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2	337	338
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NORTH DAKOTA STATE UNIVERSITY
Standing Committee on Faculty Rights

- - - - - - - - - - - - - - -
In the matter of)
Dr. Abraham A. Ungar,)
Professor of Mathematics)
- - - - - - - - - - - - - - -

P R O C E E D I N G S

in the above-entitled matter were taken at North Dakota State University, Family Life Center, Fargo, North Dakota, on Monday, April 15th, 2002, commencing at the hour of 8:35 A.M.

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P R O C E E D I N G S

(Whereupon, the hearing commenced at 8:35 A.M. as follows:)

MS. VOGLEWEDE: We are here this morning on the matter of Dr. Abraham Ungar before the Standing Committee on Faculty Rights. John Gosbee is here representing Dr. Ungar. Sara Gullickson McGrane is here representing the NDSU Administration. My name is Jane Voglewede. I have been asked to serve as hearing officer today by the Standing Committee on Faculty Rights.

The court reporter today, for any of you who haven't met her, is Deanna Sager. She has complete authority to let any and all of you know if you are speaking too quickly, too softly, or cannot otherwise be heard to make a good record.

I'm going to ask the members of the committee to each identify themselves and the college and department that they represent. And we have a bit of an echo in here today. I would ask all of you to please try to speak up so that everyone can hear you. The witnesses will be at that end of the table. The committee members who need to hear the testimony are at this end. If at any time you committee members cannot hear witnesses, pipe up and let them know.

Dr. Lindgren, do you want to start?

DR. LINDGREN: Elaine Lindgren, Department of Sociology, Anthropology, and the College of Arts, Humanities and Social Sciences.

DR. LAREW: I'm Don Larew also from the College of Arts, Humanities, Social Sciences, and teach in theater arts.

DR. DECKARD: Ed Deckard, College of Agriculture, Department of Plant Sciences.

DR. MILTENBERGER: Ray Miltenberger, Psychology Department, College of Science and Mathematics.

DR. COLVILLE: Tom Colville, Department of Animal and Range Sciences, College of Agriculture.

MS. VOGLEWEDE: And, Counsel, will you each please identify yourselves for the record.

MS. MC GRANE: My name is Sara Gullickson McGrane, special assistant attorney general representing NDSU Administration.

MR. GOSBEE: I'm John Gosbee representing Professor Ungar.

MS. VOGLEWEDE: Thank you. No challenge or objection has been made by either party in this hearing to the composition of the committee or to my serving as hearing officer. This appeal is taken, to

my understanding, under North Dakota University System Policy 605.3.9 regarding imposition of a sanction against a faculty member. So the institution will proceed first in this hearing and has the burden of proof by clear and convincing evidence.

The proceedings will be handled in this fashion. Opening statements will be heard first from counsel for NDSU Administration and then from Mr. Gosbee on behalf of Dr. Ungar. The witnesses will then be called first on behalf of the administration, then on behalf of Dr. Ungar, with the opportunity for cross-examination and recross-examination -- or redirect and recross as needed by counsel.

The committee members, keep in mind, will also have the opportunity to examine the witnesses if they choose. I have suggested to them that they wait until counsel are finished with their examination, but, depending on the question that they have, they may even break in during counsel's examination. Either party may elect to call rebuttal witnesses if necessary. And then we will hear closing arguments from counsel, again, with the administration proceeding first.

The hours set aside for this hearing today are until 6 P.M. We will take a one-hour break for lunch, is that correct, Dr. Miltenberger?

12 to 1. We'll take a brief break in the morning and probably two during the afternoon. The committee is scheduled to meet again, if needed, on Wednesday of this week from 11 until 2 P.M.

Sometime after the conclusion of the hearing the committee members will meet, and, based only on the evidence heard at this hearing, will prepare a report containing their findings, conclusions, and recommendations which will be forwarded to the president. The president will then make his decision and notify the committee and Dr. Ungar within 15 days of receipt of the committee's report.

There are just two preliminary matters that I have before we begin with opening statements. One of them is a motion in limine made by NDSU Administration concerning the introduction of any evidence of a lie detector test taken by Dr. Ungar. Both parties have submitted briefs on that issue. I have reviewed those briefs and have discussed the matter with the committee members. That motion will be granted. There will be no evidence allowed of the lie detector test or of the taking of a lie detector test by Dr. Ungar during the hearing.

The other matter that came up, and I just

want to make a brief mention of this for benefit of the committee, is that prehearing depositions were taken by counsel for Dr. Ungar. I want to just note for the record that those depositions were taken over the opposition of the administration and that there were time limits placed on those depositions. And the time limits were objected to by counsel for Dr. Ungar. Since those depositions may be referred to or used during this hearing, I wanted to let the committee members know that there were some objections on both sides to those proceedings.

Are there any other preliminary matters which counsel would like to have addressed?

MS. MC GRANE: No.

MR. GOSBEE: Just one quick question. You had mentioned that when the committee makes the decision they forward it to the president. I assume they'll also forward it to the parties.

MS. VOGLEWEDE: They will, yes. And that will be done at the same time as the decision is forwarded to the president.

Anything further from counsel?

MS. MC GRANE: No. Nothing.

MS. VOGLEWEDE: If not, you may proceed. And, Ms. McGrane, you may present your opening

statement.

MS. MC GRANE: Thank you for the opportunity to have this opening statement to give the North Dakota State University administration's brief purview on what the evidence we hope will establish during these proceedings.

Intellectually, this case would be a much more interesting one if we were talking about who came up with a mathematical concept. And that is one of the issues that has been raised by the professor in this case. However, that's not what the NDSU Administration believes this case is about.

What the NDSU Administration believes this case is about is harassment of a junior faculty member and failure to turn in student evaluations. The idea of who came up with the mathematical concept is not something that is technically before the committee, nor is it something that is even relevant to this committee. Instead, what's relevant is was a senior faculty member harassing to a junior faculty member, and did that senior faculty member fail to follow the procedures regarding student evaluations.

You will hear testimony from Vice-President Schnell that he asked for a letter of reprimand when he learned that Dr. Ungar did not turn

in his student evaluations. The former chair of the mathematics department, Dr. Comez, will testify that he provided Dr. Ungar with reminders to turn in his evaluations, and despite these reminders no evaluations were turned in.

The new chair of the department, Dr. Shreve, will testify that based upon Dr. Ungar's failure to turn in the evaluations he, together with Dean White, issued a letter of reprimand. After the letter of reprimand was issued some subsequent information became available that Dr. Ungar, in fact, did do the student evaluations, but he failed to follow the proper procedures in doing the student evaluations. Based upon that new information, the NDSU Administration issued a revised letter of reprimand properly reflecting the new information. It is basically undisputed in this case that Dr. Ungar failed to follow the proper procedure in administering student evaluations.

The second issue that's before the committee is the harassment of a junior faculty member by a senior faculty member. There was a letter of reprimand that was issued, and one of the issues that was discussed in the letter of reprimand was a communication that contained the word warning in Hebrew

at the top of the document. Dr. Ungar has since claimed that he did not write the word warning and that that is somehow dispositive. However, the NDSU Administration believes that even if he had not written the word warning, the letter of reprimand would still have been issued given the content of previous communications and subsequent communications.

Dr. Ungar and Dr. Foguel had previously collaborated on papers and had previously worked together. However, when Dr. Foguel decided to publish on his own he received communications from Dr. Ungar disagreeing to a term that he used one time in his paper. That disagreement was not a friendly debate, but was, instead, harassment. When Dr. Foguel told Dr. Ungar he disagreed with him and he was going to do it the way he chose to, Dr. Ungar did not let the issue rest. He repeated -- repeatedly contacted Dr. Foguel, and he continued to take the issue up not only with Dr. Foguel but with others within the university. It continued to a point where not only was it addressed to people inside the university, but it was taken to people outside the university. And this is where things became especially egregious to the university.

Dr. Ungar contacted one of the individuals outside the university who supported

Dr. Foguel's application for tenure. He contacted this person suggesting that her support for him was no longer appropriate.

After making this contact he sent an e-mail both to the president of the university, President Chapman, and several mathematicians around the world. And this is the letter that I think all of us will hear the egregious language. Not only did he say, "I felt I should inform Professor Kappe that her letter of recommendation to Tuval is no longer relevant," but he went on to reference why this issue of the letter of reprimand and the complaint by Dr. Foguel only came up after the New York tragedy, somehow suggesting there was some kind of a relevance between the two. He even went on to say in this e-mail, "I consider this to be an act of anti-Semitism by Tuval." He went on to quote, "How is it possible that Tuval, a genius mathematician, generated a deceptive message, the deception of which can be easily detected by the experts? The only answer," and I'm skipping a few words here, "I can figure out is that Tuval might have some mental defect, a suggestion supported by the fact that his son is known to have some mental defects." In that letter he admits that he might be understandably paranoid and that he may need help and that he has

likely overreacted.

Based upon that e-mail and the other things that had been going on, the dean of the department, Dean White, and the chair, Chair Shreve, issued a letter to him suggesting that he get assistance through the faculty assistance program. NDSU Administration also for a short period of time terminated his outgoing e-mails from the math department so that we could try to get a handle on what was going on and what was turning into a very destructive communication by a senior faculty member.

The NDSU Administration believes there are really two issues for this committee. The first is that is a letter of reprimand in this case supported. Not only is it supported, but we think even stronger -- a stronger form of punishment could have been taken by the NDSU Administration. The issue is not who should be given credit for the mathematical concept. The issue is not who wrote the word warning. The issue is whether Professor Ungar harassed a junior faculty member by repeated communications when Dr. Foguel asked that they stop, and then when he did not stop communicating with Dr. Foguel he started communicating with others. Both an individual who supported his tenure application and others outside of

the university.

We believe in this case there is harassing and intimidating behavior that supports the letter of reprimand. And the issue of the student evaluations, which we discussed earlier, we believe is basically conceded, and so the letter of reprimand was appropriate on that point.

Thank you very much.

MS. VOGLEWEDE: Mr. Gosbee?

MR. GOSBEE: Thank you, hearing officer. I've got a copy of my -- part of my notes. I would distribute that to the committee.

MS. VOGLEWEDE: Yes.

MS. MC GRANE: Do you have a copy for me, too, John? Thank you.

MR. GOSBEE: Mr. Chairman, members of the committee, and Hearing Officer Voglewede, the -- this case, contrary to the assertion of the administration, is not about -- or they contend that the issue of who wrote the word warning is not important. Yet that is what was alleged in the letter of reprimand. And you're going to hear an awful lot of evidence today. And none of you is a lawyer, and I suspect very few of you probably have ever even served on a jury. But I think counsel for the administration will not disagree,

and I think it was already pointed out by the hearing officer, that the standard of proof in this proceeding is clear and convincing evidence in the record considered as a whole.

Now that's a nice phrase, clear and convincing. Then the question becomes what does that phrase mean. And that's where we lawyers make a lot of money scratching our heads trying to figure out what all these phrases mean. So you go to the North Dakota Supreme Court cases and you find that reasonable doubt, and I think almost everybody here knows what that is in a criminal case, means, quote, firm and abiding conviction of the defendant's guilt. That's based on pattern jury instructions they use in criminal cases. Then you go down and say clear and convincing means, quote, firm belief or conviction that the allegations are true. So really the only difference between the standard in a criminal case and that standard that has to be applied here is whatever difference is perceived by the word abiding. Because they both say firm belief or conviction. And the reasonable doubt standard adds the word abiding. I must admit I can't tell the difference.

But here's an example that I ask you to consider. This clear and convincing standard applies

in parental termination cases. In other words, the state cannot take somebody's child away from them unless they convince the trier of fact by so-called clear and convincing evidence that it's justified. So when you listen to all this evidence I ask you to evaluate it on that level of importance. The administration has to do more than just balance the scale slightly in its favor. They may not have to spring the scale down as they would in a criminal case, but it's almost as much. So as you hear all these stories, you're going to hear all sorts of conflicting stories as who did what and who said what and who did what when. And the biggest conflicting story is going to be who wrote the word warning.

Professor Ungar plans to testify under oath that he didn't do so. Professor Foguel has already testified under oath that he didn't do so, and I assume he will do so again today. Or so testify again today.

And the administration argues that what Professor Ungar did broke the rules. Well, as you listen to everything they say he did -- and to a great extent there's not a factual dispute as to whether he wrote a certain letter. We're not going to say he wrote the letter on May 10th, or whatever. Obviously,

there's no disagreement on that. The question is did it break the rules. And as you see all that evidence I ask you to say to yourself and expect the administration to show you the answer to these questions. Where is it written thou shalt not send letters to outside professors about a colleague's tenure. Where is it written thou shalt not defend thy intellectual property. Where is it written thou shalt not protest low academic standards. For that matter, where is it written that thou shalt not make a comment in a letter that goes to the personal family of a person you're arguing against. If they can't show some place that is written, then how is it fair that Professor Ungar is held to a standard to obey a rule neither he nor you nor the administration can read.

And what's really at stake here is a stake much greater than the people in this room, although this proceeding alone is costing a fortune, probably on the order of $50,000 over who wrote the word warning and whether it was nice, whether Dr. Foguel -- I'm sorry, Dr. Ungar was as nice as he could have been in an argument with Dr. Foguel over an academic issue. That's kind of a sad consumption of resources. Be all that as it may, this is about academic freedom. Dr. Ungar's academic freedom to say

what he believes.

I have quoted on my opening statement notes the general principles of academic freedom as repeated in -- or as published in the policy manual of North Dakota State University. I will not consume your time reading that aloud to you. I do ask that you reflect on that as you hear all this evidence. Reflect on whether approving these sanctions would be an infringement upon Dr. Ungar's academic freedom.

It's interesting they are now backing off on whether the warning is all that important. Yet when you see the letter of reprimand, I'm not sure if the committee members have all seen it yet, but you will before long, great emphasis was placed on that word. As a matter of fact, Professor Shreve and White used the curious phrase that it was written in the, quote, security of the Hebrew language. Almost as if writing it in Hebrew was some sort of plot from the Israeli Knesset. I don't know why it would be somehow sinister because it was written in Hebrew. God only knows because the two men involved could easily read and write Hebrew. So they've backed off on that because they're not so sure they can prove it. And there will be quite a bit of evidence that they can't prove it. There would be more if certain rulings hadn't gone

against us.

MS. MC GRANE: Objection.

MR. GOSBEE: I didn't say what they were.

MS. MC GRANE: I still object. And move to strike the last statement.

MS. VOGLEWEDE: The committee will be instructed to disregard it.

You may move on, Mr. Gosbee.

MR. GOSBEE: They are also backing off on the initial evaluation issue. They've essentially admitted that they drew the wrong conclusion with the evidence available to them, and so they're trying to back pedal and make something out of what's left of their case.

So we respectfully submit that the university will fail in its burden of proving with clear and convincing evidence, by that standard of proof, will prove with clear and convincing evidence that these sanctions were justified. Therefore, the letter of reprimand issued in October should be withdrawn, the letter of reprimand issued in November should be withdrawn, the order to go to the faculty staff assistance program should be withdrawn, and the order concerning e-mails should be withdrawn and the

committee we request direct the administration not to inflict such a punishment in the future unless he actually violates, which he has never done, I think the committee will eventually agree with that, the university's e-mail policy. Because the only thing in the e-mail policy deals with pornographic literature, and nobody has ever said he did that. Thank you.

MS. VOGLEWEDE: Ms. McGrane, you may proceed with your first witness.

MS. MC GRANE: Thank you. NDSU Administration calls Dr. Alan White.

DR. ALAN WHITE,

HAVING BEEN FIRST DULY AFFIRMED TO TESTIFY THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH RELATIVE TO THE CAUSE SPECIFIED, TESTIFIED AS FOLLOWS:

THE WITNESS: I affirm.

MS. MC GRANE: Before we get started, is it okay if I pass around the administration's exhibit packet just so we don't have to keep doing it every time?

MS. VOGLEWEDE: Sure.

EXAMINATION

BY MS. MC GRANE:

Q. Will you please state your full name for the record?

A. Alan Robert White.

Q. And what is your position with the university?

A. I'm a professor in the Department of Biological Sciences and dean of the College of Science and Mathematics.

Q. And as dean, what are your duties and responsibilities?

A. I'm really responsible for the academic portion of the college, running the budgets, supervision of the various departments that are in the college. Basically all of the operation of the college comes through the dean's office.

Q. And how long have you been in the position of dean?

A. Almost two years. It will be two years in July.

Q. Are you familiar with Dr. Ungar and Dr. Foguel?

A. Yes.

Q. How are you familiar with them?

A. They're both professors in the Department of Mathematics which is in the College of Science and Math.

Q. And have you had an opportunity to speak with them while you've been in your capacity as dean?

A. Sure.

Q. Have you ever spoken with Dr. Ungar about any of his concerns that have become relevant in this case?

A. Yes. About a month -- well, I think towards the end of July of the year 2000, just after I became dean, he made an appointment and came in and outlined his issues with the gyrogroup versus K-loop controversy.

Q. And at that time did that have any involvement with Dr. Foguel?

A. Not to my recollection.

Q. And did you speak to him again about this subject?

A. I think over the next year he made three or four appointments with me essentially to discuss the same matter.

Q. And at some point in time did you also have conversations with him about a concern he had with Dr. Foguel?

A. I think the first time that Dr. Foguel's name came into this would have been in the summer of 2001.

Q. What I'd like to do is --

A. Or the spring, anyway, of 2001.

Q. What I'd like to do is show you a copy of what we've marked as the Administration's Exhibit 14. I'll give you an opportunity to review that. Do you recognize that document?

A. Yes, I do.

Q. And can you tell the committee what it is?

A. This is a letter that Dr. Ungar wrote to me following one of the meetings he had with me I believe it was three days earlier on April 27th.

MS. MC GRANE: We'd offer Exhibit 14.

MS. VOGLEWEDE: Any objection?

MR. GOSBEE: No, your Honor.

MS. VOGLEWEDE: Okay. Received.

Q. (Ms. McGrane continuing.) And can you give a brief summary, without reading the whole thing, but just a brief synopsis of what the exhibit is about.

A. Yeah. This is a letter to me from Dr. Ungar kind of recapping what it was he told me during that meeting. It points out that -- the dispute about the term gyrogroup. It also brings up the fact that Dr. Foguel and he had co-authored a couple of papers, had worked jointly on some papers, and that in his opinion now Dr. Foguel has decided to move over to

the other side, I guess, in this dispute, and that's in some way harming NDSU's reputation.

Q. Was that the first time that you recall -- or is that document, does that reflect the first conversation that you recall having with him regarding his dispute with Dr. Foguel?

A. Yes, it is.

Q. And I'd also ask you to turn to Exhibit 17, please.

A. Okay.

Q. Do you recognize Exhibit 17?

A. Yes.

MS. MC GRANE: We'd offer Exhibit 17.

MR. GOSBEE: No objection, your Honor.

MS. VOGLEWEDE: Received.

Q. (Ms. McGrane continuing.) And can you tell us what Exhibit 17 is?

A. This is a response from Dr. Ungar regarding a letter that Dr. Comez had written him I believe about his teaching in a Math 146 course.

Q. So at the time you were having communications with Dr. Ungar regarding the gyrogroup issue, were you also having conversations with him about other issues?

A. Yes.

Q. I'd next like to have you turn to Exhibit 13, please. Do you recognize Exhibit 13?

A. Yes, I do.

Q. And can you tell the committee what Exhibit 13 is?

A. This is a copy of the procedures manual of a mathematics society which Professor Ungar gave me I think at the same time that he delivered the letter with the same date, April 30th. And at the top was handwritten a note from Dr. Ungar which was I believe partly in black ink and partly in red ink.

MS. MC GRANE: We offer Exhibit 13.

MS. VOGLEWEDE: Any objection?

MR. GOSBEE: No objection.

MS. VOGLEWEDE: Received.

MS. MC GRANE: And for the committee's pleasure, we did bring the original of that exhibit.

Q. (Ms. McGrane continuing.) And, Dr. White, can you show the committee what you're referring to when you refer to part in black ink and part in red ink?

A. The heading up at the top is written in one pen, which is black, and then the note is written in another pen, which is red ballpoint pen.

MS. VOGLEWEDE: Ms. McGrane, can you pass

that down to the committee?

MS. MC GRANE: Certainly.

Q. (Ms. McGrane continuing.) When Dr. Ungar gave you a copy of Exhibit 13 did he tell you what he wanted you to do with it or why he was giving it to you?

A. No. This was delivered I think along with the letter that you introduced a minute ago. So, as far as I recall, this showed up in my mailbox.

Q. And the exhibit that we were referring to is Exhibit 14; is that correct?

A. Yes.

Q. And at this time, at the end of April of 2001, did there seem to be any resolution in sight, or did things seem to be improving in any way?

A. At that time I basically noted the dispute between the two professors. I believe I talked with Dogan Comez, the chair of the department, about it. At that stage I think I just kind of let it lay hoping that they would resolve the dispute between them.

Q. And then when is the next time that you became aware that there was something that was ongoing between the two professors?

A. I believe it was on into October of 2001.

Q. Did you take any disciplinary action in the spring of 2001?

A. No.

Q. Why not?

A. Well, I didn't see any reason to be -- as far as I could tell, there was nothing happening that warranted any kind of disciplinary action.

Q. And what happened in the fall of 2001?

A. I believe the first thing I heard was a phone call from Warren Shreve, who had become the department chair, about a conversation between the two professors, and also a note which had passed between them and several letters, I believe, that had gone back and forth.

Q. And at that point did you decide to take any action against either of the professors?

A. I believe Dr. Shreve and I then had a meeting where we talked about this. We consulted with Dr. Schnell, the vice-president for academic affairs, and decided that a letter of reprimand was in order against Dr. Ungar.

Q. And why did you think that a letter of reprimand was in order?

A. Well, there were two issues. One was that he had never conducted the student ratings of

instruction, the course evaluation at the end of his course in the spring semester, which is required of all professors in all courses that they teach.

And the second was the intimidating and harassing behavior that he had towards Dr. Foguel, especially with Dr. Foguel coming up for tenure and promotion. And the conversations that were related to me had to do with essentially Dr. Ungar threatening to withhold his support for Tuval Foguel's tenure and promotion unless Dr. Foguel was willing to change his wording in a paper that he had written to the wording that Dr. Ungar preferred. So if he would change his wording then Dr. Ungar would support him for tenure and promotion. If he didn't change his wording that he was going to oppose that.

Q. What I'd like to have you do is turn to Exhibit 1, please. Do you recognize Exhibit 1?

A. Yes. This is the letter of reprimand.

Q. And is this the letter of reprimand that was jointly signed by you and Dr. Shreve?

A. Yes, it is.

MS. MC GRANE: We'd offer Exhibit 1.

MS. VOGLEWEDE: Any objection?

MR. GOSBEE: No objection.

MS. VOGLEWEDE: Received.

Q. (Ms. McGrane continuing.) Had you ever done a letter of reprimand as a dean before this letter of reprimand was issued?

A. No. That was the first one I'd done.

Q. And what did you view as the significance of the student evaluation issue?

A. All professors at NDSU are required to do a student rating of instruction at the end of every course. There's very precise procedures that are laid out. These are designed to protect the students from any kind of recrimination from the professor. The professor is not supposed to be in the room when it takes place. Someone else is supposed to hand out a standard form to all students. The professor should not even be present when this happens. The other person should then collect those and turn them into the department. The professor is not supposed to see the student evaluations until after he has -- he or she have turned in their grades at the end of the semester.

Q. And at the time you issued the letter of reprimand, which is Exhibit 1, what was your understanding as to what had happened with the student evaluations in Dr. Ungar's course?

A. As far as I knew, they weren't even done. That the student evaluation was never even

conducted. There was no indication that there had ever been any student evaluation done at all.

Q. And at some point in time did you later learn that there was a different outcome on the student evaluations?

A. Later, after the letter of reprimand, Dr. Ungar I believe wrote a letter directly to Dr. Schnell stating that he had, indeed, done these student ratings of instruction, but he had done them himself and he had them.

Q. And when you say he had done them himself, what do you mean by that?

A. That he had passed them out to the class directly. That he was there when the students were filling them out and he took them back up from the students himself.

Q. And as a result of gaining that additional information, did you revise the letter of reprimand?

A. Ultimately -- well, we asked that those student ratings of instructions be turned over to Craig Schnell. I think about a month later they were turned over. I've never actually seen them. So I believe they were given directly to the vice-president's office. Once it was known that student rating of

instruction had actually been done, but done in a totally improper way, we revised the letter of reprimand to instead of saying you didn't do the letter of reprimand we said you did them in a totally inappropriate way which did not follow the procedure.

Q. And can I have you turn to Exhibit 3 and Exhibit 4, please?

A. Okay.

Q. Can you tell the committee what we have in Exhibits 3 and 4?

A. Exhibit 3 is that amended letter of reprimand. The underlined portion is the portion that was changed. So that it would be clear. And there's one section of underlined on the first page and another short section on the second page. That was done to make it clear what was different about this one and the one that was originally issued on October 10th.

And then Exhibit 4 is a cover letter that was attached to the amended letter of reprimand. We were letting Dr. Ungar know that we had amended the letter, and, also, that as a result of the e-mails that he was sending out across the world we were suspending his e-mail privileges until he assured us that he would not be abusing e-mail privileges in the future.

MS. MC GRANE: We'd offer Exhibits 3

and 4.

MS. VOGLEWEDE: Any objection?

MR. GOSBEE: No objection.

MS. VOGLEWEDE: Received.

Q. (Ms. McGrane continuing.) There was a suggestion made in opening statements that you don't have the authority to stop someone from sending e-mails from the university unless they're of pornographic content. Is that a statement that you would agree with?

A. No. Absolutely not.

Q. Why not?

A. Certainly the use of e-mail -- well, I don't have the policy in front of me, but one of the things that's listed there is about pornography. But certainly the use of e-mail is a privilege, it's not a right. And its improper use reflects on the university. So this is an official function of the university and it should be used properly.

Q. I won't offer this because we didn't mark it as an exhibit. But I'd like to show you a document that is the university's computer use policy. Is that a document you've seen before?

A. Yes, it is.

Q. And does that refresh your recollection

as to what kind of things are permitted and prohibited?

A. Sure. It says, "Material that's obscene or defamatory or to enter or send material that is intended to annoy, harass, or alarm other persons -- another person which serves no legitimate purpose."

Q. And the policy that you just referred to is an NDSU policy; is that correct?

A. Yes, it is.

Q. Are you familiar if the board also has a policy?

A. Yeah. Usually the NDSU policy closely reflects the Board of Higher Education's policies.

Q. And if we turn a few pages back in the document that I gave you to refresh your recollection, can you tell us what the title of the board's policy is?

A. "Subject: Miscellaneous Section Computing Facilities."

Q. Thank you.

MS. VOGLEWEDE: Counsel, what's the policy number?

MS. MC GRANE: I'm sorry. The policy number is 1901.2. And that's the board policy. The NDSU policy is Section 710.

MS. VOGLEWEDE: Thank you.

Q. (Ms. McGrane continuing.) We've talked about the student evaluations. And if only the issue of the student evaluations had been present, would you have issued a letter of reprimand to Dr. Ungar?

A. Yes.

Q. Why?

A. Because it was a clear violation of NDSU policy. It's something that every professor is expected to do at the end of every course. And it appeared that he had not done his student evaluations.

Q. The second issue that's mentioned in the letter of reprimand which is Exhibit 1 is harassment. Is that correct?

A. Yes.

Q. And if we turn to Exhibit 1, the second -- I guess it's the third full paragraph discusses, "In communications to Professor Tuval Foguel you've accused him of using a notation which is nonstandard."

Do you see that?

A. Yes.

Q. And do you have any idea of how many communications there were between Dr. Ungar and Dr. Foguel where they discussed this issue?

A. I believe there were several letters and notes that went back and forth and several conversations. I don't know exactly how many.

Q. Does the fact that two professors are disagreeing about a concept concern you?

A. No.

Q. What about this disagreement, then, rose to the level of concern for you?

A. Really the point at which I thought we had a problem was when I was informed that Dr. Ungar was threatening the tenure and promotion process for Dr. Foguel. I thought that was inappropriate and --

MR. GOSBEE: May I interpose an objection. I haven't objected to all this hearsay and hearsay and hearsay. But especially with buzz words like threat, unless he actually saw the episode in question, he shouldn't be allowed to testify to so-called threats. So I object to his testimony.

MS. MC GRANE: And it's perfectly admissible for notice purposes. And based upon the notice that he received, if it had simply been a disagreement it wouldn't have rose to a letter of reprimand. It's because of the notice that he received was that it was a threat. And his letter of reprimand was issued. So I think it is appropriate in this

instance. The notice exception of hearsay rule.

MR. GOSBEE: But the word threat is a characterization that is critical to the whole argument. And it should come from the person -- or testimony concerning exactly what happened that supposedly is a threat should come from the person who experienced it, not, if I've kept track here, I think he's a thirdhand hearsay person.

MS. VOGLEWEDE: My understanding is that Dr. White is testifying as to the -- his understanding or his basis for the letter of reprimand. So I'm going to overrule the objection.

Q. (Ms. McGrane continuing.) And you said that the reason that you thought the issue had become a new issue for you, at least, was that there was a suggestion that somehow the tenure process was going to be impacted; is that correct?

A. Yes.

Q. And in the letter of reprimand you cite an instance of harassment including the word Hebrew -- or, I'm sorry, the worked warning being written in Hebrew on the top of the document; is that correct?

A. Yes.

Q. Is that the only instance of harassment

that had been taking place when the letter of reprimand was issued?

A. No. There was a case of Dr. Ungar removing Dr. Foguel's tenure application from the department office which is against the rules of that department. The tenure application is on deposit in the office. The department office faculty members are welcome to come into the office and look it over, read it, take notes, whatever they need to do to make their judgment on the tenure cause. But they're not supposed to remove it from the office. Apparently, Dr. Ungar had removed it from the office, had it out in the hallway, and directly confronted Dr. Foguel about the word K-loop versus gyrogroup and made some statement, and I believe there's a letter from Dr. Foguel recounting this incident, a statement about if he would change his wording that Dr. Ungar would then support him for his tenure and promotion process.

Q. What I'd like to have you now do is turn to Exhibit 10, please. Can you describe for the committee what we have in Exhibit 10?

A. This is a note I believe written by Dr. Ungar to Dr. Foguel. It's on top of -- the note itself is written at the head of a letter which Dr. Ungar wrote to the AEM -- I mean to the Notices

of -- what's it, the Notices of Mathematical Society of America. I'm not sure exactly what the journal is. Basically it's a mathematics journal. This is a letter that Dr. Ungar had written to the journal detailing his dispute with the Karzel group in Germany about the term K-loop versus gyrogroup. And then at the top of that is a letter written in Hebrew. Or a note written in Hebrew.

MS. MC GRANE: We offer Exhibit 10.

MS. VOGLEWEDE: Any objection?

MR. GOSBEE: Is the actual original going to be the one that's offered?

MS. MC GRANE: No. We've got the copy in, but we brought the original to show to the committee.

MR. GOSBEE: In that case I'm going to object. I think quite material -- most of these things I don't mind third and fourth generation photocopies. On this I think the actual original of all three pages should be offered. And I'll object to anything other than that.

MS. VOGLEWEDE: I would prefer the original be marked.

MS. MC GRANE: Can I have one second here to confer? Mr. Anderson is here, and I know this issue

could be significant in another issue, so if I could just confer with him for a second.

MS. VOGLEWEDE: Sure.

MR. GOSBEE: The document certainly can be released as needed in other proceedings.

MS. MC GRANE: With that understanding that the original can be retrieved later if needed, we have no problem offering the original Exhibit 10.

MR. GOSBEE: All three pages, please.

MS. MC GRANE: All three pages.

MS. VOGLEWEDE: It will be received.

DR. MILTENBERGER: Can we take a look at it, please?

MS. MC GRANE: Absolutely.

Q. (Ms. McGrane continuing.) You have before you a copy of Exhibit 10. Can you describe for the committee what your understanding of the notation at the top is? You don't read Hebrew I'm assuming?

A. No, I don't.

Q. What's your understanding of the content?

A. I believe I was shown a translation of this into English which was done by Dr. Foguel originally. It essentially -- well, I can't remember exactly what it said. I'd have to look at the translation to remember. But, you know, what I saw was

this note in Hebrew along with a translation.

Q. And there is a note -- or there is a word at the top that's written in red; is that correct?

A. Right.

Q. And do you have an understanding as to what that word in red is?

A. I was told that that is the Hebrew word for warning with an exclamation mark.

Q. And are you aware that there is a dispute as to who actually wrote the word warning on this document?

A. Yes, I am.

Q. And did you or did anyone under your direction, do anything to attempt to determine who actually wrote the word warning on this document?

A. I believe Dr. Shreve asked each of the two professors if they had written it. And then he, I believe he also asked them each to write the Hebrew word for warning in capital letters as a sample of handwriting.

Q. And if you'll turn to Exhibit 24, please. Do you recognize Exhibit 24?

A. Yes. These look like the two writing samples that Dr. Shreve asked for.

MS. MC GRANE: Ms. Voglewede, would you

like the original? Is that a good place for it?

MS. VOGLEWEDE: Why don't you leave them with the court reporter.

MS. MC GRANE: Okay.

Q. (Ms. McGrane continuing.) And I'm assuming, Dr. White, that you're not a handwriting expert?

A. No.

Q. Based upon your novice or layperson's opinion, were you able to tell or did you have an estimation --

MR. GOSBEE: I'll object.

Q. -- as to who wrote the word warning on the document based upon Exhibit 24?

MS. GOSBEE: Objection, your Honor. We all have opinions. I think we could predict with precision what each of us thinks.

MS. VOGLEWEDE: Sustained.

Q. (Ms. McGrane continuing.) Based upon your review of Exhibit 24, did you stand by the letter of reprimand that was issued to Dr. Ungar?

A. Yes, I did.

Q. Have you received any material from Dr. Ungar or Dr. Foguel that had similar notations on the top of documents in red?

A. There was the note that was introduced earlier written on the top of his letter to me -- or, no, it was on top of a copy of the paper.

Q. If I turn you back to Exhibit 13, would that be the document you're referring to?

A. Yes, that's it.

Q. And after the letter of reprimand was issued to Dr. Ungar did you receive a response from him?

A. Yeah. I believe it was two days later on October 12th there was a letter that was delivered into my mailbox.

Q. If I can have you turn to Exhibit 22, please. Oh, I'm sorry.

MS. MC GRANE: As a matter of housekeeping, I neglected to offer Exhibit 24. And we'd offer Exhibit 24.

MR. GOSBEE: I was wondering when she was going to do that. I'd like to reserve an objection pending -- or can I ask a quick question in voir dire of the witness?

MS. VOGLEWEDE: Yes.

MR. GOSBEE: Dean White, you didn't personally take these samples; is that correct?

THE WITNESS: No, I didn't.

MR. GOSBEE: And do you know who did?

THE WITNESS: Dr. Shreve.

MR. GOSBEE: And is he available for testifying here today?

THE WITNESS: To my knowledge, yes.

MR. GOSBEE: Okay. I'd like to reserve an objection pending Dr. Shreve's testimony.

MS. VOGLEWEDE: It will be received.

DR. LINDGREN: I'm confused. Could you explain the objection?

MR. GOSBEE: I'd like to -- well, I guess am I --

MS. VOGLEWEDE: I'm receiving them anyway.

DR. LINDGREN: Okay.

MS. VOGLEWEDE: It's one exhibit, Exhibit 24.

Q. (Ms. McGrane continuing.) We're now up to Exhibit 22 now that I remembered to clear that up. And in Exhibit 22 you mentioned this is a copy of a letter that you received from Dr. Ungar; is that correct?

A. Yes, it is.

MS. MC GRANE: We'd offer Exhibit 22.

MS. VOGLEWEDE: Any objection?

MR. GOSBEE: Well, if it's being offered for the sinister handwriting in red, I think the original should be offered.

THE WITNESS: There's no handwriting in red on this one.

MS. GOSBEE: I'm not sure if I understand why it's being offered. You're looking at a photocopy.

MS. VOGLEWEDE: Mr. Gosbee, what's your objection? Do you want the original offered of 22?

MR. GOSBEE: Yes.

MS. VOGLEWEDE: For what reason?

MR. GOSBEE: If -- I guess I'm trying to -- I might be anticipating the administration's argument here, if they're going to argue that, see, we're all looking at photocopies and it says, "Copy to Rick from Abraham October 22." And if that original was in red, and that's going to be relevant, I want the original.

MS. MC GRANE: It's not going to be relevant.

MR. GOSBEE: In that case I have no objection.

MS. VOGLEWEDE: Received.

Q. (Ms. McGrane continuing.) And can you tell the committee what Exhibit 22 is?

A. This is a letter that Dr. Ungar wrote to me in response to the letter of reprimand on October 10th.

Q. Was there anything that you found about this letter to be unusual?

A. Well --

MR. GOSBEE: Objection. The letter speaks for itself. I guess his characterization if it's unusual is irrelevant. The committee would draw whatever conclusions it wants from the letter.

MS. VOGLEWEDE: Overruled.

