

ITEM: 9

**Florida Gulf Coast University Board of Trustees
January 20, 2009**

**SUBJECT: Transcript and Exhibits to the Executive Session of August 22,
2008**

PROPOSED BOARD ACTION

For Information Only

BACKGROUND INFORMATION

The Florida Gulf Coast University Board of Trustees met on August 22, 2008 in Executive Session regarding Jaye Flood and Holly Vaughn vs. Florida Gulf Coast University Board of Trustees, Wendy Suzanne Morris vs. Board of Trustees of Florida Gulf Coast University, and Florida Gulf Coast University Board of Trustees vs. Wendy Suzanne Morris. As the aforementioned litigation has been concluded and as required by law, this transcript is being provided to be made a part of the public record.

Supporting Documentation Included: Transcript and Exhibits to Executive Session of August 22, 2008

Prepared by: Fort Myers Court Reporting

Legal Review by: N/A

Submitted by: General Counsel Vee Leonard

FLORIDA GULF COAST UNIVERSITY
BOARD OF TRUSTEES
EXECUTIVE SESSION

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DATE: August 22, 2008
TIME: 1:40 p.m. to 4:00 p.m.
PLACE: Florida Gulf Coast University
10501 FGCU Blvd., South
Fort Myers, Florida
REPORTER: Lisa M. Boyd, Registered
Professional Reporter, Notary
Public, State of Florida at Large



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MEMBERS PRESENT FOR EXECUTIVE SESSION:

Dr. Wilson Bradshaw, President
Scott Lutgert, Chair, Board of Trustees (telephone)
Larry Hart, Vice Chair, Board of Trustees
Lindsay Harrington, Board of Trustees (telephone)
Brian Cobb, Board of Trustees (telephone)
Dr. W. Bernard Lester, Board of Trustees
David Lucas, Board of Trustees
Dr. Halcyon St. Hill, Board of Trustees
James Malone, Board of Trustees
Sean Terwillger, Board of Trustees
Michael Villalobos, Board of Trustees
Jaynie Whitcomb, Board of Trustees
Doug St. Cerny, Board of Trustees
Jerry Starkey, Board of Trustees

ALSO PRESENT:

Vee Leonard, Esquire
Aaron Behar, Esquire
Margaret Mevers, Esquire

1 MR. HART: I would like to turn it over to Dr.
2 Bradshaw.

3 DR. BRADSHAW: Mr. Vice Chair, thank you very
4 much. I'll be very, very brief because I think
5 we're going to need all of our allotted time to
6 thoughtfully and fully vent these matters of
7 litigation. I will remind you, and others will
8 remind you that while this not immediately a matter
9 of public record, once the litigation has been
10 resolved then everything in this session becomes
11 public.

12 I would encourage you to engage fully the
13 matters at hand and not be inhibited by the
14 future public release of these proceedings. At the
15 same time I would just ask you to be thoughtful as
16 you choose your words, and especially your thoughts.

17 With that I'll turn it over to general counsel
18 Vee Leonard.

19 MS. LEONARD: As stated previously, the
20 purpose of this meeting is to seek the advice of
21 this board. And I am seeking general advice and
22 guidance, no formal motions can be taken at this
23 session. If there is a motion to be made or a vote
24 to be taken, that will have to be done in the public
25 at the conclusion of this session.

1 At this time I would like to turn it over to
2 our outside counsel Aaron Behar and Margaret Mevers
3 so that they might explain the status of the current
4 litigation and seek advice from this counsel.

5 MR. MALONE: Can I ask a procedural question?

6 MS. LEONARD: Yes.

7 MR. MALONE: Is it appropriate, proper or
8 allowed to ask for a general consensus or general
9 thoughts and opinions without calling specifically
10 for a vote or creating a specific motion around the
11 subject?

12 MS. LEONARD: Thoughts and opinion, yes.
13 Consensus, no.

14 MR. BEHAR: Thank you all again for having us
15 today. Since we last met a lot has happened with
16 respect to the Wendy Morris litigation. It did go
17 to the early mediation. And long story short, they
18 started their initial demand at three million
19 dollars.

20 From there we negotiated. It was an all day
21 mediation. And where we left off was their final
22 demand was a million dollars with some non monetary
23 terms that we'll discuss in a minute. And our final
24 monetary offer, we had authority for \$100,000, and
25 then we had a suggestion of authority from the State

1 for \$500,000.

2 And by that I mean that they were willing to
3 consider taking to the committee the half million
4 dollar figure if the board approved it. And then if
5 the committee went ahead and approved it as well.
6 When we left off we were still at an impasse. I
7 spoke with Morris's attorney a little bit in private
8 and got the impression, the mediator also had the
9 impression, that we may be able to resolve the case
10 for somewhere in the eight hundreds.

11 I don't know if the State is going to be going
12 up that high. I don't have an indication from them.
13 They're waiting to see what the outcome of today's
14 meeting is. But again my impression is that they
15 may be willing to consider five hundred. The non
16 monetary demands that Morris had made --

17 MR. HART: Did you mean eight hundred or you
18 meant five -- you said they may be --

19 MR. BEHAR: They may be willing to contribute
20 the five hundred, possibly a little bit more, the
21 balance to come from the University. Exactly how it
22 would work is unclear. I don't have much guidance
23 from the State on this point. They're waiting to
24 see what happens here before they give me any more
25 authority or they even communicate the amount of

1 financial assistance that they're going to provide.

2 It could be five, it could be a little bit
3 more than five. I should know that later on,
4 hopefully today or next week. But again there would
5 have to be some sort of contribution from the
6 University to make up the balance.

7 As far as non monetary terms that she's
8 demanding, and these non monetary terms do play a
9 significant part to their reduction of the demand
10 from the three million down, it would be to void
11 negative documentation in her personnel file, and
12 then allow her to resign or submit a resignation
13 letter.

14 We discussed alternatives for the voiding
15 process. I think we may have come up with a
16 solution that would be in compliance with the
17 sunshine laws. That would be to place in her
18 personnel file a letter of explanation as to what is
19 being voided, and then just seal the documents but
20 keep them in the personnel file. And of course we
21 would still be subject to any Florida law regarding
22 disclosure of those documents. None of that would
23 change or be impeded.

24 Some of the issues that I want to talk about
25 though concerning the Morris litigation, a lot of

1 the information I have either comes from the
2 allegations in the complaint or interviews that we
3 conducted from our own personnel. But I do want to
4 stress especially for the record that these are for
5 the most part allegations and not anything taken as
6 fact at this point.

7 But the last time we were together we spoke
8 about the timeline of events and what my concerns
9 were in terms of the proximity of the events between
10 the protected activity, which was opposing the
11 nonrenewal of Jaye Flood that Morris had done, and
12 then the series of events in between, that, and then
13 the ultimate placement on leave or termination.

14 There was a number of things that occurred
15 between one event and the other, all of which she
16 can point to at trial to say that this was a
17 continuing pattern of retaliation. That was my
18 concern, that continues to be my concern.

19 The other issues that I have come from the
20 witness interviews that we were conducting. What I
21 did, just so that we can all be on the same page in
22 terms of where the exposure may lie in terms of
23 these witnesses either sitting at deposition or
24 testifying at trial, is I put together just a list
25 of key individuals and some of the things that they

1 say and problems that are going to arise from that.

2 The majority of the problems are
3 inconsistencies and conflicts between our own
4 people. Either one individual would have said
5 something at one point in time and then contradicts
6 himself later on, or two individuals are entirely
7 contradicting. The danger in that is that it takes
8 away from our ability to defend the case, because
9 now you're taking away some of our legal arguments
10 that we may have and our legal procedural defenses
11 that are available to us in submitting the case to a
12 jury.

13 And all of our research has shown that these
14 Title IX cases, especially retaliation cases, the
15 verdicts are much, much higher than the sister acts,
16 Title VII, for example. The reason for that is
17 Title VII has caps built into it. So when you have,
18 you know, discrimination based on race, for example,
19 you don't see those really big jury numbers because
20 you have for entities of five hundred or more
21 employees a \$300,000 cap. Title IX doesn't have
22 those caps. That's where the real danger comes in.

23 For example, one of the concerns I have is
24 with Charles McKinney. Mr. McKinney definitely will
25 be deposed, and probably will be called at trial.

1 DR. BRADSHAW: Aaron, it might be helpful if
2 you identify his position, and others as you --

3 MR. BEHAR: Sure.

4 MS. MEVERS: He's the University ombudsman.
5 He used to be I think director at Equal Employment
6 Opportunity.

7 MR. BEHAR: So the EEO director. He's been in
8 focus for a little bit going back to the McGaha
9 litigation. The reason this is at issue is because
10 during the time that we had originally interviewed
11 McKinney, Morris was in those interviews when she
12 was general counsel.

13 During those interviews we learned that
14 McKinney as EEO director would receive complaints
15 and never really follow up, he wouldn't write things
16 down. These are all things we had discussed early
17 on. You know, he never maintained notes of his
18 investigation. Things that are all concerning.
19 Morris knows about these issues.

20 Well, now it's happening again. And what
21 we've come to learn is that Morris had approached
22 him in early 2007 with concerns of gender
23 discrimination. He took no action whatsoever. He
24 never investigated it, he didn't take any notes.
25 What we did come to learn is that rather than taking

1 the notes he maintained a red book of just his own
2 personal notations or information.

3 That red book is not part of the personnel
4 files, it is not part of the HR files. That's a
5 problem in terms of, you know, what HR had at the
6 time that they made certain decisions, personnel
7 decisions, and what we have in order to defend the
8 case.

9 What we're also learning is that during the
10 interviews he had offered some general information
11 about individuals who may have said things to him
12 during his, you know, partial investigations, people
13 who may have complained to him or raised some
14 concerns to him.

15 He wouldn't disclose to us who these
16 individuals were and wouldn't give us any specific
17 information, which in turn it impedes our own
18 litigation investigation and damages our defenses,
19 because I do not know what the plaintiffs know. The
20 plaintiffs certainly do know that they went and
21 complained to him and they know that nothing was
22 done. I don't know what else they may know that I
23 don't and he is not sharing with us.

24 MR. STARKEY: So he's a former employee?

25 MR. BEHAR: He is a current employee.

1 MR. HARRINGTON: That is the EEO director?

2 MS. MEVERS: Yes.

3 MR. HART: We're recording the meeting and we
4 have a court reporter, so if you're going to make a
5 comment on the phone just give your name first for
6 me.

7 MR. HARRINGTON: Thank you.

8 DR. BRADSHAW: When Dr. McKinney was asked why
9 he didn't follow up, what was his response?

10 MR. BEHAR: He from my recollection at one of
11 the interviews was that he does not like to take
12 notes because he does not want to have a paper
13 trail, which in and of itself is concerning.

14 MR. STARKEY: Is the red notebook not the
15 property of the University because it's his
16 contemporaneous notes at the time he was reflecting
17 upon interviews in his duties as the EEO director?

18 MS. LEONARD: I don't know the answer to that
19 question. The red notebook is what we call the
20 lawyer's diary, and it's sort of like a calendar,
21 and he makes notations on that.

22 MR. STARKEY: Is it in our possession?

23 MS. LEONARD: It's in his office.

24 MR. HART: Do you have it --

25 MS. LEONARD: No.

1 MR. HART: -- and have you seen it?

2 MS. LEONARD: Yes, I've seen it. It's not
3 hidden.

4 MS. WHITCOMB: So it belongs to the University
5 if we paid for it and we --

6 MS. LEONARD: That I don't know.

7 MS. MEVERS: Let me clarify that for you.
8 We've seen the actual book. What's inside the book
9 we have not seen.

10 MS. WHITCOMB: But is it University property?

11 MR. HART: Let me just -- the book is on the
12 University property, it's in a University desk, it's
13 a University book, just go get the book.

14 MR. VILLALOBOS: It's not that simple.

15 MR. HART: Are you saying you can't go in
16 there and -- who purchased the book?

17 MS. LEONARD: That I don't know.

18 MR. MALONE: Even if he purchased it though he
19 wrote in it on company time.

20 DR. LESTER: About company business.

21 Aaron, what's he tell you when you ask him
22 what he's learned and he says I'm not going to tell
23 you, what is his reason there?

24 MR. BEHAR: Very evasive answers. And, you
25 know, despite a lot of prodding he never gets any

1 more specific than that.

