STATE OF NORTH DAKOTA
STATE BOARD OF HIGHER EDUCATION

IN THE MATTER OF: Richard McCallum

) ) ADMINISTRATIVE LAW JUDGE'S
) ) RECOMMENDED FINDINGS OF FACT,
) ) CONCLUSIONS OF LAW,
) ) AND ORDER
) ) OAH File No. 20110365

PROCEDURAL BACKGROUND


NDUS requested the designation of an administrative law judge (“ALJ”) from the Office of Administrative Hearings to preside over the proceedings. On September 14, 2011, the undersigned ALJ Bonny M. Fetch, was designated.

The ALJ held prehearing conferences with counsel on September 16, 2011, and October 13, 2011. A Notice of Hearing and Specification of Issues was served on September 21, 2011, scheduling the hearing to be held on October 19, 20, and 21, 2011.

The issue specified for hearing is:

Whether the employing agency, Dickinson State University, had just cause to terminate Dr. McCallum’s employment, considering the provisions of State Board of Higher Education Policy Section 608.2 and North Dakota University System Human Resource Policy Manual, section 25.

The hearing was held as scheduled on October 19, 20, and 21 at the Office of Administrative Hearings in Bismarck, ND, and was open to the public. The hearing was not
completed as of October 21, 2011, so the parties agreed to continue on a later date. The hearing was completed on October 26, 2011, at Bismarck State College. Attorneys Michelle Donarski and Krista Andrews represented Dickinson State University. Attorney Benjamin Thomas represented McCallum. H. Patrick Seaworth, general counsel for NDUS, appeared on behalf of the State Board of Higher Education.


Written closing arguments and proposed findings of fact, conclusions of law, and proposed orders were submitted by counsel on November 23, 2011. The record was closed as of that date. The decision of the administrative law judge is based on the evidence admitted at the hearing, the testimony presented at the hearing, and the post-hearing closing arguments of the parties.

FINDINGS OF FACT

1. Dr. Richard McCallum ("McCallum") is originally from rural Nebraska. He served as a Lieutenant Colonel with the Nebraska National Guard. He was the senior commander from the state of Missouri during Desert Storm. He was decorated five times in the
Gulf War, including the Bronze Star. He retired from the US Army in 2001, at the rank of full Colonel. McCallum has been president of Dickinson State University since April 5, 2008. In that position, he reported to NDUS Chancellor William Goetz (“Goetz”). McCallum’s annual performance evaluations, including one completed in June 2011, have been satisfactory. In June 2011, Goetz recommended and the SBHE approved a one-year extension to McCallum’s contract term (ending June 30, 2012), and a 2 percent salary increase. The 2 percent salary increase was the lowest of all NDUS presidents and the one-year extension was less than the typical two-year extension granted other NDUS presidents. (Exhibits 47-49; and Goetz testimony).

2. Prior to receiving a Notice of Intent to Dismiss, McCallum had received only positive performance evaluations. He had received no prior discipline or performance write-ups.

3. McCallum has had many accomplishments as president at Dickinson State University, including the completion of the Badlands Activity Center, the launching of a strategic plan for DSU, and the positive financial position that DSU was in during McCallum’s tenure.

4. In February 2011, DSU and NDUS officials received information from the National Survey of Student Engagement (“NSSE”) that individuals reported as enrolled DSU students indicated they were not DSU students. (Exhibits 19-20; and Dr. Michel Hillman and Scott Staudinger testimony).

5. NSSE is a unit within the Center for Postsecondary Research in the Indiana School of Education. NDUS contracts with NSSE to conduct annual surveys of NDUS students enrolled as freshmen and seniors. Survey results are used in annual NDUS Accountability Measures Reports. The contract between the NDUS and NSSE states that NDUS institutions are
to submit to NSSE information regarding all enrolled freshmen and seniors so NSSE may then
survey those students. (Exhibits 15, 92-94; and Dr. Michel Hillman and Scott Staudinger
testimony).

6. Information submitted to NSSE by DSU and other NDUS institutions is generated
by the state’s PeopleSoft administrative system, or what is known as ConnectND. (Exhibit 32). Only designated employees delegated responsibility and authority to do so are enabled to access
this system to enter student data. (Dr. Michel Hillman, Bill Eggert and Scott Staudinger
testimony).

7. Student information entered in ConnectND by NDUS institutions is used to
generate official NDUS enrollment reports. These reports satisfy federal and state reporting
requirements. (Exhibit 32; and Dr. Michel Hillman, Bill Eggert and Scott Staudinger testimony).

8. All higher education institutions that receive federal Title IV funds, including
DSU and other NDUS institutions, are required by federal law to annually report accurate
information regarding enrolled degree credit students for the Integrated Postsecondary Education
Data System (“IPEDS”). IPEDS is part of the National Center for Education Statistics within the
U.S. Department of Education. Submission of inaccurate information is unlawful and may result
in financial sanctions. (Exhibits 31-32 and Dr. Michel Hillman, Bill Eggert and Scott Staudinger
testimony).

9. NDUS prepares official enrollment reports based on student information entered
into ConnectND by NDUS employees. Data reported in the fall enrollment report is then
reported to IPEDS. Reports are also submitted to legislative committees. (Exhibits 31-32 and
Dr. Michel Hillman, Bill Eggert and Scott Staudinger testimony).

10. In 2010, DSU created 5 courses which were not valid degree-credit courses:
a. HIST 299 Presidential Leadership  
b. SCNC 399 Energy Symposium  
c. BADM 399 Quality Service & Hospitality (“Disney symposium”)  
d. HIST 399 Theodore Roosevelt: President (“TR symposium”)  
e. SSCI 495 Cataloging All Things Roosevelt

(Exhibits 34 and 85).

11. The Energy Symposium was held on the DSU campus from August 8-10, 2010. (Exhibits 36 and 38). The registration fee was $100 which included all meals and refreshments. In addition to the attendees, some of the conference speakers for the Energy Symposium were also entered in ConnectND by DSU employees as DSU degree-credit freshmen. (Dr. Michel Hillman testimony, transcript p. 107:11).

12. The TR symposium was held on the DSU campus and in Medora, ND, from September 16-18, 2010. (Exhibits 36 and 37). Registration was $170 for the two-day symposium which included all meals, receptions, transportation to and from Medora, and all tours in and around Medora. (Exhibit 37, pg. 0296).

13. The Disney symposium was held on the DSU campus from September 29-30, 2010. (Exhibit 39). Registration was $195 for the two-day conference.

14. Degree credit means “institutional instructional activities which result in the award of college credit that can be applied toward a college degree or credit-based remedial courses taken by degree seeking students.” SBHE policy 440(3)(a) (Exhibit 9, p. 0026) (emphasis added). The definition of degree credit is consistent with the revised NDUS policy 441 (Exhibit 10, p. 0030). None of the above five courses met NDUS policy requirements for degree-credit courses.
15. There were 213 individuals for the Disney, Energy and TR symposiums that DSU employees entered into the ConnectND student information system as DSU degree-credit freshmen students. They were not enrolled DSU students, they had not applied for admission as DSU students, and even though none of those three courses met NDUS policy requirements for degree credit courses, they did not know they were being enrolled as degree credit students. (Exhibits 34, 35 and 85).

16. Specifically, in August and September 2010, DSU employees intentionally entered symposium registrant information into the ConnectND student information system that was known to be false and inaccurate. DSU employees registered symposium attendees as degree-credit freshmen students to inflate DSU’s fall 2010 enrollment. This was done by entering registrant data from the symposiums’ registration spreadsheets into the ConnectND student data system. (Exhibits 35 and 55; and testimony of Office of Extended Learning employees Kay Erickson, Joanne Fields and Stacy Wilkinson).

17. When social security numbers were not available, social security numbers were created by using “9s” for all social security digits. (Exhibit 86; testimony of Scott Staudinger, transcript p. 635:14; and testimony of Dr. Michel Hillman, transcript p. 21:16).

18. “Freshmen” are defined as “students entering any institution for the first time at the undergraduate level, including students enrolled in the fall term who earned college credits in the prior summer term and/or entered with advanced standing before graduation from high school.” SBHE policy 440(3)(e) (Exhibit 9, p. 0026). The 213 “students” of the Disney, Energy and TR symposiums were not freshmen students and did not go through the admissions process, did not complete applications, and did not pay tuition rates and student fees as required by SBHE policies. Instead, these “students” were merely attendees at a community symposium.
19. These symposiums were all advertised as offering one credit continuing education credit for licensure, professional CEUs or certification. (Exhibit 37, p. 0294; Exhibit 39, p. 0301). Continuing education credit is distinctly different from a degree-credit student and is not reportable on IPEDS enrollment reports. (Exhibits 9, 10, and 14).

20. SBHE policy 440 addresses enrollment reporting. Each campus must report fall and spring semester enrollments “for degree credit students based on the number of students enrolled on the twentieth scheduled class day of the fall and spring semesters.” SBHE policy 440(1) (Exhibit 9, p. 0025) (emphasis added). “Enrolled” means: “the student has registered and paid tuition and fees, made arrangements to pay or a plan for payment is in place . . .” Id. The evidence and testimony at the hearing established that the symposium registrants were not “degree credit students” nor were they “enrolled” students.

