

COMMONWEALTH OF KENTUCKY  
FAYETTE CIRCUIT COURT  
DIVISION NO. III  
CIVIL ACTION NO. 15-CI-551

PAUL KEARNEY, M.D., ) DEPOSITION TAKEN ON  
 ) BEHALF OF PLAINTIFF  
 PLAINTIFF ) BY: NOTICE  
 )  
VS. )  
 ) VOL. 1  
UNIVERSITY OF KENTUCKY ) WITNESS:  
 )  
DEFENDANT ) PRESIDENT ELI CAPILOUTO

\* \* \* \* \*

The deposition of PRESIDENT ELI CAPILOUTO was taken before Desiree J. Wright, Court Reporter and Notary Public in and for the State of Kentucky at Large, and by videotape recording, at the law offices of Sturgill, Turner, Barker & Moloney, PLLC, 333 West Vine Street, Suite 1500, Lexington, Kentucky, on Wednesday, July 20, 2016, commencing at the approximate hour of 1:06 p.m. Said deposition was taken pursuant to Notice, heretofore filed, to be read and used as evidence on behalf of the Plaintiff at the trial in the above-captioned action and all other purposes as permitted by the Kentucky Rules of Civil Procedure.

\* \* \* \* \*

1 APPEARANCES:

2

3 Hon. Bernard Pafunda  
4 PAFUNDA LAW OFFICE  
5 175 East Main Street - Suite 600  
6 Lexington, Kentucky 40507

7

ATTORNEYS FOR PLAINTIFF

8

9

Hon. Bryan Beaman  
10 STURGILL, TURNER, BARKER & MOLONEY, PLLC  
11 333 West Vine Street - Suite 1500  
12 Lexington, Kentucky 40507

13

14 ATTORNEYS FOR DEFENDANT

15

16

ALSO PRESENT:

17

Ann LeRoy,  
18 Certified Videographer

19

20 Paul Kearney, M.D.

21

22 William Thro, General Counsel, University  
23 of Kentucky

24

25

25 AN/DOR Reporting & Video Technologies, Inc.

I N D E X

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Report

1 THE VIDEO TECHNICIAN: We are on the  
2 video record. I'm Ann LeRoy, certified  
3 videographer. The court reporter is  
4 Desiree Wright.

5 We're here to take the deposition of  
6 Eli Capilouto, President of the University  
7 of Kentucky, at the law offices of Sturgill,  
8 Turner, Barker & Moloney, 333 West Vine  
9 Street, Lexington, Kentucky.

10 The deposition is being taken  
11 pursuant to Notice in the Fayette Circuit  
12 Court; styled Paul Kearney, M.D. versus the  
13 University of Kentucky.

14 The date is July 20, 2016. The time  
15 is 1:01 p.m.

16 Would counsel please introduce  
17 themselves, and state who they represent.

18 MR. PAFUNDA: Bernard Pafunda, on  
19 behalf of Dr. Paul Kearney.

20 MR. BEAUMAN: Bryan Beaman, for the  
21 University. Also with me today is  
22 William Thro, general counsel for the  
23 University.

24 The witness, ELI CAPILOUTO, after  
25 first being duly sworn, was examined and  
AN/DOR Reporting & Video Technologies, Inc.

1 testified as follows:

2 MR. PAFUNDA: At this point we'd ask  
3 that Mr. Thro remove himself from the room  
4 since he is a witness in this particular  
5 matter, unless you're going to designate him  
6 as the corporate representative?

7 MR. BEAUMAN: I can either designate  
8 him as the corporate representative for  
9 today's purposes or here as general counsel  
10 for the University, either one.

11 MR. PAFUNDA: No, I don't know if  
12 general counsel for the University fits into  
13 the mold, but I take it from the response  
14 he's not leaving?

15 MR. BEAUMAN: Correct.

16 MR. PAFUNDA: Okay.

17 EXAMINATION

18 By Mr. Pafunda:

19 Q After that brief introduction,  
20 President Capilouto, you brought a copy of your  
21 curriculum vitae with you?

22 A Well, they -- it's been downloaded  
23 from the Web. I haven't looked at it in a while,  
24 but, yes.

25 (REPORTER MARKS CURRICULUM VITAE AS  
AN/DOR Reporting & Video Technologies, Inc.

1 PLAINTIFF'S EXHIBIT NO. 1 FOR PURPOSES OF  
2 IDENTIFICATION.)

3 Q All right. If you will, I'll hand  
4 you what I've marked as Plaintiff's Exhibit No. 1.  
5 And after you've had an opportunity to review it,  
6 we'll address questions.

7 (Off the record.)

8 A Okay.

9 Q Is this a true and accurate copy of  
10 your CV?

11 A I've noticed it's not entirely up to  
12 date.

13 Q What needs to be updated? What  
14 information?

15 A There -- there are a couple of  
16 places in there where it says, you know, I still  
17 serve on a committee at UAB, which I notice I  
18 don't. You know, it was -- I think it was last  
19 updated, you know, when I arrived here, and I  
20 certainly have no role at UAB. I noticed that  
21 kind of thing.

22 Q So to state the obvious, all ties  
23 with the University of Alabama at Birmingham have  
24 been cut?

25 A Yes.  
AN/DOR Reporting & Video Technologies, Inc.

1 Q And in terms of a segue way, when  
2 did you first arrive here as president of the  
3 University of Kentucky?

4 A July 1, 2011.

5 Q What triggered the move, other than  
6 the position itself, from UAB to president of the  
7 University of Kentucky?

8 A I have been serving as a provost for  
9 nine years. I was interested in another  
10 challenge. I was consulted -- I was contacted by  
11 a search firm. I read the materials about the  
12 University of Kentucky and I found it to be  
13 attractive.

14 Q And when you say you were a provost  
15 for a number of years and you were interested in  
16 the position at the University of Kentucky, I take  
17 it that a move from provost up to president, to  
18 state the obvious, is a move upward on the ladder;  
19 is that correct?

20 A Yes, sir.

21 Q And that's what you wanted to do  
22 while you were at the University of Alabama at  
23 Birmingham, correct, move up?

24 A In my last year as provost, I talked  
25 to my president about my interest in -- in looking  
AN/DOR Reporting & Video Technologies, Inc.

1 at a presidency, yes.

2 Q And then I take it from the tenor of  
3 your remarks that somewhere, somehow you posted or  
4 let it be known that you were interested in a  
5 presidency so that a search team would locate it  
6 and find out?

7 A I can't remember how that search  
8 firm consulted me. Periodically, I think I got  
9 some this week, you know, their e-mail  
10 solicitations, and I don't know if somebody gave  
11 them my name, but they called me.

12 Q And then you took -- took the ball  
13 from there; correct?

14 A Yes, sir.

15 Q And who was your first contact at  
16 the University of Kentucky as you -- as you  
17 approached the position?

18 A The members of the search committee.

19 Q Did that include, and I may be  
20 mistaken, Dr. Hollie Swanson?

21 A Yes.

22 Q And you've known Hollie --  
23 Dr. Hollie Swanson, I take it, from that time to  
24 the present; is that correct?

25 A From the time of the interview  
AN/DOR Reporting & Video Technologies, Inc.



1 forward, yes.

2 Q And I noticed from your CV that when  
3 you started out at Harvard University, you had a  
4 degree in administration -- or business; correct?

5 A No. When I started at Harvard, I  
6 had a Bachelor's degree, a dental degree and a  
7 Master's of public health.

8 Q And you elected at some point to do  
9 your graduate work in the field of administration?

10 A I got a Master's degree in health  
11 administration. And then I got a Doctor of  
12 Science in health policy and management.

13 Q What brought you into that  
14 particular field?

15 A I had been largely teaching and  
16 practicing clinical dentistry. I had an interest  
17 in doing research and realized I didn't  
18 necessarily have all of the tools to independently  
19 do research. In talking to some mentors, they  
20 suggested I take some courses in public health,  
21 which I did, and those broadened my horizon and  
22 interest into the health policy field.

23 Q And at that time, I take it that the  
24 health policy field or, for lack of a better  
25 expression, health administration field was  
AN/DOR Reporting & Video Technologies, Inc.

1 relatively new?

2 A I think health administration has  
3 been around a while.

4 Q Ever since there's been hospitals?

5 A I would imagine.

6 Q And doctors?

7 A Sure.

8 Q But it's changed over the years, has  
9 it not, in terms of --

10 A Most things have changed over the  
11 years.

12 Q And in term -- in terms of its  
13 change over the years, can you describe the  
14 change? Not just in terms of coverage, but in  
15 terms of administration?

16 A I -- I would say the organization,  
17 finance and delivery of healthcare has changed.  
18 There are many factors that come into play  
19 regarding that, from reimbursement to regulation  
20 to information systems, you know, technology,  
21 automation, medical breakthroughs. You know, all  
22 of those things.

23 Q As president of the University of  
24 Kentucky, do you keep up with the advances in  
25 hospital administration?

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1           A           Not detailed advances in hospital  
2 administration.

3           Q           Describe, if you will, if you -- if  
4 you have one, your particular management style.

5           A           Sure.

6                       I try to hire good people, give them  
7 responsibility, set up systems of accountability,  
8 and allow them to build a vision and manage an  
9 operation consistent with the overall interests of  
10 the University.

11          Q           And when you say allow them to build  
12 a vision, in other words, I take it from that  
13 response you don't micromanage the various  
14 colleges at the University; is that correct?

15          A           What do you mean by micromanage?

16          Q           Step into the day-to-day operations.

17          A           No. I -- that's not something I do.

18          Q           All right. And your -- and your job  
19 duties, if you'd describe those, please.

20          A           Sure.

21                       I am, I think, a chief advocate for  
22 the University to a variety of constituents. I  
23 have a responsibility overall to promote the  
24 financial wellbeing of the University so that we  
25 can meet the demands and needs of our many

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1 constituents from -- starting first with students  
2 to the Commonwealth and all 120 counties. We have  
3 extension offices, for instance; faculty and staff  
4 who have the responsibility to really carry out  
5 the mission.

6 Q Is there someone on your immediate  
7 staff, and when I say your staff, the staff of the  
8 President's office, who is more say on a  
9 micromanagement level in terms of the day-to-day  
10 operations of the various colleges at the  
11 University?

12 A There are a variety of people who  
13 have, you know, responsibility in day-to-day  
14 areas. For instance, the provost is the chief  
15 academic officer. You know, they --

16 Q Mr. Tim Tracy?

17 A Right. Many of the day-to-day  
18 activities involving academic issues would go to  
19 the provost.

20 Q Would you say in terms of the chain  
21 of command that Mr. Tracy is directly below you?

22 A He is one of a few that are directly  
23 below me, yes.

24 Q Let's start with -- if you don't  
25 mind, just to change gears for a minute, where are  
AN/DOR Reporting & Video Technologies, Inc.

1 you from?

2 A I'm from Alabama.

3 Q Born and raised?

4 A Yes, sir.

5 Q And so I take it at the University  
6 of Alabama at Birmingham, that was in a sense  
7 returning home for you; is that correct?

8 A What do you mean, returning home?

9 Q From school?

10 A I started school at the University  
11 of Alabama. Upon graduation I went to the  
12 University of Alabama at Birmingham School of  
13 Dentistry. And I immediately went into a  
14 instructor or teaching role. Ten years after that  
15 is when I spent the four years at Harvard and then  
16 returned to UAB.

17 Q And the University of Alabama at  
18 Birmingham has a highly-ranked medical school,  
19 does it not?

20 A Yes. Well, it has a --

21 Q Or nationally rated?

22 A -- thriving academic health center.  
23 It has a robust -- robust research enterprise,  
24 yes.

25 Q In terms of national ranking, or on  
AN/DOR Reporting & Video Technologies, Inc.

1 that particular spectrum, where -- it's true that  
2 the University of Alabama at Birmingham Medical  
3 School is one of the top medical schools in the  
4 country; is that correct?

5 A I'm -- I'm not entirely familiar  
6 with recent rankings, and there are a variety of  
7 them out there. So I -- I think it was recognized  
8 through a variety of rankings. You know, for a  
9 period of time people ranked universities and  
10 colleges and even departments by the amount of  
11 external funding. So, yeah, there were a variety  
12 of rankings.

13 Q In your position as provost at UAB,  
14 did you have an opportunity or, in fact, did your  
15 job duties include interacting with the medical  
16 college there?

17 A Yes.

18 Q To what degree?

19 A The dean of the college of medicine  
20 reported to me in terms of the day-to-day  
21 operations. He also reported to the president of  
22 the university. When it regarded sort of vision  
23 for the -- for the school, we called them there,  
24 and also the -- the arrangement there is -- is  
25 such that you have a dean of the medical school.

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1 You have a president of the health services  
2 foundation, which is the practice plan. You have  
3 the hospital, and -- so you have three leaders of  
4 those enterprises and then you have the CEO. And  
5 so that's my -- my large interaction is with the  
6 dean of the school.

7 Q And that would be the main  
8 interaction; correct?

9 A It would be the main interaction,  
10 but the CEO of the -- of the health enterprise is  
11 part of the president's executive leadership team  
12 and there would be periodic meetings.

13 Q So it would come from both  
14 directions, the dean of the medical college and as  
15 well as the CEO, from the president's office?

16 A Parallel, direct report to the  
17 president.

18 Q And when you came to the University  
19 of Kentucky -- in what year again, please --

20 A 2011.

21 Q -- did you have a particular -- once  
22 you were in place, did you have a particular  
23 vision for UK healthcare?

24 A I think the vision for UK healthcare  
25 was set long before I got here. It was to be a --  
AN/DOR Reporting & Video Technologies, Inc.

1 really a subspecialty referral center.

2 Q Any other aspect to it?

3 A That's what I largely remember as  
4 the -- you know, my introduction to it. I've been  
5 here -- well, I came a week or so before I was  
6 president and went to a health committee retreat  
7 that's held on an annual basis.

8 Q And when you say health committee,  
9 that's with -- health committee of the Board of  
10 Trustees?

11 A The Board of Trustees, but it's  
12 attended by a good number of people, including  
13 faculty, staff and representatives from partners,  
14 for instance, hospitals, we may have.

15 Q In that role of referral service,  
16 what role does the academic portion or research  
17 portion play, if any?

18 A Well, in general, I would say it is  
19 ideal to have a thriving research enterprise in  
20 parallel with your clinical activities. It's good  
21 to know that you're part of discovery or you're  
22 interested in the discoveries that are being made  
23 and what would be, you know, best practice to be  
24 able to serve patients.

25 Q So your approach now with respect to  
AN/DOR Reporting & Video Technologies, Inc.



1 UK Healthcare Center is maintain a robust research  
2 institution as well as a clinical institution?

3 A Sure.

4 Q Does there have to be a balance that  
5 has to be reached between research and clinical  
6 duties?

7 A Collectively, yes.

8 Q And when you say collectively, you  
9 mean what?

10 A I -- I think that holistically  
11 speaking, you know, the entire enterprise  
12 participates at a variety of levels in  
13 complimentary ways to advance both of those.

14 Q But as president of the University  
15 of Kentucky, do you want to push it forward in the  
16 direction that it becomes known as a research  
17 center in the healthcare portion?

18 A I would -- I would certainly be  
19 proud if we were recognized as a top research  
20 university, yes.

21 Q But that's -- my question is, is  
22 that the direction that you want to push the  
23 University healthcare system?

24 A That's not exclusive of being an  
25 excellent clinical enterprise either.

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1 Q Do you have a plan on how to reach  
2 that balance between research and clinical  
3 enterprise?

4 A Do I have a plan?

5 Q Yes.

6 A I think the plan the University has  
7 is a strategic goal to advance research across the  
8 entire University. Different units do that in  
9 different ways. What the law school does and the  
10 College of Fine Arts does in the area of  
11 discovery, of course, is different than the  
12 College of Medicine and the other colleges amongst  
13 the Health Sciences. The Health Sciences are  
14 advancing from basic to applied research, so, yes,  
15 and -- and I do -- I do have a -- and we work to  
16 measure those in a variety of ways. We're looking  
17 for better ways to measure those, but one that is  
18 convenient and is a good indicator is the level of  
19 extramural funding.

20 Q So is that the primary indicator or  
21 metric that you look at to determine how far along  
22 the University of Kentucky --

23 A That is one of the indicators. It's  
24 not the only indicator.

25 Q What are some of the other  
AN/DOR Reporting & Video Technologies, Inc.

1 indicators?

2 A We have started using tools.  
3 They're not using them to make determinations  
4 about allocation of resources or anything like  
5 that, but there are -- academic analytics, for  
6 instance, is a tool that allows one to look at  
7 publications per faculty members, citations of  
8 faculty members' work, funding. Our vice  
9 president for research, who has --

10 Q Is who?

11 A Lisa Cassis.

12 Q Thank you.

13 A -- is working with the colleges now  
14 to refine ways to measure research productivity,  
15 because, you know, it just varies so much across a  
16 university with this many disciplines as we have.

17 Q But I take it at some point in time,  
18 whether it's Lisa Cassis or yourself, but there is  
19 a place where those metrics are stored,  
20 maintained, the studies, the surveys, to see if,  
21 in fact, advancements have been made at the  
22 various colleges, including the College of  
23 Medicine; correct?

24 A Every month I get a report of the  
25 grants that are awarded and our research  
AN/DOR Reporting & Video Technologies, Inc.

1 expenditures.

2 Q And when you say grants, I take it  
3 that includes NIH grants?

4 A Yes, sir.

5 Q Do you know if in terms of an NIH  
6 grant if grants -- if an NIH grant funding has  
7 been included in the University budget before  
8 those funds have been received?

9 A We -- every year in developing our  
10 budget, okay, if you get a grant, okay, I get a  
11 three-year award. Every month, depending on how  
12 much effort I devote to that, if it's going to be  
13 funded by the grant, are -- I expend funds to  
14 purchase something that's part of the grant. Once  
15 that's done, there's a draw down from the funding  
16 source. You don't get the money in advance, but  
17 you know you've been awarded for the year and  
18 you're going to be expending it. Also for most  
19 awards, not just NIH, you get an overhead for  
20 administration. Every university has a different  
21 overhead rate. It's determined through a process  
22 of measurement and consultation with appropriate  
23 federal agencies. So let's say it's 50 percent,  
24 and I'm keeping it real simple, that for every  
25 hundred dollars you spend you get \$50 of overhead.  
AN/DOR Reporting & Video Technologies, Inc.

1 So we try and we model our grants. We see how  
2 many have come in. We anticipate. So there's a  
3 burn rate. How are you going to be spending  
4 month-to-month, and we project what will be the  
5 overhead rate for the year.

6 Q But my question I think is more  
7 direct, and maybe on too simplistic a level,  
8 is, are NIH grants, once a grant is received or  
9 approved, all right, by the principal  
10 investigator, once that's approved, is it -- does  
11 the University place that money from that grant in  
12 its budget, put it on a budget line as already, in  
13 fact, received before its received?

14 A You just said to me once the  
15 University knows it's been awarded the grant, it  
16 puts it on a budget line before it's received, but  
17 I would say once you've been told you're going to  
18 receive the grant through an official mechanism,  
19 you would count that as an award you're going to  
20 receive.

21 Q Is that, in fact, what happens at  
22 the University of Kentucky?

23 A I hope that's what happens at the  
24 University of Kentucky.

25 Q What if a grant -- what if a  
AN/DOR Reporting & Video Technologies, Inc.

1 grant -- NIH grant is applied for and has not  
2 received final approval, are those funds also  
3 included in the budget, if there hasn't been final  
4 approval?

5 A I don't know. I'm not --

6 Q Who would know that information?

7 A I guess you'd talk to our vice  
8 president for research.

9 Q And again, her name?

10 A Lisa Cassis.

11 Q Did she replace Jim Tracy?

12 A Yes.

13 Q And the reason Mr. Tracy left?

14 A Mr. Tracy -- Dr. Tracy and I --

15 Q Excuse me, Dr. Tracy.

16 A -- Dr. Tracy and I, as we looked  
17 towards the future of the University, I thought it  
18 was time for some new leadership in that area, and  
19 we mutually agreed on that.

20 Q And you based your decision that he  
21 wanted new leadership in that area on what?

22 A A variety of factors, including  
23 vision leadership management, yes.

24 Q Well, outside of the corporate  
25 arena, then, I take it you informed Mr. Tracy of  
AN/DOR Reporting & Video Technologies, Inc.

1 this and asked him to move on?

2 A I can't remember exactly how that  
3 conversation went, but he -- after we had our  
4 discussions, he desired to look and I gave him a  
5 good bit of time to look for another opportunity.

6 Q We'll get more in-depth later, but  
7 when you say communications, how they went, I take  
8 it that those communications also included e-mail  
9 communications between yourself and Mr. Tracy, or  
10 your staff and Mr. Tracy on that subject?

11 A I can't remember.

12 Q If there, in fact, were e-mail  
13 communications between yourself or your staff and  
14 Mr. Tracy, where would they be maintained?

15 A I have no idea, and I'm...

16 Q Well, if someone were to ask  
17 standard open records requests, other than  
18 Mr. Swinford, where would they go to retrieve  
19 them?

20 A I think we have one shop in our  
21 legal office I believe that determines who goes  
22 and finds these things. So --

23 Q So I have to go --

24 A -- I don't know the details of how  
25 you retrieve the e-mails.

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1 Q So I would have to go to the legal  
2 office and inquire that way?

3 A The open records requests I believe  
4 comes in and is directed to the legal office to  
5 secure the information.

6 Q We may be speaking at cross  
7 purposes. I'm wondering if there's a backup  
8 server system that retrieves and maintains all  
9 e-mail communication?

10 A I don't know enough about our  
11 servers and backup.

12 Q Who does?

13 A I would say chief information  
14 officer.

15 Q Is whom?

16 A We -- we just appointed an interim  
17 in that role, and I can't recall the name  
18 immediately.

19 Q When you came to the University of  
20 Kentucky, Barbara Jones was general counsel?

21 A Yes.

22 Q And like Mr. Tracy, I guess you  
23 wanted someone else in that position; is that  
24 correct?

25 A We talked about her role and an  
AN/DOR Reporting & Video Technologies, Inc.



1 opportunity for change, yes.

2 Q And so -- and this may be a crude  
3 way to put it, but you asked her to move on; you  
4 wanted to place your own person in that position;  
5 correct?

6 A Those are your words. I didn't have  
7 a --

8 Q Use your words.

9 A -- a particular person to put into  
10 that position.

11 Q Well, who filled her slot after she  
12 left?

13 A I -- on an interim basis -- I'm  
14 blanking on her name now.

15 Q Vance?

16 A Yes, Kim Vance.

17 Q And Ms. Vance also defended you in  
18 Alabama, did she not, or her law firm in a civil  
19 suit?

20 A No, not that I know of.

21 Q But there was a civil suit going on  
22 in Alabama involving you; is that correct?

23 A There was a suit.

24 Q Is that still ongoing?

25 A No.

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1 Q When was that resolved?

2 A I -- I can't remember the dates. I  
3 would say 2006, '7, '8. Something like that. I  
4 can't -- I can't remember.

5 Q What was the nature of that lawsuit?

6 A It was an employment issue.

7 Q And the nature of that issue,  
8 specifically?

9 A I can't remember all of the details  
10 of that case. There was an allegation regarding  
11 disparities in salaries, I believe, related to an  
12 advance grant we had.

13 Q And were -- you were a defendant in  
14 that lawsuit; is that correct?

15 A I think the University was a  
16 defendant.

17 Q I'm asking if you were a defendant?

18 A I don't remember exactly. The  
19 University and --

20 Q Do you have any documents from that  
21 lawsuit in your possession, do you know?

22 A No, I do not.

23 Q Who represented you in that lawsuit?

24 A The University represented the  
25 University.

AN/DOR Reporting & Video Technologies, Inc.

