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ADMINISTRATION

EXHIBIT NO.	OFFERED	RECEIVED
(None)		

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9	366	366
10	418	(not received)
12	420	421
13	388	388, 390
15	471	471
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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, Memorial Union, Fargo, North Dakota, on Wednesday, April 17th, 2002, commencing at the hour of 11:10 A.M.

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P R O C E E D I N G S

(Whereupon, the hearing continued at 11:10 A.M. as follows:)

MS. VOGLEWEDE: We are reconvening this morning in the matter of Dr. Abraham Ungar, and all members of the Standing Committee on Faculty Rights are here as are counsel for both parties.

Just a brief review of the time line today. We are going to be completed with the hearing by 2 P.M. as at least some members of the standing committee have to leave then. My proposal is that we start closing arguments no later than 1:25 P.M. I will allow cross-examination of -- is Dr. Ungar your only witness, Mr. Gosbee?

MR. GOSBEE: Yes, your Honor.

MS. VOGLEWEDE: Okay. We will start cross-examination by ten minutes to 1. I don't know how much time you want to allow for redirect. If you want to preserve that. I'm going to allow counsel for NDSU 30 minutes unless you request less for cross-examination.

MS. MC GRANE: Thirty minutes should be fine.

MR. GOSBEE: Well, I would like some time for -- let's see. We've backed up to 1:25 to 12:55.

MS. MC GRANE: Actually she said 12:50. So I think that will leave....

MR. GOSBEE: But if I need to reserve time for redirect it's going to come after her cross.

MS. VOGLEWEDE: Right. And we're going to need time for a break. At least a ten to 15-minute break somewhere around 12:30 probably.

MR. GOSBEE: Sounds like I have to be done with my direct by 12:30?

MS. VOGLEWEDE: That would be good.

MR. GOSBEE: Okay. And I would like the record to reflect our standing objection to the time limitations.

MS. VOGLEWEDE: The record will so note.

When we adjourned on Monday you were in the process of your direct examination of Dr. Ungar, and you may continue, Mr. Gosbee.

MR. GOSBEE: Thank you, your Honor.

MS. VOGLEWEDE: And please make an effort, Dr. Ungar, to speak up so that all members of the committee can hear you down here.

THE WITNESS: Thank you. Is it okay like this?

MS. VOGLEWEDE: Yes.

THE WITNESS: Thank you.

MR. GOSBEE: If any committee member can't hear me or Dr. Ungar please, raise your hand or do something because we definitely want you to hear everything.

EXAMINATION (Cont'd)

BY MR. GOSBEE:

Q. Dr. Ungar, are you familiar with the manual of the Committee and Professional Ethics of the American Mathematical Society?

A. Yes.

Q. And what's your knowledge of that manual?

A. I know that this tells you what to do in case of plagiarism, for instance. That's the case which interests me.

Q. And I ask you to turn to Faculty Exhibit No. 9 in the red book. And I ask you to identify Faculty Exhibit No. 9.

A. It is a document that I took from the Website of the American Mathematical Society.

Q. And are there any notes of yours on page 7 of this document?

A. Not here.

Q. On our exhibits, on page 7?

A. On the exhibit, yes, I drew the attention of Dean White to example 4 on page 7. And I made it in

red to make sure -- to clarify my drawing attention to example 4.

MR. GOSBEE: And we offer Exhibit Faculty 9.

MS. MC GRANE: Objection. Lack of foundation.

MS. VOGLEWEDE: Mr. Gosbee, is the text the same as for Administration Exhibit 13? But with the addition of Dr. Ungar's notes?

MR. GOSBEE: Yes, your honor.

MS. VOGLEWEDE: It will be received.

Q. (Mr. Gosbee continuing.) I call your attention to page 7 of Exhibit 9. And would you explain to the committee, reading the example, if necessary reading all of the example, for why that applies to your situation with the Karzel group?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

A. If you're substituting the example Y for Dr. Foguel, Z for Karzel and his school, complainant for Ungar, then it is exactly the case we are dealing with. It says, "A complainant said that a result attributed in Y's paper to the Fields medalist," somebody very famous, "Z was actually proved first by the complainant. Reference provided. There is a human

tendency in scientific papers to establish or confirm authority by citing famous authors, but this is not an excuse for not making the correct attributions. The complainant should make sure he informs the offending author. Depending on the judgments of the significance of the oversight, a correction can be sent to the journal. If the response is not satisfactory then a formal complaint can be made to COPE," COPE is the Committee of the American Mathematical Society for complaining about plagiarism, also part of plagiarism, "and it will be examined."

Q. (Mr. Gosbee continuing.) And are you claiming that Dr. Foguel committed plagiarism or just supported it?

A. He did not commit plagiarism. He supports the plagiarism of Karzel.

Q. And explain -- or I call your attention to, "The complainant should make sure he informs the offending author." And who is who in that particular sentence?

A. In this case, first of all, Professor Foguel I should inform him that such an example exists. And I would suggest him to follow the rules of the American Mathematical Society about ethical behavior.

Q. And if I could call your attention to Administration Exhibit 8 in the blue book. Exhibit 8. Was that your attempt at complying with the sentence you just quoted from the manual?

A. Yes.

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

Q. And --

MS. VOGLEWEDE: You may answer.

A. Yes.

Q. Tell us why you sent him this letter.

A. I asked him to -- he wrote Bruck loops in parentheses equivalently K-loops. I asked him to write Bruck loops, that's fair enough, in parentheses equivalently gyrocommutative gyrogroups. The terms that we use in our papers until that time.

Q. And that is which item in Administration Exhibit 8?

A. Yes, it is.

Q. Which item?

A. It is item 2. Which is related to item 1.

Q. Double check what item 3 is.

A. Yes. It is item 3. Item 2 says please replace -- I recommend that you replace the phrase by

the new phrase, item 3, Bruck loops equivalently gyrocommutative gyrogroup and give references including his own papers. Reference to Ungar '97 and to Foguel/Ungar, 2000, and to Foguel/Ungar, 2001. And also to other papers which do the same.

Q. All right. And what was Dr. Foguel's reaction to Administration Exhibit 8?

A. He did not make any indication at this time that he is not my collaborator anymore. So he just presented that he does not understand what I'm talking about.

Q. And did you attempt to come up with a slightly different solution to the problem?

A. Yes, I did.

Q. And I call your attention to Administration Exhibit 9 in the blue books. And call your attention to paragraph 2 in that exhibit. And ask you to explain how that's different from paragraph 3 in Exhibit 8.

A. Since I understood vaguely that he insist of the use K-loop, then I said, okay, use K-loop. Just add the remark after that. So I asked him to replace the phrase Bruck loop in parentheses equivalently K-loops by the phrase Bruck loops equivalently K-loops that first appeared in print in Ungar 1989.

Equivalently gyrogroup -- gyrocommutative gyrogroup. So he can use the term K-loop as long as he gives the full truth, not half of the truth.

Q. And so is it correct, then, that you do not oppose his use of the phrase K-loop?

A. Certainly. I did not oppose it.

Q. And if I make this statement, the use of K-loop is inaccurate unless mention is made that the first use of that phrase in print was in Ungar '89, do you agree or disagree that that is a statement of your case?

A. I do agree. That's exactly what I insist.

MR. GOSBEE: May I write that on the board so it would be helpful for the committee to see it?

MS. VOGLEWEDE: Certainly.

MR. GOSBEE: Let's hope there's something to write with.

DR. MILTENBERGER: While he's writing, let me ask you a question, Dr. Ungar. Did you then make a formal complaint with COPE as it states you should here?

THE WITNESS: Yes, I did. And may I ask my lawyer if it is in here. I admit my memory is not

good enough to remember all these. My lawyer remembers everything. Is my complaint to the American Mathematical Society somewhere here? Or a mention of the complaint?

MS. MC GRANE: It is.

THE WITNESS: For 2000.

MR. GOSBEE: Her memory is better than mine.

DR. MILTENBERGER: So we'll be getting to that.

THE WITNESS: I believe we will go to here, but I cannot promise. You know, I'm confused and I do not remember everything. Although, we went over this with my lawyer several times.

Q. (Mr. Gosbee continuing.) I call your attention to what I just wrote on the board, Dr. Ungar. Is that your position?

A. Yes, it is.

Q. And how many people have you tried to explain this position to?

A. I explained my position to the organizers of the conference on loop theory in 1999. It was the first international conference on loop theory ever conducted. Because loop theory is a young theory began only in the 1920s. So it was the first conference, and

I told the organizers that here all the top German geometers say that K-loop came into the literature in the 1960s. They don't say if it came in January 1960 or December 1969. They say 1960s. No evidence, no accurate dates. So I told them that it is a lie. It appears for the first time in my paper 20 or 30 years later in 1989. It's a big difference 20 or 30 years later. I could not figure out if it's 20 years or 30 years. It is 30 years since 1960 and 20 years since 1969. They just say in the 1960s.

So I suggested to them to force every author who writes anything about K-loops to add the remark that K-loop appeared in print for the first time in my paper in 1989. Unless the author can give a counter example. And then the organizers themselves were surprised because it looks ridiculous. I look like lunatic if I say somebody from unknown university -- who knew in Europe about Fargo, North Dakota. Somebody from Fargo, North Dakota claims that all the top German geometers -- and when I say all I mean literally all of them. They show strong solidarity. They help each other. Here in Fargo there are only two Israelis in the fight. In Germany there are hundreds of Germans and they all show strong solidarity. So I told them all the top German

geometers and the first generation, my generation, and the second generation, their students, my generation -- the second generation is the old of Dr. Foguel. They all cooperate and say the same thing. K-loops appeared in the 1960s. So the organizers, they were surprised to see that I was right. Nobody could give a counter example. And they made the rule. If you talk about K-loop, you cannot give a counter example, say the truth. First time it appeared in 1989 in my paper.

Now their honorary president of this conference was Pflugfelder that we will hear about this later again. And Pflugfelder, that's the way he knew about my complaint about plagiarism. She even told me personally she heard other complaint about Karzel. It is his habit to steal ideas without giving --

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Mr. Gosbee, would you proceed on a question and answer basis, please.

MR. GOSBEE: Okay.

Q. (Mr. Gosbee continuing.) Did you -- there's been some testimony of a meeting you had with Dean White in April of 2001. Do you recall that meeting?

A. Yes, I do.

Q. And do you recall trying to present some of this evidence in favor of your position to Dean White?

A. Yes. And to support my position I presented the example 4 from page number 7.

Q. And was he at all receptive to what you were trying to present?

A. Not at all. He was rude towards me. Which I understand. He was rude towards me. Which I understand. Somebody from unknown university who claims that all the top German geometers stole his main work, looks like lunatic. It's not my fault, but that's how he considered me.

Q. Let's try to do a more formal question and answer basis. Let's see here. If you could turn to Exhibit 19 in the red books. And could you describe briefly what Exhibit 19 is.

A. This is a document I work hard and I prepare to show to Dean White and to leave with him a copy.

Q. And you offered to leave him a copy; is that correct?

A. Yes.

Q. And did he accept your offer?

A. I doubt if he kept a copy. But we went

together page by page.

Q. Did it appear that he was paying attention to you?

A. I tried to attract his attention. I'm not sure I was successful.

MR. GOSBEE: We offer Faculty 19.

MS. MC GRANE: No objection.

MS. VOGLEWEDE: Received.

Q. (Mr. Gosbee continuing.) Have you ever heard of an author named Sexl, S-E-X-L, and an author named Urbantke, U-R-B-A-N, as in Nancy, T-K, as in kilo, E?

A. Yes, I did.

Q. And who are they?

A. They are two authors, one of them died 14 years ago, who wrote a -- the best book about special relativity. It was available for many years only in German. But just a year ago there was a new edition which is revised and translated into English. So now the book became even more famous.

Q. And did you try to show some of the pages from any of these -- either of these versions to doctor -- or to Dean White?

A. Yes.

Q. And I call your attention to, within

Exhibit 19, the page numbered 4, has number 4 at the bottom. I'm sorry, number 5 at the bottom. My mistake. And what's the significance of page number 4?

A. Number 5?

Q. I'm sorry, number 5.

A. It is that I'm showing the '99 edition which is the edition before the last edition still in German. And this edition mentions my theory under the name of Karzel. My theory is called Karzel-loop.

Q. All right. And turn to the next page of this exhibit. I notice it has 5.1 at the top. Top right part of the page. What's -- why did you number it 5.1?

A. It is part of another exhibit. Because it comes after page -- page 5 came from my computer. So my computer give automatically numbers. And when I -- and pages which come after page 5 are numbered 5.1, 5.2, and so on. Pages that I added after number 6 came -- count 6.1, 6.2, and so on.

Q. So basically you make a statement of a position in a page like number 5 and then your evidence and support of it is numbered 5.1 and 5.2, and so on; is that right?

A. That's correct.

Q. And what is 5.1?

A. 5.1 is the title of the German edition which I copied from this book. That's a German edition, that's an English edition.

Q. We'll get to the English one in just a second. We're focusing on the German one now. And the Exhibit 5.1 is from this book?

A. From this book. I just took it from here. Because I did not want to lose the book. The book is not an exhibit, but a copy from the book.

Q. All right. Now if I could call your attention to what you had marked 5.2. And equation 6.2.9 in the left-hand page. On the left-hand. 140 as numbered in the textbook, and then there's an equation 6.2.9. Do you see that? Equation 6.2.9. All right. And what's the significance -- or where does Karzel-loop appear?

A. In the line number three below equation number 6.2.9 you see they wrote "Karzel-loop." And now you don't understand the German, but I can tell you that my work is described here. But the credit is given to Karzel. I called it K-loop, but he even went farther. He did not call it K-loop because some people might not know that K is for Karzel so he made it explicit. Karzel-loop.

Q. And that equation 6.2.9, do you recognize

it even if none of the rest of us do?

A. Yes. I do recognize it.

Q. And is that some of your work or some of your concept?

A. I cannot say on a single equation. I can only tell about the whole concept.

Q. I see. Let's see. This book was printed in German in 1992, correct?

A. Yes.

Q. And was it later revised in a different language?

A. That's correct. It later was revised and translated into English.

Q. And I call your attention to the next page in this exhibit which is marked 6.1. And what is this page here?

A. This is the copy from the English translation of the book which is not just a translation, it's also a revision of the book. It's a new edition which was revised and translated.

Q. And according to the title page, who, in fact, translated from the German?

A. Yes. We can read in the prefix of the book that the first author actually died 14 years ago. So actually the one who really revised is not the first

author but the second name author, Helmuth Urbantke.