21. McCallum received emails from the Office of Extended Learning to inform him that the symposium registrants were enrolled as students:

a. E-mail from Marty Odermann-Gardner, Director of Office of Extended Learning, dated 8/11/10 to McCallum and several others stated, “FYI… we had 44 participants attend both days of the Energy Conference. They will be registered asap.” (Exhibit 55, p. 500).

b. E-mail from Norman Coley, Director of Office of Enrollment Services, dated 9/13/10 to McCallum regarding 20 to 47 Belfield High School students being enrolled for undergraduate credit for the TR symposium “[t]o enhance Dickinson State headcount.” (Emphasis added). “Dr. Jon Brudvig will work with Belfield High School to assure contact hours are satisfied.” The requirements of dual credit were not satisfied and the Belfield Students were not degree-credit enrolled students for IPEDS reporting requirements. (Exhibit 55, p. 503).

c. E-mail from Office of Extended Learning (OEL) employee Stacy Wilkinson dated 9/21/10 to McCallum and several others regarding fall 2010 enrollment report. OEL needed 780 students to meet the enrollment goal. OEL was short on this goal but “made up the difference through the following conferences:

7
Energy Symposium – Add an additional 36

TR Symposium – Add an additional 49

Disney Institute – Add an additional 82”

(Exhibit 55, p. 508).

22. The 213 individuals who attended the Disney, Energy and TR symposiums were not only enrolled as DSU students, but they were registered for one credit classes. Further, at the end of the fall semester when grades were entered, all individuals received an “A” which was recorded as an official DSU transcript entry. (Exhibit 21, p. 0093, 0096-0098; Exhibit 23, p. 105-106; and Dr. Michel Hillman, Bill Eggert, Scott Staudinger, OEL employees, and Dr. Jon Brudvig testimony).

23. It was not possible for a student to fail any of the five courses. Students did not participate in multiple assessments as required by the Commission on Higher Education and were automatically given As, even at the objection of faculty.

24. Dr. Roger Kilwein (“Kilwein”) is a long-time DSU professor, and was assigned, without his knowledge, as the instructor for one of the classes created for a 2010 conference. Kilwein did not prepare a class syllabus, did not meet with individuals registered in the class or even communicate with any of the individuals. Near the end of the fall 2010 semester, Kilwein learned he was expected to enter grades for this class. After expressing his serious concerns for entering grades for a class he had no involvement in and no basis upon which to award a grade, he spoke to DSU Director of Academic Records (Registrar) Marshall Melbye. Kilwein was very upset and had no basis other than attendance upon which to assign a grade for these individuals. The scenario had never happened before. Melbye told Kilwein they could enter a grade right then. Kilwein was uneasy about it, but under the circumstances felt that if the individuals
attended, he could not dock them, so he assigned them all an A. Melbye then entered the grades for the class. (Professor Kilwein and Marshall Melbye testimony). As such, Melbye’s actions in assigning grades for this symposium did not meet the standards for instructional activity.

25. SBHE policy 440 Enrollment Reporting states that “System degree credit enrollment reporting is intended to be consistent with United States Department of Education Integrated Postsecondary Data System definitions for measures of instructional activity on an annual basis.” (Exhibit 9).

26. IPEDS collects data “on the number of students enrolled in the fall at postsecondary institutions.” (Exhibit 14, p. 0039). IPEDS defines fall enrollment as “Students reported . . . enrolled in courses creditable toward a degree or other formal award; students enrolled in courses that are part of a vocational or occupational program, including those enrolled in off-campus or extension centers; and high school students taking regular college courses for credit.” Id. It is undisputed the symposium registrants were not enrolled students and should not have been included in the IPEDS fall enrollment report.

27. Several of the faculty of record for the courses at issue were assigned in an ad hoc manner. For example, Jon Brudvig was assigned as the instructor for the energy symposium course. (Exhibit 35, p. 281). As Vice President for Academic Affairs, Dr. Brudvig is not qualified to teach in the area of science. Despite his lack of pertinent expertise and involvement with the individuals attending the energy symposium, Dr. Brudvig entered grades (all As) for the registrants in this course, even though he had not engaged in any instruction. Dr. Brudvig testified he did not meet with the individuals enrolled in the class, and there was no course syllabi, assignments, papers or tests. As such, Dr. Brudvig’s actions in assigning grades for this symposium did not meet the standards for instructional activity.
28. Dr. Brudvig was not only assigned as an instructor for the energy symposium course, he was also registered as a DSU freshman student. Dr. Brudvig was withdrawn from the energy symposium course after the fall 2010 enrollment reporting census date.

29. It is beyond reasonableness for Dr. Brudvig and Marshall Melbye to testify that their actions were not inappropriate or wrong. Both Brudvig and Melbye hold officer positions at DSU and directly report to McCallum. Dr. Brudvig testified he has been employed with DSU for four years, and Marshall Melbye testified he has been employed with DSU for 31 years.

30. Among those who attended the TR symposium were 39 Belfield high school students, enrolled in a dual credit class. According to state law and SBHE policy, high school students may, with school district permission, apply for and enroll in college classes taught by college instructors and receive both college and high school credit for the class. (Exhibits 4-6, and 75).

31. The class for the Belfield high school students was set up under direction of DSU Acting Vice President for Academic Affairs Jon Brudvig, who was also the assigned instructor. Notably, Dr. Brudvig admitted that he failed to have any interactions with the Belfield high school students, although he had intended to at some point. Dr. Brudvig failed to comply with state law and SBHE policy requirements for a dual credit class and the evidence established that the class did not qualify as a dual credit class.

32. DSU and other NDUS institutions are subject to periodic review in order to maintain institution and program accreditation under Higher Learning Commission (“HCL”) accreditation standards. Among other requirements, HCL standards provide that credit classes must have a class syllabus, qualified instructor and measurement of student learning based on tests, assigned papers or other assessment. Enrolling individuals who have never applied for
admission or been admitted in degree credit classes, and awarding credit and a grade based solely on conference attendance, is a blatant violation of accreditation standards and could jeopardize DSU’s accreditation. Jeopardizing accreditation for DSU would have serious and far-reaching ramifications. (Exhibits 4-6, 8 and 75; and Dr. Michel Hillman, Bill Eggert, and Scott Staudinger testimony).

33. Bill Eggert is the North Dakota University System Director of Internal Audit and Risk Assessment. He testified that he was directed by Goetz to initiate an audit regarding “enrollment processing” at Dickinson State University. Eggert testified that, with regard to perceived enrollment errors, there are five separate levels of review which should have, but didn’t, detect enrollment errors at DSU. None of those levels include the president’s office. (Tr. 504, referencing Ex. 90).

34. During his testimony, Eggert acknowledged that there are “no documents that establish that McCallum specifically directed employees to knowingly submit false enrollment information.” McCallum testified that he did not know of the misreporting of enrollment data, and that he did not direct the misreporting of enrollment data. In direct opposition to McCallum’s testimony, several credible DSU employees, including former Vice President for Academic Affairs Richard Brauhn, Director of Enrollment Services Norman Coley, and Office of Extended Learning Director John Hurliman, testified that McCallum specifically requested action that necessarily would result in the misreporting of enrollment data. In addition, an Internal Review Report by NDUS Director of Internal Audit Bill Eggert concluded the misreporting specifically occurred at McCallum’s directive, and Eggert testified that former Office of Extended Learning Director Marty Odermann-Gardner reported she was under constant pressure to get enrollment up and McCallum specifically instructed her to enter inaccurate or
false information. (Exhibit 17). McCallum’s testimony cannot be reconciled with the testimony and evidence presented at the hearing.

35. DSU enrollment data was misreported to IPEDS under McCallum’s leadership. As the chief executive officer of DSU, McCallum is ultimately responsible for DSU’s compliance with policies, procedures and laws.

36. The focus of increasing DSU’s enrollment was at the directive of McCallum. In fact, McCallum held periodic meetings with those who reported to him directly to discuss status of enrollment numbers. These meetings occurred weekly both before and during the 2010 fall enrollment census date. (Testimony of Hal Haynes, Vice President for Student Development; Norman Coley, Director of Enrollment Services; Ronnie Walker, Director of the Center for Multicultural Affairs; and Tim Daniels, Athletic Director).

37. Throughout the 2009-10 and 2010-11 academic years, McCallum devoted significant attention and resources to increasing DSU headcount enrollment for the official NDUS enrollment reports. Under his direction, two separate groups of DSU officers and employees met on a regular basis with a focus on recruitment and increasing enrollment numbers. McCallum demanded attention to an “enrollment dashboard” showing enrollment targets for various DSU divisions. (Exhibits 66-67). He insisted that each DSU unit meet established targets and made statements and distributed memos indicating there would be “consequences” for failure to do so. McCallum held frequent meetings with individual DSU officers, employees or groups of employees, regarding enrollment targets. On numerous occasions, McCallum would criticize or berate individuals or groups because he thought they weren’t doing enough to meet his enrollment demands. Officers and employees were intimidated and McCallum’s statements and actions caused them to reasonably believe their
employment or opportunities for advancement would be jeopardized if they questioned his directives. (Testimony of Hal Haynes, Vice President for Student Development; Norman Coley, Director of Enrollment Services; Ronnie Walker, Director of the Center for Multicultural Affairs; and Tim Daniels, Athletic Director).