1 Q All right. General counsel --

2 A General counsel.

3 Q -- for the University of Alabama?

4 A Right.

5 Q And where was that lawsuit filed?

6 A In Birmingham.

7 Q In state or federal court?

8 A I think it's federal.

9 Q The name of the plaintiff or  
10 plaintiffs?

11 A Rose Scripa.

12 Q Any other plaintiffs?

13 A Not that I recall.

14 Q How do you spell that last name so  
15 that?

16 A S-C-R-I-P-A.

17 Q What position did she hold at the  
18 University of Alabama at Birmingham?

19 A I believe she was associate provost  
20 for faculty affairs.

21 Q And that's a position that's, what,  
22 just right immediately below you when you were  
23 provost?

24 A Yes.

25 Q Did she make any allegations that  
AN/DOR Reporting & Video Technologies, Inc.

1 you had engaged in wrongful employment conduct  
2 during the course of that litigation?

3 A I think you'd have to check the  
4 details of that. I think the concern was that  
5 there was a salary inequity upon which action  
6 wasn't taken.

7 Q Any -- any allegations of racial  
8 misconduct or discrimination?

9 A I don't remember the terms in the  
10 case, to be honest with you.

11 Q Your general understanding?

12 A My general understanding was it  
13 involved her employment and a concern she raised  
14 about salary inequity.

15 Q And is she still at the University  
16 of Alabama at Birmingham, to your knowledge?

17 A I -- I don't know.

18 Q What led you to select Ms. Vance as  
19 interim general counsel?

20 A I asked Ms. Jones for some  
21 recommendations of outside counsel to look at a  
22 variety of issues, and she gave me the names of,  
23 pretty sure, two firms and that was one of them  
24 and I called.

25 Q So I take it from your remarks that  
AN/DOR Reporting & Video Technologies, Inc.

1 your initial interest was that you wanted an  
2 outside law firm to look at a variety of issues  
3 that impacted the University of Kentucky?

4 A Uh-huh.

5 Q And then when you talked -- spoke  
6 with Ms. Vance, you were impressed and said, yes,  
7 here is a position for general counsel?

8 A No.

9 Q Please fill me in. How did it  
10 happen?

11 A She came in and did some work for us  
12 within the Medical Center.

13 Q And the nature of that work?

14 A We had some, I think, employment  
15 issues, and I think one of them regarded  
16 Sergio Melgar, if I'm not mistaken.

17 MR. BEAUMAN: I think we've done a  
18 nice job to this point of treading lightly  
19 on attorney/client privilege. You've done a  
20 good job of framing your questions not to  
21 get in it, and he's not disclosed anything  
22 that might be privileged. I just want to  
23 make sure we don't veer off the path we're  
24 going here.

25 MR. PAFUNDA: You know what I like  
AN/DOR Reporting & Video Technologies, Inc.

1 about Mr. Beauman the best.

2 MR. BEAUMAN: What is that, sir?

3 MR. PAFUNDA: He's soft spoken.

4 MR. BEAUMAN: I was complimenting  
5 you.

6 MR. PAFUNDA: Thank you. I  
7 appreciate it, Bryan.

8 Q Returning to the chain of command.

9 The Board of Trustees is your boss; correct?

10 A Yes, sir.

11 Q And you report to the Board of  
12 Trustees on what?

13 A What exactly do you mean?

14 Q What do you report to the Board of  
15 Trustees?

16 A The Board of Trustees on a periodic  
17 basis at meetings will cover a variety of topics,  
18 and much of it works on a committee basis. For  
19 instance, there's an investment committee that  
20 deals with the University's endowment investment.  
21 There's an academic and student affairs committee  
22 that involves issues related to academic programs  
23 and students. There's an audit committee --

24 Q If I may just interrupt you; do you  
25 delegate to someone to report to the Board of  
AN/DOR Reporting & Video Technologies, Inc.

1 Trustees on the various committees that you --

2 A That would -- that would be, for  
3 instance, the provost and those who have  
4 responsibility in student affairs would naturally  
5 communicate with, you know, the chairman of the  
6 committee or work with the chairman about what  
7 items would be considered on the agenda, yes.

8 Q Is it important to be -- for you as  
9 president of the University to be able to work  
10 with the chairman of the Board of Trustees?

11 A Uh-huh.

12 Q And you'll have -- excuse me, but  
13 you'll have to answer either yes or no.

14 A Oh, excuse me.

15 Q No, no, that's fine.

16 A Yes.

17 Q Thank you.

18 Why is the -- explain why it's  
19 important for you to be able to work with the  
20 chairman of the Board of Trustees?

21 A Because I think for the optimal  
22 governance and management of the University.

23 Q Can you be more specific, or will  
24 you be more specific?

25 A I think ideally the Board has  
AN/DOR Reporting & Video Technologies, Inc.

1 oversight, sets policy, approves budgets, is at  
2 that level, and the day-to-day operations of the  
3 University are entrusted to the president and the  
4 president's direct reports.

5 Q So as president of the University, I  
6 take it you have to have at least some degree of  
7 political acumen to work with the chairman of the  
8 Board of Trustees as well as the rest of the  
9 trustees; correct?

10 A You have to have some skills. I  
11 don't know if it's political acumen.

12 Q How would you describe those skills?

13 A Respect, service, orientation,  
14 understanding of respective responsibilities.

15 Q Is there a time when you have to be  
16 heavy handed with the Board of Trustees?

17 A I don't consider heavy handed as  
18 a -- well, what do you mean by heavy handed?

19 Q Is there a -- are there times when  
20 you have to assert yourself, draw a line in the  
21 sand, this needs to be done or there's an  
22 ultimatum to be faced?

23 A I work for the Board of Trustees. I  
24 think they have expectations of me. Their  
25 personnel decision they make is -- is the  
AN/DOR Reporting & Video Technologies, Inc.



1 appointment of the president.

2 Q But your contract of employment is  
3 with the Board of Trustees; is that correct?

4 A I believe a representative of the  
5 Board of Trustees signs my contract, yes.

6 Q And likewise in your contract, I  
7 take it, that you have a buyout provision. If  
8 you're terminated, you'll receive a sum certain,  
9 do you not?

10 A Yes.

11 Q And your newest contract has such a  
12 provision, does it not?

13 A Yes.

14 Q And even if you're dismissed even  
15 for cause, you still -- you still receive your  
16 buyout; is that correct?

17 A I don't think it's the case if I'm  
18 dismissed for cause.

19 Q Is that literally in your contract,  
20 if you recall?

21 A There is an arrangement that pays me  
22 if I'm dismissed without cause.

23 Q And if it's without cause, you  
24 receive how much?

25 A That's outlined in the contract.  
AN/DOR Reporting & Video Technologies, Inc.

1 I'd have to have it in front of me to --

2 Q Just generally, just ballpark me.

3 A It varies by years remaining on the  
4 contract.

5 Q Is it a 5 million dollar figure?

6 A It could be. I'm not certain of the  
7 exact terms.

8 Q Is that figure dependent on how long  
9 you serve or is it dependent on what happens if  
10 the contract is terminated?

11 A Both.

12 Q Is that contract a matter of public  
13 record?

14 A Yes.

15 Q Thank you.

16 And your present salary is?

17 A 700 -- my base salary is \$790,000  
18 annually.

19 Q Despite all of the newspaper  
20 coverage, I take it that you recently received a  
21 substantial increase in your salary?

22 A Yes.

23 Q And I take it you received that  
24 increase because you, in fact, are doing a good  
25 job?

AN/DOR Reporting & Video Technologies, Inc.

1           A           I hope so.

2           Q           But would you agree with me that  
3 your salary increase is commensurate with the job  
4 that you're doing as president of the University  
5 of Kentucky?

6           A           I think you'd have to ask the Board  
7 of Trustees that made that decision, but I think  
8 their decision was based on job and comparisons  
9 with other presidential salaries and compensation.

10          Q           And when you say comparisons, is  
11 that national comparisons or comparisons just in  
12 the southeastern conference?

13          A           They largely use the southeastern  
14 conference.

15          Q           How is the University of Kentucky  
16 ranked in the southeastern conference  
17 academically? Or where is it ranked?

18          A           I wouldn't able to answer that  
19 question.

20          Q           Is it in the top half or the bottom  
21 half?

22          A           I'm not certain. There are a  
23 variety of rankings.

24          Q           Does one jump to mind right now?

25          A           Not one in particular.  
AN/DOR Reporting & Video Technologies, Inc.

1 Q If I were to have to look to see  
2 where the University of Kentucky is ranked  
3 academically in the southeastern conference, where  
4 would I look?

5 A You know, there's Forbes. There's  
6 US News & World Report. There -- there could be  
7 several of these types of rankings.

8 Q But you're dismissive of some of the  
9 rankings, are you not?

10 A I'm not dismissive of them. I just  
11 think that you have to understand the components  
12 of those to see if they have a fit with your  
13 mission.

14 For instance, if you wanted to go up  
15 in the rankings of US News & World Report, you can  
16 become very selective. You can say no to lots of  
17 people to come to your university, and that weight  
18 counts you as a more selective university and you  
19 can increase in the rankings.

20 I would say given our mission to  
21 keep our doors open wide to Kentuckians who come  
22 from a variety of backgrounds and levels of  
23 academic preparedness, we -- we -- we're not  
24 striving to just be selective. We're trying to  
25 make a good decision about a student and meet our  
AN/DOR Reporting & Video Technologies, Inc.

1 responsibilities as a land-grant university.

2 Q When you say selective, just to keep  
3 it on a rather basic level, you mean selective in  
4 the sense of higher GPA's in order to enter --

5 A Higher GPA's, higher standardized  
6 test scores.

7 Q But then again, as you've noted on  
8 many occasions, the University is engaged in quite  
9 an extensive building project?

10 A Yes, sir.

11 Q And yet the demographics in Kentucky  
12 are decreasing, are they not?

13 A In what way?

14 Q Population is going down.

15 A High school populations largely  
16 across the United States are flat -- are  
17 declining, and our building at the University of  
18 Kentucky, much of it is to replace old facilities  
19 and to create facilities that allow us to better  
20 carry out our mission.

21 Q And again, that mission is what?

22 A For me it is to deliver quality  
23 education first to the citizens of Kentucky, to  
24 serve the Commonwealth in a variety of ways  
25 through health care, to extension offices, to many  
AN/DOR Reporting & Video Technologies, Inc.

1 other ways that faculty can serve, and to conduct  
2 research.

3 Q And you would agree with me, would  
4 you not, that the faculty is the backbone of  
5 accomplishing that mission?

6 A Yes, sir.

7 Q And returning to the Board of  
8 Trustees; they're at the top rung of the chain of  
9 command; correct?

10 A Yes, sir.

11 Q And you're on the rung just below  
12 them?

13 A Yes, sir.

14 Q And who's immediately below you?

15 A I have the Executive Vice President  
16 for Finance and Administration, the Executive Vice  
17 President for UK Healthcare, the provost of the  
18 University, Vice President for Research, Vice  
19 President for Office of Philanthropy, Vice  
20 President for the Office of Institutional  
21 Diversity.

22 Q So --

23 A I may have missed one, but, yeah.

24 Q That's all right.

25 A So there's a large handful.  
AN/DOR Reporting & Video Technologies, Inc.

1 Q So if someone carries the title of  
2 vice president, they're at the top rung of the --  
3 of the administration; correct?

4 A They're -- they're at a managerial  
5 and leadership level, yes.

6 Q And likewise, the Executive Vice  
7 President of Health Affairs would fall into the  
8 same slot just almost immediately below yourself;  
9 is that correct?

10 A Yes, sir.

11 Q And that's Dr. Michael Karpf in this  
12 instance, is it not?

13 A Yes, sir.

14 Q And prior to the disciplinary  
15 process, had you met Dr. Paul Kearney?

16 A Yes, I think so, or he had been  
17 pointed out to me.

18 Q Other than an in-passing kind of  
19 social situation?

20 A I only remember in passing social  
21 situations.

22 Q And I take it those were University  
23 functions, from the tone of your response?

24 A Yes.

25 Q So you had no personal knowledge of  
AN/DOR Reporting & Video Technologies, Inc.

1 Dr. Paul Kearney?

2 A No.

3 Q Okay.

4 A I was only told at a social event  
5 that he was an outstanding surgeon and -- and  
6 people were very grateful for the care he  
7 rendered. I remember hearing that.

8 Q Did you know at the time -- at some  
9 point in time during your presidency that he had  
10 received an endowed chair?

11 A No, I did not know.

12 Q When did you find that out, if you  
13 did, in fact, find it out?

14 A I think I learned it during this  
15 process. We -- we have dozens of these. I have  
16 to say I can't keep up with each one of them  
17 individually.

18 Q Dozens in the medical, UK  
19 Healthcare?

20 A Dozens across the University.

21 Q And for active professors?

22 A Yes.

23 Q Endowed chairs are important, are  
24 they not?

25 A Yes.  
AN/DOR Reporting & Video Technologies, Inc.



1 Q Why are they important to a  
2 university?

3 A I think they, first of all, provide  
4 a unique form of recognition for a faculty member.  
5 And it's also I think an indication that a donor  
6 has faith and confidence in the University.

7 Q So it's important in terms of the  
8 donors who fund the endowed chairs; correct?

9 A Yes. I think many donors today want  
10 to direct their gifts, and, you know, some can be  
11 scholarships. Some can be faculty positions.

12 Q And primarily you would agree with  
13 me, in fact, almost exclusively that the endowed  
14 chairs are in recognition of the individual's  
15 achievements within their particular college;  
16 correct?

17 A In general I would say that, but I  
18 don't participate in the day-to-day awards of  
19 endowed chairs.

20 Q Who does?

21 A That would be something that would  
22 occur at the college level. The dean or  
23 department chairs is how I think it would  
24 naturally occur.

25 (REPORTER MARKS AMENDED AND RESTATED  
AN/DOR Reporting & Video Technologies, Inc.

1           ARTICLES OF INCORPORATION OF BEYOND BLUE  
2           CORPORATION AS PLAINTIFF'S EXHIBIT NO. 2 FOR  
3           PURPOSES OF IDENTIFICATION.)

4           Q           If I -- if I may, I marked this as  
5   Defendant's (sic) Exhibit No. 2 --

6                   MR. PAFUNDA:   And, Bryan, I may not  
7   have an extra copy other than mine that's  
8   highlighted.

9                   MR. BEAUMAN:   I'll take that one.

10                   MR. PAFUNDA:   I'm going to give you  
11   one.

12                   MR. BEAUMAN:   No, I'll take that  
13   one.

14                   MR. PAFUNDA:   I'm going to give you  
15   one.

16                   And, President Capilouto, I  
17   apologize, but any time you want to take a  
18   brief break, just feel free to do so.

19                   MR. BEAUMAN:   Is this all one?

20                   MR. PAFUNDA:   Yeah. I apologize, if  
21   you want to look through that. I just  
22   want...

23           Q           President Capilouto, I've handed you  
24   what's been marked as Plaintiff's Exhibit No. 2  
25   and it's the Articles of Incorporation of Beyond  
          AN/DOR Reporting & Video Technologies, Inc.

1 Blue Corporation. Do you have that in front of  
2 you?

3 A Uh-huh.

4 Q If you would, sir, if you'll turn  
5 to -- it begins on Page 3.

6 A Could you tell me the date of this?  
7 What is the date of this document?

8 MR. BEAUMAN: Can I show him? Do you  
9 mind?

10 MR. PAFUNDA: Yeah.

11 MR. BEAUMAN: This will indicate when  
12 it's filed with the Secretary of State's  
13 Office.

14 THE WITNESS: Okay.

15 Q If you would, sir, I will direct  
16 your attention to Page 3 and we'll --

17 A If you don't mind, let me look at  
18 Page 2.

19 Q No, that's fine. You can look at  
20 Pages 1 through 5 if you want to.

21 THE VIDEO TECHNICIAN: We're going  
22 off the video.

23 (Off the record.)

24 (Brief recess.)

25 THE VIDEO TECHNICIAN: We're back on  
AN/DOR Reporting & Video Technologies, Inc.

1 the video record. This is Tape No. 2. The  
2 time is 2:03.

3 CONTINUED EXAMINATION

4 By Mr. Pafunda:

5 Q President Capilouto, have you had an  
6 opportunity to review the Articles of  
7 Incorporation of Beyond Blue Corporation?

8 A Yes, I looked through them, scanned  
9 them.

10 Q Were you aware of the existence of  
11 Beyond Blue Corporation?

12 A I was aware of the existence of an  
13 entity like this, couldn't recall the name  
14 exactly, that we set up as a means of -- of  
15 facilitating operations beyond our state borders.

16 Q How would this corporation  
17 facilitate operations beyond state borders, to  
18 your --

19 A My -- my understanding, best that I  
20 can recall, and it's been a good while, it's ---  
21 it's -- you know, those situations where there can  
22 be regulatory or reimbursement issues across  
23 states and payors and so forth, but that's the  
24 best I can remember.

25 Q Had not the University done business  
AN/DOR Reporting & Video Technologies, Inc.

1 outside the State prior to the existence of this  
2 corporation?

3 A I'm not sure.

4 Q Well, during your tenure which  
5 began, when, again 2011?

6 A 2011.

7 Q To this point in time, prior to the  
8 existence of this corporation, had --

9 A I -- I am not sure. I know that,  
10 you know, we have a variety of partners, but I  
11 couldn't tell you the extent of those and the  
12 location of every one of them.

13 Q Aren't there also a variety of  
14 corporations set up by admin -- administrators at  
15 the University of Kentucky?

16 A There can be.

17 Q And do you know how many there are?

18 A No.

19 Q Who would have that information,  
20 other than the legal office?

21 A I would say the legal office would  
22 be your best --

23 Q I'm so --

24 A -- most efficient source of  
25 information for such documents.

AN/DOR Reporting & Video Technologies, Inc.

1 Q I am so loved down there.

2 A Are you?

3 Q Yes.

4 Any other offices?

5 A You know, I'm a couple of floors  
6 down if you'd ever like to come visit.

7 Q If these gentlemen at your side,  
8 your general counsel and Mr. Beauman wouldn't  
9 object, I'd come visit you tomorrow.

10 A Okay.

11 Q But other than the legal office, any  
12 other office, like say the chief financial  
13 officer?

14 A I wouldn't know. They could. I'm  
15 sorry, I don't -- I don't know who's the custodian  
16 for every document at the University.

17 Q No, I know that, but we're not  
18 speaking about every document. We're talking  
19 about the formation of corporations --

20 A Sure.

21 Q -- in existence of corporations,  
22 which you would agree with me is unusual, is it  
23 not?

24 A

25 Unusual, I would say there may be a  
AN/DOR Reporting & Video Technologies, Inc.

1 circumstance or context where it would be usual.

2 It depends.

3 Q Give me one in which it would be  
4 usual.

5 A I would say in a situation like this  
6 where, you know, we engaged I believe in providing  
7 healthcare for West Virginians who participated in  
8 the State either pension, health insurance plan or  
9 something like that.

10 Q Now, when you say for West  
11 Virginians, does that mean West Virginians who  
12 come to Kentucky or does the University actually  
13 have facilities in place in West Virginia?

14 A I think it could be both.

15 Q Do you know?

16 A I'm not certain of the facility's  
17 part of this, no.

18 Q And I certainly could ask the  
19 Executive Vice President of Health Affairs,  
20 Dr. Michael Karpf; correct?

21 A Sure.

22 Q And if you will, I'll direct your  
23 attention to Page 3, and I apologize, we got a  
24 little off message.

25 MR. PAFUNDA: I'm being very polite,  
AN/DOR Reporting & Video Technologies, Inc.

1 Bryan.

2 Q And Article VII.

3 A Excuse me, on Page 3, Article --

4 Q VII.

5 A -- VII.

6 Got it, right.

7 Q Do you have it in front of you,

8 President?

9 A Uh-huh.

10 Q You have there Dr. Michael Karpf;

11 correct?

12 A On the next page?

13 Q Yes. On that page, Page 3.

14 A Right. Page 4.

15 MR. BEAUMAN: Mine goes to Page 4.

16 THE WITNESS: (Indicating.)

17 Q Thank you.

18 Isn't this a diagram, in effect, a

19 listing of these officers as a chain of command,

20 representative of a chain of command?

21 A Explain what you're talking about.

22 Q I'll ask you questions and see if we

23 can follow along.

24 Dr. Michael Karpf, Executive Vice

25 President of Health Affairs, is below your office  
AN/DOR Reporting & Video Technologies, Inc.



1 as president; correct?

2 A Correct.

3 Q He reports to you, does he not?

4 A Correct.

5 Q You're his immediate supervisor, are  
6 you not?

7 A Yes.

8 Q You have the authority to discipline  
9 him, do you not?

10 A Yes.

11 Q In fact, you have the authority to  
12 remove him, do you not?

13 A Yes.

14 Q Is he removable at will or does he  
15 have a contract of employment that you must honor?

16 A He has a letter of appointment.

17 Q And is that different than a  
18 contract of employment?

19 A Our contracts are different.

20 Q And his letter of employment  
21 basically provides for what, in terms of his  
22 employment?

23 A His compensation.

24 Q And a specific term of employment?

25 A Term of employment, yes.  
AN/DOR Reporting & Video Technologies, Inc.

1 Q And his present term of employment  
2 per that letter of employment is?

3 A It goes through July of 2017 as  
4 Executive Vice President for Health Affairs.

5 Q And was it recently renewed?

6 A It was renewed a little over a year  
7 ago.

8 Q And returning to the list, on the  
9 Articles of Incorporation, we have Tim Tracy,  
10 Provost?

11 A No. I've got Chris Riordan on mine.

12 Q I've got Tim Tracy on mine.

13 A Well, you've handed me a document  
14 that says Chris Riordan.

15 Q No, let's -- let's hand you another  
16 document.

17 A Okay.

18 Q But your first page, does it say  
19 "Articles of Incorporation" --

20 MR. BEAUMAN: You gave us the Amended  
21 and Restated.

22 MR. PAFUNDA: Yeah. I'll let you  
23 thumb through it. I have the amended  
24 attached.

25 MR. BEAUMAN: Here is this.  
AN/DOR Reporting & Video Technologies, Inc.

1 MR. PAFUNDA: Is it an extra copy?

2 MR. BEAUMAN: This is what we just  
3 had --

4 THE WITNESS: You need to put your  
5 sticker on?

6 MR. PAFUNDA: Yeah, I do need to.

7 MR. BEAUMAN: This is the packet you  
8 just handed. I took two copies of.

9 MR. PAFUNDA: Did you switch  
10 something?

11 MR. BEAUMAN: No, you did.

12 Q President --

13 MR. BEAUMAN: I think you want that  
14 to be 3, Bernie?

15 MR. PAFUNDA: I do, yeah. We'll make  
16 it 3.

17 MR. BEAUMAN: Because we were looking  
18 at the initial board --

19 MR. PAFUNDA: I got you, yeah. I  
20 apologize. We'll mark this as Plaintiff's  
21 Exhibit No. 3, which is, in fact, the  
22 original Articles of Incorporation of Beyond  
23 Blue Corporation.

24 (REPORTER MARKS ARTICLES OF

25 INCORPORATION OF BEYOND BLUE CORPORATION AS  
AN/DOR Reporting & Video Technologies, Inc.

1 PLAINTIFF'S EXHIBIT NO. 3 FOR PURPOSES OF  
2 IDENTIFICATION.)

3 Q I will direct your attention to  
4 Page 3, and --

5 MR. BEAUMAN: Yeah, you've got two  
6 copies there.

7 MR. PAFUNDA: Do I?

8 MR. BEAUMAN: Yeah. Would you like  
9 your highlighted --

10 MR. PAFUNDA: No, you can keep one if  
11 you want.

12 (Handing.)