A. Well, if I could just kind of go down through what he has in this letter, he starts out by talking about the Hebrew word of warning. That he didn't write it. He gives his translation of the Hebrew note on the top of the, what's been called the warning letter or warning note.

And then he goes on to state that he thinks this is an obvious -- if Dr. Foguel had written the word warning on there and accused Dr. Ungar of writing that word, that that was something that could easily be discovered. And why would he do something that would be so easily refuted. His only explanation is that he has -- that Dr. Foguel has some kind of a mental defect and that further evidence of this is his

son suffers from mental defects.

When I read that I thought that was just outrageous to make that kind of a personal attack against another professor. And, furthermore, to bring in someone's family and son, and whatever his characterization of a mental defect is, I thought that was just an outrageous thing to do.

Q. And on the second page of that letter can you again summarize for the committee if there was anything that you found to be unusual or not supported in the letter?

A. In this one he accuses Dr. Foguel directly of plagiarism. And, furthermore, that if Dr. Foguel was to be granted tenure and promotion that it would mean that NDSU itself is promoting plagiarism and deception. And then he goes on to attack the credibility and the qualifications of Dr. Shreve to be department chair at NDSU. He said that Shreve was essentially promoted to full professor and to department chair resulting from a lack of funds and indicates that Dr. Shreve is not qualified to be department chair.

Q. At some point in time did Dr. Ungar withdraw this letter that we have as Exhibit 22?

A. I believe later that day, towards the end

of the afternoon, a second letter was delivered to my office.

Q. And if I can have you turn to Exhibit 23, please. Can you describe for the committee what Exhibit 23 is?

A. Yes. This is the second letter that was delivered on October 12th.

MS. MC GRANE: We'd offer Exhibit 23.

MS. VOGLEWEDE: Any objection?

MR. GOSBEE: I guess I'll object -- well, if they've offered 22 and it's been withdrawn by 23 I don't think either one should be allowed.

MS. VOGLEWEDE: What's the basis for your objection?

MR. GOSBEE: Neither one is relevant. One cancels out the other.

MS. VOGLEWEDE: It will be received.

Q. (Ms. McGrane continuing.) You mentioned that you learned of a contact that Dr. Ungar had with Dr. Foguel in the hallway; is that correct?

A. Yes.

Q. And I'd like you to turn to Exhibit 20, please. Do you recognize Exhibit 20?

A. Yes, I do.

Q. And can you describe for the committee

what it is?

A. This is a short letter that Dr. Foguel wrote to Warren Shreve, who is his department chair, recounting this incident that happened in the hallway in the math department.

MS. MC GRANE: We'd offer Exhibit 20.

MR. GOSBEE: No objection.

MS. VOGLEWEDE: Received.

Q. (Ms. McGrane continuing.) You mentioned that, in the previous exhibit that we were looking at, that Dr. Ungar believed that there was a supporting of plagiarism by Dr. Foguel; is that correct?

A. Yes.

Q. Did you ever come to any conclusions or form any opinions as to whether plagiarism was being supported by Dr. Foguel?

A. The matter of this mathematical argument about authorship or ownership of the idea, I don't know enough about the details of the mathematics behind it to really have an opinion on that.

Q. Is that an issue that you tried to stay out of?

A. Yeah. I think so.

Q. Did you learn subsequently that Dr. Ungar had contacts with others outside of North Dakota State

University?

A. Yes, I did.

Q. How did you learn that he was having those contacts?

A. The first I learned of this was when I received an e-mail from a Dr. Luise-Charlotte Kappe at Binghamton University. She wrote me an e-mail in which she noted that Dr. Ungar had contacted her several times both by letter and also by e-mail. That his contact with her was with respect to her having written a letter of recommendation for the tenure and promotion package of Dr. Foguel. And that Dr. Ungar was writing her to, I assume, to try to change her mind about whether she should support his tenure and promotion. And she said in that e-mail that she would like to speak to me on the phone, that I think she said she was upset about this whole thing, and she thought it was highly inappropriate that she'd been contacted in that way.

Q. Did you, in fact, talk to Dr. Kappe on the phone?

A. Yes. I immediately called her, and we had a telephone conversation in which I apologized for --

MR. GOSBEE: Objection. Now we're into

hearsay in a conversation with Dr. Kappe at Binghamton. She's not available for anybody.

MS. VOGLEWEDE: I believe the witness was just describing what he said.

A. So we had a conversation about this matter. I asked her if she would be willing to send me copies of all of the materials that Dr. Ungar had sent her, which she did.

Q. (Ms. McGrane continuing.) What I'd like to have you do, then, is turn to Exhibit 21, please. Can you describe to the committee what we have in Exhibit 21?

A. Yeah. This is a copy of the letter Dr. Ungar wrote to Dr. Kappe which she then faxed to me that day.

MS. MC GRANE: We'd offer Exhibit 21.

MS. VOGLEWEDE: Any objection?

MR. GOSBEE: May I ask the witness a couple of questions on voir dire?

MS. VOGLEWEDE: Yes.

MR. GOSBEE: Okay. On my copy I notice a fax date of 5-15-92? 23:56, and a telephone number beginning with area code 607?

THE WITNESS: Right.

MR. GOSBEE: Is that from Professor

Kappe?

THE WITNESS: Yes.

MR. GOSBEE: She sent that to you ten years ago?

THE WITNESS: I assume when I see that that her fax machine must have the wrong date stamp on it. And that's my only explanation for it.

MR. GOSBEE: Did it come in at almost midnight?

THE WITNESS: No. But that would be the time on her machine when it was sent. And if her machine is set to 1992 then that's what we would see.

MR. GOSBEE: Do you know if 607 is the area code where she is?

THE WITNESS: I believe that's -- I don't have her number in front of me, but I believe that was the area code that I called. I'm not positive about that.

MR. GOSBEE: And how quickly after you talked to her did this fax arrive?

THE WITNESS: I don't recall exactly. I believe it was within an hour. It may have been within a few minutes. I don't know.

MR. GOSBEE: And you're representing that this is, in fact, the one you received from her?

THE WITNESS: Excuse me?

MR. GOSBEE: You're representing that this is, in fact, the document you received from her?

THE WITNESS: Yes.

MR. GOSBEE: Okay.

THE WITNESS: A copy of it.

MR. GOSBEE: Relying on that representation, we don't object.

MS. VOGLEWEDE: Received.

Q. (Ms. McGrane continuing.) And I'd also ask you to turn to Exhibit 25, please. I'm actually going to trade copies with you.

A. Okay.

Q. Since we found an extra set. Can you describe for the committee what we have in Exhibit 25?

A. Just a second. Yes. This is the e-mail that she sent to me. Again, that same day, I believe. Which has attached to it copies of all of the e-mails that Dr. Ungar had sent to her.

MS. MC GRANE: We offer Exhibit 25.

MR. GOSBEE: Objection. That we object to because it's apparently from Professor Kappe, and she isn't available. And nobody can -- apparently it's being offered to show that she objected to receiving communications from Dr. Ungar. And we should be

entitled to cross-examine her and find out if that's, in fact, what the situation is. So we object to 25.

MS. MC GRANE: Exhibit 25 is a number of things. One is the original message from Dr. Kappe which speaks for itself. And, again, it's a business record of the university once it's been received.

The second purpose for which it's offered is the final e-mail message which is sent not only to Dr. Kappe, but also, apparently, Dr. Ungar sent it to himself as well as to President Chapman. So certainly this is a business record of the university. And it's something upon which the university relied in taking its actions. So it's an exception to the hearsay rule under notice as well.

MR. GOSBEE: Well, and further, there appears to be several things missing. For example, on page 6 of the exhibit it says, "Unable to print this part." It says that three times. Page 1 of the exhibit, "Unable to print this part." Goodness knows what's missing.

MS. VOGLEWEDE: It will be received.

MR. GOSBEE: That would be one advantage of having Professor Kappe here. Maybe she can answer those questions.

MS. VOGLEWEDE: It will be received.

Q. (Ms. McGrane continuing.) Was there anything about the contacts between Dr. Ungar and Dr. Kappe that you found inappropriate?

A. Oh, absolutely. Dr. Kappe was asked to -- as part of the tenure and promotion process for Dr. Foguel she was asked if she would be willing to review his application materials and write an evaluation for Dr. Foguel which would go into his promotion and tenure document. The contacting of her directly regarding that by Dr. Ungar I thought was highly inappropriate. The process is not meant to be interfered with in that way, and especially if he was contacting her to dispute the things that she had said about Dr. Foguel's record and try to get her to change her opinion of him, I thought that was totally inappropriate.

Q. In Mr. Gosbee's opening statement notes he put, "Where is it written thou shalt not send letters to outside professors about a colleague's tenure." Do you think that there needs to be a written policy or procedure in order for you to find that inappropriate?

A. I think that's pretty much accepted among academic people, that you don't interfere with a process like that this and you certainly don't directly

contact people who are supposed to be independent references for someone else.

Q. And if you will turn to the final page of -- I'm sorry, the second to the last page of that e-mail. At the top it says page 7 of 8.

A. Um-hum.

Q. Is there anything in this portion of the e-mail message that you find to be inappropriate or harassing?

A. Well, I found this -- I really don't understand what Dr. Ungar was talking about here. He talks about how Dr. Foguel dated his message -- something about the fact that the letter of reprimand was immediately after the September 11th terrorism in New York and Washington as if somehow Dr. Foguel's actions have something to do with that. He also brings in the protecting the Jewish state of Israel against the Moslem world. "Why did Tuval trigger the letter of reprimand a month after the New York tragedy rather than a day before the New York tragedy?" When I read that I really just did not understand what in the world must have been going through Dr. Ungar's mind when he wrote that.

Then he accuses Dr. Tuval of being anti-Semitic. And, once again, says that, you know,

that seems to be a -- how could Tuval, who is himself a Jew, be anti-Semitic. And he says the only -- again repeats his statement about the only explanation he can come up with is that Dr. Foguel must have some mental defect and, again, suggests that further evidence of that is that his son has a mental defect. When I looked at the header of this and realized that he had sent this message to the president of the university, to five or six people around the world, to the Notices of the Mathematics Society, again, making what I think are outrageous personal attacks against another professor in a very public way. And I assume without informing Dr. Foguel that he was doing this.

Q. Did you take any action as a result of this -- of receiving these e-mails?

A. I think I should have written another letter of reprimand at that point. I didn't because the matter had already been -- lawyers were involved. At that stage it was basically too late for me to write any further letters of reprimand. It would have been given as another example of me harassing Dr. Ungar I guess.

Q. At any point did you do anything with respect to his e-mail privileges?

A. Yeah. In response to -- when we saw that

he was writing these kinds of letters out around the world, we suspended his e-mail account. Actually I think we only suspended one of them. We suspended his normal NDSU account without realizing that math has its own separate server. And I believe through this whole thing Dr. Ungar still had access to the Hypatia server which is in the math department. I don't believe that was ever suspended.

Q. Was he able to still receive e-mails even when his suspension to send e-mails was suspended?

A. I don't know the answer to that.

Q. Did you issue any other letters of reprimand of Dr. Ungar?

A. No.

Q. Did you send a letter to him suggesting that he utilize some assistance program of the university?

A. Yes, we did.

Q. I'd like you to turn to Exhibit 2, please. Do you recognize Exhibit 2?

A. Yes I do.

Q. Can you describe for the committee what it is?

A. Yeah. This is a letter written by me and Warren Shreve to Dr. Ungar. And this is after we

became aware of the contacts with Dr. Kappe and all the e-mails in the previous exhibit.

MS. MC GRANE: We offer Exhibit 2.

MR. GOSBEE: No objection, your Honor.

MS. VOGLEWEDE: Received.

Q. (Ms. McGrane continuing.) And if I can then have you turn to Exhibit 29, please. Will you please describe for the committee what we have in Exhibit 29?

A. Yeah. This is the NDSU policy describing the faculty staff assistance program.

Q. And is this the program that you suggested that Dr. Ungar attend in Exhibit 2?

A. Yes, it is.

Q. As dean of the college, what would you ask this committee to recommend?

MR. GOSBEE: Objection. I don't think that's a proper question.

MS. VOGLEWEDE: Would you repeat the question?

MS. MC GRANE: Sure. I'm sorry, first I have to offer Exhibit 29.

MS. VOGLEWEDE: Any objections?

MR. GOSBEE: No, your Honor.

MS. MC GRANE: And the question that was

objected to --

MS. VOGLEWEDE: Received.

MS. MC GRANE: The question that was objected to was as dean of the college what are you requesting the committee to do.

MR. GOSBEE: I don't think that's appropriate. If counsel wants to argue at the conclusion what she wants, that's appropriate. But I don't think it's appropriate for a witness to do that.

MS. VOGLEWEDE: It will be allowed.

A. I'm hoping that this committee will send Dr. Ungar a strong message that what he did was -- well, in terms of the student evaluations, he just flat out disregarded university policy. He didn't follow the procedure. I think what he did actually -- there's very good reasons why the university policy is set up the way it is. And that is to protect students from a professor reacting to what they write on their student evaluations. The professor should not be present when they're given, and the professor should not even see those evaluations until after the grades have been turned in. He flatly disregarded that, and I think there's no question that he violated that policy. I think the committee should tell him in no uncertain terms that that's not

acceptable. That, as a professor at this university, he has a responsibility to follow the rules and to do what's required of him.

When it comes to all of the dispute between him and Dr. Foguel, you know, the mathematics behind it I don't really -- I have no way of deciding who's right and who came up with this idea first. But I do know that there are some bounds to the types of discussions that should go back and forth between professors. And I think Dr. Ungar stepped over the line several times. He made personal attacks against Dr. Foguel. He brought his family members into the whole process in a totally inappropriate way. And then he tried to interfere with the process of tenure and promotion in several ways. Number one, by publicly opposing that and tying it to whether Dr. Foguel was going to use the terms that Dr. Ungar preferred or not.

And then, second, by contacting Dr. Kappe and trying to influence her opinion. And I think if you read this carefully you'll find that he attempted to get her to change her letter of recommendation for Dr. Foguel. I think that was totally out of bounds. And I think this committee should tell him in no uncertain terms that that's not acceptable.

Q. (Ms. McGrane continuing.) And do you stand by the letter of reprimand that you issued which we have in Exhibit 1 which was modified with respect to the student evaluation issue?

A. Yes, I do.

Q. And why?

A. Because I think it's very clear that he didn't do the student evaluations properly. He knew he was not doing it properly when he did it. He'd been told several times. And he certainly knew what the rules were, and I think he willfully disregarded those rules.

And, second, I still believe, no matter who wrote the word warning, if you look at all of the interactions between him and Dr. Foguel, I think Dr. Ungar is trying to use his position as a full professor to unfairly and inappropriately influence a junior faculty member. And in doing that he threatened Dr. Foguel's career. He threatened to try to undermine his chances for tenure and promotion because of an academic dispute which had to do with the terms that Dr. Foguel prefers to use in his publications.

MS. MC GRANE: Thank you. I have no further questions.

MS. VOGLEWEDE: Cross?

MR. GOSBEE: Yes, your Honor.

EXAMINATION

BY MR. GOSBEE:

Q. When you issued Administration Exhibit 1, the letter of reprimand, back in October, were you aware of most of the situations you've described just now?

A. Most of -- I was aware of some things and not others.

Q. Okay. Let's go through these things one at a time. Now, first of all, going to the second paragraph, you claim that Professor Ungar made what you consider a veiled threat on the document entitled "Prophetic Referees of AEM." Did you write that phrase or did Dr. -- I understand the -- this is a co-authored document; is that correct?

A. Yes, it is.

Q. And you co-authored it with Warren Shreve; is that correct?

A. Yes.

Q. And who wrote that particular part of this document?

A. On this letter I believe Warren Shreve wrote the first draft.

Q. And the sentence that I'm referring to,

"In your efforts to have his work conform," et cetera, is that your work or Dr. Shreve's work?

A. I believe he drafted that statement first.

Q. Did you approve of it?

A. Yes. I signed it.

Q. And what did you mean by the phrase "the security of the Hebrew language"? Is there something sinister about the Hebrew language?

A. No.

Q. And how would that be secure?

A. Because I think it's fairly well known that most people within the department would not be able to read that note. I don't know how many people in math can actually read Hebrew. But certainly the number of people would be limited.

Q. But the number includes the sender and recipient of the note, does it not?

A. Yes. So in that sense it was a secure communication in that only those two people could read what it said.

Q. Now there has been offered -- if you take a look at Administration Exhibit 22. Paragraph 2. There is a translation of the, obviously, with the exception of the word warning, the Hebrew note on the

famous red warning note. Could you read that, please, out loud?

A. Read the translation?

Q. Yes, please.

A. "To Tuval the Peace and the Blessing. This is a copy of a letter that I submitted for publication in the Notices of the AMS. Interestingly what will be the editor's reply. I hope that my suggestion concerning your paper is acceptable to you. Tuval, I expect from you a little bit of more encouragement in the war against Karzel," and this -- I believe that in parentheses there was not part of the translation, but more of an explanation, "Karzel being the plagiarist-in-chief of my work." I think that's a note that Dr. Ungar added in there. "With Friendship, Abraham."

Q. And is it your understanding that that's an accurate translation?

A. As far as I know.

Q. Have you accepted it as accurate in all your dealings in this matter?

A. I did ask for a third party to translate this. And the translation that I was given from that third party was very similar to this. Slightly different.

Q. And is there anything in that translation that you decided justified issuing a letter of reprimand?

A. What's missing there is the word warning at the top of this.

Q. I understand that. But aside from the word warning, is there anything in those letters in that translation that, in your view, justified issuing the letter of reprimand?

A. Well, the word warning was on the note that I saw so I can't separate it from what's written there. I think in the context of starting out a note by warning with an exclamation mark, and then talking about a war and expectation that Dr. Foguel will come over to Dr. Ungar's side of this war, I think that's fairly threatening language. It certainly would be taken that way by a junior faculty member who receives a note like that from the senior faculty member when the junior faculty member is coming up for tenure.

Q. All right. So I'm still trying to find out from you, and I don't have an answer yet, is whether this, without the word warning, whether that's threatening.

A. I can't answer whether it's threatening without the word warning because the word warning was

there.

Q. Who maintains Dr. Ungar's official personnel file?

A. There's probably a file in the department office of the mathematics department. And then there would be another file in the dean's office.

Q. And by dean's office you mean your office?

A. Yes.

Q. And have you maintained an access -- or, I'm sorry, a record of access to that file -- strike that.

Has anybody -- I'll rephrase this.

Are you aware of the statutory requirement that you maintain a record of people gaining access to his file?

A. Yes, I am.

Q. And have you maintained access -- that record with respect to him?

A. Yes.

MS. MC GRANE: Objection. Relevance.

MS. VOGLEWEDE: Overruled.

A. Yes.

Q. (Mr. Gosbee continuing.) And who -- do you know who has had access to his file?

MS. MC GRANE: Standing objection on relevance.

MS. VOGLEWEDE: You may have a standing objection. Overruled.

A. Can you repeat the question, please?

Q. (Mr. Gosbee continuing.) Do you know who has had access to Professor Ungar's personnel file in your office?

A. I would have to look at the log sheet at the beginning of the file to see. I know every time I've gone into the file I've logged myself in.

Q. Have you noticed any other names there?

A. I couldn't answer that without looking at the log.

Q. I call your attention to the Administration Exhibit 13. Would you agree or disagree if I were to describe this as the procedures of the committee on professional ethics covering, among other things, things such as plagiarism?

A. Yeah. I would agree with that.

Q. Okay. And this is something that Dr. Ungar gave to you, correct?

A. Yes.

Q. Did you make any effort to read it?

A. I scanned through it.

Q. Did you do anything more than scan?
A. No.
Q. Did you tell Dr. Ungar that you were only going to scan through the documents he gave you?
A. No. This appeared in my mailbox. I looked through it to see what it was and then filed it.
Q. Okay. And did you -- I notice at the top -- I assume you contend Dr. Ungar wrote this, "Please read example 4 on page 7."
A. Yes.
Q. Did you go ahead and read four 4 on page 7?
A. I don't recall if I did or not. I probably did. I mean, the note sent me to that page so I probably looked to see what that -- what example 4 on page 7 was.
Q. All right.
A. I don't recall. This was a long time ago.
Q. Could you take a look now?
A. Sure. Okay.
Q. Okay. If you could read through it to yourself and then tell me if that refreshes your recollection on whether you read it at the time.
A. Yeah. I think I read that. At the time.

Q. And -- okay. Now example 4 says, "A complainant said that a result attributed in Y's paper to the Fields medalist Z was actually proved first by the complainant."

What is your understanding of who those people are as Dr. Ungar presents his argument? Who is the complainant?

A. I don't understand your question.

Q. Well, Dr. Ungar gave you this document and called your attention to example 4.

A. Right.

Q. So, presumably, he wanted you to see if you came to the same conclusion he did?

MS. MC GRANE: Objection. Calls for speculation.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) Did you make any effort to analyze example 4 with respect to the points Dr. Ungar was trying to make to you?

A. No. This, I mean, this is the rules of a mathematics society on their ethics. I looked at it to see what it was he was pointing to. But I didn't sit down and try to determine who was X and who was Y and Z in this related to this case, no.

Q. So you now -- I think I might be correct

in understanding, then, that you made no effort to even find out if perhaps Dr. Ungar was right on his argument that there was plagiarism.

A. I don't understand. What?

Q. All right. I'll withdraw that and ask another one.

A. Yes, I made efforts to understand what was going on. I didn't just totally disregard this matter. But I'm not a mathematician. I don't know who came up with these ideas first. I made an effort to try to understand what was going on to the level I thought I needed to.

Q. Would you want a professor given tenure and promoted who had, in fact, committed plagiarism?

A. No.

Q. Did you consider it important to investigate the possibility that Dr. Ungar was right that what Dr. Foguel was doing was, in fact, plagiarism?

A. I'm unaware that Dr. Ungar is officially accusing Dr. Foguel of plagiarism. And if he is, there are procedures and policies in the university that he can do that.

Q. Which part of the note didn't you understand on the front of page 1? "Please read

example 4."

MS. MC GRANE: Objection. Argumentative.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) "To see why Foguel's act is unethical."

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) Did you understand that?

MS. MC GRANE: Objection.

MR. GOSBEE: I'm asking if he understood what was written.

MS. VOGLEWEDE: That will be allowed.

Q. (Mr. Gosbee continuing.) Did you understand that writing of Dr. Ungar, "Please read example number 4 on page 7 to see why Foguel's act is unethical"?

A. Yes. I understand that.

Q. Did it bother you that there was a possibility that Dr. Foguel's act might be unethical, or did you just dismiss it entirely out of hand, Dr. Ungar's position?

A. No. I didn't dismiss it out of hand. He had been bringing this whole issue up to me multiple times over a period of about a year.

Q. What I'm trying to find out is what effort you made to analyze the matter because, if I understand things correctly, it was his position in this whole thing, and his adamance in pursuing it, that has helped you issue the letter of reprimand.

A. And what's the question?

Q. I'm trying to find out what analysis you did, especially in response to example 4, to see if Dr. Ungar might be right after all.

MS. MC GRANE: Objection. Asked and answered.

MS. VOGLEWEDE: Overruled.

A. I guess I still don't understand the question.

Q. (Mr. Gosbee continuing.) Let's put it this way. If, in fact, Dr. Foguel had committed plagiarism and it could be proven, would Dr. Ungar's actions, such as communicating that fact to Dr. Kappe, be justified?

A. Is seems like a hypothetical that assumes that Dr. Foguel is guilty of plagiarism.

MS. MC GRANE: And on that basis I will object as calling for speculation.

MS. VOGLEWEDE: Overruled.

A. Can you repeat it then?

Q. (Mr. Gosbee continuing.) All right. If we could know for sure that Dr. -- and assume for the sake of this question, if, in fact, Dr. Foguel committed plagiarism as defined here in this example, wouldn't Dr. Ungar's actions have been justified? Contacting Professor Kappe, for example?

A. No. No. She was an external evaluator in the tenure and promotion process. And if he's going to contact a person -- I mean, there's plenty of procedures set up for the university, if he would like to accuse Dr. Foguel of plagiarism, there are policies by which he should do that. And he didn't do that.

Q. So he should sit back and not say a word while a plagiarist is granted tenure?

A. No. He should follow the policies.

Q. And where is the policy written on how he can get this tested?

A. I can't cite the policy off the top of my head, but there is a policy and a procedure whereby if a professor would like to formally accuse another professor of plagiarism there are policies on how that is done. And it's policy in the policy manual.

Q. Does that say that is the exclusive way to test?

A. I would have to read the policy. I don't

have it in front of me.

Q. Okay. If that is not the exclusive way to test whether there is plagiarism, how is the contact with Dr. Kappe wrong?

A. Because in doing so he was trying to interfere with the process of evaluation. Those are supposed to be independent and external evaluations. And by his contacting her he was interfering with that process.

Q. But if a plagiarist is about to get tenured, shouldn't the process be interfered with?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: On what basis?

MS. MC GRANE: Argumentative.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) You drew the conclusion that Dr. Ungar's actions in contacting Dr. Kappe were improper; is that correct?

A. That's my belief, yes.

Q. And are you contending that even if, in fact, Dr. Foguel had committed plagiarism nobody should have brought that to Dr. Kappe's attention?

A. Not in the manner in which it was done, no.

Q. How should it have been brought to her

attention?

A. Well, I think if Dr. Ungar is serious about making this accusation then he should do it through the proper channels. And he should follow the procedure that the university has set up for doing that.

Q. But --

A. And in that case it probably would have eventually gotten back to Dr. Kappe. And she may have been asked to reconsider after the process had been followed at the university. But the process wasn't followed at the university.

Q. But by then the tenure process might have been completed and it would have been too late.

A. No, I don't know that that's true.

MS. MC GRANE: Objection. Calls for speculation.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) Would you agree or disagree that one of the functions of a tenured professor is to serve as a mentor to nontenured professors?

A. Well, a mentor relationship is a very personal relationship. And it needs to be mutually agreed upon, first of all.

Q. All right. Well, how about a less formal word, sort of an as an example.

A. A less formal.

Q. A less formal word than mentor. In other words, to sort of stick up for the younger and nontenured faculty's rights because the tenured professor has -- he has tenure so he doesn't have to worry about being fired for sticking up for things. Would that be a proper role of a tenured professor?

A. Yes. I think tenured professors should be role models for younger faculty members, sure.

Q. So if a tenured professor -- I'm sorry, if a nontenured professor has a policy disagreement with the administration and he protests it, he's more likely to have an adverse career consequence, isn't he?

MS. MC GRANE: Objection. Relevance. Calls for speculation.

MS. VOGLEWEDE: I think the question is vague. Can you rephrase it, Counsel?

Q. (Mr. Gosbee continuing.) All right. If a -- I guess I'll be more explicit then. If a nontenured professor feels that the academic standards of the university are falling and decides to protest by not -- by varying the policies in evaluations, what would happen to him?

A. By varying --

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained. Lack of relevance.

Q. (Mr. Gosbee continuing.) I'll go on to some other things. If you could turn to Administration Exhibit 25. Was it -- was Exhibit 25 improper because it was sent out at all or because it was sent out and Dr. Kappe didn't want to receive it?

MS. MC GRANE: Objection. Vague. Exhibit 25 is multiple in part. And I think it's confusing.

Q. All right. I'll withdraw the question.

If I'm understanding your position correctly, you believe that the series of communications with Dr. Kappe was improper; is that correct?

A. I believe that the manner in which it was done was improper. I believe that multiple statements within those communications were totally improper.

Q. Okay.

A. And unprofessional.

Q. All right. Let's -- maybe I misunderstood what you said. I mean, are you saying that she didn't want to have any dealings with this?

A. She told me that.

Q. At what point did she tell you that?

A. She told me that the first time in her phone conversation. I believe that she also sent an e-mail directly to Dr. Ungar that she thought her contact with him was inappropriate and she didn't want him to do it.

Q. And is that e-mail in the record?

A. I think so.

Q. Do you want to point it out to us?

A. Oh, boy. Well, no, I don't see it here.

Q. Okay. Calling your attention to page 3 of the exhibit. And the letter from Professor -- or e-mail from Professor Kappe.

A. Yes.

Q. What date is that?

A. Sunday, October 21, 2001.

Q. All right.

A. The one in the middle of the page is, anyway.

Q. Right. And Professor Kappe says, "Thanks for mailing your letter and the letter to the editor of the Notices, which I had already located. As it happens, I have known Helmuth Karzel since over 40 years." And I gather Karzel is the guy everybody's

talking about?

A. I assume so.

Q. "As soon as things are less hectic here," and then she parenthetically states, "(I had to write three final reports for the five agencies overseeing a grant of mine and attend a meeting in this context, all in the first two weeks of October)." And I imagine your life is much like hers in that respect. Would you agree with that?

A. In that I'm busy, yes.

Q. Okay. "...I am planning to contact Karzel. Without prejudging any possible outcome of my inquiry, you might think of an alternative possibility." And then she goes on to describe the Leibniz/Newton debate over calculus. Or to cite that.

A. Right.

Q. Is there anything in there that told Professor Ungar his contacts with her were unwelcome?

A. No. Not at that date. And what she told me was that she had attempted to be polite. That she had responded to his e-mails. And that his communications back to her escalated. You can see that that's followed by about a two and a half page long e-mail that he sent in response. And, ultimately, she just -- I know that there was an e-mail somewhere in

here where she told him that she didn't want to discuss this anymore. That she thought that his contacting her about the matter was inappropriate. And, actually, that may have been an e-mail to me. I don't recall. But I know that she made the statement that his actions were inappropriate in that he should not have been contacting her because she's an external reference in a tenure and promotion case.

Q. Oh, really. Okay. In that case you're probably referring to page 1.

A. Where on page 1?

Q. Top. "Dear Dr. White" from her. Where does she talk about it being inappropriate?

A. That's not the -- there's another e-mail somewhere where she says that. I don't know where it is.

MR. GOSBEE: Well, may I ask for us to take a recess while he locates the e-mail?

MS. MC GRANE: I have it right here.

DR. MILTENBERGER: I have a question, Dr. White. If this Dr. Kappe thought it was appropriate does that make it appropriate?

THE WITNESS: No.

DR. MILTENBERGER: If she thought it inappropriate does that make it inappropriate?

THE WITNESS: If she felt harassed by it, it might. But, no, not directly.

DR. MILTENBERGER: So the inappropriateness of it does not rest on her stating it's inappropriate.

THE WITNESS: No. I think that's a judgment we need to make here at this university.

DR. LINDGREN: Who makes that judgment here at this university?

THE WITNESS: I think it should be a joint decision probably at the department level and at the college level. It might extend up to the vice-president for academic affairs. I certainly think that the PT and E committee might, in the College of Science and Math, might have an opinion on it, too. So I think it's a fairly broad range of people who should be making a decision like that. I guess ultimately you, as a committee, are part of that decision now.

MS. VOGLEWEDE: Mr. Gosbee, you can continue.

MR. GOSBEE: Thank you.

Q. (Mr. Gosbee continuing.) Well, the questions from the committee give me an idea of a couple good questions. How is Dr. Ungar supposed to know what contact with Dr. Kappe is appropriate and

inappropriate? Where is it written?

A. I don't know that there are explicit policies that detail appropriate and inappropriate.

Q. Well, then, how on earth is he supposed to know what he can do? How could I advise a client who asked me what he can do if I can't find a writing someplace?

A. Well, I don't think that university policies have to detail what is understood by most people as being common decency. Certainly, making personal attacks on someone's mental state and bringing a person's son's, quote, mental defects into an argument like this I think is out of bounds. I think there's -- there are accepted norms that don't need to be written down.

Q. How on earth -- okay. Because people have accused President Bush of being nuts and having kids who are nuts and go out and get drunk all the time. Is that inappropriate?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) Okay. But how is somebody -- okay. Would you agree that that kind of thing about the president is accepted or at least tolerated political discourse?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) All right. Going back to this issue. How on earth is he supposed to know. His idea might be totally different from yours. How do you even know you're on the same wavelength?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained. Repetitious.

DR. MILTENBERGER: Board Policy 1901.2 and NDSU Policy 710, could you read that again, please?

THE WITNESS: Where is this?

DR. MILTENBERGER: Just to refresh our memory on what you read before about what it says about e-mails. I just want to get that wording.

THE WITNESS: Okay. This is Section 710, number 4. It says, "Users shall not use computing facilities for any illegal purpose or to enter or send any material that is obscene or defamatory or to enter or send material that is intended to annoy, harass, or alarm another person which serves no legitimate purpose."

DR. MILTENBERGER: Thank you.

THE WITNESS: So, in my opinion, the

comments about Dr. Ungar's mental state and his son were definitely defamatory.

MS. MC GRANE: There's a second policy that I think....

THE WITNESS: Number 6 says, "Use of computing facilities and databases shall be limit to the purpose for which access is granted. Use of computing facilities or databases for political purposes, for personal or private use, or for profit, unless such use is specifically authorized, or for other purposes not related to the employee's or the other user's duties or purposes for which access is granted, is prohibited."

MS. MC GRANE: Turn the page.

THE WITNESS: It looks like the board policy is very similar.

MR. GOSBEE: If counsel wants to ask him questions without whispering I don't object.

MS. MC GRANE: Well, Dr. Miltenberger's question was about both policies, and I just wanted to direct Dr. White's attention to the second policy since he hadn't referenced it.

DR. MILTENBERGER: That answered my question. That's the one you had read earlier that I've taken some notes on. I'm just trying to get some

context for understanding where we're at right now.

MR. GOSBEE: Okay. May I resume questioning?

MS. VOGLEWEDE: Yes.

Q. (Mr. Gosbee continuing.) Okay. Let's focus on some of the ones you just read. Which of those do you contend he violated? Let's start there.

A. Can I see the policy? Defamatory, annoying, harassing, and alarming other people.

Q. Number 4? Was that the only one?

A. Well, that's four of them.

Q. I know, but I want to focus, narrow it down so we don't have to ask you about stuff that's not at issue. So tell me anything else that you say he violated.

A. I think that's enough.

Q. All right. So we can focus on item 4. And it prohibits the sending of any material that is obscene. And that's not an issue, right?

A. I don't think so.

Q. All right. Or defamatory. What's defamatory in your eyes?

A. Making a statement that Dr. Foguel has a mental defect and his son has a mental defect as further evidence that Dr. Foguel might have a mental

defect. I think that's outrageous.

Q. Do you know what the definition of defamation even is?

A. No, I couldn't recite it for you.

Q. Do you know that truth can be a defense?

MS. MC GRANE: Objection.

MR. GOSBEE: He's saying he violated the provision of the law.

MS. VOGLEWEDE: Overruled.

MS. MC GRANE: And I'm going to object because defamation under the university policy may not be the same definition as a legal policy.

MR. GOSBEE: He should define the policy he's following. I mean, it makes it all the more unfair to Professor Ungar if these definitions keep on changing.

MS. VOGLEWEDE: Counsel, we're going to take a break here. Ten minutes. And then we'll resume.

(Whereupon a break was taken.)

MS. VOGLEWEDE: Counsel, you may proceed.

MR. GOSBEE: Thank you, your Honor.

Q. (Mr. Gosbee continuing.) You're looking at section -- Subsection 4 of Policy 710; is that

correct? Or you were. I think it's to your left.

A. No. I think actually that was --

MS. MC GRANE: I think Rick went to get a copy I'm afraid.

Q. Doesn't that look like that's right?

A. No. That's Policy 326.

Q. Okay.

A. I was looking at your copy of it.

Q. All right. It's the one that says users shall not use computing facilities for any illegal purpose, et cetera.

A. Right.

Q. Did you have that regulation in mind when you wrote the letter of reprimand? Had you even read that regulation when you wrote it?

A. The letter of reprimand?

Q. Yes.

A. The letter of reprimand doesn't say anything about e-mail.

Q. All right. And that -- good point. Did you have that read out citation in mind when you suspended his e-mail?

A. Yes.

Q. So you would have read that regulation when you suspended his e-mail.

A. Say that again.

Q. You read this regulation before you suspended his e-mail?

A. I don't know that I read the whole thing.

Q. Did you at least read the part we're talking about right now in item number 4.

A. I think I did.

Q. But you're not sure?

A. No. I know we had a discussion, there was a group of us, Dr. Shreve, probably Rick Johnson and Craig Schnell, about the suspension of his e-mail. And it was generally agreed around the table that what he had done was totally inappropriate and that we needed to suspend his e-mail until we could assure ourselves that he was not going to continue to send messages like that out across the world.

Q. Okay. I know you thought it was inappropriate, but what I'm trying to find out is whether you thought it violated this section at the time when you wrote the -- when you made the edict not to -- or when you canceled his e-mail. When you ordered the cessation of his e-mail, did you have this particular rule in mind?

A. Yes.

Q. Okay. Tell us which part of the rule you

had in mind. If you want I can move my computer screen over so you can see it.

A. I don't have a copy in front of me --

Q. All right.

A. -- at the moment. And, you know, we didn't pull out the policy and underline specific words that we thought applied here. I think it's fairly obvious what the overall intent of that policy is. And I think he went over the line in it.

Q. Oh, so now it's not the words of the policy, but it's the overall intent that he violated. And where is the overall intent written?

