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SUPREME COURT STATE OF NEW YORK
COUNTY OF NEW YORK CRIMINAL TERM PART: 71

-----X

THE PEOPLE OF THE STATE OF NEW YORK Indict No.:
2721/09

-against-

RAPHAEL GOLB, Jury Trial
Defendant

-----X

100 Centre Street
New York, New York
September 17, 2010

B E F O R E:
THE HONORABLE CAROL BERKMAN, Justice

A P P E A R A N C E S:
(As previously noted.)

(Jury entering.)

COURT CLERK: Case on trial continued all parties
are present. The jury is present and properly seated.

THE COURT: Good morning. You missed a great fire
drill. Fabulous. I'm sure you're brokenhearted over that.
Next week on Tuesday I have a major matter in the afternoon
so we'll be breaking at four-ish on Tuesday. Certainly

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Senior Court Reporter

1 before five so you can make your plans accordingly.
2 Wednesday is my calendar day as usual.

3 Mr. Bandler seems to be responding somewhat to
4 pressure, maybe we can speed this up. So here we are.

5 We're ready?

6 MR. BANDLER: The People call Dr. Richard Foley.

7 (Witness entering.)

8 COURT CLERK: Sir, do you sincerely and solemnly
9 swear or affirm that the testimony you are about to give
10 this court will be the truth, the whole truth, and nothing
11 but the truth, do you so swear or affirm?

12 D R R I C H A R D F O L E Y ,

13 having been called as a witness on behalf of the People,
14 testified as follows:

15 THE WITNESS: I do.

16 COURT OFFICER: In a loud clear voice, state your
17 name, and spell your last name.

18 THE WITNESS: Richard Foley. F-O-L-E-Y.

19 THE COURT: Okay so, Dr. Foley, I need you to keep
20 your voice up so all the jurors can hear you. The mic. is
21 live but still requires personal energy.

22 If you don't understand a question, let me know so
23 we can ask it more clearly and if there is an objection,
24 give me a chance to let you know if you should answer.

25 Your witness.

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1 MR. BANDLER: Thank you.

2 DIRECT EXAMINATION

3 BY MR. BANDLER:

4 Q Dr. Foley, who are you employed by?

5 A New York University.

6 Q What is your position there?

7 A Current position is Vice Chancellor of Strategic
8 Planning.

9 Q What does that entail?

10 A It's long term planning for the university over a five,
11 ten year period.

12 Q Who do you report to?

13 A The president of the university.

14 Q And how long have you been the Vice Chancellor?

15 A I've been the Vice Chancellor for a little more than a
16 year.

17 Q And before that, what was your position?

18 A I was Dean of the Faculty of Arts and Science.

19 Q And was that your position in August of 2008?

20 A Yes, that's correct.

21 Q So what were your duties as dean?

22 A The faculty of Arts and Science contains multiple
23 units. There's an Undergrad College of Arts and Science. There
24 is a Graduate School of Arts and Science. There is a division
25 of humanities, a division of social sciences, and a division of

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1 science. Each of those units is headed by its own dean. My job
2 is to make sure that the various units work well together and
3 are coordinated properly.

4 Q And who and what were you in charge of?

5 A Excuse me?

6 Q Who were you in charge of, what people reported to you?

7 A There's a whole set of people that report to me. A
8 couple of the deans had a dual reporting relationship, the
9 graduate dean and the undergrad college report both -- reported
10 both to me and to the provost. Each of the so called divisional
11 deans the dean of science, social science, humanities, they all
12 reported to me. The rest, the office staff, the budgetary
13 people, the personnel people in the deans office reported to me
14 and the department chairs in the various divisions reported to
15 me and their respective divisional dean so the dean of the chair
16 of physics would report to both the dean of science and to me.

17 Q And while you were dean, who did you report to?

18 A I reported jointly to the president and the provost of
19 the university.

20 Q And in your current position as Vice Chancellor, who do
21 you report to?

22 A The president of the university.

23 Q And while you were dean where in the administrative
24 chain of command were you as dean in relation to Dr. Catharine
25 Stimpson?

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1 A She and I were colleagues, she had one of the positions
2 as dean of the graduate school which has a joint reporting
3 relationship both to the university level, the provost, and to
4 me but Dean Stimpson and the dean of the undergrad college and I
5 would work almost on a daily basis with each other.

6 Q And how about Dr. Schiffman, where did he fit in
7 relation to you when you were dean?

8 A He was chair of one of the departments of Arts And
9 Science. The department of Hebrew and Judaic studies was housed
10 within the Division of Humanities and so he reported to me.

11 Q I want to direct your attention to early August of
12 2008, were there some e-mails sent supposedly from
13 Dr. Schiffman?

