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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

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DR. SABINA BURTON,

Plaintiff,

v.

Case No. 14-CV-274

BOARD OF REGENTS UNIVERSITY OF  
WISCONSIN, et al.,

Defendants.

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**DECLARATION OF SABINA BURTON – CORRECTION OF  
MISTAKES AND OMISSIONS IN  
PLAINTIFF’S ADDITIONAL PROPOSED FINDINGS OF FACT (Dkt 56)**

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Pursuant to 28 U.S.C. § 1746, Sabina L. Burton declares, as follows:

1. I am an adult resident of the State of Wisconsin, the Plaintiff in the above-named case, and I make this declaration based on personal knowledge.

**1. Correction to Plaintiff's Proposed Findings of Fact (Dkt. No. 56)**

2. My former attorneys, Tim Hawks and Michele Sumara failed to provide me opportunity to proof-read, edit or approve the Plaintiff's Proposed Findings of Facts (Dkt. No. 56) before submitting the document in my name. They made significant errors in the filing that I correct with the following:

3. Delete Dkt. No. 56, ¶ 117
4. Delete Dkt. No. 56, ¶ 159
5. Delete Dkt. No. 56, ¶ 162
6. Delete Dkt. No. 56, ¶ 163
7. Delete Dkt. No. 56, ¶ 167
8. Delete Dkt. No. 56, ¶ 221
9. Delete Dkt. No. 56, ¶ 223
10. Delete Dkt. No. 56, ¶ 239
11. Delete Dkt. No. 56, ¶ 270
12. Delete Dkt. No. 56, ¶ 271
13. Delete Dkt. No. 56, ¶ 272
14. Delete Dkt. No. 56, ¶ 273
15. Delete Dkt. No. 56, ¶ 276

16. My former attorneys, Tim Hawks and Michele Sumara failed to inform the court of many of the material facts concerning my case that should have been included in the Plaintiff's Additional Proposed Findings of Facts (Dkt. No. 56). I supplement the Plaintiff's Additional Proposed Findings of Fact (Dkt. No. 56) with the following additional findings of fact.

## **II. Additional Findings of Fact**

**a. Caywood suddenly and without warning withdrew his support for Burton's efforts to create a Cyber Security Program leading to the collapse of the work she had done and her inability to ethically utilize the \$7,000 AT&T contribution she had worked to secure.**

**i. Evidence of support and approval of Burton's efforts prior to Jan 24, 2013 of Burton's Efforts to create a Cyber Security Program:**

17. In the fall of 2012, Burton was instrumental in obtaining an invitation from AT&T for the UW Platteville Foundation to submit a funding application that resulted in a grant of \$7,000 being awarded to the UW Platteville Foundation.

18. In the formal written application to AT&T, Burton wrote that UWP would use the money "[t]o support the development and implementation of a cyber-security curriculum for undergraduate and graduate students."

19. No permission was required for Burton, to develop an undergraduate curriculum because the university does not pay a faculty members to develop an undergraduate curriculum.

20. Burton had planned to obtain permission to develop graduate curriculum sometime after she obtained the donation. Permission is required to develop a graduate curriculum because it is a paid activity.

21. Burton had been developing only undergraduate curriculum prior to January 24, 2013.

22. Before teaching a new undergraduate curriculum a faculty member would need to obtain approval of the new undergraduate curriculum by the appropriate Curriculum Committee(s).

23. There was never any requirement for an undergraduate curriculum to be approved before accepting a donation intended to develop the undergraduate curriculum.

24. Burton did not have permission to develop an undergraduate curriculum prior to January 24, 2013 because she was not required to have any such permission at that time.

25. She had every intention of gaining curriculum committee approval after she had finished developing the undergrad curriculum and before teaching it. (Dkt. No. 98 Dkt. No. 98 Audio Exhibit A7)

26. Prior to January 24, 2013 no one had communicated any requirement that Burton needed to gain any permissions or authorizations for any of her cyber security efforts that she had not already obtained. (Dkt. 37-1, at 2 Filed on 11/10/15) (Dkt. No 38, Burton Dep. At 244.19 – 246.4 Filed 11/10/15) (Dkt. No. 98 Dkt. No. 98 Audio Exhibit A7)

27. Throop and Caywood never showed any concern, prior to January 24, 2013, with how Burton was portraying the status of UWP's cybersecurity program.

28. Burton had been forthright and had provided them with open access to her efforts.

29. Burton was developing an undergraduate curriculum for which she needed no permission during the months leading up to Jan 24, 2013, with the goal of completing the curriculum and getting it approved by Feb 2013 to fulfil a milestone set out in the donation application. (Dkt. 37-1, at 2-3 Filed on 11/10/15)

30. Burton had shared her efforts with Caywood in the months prior to January 24, 2013.

31. Caywood showed support up until the day of the student complaint. (Ex. 1, Dkt. No. 101-1, is a true and correct copy of an email showing Caywood's support for another attempt at NSF funding on Oct 10, 2012 for Cyber Security Program.

32. Three months after the student harassment incident an AT&T representative drafted a press release to announce the company's donation to UW Platteville Foundation.

33. The money did not go directly to Burton but into an account for the new Cyber Security Program and held by UW Foundation to be dispersed for appropriate and approved use of the money.

34. As edited, the release referred to "the development of a new cyber security program," because Burton and Caywood and Throop and many others had been referring to her efforts and the efforts of others as a new cyber security program.

35. The AT&T donation application indicated that UWP was "in the process of developing a curriculum for cyber-security," and that a milestone of the project would be to develop and implement an undergraduate cyber-security course by February 2013. (Dkt 37-1 at pages 2-3 Filed on 11/10/15).

36. Dr. Burton made a typo on the edited press release by typing "2012" when she intended to type "2013." Writing the previous year is a common mistake in January. She had been accustomed to writing "2012" at the end of dates for an entire year. It was a simple habit that everyone needs to break at the beginning of a new year. She edited the document in mid-January before she had broken that simple habit. The context of the sentence formed in future tense demonstrates her intention to write "2013" and not "2012." Throop is an intelligent and learned woman who understands future tense in sentence structure and is capable of recognizing and editing a simple typo. Throop used this typo as explanation for her actions knowing that the sentence was constructed in future tense and that it was obviously a simple typo. Dkt. No. 36-7.

37. The press release referred to a "new course . . . expected to be available to undergraduate students beginning spring of 2012." . Burton intended to type 2013 but typed 2012 instead. Nobody "expects" something to happen in the past. This was an obvious typo. The date was corrected in the final draft even without asking Burton about it. Dkt. 36-7, at 1 Filed 11/10/15

38. And Burton had not yet formally submitted any proposed cybersecurity courses to the college curriculum committee or to the university curriculum committee because approval for those courses are not required to accept donations for the purpose of creating curriculum.

39. She had not formally submitted proposals to develop curriculum prior to January 24 because she was not required to submit proposals or gain any permissions to develop undergraduate curriculum. Defendants have not offered any evidence dated prior to January 24, 2013 that Burton was required to have obtained any such permission.

40. Burton had all necessary permissions to accept the AT&T donation. Defense has not provided any evidence prior to January 24, 2013 that would indicate any lack of approval or any disapproval of her efforts to gain the AT&T donation.

41. Defense implies that Burton did not have permission to accept the AT&T donation because she did not have permission to develop an undergraduate curriculum. It would be a mistake to infer the same. Permission to accept a contribution and permission to begin teaching a course and permission to develop a curriculum are very different things.

42. In an email to Caywood Burton wrote: "I just secured between \$5000 - \$7000 in donations/funding from AT&T for getting a cybercrime program started in our CJ department." Caywood did not at that time inform Burton that she needed any more permissions to accept the donation than she already had. His silence was consent for her to accept the donation. ([Dkt. No. 53-8](#) at page 1, Filed 12/01/15)

43. On Oct 10, 2012 Caywood wrote an email to Roberts, and cc to Burton, explaining that another opportunity to apply for the NSF grant would present itself in coming months. At that time Caywood supported the Cyber Security program. Burton did not attempt to apply for the NSF grant in December and neither did Roberts or Caywood.

**ii. Events surrounding Caywood's January 24, 2013 withdrawal of support for Burton's cyber security efforts**

44. Timeline of events surrounding January 24, 2012

45. Defendants have not produced any evidence before January 24, 2013 that Burton did not enjoy the full support of Caywood and Throop for her cyber security efforts.