Q. And he translated from German according to the title page; is that correct?

A. Yes.

Q. All right. And now going to what you would mark 6.2 in the presentation to Dr. Dean White, I again call your attention to 6.2.9, the equation. Which is page 141 of the English textbook. Would you agree with that. Okay. We're on page 141 and equation 6.2.9; is that correct?

A. Yes. It is -- equation 6.2.9 in the English translation is exactly the same as in the German translation. The mathematic formulas are the same in both languages.

Q. All right. And I call your attention to the three lines immediately following that equation. And ask you to explain what change appears there compared to what had been in the 1992 edition in German.

A. The name of Karzel has totally disappeared. No Karzel anymore.

Q. And what has it been replaced with?

A. It has been replaced by Ungar and gyrocommutative gyrogroup.

Q. And I call your attention to --

MS. VOGLEWEDE: Can you point out, Counsel, specifically where that is?

MR. GOSBEE: Let's see here.

A. Can I -- here.

MR. GOSBEE: Yeah, if you want because you're getting it faster than I am.

THE WITNESS: May I read it? It's on the bottom of page 141. It's starting, "In 1988."

MS. VOGLEWEDE: I see that.

Q. (Mr. Gosbee continuing.) What's the significance, by the way, of the smaller print in this textbook?

A. Okay. In this textbook the material that the reader wants to read physics is in large letters. And the historical notes are in small letters. So the reader knows that if he wants to study on first reading usually he should skip the history notes. And only once he's familiar with the physics, he would like to know about the history, then he can read the small letters.

Q. All right. And what does Professor Urbantke say about the history of this terminology? If you want to read that starting, "The algebraic structure just presented."

A. Okay. "The algebraic structure just

presented, a groupoid whose composition satisfies equations," such and such, "thus being a loop -- " he says a loop, he does not say any more Karzel-loop, " -- has an interesting history." And then he sends the reader to footnote number two.

Footnote number two says, "We are indepted to Kuusk," he is from Russia, "Pflugfelder," Pflugfelder was the honorary president of the conference in Prague, "A.A. Ungar, University of North Dakota, and H. Wefelscheid."

Q. Obviously, he mistook where you were, didn't he?

A. Pardon me?

Q. He made a mistake about where you were, didn't he?

A. Which one?

Q. Well, are you at University of North Dakota?

A. Yes, that's a mistake.

Q. Okay.

A. I told him about the mistake. In the next edition he will correct it. Now back to the text?

Q. Yes, please.

MR. GOSBEE: Does the hearing officer

object? This is important enough I think to have him read it in.

MS. VOGLEWEDE: That's fine.

MR. GOSBEE: Okay.

A. So Urbantke say here's this loop, no more Karzel-loop, just loop, "Has an interesting history of multiple discovery, with ensuing multiple terminology." Multiple terminology is Bruck loop, K-loop, gyrocommutative gyrogroup.

"In 1988 Ungar abstracted the properties of the above composition and automorphisms from the example of the Lorentz group." Lorentz group is something in the special theory of relativity of Einstein. "Thus discovering the abstract structure together with an example. In fact, well hidden behind the Iron Curtain, Nesterov and co-workers in the Soviet Union had studied, since 1986, the same quasigroup." It was not group, but something similar so it says quasigroup. And they studied it in Report No. 400 in some Institute of Physics in the Soviet Academy of Sciences somewhere in Russia.

This shows that he did really extensive research of the history. I was the one who told him that please do a research to improve the quality of your book. Because Karzel-loop is deceptive term. And

if readers see one phrase unreliable in your book they might think that the whole of the book is not reliable. And he loves his book.

MS. VOGLEWEDE: The record should reflect that was not all a quote. Excuse me, Dr. Ungar. Just to show that that was not all a quotation from this textbook.

THE WITNESS: I would like to follow your instructions. Thank you.

MS. VOGLEWEDE: That was his own explanation and addition, correct, Counsel?

MR. GOSBEE: Yes, your Honor.

THE WITNESS: Should I continue?

Q. (Mr. Gosbee continuing.) Yes, please. "On the other hand, 20 years..."

A. "On the other hand, 20 years before Ungar, H. Karzel had postulated a version of the same abstract structure as integrated into a richer one with two compositions, called near near-domain, where the automorphisms were to be realized by the left multiplication with suitable elements of near-domain. Despite the endeavors of some researchers, among them Wefelscheid, no concrete example of a near-domain was found to demonstrate the consistency of the axioms postulated, and more exist today. This led them to

giving up the second composition; but even then no example was forthcoming until Ungar's discovery. At the suggestion of Wefelscheid, Ungar also introduced the term K-loop as an alternative to his complete weakly associative-commutative groupoid structure in his first publications on the subject. Later he developed a more systematic, descriptive terminology, according to which the structure is called gyrocommutative gyrogroup alluding to the Thomas gyration (Ungar). On the other hand, Wefelscheid and co-workers used some intermediate nomenclature while checking the independence of axioms, to come up with their final definition of K-loop around 1993."

Q. Okay. Thank you. Now there is one sentence in here that said, "But even then, no example was forthcoming until Ungar's discovery." What does that sentence mean to you?

A. This means exactly what is the connection between the atom of the ancient Greeks and the atom of modern nuclear physics. They -- the ancient Greeks hypothesized that if you take any object, keep dividing it two times --

Q. Let's focus more closely on what --

A. Okay.

Q. Your understanding of what it means as to

whether you came up with it first.

A. Yeah. I came up with the first time with the theory and example which I learned from physics. Physics told me how to develop the theory. They had something similar, but they did not have examples. If you don't have examples you don't know what to do with these. You can play with these like the ancient Greeks played with the atom, but you don't know what it is.

Q. Am I fair in concluding that Urbantke attributes this to you?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) Reading that sentence, to whom does Urbantke attribute this discovery?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained.

MR. GOSBEE: I think she should be required to state her grounds for the objection.

MS. VOGLEWEDE: Counsel, do you want to state them for the record?

MS. MC GRANE: Lack of foundation. Relevance. Calls for a conclusion. Calls for speculation.

Q. (Mr. Gosbee continuing.) Who wrote the

book?

A. Urbantke.

Q. Who wrote this historical notation?

A. Urbantke after extensive exploration.

MS. VOGLEWEDE: Counsel, you can ask him for his interpretation of this text.

Q. Okay. What is your interpretation of the sentence that states, "But even then, no example was forthcoming until Ungar's discovery"?

A. My interpretation is that Urbantke attributes to me the discovery of the K-loop because it was something only if it comes with concrete examples. If there are no examples it's like the atom of the ancient Greeks.

Q. Okay. And now earlier you were testifying about an institute in Prague; is that correct?

A. Yes.

Q. And if I've kept the characters straight, who was the person in charge of the institute in Prague?

A. You mean in the conference?

Q. Yes.

A. A. Drapal. Ales Drapal.

Q. And what was --

A. Pflugfelder was the honorary president.

Q. Okay. And you had mentioned something about the standard notation. What do you mean by that? Or standard remark. I'm sorry.

A. Standard remark. I mean that following the conference in Prague, 1999, it became standard that some authors do use that, if they use the term K-loop they had the remark that for the first time it appeared in print in my paper in 1989. It became standard.

Q. Turning to the page that's number 9 at the bottom of Exhibit 19. Is this a point that you tried to make to Dean White?

A. Yes.

Q. And is that what we were just talking about, the standard remark?

A. Yes.

Q. All right. And the reference to Exhibit 13. So if we go over to our Exhibit 13. And tell us, first of all, tell us what Exhibit 13 is. Why did you present this to Dr. White?

A. It is a copy from the paper published in the proceeding of the conference in Prague '99. Which followed my request.

Q. Is it one paper -- or parts of one paper?

A. Several papers, yes. I don't remember

how....

Q. And I notice the number is 9.2 and so on?

A. Yes.

Q. Is that that same numbering system you just described before?

A. Yes.

MR. GOSBEE: Okay. We offer Faculty No. 13.

MS. MC GRANE: Objection. Relevance. Lack of foundation.

MS. VOGLEWEDE: Were those contained within Exhibit 19?

MR. GOSBEE: Yes, they were. And then when I --

MS. VOGLEWEDE: Are they in Exhibit 19 now?

MR. GOSBEE: No, they are not. Rather than waste extra pieces of paper, since we had already brought it as 13, I just made the reference in 19.

MS. VOGLEWEDE: But they were part of the materials that were presented to Dean White?

MR. GOSBEE: Were they? Exhibit 13, was that presented to Dean White? This material here?

THE WITNESS: I think it was.

MS. VOGLEWEDE: Received.

THE WITNESS: I believe it was.

MS. MC GRANE: We'd like to then add an objection to Exhibit 19. If there were other materials removed we'd like to know what materials were removed.

MR. GOSBEE: Probably be easier if I just say they're all referenced in -- rather than take up extra copies -- let's see here.

MS. VOGLEWEDE: Counsel, my question is the exhibit is called "A Document Submitted to Dean White." Is Exhibit 19 that document? Or is it selected portions of that document?

MR. GOSBEE: It is selected portions in the sense that other parts are elsewhere in the exhibits. But, for example, if you go to -- I guess that's the first time it occurs.

THE WITNESS: In this part of what I gave to Dean White.

MR. GOSBEE: Is this part of what you gave to Dean White?

THE WITNESS: Yes.

MS. VOGLEWEDE: I'm sorry, I didn't hear your answer, Doctor.

MR. GOSBEE: It's part of what you gave to Dean White; is that correct?

THE WITNESS: Yes, it is.

MR. GOSBEE: Okay. And like page -- computer numbered page 10 of 19, that refers to Exhibit 17. Because that was a separate exhibit we had offered -- or we've created. But maybe I shouldn't have split them up into separate exhibits, but....

MS. VOGLEWEDE: Does the entirety of the materials that you presented to Dean White appear somewhere in these exhibits?

MR. GOSBEE: Did you hear her question?

THE WITNESS: Yes. I don't remember. What do you think? I think that you split this in two.

MR. GOSBEE: But everything is in here someplace.

THE WITNESS: Everything is in here, but not together.

MS. VOGLEWEDE: It will be received. 13.

Q. (Mr. Gosbee continuing.) Okay. So 13 deals with the standard remarks; is that correct?

A. Yes.

Q. All right. The first paper you presented, who's the author of that?

A. The author is Kiechle which was also mentioned by Dr. Foguel in his evidence. It's the same

person.

Q. Turning to the next page of that exhibit, you've marked something there, right?

A. Yes.

Q. The first published source.

A. Yeah. Should I say something?

Q. Yes. Tell us what that means.

A. Okay. Here you see a contradiction. Kiechle is a German geometer and he is on the side of Karzel. So originally he wrote in the paper what we see here. The first published source where the name K-loop has been used is Ungar. So he was forced to do it. On --

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained.

MS. MC GRANE: Move to strike.

A. So Kiechle was forced to do it by the organizers of the conference.

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) Okay. Is it your understanding that this citation was as a result of your request?

A. Certainly is.

Q. Okay. Don't use the word forced. All

right. Was there any more you wanted to explain about that sentence?

A. No. That's it. He put a sentence.

Q. Okay. And the next page, that just shows that citation 33 is your -- go back one page. Stop there. Okay. Let's see, it's page 322 as printed in the paper. And what is citation number 33?

A. Citation number 33 is my paper from 1989.

Q. And that's the one that --

A. That's the one I showed yesterday.

Q. But it's also the one that was just referred to -- that we just mentioned a couple seconds ago?

A. Yes. That's where the K-loop appeared in print for the first time.

Q. Now let's go to the one you had marked 9.5. And who wrote that paper?

A. Another participant of the conference. His name is Michael Kinyon.

Q. And the page you had marked 9.6, what -- where did he make the so-called standard remark?

A. Yeah. He was asked to --

MS. MC GRANE: Objection.

Q. All right. Just point out where he made

the standard remark.

A. On line number four from the bottom.

Q. "The first appearance of the term K-loop in the literature was in a paper of Ungar."

A. Yes.

Q. Citation 27?

A. 27.

Q. And if you go to -- well, you go to 9.8 and then one more page, citation 37 -- I'm sorry, 27, who was that?

A. Citation number 27 is, again, a paper of Ungar. Date 1989. Same paper.

Q. Okay. And turning you to the one you have marked 9.10. What is that? Is this a paper or something else?

A. This is a review of a paper of Kreuzer. Kreuzer is another young, very promising top German geometer. And, as all of them, they support each other. So he also supported term K-loop, and he said in his paper like everyone else --

MS. MC GRANE: Objection.

MR. GOSBEE: I don't see what's objectional about that.

MS. MC GRANE: Well, he's saying --

MS. VOGLEWEDE: Would the court reporter

read back that answer.

THE COURT REPORTER: "This is a review of a paper of Kreuzer. Kreuzer is another young, very promising top German geometer. And, as all of them, they support each other. So he also supported term K-loop, and he said in his paper like everyone else -- "

MS. MC GRANE: How can Professor Ungar purport to know what all of the German geometers think, support. We're getting a little far afield here.

MS. VOGLEWEDE: I think he's referring to a statement in the paper. It will be allowed if that's what you're referring to.

Q. (Mr. Gosbee continuing.) Okay. Focus on what was in the paper here.

A. Thank you.

Q. Or on the review. Without regard to Kreuzer's history and role and the politics of this situation, what did he, in fact, use?

A. Okay. Kreuzer said that the term K-loop appeared in the 1960s. He did not mention exact date. So the review of Pflugfelder, who was the honorary president of the conference, first international conference on loop theory, she added -- she did not want to drag herself into a court case so she said,

well, Karzel introduced it in the 1960s. But for the first time it appeared in print in Ungar's paper in 1989.

MS. MC GRANE: And I'm going to object again and move to strike the nonrelevant portion of that answer.

MS. VOGLEWEDE: The committee will disregard the content of the answer that went beyond the specific question about what terminology was used.

Q. (Mr. Gosbee continuing.) You can't go into the side history.

Okay. Now probably I should have asked this at the onset. Who wrote this review if we look at the next page?

A. Pflugfelder wrote this review.

Q. And Pflugfelder used what you call the standard terminology; is that correct?

A. That's correct.

Q. All right.

DR. MILTENBERGER: May I ask a question? On 9.10 where you were reading at the bottom of that first full paragraph it says, "Whatever its name, the structure itself is much too interesting and its applications are too promising to be obscured by disagreements about nomenclature." What does that

statement mean to you?

THE WITNESS: To me -- I know more than that because I talked to her. She was very sad that people in the theory of loop theory, it's a very young theory, are fighting against each other. She was sad. And she said it's very sad that they don't reach agreement on the common notation. Why should we use three names. Bruck loop, K-loop, gyrocommutative gyrogroups. Why can't we reach agreement to use one name.