14 A Yes.

15 Q And were there also some e-mails that came in from
16 other sources accusing Dr. Schiffman of plagiarism?

17 A Yes.

18 Q And did you receive some of those e-mails?

19 A Yes.

20 Q I'd like to display, I'm going to use the monitor, if
21 you could just turn a little, I'm going to display first 10-M as
22 in Mary.

23 (Displayed.)

24 Q This e-mail to Catharine dot Stimpson did that e-mail
25 eventually come to you?

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1 A Yes, it did.

2 Q And this was an e-mail from Larry dot Schiffman at
3 gmail, do you remember if you checked the link, web link that's
4 listed there?

5 A I don't recall doing so I may have done so but I don't
6 recall it.

7 MR. BREITBART: I'm sorry, I couldn't hear.

8 THE WITNESS: I don't recall checking it.

9 Q In substance what was this e-mail from Larry dot
10 Schiffman supposedly saying?

11 A It was supposedly saying that he was admitting to
12 charges of plagiarism.

13 Q And I want to display 10-P which is in evidence.

14 (Displayed.)

15 Q I just want to scroll from the bottom up. Where in the
16 chain of command was provost McLaughlin at that time in relation
17 to you?

18 A He was the provost of the university and I reported to
19 him.

20 Q And we're now at the top of the e-mail, August 6th of
21 2008, and Pierre Hohenberg, where was he in relation to you?

22 A He was vice provost for research, worked within the
23 provost office.

24 Q So this e-mail says he referred the matter to Dean
25 Richard Foley, did he in fact refer it to you?

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1 A Yes, he did.

2 Q And were you copied on this e-mail?

3 A Yes.

4 Q That's your e-mail address Dick dot Foley?

5 A Yes.

6 Q I'm going to exhibit 16-H which is in evidence.

7 (Displayed.)

8 Q Do you know who Rebecca Holland or Diane Delaney?

9 A No, I don't.

10 Q And Robert Roach is who?

11 A Robert Roach I'm not sure of his exact title but he's
12 an officer at the university charged with compliance issues.

13 Q And do you remember if you received this e-mail
14 forwarded to you at some time?

15 A I can't recall whether or not I've seen that e-mail or
16 not.

17 Q I'll go to 16-I which is in evidence.

18 (Displayed.)

19 Q Do you remember if that came to you at some point?

20 A No, I can't remember that came to me.

21 Q I'm going to go to 16-X from August 6, 2008 Peter dot
22 Kaufman 2 at yahoo to Dick dot Foley at NYU.

23 (Displayed.)

24 Q Do you remember if you received this e-mail?

25 A Yes, I did.

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1 Q As a result of these e-mails did New York University
2 initiate an inquiry?

3 A Yes.

4 Q And who was in charge of that?

5 A I was in charge of that.

6 Q And who also worked with that with you?

7 A Dean Catharine Stimpson.

8 Q I'm going to open up 16-KK which is in evidence from
9 September 7, 2008.

10 (Displayed.)

11 Q Do you recall receiving that e-mail?

12 A I do.

13 Q And you've received these e-mails prior to seeing them
14 here in court, correct?

15 A Yes, I have.

16 Q And 16-LL, display it. It's in evidence.

17 (Displayed.)

18 Q Do you recall receiving that e-mail from Peter dot
19 Kaufman 2 on or about September 16, 2008?

20 A Yes.

21 Q This case Dear Dr. Foley it appears from the letter
22 below and the legal notice it describes, skipping, you and/or
23 Dr. Schiffman have filed some kind of a criminal complaint
24 against me and then it talks about trying to stop Peter dot
25 Kaufman from publishing at the bottom lower down there is a

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1 forward mention from Now Public a blog.

2 Did you ever notify Now Public to stop publishing
3 anything from Peter Kaufman?

4 A No, I didn't.

5 Q And to your knowledge did anyone in the university try
6 to stop anyone from publishing?

7 A No.

8 Q And 16-LL display that. It's in evidence.

9 (Displayed.)

10 Q Is that your e-mail address?

11 THE COURT: We have to wait for Mr. Kuby to turn
12 his phone off.

13 MR. KUBY: Real sorry, Judge. Probably not as
14 sorry as I'm going to be.

15 Q Sir, on 16-LL is that your e-mail on the BCC line?

16 A Yes, it is.

17 Q And do you remember receiving this e-mail?

18 A Yes.

19 MR. BREITBART: I'm sorry, what is the letter?

20 MR. BANDLER: What's the exhibit?

21 MR. BREITBART: Yes.

22 MR. BANDLER: 16-LL.

23 Q And 16-PP I'll display that.

24 (Displayed.)

25 Q September 17, 2008, do you recall receiving this

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1 e-mail?

