

Dr. Sabina Burton v. Board of Regents University of
Wisconsin, et al.

14-CV-274

Transcript of the Testimony of:

John Lohmann

November 17, 2015



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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

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DR. SABINA BURTON,
Plaintiff,

-vs-

Case No. 14-CV-274

BOARD OF REGENTS
UNIVERSITY OF WISCONSIN, et al.,
Defendants.

= = = = =

Deposition of JOHN LOHMANN

Tuesday, November 17, 2015

1:32 p.m.

at

UNIVERSITY OF WISCONSIN-PLATTEVILLE
Ullsvik Hall
1 University Plaza
Platteville, Wisconsin

Reported By: Christal A. Hansen, CSR-IA/IL, RPR

1 DEPOSITION of JOHN LOHMANN, called as a
2 witness, taken at the instance of the Plaintiff,
3 under the provisions of Chapter 804 of the
4 Wisconsin Statutes, pursuant to Notice, before
5 Christal A. Hansen, a Registered Professional
6 Reporter and Notary Public in and for the State of
7 Wisconsin, at University of Wisconsin-Platteville,
8 Ullsvik Hall, 1 University Plaza, City of
9 Platteville, County of Grant, and State of
10 Wisconsin, on the 17th day of November 2015,
11 commencing at 1:32 p.m.

12

A P P E A R A N C E S

13

14 HAWKS QUINDEL, S.C., by
15 Mr. Timothy E. Hawks
16 222 East Erie Street, Suite 210
Milwaukee, Wisconsin 53201-0442
Appeared on behalf of Plaintiff.

17

18 WISCONSIN DEPARTMENT OF JUSTICE, by
19 Ms. Anne M. Bensky
P.O. Box 7857
20 Madison, Wisconsin 53707-7857
Appeared on behalf of Defendants.

21 UNIVERSITY OF WISCONSIN SYSTEM, by
22 Ms. Jennifer Lattis
1802 Van Hise Hall
1220 Linden Drive
23 Madison, Wisconsin 53706
Appeared on behalf of Defendants.

24

25

1 I N D E X

2 WITNESS Page(s)

3 JOHN LOHMANN

4 Examination by Mr. Hawks 4

5 E X H I B I T S

6 No. Description Identified

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13 **Exh. 140** E-mail exchanges regarding
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24 (Attached to original transcript; copies
provided to counsel)

25 (Original transcript filed with Attorney Hawks)

1 JOHN LOHMANN
 2 called as a witness, after having been first
 3 duly sworn, was examined and testified as
 4 follows:
 5 EXAMINATION
 6 BY MR. HAWKS:
 7 Q. Do you recall an issue raised by
 8 Dr. Burton with regard to what she believed to
 9 be defamatory remarks made by Dr. Rice about
 10 her?
 11 A. Yes.
 12 Q. So, she made that -- she shared that
 13 information with you in what, by what means?
 14 A. I don't recall.
 15 Q. Could it have been an e-mail?
 16 A. Could have been.
 17 Q. And did you, subsequent to receipt of
 18 that information, what did you do?
 19 A. Well, assuming it did come in by
 20 e-mail, she may have told me by person, I don't
 21 recall which, I spoke to the chair of the
 22 department, I believe, Mike Dalecki at that
 23 time, and I also spoke to Deb Rice. Yeah, I
 24 think that's --
 25 Q. Did you speak to the dean?

1 did she say in response?
 2 A. I don't recall exactly.
 3 Q. Do you recall generally?
 4 A. Yes.
 5 Q. What was the general nature of that
 6 conversation?
 7 A. The general nature of the conversation
 8 with Deb Rice was, you know, here are the
 9 allegations that Sabina has set forth, and I've
 10 spoken to the chair about it. I believe I
 11 showed her the e-mail, May not have. If I
 12 didn't show it to her, I read it to her.
 13 Q. If it's here, we'll have it out.
 14 A. Yes. And she -- I confirmed whether or
 15 not the facts were as Sabina had stated them.
 16 Q. And?
 17 A. Essentially Deb agreed that they were
 18 correct. And I said more or less generally to
 19 Deb that it was inappropriate to speak this way
 20 in front of the student in particular. That was
 21 the real issue I had. And I asked her if she
 22 would apologize to Sabina.
 23 Q. And she said?
 24 A. No. I think she said, "Hell no."
 25 Q. And did she explain why?