DR. MILTENBERGER: Okay.

MS. VOGLEWEDE: Counsel, I'd like to take a five-minute break. I want to speak very briefly with the committee and then with counsel. This will be a good chance for people to grab sandwiches if you want.

(Whereupon, a break was taken.)

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

MR. GOSBEE: Thank you.

Q. (Mr. Gosbee continuing.) What impact would -- strike that.

If the mathematical community recognizes you as the author of gyrocommutative gyrogroups, what impact would that have on NDSU?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Would you ask the question again? I didn't hear the first part of the question.

Q. If the mathematical community recognizes you as the discoverer or author of the concept of gyrocommutative gyrogroups, what impact would that have on NDSU?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: I'll allow it. Go ahead.

Q. (Mr. Gosbee continuing.) Go ahead and answer.

A. The international community already recognizes that I'm the author. And the fame already is coming to NDSU. I was invited to participate in three conferences in Europe. In one of them I'm part of the organizers. You can see on the Internet.

Q. Okay. So it would have brought fame to the university.

A. Certainly.

Q. Now let's see here. Do you recall Vice-President Schnell's testimony yesterday about your evaluations -- and I'm going to change the subject completely for a minute -- your evaluations for the spring semester of 2001?

A. Yes.

Q. And he said they were not very good; is that correct?

A. That's correct.

Q. Have you -- in the fall semester of 2001 did you do the normal evaluations per university policy?

A. Yes.

Q. And do you know what the results were for the fall of 2001?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Counsel, there were -- there was some testimony that came in yesterday without objection by you, Mr. Gosbee, on the evaluations. I don't see that that is an issue before this committee. Can you enlighten me as to the relevance?

MR. GOSBEE: Yeah. Because I want to make an offer of proof. He is going to testify that --

MS. VOGLEWEDE: Before you do that, what's the relevance to the issue before the committee?

MR. GOSBEE: It goes to why there was the dispute over the evaluation process that is one of the issues raised in the letter of reprimand.

MS. VOGLEWEDE: But you're talking about evaluations that postdated that, correct?

MR. GOSBEE: That's true.

MS. VOGLEWEDE: I'll allow discussion as necessary to go to the issue that's before the committee.

MR. GOSBEE: All right. Well, I guess --

MS. VOGLEWEDE: Which essentially goes back to the evaluations that were under consideration at the time the letter of reprimand was issued.

MR. GOSBEE: I guess if I get too far afield you'll rein me in.

Q. (Mr. Gosbee continuing.) How did your evaluations for the fall compare to those for the spring?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained.

MR. GOSBEE: It's relevant because it's going to show -- or the dispute over the evaluations was because he thought the process was flawed.

MS. VOGLEWEDE: Then you should ask him about that.

Q. (Mr. Gosbee continuing.) All right. Going back to the issue over -- all right. Let's go back a little bit further. If you could turn to

Exhibit 16 in the blue books.

MS. VOGLEWEDE: For the record, Counsel, we don't have blue books.

Q. Oh, I'm sorry. 16 in the administration -- yeah, our blue book. Administration Exhibit 16. That is the letter from Chairman Comez talking about the evaluations; is that correct?

A. Yes, it is correct.

Q. Okay. I notice, by the way, he says that it violated long-respected traditions of the department. Has anybody ever told you what the long-respected traditions of the department are?

A. No.

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

Q. (Mr. Gosbee continuing.) Do you know what they are?

A. No.

Q. And why weren't those turned in immediately to dean -- or to Chairman Comez?

A. Can you explain the question?

Q. Why weren't -- okay. You eventually brought the evaluations to Vice-President Schnell; is that correct?

A. Yes.

Q. Why did you get involved in the process like that?

A. Originally --

Q. Were you trying to prove something?

A. Yes. I wanted to bring it directly to Dean White rather than to Chairman Comez because he was harassing me already. And that's what I wanted to show Dean White how the process of harassment of Chairman Comez against me was going on for about several years.

Q. And were you trying to prove something about the evaluation process itself?

A. Yes.

Q. What were you trying to prove about the evaluation process itself?

A. I wanted to prove that the students actually do not evaluate my teaching, they evaluate the grades I give them.

Q. All right.

A. If I give them good grades, they give me high evaluation. If I give them bad grades, they give me bad evaluations. Nothing to do with teaching.

Q. And, as it's been testified, you had poor evaluations for the spring of 2001?

A. Yes.

Q. Did you conduct an experiment related to

that issue?

A. Yes, I did.

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

A. I did conduct an experiment to see if my assumption is correct.

Q. (Mr. Gosbee continuing.) And how did you -- what experiment did you conduct?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

A. Instead of giving the students the final grades after the class evaluations, I gave them the final grades before the class evaluations. And then the class evaluations went up. That's how I got good class evaluations. Same teaching.

DR. MILTENBERGER: Can I ask a question? In this experiment did you have appropriate control groups and did you look at other possible variables besides the grades coming before or after? In an experiment one would do all those things. And I wonder if you did that in this experiment.

THE WITNESS: I don't have the manpower to do a scientific experiment, but it was clear to me that the students are afraid of my teaching because I emphasize understanding. Other teachers emphasize if

you memorize without understanding it's fine. And the difference is huge. If a student writes A B, he forgot to write equality, he had to write A equals B. And what's A B leaving me to understand that he means equality. So other teachers say, well, quality is tiny, little thing. They gave them full credit. I say, no, if you miss the equality sign, something that students learn at the age of seven, and my students do it now at the university, they don't understand something. So I like to teach them. And some of them learn, some of them don't want to learn. And the complaint, one student complained I've never seen -- I took several classes, mathematics classes at NDSU, and I've never seen a teacher who took ten percent of the grade just for not writing equal signs. So the --

MS. VOGLEWEDE: Dr. Ungar, I think that gets beyond the scope of this question.

MR. GOSBEE: Yeah, we're running out of time here. Let's try to focus.

DR. LAREW: I have a question. Did you administer the evaluations yourself?

THE WITNESS: No. I did exactly the rules. Our rules is not to bring a graduate student, just appoint one of the students -- this is the rule which nobody wrote, nobody told me, but I did it all

the time. And I did not -- nobody told me that I shouldn't do it.

DR. LAREW: So you gave it over to a student. You were not present during the evaluation process?

THE WITNESS: I was not present.

MS. VOGLEWEDE: Are we talking about which evaluation? The one --

DR. LAREW: Spring 2001. And my other question is did you review the evaluations prior to giving them to Dr. Schnell?

THE WITNESS: Yes. In the very last minute before I gave it to him I looked at them.

DR. MILTENBERGER: So the student who did the evaluations collected them and gave them to you.

THE WITNESS: No. We are talking about two different evaluations.

DR. MILTENBERGER: In the spring semester for which you got reprimanded.

THE WITNESS: Yes.

DR. MILTENBERGER: A student delivered the evaluations.

THE WITNESS: That's correct.

DR. MILTENBERGER: In your absence.

THE WITNESS: Yes.

DR. MILTENBERGER: Collected the evaluations in your absence.

THE WITNESS: That's correct.

DR. MILTENBERGER: And did what with them?

THE WITNESS: And then he brought it to the department.

DR. MILTENBERGER: And gave it to whom?

THE WITNESS: That's in the entry of the department. Watching my mail in my mailbox. And the secretary was not there in the front room. So here is a student say, oh, hello, hello. So I said why don't you give it to me, I'll give it to the secretary.

DR. MILTENBERGER: So they came to you before they were given to the secretary.

THE WITNESS: The secretary was not there so he gave it to me to give it to the -- he understood that I'm going to give it to the secretary.

DR. MILTENBERGER: So they were in your possession.

THE WITNESS: Yes. One of them. I'm talking about the first class. I have two classes.

DR. MILTENBERGER: The spring in question.

THE WITNESS: Yeah. But it is about --

DR. LAREW: So one class you had an experiment with, the other you did not.

THE WITNESS: The experiment was much later. So that's why I wanted to make sure that we are talking about two different evaluations.

DR. MILTENBERGER: I'm talking about the spring for which you received the letter of reprimand.

THE WITNESS: That's the one which I did not take to Comez. I wanted to take it directly to Dean White.

DR. MILTENBERGER: You kept them. They were given to you by the student.

THE WITNESS: Yeah.

DR. MILTENBERGER: Thank you. That's all.

THE WITNESS: I intended to give it to the secretary.

Q. (Mr. Gosbee continuing.) Now having received the bad evaluations in the spring, you did this experiment, which may or may not have been a formal scientific experiment, but at least it was something to help you as a teaching tool, right?

A. Yes.

Q. And what change did you make? You described this -- what policy did you have for the

final exam?

MS. MC GRANE: I'm going to object on relevance.

MS. VOGLEWEDE: Didn't you ask about this earlier, Counsel?

MR. GOSBEE: No. Because I don't think he's explained his -- the grading policy he applied in the final exam. I think this makes a lot of difference.

MS. VOGLEWEDE: All right.

Q. (Mr. Gosbee continuing.) What did you tell your students about the grading policy for the final exam?

A. Since I gave them the final grades before the class evaluation it means that I give them before the final exam. So I told them the final exam is a no-risk exam. The final exam can only improve their grades. So my grade, the grade I gave them is either the final one or can be better if they do better in the final exam. But the final exam can make no harm. So it was a no-risk final exam.

DR. MILTENBERGER: Was that the same way you did it in the spring?

THE WITNESS: Never before. It was a unique experiment of which I did not even know the

results until I got a letter.

DR. MILTENBERGER: So it's not only they knew their grade in advance, but they had a way to improve their grade that they did not have in the spring.

THE WITNESS: Please repeat your question.

DR. MILTENBERGER: You said your experiment was such that they knew their grade before they gave their evaluations.

THE WITNESS: Yes.

DR. MILTENBERGER: But, also, they had a way to get a better grade in this semester in the fall because they could either choose to take the final and use it or not.

THE WITNESS: That's correct. So they can get --

DR. MILTENBERGER: That was more than just knowing their grades in advance. That was an additional way to improve their grade.

THE WITNESS: Yeah. But it is no-risk. They did not have any tension anymore. They could pay more attention for study and less attention for the pressure of getting good grade.

Q. (Mr. Gosbee continuing.) And what were

your evaluations for the fall of 2001?

A. After I made the experiment?

Q. After you did that experiment.

A. Then I expected to get better ones, but it takes several months until I see the results. Which I have not yet even now seen the result. But I received a letter.

Q. Just tell us what the scores were in the spring and tell us what the scores were in the fall.

A. The scores in the -- were 2.5, 2.1 which is bad. And after I made the experiment it went up to 4.3 and 3.6.

Q. And other than the no-risk final exam policy, and giving them, in effect, their tentative grade at the evaluation, you made no change in teaching method; is that correct?

A. Nothing. I keep emphasizing understanding over memorizing without --

DR. MILTENBERGER: Was this the same class?

THE WITNESS: No.

DR. MILTENBERGER: It was not 146?

THE WITNESS: 146. Not same students. I'm sorry. Same class.

DR. MILTENBERGER: Same size?

THE WITNESS: More or less, yes.
DR. MILTENBERGER: How many students in there?
THE WITNESS: They always start with about between 30 and 35. But eventually there are less.
DR. MILTENBERGER: So they were equivalent?
THE WITNESS: Yes.
DR. MILTENBERGER: And in the fall when you did this experiment you knew going in that you were going to do it?
THE WITNESS: Please ask again.
DR. MILTENBERGER: At the beginning of the fall semester you knew you were going to do this experiment?
THE WITNESS: Yes.
DR. MILTENBERGER: So your expectation was that your evals would improve.
THE WITNESS: Yes.
MR. GOSBEE: I'm not sure if you understood his question.
THE WITNESS: Make me better understand it.
MR. GOSBEE: When did you decide to do

this experiment?

THE WITNESS: In the middle of the semester.

DR. MILTENBERGER: But you had testified that you didn't hand in your spring evals because you had this master plan to do this experiment and prove that it was because of the poor grades. So you must have known in advance you were going to do this.

MR. GOSBEE: I'm not sure if that was his testimony.

THE WITNESS: I'm afraid you are mixing between two different -- for the last three years I taught nothing but only 146. That's a kind of punishment I get.

DR. MILTENBERGER: I withdraw the question. I withdraw the question. You're right. I may have been thinking of something that wasn't said.

Q. (Mr. Gosbee continuing.) Let's make sure we get this straight. Your withholding the evaluations in the spring, you hadn't thought of that idea in the spring, had you?

A. No, no.

Q. You just wanted to call to people's attention what you thought was fairness in the evaluations; is that correct?

A. That's correct.

Q. And then you, sometime in the fall, thought of this experiment; is that correct?

A. Yes.

Q. Have you been invited, either in the past or in the near future, to give talks on, you know, professional talks?

A. Yes. Many times.

Q. And what is -- have you been asked to give what they call a plenary lecture on any occasion?

A. Yes.

Q. Okay. And I call your attention to Exhibit 28, Faculty Exhibit 28, in the red book. Okay. We're going to really get through this because we're running out of time. What is Exhibit 28?

A. It is a copy of a letter that I received from professor who organizes a conference in Budapest, Hungary.

Q. And what have you been invited to do?

A. Invited to give a talk about my theory of gyrogroups and gyrovector spaces.

Q. And the remaining -- okay.

MR. GOSBEE: We offer Faculty 28.

MS. MC GRANE: No objection.

MS. VOGLEWEDE: Received.

Q. (Mr. Gosbee continuing.) And I call your attention to -- okay. And the second two pages are just a description of the conference; is that correct?

A. Yes.

Q. All right. And now I call your attention to exhibit -- Faculty Exhibit 14. Strike that. I'm not going to offer that one.

Let's see. 22. And could you tell us what Exhibit 22 is.

A. It is a letter I received from Professor Beran in university in Wisconsin, Superior.

MR. GOSBEE: All right. We offer 22.

MS. MC GRANE: No objection.

MS. VOGLEWEDE: Received.

MR. GOSBEE: I'm sorry?

MS. VOGLEWEDE: Received.

Q. (Mr. Gosbee continuing.) What's the significance of Exhibit 22?

A. Out of the whole presenters of people for my department at NDSU I was the only one selected to reciprocate a visit and visit this university. They have every year an event called fall reception. You can see on the second paragraph, second line, fall reception. And they suggested that I give a talk which will be the central event in their fall reception. And

they also explain why they invite me. Because they attended my talk at NDSU and they were very impressed on the quality of my talk.

Q. All right. And you eventually had to go to Superior, Wisconsin; is that correct?

A. Yes, I did.

Q. And you had to have e-mail correspondence with the people at the university -- or in Superior about transportation arrangements; is that correct?