2 A Yes.

3 Q And 16-RR?

4 (Displayed.)

5 Q Do you remember receiving that e-mail?

6 A Yes.

7 Q How serious is an accusation of plagiarism for someone
8 in Dr. Schiffman's field or your field?

9 A It's very, very serious.

10 Q And why is that?

11 A The academic system rests is basically a system relies
12 on scholarly trust and honesty so charging somebody with a
13 violation of that is very serious to one's reputation.

14 Q Does NYU have a policy that covers plagiarism?

15 A Yes, it does.

16 Q Prior to testifying, did you get a chance to review
17 exhibit 1-A which is in evidence?

18 A Yes.

19 Q And I'll just display the first page so we all know
20 what 1-A is.

21 (Displayed.)

22 Q And that fairly and accurately describe portions of the
23 NYU policy?

24 A Yes, that's correct.

25 Q What action was taken by NYU in response to this false

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1 confession from the Larry dot Schiffman gmail account as well as
2 these accusations coming from other e-mail accounts?

3 A There was a series of conversations between Dean
4 Stimpson and myself. There were conversations with Professor
5 Schiffman as well.

6 Q And were any records generated by New York University
7 as a result of this?

8 A There was a statement that I wrote at some point, a
9 short statement.

10 Q And prior to testifying did you get a chance to review
11 what is in evidence as exhibit 2?

12 I'll display that.

13 (Displayed.)

14 A Yes, I did.

15 Q And what is exhibit 2?

16 A Pardon me?

17 Q What is exhibit 2, what is this?

18 A Exhibit 2 is a memo stating that following our review
19 we determined that the claims of plagiarism were not credible.

20 Q And if you had determined that they were credible you
21 would have had to do additional procedural action, correct?

22 A That's correct.

23 Q Based on your personal observations, were you able to
24 tell if these accusations and impersonation had any effect upon
25 Dr. Schiffman?

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1 MR. BREITBART: Objection.

2 THE COURT: You may answer the question.

3 A Yes, I knew that he was very, very upset by these
4 allegations.

5 Q And how were you able to tell that?

6 A He told me he was very, very upset.

7 MR. BREITBART: I'm sorry, I can't hear.

8 THE COURT: He told him so we're going to strike
9 that answer since that is hearsay.

10 Q Aside from what he told you, was there anything else
11 that manifested his mental state?

12 A He reported to me in an agitated tone of voice.

13 Q Is this something that took time for Dr. Schiffman to
14 address?

15 A No, no, he addressed it right away.

16 Q But did it take him any amount of effort and I guess
17 expenditure of time I guess to address these false accusations?

18 A Yes, he reported to me that he spent considerable time.

19 MR. BANDLER: I have no further questions.

20 CROSS-EXAMINATION

21 BY MR. BREITBART:

22 Q Dean Foley, my name is David Breitbart. I'm one of the
23 attorneys that represent the defendant. I'm going to be asking
24 you some questions on cross-examination.

25 A Fine.

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CROSS/BREITBART/DR. FOLEY

1 Q You indicated firstly that you were familiar with and
2 subsequent August 2008, you received and read 10-M, 10-P, 16-H,
3 16-I, 16-X, 16-KK, 16-LL, 16-RR; is that correct, sir?

4 A I don't remember all the numbers but that matches
5 what's the district attorney asked me, the answer is yes.

6 Q Did you read all of those things that had been sent to
7 you?

8 A Yes, I read them.

9 Q There were blog links attached to those notes and
10 memorandum that I see, did you read those links?

11 A Not that I recall.

12 Q Was there a reason that you chose not to follow the
13 link?

14 A No particular reason.

15 Q You read enough though to begin an inquiry with regard
16 to the plagiarism accusation against Dr. Schiffman?

17 A That's correct.

18 Q The allegations against Dr. Schiffman were contained in
19 the documents that you read; is that right?

20 A Yes, that's correct.

21 Q What investigation did you do to determine whether or
22 not those allegations were correct or not, false or true?

23 A I had conversations with, extensive conversations with
24 Dean Stimpson about the charges. I had conversations with
25 Professor Schiffman about the charges and reached a conclusion

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1 that they were not credible.

2 Q In reaching that conclusion, sir, was that your opinion
3 also?

4 A Yes, it was my opinion.

5 Q Would it be fair to say that you made no inquiry
6 whatsoever outside of these short discussions with Dean
7 Stimpson?

8 A I'm not sure if that's fair or not. I may have
9 discussed the case with some other people, the Dean of
10 Humanities who is Edward Sullivan, I may have had a conversation
11 with Edward Sullivan as well.