2 MR. HART: Have you asked for the notebook?

3 MR. BEHAR: We asked for the --

4 MS. MEVERS: We originally asked at the very
5 onset for documents that reflected anything that
6 dealt with Wendy Morris, Jaye Flood, and Holly
7 Vaughn, that HR had, athletics had, and general
8 counsel had. And I think we also included the EEO
9 office as well, did we not?

10 MR. HART: You're missing the question. Did
11 you ask him --

12 MS. LEONARD: For the book?

13 MR. HART: Did you ask him point blank you
14 want to see the book?

15 MS. MEVERS: At that point, no, we did not
16 know the book --

17 MR. HART: Had anyone asked him point blank to
18 provide the book?

19 MS. MEVERS: I don't know.

20 MR. STARKEY: Who does he report to?

21 DR. BRADSHAW: Me.

22 MR. STARKEY: So it seems to me that you could
23 simply walk in his office and say I'd like to have
24 the book. Is there a job description for the EEOC
25 director?

1 DR. BRADSHAW: Oh, sure.

2 MR. HART: It's part of the EEOC, and I'm
3 putting my government hat on. It's part of the EEOC
4 position to report this information to the
5 president.

6 MR. STARKEY: Right.

7 MR. HART: And if he has it, he has to report
8 it to the president.

9 MR. HARRINGTON: I have a question. The
10 information in that book may not be substantiated,
11 but can it be used in direct questions of Wendy
12 Morris currently or even in a court case? Can it be
13 used as a basis in which to determine information,
14 things that she knew and things that she may have
15 helped create the problem which she at some later
16 date would have a windfall situation that she's
17 working on right now for herself?

18 MR. BEHAR: It's hard to answer the question
19 because we don't know what's in the book, but
20 certainly it could be subpoenaed from Wendy's
21 attorney, if he knows that it exists and has reason
22 to believe it exists. He can also issue a document
23 request, which he hasn't done yet, that would be
24 broad enough to encompass that book. So that has
25 not been done yet, but it is certainly not out of

1 the question, they can learn about the contents of
2 the book.

3 MR. HARRINGTON: But can we -- I'm sure there
4 is something in there for us to use to defend our
5 position and maybe claim that Wendy Morris may have
6 set us up.

7 MR. BEHAR: Whether we can use it or not we
8 still need to know what's in there. I mean, it
9 doesn't matter what it actually said. You know,
10 part of our investigation is just to simply know and
11 collect the facts. So, I mean, that is going to be
12 something that I need to get. Getting it directly
13 from him was not an easy task. Getting any
14 information from him was not easy at all.

15 MS. WHITCOMB: It's State property.

16 MR. HART: I'm confused. No one has asked him
17 directly to hand the book over? Did you go in and
18 say I need to see this book as part of our case, and
19 I would like to have it today at ten o'clock?

20 MS. MEVERS: No.

21 MR. HART: Why is the book an issue when you
22 haven't even asked for it?

23 MR. BEHAR: Because the information that we
24 have asked him for in discussions he's refused to
25 give to us, and then we learned of the book at the

1 end of our interview with him. So there has not
2 been an opportunity yet to actually take whatever
3 steps are necessary to obtain that book, internally.

4 MS. WHITCOMB: Couldn't Vee do that? Couldn't
5 Dr. Bradshaw do that?

6 MR. HART: I'm making that assumption.

7 MR. STARKEY: Just walk in and get the book.

8 MR. HART: Walk in and say this book is
9 University property. Unless there is some reason
10 this is a personal matter for him and it contains
11 his personal information. But this is business in
12 relation to the University. That should be a non
13 issue.

14 DR. LESTER: Sounds like there is no way he
15 could say it's personal, you can't have it, because
16 it all dealt with business.

17 MR. VILLALOBOS: We don't know that. We
18 haven't seen what's in the book. But surely we --

19 MR. HART: We have not directly asked for the
20 book.

21 MR. VILLALOBOS: Surely we can make a copy of
22 the book and he can redact whatever is personal, and
23 whatever is the university's is the university's.
24 The bottom line is getting ahold of the book. If he
25 has an objection to it, that he says he has personal

1 things, well, you ask him, listen, make a copy of
2 the whole book, black out or redact whatever you
3 think is personal. If that's the case --

4 MR. MALONE: After he's made the copy of it.

5 MR. VILLALOBOS: There is also procedures I
6 would think for that.

7 DR. BRADSHAW: Let me say a couple things on
8 this point. I think part of the point here that
9 Aaron is trying to make is how evasive, as an
10 example, Dr. McKinney has been during the interview
11 process.

12 MR. VILLALOBOS: That's one example, or are
13 there others?

14 DR. BRADSHAW: That's one example, there are
15 others. And the second thing is I'm sure we can get
16 the book. No one has asked me to get the book, and
17 I only recently learned of the book as did general
18 counsel in the interviews with Dr. McKinney. But,
19 again, I think the point here to be made is how
20 evasive some of our folks who have been interviewed
21 have been in this process.

22 And we can talk later about getting the book,
23 and we could do that. But it might be helpful,
24 Aaron, if you can provide other examples of either
25 conflicting stories or evasiveness.

1 MR. BEHAR: Sure. There are a number of
2 individuals as I said earlier who have provided
3 information during these interviews, at least that
4 is cause for concern from an operational perspective
5 as well as a litigation perspective.

6 For example, Bonnie Yegidis, she is the former
7 University provost, she explains to us that she had
8 complained of gender issues and females being
9 discriminated against and harassed to Charles
10 McKinney, Mark Rosenberg and Ed Morton. What's
11 concerning is that she told us that Mark had
12 responded to her concerns by saying keep your head
13 down and stay out of the fray, and try and work it
14 out with Dr. Pagnetter.

15 MS. WHITCOMB: Is that Bonnie Yegidis the one
16 who held the luncheons where men were not allowed to
17 attend?

18 MR. BEHAR: Yes.

19 DR. BRADSHAW: For the record, Mark Rosenberg
20 is a chancellor in the state University system.

21 MR. BEHAR: And during the interview Yegidis
22 says that despite her complaints nothing was ever
23 done. Her concerns never went anywhere beyond the
24 few individuals that she had communicated to. She
25 also said that Dr. Pagnetter refused to meet with

1 her to discuss her issues, even though he would have
2 been her direct line supervisor.

3 So these are some of the concerns that she has
4 concerning the allegation of gender inequities and
5 how, you know, when she tried to voice these
6 concerns they fell on deaf ears. I have also
7 heard --

8 DR. BRADSHAW: Aaron --

9 MR. BEHAR: I'm sorry.

10 MR. VILLALOBOS: Mr. President, are you
11 talking in general or both cases, or just Wendy
12 Morris? Can we at least direct it to one or the
13 other, or are you speaking in general?

14 MR. BEHAR: I apologize for that. When we
15 were interviewing these individuals in order to
16 minimize the disruption to them we would speak to
17 them about both cases. We would usually start with
18 the Morris litigation, get some information,
19 whatever we needed, and then move on to the Flood
20 litigation. In between we would be provided
21 snippets of information, just generalities
22 concerning the overall atmosphere as they tried to
23 characterize it in the University. So it would be
24 applicable to both Morris and Flood.

25 I have also heard from a number of individuals

1 and rumors around that she is consulting with an
2 attorney. She's been seen around town with an
3 attorney. During her interview she came in with her
4 daughter, who made a comment that, you know, perhaps
5 we should wait to speak to your attorney or until he
6 can be here to continue to interview. So we do know
7 she's represented. The extent of it or the reason
8 for representation I do not yet know.

9 DR. BRADSHAW: We should be clear that "she"
10 in the last minute or so has been Dr. Yegidis who
11 we've been referring to who has been seen around
12 town with an attorney and possibly consulting.

13 MR. BEHAR: Yes, sorry. Another person who we
14 had interviewed who raised concerns as to the
15 environment and gender issues was Susan Blanchard.
16 She says that Dr. Peggnetter had created a hostile
17 work environment for her. She had told us about
18 circumstances where he called her into his office
19 and slammed the door closed, stood in her face very
20 close to her. You know, became very loud, made her
21 feel uncomfortable, was very aggressive with her,
22 accused her of insubordination.

23 In fact, she even mentioned about seven months
24 after she had started working here she began looking
25 for another job. She had complained to special

1 assistant of the provost Lynn Bragg. And after that
2 complaint it had stopped for a little bit of time,
3 but the problems resurfaced when it was time for her
4 performance evaluation. Again, she had spoken --
5 she says that she has spoken with Wendy Morris and
6 with Dr. Yegidis about her complaints, and they had
7 shared in the same feelings about Dr. Pegnetter that
8 Blanchard had.

9 So we have these three individuals who are
10 certainly going to be able to come in and testify at
11 least in the Morris litigation, and possibly also in
12 the Flood litigation as to their feelings of this
13 overall inequity in the University. They voiced
14 their concerns to a number of different individuals
15 and it just never went anywhere. And oftentimes it
16 just got worse, you know, after some time with Dr.
17 Pegnetter.

18 So these are all going to be witnesses who one
19 way or another are going to be able to have that
20 effect on the jury if this goes to trial. It is
21 exactly what the plaintiffs want. Because in the
22 plaintiffs' cases it's not so much about the
23 salaries, because those figures are usually
24 relatively low. Compensatory damages, that's where
25 the big dollars come and hit us hard. This is

1 exactly the type of evidence they need.

2 Other concerns that we have besides just --

3 MR. MALONE: Excuse me. Evidence has got to
4 be a basis of fact rather than just a feeling, or I
5 remember, or this is kind of what it seemed like to
6 me. So that -- I don't want to play lawyer, but on
7 cross, playing Perry Mason, it doesn't seem to be a
8 big problem.

9 MR. BEHAR: Absolutely. On cross-examination
10 there's a number of things that we can do. But the
11 fact is and likelihood is very great that this
12 information is at least going to make it to a jury,
13 and they're going to hear story after story after
14 story about, you know, I was treated unfairly, and
15 you know, plus whatever it is that we don't know.
16 Whatever it is these people have not told us or
17 shared with us is going to come out.

18 So my ability to cross-examine them after a
19 while, after three, four, five witnesses all starts
20 to seem like excuses. And that's how they're going
21 to present their case. They're going to say, you
22 know, how many times can we hear the same excuse,
23 it's excuse after excuse. But can six people be
24 wrong, can ten people be wrong, and then it's up to
25 a jury to figure out. It's a big chance to take,

1 it's a big risk to take, especially with the numbers
2 we've seen being posted on these jury verdicts.

3 DR. BRADSHAW: Can you speak to what Dr.
4 Pegnetter's response has been to these allegations?
5 Was he confronted with those or told that people
6 have suggested he acted in that manner.

7 MR. BEHAR: We interviewed Dr. Pegnetter and
8 we went through a lot of these allegations, and it
9 was just a simple denial. There was no real
10 explanation for anything. It was just, you know, it
11 didn't happen, I didn't do that. That was
12 essentially it. Credibility-wise, if I were -- you
13 know from my personal standpoint I have issues with
14 the credibility.

15 You know, I sat in front of him for probably
16 an hour or so. I could tell I was probably being
17 deceived, I was being lied to. So if I'm sitting on
18 the jury it will probably come across as well.
19 That's another concern. Forget about what the words
20 are, because I can sit here and talk to you about
21 these things all day long, but when you actually sit
22 and look at these people in the face and you hear
23 the stories, you get an impression for who is being
24 credible, who is being believable and who's not. He
25 is not one of those people who I'm going to believe

1 if I were on a jury.

2 Moving aside from that for a second, there are
3 some weaknesses in this Morris case that came out
4 and were really stressed on during the mediation. I
5 am sure there are a number of things that her
6 attorney did not want to share with us, there is no
7 need to at that point.

8 But some of the things that -- even the
9 mediator had come back and forth and wanted to
10 discuss with us in private as to some of the things
11 that concerned her. The big one was the Baker
12 letter, the initial letter that started everything
13 off, detailing some of the gender inequity and Title
14 IX concerns that was submitted by Ms. Baker on
15 behalf of Jaye Flood and Vaughn.

16 MR. STARKEY: Who was it submitted to?

17 MS. MEVERS: It was originally communicated by
18 telephone to Dr. Pegnetter that Merrily Dean Baker
19 wanted to speak to him. President Pegnetter
20 referred the call over to Charles McKinney, and
21 Charles McKinney ultimately met with Merrily Dean
22 Baker and had requested that she not give him the
23 letter, but ultimately she did give him the letter.
24 And it was communicated back out to President
25 Pegnetter.