46. On Jan 23, 2013 3:27 PM: Jessica Erickson, Director of Public Affairs, AT&T Wisconsin, sent an email to Burton, cc to Jim Jermain, AT&T, with a proposed press release attached.

47. About 7:30 AM on January 24, 2013 Burton received word that her father was in grave condition and was not expected to live much longer. Burton informed Caywood in the morning of January 24, 2013. Burton's father passed away on Feb 14, 2013.

48. About 8:10 AM Burton invited Caywood to the AT&T donation ceremonial check presentation in her current topics cyber-crime class and gave him the date and time of the presentation. Dr. Caywood told her that he had been conversing with Throop about the check presentation but gave no indication that there was any problem.

49. Jan 24, 8:37 AM, 2013 Burton sent back the press release with some changes attached. One change Burton made was to replace "cyber security course" with "cyber security program" to more accurately reflect the purpose of the donation as accepted by UW Platteville Foundation. Ex. 2, Dkt. No. 101-2 is a true and correct copy of the AT&T check and letter that accompanied it.

50. Defense has not produced any documentation showing that Throop had ever discussed any problem with departmental or college level support for the cyber-security program prior to January 24, 2013.

51. Jan 24, 10:27 AM, 2013 Dean Throop sent an email to Jessica Erickson, Director of Public Affairs, AT&T Wisconsin, the Chancellor's office, cc to Burton and Caywood saying: *"This press release concerns me deeply. There are a number of highly inaccurate-- indeed, misleading--statements regarding the status of cyber-security curricula at the University of Wisconsin-Platteville. I am not confident that the ceremony being planned is wise given this."* Ex. 3, Dkt. No. 101-3 is a true and correct copy of the email.

52. Jan 24, 10:38 AM: 2013 Dean Throop sent an email to Jessica Erickson CC: Dr. Caywood and Dr. Burton which indicated that she had spoken to Jessica and that she would edit the long form release to reflect her concerns. Dkt. No. 101-3

53. Katheryn Lomax, Director of the UW Platteville Foundation had reviewed the application before it was submitted. ([Dkt 54-15](#), Filed on 12/01/15)

54. Comparing Burton's edited draft and The final version approved by Throop a reasonable jury will be able to conclude that the changes Throop made were: a) She removed mention of the word "program" and changed the purpose of the award to show that it only supported a new course rather than a "program." b) Throop changed "We are very proud that UW-Platteville has one of the best Criminal Justice programs in the nation," to ""We are very proud that UW-Platteville has one of the best Criminal Justice and forensic investigation programs in the nation," c) Throop replaced the paragraph which stated that the department was developing a cyber security curriculum with a paragraph about the Cyber Crime class. Dkt 36-7 Ex. 4, Dkt. No. 101-4 is a true and correct copy of the press release obtained from the Defense.

55. Throop's edit of the press release changed "program" to "course." Prior to January 24, 2013 the word "program" was not a problem but suddenly it had become a reason to punish Burton for her good work.

56. Throop edited the press release to avoid advertising that the CJ department was developing a new "program" even though the word "program" had been used to describe Burton's and Caywood's and Roberts' efforts for several months. Nobody before January 24, 2013 ever objected to the word "program" in describing their cyber security efforts. ([Dkt. No. 53-8](#) at top of page 1 Filed 12/01/15)

57. Throop had the option of changing the word "program" to "course" in the press release without withdrawing support for a cyber security program or Burton's efforts or restricting her use of the donated funds.

58. Prior to Jan 24, 2013 Burton there was solid support from her department from her chair and from her dean as well as others outside the department and college for the new Cyber Security Program.

59. The city of Platteville and University of Wisconsin-Platteville Innovation Center market analysis and feasibility study stated "the synergies with innovation and cross-disciplinary collaboration *will* (emphasis added) lead to the establishment of UW-Platteville as a leader in Forensic Science, Cyber Security and Criminalistics." Burton was not involved with this advertisement. Ex. 5, Dkt. 101-5 at pg 26 of 163 is a feasibility study report showing great support of the cyber security program.

60. Throop added the Forensic Investigation program in the press release.

61. An independent expert auditor of the Forensic Investigation program later wrote in his report that "*Campus administration and the dean's office must shoulder some*

*responsibility for the train wreck that occurred much later.*” (Dkt. No. 53-10 Filed: 12/01/15  
Page 13 of 24)

62. Burton taught class from 9:30 am to 12:20 pm. She saw Dr. Caywood again at about 1 pm and told him about time slots for him to say something at the check presentation and he gave no indication of a problem with the press release at that time.

63. Jan 24, 1:06 PM, 2013 Burton sent Caywood an email informing him of the memo from Jessica Erickson listing those to be present at the check presentation ceremony. This was the point in time where the deer stands in the headlights not knowing what is coming. Up to this point there had been no indication from anyone that support for her cyber security efforts had been withdrawn. Twenty seven minutes later Caywood “pulled the rug” out from under Burton. Ex. 6, Dkt. No. 101-6 is a true and correct copy of the email. (Dkt. No. 98 Audio Exhibit A6 CDII at 8:10-8:30 Date: 4/12/13)

64. January 24, 2013 1:27:36 PM - Caywood sent an email to Burton, cc to Throop, with a letter attached, informing her that *“You are advertising in press releases and websites that the department and university are supportive of what you are doing. That is in error.”* ([Dkt. No. 53-4](#) Filed: 12/01/15 )

65. Burton was surprised by this and felt hurt and betrayed.

66. In his letter Caywood wrote *“According to the websites of Journal of Cyber Security and Journal of Criminal Justice which you state you own. Both states a proposal for a cyber security/homeland security program at UW-Platteville”* and *“ As an old saying goes you have the cart before the horse”* but the bullet points on the websites were “proposals” for the program.

67. Burton did not make any misrepresentations on the websites. Screen shots of what the websites looked like on the morning of Jan 24, 2013 are: (Dkt. No. 37-3, Filed: 11/10/15) (Dkt. No. 37-2, Filed: 11/10/15 )

68. Caywood had the option of asking Burton to change the websites and she would have done so. Caywood did not act to correct what he claims was a problem but instead acted to destroy Burton's cybercrime efforts by convincing Throop that Burton had made misrepresentations on the press release and websites.

69. The only misrepresentation Burton had made on the press release was a typo.

70. The websites were not advertised online.

71. Never did anyone prior to Jan 24, 2013 indicate to Burton that there was any problem with any aspect of the websites.

72. On October 6, 2012 Burton emailed to Caywood a proposal for a cyber security program which included the url for the websites and Caywood was pleased with her work.

Dkt. No. 53-44

73. Neither Caywood nor Throop ever expressed any concern to Burton concerning the websites prior to Jan 24, 2013.

74. The websites were not advertised online but they were used by Burton as an online easel to show her proposal plans to people she met with or emailed. She gave the url to people she felt could help further her plans.

75. Between early October and January 24, 2013 it would have been nearly impossible for anyone to find the brand new, obscure websites on a search engine query unless they had been given the exact url some other way.

76. Google Analytics tracking software was added to the websites in mid January 2013 to track visits to the sites.

77. Between mid January, 2013 and Oct 1, 2013: JournalofCyberSecurity.com received only 104 online visits and JournalofCriminalJustice.com received only 59 visits with ten visits on January 24, 2013. Both websites had a spike in visits on January 24, 2013. Ex. 8, Dkt 101-8 is a true and correct copy of a Google Analytics report for JournalofCyberSecurity.com and JournalofCriminalJustice.com.

78. The spike in visits on January 24, 2013 included visits from Throop, Caywood, Den Herder and others who were involved in the flurry of attention surrounding the sites on that day. Other activity can be explained by Burton's and the webmaster's visits and visits by lawyers and others who had been made aware of the urls through grievances and this legal action. It is conceivable, albeit unlikely, that a few individuals, out of all internet users, could have happened across the website without having first been given the url address.

79. Throop and Caywood's purported reason for their withdrawal of support was that they were concerned that a few individuals out of +3Billion random worldwide internet users might misinterpret the content of Burton's websites as badly as they themselves did.

80. Neither Throop nor Caywood ever asked Burton if the website was advertised online.

81. Jan 24, 2:35 PM, 2013 Dean Throop sent an email to Dr. Caywood and cc to Burton saying that Dr. Caywood's letter deeply concerned her and demanding a meeting at 2 pm the following day. Ex. 9, Dkt. No. 101-9 is a true and correct copy of the email chain.