12 Q What does that mean, you may have had a discussion with
13 Dean Sullivan?

14 A That means I don't have a clear memory of this, it
15 would not have been unnatural for me to have a conversation,
16 we're in the dean office, we talk to each other on virtually a
17 daily basis about many, many things. I may have had a
18 conversation with Edward Sullivan.

19 Q Does that also mean that you may not have had a
20 conversation with Mr. Sullivan?

21 A Yes, it does mean I may not have had a discussion with
22 him.

23 Q Basically you recall the conversation you had with Dean
24 Stimpson but you do not recall any conversation that you had
25 with Dean Sullivan?

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1 A That is correct.

2 Q My question though was did you do outside, did you do
3 anything outside of the NYU community to investigate the claim?

4 A No, we did not.

5 Q And when you say "we" now you're speaking for all of
6 the people that you've mentioned Dean Stimpson, Dean Sullivan?

7 A I don't have firsthand knowledge what Dean Stimpson
8 did. My investigations were limited to Professor Stimpson and
9 perhaps Dean Sullivan.

10 Q There were some pretty specific allegations against
11 Mr. Schiffman, weren't there?

12 A I don't recall all the details of the allegations.

13 Q You don't even know what he was accused of?

14 A I know he was accused of plagiarism.

15 Q What was the plagiarism?

16 A I don't recall at this time.

17 Q Who was he accused of plagiarizing?

18 A It was a professor at the University of Chicago?

19 Q Do you know the name of that individual?

20 A Golb.

21 Q Did you attempt to communicate with Professor Golb?

22 A No, I did not.

23 Q Did you know, sir, that Professor Golb had written a
24 book called Who Had Written The Dead Sea Scrolls?

25 A I didn't know the title of the book. I knew he had

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1 written on the Dead Sea Scrolls.

2 Q Did you know there were entries in that book with
3 regard to the allegation of plagiarism?

4 A No, I did not.

5 Q Do you now know it?

6 A No.

7 Q Would it be fair to say that you didn't look into
8 any -- picking up this book and ascertaining if there were any
9 reference to these allegations?

10 A That's correct.

11 Q Did there come a time when you learned that one of the
12 allegations was that he had previously been accused of
13 plagiarism by a very prominent journalist in Israel by the name
14 of Avi Katsman?

15 A Who is the he?

16 Q Who is the he who was accused of plagiarism?
17 Schiffman.

18 A No, I was not aware of that.

19 Q Was it not contained in the documents that you read
20 that contained the claim of plagiarism?

21 A I looked over the documents quickly before a quick
22 meeting but I don't remember that.

23 Q If there had been documents either verifying or taking
24 Dr. Schiffman's position, would it in fact had been beneficial
25 for you to explore those documents?

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1 A Dr. Stimpson and I talked extensively about it, based
2 on the background knowledge that we knew about Professor
3 Schiffman, we didn't find the charges credible.

4 Q Well, you've said that you didn't find the charges
5 credible, but would it also be fair to say that you didn't do
6 anything to check them out?

7 A We did talk to Larry Schiffman, we talked to Dean
8 Stimpson, we knew the background that scholars and Dead sea
9 scrolls was a controversial area, we knew that charges of
10 plagiarism was not unusual in this area, putting all that
11 together and what we knew of Larry Schiffman's background, his
12 reputation for honesty, and as an outstanding scholar, we
13 decided that the charges were not credible.

14 Q Did you ask Dr. Schiffman to take any steps, did you
15 ask him to write a response to you?

16 A No, we had discussions with him.

17 Q Did he write a response to you?

18 A I don't recall, we didn't request a fomal statement
19 from him.

20 MR. BREITBART: May I approach the witness, your
21 Honor?

22 THE COURT: You want to show the witness a
23 document?

24 MR. BREITBART: Yes.

25 THE COURT: Sure, but that's Dennis's job.

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CROSS/BREITBART/DR. FOLEY

1 Have they been marked for identification, sir?

2 MR. BREITBART: Yes, they are marked as C for
3 identification.

4 Q Mr. Foley, do you recognize that document?

5 A I actually don't recall the document, I don't doubt
6 that I may have seen it but I don't remember it.

7 Q Well, isn't it a fact that Dr. Schiffman sent you a
8 response to the allegations against him that are contained in
9 the document in front of you?

10 A What I remember is that I had extensive conversation
11 with Professor Schiffman. What I don't remember is these
12 written documents.

13 Q Did he submit a written document to your committee who
14 was investigating him?

15 A There was no formal committee, the conversations
16 between Catharine Stimpson and myself were conversations about
17 whether to convene a committee.

18 Q Whether to convene a committee?

19 A Right.

20 Q Dr. Foley, if someone appropriate portions of another
21 scholar's theory and presents them as his own without giving
22 appropriate credit, does that fall under NYU's definition of
23 plagiarism?