A. Yes.

Q. And did you receive any e-mails from them about being picked up at the airport in Wisconsin?

A. Yes, I did receive e-mail from them.

Q. And did you want to reply to them?

A. I did want to reply.

Q. And was that before or after your e-mail privileges had been suspended?

A. After my e-mail was suspended.

Q. And because your e-mail was suspended what did you try to do?

A. I asked the permission of my chairman, Professor Shreve, to allow me to reply.

Q. And what was his answer? Did he allow you to reply?

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

A. He said, no, you cannot reply.

Q. And --

MS. MC GRANE: Objection. Hearsay.

MR. GOSBEE: Oh, come on. He can testify to what he was told.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) And did Mr. -- did Chairman Shreve offer to write a reply for you?

A. Yes.

Q. And did you accept that offer?

A. No. That's an insult.

Q. And what did you do to contact the people in Wisconsin?

A. I used the telephone.

Q. And going to that, covering this issue of e-mails real quickly here, I think Dean Schnell -- or, I'm sorry, Vice-President Schnell testified that only one of your e-mail accounts was, in fact, suspended. The UND math account. And there was a gyro Hypatia account if I recall correctly.

A. Yes.

Q. After the suspension order came down did you use that gyro Hypatia account?

A. I did not touch the other account because --

Q. Why not?

A. The fact that I did not get permission to send e-mail out of NDSU applies to -- I assume it applies to any e-mail account. So I did not dare to try to use the other one without permission.

Q. So the ban on using e-mail was effective?

A. Oh, yes.

Q. And do you know what Hot Mail is?

A. Yes.

Q. And did you eventually open a Hot Mail account as a way to try to send out e-mails?

A. Yes. Hot Mail account is a private account, and I can use any computer to use private account which I use it. But if I use it with other -- with correspondence with people in other universities they will wonder why do I use Hot Mail.

Q. All right. I call your attention to exhibit -- Faculty Exhibit 30. And tell us very briefly what this is.

A. This is from the Internet about the conference in Hungary, Budapest. And there is a list of those who were invited to give a plenary lecture.

Q. And calling your attention to I think

it's the un-numbered fifth page. Who is listed there first?

A. The first one is Benko.

Q. Next page.

A. Next page the first one is Ungar from the USA.

Q. And that's coming up this summer, correct?

A. This summer, yes.

Q. If you could turn to Exhibit 10 in the -- Administration Exhibit 10 in the blue book. I call your attention to the Hebrew word at the very top. What does that translate to?

A. It means, in English, warning.

Q. Do you or did you not write the word warning?

A. I did not write it.

Q. I call your attention to Faculty Exhibit 10 in the red book. Tell us very quickly what that is.

MS. VOGLEWEDE: Counsel, before that's identified, it appears to me that each of these copies have original handwriting on them.

MR. GOSBEE: I'd say it's a high quality color photograph. Color photocopy. I'm sorry.

MS. VOGLEWEDE: Okay.

MR. GOSBEE: And then maybe -- I may have actually gotten two of this one there in the assembly process. Mailboxes may have messed up on me.

Q. (Mr. Gosbee continuing.) Quickly, what is 10?

A. When Tuval came to NDSU in 1997 I asked him to show me his paper. So he gave me one, and as a nice friend he also signed it in Hebrew.

Q. And that's the blue writing at the bottom?

A. Ask again?

Q. That's the blue writing at the bottom?

A. Yes.

Q. And what does that translate to?

A. Tuval Foguel.

MR. GOSBEE: And we offer 10.

MS. MC GRANE: Objection. Lack of foundation.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) When did Dr. Tuval give this to you?

A. When he was new with NDSU.

Q. And whose idea was it to sign it, yours or his?

A. His idea.

Q. And how do you know that's his signature?

A. I can read -- he gave me already with a signature. It makes sense that it is his.

MR. GOSBEE: I think we've established foundation.

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Sustained.

MR. GOSBEE: I've shown when and where it came from.

MS. VOGLEWEDE: Was it signed in your presence, Dr. Ungar?

THE WITNESS: No.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) How many people at NDSU do you know who write Hebrew?

A. Only one.

Q. Other than --

A. Only two. Myself and Dr. Foguel.

MR. GOSBEE: Well, we offer it, if nothing else, as a sample of somebody writing Tuval Foguel in Hebrew.

MS. VOGLEWEDE: Well, then it's not relevant.

MR. GOSBEE: I enter my objection for the

record.

THE WITNESS: If you give a paper you sign on the paper. It's very common.

Q. (Mr. Gosbee continuing.) All right. Turn your attention to Exhibit 12. Tell us what that is.

A. When we work together on our papers we also wrote together on the same piece of paper. So --

Q. Was this written by you and Dr. Tuval at the same time in your presence?

A. At the same time together at the same time.

Q. And there were two pages, correct?

A. Yeah.

MR. GOSBEE: All right. We offer --

A. Two pages not at the same time. Each page has the handwriting of both of them. And each of them was done at the same time. The two pages --

Q. Were done at different times?

A. Different times.

Q. But each time you personally saw Dr. Foguel sign it -- or write on the page?

A. Yes.

MR. GOSBEE: Okay. We offer 12.

MS. MC GRANE: Objection. Relevance and

lack of foundation.

MS. VOGLEWEDE: It will be received.

Q. (Mr. Gosbee continuing.) I point to -- on the first of these pages. Which writing is Dr. Foguel's?

A. The red below starting from G.

Q. And where it says -- is that "close 2," or something, "base 2," or what? "Milt of base 2"? I'm not sure what these two words down here are.

A. It is also not easy for me to read his handwriting. I really do not know what he did write here.

Q. But that arrow beside the number 2.

A. Yes.

Q. Is that smooth?

A. The arrows are nonsmooth which is very typical to Dr. Foguel.

Q. Turning to the second page of this exhibit, which words were written by Dr. Foguel?

A. So here most of the page is Dr. Foguel. My name is a box in the middle.

Q. So the equation that starts A B, was that written by Dr. Foguel?

A. Show me where.

Q. At the top.

A. That's by Dr. Foguel.

Q. All right.

MS. MC GRANE: May I ask a question? Who circled in the middle and wrote it looks like an....

MR. GOSBEE: E.

MS. MC GRANE: An E.

THE WITNESS: Okay. That's my short notation. Since my English is not very good, when I see a nice phrase that I like to remember I put E for the word English. And emphasize it by using a marker.

MS. MC GRANE: Was that on the sheet at the time that it was prepared, or did you later put on that?

THE WITNESS: Yes, yes. Because I'm not expert in group theory. Dr. Foguel is expert in group theory. So whenever he gave me a phrase, mathematical phrase that I should learn by heart, I did something like this. To remind myself English. That's some phrase that I should learn by heart. "Central by property A." That's a phrase that people in group theory use every day. And I was not in group theory so I had to teach myself how to become a person who can talk to people in group theory in their language. So this is the phrase that every group theory use all the time.

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

MR. GOSBEE: Thank you, your Honor. How much time do I have left?

MS. VOGLEWEDE: None.

(OFF THE RECORD)

Q. (Mr. Gosbee continuing.) Have you written a textbook in the field?

A. Yes, I did.

Q. And I call your attention to Exhibit F23, or Faculty 23. Could you describe very quickly what F23 is?

A. It is a copy form of the first page of my book. Front of my book.

Q. And then we've got some selective pages from the book; is that right?

A. Yes, that's correct.

MR. GOSBEE: And we offer Faculty 23.

MS. MC GRANE: No objection.

MS. VOGLEWEDE: Received.

Q. (Mr. Gosbee continuing.) And I hand you a book and ask you to show it to the committee and tell the committee if that's the actual book.

A. Yeah. That's my book.

Q. And how many people in the math

department, to your knowledge, have published a textbook?

MS. MC GRANE: Objection.

MR. GOSBEE: To your knowledge?

MS. MC GRANE: Objection. Relevance.

MS. VOGLEWEDE: Sustained.

MR. GOSBEE: Goes to the -- I mean, if they're trying to portray him as this lunatic, and so on, he's entitled to show if he's the only one that's published.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) Turning to the second page of this exhibit. It talks about fundamental theories of physics. What does that mean? Is that a part of a series?

A. It is a series published by Kluwer Company. And the editor of this series is Professor Van Der Merwe who invited me to publish my book.

Q. And turning to page Roman numeral XXIX as it appears in the exhibit -- that's the right one. Is there a citation to somebody other than you in this room?

A. Yes. I acknowledge several people, one of whom is Dr. Foguel.

Q. No. This is -- okay.

A. So what did you want?

Q. There's a citation to two articles; is that correct?

A. Pardon me?

Q. On Roman numeral XXIX there are citations to a number of articles including FU00 and FU01?

A. Correct. There is a citation to the papers -- two papers that I wrote with Dr. Foguel. FU00 and FU01. FU is for Foguel Ungar.

Q. All right. And the next page, Roman numeral XXXI, do you mention Dr. Foguel here?

A. Yes. I acknowledged the contribution of Dr. Foguel. Talking to him about group theory helped me to improve my book.

Q. And are the remaining pages citations you have made to the papers that you and he wrote together?

A. Yes. Several times.

Q. All right.

A. Actually many times.

Q. And what -- this question was asked of a few of the administrators so I'll ask it of you. What would you like this committee to do?

A. To reverse the letter of reprimand. To withdraw it.

Q. How about the amended letter of

reprimand?

A. And also the amended reprimand. And -- letter of reprimand. And also all sanctions involved. Like that they asked me to obtain some psychological treatment.

MR. GOSBEE: No further questions.

MS. VOGLEWEDE: Cross.

EXAMINATION

BY MS. MC GRANE:

Q. Dr. Ungar, who asked you to receive psychological treatment?

A. Do I use the correct term? Psychological treatment? In a letter. My lawyer knows better than I.

Q. Instead, what they actually did was they referred you to the faculty assistance program which is a voluntary program; is that correct?

A. That's correct.

Q. And that referral was made after you sent e-mails -- you sent first a letter to Dr. White saying that you thought maybe you were paranoid. And then you sent e-mails to at least six individuals, including President Chapman, where you indicated you might be understandably paranoid and that quote, unquote, it indicated to me that I need help.

MR. GOSBEE: Can she say where she's reading this from?

MS. MC GRANE: Absolutely. Exhibit 25. The page 7 of 8.

DR. MILTENBERGER: Whose exhibit?

MS. MC GRANE: I'm sorry, administration exhibit. Not the red book.

DR. COLVILLE: Which page?

MS. MC GRANE: It's page 7 of 8 at the top.

Q. (Ms. McGrane continuing.) Isn't that correct that in that exhibit you said that you were understandably paranoid and indicated to me that I need help?

DR. LINDGREN: Where are you reading from?

MS. MC GRANE: Page 7 of 8. It's the full first paragraph at the bottom of the page.

DR. LINDGREN: At the bottom.

MS. MC GRANE: "My way of exploiting..."

A. I tried to do anything to please Dean White. And I thought maybe he will be pleased to do it and he will leave me alone. Do I look like a paranoid? I don't think so. I'm a very proud --

Q. (Ms. McGrane continuing.) But my

question was --

A. I did write it.

Q. -- the request for faculty assistance program was made after this e-mail was sent, correct?

A. Yes.

Q. You testified about an e-mail account. Would you agree with me that you do have a personal e-mail account?

MR. GOSBEE: What do you mean by personal e-mail account?

Q. Hot Mail account. You have an account that you can use apart from NDSU.

A. Hot Mail, yes.

Q. And you referred to Faculty Exhibit 22 and said that you weren't permitted to respond by e-mail. Isn't it true that that letter from Dr. Beran gave you both his e-mail address and his office telephone number and asked you to reach him at one of those places?

MR. GOSBEE: If you want to take a look at the exhibit go ahead and take a look at the exhibit.

A. Which exhibit?

Q. Exhibit 22.

MR. GOSBEE: Yours or ours?

Q. Faculty.

A. Oh, 22 here.

Q. Red book?

MR. GOSBEE: Red 22.

A. What is your question? Please repeat.

Q. Dr. Beran, at the end of the letter, gave you both his e-mail address and his office telephone number, correct?

A. Correct.

Q. You offered testimony about an experiment that you conducted with your students in 146. And you mentioned that there were a certain number of students when the class started and a certain number of students who remained in the class. Can you give us the approximate number of students before and the approximate number of students after?

A. I don't remember saying so. The same students who came to the class in the first minutes stayed. No students leave the class in the middle of the class.

Q. No drops?

MR. GOSBEE: I'm not sure you guys are communicating. You're talking about the course period or particular class?

MS. MC GRANE: He testified about his

students in 146. A question was asked by Dr. Miltenberger about the size of the class. And he gave the size of the class at the beginning. And I'm trying to understand -- and then he said but some students dropped. So I'm trying to get an understanding of how many students started in the class, how many students stayed in the class that this testing on evaluations was actually performed on.

A. Normally all students stay. Very few drop. Insignificantly.

Q. (Ms. McGrane continuing.) Did you get Institutional Review Board Committee approval before you did the experiment on your class?

A. No. I did not ask.

Q. Do university policies permit professors to experiment with method administration --

A. As far as I understand, yes. I read the policy and I inquired about colleagues if --

Q. Did you inquire of your chair if you were permitted to experiment with your teaching evaluations?

A. The chair is the one who harassed me all the time.

Q. And the chair at the time that you did the experiment was Chair Shreve, correct?

A. Yes.

Q. It was not Chair Comez.

A. Never mind. Same thing.

Q. You're claiming that Chair Shreve harasses you as well?

A. Yes.

Q. And, in fact, you've taken some personal attacks against Chair Shreve, haven't you?

A. It's not my opinion. Dean Fisher never allowed this promotion.

Q. Let's take a look at Exhibit 22. You felt the need to put in a letter to the dean of the college, Dean White, some very negative remarks about Chair Shreve; isn't that correct?

MR. GOSBEE: Which Exhibit 22?

MS. MC GRANE: The administration. Blue book.

A. Well, that's what I learned from Dean Fisher. I had a lot of talks with Dean Fisher because I was in the committee that dealt with the promotion of Shreve.

Q. (Ms. McGrane continuing.) That wasn't my question. You put negative remarks about him in a letter --

A. Which I learned from Dean Fisher. Everything I learned from Dean Fisher.

MS. VOGLEWEDE: Dr. Ungar, wait until the question is finished before you answer, please.

THE WITNESS: Thank you.