1 A. No, no, I don't believe I did. I was
 2 actually just trying to remember if I spoke to
 3 the student or not. I've spoken to him about
 4 other matters. So, what I did was, I met with
 5 each of them. I definitely met with Dalecki,
 6 and then I talked to him about it. He said he
 7 was going to talk to Deb Rice. He talked to
 8 Deb Rice, as I understand it, came back and
 9 spoke to me. And then I met with Deb Rice,
 10 Dr. Rice, and asked her about the events.
 11 Q. Did you share with Dr. Dalecki the
 12 content of what Dr. Burton shared with you?
 13 A. I believe so.
 14 Q. Including the nature of the words that
 15 Burton believed Rice had said or used?
 16 A. More or less, I believe so.
 17 Q. And you would have done that at a
 18 meeting with him?
 19 A. Yes, in my office.
 20 Q. What did, what did he say in response
 21 to your sharing of that information?
 22 A. I don't recall.
 23 Q. Did you keep any notes of that?
 24 A. I have, likely.
 25 Q. And what did you say to Rice, and what

1 A. No.
 2 Q. Is that how the conversation ended?
 3 A. No.
 4 Q. So, how did it end or where -- how did
 5 it continue?
 6 A. We spoke a little bit about her service
 7 in the U.S. Army. We spoke a little bit about
 8 Germany.
 9 Q. Whose service?
 10 A. Deb Rice.
 11 Q. Deb Rice's service. Okay.
 12 A. She was an officer. And that's about
 13 it for that conversation. And I subsequently
 14 had a conversation with Dalecki about that.
 15 Q. What is the general -- let's go back to
 16 your first conversation with Dalecki. What was
 17 the general sum and substance of that
 18 conversation?
 19 A. That Sabina had alleged that there were
 20 statements made in front of a student at
 21 Steve's, I believe, one of the pizza joints,
 22 about Sabina that she was offended by and felt
 23 were improper. And Mike was very frustrated by
 24 that. And, and he said basically, you know, do
 25 what you have to do, investigate it. And I

1 wanted to see if he had heard anything. I don't
 2 remember getting anything substantive from Mike
 3 at that point, like, oh, yes, I heard this or,
 4 no, I haven't heard this. I just think he was
 5 frustrated by that situation because it was a
 6 dumb thing to do on Deb's part.
 7 Q. When you spoke to him about it, it was
 8 after the e-mail had been sent?
 9 A. After however I had been notified.
 10 Q. However you'd been notified.
 11 A. Yes.
 12 Q. And did he seem surprised by the
 13 information that he shared with you, as if it
 14 was the first time he'd heard about it?
 15 A. I don't recall that. I recall him
 16 being very frustrated. I don't recall him
 17 saying, Hey, this is the first time I've ever
 18 seen this or anything to that effect.
 19 Q. Right. And when you contacted him to
 20 set up the meeting, did you do that by e-mail or
 21 by telephone, do you know? Or, more
 22 importantly, did you forward anything in writing
 23 that would provide the information that Sabina
 24 had shared with you?
 25 A. Did I -- I don't recall, to be honest.

1 A. Yes, sir. Okay. Do you need your
 2 computer back?
 3 Q. Can you summarize what you've observed
 4 in that e-mail? Who is it from and who is it
 5 to?
 6 A. Just for identification, I think the
 7 e-mail can speak for itself.
 8 Q. Yes.
 9 A. But it's from Sabina to Mike Dalecki
 10 dated April 2, 2015, 4:30 p.m.
 11 Q. From Sabina?
 12 A. Yes.
 13 Q. Let me see it. Actually, I cursor to
 14 the top of the screen, and I'd ask you to
 15 identify that e-mail again, please. Who's the
 16 author and who is it to?
 17 A. Oh, I see. At the top of this
 18 document, this is from Deborah Rice to
 19 Michael Dalecki.
 20 Q. What's the date and the time?
 21 A. April 6, 12:25.
 22 Q. And it appears that she's forwarding
 23 another e-mail, correct?
 24 A. It does, yes.
 25 Q. And that e-mail that she's forwarding

1 I would either e-mail Mike, I would call Mike
 2 sometimes. Sometimes he would be up in the
 3 office regarding hiring affairs for the
 4 department. So, I may just catch him then.
 5 Q. We received a response to a subpoena
 6 duces tecum with a thousand files in it last
 7 night or yesterday, and there's at least one
 8 document in there I want to ask you about.
 9 A. That's fine.
 10 MR. HAWKS: Counsel, I'd like to
 11 show it to you first.
 12 Q. And then you can see it. Feel free to
 13 cursor down to get the whole content.
 14 MS. BENSKY: I've seen this
 15 before.
 16 MR. HAWKS: You have?
 17 MS. BENSKY: I think I --
 18 A. Are you ready for me to look at it?
 19 Q. Yes. Please do.
 20 MS. BENSKY: Look at the top.
 21 Q. And feel free to cursor through it.
 22 A. I'm looking at this.
 23 Q. Have you had a chance to review it?
 24 A. Let's see.
 25 Q. Let me know when you're ready.