82. Jan. 24, 2013 (3:45 pm): Burton emailed her response to Caywood's letter. She wrote "*So tell me what you want me to do. I am ready to tell AT&T to give their money to a different school if that is what you want. This donation does not benefit me financially and actually creates extra unpaid work for me that I am willing to do for the benefit of our great school and students. If you are withdrawing your support please do so in writing so I know what to tell AT&T about this check presentation. If you have withdrawn your support for the course development we should not accept the grant.*" Ex. 10, Dkt. No. 101-10 is a true and correct copy of this email thread obtained from the defense. Dkt. No. 101-10

83. Caywood did not respond in writing that he was withdrawing his support but vaguely implied that he had never supported Burton's cybercrime efforts. Dkt. No. 53-4 Filed 12/01/15

84. January 24, 2013 4:41:22 PM - Burton responded to Throop's meeting request saying "*I am not available to meet with you and Tom tomorrow. I don't expect much good to come out of it. I need some time to myself & family and away from this petty office stuff. I am tired of being bullied and manipulated at work. Frankly, I found your comments to the AT&T press release unnecessarily harsh and discouraging. I thought you would be pleased with the accomplishment.*" Dkt. No. 101-9.

85. Jan 24, 5:15 PM, 2013 Dean Throop sent Burton an email in which she wrote "*I have backed you on every single issue you discuss below except for the cybersecurity one.*"

She also wrote “*you must have departmental approval before making announcements or representations about the CJ curriculum. Unfortunately, you don't have it.*” Dkt. No. 101-9

86. Burton was devastated.

87. Caywood and Throop never gave a clear indication for their reasons for their withdrawal of support. They instead gave vague references to the word “program” and implied that Burton had somehow failed to gain approval for some phantom requirement that did not exist prior to January 24, 2013. Defendants have offered no evidence, prior to January 24, 2013 that Caywood or Throop had any issue with Burton using the word program to describe her efforts in any emails, websites or other communications.

88. UW Platteville foundation had approved the request for the AT&T donation. The purpose of the AT&T contribution was to support a new Cyber Security program that will educate the Criminal Justice students on how to effectively investigate and respond to the increase in cyber-crime activity. By accepting the check UW Platteville Foundation attested that the funds would be used to support a new Cyber Security program. (Burton Dep., Dkt. No. 38, 229:21-230:5) Dkt. No 101-2

89. Burton had obtained all the permissions and authorizations required in order for the school to request and accept the AT&T donation. In fact the university had already accepted and cashed the AT&T \$7,000 contribution on about Dec 28, 2012. Dkt. No. 101-2

90. Nobody ever told Dr. Burton prior to Jan 24, 2013 that she lacked any support in applying for or receiving the AT&T contribution. In fact Caywood had expressed strong support for her efforts in cybercrime up to October 10, 2012.(Burton Dep., Dkt. No. 38, 229:15-20)

91. Dr. Burton was shocked to read Dean Throop's email because prior to Jan 24, 2013 her efforts to gain the AT&T contribution had been supported, approved and encouraged by Throop and Caywood. Dr. Burton felt that Dean Throop had swallowed Caywood's lies about her lack of support in the department, that Caywood's lies had influenced Throop to write the email to AT&T and that Throop's email to AT&T had falsely informed AT&T that Burton had done something wrong in applying for the contribution without specifying exactly what Throop alleged that she had done wrong. (Burton Dep., Dkt. No. 38, 249:5-250:4)

92. January 24, 2013 7:14:45 PM - Burton sent an email to Throop saying "*If the chair of CJ, the Dean's office and the Chancellor's office signed off on the proposal it is beyond me how one can call my statements inaccurate. Under the circumstances I find myself in I don't think I can accept the AT&T donation. I will forward Tom's letter and my response as well as the NSF proposal to them and with that politely decline their generous offer. If you think you can fix this with Tom then please give it a shot.*" Ex. 16, Dkt. No. 101-16 is a true and correct copy of email thread of Jan 24, 2013.

93. January 24, 2013 7:45:15 PM – Burton sent an email to Throop that explained that the proposal had been approved and submitted the semester before Throop started as dean. Ex. 14, Dkt. No. 101-14 is an email with a link to the proposal.

94. January 24, 2013 7:46:25 PM Throop wrote: "Again, my friend, please, let's you and me talk." Dkt. No. 101-14

95. January 24, 2013 8:16 PM Burton wrote "*I don't even know if I can come to school tomorrow. I have been popping migraine pills for a huge tension headache. I may call in sick and talk to an attorney instead. I need to see how I can get some justice in this matter. Tom has defamed my character. He has lied...My character has been put in question with AT&T when*

*my statements were called incorrect and even misleading. This has to be corrected. My name must be cleared of this.*” Dkt. No. 101-14

96. Fri, Jan 25, 2013 07:45 AM - The following morning Burton wrote to Throop and Caywood *“My headaches have only gotten worse. The bullying, discrimination, and incorrect and deceptive statements by our chair have taken a toll on me. Now it also affects our students. I have to call in sick and will see a doctor today. I slept for about one hour last night tossing and turning from this mess. In 17 years teaching I never called in sick.”*

97. Jan 25, 2013. Burton’s doctor prescribed her pain, anxiety and sleep medication.

98. Jan 25, 2013 – 1:28 PM – Burton sent an email to Den Herder in which she wrote *“I have been discriminated against, unfairly treated and bullied by Tom after responding to a student’s request to help her with a sexual harassment problem by a CJ faculty member in Oct. 2012.”* She also wrote *“I have turned to Liz for support in this bullying matter but she has repeatedly told me that she will not get involved in department affairs. I cannot address bullying by my boss by bringing it to my boss’ attention. I tried, it didn’t work.”* Ex. 15, Dkt. No. 101-15 is a true and correct copy of Burton’s email to Den Herder.

99. Jan 25, 2013 – 4:04 PM - Later that day Burton wrote *“I am sorry I did not respond well when you wanted to talk about the issues at hand. I was upset by your coarse tone but the tone I have shown you has been much worse and I promise never to do that again. I accept that you are the dean and I am subject to your decisions and I want to make things right again if that is possible. You extended an olive branch and I swatted it away and for that I am very sorry.”* Burton ended the email by saying *“I am an emotional mess today but perhaps you can find time to talk to me tomorrow.”* Burton did not refuse to meet.

100. Jan 25, 2013, 4:32 PM - Dean Throop responded "*I accept your apology without reservation*" and suggested meeting the following Tuesday, Jan 29, 2013.

101. Jan 25, 2013 04:46 PM Burton sent an email to Provost Den Herder with subject "my apology." She sent this letter because after re-reading her previous email she felt that it gave the wrong impression that she intended to take the matter to court, which was not her intent at that time. She wanted to resolve the issue without legal action if that was possible.

102. Fri, Jan 25, 2013 4:51 PM - Burton responded that she could meet.

103. Jan 26, 2013 – 5:29 AM - Burton wrote to Throop asking "*What shall I do with the \$7000? I don't even know how to use it anymore, how I can use it anymore.*"

104. Sat, Jan 26, 2013 – 7:35 AM –Throop wrote "*I would say that you could use the funds for conference travel, research expenses, and professional development so that you perhaps will be able to publish in this area in the future.*" This was not an approved use of the funds. This put Burton in a difficult position. Burton decided to avoid violating the agreement by not using the funds. By not allowing Burton to use the funds for "program development" Throop barred her from using the funds at all.

105. On Jan 28, 2013 at 7:23 AM Burton sent Dr. Caywood an email with a letter attached explaining her perspective on the matter. Ex. 17, Dkt. No. 17 is a true and correct copy of the explanation letter Burton sent to Caywood obtained from the Defense.

106. Jan. 28, 2013 (2 pm): Jim Jermain presented a ceremonial check during Burton's cyber-crime class. The money had already been accepted by UWP Foundation weeks earlier.

107. Burton later contacted AT&T and requested that the money be redirected toward another purpose so she could use it as Throop had ordered but AT&T denied the request so she was not able to use the funds at all.