Q. (Ms. McGrane continuing.) And then the next day you sent a letter that didn't withdraw the earlier letter, but in the second letter, which we have in Administration Exhibit 23, you don't take away the remarks about Chair Shreve, but, instead, you say that, "Following the receipt of the letter of reprimand I became paranoic, already exploring the possibility that I might be forced to take early retirement. I was under this paranoic influence when I wrote my letter to you that I left with Nancy." And then you say that things have dramatically changed and that you feel that Warren, who, in fact, is Chair Shreve, is looking into the issue and that's making you feel better, correct?

A. That's what Warren told me, that he's going to investigate whose is handwriting. And it's obvious his handwriting.

Q. But you didn't withdraw the letter that we have in Exhibit 22, did you?

A. I was not asked to withdraw it.

Q. Let's look at Exhibit 22 on the previous page. The first page of Exhibit 22.

A. 22 in the red.

Q. Blue book.

A. Blue?

Q. Or administration exhibits for those that we don't have blue books for.

A. Please repeat your question.

Q. Subparagraph 3, you wrote, "One may ask how Professor Foguel, a genius mathematician, produce a lie which is simultaneously, i, very serious, but also, ii, very easy to be refuted? The only answer I can give is that Professor Tuval Foguel has some mental defect. By the way, it is known that his son suffers from some mental defects, which might be considered as possible supporting evidence." You sent that, didn't you, to the dean of the department?

A. Yes, I did.

Q. And Professor Foguel is a member of that college as well, isn't he?

A. Yes.

Q. You testified about your student evaluations that you chose not to give to the chair of your department as a form of protest. But you also didn't give those students evaluations to Dean White either, did you?

A. I wanted -- I went to meet him --

Q. My question is did you give them to him?

A. I wanted to give. He did not want to accept.

Q. It's your testimony that you offered to give them to Dean White, and Dean White said, I don't want them?

A. I did offer them. He was rude towards me.

Q. He was rude towards you.

A. Yes.

Q. He was rude towards you when he went through each of the pages of the presentation of materials with you.

A. (Indicating yes.)

Q. He was also rude to you when you went to him to try to give him your student evaluations?

A. Actually we went one by one on the evaluations. But not the formal official one, but my evaluations. I made first my evaluations. Which I --

Q. I want to understand your testimony. Is it your testimony that the student evaluations that you received from the student who brought them up to the department, that you took those to Dean White and tried to give him those?

A. First I want to discuss with him something that I knew --

Q. That's not my question. My question is did you ever go to him and say, "Dean White, I have these student evaluations. I never gave them to the chair. I want you to have them."

A. I did not show -- it was not in my hands. It was in my office. In my hands was evaluations that I did. Which I am permitted to look at this.

Q. And did you tell Dean White that you never bothered to turn in the student evaluations to anybody in the department?

A. Yes. I wanted to bring it to him.

Q. Did he tell you that was okay?

A. He didn't say anything. And that's why I felt that he doesn't care. And that's why the letter of reprimand came to me out of the blue.

Q. And when you say that you told Dean White about these but you didn't tell him that you had them in your office, did you ever go to Vice-President Schnell and say, "I still have these student evaluations. I haven't given them to the chair. I haven't given them to the dean. What should I do with them?" Before the letter of reprimand.

A. Not immediately. But I did it. Actually when I got the letter of reprimand there was already

scheduled for me a meeting with Dr. Schnell.

Q. And when you went to meet with Dr. Schnell you informed Dr. Schnell that the reason you didn't follow policy was because you had a protest.

A. That's correct.

Q. And you believe that you're authorized to not follow policy when you have a protest.

A. I was forced to teach -- for three years to teach only 146.

Q. That was not my question.

A. I needed to protest. I'm not a lawyer. I'm not trained as a lawyer. I'm trained as a mathematician. So I did not know what is the right way to protest. If I had my lawyer this time he would have helped me. I didn't have a lawyer.

Q. But you didn't go to the chair of the department, you didn't go to the dean of the department and say --

A. The chair of the department is precisely the person I wanted to avoid.

MS. VOGLEWEDE: Dr. Ungar, wait until the question is finished, --

THE WITNESS: I'm sorry.

MS. VOGLEWEDE: -- please.

THE WITNESS: I'm sorry.

Q. (Ms. McGrane continuing.) You didn't go to the chair of the department, you didn't go to the dean of the department, and you didn't go to the vice-president to ask them how you could protest, did you? You decided this was your method of protest.

A. I did not ask how to protest. I did protest. That's why I went to meet Dean White several times. I did protest.

Q. And after you received the student evaluations then you told the administration, after they reprimanded you, that the reason you didn't turn them in was because of a protest, true?

A. I told it once when I gave it to Dr. Schnell. But until then nobody showed interest. I was -- they was in my office. I wanted to see interest. And then if somebody asked me, Dr. Ungar, why don't you give it to them. Okay, here it is. And on this occasion I like to protest something. Nobody showed interest. Suddenly I got out of the blue the letter of reprimand.

Q. And the letter of reprimand was issued on October 10th of 2001; is that correct?

A. That's correct.

Q. And you met with Vice-President Schnell

within a couple of days of that letter of reprimand?

A. That's exactly what -- the schedule of the meeting was done before. And for other purpose. My purpose was to discuss with him exactly the class evaluations.

Q. That wasn't my question. My question was you got the letter of reprimand on the 10th.

A. Um-hum.

Q. And you met with Dr. Schnell within a day or two of that letter, correct?

A. Yes. Based on schedule that I did before I got the letter of reprimand.

Q. And when you met with him you didn't bring the student evaluations with you on October 11th, did you?

A. But I discussed it.

Q. And you didn't actually give them to vice-president --

A. He did not ask me.

Q. May I finish my question, please?

A. Yes. Sorry.

Q. You did not actually give them to Vice-President Schnell until October 26th, correct?

A. Until he showed interest that he wanted to get it. He did not want to --

Q. On the 11th he told you to turn them in. So you turned them in. You sent a letter saying here are the student evaluations that you requested, and you waited to do that until October 26th pursuant to Administration Exhibit 19, correct?

A. 19. What is 19?

Q. Blue book. Administration Exhibit 19.

A. Once he showed interest he wants it I gave it to him. Until then he did not show interest he wants it.

Q. And you said that you're giving him the student evaluations apologizing for not forwarding them to Dr. Comez. This will not happen again in the future. Correct?

A. Correct.

Q. And then you also say, "If possible, I would like to discuss with you the point that I wanted to protest against the present way of teaching M146 which affects my evaluations." Correct?

A. That's correct. And here I am protesting. You see, I had to wait until today to be allowed to protest. And I'm very glad that now I am allowed to protest. Until now, until today, and the day before yesterday, I never had a chance to protest. I'm full professor here. Well known all over the

world. And cannot protest about something which bothers me for three years I'm being forced to teach nothing else but 146. It is a class that every professor hates to teach. Because the students hate mathematics. I like to teach....

Q. Are you through?

A. (Indicating yes.)

Q. You offered a lot of testimony about K-loops, gyrocommutative gyrogroups, gyrogroups, Bruck loops, true?

A. Yes.

Q. Are those terms all roughly equivalent?

A. Roughly, yes.

Q. And if we look back in the literature we'd find that Bruck loops was first published in the 1960s, correct?

A. That's correct.

Q. By a Dr. Glauberman.

A. Yes.

Q. And there were papers that you submitted to a journal in Canada that are in your red book, the faculty book, that are Exhibits 2 and 3. And Exhibit 2 looks like is a -- you're enclosing a copy of a paper and its summary to a Professor Cross in Waterloo, Ontario; is that correct?

A. Yes.

Q. And Exhibit 3 is an acknowledgment from a Dr. Moskal. And it's from Waterloo, Ontario again. Is that true?

A. Yes.

Q. And that is the paper that you submitted that you said was rejected; is that correct?

A. That's correct.

Q. And I believe your testimony was that you thought that the referee reports were faked when they rejected that paper. Is that what you testified to?

A. Yes.

Q. Exhibit 4, which is in your red book again, is a letter that you sent -- I'm sorry, no, that was sent to you by a gentleman whose name is cut off. Is it Wefelscheid?

A. Wefelscheid.

Q. And when Dr. Wefelscheid sent you this letter he was thanking you for your letter of January 24th and thanking you for sending him a preprint; is that correct?

A. Yes.

Q. And is that information that you've sent to him for publication?

A. That's a paper that was to be rejected.

It was not yet rejected. I believe so.

Q. But you sent it to another journal?

A. Not for publication. He asked me. He -- it's not in here, but he asked me for a copy of a preprint. And I sent it.

Q. And when you sent it to him were you sending it to him for his information or were you hoping that maybe he would consider publishing it in his journal?

A. I did not know anything about him. So it was only for his information. It's very common that colleagues ask by -- today by e-mail, at this time by cards, for preprints of papers before they have been published. What was amazing for me --

Q. There's not a question, sir. I'd like you to turn to Exhibit 5, please. Exhibit 5, then, is from Dr. Wefelscheid where he asks you to submit your paper, correct?

A. That's correct.

Q. And then you did submit your paper to him for publication after --

A. That's correct. After it was rejected.

Q. And the paper that you submitted, you used the phrase K-loop in that paper, correct?

A. Yes.

Q. And is it your testimony that that word K-loop was inserted by you or was inserted by somebody else?

A. By Wefelscheid.

Q. Wefelscheid inserted the word K-loop?

A. He did not insert it. He seduced me to do it. I did it.

Q. You did it. Did you protest against using K-loop in that paper?

A. At this time I was very happy because I thought that I'm going into a big group of German geometers who all of them will praise me for doing such a good job.

Q. And when you used the term K-loop, the algebraic structure that you were referring to was not new, was it?

A. No. It's not new. It's Bruck loop.

Q. And Bruck loop had been around for years, correct?

A. Yes.

Q. And what did the K, when you used the term K-loop, mean to you?

A. It means that I was deceived to believe that K-loop already existed.

Q. No. My question was when you used the

word K-loop what did you mean the K to stand for in K-loop?

A. Karzel.

Q. Did you suggest the term K-loop or did Wefelscheid suggest the --

A. He did not suggest it. He told me that it's already in use.

Q. You need to let me finish my questions, okay, sir?

A. I'm sorry. Sorry.

Q. My question was when you used the word K-loop, was it you who suggested, or was it you who used that, or was it Wefelscheid who suggested you use K-loop?

A. Wefelscheid suggested it.

Q. And why did he suggest you use it?

A. He said --

MR. GOSBEE: Objection. Irrelevant.

A. He said it's already in use since the 1960s.

Q. He said it was already in use from the 1960s.

A. From the 1960s.

Q. Did you ask him for proof or verification that it had been in use since the 1960s?

A. I asked him to give him an example of a K-loop. I asked him to give me an example.

Q. And did he do that?

A. No. Oh, he lied. He said, yes, we have example. He said something like this. He said, yes, we have example, but never mind about this. Your example is much better. That's the answer which I don't think we put it in here, but it is in my general plagiarism complaint.

Q. And you made general plagiarism complaints to numerous sources, as I understand it; is that correct?

A. Yes, that's correct.

Q. And has anybody come back to you and said, yes, you're right, there is evidence of plagiarism? Do you have anything in writing from any of your complaints saying you are right?

A. If somebody says so he will only draw himself into a court case. People are afraid to do it.

Q. And so the answer to my question is no?

A. No.

Q. On exhibit -- Faculty Exhibit, in the red book, No. 8. In Exhibit 8 we have an abstract, and then there's an introduction that appears right below the word abstract, correct?

A. Yes.

Q. And at the end of that initial paragraph the sentence reads, "It was earlier discovered by Karzel, and studied by Kerby and Wefelscheid in a totally different context," correct?

A. Yes.

Q. And is that something that you wrote or is that something that Wefelscheid wrote?

A. Wefelscheid suggested me, but -- suggested me to write it, but his recommendation was like an order. Otherwise he will not publish this.

Q. And if we look at the second page there is a reference that we talked about earlier where it talks about these "...Thomas rotations, some of which are presented in this paper, have obvious counterparts in earlier results of Karzel, Kerby, Wefelscheid, and others." And then there are four notations given. Do you see that?

THE WITNESS: Do you see it?

MR. GOSBEE: Which page are you referring to?

MS. MC GRANE: The second page of Exhibit 8.

MR. GOSBEE: What's the number?

THE WITNESS: Says 169?

MS. MC GRANE: It says 169. And it's the second full paragraph.

THE WITNESS: Okay.

Q. (Ms. McGrane continuing.) In the middle of the paragraph there's a reference to, "...some of which of are presented in this paper, have obvious counterparts in earlier results of Karzel, Kerby, Wefelscheid and others."

A. I don't find it. On the second -- are you talking about the paragraph that starts with, "In this"?

MS. MC GRANE: If your counsel will let me approach I'll just point and I think we'll save time.

MR. GOSBEE: All right.

Q. (Ms. McGrane continuing.) Right in here.

A. Starting "Wefelscheid"?

Q. Yep. And then, "Some of which are." That part there. If I can focus your attention there.

A. Yeah. Okay.

Q. You were asked some questions about whether or not you had ever read any of these notations. And I believe your testimony was that you had not because they were in German; is that correct?

A. That's correct.

Q. Have you read any publications by these authors that have been translated to English or that are in English?

A. At this time what was in English I read.

Q. What I'd like to do, then, is show you something that was published by Kerby and Wefelscheid that's called Definition A. And will you read the highlighted portion and let me know if that's generally equivalent to what you consider to be a K-loop?

DR. LINDGREN: Do we have that document?

MS. MC GRANE: No, you don't.

MR. GOSBEE: May have to take some time to digest this.

DR. LINDGREN: If we don't have that document....

MS. MC GRANE: We're allowed to use documents for impeachment purposes which we're not introducing. So we're just using this for impeachment purposes.

DR. LINDGREN: You're not introducing it.

MS. MC GRANE: No, we're not.

MR. GOSBEE: Is it possible for you to even absorb this in the time and analyze it in the time we've got left?

MS. MC GRANE: I'm just asking him to read the highlighted portion and let me know if that's his definition of a K-loop.

MR. GOSBEE: There's no way of knowing --

MS. VOGLEWEDE: Counsel, don't testify on behalf of your client, please.

A. I can answer. It's called a near-domain. And Urbantke in this book already said that a near-domain is a structure of which a substructure is the same as mine. That's correct.

Q. (Ms. McGrane continuing.) And if we look at the date of this publication it's in the Journal of Algebra, 1974; is that correct?

A. Yes.

Q. If we can turn, then, to your Exhibit 13 in the red book, please. The beginning of that paper starts out, "K-loops came about as the additive loops of near-domains. The latter have been introduced by Karzel," and then there's a citation. If we look at citation number 14 it is an article that was published in 1968. Have you read that article before?