24 A I haven't read recently the exact definition of
25 plagiarism but it sounds like it probably would.

CROSS/BREITBART/DR. FOLEY

1 Q Well, the definition of plagiarism is contained in the
2 NYU handbook, isn't it?

3 A It is contained in the NYU handbook.

4 Q Have you read the NYU handbook?

5 A I have read the NYU handbook. I haven't memorized the
6 NYU handbook.

7 MR. BREITBART: Would you show this to the
8 witness. 1-A.

9 (Handed to witness.)

10 Q Do you recognize 1-A?

11 A Yes, I do.

12 Q And what do you recognize it to be?

13 A It is university policies out of the NYU faculty
14 handbook.

15 Q I had given it to you with a page folded open, do you
16 see that, sir?

17 A I do.

18 Q And do you see a highlighted portion there?

19 A I do see that.

20 Q Would you read that?

21 MR. BANDLER: Which page? What page are we on?

22 Q May I have it back, Mr. Bandler wants to know what page
23 or could you tell us what page that is?

24 A It's page 19 of 54.

25 Q Thank you.

CROSS/BREITBART/DR. FOLEY

1 Is that the definition of plagiarism that we were
2 talking about, sir?

3 A The highlighted saying plagiarism the appropriation of
4 another person's ideas, processes, results, or words without
5 giving appropriate credit, research, misconduct, does not
6 include honesty or honest differences of opinion.

7 (Continued on next page.)

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1 Q. Does that indicate to you or refresh your recollection,
2 sir, that if one working for NYU appropriates portions of
3 another's scholar's theory and presents them as his own without
4 giving appropriate credit that falls under NYU's definition of
5 plagiarism; is that right?

6 A. Yes, that is correct. The appropriation of another
7 person's idea, process, or results, or reasons without giving
8 appropriate credit, research, conduct does not include honest
9 error or honest differences of preponderance.

10 Q. If an NYU faculty member had been accused of doing
11 precisely that, and then told the NYU officials including
12 yourself that he had never been accused of plagiarism, would
13 that be appropriate?

14 A. The definition of plagiarism is the appropriation of
15 another person's ideas without giving appropriate credit that
16 would not be appropriate.

17 Q. If you asked Dr. Schiffman whether or not he or --
18 withdrawn.

19 Did you ask Dr. Schiffman whether he had in any way
20 committed plagiarism?

21 A. I did ask him about these issues and concluded he had
22 not committed any plagiarism.

23 Q. You concluded?

24 A. I concluded.

25 Q. Did you do any -- would it be fair to say, sir, you did

1 not do any background search to make a determination whether or
2 not he was telling you the truth?

3 A. I had conversations with Catherine Stimpson, extensive
4 conversation with Catherine Stimpson. I had extensive
5 conversations with Professor Schiffman.

6 Q. Did you know that the allegations that had been alleged
7 against Dr. Schiffman was that this was not the first time that
8 he had been accused of plagiarism?

9 A. I didn't recall that.

10 Q. Is there anything in front of you that refreshes your
11 recollection?

12 A. I have the -- I have the faculty handbook.

13 Q. How about Dr. Schiffman's notes?

14 A. Should I read Dr. Schiffman's note?

15 Q. You can read it to see if it refreshes your
16 recollection.

17 MR. BANDLER: Are we talking about Defense Exhibit
18 C?

19 MR. BREIBART: Yes.

20 Q. I refer you to any indications that he had had
21 interacted with somebody by the name of Avi Katzman?

22 A. Yes, I see first one, a section on Norman Golb and his
23 theory. I see section on Golb and the museum exhibits. I see
24 section the Michael Wise affair. And then I see section on the
25 Avi Katzman article.

1 Q. Does that refresh your recollection that you previously
2 read that, sir?

3 A. I, I don't remember reading it, but --

4 Q. Did you learn Avi Katzman was a very prominent
5 journalist in Israel?

6 A. Not that I know of. I don't know Avi Katzman.

7 Q. Did Schiffman tell you -- you never even read his
8 explanation for these accusations, right?

9 A. I don't recall whether I read this or not. I remember
10 having extensive conversations with Professor Schiffman.

11 Q. If you, in fact, knew that there was alleged to be a
12 journalist who had interviewed Dr. Schiffman about plagiarism in
13 the '90s, would you have felt obligated to either call or write
14 to that author to get any materials that were necessary?

15 A. Not necessarily.

16 Q. Because you spoke to Dean Stimpson?

17 A. No. I spoke to Dean Stimpson. I spoken to Schiffman,
18 journalism, what the context was, what the, what the dispute was
19 about.

20 Q. Would it be fair to say, sir, you did nothing outside
21 of talk to Dean Stimpson to make a determination that these
22 accusations were unfounded?