38. McCallum single-handedly established unreasonable enrollment goals and then told his officers and directors “there will be accountability” if his enrollment goals were not met. (Exhibit 59). Hal Haynes, Vice President for Student Development; Norman Coley, Director of Enrollment Services; and Ronnie Walker, Director of the Center for Multicultural Affairs all testified that they interpreted McCallum’s “accountability” statements to mean their job was on the line if they did not meet his enrollment goals. They further testified that McCallum unreasonably pressured them and caused significant anxiety and stress to meet enrollment demands.

39. DSU employees testified that DSU dorms have triple bunking, with 30 rooms designed for two students employing triple bunking. DSU employees further testified that the triple bunking has created serious housing and enrollment issues. Despite these concerns, McCallum disregarded the housing problems at DSU and continued to pressure DSU employees to recruit students despite the lack of adequate DSU housing. (Testimony of Ronnie Walker and Hal Haynes).

40. McCallum’s July 6, 2010 memo to staff who directly report to him (Exhibit 58) addresses fall 2010 enrollment. In this memo, McCallum shares his “concern and sense of urgency” with declining enrollment and implements the following:

“We have eleven weeks before we submit our official enrollment census. We still need 1,300-plus enrollments to achieve our goal and accommodate the expected withdrawals that occur during the early week of the semester.
Consequently, we need to develop action plans that will enroll about 120 students per week for the next eleven weeks.”

(Exhibit 58). At the time of the memo, DSU’s enrollment was approximately 2,700. Testimony of Hal Haynes, Dr. Rich Brauhn, Marshall Melbye, Norman Coley and Ronnie Walker established that McCallum’s directive to enroll about 120 students per week for the next eleven weeks was unreasonable and unrealistic.

41. McCallum’s unreasonable focus on increasing enrollment was not driven by a funding formula, policies, directives of the SBHE, or the chancellor. Notably, NDUS does not have a funding formula based on enrollment or student numbers. Rather, the SBHE strategic plan focuses on quality and retention or student success - not enrollment increases. Goetz did not focus on increasing enrollment numbers in NDUS president performance evaluations, and no other NDUS president focused on increasing headcount enrollments to the extent that McCallum did. (Goetz testimony). Hal Haynes and Goetz testified McCallum was "obsessed" with increasing enrollment.

42. At an August 2010 enrollment dashboard meeting, McCallum berated DSU staff for not meeting his “enrollment goals” and slammed his fist down in anger when addressing staff on the issue. McCallum's action was "alarming” and "very stressful." (Testimony of Tim Daniel).

43. McCallum’s August 30, 2010, handwritten notes support his unreasonable focus on enrollment goals. He writes, “3 week final Push”, “562 Needed” and includes in the enrollment count “150” from the “TR & Disney conferences.” (Exhibit 78).

44. McCallum knew that TR & Disney symposium attendees could not be counted in the IPEDS enrollment report because of his discussion with Dr. Rich Brauhn on the exact subject
the year before. Dr. Brauhn testified that he specifically informed McCallum that it would be
inappropriate and even illegal to do so. Despite this conversation, McCallum allowed the
symposium attendees to be counted in IPEDS enrollment.

45. On August 10, 2010, McCallum issued a memorandum to Hal Haynes, Ronnie
Walker and Connie Walter, asking each to accept the responsibility to restore the international
student enrollment to 350 in Spring 2011 and 400 in Fall 2011. (Exhibit 59). McCallum explains
that “[w]ith this responsibility, there will be accountability.” Id. (Emphasis added). McCallum
issued similar memorandums to Norman Coley, Director of Enrollment Services dated
September 10, 2010 (Exhibit 60) and to Steve Glasser, Executive Director Strom Center dated
October 11, 2010 (Exhibit 61). Norman Coley, Hal Haynes, and Ronnie Walker all testified to
the unreasonableness of these enrollment goals.

46. On November 2, 2010, McCallum sent another memorandum to several staff
members on the subject of "Our Enrollment Challenge", addressing 455 students lost since the
Fall of 2008 and 2009 and indicating that simply making up for lost ground was not acceptable.
McCallum noted that the aspiration should be to “take head count well beyond 3,000.” (Exhibit
62). This memorandum provides additional evidence of continued pressure and unreasonable
enrollment goals set by McCallum during a time when DSU enrollment had been declining due
to the economy and the western North Dakota oil boom.

47. In February of 2011, days before the spring enrollment reporting deadline and
during the first week on the job for new Director of Office of Extended Learning John Hurliman,
McCallum called Hurliman and asked him to create a class for 32 or 33 students. At first,
Hurliman did not understand what McCallum wanted, being new in the job. After speaking to
other DSU employees, Hurliman understood that McCallum expected him to create a one credit
class and enroll 32 or 33 DSU employees in the class, for the purpose of increasing degree credit headcount enrollment on the enrollment reporting census data. After thinking about it, Hurliman visited with Scott Staudinger and Dr. Brudvig and informed Dr. Brudvig he was not going to do as McCallum had asked. Dr. Brudvig agreed with that decision. (John Hurliman and Scott Staudinger testimony).

48. McCallum’s pressure on enrollment continued into the Spring of 2010. On March 8, 2011, McCallum sent separate memos to Hal Haynes, Ronnie Walker and Connie Walter with the same message:

“This letter will confirm my sincere disappointment. On August 10, 2010, I sent you correspondence confirming our discussion regarding the need to restore our international student enrollment. I asked you to accept responsibility for this effort. We agreed our spring 2011 international enrollment goal would be 350 students. The enrollment report indicates we have 330 students this semester. We missed our goal by 20 students... I believe it is essential that we restore our ‘lost numbers’ and achieve our enrollment goals.”

(Exhibits 63-65).

49. McCallum issued separate detailed letters to Norman Coley on March 18, 2011, (Exhibit 69); Jon Brudvig and John Hurliman on March 28, 2011, (Exhibit 70); and Hal Haynes and Ronnie Walker on April 28, 2011, (Exhibit 71), stressing the declining enrollment and missed established target goals for four consecutive semesters. McCallum wrote, “We have had multiple enrollment conversations during the last 15 months.” He further stressed:

“Today I write to express my growing concern and the urgent need for each of you to recalibrate our enrollment focus and our enrollment energy. This cannot be ‘business as usual’ with episodic coordination.”

“Spring 2010: you will remember these numbers because they became headline news on the front page of the Dickinson Press. We were down 200 students compared to spring 2009.”
“Fall 2010: with more red than green barometers on our enrollment dashboard, we lost our concentration early during the ‘fourth quarter’ of the recruitment process and fell short of our goal by 100 students.”

“Spring 2011: after a disappointing fall enrollment, we agreed to set a new spring enrollment record in order to carry a positive momentum into the Legislative Session. Unfortunately, we made several coordination errors, essentially gave-up during the holiday season and never regained our focus as the spring semester started. Hence, we again missed our goal by more than 220 students.”

(Exhibits 69-71).

50. Norman Coley, Jon Brudvig, John Hurliman, Hal Haynes, and Ronnie Walker all testified that these enrollment goals were not met simply because they were unreasonable goals set by McCallum, not because staff were not working hard enough on the goals.

51. McCallum’s wife, Julie McCallum, also advocated her husband’s misplaced obsession with enrollment and pressured DSU employees to meet McCallum’s enrollment goals. (Exhibit 77). On February 14, 2011, Mrs. McCallum emailed DSU employees stating, “Many folks on this campus think that Dick is being too hard with enrollment expectations.” “Those who are not in the top administration fail to realize that declining enrollment signals financial disaster. . . .” “I applaud Dick for wanting to push DSU forward despite the resistance/confusion he encounters almost daily and not just concerning enrollment but other issues as well.” “I would also wonder about an individual who did not perceive his supervisor’s enrollment goals as a significant concern.” “If I sound a bit irritated then you have read this correctly.” “Betrayal is a bitter pill to swallow Hal (Haynes) . . . .” Such statements and pressure further evidence McCallum’s misplaced focus on enrollment, and the intimidating environment that he created. (Exhibit 77).

52. Entering symposium attendees into ConnectND student information systems as DSU degree credit freshmen students required affirmative action or knowledge on the part of
numerous employees in three or four separate DSU departments. The concerted efforts included: completing the forms proposing or creating credit classes, signed by the director of OEL, a department chair, and a dean or vice president for academic affairs; processing and entering incorrect student data by staff in OEL and the Office of Enrollment and Admissions; the Vice President for Academic Affairs approving necessary degree credit classes and himself being listed as an instructor for one class (as well as being an enrolled student temporarily, until withdrawn two days after the fall 2010 enrollment census date); and faculty or the registrar’s office entering grades on official transcripts. (Exhibits 17, 86 and 90; and Testimony of OEL employees, Bill Eggert, Norman Coley, and Scott Staudinger).