**iii. Burton attempts to get help to alleviate her retaliatory working environment.**

108. Durr Delayed Burton's grievance by ignoring her request about who to give the grievance package to.

109. On Jan 29, 2013 (8:15 – 9:15 am) Burton met with Jeanne Durr and Dean Throop in response to Dr. Caywood's withdrawal of support and harsh treatment. She audio recorded the meeting. (Dkt. No. 98 Audio Exhibit A1)

110. During the meeting Throop said *"you have your, your conflicts with Tom. You're sure, I'm sure you're not the only one, but you have your conflicts with Tom. Um, and, and you've been coming to me to talk about them. And I probably should not have let you do that. I probably should have really been saying "Let's sit down and get this worked out on the department level, because this is where, this is where you live, this is your place, these are your colleagues, and coming to me doesn't solve the problem. Cause, I can't interfere. Right? I mean there are governance structures right? So, so for me, this is the the pattern and I think, it's me, I'm gonna self aggrandize here. I think you find me approachable, I think you find me as someone who will, you know, cares and, and will listen. Um, but, but, at, I think the events of the last week just sort of proved that the listening hasn't been effective because nothing is changing. Nothing changes that you want. You still have your difficulties and and you seem to pinpoint Tom as one of the major, you guys just don't get on. You don't get on. But, I can't tell him to do*

*what you say. (Laughter), I wish I could. I wish I could.*” (Dkt. No. 98 Audio Exhibit A1 – about 1:40 to 3:41)

111. Burton said that Caywood was absolutely upset that the student complaint went outside of his office and ever since then his tone changed and that he had become very very hostile, that he felt a need to educate the department on how to handle sexual harassment complaints by giving them a new policy. His point was that what happens in the department stays in the department. (Dkt. No. 98 Audio Exhibit A1 – at 3:40 to 6:50)

112. Durr and Throop agreed that Caywood’s policy contradicted university policy. (Dkt. No. 98 Audio Exhibit A1 at 6:50 to 7:20)

113. Then Burton told Throop and Durr that Caywood had supported her cyber crime efforts and a cybercrime program, that he had seen the website previously and was pleased with it. She told them that Caywood was doing this because of the student complaint, that he was lying and she asked for a grievance hearing. (Dkt. No. 98 Audio Exhibit A1 7:50 to 8:10?)

114. Burton said: *“This tears me apart. This is personal. He’s going after me. He’s trying to destroy me. He’s hateful....”* *“The toughest time is, his, spitefulness toward me. And that’s tearing me apart and it affects our students. And uh, it’s the tone, it’s the way he treats me. It’s the way when I come, how, you know, like, uh, behavior, what he does with me, um how he puts me down, his sharp tone, I don’t feel like I can talk to him* (Dkt. No. 98 Audio Exhibit A1 at 8:35 to 10:14)

115. Burton said: *“I wish that student would have gone to somebody else. Oh my gosh, how different would the situation be? Cause everything was fine and then.. I just so wish. I feel like, what would I say if a student would come to me again? I hope I would do the right thing. Because that student was really really upset, and she was really scared and she was sick the weekend after so it really affected her emotional and uh I knew, and she said like, she was uncomfortable in classes I said “you have to go*

*back, you have to go back to class, don't skip class, it's very important. .... I didn't say she has to come to me but "you know where you can go now, to Student Affairs, they have people there who can assist you and want you to be comfortable."* (Dkt. No. 98 Audio Exhibit A1 - 30:54 to 31:35)

116. Burton said: *"My biggest problem is that, uh, I really felt misled by Tom, because he, up to that student incident, there was support and I really would like, the grievance committee looks into that and really see what the heck happened. And that, you know, if they decide, if that committee decides that it really, then became personal then I think Tom has to apologize for that, and he has to kind of take responsibility and I would like to see this because I think this would probably, finally, stop him being retaliatory toward me and really let that go, he has to let it go. I understand he's not pleased, he wasn't pleased, he's maybe old school, but he has to accept this..., you can't just shove it under the rug I mean this is not something, boys will be boys thing. You can't see it that way. This is pretty serious stuff."* (Dkt. No. 98 Audio Exhibit A1 - 50:33 to 51:20)

117. Durr later wrote down some notes of the 1/29/13 meeting with Burton and Throop in which she wrote a very watered down version of the actual conversation. Durr's statements completely mischaracterized Burton's complaint. A reasonable jury will be able to see pretext by comparing Durr's notes of the meeting with the audio of the meeting. It is suspicious that Durr did not mention the word "retaliation" in her notes and that she did not mention what Burton called her "biggest problem." A reasonable jury will be able to see that Durr was dissembling to cover up the retaliation claim by "sugar coating" Burton's actual complaint. (Dkt. No. 98 Audio Exhibit A1) Ex. 18, Dkt. No. 101-18 is a true and correct copy of Durr's notes obtained from the Defense. (Burton Decl. ¶35, Ex. 14, Dkt. No. 54-14)

**c. The student complaint against Gibson**

118. On October 10, 2012, Dr. Gibson, a male professor, handed a female student, Alexandra Zupec, an inappropriate note in his class which said “Call me tonight!!” and included his personal cell phone number. Ms. Zupec and a friend later saw Dr. Burton and asked Dr. Burton for her help regarding the note. (Alexandra Zupec Decl. ¶¶4-8, 11-17, Dkt. No. 51; Zupec Decl. Ex. A, Dkt. No. 51-1; Burton Dep., Dkt. No. 38, 252:13-254:2; Caywood Decl. Ex. WW at 001-002, Dkt. No. 36-5)

119. Gibson was teaching a class titled “CJ Research Method’s” when he passed the note to the student.

120. There is no chapter on breach experiments in the CJ Research Methods textbook.

121. Breach Experiments are a Psychological method of study that is not part of the CJ department’s approved curriculum for the CJ Research Methods class Gibson was teaching.

122. Breach experiments require IRB approval before they are conducted.

123. The department chair is not authorized to give permission for a faculty member to conduct breach experiments.

124. Caywood told the student that he had given Gibson permission to conduct the breach experiment. (Alexandra Zupec Decl. ¶¶27)

125. Caywood attempted to convince Burton that Gibson was conducting an actual breach experiment.

126. Caywood attempted to convince Throop that IRB approval was not required because there was no research being conducted.

127. Throop wrote to Caywood: *“I understand what a ‘breach’ is. I have served on IRBs at every institution at which I have worked, and I have dealt with IRBs at R1 for my own*

*research. If he passed a note with that message and a phone number without explaining, ahead of time, what he was doing, and he did it, in addition, in such a way as to create an atmosphere of potential sexual harassment, this is a profoundly serious issue.”*

128. Throop continued *“I am very disturbed by this entire incident and by your response to it. Please see me at your earliest convenience. You’re right in that perhaps it is not an IRB issue. It could well be a significant HR and Title IX issue.”* Ex. 19 at page 3-4, Dkt 101-19 is a true and correct copy of the email string about the student harassment issue obtained from the defense.

129. A grievance committee called Gibson’s email to the students “beyond reprehensible” and “slut shaming.” (Dkt. No. 53-32 at page 1, April 17, 2013)

130. In a later meeting HR director Durr told Burton that Caywood *“doesn’t need to answer your questions. You would like him to answer your questions, but he doesn’t need to.”* She continued *“he could totally ignore everything that you send him from now till you both retire.” “He can continue to ignore you forever.”* [Dkt. No. 98 Audio Exhibit A2 at 1:00-1:30, 10:20-10:41]

131. In an email of Jan 25, 2013 Throop wrote to Caywood telling him not to respond to Burton’s email. (Dkt. No. 37-8)

132. The grievance committee’s second findings on July 10, 2013 are suspiciously far removed from their first findings and from the actual audio of the grievance hearing recorded by the university on April 19, 2013. A reasonable jury could conclude that Burton’s real grievances were “displaced” or “lost” or “forgotten” or “discarded” or “altered” in the three months between the hearing and delivery of the second findings during which time the committee did not discuss the grievance with Burton. (Dkt. No. 98 Audio Exhibit A6) Ex. 21,

Dkt. No. 101-21 is a true and correct copy of the grievance commission findings of April 19, 2013. Ex. 22, Dkt. No. 101-22 is a true and correct copy of the July 10, 2013 findings of the Grievance Commission obtained from the Defense.

133. In Burton's grievance hearing against Throop the dean gave as reason why she considered Burton to be ineligible for chair as being that Burton had not been handling Caywood's retaliation on the departmental level. Throop took away Burton's chance for advancement to chair because Burton complained to Throop about Caywood's retaliation. (Dkt. No. 98 Audio Exhibit A13 at 9:21 – 11:24)

134. In a chair search meeting on 12/5/14 a student said that students do not feel comfortable at all going to talk to Dalecki. She knew of six students who had left the school because of issues involving interim chair Dalecki. (Dkt. No. 98 Audio Exhibit A16 at 30:06 to 31:10)

135. Burton was harassed during the process of her application for tenure. Her tenure request was initially ignored. If Burton had accepted the initial findings of the CRST she would not have received tenure as the initial findings did not even mention anything about Burton's tenure request even though she had requested tenure. The CRST took no action regarding Burton's tenure request and failed to give a reason.

