

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JEFFREY KURTZMAN,)
)
 Plaintiff,)
)
 vs.) No. 4:96CV01089DJS
)
 WASHINGTON UNIVERSITY,)
)
 Defendant.)

COPY

Deposition of Witness
JEAN ENSMINGER, Ph.D.
on Behalf of the Plaintiff

December 11th, 1996

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Reported by:
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Certificate of Merit Reporter

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1 Q. And then this next document that has
2 the Bate stamp of 572?

3 A. I just don't remember this. I assume
4 so.

5 (Discussion was held off the record.)

6 Q. Okay. All right. You're assuming so
7 on the basis that it's referred to in the letter?

8 A. Yes.

9 Q. Now, if we can go back to Plaintiff's
10 Exhibit 1, I'm going to direct your attention to
11 this part in the middle of the page here.

12 Actually, this says "On the matters of
13 sexual harassment," showing you my copy, just so
14 you can kind of get an idea of where to go on your
15 copy.

16 A. Am I on the right one?

17 Q. Yeah. Do you see that?

18 A. Yes.

19 Q. Okay. Now, you were not investigating
20 Dr. Kurtzman for any sexual harassment or sexual
21 discrimination, is that correct?

22 A. Correct.

23 Q. Were you aware that there was an
24 investigation, with respect to sexual harassment
25 and sexual discrimination, had been referred to

1 what they call the ad hoc committee?

2 A. Yes.

3 Q. How did you become aware of that?

4 A. Dean Macias told us that there was
5 another completely independent investigation going
6 on.

7 Q. Now, this Plaintiff's Exhibit Number 1
8 that you have, the very first document I gave you,
9 that arrived -- would that have arrived right
10 around June 16th?

11 MR. GIANOULAKIS: You're asking her if
12 Plaintiff's Exhibit 1 arrived around June 16th?

13 MR. BOND: Right.

14 A. I believe I see recorded here in the
15 document, "Notes on the charges against Jeffrey
16 Kurtzman," that this packet was received on June
17 19th after we had written this memo.

18 Q. Could I see which memo you're
19 referring to?

20 A. Okay.

21 Q. Was this -- the memo -- and let me
22 just state it for the record. "Notes on the
23 charges against Jeffrey Kurtzman," is that the one
24 you're referring to?

25 A. Yes.

1 Q. The other two, also, Sona Haydon and
2 is it Cathleen Bolduan?

3 MR. GIANOULAKIS: Bolduan.

4 Q. Right.

5 A. Everything that I received would be in
6 the files that I believe were turned over to you.

7 Q. Okay. All right. Now, in this letter
8 -- and I'm talking about the Plaintiff's Exhibit 1
9 -- it refers to the "ad hoc investigating
10 committee" again, is that correct, toward the
11 bottom?

12 A. Uh-huh.

13 Q. That's the second line from the
14 bottom.

15 Of course, you're aware at that point
16 that, while your investigation is going on, that
17 there is a simultaneous investigation going on
18 regarding other allegations, is that correct?

19 A. Yes.

20 Q. You were not investigating sexual
21 harassment or sexual discrimination in any way, is
22 that correct?

23 A. Correct.

24 Q. And then going over to the second
25 page, once again, I'm just going to refer you to

1 my copy so you can see generally where I'm
2 referring.

3 This talks about "Jeffrey Kurtzman is
4 chairing the ethics statement committee." Do you
5 see that statement?

6 A. Yes.

7 Q. And you were aware of that then, is
8 that correct?

9 A. Yes.

10 Q. Based on this letter. And then
11 skipping on down into the third line on the second
12 page, it talks about allegations of sexual
13 harassment again, is that correct?

14 A. Yes.

15 Q. And then skipping down to the third
16 paragraph, once again, excuse me for pointing, but
17 just to give you an idea as to what we're talking
18 about, the area, it says "The faculty council has
19 our permission to present to Jeffrey Kurtzman,"
20 then it talks about the attached addendum of
21 allegations regarding conflicts of interest, is
22 that correct?

23 A. Yes.

24 Q. Were there certain documents that they
25 didn't want you to show him?

1 MR. GIANOULAKIS: Do you mean
2 documents that they had or documents that they
3 didn't have?

4 Q. Documents that they had furnished to
5 the council.

6 A. I know that there was a discussion of
7 something not being furnished at some point. I no
8 longer recall exactly what it was. My
9 recollection, but I could be wrong, was that in
10 the end everything was turned over.

11 Q. To Dr. Kurtzman?

12 A. Yes.

13 Q. Did your committee in any way -- was
14 it charged with investigating Dr. Kurtzman's
15 treatment of women?

16 A. No.

17 Q. I'm going to refer you to the page
18 that has 581 on it, and once again, if I can just
19 point, just to give you the general idea of -- it
20 states something -- I'll just try to read it
21 verbatim. It's paragraph A.

22 "Jeffrey Kurtzman was made aware in
23 1992 that two of the three reasons given by
24 majority of the music department voting faculty
25 for recommending that he no longer continue as

1 chair of the music department were his treatment
2 of women and nepotism."

3 You were not investigating that part
4 of it, right, the treatment of women?

5 A. We were not investigating the
6 treatment of women independent of conflict of
7 interest charges and mismanagement charges.

8 Q. I'm sorry, would you repeat that?

9 A. We were not investigating the
10 treatment of women independent of conflict of
11 interest and mismanagement charges.

