

1 STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
2 ORANGE COUNTY SUPERIOR COURT DIVISION
3 20 CVS 022
4 DTH MEDIA CORP.,)
5 Plaintiff,)
6 v.)
7 THE UNIVERSITY OF NORTH)
8 CAROLINA; THE UNIVERSITY OF)
9 NORTH CAROLINA BOARD OF)
10 GOVERNORS; JAMES L. HOLMES,)
11 JR., in his capacity as a)
12 member of the Board of)
13 Governors; DARRELL ALLISON,)
14 in his capacity as a member)
15 of the Board of Governors;)
16 WENDY MURPHY, in her)
17 capacity as a member of the)
18 Board of Governors; ANNA)
19 SPANGLER NELSON, in her)
20 capacity as a member of the)
21 Board of Governors; and)
22 ROBERT A. "BOB" RUCHO, in)
23 his capacity as a member of)
24 the Board of Governors,)
25 Defendants.)

30(b)(6) Zoom Deposition of UNC

BY: EARL WHIPPLE

(Taken by the Plaintiff)

Raleigh, North Carolina

Wednesday, January 27, 2021

Reported by: Marisa Munoz-Vourakis -
Stenograph Reporter, RMR, CRR
and Notary Public

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30(b)(6) Zoom Deposition of UNC, by EARL

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WHIPPLE, taken by the Plaintiff, at Raleigh, North

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Carolina, on the 27th day of January, 2021 at 1:30 p.m.,

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before Marisa Munoz-Vourakis, Stenograph Reporter,

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Registered Merit Reporter, Certified Realtime Reporter and

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Notary Public.

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1	I N D E X		
2	Examination of:		Page
3	EARL WHIPPLE		
4	EXAMINATION BY MR. STEVENS	5	
5			
6			
7	DEPOSITION EXHIBIT		
8	EXHIBIT NUMBER	DESCRIPTION	PAGE
9	Exhibit 1 12-16-19 Op Ed		59
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 P R O C E E D I N G S

2 Whereupon, EARL WHIPPLE, having
3 been first duly sworn, was examined
4 and testified as follows:

5 EXAMINATION BY COUNSEL FOR PLAINTIFF
6 BY MR. STEVENS:

7 Q. All right. Now, as I was saying, it's
8 pretty much customary to begin by just asking you to
9 identify yourself for the record by stating your name.

10 A. My name is Earl Whipple, vice president for
11 communications at the UNC System.

12 Q. Thank you. Do you mind describing a bit
13 what your duties and responsibilities and authority are
14 in that position, please?

15 A. Sure. Essentially I'm the chief
16 communications officer for the UNC System. I have
17 responsibility for media relations, branding, internal
18 communications. We also do writing and editing in
19 house, manage the communication vehicles, such as the
20 website, social media, those kinds of things.

21 Q. How long have you held your current
22 position?

23 A. Eighteen months.

24 Q. And could you give us a brief overview of
25 your work history prior to coming to this position?

1 A. Sure. I came from the private sector. I
2 was head of corporate communications at Penn Mutual
3 Life Insurance Company outside of Philadelphia,
4 Pennsylvania prior to coming to the system.

5 Prior to that, I was in Washington for a
6 senior communications advisor to the Federal Trade
7 Commission for one year.

8 Other than that, corporate experience, I've
9 been head of corporate communications for AstraZeneca,
10 R&D communications at Merck. Got my start on Capitol
11 Hill where I worked for three different members of
12 Congress in the '90s.

13 Q. Just curious, which members of Congress did
14 you work for?

15 A. Going in reverse order, Congressman Bob
16 Reilly from Alabama; Congressman Fred Heinz, who
17 represented the Research Triangle/Raleigh/Durham area,
18 and then Congressman Jack Quinn from Buffalo, New York.

19 Q. Would you mind giving us just a brief
20 overview of your educational background, please?

21 A. Sure. I have an MBA from Duke University
22 Fuqua School of Business. I got my bachelor's degree
23 at a small liberal arts college in Pennsylvania,
24 Dickinson College.

25 Q. And what year did you graduate from the

1 Duke Fuqua School?

2 A. '98.

3 Q. Okay. I take it that you are aware that
4 the focus of our deposition today, the topic is an op
5 ed column that was published in the News & Observer and
6 perhaps other places on or about December 10, 2018?

7 A. Yes -- no, 2019.

8 Q. 2019, I'm sorry, yes.

9 And do you have a copy of that in front of
10 you?

11 A. I do.

12 Q. Can you just generally begin by telling us
13 what you know about how that op ed came to be and how
14 it came to be published?

15 A. Yes. So going back in time in the midst of
16 the news coverage on the settlement agreement related
17 to Silent Sam, you know, there was a very heavy media
18 coverage going on that predominantly was coming from
19 the journalistic points of view. In some cases, either
20 some of the news reports were factual. I think in some
21 cases there were errors. The point being is that there
22 had not been any type of interview or statements made
23 on behalf of the UNC System, other than when the
24 settlement agreement was signed, which was back in
25 November.

1 So with all the, you know, very negative
2 news coverage that was occurring, it was my
3 recommendation that we consider some type of media
4 response. This was a discussion I had with
5 Mr. Shanahan and Mr. Holmes, who was one of the board
6 members tasked with working on this. And, you know, we
7 considered a few different options but settled on an op
8 ed as one that would give, you know, very crystal clear
9 clarity on the position of each of the individual board
10 members, and essentially remove variables for
11 editorializing and things like that, things that we
12 thought were important to ensure that the facts were
13 correctly reported, and we thought the op ed was the
14 best vehicle for doing this.

15 Q. Now, this op ed was published on
16 December 16, 2019. How long had you been in your
17 current position as of that time?

18 A. Oh, four months, yeah, four months.

19 Q. Do you recall roughly when you started in
20 this position?

21 A. August, August of 2019. So five months, I
22 guess, five months.

23 Q. All right. Now, you have alluded to
24 settlements that were made public in November of 2019.
25 Let me just ask, were you in any way involved in the

1 actual negotiation or implementation of those
2 settlements?

3 A. No.

4 Q. And how did you acquire your information
5 about them in order to carrying out this plan about the
6 op ed?

7 A. How did I get copies? I'm sorry, I don't
8 understand your question.

9 Q. How did you -- how did you gather
10 information that you needed to work on this op ed,
11 information about the settlements since you were not
12 involved in the negotiation?

13 A. All right, thank you, now I have a better
14 understanding what you're asking.

15 So there were a variety of sources. So, of
16 course, there was the settlement documents themselves.
17 There were certainly conversations with counsel, and I
18 had individual conversations with the five members who
19 were tasked by the board to work on this particular
20 topic. So it was Mr. Holmes, Mr. Rucho, Mr. Allison,
21 Mrs. Murphy and Ms. Nelson.

22 Q. Okay. And those are the five people whose
23 names appeared as essentially the authors of the op ed,
24 correct?

25 A. That is correct, yes.

1 Q. Okay. As you already alluded to,
2 Mr. Holmes, can you tell me about your conversations
3 with Mr. Holmes?

4 A. I don't recall specifics of it, other than
5 he agreed with the need to get, you know, our story out
6 on this particular issue. And that was, again, the
7 genesis for, you know, for considering options for, you
8 know, what ultimately turned out to be the op ed.

9 Q. Did that include discussions with him about
10 the substance of the settlements that you were going to
11 be writing about?

12 A. I don't recall specifically. The extent of
13 my questions around the settlement was essentially
14 taking legal language and translating it into, I would
15 say, simpler language for consumption by the general
16 public.

17 So when you say consent agreements, things
18 like that, there's a vernacular there. But, you know,
19 that was primarily it, as well as, you know,
20 validating, you know, as hearing his input as well as
21 the input of others individually to kind of craft
22 together the need to get the story of the op ed, which,
23 you know, we did relying on each of them and the facts
24 as I knew them, based upon board meeting minutes,
25 historical documents, the consent agreement, things

1 along that line.

2 Q. Okay. You referred to the five members of
3 the board of governors whose names appeared on the op
4 ed as a group. What was your understanding as to their
5 involvement in the settlement process?

6 A. I'm not aware of what their role was or
7 not, and I didn't call them a group. I said they were
8 members tasked with working on this.

9 Q. Okay. I recall that word. Thank you.
10 And were you in attendance at a meeting in
11 which the chairman of the board of governors tasked
12 these five members to deal with that situation?

13 A. No.

14 Q. How did you become aware and given the task
15 to deal with the Silent Sam issue?

16 A. The meeting minutes primarily from the
17 board meeting in 2018. So I believe it was December of
18 2018 when the chair then identified these individuals
19 to work on this issue that was reflected in the board
20 minutes.

21 Q. What understanding, if any, did you have as
22 to what that meant, for them to be tasked to deal with
23 the situation?

24 A. Only from what I knew from the minutes. I
25 was not here then.

1 Q. Did you ever hear them refer to by any
2 collective name like the committee or subcommittee or
3 anything of that sort?

4 A. Never.

5 Q. Okay. Do you know whether any of the five
6 members were a de facto head of the group?

7 A. I think Mr. Holmes was viewed as the lead
8 individual of those members, yes, and I think that's
9 public, public knowledge.

10 Q. Are you aware of any formal designation of
11 any kind to that effect, such as an appointment to be a
12 committee chair or chair of the task force or anything
13 of that sort?

14 A. No, I'm not. I'm not aware.

15 Q. Okay. Now, can you tell me about what you
16 recall of questions with Mr. Allison, Darrell Allison
17 about the plan to do this op ed?

18 A. He liked the idea of doing an op ed. I
19 think he agreed it was a strategy that -- you know, my
20 recommendation for doing the op ed, it was a strategy
21 that would allow them to share their message unimpeded
22 by editors and ensure that their were no factual
23 errors, which we had seen in some of the reporting at
24 that point.

25 Q. Do you recall what specific factual

1 error -- any of the specific factual errors that you
2 are seeking to correct?

3 A. Well, yes, and some of them we did.

4 The initial reporting talked about funds
5 being given to a confederate group, when in fact there
6 was a trust created. So in fact, these were just
7 factual things. These were not -- you know, factual
8 things to ensure that the reporting matched the actual,
9 I guess, events, if you will, of the settlement, the
10 events and the things that were identified in the
11 settlement.

12 And for the most part, I think everyone --
13 you know, I think the reporting was based upon just a
14 general understanding of what was shared, and so that
15 was actually one of the reasons why we wanted to do
16 this op ed, was to get into specifics.

17 Q. Okay. Anything else that you recall about
18 your conversations with Mr. Allison concerning your op
19 ed?

20 A. No, other than during the editorial
21 process, he had some thoughts and had some feedback on,
22 you know, some changes that we incorporated, as did
23 each of the members individually.

24 Q. Okay. How about Ms. Murphy, Ms. Wendy
25 Murphy? What do you recall about your conversations

1 with her concerning the op ed?

2 A. I had one brief conversation with her, and
3 I think it was around the way we were framing the op
4 ed, the kind of tone and tenor, but there were no
5 specifics that I can recall.

6 Q. Okay. What do you recall about any
7 conversation you had with Ms. Nelson, Ms. Anna Nelson?

8 A. I don't recall having any conversations
9 with her. I think it was feedback she shared via
10 email.

11 Q. All right. Well, let me just pursue that.
12 Did you share -- well, first of all, who
13 drafted the actual contents of the op ed?

14 A. I did.

15 Q. And then did you share it with these five
16 members individually, or did you meet with them
17 collectively?

18 A. No. So I had some individual phone
19 conversations, you know, to kind of walk through my
20 recommendation for this. I did get some, you know,
21 some input as to the direction each of these
22 individuals were to take. But as you read the op ed,
23 you'll see a lot of it is based upon -- a lot of it is
24 just factual information that's based on publically
25 available sources. I did draft the op ed, you know,

1 different iterations from it. I had Mr. Shanahan look
2 at it as well to make sure I had a full understanding
3 of the translation of some of the legal language into
4 more laymen's language, and I did share it with the
5 board members individually, and then I asked for their
6 feedback, individually.