A. It's in the policy.

Q. All right.

A. I'm not sure what you're asking me.

Q. I'm trying to find out if I'm allowed to rely on 710.4 as being what you claim you violated. Or if you're relying on something vague like inappropriate or intent of the policy.

A. The policy specifically says that you cannot use e-mail for a number of different purposes that are inappropriate. And it's very clear that he used the computer e-mail to do several of those things that are on that list.

Q. And this is the list of Subsection 4,

correct?

A. Yes.

Q. And we've already agreed obscene is not one of them.

A. Yes.

Q. So we were on defamatory when we took the break.

A. Right.

Q. What does the word defamatory mean to you and how did you apply that meaning when you decided that the rule was broken?

A. To defame to me means you're imputing someone's character and integrity. That you're saying things that are not true about that person or at least that would damage their reputation. And I think an accusation that a professor is supporting plagiarism, it damages his professional career.

To state that a person has a mental defect I think is defamatory to that person's character and probably damages their career. To say that a person's son has a mental defect as evidence that this person has a mental defect I think is totally out of bounds. That, to me, is attacking the character of that person and is totally inappropriate and unprofessional.

There's also the issue of accusing him of being anti-Semitic which I think is ridiculous considering the background of Dr. Foguel. You know, I just totally don't understand how he could say something like that without meaning in doing so to defame his character in some way.

Q. So that's your definition of defamatory. As you applied it to decide that he violated this rule.

A. That's my impression of what defamatory means in terms of this policy, yeah. I don't know that I defined defamatory then. I don't think I did.

Q. Well, how is a professor, trying to obey these rules, going to know how to conform his conduct of the requirement of the rules without knowing your definition of defamatory?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) Okay. Do you know if truth is a defense to a defamation claim?

A. No. I don't know.

Q. Okay. And --

A. Are you stating that if Dr. Foguel does, indeed, have a mental defect that it's okay to say that he does? Is that what you mean?

Q. Well, I get to ask the questions here. And if counsel wants to --

A. I mean truth as a defense --

MS. MC GRANE: There's no question.

THE WITNESS: Okay.

Q. (Mr. Gosbee continuing.) So then I think I have understood your position, then, that truth is irrelevant to whether it's a defamation claim.

A. I didn't say that.

Q. Then I have misunderstood you. So truth is relevant to whether something's a defamation.

A. I would think so, yes.

Q. That means it's relevant as to whether Dr. Foguel plagiarized, isn't it?

A. I'm unaware that there's been a direct accusation that Dr. Foguel has plagiarized. If Dr. Ungar wants to do that there are policies where he can formally charge Dr. Foguel with plagiarism. I don't think that's an issue here. I'm unaware of any claim that Dr. Foguel plagiarized anything.

Q. Now the rest of this sentence goes on to say, "...or to enter or send material that is intended to annoy, harass, or alarm." Do you claim he did one of those things, two of them, or all three?

A. I think all three.

Q. And who is the other person referred to in that rule?

A. A large number of people. These e-mails were sent out to, I don't know exactly how many, but six or seven people around the world. Several of them responded back that they were annoyed by this, that they didn't want to be contacted by Dr. Ungar anymore. That they didn't really care to be involved in this whole dispute. Dr. Mann in Israel was one. Dr. Kappe contacted me directly to tell me that she didn't want to be involved in this. I know that by the end of it I was being annoyed by some of the level and volume of content that I was hearing.

Q. Okay. Now all these people who didn't want to be contacted by Dr. Ungar, where are their e-mails in the record?

A. Well, I believe Dr. Kappe's, at least the e-mails, the copies of e-mails that she sent me are in the record. I don't know that --

Q. Could you point it out, please.

MS. MC GRANE: Mr. Gosbee requested that we produce a copy. We did produce a copy, and the committee's apparently asked for the copy, and if it's agreeable the committee will mark it as Administration's Exhibit 31 and offer it.

MS. VOGLEWEDE: Any objection?

MR. GOSBEE: I guess I'd like to have a copy of it.

MS. MC GRANE: It's on its way.

MR. GOSBEE: I guess we object on the ground, obviously, it should have been produced in that list of exhibits.

MS. VOGLEWEDE: Overruled. It will be received.

Q. (Mr. Gosbee continuing.) Okay. Now is there anything else in the record or not in the record that would be mysteriously appearing now apparently?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) Is there any other e-mail that supports your contention that these people didn't want to hear from Dr. Ungar?

A. Well, I think Dr. Mann point blank says that he doesn't want to be involved in this. That he didn't ask to be -- on page 6 of 8 in that set of e-mails he says, "Somehow my name got involved in Dr. Ungar's description of an argument he has with Dr. Tuval Foguel. I had already explained to Professor Ungar that such involvement is not my will." I think that's pretty clear he doesn't want to be involved in

this.

Dr. Kappe's e-mail plainly states that, "Dr. Ungar contacted me concerning Tuval Foguel in the letter that I wrote on Tuval's behalf as well as a matter concerning the relationship -- relation of Ungar and Foguel. As I see from correspondence, you know about the matter. Ungar constantly sends me and a group of other mathematicians e-mail concerning this issue and also mailed a letter to me. I find his behavior not acceptable."

Q. All right.

A. That's pretty clear to me.

Q. Okay. This e-mail is addressed to you on October 22, right?

A. Yes.

Q. And who is Ms. Meester?

A. She's one of the secretaries in the dean's office.

Q. All right.

A. She would be the person who initially contacted Dr. Kappe to request the letter of reference for the tenure and promotion package for Dr. Foguel.

Q. All right. And did you tell Dr. Ungar after October 22 -- 21 at 9 P.M. about this e-mail from Dr. Kappe?

A. Did I contact Dr. Ungar?

Q. Yes.

A. No. I called Dr. Kappe first to find out what -- exactly what was going on. We had a phone conversation. And I've already related what happened in that conversation. She said she thought this was a totally -- this was an inappropriate contact that she -- that Dr. Ungar shouldn't have done that. I asked her to send me a copy of all the e-mails and any correspondence that she received from Dr. Ungar. She sent me the e-mails as an attachment later that afternoon. And then also faxed the copy of the letter that Dr. Ungar had sent her. And then later contacted me again in October to tell me that this was continuing.

Q. All right. And is it the contact with Dr. Kappe before or after Exhibit 31 that formed your basis for --

A. This is Exhibit 31?

Q. Yes. Is it the contact with Dr. Kappe before or after you received Exhibit 31 that formed your basis for suspending Dr. Ungar's e-mail?

A. Say that again.

Q. Is it -- when you suspended Dr. Ungar's e-mail did you do so for conduct he committed before

you got this e-mail from Dr. Kappe or for conduct he committed after you got that e-mail?

A. We suspended -- as a result of this e-mail, and all of the e-mails that Dr. Kappe sent to me as a result of seeing what Dr. Ungar was doing with his e-mail, that was the reason for suspending his e-mail. Seeing that he was sending these things out around the world with outrageous statements in them.

Q. And where in the record does it show that Dr. Kappe told Dr. Ungar she didn't want to hear from him anymore?

A. I don't know that -- I would have to sit down and read through all of this to see if that statement's in there. Clearly, she said to me I find his behavior not acceptable.

Q. That isn't my question.

A. And she told me on the telephone that she thought it was unacceptable, also.

Q. That's not my question.

A. Okay.

Q. My question is where in this record did Dr. Kappe tell Dr. Ungar she didn't want to hear from him anymore?

A. I don't know that she ever said that.

Q. Then how on earth is Dr. Ungar supposed

to know that he's not supposed to contact Dr. Kappe?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

A. Dr. Kappe was an external reference for Dr. Foguel in his promotion and tenure process. As such, it is I think accepted by any academic -- by any professor that that's part of a process that is key to a person's career, and there is a definite process that should be followed here. And I don't know that there's any policy that says you should not contact external references. I think any professor would understand that you don't do that. So contacting her in an attempt to get her to change her opinion of Dr. Foguel's tenure and promotion, for evaluation of Foguel's record for his tenure and promotion, is an unacceptable action by a senior professor which is very threatening to a junior professor.

Q. (Mr. Gosbee continuing.) So now he's not even allowed to contact an external professor on the subject of tenure at all; is that correct?

A. I don't think he should. I think it's inappropriate.

Q. Where is that written?

A. I don't know that it's written anywhere.

Q. Then how is he supposed to know that he

shouldn't do it?

A. There are certain things that I think are common sense and any professor would know.

Q. All right. Tell us a few things that are common sense and that any professor would know and how he's supposed to know what's on the list.

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) Is it inappropriate to send Dr. Kappe an e-mail that says, "Dr. Kappe, Dr. Foguel's a wonderful man. I hope you write a very favorable recommendation"?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

A. Is it -- yeah. That's inappropriate. That is an attempt to influence an external evaluator's opinion about a professor that that person's been asked to write an independent evaluation of. If he tries to influence that person, either positively or negatively, that's inappropriate.

Q. (Mr. Gosbee continuing.) But you can't point to any place this is written, can you?

A. No.

Q. And going back to the policy that supposedly Dr. Ungar violated using e-mail intended to

annoy, harass, or harm another person. In that policy it refers to another person. Does that mean the recipient of the e-mail or some uninvolved third -- or some third party not the recipient of the e-mail?

MS. MC GRANE: Objection. Asked and answered. We've been over this.

MR. GOSBEE: No, I don't think we have.

MS. VOGLEWEDE: Overruled.

A. I interpret that to mean the person who receives the e-mail, although it could be a third party, too, I would imagine. That if you're sending e-mails that in some way harass a third party that would also be covered.

Q. (Mr. Gosbee continuing.) And what are the last five words in that sentence?

A. "Which serves no legitimate purpose."

Q. And how far back does that phrase modify? Which of those elements, in your eyes, does it modify?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) Did you understand this rule to prohibit any transmission that annoys somebody with or without a legitimate purpose?

A. Ask that again. I'm not sure what you're

asking.

Q. Well, I'm trying to find out where the line is drawn. It says send material that is intended to annoy, et cetera, which serves no legitimate purpose. So is it your understanding of the rule that something might annoy somebody but if it serves a legitimate purpose it's okay?

A. Yeah. I would interpret it that way.

Q. All right. And if something harasses somebody but serves a legitimate purpose it's okay.

A. Well, I don't know. I think you can do things in a way that have a legitimate purpose but are still harassing. And I think the intent to annoy or harass or alarm other people is the main part of that. I think that last phrase is probably put in there to say that if there is some overriding legitimate purpose then that has to be taken into account.

Q. Okay. And you just consider this purpose not legitimate, correct?

A. I'm not sure what his purpose was. It seemed like his purpose was --

Q. It was a yes or no question. Did you or did you not consider his purpose legitimate?

A. I don't know what his purpose was.

Q. All right.

A. So I don't know how to answer that.

Q. And so I make sure I understand things clearly there, that is the only violation of 710 that you contend justified suspension of his e-mail?

MS. MC GRANE: Objection. Vague.

MS. VOGLEWEDE: Overruled.

A. Okay. So what do I have to do now, read the policy to answer that question?

Q. (Mr. Gosbee continuing.) If you're stopping at 4 I'll stop.

A. Well, I would like to reserve the right to come back to other parts of the policy.

Q. You've already suspended his e-mail. And I assumed it was based on having read or at least applied Policy 710.

A. Yes.

Q. So is there any other part of 710 that led you to suspend his e-mail?

A. Not that I'm aware of right now.

Q. And calling your attention again to the e-mail from Professor Kappe on page 3 to Professor Ungar.

MS. MC GRANE: Page 3 of Exhibit 25?

MR. GOSBEE: Yes, I'm sorry.

A. Okay.

Q. (Mr. Gosbee continuing.) Are you contending that anything in that particular e-mail said that Kappe didn't want to hear from Ungar?

A. No.

MS. VOGLEWEDE: Counsel, are you talking about the e-mail of October 21st, 2001?

MR. GOSBEE: Yes. On page 3 of Exhibit 25. Starts off, "Dear Professor Ungar."

Q. (Mr. Gosbee continuing.) So the next day is when you got Exhibit 31. Is that correct?

A. 31.

Q. That is the -- yep. That one.

A. Yes.

Q. So on October 22 --

A. On Monday.

Q. -- at least as far as the record goes, the last thing that Dr. Ungar knew is that Dr. Kappe was at least interested in the situation?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) Okay. If I could call your attention to Exhibit 2. Administration Exhibit 2. This is the faculty staff assistance program referral letter.

A. Yes.

Q. And who wrote this?

A. I believe I wrote the first draft of that. And then Dr. Shreve and I reviewed it. And we probably made some changes. I don't know what. And then we both signed it and sent it out.

Q. And you stand by it as written.

A. Yes.

Q. And in the first paragraph there are five areas that apparently are causing you concern; am I correct? That's how I'm interpreting that first paragraph.

A. Yep.

Q. I'm sorry?

A. There were five that we outline, yes.

Q. And anything else you must not have considered important enough to outline.

A. I don't know that that's true. Those were five areas --

Q. Why is it in there?

A. I'm sorry?

Q. If it wasn't important enough to outline why wasn't it in there?

A. If it wasn't important to outline why wasn't it in there. I don't know. I don't know how to answer that question.

Q. I'm trying to make sure that we're only talking about these five and not something else.

A. Well, okay. Those are the major issues, yes.

Q. Well, that means there were minor issues? That were not mentioned?

A. I'm sure there were, yes.

Q. Okay. Your conduct -- number one is, "Your conduct in pursuing your dispute with the Karzel group." Exactly what particular conduct were you referring to?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

A. This was written in response to the --

Q. (Mr. Gosbee continuing.) That wasn't the question I asked. Please focus on the question I asked. My question is exactly what conduct in the pursuit with the Karzel group caused you the concern expressed in this letter?

A. That's what I was trying to answer. His conduct was a result of a long history of pursuing this whole matter in a way that was annoying in many ways I think to people around the world. There were persistent e-mails. He had notebooks full of detailed arguments about why he had been wronged. Just the

whole way that he was pursuing this almost in an obsessive manner was, I think, concerning. I mean, if you notice the first letter says, "We are writing this letter out of a sincere concern about your recent behavior." His own words said that he was acting in a paranoid fashion when he wrote the second letter to me trying to withdraw the first letter. Certainly he was writing a large volume of e-mails out to people that were concerning. I was sincerely concerned about his behavior.

Q. Okay. There was something sinister about having notebooks full of material to present in defense of his argument?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

A. No. I wouldn't call it sinister, no.

Q. (Mr. Gosbee continuing.) But it caused you concern that he had a notebook full of materials to present in support of his argument.

A. It caused me concern that there were multiple notebooks full of things. And there were a large volume of e-mails being sent out across the world about an academic dispute. Which, clearly, several of those people didn't want to be involved with. They'd heard enough of it.

Q. How else could a person present his argument without an organized notebook or some way of convincing a stranger of the validity of his arguments?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

A. How else? Well, he's written letters to math journals, he's presented at least two or three different notebooks full of material to me. I assume he's presented those same notebooks to other people, too.

Q. And is that something that causes concern because he did that?

A. The level of volume and the almost obsessive manner in which he did it starts to be concerning, yes.

Q. So at what level does it go from an attempt to persuade to becoming obsessive, and how on earth is a person supposed to know when he's hit that level?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

A. I don't know. That's one of the reasons we were referring him to the faculty staff assistance program so that he could get some professional help with what appeared to be a problem in his behavior that

was affecting the rest of the department or affecting his own performance as a professor. This was an attempt to get him some help.

Q. What was your understanding of where he crossed the line?

MS. MC GRANE: Objection. Asked and answered. Repetitive.

MS. VOGLEWEDE: Overruled.

Q. (Mr. Gosbee continuing.) Well, apparently --

A. Are you asking me exactly when he crossed that line? I don't know. That's a very fuzzy line. Basically the Policy 134 that describes the faculty staff assistance program, I think the spirit behind that is before you do something that's going to be an official reprimand of someone or do something that might harm their career, you attempt to get that person some help. And that was the intent of this letter was to refer Dr. Ungar to some professional help hoping that we could salvage the situation and that it wouldn't have to come to anything more.

Q. Then I've misunderstood everything because you first hit him with the club on the reprimand and then you gave him the carrot of going to this faculty staff assistance program.

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

Q. (Mr. Gosbee continuing.) If this is intended to help him why didn't it come before the letter of reprimand?

A. Because the statements about mental defects, the e-mails out to around the world, I was unaware of that at the time of the initial letter of reprimand. What we had seen up to that point was that he did not follow the procedures in doing student evaluations. And that he had made some direct threats against the tenure and promotion process for Dr. Foguel. That's all I was aware of at that time. In the intervening month many other things happened. The letters that he wrote in response, the e-mails that were sent out, the phone call with Dr. Kappe, all of those things happened in the intervening time. This appeared to be an escalating situation. Something that was getting worse and worse. And, frankly, Dr. Ungar's behavior was becoming more and more severe. We were concerned about it.

Q. What was becoming more and more severe about his behavior? Was he threatening to shoot anybody?

A. No.

Q. Was he coming to his office with a gun?
A. Not that I'm aware of.
Q. Was he physically assaulting anyone?
MS. MC GRANE: Objection.
A. No.
MS. VOGLEWEDE: Sustained.
Q. What was he doing that was so dangerous?
MS. MC GRANE: Objection.
A. I didn't say it was dangerous.
MS. MC GRANE: Objection.
Q. So it was concern causing.
MS MC GRANE: Objection. Repetitive.
MS. VOGLEWEDE: Overruled.
A. Well, I think I've answered that three times now. The sum total of his behavior was becoming more and more severe.
Q. (Mr. Gosbee continuing.) Okay.
A. I don't know what else to say.
Q. Let's go back to Exhibit 2 in item two. "The manner in which you have confronted colleagues regarding terminology in published papers." I assume there was some difference between numbers one and two or you wouldn't have expressed them differently; is that correct?
A. Yes.

Q. All right. What was there that he did -- what was there in his manner of confronting colleagues -- well, first of all, what colleagues are you referring to?

A. Probably colleagues in the department in that number.

Q. But you didn't say so, did you?

A. No.

Q. Okay. And what was there about his manner in confronting colleagues in the department about the terminology? Did he shake his fist at anybody? Did he yell at anybody?

A. I don't know. I wasn't there.

Q. Well, what --

A. I heard stories --

Q. What were you aware of when you wrote that?

A. I heard stories --

MS. VOGLEWEDE: Counsel, permit the witness to answer.

Q. I apologize.

A. I was told of an incident in the hallway outside the math department. That was one of the initial incidents that started -- restarted this whole thing in early October. In which he shook the

promotion and tenure application of Dr. Foguel. The adamant way in which he, and extremely persistent way in which he brought this issue up to faculty members in the department over and over and over again.

Q. Okay. And number three, "Your statements and actions regarding the conditions under which you would support tenure and promotion for a junior faculty member." I gather that's -- well, tell us what you meant by number three.

A. I'm referring there to his contact with Dr. Kappe. At this point I was trying to keep her name out of this. This was a letter that was intended to refer Dr. Ungar to the faculty staff assistance program. I didn't want Foguel's name in it, I didn't want Luise Kappe's name in it. That was not the point of this. But that's what I was referring to.

Q. All right. In that case explain, given your explanation of number three, how does number three differ from number four?

A. "Inappropriate contact you made with an external evaluator in the promotion -- " that's pretty much the same thing.

Q. So you split one thing into two?

A. Okay. Wait a minute. Okay. I'm sorry. Number three would refer to his statements that he

would support Dr. Foguel's tenure and promotion if Dr. Foguel would agree to change the wording in one of Dr. Foguel's papers, or maybe several of his papers, in which he used the word K-loop or the term K-loop instead of Dr. Ungar's preferred term gyrogroup. So if Foguel would agree to change his terminology then Dr. Ungar would support him for tenure and promotion. If he didn't change his terminology then he would oppose it.

Q. And did you understand that to be linked to the argument Dr. Ungar was making that the selection of the K-loop terminology as distinguished from the gyrogroup terminology was supporting plagiarism? I realize you don't agree with it, but did you understand that was why Dr. Ungar was making that point?

A. Because he believes using the term K-loop is the equivalent of supporting plagiarism?

Q. Yes.

A. I believe he believes that, yes.

Q. Right. And given the assumption that Professor Ungar believes that terminology supports plagiarism, what is inappropriate about asking a colleague to stop supporting plagiarism?

A. What's inappropriate is the basically threat to try to prevent Dr. Foguel's tenure and

promotion in exchange for changing the terminology. I think when you put it in those terms that's totally inappropriate. That's not how the tenure and promotion process is supposed to take place. And, frankly, it violates the academic freedom that Dr. Foguel has to publish his own papers with his own terminology. And if Dr. Ungar disagrees then he's free to write letters to the journals explaining why he disagrees.

Q. Which is exactly what he did, and now he's in hot water.

A. That's not why he's in hot water. He wrote the letters to those journals, and that's fine. That's within the academic realm. I don't think we ever even considered any action to that. That's what's expected of a professor.

Q. Okay.

A. But making a threat against a junior professor's tenure if he will agree to change his terminology in an academic paper is not part of the academic process.

Q. So if Professor Ungar believes that Professor Foguel is supporting plagiarism he should just sit back and watch him get appointed to tenure?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) What action is appropriate for a professor, a senior professor who believes a junior professor is committing plagiarism, what action is appropriate for that senior professor when the junior professor comes up for tenure?

A. He can use the academic misconduct policy and make a formal accusation that that professor is plagiarizing. And then there's a whole series of procedures that are followed to do that.

Q. Okay. What policy is that?

A. That has not happened here.

Q. What policy number is that?

A. 326.

Q. And does that say it's exclusive?

A. I'm sorry, what?

Q. 326. So you're saying that the only thing he should have done was follow 326; is that correct?

A. No. I'm saying if Dr. Ungar is accusing Dr. Foguel of plagiarism, then this is the correct policy that he should have made that -- then he should make that as a formal complaint, and then we'll deal with it through that process. I'm unaware that he has actually made that accusation. To my knowledge, Dr. Ungar has not said Dr. Foguel is a plagiarist. If

he has, then this is the policy he should follow. Yes.

Q. And where in that policy does it say that's the only way that one can test the issue of plagiarism?

A. I don't know if it -- I would have to read this whole policy to find out whether in there it says this is the only process that you should follow. But this is the obvious process that you should follow. It is the procedure to ensure that if -- that's a very serious accusation. If you're going to accuse another professor of plagiarism then you better have some evidence to back it up, and it should be done in a formal way. And this policy outlines how that should be done properly.

Q. Okay. So because he didn't follow 326, but, rather, tried to present his plagiarism case another way, you call that harassment?

A. If Dr. Ungar is accusing Dr. Foguel directly of plagiarism, then he should have followed this policy. If he's doing that by writing e-mails out to other people and making that accusation, then I think that's totally inappropriate.

Q. Okay.

A. It's a direct attack on Dr. Foguel's career and his reputation and his character. And, as

far as I can tell, that's totally unsupported here.

Q. Now going back to Exhibit No. 2. The reference to the faculty staff assistance program. Number five. What's number five all about?

A. "Your persistence in contacting other mathematicians around the world concerning your academic disputes." That is referring to the series of e-mails that he sent out to those five or six or seven other mathematicians around the world making his arguments about this whole K-loop, gyrogroup controversy. And about Foguel's tenure and promotion, and the comments that Foguel has a mental defect and so does his son, and the comments about him being anti-Semitic, and the comments tying all of this to September 11th in some way.

Q. And how is that different from number four?

A. Number four is referring to his contacting Luise Kappe and attempting to get her to revise her letter of recommendation for Dr. --

Q. So four is only Kappe and five is --

A. Five is the rest of them.

Q. The rest of the world. Okay.

A. The point being that the sum total of all of those is --

Q. There's no question pending, sir.
A. Okay.
Q. Turn to exhibit -- Administration Exhibit 14. Did you ever answer that letter? It's a letter from Professor Ungar to you, correct?
A. Not that I recall.
Q. Okay. So you never did -- you don't recall ever answering this letter; is that correct?
A. No, I don't recall answering this letter.
Q. Is it customary -- do you normally answer or not answer letters you receive from faculty?
A. Depends.
Q. What criteria did you use to decide whether a letter justifies an answer?
A. If there's some response that seems to be necessary then I would respond.
Q. And did you read this letter closely when you got it?
A. Yes.
Q. Was there any part of it you didn't understand when you got it?
A. No.
Q. And if a faculty member sent you a letter that had a misstatement of fact would you call that to his attention?

A. If I thought it was noteworthy and important enough, yes.

Q. Okay. Now I notice at the bottom of page 1, the last full paragraph, "With your blessing I plan to discuss my complaints with Dr. Boudjouk".

A. Um-hum.

Q. First of all, do you know who Dr. Boudjouk is?

A. Yes. He's the vice-president for research, creative activities, and technology transfer.

Q. Here at NDSU?

A. At NDSU.

Q. And did you object to the idea of him talking to Dr. Boudjouk about this?

A. No.

Q. And then he -- on the second page it says, his first full paragraph, "I would appreciate it if you would discuss my complaint with an expert in professional ethics." Did you ever do that?

A. No.

Q. Did you ever tell Dr. Ungar that you had declined to follow his suggestion?

A. No.

Q. Calling your attention to Exhibit 17. First of all, he refers to a meeting between you and

him on May 7th.

A. Yeah.

Q. Do you dispute that you and he had a meeting on May 7th?

A. No.

Q. Is there anything in his letter about that meeting that you dispute the accuracy of?

A. No.

Q. Okay. And I notice that he says, "May I remind you that in our meeting I showed you the evaluation that I received from one of my students complaining that the problems in my tests 'are to hard'," and too is misspelled with only one O. Do you recall Professor Ungar showing you that document at that meeting on May 7?

A. I recall him showing me a series of documents about that math course. I don't know that I recall that very specific document.

Q. Okay. And did the discussion on May 7th and the subject ever come up of the evaluation forms?

A. The university evaluation forms?

Q. Well, either one.

A. I'm not sure what you're referring to.

Q. All right. Well, take a look at your copy of 332. The Policy 332. Please.

MS. MC GRANE: Exhibit 30?

MR. GOSBEE: It's part of --

MS. MC GRANE: 29?

MR. GOSBEE: 29.

THE WITNESS: 332.

MR. GOSBEE: That's the student rating of courses and instructions.

THE WITNESS: I see. Okay.

Q. (Mr. Gosbee continuing.) If I understand item one, formative assessment, the instructor is supposed to do something during at least one of his classes sometime during the semester, right?

A. Right.

Q. All right. And -- okay. First of all, in the various statements you've made today that he violated policies concerning evaluations, is it this policy you're contending he violated?

A. It is this policy. Section 2.

Q. And there's no other policy you're contending he violated?

A. Regarding student evaluations, no.

Q. So I can rely on -- I can question you on this document as to whether he violated it?

A. Yes.

Q. Okay. Going to 2.1. First of all, I

note the use of the word will. It's used repeatedly in here.

A. Yes.

Q. What's your understanding of the word will?

A. That is that every --

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) What is your understanding of the word will when you issued the letter of reprimand?

MS. MC GRANE: Objection.

MR. GOSBEE: I think that's appropriate, your Honor. Because he did take action presumably based on having read this document. And I'm entitled to inquire on that.

MS. VOGLEWEDE: You can ask him about his understanding of this policy, but we're not going to parse it apart word by word, Counsel. So you can ask him about his understanding of this policy.

MR. GOSBEE: Can I note my objection for the record because then it has to be parsed word for word because some places use shall and others use will, and that makes all the difference in the world.

MS. VOGLEWEDE: Then direct his attention

to the part of the policy that you're inquiring about.

Q. (Mr. Gosbee continuing.) All right. So it says each course -- the first sentence of 2.1 says each course offered will be evaluated. Do you view that as mandatory?

A. Yes.

Q. As opposed to optional.

A. Yes.

Q. And is there any place that you're aware of that a professor reading these instructions can learn which parts are mandatory and which parts are not mandatory?

A. My interpretation is that this is all mandatory. That this is the way that evaluations are to be done. They will be done this way. That's what it says.

Q. It also says the course evaluations should occur.

A. Yeah.

Q. So which parts are mandatory and which aren't?

A. They're all mandatory.

Q. Okay. So, apparently, a professor cannot do it in the middle third of the term.

A. He shouldn't, no.

Q. Okay.

A. Not according to what it says here. The rules are pretty explicit.

Q. So you attach no significance to the fact that the rules switch from will to should.

A. No.

Q. All right.

A. Not in terms of how I would interpret how this policy should be followed, no.

Q. Now are you contending that Professor Ungar physically administered the official exam? I'm sorry, the official evaluation?

A. That's my understanding.

Q. What's the basis of that understanding?

A. That he is the only one that had the evaluations and the only one that ever saw them before he turned them over to Dr. Schnell as far as I'm aware.

Q. Did you interview any of the students in the class?

A. No.

Q. Do you know if anybody interviewed any of the students in the class?

A. I don't know.

Q. Do you know if anybody ever even asked Dr. Ungar who physically conducted the evaluation?

A. No, I don't know that.

Q. And do you know if anybody even found out how Dr. Ungar happened to get his hands on the evaluations? Whether he did it on purpose or by accident?

A. I believe he wrote a letter to Dr. Schnell explaining that he did give the evaluations. I think in that letter he says he did them himself. He said he had them himself. They had never been turned into the department.

Q. But that wasn't my question. My question was how did you -- basically -- I'll withdraw my question.

Basically you were -- had no knowledge or evidence of exactly how it was conducted, did you? When you wrote the letter of reprimand?

A. When I wrote the letter of reprimand I had -- I didn't know that any evaluation had been done at all. All I knew was that Dr. Ungar had been reminded several times that he was to do the evaluations. He knew -- it's well known around the university the procedure that should be followed for these evaluations. We had not seen any evaluations and there was no indication any evaluations had even been done. So as far as we were aware, he just plain didn't

do the evaluations when I wrote the first letter.

Q. And where are those reminders in the record?

A. I believe there's a letter in here from Dr. Comez reminding Dr. Ungar.

Q. That's reminder singular. You said plural.

A. Maybe I misspoke. Maybe there's more than one. I don't know.

Q. Okay.

A. There may have been a verbal reminder. I don't know that either.

Q. Now going back to this meeting on May 7th, do you recall Professor Ungar showing you some sort of evaluation?

MS. MC GRANE: What exhibit are you on, Mr. Gosbee?

MR. GOSBEE: That's Exhibit 17.

MS. MC GRANE: Thank you.

A. I'm sorry. Repeat the question.

Q. (Mr. Gosbee continuing.) All right. Exhibit 17 is the letter from Professor Ungar to you discussing, among other things, the meeting you and he had on May 7.

A. Yes.

Q. And he showed you an evaluation.

A. He showed me -- I'm not sure what he showed me. I don't recall exactly what he showed me. He showed me a lot of things in that meeting. He had another notebook.

Q. That was a different notebook?

A. I think so.

Q. And all these notebooks is what caused you all the concern?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained. So can you even tell this committee for sure whether the evaluation that he's referring to is the official one or an unofficial one?

A. I presume that, in quotes, evaluation, if I remember right, he showed me a number of pieces of paper that had written comments from students. And one of them that he pointed out was a student's comment that his test -- that Dr. Ungar's tests were too hard. And I do remember him pointing out the grammatical error and that the student had used T-O instead of T-O-O. And the implication was that this student didn't even know enough to write the write too, meaning too much, with the proper spelling.

Q. And is it inappropriate for a professor

to point this out to a dean?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

A. No.

Q. (Mr. Gosbee continuing.) So there was nothing inappropriate about that, was there?

A. No. But I don't also think it's particularly relevant to my job as a dean to know that.

Q. To not know that the students in your college don't know fundamental grammar?

A. Well --

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) So that didn't cause you any concern?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained. Move on, Counsel.

Q. (Mr. Gosbee continuing.) Now in this conversation with Professor Ungar he showed you a lot of things from the second notebook. Did you ask him anything about the evaluations?

A. At that time I was unaware that he hadn't done the student evaluations.

Q. But that wasn't my question. My question

is did you ask him about them?

A. About his -- the official evaluations?

Q. Or any kind of evaluations.

A. Did I ask him?

Q. Did you say, What kind of evaluations did you conduct?

A. No.

Q. Did the subject even come up as to what kind of evaluations he conducted?

A. I don't know. It may have.

Q. Now if I recall your testimony correctly, you said that sometime in late April you thought there was a resolution in sight. And you decided to let it be. Do you recall that testimony?

A. Today?

Q. Yes.

A. I don't think I said that today.

Q. Let it lay I guess was your exact phrase. This was the dispute between Professors Ungar and Foguel. And it had apparently come to your -- you were asked when this first came to your attention. And, apparently, you first heard something about it in late April. And you decided there was no reason for discipline at the time.

A. Yeah. It wasn't an issue that seemed to

be a disciplinary matter at all. It was a dispute between two faculty members.

Q. Now do you recall when Professor Ungar first showed you the note with the word warning on it? I'm sorry, Professor Foguel first showed it to you.

A. I don't believe he did. I believe Dr. Shreve did.

Q. All right. And when did you first see it?

A. Sometime around October 8th or maybe 9th.

Q. So right before the letter of reprimand went out.

A. Right.

Q. And that, is it fair to say, was a major factor in your decision to even issue the letter of reprimand?

A. That and the account of the encounter between Dr. Foguel and Dr. Ungar outside the math department, and the fact that the letter -- I mean the student evaluations had not been done the previous semester.

Q. So we can pinpoint the date that you first saw the warning letter as around October 8th, 9th, or 10th?

A. It was before the 10th. It was probably

the 8th, but it may have been the 9th.

Q. If you take a look at Exhibit 10. What's the date on that?

A. April 23rd, '01.

Q. Which was before the day you decided there was nothing justifying disciplinary action.

A. There wasn't a day that I decided --

Q. Well, in late April you decided that nothing merited disciplinary action.

A. It didn't even occur to me that discipline was warranted.

Q. All right. Fine.

A. So there was no date at which I decided that. It just wasn't an issue.

Q. All right. So on the date this was written by -- or the date put on this document, the issue of discipline had never even occurred to you yet.

A. No. Because I was totally unaware of any of this.

Q. Didn't you ask anybody why, if this supposedly threatening document was dated on April 23rd, it was not even presented until late October? I'm sorry, late September?

A. Did I ask anyone that question?

Q. Yes.

A. No. I don't think I did.

Q. Did it occur to you that that might be a little puzzling?

A. No. I didn't find it puzzling at all. I thought that Dr. Foguel had done exactly what I had done which was assumed that the whole issue had resolved itself. Since we didn't hear anything from April all the way to October, this issue seemed to have died down so I just thought that it had been resolved. I think Dr. Foguel probably thought it had been resolved, too, until the confrontation in early October in which -- at which time he produced this as evidence that this was an ongoing thing and there were threatening things happening.

DR. MILTENBERGER: He produced it meaning Foguel?

THE WITNESS: Yes.

Q. (Mr. Gosbee continuing.) Now in Exhibit 3, Administration Exhibit 3, if I understand your testimony correctly, the underscored language -- or the underscoring was intended to signify new language?

A. Yes. The revisions. This was the revised letter of reprimand or, as we said up at the

top, amended. And the underscoring just points out places where things were changed in the letter.

Q. Okay. What led to your understanding that Professor Ungar administered the evaluation himself?

A. I'm sorry? Repeat that.

Q. In the letter it says, "It is our understanding that you administered the evaluations yourself."

A. Yes.

Q. What led to that understanding?

A. That he had the letter -- the evaluations. That no one else had seen them. That he had never turned them into the department which is what he's supposed to do with them. And that he turned them over to Dr. Schnell. Or Dr. Schnell's office. So as far as we were aware, the only person who had ever seen these evaluations was Dr. Ungar himself.

Q. And isn't it possible that the students conducted -- or strike that.

How are these normally done?

A. Normally either another professor or a secretary or a graduate student will bring the evaluations to the classroom. The professor leaves the classroom. The other person, whoever it is, passes

them out to the students. They fill out the evaluations. That person collects them and takes them to the department office. They are held there until the semester is over. Then they are run through the computer and scored. And after the professor has turned in his grades for the semester he's allowed to see the evaluations.

Q. All right. And for want of a better term, let's call the person who administers the evaluation the proctor. Who chooses the proctor?

A. It's up to the professor. Generally.

Q. Do some professors say, all right, Mr. Jones in seat 15, you're in charge?

A. A student in the class?

Q. Yes.

A. No. I wouldn't think so.

Q. Is it permitted to have a student take it? Or conduct it I should say.

A. I guess in a graduate class it might be acceptable. I think in an undergraduate class I myself would never do that. I would make sure somebody else brought them in and then I would leave the room.

Q. Is there any rule that says you can't delegate a student to do this and leave the room?

A. I don't think the policy spells that out.

Q. All right. So I want to make sure I understand clearly how much investigation you did at this point because apparently the initial conclusion was wrong. I want to see if the second conclusion was correct -- was wrong also.

A. What initial conclusion?

Q. That the evaluations had not been conducted at all. You had to withdraw that, right?

A. We amended it when Dr. Ungar let it be known that he had done them. He had never given us any indication that the evaluations had actually been done.