1 is an e-mail that was sent from Burton to you,
 2 isn't it?
 3 A. I was carboned on it.
 4 Q. CC'd on it?
 5 A. Yes.
 6 Q. And it identifies the allegations that
 7 she shared with you as to what Rice was reported
 8 to have said?
 9 A. Could you ask the question again. I'm
 10 sorry.
 11 Q. The e-mail that is forwarded to Dalecki
 12 by Rice contains the allegations of what Rice
 13 is, was reported to have said about Burton?
 14 A. I think that's correct. I mean, it
 15 does appear to say that. I don't remember
 16 specifically at this point what the specific
 17 allegation was against Deb Rice, what she was
 18 alleged to have said.
 19 Q. We'll get to that.
 20 A. But I would say, also, that's -- the
 21 bottom of the document has the part that you
 22 asked me about. And the top of the document is
 23 a different issue regarding Sabina's attendance.
 24 That is not what I'm talking about.
 25 Q. Right.

1 A. Okay.
 2 Q. Thank you.
 3 A. May I correct a statement?
 4 Q. Please.
 5 A. When I said I don't remember the
 6 allegations against Deb Rice, what I meant to
 7 say was, I don't remember the content of the
 8 comments she was alleged to have made.
 9 Q. In this e-mail, perhaps you didn't read
 10 it closely enough, and I'll quote it, see if
 11 this refreshes your memory, "Deb Rice
 12 maliciously told department members and students
 13 that I am mentally ill, that I resent
 14 East Germans, and that I would be leaving
 15 UW-Platteville soon."
 16 Was that the essence of the
 17 allegations that Burton was making against Rice?
 18 A. It could be.
 19 Q. And are those the allegations that Rice
 20 admitted having made?
 21 A. I really don't recall. I would have to
 22 look at notes, if I had any from the time.
 23 Q. After Rice said that she would -- "Hell
 24 no," I'm not going to apologize, what, if
 25 anything, did you do next?

1 A. I believe I contacted Dalecki and I
 2 spoke to him. And he indicated -- I told him
 3 Deb had said, "Hell no." And I believe I
 4 expressed to him that I thought that that was in
 5 order for her to apologize, that she should
 6 indeed, and that it would have to go forward.
 7 Mike, I recall, said something along the effects
 8 of, Well, I'm going to talk to her. By that I
 9 got the impression he was going to admonish her
 10 for that behavior.
 11 Q. After that conversation, what, if
 12 anything, did you do?
 13 A. I've had a subsequent conversation with
 14 Mike where I reiterated how inappropriate it was
 15 to have spoken about another faculty member's
 16 issues, if you want to say that, in front of a
 17 student. And I reiterated that that was really,
 18 in my mind, the crux of the issue.
 19 And he said again that he thought he
 20 could get Deb Rice to apologize. And I haven't
 21 heard back from him since. It was -- I was to
 22 write up a report that would then go, I believe,
 23 to the chancellor, I don't recall exactly,
 24 about the incident, but then I did not get the
 25 job as HR director and have not written that

1 report.
 2 (Exhibit No. 137 was marked for
 3 identification by the reporter)
 4 Q. Let me preface my questions about these
 5 documents by informing you that these were
 6 provided to us as part of a Response for the
 7 Production of Documents by the defendants.
 8 They're stamped at the bottom UW-P with a number
 9 following them.
 10 A. I see that. Do you want me to read
 11 this in detail?
 12 Q. Let me know when you've re-familiarized
 13 yourself with them, and I can begin to ask
 14 questions about them.
 15 A. Okay.
 16 Q. I'd ask you to refer to UW-P 4840.
 17 A. I have it in front of me.
 18 Q. The page begins with 12 -- an entry
 19 12/11/13, conversation with Cathy Kutka. Who is
 20 Cathy Kutka?
 21 A. She works physically in the HR office.
 22 She reported to me and to Jennifer de Coste, and
 23 she was the affirmative action program
 24 coordinator.
 25 Q. And then there are a number -- there's