7 Q. Okay. With regard to Mr. Rucho, what do
8 you recall about any conversation that you had with him
9 about the op ed?

10 A. Yeah, I had a couple of conversations with
11 him primarily it was around monuments law, since I
12 believe he was a member of the legislature when it was
13 passed.

14 You know, Mr. Rucho, also, you know,
15 shared, you know, his perspectives on, you know, how we
16 got there, and I think was generally in favor of moving
17 forward with an op ed as well.

18 Q. Do you recall ever reviewing any notes or
19 minutes of any meeting that occurred among or between
20 these five people with respect to this issue?

21 A. No. As I said earlier, I have no knowledge
22 of there being any meetings of, you know, these five
23 individuals. So I wouldn't have seen any notes. I
24 have no reason to believe there were any meetings.

25 Q. So even though they were collectively named

1 and tasked to handle this particular matter or to take
2 the lead on it, is it your understanding that they
3 never actually did that or have never had a meeting
4 with respect to that?

5 A. I have no knowledge of them having any
6 meetings.

7 Q. Okay. I take it, were you provided by any
8 of the five with any notes or written information of
9 any kind that you drew on in drafting or editing a copy
10 of --

11 A. No, the only written materials I received
12 was feedback on the op ed, which came to me by email.
13 So some suggestions around, you know, changing some
14 language or modifying some words or adding language
15 things along that line.

16 The op ed was drafted in a Word document,
17 and so, you know, what we were doing was, you know, we
18 asked each of the individuals to share their particular
19 feedback and thoughts as I kind of collected it from
20 each of them individually and then aggregated their
21 feedback into a, you know, another iteration.

22 Q. Did you retain any of the drafts or any of
23 the email feedback that was generated in the course of
24 that?

25 A. I don't know. I did not go through all my

1 emails in that period of time, but there would be no
2 reason why I would delete it. You know, that's a
3 question I guess for -- I guess the IT folks, I don't
4 know.

5 But generally I will say that for version
6 control, my preference is to delete old versions,
7 unless we know specifically there's disagreements that
8 are in place. So, you know, for me preserving the
9 ability to do that, but, you know, if you're familiar
10 with Microsoft Word and track changes, you have that
11 preservation until you get to a final draft.

12 Q. Let me ask this, did you review any
13 documents or records of any kind in preparation for
14 this deposition?

15 A. I did. I reviewed, I reviewed the consent
16 agreement. I reviewed board meeting minutes. I recall
17 I reviewed the trust, the UNC-Chapel Hill trustees
18 recommendation that they brought forward to the Board
19 of Governors back in 2018. I read a report on public
20 safety that the trustees had put together.

21 So these were all background documents.
22 Yes, that's what I recall.

23 Q. Did you review any of the correspondence
24 that you had by email or otherwise with any of the five
25 members whose names are on the op ed?

1 A. Not in preparation. The emails were
2 primarily after it had been prepared, and I shared it
3 with them individually for their feedback.

4 Q. My question is did you review any of those
5 exchanges in preparation for your testimony here today?

6 A. Oh, no. No.

7 Q. You indicated that you came to your current
8 position from the private sector. When you came to
9 your position with the UNC System, were you given any
10 training or any information about the North Carolina
11 Public Records Law?

12 A. Yes.

13 Q. And were you familiar with the public
14 records law prior to coming to work for UNC?

15 A. No.

16 Q. Can you tell me what sort of training or
17 advice or preparation you were given to familiarize
18 yourself with these requirements?

19 A. Well, I know there was a booklet that I
20 reviewed that was given to me during orientation. I
21 know I had discussions with counsel, internal counsel
22 on that. And there may have been some online training
23 that I did. I can't specifically recall, but there's a
24 whole series of training we do as part of the
25 onboarding process.

1 Q. Do you recall what that process had to say
2 in any respect as to whether drafts of public documents
3 are themselves public records?

4 A. Could you repeat that again? I'm sorry.

5 Q. Do you recall reading or being told
6 anything about the status of drafts of public documents
7 as whether they, themselves, are public record?

8 A. I don't recall.

9 Q. Who other than -- eventually, did all five
10 of the members whose names appear on the op ed, approve
11 of the content in some form or fashion?

12 A. Yes.

13 Q. Was that approval given in writing or just
14 verbally or how?

15 A. I think it was both. Some gave their
16 approval by email, some by phone call.

17 Q. Did anyone besides yourself actually have a
18 role in the initial drafting of the contents of the op
19 ed?

20 A. No, it was primarily me.

21 Q. Do you have -- I take it you have that in
22 front of you?

23 A. I do.

24 Q. All right. I'm going to move the laptop to
25 a screen where I can get it more clearly. I will see

1 if I can. I'm having trouble moving. Here we go.
2 Let me ask you to look at it, and I'll just
3 begin with this. It begins by saying, I'm reading from
4 the document: After protestors toppled the Silent Sam
5 statue on August 20, 2018, the Board of Governors
6 directed the UNC-Chapel Hill Trustees and Chancellor
7 Folt to develop a lawful solution that protects public
8 safety, preserves the monument and its history, and
9 allows the university to focus on its core educational
10 mission. That's the first paragraph.

11 A. Yes.

12 Q. Did you draft that paragraph, Mr. Whipple?

13 A. Yes.

14 Q. Okay. And did you do so based on the
15 documents that you already testified that you had
16 reviewed, the legal documents, et cetera?

17 A. Legal documents and board minutes. So I
18 recall going back to the December 2018, you know, board
19 meeting minutes as part of my preparation, yes.

20 Q. The second paragraph says: "UNC-Chapel
21 Hill proposed to construct an on-campus facility to
22 house the monument. However, multiple public safety
23 experts believed that UNC-Chapel Hill faced a continued
24 high risk of violence, civil disorder, and property
25 damage if the monument returned to campus."

1 Did you draft that paragraph?

2 A. Yes.

3 Q. And, again, was that -- did you do so based
4 on the records and minutes and documents that you have
5 already testified that you reviewed?

6 A. I did, and predominantly it was the
7 UNC-Chapel Hill Trustee proposal, and as I mentioned
8 earlier, the public safety document.

9 Q. The next paragraph reads: "The Board of
10 Governors tasked us to work with UNC-Chapel Hill to
11 review other options that would accomplish all of the
12 board's directives."

13 Did you draft that paragraph?

14 A. Yes.

15 Q. To whom does the word us in that sentence
16 refer?

17 A. I think, yeah, as I read it, the five
18 individuals. My recollection is that I wrote that
19 after reviewing the board minutes from, again,
20 December 2018. There was a chair, the chair at the
21 time had a motion or directive that was part of the
22 meeting minutes.

23 Q. And that recommendation was adopted by the
24 board, correct, at that session?

25 A. I don't know if it was a formal vote or

1 not. I don't recall.

2 Q. Okay. The next paragraph reads: We
3 recognized that many people felt strongly that the
4 monument should not be on campus. There were also many
5 North Carolinians who strongly felt that the monument
6 should be returned to campus.

7 Do you remember writing that?

8 A. I did.

9 Q. All right. In the first sentence, to whom
10 does we refer?

11 A. The five individuals.

12 Q. Okay. The next paragraph reads as follows:
13 "We learned that the Sons of Confederate Veterans,
14 (SCV) organization was prepared to pursue legal action,
15 that could mean a return of the monument to campus."

16 Let's just start with that sentence.

17 Did you draft that sentence?

18 A. Yes.

19 Q. And to whom, to your understanding, did you
20 intend that the word we would refer in that sentence?

21 A. Yeah, and I realize I should be more
22 specific. So I did say the five individuals, but I
23 should say that the five individuals, but also I think
24 they're also representative of the entire UNC System,
25 right, the -- organizationally as individual members,

1 but, you know, when I say we, it isn't just five
2 individuals saying that, it's the UNC System.

3 That particular -- the sentence you just
4 referenced, I essentially drafted that after reviewing
5 I guess what's become known as the Kevin Stone letter
6 that was published and circulated broadly. I guess it
7 was a letter to his membership, the Sons of Confederate
8 Veterans that talked about, you know, kind of his
9 thinking around this.

10 Q. Well, when it says: We learned that the
11 Sons of Confederate Veterans organization was prepared
12 to pursue legal action that could mean the return of
13 the monument back to campus, do you know to whom --
14 with whom the Sons of Confederate Veterans or their
15 representatives actually communicated the possibility
16 that they would do that?

17 A. I don't. I'm sorry communicated? I'm
18 sorry, communicated what?

19 Q. That they were prepared to pursue legal
20 action?

21 A. I think that was in the actual letter, that
22 they were threatening legal action in that letter.

23 Q. They didn't send that letter to Mr. Holmes,
24 did they?

25 A. No, but it was published in the meeting.

1 It was shared. I don't recall the exact way it was
2 leaked, but it was broadly published pretty widely in
3 North Carolina media.

4 Q. Had it been published as of December 16,
5 2019?

6 A. I don't recall.

7 Q. To your knowledge, did the Sons of
8 Confederate Veterans ever communicate to Mr. Allison
9 that they were considering legal action?

10 A. Not to my knowledge.

11 Q. To Ms. Murphy?

12 A. Not to my knowledge.

13 Q. To Ms. Nelson?

14 A. Not to my knowledge.

15 Q. And how about to Mr. Rucho?

16 A. Not to my knowledge.

17 Q. The next sentence says: "There were also
18 many North Carolinian-s who strongly believed that the
19 monument should be returned to campus.

20 Did you draft that sentence?

21 A. I did.

22 Q. And what was the basis for that sentence?

23 A. So I would say the basis for that, and the
24 basis -- I should say also this refers to the previous
25 sentence as well. So there were a number of emails

1 coming into the system office. You know, there's an
2 email box to the president, there's an email for
3 communications. So there were a number of emails
4 coming in from members of the public on both sides.

5 As it relates to that second sentence, I
6 also referenced an Elon University study that had been
7 released at the time around southern monuments and
8 their places on college campuses. So that was some
9 interesting context as well.

10 Q. Okay. Now, the next paragraph that we were
11 just discussing about the SCV being prepared to pursue
12 legal action, you said that that came from a letter
13 that was written on behalf -- later on behalf of the
14 Sons of the Confederate Veterans, is that right?

15 A. I believe it was in that Kevin Stone, yeah,
16 communication to his organization.

17 Q. Okay. Then there's a sentence that reads
18 as follows: However, the SCV indicated it was open to
19 the placement of the monument elsewhere in return for
20 funding the transportation, repair, maintenance, and
21 security of public display of the monument.

22 Did you draft that paragraph?

23 A. I did.

24 Q. And on what did you base that sentence?

25 A. I think primarily from the consent

1 agreement.

2 Q. Okay. You didn't draft that based on any
3 conversation that you had with any of the prior people
4 whose names appeared on the op ed?

5 A. No.

6 Q. And then the next sentence says: Original
7 cost estimates from the SCV exceeded \$5 million plus
8 annual recurring operating expenses.

9 Did you draft that sentence?

10 A. I did.

11 Q. And on what did you base that?

12 A. I don't recall specifically. It might have
13 been a conversation with counsel, but I'm sorry, I wish
14 I had a better answer for you.

15 Q. But, again, you weren't provided with the
16 cost estimate by any of the five people whose names
17 appear on the op ed, were you?

18 A. No, sir, no.

19 Q. Okay. I'm going to read the next
20 paragraph, it says: The state's monuments law prevents
21 the removal of a public statue, but there is exemptions
22 for private ownership.