1 MR. BEHAR: This letter is a source of issue
2 because at the time that it came in Morris is still
3 serving as general counsel. This is the type of
4 thing, which the mediator pointed to also, that one
5 would expect general counsel would receive, and it
6 was never provided to her.

7 In fact, there was some individuals who said
8 that there was, although they were never told not to
9 discuss the nature of the letter with her, but to
10 give her the letter, it was an atmosphere of do not
11 speak to Morris about any of this. And the reason
12 that we're getting is because Dr. Pegnetter simply
13 lost trust in her, which is grounds for a defense.

14 The problem with that defense, which was
15 pointed out at mediation, is that it's easier for
16 them to prove that our defense is pretextual, which
17 means that it's a false defense. I say that because
18 the reason why it was given to us by Dr. Pegnetter,
19 and during our interviews we discovered that the
20 reason why he had lost confidence in Morris was
21 because he had learned that during the Dr. Merwin
22 era she was giving him one piece of advice and then
23 turning to the board and communicating the exact
24 opposite.

25 So there was some conflict and conflicting

1 communications going on there. Dr. Pegnetter knew
2 about those, and so he had lost trust in Morris.
3 The difference is that there is a distinction
4 between losing trust in your general counsel when it
5 concerns matters of the presidency and legal matters
6 that come in that have nothing to with the
7 presidency.

8 And that's exactly what this Baker letter was.
9 This was a legal matter, it was exposure to the
10 University, and something she is going to say would
11 have been reasonable for her to obtain. This is an
12 example that she's going to point to of how she was
13 retaliated against. And in her timeline of events
14 this falls right in the middle. This is very strong
15 evidence for her that she was in fact retaliated
16 against.

17 Again I have to stress, because our mediator
18 is very savvy, very knowledgeable in these types of
19 cases, we went through a lot of research before we
20 picked her and decided on her. DFS, the State, had
21 a lot of input in that. We all agreed she would be
22 the best person, and she came to us and voiced her
23 serious concerns because of this one issue.

24 There are also a lot of inconsistencies
25 between witnesses. For example, there is a Steve

1 Belcher, we had spoken to him, the director of Human
2 Resources. And then there's also McAloose,
3 athletics director, and Kathy Peterson is associate
4 athletics director.

5 DR. BRADSHAW: Mike?

6 MR. VILLALOBOS: I want to say, if it's the
7 will of the board, I'm not sure if I want to sit
8 here and go blow by blow. They're the ones who are
9 hired to do the job, do the work, they're in it up
10 to their necks in doing this and doing investigation
11 evidence. I would like to hear what the
12 recommendation is.

13 MR. BEHAR: Okay.

14 MS. WHITCOMB: I have a question. How many
15 women did you interview that felt they had not been
16 discriminated against and had been treated fairly by
17 the University.

18 MS. MEVERS: One.

19 MS. WHITCOMB: Out of how many?

20 MS. MEVERS: I take that back, two.

21 MS. WHITCOMB: And you interviewed how many
22 women employees?

23 MS. MEVERS: I have interviewed at least
24 three --

25 MR. HARRINGTON: This is Lindsay. Can whoever

1 is speaking, speak up, please.

2 MS. MEVERS: We've interviewed Kathy Peterson,
3 Susan Evans, Bonnie Yegidis, Susan Blanchard,
4 Jennifer Goen.

5 MS. WHITCOMB: How many female employees do we
6 have?

7 MR. HART: Lots.

8 MS. MEVERS: We interviewed -- and the way the
9 interviewees were selected, they were individuals
10 who would have been involved or had some knowledge
11 or were identified as having some knowledge in
12 either the Flood-Vaughn matter or in the Morris
13 matter. It wasn't a matter of just going and
14 interviewing every woman -- Barbara Krell was
15 another one we interviewed. It was not a matter of
16 we just went and interviewed every person in the
17 University --

18 MS. WHITCOMB: But if the issue is the
19 University discriminates against women, I would
20 think we would need to take a bigger sample.

21 MR. BEHAR: Well, that's not going to be the
22 issue at trial. The issue at the trial is whether
23 this particular plaintiff was discriminated against,
24 not whether all women at the University were
25 discriminated against. And so one defense that we

1 have is a statistical defense. We can say, look,
2 let's look at statistically how many women do we
3 have who are in upper levels of administration, how
4 many women do we have who have no complaints, so on
5 and so forth.

6 I can tell you from experience that a court is
7 not going to allow me to march one hundred women in
8 there to testify as to how great the environment is,
9 because the circumstances are all different. I'm
10 going to be precluded from doing that. What the
11 court cares about and what the court is going to
12 allow the testimony to come in from is these
13 particular women, this particular plaintiff, and how
14 does this particular plaintiff feel she was
15 discriminated against, and who else can she point to
16 who has evidence.

17 I may be able to present the statistical
18 information and it could help. It could help, but
19 the problem is you have a lot of direct evidence,
20 you have a lot of very strong circumstantial
21 evidence. There's a lot of things here -- you know,
22 for example, the placement of the University on
23 notice of these types of issues, the failure to
24 investigate these concerns, all of these things are
25 going to enrage a jury.

1 I can stand there all day long and say to
2 them, yes, but look at all these women that we have
3 in high positions. And that's going to be a good
4 thing, but I don't think it's going to carry the
5 day. It's not going to save us from the ultimate
6 exposure. I'll be very limited to how much of that
7 I can do.

8 That's the problem, is that the plaintiffs in
9 these types of cases do not have to prove every
10 woman was discriminated against, just that
11 particular one. So how they do it is a very liberal
12 approach, because that's just the nature of how the
13 trials are conducted. They have a liberal approach
14 to bring in whichever witnesses they want, and then
15 we have the burden of disproving whatever these
16 witnesses are saying.

17 While we do have some leeway in our evidence
18 we really are going to have to attack her witnesses,
19 because those are the ones the jury will be
20 listening to first, and probably the most strongest,
21 only because those are her own witnesses. A lot of
22 them may have some biases which we could
23 cross-examine them on. A lot of them may not have
24 biases, and those are the most dangerous ones, the
25 ones that we can't prove there's a bias, that there

1 is some underlying motivations going on. I suspect
2 that a number of her witnesses are going to be
3 unbiased witnesses.

4 DR. BRADSHAW: Jaynie, I know what you're
5 getting at. I guess the question for us, the
6 governing board and for this administration, is do
7 we have some type of systemic problem with gender
8 issues and gender discrimination? That can be asked
9 and investigated or looked into outside these
10 lawsuits.

11 I think it's incumbent upon us as we move
12 forward to make some decisions on determining that.
13 What kind of atmosphere do we have here, and is it
14 one that condones gender discrimination. And if
15 that's the case we need to address that. I think
16 that's probably where you're kind of going with
17 that.

18 MS. WHITCOMB: Well, my point is we've had
19 three women now file suit out of how many women that
20 work at the University.

21 MR. BEHAR: That is a very good point. To the
22 best that I'm allowed to I'm certainly going to
23 bring that up. These are all things that are your
24 basic lines of defense.

25 MS. WHITCOMB: And are these litigious

1 individuals? Have there been any other lawsuits
2 filed by them?

3 MR. BEHAR: Absolutely.

4 MR. HART: Doug, do you have a question?

5 MR. ST. CERNY: They're kind of tied together,
6 I have two. One, going back to the red book, it
7 would appear to me that you clearly have established
8 a relationship as an employer/employee. And where
9 does an employee get the authority to keep private
10 records on public matters as they pertain to a
11 public university without having it being mandatory
12 that those become records of the University, which
13 is a public institution. I think there's a real
14 question on that and problem with that, number one.

15 Two, it's the same thing with Morris. Where
16 do you separate attorney/client and
17 employer/employee relationships, where she can use
18 confidential information through the process of
19 being of counsel, and then turn around and use it to
20 her own benefit by jumping into a lawsuit, hanging
21 it on with other lawsuits and using the information
22 she was privy to in the beginning to further her own
23 lawsuit?

24 I mean, it seems like here, you know, we need
25 to step back here and take a deep breath and look

1 at, okay, who's in charge here and what are the
2 rights of the University and the State of Florida,
3 and what is and what is not property at this
4 University? Is that a public record? I think you
5 have a question there too, except that it might be
6 exempt coming under Title IX.

7 And then when you turn around and you have
8 in-house counsel using privileged information for
9 her own benefit in a future lawsuit, there's a whole
10 lot of posturing getting ready for that, and just it
11 seems like we need to clarify these, or are they
12 going to be ultimately our defense.

13 MR. BEHAR: The two issues you raised, they're
14 both excellent points. To me they're not as closely
15 tied together. To me the -- well, first of all,
16 talking about the red book, and I hate to go out of
17 turn, but that's not the only example --

18 MR. ST. CERNY: That's also --

19 MR. BEHAR: We get into the Flood case and we
20 have another very serious problem, which is that
21 Kathy Peterson has told us that she maintains what
22 she calls a desk file, which is all the bad stuff
23 that she's collected against Flood, none of which is
24 in the HR file or the personnel file or anything
25 else. HR doesn't even know about this.

1 What is more concerning is that a public
2 records request came in by Flood asking for these
3 documents in the desk file. Peterson tells us that
4 she produced everything to her, didn't keep a copy
5 of exactly what was produced and cannot confirm to
6 me that what we have is the exact same thing as to
7 what she turned over to Flood. She may have given
8 some originals, some copies, it's unclear.

9 So now I'm in a position where I do not know
10 what Flood has. I have Peterson who is maintaining
11 entirely separate records, disciplinary records.
12 That's our defense, is discipline. That's how I get
13 around the problem. None of this is in the
14 personnel file in HR. So how can HR logically rely
15 on any of this discipline in making its
16 determinations?

17 This is the problem -- that's a very serious
18 problem, the red book and this. You know, these are
19 two examples of who knows how many where you have
20 personnel maintaining, you know, separate
21 documentation, which is exactly the type of
22 information that has to go to HR so they can then
23 act appropriately when they get a complaint or when
24 it comes time for disciplinary action.

25 MR. LUCAS: Who does Peterson work for?

1 MR. BEHAR: Carl McAloose. The other point
2 that you raised as to how much can Morris rely on
3 the confidential information that she's gathered as
4 an employee of the University against us, that's
5 something that's addressed in the lawsuit that we
6 filed against her. And strategically I've got to be
7 very careful how I address these issues.

8 Here's why. From a timing standpoint the
9 depositions in Flood are going to be taking place
10 first. Flood's lawyer is going to depose Morris
11 September 19th -- the 17th. To the extent that the
12 lawyer gets into anything that is attorney/client
13 privilege, right now I have carte blanche to object
14 all I want and threaten any type of sanction, Bar
15 complaints, all sorts of things available to me
16 right now.

17 If I go to a hearing and expedite that process
18 where I ask a court to now tell me what is and is
19 not attorney/client privilege and to what extent are
20 you going to permit her to testify or not testify to
21 certain things, I run the risk that a judge may
22 disagree with a lot of my points and open up the
23 door so that she can testify openly in the Flood
24 case.

25 Right now I can silence her a little bit in

1 the Flood depositions, actually a lot, and limit the
2 information that they get in that case. That's
3 exactly what I want to do. Once that's over I'll
4 move forward on my case and prevent her from
5 testifying in Wendy's own case. So it's a matter of
6 timing and trying to be very strategic about these
7 things. And so far, knock on wood, her attorney has
8 not moved forward on that process, despite his
9 threats to do so. So I need to wait it out until
10 mid September and see what happens.

11 MR. LUCAS: Are you saying that would be part
12 of the settlement with Morris?

13 MR. BEHAR: It would all go hand-in-hand so
14 that our claim against her goes away, her claim
15 against us goes away. And again I would remind you
16 that the claim we have against her is not a monetary
17 claim, it's injunctive relief. It's an equitable
18 claim that we've raised just to limit what she can
19 disclose, just to protect ourselves.

20 MR. STARKEY: Has there been any discussion
21 that these employees were instructed not to keep
22 official records?

23 MR. BEHAR: I have not heard that yet.

24 MR. STARKEY: Each individual has come to
25 that -- they've reached that conclusion on their own

1 that that's the way they're going to keep the
2 records?