Q. And you didn't perceive that from your meeting with him on May 7th either.

A. I don't know that it even came up on May 7th. I'm not sure I was even aware that Dr. Comez had written Dr. Ungar a letter reminding him that he needed to do the evaluations at that date.

Q. Now if I'm -- you say, "It is our understanding that you administered the evaluations." You didn't investigate that. You just sort of guessed from external evidence, right? You didn't actually ask somebody what happened. Am I correct?

A. Asked?

Q. A student or Professor Ungar or the secretary or anybody.

A. No. Well, we knew that the secretary had not done it.

Q. How did you know that? Did somebody go and ask her?

A. I assume the department chair -- I don't know that directly.

Q. Okay. And I notice that you have the underlining here to symbolize new material. Did you overstrike or do anything to indicate the material that was taken out?

A. No.

Q. So you just omitted that and used underscores to combine them.

A. Yes. The original is there. You can go see what the original says. It's easy enough to do. I just wanted to indicate so that anybody reading this would know these are the new parts. This is the parts that had been changed.

Q. And it wouldn't show the mistakes that you corrected.

A. I don't think they were mistakes.

Q. All right. Let's see here. Oh, yeah. You testified that he had apparently improperly handled the notice dealing with the fact that Professor Foguel was up for tenure. Apparently he physically took it

out of the office; is that correct?

A. That's what I heard.

Q. Am I correctly understanding your testimony?

A. That's what I heard.

Q. And where is it written that that material stays only in the office?

A. My understanding was that is a departmental rule. That's what I was told.

Q. And where is it written in the departmental rules?

A. I don't know.

Q. Is there any claim that he at all altered anything?

A. Not that I'm aware of.

Q. Turning to Exhibit 23. This is Professor Ungar's letter to you dated October 12. Are you contending that this letter violated any rule of the institution?

A. No.

Q. Okay. So why is it an exhibit?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) Now you testified that Dr. Kappe was asked to evaluate

Dr. Foguel's tenure application. I suspect probably everybody on the committee understands that process, but I don't. So could you educate me and tell me how that process works when these outsiders get called in?

A. In the College of Science and Math late in the summer the candidate who is coming up for tenure and promotion is asked to draw up a list of names, it can be six, eight, ten names, of who that candidate feels might be appropriate to judge their work. The department chair meets with me, with the dean. We discuss those candidates, those names. We may come up with other names. The department chair may suggest other names. And we generally come up with a list of three. And then go ahead and talk about several others in case one of those three people declines to participate. So that we've already -- we know as soon as they say, no, I won't do that, we're ready to contact the next person on the list.

Then those three people are written a letter -- well, first they're e-mailed to inquire as to whether they're willing to do this or not. If they respond positively then they are sent an official letter. There's a template for that letter. And they're given a copy of the CV of the candidate. And then some guidelines as to what kind of evaluations we

would like them to write. And then we give them the deadline of, you know, when we would like to receive these.

Q. And is this procedure spelled out someplace?

A. Yes. I believe it's in the college promotion and tenure guidelines. It's probably in the university guidelines, too.

Q. All right. So the candidate selects presumably people favorable to him to be evaluators?

A. I would assume.

Q. And then the dean or the chairman weed through that list and select three most likely?

A. Or other people. We treat that list simply as a suggestion of people who might be appropriate and should know something about that person's work. And usually we'll try to come up with at least one name, if not two, that are not on that list. Someone else that the candidate doesn't suggest.

Q. Okay. And once the decision is made to have evaluators one, two, three, four and five handle the candidate -- or comment on the candidate, who is told who one, two, three, four, and five are? Do you tell the candidate these five people will be doing it?

A. No. I mean, the candidate will know

eventually because the letters of recommendation or reference will be in the promotion and tenure document which they're free to look at. But, no, I don't think we ever informed the candidate that these are the three people we've chosen.

Q. Now this promotion and tenure document, is that that file that you were talking about earlier that's maintained in the secretary's office?

A. The process begins at the department level. These letters of evaluations are put into this package. The candidate themselves draws up, according to some very precise guidelines, supplies all the documentation for their case. That is put at the department level. Some departments the whole department reviews them, other departments might have a promotion and tenure committee that will review them. The department writes a letter of recommendation about action as to whether the person should receive promotion and tenure or not. And the chair writes a separate letter.

All of those go together into the official application which comes to the dean's office. So it would have all the materials from the candidate, the three outside letters, the letter from the chair, and a letter from the department in it. And the

candidate is free to review any of that material.

Q. And at what point does this package -- is that a fair word to apply to this whole collection?

A. I think it's officially termed an application.

Q. At what point does this application become available to the rest of the department to look at?

A. Right at the beginning. It begins at the department level.

Q. And so this application packet includes these third party --

A. The external letters.

Q. The external letter?

A. Yes. All the materials from the candidates, the external letters. That's the basis on which the department writes its letter and the chair writes his or her letter.

Q. If no contact by other department members with the external evaluators is permitted, why is that information even made available to them since they can't even act on it?

A. So that they can see the opinion of someone in that academic field from outside the university. So they can read the letter and see what

that person's opinion is.

Q. But they are not allowed to act on what they see?

A. I don't think they should be contacting that person and attempting to make that person change their mind, no.

Q. Okay. Going back to this meeting you had with Professor Ungar on May 7th. And that was referred to in I think it was No. 13. No, it wasn't. No. 17. Did you discuss -- well, I'll let you go to 17. After that meeting did you discuss with anybody the fact that you had the meeting with Professor Ungar?

A. Not that I recall.

Q. Any chance you discussed it with Chairman Comez?

A. Not that I recall, no.

Q. And if you could take a look at Exhibit No. 22. That was a letter from Professor Ungar to you.

A. Yes.

Q. Did you respond to that?

A. Did I respond to it?

Q. Yes.

A. No.

Q. Administration Exhibit No. 23. That was

a letter from -- also from Professor Ungar to you. Did you respond to that?

A. No.

Q. Could you review that and tell me if there are any factual misstatements in there?

MS. MC GRANE: Objection. Asked and answered.

MR. GOSBEE: I don't think I went through this one.

MS. MC GRANE: I think you did.

MR. GOSBEE: I could have sworn it was the other one.

THE WITNESS: No. It was this one.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) All right. In that case, refresh my recollection. What was your answer? Because I honestly don't recall.

A. Repeat the question.

Q. Are there any factual misstatements made by Professor Ungar in this letter?

A. Not that I'm aware of.

Q. Okay. And Professor Ungar says, "I appreciate Warren's cooperation -- " I assume here he's referring to Chairman Shreve?

A. Yes.

Q. " -- in arranging that the problem of who wrote the red word and what is the correct translation into Hebrew is now under investigation by experts."

What was your understanding what Professor Ungar meant by that?

A. I believe this is about the time when Dr. Shreve asked both of the professors to write the word -- Hebrew word for warning.

Q. Actually that was ten days later, but okay.

A. Well, maybe we had told him we were going to do that. I don't know. And the correct translation, I'm assuming that he means that the translation of that note may have been in some kind of dispute. I don't recall when we decided to have the third party translate it. But it was about this time. So I'm assuming that's what he was referring to.

Q. And he also said, "Warren informed me that the problem whether or not the red Hebrew word for warning is authentic is under investigation."

What was your understanding of what Professor Ungar meant by that?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) What investigation, if any, was, in fact, undergone by Warren?

A. I think asking the two for handwriting samples I believe was the first thing we did.

Q. And that was ten days in the future?

A. I guess. If you say so.

Q. All right. Are you familiar with the phrase plenary lecture?

A. Yes.

Q. What does it mean to you?

A. Generally at an academic conference a plenary lecture is one of the main lectures at the conference.

Q. And is it an honor for a professor to be invited to give such a lecture?

A. Yes.

Q. Have you been invited to give such lectures in your field?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained. Unless you can demonstrate the relevance, Counsel.

Q. (Mr. Gosbee continuing.) All right. Do you know if Professor Ungar has been so invited?

MS. MC GRANE: Same objection.

MS. VOGLEWEDE: Sustained. Unless you can demonstrate the relevance, Counsel.

MR. GOSBEE: Goes to the issue of whether Professor Ungar's views are accepted in the academic world. They're kind of portraying him as this guy off on his own, you know, unusual notions of the world. And if he's being invited to serve as a plenary lecturer then, apparently, he must be persuading some people that he's got something worth listening to.

MS. VOGLEWEDE: I'm going to sustain the objection.

Q. (Mr. Gosbee continuing.) Did you intend -- strike that.

What was your goal in sending out the letter of recommendation? Letter of reprimand.

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

A. The first one?

Q. (Mr. Gosbee continuing.) Yes.

A. What was my goal?

Q. Yeah. What were you trying to accomplish?

A. Well, number one, that he directly violated the university policy of doing student evaluations. And that he should not do that in the

future. That in the future he should follow the procedure and do what he's supposed to do.

Q. So you're trying to modify his behavior?

A. Yeah. To follow the rules, yes.

Q. Did you have any other goals?

A. Well, we were hoping that this could lead to a resolution or at least a cessation of the dispute between him and Dr. Foguel.

Q. So you wanted to modify his behavior in that regard, too, right?

A. Yes.

Q. Would you bear with me for a moment, please.

Do you recall giving your deposition in this matter?

A. Yes.

Q. And do you recall me asking you questions about whether you had made a list of events that led to your decision to issue a letter of reprimand?

A. I think so.

Q. And do you recall testifying you made such a list on February 11th?

A. That was long after the letter of reprimand. At the time of writing the letter of reprimand, no.

Q. Yeah, I understand.

A. Afterwards, yes.

Q. Why did you make that list on February 11th?

A. Because the deposition was coming up in two days, and in reviewing my files I realized that it was a very complex letter. There was a huge stack of paperwork. And I wanted some way of organizing those in my mind as to what happened when. And exactly what was in each one of these different things and events. So I made a time line to help me organize them.

Q. Did you make a similar time line in preparation for today?

A. No. I had the one from then.

Q. Have you used that to refresh your recollection while you were testifying?

A. When?

Q. Today.

A. Today? No.

Q. Okay. I want to make sure I understand something about the evaluations. If I understand your testimony correctly, you say that Professor Ungar was reminded at least once, and perhaps multitudes of times, about the evaluations. If he had provided the evaluations sooner would you have issued the letter of

reprimand on that issue?

A. Probably not. Well, assuming he had done them properly, which he didn't. If he had done them properly or could produce evidence that he had done them properly, then I don't think we would have issued the letter of reprimand.

MS. VOGLEWEDE: Do any of the committee members have questions while Mr. Gosbee is checking his notes?

DR. COLVILLE: I'd like to inquire about the PT and E process within mathematics and -- science and math. There is a department as a committee as a whole; is that correct? Or is there a PT and E committee within the.... I'm trying to discern what Dr. Ungar's role in the PT and E process is.

THE WITNESS: Is there a PT and E committee?

DR. SHREVE: Yes, there is.

THE WITNESS: The answer is I don't personally know.

DR. MILTENBERGER: Is it okay to oppose somebody's promotion and tenure?

THE WITNESS: Sure.

DR. MILTENBERGER: Is it okay to be public about it in a department?

THE WITNESS: Yes.

DR. MILTENBERGER: What would happen if someone was public about it in a department?

THE WITNESS: I would assume there would be a discussion about that and give and take and an exchange about it.

DR. MILTENBERGER: So the issue is not Ungar opposing the tenure.

THE WITNESS: No.

DR. MILTENBERGER: The issue is the quid pro quo.

THE WITNESS: Yes. And the attempt to influence an external evaluator.

DR. MILTENBERGER: If you were opposed to someone's tenure would you think it fair to work hard to try to convince your colleagues that this person doesn't deserve tenure?

THE WITNESS: Yeah. I think within the process that's set up, yes. I would expect someone to.

MS. VOGLEWEDE: Mr. Gosbee, do you have any --

DR. LINDGREN: I just wanted to go back to the evaluation. I'm just curious to know did you issue any other letters of reprimand for discrepancies in student evaluations for that same time period?

THE WITNESS: No. I was only aware of one other person who was warned that they hadn't done it. And I didn't hear anything more about that case so I assume that person did theirs.

DR. LINDGREN: And had you issued any for Dr. Ungar before in his career?

THE WITNESS: No.

DR. LINDGREN: So this was the first one in terms of evaluations.

THE WITNESS: Actually that's the first letter of reprimand I ever issued as a dean so....

Q. (Mr. Gosbee continuing.) So I want to make sure I understand it. If he had submitted them on time you would still have issued the letter because he didn't do them the proper way; is that correct?

A. Yeah, I think so. The way they were done was totally improper. And I think worthy of a letter of reprimand just for the fact that the way they were done was not correct.

Q. At least as you understand they were done. Namely, that he conducted --

A. They were not turned into the department first of all. And that right there is a direct violation of the policy. So I think it's very clear that they were not done properly.

Q. So that alone, in your eyes, is enough for the letter of reprimand.

A. Yes, I think so.

Q. In that case --

A. For that part of the letter of reprimand.

Q. What good would it have been to have turned them in when he was requested and reminded?

A. What good would it have done? It would have -- if he had done what he was supposed to do he wouldn't have been reprimanded.

Q. But I misunderstood you. I thought if he had turned it in when he was reminded he also would not have been reprimanded.

MS. MC GRANE: Objection. We've been over this.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) Could you take a look at Exhibit 22. Is there anything there that violates university policy?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

A. Oh, boy. Well, this is a letter in which he says, "The only answer I can give is that Professor Tuval Foguel has some mental defect," and, "by the way, it is known that his son suffers from some mental

defects which might be considered a possible supporting -- as possible supporting evidence." I think that's a personal attack that goes above and beyond academic discourse. You know, there is a responsibility of faculty members to be collegial. To keep things on a -- you know, personal accusations and personal comments like that out of the academic realm. So I think that right there is certainly a violation.

In here he is -- well, he's putting forth the notion that NDSU promotes deception and plagiarism. I don't know that that's against policy, but I think that's certainly a serious accusation that if somebody's going to make it they better have some supporting evidence to back it up.

And then he goes on to question the credibility and the credentials of Warren Shreve as department chair. Again, I think that's a very serious allegation and one that if you're going to make it you better be prepared to back it up with some evidence.

Q. (Mr. Gosbee continuing.) Okay. He's supposed to back this stuff up, right?

A. They're very serious allegations, yes.

Q. And he came --

A. And he should not make them lightly.

Q. And he came to your office with several

notebooks, and that was wrong, too. That caused you concern.

A. No. That wasn't wrong.

Q. Well, my understanding, correct me if I've misunderstood your testimony, you said one of the things that caused you concern was his visits to your office with notebooks trying to back up these very accusations he's making here.

A. Well, no. His notebooks were not saying anything about mental defects of Dr. Foguel's son.

Q. But his notebooks were extensive on the issue of plagiarism to the point you didn't even want to read them.

A. Yes, that's true.

Q. But you just said he should back it up.

A. At that point he was not accusing the university of supporting plagiarism. He was trying to convince me, I guess, that I should do something to help him in his academic dispute with the Karzel group in Germany. Frankly, I don't see what as dean I could have done to help him with this. That's an academic matter. I don't know the details of it. There's really nothing I could have done as a dean to help him along with that. That's why I listened to him, I thought I was polite with him. I didn't refuse to see

him again. I let him come in multiple times and explain his position. But, no, I didn't go out and try to crusade for him.

Q. So you listened politely and then ignored him.

A. No, I didn't ignore him. I listened to him.

Q. Okay. Now this policy that he violated by contacting Professor Kappe, I'm looking at Section 352 of the policy manual dealing with promotion, tenure, and evaluation. Is that -- is it written in there someplace that he can't contact an external evaluator?

A. I don't know.

Q. I'd be happy to make it available for you to read it.

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Counsel, how much longer do you have with this witness?

MR. GOSBEE: I'm pretty much done, but, I mean, this whole point of going external it's so important I think, you know....

MS. VOGLEWEDE: You don't need to tell me where you're headed. My only question is is there a way you can finish with this witness in the next five

minutes or so?

MR. GOSBEE: Depending if he can answer this question. This was going to be my last question.

MS. VOGLEWEDE: Okay. Go ahead.

A. So what's the question?

Q. (Mr. Gosbee continuing.) In Section 352 where does it say thou shalt not contact an external evaluator?

A. It doesn't say that.

Q. Thank you.

A. To my knowledge.

Q. Does it say it anywhere else?

A. Thou shalt not contact? No, I don't think it says that.

Q. Or a substantive equivalent.

A. I don't know.

MR. GOSBEE: No further questions.

MS. VOGLEWEDE: We will break until 1 o'clock. Dr. White, you may be excused. And we'll reconvene at 1.

MS. MC GRANE: Ms. Voglewede?

MS. VOGLEWEDE: Yes.

MS. MC GRANE: My redirect is very, very brief. Would the committee prefer to get it over with, or would the committee prefer to eat and come back?

MS. VOGLEWEDE: Let's do that now.

MS. MC GRANE: It will be very brief.

EXAMINATION

BY MS. MC GRANE:

Q. You were asked a question about opposing tenure within a department. To your knowledge -- or not even to your knowledge. Was any of the disciplinary action that you took against Dr. Ungar because he was advocating against Dr. Foguel's tenure within the department?

A. No.

Q. Who, to your knowledge, dealt with Dr. Ungar on the student evaluation issue after the letter of reprimand was issued?

A. Who dealt with him?

Q. Yes.

A. To my knowledge, Warren Shreve. After the letter of reprimand would have been -- that's all I know about.

Q. And who was the person that received the student evaluations from Dr. Ungar once they were finally submitted?

A. My understanding is that he turned them in directly to Dr. Schnell's office.

Q. Are you aware if departments also have

policies on how student evaluations are to be conducted?

A. I believe most departments do, yes.

MS. MC GRANE: We referenced a computer policy which was exhibit -- or which was Section 710. And the committee had asked for a copy of it. And if it's acceptable we'll mark that as Exhibit 32 now and offer it.

MS. VOGLEWEDE: Any objection?

MR. GOSBEE: No. Obviously, copies of the policy are perfectly admissible.

MS. VOGLEWEDE: Received.

MS. MC GRANE: That's all the questions I have.

MS. VOGLEWEDE: Mr. Gosbee?

MR. GOSBEE: Quick one on redirect.

EXAMINATION

BY MR. GOSBEE:

Q. Turning to Exhibit 22. Would you say that a fair characterization of this is that he opposes tenure for Professor Foguel among other things?

MS. MC GRANE: Objection. Beyond the scope.

MS. VOGLEWEDE: Overruled.

A. Ask the question again.

Q. (Mr. Gosbee continuing.) Would you say that it's a fair characterization of Exhibit 22 that, among other things, it opposes tenure for Professor Foguel?

A. I don't know that he's actually opposing -- I guess by implication he is, but he's mixing in personal attacks and discrediting the department chair along the way, too. I mean, he's done a whole lot of things here including essentially saying that NDSU promotes plagiarism and deception.

Q. Now if I understand your testimony on redirect correctly, though, arguing against tenure within the department is okay.

A. Sure.

Q. So if this had been addressed to dean -- to professor -- Chairman Shreve it would have been okay?

A. No. Not the way it's written. Not with the kind of statements that are in this. These I think have crossed the line of common decency.

MR. GOSBEE: No further questions, your Honor.

MS. VOGLEWEDE: Now you may be excused, Dr. White.

(Whereupon, a lunch break was taken from

12:05 to 1:05 P.M.)

MS. MC GRANE: The university calls Dr. Tuval Foguel.

DR. TUVAL FOGUEL,

HAVING BEEN FIRST DULY SWORN TO TESTIFY THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH RELATIVE TO THE CAUSE SPECIFIED, TESTIFIED AS FOLLOWS:

EXAMINATION

BY MS. MC GRANE:

Q. Good afternoon.

A. Good afternoon.

Q. Would you please state your full name for the record?

A. Tuval Shmuel Foguel.

Q. And what is your position with the university?

A. I'm an assistant professor with the Department of Mathematics.

Q. And how long have you been with the university?

A. This is my fifth year.

Q. Fifth year?

A. Yeah.

Q. Are you familiar with Dr. Ungar?

A. Yes, I am.

Q. How are you familiar with him?

A. I first met him when I was interviewed for the position here.

Q. And since you began working at NDSU have you had an opportunity to work with him?

A. Yes.

Q. And did you ever work on any papers with him?

A. Yes, I have.

Q. Can you describe for the committee what that involvement was?

A. Professor Ungar, in fact, when I first was interviewed here asked me some questions that he felt I might know related to group theory and some of the things he wrote. I said, yes, I've read some relevant things. And when I came here he asked if I would like -- he suggested some collaboration, and out of that collaboration two papers came out.

Q. And at some point did you work on some papers on your own?

A. Yes, yes. All the time.

Q. When you decided to continue doing the research on your own did you receive any feedback from Dr. Ungar on one of those papers?

A. Yes.

Q. And can you describe for the committee

how that came about?

A. I was printing a paper of mine. And then I went to the printer to see the proof piece, how they printed it. A few days later I received a note from Ungar, with it attached a copy of my paper. And in the note he complained about my terminology and suggested it be changed.

Q. Dr. Foguel, I'd ask you to turn to Exhibit 7, please.

A. Yes.

Q. Do you recognize Exhibit 7?

A. Yes. That's the copy of my paper. The note from Ungar, and there was attached letter from Ungar to it.

MS. MC GRANE: We'd offer Exhibit 7.

MS. VOGLEWEDE: Any objection?

MR. GOSBEE: Exhibit 7 consists just of the paper; is that correct?

MS. MC GRANE: That's correct.

MR. GOSBEE: And what color is "See highlighted K-loop" on the original? Or is the color at issue at all?

MS. MC GRANE: The original is red. And, yes, it is an issue.

MR. GOSBEE: In that case we would ask

that the original be admitted.

MS. MC GRANE: And pursuant to the same stipulation understanding we'll be happy to do that.

MS. VOGLEWEDE: Let's put that stipulation on the record. The record is that any original documents -- or the stipulation between counsel is that any original documents that are marked here will be maintained in Dr. Schnell's office. And available -- made available from his office to counsel as needed, correct?

MS. MC GRANE: That's correct.

MR. GOSBEE: Yes, your Honor.

MS. VOGLEWEDE: Exhibit 7 will be received.

Q. (Ms. McGrane continuing.) And this is the paper that you received back in your mailbox with a note on the top; is that correct?

A. Yes.

Q. And in this paper you note, "See highlighted K-loop on next page" is at the top; is that correct?

A. That's noted on the paper, yes.

Q. And if we look at the original.

A. Yes.

Q. Is the term K-loop highlighted on the

second page?

A. Yes. Highlighted and underlined.

Q. And why did you use the reference equivalent K-loops on that second page of your paper?

A. In this --

MR. GOSBEE: That's not the phrase he used. He used equivalently. Your question was equivalent.

MS. VOGLEWEDE: Mr. Gosbee, I can't hear you.

MR. GOSBEE: I don't think she quoted the phrase accurately. It was "equivalently K-loops," and I think she said equivalent K-loops.

MS. VOGLEWEDE: You may answer.

A. Okay. This paper was based mostly on the work of Professor Glauberman. At that time he was in Wisconsin. Currently he's at the University of Chicago. And I referred in reference I believe number 9 to a paper by Hubert Kiechle. I'm not sure of the pronunciation. Where he uses the term loop -- K-loop. Showing to explain that Bruck loop are equivalent to K-loop. I mentioned that once in the introduction.

Q. (Ms. McGrane continuing.) So if I'm understanding you correctly, the reference to K-loop on the second page is actually the reference that was made

in the source that you're citing, and the source is in your reference as Exhibit 9.

A. Yes.

Q. Did you believe that the way that you cited this language here was appropriate?

A. Oh, very much so.

Q. Did you -- I'd like you now to turn to Exhibit 8, please.

A. Yes.

Q. Have you seen Exhibit 8 before?

A. Yes.

Q. And can you tell the committee what we have in Exhibit 8?

A. Exhibit 8 is what came in the mailbox with this paper. We have a letter from Ungar stating his point. And that's basically what it is in this.

MS. MC GRANE: We offer Exhibit 8.

MS. VOGLEWEDE: Any objection?

MR. GOSBEE: Am I correct in assuming the color of writing is not an issue on this one?

MS. MC GRANE: That's correct.

MR. GOSBEE: No objection to the photocopy being admitted.

MS. VOGLEWEDE: Received.

Q. (Ms. McGrane continuing.) As a result of

receiving Exhibit 7 and Exhibit 8, did you do anything after you received these?

A. Yes. I spoke with Ungar.

Q. And what did you speak with Dr. Ungar about?

A. I mentioned to him that the notation I'm using is based on the work of Glauberman. That I'm using the definition that Glauberman gave. And basing my article on his work from 1962. And I asked him that this will bring the matter to a close.

Q. Did it bring the matter to a close?

A. No.

Q. What happened next?

A. Next I received what is Exhibit No. 9 summarizing the conversation we had.

Q. And if you turn to Exhibit 9, it's an April 23rd, 2001 memo from Dr. Ungar to you; is that correct?

A. Yes.

MS. MC GRANE: We offer Exhibit 9.

MR. GOSBEE: And is color -- no objection to photocopy of 9.

MS. VOGLEWEDE: Received.

Q. (Ms. McGrane continuing.) And when you received Exhibit 9 did it accurately reflect the

conversation that you had with Dr. Ungar?

A. Oh, no.

Q. And did you talk to anyone about the document that you received that appears as Exhibit 9?

A. Yes. I spoke with head of the department.

Q. And who was that?

A. Professor Comez.

Q. And why did you speak with Professor Comez?

A. Because I wanted this matter to be brought to a close. I felt strongly that he made his point. I answered him. And that this matter has to be brought to a close.

Q. And what did you do after your conversation with Dr. Comez?

A. I sent a letter to Ungar and I cc'd it to Dr. Comez and to Dean White. And that's Exhibit No. 11.

Q. And if you'd look at Exhibit 11, it's an April 24th, 2001 memo from you to Dr. Ungar with the cc's that you referenced; is that correct?

A. Yes. Exactly.

MS. MC GRANE: We offer Exhibit 11.

MR. GOSBEE: No objection.

MS. VOGLEWEDE: Received.

If counsel and the witness can all speak up, please.

THE WITNESS: Okay.

MS. MC GRANE: Sorry.

Q. (Ms. McGrane continuing.) If we go back to Exhibit 9, what about Exhibit 9 do you think did not accurately reflect the conversation that you had with Dr. Ungar?

A. "Thank you for accepting my suggested -- my suggestion about the representation of my work in the above titled paper that resulted from our joint work."

First of all, the paper did not result from our joint work. Second, never did I accept his suggestions. In fact, I made it very clear to him in our conversation that I hope the matter will come to a close. I stated clearly my position. So basically nothing about this is accurate.

Q. And he asks you in subparagraph 1 to replace the phrase Bruck loops, equivalently K-loops, in your paper. Why did you not want to replace that reference?

A. Because I believed that that reference is very proper. Bruck loops have been around since the

1960s. And my work was based mostly on the work of George Glauberman. And I referred to the original work of Professor Glauberman. Therefore, I used the original terminology.

Q. And how many times did you use the word K-loop in the paper?

A. Once.

Q. If we turn to Exhibit 11 which we just talked about, after you sent Exhibit 11 did that end the conversation between you and Dr. Ungar on this topic?

A. Oh, no. There was several other notes and e-mails we saved from Dr. Ungar. It ended on one direction; I did not send any further note to Professor Ungar.

Q. If we turn to Exhibit 12, can you describe for the committee what we have as Exhibit 12?

A. Yes. Exhibit 12 is a note by Professor Ungar on the 25th. And that he again brings the whole issue up again.

MS. MC GRANE: We offer Exhibit 12.

MR. GOSBEE: No objection.

MS. VOGLEWEDE: Received.

Q. (Ms. McGrane continuing.) If I can also have you turn back to Exhibit 6, please.

A. Yes. Exhibit 6. Yes. Exhibit 6.

Q. Can you identify for the committee what we have as Exhibit 6?

A. Yes. A note from Professor Ungar with reprint from mathematical review of some review. And he says, "Knowing that the term K-loop is deceptive, experts avoid it unless they are personally attached to Karzel."

MS. MC GRANE: We offer Exhibit 6.

MR. GOSBEE: Is ink color an issue on this one?

MS. MC GRANE: No, it's not.

MR. GOSBEE: No objection to the photocopy.

MS. VOGLEWEDE: Received.

Q. (Ms. McGrane continuing.) Did you agree with Dr. Ungar's comment that K-loop is deceptive and experts avoid it unless they are personally attached to Karzel?

A. No.

Q. After the letters exchanged, several from Dr. Ungar and one from you, was there any attempt to resolve the issue?

A. There was several attempts by the chair of the department to mediate.

Q. And can you describe for the committee what was the attempt by the department to mediate?

A. The chair wrote several e-mails trying to set a meeting between me and Dr. Ungar and himself. But the mediation never came to fruition.

Q. If I can turn your attention to Exhibit 15, please. Do you recognize Exhibit 15?

A. Yes.

Q. And can you describe for the committee what it is?

A. It's a note that Professor Ungar sent me on May 1st. Again, talking about the same issue.

MS. MC GRANE: We'd offer Exhibit 15.

MR. GOSBEE: No objection.

MS. VOGLEWEDE: Received.

Q. (Ms. McGrane continuing.) If I can turn your attention to Exhibit 10, please.

A. Yes.

Q. Is this a copy of the document that you received?

A. Yes, it is.

Q. And do you remember when you received this?

A. Not the exact date.

Q. Do you remember an approximate date?

A. Sometime towards the end of April, early May.

Q. End of April, early May?

A. Yeah.

Q. The document is actually dated April 23rd of 2001. Did you receive it on April 23rd?

A. I don't believe so. I don't stamp the date I received it in my mailbox, but I don't believe so.

Q. Okay. When you received this document did you do anything after you received it?

A. I mentioned it to the chair of the department while I talked with him about other things.

Q. And the chair of the department at that time was?

A. Professor Comez.

Q. When you brought it to Professor Comez's attention did you tell him that it had the word warning on it?

A. Yes.

Q. Did you give him a copy of it at that time?

A. No.

Q. Why not?

A. Because I was hoping that the matter will

come to a close. I didn't see this as any worse than the other resistance of Professor Ungar. I wanted the matter to come to a close.

Q. When you received this notation from Professor Ungar on the top of the document did you perceive that as a friendly notation?

A. Oh, no. He uses terms like war, the Karzel war. He wants me to join him in the war against Professor Karzel. And the whole article that he submitted to the AMS is an attack on the editor for rejecting one of his papers 15 years ago. And claiming that the editor used fake referees. And it's -- so the whole thing is part of a menacing term by Professor Ungar.

Q. Why did you go to the chair of your department with these issues?

A. Because I wanted the matter to come to a close. I did not want his letters and demands from him to be continued. If he felt that he has a case against me there is the appropriate channel to bring them up. I wanted this to come to an end.

Q. Did you have any other conversations or receive any other written communications from Dr. Ungar at the end of the 2001 -- and that's not the right way to say it since the school career is funny. Before the

end of May of 2001.

A. I received one communication that -- or one -- someone left in my mailbox the American Mathematical Society Committee on Professional Ethics Procedures Manual. But there was no name attached to it.

Q. And you are looking at an exhibit there; is that correct?

A. Yes.

Q. What exhibit number is it?

A. 13.

Q. And if you look at Exhibit 13, am I correct that you received this article but with none of the handwriting on the top of it?

A. None of the handwriting.

Q. Any other communications other than that which you received from Dr. Ungar?

A. There were a few letters. There was the letter of May 1st I believe. Yes.

Q. And what exhibit number is that?

A. 15.

Q. If we turn to Exhibit 15. That's the memo that we referred to just a few moments ago; is that correct?

A. Yes. And then there was a few e-mails

back and forth basically about arranging a meeting.

Q. The mediation with Professor Comez.

A. Yes.

Q. And that mediation didn't take place; is that correct?

A. No.

Q. How about over the summer. Were there any other communications from Dr. Ungar over that summer?

A. No. The summer was very quiet.

Q. And when you returned in the fall did the communications begin again?

A. Yes.

Q. Can you tell the committee how they began again?

A. The first thing that was left in my mailbox is a Xeroxed copy of an article Professor Ungar had -- a letter, not article, Professor Ungar had published in the Notices of the American Mathematical Society.

(OFF THE RECORD)

Q. (Ms. McGrane continuing.) When you returned in the fall of 2001 we were talking about the communications that you received from Dr. Ungar. And you were describing the first for us when we needed to

replace a tape.

A. It was a copy of the letter he just had published in the Notices of the AMS.

Q. And then did you receive any other communications with or from him?

A. Yes. There was a letter that he sent to the chair of the department, Dr. Shreve. It was handwritten on the article for -- from the Notices requesting that in light of the letter in the Notices Professor Shreve should talk with me to change my notation.

Q. And did Professor Shreve speak with you about that?

A. He showed me the note from Ungar.

Q. And did you have a conversation with him about the note?

A. Yes.

Q. And did he ask you to change your notation?

A. No, he did not.

Q. And did you tell him if you were willing to change your notation?

A. I made it clear that I would not change my notation.

Q. And did you receive any other

communications from Dr. Ungar in the fall of 2001?

A. Directly from Dr. Ungar?

Q. Correct. How about oral communications.

A. Yes. Oral communications I received. The day I submitted my dossier to the department office.

Q. And when you submitted your dossier to the department office, how did you receive a communication from Dr. Ungar?

A. I was walking in the hallway. And Professor Ungar came out of the office with the copy of my dossier. He was pointing to something. And he told me that he has to speak with me. I told him that the dossier is supposed not to leave the office. Would he return it. He said I have to speak with you. You know this letter is really great. If you become a friend again I will support you for tenure and promotion.

Q. And what did you interpret that to mean?

A. I interpreted it's a threat. I had to become his friend or he will work actively to oppose my tenure and promotion.

Q. And by friend, what did you interpret that to mean?

A. I had to change my notation to his notation.

Q. Did you report that conversation to anyone?

A. Oh, yes. I immediately reported it. And I, in fact, sent a letter that I -- to Professor Warren Shreve on that day, Exhibit No. 20.

MS. MC GRANE: And I believe Exhibit 20 is already in evidence.

MS. VOGLEWEDE: It is.

MS. MC GRANE: Thank you.

Q. (Ms. McGrane continuing.) Did you have a conversation with Dr. Shreve at the time you presented him with this letter?

A. Yes.

Q. And what did you report to Dr. Shreve?

A. I mentioned to him all the things that have occurred until that point. And what happened that day. And that I was very worried.

Q. And after this conversation with Dr. Shreve did you receive any other communications from Dr. Ungar?

A. I believe that was the last direct communication from Dr. Ungar.

Q. And did Dr. Shreve, or anyone else in the mathematics department or your division, tell you that they were going to be taking any action?

A. They told me that they will be taking -- that they will be speaking with Professor Ungar about it.

Q. Did they tell you they were going to issue a letter of reprimand to him?

A. No. They have not mentioned it.

Q. When was the first time that you learned that Dr. Ungar had received a letter of reprimand?

A. When Mr. Gosbee sent me a summon to -- in civil court, attached to that summon was a copy of the letter of reprimand.

Q. I'd like to turn your attention to Exhibit 30, please. Is that the document that you were referring to?

A. Yes.

MS. MC GRANE: We'd offer Exhibit 30.

MS. VOGLEWEDE: Any objection?

MR. GOSBEE: May I ask the witness a couple questions on voir dire?

MS. VOGLEWEDE: Limited.

MR. GOSBEE: You received this when?

THE WITNESS: I received that I don't remember the exact date.

MR. GOSBEE: What's the date on the document?

THE WITNESS: November 29.

MR. GOSBEE: And do you recall if when you received it that date was within a day or two of the day you received it?

THE WITNESS: Yes.

MR. GOSBEE: We object on the grounds of relevance. This postdates everything he's accused of and it postdates the last sanctions. It's totally irrelevant, has nothing to do with this case. Dr. Ungar is certainly privileged to file civil lawsuits, and it's unduly prejudicial.

MS. MC GRANE: We believe it goes to the continuing pattern of behavior of Dr. Ungar against Foguel, and we believe it's a continuation of the harassment. And we think it is certainly relevant. And it also goes to the date that Dr. Foguel first became aware of the letter of reprimand to Dr. Ungar.

MR. GOSBEE: The date that he first became aware of the letter of reprimand is irrelevant.

MS. VOGLEWEDE: I'm going to sustain the objection at this point subject to any issues that come up concerning knowledge about the letter of reprimand. Sustained.

Q. (Ms. McGrane continuing.) So the first time that you were aware of the letter of reprimand was

sometime after November 29th of 2001?

A. Yes.

Q. Are you aware of Dr. Ungar's contacts with Dr. Kappe and other mathematicians?

A. Yes.

Q. How are you aware of them?

A. Both from exhibits that I got about the process here.

Q. And when you reviewed the exhibits did you have a reaction to any of them?

A. Oh, yes. Very strong reaction.

Q. Can you describe for the committee what that reaction was?

A. Oh, yes. Let me start by saying I have a six-year-old son who loves to play with sand, who loves to play in water, but when he cries at night --

MR. GOSBEE: Your Honor, may I interpose on objection before this gets any further?

MS. VOGLEWEDE: What's your objection?