12 Q. Was anything ever -- if you can -- I'm
13 sorry, strike that question.

14 If you can just go ahead and flip on
15 to page -- flip over to page 587, and you'll
16 notice that there's a large area that is deleted.
17 Do you see that?

18 A. Yes.

19 Q. Do you know why that was?

20 A. No.

21 Q. You were never advised why that was
22 deleted, is that what you're saying?

23 A. We were never advised on the parts
24 that were deleted, no.

25 Q. You were never advised of the content

1 I think she said already that she received it on
2 the 19th of June.

3 Q. Did you receive it on the 19th?

4 A. According to this, the notes that I
5 made in this document that we've already
6 discussed, "Notes on the charges against Jeffrey
7 Kurtzman," it says here that it was received on
8 June 19th.

9 Q. Okay. And was Dr. Kurtzman advised of
10 this letter dated June 16th?

11 A. I don't know.

12 Q. Had you already interviewed Dr.
13 Kurtzman at this time? I'm -- not interviewed.
14 Had you already received statements from Dr.
15 Kurtzman on June 19th?

16 A. I would have to check documents I
17 have.

18 Q. What documents would you check to
19 determine that?

20 A. We did receive the letter from him.
21 According to this, we received -- doesn't say when
22 we received it. It was a June 17th letter.

23 Q. From Dr. Kurtzman?

24 A. Right.

25 Q. Okay. And then so you received this

1 June 16th letter on June 19th, according to your
2 notes.

3 A. Yes.

4 Q. And then you received the letter from
5 Dr. Kurtzman. You had received it by the 19th,
6 right, of June?

7 A. Yes, we had.

8 Q. All right. And my question that I
9 have then is -- and just to make sure I have this
10 straight.

11 Do you recall presenting this document
12 to Dr. Kurtzman, this document 079 that we've been
13 referring to as Plaintiff's Exhibit 1?

14 A. You just asked me that, and I said I
15 don't recall.

16 Q. Would you have any records that would
17 show one way or the other?

18 A. I have no records other than what's
19 there.

20 Q. And if you had submitted it to Dr.
21 Kurtzman, would that be by correspondence?

22 A. I never submitted anything personally
23 to Dr. Kurtzman, that I can recall.

24 Q. Okay. And by you personally, are you
25 talking about you acting on behalf of the faculty

1 response to these -- to this -- the allegations
2 made in the Plaintiff's Exhibit 1 that's dated
3 June 16th?

4 A. I don't recall.

5 Q. Do your records show any kind of
6 response other than -- well, strike that.

7 This June -- excuse me, this June 16th
8 letter from Dr. Kurtzman, that's Plaintiff's
9 Exhibit 32, that's dated the same day as
10 Plaintiff's Exhibit 1, right?

11 A. Yes.

12 Q. Is that a response? Is Plaintiff's
13 Exhibit 32 a response to Plaintiff's Exhibit 1?

14 MR. GIANOULAKIS: Well, I'll object to
15 that as calling for speculation on the part of the
16 witness, but she can answer if she knows or
17 understands.

18 Q. Do you know?

19 A. I don't know what might have been
20 going on between them, no.

21 Q. Between the two -- the four
22 complainants and Dr. Kurtzman?

23 A. Right, right.

24 Q. And just going -- you said you
25 received Plaintiff's Exhibit 1 on June 19th,

1 right?

2 A. Yes.

3 Q. All right. And then this letter from
4 Dr. Kurtzman, Plaintiff's Exhibit 32, is dated
5 June 16th, right?

6 A. Yes.

7 Q. Okay. I want to show you Plaintiff's
8 Exhibit 2, if you could also show your attorney.
9 Okay. Now, have you seen that document --

10 A. Yes.

11 Q. -- before? And what is Plaintiff's
12 Exhibit 2?

13 A. These are my notes from my interview
14 with Marty Israel and Craig Monson.

15 Q. And were you the one that was
16 interviewing the individuals personally?

17 A. Yes.

18 Q. Was there anybody else present?

19 A. Yes, Lori Fox.

20 Q. The assistant general counsel for the
21 university?

22 A. Yes, yes.

23 MR. GIANOULAKIS: Associate general
24 counsel.

25 Q. Associate general counsel. I'm

1 would not never see.

2 Q. For example, in number 9 again, that
3 talks about "the relationship between Dr. Kurtzman
4 and the departmental bookkeeper was the creation
5 of a sexually charged atmosphere in the
6 departmental office."

7 Do you want to read that, verify that?

8 A. Uh-huh.

9 Q. Would you agree that that pertains
10 more to the sexual harassment and/or sexual
11 discrimination that the other committee was
12 investigating?

13 A. Yes, and that's why we did not take
14 under -- we did not consider that charge.

15 Q. But it was submitted to your council,
16 to the council, right?

17 A. It was in this document.

18 Q. Right. In other words, Plaintiff's
19 Exhibit 31 is how it was presented, right?

20 A. Yes.

21 Q. What's here is what's here?

22 A. Right.

23 Q. Okay. And if you can refer to page 6
24 of your handwritten notes. It says "13 and 14,
25 no"?

1 A. Yes.

2 Q. Were allegations 13 and 14 not
3 investigated?

4 A. Correct.

5 Q. Now, number -- why wasn't number 13
6 investigated?

7 A. According to our summary of our
8 rationale, we believed that there was a need to
9 have better procedures in place, but we thought it
10 was the obvious sanction for chairs who engage in
11 preferential hiring practices, removal as chair.