13 Q I will direct your attention to  
14 Page 3. Thank you.

15 A Okay, now I see.

16 Q Again, returning to my earlier  
17 question, in terms of the chain of command,  
18 Dr. Michael Karpf is immediately below you, is he  
19 not?

20 A Uh-huh -- yes, sir.

21 Q All right. Thank you.

22 He's one of the Board of Directors  
23 of this particular corporation?

24 A Yes.

25 Q Turning to Page -- Page 4, Tim Tracy  
AN/DOR Reporting & Video Technologies, Inc.

1 is the interim provost?

2 A He is now the provost.

3 Q And he became the provost? It  
4 doesn't have to be exact.

5 A A year ago, I think.

6 Q Thank you.

7 And again, is his position as  
8 provost parallel to Dr. Karpf or is it above  
9 Dr. Karpf in the chain of command?

10 A I would consider them parallel, but  
11 in certain circumstances when you're overseeing  
12 academic enterprises, it's primary, and -- and the  
13 same with Eric Monday, as Executive Vice President  
14 for Finance and Administration, everything that  
15 comes under him is not superseded by Dr. Tracy's  
16 appointment.

17 Q But I take it then from your  
18 response, that Executive Vice President for  
19 Finance and Administration, Eric Monday, holds a  
20 parallel position in the administration to, say,  
21 Dr. Michael Karpf, who's at the UK Health Center?

22 A Yes.

23 Q And then William Thro, who's present  
24 here with you today, is general counsel?

25 A Yes.  
AN/DOR Reporting & Video Technologies, Inc.

1 Q Is there a particular reason why  
2 he's listed as a Board of Director?

3 A I don't know.

4 Q Other than Mr. Thro himself, who  
5 would have that information?

6 A I'm not certain.

7 Q Thank you.

8 Has Mr. Thro, by becoming general  
9 counsel for this corporation, placed himself in a  
10 position where there may be a potential conflict  
11 with the University?

12 MR. BEAUMAN: Object to the form.

13 That's calling for --

14 Q Just in your opinion.

15 A I don't know.

16 Q What business is this corporation  
17 engaged in?

18 A My best recollection is it just  
19 provided us an opportunity to conduct the  
20 provision of services to entities or with entities  
21 across state lines.

22 Q Is it actively doing business?

23 A I -- I'm not certain, sir.

24 Q Murray Clark, again, the same  
25 question, he's the Chief Financial Officer, and I  
AN/DOR Reporting & Video Technologies, Inc.

1 take it he's no longer an interim; is that  
2 correct?

3 A He just retired and there's a new  
4 person in his position.

5 Q Who did Mr. Clark replace?

6 A At the time of this, I --

7 Q No, who did he replace as Chief  
8 Financial Officer?

9 A I would assume Mr. Melgar, but I'm  
10 not entirely certain.

11 Q Same Melgar that you mentioned  
12 earlier today?

13 A Yes.

14 Q Thank you.

15 And I take it you asked Mr. Melgar  
16 to leave; is that correct?

17 A No.

18 Q Who did that; anyone?

19 A I don't recall how that happened,  
20 sir.

21 Q Do you recall why it happened?

22 A I know there were disagreements, and  
23 I'm not sure if he was asked to leave or if he  
24 chose to leave. To be honest with you, I can't  
25 remember that.

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1 Q Were you involved in the decision to  
2 ask him to leave?

3 A No, sir. I had a conversation with  
4 Mr. Melgar where he -- I just can vaguely remember  
5 it -- where he talked about employment, but I just  
6 can't recall details of -- of that.

7 Q Who played the role in that then, if  
8 it wasn't yourself?

9 A I -- I can't remember. I just  
10 remember having a meeting with him. I think  
11 somebody else was there. I'm not sure. I  
12 couldn't remember. Sorry.

13 Q Is there a record of why he left or  
14 the reasons?

15 A I don't -- no.

16 Q Is your answer no, or you don't  
17 know, excuse me?

18 A I don't know.

19 Q If there is a record, where would it  
20 be maintained?

21 A It could be in HR. It could be in  
22 UK Healthcare. I'm not certain.

23 Q Was he instrumental in UK  
24 Healthcare, as his title seems to suggest?

25 A Who, Murray Clark?  
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1 Q Yes.

2 A Oh, yes.

3 Q And likewise, Sergio Melgar?

4 A Yes.

5 Q So Dr. Michael Karpf would know what  
6 reason or reasons Mr. Melgar was let go?

7 A I don't know if he was let go or he  
8 chose to leave. I'm not certain, sir.

9 Q Do you know why he vacated his post?

10 A You'd have to ask him. I just can't  
11 remember, to be honest with you.

12 Q Dr. Birdwhistell --

13 A I don't think he's a doctor, but  
14 Mark Birdwhistell.

15 Q All right. Is he in that position  
16 now, Chief External Affairs Officer?

17 A I think the title of the position  
18 may have changed. I just can't remember it.

19 Q But he's in --

20 A He's in the --

21 Q -- same or similar position at the  
22 University?

23 A Yes, yes.

24 Q And his job duties, if you know?

25 A Well, over the last several months  
AN/DOR Reporting & Video Technologies, Inc.

1 he's been on loan to state government to work on  
2 the Medicaid plan, but he prior to that time sort  
3 of administration management. I think also an  
4 interface with state government.

5 Q His -- the name -- the title would  
6 seem to be self-explanatory, but Chief External  
7 Affairs Officer does what, if anything?

8 A I would say -- let me give you  
9 examples. So our -- our relationships with the  
10 Health Cabinet, for instance, when we work on  
11 anything from Medicaid to when the State  
12 approached us about managing Eastern Hospital's  
13 mental health facility, to the work we did with  
14 Congressman Rogers on his substance abuse summit.  
15 You know, those kinds of activities. Those  
16 external contacts.

17 Q But in terms of the chain -- chain  
18 of command, Mr. Birdwhistell would fall where?

19 A He reports to Dr. Karpf, except  
20 during this role that he was on loan to the State,  
21 he sort of reported to my office. But I didn't  
22 meet with him or so forth. We just sort of  
23 separated those at the time because he's working  
24 on Medicaid which is associated with our  
25 reimbursement, so we just kept those separate.

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1 Q And, in fact, those reimbursements  
2 is part of the hospital's revenue in terms of  
3 Medicaid/Medicare range in the neighborhood of 38  
4 percent, do they not?

5 A That sounds right. I can't  
6 remember, sir, exactly.

7 Q Are there concerns that in, say,  
8 2017 if Obamacare ends that those revenues go down  
9 and may severely impact UK Healthcare?

10 A There are a variety of concerns one  
11 can have about reimbursement in healthcare, not  
12 just Medicaid. You can look across all payors.

13 Q Right, and -- but right now the  
14 primary focus nationwide is Obamacare, is it not?

15 A I think you have to focus on  
16 employment-based insurance, reimbursement of  
17 physicians and hospitals, whether it be through  
18 private or public pay. There -- there's a lot  
19 going on.

20 Q But in terms of what's captured the  
21 news here in the Commonwealth of Kentucky in terms  
22 of Governor Bevin, it's the Obamacare program and  
23 how to address it, is it not?

24 A That's certainly been a topic here.  
25 I think his main focus has been Medicaid  
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1 expansion, which states have the option of  
2 exercising under the Affordable Care Act, which  
3 I'll refer to it as that, not as Obamacare.

4 Q And in terms of the options, the  
5 position of the Commonwealth of Kentucky vis-à-vis  
6 the governor is what?

7 A Excuse me, the what?

8 Q The governor's position on this is  
9 what, or does he have a position?

10 MR. BEAUMAN: Governor's position on  
11 what?

12 MR. PAFUNDA: Affordable Care Act  
13 expansion.

14 A I would trust you to ask the  
15 governor his positions on all of these things.

16 Q But as president of the University,  
17 shouldn't you be aware or in tune with that?

18 A I am aware of what's reported  
19 periodically in the newspaper. And I'm aware that  
20 he has filed a waiver with the Medicaid/Medicare  
21 Services branch of the federal government to alter  
22 Kentucky's Medicaid plan.

23 Q And has Kentucky's Medicaid plan in  
24 effect been altered as a result of that waiver to  
25 date?

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1 A Not yet.

2 Q If it is, in fact, impacted, will  
3 that have an impact on the University of Kentucky  
4 healthcare?

5 A It certainly could, but I don't know  
6 what that impact would be.

7 Q As president of the University,  
8 should you not be in tune with what that impact  
9 may or may not be?

10 MR. BEAUMAN: Object to the form.

11 A I'll only say this: At our health  
12 committee --

13 Q Yes.

14 A -- that we have every year, we do a  
15 sensitivity analysis on our budget projections and  
16 we use several factors of what could impact our  
17 budget projections and try to anticipate what  
18 those could be, and one of them is changes in  
19 Medicaid.

20 Q And --

21 A It's not the only thing.

22 Q I understand that. But is that  
23 reduced to a report to you?

24 A No.

25 Q So that's just a verbal discussion?  
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1           A           Well -- oh, excuse me. Those -- no,  
2 these are presented. This is part of an open  
3 meeting. There's a bar graph that shows exactly  
4 what the potential impact could be. We've been  
5 doing that annually.

6           Q           And that bar graph is presented, I  
7 take it, to the Health Care Committee and the  
8 Board of Trustees?

9           A           Yes. And everybody who attends that  
10 retreat.

11          Q           Likewise, going down the list again,  
12 Mr. Swinford is in your office; where does he fit  
13 in the chain of command?

14          A           He is my Chief of Staff.

15          Q           And it places him where in the chain  
16 of command?

17          A           He, like --

18          Q           Other than at your right hand?

19          A           He's at my right hand because, like  
20 a day that I'm out of the office, like I was  
21 yesterday, and people need sort of an immediate  
22 response to something, or it needs to be directed  
23 to someone to handle, he's sort of the traffic  
24 director.

25          Q           Dr. DeBeer, he's no longer Dean of  
AN/DOR Reporting & Video Technologies, Inc.

1 the Medical College; correct?

2 A True.

3 Q He was just recently replaced by  
4 whom?

5 A Dr. Bob DiPaola.

6 Q Prior to that, Dr. DeBeer was acting  
7 dean?

8 A I think he was appointed right  
9 before I got here. I don't remember him being  
10 acting dean.

11 Q Is there a survey that's done in  
12 terms of the faculty of the medical college as to  
13 the dean's performance?

14 A As part of evaluations there are  
15 routinely surveys done.

16 Q Are you familiar with the results of  
17 his evaluations --

18 A I couldn't -- I couldn't recall.  
19 The provost, who the dean reports to, that would  
20 be that individual's responsibility.

21 Q And you've just answered my next  
22 line of questions. So the dean -- Dean DeBeer,  
23 when he was in position as dean, his immediate  
24 supervisor would be the provost?

25 A The provost and the Vice President  
AN/DOR Reporting & Video Technologies, Inc.

1 for UK Healthcare, they both participated in, I  
2 think, developing that evaluation.

3 Q Not the evaluation. I'm talking  
4 about in terms of the supervisory capacity?

5 A Provost, but the dean is part of the  
6 Vice President for UK Healthcare's executive team  
7 as well.

8 Q And I take it the Vice President of  
9 Health Affairs, Dr. Karpf, is Dean DeBeer's  
10 superior; correct?

11 A His immediate superior is the  
12 provost, and in his role in working with UK  
13 Healthcare in terms of faculty positions, somebody  
14 can hold a faculty position and have a clinical  
15 responsibility.

16 Q Who selects the dean of the medical  
17 college?

18 A That is conducted through search,  
19 and there was a search committee appointed.  
20 Candidates are interviewed. In this case  
21 finalists came on the campus and were sort of  
22 interviewed and made presentations. Feedback was  
23 solicited, and then the selection is made.

24 Q Who makes -- who is the  
25 decision-maker?

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1           A           Primarily the provost, but in a case  
2 like this, it would be in consultation with  
3 Dr. Karpf.

4           Q           So Dr. Karpf and the provost?

5           A           Uh-huh.

6           Q           And when you say uh-huh, I take it  
7 that --

8           A           Yes.

9           Q           -- Dr. Karpf has the final word,  
10 given his position?

11          A           I don't think it works that way. I  
12 think it's a joint decision, and they both agreed  
13 in this case that -- you know, I think we had four  
14 candidates in and they both thought that the  
15 person we selected was the best choice.

16          Q           Does the dean serve at the pleasure  
17 of Dr. Karpf and the provost?

18          A           Serves at the pleasure of the  
19 provost.

20          Q           As we move down into the College of  
21 Medicine as well as UK Healthcare, the Chief  
22 Medical Officer would be underneath whom, the  
23 dean?

24          A           I think the Chief Medical Officer,  
25 it would be my understanding that that would be a  
AN/DOR Reporting & Video Technologies, Inc.

1 role that was under UK Healthcare.

2 Q And so the Chief Medical Officer's  
3 immediate supervisors would be the dean and the  
4 Executive Vice President for Health Affairs?

5 A Executive Vice President for Health  
6 Affairs, yes.

7 Q So I take it the Executive Vice  
8 President for Health Affairs is over both the  
9 college as well as UK Healthcare?

10 A It's not entirely over the college,  
11 because the provost has responsibility.

12 Q But the provost's responsibilities  
13 are primarily academic?

14 A Not entirely, no.

15 Q Is it involved in the disciplinary  
16 process at all?

17 A Depending on the nature of the  
18 disciplinary action being considered.

19 Q With respect to Dr. Kearney, did the  
20 provost have any role in his discipline?

21 A No.

22 Q If you will -- and I'll mark it as  
23 Plaintiff's Exhibit --

24 MR. BEAUMAN: 4.

25 MR. PAFUNDA: Thanks, Bryan.  
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1 MR. BEAUMAN: You're welcome.

2 MR. PAFUNDA: High school education.

3 (REPORTER MARKS NEWSPAPER ARTICLE  
4 DATED 10/14/15 AS PLAINTIFF'S EXHIBIT NO. 4  
5 FOR PURPOSES OF IDENTIFICATION.)

6 Q I've just handed you what's been  
7 marked as Plaintiff's Exhibit No. 4, which is a  
8 newspaper article; correct?

9 A Yes.

10 Q And, Dr. Capilouto, would you read  
11 into the record the headline?

12 A "Capilouto apologizes for imperfect  
13 handling of UK surgeon who lost clinical  
14 privileges."

15 Q Did you, in fact, apologize?

16 A I had words of apology in my  
17 address, yes.

18 Q And the answer to the question, I  
19 said did you, in fact, apologize?

20 A Yes.

21 Q And what did you apologize for?

22 A I think that once the decision was  
23 handed down by the Health Committee of the Board  
24 that we weren't entirely prepared on how to deal  
25 with the situation where someone had lost their  
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1 clinical privileges, when, in fact, that was --  
2 represented the vast majority of their work, at  
3 the same time maintain a tenured position, we  
4 tried to figure out what -- how those roles would  
5 be defined. I think I was upset that we -- we  
6 weren't prepared to sit down with Dr. Kearney and  
7 return his hard drive with him and remove the  
8 protected health information or identify any  
9 personal information he had, that we weren't set  
10 up to give him the appropriate office. Those  
11 kinds of things.

12 Q Well, you'll forgive me, but you  
13 would agree with me that doesn't answer the  
14 question; isn't that true?

15 A No, you tell me why.

16 Q No, I'll ask the question.

17 A Sure.

18 Q You apologized for the mishandling  
19 of the Dr. Kearney matter. What was mishandled?

20 A Postdecision by the Health  
21 Committee, which I just described to you.

22 Q Prior to that, was the matter  
23 mishandled?

24 A No, sir.

25 Q Did you have an opportunity to  
AN/DOR Reporting & Video Technologies, Inc.

1 review how it was handled?

2 A Yes.

3 Q And when was that?

4 A I will de -- I will describe...

5 Q You do it your way.

6 A Do it my way.

7 I was informed that the Chief  
8 Medical Officer had made the decision to put  
9 Dr. Kearney on administrative leave with pay.

10 Q If I may interrupt you as you go to  
11 describe it your way?

12 A Sure.

13 Q Was this the first time that you had  
14 ever been involved in a disciplinary decision?

15 A In my career, no.

16 Q No, I mean at the University of  
17 Kentucky? I apologize.

18 A No.

19 Q Is this the first time that you were  
20 involved in a disciplinary matter at the College  
21 of Medicine?

22 A One that involved clinical  
23 privileges. There may have been others. I just  
24 can't recall right now.

25 Q Was it unusual for the Chief Medical  
AN/DOR Reporting & Video Technologies, Inc.

1 Officer to bring this matter to your attention?

2 A I -- I was made aware that this  
3 action had been taken. I was also made aware at  
4 the time through counsel that there had been a  
5 disciplinary letter that Dr. Kearney had signed  
6 just coincident with this. There was -- I learned  
7 there was a complaint made in -- about a lecture  
8 that Dr. Kearney delivered. And that I believe we  
9 had investigated this incident at the hospital or  
10 were investigating the incident that occurred at  
11 the hospital, and that the College of Medicine and  
12 the dean's office, with our Equal Opportunity  
13 Office, had reviewed the circumstances surrounding  
14 the lecture.

15 Q Who brought this information to your  
16 attention?

17 A Chief -- our general counsel.

18 Q Did Dr. Michael Karpf participate?

19 A No.

20 Q So it was just you and chief --  
21 general counsel William Thro one on one?

22 A Yes.

23 Q No one else present?

24 A No.

25 Q Were you presented with any  
AN/DOR Reporting & Video Technologies, Inc.

1 documents, and if so, what documents?

2 A I can't -- I can't recall on the  
3 documents when I first saw those, to be honest  
4 with you.

5 Q Is this the first time that you've  
6 been honest with me?

7 A No, it's not. I'm sorry, I just  
8 can't remember it all.

9 Q All right.

10 A But I -- I know I was aware of a --  
11 of a letter that set out an expectation for  
12 behavior; that there was concern that the terms of  
13 that letter had been breached; that there was a --  
14 an extensive sort of history of behaviors that  
15 were disconcerting; that we had this lecture  
16 incident, and that the Chief Medical Officer had  
17 put him on leave.

18 Q So I take it then, we'll work our  
19 way through this slowly, but in terms of a time  
20 frame and when this was reported to you, did you  
21 in any way document it?

22 A No.

23 Q No follow-up e-mails to confirm the  
24 meeting with Mr. Thro?

25 A No.  
AN/DOR Reporting & Video Technologies, Inc.

1 Q No e-mail traffic back and forth  
2 between you and Mr. Thro?

3 A Not to my knowledge, no.

4 Q Was that a deliberate attempt to  
5 keep it off paper?

6 MR. BEAUMAN: Object to the form.

7 It's clearly argumentative.

8 Q So, in other words, there was  
9 nothing on paper; correct?

10 A I don't know if we exchanged  
11 e-mails. I just remember he walked into my  
12 office. He explained this to me.

13 Q Is that how disciplinary matters are  
14 handled with the chief -- with general counsel  
15 bringing them to your attention?

16 A Yes.

17 Q Is that set forth in any policy or  
18 procedure manual?

19 A I think when these matters are  
20 raised, there are a variety of entities that are  
21 charged with investigation, adjudication and so  
22 forth. So he would make me aware if we had a  
23 sexual assault case, you know, this is how this is  
24 being handled and these are the various tracks  
25 that it would go through and so forth.

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1           Q           But at this particular point in  
2 time, did you give Mr. Thro any directive to pass  
3 on down to the Medical College with respect to  
4 Dr. Kearney?

5           A           Not at that time. When he gave me  
6 the information and I understood the long history  
7 and all, I thought it would be practical to  
8 mediate a settlement.

9           Q           Why would that be practical?

10                   MR. BEAUMAN: Before he answers that,  
11 if I can just have a continuing objection to  
12 the extent we're going to get into any  
13 settlement discussions.

14                   MR. PAFUNDA: No.

15                   MR. BEAUMAN: I sort of think you're  
16 intending to ask him that. If you'll just  
17 let me preserve an objection to that.

18                   MR. PAFUNDA: Well, I think you get  
19 to do that even if you don't put it on the  
20 record, because under -- you get to object  
21 to the form. If there's a privilege, you  
22 can tell him not to answer.

23                   MR. BEAUMAN: Right.

24                   MR. PAFUNDA: But I think you've  
25 preserved it anyhow.

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1 MR. BEAUMAN: Thank you.

2 MR. PAFUNDA: I don't think that you  
3 have to go old school on me.

4 MR. BEAUMAN: Thank you.

5 If you remember the question, you  
6 can answer it.

7 A Well, no, let's hear it again.

8 Q I can always have the court reporter  
9 read it back, okay, but I'm not going to do that.

10 Did you know that you had been  
11 provided with false information at that particular  
12 meeting with the general counsel?

13 MR. BEAUMAN: Object to the form.

14 Q Or that you, in fact, had been  
15 misled?

16 A No.

17 Q So you relied on the information  
18 that general counsel passed on to you to be true  
19 and accurate; is that correct?

20 A In general, yes.

21 Q And you can have -- can you not, you  
22 can have inaccurate or misleading information by  
23 either comission or omission; correct?

24 A Yes, that can happen.

25 Q Now, earlier you said after the  
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1 Health Care Committee returned Dr. Kearney to his  
2 position as a full-tenured professor, you were  
3 upset. My question is, were you upset with the  
4 Board of Trustees Healthcare Committee?

5 A No. I respected their decision. I  
6 was upset with the way we -- we handled the -- the  
7 issues related to his office and his e-mail.

8 Q After the Health Care Committee's  
9 decision to return Dr. Kearney as a tenured  
10 professor, did you, in fact, ask Keith Gannon to  
11 step down as chairperson of the Board?

12 A No.

13 Q At any time?

14 A No.

15 Q Did you threaten to resign?

16 A No.

17 Q Did you want Dr. Brockman to  
18 replace --

19 A I don't make the decision about --

20 Q No, that's not my question.

21 A And I -- it would -- I never  
22 expressed the desire who should be the Board  
23 chair. I've never done that since I've been here.

24 Q Did you politic to have Dr. Brockman  
25 replace Keith Gannon as chair?

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1 A No, sir.

2 MR. PAFUNDA: Mark this as  
3 Plaintiff's Exhibit No. 5.

4 (REPORTER MARKS E-MAIL DATED 8/29/14  
5 AS PLAINTIFF'S EXHIBIT NO. 5 FOR PURPOSES OF  
6 IDENTIFICATION.)

7 MR. PAFUNDA: I've got you a copy.

8 MR. BEAUMAN: Okay.

9 MR. PAFUNDA: It's only one line.

10 Q Have you had an opportunity to read  
11 Exhibit -- Plaintiff's Exhibit No. 5?

12 A Yes.

13 Q And you would agree with me that's  
14 an e-mail to Dr. Kearney from Cliff Iler; correct?

15 A Yes.

16 Q And, as it states on there, and is  
17 obvious, it's August 29th, 2014, and at nearly  
18 10 a.m. in the morning; correct?

19 A Uh-huh.

20 Q It addresses the lecture, does it  
21 not?

22 A It -- it addresses a lecture.

23 Q And that's the lecture that was  
24 brought to your attention that was supposed to be  
25 discriminatory in some remarks?

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1 A I don't know.

2 Q Do you even know what lecture was  
3 brought to your attention?

4 A Yes.

5 Q Did you ever listen to the lecture?

6 A I did not listen to the lecture.

7 Q And why not?

8 A I entrust that to people in the  
9 College of Medicine who work with our Office of  
10 Equal Opportunity; they listened to the lecture.