MR. GOSBEE: The reaction of his family is utterly irrelevant to this litigation. Obviously, apparently his son never read the --

THE WITNESS: No, it's my reaction I'm talking about.

MS. VOGLEWEDE: Counsel, what's the

exhibit that you have asked the question about?

MS. MC GRANE: 25. And the Exhibit 25 is Dr. Ungar's reference to Dr. Foguel's -- one of the references to Dr. Foguel's son.

MR. GOSBEE: But Dr. Foguel's family's reaction to this is utterly irrelevant.

MS. VOGLEWEDE: Excuse me. The question was about his reaction.

MR. GOSBEE: He was all set to go into a litany about his six-year-old son playing in the sandbox.

MS. VOGLEWEDE: Your objection is overruled.

A. So my son when he cries at night I don't know if he's crying because his head hurts or because he had a bad dream. Because he has no way of telling me. And Professor Ungar thinks that this is evidence that I'm an anti-Semite, that I'm a plagiarist. In fact, as the professional manual tells you very pointedly in the correspondence that that's extremely improper.

I was also very much shocked by him linking me to September the 11th. And I was shocked and dismayed by him calling me an anti-Semite. My grandfather died in Israel's War of Independence. And

he called -- those things that he spread around the world by my personal, my son's personal situation, I do everything in the world for my son. Even serve on the North Dakota autism task force because I care so much about my son and his disability. That makes me a bad person and anti-Semite? I want to mention that the former Prime Minister Netanyahu of Israel has autistic son. Does that make him an anti-Semite?

MR. GOSBEE: Your Honor, I think that's getting pretty far afield. I object and move to strike that.

MS. VOGLEWEDE: Overruled.

A. I was extremely sad and dismayed when I received that.

Q. (Ms. McGrane continuing.) Are you aware if Dr. Ungar participated in your tenure decision within your department?

A. I understand that he did not attend the meeting.

Q. His not voting either in favor or against you for tenure, do you still feel that his communications with people had an impact on you?

A. Oh, yes. A very strong impact.

Q. And one of the things that Dr. Ungar has stated in some of his written communications is that

you have supported plagiarism. Do you believe that you have supported plagiarism?

A. Oh, no.

Q. Why not?

A. I refer to an article that I use some of the results. I base my work on the work of Professor Glauberman from the 1960s. And I gave him full credit for originating, for his work. In fact, I also refer to Professor Robinson's work that predated Professor Glauberman about Bruck loops. And that's the basis of my article. My article is a direct result of Professor Glauberman's paper.

MS. MC GRANE: Thank you. That's all the questions I have.

MS. VOGLEWEDE: Counsel.

EXAMINATION

BY MR. GOSBEE:

Q. If you could turn to Administration Exhibit 7. Did that exhibit intimidate or harass you?

A. Did that exhibit intimidate or harass me. It came with Exhibit 8. And I felt that after it occurred, the meeting with Professor Ungar.

Q. I'm sorry, I didn't hear you.

A. He stated his position. And that's his right.

Q. So neither 7 nor 8 you view as intimidating or harassing; is that correct?

A. Correct.

Q. And Exhibit 9, did you view that as intimidating or harassing?

A. Oh, yes. That was after we had the conversation when I asked him to -- that the matter be closed. He misstated the conversation completely. Yes. I would say he did.

Q. So that was both intimidating and harassing in your eyes?

A. Yes.

Q. Did you tell him that you viewed it as such?

A. Yes. I told him that definitely so in Exhibit 11 when I stated that I hoped this brings the conversation to an end. This is the second time I told him that statement.

Q. I'm looking in there for a statement where you said it was intimidating, harassing, and I can't find it.

A. I didn't use those terms. I made it clear that I wanted the conversation to come to an end.

Q. Now do you know whose idea it was to try to have Chairman Comez mediate this situation?

A. That, I believe, was Chairman Comez's idea as far as I recall. I'm not sure of that.

Q. Do you know why it didn't succeed?

A. Yes. Professor Comez said that Ungar was putting forward too many preconditions to the meeting to be had.

Q. And are those preconditions somewhere in this record?

A. I'm not sure one way or the other. I'm not sure.

Q. I'm looking at Exhibit 15. And it's Professor Ungar writing to you. And Dogan refers to Chairman Comez, right?

A. Yes.

Q. "...justifiably suggested that we meet to resolve the ethical problem..." Is that accurate or inaccurate?

A. Give me a few minutes. Do you want me to state whether his statement is accurate?

Q. Well, his statement was, "Dogan, justifiably, suggested that we meet to resolve the ethical problem..." Is that accurate or inaccurate?

A. That Dogan justify that we meet to resolve the problem is accurate. The ethical problem is not type of problem.

Q. So you did not view the problem as being an ethical problem.

A. No.

Q. Now do you understand that Dr. Ungar views the use of K-loop as plagiarism? I realize you don't agree with that position, but do you understand that's how he views it?

A. I cannot read his mind. That's what he states.

Q. I'm not asking you -- well, having read the various documents he's produced, do you draw the conclusion that he believes it's plagiarism?

A. That's what he states.

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

A. That's what he states. Even though he has used it himself.

Q. (Mr. Gosbee continuing.) All right. And do you contend that his -- first of all, you contend that he is wrong when he says it's plagiarism; is that correct?

A. That's correct.

Q. Do you contend that that viewpoint is irrational?

A. I contend that it's irrational, yes.

Q. That it is irrational.

A. Yes.

Q. Okay. What's your understanding of the paper in 1989 that Dr. Ungar contends is the one he first published this concept?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: It's overbroad, Counsel. Can you make that narrower?

Q. (Mr. Gosbee continuing.) Are you aware that Dr. Ungar in 1989 -- or published a paper in 1989 dealing with the subject of K-loops?

A. I'm aware of that.

Q. And are you aware that that, in his view, is his evidence that he came up with the concept first?

A. In his view. And that's his claim even though the concept has been around from the early '60s.

Q. I just want to find out if that's your understanding of his view. I know you don't agree with it, but I'm trying to keep this on point. So that's the basis of his argument; is that correct?

A. I never understood his argument. But if you say so.

Q. I'm asking what you -- so you're saying you never understood his argument.

A. (Indicating no.)

Q. Does that mean you couldn't agree with it or you simply couldn't understand what he presented?

A. Both.

Q. If you couldn't understand what he presented, did you ask him to explain it to you in terms you could understand?

A. No.

Q. So you left yourself unable to understand the argument.

A. It didn't interest me much one way or the other.

Q. Did you and he co-author a couple of papers?

A. Yes.

Q. And what terminology was used in those papers?

A. In his terminology.

Q. And what terminology was that?

A. Gyrocommutative gyrogroups.

MR. GOSBEE: Okay. For the court reporter, do you want us to spell that or have him spell that?

THE COURT REPORTER: Please.

A. G-Y-R-O-C-O-M-M-U-T-A-T-I-V-E. That's

the first word. The second is G, as in government, Y-R-O-G, as in government, R-O-U-P.

Q. (Mr. Gosbee continuing.) And the plural form would be gyrocommutative gyrogroups, correct?

A. Gyrocommutative.

Q. Okay. And are you contending that Karzel came up with this concept before 1989?

A. I'm not contending one way or the other.

Q. If Dr. Ungar contends that he came up with the concept and first published it in 1989, do you agree or disagree with that?

MS. MC GRANE: Objection. Relevance.

MS. VOGLEWEDE: I'm going to allow some very limited exam on this. Overruled.

A. The concept as first appeared in publication in Robinson's thesis. So that would be --

Q. (Mr. Gosbee continuing.) Which exhibit are you looking at, sir?

A. Exhibit -- on my paper that's Exhibit No. 7.

Q. Okay.

A. The concept first appeared in Professor Robinson's paper in his thesis in the University of Wisconsin in 1964. And then again appeared in Glauberman's paper On Loops of Odd Order in 1964.

Q. Okay. I want to make sure I understand this accurately. Are you contending the phrase K-loop appeared before '89?

A. No. The mathematical structure that was later named K-loop at that point was called Bruck loop, and, in fact, that's why I used the terminology Bruck loop in my paper.

Q. And are you contending that Bruck loops and gyrocommutative -- I always get this wrong, gyrocommutative gyrogroups are the same thing?

A. Yes.

Q. Now in your paper, Exhibit 7, you use the phrase, "...in the construction of Bruck loops (equivalently K-loops)."

A. Yeah.

Q. And, if I'm understanding this correctly, Bruck loops and K-loops are the same thing?

A. Yes.

Q. Why did you add that parenthetical statement?

A. Because I used the results from Hubert Kiechle's paper. And the name of his paper is K-loop from Classical Groups Over Ordered Fields. Since I used results from his paper, I thought it was important to mention to the reader that the two things are the

same.

Q. And Kiechle's paper was written when?

A. His paper was written in 1998.

Q. And that was after Dr. Ungar's first paper, correct?

A. I guess so.

Q. Are you aware of any author --

MR. GOSBEE: May I go off the record for a second? I'm going to try to get these math questions right so I don't mess them up. Can I go off the record for a second and confer with my client?

MS. VOGLEWEDE: We will stay on the record, but you can confer privately with your client.

MR. GOSBEE: Now --

MS. VOGLEWEDE: Counsel, would you wait just a moment, please?

You may proceed, Counsel.

MR. GOSBEE: And I realize this is highly unusual. I'm so obscene at the precision in terms of this language, could I ask my client to ask him a couple questions on this point?

MS. MC GRANE: We'd object.

MR. GOSBEE: All right. Well, I'm sorry people think it's funny, but....

Q. (Mr. Gosbee continuing.) Do the phrase

K-loops first appear in print before Ungar's paper?

MS. MC GRANE: Objection.

Q. To your knowledge.

MS. MC GRANE: Relevance.

MS. VOGLEWEDE: Overruled.

A. To my knowledge, it first appeared in print in Dr. Ungar's paper where he gives credit to Karzel for it.

Q. (Mr. Gosbee continuing.) Now if you could take a look at Exhibit 9. Are we agreeing or disagreeing with item two?

MS. VOGLEWEDE: What was the question, Counsel?

Q. Okay. Exhibit 9, item two. Is that accurate?

A. "Bruck loops (equivalently K-loops, that first appeared in print in equivalently gyrocommutative gyrogroups." Are you asking whether I agree that it first appeared in Ungar's paper of '89?

Q. Yes.

A. As far as I know, it first appeared in -- the term K-loop, not the structure that was previously called Bruck loop, first was -- appeared in print in Ungar's paper in 1989.

Q. All right.

DR. MILTENBERGER: I'm sorry, may I get clarification. Is it Bruck loop that first appeared in Ungar '89 or is it K-loop that first appeared?

THE WITNESS: K-loop. The term Bruck loop first appeared in Robinson's thesis in 1962.

DR. MILTENBERGER: '64.

THE WITNESS: '64.

Q. (Mr. Gosbee continuing.) Okay. Turning to -- or staying with Exhibit 9. If you could read his paragraph 3. And tell me if you agree with that.

A. I have no idea if it's true or not. I know that his paper did not appear in the proceeding. But I have no idea if that's true.

Q. Do you agree or disagree with the statement, "This additional remark is necessary since, misleadingly, some authors claim that K-loops appeared in the 1960s"?

A. No. I do not agree that this remark is in any way necessary.

Q. Okay. You think it's not necessary. Do you agree that some authors claim that the K-loops appeared in the 1960s?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

A. I can cite one. Professor Ungar in his

paper in '89 says that K-loops were first introduced by Karzel in the discussion of near-domains. One citation for this will be Professor Ungar.

Q. But that was -- was he talking about the term K-loops or the concept?

A. I believe the term, but it's important to ask him.

Q. So if I'm understanding your description of No. 9 correctly, you agree with item two. You disagree with the introductory paragraph. And you disagree -- or you're really not sure about number three; is that correct?

MS. MC GRANE: Objection. Mischaracterizes the witness's testimony. Witness's testimony is on the record.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) Okay. Turning to Exhibit 10. If I recall correctly, you testified you don't believe you got them on April 23, but you also aren't sure; is that correct?

A. I don't stamp my mail. Maybe I should start doing it. But I'm not in the habit of stamping my mail.

Q. Okay. Well, can I assume that the answer to that question -- or that statement means the answer

is yes?

A. The answer is that I don't recall the exact date. I believe that it was after the 23rd.

Q. Okay. So there's every reason to believe that it was accurately dated. There's no reason to disbelieve that it's accurately dated on April 23rd.

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Is that an issue in dispute?

MR. GOSBEE: I'm sorry?

MS. VOGLEWEDE: Is that an issue in dispute in this case?

MR. GOSBEE: It could be as a matter of fact.

MS. VOGLEWEDE: Is it in dispute?

MS. MC GRANE: We've never alleged that Dr. Ungar did not write April 23rd, '01 on the document. And Dr. Foguel's testified that he received it sometime after then. He can't remember when. I don't see what the point is, but....

MS. VOGLEWEDE: Mr. Gosbee, what's the relevance?

MR. GOSBEE: I was about to get to that. But all right. I'll withdraw that question.

Q. (Mr. Gosbee continuing.) And how soon

after getting Exhibit 10 did you show it to Chairman Comez?

A. I have never showed it to Chairman Comez.

Q. I'm sorry, did you mention it to Comez.

A. I mentioned it when I spoke with him must have been early May I would say.

Q. And did he ask for a copy?

A. No.

Q. Did you offer him a copy?

A. I don't recall if I offered him. It was one of many things I mentioned to him.

Q. And at the time you didn't see it as any worse than the other dealings you had had with Professor Ungar; is that correct?

A. That's correct.

MS. MC GRANE: Objection. Vague.

MR. GOSBEE: That is exactly what he testified to.

MS. VOGLEWEDE: Overruled.

A. That's correct.

Q. (Mr. Gosbee continuing.) Now calling your attention to Exhibit 11.

A. Yeah.

Q. What's the date of that?

A. That's Tuesday, April 24th.

Q. Which is one day after Exhibit 10.

A. It's one day after the date on Exhibit 10.

Q. And in Exhibit 11 you're discussing a letter you received from Professor Ungar dated April 18th. Is that correct?

A. I'm discussing a letter dated April 18 and another letter dated April 23rd.

Q. And you never once in either -- you didn't mention Exhibit 10, did you?

A. No, I did not.

Q. Now you testified that the reference to war, and so on, intimidated you and frightened you. Did that intimidate you and frighten you when you received it or later?

A. The whole, not just that individually, the whole continued harassment by Professor Ungar did intimidate me.

Q. Well, if I understand the history correctly, the only time the word warning was ever used, whoever wrote it, was in this paper, and the only time the word war was used was in this paper.

A. Those are not the only things I found intimidating.

Q. I understand that. But I'm asking about

these two elements of intimidation. The word warning and the word war.

A. Those two between many elements, yes.

Q. But on receipt of this paper you didn't see it as any worse. At some point or another you change your perception. Because you actually made a complaint to the dean.

MS. MC GRANE: Objection. Counsel for Mr. Ungar -- or for Dr. Ungar is asking him about a document that he wrote on April 24th. The witness has already testified that he doesn't believe that he received the document on April 23rd. So there's no evidence that he even had the document in evidence when he wrote Exhibit 11. It's confusing, it's misleading questioning.

MS. VOGLEWEDE: I'm going to sustain the objection on grounds that it is argumentative.

Q. (Mr. Gosbee continuing.) Take a look at Exhibit 20.

A. Yes.

Q. Was Exhibit 10 in mind when you wrote Exhibit 20?

A. No. Not only. The whole process. Everything that preceded and what happened on October 8th.

Q. And are we safe in assuming that on October 9th you had long received Exhibit 10?

A. Yes.

Q. And drawn whatever conclusions you were going to draw from it.

A. Yes.

Q. So whenever you received it, whether it was before or after Exhibit 11, when you first received it you didn't see it as any worse. Yet by the time Exhibit 20 came out it was one of the justifications for this complaint to the chairman.

MS. MC GRANE: Objection.

Q. Is that correct?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

A. No. My complaint to the chairman was specifically on what Ungar told me that day. If you read it, "On Monday, October 8th, after depositing my application for tenure and promotion at Mindy's office Professor Ungar approached me and told me that he will support my tenure and promotion if I become his friend again. I found his statement menacing and intimidating, in particular due to my previous encounters with Professor Ungar."

Q. (Mr. Gosbee continuing.) You found his

statement menacing?

A. Yes.

Q. You didn't use the word menacing in there.

A. "I found his statement and mannerisms intimidating."

Q. Now by October 9th you had already given to somebody a copy of Exhibit 10; is that correct?

A. I gave it to Professor Shreve.

Q. Did he request you give it to him or did you offer to give it to him?

A. After Professor Shreve received the letter, the copy of the letter to the Notices from Ungar with Ungar's request that I -- that he talk with me, he came to me and we talked about what happened, and he asked me to give him copies of everything I had in my file. So I gave him that with everything else.

Q. So this was just part of everything else.

A. Yes.

Q. How big a pile of paper was everything else?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

A. Basically most of the exhibits that are

up to this point. Including copies of the e-mails back and forth between Ungar and Professor Comez about the mediation meeting. I don't have the exact page now. I didn't bother to do it.

Q. (Mr. Gosbee continuing.) But not all those things are in the record today, are they?

A. The e-mails do not seem to be part of the record.

Q. And focusing on Exhibit 20, you say, "...after depositing my application and tenure -- or for tenure and promotion in Mindy's office, Professor Ungar approached me..." Did he approach you on Monday the 8th?

A. Yes. As stated there.

Q. And now the phrase "if I become his friend," was the use of the word friend, was that his word or your summary of what he said?

A. I believe it was his word.

Q. But, if I recall correctly, you mentioned that he wanted you basically to agree with him on the plagiarism issue for the K-loops.

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

MS. MC GRANE: Argumentative.

A. At that point that's the way I understood

it, yes, the statement to mean.

Q. (Mr. Gosbee continuing.) I'm sorry, I didn't hear you.

A. That's what I understood the statement to mean.

Q. So you didn't interpret it like, you know, two grade school kids be my friend kind of statement. You interpreted it as a professional statement, not a be a personal friend kind of statement, correct?

A. Yes. It's very surprising, oh, be my friend, I will support you for tenure and promotion. You know, I understood it in light of all these previous things that either change my notation or he will work against my tenure and promotion.

Q. And you understood his position on that notation to be that he perceived this to be plagiarism?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained. Repetitious.

Q. (Mr. Gosbee continuing.) I don't think this is repetitious. If he had adopted -- I'm sorry, if he would have adopted his position on the issue of K-loops, would that have conformed -- or would that have eliminated the issue of plagiarism?

MS. MC GRANE: Objection. Calls for

speculation. Vague.

MS. VOGLEWEDE: I'll sustain it on the grounds that it's vague.

Q. (Mr. Gosbee continuing.) Did you view his approach as trying to persuade you to adopt his position on K-loops?

A. He tried to -- he threatened me to adopt his position.

Q. And you were aware at the time that he viewed the opposing point of view as plagiarism.

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained. Repetitious.

Q. (Mr. Gosbee continuing.) Now you testified -- if you look at Exhibit 13.

A. Yes.

Q. And, if I understand correctly, didn't that come along with Exhibit 12? It came along with something else. Wasn't Exhibit 13 accompanied by a cover letter?

A. No. Not the one I received.

Q. All right. And what was your understanding of the purpose of this being in your mailbox?

A. I assumed it was from Professor Ungar. And he referred in earlier letters I believe to this

exact manual if my memory is correct. And --

Q. Yes. It's No. 15. I found it. Okay.

A. I saw it as I -- part of the --

Q. Take a look at 15.

A. Yes. In 15 he says that is available on the Web. So I guess he wanted me to have a copy of it.

Q. All right. And in 15 he says, "In fact, you can read about that yourself at page 7 under example 4."

A. Yeah.

Q. Okay. Did you go read it upon receiving this letter?

A. No.

Q. Have you ever read it since then?

A. No.

Q. So you have no idea whether the argument is sound or not, do you?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

A. His argument is not --

Q. (Mr. Gosbee continuing.) If you take a look at page 7 --

MS. VOGLEWEDE: I would like the witness to answer.

MS. MC GRANE: The witness was

answering.

A. His argument is not sound. I used the term from the 1960s. It's hard to believe that I plagiarized when I used a term from the 1960s and not used it from '89. I know time might be relativistic, but it's a bit hard to understand that.

Q. (Mr. Gosbee continuing.) All right. I apologize for interrupting. Okay. Going to Exhibit 13, page 7, example 4.

A. Yes.

Q. Is it your understanding that this is Dr. Ungar's argument as to why your terminology is plagiarism?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: The question relates to page 4 of Exhibit 13?

MR. GOSBEE: No, I'm sorry, page 7, example 4 in Exhibit 13.

MS. VOGLEWEDE: The objection is overruled. You can answer.

A. I haven't read the example. I know that --

Q. Could you read it, please.

A. "A complainant said that the result attributed in Y's paper to the Fields medalist Z was

actually proved first by the complainant."

Q. Okay. And could you read the next paragraph either to yourself or out loud.

A. Okay.

Q. All right. Now focusing on the two lines beside example 4, "A complainant said that a result..." And would Professor Ungar be the complainant in this example?

MS. MC GRANE: Objection.

MR. GOSBEE: I think he said he disagreed with the argument that it was plagiarism, and I'm entitled to inquire into the formation of that belief.

MS. MC GRANE: He testified he's never read this document before this moment, and there's no evidence this document was written in reference to Dr. Ungar.

MR. GOSBEE: But this example was provided by Dr. Ungar to support his position. In a letter sent to the witness.

MS. VOGLEWEDE: The objection is sustained.

Q. (Mr. Gosbee continuing.) Now you testified that when everybody came back in the fall of 2001 that there was further contact between Dr. Ungar and you. And this included a letter with a

copy of a -- or some sort of communication. I don't know if it was a letter. But the copy of a letter that he wrote in the American Mathematical Society publication. Do you remember that testimony?

A. Yes. He left a copy of -- I assume he left. It was someone left a copy of his letter to the Notices of the AMS in my mailbox.

Q. And you, apparently, sent a copy of Dr. Ungar's communication to Chairman Shreve; is that correct?

A. Which one?

Q. About that American Mathematical Society letter to the editor.

A. No. Dr. Shreve had a copy that Ungar left in his mailbox with a request that he speak with me about changing my notation in light of Ungar's letter.

Q. I see. Okay. Turning to Exhibit 20. I gather there had been some conversation between you and Chairman Shreve before this was sent out?

A. I spoke with him that afternoon explaining to him what happened.

Q. Who else did you speak to about the situation?

A. That day -- I believe I spoke only to

Dr. Shreve that day. And the next morning immediately I submitted this letter to him.

Q. So this letter, you wrote it in the morning of October 9th; is that correct?

A. Yes.

Q. And you mentioned you only talked -- or Dr. Shreve was the only one you talked to about it on Monday. Did you talk to anybody else about it earlier about filing a written complaint?

A. I have filed a written complaint. The incident happened October 8th. It would be surprising if I talked with anyone before that.

Q. Well, except I understood you to testify it dealt with the prior episodes, too.

A. You are asking about this letter that talks about the encounter with Professor Ungar on October 8th.

Q. All right. So the only one you talked to about it on the 8th, then, was Chairman Shreve; is that correct?

A. As far as I recall.

Q. All right. Do you recall giving your deposition?

A. Yes.

Q. And do you recall being asked to prepare

a handwriting sample at my request?

A. Yes.

Q. I show you what's been marked as Exhibit F33 and ask if you recognize that.

A. Yes.

Q. And is that the sample you prepared at my request?

A. I believe so.

Q. And what's your recollection of what my request was?

A. Your request was to copy -- you had something written in English and something written in Hebrew. You asked me to copy, underline everything that was underlined in English. And underline everything that was circled in Hebrew. And then sign it. Asking what language I should sign it, you told me to sign it in English.

Q. All right. And do you recall if I asked you to write the Hebrew part in a particular form -- strike that.

In English there's something called cursive writing. Are you familiar with that?

A. Yes.

Q. And then we have printing. Block printing, and the like. Does the Hebrew language have

similar --

A. A much more so.

Q. And do you recall my making a request that you write it in that kind of format?

A. You told me to write it exactly in the form that it appears in the note.

Q. Okay.

DR. MILTENBERGER: Do we have this exhibit?

MR. GOSBEE: Not yet because it's in my collection. And I can distribute the notebooks. I can offer the original. He wrote it on a writing pad. I'd like to offer the, like, five blank pages underneath that as part of the exhibit.

MS. MC GRANE: Relevance objection.

MS. VOGLEWEDE: Pardon?

MS. MC GRANE: Relevance objection.

MS. VOGLEWEDE: You're offering the notepad and --

MR. GOSBEE: No, no, just like five -- or whatever I've torn off here.

DR. MILTENBERGER: How come?

MR. GOSBEE: Okay. Because it shows printing going from multiple pages where he bore down heavily on some of the words. So I want those pages to

be part of the record -- exhibit, too.

MS. VOGLEWEDE: I'll allow it.

MR. GOSBEE: Do you want to look at it before I tear it apart?

MS. MC GRANE: No.

MR. GOSBEE: So we offer Faculty No. 33. Should I distribute it to the committee so they can see it?

MS. VOGLEWEDE: Is this on our list as 35?

MR. GOSBEE: I hope -- no. It should be 33. Did I mess that up? I hope it shows as 33 on your list. Oh, I know, the one I prepared before the hearing I've got some numbers messed up so I fixed them. So the numbers in the red binder match. Do you want me to distribute the red binders now?

MS. VOGLEWEDE: Yes, please.

MS. MC GRANE: With the removal of Exhibit 34, please.

MS. VOGLEWEDE: Pardon?

MS. MC GRANE: With the removal of Exhibit 34, please.

MS. VOGLEWEDE: Yes. Has 34 been removed, Mr. Gosbee?

MR. GOSBEE: I'm sorry?

MS. VOGLEWEDE: Did you remove Exhibit 34 based on the rules of the motion in limine this morning, please.

MR. GOSBEE: Oh, okay. I have to cross that out on the title page. Or we just pull it out?

MS. VOGLEWEDE: Do both, please.

MR. GOSBEE: I'm sorry?

MS. VOGLEWEDE: Do both. Remove it --

MR. GOSBEE: And cross it out?

MS. VOGLEWEDE: Yes.

DR. MILTENBERGER: While we have a moment, could we ask some questions?

MS. VOGLEWEDE: Is that acceptable to counsel?

MR. GOSBEE: Yes.

MS. VOGLEWEDE: Go ahead.

EXAMINATION

BY DR. MILTENBERGER:

Q. The gyrocommutative gyrogroups are the same as Bruck loops are the same as K-loops; is that correct?

A. Yes.

Q. Those are all absolutely equivalent terms.

A. Yes.

Q. Is there a publication or more that describes this as a Bruck loop in the early '60s?

A. Yes.

Q. When is the first publication that uses the term K-loop?

A. 1989.

Q. Okay. And why was the term K-loop chosen in that publication?

A. Because the person who wrote it did not know much loop theory and did not know about the existence of Bruck loops.

Q. And now why was K used?

MS. MC GRANE: Objection. This witness didn't write that.

Q. Based on writing the paper, what did it say in the paper?

A. In that person's paper he wrote that, and that person is Professor Ungar, wrote that the term K-loop was used because it -- because that's the term that was used beforehand when people looked at near-domains.

Q. Who used K-loop before him if people used it? Did it say in that paper?

A. He says that --

MS. MC GRANE: For the record, I'm going

to object because Dr. Ungar is nodding and shaking and moving his hands as the witness is trying to answer.

DR. UNGAR: No, I did it only after the answer.

MS. MC GRANE: Well, that's the fifth time.

MS. VOGLEWEDE: Dr. Ungar, don't indicate your reaction or response to the witness's testimony.

DR. UNGAR: It's the first time I made such indication.

A. From what I recall, I would like to look at the paper, but I recall that Professor Ungar gives credit to Professor Karzel for writing -- not writing, for talking about it in the context of near-domains.

Q. (Dr. Miltenberger continuing.) So in this paper it's stated that Karzel talked about these loops.

A. Yes.

Q. Okay. So K-loop is first talked about in Ungar '89 with reference to Karzel having talked about it but not published it.

A. Yes.

Q. And then in that same paper did he -- does Ungar introduce gyrocommutative gyrogroups?

A. I believe he introduced it later.

Q. It wasn't in that paper.

A. No.

Q. And then in 1998 Karzel wrote a paper using K-loops as well?

A. I'm not exactly sure. I know he used the term K-loops in some papers.

Q. Okay. I thought you had said '98. It was in the '90s?

A. No, no. The paper that I'm referring to in my paper by Hubert Kiechle was in '98.

Q. Okay. There we go. Not Karzel. Kiechle.

A. Yes. And then we failed --

Q. I'm sorry. I misunderstood. Okay. So Kiechle, if I'm pronouncing that correctly, used K-loop in '98. Bruck loop was used in the '60s. And gyrocommutative gyrogroups was used at some point by Ungar.

A. Yes.

Q. He published that.

A. Yes.

Q. They all are exactly the same mathematical phenomenon.

A. Exactly.

Q. And in your work you called it Bruck

loop, parenthesis, same as K-loop?

A. Yeah.

Q. And you used the reference from someone who had published that themselves.

A. Yes.

Q. And that was Kiechle?

A. Yes.

Q. So, in your mind, you were citing sources for this in a legitimate fashion.

A. Very much so.

Q. And this was not plagiarism to you.

A. No.

Q. Why did you choose to cite K-loop instead of gyrocommutative groups knowing that they're all the same? What made you decide on one as opposed to the other?

A. In most of the papers -- in the paper I used that term only once. The paper is really built almost exclusively on the work of Glauberman. So I decided to use the same terminology that Professor Glauberman used. In the paper I also referred to the results of Professor Kiechle. And since he doesn't use the term Bruck loop, I wanted to make it clear to the reader that Professor Kiechle's paper is about the same as the Bruck structure since I referred to it.

Q. So what you're saying is you didn't make something up and call it your own which would be one form of plagiarism.

A. No.

Q. You didn't say something that Dr. Ungar told you you could only have known by those conversations with him and attribute it to someone else.

A. (Indicating no.)

Q. That you --

MS. VOGLEWEDE: You need to answer out loud.

A. No.

Q. That you published in this paper something that you got from other papers and cited it as such, but that you chose not to cite gyrocommutative gyrogroups, you chose to use other terminology. But that there were citations for these.

A. Yes. I used the terminology that was used in the paper that my article was based on.

Q. You chose to cite one reference and to ignore another.

A. Yeah.

DR. MILTENBERGER: Thank you.

MS. VOGLEWEDE: Mr. Gosbee.

MR. GOSBEE: Thank you.

EXAMINATION

BY MR. GOSBEE:

Q. If you could turn to the Administration Exhibit 6.

A. Yes.

Q. Are you contending that that's intimidating and harassing?

A. I'm contending that that's inaccurate.

DR. MILTENBERGER: What was the answer?

A. That it's inaccurate what he says there.

Q. But my question was are you contending it's intimidating or harassing?

A. It's part of to look at whether something is harassment you have to look at the light of everything that happened before. It's a cumulative total. And as part of that cumulative total, yes, it's part of his insistence despite being told to let go.

Q. So you're contending it's because he wouldn't let go, as you used it, that was intimidating or harassing.

A. I have made it clear to him, in written and in person, that this matter should come to a close. And the continuation is intimidation.

Q. And did this come to you, or did he

deliver this to you before or after you made that clear to him?

A. To tell you the truth, I don't recall.

Q. Okay. And could you take a look at Exhibit 22.

A. Exhibit 22. I seem to be missing the exhibit.

Q. That is a letter from Ungar to White.

A. It does not seem to be in the pile I have. If someone can give me a copy of it, I would be glad to look at it. Thank you.

Q. And if you could also take a look at Exhibit 10. That's the note.

A. Yes.

Q. All right. And if you could look at the Hebrew on 10 and the English translation of paragraph 2 of 22, go over them to yourself, please, and tell us if you agree or disagree that the paragraph 2 in Exhibit 22 is a reasonably accurate translation of the Hebrew, obviously, other than the word warning?

MS. VOGLEWEDE: Counsel, are these exhibits in evidence?

MR. GOSBEE: I'm sorry?

MS. VOGLEWEDE: Are these exhibits in evidence?

MR. GOSBEE: Yes.

MS. VOGLEWEDE: You're referring to 10. Are you referring to your own 22?

MR. GOSBEE: I'm sorry. I wasn't clear. Administration 10 and Administration 22 in both cases. I'm sorry.

A. It's pretty much accurate.

Q. (Mr. Gosbee continuing.) I'm sorry?

A. Yes.

Q. So it's a reasonably accurate translation.

A. Reasonably accurate.

Q. Do you have any serious quarrels with it, or is this something that the committee can rely on as a translation of what he said to you other than the issue of the word warning of course?

A. I will accept it.

Q. All right. Go ahead. And what's your educational background in terms of elementary and high school?

MS. MC GRANE: Objection. Relevance.

MS. VOGLEWEDE: Counsel, what's the relevance?

MR. GOSBEE: I want to ask him questions about where he learned handwriting in English and

Hebrew.

MS. VOGLEWEDE: Where he learned Hebrew handwriting?

MR. GOSBEE: Handwriting in both English and Hebrew.

MS. VOGLEWEDE: What's the relevance?

MR. GOSBEE: Goes to these various exhibits purporting to show various people's handwritings.

MS. VOGLEWEDE: I need more than that.

MR. GOSBEE: Well, I'd have to get Dr. Ungar on the stand to testify about the various kinds of Hebrew that are taught, Hebrew writing that's taught in elementary schools and high schools in Israel. And I want to inquire of the witness how far his training went both in Israel and the U.S.

MS. VOGLEWEDE: My understanding is that neither party in this case is calling handwriting experts. Correct?

MR. GOSBEE: That's true. But we're probably going to argue about it.

MS. VOGLEWEDE: And I will also assume that neither party is intending to offer lay opinions on handwriting. Is that true?

MR. GOSBEE: Well, we may offer it. It

may not be accepted.

MS. VOGLEWEDE: If that's the case, if we're not having expert witnesses on handwriting, I'm not sure what the relevance is of that testimony. And I'm going to sustain the objection.

Q. (Mr. Gosbee continuing.) Taking a look at Exhibit 10. How many Hebrew -- how many different Hebrew letters are represented in the word that's been translated as warning?

A. I believe that there are four.

Q. And numbering them one -- from right to left, which is the way Hebrew is written; is that correct?

A. Hebrew is written from right to left, correct.

Q. So the right most letter of that word is the first letter in the Hebrew language of that word.

A. Yes.

Q. What's the Hebrew word that's written there?

A. Azarh.

THE COURT REPORTER: Excuse me?

THE WITNESS: Azarh.

Q. Can you provide the English spelling of that?

A. I'm not good at this game.

THE COURT REPORTER: Neither am I.

MS. MC GRANE: Can you give her the closest spelling possible? She just needs to get the closest spelling for the record.

THE WITNESS: A-Z-A-R-H.

MR. GOSBEE: Okay. And did you get that?

THE COURT REPORTER: Yes.

Q. (Mr. Gosbee continuing.) Let's go one letter at a time. That first letter. What Hebrew letter is -- what's the English translation of that Hebrew letter?

A. It's A.

Q. And like alpha is the English word -- or, you know, alpha in Greek is A, and so forth. What's the Hebrew equivalent A? Equivalent of alpha, I'm sorry. Have I made this clear as mud? I think I have.

A. No.

Q. If we were asking about Greek you'd tell me that was alpha, right?

A. It's not alpha. It's not Greek alpha.

Q. I know that.

A. It's Hebrew.

Q. What is the English equivalent --

MS. VOGLEWEDE: Counsel, let me just interrupt here. Is there a dispute in this case about the meaning of the word that's written here?

MS. MC GRANE: (Indicating no.)

MR. GOSBEE: No. Not that it translates to warning, no.

MS. MC GRANE: No.

MS. VOGLEWEDE: Then can you explain the relevance of this line of questioning?

MR. GOSBEE: Well, if we're not going to be allowed to discuss who wrote the word --

MS. VOGLEWEDE: Well, Counsel, that was not my question about who wrote it. I said is there some dispute about the meaning of the word?

MR. GOSBEE: No. But the way the word was physically written is relevant.

MS. VOGLEWEDE: Okay.

MR. GOSBEE: All right. I'll withdraw these questions.

MS. VOGLEWEDE: Counsel, if you can explain how this relates to who the author of the word is let me know. But I'm not following where you're headed with that.

MR. GOSBEE: Being able to translate

letter for letter what those letters are will be helpful in analyzing who wrote it.

MS. VOGLEWEDE: And how would that be so?

MR. GOSBEE: For the same reason if I write the word cat and you write the word cat it's going to look different. And if somebody wasn't familiar with English he'd have to tell them what C, A and T were.

MS. VOGLEWEDE: How does that establish who wrote it?

MR. GOSBEE: If my C looked materially different from your C and we were, say, in Israel trying to explain all this to somebody, to a committee in Israel, and they didn't know what English was, it would be as strange to them as this word is to us.