53. McCallum’s testimony that he did not direct staff to include 2010 conference attendees in degree credit headcount numbers is not credible. In fact, McCallum’s testimony was directly contradicted by Bill Eggert who, on cross-exam by McCallum’s attorney, testified that former OEL Director Marty Odermann-Gardner informed him that McCallum instructed her to take all necessary steps to include 2010 conference attendees in degree credit headcount numbers, and Director of Enrollment Services Norman Coley, who testified that McCallum told him the TR and Disney symposium attendees were being utilized to increase headcount and instructed him to work with Odermann-Gardner to "make that happen;" that is, to make sure that conference attendees were enrolled and reported as DSU students.

Odermann-Gardner also informed Eggert that under tremendous pressure from McCallum to meet enrollment targets for her division, she informed McCallum that she could only reach the targets if everyone who attended the three 2010 conferences was enrolled as a degree credit student and counted in degree credit headcount numbers, but she didn’t know if
that was legal. According to Odermann-Gardner, as testified to by Bill Eggert, McCallum nevertheless told her to “just do it.”

54. Former Vice President for Academic Affairs Rich Brauhn also testified that in 2009 McCallum asked him to do what Odermann-Gardner was instructed to do in 2010. Dr. Brauhn testified that he informed McCallum it could not be done since it was both illegal and violated policy. Dr. Brauhn informed McCallum that such practice would violate SBHE policy and academic standards and he refused to comply with McCallum’s request.

55. By August and September 2010, when other DSU employees completed steps required to enroll 2010 conference attendees as degree credit students so they would be included in official degree credit headcount enrollment reports, Dr. Brauhn was replaced by Acting Vice President for Academic Affairs Jon Brudvig.

56. McCallum’s testimony is also contradicted by documentary evidence, including several emails he received detailing action taken to increase reported enrollment by adding dual credit students and 2010 conference attendees. (Exhibit 55). Critically, on August 30, 2010, McCallum’s own note substantiated his knowledge of enrollment targets and additional enrollment numbers anticipated from 2010 conference attendees. (Exhibit 78).

57. McCallum testified that he specifically and repeatedly instructed both Dr. Brudvig and Alvin Binstock to make sure that the 2010 conferences were “academically and financially sound”. This testimony is both inconsistent with his own testimony, and specifically refuted by two of his own witnesses. First, McCallum himself indicated that he had no involvement with the 2010 symposiums, yet later indicated that he issued the above directives to Brudvig and Binstock. Second, both Dr. Brudvig and Alvin Binstock repeatedly testified that they were never instructed by McCallum to ensure that the 2010 conferences were academically and financially
sound. Dr. Brudvig and Alvin Binstock both testified that there was no such direction or conversation with McCallum. As such, McCallum’s testimony cannot be reconciled, and the inconsistencies in his testimony were fatal to his credibility on this point.

58. McCallum’s testimony that he did not direct and had no knowledge of the false or inaccurate reporting and creation of classes not meeting academic standards in 2010 is not credible, in light of the substantial evidence to the contrary.

59. At a minimum, even if McCallum’s testimony that he did not direct the false or inaccurate enrollment reporting is believable, his conduct was improper and violated SBHE policy. Such conduct included an unreasonable focus or obsession on increasing headcount enrollments, frequent communications regarding enrollment targets and expectations, insisting on what several key DSU officers concluded were unreasonable or unrealistic enrollment targets, berating key officers for not meeting targets, and responding to those who raised concerns in an intimidating or threatening manner.

60. Gail Ebeltoft is Coordinator of Human Resources at DSU. She has held that position for 14 years. Ebeltoft testified that, during McCallum’s tenure, DSU received no claims of “hostile work environment” or “bullying.” Ebeltoft testified that she was in the best position to assess McCallum’s working relationship with employees and co-workers. She reported that she received no complaints with regard to McCallum’s performance or treatment of employees. However, Ebeltoft is apparently either not in touch with what is going on around her, or employees do not confide in her. There was ample evidence that McCallum’s demands and conduct contributed to an environment at DSU in which officers and employees reasonably believed their jobs or opportunities for advancement would be jeopardized if they did not do what was necessary to meet enrollment targets. (Testimony of Norman Coley, Ronnie Walker,
Hal Haynes.) The preponderance of evidence established that DSU officers and employees were pressured to engage in or tolerate unethical, improper or unlawful conduct in order to satisfy McCallum’s demands.

61. A Campus Quality Survey for DSU, dated December 2010, was conducted by an independent third party (Performance Horizons Consulting Group). The survey supports the charges against McCallum. Goetz utilized the Campus Quality Survey, among other things, in deciding to issue the Notice of Intent to Dismiss McCallum. (Exhibit 45). Specifically:

**Bates No. 358:** DSU’s ratings decreased in all eight quality improvement categories for the time period of 2008 - 2010.

**Bates No. 359:** The performance gap increased in all eight quality categories for DSU for the time period of 2008 – 2010.

**Bates No. 360:** Comparison of the 2008 and 2010 results show the combined percentage of satisfied and very satisfied respondents decreased from 83% to 70%, reflecting the lowest combined percentage since 2004 (68%).

**Bates No. 361:** Comparison of the 2008 and 2010 results show a large decrease in the combined percentage of excellent and good responses from 81% to 54%, representing the lowest combined percentage in five surveys.

**Bates No. 396:** “How it is Now” ratings decreased and performance gaps increased (reflecting negative change) at DSU. The performance gaps are below the four-year institution National Norms for all locations except DSU.

**Bates No. 401:** DSU ratings were below the NDUS overall average.

**Bates No. 402-04 and 411-12:** DSU’s level of employee satisfaction was down 13% which was the lowest of all NDUS institutions. DSU’s overall impression of quality is down 27% - the lowest of all NDUS institutions. This was the fifth time the Campus Quality Survey had been used at DSU. The number of survey respondents (119) reflected a 176% Increase from 2008 (43) and represented the highest number of respondents since the survey was initiated in 2002.
62. DSU Risk Assessment Results dated 5/16/11 (Exhibit 46) also support the charges against McCallum as identified in the Amended Notice of Intent and the Internal Audit Report. The Risk Assessment was conducted by Larson Allen, a third party independent consulting firm. Goetz further utilized the findings from the Risk Assessment report when determining to issue the Notice of Intent to Dismiss McCallum. The pertinent findings from the Internal Audit Report include:

Bates No. 431: High Risk ranking in category of functional area/process in academic affairs. “There is significant pressure to increase domestic and international student headcount. Concerns included the diversity of the student body, potential overspending, and certain students not meeting admissions requirements criteria.” “Enrollment Services reports directly to the President.”

Bates No. 437: High Risk ranking in category of functional area/process in governance. “A subset of senior leadership is providing an overall culture/environment and tone at the top that is not supported and respected by staff and faculty.” “Lack of communication and interaction between the foundation and a subset of senior leadership at the institution.” “The Foundation requested separation from DSU during the fall 2010 semester.”

63. DSU’s Assessment of Effective Communications for the 2009-2010 Faculty (Exhibit 54) also supports the charges against McCallum. Goetz also utilized the findings from this Assessment report when determining to issue the Notice of Intent to Dismiss McCallum. The pertinent pages from this report include the following:

Bates No. 492-495: On a scale of 1 to 6 with 1 being the lowest and 6 being the highest score, the mean scale is 3-4 which represents disagree to neither agree/disagree.

Bates No. 496-99: Faculty comments identify an environment of harassment, bias, lack of leadership and communication, issues with dual credit, and wasteful resources.

64. McCallum learned about NSSE survey concerns on or about February 4, 2011. (Exhibit 20; and Scott Staudinger testimony). NDUS and DSU officers and employees quickly
addressed NSSE concerns by identifying most individuals that should not have been included as enrolled students reported to NSSE and NSSE was able to proceed with its survey of legitimate DSU students. (Exhibits 19-24).

65. McCallum testified that he did nothing to address the underlying problem that resulted in conveyance of false or inaccurate information to NSSE. He did not follow up on this information and inquire about how inaccurate information was entered into databases that generated information submitted to NSSE. He did not inquire about IPEDS or NDUS enrollment reports. He did not inquire about how individuals who had no idea they were enrolled DSU students were registered in DSU classes in order to be reported as enrolled DSU students. He did nothing to correct false or inaccurate data submitted to IPEDS and the NDUS and did not direct anyone else at DSU to do so. Rather, he testified that he simply waited for NDUS personnel to contact him if they had concerns or needed any information.

66. McCallum’s testimony that he was unaware of any concerns related to IPEDS or NDUS reports until he met with Goetz on August 3, and that he didn’t fully understand concerns until he heard testimony at the evidentiary hearing, is not credible. When McCallum met with Dr. Hillman and Eggert in the spring of 2011, he didn’t want to discuss DSU enrollment reporting issues and instead focused his comments on an enrollment reporting matrix, which had been created to enable discussion about policy changes responding to issues raised by institution officers that had nothing to do with fraudulent or inaccurate reporting by DSU. (Dr. Michel Hillman and Bill Eggert testimony).

67. McCallum testified he has more than 30 years of experience in higher education, including a term as the chief academic officer at another university and other administrative positions. He has been DSU president for more than three years. He admitted he is familiar with
IPEDS reports. It is inconceivable that with his past experience and three years as DSU president he would have no knowledge concerning how information is entered into NDUS student information systems, how IPEDS and system enrollment reports are generated, or that information submitted to NSSE necessarily would be generated by information entered into the ConnectND system.