3 MR. BEHAR: Right.

4 MR. HART: How does the environment allow
5 that? Because all these people have been making the
6 assumption in some managerial type position in the
7 University setting, and all of them should be aware
8 of the public records law. All of them should be
9 aware that there's only one file. And the law is
10 very clear on that, that you can only have one file,
11 unless it's medical.

12 I think that's going to go to a separate --
13 I'm thinking that's going to go to a separate part
14 of this, where at some point the president is going
15 to have to do a full investigation of the client,
16 because there's more than one person keeping their
17 own file, which is a grave concern to me.

18 MR. STARKEY: A violation of their job
19 description and duties?

20 MR. HART: If it's not in the HR file it
21 didn't happen.

22 MS. LEONARD: If I could just add, as far as
23 Kathy Peterson is concerned we didn't find out until
24 the investigation came up regarding Flood's and
25 Vaughn's internal complaint that they had a file.

1 And once we found out we did disclose to her that
2 she could not keep a separate file. Now, whether
3 she got with HR and transferred the information into
4 the HR file or whether she discontinued the
5 practice, that I don't know.

6 DR. ST. HILL: The question is did the
7 employee know of that second filing and have
8 knowledge as to what was in it.

9 MS. LEONARD: The employee as in Flood, did
10 Flood know that there was a desk file?

11 DR. ST. HILL: Yes.

12 MS. LEONARD: She found out.

13 MS. MEVERS: She came to learn about it in a
14 newspaper article.

15 MR. BEHAR: That leads into another issue in
16 the Flood case, which is a defamation claim which
17 arises out of this newspaper article. Because
18 during an interview with a reporter I believe
19 Peterson took that desk file and waved it around and
20 disclosed some generalities as to what was in there.

21 But, you know, what Flood is saying is, well,
22 it's directly related to her performance as an
23 employee and that it was defamatory. So now we're
24 also defending a defamation claim because of that
25 desk file being waved around. So there's a lot of

1 things that have branched off of this, but it's one
2 more issue that has arisen because of it.

3 DR. BRADSHAW: I'll remind the board and
4 others, the reason for the actions that I took
5 several months ago in avoiding the most recent
6 evaluation and issuing the letters of reprimand to
7 Carl McAloose and Kathy Peterson was because I
8 determined through an investigation that the
9 evaluation that was being proffered did not have
10 proper documentation to substantiate it.

11 And so we voided that evaluation for the
12 reasons that I alluded to here and we issued two
13 letters of reprimand. I should also point out that
14 both Kathy Peterson and Carl McAloose have responses
15 to those reprimands and they were placed in the
16 personnel file as well.

17 MR. HARRINGTON: I have a question. Was
18 Morris aware of these files being kept? And if she
19 was aware of them, is there any indication that she
20 indicated to them in a written form that they were
21 to cease and desist and/or to forward that forward
22 to be a permanent part of the HR file? Did she take
23 actions at any point in written documents, even to
24 the president or department heads, trying to stop
25 some of this improper activity within the school?

1 MS. LEONARD: At the time we became aware that
2 there were desk files Morris was no longer with the
3 University. We became aware of those files after
4 September of '07. Morris left in July of 2007. And
5 since those files HR has conducted training sessions
6 regarding proper documentation related to
7 performance evaluation.

8 MR. HARRINGTON: Has questions been asked of
9 Morris, if she was aware of anything of this nature?

10 MS. LEONARD: No.

11 MR. HART: Has HR conducted training before
12 this?

13 MS. LEONARD: They have conducted --

14 MR. HART: As far as filing and evaluations
15 and --

16 MS. LEONARD: That I don't know. I know they
17 regularly conduct training, but whether or not they
18 have previously conducted training on this specific
19 subject, I don't know.

20 DR. LESTER: Do we know on the Peterson files,
21 were they all complaints about the way the
22 University was operating, or in some cases was it
23 her notes on things employees were doing that for
24 whatever reason she chose not to put in their file?

25 MR. BEHAR: In the desk file?

1 DR. LESTER: Right.

2 MR. BEHAR: What was in there was older, a
3 little bit dated information, and a lot of
4 handwritten notes. One of the things that we're
5 having -- that we may have a legal issue with is the
6 exchange between Peterson and McAloose of draft
7 evaluations for Flood and for Vaughn.

8 Now, we came to learn that in Vaughn's case
9 there was an original evaluation put together, then
10 there was some red line changes by one -- by either
11 McAloose or Peterson that went back and forth. They
12 could have had notes or not had notes. We then came
13 to suspect that the same may have existed for Flood.

14 We asked the questions of these witnesses, and
15 they confirmed that there was more documentation in
16 the file concerning Flood, but they don't know where
17 it is. It could have been thrown away. If that is
18 the case we may be faced later on with a spoliation
19 of evidence claim if we were to prevail at trial in
20 the Flood case or the Vaughn case.

21 Now, even if we don't prevail what could
22 happen is that in the litigation of Flood and Vaughn
23 there could be what's called an adverse jury
24 instruction. If they can demonstrate that this
25 draft or whatever this other evaluation was that had

1 some markings on it, if they can demonstrate that it
2 was in fact destroyed and there was some indication
3 of potential litigation in the future, what the
4 plaintiff can do is ask the judge for an adverse
5 jury instruction.

6 In other words, you're asking the jury to
7 assume because they destroyed the document, assume
8 that whatever is in the document is going to be
9 negative as to the University. And the jury goes
10 back in the jury room, and without anything to the
11 contrary they say, well, this document must be
12 against the University, that's a jury instruction,
13 and then that can work against us as well.

14 DR. ST. HILL: Has anyone asked whether or not
15 there is any evidence or documentation sent to all
16 supervisory personnel in the past before this
17 indicating that there were files not to be kept --
18 because I would think that would be --

19 MS. LEONARD: No.

20 MS. WHITCOMB: Is it unusual to do a draft
21 while you're doing an evaluation and show it to your
22 supervisor before you do an official evaluation? I
23 wouldn't think that would be unusual.

24 MR. BEHAR: Given the allegations it's going
25 to be called into question. Especially because --

1 let me see if I can go back and recall these
2 interviews. We were told that, I believe it was
3 Peterson, that when she would look at the different
4 performance categories, when she went to determine
5 the ultimate evaluation she would look at Flood and
6 weigh most heavily those in which she scored the
7 poorest. And then when she would do Vaughn's she
8 would weigh most heavily most in which she performed
9 the poorest.

10 But in looking at the two they were never the
11 same. So what she's admitted to us is that she
12 would -- if Flood performed poorly in category A and
13 exceptional in B through F, she would weigh category
14 A the heaviest. Whereas where Vaughn performed
15 excellent in A through C, for example, and D she
16 performed the poorest, she would weigh D the
17 heaviest.

18 And that in itself doesn't make any sense, and
19 that's where these problems come in. So that's
20 just -- it's another example of why you need these
21 drafts. That's what they're going to say, is this
22 draft is relevant and it's material evidence to see
23 exactly what the communications indications were in
24 the way they rated it.

25 MS. WHITCOMB: But is that common practice to

1 weigh some areas more than you weigh the other
2 areas?

3 DR. BRADSHAW: I think in this case, just an
4 observation, I think that the tool that we're
5 required to use does not allow for that kind of
6 weighting. And it probably does not serve as, in my
7 opinion, the best evaluation tool that we can have.

8 MS. WHITCOMB: So our evaluation tool doesn't
9 have -- if you have 1 through 5, that this twenty
10 percent, twenty percent, ten percent, fifty percent,
11 it doesn't have that?

12 MS. LEONARD: That's correct, it does not.

13 MR. HART: Does it have a numerical number?

14 DR. BRADSHAW: I think it's 1 to 5.

15 MS. LEONARD: There is an outstanding, exceeds
16 expectation, meets expectation, below expectation,
17 and unsatisfactory. And there is not a number that
18 you get, like between 1 and 5, 5 being greatest, so
19 that you can add up the numbers and get an average.
20 There is none of that kind of compilation that you
21 can come to a consistent outcome between the
22 employees.

23 MR. HART: If an employee is performing in an
24 area below standards, it would make sense that
25 during that process you emphasize maybe what that

1 person needs to do in order to improve, to bring the
2 unsatisfactory or below to meet expectation. If you
3 have an employee that did not come to work and you
4 rated them very low in attendance, it would be
5 reasonable for you to put on there that the reason
6 this person received an unsatisfactory in attendance
7 is because of their being late or failing to meet
8 the timelines of the University.

9 MS. LEONARD: That's correct.

10 MR. HART: I don't see where that would be a
11 significant issue, because in order for that person
12 to improve you must look at those areas. If I meet
13 expectation in every category there's not a whole
14 lot you need to say to me, but continue on what
15 you're doing. But if I fell short in some area, as
16 a manager you have to let me know what I'm doing
17 wrong and hopefully give me some ideas of what I
18 need to do to improve. I don't see the correlation
19 here.

20 MS. LEONARD: If I could add. Part of the
21 problem is that during the evaluation, yes, if you
22 are below expectation the instrument requires you to
23 explain why, and Kathy did do that. The problem is
24 that some of the explanation falls outside of the
25 fiscal year for the evaluation.

1 For example, if the fiscal year is '06/'07 and
2 you're saying I'm below expectation because I did X,
3 Y, and Z, but what you're pointing to or holding out
4 as occurring in '06/'07 actually occurred in 2003 or
5 2004, some time outside the evaluation period.

6 MR. LUCAS: I thought I heard you say that an
7 area that was a strength was de-emphasized with one,
8 and in a different area was de-emphasized with the
9 other. So that doesn't make any sense.

10 MR. BEHAR: Right.

11 DR. BRADSHAW: I don't want to move on from
12 the -- because we are talking about Flood-Vaughn. I
13 think we've explained thoroughly the situation with
14 the Wendy Morris case. There are some other I think
15 key components of the Flood-Vaughn case that we need
16 to put on the table so the trustees can be as well
17 informed about that case. Clearly these cases are
18 related because they both have similar claims of
19 gender discrimination.

20 MR. BEHAR: A lot of the evidence and issues
21 that we discussed just now concerning Morris I
22 expect will come up in the Flood-Vaughn litigation
23 as well. Let me just share with you where I am so
24 far. We have a mediation coming up on this case,
25 not this coming Tuesday, but the following Tuesday,

1 the 3rd or the 4th.

2 I have been speaking with Linda, who is Flood
3 and Vaughn's attorney in D.C.

4 DR. BRADSHAW: Can we have her last name,
5 please?

6 MR. BEHAR: Correia. I have tried to solicit
7 a formal demand from her so that I can come and
8 share with you whatever the scope is or the ranges
9 are of dollars. She as of last night has been
10 unable to get that information from her clients.
11 She's leaving it up to her clients to make the final
12 decision on the dollar amounts. She said it will be
13 in the seven figures. It will probably not be in
14 the low seven figures.

15 And she did make a couple of other I think
16 important points. The non monetary demands may
17 outweigh some of the financial demands that she's
18 placing on us. There are three key things she's
19 looking at right now. Potential reinstatement for
20 Vaughn, potential reinstatement for Flood.

21 And then also an opportunity at the mediation
22 to speak with the president as to the status of what
23 we're doing internally at the University to ensure
24 that a lot of these problems do not happen again, or
25 that we're taking serious measures to make sure that

1 whatever the concerns are that are being raised in
2 all these lawsuits are being taken seriously and
3 addressed.

4 The president's participation at the mediation
5 is confidential under the court's rules. So there
6 is no real danger of anything that we discuss there,
7 making it out into a newspaper or into any of the
8 pleadings. She also assured me it would be non
9 adversarial. She would not be questioning him, but
10 rather exchanging ideas as to some thoughts she has
11 as to how we can all improve based on things she has
12 seen in the past, and ideas she has offered in the
13 past that have worked for other universities and
14 other colleges. She also wants to get an impression
15 from us as to what it is that we're doing to move
16 forward. She said that with that and the potential
17 reinstatement, that the dollar figures will drop
18 significantly.

19 In my evaluation to the State I have assessed
20 the value of this case somewhere, and I know it's a
21 broad range, but somewhere between \$700,000 to
22 \$3,000,000. And the \$700,000 very low one million
23 figure would be considering a reinstatement and also
24 an early mediation before there is real discovery
25 that's taken place.