MS. VOGLEWEDE: Committee members, let me know if you feel differently, but, Mr. Gosbee, I don't understand how the translation of the letters determines who the author is. So I'm going to sustain the objection. And if you can demonstrate at some point further in his testimony how that's relevant you're free to try.

Q. (Mr. Gosbee continuing.) Now turning to Exhibit 20. I guess we've already covered that so I'll

withdraw that question I didn't even ask.

Okay. What's your understanding of what a plenary lecture is?

A. It's a lecture in a conference.

Q. And does the word plenary imply something?

A. Yes. It's important lecture.

Q. And have you been invited to give a plenary lecture?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Grounds?

MS. MC GRANE: Relevance.

MS. VOGLEWEDE: I'll sustain.

Q. (Mr. Gosbee continuing.) Do you know if Professor Ungar has been given -- has been invited to give a plenary lecture?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

A. From the question you asked Professor White here today, yes.

MR. GOSBEE: May I have a moment to confer with my client?

MS. VOGLEWEDE: We'll take a break now.

MR. GOSBEE: Okay.

MS. VOGLEWEDE: Till a quarter to.

(Whereupon a break was taken.)

MS. VOGLEWEDE: As we resume I want to remind counsel of something that you were notified of in advance of the hearing which is that the committee has allotted what it believes is a reasonable amount of time for this hearing. All day today plus three hours on Wednesday. That it is the committee's intention that the hearing be completed by the end of that time. It will not carry over past Wednesday. So use the time accordingly. Use it as you see fit. But the hearing must be completed by the end of that time.

You may proceed.

MR. GOSBEE: Was that on the record?

MS. VOGLEWEDE: Yes.

MR. GOSBEE: I can proceed?

MS. VOGLEWEDE: You can proceed.

MR. GOSBEE: Okay. On the issue of the question I was just trying to ask the witness, if I can make a little argument up here at the board. I think this will make myself a little clearer. There are five letters in the Hebrew word. Say the word at issue were the English word catch like catch a fish. Obviously, this C is not a really good C. And I want to question the witness -- the exhibit hasn't been admitted yet, but I'm pretty sure it will. And if, you know, over

objection if it is I want to be prepared for it. And I want to question the witness about what basically the five letters in that Hebrew word are by analogy to the five letters in the word catch. There's a pair of duplicate letters and they were written differently in his sample.

MS. VOGLEWEDE: Differently from what?

MR. GOSBEE: Each other. Words -- using this metaphor, the word catch, one C looks like this and the other C looks like that in his sample.

MS. VOGLEWEDE: And how is that relevant to the warning letter?

MR. GOSBEE: Because it shows an attempt to deceive when he created the sample. And I'd like to question the witness if he -- you know, about the five letters in Hebrew. It would have taken less time to question him than I've spent trying to argue.

MS. VOGLEWEDE: Counsel, the part I don't understand is how that does not get into a purported expert analysis of handwriting.

MR. GOSBEE: If nothing else, the committee's going to have to serve as amateur experts because they're going to have to make a decision on the merits.

MS. VOGLEWEDE: Counsel, here is what

I'll allow. You can ask him questions specifically about the sample that's now been admitted into evidence. Without going through this.

MR. GOSBEE: Fine. Thank you. I hope I'm staying within bounds.

DR. MILTENBERGER: Has that sample come around for us to see it?

MS. MC GRANE: No, it hasn't.

MR. GOSBEE: 10? I thought it had. That's the original warning letter?

MS. VOGLEWEDE: I'm talking about the exhibit, the deposition example.

MR. GOSBEE: I wasn't talking about the deposition -- it was the sample that Professor Shreve took that hasn't even been admitted get.

MS. MC GRANE: Yes, it has. It's Exhibit 24. It's already in evidence.

MR. GOSBEE: No. It's pending decision if I recall.

MS. MC GRANE: No. It was admitted.

MS. VOGLEWEDE: Which number?

MS. MC GRANE: 24.

MR. GOSBEE: 24.

MS. VOGLEWEDE: That's been received.

MR. GOSBEE: Well, in that case that's

the one I'm talking about.

MS. VOGLEWEDE: Well, you can ask him about that exhibit specifically.

MR. GOSBEE: All right.

Q. (Mr. Gosbee continuing.) Take a look at the second page of Exhibit 24.

A. Yeah.

Q. Compare it to the Exhibit 10.

A. Yep.

Q. The right most letter.

A. The right most letter, yes.

Q. Is that the Hebrew letter aleph?

A. Yes.

Q. The next letter, is that the Hebrew letter ziyin?

A. Yes.

Q. The next letter, is that the Hebrew letter hay, H-A-Y in English?

A. No. I misspelled it. It's a Hebrew letter aleph again.

Q. Okay. And the next letter is the Hebrew letter resh?

A. Right.

Q. And the next letter is the Hebrew letter hay.

A. Right.

MR. GOSBEE: In that case I now make an objection to 24. He's just admitted that it's A, therefore, it's not even reliable.

MS. VOGLEWEDE: It's already been admitted.

MR. GOSBEE: I ask that it be withdrawn. I wasn't even aware of that till just now.

MS. VOGLEWEDE: Overruled.

MR. GOSBEE: In that case I have no further questions.

EXAMINATION

BY MS. MC GRANE:

Q. Dr. Foguel, you were asked a series of questions about your paper. And I believe it's Exhibit 7; is that correct?

A. Let me find it again. Yes.

Q. In any place in Exhibit 7 do you refer to or cite any work by Dr. Ungar?

A. Briefly I refer to our joint paper.

Q. In your -- when you wrote the paper did you believe that you needed to cite Professor Ungar's 1988 or 1989 article to be thorough or to be accurate?

A. No. It was completely irrelevant to this paper.

Q. Why?

A. Because the things he done in his article have very little to do with what is done here in this paper.

MS. MC GRANE: Thank you. That's all the questions I have.

EXAMINATION

BY MR. GOSBEE:

Q. Is it your understanding that Dr. Ungar wanted you to recite to his '89 paper?

A. I believe that he makes that request in several places.

Q. Can you show me one?

A. Yes. Exhibit 8 in number 3. And 1 I believe. Exhibit 9, number 2 and number 3. I think there might have been others on the list. Exhibit 14 does he mentioned that. Finding those two. Let me look. In those two.

Q. Let's focus on those two to try to speed things along. Now on number -- on Exhibit 8.

A. Yeah.

Q. You're interpreting paragraph 3 as saying you want him to cite to him?

A. He said, I would like to make two strong recommendations. To replace the phrase Bruck loop

equivalent in the above titled by the phrase Bruck loop equivalently gyrocommutative gyrogroups reference Ungar '97.

Q. Which one are you looking at? Eight?

A. In No. 8.

Q. Which paragraph?

A. Three. So he clearly asks me to refer to it.

Q. He just makes the citation. He doesn't ask you to cite to him.

A. He says in the above titled preprint he demands that -- he asks that I replace the phrase by that one and includes the citation in the phrase that he asked to replace it by.

Q. But he's talking about the phrase, not a citation to him.

A. The phrase that he asks me to replace with -- read number 3.

Q. "However, I would like to make two strong recommendations." And then he says, "Bruck loops equivalent," et cetera. And he gives a citation to support his argument. He's not asking you to make the citation. Is that the way you interpret it?

A. He states that I would like that you replace the phrase Bruck loop equivalently K-loop by

the phrase. That's the way I read it.

Q. Okay. So your contention is that there's no need to cite the article or there's no need to explain Bruck loops?

A. I gave the definition in my paper of Bruck loop and I cite Robinson paper. I very much explain what Bruck loop is.

MR. GOSBEE: No further questions.

MS. MC GRANE: (Indicating no.)

MS. VOGLEWEDE: Professor Foguel, you may step down.

THE WITNESS: Thank you.

MS. VOGLEWEDE: Ms. McGrane, you may call your next witness.

MS. MC GRANE: Thank you. The university administration calls Dr. Comez.

DR. DOGAN COMEZ,

HAVING BEEN FIRST DULY SWORN TO TESTIFY THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH RELATIVE TO THE CAUSE SPECIFIED, TESTIFIED AS FOLLOWS:

EXAMINATION

BY MS. MC GRANE:

Q. Good afternoon.

A. Good afternoon.

Q. Will you please state your full name for the record?

A. My full name is Dogan Comez.

Q. And what is your position with the university?

A. I'm a professor in the Department of Mathematics.

Q. And how long have you been in that position?

A. This is my 17th year at NDSU.

Q. 17th?

A. 17th.

Q. And have you served in any capacity as chair of the department at any time?

A. Yes. Between 1998 and 1997 first year -- 1997-1998 as interim chair. And then from 1998 till 2001, end of June, chair. Elect chair.

Q. And in that position as chair were you familiar with both Dr. Ungar and Dr. Foguel?

A. Yes, I was familiar with both of them.

Q. And did Dr. Foguel ever come to you with any concerns regarding communications that he was receiving from Dr. Ungar?

A. Yes, he did.

Q. And can you describe for the committee when, approximately, you first heard from Dr. Foguel regarding these concerns?

A. I think I believe it was either April 19th or 20th. I don't exactly remember. Most likely the 19th. Tuval approached me with -- about the communication he received from Dr. Ungar. And asking him to make some changes about an article that he recently wrote.

Q. And I'm going to ask you to look at exhibits -- at Exhibit 8 and Exhibit 9.

A. Yes.

Q. Did Dr. Foguel ever show you a copy of Exhibit 8 and Exhibit 9?

A. The first communication when he approached me he showed me the Exhibit 8.

Q. And when he showed you Exhibit 8 did you think there was anything unusual about Exhibit 8?

A. Well, Exhibit 8 is not a common way of conducting this kind of dispute between two faculty.

Q. What would be a common way?

A. Well, the common way would be that a faculty, if he or she does not like the terminology, or whatever, that the other faculty uses would approach the person and then would try to discuss the matter in a friendly manner. Rather than put it into a letter form like that. And then continue after.

Q. Was it appropriate, in your mind, for

Dr. Foguel to come to you with this concern?

A. Well, very inappropriate in my opinion.

Q. Did Dr. Foguel come to you with any additional concerns?

A. Later on, yes.

Q. And when you say later on, how much later?

A. Well, it didn't take maybe more than two or three days. I think around April 23rd or 24th he came -- let me add here that after the first time he approached me I advised him to go back to Dr. Ungar and then discuss the matter in the way that I believe should be discussed. In a collegial, friendly manner. Especially two people who are working on a joint paper together should be able to handle the situation that way. And, as far as I know, Dr. Foguel had done so.

And when he approached my again a couple of days later he approached me again with another letter he received from Dr. Ungar. That Dr. Ungar is continuing with these kind of demands from him.

Q. What did you recommend?

A. Well, I recommended him that after the second time that he should respond first of -- respond in a -- this time in a written form. If he chooses he should also try to approach him and try to settle the

matter by talking. But the matter came to a point that I believe he should now respond in a document fashion. And I commented to him that if he likes he can cc to me and to Dean White as well.

Q. Did you observe that Dr. Foguel was reacting at all to the communications he was receiving from Dr. Ungar?

A. Well, he was very upset. He was shaken, distraught. It wasn't a usual form of communicating these kinds of matters. So he was visibly upset about it.

Q. Did you recommend any alternatives in an attempt to resolve the issue?

A. Yes. After the second communication took place I asked -- at that time I was informed about it I sent an e-mail to both Abraham and Tuval that two faculty in the same department who had corroborated earlier should be able to resolve such matters in a friendly manner. And I offered them that I would be very happy to mediate the resolution by bringing them together at a place where we three can, you know, settle the issue.

Q. And did, in fact, that mediation occur?

A. It didn't occur. In the beginning when I sent them this e-mail, both of them, I came to my

realization that Dr. Ungar also went to see Dean White. And Dr. Ungar's response to me the first time was that he will think about it after he meets Dr. White. And, in the meantime, after Dr. White realized that I wanted to mediate, he asked Dr. Ungar to do the mediation first and then talk with him. Dr. Ungar didn't want to do that. And to my recollection later he agreed after meeting with Dr. White to -- for this mediation. With a condition.

And my response to him was that mediation cannot be done with some strings attached. I would be very happy to mediate in between without any conditions attached. And because of that he refused to meet me at my mediation. And, as a result of that, mediation didn't take place.

Q. Did Dr. Foguel ever come to you regarding the note that was written in Hebrew on the top of the document?

A. He came, I believe sometime early May he mentioned to me that he received a note from Dr. Ungar with a warning on it.

Q. And did he show you the document at that time?

A. At that time I don't remember seeing the document.

Q. And what did he tell you about the document?

A. He told me about the document, that he has an article that appeared somewhere. A letter that appeared somewhere. And he put some Hebrew letters, and then on top there is a phrase, warning.

Q. And how did Dr. Foguel appear to you when he approached you regarding this communication?

A. I remember that day very vividly. He was very upset. He was all white when he came to my office. And he was literally shaking.

Q. And, as I understand it, you weren't part of the letter of reprimand that was later issued to Dr. Ungar; is that correct?

A. No, I wasn't.

Q. One of the issues that's raised in the letter of reprimand is student evaluations. And there was a question from the committee earlier regarding the procedure for student evaluations in the math department. And perhaps you could address that issue for us.

A. I would be happy to do so. We believe that the mathematics student evaluations are important matters that every faculty should follow. And for that we have a very established, very well running

procedure. Towards the end of semester, three or four weeks before the end of semester, our administrative assistant prepares packages of student evaluations together with the department evaluations. And on each of those packages we attach a letter to the faculty receiving the deadline that those evaluations be returned to our office.

The way that we conduct these evaluations is that we ask faculty to take these packages to classrooms, and then after that moment on they should appoint one student in the classroom to distribute these evaluations to other students. And then after the evaluations are done collect and take the whole package back to the department secretary. And during the time that evaluations are done by students faculty are not supposed to be in the classroom. Faculty should leave the classroom.

And in that particular time I instructed our administrative assistant to prepare these early April. And because I remember the packages were put into the faculty mailboxes April 11th with a deadline of April 23 week. Which means that the deadline was April 27th.

We also know that faculty in a busy time occasionally forget to conduct these evaluations. And

as part of -- because of that, every year I ask, as a chair, and I'm sure the current chair does the same thing, too, to send reminders by e-mail to faculty about conducting these evaluations on time before the deadline. It was done.

And around the time very late on that April 23 week the administrative assistant approached me that he received most of the evaluations from faculty except one of them -- except two people. Dr. Ungar, and at that time we have another visiting faculty, Dr. Movshovich. And I asked our administrative assistant to send reminders to both of them. And I remember also approaching Dr. Ungar in the corridor and demanding him to do so. He told me that he wouldn't.

Q. That he would?

A. He wouldn't.

Q. Would not.

A. Would not, yes.

Q. Did he tell you why he would not?

A. He didn't tell me anything. He simply said he won't do it.

After that I also asked our administrative assistant after the deadline to again send the reminders. I still didn't lose my hope. And

two more e-mail reminders from our secretary and from our administrative assistant sent to him. And still no student evaluations are returned to our office. And I was very disappointed. I took it as a violation of our university policies. And on May 9 I wrote him a letter telling him my explanation.

Q. I'd like you to return to Exhibit 16 if you would, please.

A. Yes.

Q. Do you recognize that document?

A. Yes.

Q. Is this the letter that you're referring to that you sent to Dr. Ungar regarding the student evaluations?

A. Yes.

MS. MC GRANE: We'd offer Exhibit 16.

MS. VOGLEWEDE: Any objection?

MR. GOSBEE: Yes, your Honor -- or may I ask a couple questions in voir dire?

MS. VOGLEWEDE: Yes.

MR. GOSBEE: If you take a look at Exhibit 1, page 2. I notice at the bottom there there's looks like an ink stamp and it says, "A copy of this," et cetera.

THE WITNESS: You mean this part?

MR. GOSBEE: Yeah. Well, the one part is crossed out and the second part is not crossed out.

THE WITNESS: I see that, yes.

MR. GOSBEE: And do you know what the purpose of notices like that are on personnel documents?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Counsel, does this go to the foundation for the exhibit?

MR. GOSBEE: Yes.

MS. VOGLEWEDE: If not it's --

MR. GOSBEE: Yes, it does.

MS. VOGLEWEDE: It's not cross-examination.

MR. GOSBEE: I'm going to the foundation.

MS. VOGLEWEDE: Okay. Go ahead.

MR. GOSBEE: Because otherwise my question -- the next question I'll ask will make no sense if he doesn't understand what I'm talking about.

Do you understand the purpose of that little note at the bottom?

THE WITNESS: Yes.

MR. GOSBEE: And what's your understanding of its purpose?

THE WITNESS: My understanding is that the faculty is notified and that they have understood this.

MR. GOSBEE: Now turning to Exhibit 16. Is there a similar notice on that?

THE WITNESS: No.

MR. GOSBEE: Okay. I object to 16 on the grounds failure to comply with NDCC 54-21-06.

MS. VOGLEWEDE: Overruled. It will be received.

Q. (Ms. McGrane continuing.) Dr. Comez, Exhibit 16 is, then, the letter that you sent to Dr. Ungar regarding his failure to do the student evaluations; is that correct?

A. Yes.

Q. And did you at any time receive student evaluations from Dr. Ungar after receiving the May 9th -- or after sending the May 9th communication?

A. No.

Q. Were you familiar with the K-loop gyrocommutative gyrogroup controversy that was going on somewhat within the mathematics department?

A. I'm somewhat familiar, yes.

Q. And did you think that Dr. Foguel had committed plagiarism by his reference to this concept

as K-loop in his paper?

A. No. Definitely not.

Q. Why not?

A. Because in my opinion what Dr. Ungar -- Dr. Tuval Foguel had done is completely out of the context of plagiarism.

Q. What do you believe --

DR. MILTENBERGER: I'm sorry, what was that?

THE WITNESS: What Dr. Tuval Foguel did is not -- is completely outside of domain of plagiarism.

Q. (Ms. McGrane continuing.) What is plagiarism to you?

A. Plagiarism to me is to steal and pass off as one's own idea or words that belong to somebody without giving any credit to the person that it belongs to.

Q. And do you think that Dr. Foguel in this case supported plagiarism by using the reference K-loop?

A. I don't believe so.

Q. Why not?

A. Dr. Tuval simply is writing a mathematical article with giving credits to the people

that he believes that wrote the initial idea. And simply following that.

Q. In your opinion, is Dr. Foguel giving credit to the proper sources in his article?

A. Yes, he's giving credit for his sources to original paper that the idea emanated from. He's not stealing any ideas. He's not stealing anybody's words. And, as far as I know, I could see all the ideas in that paper are his own.

Q. When you were chair of the department were you concerned about Dr. Ungar's treatment towards Dr. Foguel?

A. I was concerned, yes.

Q. Why were you concerned?

A. Because the way that Dr. Ungar approached to Dr. Foguel in this manner is not friendly, not collegial. And I would expect that in a department like ours a senior faculty who should have -- should know more about these matters should approach to a junior faculty in a more collegial matter.

Q. In this case you didn't issue a letter of reprimand, though, did you?

A. No, I didn't.

Q. Why didn't you?

A. Well, I hoped that after the various

conversations the matter was laid at rest and it was never brought up. And, plus, later on I was busy with my own other academical, you know, duties. And then as of June 30, 2001 my term was over. I transferred the chairmanship to Dr. Shreve.

Q. And are you aware that Dr. Ungar received a letter of reprimand?

A. No.

Q. You're not familiar with it.

A. I'm not familiar with it.

MS. MC GRANE: Thank you. That's all the questions I have for you.

(OFF THE RECORD)

MS. VOGLEWEDE: Go ahead, Counsel.

MR. GOSBEE: For the record, I'd like to correct an error I made in the citation on objecting to 16 as 54-06-21. I think I got that wrong before.

EXAMINATION

BY MR. GOSBEE:

Q. Now you testified that exhibit -- if you want to take a look at Exhibits 8 and 9.

A. Which one?

Q. Exhibits 8 and 9, please.

A. Yes.

Q. And you testified that is not the common

way to conduct disputes such as this.

A. Yes.

Q. Where is it written so that a person knows how to follow it properly?

A. You cannot write everything. You cannot foresee future, you cannot write every rule.

MR. GOSBEE: Objection. Nonresponsive. My question is where is it written. Not an essay on the difficulties of writing regulations.

MS. MC GRANE: We believe the answer should stand. He's responding to the question.

MS. VOGLEWEDE: The answer will stand.

Q. (Mr. Gosbee continuing.) Where is it written?

A. Nowhere.

Q. Thank you. Now in this attempt to set up mediation between -- where you were going to serve as mediator, you mentioned that Dr. Ungar wanted conditions.

A. Yes.

Q. What were those conditions that he wanted?

A. He didn't mention the conditions.

Q. I'm sorry?

A. He didn't mention the conditions.

Q. He did not mention the conditions.
A. No. He mentioned only that those will be the things that he will be exhibiting to Dr. White.
Q. I guess I don't understand it.
A. In his e-mail response to me he mentioned that he would be agreeing to my mediation provided that he is allowed to present the things that he would be presenting to Dr. White.
Q. And that was an unacceptable condition to you.
A. Yes. Unacceptable to me.
Q. This e-mail where he communicated this, is that part of the record?
A. I don't know.
Q. To your knowledge?
A. I don't know.
DR. LINDGREN: I couldn't hear that. Did you say what was the condition?
THE WITNESS: The condition was that before the meeting, my mediation, he would be presenting some kind of a dossier or document to Dr. Alan White. And he be allowed to do the same thing before the mediation starts. Which I found unacceptable for mediation.
Q. (Mr. Gosbee continuing.) So you found it

not acceptable that he bring to a mediation meeting argument and -- or documents in support of his argument?

A. No. The thing that mediation should take place to settle the matter in a friendly and collegial way. And I find that somebody bringing in his arguments to prove the other person with my presence unacceptable for the purpose of mediation.

Q. Have you ever conducted a mediation?

A. Yes.

Q. As you've described?

A. Yes.

Q. And how do people do it?

A. Well, they do it very well. They find me very collegial, very friendly. And because of that, I arranged a couple of mediations among various parties. I was able to resolve the situation with them.

Q. So you defined the terms of mediation, and if they won't agree to your terms the mediation doesn't occur.

A. Excuse me?

Q. You defined the terms of the mediation, and if those terms are not agreed to by the participants it doesn't occur.

A. If I'm the mediator I think I have the

right to define the terms of the mediation.

Q. And was this definition that you've just provided, was that provided to Dr. Ungar in writing?

A. Yes. I told Dr. Ungar that I would be willing to mediate between Dr. Foguel and him and settle the issue.

Q. I didn't hear the end of it.

A. Settle the issue.

Q. When did you tell Dr. Ungar he wasn't allowed to bring any evidence in favor of his argument?

A. I didn't say that he's not allowed to. I said that I wouldn't be mediating with that condition.

Q. And if you could take a look at Exhibit 13.

A. Yes.

Q. And do you recognize what 13 is?

A. No. I'd be willing to read.

Q. I'm sorry?

A. I'd be willing to read.

Q. Just read enough so you can discern what it is.

MS. MC GRANE: I'm going to object. The witness isn't familiar with the document. He has no obligation to refresh his recollection of a document he's not familiar with.

MR. GOSBEE: It might be refreshed if he takes a glance at it.

THE WITNESS: Refreshed for what? Why?

MS. VOGLEWEDE: Was the earlier answer have you seen this, have you ever seen the document before?

THE WITNESS: No, I haven't seen this document.

MS. VOGLEWEDE: Sustained. Lack of foundation.

Q. (Mr. Gosbee continuing.) So your testimony is you have never seen Exhibit 13.

A. I've never seen this document.

Q. Dr. Ungar never gave you a copy of it?

A. No.

Q. Dr. Ungar never asked you to consider example 4 on page 7 of Exhibit 13. Is that what you're testifying?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) Now let me make sure I understand this process of handling the class evaluations. Because when Dean White testified, if I recall his testimony accurately, he said somebody other than a student physically conducts the evaluation.

Were you here when Dean White testified to that?

A. Yes, I heard that.

Q. Is that accurate about the way it's done in your department?

A. In our department we don't have enough manpower to do that. So we ask faculty to ask a student in the class to do that.

Q. So the answer to my question is no; is that correct?

A. In our department that's the way that we conduct student evaluations.

Q. I've asked a yes or no question. I think I am entitled to a yes or no answer.

MS. MC GRANE: I'm going to object. The witness has already answered the question.

MR. GOSBEE: My question was was Dr. White accurate. That's a yes or no question. He's not entitled to just go off on these little essays.

MS. VOGLEWEDE: Overruled. You may answer.

A. I described the way that our department conducts the evaluations, and I stand by that.

Q. (Mr. Gosbee continuing.) Now when you and Dr. White decided to issue this letter of reprimand concerning the evaluations, did you tell Dr. White that

your department conducted evaluations differently than the way Dr. White believed?

MS. MC GRANE: Objection.

A. I didn't discuss --

MS. MC GRANE: Objection. Mischaracterizes the evidence and the testimony. Dr. Comez has already testified he was not aware of the letter of reprimand nor was he a part of the letter of reprimand.

MS. VOGLEWEDE: Counsel, would you rephrase the question?

Q. (Mr. Gosbee continuing.) Did Dr. White ever interview you about these evaluations?

A. No.

Q. Then how did he find out how they were conducted?

A. Because when -- after this letter has been put into -- given to him in his mailbox a copy was put into his file.

Q. Copy was put in whose file?

A. His department file.

Q. Copy of what letter?

A. The letter that I did on May 9th.

Q. This is the one where you did not put the notice required by 54-06-21?

MS. MC GRANE: Objection. There's no evidence that that notice is required. It's argumentative.

MS. VOGLEWEDE: Overruled.

Q. (Mr. Gosbee continuing.) You're talking about Exhibit 16, right?

A. Yes.

Q. And this is one you sent a copy to Dean White, correct?

A. Yes. It's a cc at the bottom.

Q. Right. And this is the one where there is no, assuming -- there is no notice at the bottom at all, correct?

MS. MC GRANE: Objection. We've been over this.

MR. GOSBEE: I didn't hear the objection.

MS. MC GRANE: Repetitive.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) Until today did you ever -- do you know that Dr. White had the belief that -- strike that.

Dr. White apparently believes that a nonstudent is required to conduct the evaluation. Would you agree with that from his testimony?

A. I cannot read other people's mind.

Q. Having heard his testimony, would you agree with that?

A. I heard his testimony, yes.

Q. All right. To your knowledge, did anybody ever tell Dr. White that the math department does it differently?

MS. MC GRANE: Objection.

MR. GOSBEE: I can ask what his knowledge is, can't I?

MS. MC GRANE: Did anybody?

MR. GOSBEE: To your knowledge.

MS. VOGLEWEDE: Overruled.

A. I have no idea.

Q. (Mr. Gosbee continuing.) And you never did; is that correct?

A. Excuse me?

Q. You never did, did you?

A. Did what?

Q. Told Dr. White, oh, Dean, by the way, in the math department we do let students conduct the evaluation.

A. That's how we do it in the Department of Mathematics that I know of prior to me being chair and after I am chair.

Q. I understand that. Did you ever tell

Dr. White, the dean of your college, that that's the way you do it?

A. My understanding was that that is the accepted and, you know, done rule in the department. I simply follow that. And I didn't see any reason why I should go out of my way and inform somebody about it. The student evaluations in the department are done regularly in a regular manner in this way.

MR. GOSBEE: I think I am entitled to an answer to the question I asked, not the one he wants to --

MS. VOGLEWEDE: I believe he did answer it at the end.

Q. (Mr. Gosbee continuing.) Now you also testified that a number of reminders were sent out about doing the evaluations.

A. Yes.

Q. Sounds like, if I've understood your process correctly, the first set is sent out to everybody.

A. Yes.

Q. And then at some point shortly before the deadline the administrative assistant gets a list of those who haven't done it. And another reminder is sent out?

A. At that moment usually what we do, I ask, at least during the time that I was chair, I asked the administrative assistant to go to and talk with each individual faculty who forgot to conduct the evaluations and ask them or urge them to do so.

Q. And then do you ask the -- all these questions pertain to your time as chairman.

A. Yes.

Q. Do you ask the administrative assistant -- or did you ask the administrative assistant to report back to you that professors A, C, F and G haven't got it done?

A. I always asked him, you know, if close to the deadline if something is not done I should be informed about it.

Q. Okay. And how close to the deadline did you learn that Professor Ungar -- and what was the other professor's name?

A. Movshovich.

Q. How do you spell that?

A. M-O-V-S-H-O-V-I-C-H.

Q. Okay. And you sent I guess in effect personal letters or e-mails to Professors Movshovich and Ungar; is that correct?

A. I didn't send personal letters. I asked

the administrative assistant and secretary to send those e-mails.

Q. And you mentioned that you had a talk with Dr. Ungar in the corridor, if I recall correctly, on this subject?

A. I talked to him about this matter in the corridor.

Q. And was that a chance meeting or did you --

A. It's a chance meeting. And in passing I tried to remind him that he hadn't conducted the evaluations yet.

Q. And how far in advance of the deadline was this chance meeting in the hallway?

A. It was during the week of the 23rd.

Q. And can you pinpoint it more precisely?

A. I cannot.

Q. Okay. And your testimony is that he said he would not do it; is that correct?

A. Yes. He very clearly told me that he will not do it.

Q. What action, if any, did you take in response to his statement that he would not do it?

A. Well, I continued to ask to be -- to remind him that he should do it. It's this university

policy and it's expected of him to do so. And that's part of his responsibility.

Q. And when you finished your tenure as chairman were you still under the belief that he had not conducted the student evaluations?

A. I was not given any information the other way around.

Q. Although you viewed this as a serious violation of long-respected traditions, you did not issue a letter of reprimand; is that correct?

A. I issued the letter. On May 9.

Q. That wasn't my question. My question was did you issue a letter of reprimand analogous to Administration Exhibit 1?

A. Well --

Q. It's a yes or no answer, sir.

A. I issued the letter of reprimand because still the matter would be settled. I was hoping that even after deadline he will conduct student evaluations.

Q. How could he possibly conduct a student evaluation after the deadline?

A. Well, I could be flexible. I think as a good administrator sometimes you should be flexible to let the chance -- to give other person a chance that

still if the person does it it will be okay. In academy it is very important to act this way.

Q. That deadline, isn't that just before finals?

A. Well, after that they would give that during the finals. There's nothing wrong about it. If he agreed to it in an objective way. I don't remember exactly. Whether it was just before, during the finals or --

Q. Well, this letter -- I think the committee can take judicial notice of when various semesters ended. It's my understanding that May 9th is after the spring semester of 2001 ended.

A. That's right.

Q. In that case, exams have been conducted, students have gone home. How is it possible he could have done an evaluation after the exams were over with?

A. That's why I wrote my letter after he didn't conduct the student evaluation, then I was a hundred percent sure that he didn't conduct it.

Q. But you also said that you did not issue a letter of reprimand analogous to Administration Exhibit 1 because you wanted to be flexible.

A. I wanted to be flexible because I could still hope that -- I still hoped that he would maybe

still, you know, try to conduct some evaluations before students left.

Q. How could he have done that? After exams?

A. It's not after exams.

Q. So your testimony is May 9, 2001 was not after exams in that school year?

A. I don't understand your question.

Q. I don't know how to say it other than repeat it. On May 9, 2001 were exams going on or were they finished?

A. At the time I'm not a hundred percent sure. I should look at the calendar.

Q. Assuming, for the sake of discussion, that the exams had, in fact, ended before May 9th, how would it have been possible for him to do the evaluations with the students already gone?

MS. MC GRANE: Objection. Argumentative. Repetitious.

MS. VOGLEWEDE: Overruled.

A. Don't know.

Q. (Mr. Gosbee continuing.) And when did you finally learn that he had, in fact, conducted the exams -- or the evaluations?

A. I didn't know that until this matter is

informed to me.

Q. Did you ever ask him?

A. I asked him after this -- before and after this letter. If he would have done it I'm sure that a faculty who knows his responsibilities would approach me and told me I did it. That he did it.

Q. You never once said, gee, Dr. Ungar, did you ever do these evaluations?

A. If he would do it, his job, would be to ask a student in the class to bring it to the office and I would know it.

Q. That wasn't my question, sir. My question is any time after May 9th, 2001 did you ever ask, Dr. Ungar, did you do the evaluations?

A. No, I didn't ask.

Q. Thank you. Now in Exhibit 16 you referred to long-respected traditions of the Department of Mathematics.

A. Yes.

Q. Where are those written?

A. There are some traditions you don't write. You simply have it and you go along with it.

Q. That wasn't my question. My question is where are the long-respected traditions of the Department of Mathematics written?

A. In our department policy. It's stated that faculty should conduct student evaluations. And it's a part of also -- it simply reflects the university's policy. Which is --

Q. Now your letter says he violated 332.

A. Yes.

Q. As well as long-respected traditions.

A. Yes.

Q. Where can he go when he gets back to his office tonight to look at those long-respected traditions?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained. Argumentative.

Q. (Mr. Gosbee continuing.) Where are those written?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained.

MR. GOSBEE: That's not argumentative. That's where they are.

MS. MC GRANE: It's repetitive.

MS. VOGLEWEDE: Sustained.

MR. GOSBEE: He hasn't answered the question.

MS. VOGLEWEDE: Counsel, move on.

Q. (Mr. Gosbee continuing.) Do you know what a plenary lecture is?

A. Yes, I do.

Q. What's your understanding of what a plenary lecture is?

MS. MC GRANE: Objection. Relevance.

MS. VOGLEWEDE: Sustained.

MR. GOSBEE: I was allowed to ask that before.

MS. VOGLEWEDE: Sustained, Counsel.

MR. GOSBEE: We have no further questions.

MS. VOGLEWEDE: Redirect?

MS. MC GRANE: Briefly, Dr. Comez.

EXAMINATION

BY MS. MC GRANE:

Q. When did Dr. Ungar tell you that he would not do the student evaluations?

A. When he told me, as I said, it was the last week, that week of 23rd.

Q. And when you wrote the letter --

A. Sometime in that week.

Q. So the letter on May 9th was after he told you he would not be doing the student evaluations.

A. Yes.

Q. And in this letter that we have as Exhibit 16 do you state the NDSU policy that he violates by failing to do the student evaluations?

A. As far as I recall, that policy says that faculty will conduct student evaluations at the prescribed time in a certain fashion. I cannot remember the details.

Q. And when Dr. Ungar told you that he would not do them, was it your understanding that he violated the policy that's cited in the letter?

A. Yes.

MS. MC GRANE: No further questions.

EXAMINATION

BY MR. GOSBEE:

Q. And when you wrote Exhibit 16 did you even inquire as to whether he had done so? Or did you just rely on his previous statement that he wouldn't do so?

A. Well, if he had done so it would be in our department office and I would be informed about it by everything that he had done. And I wasn't informed, and as a result I assumed that he didn't know. And at that time I talked with the administrative assistant, Mindy, she told me that she hasn't received any documentation of that kind.

Q. And so after being told by the administrative assistant that she didn't have it, you didn't go to Dr. Ungar and ask his side of the story?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

A. I didn't go and ask him.

MR. GOSBEE: Thank you. No further questions.

EXAMINATION

BY MS. MC GRANE:

Q. And that was after Dr. Ungar had already told you he would not be doing them, correct?

A. Exactly correct.

MS. MC GRANE: Nothing further.

A. If someone tells me that he won't do it, I don't see any reason why I should go to the person's office and inquire about the same thing again.

MS. MC GRANE: Thank you.

EXAMINATION

BY MR. GOSBEE:

Q. It was before this letter, right?

A. It was before this letter.

MR. GOSBEE: No further questions.

MS. VOGLEWEDE: Professor Comez, you may step down. Thank you.

Your next witness.

MS. MC GRANE: NDSU Administration calls Vice-President Craig Schnell.

CRAIG SCHNELL,

HAVING BEEN FIRST DULY SWORN TO TESTIFY THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH RELATIVE TO THE CAUSE SPECIFIED, TESTIFIED AS FOLLOWS:

EXAMINATION

BY MS. MC GRANE:

Q. Good afternoon.

A. Hi.

Q. Will you please state your full name for the record?

A. Robert Craig Schnell.

Q. What is your position at the university?

A. I'm the vice-president of academic affairs.

Q. Are you familiar with the issue before the committee?

A. Yes.

Q. And it's been a long day so I'm going to try to push some of it along. One of the issues that's been discussed is the letter of reprimand which we have in Exhibit 1; is that correct?

A. Well, they've been shuffled. I presume. Everybody has said --

MR. GOSBEE: I'll stipulate that Exhibit 1 is at issue. It takes a couple seconds to sort them, it might be easier.

MR. JOHNSON: We've got another one here, Craig. Just give me the whole shebang here.

Q. (Ms. McGrane continuing.) Dr. Schnell, we'll let Mr. Johnson sort. I'll just skip past the exhibit question.

We've heard testimony about a letter of reprimand. How did the letter of reprimand come to be?

A. The start was when it was told to me that Dr. Ungar refused to do evaluations in his class. He -- by anecdote. And student complaint, another thing, he's not considered to be a very good teacher. And I thought that he should do those evaluations. The policy called for it, et cetera. So I conferred and talked to the dean. I talked to the chair. And said we need to let Dr. Ungar know the importance of this. And so we should issue a letter of reprimand.