11 Q And Cliff Iler, as is explained in  
12 this e-mail, his title is Associate General  
13 Counsel; correct?

14 A Yes.

15 Q Would you read into the record what  
16 Mr. Iler told Dr. Kearney on August 29th, 2014?

17 A "I listened to your most recent  
18 lecture. There were no issues or concerns about  
19 the content of your lecture based upon my review."

20 Q And I take it you consider Mr. Iler  
21 a competent lawyer?

22 A To the extent that I've worked with  
23 him.

24 Q Is there any other extent to which  
25 you would question his competency?

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1 A No.

2 Q When was your meeting with Mr. Thro?

3 A My meeting with Mr. Thro would be  
4 September, October, 2014.

5 Q Sometime after this e-mail which  
6 exonerated any charge Mr. -- or Dr. Kearney would  
7 face with respect to that lecture; correct?

8 MR. BEAUMAN: Object to the form.

9 A My understanding is that there  
10 were -- there were remarks made in that lecture  
11 that -- that reflected terms of sort of bias along  
12 national origin, or gender or body size. We  
13 received a complaint from a student, which I think  
14 triggered the examination of the lecture, and  
15 that's the -- my recollection.

16 Q And according to the University's  
17 own in-house counsel, there was nothing  
18 discriminatory or derogatory about that lecture  
19 after Mr. Iler reviewed and listened to the  
20 lecture; correct?

21 A You'd have to ask Mr. Iler.

22 Q I don't have his e-mail, don't I,  
23 President Capilouto?

24 A Excuse me?

25 Q We have his e-mail, do we not?  
AN/DOR Reporting & Video Technologies, Inc.

1 A We have his e-mail, but.

2 Q Do we need it to read it into the  
3 record again?

4 A No.

5 Q So you disagree with counsel's  
6 e-mail and characterization of the lecture;  
7 correct?

8 A If he is referring to the lecture  
9 for which I received information, yes.

10 Q No, I'm asking if you disagree with  
11 his characterization of the lecture?

12 MR. BEAUMAN: I think he answered  
13 your question.

14 MR. PAFUNDA: No, he didn't. He said  
15 based on -- I'm asking him if he did.

16 MR. BEAUMAN: He answered it with the  
17 qualifications as best as he knows. That's  
18 all he'll do.

19 MR. PAFUNDA: If you want to start  
20 arguing, we'll --

21 A I -- I -- I do not know what  
22 Mr. Iler means by there are no issues or concerns.

23 Q All right.

24 A I haven't had a conversation with  
25 Mr. Iler about that.

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1 Q Were you aware of that e-mail?

2 A No.

3 Q Were you presented with that e-mail  
4 when Mr. Thro brought this matter to your  
5 attention?

6 A No.

7 Q Your opinion, based on how Mr. Thro  
8 works, so on and so forth, was his association  
9 with Mr. Iler, would you -- would it be your  
10 opinion that at the time he came to you he had  
11 that e-mail?

12 A I'm not certain.

13 Q Who's copied on that e-mail?

14 A Patty Bender and Charles Griffith.

15 Q And Charles Griffith is whom?

16 A He's --

17 Q Is who?

18 A He's an associate or assistant dean  
19 in the College of Medicine. He has responsibility  
20 over educational activities.

21 Q And if you'll recall earlier, you  
22 mentioned that Dr. Kearney's hard drive, computer  
23 had been seized -- seized may be too strong of a  
24 word -- but had been taken by the University  
25 during this disciplinary process; correct?

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1           A           I had been -- I used the term sort  
2 of frozen.

3           Q           Well, it had been more than frozen.  
4 It had been removed from his office, had it not?

5           A           I believe so.

6           Q           In fact, you were informed that it  
7 had been removed from his office, were you not?

8           A           Somewhere along the line.

9           Q           Who informed you of that?

10          A           I cannot remember.

11          Q           Did you authorize that action?

12          A           That would be something that we  
13 would normally do in cases where someone is put on  
14 administrative leave under these circumstances.

15          Q           But Dr. Kearney wasn't placed on  
16 administrative leave, was he?

17          A           When it was brought to my attention  
18 he was on administrative leave with pay.

19          Q           If a faculty member is placed on  
20 administrative leave that's over 30 days, do the  
21 Board of Trustees have to be informed?

22          A           I can't recall every regulation that  
23 we have.

24          Q           As we sit here today, the Board of  
25 Trustees has to be informed if a tenured  
AN/DOR Reporting & Video Technologies, Inc.

1 professor, faculty member is placed on  
2 administrative leave for more than 30 days?

3 A That certainly could be within our  
4 regulations.

5 MR. PAFUNDA: Mark this as  
6 Plaintiff's Exhibit No. 6.

7 (REPORTER MARKS MEMO DATED 9/5/14  
8 REGARDING ADMINISTRATIVE LEAVE AS  
9 PLAINTIFF'S EXHIBIT NO. 6 FOR PURPOSES OF  
10 IDENTIFICATION.)

11 Q Mr. President.

12 A Thank you, sir.

13 Q You're welcome.

14 Just take one moment to -- I'll  
15 preface it with this: President Capilouto, had  
16 you seen that e-mail prior to today?

17 A Which e-mail?

18 Q That I've just handed you -- or a  
19 memo, excuse me?

20 MR. BEAUMAN: Had me confused.

21 MR. PAFUNDA: I'm so technically  
22 advanced.

23 Q Had you seen that prior to today?

24 A I -- I don't -- I don't remember  
25 exactly seeing it, but I remember the content and,  
AN/DOR Reporting & Video Technologies, Inc.

1 you know, the actions taken, yes.

2 Q Other than the action, though, my  
3 question is specific in terms of the document  
4 itself?

5 A I can't remember.

6 Q If you had been presented with that  
7 document, would you or -- would you or your office  
8 have retained that document?

9 A Possibly, but we're not copied on  
10 this document --

11 Q I see that.

12 A -- I'm not certain. I could imagine  
13 it would be in our legal office.

14 Q Is anyone copied on that document?

15 A I can't tell, but it has -- well,  
16 the one that you gave me doesn't have that, no.

17 Q And returning to my earlier  
18 question.

19 Do you recall -- when you say -- you  
20 used the euphemism "froze his computer and hard  
21 drive" --

22 A Uh-huh.

23 Q -- and I countered and said isn't it  
24 true it was removed from his office, and your  
25 answer was, or is?

AN/DOR Reporting & Video Technologies, Inc.

1 A I'm not certain how it was done.

2 Q Were you aware of the fact that  
3 Dr. Kearney's e-mails were rerouted to legal  
4 office?

5 A My understanding is that they are  
6 parked, and they may be under the auspices of the  
7 legal office, but we were not reviewing  
8 Dr. Kearney's e-mails.

9 Q When you say we were not reviewing  
10 Dr. Kear --

11 A I don't think the University looked  
12 at --

13 Q Who's -- who's "we"?

14 A My understanding of this is at the  
15 time we returned Dr. Kearney's hard drive and  
16 activated his e-mail, that we had our compliance  
17 and IT offices working together to sort that out.

18 Q To sort what out, that his e-mail  
19 had been rerouted or to sort out what was --

20 A To restore his e-mail and to parse  
21 out any patient information that might be on his  
22 hard drive.

23 Q My question going back to it,  
24 though, Mr. President, is were you aware of the  
25 fact that his e-mail traffic had been rerouted to  
AN/DOR Reporting & Video Technologies, Inc.

1 the legal office?

2 A I know his e-mail had ceased. I  
3 don't know exactly where it's routed or whatever.

4 Q When you learned that it had been  
5 ceased, who passed that information on to you?

6 A I don't remember, but it's -- again,  
7 it's not atypical of when somebody is placed on  
8 administrative leave.

9 Q Can you give me another example of  
10 someone who was placed on administrative leave?

11 A Sure. Professor Tao in engineering,  
12 who students raised concerns about in the way they  
13 were treated and had been used involving his  
14 consultation and all, once we had interviews with  
15 those students and all and put him on  
16 administrative leave, then -- then it's sort of  
17 frozen.

18 Q And when -- again, when you use the  
19 word "frozen," computer is actually removed from  
20 that professor's office; correct?

21 A I don't remember the logistics of  
22 that.

23 Q Why were you involved with  
24 Dr. Kearney say in October of 2014? Why is it  
25 brought to your attention?

AN/DOR Reporting & Video Technologies, Inc.

1           A           It -- I would say there are others  
2 that are brought to my attention. As  
3 Professor Tao, they walk in and tell me; when we  
4 have a case of sexual assault involving a student  
5 informed, so that -- that's the way it works.

6           Q           Dr. Eric Smart?

7           A           Dr. Eric Smart's case was at its  
8 conclusion when I arrived here.

9           Q           But you were more than just informed  
10 in Dr. Kearney's case. You gave out a directive  
11 when you met with Mr. Thro, did you not?

12          A           I -- when Mr. Thro gave me a  
13 briefing on this, and I was aware of the last  
14 letter that Dr. Kearney had received because of  
15 his unprofessional behavior, and I realized that  
16 there was a history of this, I anticipated that  
17 this could be a protracted process and I asked  
18 Mr. Thro to work on a mediation which went on for  
19 a few months.

20          Q           When you say went on for a few  
21 months, when -- when do you believe that the  
22 mediation began?

23          A           I'd say -- I don't know, October --

24          Q           Okay.

25          A           -- maybe, October of 2014.  
AN/DOR Reporting & Video Technologies, Inc.

1 Q Were you aware that Mr. Thro,  
2 Mr. Iler met with Dr. Kearney and myself?

3 A Yes, yes, I knew that.

4 Q Was there a report given to you  
5 after that meeting?

6 A Yes.

7 Q Was it in writing? When I say in  
8 writing, I --

9 A I don't remember in writing. What I  
10 do remember was at that meeting Mr. Thro told me  
11 an allegation had been made by Dr. Kearney  
12 regarding sort of a threat of his employment.

13 Q I'm not following you.

14 A I just recall at that meeting we  
15 were informed from that meeting and in those  
16 discussions that Dr. Kearney claimed that several  
17 months earlier there was a situation of a general  
18 meeting of faculty and all, and that a threat had  
19 been made regarding his employment.

20 Q Right. Were you informed as to  
21 who -- who made the threat?

22 A My recollection is --

23 Q No, by Mr. Thro at that meeting,  
24 were you informed?

25 A I understood that Dr. Kearney had  
AN/DOR Reporting & Video Technologies, Inc.

1 raised that.

2 Q Well, Dr. Kearney didn't threaten  
3 himself. Do you know who -- were you informed as  
4 to who threatened --

5 A Oh, excuse me.

6 Q Yes.

7 A Yes. That it was from Dr. Karpf.

8 Q Did you just immediately dismiss  
9 that?

10 A No. I asked for the -- a  
11 description of what happened there.

12 Q Who provided you with that  
13 description?

14 A Mr. Thro.

15 Q What description did he give you?

16 A My -- my recollection was there was  
17 I think questions involving a physician payment or  
18 reimbursement --

19 Q If I may just interrupt you?

20 A -- or some other policy -- yeah.

21 Q Did Mr. Thro tell you that a threat  
22 had been made, or even address the issue in that  
23 meeting?

24 A He -- he said -- he said that  
25 several months earlier, and in this discussion,  
AN/DOR Reporting & Video Technologies, Inc.



1 that Dr. Karpf, in general in response to a  
2 question about a particular policy or payment or  
3 compensation, said something to the effect that,  
4 you know, if someone doesn't like this they could  
5 leave. And that someone asked him if that was a  
6 threat and he said no.

7 Q All right.

8 A That's what I remember.

9 Q Thank you.

10 Now, when you're having this meeting  
11 discussing the threat, we'll call it that meeting,  
12 Mr. Thro and Mr. Iler had already met with  
13 Dr. Kearney and myself, had they not?

14 A Yeah, I think they learned all of  
15 this that -- well, that it had been raised as a  
16 threat to him and that it was part of his  
17 whistleblower allegation.

18 Q Do you keep a calendar in terms of  
19 appointments? If Mr. Thro comes to see you, do  
20 you have a calendar that would indicate that or a  
21 secretary who keeps your --

22 A Not -- not -- not all appointments,  
23 no.

24 Q I didn't ask that, but do you have a  
25 calendar that would show --

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1           A           I have a calendar, but it wouldn't  
2 show every appointment. I may run upstairs and  
3 talk to Mr. Thro. He may walk in and stick his  
4 head in.

5           Q           But likewise, on the other side of  
6 that coin, that calendar would -- may, in fact,  
7 show that meeting; is that correct?

8           A           It may or may not. I don't know.

9                       MR. PAFUNDA: We've got five minutes  
10 left. If you don't mind, Mr. President,  
11 we'll just take a break.

12                      THE VIDEO TECHNICIAN: We're going  
13 off the video.

14                               (Brief recess.)

15                      THE VIDEO TECHNICIAN: We're back on  
16 the video record. This is Tape No. 3. The  
17 time is 3:09.

18                               CONTINUED EXAMINATION

19 By Mr. Pafunda:

20           Q           Mr. President, back in the fall of  
21 2014, September and October, you relied on the  
22 information that was brought to you by general  
23 counsel William Thro; is that correct?

24           A           Correct.

25           Q           Who hired Mr. Thro?  
AN/DOR Reporting & Video Technologies, Inc.

1 A I did.

2 Q And the reason you selected  
3 Mr. Thro?

4 A I thought he was the best-qualified  
5 candidate.

6 Q Did you know Mr. Thro prior to the  
7 time you ser -- began your service as president?

8 A No, sir.

9 Q So it was on an application  
10 procedure; correct?

11 A Application, interviews.

12 Q Was it unusual at the time for the  
13 Chief Medical Officer to step outside the chain of  
14 command and go to general counsel to bring this  
15 matter to your attention?

16 A No.

17 Q And tell me why not.

18 A Because I think personnel matters  
19 from a variety of units across campus, certainly  
20 when they can involve potential legal matters,  
21 would certainly be brought to his attention. I  
22 mentioned to you before we had sexual assault or  
23 scientific integrity breach or misappropriation of  
24 funds, those things are brought to my attention.

25 Q But likewise, even though they're  
AN/DOR Reporting & Video Technologies, Inc.

1 brought to your attention, you don't keep a record  
2 of those particular matters?

3 A No, sir.

4 Q Do you rely on someone else to keep  
5 a record?

6 A No, sir.

7 Q Do you expect your general counsel  
8 to keep a record?

9 A Yes.

10 Q So, in essence, you do rely on  
11 someone else to keep records?

12 A Yes, I do. And in this case the --  
13 the records also are those produced by the  
14 respective bodies that reviewed the allegations  
15 and made decisions. They issued reports or  
16 conclusions. And those -- at the end of the  
17 entire process, I read those.

18 Q And when you -- and when you say at  
19 the end of the entire process, since I wasn't in  
20 your office at the time, when did the process end?

21 A When the Board of Trustees handed  
22 down -- or the Health Committee handed down its  
23 decision.

24 Q And is that -- that was the first  
25 time that you had reviewed what had occurred in  
AN/DOR Reporting & Video Technologies, Inc.

1 the process?

2 A That's the first time I reviewed  
3 everything that the Health Committee reviewed.

4 Q And what did you review?

5 A I reviewed the materials we made  
6 available to them that included the Medical Staff  
7 Executive Committee, the -- the hearing panel, the  
8 various documents that were appended to those. I  
9 didn't read them, you know, line by line, but  
10 that's when I reviewed them more comprehensively.

11 Q Did you review the documents that  
12 were provided by Dr. Kearney during this process?

13 A I read documents -- I read -- I  
14 recall certainly testimony by Dr. Kearney. I  
15 recall various letters given to Dr. Kearney about  
16 his professional behavior. I recall some annual  
17 evaluations. It was an extensive amount of  
18 information, but I largely focused on what the  
19 peer panels reviewed.

20 Q And when you say the peer panels,  
21 you're talking about the Medical Staff Executive  
22 Committee; am I correct?

23 A Yes, sir, and then --

24 Q As well as --

25 A -- the hearing panel, the subsequent  
AN/DOR Reporting & Video Technologies, Inc.

1 group of I believe three physicians.

2 Q And -- so whatever documents they  
3 reviewed, you would likewise review those same  
4 documents?

5 A Pretty much, because -- and the  
6 reason I reviewed them then is -- is to inform how  
7 to best operationalize something that is atypical,  
8 and that is somebody is stripped of their clinical  
9 privileges, most of their time is spent in a  
10 clinical context, which involves teaching, and at  
11 the same time maintaining a tenured appointment.  
12 That doesn't happen every day, so I was trying to  
13 look at a fuller context, and I -- and I asked a  
14 group that works on these matters day to day  
15 through Counsel Thro to give me some idea of how  
16 you manage this.

17 Q Well, in fact, this investigation  
18 and the resulting loss of clinical privileges for  
19 Dr. Kearney, as well as the fair hearing, is the  
20 first time this ever occurred, is it not, that  
21 you're aware of?

22 A Certainly since I've been here, five  
23 years.

24 Q But did you inquire to see if there  
25 was any history?

AN/DOR Reporting & Video Technologies, Inc.

1           A           I -- I think it is very rare, I  
2 heard that, or maybe never.

3           Q           And you've just described to me that  
4 you read Dr. Kearney's testimony at the Fair  
5 Hearing Panel; correct?

6           A           I read lots of I guess you'd call it  
7 testimony or interviews. There were -- there were  
8 numerous things that I reviewed.

9           Q           But you would agree, to state the  
10 obvious, there's a difference between testimony  
11 and documents; correct?

12          A           Sure.

13          Q           And do you recall reading testimony?

14          A           It has been a year since I looked at  
15 those documents --

16          Q           I understand that.

17          A           -- sir, and I can't remember  
18 testimony from documents, to be honest with you, I  
19 mean, to clarify it entirely.

20          Q           But you're certain of the timing of  
21 your review was after the Healthcare Committee --

22          A           Yes.

23          Q           -- returned Dr. Kearney back to full  
24 status as a tenured professor; correct?

25          A           After he had been stripped of his  
AN/DOR Reporting & Video Technologies, Inc.

1 clinical privileges.

2 Q Well, he had actually been stripped  
3 of his tenure prior to the Healthcare Committee,  
4 had he not?

5 A Stripped of his tenure?

6 Q Yes.

7 A No.

8 Q We'll return to that later, but -- I  
9 now -- you've drawn a picture for me where you as  
10 the president of the University -- and I take it  
11 you're busy in that capacity; correct --

12 A Yes, sir.

13 Q -- are now micromanaging a  
14 disciplinary procedure by sitting down with the  
15 fair hearing documents and going through them  
16 yourself; is that correct?

17 A I would not call it micromanagement.  
18 I would call it being responsible.

19 Q And responsible in what regard?

20 A This is a decision that our Board of  
21 Trustees has made. It is unique. As you say, it  
22 is rare.

23 Q No, I mean -- no, I was referring to  
24 you would agree with me that the entire process,  
25 Medical Staff Executive Committee, an appeal to  
AN/DOR Reporting & Video Technologies, Inc.



1 the fair hearing and then an appeal to the  
2 Healthcare Committee, that has never happened  
3 before, has it?

4 A To my knowledge, no. But what I  
5 wanted to assure when we got started was that we  
6 follow the process and we trust the process, and  
7 no one should interfere with the process.

8 Q Did you have any indication that  
9 anybody was interfering with the process?

10 A No, sir.

11 Q But you told us a moment ago that  
12 you were upset right after the Healthcare  
13 Committee returned Dr. Kearney to work?

14 A That's because it was after the  
15 decision was made and what our actions were after  
16 the decision. I -- I have no concerns about the  
17 process that was followed, and I trust and respect  
18 that process.

19 Q Then what did you apologize for  
20 publicly, your public apology, that his  
21 disciplinary process was mishandled?

22 A No, I did not apologize that his  
23 disciplinary -- that process, the review by the  
24 panels, the decision is handed down, the  
25 determinations by the Health Committee, I'm not  
AN/DOR Reporting & Video Technologies, Inc.

1 apologizing for that.

2 Q What did you apologize for?

3 A I apologized that once that decision  
4 was handed down, the way we interacted with  
5 Dr. Kearney, and I think some common courtesies we  
6 should have extended to him, about his office and  
7 e-mail and so forth weren't what I wanted them to  
8 be.

9 Q Well, let me ask you this,  
10 Mr. President: With respect to his computer and  
11 his hard drive being -- and you used the word  
12 frozen, but removed from his office after his  
13 suspension by Dr. Boulanger, didn't that give  
14 legal office an opportunity to clean his hard  
15 drive or remove anything that may favor  
16 Dr. Kearney as opposed to the administration?

17 A I don't know what kind of  
18 opportunity it provides.

19 Q Well, they had -- they had literal  
20 possession, physical possession, of his computer  
21 and hard drive?

22 A Well, I would not --

23 Q You would agree with that?

24 A -- think that we would engage in  
25 destroying information. Okay.

AN/DOR Reporting & Video Technologies, Inc.

1 Q And you would rely on that heavily,  
2 would you not?

3 A I would -- I would hope that's the  
4 way we operate, yes, sir.

5 Q And you expect nothing less?

6 A That's true, sir.

7 Q And likewise, you would expect  
8 nothing less that those beneath you in terms of  
9 the chain of command and those responsible  
10 wouldn't place false information in someone's  
11 personnel file; isn't that correct?

12 A Yeah. But tell me what you're  
13 talking about in false information.

14 Q No, my question is simple. Earlier  
15 you told me that you would rely on the integrity  
16 of those beneath you; correct?

17 A Sure.

18 Q And you have to as president of the  
19 University, do you not?

20 A Yes.

21 Q And you have to trust that the  
22 information that's brought to your attention is  
23 true and accurate?

24 A Yes.

25 Q To the best of that person's  
AN/DOR Reporting & Video Technologies, Inc.

1 ability; isn't that correct?

2 A To the best of that person's  
3 ability.

4 Q Now, you would trust that false  
5 information is not put in a faculty member's file;  
6 isn't that true?

7 A I would hope that that is not the  
8 case.

9 Q Take it even a step further; you  
10 would trust that not to be the case, wouldn't you?

11 A I would trust that not to be the  
12 case, certainly hope --

13 Q Thank you.

14 A You know what, we're all human and  
15 someone could make a mistake.

16 Q So someone could mistakenly place  
17 false information in a personnel file?

18 A You could -- you could mistakenly  
19 put a wrong document or somebody else's  
20 information in a file. There -- there are a  
21 variety of things that I imagine could happen.  
22 So, yes, it could happen.

23 Q And, in fact, if it were -- if it  
24 had happened, that false information was placed in  
25 a personnel file, would you expect an  
AN/DOR Reporting & Video Technologies, Inc.

1 investigation to be done in that particular matter  
2 to determine --

3 A It would -- it would depend if it  
4 were material to -- to a matter being considered.

5 Q If it were material to a  
6 disciplinary matter?

7 A It depends on the context. I can't  
8 speculate on something that I don't know about.

9 Q So if you learned that that had, in  
10 fact, happened, and that it was material to a  
11 disciplinary process, would you take corrective  
12 remedial action?

13 A It depends on the magnitude of  
14 something.

15 Q But would you be the judge of that?

16 A I could be, but -- and if -- well,  
17 it would depend.

18 Q All right.

19 A Okay.

20 Q The College of Medicine faculty  
21 council, what purpose does that faculty council  
22 serve, in your opinion?

23 A I think that's an elected body. I'm  
24 not sure of its roles and responsibilities in  
25 detail.

AN/DOR Reporting & Video Technologies, Inc.