68. Based on preliminary information from NSSE that surveyed individuals denied being DSU freshmen students, Goetz directed Dr. Hillman and Bill Eggert to investigate and report back to him. Dr. Hillman and Eggert interviewed McCallum and numerous DSU officers and employees or former employees. Eggert then prepared and submitted to Goetz and SBHE members an August 1, 2011, Internal Review Report. (Exhibit 17 and Goetz testimony).

69. Prior to submitting the final August 1, 2011, Internal Review Report, Eggert prepared one or more preliminary drafts, which he shared with Goetz and other NDUS officers who report to Goetz. The first draft was dated June 21, 2011, and Eggert reviewed the draft with Goetz on or about that date. Prior to Eggert reviewing the preliminary draft with Goetz, Goetz testified that he was not aware of the scope of McCallum’s involvement in DSU reporting issues and details regarding other reported concerns at DSU.

70. Goetz reasonably waited until he had a final report and information required for him to make an informed decision before addressing the results of the investigation with McCallum on August 3, 2010. McCallum testified he was not kept in the loop regarding the investigation. Contrary to what McCallum implied in his testimony, it would not be reasonable to expect the NDUS Chancellor to keep an institution president informed as an investigation into alleged unlawful and unethical conduct progresses when the president himself is suspected of directing or permitting such conduct and the president may be subject to criminal prosecution.
71. Preliminary draft reports were not shared with SBHE members and SBHE members did not learn of the results of the investigation until they received the August 1, 2011, report, which was then released to the media in response to media and open records requests.

72. Goetz’s recommendation and SBHE approval of a 2% salary increase and one-year contract extension for McCallum at a June 16, 2011, SBHE meeting occurred before Goetz and SBHE members received the August 1, 2011, Internal Review Report. Goetz’s employment recommendations also occurred before he and the SBHE learned that DSU officers and employees reported that McCallum directed the false or inaccurate reporting, or pressured DSU officers or employees into submitting false or inaccurate data for the purpose of inflating headcount enrollment numbers. (Goetz testimony).

73. The August 1, 2011, Internal Review Report concluded that McCallum directed DSU officers or employees to enter false or inaccurate information and report inaccurate or inflated enrollment numbers, or that he had pressured them to do so. (Exhibit 17).

74. The Internal Review Report also noted that DSU leadership focused on continuing enrollment growth without an effective plan to support that growth; that this resulted in pressure to report higher enrollment; that this pressure led the former director of DSU’s Office of Extended Learning, the Office of Enrollment, and the admissions department to enroll conference attendees without following the proper enrollment process; that DSU leadership created a campus culture that was divided and one of distrust, with staff being pressured to engage in unethical, suspect or wasteful activities to meet demands. (Exhibit 17).

75. Exhibit 81 identifies the criteria of the DSU Roughrider Homestead Scholarship and Roughrider Scholarship Award. McCallum awarded Roughrider scholarships that greatly exceeded the $500 or $1000 annual scholarship ($250 or $500 per semester). In one instance
one international student received $8,000 (Exhibit 81 at Bates No. 575) and another international student received $1578.73 (Bates No. 576).

76. Dr. Hillman acknowledged that, as a result of inaccurate enrollment reporting, “no funding has been cut by the legislature toward Dickinson State University,” “no accreditation has been withdrawn with respect to Dickinson State University,” “no federal action has been taken, and no fines have been imposed on Dickinson State University.” However, just because none of those actions have been taken to date, the inaccurate reporting opened up DSU to potential severe financial sanctions in the form of IPEDS fines and created a serious credibility problem for DSU. (Michel Hillman and Bill Eggert testimony.)

77. One of the bases for McCallum's dismissal in the Notice of Intent to Dismiss and the Amended Notice of Intent to Dismiss is insubordination. (Exhibits 16 and 18). During Goetz's meeting with McCallum on Wednesday, August 3, 2011, Goetz requested McCallum's resignation, and instructed McCallum to telephone him the next morning, Thursday, August 4, to further discuss it. McCallum did not call Goetz on August 4, and the chancellor's administrative secretary was unable to contact McCallum that day, despite several calls to McCallum's administrative secretary, his cell phone, and his wife at his home. McCallum's wife answered the phone and reported McCallum was "unavailable." Goetz was unable to contact McCallum the next day, on Friday, August 5. Neither McCallum's administrative assistant, nor DSU officials or employees knew where he was or how he could be reached. McCallum failed to respond to calls or voice mail messages to his office and cell phone. (Exhibit 18.)

McCallum testified that he believed Goetz’s ultimatum that he resign was “extremely harsh” and “legally unsound.” He testified that by Thursday, August 4, he decided he needed to have legal counsel, so he sent an email to his secretary asking her to process him for a day of
vacation for Thursday, and met with an attorney in Fargo on Friday and Saturday. McCallum testified that the only way he could have avoided Goetz’s claim of “insubordination” would have been if McCallum had immediately tendered his resignation as directed.

What McCallum overlooks is that he certainly had the right and opportunity to contact legal counsel if he desired, which he did, but he could have, and should have, called Goetz on August 4 to request additional time to do so, rather than ignoring the instruction to call Goetz and making himself unavailable.

Benjamin Thomas, counsel for McCallum, and Patrick Seaworth, NDUS General Counsel, stipulated that Mr. Thomas left a voice mail message at Mr. Seaworth's office on August 5 indicating he wished to talk to him about DSU President Dr. McCallum. At that point, Mr. Thomas had not met McCallum or been retained by him, nor had Mr. Thomas seen the Notice of Intent to Dismiss him. Mr. Seaworth returned Mr. Thomas's call that afternoon, but Mr. Thomas was gone. Mr. Thomas and Mr. Seaworth were able to talk about McCallum on Monday, August 8, for the first time.

78. Goetz testified he was willing to discuss the time frame of McCallum’s resignation or a delayed resignation date. However, McCallum elected to ignore Goetz’s directive and he simply disappeared without leaving contact information with Goetz or anyone at DSU. Further and importantly, McCallum refused to respond to repeated calls and messages from Goetz’s office on August 4 and 5. While such an ultimatum was understandably unnerving, McCallum’s behavior was irresponsible. It was not unreasonable for Goetz to act accordingly by issuing a Notice of Intent to Dismiss on August 5.

79. McCallum was treated similarly to other NDUS presidents who were recently asked to resign. Goetz testified that he requested and received resignations from former North
Dakota State University (NDSU) and Williston State College (WSC) presidents prior to the end of their contract terms. He testified the WSC president did not receive severance pay and was not permitted to serve out his contract. Unlike the responses received from the NDSU and WSC presidents, McCallum refused to respond to Goetz’s communication requests. It was reasonable for Goetz to then issue a Notice of Intent to Dismiss based upon McCallum’s actions or lack thereof.

80. Goetz also testified that the circumstances leading to the request for McCallum’s resignation were not comparable to those involving the former presidents at NDSU or WSC. The other two presidential resignations did not entail a president alleged to have engaged in unlawful conduct. Further, in neither case did the president direct or permit false or inaccurate reporting which could potentially lead to monetary sanctions, jeopardize accreditation, or damage the credibility of the institution and the NDUS.

81. The Amended Notice and the Internal Review Report identifies the following policy violations: 611.10 (Employee Responsibility and Activities: Theft and Fraud); 308.1 (Officer and Employee Code of Conduct, Section 2 General Conduct); 308.8 (NDUS Records and Communication); 308.12 (Reporting Suspected Violations, Procedures for Investigating Reports); 402.2 (Admission Policies – Beginning Freshman Applicants - Baccalaureate Programs); and 440 (Enrollment Reporting). Those policies are discussed extensively in the Internal Review Report. (Exhibits 17 and 18).

The preponderance of evidence shows McCallum violated or knowingly permitted and directed violations of SBHE Policies 308.1, 402.2, 440 and 611.10. His actions constitute misconduct, and are detrimental to the discipline or efficiency of DSU and the NDUS, and thus constitute grounds for dismissal for cause under SBHE Policies 305.1 and 608.2.
CONCLUSIONS OF LAW

1. As president of DSU, McCallum “is the chief executive officer of the institution.” SBHE Policy Section 305.1(1). “The Board delegates to the president of each institution full authority and responsibility to administer the affairs of the institution in accordance with Board policies, plans, budgets, and standards, including the management and expenditure of all institutional funds, within budgetary and other limitations imposed by law or by the Board.” SBHE Policy 305.1(2). (Applicable policy.)

2. The president’s responsibilities are identified by the State Board of Higher Education in Policy 305.1(3) and include: “maintain[ing] good relations and effective communication”, “be[ing] accountable for all funds, property, equipment, and other facilities assigned or provided to the institution,” and “striv[ing] at all times to conform to and advocate the Board’s beliefs and core values.” (Applicable policy.)