23 Did you draft that sentence?

24 A. Yes.

25 Q. And on what did you base that sentence?

1 A. On the settlement -- it was primarily the
2 settlement agreement.

3 Q. Now --

4 A. I think, I'm pretty sure it was referenced
5 in the settlement agreement, and I would say
6 conversations with counsel, just in terms of, you know,
7 I think it was drafted in a more legal way, and the
8 settlement agreement said this was essentially
9 translation to simplified language.

10 Q. But that summarizes a legal concept or a
11 legal issue, doesn't it?

12 A. Yes, it describes it, yes, in laymen's
13 terms.

14 Q. All right. The next sentence says: The
15 SCV arranged to acquire all property rights of the
16 monument from the United Daughters of the Confederacy
17 (UDC). Did you draft that sentence?

18 A. Yes.

19 Q. And what was the basis on which you did so?

20 A. That was the settlement agreement.

21 Q. Are you saying there was a settlement
22 agreement in which it was explicitly stated that the
23 SCV was going to acquire property rights of the
24 monument from the UDC?

25 A. I believe so. I mean, I don't have it

1 burned in memory from a year ago, but I believe that
2 was the source of it, yes.

3 Q. Did any of the five people whose names
4 appear on the op ed ever tell you that the SCV had
5 arranged to acquire whatever property rights the UDC
6 had in the statue?

7 A. No.

8 Q. Okay. And then the next sentence says: We
9 reached an agreement with the SCV to settle the
10 threatened litigation with the following terms. Let's
11 just stop at this colon there.

12 I take it you drafted that language?

13 A. I did.

14 Q. To whom does the word we -- who is that
15 supposed to refer to in the sentence?

16 A. The university system.

17 Q. Well, this op ed is not -- was not
18 published over the -- or in the name of or on behalf of
19 the UNC System, was it?

20 A. No.

21 Q. It's published under the names of the five
22 individual members of the Board of Governors?

23 A. Yes.

24 Q. And I take it from your answers so far,
25 none of them drafted this op ed?

1 A. I drafted the op ed. They provided
2 feedback and input on it, both in the prior to drafting
3 as well as the reviewing of the draft.

4 Q. But none of them actually composed or
5 drafted the contents of this op ed, did they?

6 A. Any parts of it? I mean, I'm trying to
7 understand the question, because there were specific
8 language of the sentences that I incorporated from them
9 individually that are contained in the op ed. But if
10 you're asking if any single board member draft a
11 hundred percent of this, the answer is no.

12 Q. Well, and once again, do you recall any
13 specific contents, up to this point as far as you have
14 read, that were composed or drafted by any of the five
15 members who were on the op ed?

16 A. You're asking me for specific words and
17 sentences I don't recall. You know, as I said, there
18 were five individuals giving feedback. In some cases
19 it was changing a word or two. I recall one particular
20 example, whether it was a sentence added, but I don't
21 recall looking at the final version here what those
22 were.

23 Q. Okay. Then if you proceed along from where
24 we just stopped, there's an outline of the terms of the
25 settlement agreement, and the first thing it says: SCV

1 owns the monument. The second bullet, there's a
2 bullet: The monument will be transferred to the SCV.
3 The next bullet says: "The UNC System and the Board of
4 Governors will fund a separate charitable trust
5 administered by a neutral, independent trustee in the
6 amount of \$2.5 million; the funds will come from
7 interest on the university endowment fund, not tax
8 dollars or tuition and fees.

9 The next bullet says: The separate
10 charitable trust is to be used only for the
11 preservation of the monument, as determined by the
12 trustee.

13 And the last bullet is: The monument
14 cannot be located in any of the 14 counties currently
15 containing a UNC System constituent institution.

16 Did you draft all that language?

17 A. Yes.

18 Q. And on what did you base that provision on?

19 A. From the settlement agreement. Some of it
20 is verbatim right from the settlement agreement.

21 Q. And, again, that language was not provided
22 to you by the five people whose names appear on the op
23 ed, was it?

24 A. No, sir, no.

25 Q. Okay. Earlier you stated that your purpose

1 in doing this op ed was to provide clarity on behalf of
2 the UNC System in the face of some reporting that had
3 raised some questions. Is that a fair statement?

4 A. Yes.

5 Q. Why then did you -- why then was it
6 published over the names of these five individuals
7 rather than as a press release from the UNC system --

8 I think you agreed to the previous
9 question, and my follow up was this.

10 If it was intended to provide clarity on
11 behalf of the system, why was it not published as a
12 press release or official statement on behalf of the
13 entire system, and instead was published under the
14 names of these five individual members of the Board of
15 Governors?

16 A. It was my professional recommendation that
17 individual names gives a public face to this; and since
18 these five were, you know, tasked with working on this
19 issue, my recommendation was we draft something that
20 all five of them could sign onto. I mean, we certainly
21 could have taken the route of having it just be, you
22 know, an organizationally-authored thing, but I thought
23 from a public relations perspective and an authenticity
24 perspective, it's more powerful that individual names
25 were put to this.

1 Q. Okay. We'll come back to that. Let's move
2 to the next paragraph, which reads as follows: We also
3 agreed that the SCV would sign a separate agreement
4 limiting its ability to display flags and banners on
5 the university campuses, in exchange for payment of
6 \$74,999. Did you draft that?

7 A. Yes.

8 Q. And on what did you base that?

9 A. It was the consent agreement, as well as
10 the legal report from counsel during the board meeting.

11 Q. Are you saying that there were public
12 documents in existence, as of December 16, 2019, that
13 memorialized such an agreement?

14 A. I believe that was -- I believe that was
15 part of the -- I believe that was part of the files
16 that were released back in late November, as part of
17 the consent agreement.

18 Q. Are you sure about that?

19 A. I'm sorry, do you want to take that --
20 As best as I can recall.

21 Q. Okay. If I represent to you that the
22 sentence I just read was the first public notice of any
23 kind of the agreement, do you have any basis to take
24 issue with that?

25 A. No. I mean, I guess it comes down to what

1 do you mean by public? You know, I believe, you know,
2 the legal documents were publicly available. I think
3 if you're asking me is this the first kind of PR
4 acknowledgment? I would agree with you there, yes,
5 that this was the first PR acknowledgment, public
6 relations.

7 Q. Okay. In that sentence that we just were
8 discussing, to whom does the word we refer?

9 A. We is the university system.

10 Q. And, again, if this was intended to convey
11 something on behalf of the system, why was it actually
12 stated as coming from these five individuals?

13 A. These five individuals were tasked by the
14 Board of Governors to work on this issue with the board
15 as the overall governing authority over the UNC System.

16 Q. Do you know of your own knowledge who
17 actually negotiated or signed this \$74,999 agreement
18 that's referred to in the sentence we just read?

19 A. I don't know who negotiated it. I know who
20 signed it.

21 Q. And who signed it?

22 A. Dr. Roper, who was interim president of the
23 UNC System at the time.

24 Q. Are you aware that -- do you have any
25 reason to believe that any of the five people, whose

1 names appeared on the op ed, had anything to do with
2 negotiating that agreement?

3 A. I have no knowledge of that.

4 Q. Does it surprise you that someone might
5 interpret the we in that sentence as referring to
6 the -- does it surprise you that someone might
7 interpret the word we in that sentence as referring to
8 the five people whose names appears on the op ed?

9 A. No, it -- so let -- as I -- again, I'm not
10 an attorney, but the, you know, the authority to enter
11 into legal agreements here is authority that is with
12 the board collectively, all right. And this is
13 something I've learned, you know, through legal
14 counsel, that there's no individual authority extended
15 to members of the Board of Governors, right. Their
16 authority to execute, take actions, do things, is a
17 corporate authority.

18 So it does not surprise me, because I know
19 that. So when I say the we, it can only be the UNC
20 System.

21 Q. But my question is does it surprise you
22 that someone reading this op ed would think that the we
23 is referring to the five people whose names are on the
24 op ed?

25 A. Again, I can only speak to myself. Again,

1 it doesn't surprise me. I don't want to conjecture as
2 to what anyone could interpret or misinterpret.

3 Q. Do you think it's possible that someone
4 could misinterpret?

5 A. Sure, anything is possible.

6 Q. Okay. The next sentence says: "This
7 agreement addressed the possibility that the consent
8 order might not be approved, in which case the SCV
9 agreed that it would not sponsor events on any of our
10 campuses for five years."

11 Did you draft that sentence?

12 A. I did.

13 Q. And on what did you base that sentence?

14 A. That was based, to a certain degree, on
15 conversations with counsel, with Mr. Shanahan. And
16 part of it is also based upon the consent agreement.
17 So the language about sponsoring events and, you know,
18 giving up their ability to organize, you know, organize
19 and do things on campus.

20 Q. All right. Let me address a couple of
21 things here.

22 First of all, do you agree that this op ed
23 discusses two separate agreements; one for the
24 establishment of a trust to be funded with two and a
25 half million dollars, and the other where the SCV would

1 be paid \$74,999?

2 A. Yes, I agree.

3 Q. Do you know the date on which either of
4 those was executed?

5 A. I don't recall. I believe it was late
6 November of 2019.

7 Q. All right. Do you know, do you recall --
8 strike that.

9 Were you in attendance at a meeting of the
10 Board of Governors, which largely occurred by
11 telephone, I think, on or about November 27, 2019,
12 where they --

13 A. Yes.

14 Q. -- approved a settlement?

15 A. Sorry for speaking over you.

16 Yes, I was an attendee. I was in
17 attendance.

18 Q. Do you recall whether there was any
19 discussions of any kind at that meeting about the
20 agreement to pay the SCV \$74,999 to keep its events off
21 campus?

22 A. I know there was an original report from
23 counsel that was part of that discussion.

24 MR. ISLEY: Huge, if I may interject
25 here, that was in close session, and it's

1 advice from counsel. So I hope that you
2 won't be asking any further questions
3 regarding the content of the legal abort.

4 MR. STEVENS: I'm just trying to
5 understand if he understood that there were
6 two separate agreements.

7 Q. Do you know the date off the top of your
8 head on which the \$74,999 agreement was executed?

9 A. I don't know the specific date, and -- but
10 to the point I think you were referencing, I do
11 understand there are two separate agreements, that, I
12 mean, I completely affirm that.

13 Q. Do you know which came first?

14 A. I believe it was the 74,999, yes.

15 Q. What is your best recollection as to when
16 and how you first became aware of that agreement?

17 A. It was conveyed by Mr. Shanahan, general
18 counsel.

19 Q. Okay, all right. The next paragraph reads:
20 "The Attorney General's Office confirmed that there was
21 no legal impediment to the UNC System and its Board of
22 Governors agreeing to the proposed settlement, and that
23 it had the authority to consent to the judgment as
24 charged." Did you draft that sentence?

25 A. Yes, sir.

1 Q. What is the proposed settlement referred --
2 which of the proposed settlements is referred to in
3 that sentence?

4 A. I believe it was the second settlement. It
5 was the settlement that established the trust and the
6 \$2.5 million.

7 Q. Do you know, do you have any recollection,
8 of your own knowledge, as to whether the Attorney
9 General's Office reviewed or approved the \$74,999
10 settlement?

11 A. Yes, there was a -- oh, I'm sorry, I
12 misunderstood your question. I thought you were
13 referencing my answer.

14 I am not aware of them approving, reviewing
15 or not reviewing the 74,999. I had no knowledge of it.

16 Q. Okay, all right. Then the next paragraph
17 reads as follows: "We presented the proposed
18 settlement to the board's governance committee, since
19 the authority to settle this matter is within its
20 authority outlined in Section 200.5 of the UNC Policy
21 Manual."