12 And given that Kurtzman had already
13 been removed as chair, the council saw no further
14 potential action regarding this charge.

15 Q. And then number 14 -- I'm sorry, what
16 is the subject matter of number 14? And if you
17 can refer to the other document where it's listed.

18 A. "Call for a further inquiry into
19 potential conflicts of interest by Jeffrey
20 Kurtzman within the music department."

21 Q. It goes on to say, correct me if I'm
22 wrong, it says something to the effect "There is
23 such, in the past, an ongoing fear of Jeffrey
24 Kurtzman on the part of various individuals within
25 the department that they are reluctant to come

1 forward," is that correct?

2 Do you see that it's right around --
3 right there.

4 A. Uh-huh, yes.

5 Q. Okay. Were you investigating that?

6 A. No, we did not. We chose not to.

7 Q. Okay. I'm going to show you
8 Plaintiff's Exhibit 27. Would you show it to your
9 attorney first, and that applies to all the
10 documents I have from Dr. Ensminger.

11 Do you recognize that document?

12 A. Yes, I do.

13 Q. That's from Claude Evans, isn't it?

14 A. Yes.

15 Q. And do you know why that particular
16 document is -- why he was the -- is he the author
17 of that?

18 A. Of this document, yes.

19 Q. Right. And do you know why he is the
20 one that authored it as opposed to you?

21 A. My recollection -- but I -- I'm not
22 absolutely clear on this -- was that, in
23 preparation for preparing the final document, he
24 chose to draft out some ideas which might or might
25 not be included in the final report.

M. S. H.

1 Q. Let me just direct your attention on
2 this -- excuse me. If I can just -- excuse me for
3 pointing again, but starting right here, if you
4 can just read that sentence to yourself.

5 A. Yes.

6 Q. Let me just look at it again, please,
7 let me refresh my memory.

8 Just so we have it on the record, let
9 me try to read it verbatim. "Given the degree of
10 fear expressed by a number of members of the music
11 department, it is highly unlikely this goal can be
12 accomplished as long as Professor Kurtzman is a
13 member of that department."

14 Was the council investigating the fear
15 of members in the music department at any time?

16 A. I don't believe that it was relevant
17 to the charges that we chose to pursue.

18 Q. Do you know what -- other than what I
19 showed you previously in this allegation about
20 number, I believe, 14, it said something to the
21 effect "There is such, in the past, an ongoing
22 fear of Jeffrey Kurtzman on the part of various
23 individuals within the department that they are
24 reluctant to come forward."

25 Are you aware of any other documents

1 other than the original allegations that were --
2 contained language to that effect?

3 A. You mean other than Exhibit 1?

4 Q. Is there language in there to that
5 effect?

6 A. My recollection is that I think so.
7 Somewhere in there.

8 Q. Would you mind pointing that out to
9 me.

10 A. We may be here a few hours.

11 MR. GIANOULAKIS: You want to take a
12 break?

13 MR. BOND: Yes.

14 (Temporary recess was held.)

15 Q. All right. I guess we're ready to go.

16 A. Yes.

17 Q. Now, if we could just go to the
18 handwritten notes, if you can look at the exhibit
19 number on there. I forget what it is. Just so we
20 have it marked for the record.

21 A. Exhibit 2. This one.

22 Q. Okay. Now, the violations that -- and
23 I think -- I don't know if you have this in front
24 of you or not, but it talks about the violations,
25 which you found either insufficient evidence or

1 from the hourly position to the more regularized
2 position. Her salary was right in the middle of
3 others doing it.

4 "When he stepped down as chair, he
5 asked to have her salary increased to reflect her
6 talents.

7 "Marty Israel put it off on Craig to
8 decide, and Craig decided not to increase her
9 salary. Marty Israel not strong review of
10 part-time hiring by the dean. Pretty sure
11 Macdonald's wife was already on board."

12 Q. Do you know what that means?

13 A. What does that mean? Is that what
14 you're asking?

15 Q. Yes. Like "Macdonald's wife"?

16 A. I think he must have been asked was
17 Macdonald's wife already working in the
18 department, that's it, on number 3.

19 Q. What procedure do you use then, if you
20 take this statement from Dr. Israel, use to go
21 back to report to the other council members? Do
22 you send them anything in writing?

23 A. I didn't send them anything in writing
24 that you haven't seen or that I presume you
25 haven't seen. Everything was in the file.

1 Q. I mean do you recall what that was
2 that you did send them?

3 MR. GIANOULAKIS: You mean in writing?

4 Q. Right.

5 A. On the basis of this interview with
6 Marty Israel?

7 Q. Right.

8 A. I don't believe they were sent
9 anything in writing.

10 Q. Okay. Do you recall if -- and I'm
11 going to refer -- would that be a true -- true
12 with respect to everything that Dr. Israel told
13 you and everything that Craig Monson told you?

14 You would not have sent anything in
15 writing to the other four council members?

16 A. Correct. They may have seen these
17 notes, but I don't recall that there are any other
18 notes pertaining to those interviews or that there
19 was any other synopsis of the interviews.

20 Q. And when you say "may," do you recall
21 showing them? And by "them," I'm referring to one
22 or more of the other council members.

23 A. I'm sure that I would have brought
24 these notes to the meeting. Whether we passed
25 them around, I'm not sure.

1 Q. Did you ever have these typed up?

2 A. No.

3 Q. And I think you previously indicated
4 that the date on the front, June 13th, 1995, is
5 correct as to when you met with Dr. Israel?