23 A. I am not sure whether that's true or not. What I
24 remember is I had extensive conversations with Stimpson,
25 extensive conversation with Professor Schiffman, extensive

1 history with Professor Schiffman, may or may not have consulted
2 with the Dean of Humanities Edward Sullivan, and that's what I
3 did.

4 Q. During extensive conversations with Dr. Schiffman, did
5 you take notes?

6 A. No, I don't think I did.

7 Q. During the discussions with Dr. Schiffman, did he tell
8 you that he had never been accused of plagiarism in his life?

9 A. No, I don't remember him saying that.

10 Q. Did Dr. Schiffman indicate to you that he had never
11 committed or did any acts in furtherance of allegation of
12 plagiarism?

13 A. He did deny these allegations.

14 Q. But, you don't know what the allegations were?

15 A. The allegations of plagiarism of the work of Professor
16 Golb at the university in Chicago.

17 Q. Did you learn whether or not Professor Golb had written
18 extensively in the field of the Dead Sea Scrolls in the last 40
19 or 50 years?

20 A. No, I didn't inquire to that.

21 Q. Did you know whether or not Schiffman had written
22 extensively in the last 30 years about the Dead Sea Scrolls?

23 A. I knew, I knew a fair amount about Professor
24 Schiffman's scholarly output. He was a very distinguish the
25 scholar. Schiffman is often mentioned at NYU as being

1 especially outstanding. I did know quite a bit about him.

2 Q. When someone cites someone else's work, is there an
3 obligation from your position that they put a footnote or
4 mention with regard to that other scholar's work?

5 A. The standard, the standard practice in academia is a
6 practice of acknowledging other people's works in footnotes,
7 yes.

8 Q. Did Dr. Schiffman indicate to you that every time he
9 mentioned Norman Golb or anyone else, he did footnote it?

10 A. The scholarly practice is not necessarily to
11 acknowledge in a footnote each and every time you mention an
12 author.

13 Q. When Dr. Schiffman told you that he did not plagiarize
14 Norman Golb, did he indicate to you any back up, any material
15 that you could look at to make that judgement?

16 A. I think he did indicate that there had been other
17 charges against other scholars, again charged with plagiarizing
18 Professor Golb's work.

19 Q. Did you read any of that material?

20 A. No, I don't recall that I did.

21 Q. So, basically what you did is you took Dr. Schiffman's
22 word with regard to him not having plagiarized Norman Golb?

23 A. No, not a fair characterization. I did consult
24 extensively with Professor Schiffman, and I consulted
25 extensively with Dean Stimpson, and relying on what we knew

1 about the content or knew about Professor Schiffman's record, we
2 made a determination to the charges against Professor Schiffman
3 were not credible.

4 Q. Would it be fair to say Schiffman was a member of the
5 NYU community?

6 A. Yes, that is fair to say.

7 Q. That he had a reputation at NYU community?

8 A. Yes, a very good reputation in the NYU community.

9 Q. Would it be fair to say that was good enough for you,
10 he did not have to be checked out or researched or looked into?

11 A. No, that would not be fair to say. Professor Stimpson
12 and I spent considerable time discussing the issue, discussing
13 the context of the case, the pretentiousness of the scholarship
14 at issue. I made a determination the charges against Professor
15 Schiffman were not credible.

16 Q. Did you discuss what was not credible? What was the
17 subject matter that you determined was not credible?

18 THE COURT: Sorry. I don't know which question
19 you are asking. Did he discuss what was not credible with
20 Dr. Schiffman or --

21 MR. BREIBART: He was talking about a
22 conversation?

23 THE COURT: I don't know, Mr. Breibart. I don't
24 understand the question.

25 MR. BREIBART: Why don't I repeat it then.

1 Q. You've told us you took no notes with regard to talking
2 to Schiffman. Did you take any notes talking to Dean Stimpson?

3 A. No, not that I recall.

4 Q. Everything you are telling us is based upon your
5 memory?

6 A. That's correct.

7 Q. In these conversations that you had, is it now your
8 recollection that other than talking to Dean Stimpson and other
9 than Schiffman's denials, you did not do any research into the
10 allegation against him?

11 A. We, we did know again the context of which other
12 allegation had been made against other, other scholars, but we
13 also had an extensive history of dealing with Professor
14 Schiffman on many, many projects, many, many different contexts,
15 putting all that together, we came to the determination the
16 charges against Professor Schiffman were not credible.