22 Did you write that sentence?

23 A. Yes.

24 Q. Again, to whom does the we in that sentence
25 refer?

1 A. So the we in this case is the university
2 system, okay, and it was presenting the proposed
3 settlement to the governance committee of the Board of
4 Governors, which typically reviews and -- reviews,
5 affirms, legal settlements. It's part of the
6 governance authority, if you will.

7 Q. To your knowledge or recollection, did any
8 of the five people, whose names appear on the op ed,
9 present the proposed settlement to the governance
10 committee for its consideration?

11 A. It was put forward by counsel as part of
12 the legal report.

13 Q. So I take it the answer to my question is
14 no?

15 A. Correct. Again, I think that's pretty
16 standard procedure from my observation. These
17 settlements are put forth by counsel.

18 Q. Well, then my question again is if it was
19 presented to the governance committee by counsel, why
20 doesn't the op ed say so?

21 A. I'm not sure I understand -- well -- so I
22 guess my only response to that would be that the, you
23 know, the counsel's office is part of the university
24 system. And as I mentioned earlier, the we, for the
25 most part, references the university system. It's the

1 plural governing authority here.

2 Q. Do you agree with me that someone might
3 easily construe the we there as referring to the people
4 whose names are on the op ed?

5 A. Yeah, I could see where, you know, as you
6 said earlier, anything is possible, subject to
7 interpretation or misinterpretation.

8 Q. Well, ordinarily when you write something
9 and you say I or we, don't we do so in reference to
10 ourself or ourselves?

11 A. I for sure. We, I don't, I don't agree
12 with that. We is often referred to as corporate
13 authorities. And in trying to be informal.

14 Again, as I said at the beginning, part of
15 what I was doing was trying to take, you know, some
16 very complex legal terminology and translate it into
17 something that could be read and understood by the
18 general public.

19 Q. But the general public should not have
20 understood this to say that Mr. Holmes and Mr. Allison
21 and Ms. Nelson and Ms. Murphy and Mr. Rucho presented
22 the settlement to the Board of Governor's Committee
23 should they?

24 A. I'm sorry, could you say that again? I
25 want to make sure I'm answering you correctly.

1 Q. Are you saying that a member of the public
2 reading this should not have construed it to say that
3 Mr. Holmes or Mr. Allison or Ms. Murphy or Ms. Nelson
4 or Mr. Rucho presented the settlement to the Governor's
5 Committee?

6 A. Yes, that is correct. Thank you for
7 clarifying that.

8 Q. So if someone reading the op ed interpreted
9 it that way, that's their fault, not yours, right?

10 A. I cannot begin to speculate on how someone
11 interprets something or doesn't interpret something. I
12 mean, as I said, you know, I was doing the best I could
13 to try and tell the story in a way that was readable,
14 understandable to the general public. That was my
15 goal.

16 Q. Okay. Let's move on to the next sentence
17 which says: "Twenty members of the Board of Governors
18 participated in the meeting."

19 I take it you drafted that sentence?

20 A. I did.

21 Q. And was that based on the minutes of the
22 meeting?

23 A. It was.

24 Q. And that meeting, just to be clear, was
25 mostly the people were mostly participating by

1 telephone, correct?

2 A. Yes.

3 Q. Okay. Only one committee member voted
4 against this settlement, is the next sentence.

5 Did you draft that?

6 A. Yes.

7 Q. Do you recall who that was?

8 A. I don't recall.

9 Q. Okay. The next sentence reads: "A
10 superior court judge approved the consent order, the
11 SCV took possession of the monument, and the UNC System
12 transferred 2.5 million to the charitable trust from
13 interest accumulated in the UNC-Chapel Hill endowment.

14 Did you write that sentence?

15 A. Yes.

16 Q. Were you personally involved in any way in
17 obtaining the superior court judge's consent for
18 approval of the consent order?

19 A. No.

20 Q. Do you know when and how the SCV actually
21 took possession of the monument?

22 A. I don't.

23 Q. Concerning the transfer of the 2.5 million,
24 it says: The UNC System transferred \$2.5 million to
25 the charitable trust. Did you write that?

1 A. Yes.

2 Q. And what did you base that on?

3 A. Primarily conversation with counsel to
4 understand that the mechanism, how it was being done.

5 Q. Do you know how the transfer occurred?

6 A. I do not.

7 Q. And the money, it goes on to say that it
8 was "from interest accumulated in the UNC-Chapel Hill
9 endowment," correct?

10 A. That's what it says, yes.

11 Q. And so -- and you drafted that?

12 A. I did.

13 Q. Where did you understand that -- what did
14 you understand that meant in terms of where the money
15 would come from?

16 A. That was -- again, I drafted that with
17 counsel. I was not part of the specific negotiations,
18 so I was relying upon the advice of counsel to how we
19 would best describe that.

20 Q. Isn't it correct that the money actually
21 was transferred directly from UNC-Chapel Hill to the
22 trust?

23 A. I have no knowledge of that.

24 Q. To your knowledge, does the UNC System have
25 \$2.5 million to transfer to the trust?

1 A. I don't have knowledge of that.

2 Q. And are you aware of public documents that
3 have subsequently come to light that makes it plain
4 that the system basically ordered the Chancellor,
5 acting Chancellor at UNC-Chapel Hill to transfer the
6 money?

7 A. I believe that's correct.

8 Q. So if someone read this to understand that
9 the UNC System handed over the money, that would have
10 been incorrect, right?

11 A. No, I do believe the UNC System was the one
12 who handed over the money.

13 Q. Okay. But you acknowledge that the money
14 was actually in the endowment of UNC-Chapel Hill, not
15 the UNC System?

16 A. As far as I know.

17 Q. Okay, all right. Let's move to the next
18 paragraph. It reads as follows: "We were given the
19 responsibility to resolve a deeply divisive and
20 personal issue."

21 Did you write that sentence?

22 A. Yes.

23 Q. And, again, to whom does the we in that
24 sentence refer?

25 A. I think in this instance it would be the

1 five individuals.

2 Q. Okay. Then the next sentence says: "While
3 we have heard from citizens from across this state who
4 have expressed their gratitude for our efforts of
5 finding a solution to this issue, we also acknowledge
6 that others strongly disagree with the board's decision
7 to approve a settlement."

8 Did you draft that sentence?

9 A. I did.

10 Q. And on what did you base the contents of
11 that on?

12 A. As I said earlier, there were actually a
13 number of emails that were flowing into the system
14 office through a variety of means, and we're talking
15 high, high volumes.

16 So I -- you know, this was just an
17 acknowledgment that there was, you know, two different
18 sides of this particular issue.

19 And so it was based upon, you know, my
20 knowledge of those emails. I wrote that with the idea
21 to acknowledge, you know, where the paragraph ended up
22 talking about compromise.

23 Q. And in fact, going back to the very
24 beginning, if I understood you correctly, the very
25 purpose of this op ed, or at least a significant

1 purpose of it was to try to counteract the effect of
2 some of those critics, right?

3 A. I think the purpose -- it wasn't to
4 counteract critics. It was to one, be sure that the
5 UNC System was telling, you know, its story with all
6 the facts that had not been, I think -- was not
7 accurately reported in some publications.

8 So the idea was to have, you know, the
9 system be able to tell the story and be able to roll
10 out the facts in a way that was fairly transparent.

11 Q. And in a way that was also, that told the
12 story the way the System wanted it told, correct?

13 A. I think we were telling the story the way
14 the story happened. I don't think this was spin. It
15 was just -- I mean, you know, I've worked on op eds
16 that are more opinion than facts, and this is
17 definitely more -- very very heavy on facts.

18 Q. Then the last sentence of that paragraph
19 says: Compromise was a necessity.

20 I assume you wrote that also?

21 A. I, yes, I did, but I believe that was one
22 of the edits I got from -- I don't want to say which
23 one, because I'm not entirely sure. But compromise was
24 a necessity was at the request of one of the individual
25 board members. I think that they wanted that

1 particular phrase there.

2 Q. You don't recall which one?

3 A. I don't.

4 Q. Okay. Let's go to the last paragraph:

5 "However, we remain convinced that our approach offered
6 a lawful and lasting path that ensures that the
7 monument never returns to campus."

8 You drafted that sentence?

9 A. I did.

10 Q. And, again, I ask you to whom you intended
11 the we there to refer?

12 A. So the we refers to the five individuals
13 who authored the op ed; however, the our refers to the
14 UNC System.

15 Q. Okay. The next sentence says: "We believe
16 this agreement only protects and reduces the risk of
17 violence and physical harm to students, faculty, and
18 staff if the monument had returned to the UNC-Chapel
19 Hill campus, but also ensures the same for our 16 other
20 campuses in the UNC System."

21 Did you draft that?

22 A. I did.

23 Q. And, again, to whom does the we in that
24 sentence refer?

25 A. So I would say that the we here is both the

1 individuals and the university system. So, you know,
2 these five individuals are members of the board. The
3 board is the governing authority of the UNC System.

4 So in that case, it's both.

5 Q. Okay. Let's talk a bit about -- let me ask
6 you about the process.

7 How did you -- well, first of all, who
8 determined where and how you were going to attempt to
9 get this opened?

10 A. It was part of my responsibility.

11 Q. And what did you do? How did you go about
12 it?

13 A. So I, you know, one, reviewed, as I said
14 earlier, extensively board minutes, primarily from 2018
15 in terms of understanding the history. I reviewed the
16 UNC-Chapel Hill Trustee's recommendation. I reviewed
17 the public safety report. I had conversations with
18 counsel to understand, you know, the chronology of
19 events. And then I had some individual conversations
20 with those five members, not all five. I know
21 specifically I spoke to three or four of the five. I
22 know I had not spoken to Mrs. Nelson. But I believe I
23 had spoken to three of the other four individually to
24 get their perspectives before I began the writing
25 process.

1 Q. All right.

2 A. I'm sorry.

3 Q. Go ahead.

4 A. I was going to say I crafted a draft, had
5 counsel review it to make sure it was accurate. Then I
6 shared it with the five individuals and got their
7 respective feedback; some verbal, some written.

8 Q. All right. Do I understand all five in
9 some form approved your publish -- getting this op ed
10 published under their names?

11 A. Yes. If any one of them had not agreed to
12 author this, their name would not be attributed to it.

13 Q. Right. Then how did you go about placing
14 the op ed for publication?

15 A. Well, we actually called the Charlotte
16 Observer, and specifically a member on my team, who is
17 head of media relations, I directed him to contact the
18 op ed editor of the Charlotte Observer about doing a
19 future placement of the op ed, and they agreed to do
20 it. I believe it ran electronically on Sunday,
21 December 15, and it was published in print on Monday,
22 December 16.

23 Q. And who was it on your staff who had the
24 conversations or communications with the Observer?

25 A. Josh Ellis, he's our assistant vice

1 president of media relations and reports to me.

2 Q. Do you know with whom Josh Ellis spoke or
3 communicated at the Observer about this?

4 A. Paul Sayonge(phonetic), I believe, at the
5 Charlotte Observer.

6 Q. Okay. Was the op ed published by any other
7 publication, other than the Charlotte Observer?

8 A. Sure. I mean, the Observer is owned by the
9 McClatchy, which also owns the Raleigh News & Observer.
10 So, you know, one of the strategic reasons for going to
11 the Observer was we knew the News & Observer would run
12 it as well. So essentially it would have statewide
13 coverage.

14 Q. Did you attempt to place it for publication
15 in any other publishing authority?

16 A. I don't recall.

17 Q. Was it released in any other form, such as
18 a press release or statement on behalf of the
19 university or on behalf of those five individuals?

20 A. So once the op ed ran, we did release it on
21 the UNC System website as a public statement. So
22 essentially we just ran it once it was published.

23 Q. Looking back on it, and now we've just gone
24 through the contents of this op ed, do you think, in
25 your view, is there anything about it that is

1 untruthful or misleading?