6 A. I assume so. Yes.

7 Q. And could you refer to -- do you
8 recall when you met with Dr. Monson? I don't see
9 a date on that page. If you can just refer to
10 that page, please. It looks like it's about maybe
11 possibly page 7.

12 A. I believe it was the same day, June
13 13th.

14 Q. All right. I'm sorry, I think I asked
15 you this, but did you say you had these typed up
16 or not?

17 A. No.

18 Q. Okay. I can't remember. And did you
19 ever give a summary of this to Dr. Kurtzman?

20 A. No.

21 Q. Were you asking -- the numbers that
22 you have for Craig Monson, do they correspond to
23 the same -- the charges, also, like you did with
24 Dr. Israel?

25 A. Yes.

1 Q. Okay. And your interview with Dr.
2 Monson, number 3, if you could just go ahead and
3 read that, and if it's possible, paraphrase it;
4 otherwise, we'll go through it again.

5 A. "What is the current procedure for
6 hiring applied? John Stewart," I think is what it
7 says, "was hired as associate professor without
8 tenure and teaching choir through a formal search.

9 "Full-time lecturers' procedures say
10 someone in the department already could complete.
11 Teachers of applied music fall into more casually.
12 When the part-time people reach full-time, they
13 are made so by the chair."

14 I'm not sure what this abbreviation
15 is. It says "North part of" -- oh, sorry, "It's
16 not part of the voting faculty. Paid by the hour
17 and no raises."

18 "Some are partly teachers of applied
19 music. 1989 faculty voted formally on lecturers.
20 Others, Stewart, Kathi Kurtzman, etc., chair a
21 loan with permission of the dean decides to hire.
22 No committee in place, too. Can remember vote of
23 faculty on Chris, Sona," and I can't read what's
24 written there.

25 "No" -- sorry.

1 difference necessarily, but it was -- it was also
2 the case that in two cases it had been negotiated
3 at the time the faculty were hired.

4 Q. That their wives would also come
5 along?

6 A. Yes, uh-huh.

7 Q. Did anybody, including Dr. Israel,
8 ever tell you that he was part of the process of
9 hiring Kathi Kurtzman?

10 A. Could you ask that again?

11 MR. GIANOULAKIS: Would you read that
12 back, please, Julie.

13 (The following question read back by
14 the court reporter as follows:

15 "Q. Did anybody, including Dr. Israel,
16 ever tell you that he was part of the process of
17 hiring Kathi Kurtzman?")

18 THE WITNESS: Well, we only talked to
19 two people, so there are only two people who could
20 possibly have said that.

21 Q. Right. Did you -- and do you have an
22 answer to that question?

23 A. The question is did anybody
24 specifically say to us that --

25 Q. Including Dr. Israel --

1 A. Yeah.

2 Q. -- that Dr. Israel was a part of the
3 hiring process involving Kathi Kurtzman?

4 A. I don't recall the specifics of the
5 conversation with Craig Monson about his role in
6 that.

7 Q. Let me show you Plaintiff's Exhibit 3,
8 if you can show it to your attorney. Go ahead and
9 look at these documents, please.

10 A. Uh-huh.

11 Q. Now, showing you Plaintiff's Exhibit
12 3, Dr. Ensminger. Were any of these documents
13 ever presented to the council, faculty council,
14 while it was investigating Dr. Kurtzman?

15 A. I saw a number of files, and it's very
16 likely that these were in there, but I don't
17 recall specifically.

18 Q. Does it appear to you that Dr. Macias
19 was aware that Kathi Kurtzman was employed in the
20 music department, by looking at those documents?

21 MR. GIANOULAKIS: Well, I'll object to
22 the form of the question as calling for
23 speculation on her part as to what he was aware
24 of. The document speaks for itself. It's signed
25 by Dr. Macias. It's addressed to Kathi Kurtzman.

1 Q. The document that -- is that Exhibit
2 12? Is that what it says?

3 A. Yes.

4 Q. Was that ever discussed with any other
5 council members?

6 A. Yes. It was brought up at the
7 council, and my recollection is that it was
8 considered irrelevant.

9 Q. Okay. Do you know who had placed that
10 on your door?

11 A. No, I don't.

12 Q. That's anonymous, isn't it?

13 A. Yes.

14 Q. And you never found out?

15 A. Right.

16 Q. Did you ever attempt to screen out
17 documents like that that come from unknown
18 sources?

19 MR. GIANOULAKIS: Well, I'll object to
20 the form of the question. She's already testified
21 that they, in effect, screened them out and found
22 them irrelevant themselves.

23 But subject to that objection, she can
24 answer.

25 Q. In other words, did you ever try to

1 set up any procedure again for documents like that
2 coming before the -- either yourself or the
3 committee?

4 MR. GIANOULAKIS: Other than the use
5 of their own common sense and judgment?

6 Q. Right. Other than your own common
7 sense and judgment. And when I said "committee,"
8 I meant council.

9 A. You're asking if I screened documents
10 from the other members of the council?

11 Q. Correct.

12 A. With the expressed intent --

13 Q. That they not see them.

14 A. No, I did not.

15 Q. And there was not any procedure set up
16 like that to screen out documents, is that
17 correct?

18 A. Correct.

19 Q. Let me show you Plaintiff's Exhibit
20 29. Once again, if you can show it to your
21 attorney. Have you ever seen that document
22 before?