1 The higher end, the three million -- by the
2 way this is for both plaintiffs, she's lumping them
3 together, the \$3,000,000 is a consideration of the
4 way that the Morris mediation went. They started
5 with three million, I suspect that Linda Correia may
6 start at around the same figure, maybe even a little
7 higher. But that was my evaluation.

8 I've asked for settlement authority of
9 \$2,000,000, approximately one per plaintiff. And at
10 least that will give us enough room to be able to
11 negotiate with them in the event we're not able to
12 reinstatement one or both of them. I have not
13 gotten authority from DFS yet. They're taking a
14 little bit more of a liberal approach to way they
15 value these cases.

16 That may have changed since my conversation
17 with them yesterday concerning the caps on Title VII
18 and the differences between Title VII and IX. That
19 was something that they had raised concerns about a
20 number of times, and we were able to earn explain
21 that yesterday. Now having that new information
22 there may be some shift in their approach to valuing
23 this case.

24 We did the same thing in looking at Flood,
25 which is we went through a number of individuals,

1 tried to get whatever information we could and start
2 securing our own key witnesses for depositions and
3 to prepare affidavits for them in the future so that
4 we can nail them down. In the process of doing that
5 we came across the same types of problems that we
6 came across with Morris.

7 For example -- actually before I get into
8 that, there is a woman by the name of Donna Lopiano.
9 She is an expert in Title IX cases. I've spoken
10 with DFS. She's very well respected, Ms. Lopiano.
11 She has testified in about thirty cases or so.
12 She's been dealing with Title IX and sports advocacy
13 groups for about fifteen, sixteen years or so. I've
14 spoken with DFS about retaining her as an expert for
15 litigation in this. They are on board, and they've
16 authorized me to go ahead and speak with her next
17 week to at least try and secure her services for the
18 litigation.

19 I'm also going to take the opportunity to
20 speak with her, with your approval, to come into the
21 University and perhaps give us some advice or at
22 least take a look at our programs and the way that
23 things are running right now, and tell us if she has
24 any opinions as to how we can improve, and if there
25 is any aspects or any gaps in our programs that she

1 sees potential liability for.

2 I think this would be very strong evidence at
3 any future trial that we are taking remedial steps
4 to correct whatever problems may have existed in the
5 past. This could work against us though. The
6 reason is that early, early on when Littler
7 Mendelson was conducting the investigations
8 concerning Flood and Vaughn she had communicated
9 with the investigator, offered her services, this
10 was December, '07 offered her services, all that is
11 documented, but it went nowhere.

12 So to the extent that plaintiffs can learn
13 about this, they may use it at trial against us to
14 say, well, University, you had an opportunity in
15 late 2007 to begin the correction of whatever the
16 problems were to begin the process and you didn't do
17 anything for almost a year later, so shame on you.
18 It could backfire. But at least we have her coming
19 in, taking a look at our programs, and it is better
20 than not doing anything, in other words.

21 Plus, for the litigation I think she was sort
22 of an exceptional expert, and my fear is that Linda
23 Correia may try to get to her first before we do.
24 There may be a potential conflict if Linda tries to
25 speak with her, because of her involvement, or at

1 least early, early negotiations with our
2 investigator to come and do some consulting services
3 for us. So that being said --

4 DR. BRADSHAW: Let me just -- Ms. Lopiano's
5 name did come up while we were in really the meat of
6 the investigation. So we had not made any
7 determinations about what really was the problem at
8 the time. She is well renowned with Title IX,
9 issues and if you get a chance you can go on the
10 Internet and look her up.

11 My opinion, she would be a very, very strong
12 witness for Flood-Vaughn, just because of her
13 reputation. And I think she does have a very solid
14 reputation with Title IX issues. But I would be
15 frank in saying that if we engage her, and I'm not
16 saying we shouldn't, I think it would be a feeling
17 in Athletics anyway that she would be predisposed to
18 finding -- not that she would construct them, but
19 predisposed to finding Title IX issues in Athletics.

20 MR. STARKEY: For what reason?

21 DR. BRADSHAW: That's just --

22 MR. STARKEY: Why is she perceived as being
23 predisposed?

24 DR. BRADSHAW: Because I think if you look at
25 the work she's done, it's resulted in findings more

1 times than not with athletic departments. I think
2 that's --

3 MS. LEONARD: Yes. She is an advocate for
4 Title IX issues.

5 DR. BRADSHAW: That's a better way of saying
6 it.

7 MS. LEONARD: People may perceive, if she were
8 to come here, may perceive that because she's a
9 Title IX advocate that she would not come in so
10 open, she would have some subjective decisions that
11 she's already made based on newspaper articles that
12 she may have read about us without having any actual
13 knowledge of what's going on.

14 MR. STARKEY: But that would be the case for
15 any consultant coming in now since it's all been
16 published. Are there other consultants that are as
17 good or better?

18 DR. BRADSHAW: I think that in other contexts
19 Merrily Dean Baker may be someone who might be
20 highly regarded as a Title IX advocate. And there
21 are others. I don't mean to be flippant, I don't,
22 but there are others.

23 DR. LESTER: Aaron, maybe you're going to come
24 to this, but we had the internal audit and also the,
25 quote, external audit in this case, and as I recall

1 the University is pretty much cleared. So are you
2 now determining that those results were inaccurate,
3 or there was information that was not given to them?
4 I guess I'm wondering why we think we're so guilty
5 potentially if we've had two investigations now that
6 clear the University.

7 DR. BRADSHAW: If I could respond, a couple
8 months ago I was at an NCAA meeting and sat in on a
9 Title IX workshop. And there are a number of cases
10 where the institution was doing even then internal
11 or external technical evaluation of compliance of
12 Title IX, and institutions that have been found
13 technically in compliance, Fresno State is one, and
14 they end up paying as a result of litigation multi
15 millions of dollars.

16 So I think that technically -- and it's clear,
17 that Littler Mendelson made it very clear they did a
18 technical review of Title IX and found that we were
19 okay. And you're right, Bernie, our internal
20 investigation by an internal audit also found that
21 we were not out of compliance with Title IX. But I
22 don't know how much weight that will be given in a
23 different context, that is in the context of the
24 court of law.

25 MR. BEHAR: One of the things I've been

1 hearing a number of times through all the interviews
2 that we've conducted, including some people we spoke
3 to this morning, is that the investigator from
4 Littler Mendelson was perhaps not as fair as he
5 should have been.

6 I've heard things like, you know, he's put
7 words in my mouth, he reported things I did not say,
8 he was very aggressive, he led me into answers he
9 wanted to hear, those types of things. These are
10 individuals that will be deposed or later will
11 testify at trial. Those reports are, you know,
12 going to be severely discredited.

13 MR. LUCAS: First, where does the money come
14 from if we settle this thing?

15 MR. BEHAR: I'll tell you that with Alex Sink
16 in office now things have changed a little bit is my
17 understanding. In the past DFS would receive my
18 reports, I would ask for authority, and they would
19 say, okay, you have X amount of dollars and that was
20 end of story.

21 Now the shift is that they're not going to
22 give us anything without board approval. They want
23 to leave more in the hands of the agencies, take
24 votes on it, and then they will take those votes,
25 weigh them very heavily when they go to make

1 their --

2 MR. LUCAS: Agencies of what?

3 MR. BEHAR: Us, for example.

4 MR. LUCAS: If they decide to give us a half a
5 million dollars for a case and we have to settle it
6 for \$800,000, where does the other \$300,000 come
7 from?

8 MR. BEHAR: And that gets into a timing
9 question, which is I would have to come back here,
10 ask for you to approve \$800,000 from the State.
11 Assuming I get the approval from the board, I can go
12 back to the State and tell them I have approval from
13 the board for \$800,000. They would then take that
14 to their committee, and if the committee approves it
15 for the \$800,000 with the board's blessing, it's
16 done. If the committee only approves \$600,000, then
17 the balance would come from the University, or
18 whatever the agency is.

19 MR. LUCAS: From general funds?

20 DR. BRADSHAW: We would have to find a source
21 of funds.

22 MR. LUCAS: Second question. Is this level of
23 activity common in the rest of the State schools, or
24 are we the black sheep of the system? Where is this
25 in terms of --

1 MR. BEHAR: In Florida Title IX is relatively
2 young. There is not a lot of Title IX activity
3 right now. Like in other states, like California
4 for example -- I know that this past week Margaret
5 spent an entire day pulling jury verdicts from all
6 around the country to send it over to DFS for their
7 analysis. There are a tremendous number of Title IX
8 cases around the country.

9 And it is a federal law, so it's treated the
10 same across the country. It's not state specific.
11 So, you know, most of it is judged the same way that
12 a Title VII claim would be judged. The only
13 difference is in the amount of damages that you
14 have.

15 And like I said before, that's where the real
16 big hits come in, is that and with the attorney's
17 fees. Because with the attorney's fees you're
18 talking -- a lot of these attorneys do get in the
19 four hundreds, four hundred an hour or so. So
20 you're talking about significant six-figure dollars
21 just in attorney's fees.

22 MR. LUCAS: Are we top of the list for
23 Florida, or are we --

24 MS. LEONARD: For activity --

25 MR. LUCAS: For cases pending.

1 MS. LEONARD: That I don't know, because each
2 university handles these matters very differently.
3 In other schools the board has delegated authority
4 outside, maybe to the president or someone else.
5 So, therefore, you know, there is no executive
6 session and you don't hear a lot of it because
7 there's some settlement authority outside of the
8 board to resolve the matters, and so we don't hear a
9 lot. I have not heard, so I don't know.

10 MR. LUCAS: Two more questions. How do we
11 avoid being the preference to the lottery? If you
12 can't win the lottery sue the school because they
13 settle every time. If we -- how do we get around
14 that?

15 MR. BEHAR: I understand. These are the same
16 concerns that we had all discussed with McGaha and
17 discussing a possible settlement or going to trial.
18 The big deciding factor is in the risk. The State
19 does not compensate for any back pay damages, but
20 they do for all other damages. And so to that
21 extent there is some significant coverage. Now, the
22 State does have statutory authority to settle with
23 or without board approval, they just opted not to do
24 that, and as part of the new administration.

25 To avoid future lawsuits, you know, if we

1 settle there is lots to be said. We can control a
2 lot of the terms of settlement. There's a lot that
3 is not put out into the public by way of depositions
4 and trial testimony. You essentially stop the
5 bleeding at some point. With going to trial you
6 have everything becoming public, all the
7 transcripts, all the documents, all the dirty
8 laundry, so to speak, now gets aired out.

9 And you have future potential litigants now
10 going into those court records and being able to use
11 deposition testimony, the documents, jury verdicts,
12 everything else they can use against us in the
13 future should there be another one of these types of
14 claims. By settling you cut that off. There is no
15 longer that source of information that's going to
16 become available to them.

17 There's the public records laws, but at least
18 we don't have the testimony from our own people.
19 And you don't run the risk of an adverse jury
20 verdict, which in the future can be devastating,
21 because settling a case for -- and I know a lot of
22 it is very subjective, but settling a case for half
23 a million or a million dollars is certainly much
24 better in the public eye than taking a jury hit for
25 nineteen million like what happened in California.

1 Even though it was reduced later on they were still
2 in the multi million dollar range. It's a source
3 of, you know, stopping the flow of information for
4 future litigants, and at least ensuring that we can
5 control where a lot of the damage is.

6 MR. STARKEY: What has to be proved in Title
7 IX? What is the burden and what is the actual --

8 MR. BEHAR: It's the same as Title VII, which
9 is they need to prove their prima facie case, which
10 is I fit into a category, female, I participated in
11 protected activity, which we have in the cases, and
12 as a result of my participation I was retaliated
13 against.

14 MR. STARKEY: The protected activity was?

15 MR. BEHAR: Opposing discrimination like in
16 Morris's case, and Flood complaining of
17 discrimination. And then the burden shifts to us,
18 and we need to prove a legitimate non retaliatory
19 basis for the action we took. Well, a lot of that
20 is very hard to do at this point. The reason is
21 because documents were created after the fact a lot
22 of times.

23 You know, things got bad at a certain point
24 with Flood, and so McAloose and Peterson may have
25 documented things well after they had occurred.

1 That's always highly suspect. Juries frown upon
2 things like that. You know, documents missing,
3 those types of things are going to impede our
4 ability to do this. Even if we can come up with an
5 argument as to a legitimate non retaliatory reason,
6 the burden shifts back on them to prove pretext.