1           Q           Integral part of the University, and  
2 if so --

3           A           I think faculty are an integral part  
4 of the University, and I think representation of  
5 the faculty by elected members is important. I do  
6 not know -- you know, have familiarity with what  
7 the University senate does. I do not have  
8 familiarity with what councils and respective  
9 colleges may do.

10          Q           What does the University senate do?

11          A           The University senate operates  
12 according to our governing regulations and has  
13 certain roles and responsibilities, organization  
14 of the University's units. You know, you want to  
15 create a new unit, a new academic program, a new  
16 course, course revisions, honorary degrees, you  
17 know, those -- those kinds of responsibilities.

18          Q           And the Board of Trustees makes the  
19 rules and regulations that govern the University,  
20 do they not?

21          A           They approve the governing  
22 regulations. The administrative regulations are  
23 the responsibility of administration to develop.  
24 We have a process we go through for that.

25          Q           Does the Board approve  
AN/DOR Reporting & Video Technologies, Inc.

1 administrative regulations and put them in place?

2 A I think those are largely  
3 responsibilities of the administration.

4 Q If the Board of Trustees places an  
5 administrative regulation in place by vote of the  
6 Board of Trustees, is that a regulation to be  
7 followed by the administration?

8 A I would anticipate so, but I'd have  
9 to see exactly what you're referring to.

10 Q No, my question is rather broad.

11 A Yeah.

12 Q But in its breadth, it's specific,  
13 is it not?

14 A Yes.

15 Q And would not a regulation in place  
16 by the Board of Trustees need to be followed by  
17 University administrators?

18 A We'd certainly try to follow a  
19 regulation passed by the Board.

20 Q And if such a regulation were  
21 breached, just in general terms, would there be  
22 disciplinary action taken against the  
23 administration --

24 A It --

25 Q -- or administrators who had  
AN/DOR Reporting & Video Technologies, Inc.

1 breached such --

2 A It depends on what the breach is,  
3 sir.

4 Q And likewise, you can have  
5 graduated, can you not, disciplinary action?

6 A Yes.

7 Q Graduated disciplinary action wasn't  
8 necessarily applied to Dr. Kearney, was it?

9 A My review of his file was he had  
10 progressive discipline for a good number of years.  
11 There were numerous letters by various  
12 administrators over time addressing his  
13 professionalism and behavior.

14 Q Did you ascertain whether  
15 Dr. Kearney knew those letters were in his  
16 personnel file and if he was afforded the  
17 opportunity to respond to those letters?

18 A I did not review every letter in his  
19 personnel file as to whether he received it, no.

20 Q And isn't it correct that under  
21 University regulations, if a matter is placed in  
22 somebody's personnel file that's adverse, that  
23 they have the -- they be given the opportunity to  
24 file a written response?

25 A I don't know exactly what the  
AN/DOR Reporting & Video Technologies, Inc.



1 University's specific regulations are on a matter  
2 like that. There are hundreds, thousands of pages  
3 of regulations, sir.

4 Q But if there is such a regulation,  
5 you would agree that that regulation should be  
6 followed; correct?

7 A I would hope so, yes.

8 Q And again, and I return to this,  
9 because as president of the University, you rely  
10 on those beneath, do you not --

11 A I do.

12 Q -- to follow the rules and  
13 regulations?

14 A Uh-huh.

15 Q And to provide you with true and  
16 accurate information --

17 A Yes.

18 Q -- correct?

19 Otherwise, if you have to make a  
20 decision based on the information passed on to  
21 you, it could be an incorrect or even wrong  
22 decision; correct?

23 A Could be.

24 Q Yes.

25 MR. PAFUNDA: Exhibit No. 7, I think.  
AN/DOR Reporting & Video Technologies, Inc.

1 (REPORTER MARKS MINUTES OF COLLEGE  
2 OF MEDICINE FACULTY COUNCIL MEETING, DATED  
3 1/21/14, AS PLAINTIFF'S EXHIBIT NO. 7 FOR  
4 PURPOSES OF IDENTIFICATION.)

5 Q President Capilouto, you can take a  
6 moment to review this, but as you'll see from the  
7 top of the page on Exhibit No. 7, it's the minutes  
8 of the College of Medicine faculty council meeting  
9 on January 21, 2014, and it lists the attendees on  
10 the left-hand side.

11 A Excuse me, when you say the  
12 attendees on the left-hand side, the people on the  
13 right-hand side didn't attend?

14 Q I meant the whole block on the  
15 left-hand side, as the video will reveal.

16 A Excuse me.

17 Q No, that's fine.

18 MR. BEAUMAN: I'm not sure the last  
19 page goes with this.

20 MR. PAFUNDA: And your reason, Bryan?

21 MR. BEAUMAN: Because it looks to be  
22 from a Board of Trustees meeting.

23 MR. PAFUNDA: Oh, just a second. It  
24 is. Take the last page off. It is. Thank  
25 you.

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1 (Off the record.)

2 CONTINUED EXAMINATION

3 By Mr. Pafunda:

4 Q President Capilouto, you've had an  
5 opportunity to review the document?

6 A Yes.

7 Q And upon review of that document,  
8 what did you learn from this document?

9 A I learned of discussions held at  
10 this meeting about oral and maxillofacial surgery,  
11 Curriculum Committee report, progress on our  
12 national board exams, a discussion about College  
13 of Medicine Practice Plan Committee. It's a  
14 discussion, and it seems that Professor Davy Jones  
15 reviewed some portion of an administrative  
16 regulation. There is then a discussion about  
17 annual agreements; several faculty describe their  
18 experience.

19 Q Their experience in what, sir?

20 A Experience concerning annual budget  
21 plan and the unit level practice plan, so forth.  
22 There's mention of an open records request, and  
23 a -- more mention of the College of Medicine  
24 Practice Plan Committee. There's reference back  
25 to 2009 and former Dean Perman and Provost  
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1 Subbaswamy and EVPHA Karpf. And from July 9th,  
2 2013, these -- information had been conveyed to  
3 the committee, so they discussed this at length,  
4 and faculty council decided to ask the dean  
5 information. That's it basically.

6 Q Prior to today, had you seen these  
7 minutes?

8 A No, sir.

9 Q Were you aware of this faculty  
10 council meeting prior to today?

11 A No.

12 Q No one made you aware of it?

13 A No.

14 Q No one discussed what the subject  
15 matter at that meeting was?

16 A No. I do know that there was a  
17 request for those -- I know about an open records  
18 request. I don't know if it's associated with  
19 this meeting.

20 Q Okay.

21 A Something about position  
22 compensation.

23 Q Is that a recent record -- open  
24 records request?

25 A I can't recall, sir. We get lots of  
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1 them.

2 Q Wasn't the response to that open  
3 records request that the Compensation Committee  
4 doesn't keep minutes?

5 A I think the response were there were  
6 no minutes.

7 Q Well, if there are no minutes, then  
8 they don't keep any minutes, do they?

9 A I --

10 Q It's a yes or no question.

11 A I imagine not, but --

12 Q Thank you.

13 A -- but I don't know.

14 Q Who's on the Compensation Committee?

15 A I do not know, sir.

16 Q Do you know who's on the  
17 Compensation Committee for UK Healthcare?

18 A No, I do not.

19 Q Do you know who's on the  
20 Compensation Committee for Kentucky Medical  
21 Services Foundation?

22 A No, I do not.

23 Q Do you know how compensation is set  
24 in the College of Medicine?

25 A In general?  
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1 Q Yes, if you know it in specific.

2 A I -- I know -- I recall a few years  
3 ago at a meeting of the Health Committee of the  
4 Board of Trustees that Dr. Moliterno presented  
5 plans for compensation, and I recall that, and it  
6 moving towards an RVU-based recognition with some  
7 benchmarking and so forth. I remember the general  
8 description, sir.

9 Q Thank you.

10 With respect to RVU's, for the  
11 record, what are RVU's?

12 A Relative Value Units.

13 Q And what do they measure?

14 A I think they were instituted by  
15 Medicare back in the 80's, and they tried to put  
16 values around certain physician services and use  
17 standard units and try to incorporate into them,  
18 you know, sort of a weighted value given the  
19 complexity of the service or delivery.

20 Q RVU's measure, in fact, do they not,  
21 in general terms the amount of work that a  
22 clinician does?

23 A It is in general terms a measure of  
24 the amount of clinical service someone provides.

25 Q Thank you.  
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1           A           In -- yes.

2           Q           And as employed at the University of  
3 Kentucky, it's a measure of how much compensation  
4 a clinician should receive for the services that  
5 he or she has performed?

6           A           My understanding is it is a factor.

7           Q           Are there other factors that you're  
8 aware of?

9           A           I think it's a -- my understanding  
10 from the presentation that day on the -- in terms  
11 of clinical responsibilities, it is a factor, but  
12 again, it had bands. You know, that you performed  
13 within certain ranges and so forth. It -- so, you  
14 know, it's not just you did so many of these and  
15 you've got so much of that. It was in the context  
16 of a range in your area, and I believe using  
17 either local or national benchmarks. I can't  
18 remember.

19          Q           Have you had recent discussions on  
20 the increase in RVU's required of clinicians?

21          A           No.

22          Q           Before we get into the compensation  
23 area of the faculty, if you'll turn your attention  
24 to the second page of the document that I just  
25 handed you, Plaintiff's Exhibit No. 7. At the  
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1 very top, would you read into the record the first  
2 sentence?

3 A "President's Administrative  
4 Regulation 3:14 (approved by the Board of Trustees  
5 for effect July 1, 2009) requires the existence of  
6 a committee elected by and from those faculty who  
7 are members of the College of Medicine Practice  
8 Plan."

9 MR. BEAUMAN: I think technically  
10 that -- this is really picky now -- the  
11 sentence started on the prior page, and we  
12 left out the word "The."

13 MR. PAFUNDA: Oh, God.

14 MR. BEAUMAN: So, Bernie --

15 Q Mr. President, I apologize for  
16 counsel's interruption. I would have you read it  
17 again, but I would decline to be that rude.

18 A We appreciate your kindness and  
19 courtesy.

20 MR. PAFUNDA: Thank you.

21 Q It is Administrative Regulation 3:14  
22 that was approved by the Board of Trustees;  
23 correct?

24 A According to this document, it is.

25 Q Are you familiar with Administrative  
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1 Regulation 3:14?

2 A No, I'm not.

3 Q In any manner, shape or form?

4 A No, sir, I'm not.

5 Q Had you discussed Administrative  
6 Regulation 3:14 with anyone prior to today?

7 A No, sir.

8 Q Do you know what the Practice Plan  
9 Committee is, or what do you understand it to be?

10 A I can't give complete information on  
11 the Practice Plan Committee.

12 Q When you say you can't give --

13 A I have very little information on  
14 the workings of the Practice Plan Committee.

15 Q I just wanted your understanding, so  
16 even if it's --

17 A I am not certain of the Practice  
18 Plan Committee and its role, sir.

19 Q As a committee of a public  
20 university, it should keep minutes, should it not,  
21 if it meets?

22 MR. BEAUMAN: Object to the form.

23 A I would say that there are dozens,  
24 hundreds of committees at the University. I don't  
25 know the practice or requirements of each one of  
AN/DOR Reporting & Video Technologies, Inc.

1 those keeping minutes.

2 Q Dr. Davy Jones, are you familiar  
3 with him?

4 A Yes.

5 Q In what -- in what way, sir, other  
6 than the fact that he's an employee of the  
7 University?

8 A Member of the University senate.

9 Q And --

10 A Faculty member in the College of  
11 Medicine.

12 Q -- have you had interactions with  
13 Dr. Jones?

14 A Very limited.

15 Q Are you familiar with his open  
16 records requests?

17 A Not every one of them, no.

18 Q When you say that, have there been  
19 quite a few?

20 A I think he is a frequent flyer when  
21 it comes to those.

22 Q When you say he's a frequent  
23 flyer --

24 A Yeah.

25 Q -- are you critical of that?  
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1 A No.

2 Q Are you thinking as a --

3 A No, I'm not.

4 Q But he stands out as a frequent

5 flyer?

6 A Yeah.

7 Q No, it's an excellent phrase.

8 We're both agreed; correct?

9 A You tell me.

10 Q No, you just told me --

11 A I just know that he makes frequent

12 requests.

13 Q Thank you.

14 I'll show you Exhibit No. 8.

15 (REPORTER MARKS MINUTES OF COLLEGE OF

16 MEDICINE FACULTY COUNCIL MEETING, DATED

17 4/15/14, AS PLAINTIFF'S EXHIBIT NO. 8 FOR

18 PURPOSES OF IDENTIFICATION.)

19 Q In your opinion, are those frequent

20 requests warranted?

21 A I don't know the nature --

22 Q No, let me --

23 A I can't answer that.

24 Q By Dr. Jones, or do you think

25 they're just designed to be harassment?

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1           A           I don't know the nature of every one  
2 of his requests, so I couldn't make a judgment on  
3 that.

4           Q           So at this point in time you have no  
5 opinion?

6           A           I have no opinion.  
7                        I think I have two of these  
8 (indicating).

9           Q           You may have.

10                      MR. BEAUMAN: Speaking of that, I'll  
11 go ahead and pull off this.

12                      (Off the record.)

13           Q           Dr. Capilouto, you've had an  
14 opportunity to review the minutes of the College  
15 of Medicine faculty council meeting on April 15th,  
16 2014?

17           A           Yes.

18           Q           What did you glean from those  
19 minutes, if anything?

20           A           It's a discussion about roles and  
21 responsibilities of the faculty council. They  
22 play an advisory role. Dr. Karpf agreed. The  
23 Practice Plan relied -- falls within  
24 administrative sphere; questions about who's  
25 elected and their identification. Mr. Thro talks  
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1 about -- stated here that the Board can change  
2 3:14, and that the College of Medicine survey  
3 indicated they weren't pleased about the recent  
4 practice plan or how it was rolled out, and  
5 Dr. Karpf agreed to send information regarding the  
6 identity of faculty members. That's it.

7 Q Dr. Capilouto, just take the last  
8 sentence that you reviewed out loud, "Dr. Karpf  
9 agreed to send information regarding the identity  
10 of the faculty members of the practice plan."

11 A Uh-huh.

12 Q Given the previous exhibit, you  
13 learned that the faculty council tried to obtain  
14 the identity of the Practice Plan Committee  
15 members, in Exhibit 7?

16 A I -- I -- that's what you assume  
17 from this.

18 Q You can look at Exhibit 7 and  
19 ascertain for yourself, can you not?

20 A Let me see Exhibit 7 again. Yes,  
21 they're questions about identity of the members of  
22 the committee.

23 Q So according to Exhibit 7, which  
24 speaks for itself, the College of Medicine faculty  
25 council, despite their attempts to learn the  
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1 identity of the Practice Plan Committee members,  
2 those attempts have been thwarted, have they not?

3 MR. BEAUMAN: Object to the form.

4 A It seems like the information wasn't  
5 provided.

6 Q Thank you.

7 And if you'll look at Exhibit No. 8,  
8 which you have in front of you, those in  
9 attendance, and I'll read it to save some time,  
10 include Fred -- Dean Fred DeBeer, General Counsel  
11 Bill Thro, Executive Vice President for Health  
12 Affairs, Michael Karpf, and Faculty Trustee,  
13 John Wilson?

14 A Uh-huh.

15 Q Correct?

16 A Uh-huh.

17 Q And you'll have to answer yes or no.

18 A Yes, excuse me.

19 Q I'm not being rude. That's just for  
20 the record.

21 John Wilson is a member of the Board  
22 of Trustees, is he not?

23 A Until recently, yes.

24 Q All right.

25 A His term ended.  
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1 Q But at the time he was a member of  
2 the Board of Trustees; correct?

3 A Right.

4 Q In -- in the highest rank of the  
5 chain of command that we discussed earlier;  
6 correct?

7 A Yes.

8 Q And Executive Vice President for  
9 Health Affairs, Michael Karpf, in that chain of  
10 command is over the College of Medicine and UK  
11 Healthcare; correct?

12 A He's over UK Healthcare, not  
13 necessarily over the College of Medicine.

14 Q But necessarily over the College of  
15 Medicine is Dean Fred DeBeer; is that correct?

16 A Yes.

17 Q And likewise we have General Counsel  
18 Bill Thro; correct?

19 A Yes.

20 Q Who is, as -- as it states, general  
21 counsel for the University of Kentucky; correct?

22 A Right.

23 Q Do you know, in fact, the time of  
24 this meeting in 2014 that Mr. Thro had been  
25 approved by the Board of Trustees as general  
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1 counsel?

2 A I remember someone raising that  
3 issue as a technicality. It may have been  
4 Davy Jones.

5 Q When was this, and how was this?

6 A I just remember that, you know, it  
7 is the case that we -- as we do faculty  
8 appointments, administrative appointments, we list  
9 them in -- in our board, you know, with personnel  
10 decisions and we had omitted that. I had  
11 announced Mr. Thro as the general counsel. This  
12 was no secret. It was just omitted I believe from  
13 what we did at a trustee meeting.

14 Q And when did --

15 A And I would say, if you attend our  
16 trustee meetings, we -- we several times a year  
17 have to amend the list of students that graduated,  
18 where we omit one or wrongly inserted one or the  
19 faculty approved one that's incorrect or  
20 something. So that's the kind of error it was.

21 Q But you have many more thousand  
22 students than you do a general counsel?

23 A True.

24 Q And a general counsel holds a very  
25 important position, does he not?

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1 A True.

2 Q And he first came on board when?

3 A I cannot remember the date, sir.

4 Q The year?

5 A I can't remember the year, sorry.

6 Q He'd been there several years,

7 though, at the time of this meeting; is that

8 correct?

9 A Well, you can ask him.

10 MR. PAFUNDA: Bill, how long -- when

11 did you start?

12 BILL THRO: October 15th, 2012.

13 MR. PAFUNDA: Thank you very much,

14 Mr. Thro.

15 Q Thank you, Mr. President.

16 A All right.

17 Q We just took a liberty in a

18 deposition.

19 When you say it's a technicality

20 approval by the Board of Trustees, what do you

21 mean it's a technicality?

22 A I -- I had informed the Board of

23 Trustees. I had made the announcement. I just

24 had -- it was an oversight to put it on the

25 agenda, simply what it was.

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1 Q And who's responsible to put it on  
2 the agenda?

3 A You know, at the end of the day,  
4 maybe that was my responsibility. I missed that  
5 one, but people that do that.

6 Q And who are those people?

7 A We can have several administrative  
8 units. We could have HR that would track those,  
9 our human resource division, about when those need  
10 to go forward and all, but.

11 Q Was it a deliberate omission on  
12 anybody's part?

13 A No, sir.

14 Q Well, in any event, we'll return to  
15 the minutes of the faculty council meeting. Had  
16 you prior to today had an opportunity to review  
17 Dr. Hollie Swanson's deposition?

18 A No, sir. I wasn't sure if she had  
19 been deposed, to be honest with you.

20 Q Has anyone discussed it with you?

21 A No, because I didn't -- I can't  
22 recall if she had been, to be honest with you.

23 Q Thank you.

24 You knew Mr. -- or Dr. Davy Jones  
25 had been deposed; correct?

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1 A No, I didn't know that.

2 Q Until just now?

3 A Has he?

4 Q Yes.

5 A Well, now I know.

6 Q Have you reviewed in any fashion the  
7 testimony of Dr. Hollie Swanson or Dr. Davy Jones?

8 A No, sir.

9 Q Did you know at the fair hearing  
10 that they stated that Dr. Karpf threatened to fire  
11 Dr. Kearney?

12 A No. At the fair hearing?

13 Q Yes, at the fair hearing.

14 A I certainly heard their  
15 interpretation of that somewhere along the way. I  
16 can't remember where.

17 Q So you just told us a moment ago  
18 that you read the testimony of the fair hearing?

19 A Excuse me, I thought you were  
20 talking about their depositions. Excuse me. I  
21 was --

22 Q I was --

23 A -- trying to --

24 Q -- and then I went to the fair  
25 hearing.

AN/DOR Reporting & Video Technologies, Inc.

1 A Excuse me. All right.

2 Q So you did read their testimony or  
3 their statements at the fair hearing?

4 A I reviewed lots of documents  
5 associated with that. I certainly remember  
6 this -- their interpretation of comments made at a  
7 meeting, yes.

8 Q Did you address their interpretation  
9 that Dr. Karpf had threatened to fire Dr. Kearney  
10 at the April 15, 2014 meeting with Dr. Karpf?

11 A No, I did not.

12 Q Why not go directly to the  
13 individual himself?

14 A We were going through this process.  
15 I did not want to discuss Dr. Kearney's case with  
16 Dr. Karpf.

17 Q And why not?

18 A I didn't want to discuss it with  
19 anybody except the general counsel.

20 Q And the reason was to create a  
21 Chinese wall?

22 A No, sir.

23 Q Now, what was the reason?

24 A The reason was I didn't want in any  
25 way to interfere with the fair process.

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1 Q But the fair process, as you  
2 described it, was over at that particular point  
3 when you reviewed the documents?

4 A Oh, oh, at the end?

5 Q Yeah, at the fair hearing.

6 A Yeah, but I -- I don't agree with  
7 what they had to say.

8 Q Were you present at this meeting?

9 A No, sir.

10 Q Why do you not agree with what they  
11 say? On what factual basis do you render that  
12 opinion?

13 A Well, I -- it is the description  
14 that I received --

15 Q You have to be more specific.

16 A -- from Mr. Thro, and -- do you have  
17 minutes of that meeting? You have a lot of  
18 minutes.

19 Q Dr. Capilouto, it will save a lot of  
20 time, especially with me, if I'm allowed to ask  
21 the questions and you answer them, because I can  
22 buck up in a heartbeat.

23 A Don't do that.

24 Q I won't. Go ahead.

25 A I -- I disagree with the  
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1 characterization of that as a threat to fire  
2 someone.

3 Q But when you disagreed with that,  
4 you relied on the characterization that was  
5 presented to you by general counsel; correct?

6 A Yes.

7 Q Thank you.

8 To go back to my earlier question,  
9 did you address the matter with Dr. Karpf?

10 A I did not.

11 Q Thank you.

12 Did you know at that meeting when  
13 the questions were raised about the Practice Plan  
14 Committee that Mr. Thro told the members of the  
15 faculty council it was none of their business?

16 A No.

17 Q Did you know that Dr. Swanson didn't  
18 put that in the minutes so as not to embarrass  
19 Mr. Thro?

20 A No.

21 Q It's on Page 39 of her deposition.  
22 Do you want to take time to read it?

23 A No.

24 Q So you're dismissive of  
25 Dr. Swanson's comments?

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1           A           No, I'm not.  If you want me to read  
2  39 pages of deposition, I'm glad to read it, but.

3           Q           No, I just -- wouldn't it be --

4           A           She --

5           Q           And with respect to this ongoing  
6  lawsuit, are you saying that Dr. Swanson is not a  
7  credible person?

8           A           No, sir, I'm not.

9           Q           In fact, she was in the running for  
10 provost, was she not?

11          A           I don't recall that, sir.  I don't  
12 recall her being a candidate for provost.

13          Q           At that faculty council meeting, the  
14 faculty council was, in fact, stating and  
15 disclosing and reporting that the administration  
16 had breached AR 3:14 since the Practice Plan  
17 Committee had not met and, in fact, did not exist  
18 except in name only, did you know that?

19          A           No, sir.

20          Q           If in fact -- well, I'll take back  
21 the "if."

22                        When the administration breached AR  
23 3:14, should members of the administration be  
24 disciplined?

25          A           Before I answer that question, I  
                      AN/DOR Reporting & Video Technologies, Inc.