136. This was later explained by Den Herder as an "administrative oversight," an "office error" and "simply a glitch in process." But Burton felt it was intentional.

137. Burton was forced to ask repeatedly for her tenure approval in order to receive it.

138. Caywood actively tried to prevent Burton from getting DRB approval for tenure. He conceded only because it wasn't worth the fight.

**d. Burton's tenure does not protect against Corruption**

139. Shortly after Dalecki took over as interim chair Burton made a polite request that her title be shown on the chair's emails to the department. Dalecki's response was Bcc'd to Throop. It was longer and harsher than it needed to be.

140. Dalecki threatened a grad student for communicating with Burton. (audio A28).

141. Dalecki later yelled at the secretary for emailing Burton. (Dkt. No. 52 Jacobus Decl. at 30 Filed 12/01/15)

142. Later the grad student lost his job. Dalecki's reason for eliminating the position was lack of funds but there was money available.

143. The grad assistant had communicated to Burton that Rice had said at a social event that Burton had a mental disease. (Dkt. No. 52 Jacobus Decl. at 14 Filed 12/01/15)

144. Burton did not invite the German delegation. International Programs invited them. Dalecki signed off on the visit.

145. The allegations in Throop's letter of direction were false! Burton couldn't accept the directions as they were unfounded. She asked for a grievance, that Throop derailed. Burton provided proof that the allegations were false. UWP refused to give her a grievance against Dalecki or against Throop for her letter of direction.

146. The stress of the harassment Burton received caused severe ulcers that hospitalized her.

147. On learning that someone had told Dr. Burton about the defamatory statements Rice made about Burton, Dr. Dalecki assumed that person to be Mr. Jacobus and met privately with him to warn him that talking to Dr. Burton could lead to severe consequences and Mr. Jacobus recorded the meeting. During the meeting Dr. Dalecki used graphic language to intimidate Jacobus and called communicating with Burton a mistake. (Dalecki Dep., Dkt. No.

41, 43:19-23, 71:16-24, 77:13-15; Jacobus Decl. ¶¶20-23, Dkt. No. 52; Hawks Decl. ¶4(a), Ex. 11, Dkt. No. 53-11) (Dkt. No. 98 Audio Exhibit A28)

148. In the department meeting on 8/29/14 Dalecki told the department that they would not discuss the job description at that meeting but that there needed to be a consensus of the members. He assigned Solar to get this consensus at a future meeting. (Dkt. No. 98 Audio Exhibit A11 at 44:20 – 47:44)

149. Solar did not get the consensus of the job description at a future meeting.

150. When Burton accused Solar about his policy violation he gave various lame excuses and finally lied that he had gotten the required consensus at the 8/29/14 department meeting which he was unaware Burton had recorded. (Dkt. No. 98 Audio Exhibit A11 at 44:20 – 47:44)

151. Throop made conflicting statements about the source of her information. In her false accusation email Throop wrote “It has come to my attention that you cancelled classes last Friday.” Then on 12/19/14 she wrote “As I had indicated earlier this week, I received student reports, which I double-checked, that you had cancelled class and that you were absent without permission” but had not previously indicated that she had received student reports nor that she had double checked them. Though Burton later asked for the students to be disciplined they never were identified or disciplined. Likewise Rice was never disciplined. Throop claimed, under oath, that she had received the information from Ms. Rice, who had recently defamed Burton, and that she had verified the information by asking Rice to verify with the students if the information was accurate. Throop did not attempt to verify the information with the chair.

(Burton Decl. ¶28, Ex. 28 at 5-6, Dkt. No. 54-11) (Throop Dep. at 13.22 to 16.2, Dkt. No. 42) (Bensky Decl. Dkt. No. 43-3, Exh AAA)

152. But Ms. Rice, under oath, said that she did not have any conversation with Throop or Dalecki about Burton cancelling those classes and denied that Throop had not asked her to verify the report she never made. (Burton Decl. ¶28, Ex. 28 at 5-6, Dkt. No. 54-11) (Rice Dep. at 14.8 to 20.22)

153. On December 16, 2014 Dean Throop threatened discipline on a baseless accusation that Dr. Burton had cancelled classes on December 12, 2014. (Burton Decl. ¶28, Ex. 28 at 5-6, Dkt. No. 54-11)

154. Throop knew that Burton had flown to Germany to see her ailing mother and assumed that to be the reason why she had allegedly cancelled class on Dec 12, 2014. Instead of having compassion on a faculty member whose mother was sick Throop decided to discipline her. (Throop Depo. at 14.22 to 14.25, Dkt. No. 42).

155. On her January 2014 DRB evaluations Dr. Burton received all outstanding marks. This was done during the period when Throop and Dalecki were trying to bribe her to drop her discrimination and retaliation charges. Ex. 12 at para 2, Dkt. No. 101-12 is a true and correct copy of Burton's appeal letter to Fuller.

156. On the January 2015 DRB evaluations, Dr. Burton received lower peer evaluation than she had in previous years and Caywood, a defendant in this case, was a member of the review board that evaluated her. Her 2014 evaluation sheet disappeared from her DRB file and her 2015 evaluation sheet did not incorporate the higher scores she had received the year prior. Burton's appeal of the low scores and her request that Dr. Caywood be removed from the DRB, on the basis of conflict of interest, were ignored. Burton went on extended sick leave at about that time for severe ulcers due to stress. While she was on sick leave someone altered Burton's evaluation score sheets. Dalecki admitted that Burton's score sheet seemed askew. (Dalecki

Decl. ¶26, Dkt. No. 34) (Dalecki Dep. 184.22 - 185.5, Dkt. No. 41) ( Dalecki Dep. exhibits 57A, 57B, 57C), Dkt. No. 12

157. During the Grievance hearing of April 12, 2013 a Grievance Committee board member said to Burton “*it did have the feel like the rug was pulled out from under you.*” (Dkt. No. 98 Audio Exhibit A6 CDII at 8:10-8:30 Date: 4/12/13)

158. The grievance committee findings refer to Caywood’s January 24 letter as a “*last-minute withdrawal of support to her (Burton’s) AT&T grant proposal.*” They also wrote “*At the hearing Dr. Caywood admitted that he poorly handled the student complaint against the faculty member.*” (Dkt. No. 21 at para 3)

159. At his deposition Caywood admitted that the way he handled the student complaint reflected very poorly on him personally and that he owes Burton an apology. (Caywood dep. at 49.21 to 50.5, Dkt. No. 40)

160. By deciding to appoint Dalecki as chair of the department instead of calling for an internal election, as required by policy, Throop denied Burton the opportunity to run for the elected position of department chair. Promotion to chair of the department would have meant a substantial increase in pay for Burton.

161. In Throop’s notes she wrote that Dutelle had been accused of asking for a bribe but Throop did not discipline Dutelle. Ex. 20, at para 5, Dkt. No. 101-20 is a true and correct copy of the document provided by defense identified as Throop’s notes.

### **III. Throop’s Letter of Direction**

#### **a. Throop’s letter of direction Paragraph 1**

162. Throop reported receiving “dozens of emails” from Burton in which she made serious accusations against Dalecki but she only listed one. A few days after receiving Throop’s letter of direction Burton wrote back to her “*In your letter of direction you*

*referenced an 'email of October 2, at 8:40 PM.'* I don't have such email in my sent folder. Please send me a copy of the email in question. Throop responded *"You are incorrect. There is no reference to an Oct. 2, 2014 email in my letter of direction."* However, Throop did reference an Oct 2, 2014 email in her letter of direction. Tellingly, the only email she referenced was one in which Burton requested that the Chancellor initiate an investigation into Dalecki's retaliatory activities, a protected activity. Ex. 11, Dkt. No. 101-11 is a true and correct copy of the email Throop referenced in her letter of direction.

163. Burton's request for an investigation was denied and her requested grievance was delayed indefinitely.

164. Burton responded saying *"To be clear, I want the grievance hearing as soon as possible."* The grievance hearing was delayed well over another month longer without being scheduled. Burton was never given an opportunity to address her grievances against Dalecki in a grievance hearing.