23 A. Yes.

24 Q. And when did you see it?

25 A. I don't know when I saw it.

1 Q. What is the date on it, please?

2 A. 19th of June.

3 Q. Was it approximately around that date?

4 A. I have -- I have no idea, other than
5 what common sense would indicate looking at the
6 date on it.

7 Q. All right. Do you know who Michael
8 Friedlander is?

9 A. Yes.

10 Q. And who is he?

11 A. I believe he's on the physics faculty.

12 Q. Do you know if that document was
13 shared with the other members of the faculty
14 council?

15 A. I believe so. I'm not positive.

16 Q. Now, with respect to the note that we
17 were calling anonymous --

18 A. Yes.

19 Q. -- that's the Exhibit 12, was Dr.
20 Kurtzman ever furnished a copy of that, during
21 this investigation, that is?

22 A. Not to my knowledge.

23 Q. And with respect to Plaintiff's
24 Exhibit 29, do you know if Dr. Kurtzman was ever
25 furnished a copy of Plaintiff's Exhibit 29?

1 A. I don't know.

2 Q. Okay. Would you ever have furnished
3 him a copy?

4 A. No.

5 Q. Going back to Plaintiff's Exhibit
6 Number 1 --

7 A. Yes.

8 Q. -- is there any reason that you
9 wouldn't give that document to Dr. Kurtzman and
10 ask for him to respond to it?

11 A. I don't believe that this document
12 influenced our investigation. We had more or less
13 come to our conclusions before we received this
14 document. *It was received of June 19 (p.76), same day they received my*
letter (p.39)

15 Q. If we could go back to -- go back to
16 the question, okay? Would you read the question
17 back.

18 MR. GIANOULAKIS: Just a minute, read
19 the question and the answer, please.

20 (The following question and answer
21 read back by the court reporter as follows:

22 "Q. Going back to Plaintiff's Exhibit
23 Number 1 --

24 A. Yes.

25 Q. -- is there any reason that you

1 wouldn't give that document to Dr. Kurtzman and
2 ask for him to respond to it?

3 A. I don't believe that this document
4 influenced our investigation. We had more or less
5 come to our conclusions before we received this
6 document.")

7 Q. Is that correct?

8 A. Yes.

9 Q. And this document was dated June 16th,
10 1995?

11 A. Yes, but was not received by us until
12 after the notes on the charges against Jeffrey
13 Kurtzman were recorded.

14 Q. And that's --

15 A. That's recorded on this document.

16 Q. June 19th?

17 A. Correct.

18 Q. Isn't Dr. Kurtzman's response also
19 dated June 16th, 1995?

20 A. His -- I know the letter you're
21 referring to. Yes.

22 Q. That's -- we're referring to
23 Plaintiff's Exhibit 32?

24 A. And, yes, we had received that letter.

25 Q. Your notes show that?

1 A. Yes.

2 Q. Do you know why you hadn't received
3 the one marked Plaintiff's Exhibit 1?

4 A. No, I don't.

5 Q. So his letter's dated June 16th, and
6 when you say "June 19th," is that the date of the
7 meeting?

8 A. Yes.

9 Q. Was there a meeting -- when was the
10 first meeting after June 16th that the faculty
11 council had?

12 A. I don't know.

13 Q. Do you know if there was a meeting
14 between the 16th and the one that you're referring
15 to on the 19th?

16 A. No, I don't know.

17 Q. Do you recall if, on June 19th, that's
18 when you considered his response?

19 A. What I know is what's written here on
20 this document, "Notes on the charges against
21 Jeffrey Kurtzman. These notes make no attempt to
22 comprehensively summarize Jeffrey Kurtzman's
23 letter to the faculty council of June 17th."

24 (Discussion was held off the record.)

25 MR. GIANOULAKIS: Well, before we go

1 chasing rainbows, can I just clarify something.
2 Your reference to June 17th, do you know whether
3 that's a mistake and whether that should be June
4 16th?

5 THE WITNESS: It could very well be a
6 mistake, because there doesn't appear to be a
7 letter dated June 17th, so I can't account for
8 that June 17th. It may have been a mistake.

9 Q. There definitely was a meeting on the
10 19th, though, right?

11 A. Yes, yes.

12 (Discussion was held off the record.)

13 MR. BOND: Could I look at your notes
14 for a second? I know we've got them somewhere.
15 Did this document -- could we get a copy of this,
16 John?

17 It would be easier to mark it. Maybe
18 if I can get a copy, it will be easier to go back
19 and forth.

20 MR. GIANOULAKIS: Hold on for a
21 minute, please.

22 (Temporary recess was held.)

23 Q. Let me show you what's been marked as
24 Plaintiff's Exhibit 14. If you can just read that
25 first paragraph to yourself.

1 A. Yes.

2 Q. Basically where you have -- start with
3 after that first paragraph, number 1, do you see
4 that?

5 A. Yes.

6 Q. And then you go all the way through
7 14?

8 A. Yes.

9 Q. All the way through the end of the
10 document. It should be Bate stamped 1885.

11 A. Uh-huh.

12 Q. Those are each of the allegations that
13 you were investigating, right?

14 A. Correct.

15 Q. And then was this document later used
16 for the basis for the June 26th letter?

17 A. Yes.

18 Q. And in that first paragraph where you
19 say "These notes made no attempt to
20 comprehensively summarize Jeffrey Kurtzman's
21 letter to the faculty council of June 17," you
22 said that means June 16th, right?