1 would like the opportunity to get more information  
2 than I'd get from these minutes.

3 Q No, I understand that.

4 A Okay.

5 Q When the administration breached AR  
6 3:14, would it be your position as president of  
7 the University that since they didn't follow the  
8 rules and regulations of the University that they  
9 should be disciplined?

10 MR. BEAUMAN: Object to the form.

11 A I don't know the extent of the  
12 breach from these four sheets of paper that you're  
13 inferring to, sir, sorry.

14 Q That's not my question.

15 My question is, when the breach  
16 occurred, and given the breach, would you  
17 discipline those administrators?

18 MR. BEAUMAN: Object to the form.

19 A It depends on circumstance and  
20 content.

21 Q Didn't you tell the faculty in  
22 October of 2015 that the rules and regulations  
23 should be obeyed by everybody in the University  
24 community?

25 A I certainly expect everybody to  
AN/DOR Reporting & Video Technologies, Inc.



1 follow the rules and regulations.

2 Q And when they don't, do you expect  
3 them to be disciplined?

4 A I expect us to take corrective  
5 measures.

6 Q Otherwise it would simply be single  
7 out Dr. Kearney for discipline while the  
8 administration is able to operate with total  
9 impunity; correct?

10 A No, sir.

11 MR. BEAUMAN: Object to the form.

12 Q That, to say the least, wouldn't be  
13 fair, would it?

14 A No, sir.

15 Q And it was highly inappropriate for  
16 general counsel, no matter his motivation, to tell  
17 the faculty council that these -- this was none of  
18 their business --

19 MR. BEAUMAN: Object to --

20 Q -- wouldn't you agree?

21 MR. BEAUMAN: Object to the form.

22 A I learned from you that that was  
23 said. I have not discussed that with the general  
24 counsel, and until I do, I'm not commenting or  
25 speculating on what you're interpreting or what  
AN/DOR Reporting & Video Technologies, Inc.

1 was said by someone else.

2 Q It's not my interpretation. You  
3 understand that?

4 A It's somebody else's statement.

5 Q Yes; Dr. Swanson.

6 A Yes, sir.

7 Q And you would agree Dr. Swanson is a  
8 highly credible individual and --

9 A I respect Dr. Swanson. I do not  
10 know the context of her statement and the -- the  
11 full circumstances around it, sir.

12 Q Thank you.

13 At the conclusion of this  
14 deposition, do you intend to look into it?

15 A I'll look into several things.

16 Q Thank you.

17 Will that be one of them?

18 A Maybe so.

19 Q Thank you.

20 MR. PAFUNDA: We've only got five  
21 minutes left. We're going to break.

22 THE VIDEO TECHNICIAN: Going off the  
23 video. The time is 4:04.

24 (Brief recess.)

25 THE VIDEO TECHNICIAN: We're back on  
AN/DOR Reporting & Video Technologies, Inc.

1 the video record. This is Tape No. 4. The  
2 time is 4:11.

3 CONTINUED EXAMINATION

4 By Mr. Pafunda:

5 Q Mr. President, did you know at that  
6 same meeting in April of 2014 Dr. Kearney  
7 disclosed that the Kentucky Medical Services  
8 Foundation was being mismanaged?

9 A No. At this meeting (indicating)?

10 Q Yes.

11 A No.

12 Q Did you know on November 3rd, 2014  
13 Dr. Kearney sent an e-mail to Cliff Iler via me  
14 stating that Dr. Karpf was mismanaging funds at  
15 Kentucky Medical Services Foundation?

16 A No.

17 Q No one in legal office --

18 A I don't --

19 Q -- communicated that e-mail to you?

20 A There were numerous communications.  
21 That certainly could have been one, but the  
22 specificity of those things, I don't know, sir.

23 Q From your earlier testimony, I take  
24 it that in October or September of 2014, you  
25 instructed Mr. Thro to try to negotiate a  
AN/DOR Reporting & Video Technologies, Inc.

1 settlement with Dr. Kearney; is that correct?

2 A Correct.

3 Q Had you not at that particular point  
4 in time made a decision?

5 A No.

6 Q And yet your instructions were go  
7 negotiate a settlement?

8 A Yes.

9 Q Did you ask --

10 A Excuse me, I said, try to work out a  
11 settlement, yes.

12 Q So you had, in fact, made a decision  
13 at that point in time that Dr. Kearney was subject  
14 to disciplinary action; correct?

15 A The decision I made was that this  
16 would be a protracted process, which I think we'd  
17 all agree it is, and that if -- if an agreement  
18 wasn't reached, we would follow the process in  
19 accord with the appropriate bylaws to further  
20 adjudicate the matter.

21 Q That's quite a bit different than  
22 Mr. Thro's message to Dr. Kearney that if you  
23 don't take the settlement, I'm going to ruin your  
24 career?

25 MR. BEAUMAN: Object to the form.  
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1 Q Wouldn't you agree?

2 A I don't know that, sir.

3 Q Did you know that there was a  
4 request by Dr. Kearney to meet with you?

5 A I believe there was, yes.

6 Q And you turned it down for what  
7 reason or reasons?

8 A I think the -- there are adequate  
9 processes in place to adjudicate his -- his  
10 matters.

11 Q This was before any litigation?

12 A That's right, sir.

13 Q So, in other words, you've got  
14 Dr. Kearney, who's the only active professor on  
15 your entire campus, I believe, who has an endowed  
16 chair, and you didn't want to meet with him?

17 A To discuss his personnel matter  
18 which should be handled according to specific  
19 bylaws, I didn't want to interfere with that  
20 process, sir.

21 Q But you already had when you  
22 instructed Mr. Thro to either settle it or --

23 A No, I did not, sir. I did not  
24 interfere or remove his rights to follow the  
25 process through the system, sir.

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1 Q I didn't say that. But you already  
2 interjected yourself into the disciplinary  
3 process, hadn't you?

4 A All -- all I advised was, see if an  
5 agreement could be reached.

6 Q And when you say agreement, though,  
7 you mean monetary agreement?

8 A A separation agreement, and I would  
9 imagine it would involve financial consideration.  
10 They typically do.

11 Q Did you at any point in time address  
12 the financial considerations to make an offer to  
13 Dr. Kearney?

14 A I -- I remember getting some  
15 information on details of negotiation, but I can't  
16 remember any financial terms.

17 Q So you were not the decision-maker  
18 on the financial terms; am I correct?

19 A I just remembered we could not reach  
20 an agreement.

21 Q Do you know how much money was  
22 offered to Dr. Kearney?

23 A I cannot recall that, sir.

24 Q Did that amount of money come from  
25 you?

AN/DOR Reporting & Video Technologies, Inc.

1           A           I'm sure I was involved in those  
2 discussions, but I cannot remember the amount,  
3 sir.

4           Q           Were you --

5           A           And I -- and I don't -- and there  
6 may have been other terms associated with that  
7 that I can't remember. It's been a while.

8           Q           Did you pass -- you authored the  
9 offer that was made to Dr. Kearney, did you not?

10          A           I approve when they're brought to me  
11 that they're -- they go forward, but I cannot  
12 remember the terms, sir.

13          Q           Did you reduce it to an e-mail or  
14 any kind of record as you passed it on to those  
15 you delegated to carry out --

16          A           Not that I recall, no, sir.

17          Q           So this was all verbal?

18          A           Yes, sir.

19          Q           If the amount in the settlement had  
20 been a million dollars or in excess, would you  
21 have had to take that to the Board of Trustees?

22          A           I don't believe so.

23          Q           Dr. Plunkett, you're familiar with  
24 him and his separation from the University?

25          A           Yes, sir, right.  
AN/DOR Reporting & Video Technologies, Inc.

1 Q And he was separated from the  
2 University basically because his mortality rates  
3 were higher than the national average; isn't that  
4 correct?

5 MR. BEAUMAN: Object to the form.

6 A The mortality rates that I reviewed  
7 associated with that service, my recollection of  
8 those is that they were average. They weren't  
9 higher than the national average. They were just  
10 average, that's what I remember, success rates --

11 Q And the reason --

12 A -- and there were a, you know,  
13 limited number of cases.

14 Q And when you say and there were a  
15 limited number of cases, he wasn't bringing enough  
16 revenue into the University?

17 A No, sir, that's not what I meant.

18 Q What did you mean by that?

19 A I meant that the number of surgeries  
20 over a period of time were not numerous, so.

21 Q In other words, it didn't justify  
22 the money that he was making?

23 A No, sir, I never had a conversation  
24 about his money and the number of cases he had,  
25 and never was part of a -- such a discussion.

AN/DOR Reporting & Video Technologies, Inc.



1 Q Then why -- why focus on the number  
2 of surgeries over a period of time were not  
3 numerous, to use your --

4 A The -- the reason I said that is  
5 you -- you look at the number of cases and compare  
6 to, you know, other institutions or other services  
7 and so forth. Our service had not been in  
8 operation that long. I'm just making an  
9 observation that compared to other places that had  
10 been in existence longer, there were more cases.

11 Q And did you make the decis -- was it  
12 your decision to end Dr. Plunkett's stay at the  
13 University?

14 A No, sir.

15 Q Whose decision was --

16 A That would be Dr. Karpf. And those  
17 kinds of things would be discussed with me through  
18 Counsel Thro, yes.

19 Q Were they discussed with you through  
20 Counsel Thro?

21 A Yes, I had discussions about his  
22 separation.

23 Q And you agreed with Dr. Karpf's  
24 decision to separate him from the University?

25 A I agreed that they reached a  
AN/DOR Reporting & Video Technologies, Inc.

1 decision, and I don't know the exact terms of that  
2 agreement.

3 Q I think you're leaping ahead of me.  
4 Wasn't the first decision to  
5 separate him from the University?

6 A I don't remember it that way, sir.  
7 I'm sorry. I can't remember the details of his  
8 employment history.

9 Q But you don't offer someone a  
10 settlement unless you've already made the decision  
11 to separate them from the University; isn't that  
12 true?

13 A I -- I can't remember the exact  
14 circumstances of his employment situation, such  
15 that I could provide you that detail.

16 Q Did you know that part of his  
17 separation agreement that he was not to discuss  
18 that separation agreement with anyone?

19 A I believe I recall that.

20 Q And was the University trying to  
21 hold back his separation agreement and not make it  
22 public?

23 A I believe we try to comply with  
24 whatever -- whatever rules and regs those come  
25 under, sir.

AN/DOR Reporting & Video Technologies, Inc.

1 Q What regs do settlement agreements  
2 with employees come under?

3 A I -- I'd have to say I -- I'm not  
4 certain in terms of open records and what's  
5 included and what's not included.

6 Q In your opinion, are settlement  
7 agreements with physicians who leave the  
8 University, are they confidential?

9 A I -- I think we certainly have  
10 included those in -- in agreements.

11 Q And in your opinion, is it  
12 appropriate for a state University to make  
13 settlement agreements confidential?

14 MR. BEAUMAN: Object to the form.

15 A In certain circumstances, if both  
16 parties certainly agree to that, it's appropriate.

17 Q I'm talking about just from the  
18 University standpoint?

19 A There could be situations where both  
20 parties agree to that, and it would be  
21 appropriate.

22 Q Have there been such situations?

23 A I'm sure there have been.

24 Q Have you been party to any such  
25 situations? And I mean by party, president of the  
AN/DOR Reporting & Video Technologies, Inc.

1 University and participated in?

2 A I'm trying to think across the  
3 entire University. There -- there may have been  
4 those brought to my attention. I just can't  
5 remember them all. I know there have been some.  
6 I just can't remember the specifics on them, sir.

7 Q It was represented to the Medical  
8 Staff Executive Committee in their very first  
9 meeting that you had made a generous offer to  
10 Dr. Kearney. Returning, what was your generous  
11 offer to Dr. Kearney?

12 A I cannot remember the details of the  
13 offer, sir.

14 Q Were the details left to others?

15 A No, sir. They were discussed with  
16 me, but I just cannot remember them.

17 Q And was one of the conditions you  
18 put on any type of separation agreement with  
19 Dr. Kearney not only money but also that he had to  
20 write a letter to the donors?

21 A I don't recall that, sir.

22 Q So in this instance, as in several  
23 others you've testified about today, there's no  
24 record of these discussions or what's being passed  
25 on; is that correct?

AN/DOR Reporting & Video Technologies, Inc.

1           A           I do not keep a record of  
2 discussions I may have with general counsel about  
3 a case like this.

4           Q           And is that a practice that you  
5 engage in throughout your tenure now as president?

6           A           That is a way I...

7           Q           Operate?

8           A           Operate, yes, sir.

9           Q           And if that's the way you operate,  
10 then no one can ever discover if there's any  
11 written record or memorandum of your discussions,  
12 correct, to state the obvious?

13                       MR. BEAUMAN: Object to the form.

14           A           You can't discover something that's  
15 not written, is that what you've asked?

16           Q           Yes. It's that --

17           A           I think that question answers  
18 itself. You can't discover something that's not  
19 written.

20           Q           So as --

21           A           That may not be the reason why I  
22 don't write them down.

23           Q           Well, is it to keep it secret?

24           A           No, sir.

25           Q           If Dr. Kearney, if someone had  
AN/DOR Reporting & Video Technologies, Inc.

1     investiga -- in fact, an investigation of  
2     Dr. Kearney's allegation that Kentucky Medical  
3     Services Foundation was being mismanaged --

4             A           Uh-huh.

5             Q           -- at that time in 2014, would, in  
6     fact, have revealed mismanagement, would it not?

7                     MR. BEAUMAN: Object to the form.

8             A           Not to my knowledge, sir.

9             Q           Wasn't it recently published in the  
10    newspaper for the first time that 4 million  
11    dollars was paid back to the federal government?

12            A           Yes, sir.

13            Q           And wasn't the announced reason by  
14    the University that that was over a billing  
15    misunderstanding on the billing systems between  
16    Hazard Cardiology and Kentucky Medical Services  
17    Foundation?

18            A           It was billing errors, yes, sir.

19            Q           When you say billing errors,  
20    Mr. President, did you personally become familiar  
21    with what particular billing errors were involved?

22            A           In a general sense, I understood  
23    the -- the -- what I would say the billing  
24    inconsistencies we had, yes, sir.

25            Q           And when Dr. Kearney called for an  
                  AN/DOR Reporting & Video Technologies, Inc.

1 outside audit of Kentucky Medical Services  
2 Foundation in an April of 2014 meeting, it would  
3 have revealed that Hazard Cardiology was engaged  
4 in upcoding, would it not?

5 MR. BEAUMAN: Object to the form.

6 A We have external auditing of KMSF  
7 every year.

8 Q And your external -- now, when you  
9 say we, you're talking about the University?

10 A KMSF has it, and it's published and  
11 posted on websites.

12 Q So the billing practices of Hazard  
13 Cardiology were posted on a website?

14 A No, sir. But I say the general  
15 audits that we do every year of KMSF are posted.

16 Q Well, let's talk about the audits  
17 for a moment, if you will, Mr. President. Was an  
18 audit done before Hazard Cardio -- of Hazard  
19 Cardiology before it was purchased?

20 A There were some reviews of the  
21 practice. I don't know if the term audit -- what  
22 do you mean by audit?

23 Q No, Mr. President, it's my question.  
24 Was an audit performed?

25 MR. BEAUMAN: And he asked you to  
AN/DOR Reporting & Video Technologies, Inc.

1 explain by --

2 THE WITNESS: What is an -- what is  
3 an audit?

4 Q What is your understanding of the  
5 word audit?

6 A Is it a financial audit? Is it an  
7 organization audit? Is it a practice procedure  
8 audit?

9 Q Let's do it this way.

10 A Sure.

11 Q KMSF purchased Hazard Cardiology;  
12 correct?

13 A Correct.

14 Q Prior to the actual purchase, was  
15 any due diligence investigation conducted into  
16 Hazard Cardiology?

17 A There were levels of examination of  
18 Hazard Cardiology.

19 Q Did that include levels of financial  
20 investigation?

21 A I'm not insure -- I'm not sure  
22 exactly what the -- the depth of the due diligence  
23 was or the magnitude of it.

24 Q Did you ask about it, inquire?

25 A No, I did not.  
AN/DOR Reporting & Video Technologies, Inc.



1 Q At any point in time, even after the  
2 4 million dollars was paid back?

3 A Certainly -- the way this occurred  
4 is, Mike Karpf was informed of billing  
5 irregularities. I was informed Mike Karpf had  
6 stopped billing immediately. We then got to the  
7 bottom of it. We investigated it; brought in  
8 outside counsel to thoroughly look at it, to fix  
9 it and correct it.

10 Q And it was corrected how?

11 A First in the operation and  
12 arrangement with the practice in the way we  
13 exchanged information to code. And then out of an  
14 abundance of caution, we returned the remuneration  
15 we had from bills during the period in question.

16 Q Returned the remuneration to whom?

17 A Federal government.

18 Q Had the federal government done its  
19 own investigation?

20 A Not to my knowledge, no.

21 Q So this was a voluntary thing --

22 A Purely voluntary, yes.

23 Q -- on behalf of KMSF who blew the  
24 whistle on itself?

25 MR. BEAUMAN: Object to form.  
AN/DOR Reporting & Video Technologies, Inc.

1           A           KMSF -- I don't say KMSF. I'm  
2 saying that our compliance office as part of their  
3 routine review of activities detected  
4 irregularities, immediately reported them. We  
5 immediately stopped billing; totally examined our  
6 billing and so forth and made these corrections.

7           Q           When did you first become aware of  
8 the irregularities associated with Hazard  
9 Cardiology?

10          A           I cannot remember the dates, but I  
11 would say almost immediately when the compliance  
12 officer I believe noted the irregularities. It  
13 was pretty quick.

14          Q           And when was that?

15          A           I can't remember, sir.

16          Q           In the last year?

17          A           It's been over a year.

18          Q           All right.

19          A           Year or two.

20          Q           2014?

21          A           Could have been, but I'd have to  
22 check. I can't remember it all.

23          Q           Did you have a discussion with  
24 Dr. Karpf as to when he first learned about the  
25 irregularities?

AN/DOR Reporting & Video Technologies, Inc.

1           A           That was all simultaneous. He heard  
2 about it. I was informed. He informed me.  
3 General counsel informed me. You know, as soon as  
4 we saw that, it's -- you know, you immediately  
5 address it.

6           Q           You have to immediately address it;  
7 correct?

8           A           Yes, sir.

9           Q           Because it can be considered fraud,  
10 can it not?

11                       MR. BEAUMAN: Object to the form.

12           A           I'm not going to characterize it,  
13 sir.

14           Q           But you understand what I mean?  
15 When I say fraud, your understanding of the word  
16 is what?

17           A           My understanding would be that you  
18 didn't provide services or provide services --  
19 didn't bill correctly for them. Those kinds of  
20 things I would consider fraud.

21           Q           Thank you.

22                       Do you know if Dr. Karpf was  
23 informed in 2012 of the irregularities in the  
24 coding and the billing of Hazard Cardiology?

25           A           I know he was informed and I was  
AN/DOR Reporting & Video Technologies, Inc.

1 almost informed at the same time, whenever that  
2 was. I can't remember exactly the time.

3 Q But if that was 2012, then it was  
4 let run for a while, was it not?

5 A I can't remember the date, sir. I'm  
6 sorry.

7 Q Do you have a record?

8 A I am sure I could determine when I  
9 was informed.

10 Q Do you know when Dr. Mark Randall  
11 was so informed?

12 A No, but I would imagine it was...

13 Q All at the same time?

14 A I would imagine.

15 Q If I were to look for a document  
16 that would pinpoint the time that you were so  
17 informed, where would I look?

18 A The compliance officer informed  
19 Dr. Karpf and I was informed with the general  
20 counsel, and then we immediately took steps to  
21 examine what was going on. So we, you know,  
22 engaged counsel and did a thorough examination, so  
23 I can't remember the dates, sir.

24 Q The compliance officer is whom?

25 A Brent Seales.  
AN/DOR Reporting & Video Technologies, Inc.

1 Q And I take it from your explanation  
2 that Brent Seales is the one who brought this to  
3 everybody's attention at first; is that correct?

4 A I think so.

5 Q And so --

6 A That's my recollection.

7 Q And Brent Seales is still in  
8 position?

9 A Yes.

10 Q Did Brent Seales make a written  
11 report with respect to his findings, and if he  
12 did, were you supplied with a copy?

13 A We had outside counsel --

14 Q No, we're talking about  
15 Brent Seales?

16 A -- conduct reports. I did not see  
17 his written report. I just know the red flag went  
18 up that we had some irregularities. They were, in  
19 general, described to me, and that it was the  
20 recommendation that we stop billing.

21 Q But Brent Seales, did he -- he --  
22 when the red flag went up, he raised the red flag,  
23 correct, according to you?

24 A That's my recollection.

25 Q When he raised the red flag, was  
AN/DOR Reporting & Video Technologies, Inc.

1 there a record made by Mr. Seales?

2 A I don't know.

3 Q Kentucky Medical Services

4 Foundation, the position of the University is the

5 Kentucky Medical Services Foundation is

6 unaffiliated with the University; correct?

7 A Correct.

8 Q And you agree with that position?

9 A Yes.

10 Q So when the Kentucky Medical

11 Services Foundation operates or engages in

12 business, it does so outside the purview or the

13 oversight of the Board of Trustees; is that

14 correct?

15 A It does so under arrangements with

16 the Board of Trustees, and there are times where

17 the Board of Trustees endorses or approves

18 determinations that KMSF may make that involve --

19 that involve the University.

20 Q Did the Board of Trustees approve

21 the purchase of the Hazard Cardiology, the

22 practice?

23 A I can't recall, sir. Sorry.

24 Q If the Board of Trustees had

25 approved that practice, would it be reflected in  
AN/DOR Reporting & Video Technologies, Inc.

1 the minutes of the Board of Trustees?

2 A I think so.

3 Q Did the University of Kentucky  
4 approve the purchase of Hazard Cardiology?

5 A I'm not certain, sir, who exactly  
6 approved it.

7 Q Who effectuated the negotiations  
8 with Hazard Cardiology? Was it Dr. Michael Karpf?

9 A I would imagine he would be a lead  
10 in those discussions, yes.

11 Q Has he done that with other  
12 practices that you're aware of?

13 A We have -- I think this one was  
14 unique. We have an arrangement with a practice in  
15 Georgetown and so forth, but I think this is first  
16 manifestation of something of this nature.

17 Q Now, explain that. It was --

18 A I think -- I think the purchase of  
19 the practice in Hazard had a uniqueness to it.

20 Q And the uniqueness in your opinion?

21 A Was the arrangement we had to  
22 purchase facilities, the practice and so forth.

23 Q And other than in just in general  
24 terms, Mr. President, would you be more specific  
25 in defining the uniqueness of that particular  
AN/DOR Reporting & Video Technologies, Inc.

1 practice?

2 A Not -- I wouldn't say unique. I  
3 think maybe the word is infrequent. Okay.

4 Q Fine.

5 Given the -- your modifier,  
6 infrequent, describe it for me, please.

7 A I don't think we have other  
8 arrangements where we had purchased the entirety  
9 of a practice this way. Or they're rare, and I'll  
10 leave it at that.

11 Q You mentioned one in Georgetown,  
12 which -- which practice is that?

13 A We -- we have an arrangement with  
14 George -- a practice in Georgetown. I do not  
15 think we own that practice, but it's -- it's one  
16 where they enjoy faculty appointments and so  
17 forth. We have numerous arrangements around the  
18 state where we have our faculty who are on the  
19 staff of various hospitals. Our Gill Heart  
20 Institute, our Markey Cancer Center, for example.