2 A. No, it's completely truthful and factually
3 correct.

4 Q. And, again, if someone interpreted it as
5 saying that these five individuals had negotiated the
6 settlements that are described in it, that's the
7 reader's fault, not yours, correct?

8 A. Correct.

9 MR. STEVENS: I think we're getting
10 close to the end here. Would it be
11 appropriate just to take a little break here
12 and let everybody stretch for a minute, and
13 then maybe we should figure out a way to
14 talk among ourselves, either through the
15 chat mechanism or something else?

16 MR. ISLEY: Sure. In fact, I was
17 going to suggest after about an hour. I
18 don't know if Earl has anything to drink.
19 That's fine. We can leave the room again,
20 Hugh, if you want to stay on this platform,
21 and we'll do what we did the last time which
22 is walk across the building.

23 MR. STEVENS: I think that Erica and
24 Anna can communicate with me through the
25 chat mechanism, if they wanted to

1 individually. In other words, we can just
2 stay on and do that either way.

3 MR. ISLEY: I have no idea. This is
4 my very first videotape deposition.

5 MR. STEVENS: Why don't we do this,
6 why don't we take a break and let the
7 reporter have a minute also and just
8 reconvene at three o'clock, how's that?

9 MR. ISLEY: Yeah, that's great. Thank
10 you.

11 (Off the record at 2:46 p.m.)

12 (On the record at 3:01 p.m.)

13 BY MR. STEVENS:

14 Q. Just a couple of additional questions, and
15 I think we'll wind up.

16 Mr. Whipple, you talked about having the op
17 ed published over the names of the five members of the
18 Board of Governors. Did you ever consider having other
19 members of the board listed as signatories on the op ed
20 other than yourself?

21 A. I didn't. It was my recommendation that
22 since these five individuals were tasked with working
23 on this, that it made sense for those five to be the,
24 you know, essentially put their signatures to it. Plus
25 logistically getting, you know, a dozen or 15 or 24,

1 you know, on something is very very challenging.

2 So five was, you know, five was -- five
3 made sense to me as to, you know, the course of action
4 that we took.

5 Q. After you decided that -- to take the
6 approach of having these five people being potential
7 signatories, were you surprised when you talked to them
8 to find that they in fact had not ever met as a group
9 or had not met as a group?

10 A. I didn't have any discussions about that.
11 As I said, I knew that they were working individually
12 on this. I wasn't at all, you know, tuned into the
13 interactions of the five members.

14 Q. And did you ever -- we've gone over the
15 fact that you had talked to each of them or
16 communicated with each of them about the op ed. But
17 did you ever have a conversation with any of them about
18 their involvement or lack of involvement in the actual
19 negotiation of the settlement?

20 A. No.

21 Q. I'm going to ask you some names of people,
22 simply ask you if you communicated with any of them or
23 they with you about this, and in all instances, the
24 first question is simply a yes or no question, okay?

25 A. Well, can I ask you a clarifying question?

1 When you say communicated about this, do you mean the
2 op ed?

3 Q. About the op ed.

4 A. Okay.

5 Q. Did you ever communicate with Dr. Roper
6 about the op ed before it was published?

7 A. Yes.

8 Q. What can you tell me?

9 A. I think it was more of just informing him
10 of the approach, my recommendation on the approach to
11 take here as to how it should be framed, that there
12 should be signatories, that, you know individual
13 signatures, things along that line. It was just, he
14 wasn't giving me any direction. He wasn't reviewing
15 things. It was just kind of keeping him up to, kind of
16 up to speed on my approach.

17 Q. And I take it from your answer that he had
18 no -- he didn't provide any of the content for an
19 editorial function involved?

20 A. No.

21 Q. Okay. How about Chairman Ramsey? Did you
22 ever have any conversation with him about the op ed
23 before it was published?

24 A. No.

25 Q. Did you ever have any conversation with

1 Whipley Rand about the op ed before it was published?

2 A. No.

3 Q. Did you ever have a conversation with
4 Clayton Summers about the op ed before it was
5 published?

6 A. No.

7 Q. Did you ever have a conversation with Kevin
8 Guscowitz about the op ed before it was published?

9 A. No.

10 Q. Did you ever have a conversation with any
11 member of the Board of Governors, other than the five
12 we've already talked about, before the op ed was
13 published?

14 A. No.

15 Q. Other than Josh Ellis on your staff, was
16 any other member of your staff involved in the
17 drafting, placement or the editing of the op ed?

18 A. A gentleman by the name of Tom Wallace
19 essentially acted as proofreader.

20 Q. Did you ever get any feedback from members
21 of the Board of Governors about the op ed after it was
22 published?

23 A. You mean -- oh, general feedback, so after
24 it was published?

25 Q. Yes.

1 A. Yeah, there was some -- yes, there was
2 feedback.

3 Q. Can you describe in what form that came and
4 what the nature of it was?

5 A. I don't recall who specifically. I know I
6 had a couple of conversations, had a few emails, but it
7 was generally positive, you know, that, you know, laid
8 out the facts well, and, you know, complimenting us on,
9 you know, all the hard work that went into the
10 development, creation, editing and placement of it.

11 Q. You mentioned in the course of my questions
12 that you had been provided in conjunction with your
13 onboarding at the systems with material about the
14 public records law. I don't think I asked you were you
15 also provided with structured information about the
16 open meetings law in North Carolina?

17 A. Yeah, part of the training, of the
18 onboarding training, covers the open meetings law, yes;
19 and my office typically -- my office is the one that
20 issues the public notices.

21 Q. Is the training all -- well, in what form
22 does the training take? Are there actual sessions like
23 seminars or meetings, or is it simply providing written
24 material, or some combination? Or how does that --

25 A. No, it's an online training. So typically

1 there's instruction, usually some -- a couple of case
2 study examples, and usually then a quiz, right, to
3 ensure that you've mastered the contents.

4 Q. Do you know whether a similar training is
5 provided to the members of the Board of Governors
6 themselves?

7 A. I do not know.

8 Q. But when you say per the onboarding
9 process, to whom -- obviously it was part of yours, do
10 you know who would --

11 A. My understanding it's part of the
12 onboarding process for a new employee. It wasn't
13 specific to me.

14 Q. Okay. So staff positions, administrative
15 positions?

16 A. Yes.

17 Q. People who are hired for those are given
18 this training, is that right?

19 A. Yes. I think so, yeah.

20 Q. Is there anything about this op ed and the
21 process by which it was created and published that you
22 think is important to tell me about that I haven't
23 asked you about?

24 A. No, I think, you know, you mentioned the
25 we's, and I think that as I walked away, one of the

1 things I should emphasize is that, you know, there are
2 character limits, word limits on op eds. And so part
3 of the, you know, part of what I had to do in crafting
4 this is, you know, using very -- you know, making it as
5 simple as possible and using as few words as possible
6 to convey the story so that it fell within the word
7 limit to have it be published.

8 Q. I think one last question, and this may go
9 back to a question you answered before.

10 Is it your understanding or recollection
11 that the existence of the November 21, 2019 settlement
12 in which the SCV was paid \$74,999, was known publicly
13 prior to the publication of this op ed?

14 A. I think, as I said earlier, I don't recall.
15 I'm not aware.

16 MR. STEVENS: All right. I think
17 that's all the questions we have for you,
18 Mr. Whipple. Thank you for your time.

19 Your counsel may have some questions,
20 some follow-up questions. I don't know.

21 MR. ISLEY: Mr. Whipple, thank you for
22 your time. I don't have any questions for
23 you. I appreciate your attending today?

24 THE WITNESS: Sure.

25 MR. STEVENS: Can we stipulate for

1 clarity sake that the reporter can attach
2 the op ed as an exhibit to the deposition?

3 MR. ISLEY: Yes.

4 (The document referred to was marked
5 Deposition Exhibit Number 1 for
6 identification.)

7 (Whereupon the deposition was
8 concluded at 3:13 p.m.)

9 (Signature reserved.)

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1 SIGNATURE PAGE
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7 _____
8 EARL WHIPPLE
9
10
11 SUBSCRIBED AND SWORN to before me this _____
12 day of _____, 2021.
13
14
15 _____
16 NOTARY PUBLIC
17
18 My Commission expires: _____
19
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1 ERRATA PAGE

2 MMV

3

4 CASE NAME: DTH vs. UNC

5

6 WITNESS NAME: EARL WHIPPLE

7 DATE: January 27, 2020

8

9 PAGE LINE READS SHOULD READ REASON FOR CHANGE

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1 C E R T I F I C A T E

2 I, Marisa Munoz-Vourakis, Stenographic Reporter, RMR,
3 CRR and Notary Public, certify that on January 27, 2021,
4 in Raleigh, North Carolina, having produced satisfactory
5 evidence of identification, and having been first duly
6 sworn by me according to the emergency video notarization
7 requirements contained in G.S. 10B-25, to tell the truth,
8 thereupon testified as set forth in the preceding pages,
9 exclusive of errata sheet and signature page, if required,
10 the examination being reported by me verbatim and reduced
11 to typewritten form by me personally.

12 I further certify that I am neither counsel for,
13 related to, nor employed by any of the parties to this
14 action in which this proceeding was conducted, and
15 further, that I am not a relative or employee of any
16 attorney or counsel employed by the parties thereof, nor
17 financially or otherwise interested in the outcome of the
18 action.

19 This the 31st day of January, 2021.

20 
21 _____ MARISA MUNOZ-VOURAKIS
22 Notary #20032900127
23
24
25

Exhibits	2018 7:6	abort 37:3	additional
	11:17,18	accomplish	52:14
WhippleE 1	17:19	21:11	address
4:9 59:5	20:5,18	accumulated	35:20
	21:20	42:13 43:8	addressed
\$	48:14		35:7
	2019 7:7,8	accurate	administered
\$2.5 30:6	8:16,21,24	49:5	30:5
38:6 42:24	24:5 32:12	accurately	administrative
43:25	36:6,11	46:7	57:14
\$5 26:7	58:11	acknowledge	adopted
\$74,999 32:6	21 58:11	44:13	21:23
33:17	24 52:25	45:5,21	advice 18:17
36:1,20	27 36:11	acknowledgment	37:1 43:18
37:8 38:9	2:46 52:11	33:4,5	advisor 6:6
58:12		45:17	affirm 37:12
1	3	acquire 9:4	affirms 39:5
		27:15,23	aggregated
1 59:5	3:01 52:12	28:5	16:20
10 7:6	3:13 59:8	acted 55:19	agree 33:4
14 30:14	7	acting 44:5	35:22 36:2
15 49:21		action 22:14	40:2,11
52:25	74,999 37:14	23:12,20,	agreed 10:5
16 8:16	38:15	22 24:9	12:19 31:8
24:4 32:12	9	25:12 53:3	32:3 35:9
47:19		actions	49:11,19
49:22	90s 6:12	34:16	agreeing
2	98 7:2	actual 9:1	37:22
		13:8 14:13	agreement
2.5 42:12,	A	23:21	7:16,24
23		53:18	10:25
20 20:5	ability 17:9	56:22	17:16 26:1
200.5 38:20	32:4 35:18	added 29:20	27:2,5,8,
		adding 16:14	