17 MR. BREIBART: May have I moment, Judge?

18 THE COURT: Sure.

19 MR. BREIBART: Thank you, Dean Foley. I have no
20 other questions.

21 MR. BANDLER: I have a couple of questions. Could
22 I Spain Defense Exhibit C please.

23 THE COURT OFFICER: (Handing).

24 MR. BANDLER: I have a couple of questions. Just
25 need a moment.

1 MR. BREIBART: I don't think that's in evidence.

2 MR. BANDLER: It's definitely not in evidence.

3 THE COURT: It is not in evidence.

4 MR. BANDLER: But you did mark it. I just want to
5 compare it to my document to make sure it's the same.

6 RE-DIRECT EXAMINATION

7 BY MR. BANDLER:

8 Q. I am going to put up exhibit 2 which is in evidence.
9 This is your memo of September 17, 2008. And second to last
10 line says, thus I have concluded there's no basis for further
11 inquiry and that this matter be closed. The line under that
12 says attachment August 29, 2008, response to internet
13 accusations.

14 I would like to hand back to you Defense Exhibit C for
15 identification. And does the date on Exhibit C match August 29,
16 2008?

17 A. Yes, it does.

18 Q. And does the title match response to internet
19 accusations?

20 A. Yes, it does.

21 Q. Is Defense Exhibit C an 11-page document?

22 A. Yes, it is.

23 Q. And is that a document that was prepared by
24 Dr. Schiffman?

25 A. Yes, it was.

1 Q. Is that the document that was attached to your memo, if
2 you recall?

3 A. I didn't actually recall there was an attachment, but
4 it looks as if it was.

5 Q. It's got the same date and title, correct?

6 A. Right.

7 Q. And in Dr. Schiffman's response to internet accusations
8 dated August 29, 2008, and does it address these internet
9 accusations in detail?

10 A. Yes, it does.

11 Q. And Mr. -- I think Mr. Breibart, you know, made some --
12 asked some questions about whether you knew about certain
13 things. But does this memo basically address what this
14 anonymous internet person was accusing him of? I want to
15 direct your attention to page 7. Is there a section titled the
16 Avi Katzman article?

17 A. Yes, there is a section called the Avi Katzman article.

18 Q. That goes to page 8, does that address this internet
19 anonymous person's accusations regarding that?

20 A. Yes, it seems to, yes.

21 Q. So --

22 MR. BREIBART: He's reading from something that's
23 not in evidence. I will stipulate this into evidence if
24 Mr. Bandler wants it in.

25 MR. BANDLER: I will be happy to have it in. That

1 certainly is hearsay of Dr. Schiffman who did testify on the
2 stand as to all these things. I will be happy to put this
3 in so there's nothing the jury thinks is being hidden from
4 them.

5 THE COURT: Defense Exhibit C in evidence.

6 Q. So, all right so Defense Exhibit C is in evidence. So,
7 it's a little more okay to read from it. Again, this was August
8 29th, 2008, correct? I am sorry. Let me put Exhibit C up.
9 Well, actually this is my copy of Defendant's C. But, it's the
10 same?

11 A. August 28, 2008.

12 Q. So, this was within a month after these accusations
13 first came to light, correct?

14 A. That's correct.

15 Q. So, Dr. Schiffman provided some background on the Dead
16 Sea Scrolls controversy, going to page 3 now, he discusses
17 Norman Golb and his theory. Is it fair to say Dr. Schiffman may
18 have addressed Dr. Golb in his theory since this anonymous
19 internet person accused him of plagiarizing Dr. Golb?

20 A. Yes.

21 Q. And is it fair to say that Dr. Norman Golb, himself,
22 never made an accusation of plagiarism against Dr. Schiffman to
23 the --

24 MR. BREIBART: Objection, your Honor. That's not
25 true, as we learned from Ms. Braunstein yesterday.

1 THE COURT: Are you aware of any accusation by
2 Dr. Golb against Dr. Schiffman?

3 THE WITNESS: No, I am not.

4 Q. Certainly he never made an accusation to NYU to your
5 knowledge, did he?

6 MR. BREIBART: I am sorry. Can we have that
7 re-read, that question?

8 THE COURT: Yes. Well, if you stop chatting and
9 moving around while your adversary is ask questions of him,
10 we wouldn't have that issue.

11 (Whereupon, the requested portion of the record was
12 read back by the Court Reporter.)

13 Q. To your knowledge, did Dr. Normal Golb ever make --

14 THE COURT: Would you have a seat?

15 Q. -- ever make an accusation to NYU?

16 A. To my knowledge, no, he did not.

17 Q. And these accusation that were made in August of 2008,
18 they were essentially from anonymous people, correct?

19 A. That is correct.

20 Q. And to finish up with Defense Exhibit C, going to page
21 5, is there a section regarding Golb and the museum exhibits?