23 A. I'm guessing that that's the case,
24 yes, because we have no letter dated the 17th,
25 that I'm aware of.

1 Q. Is there any reason that these notes
2 don't attempt to make -- to summarize his letter
3 or his input?

4 A. Well, similarly, we don't attempt to
5 summarize the women's charges. This is a summary
6 of our deliberations to date.

7 Q. Was there any pressure being placed
8 upon you or other members of the council or the
9 entire council to reach a decision at this time?

10 A. No.

11 Q. Okay. Do you have the letter from Dr.
12 Friedlander? It's one of the exhibits. It should
13 be.

14 A. Yes.

15 Q. All right. Could I just look at it
16 for a second. He talks about "This case revolves
17 around some of the most serious accusations
18 against a member of our faculty." Do you see
19 that?

20 A. Yes.

21 Q. Did Dr. Macias ever state anything
22 like that to the -- to you or any other member of
23 the council?

24 A. Not to my recollection.

25 Q. Did Dr. Macias ever advise you that he

1 deliberating conclusions as opposed to data
2 gathering?

3 Q. Right.

4 A. I can only tell from the documents
5 that I have that -- it appears that we had
6 gathered the data by the time of this June 19th
7 meeting, and that's the point at which we were
8 beginning to consider what it all added up to.

9 Q. And I'm going to -- same document that
10 we've been referring to. I'm thinking -- I
11 believe you have your copy. Correct me if I'm
12 wrong. This one, 33.

13 A. Yes.

14 Q. And if I could just have that one
15 back. Like I'm looking at Plaintiff's Exhibit 33
16 now. In the middle of the page it talks about
17 "conversion of the Dammert monies."

18 A. Yes.

19 Q. And basically it says "We do not find
20 evidence of inappropriate behavior here." Do you
21 see that?

22 A. Yes.

23 Q. That was on June 2nd, right?

24 A. Yes, correct.

25 Q. And Dr. Kurtzman's response was not

1 received until sometime either June 16th or later,
2 is that correct?

3 A. Correct.

4 Q. I mean are you already deciding these
5 matters at this point?

6 A. No.

7 Q. Like --

8 A. This is our deliberation as to which
9 charges we wished to pursue.

10 Q. When you say "We do not find evidence
11 of inappropriate behavior here," what do you mean
12 by that?

13 A. Based upon the charge itself. We
14 didn't consider the charge itself worthy of
15 pursuing.

16 Q. And would that be the same, like for
17 number 2?

18 A. Yes.

19 Q. So the, basically, the allegation was
20 insufficient? Is that -- what are you -- strike
21 that.

22 Are you saying that, even if the
23 allegation were true, that it's not worthy of
24 investigating it?

25 A. Even if the allegation were true, it

1 A. Yes.

2 Q. That was received, but what, but not
3 considered, or what? Didn't enter into the
4 decision?

5 A. It was received after this memo was
6 written.

7 Q. Okay. And was it or was it not
8 considered in the final draft on June 26th?

9 A. What do you mean "considered"?
10 Everything was considered.

11 Q. You know, read by you and the other
12 council members.

13 A. I don't recall the circumstances of
14 receiving this. I'm sure that it was read. I
15 don't recall that it was significant in our
16 deliberations.

17 Q. But under any circumstances, you did
18 not go back to Dr. Kurtzman after receiving it,
19 right, and say "Respond to this"?

20 A. Correct.

21 MR. GIANOULAKIS: I'll just object for
22 the record. I think that's been asked and
23 answered on three or four times.

24 Q. Okay. Other than the individuals that
25 you've already mentioned, Edward Macias, he had

1 believe this is it -- Plaintiff's Exhibit 27,
2 that's Claude Evans?

3 A. Yes.

4 Q. Let me just refer to that again so I
5 can refresh my memory.

6 Do you know where -- what information
7 was presented to the council that would cause
8 Claude Evans to state something to the effect
9 "Given the degree of fear expressed by a number of
10 members of the music department, it is highly
11 unlikely that this goal can be accomplished as
12 long as Professor Kurtzman is a member of that
13 department"?

14 Do you know what information was
15 received leading to that?

16 A. I don't know -- I don't know what he
17 may have been thinking of there, but in the
18 original complaint there is a paragraph, paragraph
19 2 -- this is in Exhibit 31.

20 "We want to reiterate a concern
21 expressed in the May 19th letter to you from
22 Marion Guck and Dolores Pesce that there is a
23 continuing climate of fear among many women in the
24 music department."

25 I don't know, though, where -- what --

1 it was not discussed -- I don't recall that he
2 clarified where that came from.

3 Q. Okay. In referring back, is that
4 Plaintiff's 1 -- no, I'm sorry, that's Plaintiff's
5 Exhibit 31. 31.

6 This "continuing climate of fear," did
7 that ever come up again after this initial
8 complaint, Plaintiff's Exhibit 31?

9 MR. GIANOULAKIS: You mean other than
10 in Mr. Evans' memo that you --

11 Q. Right. Other than the memo from
12 Claude Evans.

13 A. Was it ever discussed? Did we ever
14 discuss fear?

15 Q. Right.

16 A. Yes, we did.

17 Q. If that were not one of the charges,
18 that was -- excuse me, that was not one of the
19 charges, why was it discussed?

20 A. It was relevant to some of the
21 original charges that we eliminated and determined
22 not to pursue. I do recall that I raised it in my
23 interview with Craig Monson.