20,22 28:9	appears 34:8	attendee	
29:25		36:16	B
30:19,20	appointment		
32:3,9,13,	12:11	attending	bachelor's
17,23	approach	58:23	6:22
33:17 34:2	47:5 53:6	attorney	back 7:15,
35:7,16	54:10,16	34:10	24 17:19
36:20	approval	37:20 38:8	20:18
37:8,16	19:13,16	attributed	23:13
47:16	42:18	49:12	32:1,16
agreements	approve	August 8:21	45:23
10:17	19:10 45:7	20:5	50:23 58:9
34:11			background
35:23	approved	authenticity	6:20 17:21
37:6,11	35:8 36:14	31:23	
ahead 49:3	38:9 42:10	author 49:12	banners 32:4
	49:9		base 25:24
Alabama 6:16	approving	authored	26:11,25
Allison 9:20	38:14	47:13	30:18 32:8
12:16	area 6:17	authorities	35:13 43:2
13:18 24:8		40:13	45:10
40:20 41:3	arranged	authority	based 10:24
alluded 8:23	27:15 28:5	5:13 33:15	13:13
10:1	arts 6:23	34:10,11,	14:23,24
amount 30:6	assistant	14,16,17	20:14 21:3
	49:25	37:23	26:2
Anna 14:7	assume 46:20	38:19,20	35:14,16
51:24		39:6 40:1	41:21
annual 26:8	Astrazeneca	48:3 50:15	45:19
	6:9	authors 9:23	basically
answering	attach 59:1	aware 7:3	44:4
40:25			
answers	attempt 48:8	11:6,14	basis 24:22,
28:24	50:14	12:10,14	23,24
appeared	attendance	33:24	27:19
9:23 11:3	11:10	37:16	32:23
26:4 34:1	36:9,17	38:14 44:2	began 48:24
		58:15	

begin 5:8	48:2,3,14	campus 20:25	Chancellor
7:12 20:3	52:18,19	22:4,6,15	20:6 44:4,
41:10	55:11,21	23:13	5
	57:5	24:19	
beginning		35:19	changing
40:14	board's	36:21	16:13
45:24	21:12	47:7,19	29:19
	38:18 45:6		
begins 20:3			character
		campuses	58:2
behalf 7:23	Bob 6:15	25:8 32:5	
25:13	booklet	35:10	charged
28:18	18:19	47:20	37:24
31:1,11,12			
33:11	box 25:2	Capitol 6:10	charitable
50:18,19			30:4,10
	branding	Carolina	42:12,25
	5:17	18:10 24:3	
believed		56:16	Charlotte
20:23	break 51:11		49:15,18
24:18	52:6	Carolinian-s	50:5,7
		24:18	
bit 5:12	broadly 23:6	Carolinians	chat 51:15,
48:5	24:2		25
		22:5	
board 8:5,9	brought	carrying 9:5	chief 5:15
9:19 10:24	17:18		chronology
11:3,11,	Buffalo 6:18	case 35:8	48:18
17,19 15:5		39:1 48:4	
17:16,18	building	57:1	circulated
20:5,17,18	51:22		23:6
21:9,19,24	bullet 30:1,	cases 7:19,	
28:22	2,3,9,13	21 29:18	citizens
29:10 30:3	burned 28:1	cetera 20:16	45:3
31:14			civil 20:24
32:10	Business	chair 11:18	clarifying
33:14	6:22	12:12	41:7 53:25
34:12,15		21:20	
36:10	<hr/> C <hr/>	chairman	clarity 8:9
37:21 39:3		11:11	31:1,10
40:22	call 11:7	54:21	59:1
41:17	19:16		
46:25	called 49:15	challenging	Clayton 55:4
		53:1	

DTH MEDIA CORP. vs THE UNIVERSITY OF NORTH CAROLINA, ET AL.

30(b)(6)

Earl Whipple on 01/27/2021

Index: clear..convinced

clear 8:8	54:1	Congressman	content
41:24	communication	6:15,16,18	19:11 37:3
close 36:25	5:19 25:16	conjecture	54:18
51:10	communications	35:1	contents
collected	5:11,16,18	conjunction	14:13
16:19	6:2,6,9,10	56:12	19:18
collective	25:3 49:24	consent	29:5,13
12:2	Company 6:3	10:17,25	45:10
collectively	completely	17:15	50:24 57:3
14:17	37:12 51:2	25:25	context 25:9
15:25	complex	32:9,17	continued
34:12	40:16	35:7,16	20:23
college	complimenting	37:23	control 17:6
6:23,24	56:8	42:10,17,	conversation
25:8	composed	18	14:2,7
colon 28:11	29:4,14	consideration	15:8 26:3,
column 7:5	compromise	39:10	13 43:3
combination	45:22	considered	53:17
56:24	46:19,23	8:7	54:22,25
Commission	concept	constituent	55:3,7,10
6:7	27:10	30:15	conversations
committee	concluded	construct	9:17,18
12:2,12	59:8	20:21	10:2
38:18	Confederacy	construe	13:18,25
39:3,10,19	27:16	40:3	14:8,19
40:22 41:5	confederate	construed	15:10 27:6
42:3	13:5 22:13	41:2	35:15
communicate	23:7,11,14	consumption	48:17,19
24:8 51:24	24:8 25:14	10:15	49:24 56:6
54:5	confirmed	contact	convey 33:10
communicated	37:20	49:17	58:6
23:15,17,	Congress	contained	conveyed
18 50:3	6:12,13	29:9	37:17
53:16,22			convinced
			47:5

copies 9:7	58:19	5:8	43:19 56:3
copy 7:9	counsel's		describes
16:9	39:23	D	27:12
core 20:9	counteract	damage 20:25	describing
corporate	46:1,4	Darrell	5:12
6:2,8,9	counties	12:16	designation
34:17	30:14	date 36:3	12:10
40:12	couple 15:10	37:7,9	determined
correct	35:20	Daughters	30:11 48:8
9:24,25	52:14 56:6	27:16	develop 20:7
13:2 21:24	57:1	de 12:6	development
39:15 41:6	court 42:10,	deal 11:12,	56:10
42:1 43:9,	17	15,22	Dickinson
20 44:7	coverage	December 7:6	6:24
46:12	7:16,18	8:16 11:17	directed
51:3,7,8	8:2 50:13	20:18	20:6 49:17
correctly	covers 56:18	21:20 24:4	direction
8:13 40:25	craft 10:21	32:12	14:21
45:24	crafted 49:4	49:21,22	54:14
correspondence	crafting	decided 53:5	directive
17:23	58:3	decision	21:21
cost 26:7,	created 13:6	45:6	directives
16	57:21	deeply 44:19	21:12
counsel 5:5	creation	degree 6:22	directly
9:17 18:21	56:10	35:14	43:21
26:13 27:6	critics	delete 17:2,	disagree
32:10	46:2,4	6	45:6
34:14	crystal 8:8	deposition	disagreements
35:15	curious 6:13	7:4 17:14	17:7
36:23	current 5:21	52:4 59:2,	discusses
37:1,18	8:17 18:7	5,7	35:23
39:11,17,	customary	describe	discussing
19 43:3,			
17,18			
48:18 49:5			

25:11 33:8	26:2,9,23	15:21 21:8	22 55:1,4,
discussion	27:17	30:25	8,12,17,21
8:4 36:23	29:3,10	39:24 40:6	57:20
discussions	30:16	45:12	58:13 59:2
10:9 18:21	31:19 32:6	48:14	editing 5:18
36:19	35:11	58:14	16:9 55:17
53:10	37:24 42:5	easily 40:3	56:10
disorder	45:8 47:21	ed 7:5,13	editor 49:18
20:24	49:4	8:8,13,15	editorial
display	drafted	9:6,10,23	13:20
25:21 32:4	14:13	10:8,22	54:19
divisive	16:16 23:4	11:4	editorializing
44:19	27:7	12:17,18,	8:11
document	28:12,25	20 13:16,	editors
16:16 20:4	29:1,5,14	19 14:1,4,	12:22
21:8 59:4	41:19	13,22,25	edits 46:22
documents	43:11,16	15:9,17	eds 46:15
9:16 10:25	47:8	16:12,16	58:2
17:13,21	drafting	17:25	educational
19:2,6	16:9 19:18	19:10,19	6:20 20:9
20:15,16,	29:2 55:17	26:4,17	effect 12:11
17 21:4	drafts 16:22	28:4,17,25	46:1
32:12 33:2	19:2,6	29:1,5,9,	efforts 45:4
44:2	drew 16:9	15 30:23	Eighteen
dollars 30:8	drink 51:18	31:1 34:1,	5:23
35:25	Duke 6:21	8,22,24	electronically
dozen 52:25	7:1	35:22	49:20
draft 14:25	duly 5:3	39:8,20	Ellis 49:25
17:11	duties 5:13	40:4 41:8	50:2 55:15
20:12		45:25	Elon 25:6
21:1,13	E	47:13 48:9	email 14:10
22:17	Earl 5:2,10	49:9,14,	16:12,23
24:20	51:18	18,19	17:24
25:22	earlier	50:6,20,24	
		52:17,19	
		53:16	
		54:2,3,6,	

19:16 25:2	55:19	26:21	facto 12:6
emails 17:1	established	exhibit	facts 8:12
18:1 24:25	38:5	59:2,5	10:23
25:3	establishment	existence	46:6,10,
45:13,20	35:24	32:12	16,17 56:8
56:6	estimate	58:11	factual 7:20
emphasize	26:16	expenses	12:22,25
58:1	estimates	26:8	13:1,7
employee	26:7	experience	14:24
57:12	events 13:9,	6:8	factually
end 51:10	10 35:9,17	experts	51:2
ended 45:21	36:20	20:23	faculty
endowment	48:19	explicitly	47:17
30:7 42:13	eventually	27:22	fair 31:3
43:9 44:14	19:9	expressed	fairly 46:10
ensure 8:12	exact 24:1	45:4	familiar
12:22 13:8	EXAMINATION	extended	17:9 18:13
57:3	5:5	34:14	familiarize
ensures	examined 5:3	extensively	18:17
47:6,19	examples	48:14	fashion
enter 34:10	57:2	extent 10:12	19:11
entire 22:24	exceeded		fault 41:9
31:13	26:7	F	51:7
Erica 51:23	exchange	face 31:2,	favor 15:16
error 13:1	32:5	17	Federal 6:6
errors 7:21	exchanges	faced 20:23	feedback
12:23 13:1	18:5	facility	13:21 14:9
essentially	execute	20:21	15:6
5:15 8:10	34:16	fact 13:5,6	16:12,19,
9:23 10:13	executed	45:23	21,23 18:3
23:4 27:8	36:4 37:8	51:16	29:2,18
50:12,22	exemptions	53:8,15	49:7
52:24			55:20,23