1 several notes above the horizontal bar.
 2 A. Uh-huh.
 3 Q. Do those notes reflect your notes of a
 4 conversation you had with her?
 5 A. It appears to. They're not in my
 6 handwriting, and I normally hand-write my notes.
 7 Q. They're typewritten?
 8 A. Yes.
 9 Q. So, if not yours, whose would they be,
 10 would you know?
 11 A. I would not know. I suspect this is
 12 mine.
 13 Q. You do suspect this is yours?
 14 A. Right. I'm just not comfortable
 15 commenting on the totality of them without
 16 seeing my handwriting.
 17 Q. Then there's a statement "Talked to
 18 Laura Whitney Classified Senate 'respect form,'"
 19 question mark and another bar. And then
 20 immediately below that is an entry:
 21 Mike Dalecki - concern is Tom Caywood. "Women
 22 do not belong in the criminal justice field."
 23 Does that, does that strike you as
 24 something, a note that you took?
 25 A. Yes.

1 Q. Do you recognize **Exhibit 145**?

2 A. I do.

3 Q. Would this establish that Dr. Burton

4 communicated to you the false or the rumors that

5 Deb Rice had spread as of December 10th of 2014?

6 A. Yes.

7 Q. And would this constitute the framework

8 of the issues that you discussed with Deb Rice

9 and that she admitted having made when you met

10 with her?

11 A. This would be, this would be the

12 framework that I discussed with her, yes.

13 Q. And that she admitted having said?

14 A. That she had discussed these things in

15 front of the student, yes.

16 Q. Did you identify the student who shared

17 the information with you with Dr. Rice?

18 A. It was a graduate student. I can't

19 remember his name.

20 Q. I can give you his name, but -- let me

21 withdraw that.

22 MS. BENSKY: His name is all over

23 transcripts. I mean, you can say it, and we'll

24 redact it.

25 MS. LATTIS: Who we've been

1 think that's why he came to see me, not the

2 invitation, and I basically took advantage of

3 him stopping by to ask him about the situation

4 just to corroborate.

5 Q. And did he corroborate?

6 A. Yes, he did.

7 Q. Did he share any other information with

8 you about another statement made at that event,

9 statement made by the provost to the chair of

10 the department?

11 A. No. I don't think so. What's the

12 statement?

13 Q. A statement to the effect that Burton

14 was all alone on a sinking ship.

15 A. Boy, I heard that somewhere. I don't

16 remember who told me that, but I did hear that

17 somewhere.

18 Q. Can you put that in any sort of

19 context?

20 A. I'm sorry. I can't.

21 Q. And when you say you've heard it

22 somewhere, did you hear that it was a statement

23 allegedly made by the provost to the chair?

24 A. I couldn't testify without specificity.

25 Q. Either with regard to it being made by

1 referring to as R.J.?

2 MR. HAWKS: Off the record.

3 (Off-the-record discussion)

4 MR. HAWKS: Back on the record,

5 please.

6 Q. Did you mention, did you mention R.J.'s

7 name to Dr. Rice?

8 A. Yes, I did, I believe. And I spoke to

9 R.J. actually out -- I had an opportunity to

10 speak to R.J. about this.

11 Q. Tell me about that conversation. When

12 and where did it occur?

13 A. In my office.

14 Q. And when?

15 A. I wouldn't be able to tell you right

16 now, but I could tie it to an event because he

17 invited me to a student event regarding

18 terrorism. There's a student group that,

19 forensics or some such thing, that he was

20 involved with, and I did attend one of those

21 meetings. And he had come by to invite me to

22 one of those meetings. And we talked about it

23 then.

24 I said, "As long as you're here." And

25 I really, frankly, thought it was a pretext. I

1 the provost or with regard to it being made by

2 her to the chair?

3 A. I recall it being -- that's a tough

4 question. I recall it being somebody in senior

5 management, senior team had said something to

6 that effect. I don't know who it was to. At

7 the moment I don't remember which person that

8 was. It could have been R.J. who told me, but I

9 don't recall that.

10 Q. Did you investigate that allegation?

11 A. Which one?

12 Q. The allegation that someone -- if

13 someone --

14 A. The sinking ship comment?

15 Q. Yes.

16 A. No, I don't think I did. People said

17 all sorts of crazy stuff to me all the time in

18 that job. It was very busy, and half the stuff

19 I got was, was just nonsense. I was happy to

20 share a complaint process with anybody who

21 wanted to make a complaint, but I didn't

22 investigate random comments like that.