7 Like I said before, a lot of times it's not
8 very difficult for her to prove that our defenses
9 are false. For example, I believe the last time we
10 met we spoke about Morris, that one of the events of
11 retaliation was that Dr. Pegnetter had instituted a,
12 quote, unquote, new policy limiting her
13 communications with the board. Well, what we can
14 say is, well, yes, there's a legitimate reason for
15 that, it's to keep order. We want to go through
16 Susan Evans so that the president is informed as to
17 what's being communicated to the board. That's our
18 defense.

19 Now it shifts back to her to prove pretext.
20 And all she has to say is, you know what, before Dr.
21 Pegnetter I was never limited in my communications
22 with the board, and to the extent I had to ask for
23 authorization, it was always given to me and now all
24 of a sudden it's not. That's how she gets around
25 our defense.

1 And in my analysis of this, and even at the
2 mediation this all sort of played itself out, almost
3 like a little mock trial where we would raise these
4 defenses, and they would come back and say, yeah,
5 but don't forget about this, which is exactly what
6 would happen at trial.

7 MR. HART: To answer a little bit of what Dave
8 had said, I'm making an assumption that at some
9 point we would have to bring someone in to provide
10 training for us in the field of HR, culture
11 diversity, sensitivity, and be able to document
12 this. Also be able to provide continuing education
13 to the staff and have detailed conversation about
14 what is documented on an employee, and make sure
15 they understand there is one file.

16 My rule of thumb is as long as you operate
17 under that umbrella I'm going to cover you. If you
18 step outside that umbrella of protection, and that
19 umbrella contains the laws and policies and
20 procedures, if you step outside and someone in my
21 office had documented a second file after they know
22 that my policy is there is one file, and if it's an
23 employee it better be in the HR file, or if it
24 doesn't exist that person is on their own.

25 I'm going to say you violated my policy,

1 you're on your own. As long as they follow it and
2 we put some good structure in place, I think any
3 reasonable jury would see that we've taken all
4 efforts to correct the problem if there is problem.

5 DR. BRADSHAW: Trustee Hart, I agree with that
6 very last part. I think the first step is to
7 determine the extent to which we have a problem. I
8 mean, that's the first step, and then determine what
9 actions we need to take. And we've already started
10 some discussions about how we approach that. But --
11 please, Mike?

12 MR. VILLALOBOS: I don't want to interrupt
13 you, finish your thought.

14 DR. BRADSHAW: Yes, because I'll lose it.
15 But, you know, with the direction that this
16 conversation is going I am very concerned as are
17 some of you who have voiced it about how this plays
18 out in public. While we might avoid a trial, the
19 settlement will be very public.

20 If we settle at \$800,000 for Ms. Morris, and
21 if we settle at two to \$3,000,000 for Flood-Vaughn,
22 those are significant sums. And while I would hope
23 very much so that that would begin to stop the
24 bleeding, it also has potential of opening the flood
25 gates. A trial also has big downsides, because

1 that's all public, and the testimony will be paid
2 attention to by the press. This institution will be
3 cast in a very bad light if we go to trial. This
4 institution will be cast in a very bad light with a
5 string of settlements all dealing with gender
6 discrimination.

7 So we're in a situation here where we need to
8 make sure that we have a strategy in place. If we
9 go to settle or go to trial, we need to have a
10 strategy and approach in place where we tell the
11 story, where we get our arms around this and we
12 determine what's going to be said about what's
13 happening and why. Right now I would confess to you
14 we don't have that.

15 MR. LUCAS: It sounds like we have a lot of
16 smoke, but I don't know how much fire there is.
17 From what I hear Aaron say we have -- my personal
18 opinion about McKinney is I get the red book back
19 from him at his exit interview. And I would
20 probably feel the same way about Peterson.

21 But, you know, I think we've got major, major
22 weaknesses here that make us extremely vulnerable.
23 So I think in addition to figuring out what is going
24 on we have to make some player changes too.

25 MS. WHITCOMB: Did all of the incidents happen

1 under President Merwin, or did I understand there
2 was some incidents under President Pegnetter also?

3 MR. HART: Linda Morris came under Pegnetter.
4 When the policy was changed and all conversations
5 would go through the spokesperson, that's a
6 Pegnetter. But prior to that, I think those are all
7 under Merwin.

8 MS. LEONARD: Excuse me, I think that was
9 Pegnetter as well, because that was February, 2007,
10 January, 2007. That was Pegnetter as well.

11 MS. MEVERS: It is. Now, some of Flood's
12 issues may have predated Pegnetter. But the Baker
13 letter and everything was under Pegnetter.

14 MR. BEHAR: The more egregious incidents and
15 events that are going to be the ones I'm focusing on
16 were all under Dr. Pegnetter.

17 DR. BRADSHAW: In the Morris case?

18 MR. BEHAR: In both.

19 MR. VILLALOBOS: Mr. President, we want some
20 direction. Where are we today? What's the
21 timeline? And what exactly are you asking or Vee is
22 asking for us to decide today?

23 DR. BRADSHAW: I'll say a couple of things,
24 and Vee may chime in as well. One action that would
25 have to be taken in public is that the board can

1 authorize me in consultation with the chair to
2 settle these lawsuits in the best interest of the
3 University. And that when I say settle I should use
4 the word resolve, because that could mean settling
5 or could be moving ahead with litigation. So that's
6 one action the board could take if it was so
7 inclined.

8 Vee said earlier that some of the sister
9 institutions in our system, they have delegated that
10 authority to the president under certain
11 circumstances, or delegated it in such a way that it
12 wouldn't have to be done in a public board meeting
13 like we are here. That's one thing that can be
14 done.

15 MR. MALONE: What's the source of the
16 financing with the litigation on the part of the
17 plaintiffs?

18 MR. BEHAR: There are built-in statutory
19 attorney's fees. And so if they prevail, and by
20 that I mean a one dollar award they recover all of
21 their attorney's fees. The same does not -- even
22 though statute says prevailing party, the same does
23 not really hold true in practice on the defense.

24 MS. LEONARD: Our current position is that we
25 left the Morris mediation unresolved. We were at

1 basically a stalemate, \$1,000,000 versus \$500,000.
2 In the Flood case we have not yet gone to mediation.
3 That's scheduled for September the 3rd. So we don't
4 know really what the position of this board is as
5 relates to Flood-Vaughn, monetary and non monetary,
6 or its position as it relates to Morris. And so we
7 need some direction from this board as to what its
8 position is on those cases.

9 MR. MALONE: How important does counsel
10 believe the red book is in terms of determination of
11 the right direction for us, and is there some
12 advantage or disadvantage to seeing and knowing the
13 full content as much as we can before we make a
14 determination?

15 MR. BEHAR: I think from a --

16 MR. HART: I would just -- by no stretch of
17 imagination am I legal counsel, but I call myself
18 world of experience, be careful what you ask for.

19 MR. STARKEY: It's going to show up whether
20 you ask for it or not. It's going to be discovered.

21 MR. BEHAR: Number one. Number two, right --

22 MS. WHITCOMB: We might as well know first.

23 MR. BEHAR: It's going to be discoverable one
24 way or another, but more importantly the University
25 has already been placed on notice through McKinney.

1 And so liability is already being triggered.

2 MR. HART: When you say placed on notice --

3 MR. BEHAR: Whatever the complaints were that
4 were related to him, or whatever the information is
5 that was related to him, it's the University's
6 obligation now. He can bind the University by his
7 actions. And so the fact that he now has knowledge
8 of a complaint or has a knowledge of a witness
9 statement and hasn't shared that with us does not
10 protect us.

11 Ignorance is not going to protect us here.
12 The University is placed on notice as soon as he
13 learns of something. That's why it's so critical
14 that these notes be put into personnel files and
15 that it become open for the administration to take a
16 look at those.

17 DR. BRADSHAW: Let me just add, because we're
18 focusing on McKinney, and rightly so to some extent,
19 but this University was placed on notice several
20 times. If you recall early on in the conversation
21 of the chancellor of the state University system, a
22 complaint went directly to that chancellor. And
23 others within the University have confirmed that
24 someone came to them with a complaint of gender
25 discrimination and nothing was done. So there is

1 some redundancy in this judgment.

2 DR. ST. HILL: I think that that red book
3 might bring to light more than we would like to see.
4 And it is going to become open to the public at some
5 point anyway. So knowledge in this case is really
6 important. We don't know from what date that red
7 book started, and that could be an issue.

8 MS. LEONARD: I just want to point out, as
9 Aaron said we're not protected by ignorance. If
10 something is written in the book, even if we have no
11 personal knowledge, if it was written by a
12 University employee about University business, about
13 things that are going on in the University, there is
14 still an obligation on the part of the University.
15 If it fell through the cracks, if we know that it
16 existed and said, well, I don't want to read it
17 because I don't want to know, that really does not
18 protect the University.

19 DR. ST. HILL: My point exactly. Why would we
20 need to --

21 MR. VILLALOBOS: Correct me if I'm wrong,
22 Aaron, we are obligated to give them the information
23 in the red book. Now we're put on notice we know it
24 exists and it --

25 MR. BEHAR: If they ask for it.

1 MR. VILLALOBOS: And I think they probably
2 know about it. The question that Trustee Malone was
3 asking me was do we need to know what's in that red
4 book before we make a decision; is that right?

5 MR. MALONE: (Nodding head.)

6 MR. BEHAR: I don't think that a decision on
7 this is contingent on what is in that red book. I
8 think that without the red book we have enough
9 information that we can make a decision today. I
10 think that red book will be important in terms of
11 identifying any other problems that we may not be
12 aware of that we must now go and investigate or at
13 least try and resolve.

14 MR. ST. CERNY: If Dr. McKinney was operating
15 on behalf of this University, as an employee of this
16 University as it pertains to employment practices,
17 whatever would be in that book, you know, they
18 always say be careful what you ask for, there could
19 be things in that book that can be very damning to
20 this institution, not only from reputation, but
21 financially.

22 And that's why I think it's so incumbent that
23 we know what's going on. I mean, we're walking
24 around blind right here and we don't understand
25 what's out there. We need to know where we are and

1 what we are, because that makes a difference in what
2 type of attitude you're going to walk into future
3 mediation and settlement conversations with. If
4 someone else has got you by the back of the neck by
5 ineptness, by mistakes, whatever that might be,
6 ultimately ends up with this University the one held
7 responsible.

8 MR. LUCAS: On top of that if we know about it
9 and don't do anything about it, it makes us look
10 worse.

11 MR. VILLALOBOS: I was going to say that
12 forty-five minutes ago I asked what are your
13 thoughts of the probability -- based on your
14 evidence and your research on the merits of the
15 case, what's your analysis of the probability that
16 we're going to be successful?

17 DR. BRADSHAW: If we go to litigation.

18 MR. BEHAR: If we to go trial, I think that --
19 well, let's put it this way, if I had my choice of
20 clients to represent I would side with the
21 plaintiffs. I think they have a very strong case.
22 I think that our defenses have a lot of holes in
23 them. I think that they can tear apart a number of
24 our defenses.

25 I have a hard time at points coming up with

1 ways to react to evidence that I'm given. I've been
2 this way for a while, and especially in employment
3 work, and this is not the kind of case that you want
4 to take to trial. I would highly recommend against
5 going to trial with these three cases.

6 MR. VILLALOBOS: Now, having said that, you
7 mentioned that you attempted to do an analysis of --
8 and you had a huge range from \$700,000 to
9 \$3,000,000, but has there been an analysis as to
10 what we can go after as far as minimizing or
11 diminishing that award?

12 I know there's some comparisons that can be
13 made between certain cases. Obviously you can
14 distinguish one case from another, amount of years
15 the employee was employed, I mean, incidents, et
16 cetera, et cetera. Has that analysis been made so
17 that we can have a better feeling of if we were to
18 move forward with settling what would be the number
19 that would be the realistic number versus a pie in
20 the sky number of \$3,000,000.

21 MR. BEHAR: Is it the Fresno case that's
22 identical?

23 MS. LEONARD: Yes. There's a volleyball coach
24 from Fresno State that had an award a five million
25 that was reduced to four point something. There was

1 a basketball coach also at Fresno that has similar
2 fact patterns to us, where the plaintiff's
3 information was posted on the Internet, where there
4 was a press conference regarding the issues
5 surrounding -- that was a \$19,000,000 case. So
6 there are similar fact patterns consistent with the
7 actions here.