165. Throop never asked Burton for her factual basis for any of her claims against Dalecki.

166. Burton made many attempts to provide the facts to anyone who was willing to hear them, and in a position to do something about it, but was never given an opportunity to do so.

167. Burton did not attempt to give the evidence directly to Throop because Throop had already told her that she would not help her. Burton was convinced that Throop was corrupt and asking for her help in the matter was pointless.

**b. Letter of direction paragraph #2**

168. In her letter of direction Throop reprimanded Burton for an email she sent on June 6, 2014 at 10:45. Burton did not send any such email.

169. The department of Criminal Justice had been a severely dysfunctional department for many years. Dkt. No. 101-21 at page 1 para 4

170. This was identified as a problem in 2010 by Den Herder, when she was Dean of LA&E. To address this problem Dean Den Herder issued a letter to the department in which she charged Caywood with conducting a workshop on conflict resolution, civility and team building. (Dkt. No 53-7 at page 2 para 5, Filed 12/1/15)

171. This workshop was never scheduled and never conducted.

172. After Burton's grievance hearing against Caywood the grievance committee recommended that; "the Criminal Justice department take steps to resolve the dysfunction within the department, such as communication training." Dkt. No. 101-21 at page 1 para 4

173. This mandated training has never been scheduled or conducted.

174. Later Chancellor Shields wrote a letter to Den Herder, Throop, Durr and the Faculty of the CJ department urging Den Herder and Throop to assist the department by employing outside consultants to work with the entire Criminal Justice Department to build a stronger team, work on communication and conflict resolution skills, and begin to resolve some of the conflict that has built up over time. This consultation shall take place as early in the academic year as possible." The consultation and communication training he called for was never conducted. Ex. 23, Dkt. No. 101-7 is a true and correct copy of the July 26 letter from Chancellor Shields to the CJ department.

175. Caywood sent Burton an email on Oct 17, 2012 asking for a timeline of her activities in regard to the student complaint. Burton did not see the blunt tone as anything more

than a “business as usual” request for information and she quickly and professionally responded to Caywood’s inquiry with a complete timeline. The tone of this email was nearly identical to the email Burton sent to Rice on Oct 7, 2014 asking for information. Caywood was not disciplined for the tone of his email but Throop used Burton’s email as reason to issue a letter of direction.

176. Burton’s email to the department was not out of norm for the dysfunctional CJ department. By using Burton’s email as reason for issuing the letter of direction Throop treated Burton disparately from her colleagues.

177. The “mess” Burton referred to was the mess identified by an independent auditor of the Forensic Investigation program who had recently written in his analysis of the FI program *“Departmental leadership is important to addressing the problematic nature of the FI major, but the consequential problems as a result of the creation and perpetuation of the FI program goes well beyond departmental leadership. Campus administration and the dean’s office must shoulder some responsibility for the train wreck that occurred much later.”* (Dkt. No. 53-10 Filed: 12/01/15 Page 13 of 24)

178. Dalecki had no plans to make any changes to the FI program.

179. The new chair, Dr. Strobl, who took over the department after Throop’s campaign to get Dalecki installed as permanent chair failed, is initiating changes that are improving FI program.

**c. Letter of direction paragraph 3**

180. A few days before the German delegation visit Dr. Burton informed Dr. Dalecki that her mother’s health was failing rapidly.

181. Burton's mother nearly died and Burton talked to her each day during the German delegation's visit. Burton was emotionally drained by her mother's medical and psychological problems and coordinated with family and medical staff to help her through her ordeal.

182. Burton's father had passed away recently, on Feb 14, 2013 and the pain of the way Dr. Caywood and Dean Throop had treated her during that time was still fresh in her mind.

183. Stress put Burton in the hospital on Aug 15, 2014 with two severe ulcers.

184. Donna Anderson, M.A., Director of International Programs invited the German delegation, not Burton. Burton's signature was not on the invitation and she was not responsible for the trip. Ex. 13, Dkt 101-13 is a true and correct copy of the invitation signed by Donna Anderson.

185. She had volunteered to help with the trip but not to do everything herself for free. This was more than a one person job. The German delegation was not any more Burton's colleagues than they were Caywood's or Dalecki's colleagues.

186. Caywood pushed for the exchange program, not Burton. In fact he called on her to help with the exchange program when she was on sabbatical in violation of the sabbatical agreement he signed.

187. Burton was not paid by the university for the German visit. (Dalecki dep. Page 124.25 to 125.13, Dkt. No. 41)

188. Deb Rice and a student worked on an itinerary for the visit in fall 2013 and never shared it with Burton. Even after Burton requested it.

189. Burton expected international programs to coordinate for things like transportation and housing etc.

190. Burton was not given release time for the German visit.

191. The visit was scheduled during Burton's summer vacation.

192. Burton was on a 9 month contract but Dalecki, Caywood and Fuller were on 12 month contracts.

193. Ultimately Dalecki, Fuller, Rice and Stackman were all paid to do the work that Burton was expected to do for free and punished for her inability to perform.

194. Dalecki excluded Burton from the welcome breakfast with the German delegation. He called her, at 8 am on 6/17/14 to tell her there would be no breakfast but he changed the location of the breakfast and did not tell her the new location. He later falsely claimed, under oath, that he did not call her at all that morning. (Dalecki Dep. At 170.11 – 175.10, Dkt. No. 41 Filed 11/10/15)

195. During the visit Burton requested to use some of the money to pay for sandwiches for the German delegation during her prepared presentation but Dalecki refused to use the money, which came from Burton's honorarium, to pay for the meal because there was no money left in the budget.

196. After the visit hundreds of dollars remained in the account.

**d. Letter of direction paragraph 4**

197. In early August 2014, before the school year started, Dalecki wrote to Burton saying "There has been a change in the mentoring assignments, Sabina. Cheryl will mentor Amy, I will mentor Valerie." He did not offer a reason for the change at that time but only replied to Burton's request for a reason saying "In my view, the choice I made was in the best interest of Valerie, as well as the mission of the department and the university."

198. Dalecki wrote to Lohmann “She wants me to explain – I of course have a number of reasons but I will not explain them without consultation with you.”

199. About three months later, in a discussion with Burton concerning the letter of direction John Lohman said “It’s strange to hear now that he’s using, in the past tense that you were the mentor, I don’t understand.” (Dkt. No. 98 Audio Exhibit A24 at 18:40 to 18:50)

200. He also said that Burton’s stated actions in regard to house sitting “Sounds perfectly professional and cordial to me.” (Dkt. No. 98 Audio Exhibit A24 18:53 to 24:11)

201. Nobody in the entire university has ever been disciplined for asking a colleague if they wanted to house sit.

202. It is not unprofessional or improper to ask a colleague if they would like to house sit.

203. In early summer 2014, Dr. Burton asked Dr. Stackman if she would like to house sit sometime in the future so Burton could take a week to fly to California to visit with a sick friend of the family. Stackman said that she was willing to house sit. Stackman had house sat for others in the past. (Stackman Dep., Dkt. No. 47, at 13:11-14:12)

204. Throop initiated a meeting with Stackman a few days before her deposition in which the house sitting subject was a central concept of the meeting. (Dkt. No. 42 Throop Dep. at 10.14-18.9 Filed 11/10/15)

205. Dr. Stackman did not house sit for Dr. Burton because Dr. Burton never asked her to house sit. Burton never asked Stackman to house sit because she did not go to visit the family friend that summer. Dr. Dalecki cautioned Dr. Stackman about her potential liability if Dr. Burton’s house caught fire or her horses got sick while Dr. Stackman was there. Stackman was not at all concerned about house sitting before Dalecki told her these things. Stackman never

complained to anyone about the house sitting issue. Even after talking to Dalecki she was not uncomfortable about it. (Stackman Dep., Dkt. No. 47, 14:13-16:7, 18:4-8 filed 12/01/15)

206. When Burton asked Stackman if she would be interested in house sitting she said “sure.” (Stackman Dep., Dkt. No. 47, at 14.10 to 14.12 filed 12/01/15)

207. Stackman was not uncomfortable in any way about the communication between her and Burton. (Stackman dep. Dkt. No. 47 at 15.15 to 15.19 Filed 12/01/15).