Q. And do you remember when that conversation was?

A. Oh, it was sometime September, October, in that range.

Q. Were you aware of the harassment issue that was also discussed in the letter of reprimand when

you asked for the letter of reprimand on the student evaluations?

A. I didn't know all of the details. There had been some discussion, rumor, whatever, that there was a dispute between Dr. Ungar and Dr. Foguel. But I didn't know details or, you know, what was happening until, you know, the final letter there.

Q. Did you request the letter of reprimand on the harassment issue?

A. No. My issue was the teaching part.

Q. And did you think that the student evaluations alone warranted a letter of reprimand?

A. Absolutely.

Q. Why?

A. We have policies. We should follow those policies. The board policy calls for student evaluations. I think it's an important issue. And that this should be done.

Q. Is there a proper way to do student evaluations?

A. Yes. We've spent a lot of time in the, discussion in the academy field, in the senate. And those policies are all very carefully designed. There are six questions that are to be included in each evaluation, and then each college and each department

can add additional questions if they so wish. But those six need to be done and are required.

I think they've testified earlier that the instructor does not conduct the evaluation. It's conducted by some other person. And the units do it differently.

Q. Does it matter if it's a student who hands out the evaluations or a staff member?

A. No. The important point is that the instructor is not there. And then they're gathered, they're taken to central office. And, again, how they're handled differs with the units. And some units actually type every comment. Students will write comments as well. And every comment is typed before the professor sees it. And it's very elaborate. It's taken care of to make sure that there is no intimidation, retaliation, et cetera, by instructors. Trying to get as accurate of data as we can.

Q. After the letter of reprimand was issued did you hear from Dr. Ungar on the student evaluation issue?

A. Yes. He asked for a meeting on October 11th. And it was 9:30 in the morning. And he came over and discussed -- primarily his issue was the dispute between himself and Professor Foguel dealing

with the K-loop, gyroloop discussion. He also talked to me about what he considered to be Dr. Foguel's behavior. We talked a little bit about the teaching evaluations. And I think that -- those were the main points.

In that meeting he said that he had shown these evaluations to Dean White. I took notes. I have notes on it. And Dean White said he had never seen them. But he did tell me that he had conducted this evaluation. And he used the term I conducted the evaluation. I think I made the remark, well, you know, you're not supposed to do it that way, but do you have them, I'd like to see them. And I think that was the first indication we knew that those had been done.

He was -- it was after Professor Foguel over this issue on the K-loop, the citation, et cetera, he basically told me in the end that he was going to sue him. That I think -- I can't recall that he used the term plagiarism there, although -- and I have to go back and tell you a little bit more earlier things that happened with the whole thing. And he did tell me at that time that he had had this discussion with Dr. Foguel. I assumed it was in the math office, or close proximity thereto. And basically said the same thing that's been said that, you know, if you'd be my

friend then I can support your promotion and tenure.

Well, I was disturbed about this because it's not the right thing. Promotion and tenure are based on three criteria. Teaching, research, and service. They're not based on quid pro quo. And as I talked to him about it he did indicate that Dr. Foguel was a genius mathematician. He used that terminology. Had no problems with his research, his teaching, et cetera. But simply that he would not use, Dr. Foguel would not use the citation in that.

And so I suggested to him that he recuse himself for the remainder of the promotion and tenure process. And I wanted to emphasize it was a suggestion, told him it was up to him, but that my advice would be that he not do that simply because Dr. Foguel would then have a basis of retaliation claim if something, you know, went badly with what had happened.

In it was early 1995, 1996 I was newly in this office. And Dr. Ungar --

Q. Can I stop you there? Let's go back to the student evaluation issue first.

A. Okay, sure.

Q. Just because I want to get this completed before we move on.

When he came to see you about the letter of reprimand on October 11th you said that he said he had completed student evaluations?

A. He said he had conducted the student evaluations.

Q. Did you have a sense from what he said that he had done the process of the student evaluations or that he had had a student do it?

A. No. I was under the impression that he had done them because he had them and he had not turned them in. The reason he didn't turn them in is because he didn't like Dogan very well and he felt that they would be misinterpreted. And I think there is a letter to that effect.

Q. If I can have you turn to Exhibit 5.

A. Yeah, here it is.

MS. MC GRANE: The administration offers Exhibit 5.

A. It says, "I did give my -- "

MS. MC GRANE: Dr. Schnell?

THE WITNESS: Oh.

MS. MC GRANE: We have to get it in first.

THE WITNESS: Oh, sorry.

MS. VOGLEWEDE: Any objection?

MR. GOSBEE: No.

MS. VOGLEWEDE: Pardon, Mr. Gosbee?

MR. GOSBEE: No objection.

MS. VOGLEWEDE: Received.

Q. (Ms. McGrane continuing.) Now that it's in I can have you say what's on the document.

A. Okay. It says here, "I did give my M146 students in the spring semester a chance to evaluate my teaching using the university-wide set of rating items. I did not forward the completed forms to the department chairman in order to protest, one, against his hostility, and, second, he said his misleading report to Dean White about my accomplishments," et cetera.

Q. And --

A. "That I do not prepare my classes." I don't know about that discussion.

Q. Now when he gave you this letter after his letter of reprimand, based upon that letter, did you still think that Dr. Ungar had violated the university's policy with respect to student evaluations?

A. Yes.

Q. And how do you believe he violated that policy?

A. He didn't follow the process. In other

words, if he went in and did those himself and then had them -- sequestered them, one, he shouldn't have been in there, two, they should have been turned into the department for the correct processing and handling of it.

Q. If I can also have you turn to Exhibit 19, please.

A. Okay.

Q. Is that a document that you recognize?

A. Yes.

MS. MC GRANE: The administration offers Exhibit 19.

MR. GOSBEE: No objection.

MS. VOGLEWEDE: Received.

Q. (Ms. McGrane continuing.) Can you describe for us what we see in Exhibit 19?

A. This is a note that accompanied the class evaluations. They came in a manila envelope. And he dropped them off in the office with my secretary. And then I was out. And then when I came back they were here. And this note was with them. So it accompanied it.

Q. So did you ever review the student evaluations that were provided to you with this letter?

A. Yes. I didn't do it right away. I had

other things. But it was within a day or two I did look at them. And I believe I also called Dean White and told him that Abraham had done a set of evaluations. And that, although there was still a problem with the process, which I felt still warranted the letter, that we should revise it to accurately reflect that he had done it. We were going to give him credit for at least having done them.

Q. And did you, in fact -- was there, in fact, a revised letter of reprimand issued?

A. Yes. I think that's been all....

Q. Already in there.

A. Yeah.

Q. How about the issue of the actual student evaluations. When you went through them what was your general impression of them?

A. Okay. I'm going to back up. Year before we had a professor who had supposedly done the same, or had also administered the evaluations in a different department. Unfortunately, that professor also filled them in himself. So you're always open to that.

I have to say that I looked at these. They are among the poorest I have ever seen for any professor here. So I believed that they were accurate. And that was my feeling. I thought, well, at least

they're accurate. The written part talked about the fact that he calls students stupid.

MR. GOSBEE: Your Honor, I'll object to testimony about the contents of a document that's not in evidence.

MS. VOGLEWEDE: Sustained.

Q. (Ms. McGrane continuing.) Your general overall impression of the documents was that they were poor evaluations; is that correct?

A. Very poor.

Q. You had also started to mention that the issue of this terminology that was in dispute between Dr. Ungar and others was something that you were aware of long before this controversy came to being here; is that correct?

A. Yes. It was '96, '97, '95 maybe, in that range, Dr. Ungar came to see me one day. As I recall it was in the fall. And was demanding that the university sue this Professor Karzel in Germany for stealing his ideas. And I had to tell him that the university did not sue people over this issue. That if he -- and there was an accusation of plagiarism. That if this were the case that certainly he had ways that he could work through his professional societies to do this. He could retain attorneys on his own to do this,

although I told him it would be pretty tough suing somebody in Germany over the issue. I also asked him to talk to Rick Johnson. I said you might need some legal advice, and at least Rick can help give you some advice along this way.

I asked him what evidence he had. And he did not have what I would call smoking gun absolute evidence where you can show that it absolutely happened. He indicated something that had to do with some review of papers or grants, or something like that. Which is always very difficult to prove. So, to my knowledge, I've never, although the accusation has been made against this group, I've never actually seen any evidence. And so until you see evidence of it it's pretty difficult to do that. But he believes that there was plagiarism.

Q. And was there a point in time when you were aware that Dr. Ungar had the same dispute with Dr. Foguel?

A. I became more aware after the letter of reprimand. And I have to admit that I have difficulty seeing where plagiarism or, as I understand it, the support of plagiarism, we're learning today this is new, that I don't know that he actually had accused Foguel of the -- of plagiarism. But that had supported

it. And I'm finding that really difficult to follow because there's never been smoking gun evidence that, indeed, plagiarism did occur. So you'd have to have that piece that's there.

I'd say that, from what I've heard today, that the citations that Dr. Foguel made were appropriate. In my experience as an associate editor over six years, probably reviewed over 1,000 manuscripts and been involved in this process, that if you saw a manuscript like this come in, and, obviously, being familiar with the field, you might have the authority to make those citations. But certainly another person like that it's inappropriate, other than say, hey, you know, I had written in this area. You should cite mine. It's up to the person. If the person doesn't want to do it, fine. But then the associate editor or an editor would have a different scope and do that. To my knowledge, I haven't heard anything today or have any knowledge that the editor has said that he should do that.

Q. You testified earlier about a conversation between Dr. Foguel and Dr. Ungar that you said was somewhat repeated to you on be my friend and I'll support you; is that right?

A. Right.

Q. Can you describe that for the committee, please?

A. Well, it's pretty much like Dr. Ungar was telling me that he -- about this dispute that he had, that Foguel would not support this. And that he had had this conversation with him. And basically that it's in the tenure process. The thing was, well, I can be your friend if you'll support this, and that he was telling me that he could not support the promotion and tenure on the basis of this.

And that's when we went into the conversation about the criteria. What are the proper criteria on how one makes a decision on that. So I figured he poisoned the well, and that's when I asked him and suggested to him that he should recuse himself from being involved further.

Q. Was there anything inappropriate, in your mind, about the be my friend and I'll support you comment?

A. Well, I think that's kind of veiled. It suggests that if you don't do what I want then you won't be my friend then, you know, certain things will happen. That are probably not pleasant.

Q. There was testimony earlier regarding some e-mails that were sent to various sources. Are

you familiar with those e-mails?

A. Yes.

Q. If I can have you turn to Exhibit 25. Are those the e-mails that you're familiar with?

A. Yes.

Q. And I believe an additional exhibit was offered. And that was Exhibit 31 as well.

A. Okay. Is that --

Q. It's right here. Sorry.

A. Oh, I'm sorry.

Q. When we look at Exhibit 25 and Exhibit 31 is there anything inappropriate, in your view, about these e-mails?

A. Yes. Basically Dr. Ungar has been so obsessed with this issue --

MR. GOSBEE: Objection to the term so obsessed unless he's an expert in psychology.

MS. VOGLEWEDE: Overruled.

A. I would say he's constant with it. It's to the point where I don't want to hear it anymore. And that's basically what I read in this Exhibit 31. They've all heard this quite a bit. And I would say that it probably is, to some degree, the same in the first part of this, in the first page here as well. I think that the issue has probably been raised at

meetings, et cetera, et cetera. People are well aware of it. Basically the thing can move on.

Q. (Ms. McGrane continuing.) And at some point was a decision made to terminate a portion of Dr. Ungar's e-mail privileges?

A. Yes. I was told about these e-mails going out. Especially the one that Dean White and others have talked about and the disparaging remarks that he made about Dr. Foguel and also Dr. Shreve. And I believe I called Warren and I says you need to talk to Abraham and tell him to stop sending those out. There's also an e-mail here somewhere where Warren said he did talk to him. That Dr. Ungar agreed, in fact, his attorney agreed, which is not Mr. Gosbee.

I then heard that here comes another group of these out. And I said enough is enough. So I said we're going to terminate the e-mail. And so I sent a note to Dick Jacobson in the office and I said I would like to have the e-mail -- this was the HECN account -- terminated. Only that he cannot send messages. He could continue to receive messages. And that's in a memo that I sent. And so that was pretty much the difference. We also, I think, indicated that if he absolutely needed to send something to somebody that he could talk to Dr. Shreve and we'd consider it,

send it out. Because there was a request sent to Dr. Chapman. Dr. Ungar was scheduled to go over to a school in Wisconsin to do some recruiting and he wanted to make a response. Later on I learned that he actually did not use that account. That he used the one in math, the Hypatia account, which we didn't know about. And they asked if that should be stopped. And at that point I think I said, well, we've got the one. And he seems to be complying. So we left it out. We did not terminate that one. So he still had communication.

Q. And at some point were full e-mail privileges restored?

A. Yes. Somewhere about a month later. I think Alan wrote a note to Dick Jacobson saying, yes, restore those.

Q. Are you aware of Dr. Ungar's accusations that Dr. Foguel has supported plagiarism?

A. I've heard that, yes.

Q. And what's your definition of plagiarism?

A. Well, plagiarism is to take credit for something that is not your own intentionally. Intentionally taking credit for something that's not your own. It could be an idea, concept, drawing, article.

Q. Do you believe that Dr. Foguel has in any way supported plagiarism in this case?

A. I don't believe he has, no.

Q. Are there any university policies or procedures to handle a dispute where a professor believes that somebody has committed plagiarism or supported plagiarism?

A. Yes. There was a Policy 340 something here. Yeah. Policy 326, academic misconduct.

Q. And what does that policy provide just generally?

A. Well, generally if one has an accusation they need to step forward with a statement. That statement actually comes I believe to me. There's an initial committee that looks to see if it has merit. If it has merit then it goes to another committee that does a full investigation of the charge. And then if, indeed, the accusation is found to be true it provides for further action, disciplinary action.

Q. Do you support the letter of reprimand that was issued in this case to Dr. Ungar?

A. Yes. Yes, I do.

Q. And what would you like the committee to do in this case?

A. In this case I think, one, the committee

has got to strongly support the issue on teaching evaluations. It has to support the process. Which was not there. We don't get to pick and choose when we do it or who we turn it in to. There's a policy, we need to follow that policy.

Secondly, I think that it's been clear that there's been evidence of intimidation. That -- and, third, it's gone beyond a letter of recommendation. I think that the behavior that's been exhibited, the charges that -- the remarks, they're mean-spirited, they're mendacious, et cetera, and I think the committee should come back with a stronger recommendation.

Q. The one question that's been focused on here is the issue of who wrote the word warning -- I can never say those two words together -- on that particular document. Is the word -- is the issue of who wrote the word warning on that document significant to you?

A. To me it's not. I think that it's just one piece of evidence in a number of e-mails, letters, et cetera, that we have seen. I think that there has been a pattern of harassment here. I think there was conversation. I think the important point is certainly that Dr. Foguel's perspective should be respected. And

he certainly testified here that he felt intimidated. He felt threatened. I think that's important.

Q. And if the word warning had not appeared on that document, would you have still recommended a letter of reprimand be issued?

MR. GOSBEE: Objection. Speculation.

MS. VOGLEWEDE: Overruled.

A. Yes. That, as I've indicated, that whole memo, that whole piece was one piece of many things that happened. In fact, the conversation that he had with Dr. Foguel in the hall that he told me about would probably have -- could stand alone I believe in warranting that. Or at least some sort of a letter telling him not to do that anymore. That was improper behavior.

Q. (Ms. McGrane continuing.) And how about after you received the evidence that we have in Exhibit 25.

A. Absolutely. Well -- I believe it to be extremely mean-spirited. Taking after somebody's bad enough in this fashion. But taking after a person's family is absolutely uncalled for. And I think also the comments and things that were made about Dr. Shreve were also unwarranted, uncalled for. And I believe he did retract some of those or at least attempted to

retract some of those in a later e-mail.

MS. MC GRANE: Thank you. That's all the questions I have.

MS. VOGLEWEDE: We're going to take another brief break here. We'll resume at 4:15.

(Whereupon, a break was taken.)

MS. VOGLEWEDE: Ms. Mc Grane, were you finished with direct of the witness?

MS. MC GRANE: Pardon me?

MS. VOGLEWEDE: Were you finished with direct?

MS. MC GRANE: I am finished. Thank you.

MS. VOGLEWEDE: Mr. Gosbee.

MR. GOSBEE: Thank you, your Honor.

EXAMINATION

BY MR. GOSBEE:

Q. Mr. Schnell -- or Dr. Schnell, I noticed during the break you were consulting a loose-leaf binder.

A. Yes.

Q. And did that have records pertaining to this case?

A. Yes.

Q. Did you consult those to help you refresh

your recollection?

A. Yes.

Q. In that case I'd ask I be allowed to see them.

MS. MC GRANE: It depends on what he looked at in the binder. He's entitled to look at the documents that he looked at. He's not entitled to look at the entire binder.

THE WITNESS: I only looked at one document.

Q. (Mr. Gosbee continuing.) What document did you look at?

A. I was looking at some notes from a meeting that I had testified about.

Q. And is that document in evidence to your knowledge?

A. To my knowledge I don't know. I haven't seen our documents.

MR. GOSBEE: In that case I think I'm entitled to see it.

MS. MC GRANE: He's welcome to review that particular document.

MS. VOGLEWEDE: Where is it?

Q. (Mr. Gosbee continuing.) Let me make sure I understand some of the time scenarios correctly

here. Did Dr. Ungar give you the evaluations at this meeting on October 9th?

A. No. This is October 11th. No.

Q. What did he say -- I mean, did he have them with him?

A. No. I asked him for them. He said he would bring them over. He brought them over at a later date.

Q. Okay. It was a cover letter if I recall.

A. It was a cover letter. He brought them to my office.

Q. So he didn't disobey your order there?

A. No.

Q. And you only advised him to avoid further contact, you didn't order him; is that correct?

A. I suggested that he not do that. And I was very plain with that because I have to be very careful with the position that I'm in because it can be misinterpreted very badly. I told him it would not be good for him. That he could be subject to a retaliation charge by the candidate and that he should not do it and he should consider it. And he did. He felt he should not do that.

Q. All right. Now let me go over a couple

of these things here. Especially this issue of what is being described by some people as a quid pro quo. After all those years in law school I can't say it. What element of that exchange leads you to so characterize it? His use of the word friend?

A. I was led to believe through that that, you know, I will be your friend if you will do this. And that's what I felt that he had crossed the line with that conversation.

Q. Okay. Now do you understand, and I realize you probably don't agree with Dr. Ungar's conclusions, but do you understand that Dr. Ungar is of the opinion that using the disputed terminology is supporting plagiarism?

A. We can have beliefs, but it doesn't necessarily make those beliefs true. And I don't think that we have a right to impose those upon other people. And my opinion is that he is trying to impose this on other people. If, indeed, it's true we would like to, you know, be able to support him in this. But if he does not have what I would call smoking gun evidence, and when you're doing plagiarism in the academy it's got to be really smoking gun before people will do it. And he has not been able to produce that. And so it's very difficult. Does he believe that? He

can believe that. It's not right.

Q. Okay. Well, now you say he has not produced smoking gun evidence. Have you even reviewed any of the evidence he has presented?

A. I've talked to him, like I say, earlier. I think there has been a conversation or two. And then in this last piece. And I've asked him, you know, what evidence he has. And he's told me that he had papers that were under review that he felt -- were the -- the information had been misappropriated. This is a very common thing, when one puts forth a grant proposal everybody's always talking about people stealing ideas. The problem with those assertions are that, and the major problem with those assertions is the fact that one does not know who is doing the reviewing on these. And so unless you have absolute evidence that this person has reviewed and do time lines, and things like that, it's very, very difficult to prove this.

Q. Okay. Now did you understand that Dr. Ungar was accusing Dr. Foguel of direct plagiarism or supporting plagiarism?

A. Well, until you made the assertion that he was accusing him of plagiarism I was under the impression that it had to do with the support of it.

Q. Okay. Well, in that case I certainly

apologize for making that mistake.

A. I think you've misled everybody here today.

Q. In that case that's my fault. In your view is supporting plagiarism appropriate?

A. I would answer no. But you'd also have to put the caveat in there that one has to know that plagiarism has occurred. And I don't think, from what I know, that Dr. Foguel has any evidence that, indeed, plagiarism has occurred. He is trying to cite references to support the work that he is doing. Those references have been peer reviewed. They've been published in documents. And they're out there. Now I agree that there have been some issues in science recently where people have faked data and have done things like that. There have been announcements put out that these are not valid anymore, et cetera. To my knowledge this has not happened with these papers. And I haven't heard anybody here say that it has. So....

Q. Will you take a look at Administration Exhibit 13.

A. Yes.

Q. Are you at all familiar with that?

A. No.

Q. Okay. I ask you to take a look at page

7, example 4. And I ask you is that a description of what the concept of supporting plagiarism is in your mind?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Basis?

MS. MC GRANE: The witness has testified he's never seen this document before. It's impossible for him to read a document and make a conclusion as to whether or not it is his definition.

MR. GOSBEE: I'm only asking him to read eight lines. He's an intelligent man.

MS. VOGLEWEDE: I don't know that this witness was asked. Dr. Schnell, have you seen this before?

THE WITNESS: No. He asked me, and I have not seen the document before. But I would say that I'm not going to reply one way or another. It's out of context and I would want to read the whole document. When you're dealing with issues like plagiarism you have to deal with a whole, not a part.

Q. (Mr. Gosbee continuing.) Do you understand that Dr. Ungar contends that example 4 fits his situation?

MS. MC GRANE: Objection.

MR. GOSBEE: I'm asking if he understands

it.

MS. VOGLEWEDE: Overruled.

MS. MC GRANE: And may I ask for clarification, does he understand it from the testimony today or did he understand it from previous conversations? There's a distinction, in my mind, which would be to another objection if I can have that clarification.

Q. (Mr. Gosbee continuing.) Well, all right. From testimony today do you understand that example 4 fits what Dr. Ungar believes is supporting plagiarism by Professor Foguel?

MS. MC GRANE: And I'll object.

MS. VOGLEWEDE: That's a different question. That was asked before, and I'll sustain the objection.

Q. (Mr. Gosbee continuing.) How about from anything before you've heard today.

MS. VOGLEWEDE: And I'll sustain the --

MS. MC GRANE: Objection.

MS. VOGLEWEDE: I'll sustain the objection. I knew it was coming.

MR. GOSBEE: Well, I'm glad it's amusing, but I'm trying to get to the bottom of this plagiarism thing and I can't.

THE WITNESS: Well --

MS. MC GRANE: There's no question.

THE WITNESS: Going to the well.

Q. (Mr. Gosbee continuing.) What do you mean by going to the well?

A. I said well so....

Q. If Dr. Ungar sincerely believes that Dr. Foguel was supporting plagiarism, would it be appropriate or inappropriate to -- for Dr. Ungar to say, Dr. Foguel, if you continue to support plagiarism I cannot support you for tenure?

A. Say that again.

Q. If Dr. Ungar were to go to Professor Foguel and say, Professor Foguel, if you continue to support plagiarism, I've presented my arguments as to why I think this is so, I cannot support you for tenure, would that be improper?

A. Yes, that's inappropriate.

Q. At what point would it be proper for somebody to say I will not support you if you support plagiarism then? Or could you never withdraw support if you thought the applicant supports plagiarism?

A. Well, I think that if professor one went to professor two who was up for promotion and accused professor two of plagiarism and could prove it, then,

obviously, he would -- there would be no support for it. But promotion and tenure is based on productivity and accomplishment and teaching, research, and service. And this is a side issue. I think that in your example Dr. Ungar would have to prove beyond a shadow of a doubt that plagiarism had occurred and then have the discussion with Dr. Foguel.

Q. Okay.

A. Clearly, Dr. Foguel does not believe that that has happened.

Q. That's quite clear. If somehow Dr. Foguel -- Ungar were to succeed in proving beyond a shadow of a doubt that Dr. Foguel had supported plagiarism, would it be appropriate, then, for Dr. Ungar to withdraw his support for the tenure candidacy?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

A. Say it again.

Q. (Mr. Gosbee continuing.) All right. If Dr. Ungar could show, perhaps to your satisfaction or somebody's satisfaction, that Dr. Foguel supported plagiarism, not committed plagiarism, supported plagiarism, and prove it to the satisfaction of you, or whoever was evaluating the situation, would it be

appropriate then for him to withdraw his support for tenure candidacy of Dr. Foguel?

A. That example is so hypothetical that it would need to be parsed so many times that I don't think -- I can't answer it. Because you have if, if, if, and if.

Q. Well, I'm trying to find out if you perceive Dr. Ungar's failure in that -- or where Dr. Ungar failed was that he failed to successfully prove his point or that he made the point.

A. About?

Q. The supporting plagiarism. Should he have not made the point or has he failed in proving the point? Do you understand the difference?

A. Both.

Q. So he should not even have made the point is what you're saying.

A. Well, unless he had more evidence than he has presented. Basically there's an implied accusation of plagiarism against the Karzel group. And if you make that and you can't prove it, I'd say you're in a pretty tough position.

Q. Okay. But at some level, then, proof becomes strong enough to make Dr. Ungar's conduct, you know, this quid pro quo situation appropriate. At some

level of proof; is that correct?

A. No. You can't do that. All you can deal -- you have to deal with what we know. And that's how we're going to have to answer it is in what we know, not what we might know or not know. You can't go there. I mean, we could -- you could go for weeks on that one.

Q. Well, okay. But I'm not just trying to ask, you know, tough questions. I'm trying to make sure I understand where the line is drawn. Because are you saying that he should never condition support if he thinks there is support of plagiarism?

A. I don't know. I guess that would be up to what he wants to do. But the question --

Q. He meaning?

A. Dr. Ungar. But the question is how does he handle it. And I don't think that the issue here is plagiarism or not plagiarism. The issue is how was this handled. And we have all said that we believe that he handled it in an inappropriate manner. Which I believe.

Q. Okay. He'd been accused of a very serious violation. But I'm trying to find out if there is ever a circumstance where the undisputed conversations would be appropriate. And --

A. Conversation -- to answer your question, the conversation is okay, but to carry it to the degree to attack a person's family --

Q. I'm not going into the family --

A. To make accusations, that's inappropriate. It's beyond the bounds --

Q. But I'm trying to focus --

A. -- of even good behavior. And whether it's written policy or not, it's called good judgment.

Q. I'm trying to focus on quid pro quo. And where the line is supposed to be drawn on a quid pro quo issue.

A. Well --

Q. And....

MS. VOGLEWEDE: Counsel, I think this has been asked and the witness indicated he couldn't answer. We need to move on.

DR. MILTENBERGER: Could I ask a question? If a candidate, in this case Dr. Foguel, had already submitted his dossier, is this a moot point anyway? That Dr. Ungar is asking him to change something, and the dossier has been submitted. He can't change it anyway, can he?

THE WITNESS: Anything that is done to the application after submission has got to be sent to

the candidate and to the parties, as you well know, and then they have 14 days to respond.

I might answer your question more directly, let's say that a candidate has submitted an application for promotion and tenure, and then it has been shown that that candidate committed plagiarism. Certainly that would, in my mind, that would come into play. But other pieces it would be pretty difficult. I don't think it happened in this case.

Q. (Mr. Gosbee continuing.) So if a colleague could show that a candidate had even committed the support of plagiarism, it would be appropriate for that colleague to bring that to people's attention, right?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

A. You just changed the words there. I said if the candidate, him or herself, committed plagiarism is one thing. Supporting it is a different issue.

Q. (Mr. Gosbee continuing.) So supporting plagiarism does not disqualify a person from tenure.

A. It goes into a whole host of things that have to be shown or proven before that. It's just as strong as the other one. And there would have to be intent. There's a lot of things. It would be very

difficult.

Q. So your position is, as a practical matter, it's improbable to prove that somebody supports plagiarism.

A. It's not impossible to do that. But I haven't seen it here.

Q. Now the -- you testified that you looked at the evaluations after they were delivered to you by Dr. Ungar; is that correct?

A. Yes.

Q. And I show you what's been marked as Exhibit Faculty 22. Do you have any recollection if that was one of them?

A. I don't know if this was one of them or not. The -- I don't know where the originals are. I suppose we could pull the original.

MS. MC GRANE: I think it's actually Exhibit 21, Mr. Gosbee. I think we're all a little confused, but I think it's Exhibit 21 that you're referring to; is that correct?

MR. GOSBEE: Yes. I stand corrected. I made a mistake on that. Excuse me.

DR. MILTENBERGER: Is that what we're looking at?

MR. GOSBEE: I apologize.

THE WITNESS: Is it appropriate to confer with my counsel or not?

MS. VOGLEWEDE: Well, I'm not sure what the pending question is.

Q. (Mr. Gosbee continuing.) My question is whether you recognize it as one of the ones that Dr. Ungar gave to him.

A. My answer is I can't say one way or another. I've seen things like this, but I'd have to go back to the packet of originals. And they're somewhere. Who has them?

MR. JOHNSON: We've got them here.

A. And we can pull it out if the original was in here.

MS. MC GRANE: I guess I don't think that's necessary here. If he's testified he doesn't remember, I don't know why we need to go further than that.

MS. VOGLEWEDE: Is there an objection?

MS. MC GRANE: The question was had he seen it before. And the answer was no. And so I don't think there was a question anymore.

MS. VOGLEWEDE: Is there -- let's hear the next question.

MR. GOSBEE: Okay. Well, we'll offer

Faculty 21.

MS. MC GRANE: No objection.

MR. GOSBEE: Okay.

MS. VOGLEWEDE: Just a moment. I'm deciding whether to receive that since there is no foundation for it. Given the lack of objection, I will receive that into evidence.

MR. GOSBEE: We're planning on putting it in through Dr. Ungar, but since it came up now is why I brought it up now.

THE WITNESS: Can I talk to counsel a minute?

MS. VOGLEWEDE: Sure. We'll take a break.

(Whereupon, a break was taken.)

MS. VOGLEWEDE: Proceed.

MR. GOSBEE: Thank you.

Q. (Mr. Gosbee continuing.) Could you look at Exhibit 25. And point out an e-mail from Dr. Ungar written after he was told not to communicate with anybody. Not somebody else's claim that he did so. But an actual e-mail where he, in fact, did so.

MS. VOGLEWEDE: Is that faculty exhibit or administration exhibit?

MR. GOSBEE: Administration 25. I'm

sorry.

A. I'm not going to be able to answer that because I don't have the exact time line on when we did those things.

Q. (Mr. Gosbee continuing.) Well, you testified that one of the reasons that you continued the letter of reprimand, obviously, this occurred afterwards so it wouldn't have affected the issuance of it, but one of the reasons I guess you're continuing it is that he supposedly kept on making this contact.

A. Yes. What I was told is that some other messages had gone out. And that he had not done that. That's what I was told. And that's when I said, okay, then we stop it. Now did I ask to see these, et cetera? No, I relied on other people's discussion of that.

Q. So if they made a mistake about the facts you would have made a mistake about your decision.

A. I suppose.

Q. Now specifically -- or if I understand things correctly, Exhibit 25 is one of the reasons you suspended his e-mail account on the NDSU account, right?

A. There was this one and there was a letter. There was another letter that he had also sent

out.

Q. You suspended his e-mail because he wrote a letter?

A. In what he had contacted there's -- with the letters coming back from Mann, et cetera. But it had to do with the e-mail here. I think that if we go back to the October 22 Monday one where he had sent this out.

Q. What page of the exhibit, please?

A. Pardon? Page 6 of 8, 7 of 8, 8 of 8 where he talked about the message. Accused him of being anti-Semitic. Mental defects.

Q. That's -- I was asking how he communicated with people after he was told not to communicate with them.

A. I thought I'd answered that.

Q. Then I misunderstood. Where in Exhibit 25 is there an e-mail from Dr. Ungar written to somebody outside the university after he was told not to write to that person?

A. I thought I answered that already.

Q. In that case --

MS. VOGLEWEDE: Answer it again, please.

A. Okay. What I said was that I had relied on others who had said that they had -- we'd asked him

not to do it and then they said that he had sent another one. And I said that's when we stop it.

Q. But it's not here, apparently, for the committee to see, is it?

A. I don't know.

Q. And why is it written that he cannot send e-mails to people around the world?

A. I don't think it says that he can't send e-mails around the world. But we already went through the policy several times. Do we have a copy of that? We talked about it.

Q. 710?

A. Yes. We talked about paragraph 4. We went through that fairly thoroughly with Dean White. I relied on the part where it says that you will not use the computing facilities for any illegal purpose or to enter or send any material that is obscene or defamatory. The messages I believe to be defamatory. Or to enter or send material that is intended to annoy, harass, or alarm another person which serves no legitimate purpose. And I rely on that last phraseology. I believe that he was harassing Dr. Foguel. I believe he was annoying Professor Kappe and Mann. And, as I recall, there were four or five other people on the list who never responded which

would be typical.

Q. Okay. But the critical problem here is the last several words which says -- which say, "...which serves no legitimate purpose." How does somebody find out from university policy what you, reviewing their e-mails, will decide is a legitimate purpose?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

A. First of all, I don't routinely review everybody's e-mails. I have enough trouble doing my own --

Q. (Mr. Gosbee continuing.) You pulled this man's e-mail privileges based on him --

A. But those e-mails were sent to me. And they were sent to many other people. They were sent to me as -- and then became part of my e-mail group.

MS. VOGLEWEDE: I don't think Dr. Schnell was finished answering the earlier question.

MR. GOSBEE: I apologize for interrupting.

THE WITNESS: I have to go back to the question.

MS. VOGLEWEDE: The question was how does

someone know where is it written what's legitimate purpose.

A. Well, we have policies with this. I think that that may be somewhat broad, but I think that there also is called good judgment, good conduct. And those sorts of things would fit here. What is the legitimate purpose for disparaging somebody's family?

MR. GOSBEE: May I debate with the witness, your Honor? It seems to invite one.

MS. VOGLEWEDE: It's part of his response.

MR. GOSBEE: Can I answer his question?

MS. VOGLEWEDE: No, Counsel.

Q. (Mr. Gosbee continuing.) Now you apparently have your opinion as to what's good judgment and what's justified. Is that correct?

A. I believe everybody should have that.

Q. How -- and you are one of the few people, I understand, in the university who has the power to cancel e-mail privileges.

A. I can only exercise that responsibility in conjunction with a policy which I felt that I had.

Q. All right. How many other people at the university are allowed to do that?

A. I don't have any idea.

Q. All right. Now, apparently, faculty member at least -- faculty members, at least, are subject to having their e-mail privileges suspended if they don't meet your definition of good judgment; is that correct?

A. I think it takes more than that.

Q. Well, where could Professor Ungar have gone before he sent these e-mails to find out what you would interpret which serves no legitimate purpose means?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) Where could he have gone to find out what your definition of good judgment is?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) How does anybody know how to obey this rule?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained.

DR. LINDGREN: Could I ask a question?

MS. VOGLEWEDE: Sure.

DR. LINDGREN: Did you ever discuss the e-mails with Dr. Ungar directly?

THE WITNESS: No. I would answer that I had talked to Dr. Shreve, had asked him to talk to Dr. Ungar about not doing it. There is an e-mail here that indicates that Abraham agreed to it and said that his lawyer, who was a different attorney at that time, thought it was a good idea. So I think that relying on that particular piece of information would say that I probably hadn't acted capriciously. That I had looked at this fairly carefully. But I felt that there was damaging -- information that was damaging not only to Dr. Foguel, it was damaging to the university.

Q. (Mr. Gosbee continuing.) In that case Dr. Foguel -- I'm sorry, Dr. Ungar, in order to find out what your standard of good judgment was, would need to get it directly from you, but it would be filtered through somebody else, correct?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

A. Not necessarily.

Q. (Mr. Gosbee continuing.) And the first notice he had that this met with your disapproval is when his e-mail was suspended, wasn't it?

A. No. He knew about it beforehand. Because Dr. Shreve had talked to him about sending this -- these e-mail messages out before. And by the

fact that he agreed, according to the memo, --

Q. Which memo was that?

A. -- he must have felt some remorse.

Q. Which memo was that, sir?

A. I believe there's a -- do we have it in evidence?

MS. MC GRANE: Exhibit 27 which we haven't offered yet. Which I wasn't planning on offering because I didn't think we were going to get to this issue in this detail, but we've got it.

MR. GOSBEE: That's a letter from his lawyer.

MS. MC GRANE: There's a comment where the lawyer represents what Dr. Ungar has apparently represented. The second page, second paragraph.

Q. (Mr. Gosbee continuing.) So other than this unadmitted exhibit, where is the evidence that he knew?

A. Well, I suppose we could find the other one. But it says right in here, it says --

MR. GOSBEE: That exhibit's not admitted. I object to him testifying from it.

MS. VOGLEWEDE: You don't refer to the exhibit, Dr. Schnell. It's not been admitted.

THE WITNESS: All right.

Q. (Mr. Gosbee continuing.) If you could turn to Exhibit 19.

A. Yes.

Q. That, apparently, was the cover letter for the evaluations, right?

A. Is what?

Q. The cover letter for the evaluations.

A. Yes.

Q. And Dr. Ungar says, "If possible, I'd like to discuss with you the point I wanted to protest against the present way of teaching Math 146 which affects my evaluations." Did you ever let him come discuss that with you?