23 Q. To your knowledge, did Dr. Dalecki

24 reprimand Rice?

25 A. I thought he did.

1 Q. Again, what makes you, what makes you
 2 say you thought he did?
 3 A. Because I believe he told me that, but
 4 I do believe the Deb Rice matter is still
 5 somewhat in limbo, because I -- I left the job.
 6 It was -- we were having voluntary retirement
 7 going on, and we had all sorts of stuff going on
 8 during that time period. And that was still --
 9 I was pursuing it because I thought Deb Rice was
 10 wrong. Dalecki thought Deb Rice was wrong and
 11 should apologize.
 12 And when I left the position, I, I was
 13 aware that there was lawsuits and complaints
 14 going back and forth, so I assumed that that was
 15 subsumed in all of that, all of those suits and
 16 complaints, et cetera. But, nonetheless, when I
 17 told Mike about it, about the meeting where I
 18 did not get satisfaction from Deb Rice in the
 19 sense of an apology, my understanding was that
 20 he did speak to her and reprimand her, but you'd
 21 have to ask him for sure.
 22 Q. Are you familiar with Dr. Burton's
 23 request to teach online as part of her basic
 24 load?
 25 A. Yes.

1 appears to be a note from you to Dr. Dalecki
 2 asking if there's anything he could give back to
 3 her at mediation so we can offer half a loaf.
 4 Why did you ask that question?
 5 A. Again, I thought highly of both
 6 individuals, and I thought that this was a
 7 conflict we could have avoided. And I was
 8 actively trying to avoid it and get these two
 9 guys talking, get these two people talking.
 10 And I think I recall Sabina had said
 11 she had apologized to Mike about the tone of an
 12 e-mail that had to do around the time that her
 13 mother was ill. And she mentioned, you know,
 14 her mother was ill and she wasn't herself. And
 15 I think I told Mike something to the effect of,
 16 you know, she's at least been willing to
 17 apologize. Why don't you have something, you
 18 know, basic negotiation, you know. Nobody is
 19 going to get everything they want. Do you have
 20 something you can offer her? You know, let's
 21 mend this relationship, let's reconcile. Does
 22 that answer your question?
 23 Q. It does.
 24 A. Thank you.
 25 Q. But I have a follow-up question. Did

1 Q. Did you investigate that issue?
 2 A. I spoke, I believe I spoke to Dalecki
 3 about that. And I think there was a
 4 disagreement between the two of them as to
 5 her -- or the obligation of the school to
 6 provide that for her. I don't remember the
 7 exact details. She put in a -- well, that's --
 8 I'll let you ask your questions.
 9 Q. Do you recall what Dr. Dalecki shared
 10 with you when you talked to him about it?
 11 A. No, I don't. It depends on which --
 12 I'm getting my timeline mixed up in my head.
 13 There was, there was an occasion where Sabina
 14 put in for family medical leave, and I was
 15 communicating with, I believe, the dean and
 16 Mike, but Mike primarily, to try and meet all
 17 the accommodations that were requested.
 18 Q. We'll come to that in a few minutes.
 19 We don't have much time left, so...
 20 A. I'll try to keep quiet.
 21 (Exhibit No. 146 was marked for
 22 identification by the reporter)
 23 Q. Have you reviewed 146?
 24 A. Yeah. Yes, I have.
 25 Q. On the very bottom of that page there

1 Dr. Dalecki offer up anything as half a loaf?
 2 A. Yeah, I think he did.
 3 Q. What did he offer?
 4 A. Some sort of class or some sort of
 5 variation in her load, and we moved her office
 6 so she would have more sunshine.
 7 Q. Did that occur at that time, or did
 8 that occur summer of 2015?
 9 A. That was later, that was later.
 10 Q. In context of her return to work
 11 following her illness?
 12 A. Yes, yes. But I believe he offered her
 13 some sort of course accommodation, and I don't
 14 recall exactly what that was.
 15 (Exhibit No. 147 was marked for
 16 identification by the reporter)
 17 A. All right.
 18 Q. Do you recognize Exhibit 147?
 19 A. Yes.
 20 Q. What is it?
 21 A. It appears to be her return to work
 22 slip, Sabina's.
 23 Q. Did you receive a copy of this on or
 24 about April 16, 2015?
 25 A. Yes.