208. Dalecki suggested to Stackman that house sitting might not be a good thing for Stackman to do given the power dynamic that was involved and potential for fires or injuries while house sitting. (Stackman dep. Dkt. No 47 at 14.13 to 16.7 Filed 12/01/15)

209. Before Dalecki told her these things Stackman was not uncomfortable with Burton’s house sitting request. (Stackman dep. Dkt. No. 47 at 17.20 to 17.25 Filed 12/01/15)

210. Burton had not had any poor interactions with Stackman (Stackman dep. Dkt. No. 47 at 31.7 to 31.12 Filed 12/01/15).

211. Stackman was surprised to learn that the house sitting issue found its way into a letter of direction. (Stackman dep. Dkt. No. 47 at 37.13 to 37.22 Filed 12/01/15).

212. Stackman had no reason to believe that Burton had ever instigated a student complaint against her. (Stackman dep. Dkt. No. 47 at 41.11 to 42.6 Filed 12/01/15).

213. Throop initiated a meeting with Stackman in the dean’s office a few days prior to Stackman’s deposition to talk with her about the deposition. The house-sitting question was a central concept of this meeting. (Stackman dep. Dkt. No. 47 at 10.14 to 13.2 Filed 12/01/15).

214. Dean Throop did not cite any “poor interactions” in her letter of direction.

215. It is unprecedented that a department chair mentors a new faculty member when tenured faculty are available and interested in the assignment. This has never been done in the CJ department.

216. Dalecki never gave Burton a reason why he removed her mentoring assignment.

217. Burton never learned that house sitting had anything to do with the decision for Dalecki removing her mentoring assignment until she received the letter of direction from Throop. So she could not take responsibility for her own part in her removal until after she had already been officially disciplined for not taking responsibility for her own part in her removal.

218. The act of removing Burton's mentoring assignment was not intended to correct Burton's actions but to punish her.

219. Dr. Dalecki was accused of attempting to benefit from Stackman renting an apartment he had arranged, a far worse conflict of interest than asking someone to house-sit yet Throop did not write Dalecki a letter of direction. (Stackman dep. At 21.24 to 23.24, Dkt. No. 47 Filed 12/01/15)

220. Caywood violated law by assigning a retired professor to teach a class before he was eligible yet Throop did not discipline Caywood for this violation of law. Dkt 101-20

221. Dutelle was accused of accepting bribes or soliciting bribes by a DC contractor. Dutelle received an email from a colleague in which the colleague ratted out his female colleague for asking the wrong person what she could do about her harassment complaint against Dutelle. He later filed a "sexual harassment complaint against that female colleague and her employment was constructively terminated. Throop never disciplined Dutelle for these things but instead transferred him to a higher paying position outside the CJ department. Dkt. No. 101-20

222. Even though Dutelle was no longer a member of the CJ department Dalecki allowed him to maintain his old office. Burton requested to be moved to Dutelle's vacant office but instead Dalecki forced one of Burton's supporters in the department to vacate his office with a window and moved him to an office without a window to make room for Burton. The office Dalecki assigned to Burton was immediately next to his own where he could keep an eye on her. Dalecki often played music loud enough to be annoying to Burton.

223. Solar was directly accused of violating policy but instead of issuing a letter of direction to Solar Throop included the accusation as part of the letter of direction she issued to Burton.

224. Rice was accused of defamation. Throop and Caywood both agreed that Rice needed to be disciplined but Throop did not discipline Rice.

**e. Letter of direction paragraph 5**

225. Nobody informed Burton that the tone of her email to Rice was problematic until weeks later when she received the letter of direction.

226. Throop did nothing to reprimand Rice spreading rumors that Burton had a "mental disease" even though Lohmann was under the impression that she would.

**f. Letter of direction paragraph 6**

227. Burton did not write this email to Solar because she was "displeased with Solar's interpretation of his role as a committee chair." Instead she wrote it because she knew beyond a shadow of a doubt that Solar violated school policy, lied to her, and failed to follow Dalecki's directions at the department meeting of August 29, 2014 and she had proof that she shared with Lohmann.

228. Throop knew Burton believed Solar violated policy but never asked Burton for her evidence.

229. Burton did not threaten Solar with consequences to his potential tenure bid. She said she would write about his policy violation in her annual letter concerning his prospects for tenure. Tenured department members are required by policy to write an annual letter that is intended to inform potential tenure candidates about potential problem areas before they become eligible for tenure so they will have opportunity to address those concerns before they become eligible to request tenure.

230. Burton believes violating policy and lying about it to be a problem area that reduces a potential candidates prospects for tenure.

231. Burton feels that correcting policy violators can only serve to improve the credibility and quality of the department and school. Burton felt that policy violations should not be overlooked when considering a tenure bid. It is possible that continued policy violations could affect Dr. Solar's prospects for tenure at some time in the future but, as Burton wrote in her email, he would have opportunity to mitigate any damage by not violating policy in the future. She was giving him constructive criticism.

232. The truth is still the truth even if only one person believes it. If Burton had been afforded a grievance hearing to address the letter of direction she could have presented her evidence of Solar's violations and untruthfulness and convinced others that she was right.

233. Burton requested an investigation into Solar's alleged violation but none was conducted.

**g. Letter of direction paragraph 7**

234. Throop falsely states that there was more than one student who talked to Burton about the complaint concerning the fellow faculty member. Burton talked to one student who spoke for multiple students.

235. Burton told the student that she was not comfortable approaching Stackman about the matter because she wasn't Stackman's mentor, and told her that if she and the other students wanted to talk to someone in the department they would have to talk to the chair.

236. Then the student said that she didn't want to talk to Dalecki because he is Stackman's mentor and is biased toward Stackman.

237. Dalecki took a very interesting liking to Stackman that was not normal. (Stackman dep. Dkt. No. 47 at 42.24 43.13 Filed 12/01/15).

238. So Burton suggested that the student could talk to Student Affairs. Burton tried to stay out of it.

239. The same student later told a search committee that six students she knew of had left the school because Dalecki was chair of the department. (Dkt. No. 98 Audio Exhibit A16)

240. Burton did not tell the student that Dr. Dalecki is biased. Throop has offered no evidence that she did.

241. Throop is incorrect that "Standard operating procedure provides that students should start with the department chair for any such concerns." It was not wrong for Burton to refer a student to Student Affairs in regard to her complaint about Dr. Stackman. Policy allows for students' affairs to be taken to the office of Student Affairs. Burton followed policy by referring the student to Student Affairs just as she was correct to refer the student victim of sexual harassment to Student Affairs on Oct 12, 2012.

242. Burton did not involve any students in a campaign against Dr. Dalecki and Throop has offered no evidence that she did.

243. Throop's fear that Burton may have instigated the complaint against Dr. Stackman is groundless. Stackman had no reason to believe that Burton would do that. Burton had no reason to alienate Dr. Stackman. Burton never accused Stackman of anything because she had not violated policy.

244. There were never any accusations against Burton that she was a bully until after the student complaint in October 2012.

245. Burton is a whistle blower, not a bully. Caywood and Throop and Dalecki are corrupt. A reasonable jury would find it difficult to believe that an underpaid employee could bully her male colleague, her male boss, her boss's boss and her next male boss and then have an excellent working relationship with her next boss. Burton exposed violations of policy and law and Solar, Caywood, Throop and Dalecki felt threatened by the exposure.

#### **IV. Burton attempts to address the letter of direction in a grievance hearing but is frustrated by undue delay after delay**

246. Burton made repeated attempts to prove that the allegations in Throop's letter of direction were false but was never allowed fair opportunity to present her evidence in a grievance hearing.

247. She filed an official grievance shortly after receiving the letter of direction in which she rebuts all of the points in Throop's letter of direction.

248. Dean Throop's threatened discipline of Dr. Burton for a class not missed validated and fulfilled Burton's stated belief and prediction in her rebuttal that the letter of direction was intended to provoke Burton, cause her stress related health issues, make her want

to quit her job and to lay the groundwork for Throop to fire her on fabricated charges sometime in the future. If Burton had been given a fair grievance hearing she could have addressed the letter of direction before Throop made the false accusation but Throop saw to it that the grievance hearing was delayed indefinitely. (Burton Decl. ¶28, Ex. 28 at 5-6, Dkt. No. 54-11)

249. Dr. Balachandran acknowledged receipt of the Burton's grievance against Throop and promised swift action.

250. However, instead of scheduling a grievance hearing within the time allotted by policy defendants re-wrote the grievance procedures.