21 Q Well, let me interrupt you. You  
22 mentioned the Gill Heart Institute; are you  
23 familiar with Mr. Ed Setser?

24 A Vaguely.

25 Q Was he here in position when you  
AN/DOR Reporting & Video Technologies, Inc.



1 came on board?

2 A Yes, I believe so.

3 Q Was he sent down to Hazard  
4 Cardiology, if you know?

5 A Was he sent down there?

6 Q Yes.

7 A I recall that he was there. I don't  
8 know if he was sent there or he was here or -- I  
9 just know he was there.

10 Q Why purchase the practices through  
11 KMSF rather than the University outright?

12 A I would think that that would be an  
13 appropriate responsibility for KMSF. It's in  
14 their sphere of responsibility.

15 Q Well, KMSF, as you just already --  
16 as you acknowledged, operates without any  
17 oversight by the Board of Trustees; correct?

18 A It's not oversight. They're working  
19 arrangements, yes.

20 Q And since it's unaffiliated with the  
21 University, KMSF maintains that it's not subject  
22 to open records requests; isn't that true?

23 A It's true.

24 Q In fact, KMSF identifies itself as a  
25 nonmember organization so that a faculty member at  
AN/DOR Reporting & Video Technologies, Inc.

1 UK cannot ask to inspect the books; is that  
2 correct?

3 A I don't know that, sir.

4 Q Well, you know it's a nonmember  
5 corporation; correct?

6 A I will say that I don't have the  
7 expertise to comment on nonmember and exactly what  
8 it would mean.

9 Q Have you examined at any point in  
10 time the structure of Kentucky Medical Services  
11 Foundation on your own, like you did the fair  
12 hearing?

13 A I -- I had a briefing probably when  
14 I arrived. I remember the documents that go back  
15 to the 80's establishing -- I think it was the  
16 80's. It could have been earlier. I remember  
17 approval or opinion by the Attorney General, had  
18 to be at the time Steve Beshear. I remember that  
19 information.

20 Q And when you say the Attorney  
21 General at that time, are you talking about  
22 Jack Conway?

23 A No, sir.

24 Q All right. Steve Beshear?

25 A Back when it was formed. I just  
AN/DOR Reporting & Video Technologies, Inc.

1 remember --

2 Q 1978?

3 A I can't remember when it was formed,  
4 sir, but that -- that wouldn't surprise me.

5 Q We'll return to the subject of  
6 Kentucky Medical Services Foundation a little  
7 later, but in the meantime, when did you learn  
8 that Dr. Kearney had turned down your offer?

9 A That -- all of that occurred during  
10 the fall of '14. During that period is my best  
11 recollection.

12 Q You were aware of the fact, were you  
13 not, that there was a mediation in January?

14 A I believe, yes.

15 Q You did not attend that mediation,  
16 did you?

17 A No, sir.

18 Q Did you delegate to someone the  
19 authority to settle with Dr. Kearney?

20 A I would instruct Mr. Thro, and  
21 Mr. Thro and I would converse about it.

22 Q And did you discuss what dollar  
23 amounts you were willing to --

24 A I'm sure we did, but I cannot  
25 remember those.

AN/DOR Reporting & Video Technologies, Inc.

1 Q And I know I touched upon this  
2 earlier, and you answered, but in addition to the  
3 dollar amounts what ever -- other conditions would  
4 be placed on a negotiation with Dr. Kearney?

5 A There could have been others, but I  
6 don't remember them.

7 Q Would I -- would I be correct in  
8 stating then that Mr. Thro is the sole  
9 decision-maker in that regard?

10 A No, sir. I think he represented the  
11 University in that regard.

12 Q When you say represented the  
13 University, he was doing so at -- he was  
14 representing you; correct?

15 A He's conferring with me, yes.

16 Q In your capacity as president?

17 A Yes, sir.

18 Q As you noted, then, once  
19 Dr. Kearney -- once the resolution wasn't reached  
20 with Dr. Kearney, you then gave the green light  
21 for the suspension process; is that correct?

22 A Yes.

23 Q Why did you step into the  
24 disciplinary procedure at that particular point as  
25 president of the University?

AN/DOR Reporting & Video Technologies, Inc.

1 MR. BEAUMAN: Object to the form.

2 A What do you mean, step into it?

3 Q Well, you have the Chief Medical  
4 Officer, do you not?

5 A Yes.

6 Q And at that time it was  
7 Dr. Boulanger; you recall Dr. Boulanger?

8 A Yes, sir.

9 Q And you knew at that time that under  
10 the bylaws of the -- of the clinic, UK Healthcare,  
11 the Chief Medical Officer could suspend  
12 anyone's -- any clinician's privileges; correct?

13 A Correct.

14 Q Why drag you into it?

15 A When it was brought to my attention,  
16 the nature of this, the history associated with  
17 it, the fact that the last letter to me after a  
18 series of letters admonishing Dr. Kearney about  
19 his behavior, and noting that there would be  
20 corrective action if he undertook these behaviors  
21 again, the initial investigation indicates some of  
22 these behaviors, I anticipate that it would be a  
23 protracted thing to resolve, after I'm briefed on  
24 the medical bylaws and so forth, and the  
25 consideration about reaching an agreement is  
AN/DOR Reporting & Video Technologies, Inc.

1 brought up and I say, yes, pursue it. When that  
2 doesn't conclude successfully, then the process  
3 proceeds.

4 Q You mentioned in a letter to you,  
5 what letter to you?

6 A I'm sorry, I'm not...

7 Q Was there a letter to you?

8 A No, no, no, no. The -- the -- the  
9 last letter in Dr. Kearney's record related to his  
10 behavior. I believe it was explained to me, or  
11 could have read it afterwards, involving his  
12 interaction with three nurses in particular, that  
13 letter.

14 Q Did you, in fact, review that  
15 letter?

16 A I have reviewed that letter. I  
17 can't remember when I reviewed that letter.

18 (Off the record.)

19 (REPORTER MARKS NOTICE OF SUMMARY  
20 SUSPENSION DATED 1/26/15 AS PLAINTIFF'S  
21 EXHIBIT NO. 9 FOR PURPOSES OF  
22 IDENTIFICATION.)

23 Q President Capilouto, I've handed you  
24 a document. It's a January 26th, 2015 letter to  
25 Dr. Paul Kearney and it's from Dr. Boulanger. If  
AN/DOR Reporting & Video Technologies, Inc.

1 you'll take a moment and please review that.

2 A Yes, sir.

3 Q And I'll hand you what's been marked  
4 as Plaintiff's Exhibit No. 6, the memorandum to  
5 Dr. Kearney from Dr. Boulanger; correct?

6 A Exhibit 6?

7 Q Yes.

8 A Yes.

9 Q In Exhibit 6, what directive is  
10 given to Dr. Kearney with respect to his  
11 suspension? What can he not do, and read it --  
12 read it into --

13 A "You shall not" --

14 Q Thank you.

15 A "You shall not be present on the  
16 University of camp -- Kentucky campus unless  
17 you're a member of -- unless you or a member of  
18 your family is in need of emergency medical  
19 services. You shall have no contact with any  
20 patients. You shall have no contact with any  
21 faculty, residents, medical students or staff.  
22 You shall not retaliate against anyone who has  
23 made a complaint about you or has been interviewed  
24 in connection with this incident. If you are  
25 found to have violated this prohibition, you will  
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1 be subject to discipline. All communications you  
2 have with the University will be with me through  
3 my office."

4 Q At the time of that letter, which is  
5 when, that memorandum?

6 A September 5th, 2014.

7 Q Do you see any agreement  
8 acknowledged by Dr. Kearney?

9 A No.

10 Q Any written memorandum where  
11 Dr. Kearney agrees to that particular so-called  
12 suspension?

13 MR. BEAUMAN: I'm sorry, what's your  
14 question?

15 Q Any written document or documents?

16 A I know of no written document.

17 Q And when I say document, I include  
18 e-mails, texts?

19 A I don't know of any.

20 Q At the time Dr. Kearney was a re --  
21 a regular title, tenured professor; correct?

22 A Correct.

23 Q At the time did Dr. Boulanger have  
24 the authority to direct that Dr. Kearney leave  
25 campus?

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1 MR. BEAUMAN: Object to the form.

2 A I think in a situation like this,  
3 after you've had what he knows to be a long  
4 history, and that this last letter is there, I  
5 could assume that he looks at this and says, I  
6 have a responsibility given these allegations of  
7 Dr. Kearney's behavior, that he takes all of these  
8 precautions, yes.

9 Q So to answer the question, your --  
10 your answer is, yes, Dr. Boulanger had that  
11 authority?

12 A I think he has a responsibility to  
13 protect patients, medical students, so forth, yes.

14 Q And when you say protect patients  
15 and medical students, is that protect a patient  
16 from physical injury?

17 A Protect also the University from  
18 another circumstance that has -- would be a -- an  
19 additional claim of misbehavior. We have a  
20 pattern here.

21 Q Well, just a second before you go to  
22 the pattern.

23 A Yes.

24 Q My question is, to protect a patient  
25 from physical injury?

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1 A To protect --

2 Q You would have to agree with me --

3 A We -- we have to protect patients  
4 and protect students from environments that aren't  
5 appropriate.

6 Q And do -- and if the administration  
7 breaches University regulations and rules, does  
8 that create an environment that's not appropriate?

9 A What rules are you referring to?

10 Q No, I'm asking --

11 A It depends on the rules. I have to  
12 know the context of the rules.

13 Q No, my question is, if they -- if  
14 administrators breach the rules and regulations of  
15 the University, does that create an adverse  
16 University climate?

17 A It could.

18 Q Thank you.

19 Now, returning to my earlier  
20 question, protect a patient from physical injury?

21 A I --

22 MR. BEAUMAN: What is the context of  
23 that question?

24 MR. PAFUNDA: It doesn't have to have  
25 a context.

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1 MR. BEAUMAN: Yes, it does.

2 MR. PAFUNDA: No, it doesn't. We're  
3 in discovery.

4 A It says, "You shall not have contact  
5 with any patients."

6 Q Does Dr. Boulanger have that  
7 authority?

8 A I believe he has that responsibility  
9 in this situation.

10 Q Dr. Boulanger's authority would come  
11 solely from the bylaws, would they -- would it  
12 not?

13 A Not every responsibility I have is  
14 incorporated into a bylaw. I'm not certain if  
15 every one of his responsibilities is.

16 Q Have you had any opportunity  
17 whatsoever to review the Medical Staff Bylaws?

18 A Those were reviewed for me in terms  
19 of the process that was going to be followed as  
20 indicated in Exhibit 9.

21 Q And who reviewed those for you?

22 A Mr. Thro went over those with me.

23 Q When he went over those with you,  
24 did he give you a copy of the bylaws?

25 A I think I remember seeing bylaws,  
AN/DOR Reporting & Video Technologies, Inc.

1 but I'm not certain, sir.

2 Q Unprofessional conduct in your part  
3 directed towards staff; correct?

4 A Yes.

5 Q What staff in 2014?

6 A I'm not certain.

7 Q Thank you.

8 What resident physicians in 2014  
9 that Dr. Kearney had professional --

10 A That was the -- that was the case  
11 that involved the quadriplegic patient where  
12 residents and medical students were in -- were  
13 present, is what I believe he's referring to.

14 Q No, I'm just -- from the letter your  
15 impression?

16 A Yes.

17 Q I am not trying to read his mind.  
18 What unprofessional conduct in 2014 did  
19 Dr. Kearney direct towards resident physicians?

20 A I think the -- the initial  
21 investigation was yelling, cursing, and  
22 unprofessional behavior.

23 Q Medical students?

24 A I believe there was a medical  
25 student in the -- in the -- in that environment,  
AN/DOR Reporting & Video Technologies, Inc.

1 but I'm not certain, sir. I can't remember.

2 Q When you say the environment, you're  
3 talking about the environment, I take it,  
4 President Capilouto, surrounding the quadriplegic?

5 A Yes, sir.

6 Q And that occurred in the endoscopy  
7 suite?

8 A I'm not exactly sure where it  
9 occurred, but from reading it, I would imagine  
10 that could be the case.

11 Q Well, you read the fair hearing  
12 testimony, looked at the documents, so you know  
13 for a fact that at some point in time it occurred  
14 in an endoscopy suite; correct?

15 A I'm pretty certain it did, sir, but  
16 there are a lot of documents I review.

17 Q Did you review the statements of  
18 Dr. Ross Strong?

19 A I can't remember the names of -- of  
20 individuals whose statements I reviewed.

21 Q Did you read the --

22 A And I didn't -- and, sir, let me  
23 make it clear, I didn't review those until the  
24 Health Committee had made its decision, because I  
25 trusted Dr. Kearney's peers who are better  
AN/DOR Reporting & Video Technologies, Inc.

1 informed than me to make a determination about  
2 these issues. Those are his peers.

3 Q So his peers --

4 A Correct.

5 Q -- stand in a position to judge  
6 Dr. Kearney?

7 A Correct.

8 Q And did so on the basis of the  
9 information that was provided to them; correct?

10 MR. BEAUMAN: Object to the form.

11 Q To state the obvious.

12 A Correct.

13 Q And it's like a computer, if you put  
14 bad information in, bad information is going to  
15 come out, isn't it?

16 A You have people who can discern  
17 information and weigh it, and interview the  
18 parties involved, including Dr. Kearney, and if  
19 they see problems with that information, and he  
20 raises concerns about that information, that can  
21 be weighed, too. But those -- those peers are the  
22 ones who are making the determinations about this.

23 Q And those peers are relying on an  
24 investigative report, are they not?

25 A And other information they can  
AN/DOR Reporting & Video Technologies, Inc.

1 garner, yes.

2 Q But the information that was, in  
3 fact, garnered in Dr. Kearney's situation was  
4 provided by an investigational team of two people;  
5 correct?

6 A They tasked two people to do that,  
7 yes.

8 Q And did you know that they did not  
9 interview a number of witnesses?

10 A I don't know exactly the extent of  
11 all of their interviews, sir.

12 Q And did you know that the only  
13 documents they were provided were the documents  
14 provided to them by the legal office?

15 A I don't know the extent of all of  
16 the documents provided to them.

17 Q And did you also know at the time  
18 that they were not provided with -- the  
19 investigative team were not provided with  
20 Dr. Kearney's personnel file?

21 A I am not sure what was entirely  
22 provided to that group, sorry.

23 Q And did you also know that in  
24 Dr. Kearney's personnel file contained excellent  
25 work evaluations over a 27-year period?

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1           A           I could imagine that those would be  
2 there.

3           Q           And you can imagine that because he  
4 matriculated from his initial incoming position  
5 all the way to tenured professor; correct?

6           A           Correct.

7           Q           And you learned, did you not, during  
8 the course of this that Dr. Kearney had raised the  
9 trauma center to a Level 1 category?

10          A           I don't know the specifics of the  
11 rise of the trauma center, sir, you know.

12          Q           Dr. Kearney was instrumental, was he  
13 not?

14          A           I imagine he was, but, sorry, that's  
15 not something I track or follow.

16          Q           Is it a Level 1 trauma center?

17          A           I believe so, yes.

18          Q           Did you know that since the  
19 disciplinary action against Dr. Kearney -- strike  
20 that.

21                       That in the last five years more  
22 physicians have left the Department of Surgery  
23 than in the previous 25 years?

24          A           I don't know that, sir.

25          Q           So, in other words, the physicians  
AN/DOR Reporting & Video Technologies, Inc.



1 are voting with their feet, are they not?

2 MR. BEAUMAN: Object to the form.

3 A I don't know, sir.

4 Q Well, you're familiar with the Press  
5 Ganey survey, are you not?

6 A Yes, sir.

7 Q And where did the faculty engagement  
8 interaction rank in that survey?

9 A Quite low.

10 Q When you say quite low, you're being  
11 actually euphemistic about it, are you not?

12 A In a percentile rating, it was  
13 1 percent.

14 Q So it's in the bottom 1 percent of,  
15 what, 1,200 hospitals that were surveyed?

16 A I don't know how many are included,  
17 sir. I can't remember the number.

18 Q 60,000 physicians?

19 A I can't remember the number, sir.

20 Q Do you have a copy of the survey?

21 A Yes, I do. It was presented to me.

22 Q And was that information that --  
23 that 1 percentile ranking passed onto the Board of  
24 Trustees?

25 A Yes, sir.  
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1 Q In that form, as the lowest rating  
2 you could possibly get --

3 A Lowest rating, and Dr. Karpf  
4 presented it at the Health Committee meeting, and  
5 also said he would share the written comments. He  
6 would make those available. And I know we're in  
7 the process of doing so. So you can read all of  
8 the written comments of all of the physicians that  
9 responded.

10 Q And, in fact, the rating -- the 1  
11 percentile is lower than it was in 2015, is that  
12 not true?

13 A Yes.

14 Q And the rating -- and the ranking in  
15 2015 was what, Mr. President?

16 A May have been 8. I can't remember  
17 the exact number.

18 Q Would it have been 2 percent?

19 A I don't remember, sir.

20 Q But in any event, you would agree  
21 with me, would you not, it was severely low in  
22 2015?

23 A It was low, yes.

24 Q And during your tenure as president,  
25 what steps, if any, have you made to correct this  
AN/DOR Reporting & Video Technologies, Inc.

1 situation?

2 A Yeah, I think when you look at  
3 the -- the comments made by the physicians, there  
4 are several things that one notices. We have  
5 grown quite fast. Our facilities and structures  
6 sometimes didn't keep up with that. People  
7 expressed dissatisfaction with being able to get  
8 patients transferred, get them in the -- out of  
9 the emergency department into rooms and so forth;  
10 some frustration with the electronic medical  
11 record, so it's those matters. And the --  
12 Dr. Karpf and his team, including Dr. DiPaola,  
13 Dr. Cofield and others, are meeting with various  
14 departments and constituencies across the college  
15 and -- to address these matters.

16 Q Why wasn't Dr. Karpf fired?

17 A I don't believe he should be fired  
18 for this.

19 Q Why not?

20 A Because if you look at the context  
21 of the overall performance of the University of  
22 Kentucky on a variety of other measures, we do  
23 quite well.

24 Q In 2015 it was ranked as the lowest  
25 hospital in the city, this city?

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1           A           I don't -- there are a variety of  
2 ranking systems out there, sir, and I'm not going  
3 to comment on which one you're referring to  
4 because I don't know what it is, and I don't know  
5 what measures they necessarily used, so.

6           Q           The 1 percentile, again, can't go  
7 any lower on that, can you?

8           A           No, sir.

9           Q           So why wasn't he fired?

10          A           Because the overall performance of  
11 UK Healthcare on a variety of factors, including  
12 patient satisfaction, case mortality, index,  
13 number of infections that -- you know, all of  
14 these measures we use and compare ourselves with a  
15 hundred-plus academic health centers show us to be  
16 a very good performer.

17          Q           And what survey would that be?

18          A           That is -- we participate in a  
19 consortium where we download a wealth of data into  
20 a central repository and that's analyzed and  
21 presented back to us and gives us a measure of  
22 where we are compared to other institutions.

23          Q           Who does that analysis?

24          A           I think that's part of the UHC,  
25 University Hospital Consortium. You know, that --  
AN/DOR Reporting & Video Technologies, Inc.

1 Q And do you have a copy of their most  
2 recent survey?

3 A We present that frequently --  
4 annually at the board meeting. This is -- this is  
5 how we performed. This is our target. This is  
6 what we'd like to set as a stretch goal. We do that  
7 every year, sir.

8 Q So the answer to my question is you  
9 do, in fact, have a copy; correct?

10 A I have copies of the results which  
11 are shared.

12 Q What about the entire survey?

13 A You're talking about two different  
14 things.

15 Q You have the results?

16 A If you're talking about the Press  
17 Ganey survey or --

18 Q Yes.

19 A -- are you talking about all of the  
20 other measures that --

21 Q You do, in fact -- I know you do, in  
22 fact, have a copy of the Press Ganey; correct?

23 A I do.

24 Q And then you've mentioned another  
25 study; correct?

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1           A           It's not a study. It is a  
2 consortium that we participate in where we share a  
3 broad and deep level of data that measures our  
4 performance on a variety of measures. Okay?

5           Q           Yes. But there's a report, is there  
6 not?

7           A           Sure, there's results from that. We  
8 share those. We make them public at meetings.

9           Q           All right.

10          A           And we do very well on those. We do  
11 very well on those. Let me say it again.

12          Q           The underlying data to that  
13 report --

14          A           Right.

15          Q           -- do you have that?

16          A           Sir, you're talking about thousands  
17 upon thousands of data points. To ask me if I'm  
18 keeping it in my desk, it can't be held in my  
19 desk.

20          Q           Well, when I ask you if you have it,  
21 is it in the possession of the University subject  
22 to inspection?

23          A           The University submits these data on  
24 a monthly basis, I believe.

25          Q           And who interprets those results to  
AN/DOR Reporting & Video Technologies, Inc.

1 the Board of Trustees?

2 A Those -- that information is  
3 measured by UHC, you know. For instance, if you  
4 look at our success in treating and the  
5 recommended care for minority patients, all right,  
6 we get our score, okay, and then we're -- we're  
7 told how we compare to the hundred and so other  
8 universities. We're not given the names of the  
9 other universities. You see what I mean?

10 Q That's -- that's my question.

11 A Right.

12 Q So it's a standalone information?

13 A No, it's not -- what do you mean  
14 it's standing alone?

15 Q It stands alone -- you don't have  
16 the comparisons or contrasts with other  
17 universities?

18 A Oh, yes, you do. You have the  
19 ranges of performance. You -- you have who's in  
20 the bottom third, who's in the middle. You don't  
21 have who. You can see the data broken down, and I  
22 would say that the University of Kentucky  
23 Healthcare does quite well along some very  
24 important measures.

25 Q And that's the information that's  
AN/DOR Reporting & Video Technologies, Inc.

1 imparted to the Board of Trustees?

2 A Along with other information, yes.

3 Q So given that information, that's  
4 why you stand by Dr. Karpf; correct?

5 A Yes.

6 MR. PAFUNDA: All right. 10.

7 (REPORTER MARKS LETTER DATED 2/10/15  
8 AS PLAINTIFF'S EXHIBIT NO. 10 FOR PURPOSES  
9 OF IDENTIFICATION.)

10 THE VIDEO TECHNICIAN: Going off the  
11 video. One second, please.

12 THE WITNESS: Excuse me, while you're  
13 doing that, may I go to the restroom?

14 MR. PAFUNDA: You can take a break at  
15 any time.

16 (Off the record.)

17 (Brief recess.)

18 THE VIDEO TECHNICIAN: We're on.

19 THE WITNESS: I have a correction to  
20 make. I used the wrong name --

21 (Off the record.)

22 THE VIDEO TECHNICIAN: Back on the  
23 video record. Tape No. 5.

24 THE WITNESS: Are you ready now?

25 I want to say, I don't know why, I  
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1 read something about Brent Seales in our  
2 computer engineering department and had him  
3 on my mind and I used that name instead of  
4 Brett Short. So I apologize.

5 (Off the record.)

6 Q Mr. President, I think we're on the  
7 record. Are you ready?

8 A Yes, sir.

9 Q You've had an opportunity to review  
10 this letter?

11 A Yes, sir.

12 Q If you'll turn to the conclusionary  
13 paragraph. See the sentence that begins, "In  
14 addition"?

15 A Uh-huh.

16 Q Would you read that into the record?

17 A Excuse me.

18 Q That's fine.

19 A Oh, "In addition, you shall have no  
20 contact with patients, faculty, residents, medical  
21 students or staff. Any communications you have  
22 with the University should be made by your  
23 attorney through the University's office of legal  
24 counsel."