A. Yes. He -- back up. He and I discussed this in the conversation on October 11. He talked to me about some issues that he had with students making the case that his teaching methods warranted the way he did things because the students learned more. And he talked to me about that. And talked about the fact that he was not an easy grader. Let's see.

Q. But I'm asking --

A. We had talked about this. He also talked about the fact that, as indicated in one of the other letters that we had just recently looked at, that he felt that others did not understand this way of

teaching and what happened.

Q. But my question was he said, "If possible, I would like to discuss with you the point I wanted to protest..." Was there a discussion with him after October 26th?

A. No.

Q. And there's a note at the bottom that says, "Sent to Warren Shreve." Is that your initials?

A. Yes.

Q. And why did you send that to Warren Shreve on November 26?

A. We had had the evaluations, and I felt that they should properly go to the department. And that's why I sent them to Dr. Shreve. He was the chair of the department. So I sent them back to him.

Q. Is there a reason you waited a month?

A. I can't remember. There was a lot going on in this time. And I think that he had engaged the services of is it Douglas Gigler at the Nilles firm. There were a number of things going on. So -- and it was at this time that I sent them back to him.

Q. Did you put any kind of comment when you returned it -- or when you sent this copy to --

A. No. This is the sum of what I sent him.

Q. Okay. So you just physically photocopied the cover letter --

A. Cover letter and sent it, yeah.

MR. GOSBEE: All right. I have no further questions.

EXAMINATION

BY MS. MC GRANE:

Q. Dr. Schnell?

A. Yeah.

Q. You referred to an instance where you believed that Dr. Ungar acknowledged that his previous use of e-mail privileges was inappropriate; is that correct?

A. Yes.

Q. And if you turn to Exhibit 27, is that the document that you were referring to?

A. This was one of the documents.

MS. MC GRANE: We'd offer Exhibit 27.

MR. GOSBEE: Your Honor, I object on several grounds. First of all, it's apparently a letter from his former attorney apparently making an admission that Professor Ungar contends the attorney did not have the authority to make. And unless somebody can bring in Douglas Gigler to testify how he drew that conclusion, I object to this. I know they're

going to say it's a business record, but the fact that it's a business record doesn't mean it can't be inaccurate. And I object to its admission.

MS. VOGLEWEDE: I believe the door was opened by some of the questions that were asked on cross-examination and so I will allow it. It will be received.

Q. (Ms. McGrane continuing.) If we turn to the second page of the letter, second paragraph, I don't want you to read it, but can you summarize what your understanding is of Mr. Gigler's understanding of the e-mail usage at that time.

A. Yes. Evidently there was discussion, and he felt that what Dr. Ungar had sent out was inappropriate. And he discussed it with him. He said that he felt Abraham himself had understood this and so he said he agrees. And this use was inappropriate.

MS. MC GRANE: Thank you. I have no further questions.

EXAMINATION

BY MR. GOSBEE:

Q. All right. Now that this letter is in, let's go over it. That same paragraph says, "He has assured me that from this point forward his use will be restricted to university business only." And I'll

confess, up until today I thought that meant he had violated I think paragraph 6 of that regulation.

MS. MC GRANE: Is that a question?

Q. What does that mean?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: That comment will be stricken. Can you address questions to the witness, please.

Q. (Mr. Gosbee continuing.) Well, was it -- okay. What was he accused of? According to the Gigler letter, Gigler attributes to Ungar, "He has assured me that from this point forward his use will be restricted to university business only." Well, from that I infer that the reason his e-mail privileges were suspended was because he violated a policy prohibiting use of e-mails for nonuniversity business. Is that accurate or inaccurate?

A. I don't know. I can't answer that.

Q. You just relied on this letter.

A. I relied on the fact that he understood -- well, I didn't rely totally on this letter because it was written after, I think after the -- it says to reconsider the suspension so he'd been suspended before this. As I indicated already, I think two or three times, what I had relied on.

Q. Okay.

A. And this certainly substantiates and I think supports the action that I had taken. It also infers that Dr. Ungar, like I'd indicated earlier, he says that, "He," meaning Dr. Ungar "understands that his prior use was at times inappropriate."

Q. And the immediately following sentence is the one I read.

A. Right.

Q. Where in Exhibit 27 does it say that Dr. Ungar admitted that his contact with external people was inappropriate or that anything about his letter was inappropriate other than apparently the university business issue? Which nobody's accused him of violating.

A. I think they're two different thoughts in the two sentences.

Q. So you think Attorney Gigler has changed his entire train of thought after he wrote the, "He and I have discussed" sentence.

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) But if there is a smoking gun that Professor Ungar violated the e-mail policy, is this it? This is what you're relying on?

A. I already answered what I relied on.

MR. GOSBEE: All right. No further questions.

MS. VOGLEWEDE: Redirect?

DR. LINDGREN: I had one.

MS. MC GRANE: Go ahead.

DR. LINDGREN: I had one question. A number of people who have testified today referred to the fact that there was another alternative for plagiarism concerns. What committee addresses those concerns?

THE WITNESS: I think, Elaine, isn't it an ad hoc committee that was formed if you look at the Policy 326?

DR. LINDGREN: I don't know. I'm asking you.

THE WITNESS: It's been a while since I reviewed that. But, as I recall, it's a two-stage affair. And in the first one there's a, I think a, they call it the inquiry. And it tells how they bring the evidence. I think there's a small committee that, as I recall....

DR. LINDGREN: That's just what policy?

THE WITNESS: 326.

DR. LINDGREN: Okay.

THE WITNESS: And nonadministrative or a tenured faculty member, et cetera. And they receive it and try to make a determination if there's merit or not. And if there is then I believe it goes into what's called investigation. And then the committee on academic integrity which is a standing committee of the faculties -- or excuse me, the university senate then would take that over and make that.

MR. GOSBEE: May I ask a question?

THE WITNESS: It is faculty driven.

MR. GOSBEE: May I ask a question based on the committee member's question?

MS. VOGLEWEDE: No. I think we're on redirect now. Did you have questions?

MR. GOSBEE: Oh, I'm sorry.

MS. MC GRANE: I'll be brief.

EXAMINATION

BY MS. MC GRANE:

Q. You mentioned that Dr. Ungar had been told that his communicating by e-mail was inappropriate; is that right?

A. Yes.

Q. And while we can't offer this as an exhibit because we did not identify it, I'm going to show it to you to refresh your recollection only.

A. Yeah.

Q. Were you aware through any communication with anyone that someone had communicated with Dr. Ungar not to communicate with individuals around the world on this issue?

A. Yes. I believe Dr. Shreve had told him that he should not continue to make the personal attacks, the things that he had done.

Q. And did Dr. Shreve communicate that with you?

A. Yes.

MS. MC GRANE: Thank you. That's all I have.

MR. GOSBEE: Can I see the exhibit he used to refresh his recollection?

MS. MC GRANE: Sure can.

THE WITNESS: That's the one I was referring to.

EXAMINATION

BY MR. GOSBEE:

Q. I notice this is 1,428 of 1,429 e-mails. Do we have any way of knowing if some of the others contradict this?

A. Let me see. Say that again.

Q. It's number 1,428 of 1,429.

A. Right. And your question again was what?

Q. Do we have any way of knowing if there's something else that contradicts that?

A. Not that I know of.

MR. GOSBEE: Actually I'm going to -- we'll agree to stipulate if the administration wants to offer this.

MS. MC GRANE: No, we don't. We don't think it's necessary.

MR. GOSBEE: In that case, I offer it.

MS. VOGLEWEDE: It will be received. Marked as Faculty Exhibit...

DR. MILTENBERGER: 33 I believe.

MR. GOSBEE: Do we mark it administration or faculty member?

MS. VOGLEWEDE: Well, you're offering it, Mr. Gosbee.

MR. GOSBEE: In that case should I reuse 34? Or -- I suppose we just should keep that just so the record -- so I'll have to start with 36.

MS. VOGLEWEDE: That will be 36.

MS. MC GRANE: Can he make a copy of that since that's the original?

MR. GOSBEE: I don't object to using

copies. I don't know if you actually want to -- you can even put this on a copy if you prefer.

MS. VOGLEWEDE: How about putting this on the original and counsel stipulating that you can keep the original.

MS. MC GRANE: Sure.

Q. (Mr. Gosbee continuing.) Now if I could take a look at Exhibit 36. It says it's an e-mail from Warren Shreve to you, correct?

A. Um-hum.

Q. And it says, "Craig, Abraham was told not to send his perspective around the world by e-mail or have his e-mail account canceled. He immediately agreed mentioning that his lawyer made the same suggestion." Right?

A. That's what the note says.

Q. Now does that mean he agreed to the order or he agreed that he had heard it?

MS. MC GRANE: Objection.

Q. And your understanding.

A. Let me see it.

MS. VOGLEWEDE: The objection is overruled. You may answer.

A. Do you want to know what his perspective is? Is that what you told me?

Q. That he agreed to -- in other words, did he agree that the order was appropriate or did he agree that he had heard the order?

MS. MC GRANE: Objection. Based upon his review of the document did he understand that's what was written?

MS. VOGLEWEDE: I assume you're asking for Dr. Schnell's interpretation.

MR. GOSBEE: Yes.

MS. VOGLEWEDE: You may answer.

A. My understanding was that he agreed not to continue the attacks that he had done.

Q. (Mr. Gosbee continuing.) Okay. And did you view that as any kind of infringement on his First Amendment rights?

A. No.

Q. And what's the date of that e-mail?

A. 23 October.

Q. Take a look, please, at exhibit -- Administration Exhibit 25.

A. Okay.

Q. Which of those e-mails were sent after faculty Exhibit 36?

A. Well, all these are dated prior to that. Conversation could have occurred prior to that time,

and probably did.

Q. We have no way of knowing, do we? When it occurred. It could have occurred minutes before that e-mail was sent.

A. It could have.

Q. And wouldn't it be most likely to have occurred fairly soon before that e-mail was sent?

A. I don't have a clue.

MR. GOSBEE: Okay. No further questions.

MS. VOGLEWEDE: Committee members, do you have any questions? If not, we're going to take another short break. Five minutes.

MS. MC GRANE: And before we do that, the NDSU Administration rests so that counsel for Mr. Ungar can be -- Dr. Ungar can be prepared.

MS. VOGLEWEDE: Thank you.

(Whereupon a break was taken.)

MS. VOGLEWEDE: Mr. Gosbee, you may proceed.

MR. GOSBEE: Actually, before I begin I'd like to, in effect, make a motion even though we're kind of against our time because it might be helpful in disposing the whole matter.

I'd like to make the equivalent of a

motion to dismiss in civil court on the grounds that the administration has failed -- their case will not get any better than it is right now. On the grounds -- and I would ask the, once I've made my argument and opposing counsel's made her response, the committee to retire for a few minutes and deliberate the matter and maybe we can resolve it today.

The -- our position is the administration has failed to prove by clear and convincing evidence there was justification for the sanctions. Most of the fight is hinged around all this communication that went out from Dr. Ungar. And repeated requests to find out exactly where it was in the rules that he was doing something wrong. And we were never able to -- they could never point to some rule, some specific rule that he violated in all these communications. And all this dealing with Professor Foguel.

And on the course evaluation it turns out that at most his only violation was not immediately turning in the -- it turns out the evaluations were, in fact, conducted. They were, in fact, conducted as required by the math department. So the only violation there is that he didn't immediately turn them over. And we would respectfully request that alone wouldn't justify the letter of reprimand.

So I guess I ask the committee, and I realize it would have to count against our time, but I think it's worth it to, you know, if they want us to all leave the room or they leave the loom, retire and consider the possibility of deciding now that the administration has failed to meet its burden.

MS. VOGLEWEDE: Ms. McGrane, your response.

MS. MC GRANE: The administration opposes the motion and doesn't think recusal of the committee is necessary to decide the issue. And I'll stop at that.

MS. VOGLEWEDE: I will adjourn with the committee for about two minutes.

(Whereupon a break was taken.)

MS. VOGLEWEDE: The committee is prepared to proceed.

MR. GOSBEE: In that case I would call Professor Abraham Ungar.

DR. ABRAHAM UNGAR,

HAVING BEEN FIRST DULY SWORN TO TESTIFY THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH RELATIVE TO THE CAUSE SPECIFIED, TESTIFIED AS FOLLOWS:

EXAMINATION

BY MR. GOSBEE:

Q. What's your name, sir?

A. Abraham Ungar.

Q. And where are you employed?

A. I'm employed by NDSU, Department of Mathematics.

Q. And what's your position there?

A. Full professor.

Q. And what field?

A. Mathematics.

Q. And how long have you been employed as a full professor?

A. Since 1984. Full professor from 1991.

Q. '91. And when did you first come to NDSU?

A. End of 1984.

Q. '84 or '94?

A. 1984.

Q. Okay. And where were you born?

A. In Israel.

Q. And was it known as Israel at the time?

A. At the time on stamps it was saying in English Palestine, in Hebrew (witness spoke in Hebrew) which means the country of Israel.

Q. So you were born before the foundation of the State of Israel.

A. Yes.

Q. In what is now the State of Israel?
A. Yes.
Q. When did you come to the United States?
A. In 1984.
Q. And have you since become an American citizen?
A. Yes.
Q. And do you have any publications?
A. Yes.
Q. How many papers have you published in your career here at NDSU?
A. More than 70. No, no, I'm sorry, from NDSU about 53.
Q. All right. And in this time at NDSU you have you published any textbooks?
A. Yes. I published one book.
Q. When was that published?
A. In 2001.
Q. In what field was that book published in?
A. It was in mathematical physics.
Q. And when did you first come to know Professor Foguel?
A. In 1997 when he came to the department as a new candidate. First as a candidate and then he got a position.

Q. And what was your opinion as to whether he should have been given the position back in 1997?

A. I supported his position, particularly because I objected to the other candidates that the head of the department at that time wanted.

Q. And what was your thoughts as to his academic talents? Did you consider him an academically talented man?

A. Oh, definitely. I know his father. His father was my teacher of mathematics at the Hebrew University in Jerusalem. And also his father is a well known professor in the field of mathematics.

Q. And this whole business of gyrocommutative gyrogroups, could you provide an explanation that we laypeople could understand?

A. Yes. Certainly. Many people object to the special theory of relativity of Einstein because Einstein changed the law of adding velocities. Physicists found that nothing can move faster than the speed of light. But if we add velocities, as we learn in high school, then you add velocities more and more until you get faster than the speed of light. But physics say we cannot. So Einstein modified the law of how to add velocities.

But then something strange happened. A

plus B is not equal to B plus A. B plus A special relatively cannot be correct. If it was, A plus B plus A is not the same as A plus B plus C. It's called associative law. Associative law says that A plus B plus C is the same as A plus B plus C. Actually when we ask the computer to add three numbers the computer cannot add three numbers. The commuter can add at the time only two numbers. So the computer, if we want to calculate one plus two plus three, we either calculate one plus two and then add three or one plus two plus three. That's the only way we can do.

In Einstein addition this is not true. If you calculate A plus B plus C you don't get the same result as A plus B plus C. Now I find the reason why it is not true because there is an alternative loop which I call --

MR. GOSBEE: Excuse me. Before you go further, would it be helpful to the committee and the hearing officer if he could use the blackboard or white board, or whatever they call it nowadays.

DR. MILTENBERGER: Will it be important for us to see it for what we're going to -- for the case?

Q. (Mr. Gosbee continuing.) Would it be helpful?

A. Yes. In the sentence that I wanted to say just now.

Q. Okay. If it would -- would it be helpful in understanding what you're talking about?

A. Yeah. Two more sentences. So what I found that everything which we know classically there is a gyro component. So that's how classically we have commutative law, I made gyrocommutative. There is associative law, I made gyroassociative. There is group, I made gyrogroup.

Now this is a kind of idea that can easily be stolen. So I published it in a physics paper. And everything was okay. Then I tried to publish it in the mathematical paper and then the editor -- one of the editors stole it. And he gave it -- he did not steal it for himself, but to a college -- to a colleague in Germany. And the idea is simple. You just have to work 20 years until you get the idea. But it is easy to steal. And then people in Germany stole it and they were -- they said that they actually did it 20 years earlier in the 1960s.

Now actually it is like saying that modern physics was discovered by the ancient Greeks. Because they called the word atom. And today modern physicists use the word atom. So it's true that

something called Bruck loop existed in the 1960s. But I discovered something which is compared to Bruck loop as modern physics compared with the atom of the ancient Greeks. So one can say that the ancient Greeks discovered a modern physics in the same way that now people can say that Bruck loop in the 1960s discovered what I did. But I must admit that what I did is Bruck loop, and I don't say that Bruck loop is plagiarist. I say that K-loop, K is concept, and the editor stole my idea. He did not steal it for himself. He gave it to his colleague in Germany. And then suddenly there was something called K-loop.

Now the people in Germany wanted me to be the first one to admit that K-loop was done by them. So what did they do? My paper was rejected by two referees who say that what I did is already known. And then a editor from Germany, who was not supposed to know about my paper, he invited me to publish my rejected paper in his journal in Germany subject to the conditions that I call it K-loop and give credit to Karzel. So I did it. But after ten years I found that I was seduced to do it. And now Foguel say I'm the first one that says K-loop was discovered by Karzel, which is true, but I'm also the first author of the term K-loop.

So what I request, and I think is just, is that if somebody wants to use the term K-loop it's fine. But add the remark that K-loop appeared for the first time in my paper in 1989. And that's something that can be easily proved or disproved. That's the point of the plagiarism that I claim.

Q. And that's when -- when you say the point of the plagiarism, you're referring to supporting plagiarism, not out and out plagiarism.

A. No. For the Germans --

Q. They didn't --

A. -- using plagiarism. But someone who used the term K-loop without mentioning that it first appeared in my paper supports plagiarism. But if he adds a remark that it first appeared in my paper that's fine because I cannot tell him what terms he should use. But I don't want people to use half of the truth. Sometimes half of the truth is worse than a lie.

Q. Let's work our way through some of these exhibits. Turn to Exhibit 2. That would be Faculty Exhibit 2. And tell us how -- or, first of all, tell us what it is.

A. This is a paper that I submitted in 1988 to a journal called Aequationes Mathematicae. It's in

Latin mathematics equations.

MR. GOSBEE: We offer Faculty 2.

MS. MC GRANE: Objection on relevance grounds.

MS. VOGLEWEDE: This is just the letter, not the paper? This is not the paper itself? It's just the cover letter?

MR. GOSBEE: It's working up to what he was just talking about in terms of the process by which it was approved.

MS. VOGLEWEDE: But Exhibit 2 is just the cover letter?

MR. GOSBEE: That's right.

MS. VOGLEWEDE: It will be allowed.

Q. (Mr. Gosbee continuing.) And could you describe what exhibit -- Faculty Exhibit 3 is?

A. One of the editors of the journal --

Q. First of all, just describe it. And then we have to offer it in and we'll have you explain it. So just tell us what it is. And then I'll offer it for admission, and if it's admitted we'll explain it.

A. Yeah. I submitted the paper and the author, Moskal, the managing editor, acknowledged that he received my paper for possible publication in the journal.

MR. GOSBEE: Okay. We offer Faculty 3.

MS. MC GRANE: Objection. Relevance.

MS. VOGLEWEDE: Received.

Q. (Mr. Gosbee continuing.) Okay. Now explain how Faculty 3 fits into the equation.

A. I don't understand the question.

Q. What's the significance of Faculty 3 and why do you want the committee to see it?

A. The significance is the title "The Relativistic Noncommutative Nonassociative Group." It shows that here is the idea of the velocities and something called Thomas rotation.

Q. And I notice this was written in January of '98?

A. Yes.

Q. '88 I mean.

A. 1988. Nobody did it before me.

Q. Okay. And this ultimately led, which we'll get to in a few minutes, but it ultimately led to the paper that we're all talking about that you wrote in '89, correct?

A. Yes.

Q. And what is E.M. Moskal's role in this process?

A. He was the managing editor so his job was

to get the papers. And that's, I don't know internally, but probably he would -- his job was also to assign another editor who is responsible for appointing referees for the paper.

Q. And would you tell us, first of all, who wrote Exhibit 4 and what it is. Faculty 4.

A. Yeah. It was written by a German professor named Wefelscheid. He became my friend. He was not my friend. He was -- but he pretended he was my friend. And he was not supposed to know that I sent -- I submitted the paper, but he knew that I submitted the paper. And he asked me to publish it in his journal. He also knew that my -- the paper that I submitted to the original journal is going to be rejected. He knew it before me.

Q. Okay.

A. So here he's asked me to send him a copy. Still he did not say why. And in this letter he just said thank you for the copy here. He acknowledged that he received the copy of my paper. At this time it was a preprint.

MR. GOSBEE: We offer Faculty 4.

MS. MC GRANE: Objection on relevance grounds.

MS. VOGLEWEDE: Overruled. It will be

received.

Q. (Mr. Gosbee continuing.) And --

DR. MILTENBERGER: Excuse me. Is there an intervening document where this guy actually asked you for the paper?

THE WITNESS: Yes. I have a document, which we could not put everything here, but I submitted a plagiarism complaint to the American Mathematical Society. And I'll be more than glad to show it to everyone. I asked the Dean Schnell when he was dean to read it. He did not want. I asked Dr. Boudjouk to read it. He did not want. I asked Comez to read it. I asked -- Shreve I did not ask because he was not chairman. But I really begged everyone please read it. Nobody wanted to read it. But your answer is already there. And I'd be glad to bring the whole package of my plagiarism complaint that I submitted several weeks ago to the American --

DR. MILTENBERGER: I wasn't asking for the whole package. I just wondered, you said that this is a later letter. You indicated --

THE WITNESS: Yes. There are many more letters.

MS. VOGLEWEDE: Just wait till he finishes his question.

DR. MILTENBERGER: You indicated that the editor of this journal had asked you for the paper, but there's no way he should have known the paper existed?

THE WITNESS: That's correct.

DR. MILTENBERGER: And I was curious, it seemed like that would have been intervening between these two times. Maybe I'm just opening a can of worms, but....

THE WITNESS: Yeah.

DR. MILTENBERGER: It just seemed like it was missing based on your earlier description.

THE WITNESS: So today people would ask for preprint by e-mail. But this time there was no e-mail and just by little postcard. So I don't have a copy of this postcard.

DR. MILTENBERGER: Okay. Let's move on.

Q. (Mr. Gosbee continuing.) Now on Exhibit 4 -- okay. Let's turn to Exhibit 5. And could you tell us what that is, please. That's from -- first of all, who is it from and who is it to?

A. It is from Wefelscheid, the same German editor that I believe that the editor of the journal to which I submitted the paper communicated with him and gave him a copy of my paper. But he could not make a use of copy of my paper until I sent him a copy. Then

literally he was aware of this. And here he asked me to publish it in his journal. He was editor of a German journal called Results in Mathematics. That's a translation to English. And he asked me to give credit to what I discovered, to give credit to Karzel. You can see it in paragraph number 3 from the bottom. He asked me giving some hints that this structure --

MS. VOGLEWEDE: Dr. Ungar, would you wait until your attorney has a chance to offer that exhibit before you talk about the contents.

MR. GOSBEE: You have the wrong exhibit.

A. I was asked what is this.

MR. GOSBEE: All right. Leave it there. Okay. We offer 5.

MS. MC GRANE: Objection. Relevance.

MS. VOGLEWEDE: It will be received.

Q. (Mr. Gosbee continuing.) Okay. Now this is still Wefelscheid, correct?

A. Yes.

Q. And basically he had two hats, right? He was involved with two different --

MS. MC GRANE: Objection.

MR. GOSBEE: What's objectionable about that?

MS. VOGLEWEDE: Sustained. Leading.

THE WITNESS: You ask me what it is about, I'll tell you.

Q. (Mr. Gosbee continuing.) All right. Okay. Explain Exhibit 5, please.

A. Okay. Here Wefelscheid asked me to publish it in his journal. But he make a condition that I should give credit to Karzel and to himself, to Wefelscheid, for the fact that they discovered the structure that I discovered. Only that I discovered it in the theory of Einstein special relativity and they discovered it in a totally different context. But they wanted me to acknowledge that what I discovered they already discovered earlier in a totally different context. And I did acknowledge it. But they actually seduced me, and today I know it was a lie. They did not do it before.

Q. And that statement is the one that says, "Also an appendix or footnote will be in order." Is that the one you're talking about?

A. Yes. He wanted me to give a reference to him. And he provided me the reference. So I gave the reference. But this reference never existed and still does not exist.

Q. So Dr. Wefelscheid provided you a reference to a prior work by Karzel?

A. Yes.

Q. And have you since tried to find that reference?

A. Yes. And I found that it does not exist.

Q. And now if you could describe Exhibit 6 to us, please.

MS. MC GRANE: Can we identify it first?

Q. Okay. I show you a document which is marked for identification as Faculty Exhibit 6 and ask if you recognize what it is.

A. Yes, I recognize.

Q. And could you tell the committee what it is, please?

A. Sure. Now the one I talk about before Wefelscheid asked me to publish my paper in his journal. It means that he already knew that my paper in the original journal is going to be rejected. And that's exactly what happened here. On May 4th, '89 after Wefelscheid already asked me --

Q. All right. Am I correct in --

A. This is a letter from the referees who rejected my paper.

Q. It was from the editor of the referees, right?

A. From the editor's referees, yes.

MR. GOSBEE: We offer Faculty 6.

MS. VOGLEWEDE: No objection.

MS. VOGLEWEDE: Received.

Q. (Mr. Gosbee continuing.) Okay. Now explain what Faculty 6 is all about.

A. Please tell me when I'm supposed to speak. Remember that my English is not my first language. So you can say something that I don't understand.

So here I get a letter saying that, I regret to advise you that the referees recommended against the publication of my paper. And then he attached to the paper the two referees' report. And you see that both the reports, although they claim it was written by two independent referees, they actually say the same. They say nothing. They say that what I did is already well known in the literature. But they don't give any reference. So later I claim that the editor of the journal, he faked these two referees because --

MS. MC GRANE: Objection.

MS. VOGLEWEDE: I didn't hear that last comment.

MS. MC GRANE: The editor of the journal faked the referees is when I objected. As

nonresponsive and move to strike.

MR. GOSBEE: I think the -- I just got chewed out in court -- the questioner is the only one who gets to complain about nonresponsive.

A. Okay. So here we say the two --

MS. MC GRANE: I have an objection.

MS. VOGLEWEDE: The objection is overruled. You may continue.

A. Here we see the two referees' reports. And both of them say actually the same thing. Both of them are very short. Four lines and three lines. They only say that the main result of the paper has already been published elsewhere, and they don't give any proof.

So later on the other editor from Germany who asked me to publish my paper in his journal giving credit to himself, he asked me before I got the letter rejecting my paper. So for me it means that he already knew that my letter, my paper is going to be rejected. And also the rejection is in such a way that the two referees say almost the same things in different roles. So for me it's clear that the editor, one editor, not the chief editor in chief, one editor, I know his name, he actually faked those two referees' reports. They were not written by living persons.

DR. MILTENBERGER: Can I ask a question for clarification? On 5, which is from Wefelscheid, that's where he asked you to include the footnote about Karzel?

THE WITNESS: Yes. That's correct.

DR. MILTENBERGER: Okay. And he's asking you to submit the paper to his journal?

THE WITNESS: To his journal.

DR. MILTENBERGER: And did you do it at that time?

THE WITNESS: Not at that time because at that time my original paper has not yet been rejected. But sooner or later --

DR. MILTENBERGER: That was my question. So you didn't submit it till this one was rejected.

THE WITNESS: I waited until the other one was rejected. And the other one told me that what Wefelscheid told me is correct. That the results are already known in the literature. But just not tell me where they are known.

DR. MILTENBERGER: Thank you.

Q. (Mr. Gosbee continuing.) Okay. Could you describe what Faculty Exhibit 7 is, please?

A. Yes. Here I sent to Wefelscheid a camera-ready copy of my paper that was rejected from

the other paper.

MR. GOSBEE: Okay. We offer Faculty No. 7.

MS. MC GRANE: Object. Relevance.

MS. VOGLEWEDE: Received.

Q. (Mr. Gosbee continuing.) Okay. Now explain what it's about.

A. And I'm telling you that I did exactly what he wanted me. That I gave a credit to whom he wanted me to give. And I thought that they were on my side.

And then he -- my discovery was so important for him to -- later I read a book about plagiarism and other falsification. So it is well known that if a plagiarism is occurred by a group one of the group will try to be friends of the victim in order to silence him. And that's exactly what was the job of Wefelscheid. To become my friend. And he was my friend. By the way, because of him I got a promotion to tenure and full professor because he gave me excellent referee reports. And so I did what he want of me. I gave him credit. And he gave me, in turn, some other service.

So that's more or less what -- "I'm sure we will reach an agreement to use the same term."

Yeah, the problem is that I was too naive. And they call it K-loop and I told them, no, this term cannot be sold. We must use a term that people will like it. K-loop, just K, because he admire Karzel. So I suggested other names like gyrogroups. And I did not understand why they don't want to accept my name. But at this time I believe that I'm one of them. And he made me to believe it because he was my friend. But only later when I read books about plagiarism that's a natural thing that every group will do. One of them will be a friend of the victim. And he was my friend.

Q. Okay. Now I direct your attention to Exhibit No. 8. And I ask you what that is. First of all, tell us what it is without going into detail. Just describe it.

A. This is just the copy, not of whole paper but of the relevant part of the paper, that I submitted that -- if you remember when I was asked to talk about Exhibit No. 1 I was asked, well, where is the paper. And my lawyer said it will come. So here it is the paper.

MR. GOSBEE: We offer Faculty 8.

MS. MC GRANE: No objection.

MS. VOGLEWEDE: Received.

Q. (Mr. Gosbee continuing.) And how long is

the paper in its original form if you recall?

A. No, I do not remember.

Q. You have two pages here.

A. Yeah. But, obviously, these are two pages only because the first one is important for the title. And the second one because it is the first time when the word K-loop appeared in the literature.

Q. And --

A. The word K-loop you can find on the other page. It's called page 169. And it is on the top of the third paragraph.

Q. And that's where it says the loop -- how about if I just ask you to read that one sentence.

A. Okay. "The loop of special relativity can be placed in the context of K-loops, studied by Kerby and Wefelscheid." So, in fact, someone can say how can I say that I was the first one to use K-loop. I myself published that K-loop was studied by Kerby and Wefelscheid. But later I found that this is the first time that the word K-loop has ever appeared in the literature.

So I was seduced to give credit to others. And that's -- I explain in details in my plagiarism complaint.

DR. MILTENBERGER: May I ask a question?

You cite in that same paragraph Karzel, Kerby and Wefelscheid, and you give one, two, three, four reference numbers. Are those real research papers that are published?

THE WITNESS: They're real, but there is no K-loop there. And they are in German which I don't read. So I only checked the reference that existed. But there's nothing -- the word K-loop never appeared before.

DR. MILTENBERGER: Did you find it questionable yourself that you were signing papers you never read and saying things that weren't -- that you didn't know to be true yourself?

THE WITNESS: No. Because I was talking with Wefelscheid. He is an expert in this area. So I learned it from him. And he guaranteed that the information he gives me is correct.

Another point is if it is a lie it is so easy to detect the lie that why should somebody lie. And that's a strange -- even today it's very easy to detect this lie. But this would mean that the whole top German geometers plagiarized my work. And nobody believes it's possible. So if I say it to anybody they say he must be mad. Somebody from NDSU, Fargo, North Dakota discovered something that all the top German

geometers would steal, it looks crazy. But on the other hand, it's easy to detect.

Here is the point. I claimed that the K-loop appeared in here for the first time. You cannot find anybody who give me counter example. So it's easy to see that I'm right. But people -- but it's not easy to find people who do the job to see that I'm right. And if I did it, I did it, indeed, it brings a lot of fame to NDSU. And NDSU does not want to get this fame. NDSU wants other things which I'll tell you when we talk about this.

Q. (Mr. Gosbee continuing.) And now you use that phrase K-loop in the citations to Kerby and Wefelscheid at Wefelscheid's suggestion; is that correct?

A. Yes.

Q. And you mentioned that you later learned that that suggestion was not accurate.

A. That's correct.

Q. And what change did you make in the way you presented this concept to accommodate that new knowledge?

A. When I discovered I changed the term. First I call it noncommutative group. But then I realized that if I do that way whenever I find a new

result I'll have to coin a new term. It was much easier to make one prefix, gyro, and then everything that I discovered which is parallel to a classical concept I just prefixed it by gyro. So it was much easier, instead of giving a name to the commutative law which I generalize associative group vector space, it became easy. Gyrogroup, gyrovector space, gyroassociative, gyrocommutative, gyrotriangular, gyroline. But it took me a while to get into this idea. So after K-loop I called it nonassociative group and then later gyrogroup.

Q. And what is the significance of the phrase gyro in this context?

A. Yeah. So in special relativity there is something very strange, and that's why many people say special relativity is incorrect. If this is parallel to this and this is parallel to this, if this is parallel to this and this is parallel to this, then also this is parallel to this. In special relativity Einstein had to distort the law of addition in order to accommodate with physics. But as a result something strange happened. This is parallel to this, this is parallel to this, yet this is not parallel to this. You won't believe it's possible, but that's why the geometry of relativity is not Euclidian geometry, it's

hyperbolic geometry. It's different. So I found the connection between relativity and a hyperbolic geometry. The connection was already known soon after Einstein invented special relativity.

But then came Minkowski, he said, no, it's not a good idea to use hyperbolic geometry and people started using Minkowski's spaces. Now I say, no, following my discovery we should go back to hyperbolic geometry. And that's why a lot of people object my group. So you see even politics there are even here. But this is academic dispute. And it's just legitimate that I argue with people who object my idea. It's like in other -- people think that mathematics is exact. It is exact, but then comes the problem should we study special relativity of Einstein by hyperbolic geometry or by Minkowski's space. Now all professors who have spent all their life studying this by Minkowski's space they would reject my book. Young Ph.D.s say, oh, that's a new idea. We like the new ideas. So there are fights everywhere.

And that's why I was surprised to realize that my legitimate dispute with Foguel suddenly exploded. I was talking just a storm in a teapot. Suddenly it became such a big -- I was surprised by

this. I couldn't believe that this has happened because disputes are everywhere.

DR. MILTENBERGER: So one final question. If references 8, 9, 18, and 19 are in German, but you haven't actually read them --

THE WITNESS: No. But I relied on Wefelscheid.

MS. VOGLEWEDE: Did you finish your question?

DR. MILTENBERGER: Yeah. I didn't finish the question. How would you know what's in them if they haven't studied the same phenomenon and published it, and that maybe Wefelscheid was correct when he said we've already found this if it's in German and you've not actually read it.

THE WITNESS: Once I suspected that K-loop never appeared before I took the German journals, and I cannot understand German, but I can see that the word K-loop does not appear there. Also in German they call it kau-loop instead of K-loop, but it's still the same thing.

DR. MILTENBERGER: Do you have any idea whether the concepts were published in there even if they didn't call it K-loops?

THE WITNESS: Oh, yes, of course. As I

told you, what I discovered is why Einstein addition is not associative.

DR. MILTENBERGER: The question was do you know if in these four references that are cited whether they studied the same concepts?

THE WITNESS: That's my answer. They studied something similar. But in plagiarism if what I did is very relevant to the one who plagiarized it, this enhance the plagiarism. For example, in a book on mathematics you write about the love life of the butterfly it's not a big plagiarism. Say that I stole something about the butterfly in mathematics books. But if I write a book on butterflies and I steal something of butterflies from another book then it is plagiarism. So I read somewhere that the amount of plagiarism -- there is no legal exact definition what is plagiarism because I read books about this. It's impossible. Nobody knows. People say that it's something that you don't know how to define, but if you see it you know it is here.

DR. MILTENBERGER: To the question of do you know what's published in these four references, you don't know what's in there.

THE WITNESS: No. Now I do know. They assumed that there is some structure which is

nonassociative. And they studied the structure. But they did not have any concrete example. Mathematicians can do it. You just imagine something that nobody has ever seen and study it. And I'm the first one who found a complete example. If you don't have a complete example you can study it, it's exactly -- I can compare it like the atom of the ancient Greeks. They just say if you keep dividing something eventually you will stop, you cannot divide it anymore. Let's call it atom. So they did the same. They said let's assume that there is something nonassociative, but they did not have any example. Once the editor of the journal showed that I found the example he understood exactly that this is something that those people in Germany, all of them, was waiting for this for 20 years. Since the 1960s they were working on this. And my example was very relevant to their work. So they actually did similar work except they did not have any example to see if something like this exists or does not exists.

DR. MILTENBERGER: So these references are similar work.

THE WITNESS: And very relevant. But no --

DR. MILTENBERGER: How did you find that out if you never read them?

THE WITNESS: But then I read other papers in English describing those papers. And I read reviews of those papers. And it took me also ten years. I did not do it in one day.

MS. VOGLEWEDE: We will adjourn for the day. We will reconvene Wednesday at 11 A.M. at the Crest Room in the Union.

(Whereupon, the hearing was adjourned at 6:04 P.M.)