24 Q. And based upon your notes, what did
25 Craig Monson say?

1 A. Okay. My question, "Would Jeffrey
2 Kurtzman take revenge, abuse power, fear,
3 retaliation?"

4 Craig's response, "Yes, I believe
5 that. 'I don't get mad. I get even.'"

6 Q. And which exhibit are you reading from
7 now? What's the exhibit number?

8 A. I don't have an exhibit number on
9 this.

10 Q. Let me see that. I'm sorry, I was
11 talking about your notes. Oh, okay. You were
12 referring to that one.

13 A. This one.

14 Q. And that's maybe a different copy than
15 we had here a minute ago.

16 A. There it is. 2.

17 Q. Right. I'm sorry, if you want to just
18 find it on --

19 MR. GIANOULAKIS: Plaintiff's Exhibit

20 2?

21 MR. BOND: Right. Plaintiff's Exhibit

22 2.

23 THE WITNESS: Yes.

24 MR. GIANOULAKIS: It looks like it's
25 on the third to last page.

1 Q. Dr. Ensminger, you want to just circle
2 that in red where you just read from. Okay. It
3 includes that part over there on the -- would you
4 mind just putting brackets over there on the other
5 side.

6 A. (Marking.)

7 Q. Was that on June 19th?

8 A. This is the interview with Monson on
9 the 13th.

10 Q. 13th? Did you discuss it again on the
11 19th, by any chance?

12 A. With Monson?

13 Q. On the telephone call.

14 A. I don't think so.

15 Q. Would you mind just examining your
16 notes just to see.

17 (Discussion was held off the record.)

18 A. No, there's no discussion on here,
19 that I can see.

20 Q. All right. So back on the 13th of
21 June then is when Dr. Monson had advised you of
22 that, is that correct?

23 A. Yes.

24 Q. And the phrase that you read off
25 that's circled in red, did you ever go back to Dr.

1 Q. Do you understand what I'm talking
2 about, Dr. Ensminger?

3 A. You want me to look for that specific
4 language in the fourteen --

5 Q. Well, not the specific language. Just
6 something generally to that effect. The same
7 thing that Craig Monson told you on June 13th.

8 MR. GIANOULAKIS: You want to know if
9 that's somewhere included in the fourteen charges
10 in these three pages?

11 MR. BOND: Right, right.

12 MR. GIANOULAKIS: You mean in addition
13 to the cover letter that she already read you
14 where it referred to fear, is that right?

15 MR. BOND: Right, right.

16 Q. But that was -- was that given to Dr.
17 Kurtzman?

18 A. That's the front of -- we've already
19 read that.

20 Q. Right, right. Was that ever given to
21 Dr. Kurtzman, that letter? Is that the May 22nd
22 letter?

23 A. Yes.

24 Q. Was that ever given to Dr. Kurtzman?
25 And we're talking about, just for the record,

1 Plaintiff's Exhibit --

2 MR. GIANOULAKIS: Plaintiff's Exhibit
3 31.

4 Q. 31. Was that ever given to him?

5 A. I don't know.

6 Q. All right.

7 A. I know that he responded to the
8 charges, so he --

9 Q. Right. And the charges that he
10 responded to, were those the fourteen allegations
11 that are attached to that letter?

12 A. Let me see the -- I don't know what he
13 received.

14 Q. Okay. Do you know who would have sent
15 that, whatever he did receive, to him?

16 A. Ed Macias.

17 Q. All right. You don't know one way or
18 the other whether he received the letter dated May
19 22nd, that is Plaintiff's Exhibit -- is that 31?

20 A. I probably knew at the time, but I
21 don't recall now who exactly got what when.

22 Q. All right. But going back to these
23 fourteen allegations. Let me see if I can -- just
24 see if -- just see if there's anything in there
25 about, you know, fear -- I mean retaliation,

1 revenge, or any of the other -- and if you want to
2 refer back to your June 13th notes again, just to
3 refresh your memory, go ahead and do that, to the
4 part you circled in red.

5 A. The word "intimidating" appears in
6 charge 5.

7 Q. Okay.

8 A. "Heated public altercations" are
9 referred to in charge 6. "There is such a, in the
10 past, an ongoing fear of Jeffrey Kurtzman."
11 That's referred to in charge 14.

12 Q. And that's one you decided not to
13 investigate, though, right?

14 A. Correct.

15 Q. Can you tell by looking at any of the
16 documents, including your notes that are dated
17 June 19th -- I forget which exhibit number it is
18 now.

19 The original document that we had
20 that's dated June 2nd, do you have that in front
21 of you?

22 A. Yes.

23 Q. Could you go back to number 14.

24 MR. GIANOULAKIS: What was the exhibit
25 number that you gave that one, Terry?

1 Q. I'll try to find it. What is that
2 number?

3 A. It's not one of those.

4 Q. Okay. The notes are Plaintiff's
5 Exhibit 14, John.

6 MR. GIANOULAKIS: Well, no, this is
7 the 19th. You were asking her about her notes of
8 June 2nd, I think.

9 MR. BOND: Right.

10 MR. GIANOULAKIS: And that's the one
11 that you marked separately with an exhibit, and I
12 think you must have that in front of you.

13 MR. BOND: Here it is right here, I
14 think. Right, here it is. It's number 33.

15 MR. GIANOULAKIS: Okay. Go ahead.

16 Q. And this is, under number 14 -- and
17 once I -- I don't know. I may have asked you this
18 and I may not have.

19 What was the reason that you decided
20 not to investigate this matter?

21 A. I wrote here "This is a vague
22 statement regarding quote potential further issues
23 that the council does not feel it can pursue in
24 this unspecified forum.