56:2	framed 54:11	17:5 56:7	55:11,21
fees 30:8	framing 14:3	generated	57:5
fell 58:6	Fred 6:16	16:23	graduate
felt 22:3,5	front 7:9	genesis 10:7	6:25
figure 51:13	19:22	gentleman	gratitude
files 32:15	full 15:2	55:18	45:4
final 17:11	function	give 5:24	great 52:9
29:21	54:19	8:8	group 11:4,7
find 53:8	fund 30:4,7	giving 6:19	12:6 13:5
finding 45:5	funded 35:24	29:18	53:8,9
fine 51:19	funding	35:18	guess 8:22
flags 32:4	25:20	54:14	13:9 17:3
flowing	funds 13:4	goal 41:15	23:5,6
45:13	30:6	governance	32:25
focus 7:4	Fuqua 6:22	38:18	39:22
20:9	7:1	39:3,6,9,	Guscowitz
folks 17:3	future 49:19	19	55:8
follow 31:9		governing	
	G	33:15 40:1	H
follow-up		48:3	half 35:25
58:20	gather 9:9	Governor's	handed 44:9,
Folt 20:7	gave 19:15	40:22 41:4	12
force 12:12	general	governors	handle 16:1
form 19:11	10:15	11:3,11	happened
49:9 50:17	13:14	17:19 20:5	46:14
56:3,21	37:17	21:10	hard 56:9
formal 12:10	40:18,19	28:22 30:4	harm 47:17
21:25	41:14	31:15	head 6:2,9
forward	55:23	33:14	12:6 37:8
15:17	General's	34:15	49:17
17:18	37:20 38:9	36:10	hear 12:1
39:11	generally	37:22 39:4	heard 45:3
	7:12 15:16	41:17	
		52:18	

hearing	Hugh 51:20	24 34:14	19:18
10:20	hundred	46:24	input 10:20,
heavy 7:17	29:11	48:19	21 14:21
46:17		54:12	29:2
Heinz 6:16	I	individually	instance
held 5:21	idea 12:18	10:21	44:25
high 20:24	45:20 46:8	13:23	instances
45:15	52:3	14:16	53:23
Hill 6:11	identification	15:5,6	institution
17:17	59:6	16:20 18:3	30:15
20:6,21,23	identified	29:9 48:23	instruction
21:7,10	11:18	52:1 53:11	57:1
42:13	13:10	individuals	Insurance
43:8,21	identify 5:9	11:18	6:3
44:5,14	impediment	14:22	intend 22:20
47:19	37:21	15:23	intended
48:16	implementation	16:18	31:10
hired 57:17	9:1	21:18	33:10
historical	important	22:11,22,	47:10
10:25	8:12 57:22	23 23:2	interactions
history 5:25	include 10:9	29:18 31:6	53:13
20:8 48:15	incorporated	33:12,13	interest
Holmes 8:5	13:22 29:8	45:1 47:12	30:7 42:13
9:20 10:2,	incorrect	48:1,2	43:8
3 12:7	44:10	49:6 50:19	interesting
23:23	independent	51:5 52:22	25:9
40:20 41:3	30:5	informal	interim
hope 37:1	individual	40:13	33:22
hour 51:17	8:9 9:18	information	interject
house 5:19	12:8 14:18	9:4,10,11	36:24
20:22	22:25	14:24 16:8	internal
how's 52:8	28:22	18:10	5:17 18:21
Huge 36:24	31:14,17,	56:15	
		informing	
		54:9	
		initial 13:4	

interpret	iterations	knowledge	15:4 27:12
34:5,7	15:1	12:9 15:21	lead 12:7
35:2 41:11		16:5 24:7,	16:2
interpretation	J	10,12,14,	leaked 24:2
40:7	Jack 6:18	16 33:16	learned
interpreted	Josh 49:25	34:3 38:8,	22:13
41:8 51:4	50:2 55:15	15 39:7	23:10
interprets	journalistic	43:23,24	34:13
41:11	7:19	44:1 45:20	leave 51:19
interview		L	legal 10:14
7:22	judge 42:10	lack 53:18	15:3
involved	judge's	laid 56:7	20:16,17
8:25 9:12	42:17	language	22:14
42:16	judgment	10:14,15	23:12,19,
54:19	37:23	15:3,4	22 24:9
55:16		16:14 27:9	25:12
involvement	K	28:12 29:8	27:7,10,11
11:5 53:18	keeping	30:16,21	32:10 33:2
ISLEY 36:24	54:15	35:17	34:11,13
51:16	Kevin 23:5	laptop 19:24	37:3,21
52:3,9	25:15 55:7	largely	39:5,12
58:21 59:3	kind 10:21	36:10	40:16
issue 10:6	12:11	lasting 47:6	legislature
11:15,19	14:4,19	late 32:16	15:12
15:20	16:9,19	36:5	letter 23:5,
27:11	17:13 23:8	law 15:11	7,21,22,23
31:19	32:23 33:3	18:11,14	25:12
32:24	36:19	26:20	liberal 6:23
33:14	54:15	56:14,16,	Life 6:3
44:20	kinds 5:20	18	light 44:3
45:5,18	knew 10:24	lawful 20:7	limit 58:7
issues 56:20	11:24	47:6	limiting
iteration	50:11	laymen's	32:4
16:21	53:11		

limits 58:2	16:11	member 15:12	met 53:8,9
listed 52:19	matter 16:1	29:10 41:1	Microsoft
litigation	38:19	42:3 49:16	17:10
28:10	MBA 6:21	55:11,16	midst 7:15
located	Mcclatchy	members	million 26:7
30:14	50:9	6:11,13	30:6 35:25
logistically	means 45:14	8:6,10	38:6
52:25	meant 11:22	9:18 11:2,	42:12,23,
long 5:21	43:14	8,12 12:6,	24 43:25
8:16	mechanism	8 13:23	mind 5:12
lot 14:23	43:4	14:16 15:5	6:19
	51:15,25	17:25	minute 51:12
M	media 5:17,	19:10	52:7
made 7:22	20 7:17	22:25 25:4	minutes
8:24 52:23	8:3 24:3	28:22	10:24
53:3	49:17 50:1	29:15	11:16,20,
maintenance	meet 14:16	31:14	24 15:19
25:20	meeting	34:15	17:16
make 15:2	10:24	41:17	20:17,19
40:25 49:5	11:10,16,	46:25	21:4,19,22
makes 44:3	17 15:19	48:2,20	41:21
making 58:4	16:3 17:16	52:17,19	48:14
manage 5:19	20:19	53:13	misinterpret
Manual 38:21	21:22	55:20 57:5	35:2,4
marked 59:4	23:25	membership	misinterpretat
mastered	32:10	23:7	ion 40:7
57:3	36:9,19	memorialized	misleading
matched 13:8	41:18,22,	32:13	51:1
material	24	memory 28:1	mission
56:13,24	meetings	mentioned	20:10
materials	15:22,24	21:7 39:24	misunderstood
	16:6	56:11	38:12
	56:16,18,	57:24	modifying
	23	Merck 6:10	16:14
		message	
		12:21	

Monday 49:21		48:22	36:10 43:5
	N		
money 43:7, 14,20 44:6,9,12, 13	named 15:25 names 9:23 11:3 17:25 19:10 26:4,16 28:3,21 30:22 31:6,14, 17,24 34:1,8,23 39:8 40:4 49:10 52:17 53:21	neutral 30:5 news 7:5, 16,20 8:2 50:9,11 North 18:10 22:5 24:3, 18 56:16 notes 15:18, 23 16:8 notice 32:22 notices 56:20 November 7:25 8:24 32:16 36:6,11 58:11 number 24:25 25:3 45:13 59:5	occurring 8:2 offered 47:5 office 25:1 37:20 38:9 39:23 45:14 56:19 officer 5:16 official 31:12 on-campus 20:21 onboarding 18:25 56:13,18 57:8,12 online 18:22 56:25 op 7:4,13 8:7,13,15 9:6,10,23 10:8,22 11:3 12:17,18, 20 13:16, 18 14:1,3, 13,22,25 15:9,17 16:12,16 17:25 19:10,18 26:4,17 28:4,17,25
months 5:23 8:18,21,22			
monument 20:8,22,25 22:4,5,15 23:13 24:19 25:19,21 27:16,24 30:1,2,11, 13 42:11, 21 47:7,18			
monuments 15:11 25:7 26:20	necessity 46:19,24 needed 9:10 negative 8:1 negotiated 33:17,19 51:5 negotiating 34:2 negotiation 9:1,12 53:19 negotiations 43:17 Nelson 9:21 14:7 24:13 40:21 41:3		
motion 21:21			
move 19:24 32:1 41:16 44:17			
moving 15:16 20:1		observation 39:16 Observer 7:5 49:16,18, 24 50:3,5, 7,8,9,11 obtaining 42:17 occurred 15:19	
multiple 20:22			
Murphy 9:21 13:24,25 24:11 40:21 41:3			
Mutual 6:2			

DTH MEDIA CORP. vs THE UNIVERSITY OF NORTH CAROLINA, ET AL.

30(b)(6)

Earl Whipple on 01/27/2021

Index: open..phrase

29:1,5,9,	organization	paid 36:1	Paul 50:4
15 30:22	22:14	58:12	pay 36:20
31:1 34:1,	23:11	paragraph	payment 32:5
8,22,24	25:16	20:10,12,	Penn 6:2
35:22	organizational	20 21:1,9,	Pennsylvania
39:8,20	ly 22:25	13 22:2,12	6:4,23
40:4 41:8	organizational	25:10,22	people 9:22
45:25	ly-authored	26:20 32:2	15:20 22:3
46:15	31:22	37:19	26:3,16
47:13 48:9	organize	38:16	28:3 30:22
49:9,14,	35:18	44:18	33:25
18,19	orientation	45:21	34:8,23
50:6,20,24	18:20	46:18 47:4	39:8 40:3
52:16,19	original	part 13:12	41:25
53:16	26:6 36:22	18:24	53:6,21
54:2,3,6,	ourself	20:19	57:17
22 55:1,4,	40:10	21:21	percent
8,12,17,21	outline	32:15,16	29:11
57:20	29:24	35:16	period 17:1
58:2,13	outlined	36:23	personal
59:2	38:20	39:5,11,	44:20
open 25:18	overview	23,25	personally
56:16,18	5:24 6:20	40:14	42:16
operating	owned 50:8	43:17	perspective
26:8	ownership	48:10	31:23,24
opinion	26:22	56:17	perspectives
46:16	owns 30:1	57:9,11	15:15
options 8:7	50:9	58:2,3	48:24
10:7 21:11	participated	participating	Philadelphia
order 6:15	participating	41:25	6:3
9:5 35:8	parts 29:6	passed 15:13	phone 14:18
42:10,18	path 47:6	path 47:6	19:16
ordered 44:4	p.m. 52:11,	phrase 47:1	
ordinarily	12 59:8		
40:8			

physical 47:17	positive 56:7	preserves 20:8	process 11:5 13:21
place 17:8 50:14	possession 42:11,21	preserving 17:8	18:25 19:1 48:6,25 57:9,12,21
placement 25:19 49:19 55:17 56:10	possibility 23:15 35:7 potential 53:6 powerful 31:24 PR 33:3,5 predominantly 7:18 21:6 preference 17:6 preparation 17:13 18:1,5,17 20:19 prepared 18:2 22:14 23:11,19 25:11 present 39:9 presented 38:17 39:19 40:21 41:4 presenting 39:2 preservation 17:11 30:11	president 5:10 25:2 33:22 50:1 press 31:7, 12 50:18 pretty 5:8 24:2 27:4 39:15 prevents 26:20 previous 24:24 31:8 primarily 10:19 11:16 15:11 18:2 19:20 25:25 27:1 43:3 48:14 print 49:21 prior 5:25 6:4,5 18:14 26:3 29:2 58:13 private 6:1 18:8 26:22 procedure 39:16 proceed 29:23	professional 31:16 proofreader 55:19 property 20:24 27:15,23 28:5 proposal 21:7 proposed 20:21 37:22 38:1,2,17 39:2,9 protects 20:7 47:16 protestors 20:4 provide 31:1,10 54:18 provided 16:7 26:15 29:1 30:21 56:12,15 57:5 providing 56:23
places 7:6 25:8			
placing 49:13			
plain 44:3			
PLAINTIFF 5:5			
plan 9:5 12:17			
platform 51:20			
plural 40:1			
point 7:21 12:24 29:13 37:10			
points 7:19			
Policy 38:20			
position 5:14,22,25 8:9,17,20 18:8,9			
positions 57:14,15			

provision	50:6,22	58:17,19,	37:19
30:18	52:17	20,22	38:17 42:9
	54:6,23		44:18
public 8:24	55:1,5,8,	Quinn 6:18	
10:16 12:9	13,22,24	quiz 57:2	realize
17:19	57:21 58:7		22:21
18:11,13		<hr/>	
19:2,3,6,7	publishing	R	reason 15:24
20:7,22	50:15		17:2 33:25
21:8 25:4,		R&d 6:10	
21 26:21	purpose		reasons
31:17,23	30:25	raised 31:3	13:15
32:11,22	45:25	Raleigh 50:9	50:10
33:1,5	46:1,3	Ramsey 54:21	recall 8:19
40:18,19	pursue 14:11	ran 49:20	10:4,12
41:1,14	22:14	50:20,22	11:9
44:2 48:17	23:12,19	Rand 55:1	12:16,25
50:21	25:11		13:17,25
56:14,20	put 17:20	reached 28:9	14:5,6,8
	31:25	read 14:22	15:8,18
publically	39:11,17	17:19	17:16,22
14:24	52:24	21:17	18:23
publication		26:19	19:1,5,8
49:14		29:14	20:18 22:1
50:7,14	<hr/>	32:22	24:1,6
58:13	Q	33:18	26:12
	question 9:8	40:17 44:8	29:12,17,
publications	17:3 18:4		19,21
46:7	29:7 31:9	readable	32:20
	34:21	41:13	36:5,7,18
publicly	38:12		42:7,8
33:2 58:12	39:13,18	reader's	47:2 50:16
publish 49:9	53:24,25	51:7	56:5 58:14
	58:8,9	reading 19:5	
published		20:3 34:22	received
7:5,14	questions	41:2,8	16:11
8:15 23:6,	10:13		
25 24:2,4	12:16 31:3	reads 21:9	recognized
28:18,21	37:2 52:14	22:2,12	22:3
31:6,11,13	56:11	25:17 32:2	recollection
49:10,21			21:18