22 A. Yes, there is.

23 Q. And page 6 section titled the Michael Wise Affair.

24 A. Yes, there is.

25 Q. Page 7, a section titled Avi Katzman article?

1 A. Yes.

2 Q. Page 9, a section titled the war of aliases?

3 A. Yes.

4 Q. Page 10, a section titled the current accusation?

5 A. Yes.

6 Q. So, Dr. Schiffman did create a detailed document
7 addressing these internet accusations, correct?

8 A. Yes.

9 Q. Albeit a document created very soon after this
10 incident. The university would accept an anonymous complaint,
11 correct?

12 A. Would accept, yes.

13 Q. Yes. But is it fair to say someone who makes a
14 complaint anonymously carries less surface credibility than
15 someone who would do so under their true name?

16 A. Yes.

17 Q. Is it fair to say someone who impersonates someone
18 while making an accusation for false confession carries even
19 less surface credibility than someone who would do so under
20 either their own name or an alias?

21 A. Yes.

22 Q. And in fact, an act of deception such as impression
23 while making a complaint might tend to show that the accuser is
24 not credible?

25 A. Yes.

1 Q. And just getting back to Defense Exhibit C,
2 Mr. Breibart asked you questions whether you knew that Dr.
3 Golb's book said something or whether you knew about
4 Dr. Katzman's article had previously accused someone of
5 something. Exhibit C by Dr. Schiffman addresses that premise,
6 correct?

7 A. Yes.

8 Q. Now, I forgot to ask you, but what's your PhD in?

9 A. Philosophy.

10 Q. Okay. How long have you been in the academic world?

11 A. 30 years, roughly.

12 MR. BANDLER: No further questions.

13 THE COURT: Re-cross?

14 MR. BREIBART: I have a few, if I may.

15 RE-CROSS EXAMINATION

16 BY MR. BREIBART:

17 Q. You now recall that you folks asked Dr. Schiffman to
18 write some kind of response?

19 A. I don't recall asking Dr. Schiffman to write a
20 response. I had extensive conversations with him, as I
21 reported.

22 Q. What you now know, though, is he did write a response
23 to these allegations; is that correct?

24 A. That is correct.

25 Q. And you now recall that there are different segments

1 and chapters referring to different parts of the allegations?

2 A. I see in the document here there are different parts
3 regarding the different parts of the allegation.

4 Q. It's fair to say you didn't recall this document
5 submitted by Dr. Schiffman, correct?

6 A. I didn't recall, no.

7 Q. Not until you saw it was attached to your notification?

8 A. That is correct.

9 Q. Now, I would like you to turn to the bottom of page 7
10 of that report, right under the bold script where it says the
11 Avi Katzman article. Does it in fact say that, and this is
12 written by Dr. Schiffman, in January of 19993, I was interviewed
13 for a Hebrew newspaper article regarding the Dead Sea Scrolls
14 that appeared in the prestigious Israel paper Haaretz?

15 A. That's what's written there, yes.

16 Q. And did he say that the article was written by Avi
17 Katzman who describes himself as --

18 THE COURT: The exhibit is in evidence, and the
19 jurors can read it. Please don't ask the witness to.

20 MR. BREIBART: I may not refer to this?

21 THE COURT: You can ask questions about it, but
22 don't ask the witness what it says. The jurors can read it
23 of themselves.

24 Q. Well, does the article say, sir, does the writing by
25 Dr. Schiffman's say that Katzman made or that the allegation

1 against him contains --

2 THE COURT: Excuse me, sir, do not ask him what
3 the article says. If you have a question that he can supply
4 further information beyond this, fine. Do not ask him what
5 the article says.

6 MR. BREIBART: That's why it was offered into
7 evidence, so I could read from it.

8 THE COURT: Not to ask him am I reading correctly.

9 Q. Does Schiffman indicate, sir, whether or not he'd ever
10 been accused of plagiarism?

11 MR. BANDLER: Objection.

12 THE COURT: Sustained.

13 Q. Does Schiffman say whether or not there was any
14 allegation of plagiarism in the article by cat unanimous?

15 MR. BANDLER: Objection.

16 THE COURT: The document speak for itself. Don't
17 ask him to interpret it.

18 Q. Do you now recall seeing this in August of 2008?

19 A. No, I don't. I don't doubt I did see it, but I don't
20 recall seeing it.

21 Q. Did Schiffman indicate, sir, whether or not Katzman was
22 right or wrong in what he wrote?

23 MR. BANDLER: Objection.

24 THE COURT: Sustained. Can I excuse the witness,
25 Mr. Bandler?

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MR. BANDLER: Yes, your Honor.

THE COURT: Thank you doctor.

(Whereupon, the witness was excused.)

THE COURT: Should we take a little break jurors?
15 minutes.

THE COURT OFFICER: Jurors, this way.

(Whereupon, the jury exited the courtroom.)

(Continued on next page.)