8 MR. BEHAR: I think it's the \$19,000,000 case
9 that is substantial similar to the one that we have
10 here with Flood.

11 MR. VILLALOBOS: Same time frame of
12 employment, years of employment, tenure and all that
13 included?

14 MS. MEVERS: I believe yes. In fact, I
15 believe Flood may have actually been with Florida
16 Gulf Coast longer than that coach was with Fresno
17 State.

18 MR. VILLALOBOS: Their income was the same?
19 I'm looking as far as income.

20 MR. BEHAR: The income only really comes into
21 play when you're calculating the back pay and the
22 front pay. Those numbers are usually very low,
23 usually in the very, very low six figures. It's a
24 compensatory --

25 MR. VILLALOBOS: So the \$19,000,000 was

1 punitive?

2 MS. MEVERS: At Fresno, that nineteen million,
3 one, the majority of the award was actually from
4 past non economic damages and future non economic
5 damages, which would have been the compensatory.

6 MR. MALONE: What are the strategic and/or
7 fiduciary strategies around the board empowering the
8 chairman and the president to deal with the
9 resolution versus the board as a body as a whole?
10 And does that send any -- first of all, does the
11 president or the chairman want that in and of and by
12 themselves? And, secondly, is that the right thing
13 to do from a historic past president point of view,
14 for this institution or the State?

15 MS. LEONARD: Well, that depends on what this
16 board wants. The motion would be tailored if that's
17 the way you want to go.

18 MR. MALONE: I'm asking a broad question as to
19 around those issues, not --

20 MS. LEONARD: So you're asking about specific
21 for this particular case only, not for any future
22 action?

23 MR. MALONE: That's a good point. Maybe both.

24 MR. LUTGERT: I just want to say that I think
25 the president -- knowing all the facts and listening

1 to all the conversation, we ought to pursue settling
2 and see where the number is on both these cases.
3 And even more importantly I want to echo what David
4 was saying. We need to get that book and look at it
5 and see if there are any other allegations or
6 complaints about any type of discrimination no
7 matter what it is and follow through on those, and
8 follow through on the responsibility that should
9 have been handled before.

10 DR. BRADSHAW: Let me remind you --

11 MR. COBB: I'm not sure we shouldn't not only
12 ask for the book, I'm not sure he should continue to
13 keep notes in that book without revealing them on a
14 regular basis to the president.

15 MR. LUTGERT: There's a whole issue about what
16 the president does with him, but absolutely, that's
17 correct.

18 DR. BRADSHAW: I would remind the board and
19 the members of the board, both individually and
20 collectively, that you are named individually in the
21 Flood-Vaughn case, and we have determined that -- I
22 believe, if this is correct, that your attorney fees
23 would be covered.

24 MS. LEONARD: Flood-Vaughn says Does 1 through
25 13. They have not specifically identified the

1 trustees by name, but when I had a conversation with
2 Flood's attorney she did tell me that Does 1 through
3 13 are the trustees.

4 MR. BEHAR: My understanding is that no one
5 has been served yet with the complaint. My
6 understanding based on some preliminary research
7 that we've done is that there is no individual
8 liability under Title IX anyway. So given those two
9 things I don't believe that you will be served any
10 time soon. I think you may have been put in there
11 more as a precautionary measure or as a threatening
12 measure, but she hasn't moved forward with that as
13 far as I understand.

14 Under the federal rules, I can't exactly
15 remember what it is right now, but they have a
16 certain number of days in which to serve you. If
17 they don't then the claim is dismissed automatically
18 and they'll have to renew it. I believe that time
19 frame has already passed.

20 MR. VILLALOBOS: Trustee Malone, I think to
21 answer your question, it doesn't look bad. I think
22 other institutions do have that mechanism where they
23 allow the president or the chair the delegation
24 authority to do that. They've done it before in
25 other institutions. So we are in good footing if

1 we're to proceed in that nature as far as
2 negotiating, or as we call it resolving these type
3 of issues. I don't think it would be a negative
4 impact or that we're sending a bad message if we did
5 that.

6 MR. HART: Is it the determination that we do
7 this in all litigation, to have the president and
8 the board chair to resolve that, or are you
9 saying -- I think that was the question. Are you
10 saying just this case, or are you saying you want to
11 delegate that authority --

12 MR. VILLALOBOS: Case by case basis.

13 MR. MALONE: I was framing the question around
14 just the general issue of delegation, not
15 necessarily this case, and certainly not more
16 broadly in a forever kind of thing.

17 MS. LEONARD: For this case if the board wants
18 to do something like that, that would have to be a
19 board action in the open part of the meeting. For
20 any future delegation you would want to do an agenda
21 item and that sort of thing. But for this
22 particular thing, that would have to be --

23 MR. LUCAS: When you say case, we mean three
24 cases, right?

25 MR. BEHAR: Flood-Vaughn and Morris. Although

1 Flood and Vaughn are under one case number.

2 MR. VILLALOBOS: Now that you mention that,
3 did we notice what -- the notice that we have for
4 that meeting, is it sufficient for us to make a
5 motion to that effect?

6 MS. LEONARD: Yes. That's what we did with
7 the -- we did that for McGaha.

8 MR. BEHAR: Just to clarify, it's the three
9 cases; Flood-Vaughn, and then Morris versus us, and
10 then there's the fourth one that we would need
11 authorization as well.

12 MS. LEONARD: He's saying Flood-Vaughn,
13 Morris, Morris, but --

14 MR. HART: Okay.

15 MR. MALONE: Do we have specific language to
16 consider in the open meeting?

17 MS. LEONARD: I think that whatever you want
18 to do, if you want to delegate to the president in
19 consultation with the chair, so that the president
20 would of course keep the chair in the loop. And
21 anything that he was considering he would have
22 discussions with the chair, since everybody is
23 already informed as to the range and what the issues
24 are.

25 MR. VILLALOBOS: Do we have to in our motion

1 specify what exactly we're asking the chair and
2 president to do, or can we just say -- just give
3 them that authorization?

4 MS. LEONARD: I would rather it be very broad.

5 MR. VILLALOBOS: And then they come back to
6 us --

7 MS. LEONARD: Right, because that motion will
8 be public. Even though this meeting won't be public
9 until everything is resolved, whatever you say in
10 that meeting, so if you have a dollar amount or
11 anything, that would just be out there.

12 MR. VILLALOBOS: That's the point I'm trying
13 to make. The motion should be very broad?

14 MS. LEONARD: Yes.

15 MR. VILLALOBOS: But here we can discuss -- we
16 can talk about the motion and the broad stroke of
17 the motion, but here we can discuss what we're
18 asking the chairman and the president to do?

19 MS. LEONARD: That's correct. For example, if
20 you think three million is too high, you don't think
21 it's going to be enough, we can have that discussion
22 here.

23 MR. LUCAS: The last time we didn't rehearse
24 as I recall. And I think this time we should decide
25 what the motion is and who's going to make it.

1 MS. LEONARD: My concern is in order for you
2 to decide to make a motion, you are in effect -- you
3 have already decided and you have already reached a
4 consensus if you're going to have a discussion about
5 what the motion is, and that cannot occur in this
6 meeting.

7 MR. STARKEY: You don't know what each
8 individual is thinking about the motion --

9 MS. LEONARD: That's correct.

10 MR. STARKEY: -- or whether we would vote for
11 it or against it.

12 MS. LEONARD: That's correct.

13 MR. STARKEY: But I think the discussion was
14 that any motion would be framed in resolving and not
15 necessarily settling or litigating. So resolving is
16 a broader term.

17 MR. HART: We're talking about resolving
18 current legal matters.

19 MS. LEONARD: And if I could just add, we have
20 other litigation besides those three. So if we say
21 current litigation, we're talking about more than
22 just Flood-Vaughn and Morris.

23 MR. LUCAS: So just theoretically and
24 hypothetically the motion should deal with those
25 three cases?

1 MS. LEONARD: We can talk about specifically
2 the issues addressed at executive session and leave
3 it broader like that. Because when we came in here
4 I announced specifically what this executive session
5 would cover, those cases. So to come back and say
6 about the issues or the cases discussed at executive
7 session I think would be broad enough to encompass
8 whatever you would like to do.

9 MR. HART: I like that.

10 MR. VILLALOBOS: So what is the timeline?
11 What are we looking at? The next thing you have is
12 mediation in --

13 MR. BEHAR: I need to contact Morris's
14 attorney sometime soon, because in that case we
15 stayed the litigation under court order pending the
16 mediation. That stay will be lifted --
17 automatically lifted very soon. When is it?

18 MS. MEVERS: The 30th.

19 MR. BEHAR: So I need to contact him and
20 continue our negotiations informally. And then I
21 have the Flood mediation on the 3rd. So I'm going
22 need to start on Monday getting back with DFS and
23 going through with their committee procedures.

24 MR. MALONE: One more question to help me. If
25 we make a considered decision that a proper way of

1 going forward might be to delegate the authority
2 around the issues that we've been discussing -- to
3 resolve the issues that we've been discussing, I'm
4 sorry, does that weaken your ability since that's in
5 the public sector virtually immediately? And if we
6 don't do that but you go ahead and continue your
7 conversation and your negotiating, if you will,
8 isn't it a stronger position for us not to have gone
9 public?

10 Because by saying we're resolving the issue or
11 we want the president to resolve it in consultation
12 with the chairman, if I'm sitting on the other side
13 of the table I'm going to look at that and say,
14 okay, they want to do this more than just to
15 continue the normal process that's been going on.
16 But perhaps you know that a strategy worth pursuing
17 is to come to a resolution.

18 MR. BEHAR: You mean to -- if I understand the
19 concern accurately, it would be to allow the
20 president to make determinations as to the future
21 course of the pending litigation. And then we're
22 not really saying that he's go to be resolving
23 anything, because I agree with you that could be
24 confusing to a layperson who hasn't debated the two
25 terms.

1 So to allow the president to make necessary
2 determinations as to the course of the pending
3 litigation would at least empower him to either
4 settle or to continue litigating, and I think it
5 would be a little bit clearer at least that way.

6 MR. MALONE: That would be a way of doing it
7 that would be better than, quote, unquote,
8 resolving. But perhaps taking it to the further
9 level is you just continue with your process.

10 MR. BEHAR: If I continue with my process we
11 would need to take a vote on the specific dollar
12 amount, and then --

13 MR. MALONE: Why is that?

14 MR. BEHAR: Because DFS will not give me
15 authorization, will not take their figures up to
16 their committee for approval without board approval
17 of those figures.

18 MR. MALONE: I didn't know you had specific
19 figures.

20 MS. LEONARD: Yes.

21 MR. VILLALOBOS: You still need figures for
22 today?

23 MR. HART: No. I think if the president and
24 the board chair has the authority, that can be done
25 by the president and the board chair, because we're

1 now delegating that authority to them. That keeps
2 us from doing a public vote on the amount.

3 MS. LEONARD: And that keeps us from having to
4 do another executive session specifically as to,
5 okay, we went to mediation, you all agreed on X
6 amount of dollars --

7 MR. VILLALOBOS: I have a question on
8 logistics then. As far as the sunshine law is
9 concerned, before every board meeting the
10 president's staff contacts us to give us our
11 briefing. Would that be able to be done in this
12 case?

13 MS. LEONARD: Yes. Those are individual
14 conversations which are --

15 DR. BRADSHAW: I think at the direction of the
16 chair, if in consultation with the chair we think we
17 have a reasonable way of resolving these two cases,
18 then at the direction of the chair I will call each
19 member individually to inform them that we've agreed
20 on the parameters and informing you that we are
21 going forward with it. That would be proper thing
22 to do.

23 MR. VILLALOBOS: That's only in an informative
24 nature, not a polling --

25 MS. LEONARD: That's correct.

1 DR. BRADSHAW: We should be clear on this,
2 maybe it's obvious, but the chair can always say
3 we're outside of the numbers we were talking about
4 in executive session, although we have not talked
5 about specific numbers, that I think we need to go
6 back to the board with this.

7 I'm going to be a bit outrageous, so bear with
8 me. I don't think this president in consultation
9 with the chair would agree to a \$15,000,000
10 settlement, it just wouldn't do that. Nor would we
11 consider a ten dollar settlement either, but I think
12 within reason. It certainly depends a lot on the
13 trust of these board members and this president and
14 the chair to be reasonable in going into and
15 analyzing what's before us in making a good
16 decision.