3. SBHE Policy 308.1(8) explains that “[a]ccurate and reliable records of many kinds are necessary to meet NDUS legal and financial obligations and to manage the affairs of the NDUS. NDUS books and records must reflect in an accurate and timely manner all business transactions.” “Board members, officers and employees must not make or engage in any false record or communication of any kind, whether internal or external, including, but not limited to, false expense, attendance, enrollment, financial, or similar reports and statements . . . .” (Emphasis added). (Applicable policy.) DSU’s false enrollment and attendance reports clearly violated this code of conduct. By way of his directives and the unreasonable goals he placed on his employees to increase enrollment, McCallum was engaged in false enrollment and attendance reports, in direct violation of SBHE Policy 308.1(8). (Conclusion of law.)
4. SBHE policies 402.2, 402.3, 402.3.1, and 402.3.2 identify admission requirements for beginning freshman applicants and for high school students to attend university classes and dual credit courses. These policies were violated by DSU officials under McCallum’s directives or under pressure from him to do so when registrants of the three symposiums were admitted as DSU freshman students. It is undisputed these individuals were not DSU freshman applicants. (Conclusion of law.)

5. SBHE Policy 440 states: “System degree credit enrollment reporting is intended to be consistent with United States Department of Education Integrated Postsecondary Data System definitions for measures of instructional activity on an annual basis.” Also, Policy 440 states: “Each campus shall report fall and spring semester enrollments for degree credit students based on the number of students enrolled on the twentieth scheduled class day of the fall and spring semesters.”

The policy states that enrollment reports must be consistent with federal reporting requirements. Higher education institutions are required to report information on enrolled degree credit students to IPEDS. The NDUS prepares official enrollment reports based on student information entered into the ConnectND system by NDUS institution employees and data reported in the fall enrollment report is reported to IPEDS. (Exhibit 14; testimony of Dr. Michel Hillman). (Applicable policy.)

It is undisputed that enrollment data was misreported to IPEDS, and was not in compliance with federal reporting requirements. (Conclusion of law).

6. The policy violations and misreporting of enrollment data was not a minor oversight. It involved several DSU employees and intentional acts, all at the direction and/or pressure of McCallum to increase enrollment. The greater weight of the evidence presented at
the hearing establishes that SBHE and NDUS policies were violated at the directive or under pressure from McCallum. Such policy violations were detrimental to the discipline and efficiency of DSU.  (Conclusion of law.)

7. An employee is generally obligated to comply with an employer’s reasonable requests. See N.D.C.C. § 34-02-08; McGregor v. Harm, 19 N.D. 599, 125 N.W. 885 (1910). See also Restatement (2nd) of the Law, Agency 385(1) (1958) (“[u]nless otherwise agreed, an agent is subject to a duty to obey all reasonable directions in regard to the manner of performing a service that he has contracted to perform.”). Professors Corbin and Williston each instruct that an employee’s disobedience of an employer’s reasonable request is a ground for discharge. 9 Jaeger, Williston on Contracts 1013B (3rd ed. 1967); 3A Corbin, Corbin on Contracts 679 (1960). See also 53 Am.Jur.2d Master and Servant 54 (1970). (Applicable law.)

8. McCallum’s conduct constituted insubordination. “‘Insubordination’ means a willful disregard of express or implied direction or a defiant attitude and ‘rebellious’, ‘mutinous’, and ‘disobedient’ are often used as definitions or synonyms of ‘insubordinate.’” McClellon v. Gage, 770 S.W.2d 466, 469 (Mo.App. 1989). McCallum willfully failed to respond to Goetz’s request to contact him before noon on August 4, 2011, to discuss his response after Goetz requested McCallum’s resignation on August 3, 2011. McCallum admitted that he chose not to do so, and in fact, did not contact Goetz until his attorney contacted NDUS’ counsel the following week, on Monday, August 8. While McCallum viewed Goetz's instruction to call him the day after requesting his resignation as "extremely harsh" and "legally unsound," his decision to absent himself to avoid responding to Goetz was not sound. He had a better option open to him. He could have contacted Goetz and asked for more time in order to obtain legal advice. It was not unreasonable for Goetz to set a time for McCallum to respond to his request for
McCallum's resignation. The time frame was very short, but nonetheless, as mentioned earlier, McCallum was well aware of Goetz's directive to call on August 4th and it was his obligation to comply. (Conclusion of law.)

9. In order to correct false or inaccurate reporting of data to IPEDS, the following steps must be taken: “correcting information in the North Dakota University System administrative system (PeopleSoft/ConnectND), the system data warehouse and the IPEDS enrollment report as well as assuring that information reported for FISAP and accrediting agencies is complete and accurate.” (Exhibit 32). Due to DSU’s inaccurate enrollment reporting, the process of correcting the inaccurate data has taken an exorbitant amount of time and manpower, and is still not fully corrected. (Testimony of Scott Staudinger, DSU Coordinator of Institutional Research and Planning; and Exhibit 88). A total of 213 individuals need to be removed from the DSU’s Fall 2010 census report. (Exhibits 34 and 86). Notably, there are several different facets of data that will still need to be removed, as detailed in Exhibit 86.

SBHE Policy 420 requires all institutions to maintain accreditation by the North Central Association of Higher Learning Commission. Criteria for accreditation includes integrity of academic processes and ensuring the organization “operates legally, responsibly, and with fiscal honesty.” (Exhibit 8, p. 0020). Accreditation criteria also includes assessment of student learning and data reported. (Exhibit 8 at p. 0021). Although DSU has currently not lost its accreditation, testimony at the hearing noted that DSU’s accreditation is up for review in 2014-15, and the impact of DSU’s inaccurate reporting on its accreditation remains unknown.

Misreporting of enrollment data to IPEDS is detrimental to the discipline or efficiency of the institution, including but not limited to participation in any federal financial assistance
program. For this reason, on August 9, 2011, the U.S. Department of Education, Federal Student Aid, addressed a letter to Goetz in response to the DSU fall enrollment report and emphasized the following:

“The completion of all IPEDS surveys, in a timely and accurate manner is mandatory for all institutions that participate or are applicants for participation in any Federal financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended. The completion of the surveys is mandated by 20 USC 1094, Section 487(a)(17).” (Exhibit 31).

Goetz and Dr. Michel Hillman testified that publication or submittal of inaccurate enrollment reports based on information that institution officers or employees knew to be false or inaccurate may have serious consequences, including federal sanctions, criminal penalties, loss of credibility with the legislature, governor and the public, reduced appropriations, and potential financial aid complications for students. By either directing or allowing submission of inaccurate enrollment reports, or neglecting to ensure accurate enrollment reports, McCallum violated federal reporting requirements and SBHE policies. (Conclusion of law.)

10. McCallum’s conduct also violated DSU’s Code of Conduct. McCallum signed a DSU Code of Conduct (Exhibit 43) which was adopted in accordance with SBHE Policy 308.1. The Standards of Conduct requires employees to, among other things:

- Act Ethically and with Integrity;
- Ensure compliance with applicable laws, policies, and procedures;
- Promote a healthy, innovative, and productive atmosphere that encourages dialogue and is responsive to concerns;
- Use University property, equipment, finances, materials, electronic and other systems, and other resources only for legitimate University purposes;
- Prevent waste and abuse;
- Promote efficient operations;
- Follow sound financial practices, including accurate financial reporting, processes to protect assets, and responsible fiscal management and internal controls;
• Promote a Culture of Compliance;
• The president or delegate shall ensure that appropriate administrative policies are maintained to support the Code of conduct.

(Exhibit 43). The witness testimony and exhibits support that these standards of conduct were violated by McCallum. As the DSU president, McCallum was responsible for DSU’s compliance with NDUS and SBHE policies and procedures. Ultimately, his actions or lack thereof, failed to comply with DSU’s Code of Conduct. (Conclusion of law.)

11. The State Board of Higher Education may dismiss a president for just cause during a contract term, following written Notice of Intent to do so, and an opportunity for an evidentiary hearing. SBHE Policy Section 305.1(5). The Board may appoint a hearing officer to conduct the hearing and make Findings of Fact, Conclusions of Law, and a recommendation to the Board, which shall then make its decision based on the hearing record. Id. (Applicable policy.)

12. Section 608.2(3) of the SBHE Policies provides that "[j]ust cause means just cause for dismissal of staff employees as defined in the North Dakota University System Human Resource Policy Manual.” The NDUS Human Resource Policy Manual states that "[j]ust cause includes conduct related to the employee’s job duties, job performance, or working relationships which is detrimental to the discipline or efficiency of the institution in which the employee is or was engaged.” NDUS Human Resource Policy Manual, Section 25.1. (Applicable policy.)

13. Agencies have a great deal of discretion in determining whether sufficient cause exists to justify termination. See Pinkney v. Civil Service System et al., 668 A.2d 1252, 1257 (Pa. Commw. Ct. 1997) (“All the law requires is that the cause be not religious or political, but concerned solely with the inefficiency, delinquency or misconduct of the employee. A wide latitude must be left to the superior officer – in fact a discretion conditioned only on its exercise

The charges against McCallum and the policies violated are identified in the Amended Notice of Intent to Dismiss (Exhibit 18) and NDUS’ Internal Review Report issued August 1, 2011 (Exhibit 17). The charges are supported by two independent assessments conducted by third party companies, the Campus Quality Survey for DSU dated December 2010 (Exhibit 45) and the Risk Assessment Results dated May 2011 (Exhibit 46).