A. I know about this article because this is the article where they claim that the K-loop came in the 1960s.

Q. Have you read it?

A. I looked at this. I can read the mathematical formulas even without knowing German. So I did read it in this.

Q. And do you agree with them that they introduced this concept in 1968?

A. Yes. If it's a yes or no question I can only say yes and no. I need to explain it.

Q. Please explain then. We want to be clear what your testimony is.

A. Okay. So, again, it's exactly like the ancient Greeks already introduced the word atom. Still we cannot say that they are the discoverer of nuclear physics. Same thing in here, they make all kind of assumptions. Thousands of assumptions. Some of which are similar to mine. Thousands of others are not similar. Only when they understood how my discovery is important they look backwards and so, oh, here we did something similar. They collected similar things and say we already did it.

Q. And, as I understand it, Kiechle in this article, and, I'm sorry, I'm not a mathematician, as an English major it's all very confusing to me, but what I'm understanding Kiechle to say, he's saying that others have published on K-loops before, but you were the first person to call them or name them K-loops; is

that correct?

A. Again, yes and no. It's exactly like the atom of the ancient Greeks.

MS. VOGLEWEDE: One of the committee members has a question.

DR. LINDGREN: I want to know in this article is what's missing here the concrete example that you had?

THE WITNESS: Yes. That's exactly the point. They did not have any concrete examples like the ancient Greeks did not know what happens if you divide until you cannot divide anymore. They gave it a name, but they did not know what to do with it.

DR. LINDGREN: They don't have the concrete example.

THE WITNESS: They do not have any concrete example. Nothing. And, therefore, they could not work with this.

Q. (Ms. McGrane continuing.) And when you added the concrete example it was an example from physics that was added, correct?

A. Yes.

Q. And you were the first person to coin this K-loops, correct?

A. Yes.

Q. And is Dr. Kiechle correct that the K in K-loop is used in honor of Karzel?

A. Yes.

Q. And when you used the term K-loop did you ever make any attempt to get a copyright, or anything like that, to coin the term K-loop as yours?

A. There is nothing like this in the business of mathematics to copyright. Publication is like a copyright. The first published is the one who has the copy -- we do not have copyright. Everyone can copy it. But --

Q. So everybody --

A. But he must give me credit.

Q. And if there are multiple terms that can be used to refer to the same thing, a person can choose one of those terms.

A. Oh, yes. I can only tell to somebody who prefers to use K-loop please add the remark that it appeared for the first time in my paper in 1989. Because if he does not do it it's deception. People believe that it appeared in the 1960s. And it's not true.

Q. And, in fact, Hubert Kiechle, in fact, believes that the concept was introduced in 1968 by Karzel, correct?

A. He introduced millions of concepts. And only when I discovered the importance --

Q. That wasn't my question, sir. I'm asking you, based upon this article, Kiechle believes that Karzel should be given credit for the concept of K-loops back from 1968. Even though he didn't call them a K-loop, he believes that Karzel should be given credit, correct?

A. No, no, I don't believe.

Q. Isn't that what he says?

A. Are you going to ask me about what he says or what I think?

Q. I'm asking you what Kiechle says.

A. I know him personally. Yes, he says so. Not only he. All the top German geometers say so.

Q. If we turn to Exhibit 15.

MS. MC GRANE: I'm sorry, was this introduced, Mr. Gosbee?

MS. VOGLEWEDE: No, it was not.

MR. GOSBEE: I don't think it is.

MS. MC GRANE: I'm sorry. I'll pass it then.

Q. (Ms. McGrane continuing.) If you could turn to Faculty Exhibit 21, please. This is a student rating of instruction. It was introduced in earlier

testimony by your attorney. Can you tell us what course this was for?

A. That's exactly the 146 course from which I did not turn -- I did not pass the class evaluation according to the policy.

Q. So this is from the spring semester of 2001; is that correct?

A. Yes.

Q. If we can turn to blue book or Administration Exhibit No. 5, please. That's a letter that you wrote on October 15 to Dr. Schnell; is that correct?

A. Yes.

Q. And that was after your meeting with him and in response to the letter of reprimand. Also correct?

A. It is in response to the letter, but if it's after or before I met him how do I know?

Q. I believe you testified that you met with him on October 11th.

A. I did, but I cannot remember dates.

Q. Okay. Well, if I told you that the reported established that it was October 11th, would you agree with me that this was after that time?

A. Again, please, ask me, if you tell me

that what?

Q. That you met with Dr. Schnell on October 11th that this letter was after the meeting you had with him, true?

A. Yes.

Q. And in it you are explaining your side of the story regarding the letter of reprimand. True?

A. That's correct.

Q. And in this explanation you first deal with the student evaluation issue. And you admit that you did not forward the completed forms to Dr. Comez, correct?

A. Yes.

Q. And you say that that was because of a protest, correct?

A. Yes.

Q. And then the second part of the letter, if we look at the first paragraph on the bottom of that page, "I believe that my protest that resulted in the 146 problem mentioned in the letter of reprimand deserves much more attention than you can presently pay since it is linked to the problem generated by Professor Tuval Foguel criminal act." What criminal act are you referring to there?

A. Supporting plagiarism. Oh, no, no, no.

The falsifying of the word warning.

Q. And you don't say that in this document, do you?

A. But I --

Q. You just refer to a criminal act, true?

A. But it was -- that was the main point. So saying this would be enough to remember everything.

Q. And on the second page you again referred to a problem with Dr. Comez, and, secondly, with Professor Tuval Foguel's criminal act, true?

A. Yes.

Q. And then you go through the history of this problem saying that it stems from Dr. Olsen's attempt to have -- is it Ergodic theorists?

A. Ergodic theory, yes.

Q. And your not wanting the department to be built predominantly of Ergodic theorists, true?

A. That's correct.

Q. And Dr. Foguel is not an Ergodic theorist, true?

A. That's correct.

Q. And then --

MS. VOGLEWEDE: Counsel, you should bring your exam to a close. I think we're out of time.

MS. MC GRANE: Can you give me one minute

to make sure I've hit my high points?

MS. VOGLEWEDE: Sure.

Q. (Ms. McGrane continuing.) In this letter to Dr. Schnell you question whether Dr. Kappe's letter of recommendation which praises the cooperation between Ungar and Foguel is still relevant to Professor Foguel's promotion, correct?

A. Yes.

Q. And you sent a number of letters to Dr. Foguel where you questioned the language that he was -- and, I'm sorry, it's not language, you questioned the reference that he was using when he cited K-loop suggesting that he change that notation, true?

A. No. I asked him to add. He says K-loop, it's fine. Just add first appeared in Ungar's paper 1989. That's truth. I wanted to tell the whole truth, not half of the truth.

Q. And we have several examples of those letters, April 12th, April 23rd, April 25th, already in evidence, true?

A. Do you consider them friendly letters as I do?

Q. I'm sorry, I'd love to be able to answer your question, but I'm sure your counsel would object

to that. It's my questions that we have to focus on. And that's the April 12th, April 23rd, April 25th, those are all letters you sent attempting to get him to change his language, true?

A. At the time when I believed he was my friend. As a friend I can expect my friend to cooperate with me. The minute I know he's not my friend he can do whatever he wants.

Q. And Dr. Foguel wrote you back and said he wasn't willing to change the language, true?

A. That's the time I realize he's not my friend.

Q. And he kept writing you letters saying he didn't want --

A. I did not.

Q. He did write you a letter and you wrote him a letter the very next day asking --

A. It's only because he sent a copy to the dean.

Q. And I'd ask to be allowed to finish my questions if I may.

The letter from Dr. Foguel to you is dated April 24th. He asks that it stops. The next day you sent him another letter, true?

A. It's not a problem that I can say yes or

no. I'll say yes and no together. I need to say some more. It's misleading if I say either yes or no.

Q. Well, let's look at the evidence, then, if we need to. Let's look at Exhibit 11 in the faculty's book which is blue. That's dated April 24th. He says, "I hope this brings this conversation to an end." We look at the very next exhibit --

A. I do not find it in 24.

Q. Exhibit 11.

A. Oh, 11. Not 24. Yes.

Q. Very last sentence, "I hope this brings this conversation to an end." Correct?

A. Correct.

Q. And then there's another letter from you dated April 25th, next day.

A. That's an example how half the truth is misleading. Give me -- let me give the other half of the truth.

Q. My question is did you send him a letter the very next day?

A. With a copy to the dean. So the target was the dean, not him.

Q. And then you sent another letter to the dean, which we have in Exhibit 14, which is several days later. Correct?

A. Yes, I did.

Q. And then you sent another letter to Dr. Foguel, Exhibit 15, which is May 1st.

A. Comez forced me to do it. I mean, it was a reaction to Comez. On my initiation I did not change -- send him anything. After I knew that he's not my friend. But if he sent a copy to the dean it just makes sense that I'll send another copy to the dean.

Q. And then I'd like to show you an article that you --

MR. GOSBEE: Isn't her --

Q. -- published in 1997.

MS. VOGLEWEDE: Counsel, I'm going to stop you there. Allow any questions from the faculty -- or from the committee members. Are there any for Dr. Ungar?

MS. VOGLEWEDE: Mr. Gosbee, redirect?

MR. GOSBEE: Yes, your Honor. Thank you.

EXAMINATION

BY MR. GOSBEE:

Q. You were referred to the faculty staff assistance program I believe it's in Administration Exhibit 2. Did you consider that -- that you had any

choice in the letter? Was it voluntary or involuntary?

A. I do not have a choice.

Q. And you were asked a number of questions about letters or e-mails in which you use the word paranoid or paranoic to describe yourself. Are you trained in psychology?

A. No.

Q. And do you even know what, other than a general definition, what the term paranoid means?

A. I only know what the people in the street know about being a paranoid.

Q. And, if I recall correctly, all of these references were after the letter of reprimand; is that correct?

A. That's correct. After. And as a result of.

Q. And what was your reaction to the letter of reprimand? Were you pleased, unhappy, frightened, or what?

A. I couldn't sleep for several nights. And if you don't sleep you cannot work, you cannot think. I didn't sleep. I took pills. I couldn't sleep. It never happened to me. At the same time the whole world start noticing my theory, here in my own university I

get a letter of reprimand. I try to bring a lot of fame to NDSU, and that's the thanks I get from NDSU.

Q. Okay. If I could refer you to Administration Exhibit 19 in the blue book. That's your letter to Vice-President Schnell in which you said that this issue with the evaluation forms will not happen again. Is that accurate? Has that ever happened again in the future?

A. It will never happen again. And it would not have happened if I knew his reaction.

Q. And you did it strictly by the book in fall of 2001, correct?

A. Yes.

Q. All right. Now when you were looking at corresponding with Dr. Wefelscheid about what became Exhibits 2, 3 -- our Exhibits 2, 3, and 4 -- let's see here. You're not saying he physically wrote K-loop; is that correct? I mean, you physically wrote the phrase K-loop; is that correct?

A. That's correct.

Q. And you did so because he suggested it?

A. Yeah. But without this my paper -- he would not publish my paper.

Q. And you relied on his description of the history.

A. I believed it.

Q. And you believed he was telling the truth.

A. I believed him because if he was lying it's a lie that's very -- can very easily be detected.

Q. All right. And if I could call your attention to Faculty Exhibit 19 in the red book. And the page you had marked 9 point -- it's barely visible. It's 142 of the textbook in English. Go to the English version of that textbook. Page 142 is where the small print was.

A. What page?

Q. 140 -- well, it's not visible on my copy. Find 143 and go to the left.

A. 143 and left. Okay.

Q. And that's where the sentence appears, "But even then, no example was forthcoming until Ungar's discovery." Is that correct?

A. Yes.

Q. And, in your view, is claiming that discovery occurred before you, is that plagiarism? Somebody claiming having discovered it before you without being able to prove it, is that plagiarism?

A. Please ask again, sir.

Q. If somebody claims to have discovered

this concept before you did and can't prove it, would that be plagiarism in your eyes?

A. If he admits my contribution it's fine. But if he says it's his -- it's very difficult for me to understand your --

MR. GOSBEE: All right. Could I take a look at the exhibit that counsel used to impeach?

MS. MC GRANE: Certainly.

Q. (Mr. Gosbee continuing.) And this is an article by William Kerby and Wefelscheid. Now do you recall if you've even ever read this?

A. Yes. I read it. I am familiar with this.

Q. And do they ever use the phrase K-loop in here to your recollection?

A. Never. They did something that later when I showed the importance they did millions of other things. When they saw the importance of one of the millions things that they did they say, oh, we did it already before.

Q. And the part that counsel highlighted for you in yellow, do you see the word K-loop there at all?

A. No, I don't see the phrase K-loop.

Q. Thank you. Is it fair to say that you believe you are the first person to have discovered a

concrete example of this concept?

A. Certainly is.

Q. I can't even read my own writing here. Oh. Turning to exhibit -- Faculty Exhibit 21 in the red book. What significance do you attach to that?

A. Here we see a student who did not want to learn to use the sign equality. Equality --

MS. MC GRANE: Objection.

MS. VOGLEWEDE: Overruled.

A. Equality is something that we all learned at the age of seven. Here you see a student who passed elementary school. He should not have passed elementary school without knowing what is equality. He passed high school and now he's going to pass NDSU because I did not fail him. I only reduced his grade by ten percent because he did not know how to use equality sign. Now what he says, what is unique in here, he not only say that I -- he complains that I reduced his grade by ten percent, he says that other teachers don't do it. And I agree with him. Other teachers of 146 pass students even if they do not deserve because they know that NDSU wants to get more money, NDSU wants us to pass all students.

Q. If I can call your attention here, because we're ready to finish up. I've written two

things here. A B and A equals B on the blackboard.

A. They write A B with no equality sign.

Q. What does A B mean? In the state of mathematical computation.

A. A times B.

Q. And what is that?

A. A equals B.

Q. Are they the same thing?

A. Totally different.

Q. When would they ever be the same? Only if A and B are the same already, right?

A. Well, if A and B are both one then it will be the same.

Q. Other than that, they're not the same?

A. Usually, no.

Q. And the student who thinks that has missed the concept; is that correct?

A. No. He just say they learn by memory, not by understanding.

Q. My question is if a student thinks those two are the equivalent, unless A and B happen to be the same number, the student does not understand the concept correctly, does he?

A. You ask me if he thinks. He does not think. He remembers without thinking.

Q. Please answer my question.

A. If he thinks then he thinks that it is equal.

Q. All right. Now turning to Administration Exhibit 15 in the blue book. Now by the time you wrote that you were aware that Professor Foguel had said he didn't want to talk to you anymore; is that correct?