251. The new procedures were not approved by the Faculty Senate.

252. These new "Grievance Hearing Procedures" were written by Dr. Balachandran, who has since retired.

253. The new procedure states "*The faculty member submitting the grievance ("grievant") is entitled to hearing before a five-member panel of the Commission ("hearing panel"), which shall act on behalf of the Commission, within 20 days of submission of a written grievance to the Commission chairperson*" But despite repeated requests for an expedited hearing Burton's grievance hearing was delayed for eleven months and ultimately was derailed.

254. At about the same time Balachandran was writing up the new Grievance Procedures Throop composed a memo to the Grievance Commission in an attempt to derail Burton's grievance hearing. Plaintiff rebutted Throop's memo in an email to Balacandran.

255. No formal decision was made to cancel the grievance. Burton was led to believe that a hearing would be scheduled but it never was.

256. Balachandran wrote "*As per UWS 6.02 Grievances, 'The Commission is authorized to establish its own procedures to investigate a grievance that it is hearing.'*" This is

not a quote from UWS 6.02. Balachandran used this statement as basis for his authority to completely re-write the “Grievance Hearing Procedures.

257. Balachandran wrote new “Grievance Hearing Procedures” not “Grievance Investigation Procedures.” Defendants have proffered no reason why the Grievance Hearing Procedures needed to be changed while Burton waited for a hearing that was already past due.

258. The new “Grievance Hearing Procedures” do not comply with Wisconsin Open Meetings Law.

259. During the time Burton waited to be scheduled for a grievance hearing to address the letter of direction Throop filed a UWS 6.01 complaint against her which was based on the letter of direction. The UWS 6.01 complaint against Burton was investigated but Burton was denied a grievance hearing.

260. Burton asked Dr. Barraclaugh, who had been assigned to conduct the investigation for Throop’s UWS 6.01 complaint, for a copy of the rules and procedures for dealing with investigations. Barraclaugh responded months later by referring Plaintiff to Dr. Balachandran, who soon retired and never provided the requested information.

261. Barraclaugh delayed processing of the complaint without asking Plaintiff whether she wanted to proceed and without offering good reason for the delays.

262. Later Balachandran sent Plaintiff a revised copy of the “Grievance Hearing Procedures.” These procedures also had not been approved by the Faculty Senate.

263. The new “Grievance Hearing Procedures” state: “the hearing panel may hold a grievance hearing in closed session.” But Open Meetings Law requires that grievance hearing meetings be initiated in open session.

264. Several months later, without ever talking to Burton and while she was still on sick leave, and before she had even been scheduled for a grievance hearing Barraclaugh issued

findings of his investigation to Chancellor Shields. In which he found that Dean Throop did incorrectly admonish Dr. Burton for having cancelled her classes on Friday, December 12, 2014. (Dkt. No. 53-12, Filed on 12/01/15).

265. Burton returned to work with two months remaining in the semester. Nobody in the Grievance committee talked to Burton while she was on sick leave. Nobody in the Grievance committee talked to Burton for the first week after she returned to work. A few days after Burton returned to work Mary Rose Williams sent Burton an email saying that her grievance hearing would be delayed until the following September but it was never scheduled.

266. In September Barraclaugh contacted Burton about completing his investigation into Throop's UWS 6.01 complaint against Burton. Barraclaugh wrote emphasizing that if Burton did not respond within three days that he would conclude the investigation without Burton's input.

267. Burton was informed that the investigation would not be delayed so she prepared a rebuttal to Throop's complaint and met with Barraclaugh to answer his questions. (Dkt. No. 54-11 Filed 12/01/15)

268. Even though the Chancellor ordered Barraclaugh to complete the investigation into Throop's complaint against Burton within two weeks it took him well over seven months to make his first attempt to speak to Burton.

269. Burton has not received any communication from the Chancellor concerning any final decision on Throop's UWS 6.01 complaint.

**V. Throop removes Caywood and violates policy and law in selecting Dalecki as interim chair.**

270. Throop's stated reason for disqualifying Burton from eligibility to be selected as chair of the department was that "*Dr. Burton's behavior in the past year had demonstrated that she wasn't solving problems at the local level.*" (Dkt. No. 98 Audio Exhibit A13 at 10:00 – 12:00)

271. Burton's alleged problem Burton couldn't solve on the local level was that her department chair was retaliating against her because her protected activity.

272. The grievance committee delivered a finding in which they agreed with Burton's claims that Throop had violated policy and law in appointing Dalecki as interim chair of the department. ( Dkt. No. 53-17 at last paragraph Filed 12/01/15 )

273. Throop did not then call for an election and she again violated policy in the next chair search.

274. Throop wrote in her notes "*I will agree that an election should have been held in the summer before opting for an external candidate. I actually did not expect that Caywood would step down; I was very hopeful that he would have been willing to acquire the management skills necessary to allow the department to run at a minimally acceptable level.*" Dkt. No. 101-20

275. Throop further wrote "*Caywood knowingly altered the start date for Lomax to 31 days after his official date of retirement, in direct violation of the law and committing fraud. His illegal behavior resulted in Lomax donating his time to the university as a volunteer. When I confronted Caywood on his illegal activity, he laughed and said that's what you get when you deal with former law enforcement: "we know how to get around the law."*" She wrote "*He also seemed to be encouraging, or at least abetting, bad behaviors by his male colleagues*

*Gibson and Dutelle and ignoring or denigrating the excellent work of his female colleagues.”*

Dkt. No. 101-20

276. Caywood wrote that he was “removed” in an email to the department but Throop maintains that he “stepped away” from being chair. Caywood later filed a grievance against Throop over the matter.

277. *Two other committees found that Dean Throop violated policy in appointing Dr. Dalecki as interim chair.*

278. Prior to Throop’s decision to appoint Dalecki as interim chair and exclude Burton from eligibility Caywood had identified two people in the department who were eligible to be chair, Dr. Burton and Mr. Dutelle. (Audio Exhibit A6 Track 18: at 34:30)

279. At a department meeting on 8/29/14 Throop headed a discussion about the next chair of the department. She controlled the voting and discussion to the point that one of the department members said “let’s have a ruling as to whether we’re going to follow the bylaws and be done with it.” (Dkt. No. 98 Audio Exhibit A10)

280. When the department was writing up their job description for the search for the chair that would succeed Dalecki the consensus was to require at least a bachelor’s degree in Criminal Justice so Dalecki would be disqualified. (Dkt. No. 98 Audio Exhibit A9 at 10:00 to 15:00)

281. Throop later changed the job description, without the department’s approval, so Dalecki would be qualified for the position.

282. Dalecki believed Caywood was removed and that his removal was a tacit if not overt admission that at least some of Burton’s complaints were likely valid. (Dkt 34-2 Exh C- at page 4, 2<sup>nd</sup> to last para, Filed 11/10/15)

283. Before the mediation meeting with DeCoste, Dalecki, Lohmann and Burton both DeCoste and Lohmann met with Dalecki to discuss the matter but they did not meet with Burton.

284. During the mediation meeting DeCoste did not allow Burton to tell her side of the story and said that Burton's email was "another form of bullying or uncivil behavior." She had never heard Burton's side of the story before she said that. The outcome of the meeting had been pre-decided to put Burton in her place. (Dkt. No. 98 Audio Exhibit A3 at 18:35-19:25)

285. Later in the meeting Dalecki said that he had not changed class assignments but he had changed class assignments.

286. The mediation meeting was not conducted in accordance with best practice procedures.

287. The university later cancelled any further attempts at mediation and Dalecki stopped talking to Burton altogether.

288. In a DRB meeting Fuller frantically thumped Burton's leg and shushed her to keep her voice from being heard in the meeting. (Dkt. No. 98 Audio Exhibit A5 at 31:56-32:46)

289. In Burton's grievance hearing against Caywood one of the members of the committee said that Caywood hung Burton out to dry. (Dkt. No. 98 Audio Exhibit A6 CDII at 43:30-43:45)

290. In the meeting Caywood admitted he screwed up. He said that he didn't see it as sexual harassment but that it had been brought to his attention that it was. (Dkt. No. 98 Audio Exhibit A6 CDII at 41:00- 41:50)

291. A board member said that Caywood had great concerns about Dr. Gibson's reputation but that he didn't have the same sensitivity for Dr. Burton. (Dkt. No. 98 Audio Exhibit A6 CDII at 42:00-42:30)

292. I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 15, 2016

s/Sabina Burton  
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