The appropriate disciplinary response necessary to promote the efficiency and discipline of service “is a matter peculiarly and necessarily within the discretion of the agency involved.” Giesler v. Merit Systems Protection Bd., 686 F.2d 844, 849 (10th Cir. 1982). Goetz testified that the SBHE takes the issues of inaccurate or false reporting of student enrollment data very seriously as they have far-reaching implications. McCallum’s conduct in directing or pressuring employees to record or report false or inaccurate information, violate applicable laws and SBHE policies, and ignore academic requirements, or failure to appropriately supervise his staff is a violation of a serious nature. As the NDUS Chancellor, Goetz has the authority and discretion to determine what standards of conduct and performance must be adhered to and to assess the seriousness of conduct which does not meet such standards. Id. DSU established that McCallum's conduct was a violation of a serious nature that constitutes just cause for dismissal. DSU met its burden to show there was just cause to dismiss McCallum as that term is defined in NDUS Human Resource Policy Manual Section 25.1. (Conclusion of law.)

14. It is important to note that McCallum only asserts that a less severe discipline than dismissal would be appropriate. However, the appropriate disciplinary response to misconduct
or performance deficits “is a matter peculiarly and necessarily within the discretion of the agency involved.” *Giesler v. Merit Systems Protection Board*, 686 F.2d 844, 849 (10th Cir. 1982). This is “a discretion conditioned only on [the] exercise of good faith . . .” *Pinkney*, 669 A.2d at 1257. It is especially important that this discretion be respected when the employee is a professional with significant, specialized responsibilities. The agency employing such professionals, and made up of such professionals, knows best what it takes to do the job. The consequences of a loss of trust in a university system and president is significant. Further, McCallum offered no explanation or reasoned argument, other than his assertion that other university presidents were treated differently, why a less severe form of discipline is appropriate here. DSU’s decision on that issue must be respected. *(Conclusion of law.)*

15. The Amended Notice of Intent to Dismiss and procedures utilized by the NDUS are found to be in accordance with due process requirements, state law, and applicable policies. The SBHE issued an Amended Notice of Intent to Dismiss McCallum for just cause during his contract term, and provided an opportunity for an evidentiary hearing. McCallum was given an opportunity to respond to the proposed action before the evidentiary hearing, but McCallum failed or refused to do so. SBHE policy 305.1(5); NDUS Policy 25.2.

McCallum served at the pleasure of the SBHE, and upon issuance of the Amended Notice of Intent to Dismiss by the SBHE, had the right to an evidentiary hearing, prior to a dismissal decision by the SBHE. SBHE policy 305.1(5).

The Amended Notice of Intent to Dismiss (Exhibit 18) complies with the requirements of NDUS Policy Section 608.2(3) and NDUS Policy Section 25.2. As required by NDUS policy 608.2(3), McCallum was given at least five calendar days prior to the date of dismissal to respond in writing. *(Conclusion of law.)*
RECOMMENDED ORDER

The preponderance of the evidence in the hearing record establishes just cause to terminate Dr. McCallum’s employment according to SBHE Policy Section 608.2 and NDUS Human Resource Policy Manual Section 25. Therefore, the Administrative Law Judge recommends that the State Board of Higher Education dismiss Dr. McCallum from his position as President of Dickinson State University.

Dated at Bismarck, North Dakota this 9th day of December 2011.

State of North Dakota
State Board of Higher Education

By: ______________________________
Bonny M. Fetch
Administrative Law Judge
Office of Administrative Hearings
2911 N 14th Street, Suite 303
Bismarck, North Dakota  58503
Telephone:  (701) 328-3200
A hearing in the matter of Richard McCallum's termination from employment as President of Dickinson State University was held before Administrative Law Judge Bonny M. Fetch, Office of Administrative Hearings, on October 19, 20, 21, and 26, 2011. The State Board of Higher Education hereby adopts the recommended findings of fact, conclusions of law and order of the Administrative Law Judge. The recommended findings are attached to and made a part of this order.

**IT IS ORDERED** that Dr. McCallum is **DISMISSED** from his position as President of Dickinson State University.

Dated at Bismarck, North Dakota this ____ day of _________________, 20 ______.

________________________________________________
Grant Shaft, President

________________________________________________
H. Patrick Seaworth, Secretary
STATE OF NORTH DAKOTA

STATE BOARD OF HIGHER EDUCATION

IN THE MATTER OF: ) CERTIFICATE OF SERVICE
 )
Richard McCallum ) OAH File No. 20110365

The undersigned certifies that the original of the ADMINISTRATIVE LAW JUDGE’S
RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER was
picked up on the ____ day of December, 2011, by H. Patrick Seaworth, and that a copy of the
above document was sent by electronic mail to:

H. Patrick Seaworth
pat.seaworth@ndus.edu

and that true and correct copies of the above document were mailed, by electronic mail and
regular mail, on the ____ day of December, 2011, to:

Benjamin Thomas            Michelle Donarski
Wold Johnson, PC           Anderson, Bottrell, Sanden & Thompson
P O Box 1680               P O Box 10247
Fargo, ND  58107-1680      Fargo, ND  58106-0247

OFFICE OF ADMINISTRATIVE HEARINGS
Bonny M. Fetch, Administrative Law Judge

__________________________________________
Louise Wetzel
STATE OF NORTH DAKOTA

STATE BOARD OF HIGHER EDUCATION

IN THE MATTER OF:               }  
} OAH File No. 
Richard McCallum } 20110365

TRANSCRIPT OF HEARING

Office of Administrative Hearings
2911 North 14th Street, Suite 303
Bismarck, North Dakota
October 19, 2011
Volume 1

Before Bonny M. Fetch
Administrative Law Judge

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FOR DICKINSON STATE UNIVERSITY.
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<td>April 18, 2011 William Goetz letter to President McCallum</td>
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<td>Chancellor's December 29, 2010 email to McCallum</td>
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August 6, 2011 letter to Chancellor
Faculty communication summary
Emails re: Counting symposium participants to increase reported enrollment numbers
January 19, 2011 Norman Coley email
List of attendees removed from NSSE
McCallum July 6, 2010 memo re: Fall 2010 enrollment coordination
McCallum August 10, 2010 memo to Hal Haynes, Ronnie Walker and Connie Walker
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EXHIBITS - DSU

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64 McCallum March 8, 2011 memo to Ronnie Walker
65 McCallum March 8, 2011 memo to Connie Walker
66 Fall 2010 enrollment dashboard
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68 February 11, 2011 Julie McCallum email to DSU
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<td>Emails re: Dr. Brauhn's response to Bismarck Tribune</td>
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<td>Mrs. McCallum's email re: Bismarck Tribune</td>
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<td>McCallum August 30, 2010 handwritten note</td>
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<td>Tracking fall enrollment three-year summary</td>
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to Chancellor re: Review results of DSU fall 2010 enrollment 112 112

Staudinger enrollment master list 641 641

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<td>NSSE Consortium/System Data Sharing Authorization</td>
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<td>Emails to and from Kary Boehm and William Goetz dated October 26, 2010</td>
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<td>List of past presidents from Dickinson State University website printed August 31, 2011</td>
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<td>Letter of Support for Dr. Richard McCallum, dated August 10, 2011</td>
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<td>Letter to board members from Gene Allen printed October 14, 2011</td>
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<td>Letter of Support for Dr. Richard McCallum with signatures, dated August 8, 2011</td>
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<td>Interoffice memo to Richard McCallum from Gail Ebeltoft, dated May 27, 2011</td>
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<td>Letter to William Goetz from Dr. Carl Larson, dated June 9, 2011</td>
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<td>Curriculum vitae for Dr. Richard J. McCallum</td>
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<td>V</td>
<td>Letter to William Goetz from Richard McCallum dated August 26, 2010</td>
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(The following proceedings were had and made of record, Wednesday, October 19, 2011, commencing at 9:15 a.m.)

JUDGE FETCH: Good morning. We are on the record, but before I open the hearing, I ask that everyone present please mute or turn off your cell phones, pagers or any other devices which may
interrupt or disrupt the proceedings. Please do that now.

Today is October 19th, 2011. It's 9:15 a.m., and we are present at the Office of Administrative Hearings in Bismarck, North Dakota, for a hearing requested by Dr. Richard McCallum in the matter of his proposed dismissal from his position as President of Dickinson State University.

This hearing is being held pursuant to the provisions of State Board of Higher Education policies sections 305.1(5) and 608.2, and North Dakota University System Human Resource Policy Manual sections 25 and 27.

My name is Bonny M. Fetch. I am an independent Administrative Law Judge with the Office of Administrative Hearings. I have been designated as the Administrative Law Judge to conduct this hearing and make recommended findings of fact, conclusions of law and a recommended decision for the State Board of Higher Education in this matter.

The issue to be considered and decided upon this hearing is whether the employing agency, Dickinson State University, had just cause to terminate Dr. McCallum's employment considering the provisions of State Board of Higher Education policy section 608.2 and North Dakota University System Human Resource Policy Manual section 25.