37:15 38:7	23:4 25:6	10:23	request
39:7 58:10	27:4	43:18	46:24
recommendation	references	remain 47:5	requirements
8:3 12:20	39:25	remember	18:18
14:20	referencing	22:7	Research
17:18	37:10	removal	6:17
21:23	38:13	26:21	reserved
31:16,19	referred	remove 8:10	59:9
48:16	11:2 33:18	repair 25:20	resolve
52:21	38:1,2	repeat 19:4	44:19
54:10	40:12 59:4	report 17:19	respect
reconvene	referring	32:10	15:20 16:4
52:8	34:5,7,23	36:22	19:2
record 5:9	40:3	39:12	respective
19:7	refers 24:24	48:17	49:7
52:11,12	47:12,13	reported	response 8:4
records	reflected	8:13 46:7	39:22
17:13	11:19	reporter	responsibiliti
18:11,14	regard 15:7	52:7 59:1	es 5:13
19:3 21:4	Reilly 6:16	reporting	responsibility
56:14	related 7:16	12:23	5:17 44:19
recurring	relates 25:5	13:4,8,13	48:10
26:8	relations	31:2	retain 16:22
reduces	5:17 31:23	reports 7:20	return 22:15
47:16	33:6 49:17	50:1	23:12
refer 12:1	50:1	represent	25:19
21:16	release	32:21	returned
22:10,20	31:7,12	representative	20:25 22:6
28:15 33:8	50:18,20	22:24	24:19
38:25	released	representative	47:18
44:24	25:7 32:16	s 23:15	returns 47:7
47:11,24	50:17	represented	reverse 6:15
reference	relying	6:17	
40:9			
referenced			

review	40:21 41:4	seminars	series 18:24
17:12,23	run 50:11	56:23	session
18:4 21:11		send 23:23	21:24
49:5	S	senior 6:6	36:25
reviewed		sense 52:23	sessions
17:15,16,	safety 17:20	53:3	56:22
17 18:20	20:8,22	sentence	settle 28:9
20:16 21:5	21:8 48:17	21:15	38:19
38:9	sake 59:1	22:9,16,	settled 8:7
48:13,15,	Sam 7:17	17,20 23:3	settlement
16	11:15 20:4	24:17,20,	7:16,24
reviewing	Sayonge(22,25	9:16 10:13
15:18	phonetic)	25:5,17,24	11:5 13:9,
21:19 23:4	50:4	26:6,9,23,	11 27:1,2,
29:3	School 6:22	25 27:14,	5,8,20,21
38:14,15	7:1	17 28:8,15	29:25
54:14	screen 19:25	29:20	30:19,20
reviews 39:4	SCV 22:14	32:22	36:14
rights	25:11,18	33:7,18	37:22
27:15,23	26:7	34:5,7	38:1,4,5,
28:5	27:15,23	35:6,11,13	10,18
risk 20:24	28:4,9	37:24	39:3,9
47:16	29:25 30:2	38:3,22,24	40:22 41:4
role 11:6	32:3 35:8,	41:16,19	42:4 45:7
19:18	25 36:20	42:4,9,14	53:19
roll 46:9	42:11,20	44:21,24	58:11
room 51:19	58:12	45:2,8	settlements
Roper 33:22	Section	46:18	8:24 9:2,
54:5	38:20	47:8,15,24	11 10:10
roughly 8:19	sector 6:1	sentences	38:2 39:5,
route 31:21	18:8	29:8,17	17 51:6
Rucho 9:20	security	separate	Shanahan 8:5
15:7,14	25:21	30:4,9	15:1 35:15
24:15	seeking 13:2	32:3 35:23	37:17
		37:6,11	share 12:21

14:12,15	56:23	26:12	statement
15:4 16:18	single 29:10	48:21	31:3,12
shared 13:14	sir 26:18	49:16 56:5	50:18,21
14:9 15:15	30:24	specifics	statements
18:2 24:1	37:25	10:4 13:16	7:22
49:6	situation	14:5	statewide
sides 25:4	11:12,23	speculate	50:12
45:18	small 6:23	41:10	stating 5:9
sign 31:20	social 5:20	speed 54:16	statue 20:5
32:3	solution	spin 46:14	26:21 28:6
signatories	20:7 45:5	spoke 48:21	status 19:6
52:19 53:7	Sons 22:13	50:2	stay 51:20
54:12	23:7,11,14	spoken	52:2
signature	24:7 25:14	48:22,23	STEVENS 5:6
59:9	sort 12:3,	sponsor 35:9	37:4 51:9,
signatures	13 18:16	sponsoring	23 52:5,13
52:24	source 28:2	35:17	58:16,25
54:13	sources 9:15	staff 47:18	stipulate
signed 7:24	14:25	49:23	58:25
33:17,20,	southern	55:15,16	Stone 23:5
21	25:7	57:14	25:15
significant	speak 34:25	standard	stop 28:11
45:25	speaking	39:16	stopped
silent 7:17	36:15	start 6:10	29:24
11:15 20:4	specific	22:16	story 10:5,
similar 57:4	12:25 13:1	started 8:19	22 41:13
simple 58:5	22:22	state 45:3	46:5,9,12,
simpler	29:7,13,16	state's	13,14 58:6
10:15	37:9 43:17	26:20	strategic
simplified	57:13	stated 27:22	50:10
27:9	specifically	30:25	strategy
simply	10:12 17:7	33:12	12:19,20
53:22,24	18:23		

stretch	34:4,6,18,	53:7,15	31:22
51:12	21 35:1	55:12	things 5:20
strike 36:8	surprised	talking	8:11
	53:7	45:14,22	10:17,25
strongly			13:7,8,10
22:3,5	sworn 5:3	task 11:14	16:15
24:18 45:6	system 5:11,	12:12	34:16
structured	16 6:4	tasked 8:6	35:19,21
56:15	7:23 18:9	9:19 11:8,	54:13,15
	22:24 23:2	11,22 16:1	58:1
students	25:1	21:10	
47:17	28:16,19	31:18	thinking
study 25:6	30:3,15	33:13	23:9
57:2	31:2,7,11,	52:22	thought
subcommittee	13 33:9,		8:12,13
12:2	11,15,23	tax 30:7	31:22
	34:20	team 49:16	38:12
subject 40:6	37:21	telephone	thoughts
subsequently	39:2,24,25	36:11 42:1	13:21
44:3	42:11,24	telling 7:12	16:19
substance	43:24	46:5,13	threatened
10:10	44:4,9,11,		28:10
	15 45:13	tenor 14:4	
suggest	46:5,9,12	terminology	threatening
51:17	47:14,20	40:16	23:22
suggestions	48:1,3	terms 27:6,	time 7:15
16:13	50:21	13 28:10	8:17 17:1
summarizes	systems	29:24	21:21 25:7
27:10	56:13	43:14	33:23
Summers 55:4		48:15	51:21
Sunday 49:20	T	testified	58:18,22
		5:4 20:15	today 7:4
superior	taking 10:14	21:5	18:5 58:23
42:10,17	talk 48:5		
	51:14	testimony	told 19:5
supposed		18:5	46:11,12
28:15	talked 13:4		
surprise	23:8 52:16	thing 29:25	Tom 55:18

DTH MEDIA CORP. vs THE UNIVERSITY OF NORTH CAROLINA, ET AL.

30(b)(6)

Earl Whipple on 01/27/2021

Index: tone..verbal

tone 14:4	6:17	UNC 5:11,16	15:2 16:2
top 37:7	trouble 20:1	7:23 18:9,	22:19
topic 7:4	trust 13:6	14 22:24	48:15
9:20	17:17	23:2 28:19	57:11
toppled 20:4	30:4,10	30:3,15	58:10
track 17:10	35:24 38:5	31:2,7	understood
Trade 6:6	42:12,25	33:15,23	37:5
training	43:22,25	34:19	40:17,20
18:10,16,	trustee 21:7	37:21	45:24
22,24	30:5,12	38:20	unimpeded
56:17,18,	Trustee's	42:11,24	12:21
21,22,25	48:16	43:24	United 27:16
57:4,18	trustees	44:9,11,15	university
transfer	17:17,20	46:5	6:21 20:9
42:23	20:6	47:14,20	25:6 28:16
43:5,25		48:3 50:21	30:7 32:5
44:5	truthful	UNC-CHAPEL	33:9 39:1,
transferred	51:2	17:17	23,25 48:1
30:2	tuition 30:8	20:6,20,23	50:19
42:12,24	tuned 53:12	21:7,10	untruthful
43:21	turned 10:8	42:13	51:1
translate	Twenty 41:17	43:8,21	
40:16	type 7:22	44:5,14	<hr/> v <hr/>
translating	8:3	47:18	
10:14	typically	48:16	validating
translation	39:4	understand	10:20
15:3 27:9	56:19,25	9:8 29:7	variables
transparent	<hr/> U <hr/>	37:5,11	8:10
46:10		39:21	variety 9:15
transportation	UDC 27:17,	43:4,13,14	45:14
25:20	24 28:5	44:8 48:18	vehicle 8:14
Triangle/	ultimately	49:8	vehicles
raleigh/durham	10:8	understandable	5:19
		41:14	verbal 49:7
		understanding	
		9:14 11:4,	
		21 13:14	

verbally	walked 57:25	19 11:19
19:14		18:14
	Wallace	21:10
verbatim	55:18	33:14 56:9
30:20	wanted 13:15	worked 6:11
vernacular	46:12,25	46:15
10:18	51:25	
version 17:5	Washington	working 8:6
29:21	6:5	11:8 31:18
		52:22
versions	we's 57:25	53:11
17:6		
Veterans	website 5:20	write 38:22
22:13	50:21	40:8
23:8,11,14	Wendy 13:24	42:14,25
24:8 25:14	Whipley 55:1	44:21
vice 5:10	Whipple 5:2,	writing 5:18
49:25	10 20:12	10:11
	52:16	19:13 22:7
videotape	58:18,21	48:24
52:4		
view 7:19	widely 24:2	written
50:25	wind 52:15	16:8,11
	word 11:9	25:13 49:7
viewed 12:7	16:16	56:23
violence	17:10	wrote 21:18
20:24	21:15	45:20
47:17	22:20	46:20
volumes	28:14	
45:15	29:19 33:8	<hr/> Y <hr/>
vote 21:25	34:7 58:2,	year 6:7,25
	6	28:1
voted 42:3	words 16:14	years 35:10
	29:16 52:1	York 6:18
<hr/> W <hr/>	58:5	
walk 14:19	work 5:25	
51:22	6:14 9:10,	