A. Yes.

Q. But it starts out, Dogan, justifiably, suggested we try to resolve the matter.

A. So if Dogan -- it's not that I won't talk to him under any circumstance. If somebody pushed me to talk to Dr. Foguel I will. But on my initiation, once I knew he is not my friend, I have nothing to do with him.

Q. So you thought there might be some chance of some sort of peace conference in effect.

A. Yes, right. And I wrote I hope that this will give me a chance to show, once again, the example number 4 on page 7 of the ethical notes of the American Mathematical Society.

MR. GOSBEE: Okay. No further questions, your Honor.

MS. VOGLEWEDE: Recross?

EXAMINATION

BY MS. MC GRANE:

Q. You said that you were forced by the administration to go to the faculty assistance program; is that correct?

A. Yes.

Q. Did you go to the faculty assistance program?

A. Yes, I did.

Q. You also said that you did your evaluations in the fall of 2001 by the book. Was that your testimony?

A. I don't understand what you mean by the book.

Q. I believe your -- the question from your attorney was the fall of 2001 you did your examinations by the book.

MR. GOSBEE: No. That was evaluations I thought I asked.

Q. Evaluations. And you testified, yes, you did them by the book. Was that correct?

A. I don't even understand what does it mean evaluations by the book so how could I understand something like that.

Q. So if that was the testimony that was a

misunderstanding.

A. My English is my second language. I even now don't understand what is by the book.

Q. Okay. Let's look at the Administration Exhibit No. 6. Blue book. For those with books. At the bottom there is a notation. "Dear Tuval, knowing that the term K-loop is deceptive, experts avoid it unless they are personally attached to Karzel." Is that correct?

A. Yes.

Q. Is that your understanding of what's appropriate?

A. Yes.

Q. And you were just at, in the red book, Exhibit 21. Where a student is apparently complaining about taking ten percent of their test score away for not using an equal sign; is that correct?

A. Yes.

Q. Did you notify the students in advance that if they failed to do that that would be a ten percent reduction?

A. I like to answer because this is important.

Q. Can you answer yes or no before you explain?

A. Again, yes and no. I did notify, but in a very special way.

Q. How did you notify?

A. So before I had enough experience I told students if you don't write equality signs you lose points.

Q. So you told this student that if they -- this student in this class, they were notified if they didn't use an equal sign they'd lose ten percent?

A. No. If I do something like this there is a expedition going to complain to the chairman and the chairman say that I'm a bad teacher. So I learned from my experience and I reversed it. Instead saying to the students if you don't write equality signs you will lose points, I write that -- I tell them if you do write equality signs you gain points. And then they cannot complain. You see, I have to treat those students like kindergarten.

Q. Let's look at Exhibit 15, then, if we can, in the red book.

MS. MC GRANE: And I don't believe this was offered yet so we'll actually offer the Faculty's Exhibit 15.

MS. VOGLEWEDE: Any objection?

MR. GOSBEE: Well, what's this going to do for our time for closing argument?

MS. MC GRANE: My last question is on Exhibit No. 15, Faculty Exhibit. We'd offer it.

MR. GOSBEE: But now we're going to have to go through recross, and all that.

MS. VOGLEWEDE: Do you have an objection, Counsel?

MR. GOSBEE: No.

MS. VOGLEWEDE: It will be received.

Q. (Ms. McGrane continuing.) This is a letter that you wrote about this particular student who you did the ten percent reduction on, correct?

A. I was asked to write it.

Q. And in it you said that Mr. -- we'll leave his name out of it. His "Request for an A indicates that in addition to being unable to get the common sense that underlies the role of parenthesis in calculus, he does not have the common sense to realize that parenthesis are relevant in algebra and calculus. As such, he should not have been allowed to enter M260, let alone pass it with any grade greater than F."

Is that what you wrote?

A. Yes, that's correct.

MS. MC GRANE: And we would request that

the student's name be omitted from all of the records before the committee. The publication of the student's name is a violation of that person's privacy.

MS. VOGLEWEDE: Redacted.

MS. MC GRANE: And since we put it in through the faculty I want to make sure it comes up.

MS. VOGLEWEDE: We will do that.

MS. MC GRANE: Thank you. That's all the questions I have.

EXAMINATION

BY MR. GOSBEE:

Q. All right. Well, quickly, first of all, the Exhibit 21, our Exhibit 21, which is the student complaining about the ten percent, that was from Math 146; is that correct?

A. Yes.

Q. And the student in Exhibit 15, who shall remain nameless, who didn't understand parentheses, that was from 1999 and Math 260; is that correct?

A. 260. Which is the last class of calculus.

Q. That's not the same course; is that correct?

A. Not the same course. And after this incident I was not allowed to teach anything other than

146. I'm afraid this is a retaliation. Since I gave him only B instead of A I got a retaliation. This was the last course other than 146.

Q. Let's try to focus because we have no more time. So counsel's question was misleading when she implied that the student involved in Exhibit 15 is the same student involved in 21; is that correct?

MS. MC GRANE: Objection. I asked the witness. I do not appreciate the counsel's misleading comment when the witness was asked the question.

MS. VOGLEWEDE: Sustained.

Q. (Mr. Gosbee continuing.) Okay. Let's make sure we understand things clearly. Exhibit 21, that is from Math 146 in the spring of 2001?

A. Yes.

Q. Exhibit 15 is from Math 260 in the spring of 1999.

A. Yes.

Q. Is that correct?

A. Yes.

Q. Without reading the student's name out loud, read his name to yourself.

A. Okay.

Q. Do you recall if he was ever in Math 146 in the --

A. Not in my class.

Q. Okay. And would a student ever go from Math 260 to Math 146?

A. 260 is completely different course than 146. 260 is the last class of calculus. By then he already fully knows calculus.

Q. So no student would ever go from 260 to 146.

A. No. 146 is a very low level of calculus.

Q. All right. Fine.

A. For students who hate mathematics.

Q. And the evaluations you conducted in the -- the student evaluations that you conducted in the fall of 2001, I'll be clearer instead of using the phrase by the book which you apparently didn't understand, to your knowledge and understanding did you conduct those as required by the university rules?

A. Please ask again.

Q. The evaluations conducted in the fall of 2001 that gave you those higher grades -- or higher results, those you conducted, at least as far as you understand, the way you're supposed to, correct?

A. Yes. By the book, yes.

Q. Has anybody claimed that you did them improperly?

A. No. And I've not yet seen them, by the way. I only saw a letter from Warren Shreve indicating that I got good evaluations. I have not yet seen it.

MS. VOGLEWEDE: Counsel, to allow 30 means for closing arguments, I'd like to take literally a three-minute break at this point. We'll start at 1:30.

(Whereupon a break was taken.)

MS. VOGLEWEDE: We have a quick question from Dr. Colville before we start the closing arguments.

MR. GOSBEE: Do you want him back up in the front, take it from here?

MS. VOGLEWEDE: That's fine. You can stay there.

DR. COLVILLE: Dr. Foguel, would you refer to Exhibit 8.

MS. VOGLEWEDE: Dr. Ungar.

DR. COLVILLE: Ungar. I'm sorry. Dr. Ungar. I apologize. Exhibit 8 in the red book.

THE WITNESS: I need my book.

MR. GOSBEE: Use mine.

DR. COLVILLE: Your attorney has it down there. I believe this is your paper from 1989 in which you announced your discovery. The second page, second

complete paragraph that starts out, "The loop of special relativity can be placed..." The third line from the bottom it says, "See for instance references 8, 9, 18, and 19." You indicated those were in German?

THE WITNESS: Those are in German.

DR. COLVILLE: And you had not read those prior to this publication.

THE WITNESS: Not at this time but later, of course, I investigated. At this time I believed that K-loop is already used. I never heard about this, but I was told that it's already in wide use since the 1960s.

DR. COLVILLE: So is the statement as you have it published in your paper accurate?

THE WITNESS: It's a lie.

DR. COLVILLE: Okay. That was my question.

MS. VOGLEWEDE: Okay. Counsel, you may proceed.

MS. MC GRANE: Thank you.

We've heard much about mathematical concepts. And the NDSU Administration would like to reinforce that this is not a hearing on whether Dr. Foguel has supported plagiarism. This is not a

hearing on whether or not the Karzel group has engaged in plagiarism. This is not a hearing about the invention of a mathematical concept called Bruck loops which were subsequently expanded by Karzel, subsequently expanded by Dr. Ungar, and many, many, many other talented mathematicians. The article submitted by Dr. Ungar shows that lots of mathematicians around the world were talking about these same concepts at the same times calling them different names.

As one of the committee members pointed out, we are talking about terminology, different terminology employed by different groups. Some in Japan, some in Germany, some in the United States. Varying definitions. That's not what this hearing is about.

What this hearing is also not about is a professional difference of opinion between two mathematicians. It stopped being a professional difference of opinion when Dr. Ungar told Dr. Foguel that unless he turned -- changed his terminology he would not be his, quote, unquote, friend for tenure purposes. The matter then became a much more serious one. And elevated to a point where a senior faculty member engaged in harassment of a junior faculty

member.

It occurred in a number of ways. It occurred first by repeated communications after Dr. Foguel told Dr. Ungar that he would not change his terminology, that he could choose the terminology he wanted to use, and that that's what he was going to do.

Even after having that communication, the issue still came about. The issue came about in subsequent communications with Dr. Foguel in writing, in person, and through the dean and through others. That is one of the reasons that we have the letter of reprimand.

The second reason we have the letter of reprimand is actually what in the administration's mind was the first reason that prompted the letter of reprimand. As Dr. Schnell testified, he asked for a letter of reprimand in the fall of 2001 for the failure to complete the student evaluations. Dr. Ungar had been reminded to complete the student evaluations, as Dr. Comez testified, not only by Dr. Comez, but also by his assistant, others in the department through e-mails, and through written communications.

Dr. Comez further testified that he spoke with Dr. Ungar about the student evaluations near the

end of the semester reminding him that they needed to be completed. Dr. Ungar told Dr. Comez that he would not be completing them. None of this evidence has been disputed by Dr. Ungar.

Dr. Comez then wrote a letter to Dr. Ungar about his failure to turn in the evaluations. That's in your exhibits as Exhibit 16 of the administration. After that document was sent on May 10th Dr. Ungar made no attempt to contact anyone and say this is wrong, I did the student evaluations, here they are. He kept them to himself. It was not until after he received the letter of reprimand that he told Dr. Schnell for the first time that he had done them. Dr. Ungar testified that he mentioned to Dr. White that he had them. Dr. White testified that that wasn't the case. That Dr. Ungar never told him that he had them.

The letter of reprimand was drafted and sent out at Dr. Schnell's request. Dr. Ungar then came and said that he did the student evaluations, but when he met with Dr. Schnell he told Dr. Schnell something different than he told the committee. He told Dr. Schnell that he had handed out the evaluations and collected them. Today he told the committee that wasn't the case. He told the committee that a student

handed them out and brought them into the department.

It doesn't matter who handed them out and who collected them. What matters is who received them. Who received them was the faculty member administering student grades before those student grades were distributed. That is a direct violation of the university policy and of department policy. There was no justification.

The letter of reprimand as issued stands that information about a student providing the information was never presented before this committee. If that were the case it should have been presented earlier before the letter of reprimand was revised. It was revised, it's accurate, there is no dispute that the student evaluations issue was a direct violation of the policy.

Today we learned that Dr. Ungar believes that it's appropriate to change department policy as a form of protest. However, one questions how effective a protest is when the people against whom the protests are being made don't even know about it. If this were going to be a protest he should have told someone what his issue was, why he had a problem, and gotten permission from his chair, from his dean, or his vice-president to alter the procedures. He didn't do

that. That was a direct violation of university policy.

He further failed to follow university policy when he decided to conduct his own investigation into whether or not these examinations were appropriate. The testimony that was established today by Dr. Ungar suggests an additional ground should be added to the letter of reprimand for his, again, altering university and faculty procedures and engaging in his own method of giving student evaluations. The university does not permit faculty members to alter the way these are done. They are standard. They are that way for a reason. That's to protect the students, protect the faculty, and protect the university as a whole.

The second issue on which the letter of reprimand was issued also stands. And that is the harassing communication of Dr. Foguel. Dr. Ungar took Dr. Foguel's paper off the printer. He did not ask for a copy of it. He then told Dr. Foguel that the trend was to ignore the term K-loop with the suggestion that he replace the reference with his term and a citation to himself. That's in the evidence as the Administration's Exhibit 8. Dr. Foguel went to his chair, Chair Comez, to tell him about the issue. Chair

Comez encouraged him to speak with Dr. Ungar. Dr. Foguel did that. Dr. Ungar then sent yet another letter. This time changing the communication that they had. In response Dr. Foguel sent a letter saying I don't agree with you. I've told you I don't agree with you. Let's let this come to an end. That's Exhibit 9.

The issue did not come to an end. The issue continued by communications from Dr. Ungar to Dr. Foguel and to Dr. White. Dr. Ungar left articles in Dr. Foguel's mailbox. We have that in Exhibit 10. And that is the exhibit that has the notation written in Hebrew with the word warning at the top of it. We don't have expert testimony on who wrote the word warning. We don't think it's necessary. We think you can look at the word and determine who wrote it.

Even if there's a dispute as to who wrote the word warning, there was already clearly and plainly a pattern of harassment. When somebody asks that communications stop and they are not respected, but continue to be communicated with, that is a form of harassment.

And an even greater form of harassment is the quid pro quo that was testified to by Dr. Foguel, by the exhibit where Dr. Foguel summarizes his

conversation with Dr. Ungar, and by Dr. Schnell who summarizes his conversation with Dr. Ungar. None of that testimony was disputed by Dr. Ungar. Dr. Ungar approached Dr. Foguel in the hallway. He told Dr. Foguel that he would be his friend for tenure purposes if Dr. Foguel would change his notation.

And I would request that Dr. Ungar not be making hand gestures as I'm giving my closing again.

MS. VOGLEWEDE: So instructed.

MS. MC GRANE: The information that was presented was undisputed. Dr. Schnell testified that Dr. Ungar acknowledged making that statement to Dr. Foguel in the hallway. Dr. Foguel testified that that statement was made. And there was a document authored by Dr. Foguel that was sent to Dr. Shreve confirming that that conversation happened. None of that has been disputed in this record.

Dr. Ungar then went beyond all bounds of decency, in the NDSU Administration's view, when he started his campaign outside the university. Not on the issue of who came up with K-loop, who is entitled to appropriate authorship. NDSU Administration believes that Dr. Ungar is fully entitled to his opinion and he's fully entitled to contact people about that issue. What he's not entitled to do is denigrate

and defame another member of the faculty, the department in which he works, by calling him anti-Semitic, by questioning whether he has a mental defect, and by bringing his son, a six-year-old boy, into the equation and talking about whether or not his son has a mental defect. This crosses all lines.