17 Of course if it turns out that the majority of
18 the board agrees that it's not a good decision, I
19 would imagine that authority will not be delegated
20 in the future and that in some other ways it will
21 come up in my evaluation process.

22 DR. LESTER: I think in some way the point
23 needs to be -- the point Jim is raising is that we
24 don't want them to think we're jumping to do this,
25 that it's still kind of out there in decision land

1 somewhere. But at the same time be practical for
2 what we're trying to accomplish.

3 MS. LEONARD: If I can add, I think what Aaron
4 said is it speaks to really what we want to do, so
5 that we don't have to come back in another executive
6 session to delegate authority. So not even to
7 resolve, but to handle the matter. Because there is
8 no guarantee that this matter can be resolved if
9 their numbers are just too big and they're not
10 willing to come down. You know, that is a decision
11 that can be made without having to come back to the
12 board again.

13 DR. BRADSHAW: There is some thought from
14 general counsel and outside counsel as well that --
15 I remind you of the request for me to be at the
16 mediation for Flood-Vaughn, that that act alone
17 could have a positive impact on the ultimate dollar
18 amount settlement. That they're being heard and
19 we're listening to them, and the president is there
20 doing that. So unless I hear otherwise my intent is
21 to go to that mediation session. I won't be there
22 for the entire time, but I will be there early on.

23 MS. LEONARD: Also if I could point out, I
24 didn't hear any discussion about the non monetary
25 issues that were raised by any of the plaintiffs.

1 And I know it's a personnel matter and the president
2 has the authority to make those decisions as far as
3 personnel is concerned, but I did not get any
4 feedback as far as this board's feeling.

5 MR. HART: Could you go over it one more time?

6 DR. BRADSHAW: Case by case, Aaron.

7 MR. BEHAR: With Morris it was the act of
8 voiding the negative documentation in her employee
9 file, doing that by inserting a letter into the file
10 that we had general language we had agreed on, that
11 those matters would be deemed void and allowing her
12 to submit a letter of resignation. The documents
13 remain in the file, we can't take them out, but it
14 would be in a separate envelope and sealed with a
15 letter attached to that. That would be for Morris.

16 For Flood and Vaughn, reinstatement for either
17 one or both of them, and then the president's
18 participation at the mediation, or attendance at the
19 mediation.

20 MS. LEONARD: Also if I could add for Morris,
21 she wanted any questions or inquiries regarding her
22 employment to go through HR, and that they only be
23 the dates of employment and salary history --

24 MR. BEHAR: General employment reference, yes.

25 MR. VILLALOBOS: I have no objection to

1 Wendy's non monetary requests, that sounds fair and
2 reasonable. The Flood-Vaughn one though,
3 reinstatement I have a concern. I don't think I
4 would agree to that.

5 DR. BRADSHAW: I'll remind you that with
6 Flood, that she was terminated because of an
7 inappropriate relationship with a student. I think
8 she will claim and her attorney will claim that -- I
9 don't know what word I'll use, is that we're digging
10 to try to find something, so we found something.

11 I also will remind you there were two other
12 investigations with Flood where we had no findings,
13 so she was not reprimanded or punished for those
14 other two investigations. But the inappropriate
15 relationship with the student I feel we made the
16 right decision on that, and reinstatement for her I
17 would say would be highly undesirable.

18 DR. LESTER: I agree with that. I think the
19 whole morale of that, if she was reinstated, the
20 conditions would be something we don't want to
21 create.

22 DR. BRADSHAW: You're right, morale is pretty
23 low now.

24 MR. HART: What about Vaughn?

25 DR. BRADSHAW: I don't know if Vaughn feels

1 strongly about being reinstated.

2 MR. BEHAR: Last night was the first time that
3 I heard indication from Linda Correia as to the
4 reinstatement of Vaughn. I don't know if it was
5 just a slip or how serious she was about it, but
6 just as a precautionary measure I thought I would
7 bring it to you in case it does come up at the
8 mediation. Again, last night was the first time I
9 heard about reinstatement for Vaughn.

10 DR. BRADSHAW: I think in terms of Wendy
11 Morris's case, and I appreciate your concurrence
12 with that, but what that will say to -- essentially
13 it would say she was treated unfairly across the
14 board, allowing her to resign because she was
15 terminated because of insubordination, I believe
16 that was what it was for, going against the
17 direction of the president.

18 Allowing her to resign having done that, and
19 also voiding the investigation that led to the
20 determination of insubordination, I think that's a
21 lot to give up. And I think it will say --
22 unintentionally it will send a message about the
23 environment here at the University and how we make
24 judgments and take actions.

25 If it's a misjudgment and a bad action, maybe

1 we need to pay for that. But you need to just
2 really know how that's going to be seen once it
3 becomes public. I'm sure you know that. That's
4 more for myself than anyone else.

5 MR. MALONE: Well said.

6 DR. BRADSHAW: Since I'm on this roll, I will
7 just say the same thing -- we just need to be
8 prepared to be supportive of this institution when
9 these things happen. The same thing is going to be
10 perceived and thought of with the Flood-Vaughn case.

11 Now again maybe we had misjudgments and bad
12 actions, and that's a message that's going to be
13 sent should we end up settling, and indeed I think
14 it will be even worse if we're in litigation.

15 MR. STARKEY: My view is that there is enough
16 issue of culpability around, not a finding, but an
17 issue of culpability around all the plaintiffs and
18 the institution. And that if there is a settlement,
19 monetary settlements are pretty significant relative
20 to their pay, and that it would probably be best
21 that they work elsewhere, and that the compensation
22 that they would receive would help make sure they're
23 in good shape until they find another institution to
24 practice their profession. That's this trustee's
25 view.

1 MR. VILLALOBOS: As to the president's
2 comment, if you were to seal -- I think if you were
3 to couch that whole thing as a sealing of record
4 versus voiding, maybe it's the way we can -- if we
5 come to an agreement, okay, because we're in a
6 settlement posture there, and I think -- you know,
7 in a settlement, we're looking at it as if we're
8 culpable. But another way to look at it is that
9 they're settling as well. And you can also look at
10 it that they're settling because they don't have
11 enough evidence to prove their case.

12 So it's a double edged sword. It's not always
13 we're losing and we're settling because we're the
14 defendant. You also look at the plaintiff's side.
15 The plaintiff may be settling because maybe they
16 don't have enough information to really go for the
17 nineteen million dollar -- so there's a double edged
18 sword in settling. It's not always the culpability
19 of the defendant, you have to look at the
20 plaintiff's side as well.

21 If somehow we can frame the fact that we're
22 going to seal, not void. Seal versus void. That
23 may look as if we're doing it in terms of purposes
24 of settling. Not totally, you know, voiding a
25 decision that was made by this institution, where

1 it's basically covering this part of it or maybe
2 some other word to that effect.

3 DR. BRADSHAW: I think legally, Michael,
4 sealing and voiding really has no real meaning. A
5 publics records request --

6 MR. VILLALOBOS: But I don't understand what
7 they're requesting.

8 MR. HART: I think it goes back to the fact
9 that if you have a personnel file it's in there. If
10 you have it in a sealed envelope or something it's
11 still in the file, but the average Joe that's coming
12 in --

13 MR. VILLALOBOS: So the issue is not whether
14 we're going to be putting that file separately or
15 voiding anything, it's if there was an inquiry of a
16 future employer for Wendy Morris, what is the
17 information that we're going to have to provide? Is
18 that accurate, or --

19 DR. BRADSHAW: I think that's accurate, and
20 I'll let counsel chime in after me. We can agree
21 that if we get an inquiry, we can agree that what we
22 will give them is dates of employment. If they say
23 I want to see the personnel file, we don't have
24 legal standing I believe to say no, you can't.

25 MS. LEONARD: Also, at mediation Morris made

1 it very clear that she wanted the letter voided, not
2 just covered up, because by voiding the letter we
3 are in effect saying that it did not happen.

4 MR. VILLALOBOS: She means retraction? You
5 can't void it, it's in the file.

6 MS. LEONARD: You can void the effect by
7 replacing it with the resignation, so that if
8 anybody calls, no, she wasn't terminated; no, it
9 wasn't the university's action, it was her
10 resignation. Which is a little different. But they
11 were very, very adamant about voiding it.

12 MR. BEHAR: The personnel file will include
13 the negative documentation on top of that letter
14 that says these materials have been voided, and on
15 top of that her resignation letter. So whoever
16 picks that up, ultimately after they flip through
17 the first two pages all the negative documentation
18 will be right there.

19 DR. LESTER: How does that fit with everything
20 that's been publicly released?

21 MS. LEONARD: It's still posted. You know,
22 the News-Press had put a hyperlink in the article so
23 that if someone searches the Internet it can be
24 found. As far as the request is concerned, I don't
25 know that any prospective employer would actually

1 ask for a copy of someone's personnel file. But you
2 never know. If someone is seeking public office
3 they go through your personnel file. Anything could
4 happen. If you're applying for some specific type
5 of job, sometimes those issues do come up.

6 MR. VILLALOBOS: So again what she's asking
7 for is a restriction of what information we release
8 in the event of a future employer asking about Wendy
9 Morris's employment with Florida Gulf Coast
10 University. We're not erasing anything, we're not
11 voiding anything --

12 MR. HART: But keep in mind if there's a
13 letter of resignation in the file, that individual
14 can say to a prospective employer, I resigned from
15 that institution.

16 MS. LEONARD: Yes.

17 MR. HART: That's what that is all about.
18 Instead of saying I was terminated, I can say I
19 resigned from Florida Gulf Coast University.

20 DR. BRADSHAW: And if asked we would say yes,
21 she did. I'll give you, and this may be more
22 information than you need, but I'll let you recall
23 with Carl McAloose and Kathy Peterson, we resolved
24 that case by voiding the evaluation of Flood and
25 Vaughn and reprimanding McAloose and Peterson. All

1 of those documents remain in the official personnel
2 file of all three of those employees. And if anyone
3 wants they can ask for it. And even though an
4 evaluation was voided and an explanation of why I
5 made that decision is in the letter, all of that is
6 still in the file.

7 MR. LUCAS: I think we've given as much advice
8 as we need to give.

9 MR. HART: Okay, any other questions?

10 MR. STARKEY: I have a question that's related
11 but not to settlement, but because we're in
12 executive session. Do the attorneys believe that
13 you've heard enough about Dr. McKinney in charge of
14 EEOC to cause a concern?

15 MR. BEHAR: When I heard that version in the
16 McGaha case I thought it was an issue then. And now
17 again hear that there have been a number of
18 complaints brought to him and never an investigation
19 conducted, much less anything written down about the
20 complaints, that causes me great concern.
21 Especially because the University is already on
22 notice.

23 MR. STARKEY: I think the University and the
24 board is on notice, and I think it should seriously
25 be looked into and dealt with.

1 MR. HART: I think we have to do a climate
2 overview. I think the president has enough about
3 that climate to be reviewed, and future training or
4 whatever we need to do to limit our exposure, or
5 correcting anything that's wrong, we need to move
6 forward on that.

7 And that also includes removal of any employee
8 that fails to comply or is found to be stepping
9 outside that umbrella and doing things that are not
10 correct to other individuals, and I think they
11 should no longer be here.

12 MR. VILLALOBOS: I have a question. These
13 notes that we've made in the executive session, are
14 they ours, yours, do we trash it?

15 MR. HART: You're welcome to take mine if you
16 want it.

17 MR. VILLALOBOS: Is it public record or are
18 these our notes?

19 MS. LEONARD: I believe those notes are public
20 record, that they are held just as the transcript of
21 this meeting will be held until the matter is
22 resolved. And if someone asks for it, then they can
23 get a copy of it.

24 DR. BRADSHAW: That's not been our past
25 practice about notes. I thought the transcript was

1 the official document.

2 MS. LEONARD: The transcript is the official
3 document. And I can make that clarification. There
4 is an exemption for personal notes, depending on the
5 purpose for the notes. If the purpose of the notes
6 was for your own information, your own recollection,
7 and not to be disseminated or transmitted to other
8 people, then the personal notes are your personal
9 notes and you don't have to give those to me.

10 MR. HART: We have to go back to the other
11 room. Do we need a motion to adjourn the executive
12 session?

13 UNIDENTIFIED TRUSTEE: Second.

14 (Meeting adjourned.)

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