25 Q So, in other words, Dr. Kearney's  
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1 effectively placed under a gag order when it comes  
2 to University personnel; is that correct?

3 A He is told to have no contact with  
4 patients, faculty, residents, medical students or  
5 staff.

6 Q And no contact literally means no  
7 contact; right?

8 A That's what it says.

9 Q Did the Medical Staff Executive  
10 Committee or Fred -- Dr. Fred Zachman or  
11 Dr. Boulanger have the authority to issue that  
12 type of order to a tenured professor?

13 A I think it's appropriate under the  
14 circumstances here to have this in this letter.

15 Q And explain, please.

16 A Because we -- we still have a  
17 process ongoing. We haven't reached a final  
18 determination of this. Dr. Kearney has the  
19 opportunity to make an appeal.

20 Q Did he have an opportunity to have a  
21 hearing before the Medical Staff Executive  
22 Committee where he would be present?

23 A I can't remember the exact bylaws  
24 and how that is addressed, sir.

25 Q In all fairness, you would  
AN/DOR Reporting & Video Technologies, Inc.

1 anticipate or expect that Dr. Kearney could appear  
2 before the Medical Staff Executive Committee,  
3 would you not?

4 A I believe Dr. Kearney was  
5 interviewed by representatives of the Executive  
6 Committee.

7 Q So that would take care of any  
8 opportunity he had to address the entire Medical  
9 Staff Executive Committee?

10 A If that's the way they conducted it  
11 by the rules of their bylaws, that is a way to do  
12 it.

13 Q What if they conducted it in breach  
14 of their bylaws? Would you take action,  
15 corrective action?

16 A It depends on the context and the  
17 circumstances, sir.

18 Q In the first sentence of that -- of  
19 that paragraph, would you read that into the  
20 record, please?

21 A On the last page?

22 Q Yes. Excuse me, I didn't know you  
23 had turned the page.

24 A "As stated in the summary suspension  
25 letter sent to you on January 26, 2015, during  
AN/DOR Reporting & Video Technologies, Inc.

1 your suspension, you shall not be present on the  
2 University of Kentucky campus unless you or a  
3 member of your family is in need of medical  
4 services."

5 Q Medical Staff Executive Committee,  
6 Dr. Fred Zachman or Dr. Boulanger have the  
7 authority to ban a tenured professor from campus?

8 A I think it was appropriate to  
9 continue what we had started from the beginning of  
10 this investigation about Dr. Kearney's contact  
11 with individuals.

12 Q The Board of Trustees Healthcare  
13 Committee did not agree with you, did they?

14 MR. BEAUMAN: Object to the form.

15 A Agree with what?

16 Q That it was appropriate to ban him  
17 from campus and put him under a gag order?

18 A No, the Board of Trustees made a  
19 determination about his clinical privileges.

20 Q Well --

21 A That -- they were weren't speaking  
22 to what his activities were during the  
23 investigation.

24 Q The investigation was over at the  
25 time of Dr. Zachman's letter, was it not?

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1           A           The process had not been exhausted  
2 as it had not gone all the way to the appellate  
3 level to the Board of Trustees.

4           Q           In fact, no one ever expected  
5 Dr. Kearney to take it this far, did they?

6           A           I can't speak to what Dr. Kearney  
7 expected or what people expected.

8           Q           You didn't expect him to take it  
9 this far, did you?

10          A           I had no way speculated on what  
11 Dr. Kearney would do. It's irrelevant to what we  
12 do here. We just carry out our process once we  
13 get started.

14          Q           Well, you knew that it was faced  
15 with a threat that Mr. Thro passed on, that his  
16 career would be ruined unless he took the money  
17 and just quietly went into the night, did you not?

18                   MR. BEAUMAN: Object to the form.

19          A           I -- I know nothing of what you're  
20 talking about, sir.

21                   (REPORTER MARKS FINAL ACTION OF UK  
22 HEALTHCARE COMMITTEE, DATED 8/24/15, AS  
23 PLAINTIFF'S EXHIBIT NO. 11 FOR PURPOSES OF  
24 IDENTIFICATION.)

25          Q           Handing you what we've marked as  
AN/DOR Reporting & Video Technologies, Inc.

1 Plaintiff's Exhibit No. 11. Here, I'll give you  
2 the e-mail too, just in case you think I chopped  
3 something off.

4 A Yes, sir.

5 Q If you would, this document is what?

6 A The Final Action of the University  
7 Healthcare Committee.

8 Q If you would, please read -- of  
9 August 24th, 2015?

10 A Yes.

11 Q If you would, please, read it into  
12 the record?

13 A "The University Healthcare Committee  
14 voted unanimously to modify the recommendation of  
15 the Appellate Review Panel. The Appellate Review  
16 Panel's recommendation was to revoke Dr. Kearney's  
17 clinical privileges permanently. The approved  
18 modification will revoke the clinical privileges  
19 permanently, but reaffirms Dr. Kearney's current  
20 status as a tenured faculty member. Specifically,  
21 the University will (1) allow Dr. Kearney to have  
22 access to campus; (2) allow Dr. Kearney to have an  
23 office in an appropriate location; (3) allow  
24 Dr. Kearney to communicate with his University  
25 colleagues or lift the suspension of Dr. Kearney's  
AN/DOR Reporting & Video Technologies, Inc.

1 University e-mail account. Dr. Kearney's access  
2 to campus will be no greater or less than those of  
3 a tenured faculty member who lacks clinical  
4 privileges. This reaffirmation should happen  
5 immediately."

6 Q And did it, in fact, happen  
7 immediately?

8 A I said earlier, and this is what I  
9 apologized for, that operationalizing this  
10 decision in a short amount of time was something  
11 we didn't do well.

12 Q Tell me where you failed.

13 A I think in fairness to Dr. Kearney,  
14 I really didn't ask people to predetermine, you  
15 know, what the decision was going to be here and  
16 how we would take our next steps.

17 Q Well, let's --

18 A So we didn't -- we didn't, you know,  
19 convene people to say exactly how we would handle  
20 something that everybody would recognize as  
21 unique.

22 Q Well, let's walk through the four  
23 items that the Board of Trustees' Healthcare  
24 Committee lists. No. 1, allow Dr. Kearney to have  
25 access to campus. That doesn't take any stretch  
AN/DOR Reporting & Video Technologies, Inc.

1 of the imagination, does it?

2 A No, sir.

3 Q In fact, it doesn't take -- require  
4 any effort on the part of the administration at  
5 all, does it?

6 A No. But to have access to the  
7 campus also means allow Dr. Kearney to have an  
8 office in an appropriate location.

9 Q We're not -- we're not there yet.

10 A And we didn't do that well, sir.

11 Q No. And you also didn't allow him  
12 to have access to campus either, did you,  
13 immediately?

14 A I don't know the sequence of...

15 Q Let's go to Item No. 2, which is  
16 allow Dr. Kearney to have an office in an  
17 appropriate location?

18 A Right.

19 Q He had an office, did he not?

20 A He did.

21 Q No one was occupying it, were they?

22 A To my knowledge, no.

23 Q So he could have just simply walked  
24 into the office, could he have not?

25 A The decision was made that given  
AN/DOR Reporting & Video Technologies, Inc.



1 that Dr. Kearney was going to be moving out of the  
2 Department of Surgery, that he didn't need an  
3 office in that area.

4 Q In fact, Dr. Kearney has never been  
5 removed from the Department of Surgery, has he,  
6 Mr. President?

7 A His assignment and reporting was  
8 removed to the dean of the college.

9 Q My question though, Mr. President,  
10 with all due respect is, Dr. Kearney to date has  
11 never been removed from the Department of Surgery,  
12 true or false?

13 A Dr. Kearney has been directed that  
14 he reports to the office of the dean of the  
15 College of Medicine.

16 Q So the dean has the authority to  
17 address certain matters in this situation or --

18 A I believe under these circumstances,  
19 he does.

20 Q -- does he have the sole authority?

21 A I think he has the authority and  
22 responsibility under these circumstances to have  
23 Dr. Kearney report to him.

24 Q And my question is, does he have the  
25 sole authority?

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1           A           I think the determination on how we  
2 exercised this included input from a variety of  
3 people before we reached that decision.

4           Q           But there's no mistake, is there,  
5 with respect to the language in the final action  
6 of the Board of Trustees Healthcare Committee that  
7 this reaffirmation should happen immediately;  
8 correct?

9           A           Correct.

10          Q           So No. 1, to allow him to have  
11 access to campus, there was no -- you didn't have  
12 to have a meeting, he was on campus, he had  
13 access; correct?

14          A           Uh-huh.

15          Q           And your answer -- you have to -- I  
16 apologize.

17          A           Yes, sir, excuse me. Sorry to do  
18 that again.

19          Q           That's all right.

20                      No. 2, allow Dr. Kearney to have an  
21 office in an appropriate location. He could have  
22 had access to his old office which was unoccupied;  
23 true or false?

24          A           True, but I would say when the Board  
25 writes in "appropriate location," they did not say  
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1 his current office.

2 Q No, they did not, but let's just  
3 follow the -- let's go down that rabbit hole for a  
4 minute. Are you saying that his old office that  
5 was unoccupied was not appropriate?

6 A Once we made the determination of  
7 how we would determine Dr. Kearney's role, given  
8 that -- especially I think I remember from the  
9 hearing panel that he created an unacceptable  
10 educational environment.

11 Q Well, when you say the hearing  
12 panel, you're talking about the Fair Hearing Panel  
13 comprised of Dr. Wendy Hansen, Lisa Tannock --  
14 Dr. Tannock, and Dr. Williamson -- is it  
15 Williamson, Williams --

16 MR. BEAUMAN: Williams.

17 Q -- Williams, excuse me -- is that  
18 who you're referring to?

19 A Uh-huh.

20 Q Well, let's take Dr. Wendy Hansen  
21 for a minute. Did you know that her department  
22 had been placed on probation?

23 A No.

24 Q The fact that a department is placed  
25 on probation, does that threaten the accreditation  
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1 of the University?

2 A It depends on what kind of probation  
3 you're talking about, sir.

4 Q But probation can affect the  
5 accreditation of the University; correct?

6 A Not necessarily.

7 Q Well, not necessarily means that it  
8 can, on the other side of the coin?

9 A No, sir. You know, it's -- you  
10 know, when I was a provost -- I'm speaking from  
11 that context, all right -- there's dozens, dozens  
12 of programs throughout our University that undergo  
13 accreditation review by respective bodies. One  
14 may be instructed to undertake an action to  
15 correct a finding. That doesn't threaten the  
16 accreditation of the University, which is what you  
17 said.

18 Q My -- no, my question was, if I may?

19 A Go ahead.

20 Q When a department is placed on  
21 probation --

22 A Right.

23 Q -- by the accreditation association,  
24 does that threaten the University's accreditation?

25 A One department threaten the entire  
AN/DOR Reporting & Video Technologies, Inc.

1 University's accreditation?

2 Q Yes.

3 A No, sir.

4 Q So Dr. Kearney, when Jay Blanton  
5 said in the newspaper that Dr. Kearney's actions  
6 threaten the accreditation of the University, that  
7 was blatantly and knowingly false, wasn't it?

8 MR. BEAUMAN: Object to the form.

9 A No, sir, no, sir, no, sir, because  
10 when I ask a group to review how we operationalize  
11 this and we looked at the graduate medical  
12 education guidelines and it spoke to the necessity  
13 of a faculty member having clinical privileges, he  
14 no longer had them.

15 Q Well, I'm glad you brought that  
16 point up, because you, in fact, had people who  
17 teach in the College of Medicine at the University  
18 Kentucky Healthcare system --

19 A Sure.

20 Q -- who don't have clinical  
21 privileges?

22 A That's exactly right, but someone  
23 who's training, skill and so forth is to be used  
24 in teaching clinician and medical students is not  
25 allowed to teach -- you don't have an anatomy

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1 professor teaching surgery. You don't have a  
2 health behaviorist treating patients, no.

3 Q Well, you don't have a health  
4 behaviorist, you don't have an intensivist -- I  
5 mean, excuse me -- a hospitalist passing  
6 themselves off as an intensivist, either, do you?

7 A I don't know what you're referring  
8 to, sir.

9 Q Dr. Williams, he's a hospitalist.  
10 He doesn't have any training as an intensivist,  
11 does he?

12 A I don't know Dr. Williams, sir.

13 Q And likewise, Central Baptist  
14 Hospital, as well as Saint Joseph, they're all  
15 expanding and they don't fall in the 1 percentile  
16 in terms of faculty engagement, do they?

17 A I don't know if they have faculty,  
18 and I don't know if they were included in the  
19 survey, sir.

20 Q And then when we've got Dr. Kearney  
21 to have an office in an appropriate location,  
22 there was no reason that he could not go -- have  
23 gone back to his old office; correct?

24 A There was reason by those who -- who  
25 work in that environment for him to have an office  
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1 in another appropriate location.

2 Q Are you implying that there were  
3 those in that environment who didn't want him back  
4 in his old office?

5 A I am saying that the educational  
6 environment that he had created in many  
7 circumstances, given that he no longer had  
8 clinical privileges to practice as a surgeon, it  
9 was inappropriate for him to have an office in the  
10 Department of Surgery. That was the determination  
11 made.

12 Q By whom?

13 A That was a group that I tasked, put  
14 together, and say how do you operationalize this,  
15 and these are recommendations that came back to  
16 me.

17 Q Who comprised that group, and who  
18 comprises that group?

19 A I believe we had the Chief Medical  
20 Officer, dean of the college, chair of surgery.  
21 We had an assistant dean who has experience and  
22 expertise in accreditation matters.

23 Q Who's that?

24 A I -- the name escapes me  
25 immediately.

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1 Q I take it from your response, or at  
2 least the tone of your response, the people who  
3 comprised that committee, No. 1, you create -- you  
4 said we need a committee; correct?

5 A I had to get some advice on how you  
6 operationalize this.

7 Q So you called together a group of  
8 people to comprise --

9 A I asked Mr. Thro to get a group  
10 together to give some advice on how you handle  
11 this.

12 Q What document or documents would  
13 identify the members of that committee or panel?

14 A I'm not certain, sir, but I've told  
15 you who I asked to get together and --

16 Q Any other --

17 A -- give me some ideas.

18 Q Any other people?

19 A No. But if there were, I'm happy to  
20 provide them to you. I can't remember.

21 Q Would you do this, you don't have to  
22 do it yourself, would you have Mr. Beauman provide  
23 that to me by Monday?

24 MR. BEAUMAN: How about Tuesday?

25 Q Have Mr. Beauman provide that to me  
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1 by Tuesday? I'm not telling you --

2 A Can I direct Mr. Beauman, because I  
3 didn't know?

4 Q No, just, you know -- no, you go  
5 ahead and tell him.

6 All right. Let's go to the next  
7 one, allow Dr. Kearney to communicate with his  
8 University colleagues. That could happen  
9 immediately; right?

10 A Yeah.

11 Q Did it, in fact, happen immediately?

12 A I think in terms of communicating  
13 via e-mail that we probably weren't ready for  
14 that, sir.

15 Q And then -- because that goes right  
16 to the next one?

17 A Sure does.

18 Q But my question -- my question is,  
19 was he allowed to communicate with his University  
20 colleagues?

21 A Yes.

22 Q Was he allowed at the present time  
23 to attend public lectures at the University  
24 campus?

25 A At the present time --  
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1 Q Yes.

2 A -- of this, I don't think we had  
3 clarified that, sir.

4 Q Since this date, August 24th, 2015,  
5 can he attend --

6 A Yes.

7 Q -- public seminars conducted by the  
8 Medical College?

9 A With permission from the dean.

10 Q Why does he need permission from the  
11 dean when someone such as myself can attend those  
12 seminars?

13 A Because of the way he's conducted  
14 himself in the past.

15 Q Isn't that an unnecessary  
16 restriction you've placed on Dr. Kearney in  
17 violation of this order?

18 A I don't believe so.

19 Q On what basis do you not believe so?

20 A Because in a teaching environment  
21 where he can assume a role as a teacher, his  
22 clinical privileges have been stripped, the  
23 graduate Medicaid -- medical education guidelines  
24 consider a professor who teaches in a clinical  
25 role as someone who has clinical privileges.

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1 Q And that's what you rest your  
2 opinion on, is the --

3 A That's part of it --

4 Q -- guidance?

5 A -- yes.

6 Q Is there another part to it, and if  
7 so, what's that part?

8 A I think the -- the repeated  
9 behavior, and something else I recall from this in  
10 reviewing documents is an acknowledgement by  
11 Dr. Kearney of an inability to change his sort of  
12 the way he did things.

13 Q If you recall, earlier today you  
14 said after this decision came out from the  
15 University Healthcare Committee you were angry;  
16 correct?

17 A I was angry with the way we handled  
18 it, sir; not angry at the Health Committee or  
19 angry at Dr. Kearney, not at all.

20 Q So when you say we were -- I was  
21 angry at the way we handled it, who's the we?

22 A I take responsibility for that, that  
23 we didn't quickly get his e-mail straight, that we  
24 didn't pick up the phone and call him and say let  
25 us sit down and go over your computer and your  
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1 hard drive and so forth, that we just didn't do it  
2 the way we should have.

3 Q But that's just paying lip service  
4 to an apology, isn't it?

5 A No, sir.

6 Q When, in fact, you were actually  
7 angry because nobody to date has done that, have  
8 they?

9 A There have been several meetings  
10 held with Dr. Kearney about his future role.

11 Q Those meetings were held with whom?

12 A The dean of the college, is what  
13 I've been informed.

14 Q And when you say the dean, you're  
15 talking about Dean DeBeer?

16 A Started with Dean DeBeer.

17 Q And is it now transferred over to  
18 Dean DiPaola?

19 A It would be Dean DiPaola.

20 Q So Dean DiPaola has the authority,  
21 unfettered authority, to address this situation?

22 MR. BEAUMAN: Object to the form.

23 Q Or does he have to run it by you?

24 A I've never talked to Dr. DiPaola  
25 about this.

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1 Q Oh.

2 A Okay, and I don't ask him to run it  
3 by me or who he talks to.

4 Q So to answer my question, in your  
5 opinion, Dean DiPaola is the sole judge at this  
6 point?

7 A Dean DiPaola has responsibility for  
8 this matter as he is the dean of the college, and  
9 the determinations we made about how this would be  
10 operationalized fall to the dean.

11 Q Thank you.

12 And you've already addressed this or  
13 touched upon it, but the fact that lift the  
14 suspension on his University e-mail account, that  
15 could have been done immediately, could it not?

16 A I think it certainly could have been  
17 done more quickly, sir. I don't know the  
18 mechanics of how you do that, sorry.

19 Q Well, it shouldn't have never been  
20 interfered with in the first place, should it?

21 A I don't agree with that, sir.

22 Q And the excuse used by the -- by  
23 certain administrative officials is, well, there  
24 was patient information on there that needed to be  
25 protected; correct?

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1           A           Correct.

2           Q           Well, Dr. Kearney is a licensed  
3 physician in the Commonwealth of Kentucky, is he  
4 not?

5           A           Correct.

6           Q           And as a licensed physician, if he  
7 obtains that information, he's still bound by the  
8 same laws as any other physician, is he not?

9           A           I believe that that is information  
10 that is under the auspices of UK Healthcare. I  
11 believe that clinicians with privileges can have  
12 access to that information. And I believe it  
13 would be inappropriate for someone who does not  
14 have clinical privileges to have access to such  
15 information.

16          Q           On what factual basis do you render  
17 that opinion?

18          A           I just think it is a practice we  
19 should take. I think that we should have sat down  
20 with Dr. Kearney, though, and gone through that  
21 information with him to make those kinds of  
22 determinations.

23          Q           But that, in fact, was not done and  
24 has not been done to date?

25          A           Well, I'm...  
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1 Q Have you communicated that to  
2 anyone, what you've just said here today?

3 A I certainly have told Mr. Thro to  
4 get those matters handled.

5 Q When did you tell Mr. Thro that, and  
6 with relationship to --

7 A That was in the weeks that followed  
8 all of this. I wanted to get his hard drive back  
9 to him, his personal information that he said was  
10 on there, all of those kinds of things.

11 Q And when Mr. Thro communicates, is  
12 he speaking on your behalf with regard to the  
13 Kearney matter?

14 A In many circumstances, yes.

15 Q When he sends out a written missive  
16 or a letter, is he speaking on your behalf?

17 A It depends what missive or letter  
18 you're talking about.

19 Q Before we get to that, and we'll  
20 break here in just a minute, I'll show you what's  
21 been --

22 MR. PAFUNDA: Do you want a copy?

23 MR. BEAUMAN: No, keep going. I

24 don't need that, assuming that's the Fair

25 Hearing report?

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1 MR. PAFUNDA: It is.

2 MR. BEAUMAN: Okay.

3 Q President Capilouto, if you could,  
4 just take a look at -- and this is the Fair  
5 Hearing report, and I've directed your attention  
6 to Page 11.

7 MR. PAFUNDA: I'll mark it as  
8 Plaintiff's Exhibit 12. Thank you, ladies.

9 (REPORTER MARKS HEARING PANEL  
10 RECOMMENDATIONS AS PLAINTIFF'S EXHIBIT NO.  
11 12 FOR PURPOSES OF IDENTIFICATION.)

12 Q Mr. President, for your ready  
13 reference, I've highlighted portions of Page 11.

14 A And let me share with you, since  
15 it's been a long time since I read this, to read  
16 one sentence out of 12 pages --

17 Q Go ahead.

18 A -- I'm going to read it all.

19 MR. BEAUMAN: What did you want to  
20 ask him?

21 PAUL KEARNEY: He wants to read it.

22 MR. PAFUNDA: No, I don't know who's  
23 more stubborn, the president or me. But you  
24 know what, if you want to -- he probably is.

25 But Mr. President wants to read the entire  
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1 thing, and so we're breaking for the  
2 evening. It's 10 minutes until 6. We're  
3 done for today. And you can keep that copy.  
4 And when we reconvene --

5 MR. BEAUMAN: No, we're not going to  
6 keep the exhibit copy.

7 MR. PAFUNDA: Yeah, why? I don't --  
8 he can keep -- all right. Just leave it.  
9 Here, I'll give you another one. We're  
10 done.

11 THE VIDEO TECHNICIAN: We are going  
12 off the video. The time is 5:45 p.m.

13 \* \* \* \* \*

14 THEREUPON, the taking of the  
15 deposition of PRESIDENT ELI CAPILOUTO was  
16 concluded at 5:45 p.m.

17 \* \* \* \* \*

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1 STATE OF KENTUCKY )  
2 COUNTY OF PENDLETON )

3

4 I, DESIREE J. WRIGHT, the undersigned  
5 Notary Public in and for the State of Kentucky at  
6 Large, certify that the facts stated in the  
7 caption hereto are true; that at the time and  
8 place stated in said caption, the witness named in  
9 the caption hereto personally appeared before me,  
10 and that after being by me duly sworn, was  
11 examined by counsel for the parties; that said  
12 testimony was taken down in stenotype by me and  
13 later reduced to computer transcription by me and  
14 the foregoing is a true and accurate record of the  
15 testimony given by said witness.

16 No party to said action nor counsel for  
17 said parties requested in writing that said  
18 deposition be signed by the testifying witness.

19 My commission expires: September 11,  
20 2018.

21 IN TESTIMONY WHEREOF, I have hereunto set  
22 my hand and seal of office on this the 9th day of  
23 August, 2016.

24

25

\_\_\_\_\_  
DESIREE J. WRIGHT  
NOTARY PUBLIC, STATE AT LARGE  
AN/DOR Reporting & Video Technologies, Inc.