Not only did Dr. Ungar send this e-mail to people around the university, but he made similar communications to his dean, to Dean White. One of the exhibits that's in evidence is a letter that Dr. Ungar wrote following his letter of reprimand where he once again claims that the only reason Dr. Foguel can think this is that he must have a mental defect. And once again refers to his son. He further goes on to comment about Dr. Shreve and Dr. Shreve's qualifications. That letter was never asked to be withdrawn by Dr. Ungar as he testified. Instead, he sent a letter explaining his actions.

Based upon those communications in which Dr. Ungar himself said he believed he was operating under a paranoic influence, the NDSU Administration did the only thing they thought it could, and that was refer him to the faculty assistance program. There was nothing else the administration could do other than try to get him help. It was his choice whether or not to

get him help. We heard for the first time today whether or not he chose to receive it. That's his choice. It was the only offer that the NDSU Administration could make.

Dr. Kappe from Binghamton -- I can never say that word correctly -- Binghamton is in Exhibit 31. She communicated with Dr. Ungar that she requested that he stop contacting her.

We also have in an exhibit, in Exhibit 25, part of that is a reference from Dr. Mann where Dr. Mann references that he has asked that Dr. Foguel stop -- or, I'm sorry, Dr. Ungar stop contacting him about his dispute with Dr. Foguel.

NDSU Administration received evidence from two individuals outside the university that they believed the communications by Dr. Ungar to them were inappropriate. When they looked at the communications and saw the nature of the communications they did what they could to stop the communication by exercising their right to stop his outgoing e-mail privileges. We'd ask you what you would do in a similar situation. When these kinds of messages are being sent on NDSU property, isn't it appropriate that NDSU try to stop the inappropriate messages from being sent.

Again, this is not a case about who invented a theory. It is not a case about who should be given credit. Dr. Ungar is, obviously, a very talented mathematician. He's a very bright man. However, Dr. Ungar is required to follow university policies and procedures regarding student evaluations. His testimony today established that he did not follow those procedures. And, in fact, established that an additional year of evaluations or semester of evaluations were also not done pursuant to university policy.

Dr. Ungar also violated university policy when he sent harassing and threatening messages to individuals both at the university and away from the university. He further violated well-established norms, common decency in communications that he had both with individuals inside NDSU and outside NDSU.

At a minimum, the letter of reprimand that was already issued should stand. We think that the examples here of the behaviors show that it has been extreme and outrageous conduct, and we need to try to repair the relationship and move forward. A letter of reprimand at a minimum should be issued. And we'd hope that you will make that recommendation. Thank you.

MS. VOGLEWEDE: Mr. Gosbee?

MR. GOSBEE: Thank you.

Mr. Chairman, members of the committee. I certainly appreciate the time that the committee has spent listening to this case. And I guess I do respectfully disagree as to what the issues are about.

The formal issues are whether the letter of reprimand, Administration Exhibit 1, is justified. Whether the Administration Exhibit 3, the amended letter of reprimand, is justified. Whether the faculty staff assistance program referral is justified. That's exhibit -- Administration Exhibit 2. And whether the e-mail suspension and apology demand in Administration Exhibit 4 are justified. By operation of the policy manual all of these are automatically suspended pending a decision of this committee and then the president. And if we peel back the layers of the onion, the university's case, I respectfully submit, they should stay suspended.

Please remember the standard of proof in this proceeding is clear and convincing evidence on the records considered as a whole. Many of the facts are agreed to, and what we're fighting over about is the conclusions you draw from them.

One of the major facts that's in hot

dispute is who wrote the word warning. I ask you to look at the handwriting samples. I call your attention to the fact that in the so-called warning letter, and all three pages should be in the record, I hope they are, of the original document, the handwriting is very deep. The person writes with a heavy hand. And if you look at the sample, I think it's 30, it's on the yellow pad of paper, that kind of handwriting appears. Compare the smoothness of the lines in the samples that we had admitted, and the underlining there is not smooth. And that's consistent with Dr. Foguel's style of underlining.

Now the question really is, and this was one thing I do agree with counsel on, whether Dr. Ungar's conduct violated the rules. We have differing views on the answer to that question. The repeated question that I asked of every, practically every administration witness is where is it written. And that is not trying to be funny. That is a serious question. It's my lawyer's instinct when a client calls me for advice what is written and where is it written? Every time I tried to pin an administration witness down I get evasive answers. Well, it's common sense. We all know. It's the long-standing tradition of the department. That's in Administration Exhibit

16.

But it's not only lawyers who want precise guidelines for conduct. Doctor -- or Dean White and Dr. Comez both agreed that the purpose of the letter of reprimand, the purpose of the process, was to try to modify Dr. Ungar's behavior. And I think we can make it a general theory here or a construct that rules are basically a behavioral contract. Thou shalt not drive more than 70 miles an hour is a behavioral contract between us and the state, and you pay if you go 75.

One essential feature of a behavioral contract is that it defines clearly the target behaviors involved in the contract. And so I won't be accused of plagiarism, I will attribute that quote to Professor Miltenberger's textbook on behavior modification at page 465. I could not say it better myself and I won't even try.

I ask you to apply the clear and convincing standard to the evidence you have heard over these last two days. Ask yourself, as you reflect on the evidence, do you have a firm belief or conviction that Professor Ungar violated the rules. Are you sufficiently convinced of this evidence that if it were that kind of a case you'd take somebody's child away.

So turning to the four things at issue. The first letter of reprimand, there are two violations accused. The first one is that the evaluations did not take place. Well, the truth in that was eventually found out so I'll address that in a couple minutes.

The second one is the so-called harassment or harassment of Dr. Foguel. In the letter, if you look at Administration Exhibit 1, the word warning I think is predominant in their theory. I think that's what triggered the letter of reprimand. And if it isn't what trigger the letter of reprimand it's because the authors of that letter didn't make themselves clear. Because that's the only thing, the only specific incident or act that's mentioned in the letter. I think the letter itself is offensive because it uses the phrase security of the Hebrew language, whatever that means.

But be all that as it may, and, of course, I think the committee does have to decide who wrote the word warning. Because as much as the administration tries to back pedal now saying it's not important, like I said, that formed the basis of the first letter. And without warning -- without the word warning the Administration Exhibit 1 is perfectly innocuous. Dr. Foguel agreed with the

translation -- or he said he didn't significantly disagree, if I recall correctly, with the translation that's in Administration Exhibit 22. And I think anybody reading that will say it's a friendly letter.

The letter of reprimand does not mention the so-called famous quid pro quo meaning which had occurred long since. It does not mention the letters to Dr. Foguel from April -- Administration Exhibits 8 and 9. And, of course, it doesn't mention the e-mails that are Administration Exhibit 25 because those occurred after the letter of reprimand. So those can't possibly justify the letter of reprimand as much as the administration tries to boot strap them into doing so.

The letter of reprimand says you have accused Dr. Foguel of using notation which is nonstandard. It is nonstandard. We've submitted all supports of evidence to show that. We've submitted the textbook of -- that German textbook that became an English textbook. And certainly we don't dispute that Dr. Foguel is free to use a nonstandard terminology if he so chooses. But Dr. Ungar also has a right to try to present his case to Dr. Foguel.

Now they make the point, well, he kept on persisting. I think a fair construction of the evidence is that he did not. Because that I want this

conversation to come to an end letter, there was only one more letter after that that was sort of spurred by that. And that was because Dr. Ungar was concerned that Dr. Foguel had sent a copy to the dean. And then the next letter after that was May 1st. And I think a fair construction of that is that Dr. Ungar thought there was some sort of mediation or peace conference about to take place with Dr. Comez.

And most important, though, if you look at all that evidence, can anybody point to me, or ask yourself, try to find where is it written what he did is wrong. Where can you find something a little stronger than it's common sense, it's long-standing tradition.

As we see, Dr. Ungar is not familiar with an awful lot of American English phrases we all take for granted. We had to explain what go by the book means. And so what we think is common and obvious may not be to an Israeli national even who's been here for 20 years. What we sort of absorb growing up, and so on, he may not have absorbed. He certainly can't be held to account for something that's not told to him.

Okay. Going to Administration Exhibit No. 2, the faculty staff assistance program. They talk about several incidents. Yet none is really defined,

none tells Dr. Ungar what he did that was supposedly wrong. Using Dr. Miltenberger's phrase, nothing clearly defines the target behaviors involved in the contract.

The Administration Exhibit 2 talks about the dispute with the Karzel group. Doesn't explain what he talks about. He talks about the confronted the colleagues. Doesn't say.

Oh, yeah. Let's go to this quid pro quo thing because that is such a -- so heavily emphasized by the administration. Here again, maybe Dr. Ungar used the word friend, maybe he didn't. But he didn't mean it in the sense, you know, I'll be your buddy like let's go out and have a drink together. I think it's fair to conclude that he meant it, look, if you agree with me -- or if you -- basically he was trying to persuade Dr. Foguel to stop doing what he considered to be supporting plagiarism. And Dr. Ungar is entitled to that opinion. He may be wrong, he may be right. Each of us has an opinion as to whether he's right or wrong. The question is did he present his case in a way that violates the rules.

And the thing that really scares me about Administration Exhibit 2 is it comes across as mind control. If you don't do what we want you to. If you

don't think the way we want you to. I don't think there's any question that Dr. Ungar isn't thinking the way the administration wants him to. They've spent a fortune trying to pursue this case. But that's kind of frightening. Because if you don't think the way we want you to we tell you to go to a place for retraining. Now they say it's voluntary, but if you read the fine print in the rules, and so on, a staff member who doesn't go gets in further hot water. And that was in part of the quotation or part of the attachment to Administration 2.

Going to Administration 3, the amended letter of reprimand, the -- they had to keep on back pedaling. First he didn't do it at all. Then he did it improperly because he had a student do it. Then the testimony came out that in the math department having a student do it is fine. So now they're saying the violation was he didn't turn it in. But I think there's almost a statute of limitations or what they call res judicata in court. You can't have double jeopardy here.

Dr. Comez testified he considered the issue and decided not to issue a letter of reprimand. So that closed the matter. Apparently, this wasn't communicated to Dr. White and doctor -- the new

chairman. But the decision was already made by the chairman under whose watch it occurred. To me that's a binding decision. And he also said that he hoped that Dr. Ungar would conform his conduct. And that's why he didn't issue a letter of reprimand. Now how he could have cured that after the exam is over is a good question.

And the policy is not as clearly written out as the administration would have you believe. Yes, it uses the word will in there. But if you take a look at the next section in their exhibit where it uses the word shall -- and this is where lawyers, you know, spend all sorts of time straining at gnats. Shall and will do not always mean the same thing. And somehow a layperson is supposed to know what to do. How could I advise a client what he can do and cannot do.

And, as a matter of fact, they are now suggesting that his experiment with the no-risk final violates the rules. Well, Section 336 of the policy manuals says that grading is entirely up to the faculty member. So he can come up with any grading system he desires. Nothing in the rules dealing with the evaluations say that the students can't be given their tentative grades before they give the evaluation. It just says that the final grades don't get

published -- or, I'm sorry, the evaluation doesn't get released until the final grade is published. And I'll be honest, I've advised my client that he can do this again. So if I'm wrong I hope somebody tells me so my poor client isn't here again and suing me for malpractice. Because I don't see anything in those rules that says he can't do what he did.

Finally, I'm running out of time here, the e-mail suspension and the apology.

I'm glad it amuses the vice-president. This is a very serious situation. And just as my client has been directed not to make hand gestures, I'd appreciate a similar direction.

MS. VOGLEWEDE: So instructed.

MR. GOSBEE: The e-mail suspension and the apology demand and the e-mails, where is it written that what he did was wrong. All they could come up with was the general prohibition of sending things that harass, annoy, or alarm other people with no legitimate purpose. That is such a vague phrase. How does somebody know what a legitimate purpose is. If there's going to be somebody punished for violating the rule, especially somebody who is not well versed in American idiomatic language, who has to learn some of the things that we all take for granted as knowing, how can he be

fairly expected to know that. No matter how bright he is. If he doesn't know the way we talk he can't follow our rules. I'd be equally at sea trying to obey the rules in Israel.

The supposed unwanted contacts with the people around the world. Contacts with Kappe, none of them occurred after she said she didn't want to be involved anymore. She had a great quote in there from Henry Kissinger that the academic fights are so mean because the stakes are so low. And she also says on page 3 of that exhibit she'll speak to Karzel, whom she's known for 20 years, that she's planning to contact Karzel. So I think Professor Ungar reasonably responded the same day to her. And there's no e-mail from Professor Ungar to Kappe postpone -- or following after that date in which Professor Kappe said she didn't want to hear anymore.

Now as far as Professor Mann goes in Israel, this is one of the reasons I objected. This is why we have a hearsay rule. Professor Mann wasn't available to question what he meant when he said he didn't want to hear anymore. Now it may have been a business record, but that doesn't make it accurate. And I think that, you know -- and, also, if you notice, the next e-mail from Dr. Ungar is by an hour or two

later. If you look at the list you'll see that Professor Mann is off the list of recipients.

Finally, the demand for an apology, there is a provision in the statute that says the law does not require futile and fruitless acts. I think it's pretty clear at this point, unless there's a change of heart of the people involved, that an apology to Dr. Foguel would not be -- wouldn't be neither welcome or accepted. And, as a matter of fact, since he's been told not to deal with him I don't see how he could possibly make an apology without getting into hot water again.

And I thank the committee for its time. And I do call attention to the definition that my client provided for the dispute. Thank you.

MS. VOGLEWEDE: Thank you, Counsel.

I don't know if we got this on the record earlier. But all of the exhibits will be reviewed by counsel with me to remove those that were not received. And then redistributed to the members of the committee. And counsel for both parties will be advised when the committee has issued its reported.

Anything further?

MS. MC GRANE: Nothing for the administration.

MR. GOSBEE: Nothing from the faculty member, your Honor.

MS. VOGLEWEDE: The hearing is adjourned.

(Whereupon, the hearing was adjourned at 2:00 P.M.)

C E R T I F I C A T E

STATE OF NORTH DAKOTA)
)
COUNTY OF CASS)

I, DEANNA L. SAGER, 312 Black Building, Fargo, North Dakota, of Norman E. Mark - Court Reporter Service, certify that I am the Reporter who was present and reported the foregoing proceedings. This record is a true and correct transcript of my shorthand (Stenograph) notes made at the time and place herein indicated.

Dated this 24th day of May, 2002.

Deanna L. Sager - R.P.R.
312 Black Building
Fargo, North Dakota