25 "It's our understanding that the

1 Q. Like the old saying, you can't unring
2 a bell? You know, once you hear it ring, I mean,
3 that's it. You've heard it.

4 A. We didn't necessarily consider those
5 credible. We didn't have the data upon which --
6 or the evidence upon which to evaluate that.

7 Q. Okay.

8 MR. BOND: I don't have any -- I'm
9 sorry.

10 (Discussion was held off the record.)

11 Q. You had also indicated that you had
12 looked at a lot of documents and that, basically,
13 your findings were based upon the documents,
14 primarily?

15 A. Yes.

16 Q. All right. And would you have done
17 that personally or --

18 A. I looked at more documents than the
19 rest of the council, but the council also looked
20 at some documents.

21 Q. Would you have been -- would you have
22 gone like by yourself to look at the documents on
23 some occasions?

24 A. There were documents that I went and
25 looked at by myself, yes.

1 Q. All right. And would the other
2 members of the council have seen those same
3 documents?

4 A. They didn't see all of the documents
5 that I saw.

6 Q. Is there any record of which documents
7 you looked at, which documents Claude Evans looked
8 at, or any other council member?

9 A. No.

10 Q. I mean, they're not marked as like we
11 have these exhibits today, like 1, 2, 3 and 4, or
12 whatever?

13 A. No. The documents -- there were many
14 documents which I didn't consider relevant, and we
15 didn't make Xeroxes of them. The documents that
16 were considered relevant, Xeroxes were made, and
17 those were available to the council if they wished
18 to look at them.

19 Q. Did they look at them?

20 A. They looked at some of them, yes.

21 Q. Okay. But not all of them?

22 A. Not all of them.

23 Q. Do you know why that was, why they
24 didn't look at all the documents?

25 A. My guess is because they did not enter

1 into the deliberations and didn't enter into the
2 findings.

3 Q. Who made that determination?

4 A. The council.

5 Q. How would they know if they didn't
6 look at them?

7 A. Well, they knew what was relevant to
8 the conclusions that they came to. It's
9 conceivable that there were things that were
10 relevant in those files which another individual
11 might have judged relevant that they didn't look
12 at.

13 Q. What's the most number of members of
14 the council that were looking at these documents
15 at any one time together?

16 A. Be the entire council minus Nina
17 Davis, whom I think was not there for any of these
18 meetings.

19 Q. Would, other than yourself, would any
20 of the other members of the council have looked at
21 documents by themselves, by himself or herself?

22 A. I don't think so.

23 Q. Were you always present when the
24 documents were reviewed by another individual on
25 the council?

1 Other than that initial complaint
2 dated May 22nd of 1995, was there any other
3 statement from Sona Haydon that you considered?

4 MR. GIANOULAKIS: Well, I believe the
5 exhibit you have in front of you has statements
6 from her and Wanda Harry and other people in
7 there.

8 MR. BOND: Oh, okay. Right.

9 Q. Let's see. Right. There are
10 statements on this, right?

11 A. Yes.

12 Q. Other than what's attached here,
13 they're not part of the letter, but they do have
14 attachments to this that were drafted by Sona
15 Haydon and I think maybe some other lady?

16 MR. KURTZMAN: Wanda Harry.

17 Q. Wanda Harry. Was there any other
18 correspondence from Sona, other than the initial
19 complaint and her attachment to this June 16th
20 letter?

21 A. A letter to -- directed to the faculty
22 council?

23 Q. Right.

24 A. I don't believe so, but if there was,
25 it would be in those files.

1 (Discussion was held off the record.)

2 Q. Craig Monson had referred to some
3 files in his notes. Did he tell you that in his
4 statement to you?

5 A. There was a reference to music
6 department files --

7 Q. Right.

8 A. -- in his interview, uh-huh.

9 Q. Did you go back and look at those
10 files?

11 A. I did see music department files, yes.

12 Q. That Craig Monson had referred you to?

13 A. They were in a folder that I viewed,
14 and I believe that Craig Monson had selected out
15 all of the relevant files.

16 Q. Did you ever ask Dr. Kurtzman to refer
17 you to any files in the music department?

18 A. No.

19 Q. Did you ever examine Kathi Kurtzman's
20 file?

21 A. I believe there were papers from Kathi
22 Kurtzman's file in the documents that I reviewed.

23 Q. But you didn't specifically review her
24 file?

25 A. I don't know whether her entire file

1 had been part of those papers.

2 Q. Did Craig select the documents that
3 you looked at in the music department?

4 A. I viewed them in the general council's
5 office, and it was my understanding that he had
6 selected some music department files. Whether
7 others had been requested by Lori, I don't know.

8 Q. Okay.

9 MR. BOND: Okay. Thank you very much,
10 Dr. Ensminger, appreciate your time today.

11 THE REPORTER: Signature not waived or
12 waived? At least for this portion?

13 MR. GIANOULAKIS: Let's have a brief
14 discussion about that.

15 (Discussion was held off the record.)

16 (Temporary recess was held.)

17 MR. GIANOULAKIS: Julie, we will not
18 waive signature on this, but that doesn't mean
19 that you can't use it even without her signature
20 to respond to the motion for summary judgment.

21 (Witness excused.)

22 (By agreement of all the parties, the
23 signature of the witness is not hereby waived.)

24

25