At this time, I'm going to ask the parties to make their appearance for the record. We'll begin with Dickinson State University.
MS. DONARSKI: My name is Michelle, M-i-c-h-e-l-l-e, Donarski, D-o-n-a-r-s-k-i. I am legal counsel for Dickinson State University.

JUDGE FETCH: All right. And who is present with you?

MS. DONARSKI: Present with me is Krista Andrews, who is co-counsel with Dickinson State University. I have Chancellor Goetz, who is the representative. Chancellor Goetz.

JUDGE FETCH: Thank you. And for Dr. McCallum?

MR. THOMAS: Good morning, Your Honor. My name is Benjamin Thomas. I represent Dr. McCallum.

Dr. Richard McCallum is seated to my right.

JUDGE FETCH: Thank you. And we also have H. Patrick Seaworth, general counsel for North Dakota University Systems, who is here on behalf of the State Board of Higher Education. Others present this morning; the record of this proceeding is being made by court reporter Linda Gingery.

The Board provided that this proceeding be an open hearing, so members of the press and the public are in attendance. The parties and I will appreciate everyone's consideration and cooperation in limiting movements during the hearing so that there is minimal disruption of the proceedings. You can -- if you need to, you may leave, you know, for a moment to use the restrooms down the hall or to get a drink of water, that sort of thing, but we will be taking breaks now and again, so if you can
basically limit those movements to those times, that's fine, but if you need to, you may leave momentarily.

This is the hearing procedure which will be followed in this matter. Dickinson State University has the burden to show that it has just cause to dismiss Dr. McCallum. Therefore, the University will present its case first. Witnesses called by the University will be subject to cross-examination by Mr. Thomas. I'm going to ask at this time, Mr. Seaworth, as you're here appearing on behalf of the State Board of Higher Education, who will be making the final decision, are you intending to question the witnesses?

MR. SEAWORTH: Judge Fetch, no, I do not intend participating in the questioning of the witnesses.

JUDGE FETCH: Thank you, Mr. Seaworth. I may ask questions of the witnesses. Upon completion of the University's presentation of its case, then Dr. McCallum will present his case. Any witnesses called by Mr. McCallum will be subject to cross-examination by Ms. Donarski, and, again, I may also ask questions. I will make a recommended decision to the Board, so it's important that I get all the evidence and clarify what I need to, so I may ask questions of any of the witnesses.

All witness testimony is taken under oath and is subject to penalties for perjury. By law I'm required to inform witnesses as to those penalties
and since some witnesses are currently present, I'm going to do that at this time. The others I will instruct as they appear.

In the State of North Dakota, perjury is a Class C Felony, which is punishable by a maximum fine of $5,000, a maximum five years in prison, or both.

Before we went on the record, counsel and I discussed whether witnesses would be sequestered and counsel did request that witnesses be sequestered and we're going to do that at this time. What that means is, that witnesses will be removed to another room and will wait there until they are called to give their testimony. I will give instructions to witnesses who are being sequestered. Members of the public who are here to observe, you may remain seated. You may remain, but anyone who is going to be called as a witness, at this time, Ms. Donarski, do you want to identify who those people are and we'll remove them?

MS. DONARSKI: Okay.

JUDGE FETCH: I'll be back in just a couple of minutes and we'll continue.

(Recess was taken.)

JUDGE FETCH: I think most of the witnesses are leaving. Is that a problem for any of you?

MS. DONARSKI: That is not a problem.
JUDGE FETCH: Yours are coming back this afternoon and the gentleman for Dr. McCallum indicated he would probably leave for the day and come back tomorrow.

MR. THOMAS: Okay.

JUDGE FETCH: Okay. Are there any questions, counsel, concerning the procedures to be followed or any preliminary matters?

MR. THOMAS: Judge, I just have one issue.

JUDGE FETCH: Yes, Mr. Thomas.

MR. THOMAS: Ms. Donarski and I discussed prior to the commencement of the hearing and that relates to the exhibits that have been submitted to Your Honor. Dickinson State has submitted a packet of exhibits that appear to include approximately 600 pages. Ours is considerably smaller than that, but it's still substantial.

My understanding is that while I don't anticipate objections either to admissibility or foundation from either side to the offered exhibits, my preference, anyway, would be that we not file dump, if you will, and submit all of these documents to you en masse at the beginning of the hearing. I think it's more likely that only some of the exhibits from each side will likely be referenced at the hearing and, therefore, those should be offered as the testimony is taken and as those exhibits become relevant and that should, hopefully, avoid the situation at the conclusion of the hearing where you've got more than a thousand pages of exhibits to
sift through.

JUDGE FETCH: Ms. Donarski?

MS. DONARSKI: That is agreeable.

JUDGE FETCH: Okay. So we'll deal with admitting the exhibits as they're offered during the hearing.

MR. THOMAS: That's all we have, Your Honor.

JUDGE FETCH: All right. Ms. Donarski, did you have any preliminary -- other preliminary matters or questions?

MS. DONARSKI: I do not.

JUDGE FETCH: All right. Do the parties wish to make opening statements at this time?

MS. DONARSKI: I do, Your Honor.

JUDGE FETCH: All right. We'll proceed with you, Ms. Donarski.

MS. DONARSKI: Thank you.

As indicated, I represent Dickinson State University. The issue is whether there was just cause to terminate Dr. McCallum's employment. Just cause is defined by policy manual 25. It's defined as conduct that related to the president's job duties, performance or working relationships which are detrimental to DSU.

In this case we have the reporting of inaccurate and inflated enrollment numbers. Now, you may ask, how is that detrimental to DSU? It's detrimental for a number of reasons. First of all, the reporting of inaccurate and inflated enrollment
numbers was at the direction of the President. The reporting of the inaccurate enrollment numbers was done by DSU officials and, specifically, they took attendees that attended symposiums, primarily three symposiums; the Disney symposium, the Theodore Roosevelt symposium, and the energy symposium. Those attendees were then registered as students, as Dickinson State University freshmen students.

The evidence and testimony you will hear from DSU will show that, in fact, there was great emphasis and focus under President McCallum's leadership that the DSU enrollment numbers were to increase and that he was a president who was not going to allow those numbers to decrease under his term. In fact, there will be testimony and evidence to show that his expectations were so high that he expected his leadership to enroll 120 students each week for 11 weeks during the fall of 2010. That totals 1,200 students. DSU student enrollment is approximately 2,700. The expectations were unreasonable, were demanding, and what happened is, employees felt that they would lose their job if they did not increase enrollment.

What did they do? DSU employees will tell you that they skipped the admission process and the registration process for students and instead what happened is that attendees, community participants that attended these three symposiums, were then registered as DSU freshmen students. They were assigned student ID numbers. If we did not have a
Social Security Number, they were given digits of nine all the way across for their Social Security Number. They were then set up -- a class was set up. A class was created. They were enrolled in that class. An instructor was assigned to the class without the instructor's knowledge. The instructor was expected to give all the attendees A's. When instructors refused, that was entered through administration.

We have students, DSU students, freshmen students, who never enrolled, who did not register, who did not complete forms and were never asked to be students. They now have a transcript with an A because they attended a symposium. It is not a handful of students we're dealing with. This misreporting was over 180 students. This is not a miscommunication. This is not an error. It's not human error. You will hear testimony from DSU employees who knew what they were doing was wrong, but it was at the direction of the President because enrollment numbers needed to increase.

So how is this detrimental? For just cause we have to show that this working relationship under the president is detrimental to DSU. Well, first of all, it's detrimental to the working relationship of the president and the employees at DSU. We are not following enrollment processes. We are not following admissions. We're not following registrations and, instead, we're registering students who truly are not students for enrollment
purposes, to look like DSU is growing in enrollment under the leadership of McCallum.

Of course, as a president you want your university to grow. How is that detrimental? Well, not only to the campus culture of employees who were doing things knowing it was wrong, but it also has great potential of harm to DSU with respect to the reporting. This enrollment numbers -- over 180 students were reported to the federal Integrated Postsecondary Education Data System, also known as IPEDS. IPEDS has a penalty -- excuse me -- a penalty of $27,000 per occurrence. There are great ramifications with respect to penalties. Not only penalties. We have the accreditation issue. This could affect accreditation of DSU. We have student federal financial aid, which is based in part on the data that DSU submits to the federal government through the IPEDS system. We have state funding to DSU. You have the integrity to DSU that, obviously, has been tarnished as a result of this. We also have wasteful resources devoted to this process and now in correcting the false data. The data has not been corrected. There have been hundreds of hours of employees correcting the data. The error has not been corrected as we sit here today.

This was a difficult decision for anyone, but the decision is well supported by the evidence. It's supported by the internal audit that was performed to ensure that this, in fact, was information that did occur and does have serious
ramifications to DSU. As you hear all the evidence through this week, you will see that, in fact, there was just cause and the decision was reasonable to dismiss President McCallum.

Thank you.

JUDGE FETCH: Thank you, Ms. Donarski.

Mr. Thomas, do you wish to make an opening statement at this time?

MR. THOMAS: Yes. Thank you.

The issue, Your Honor, is correctly stated and that is whether there is just cause for terminating Dr. McCallum’s employment. That burden properly rests with the North Dakota University System.

Why is that? Dr. McCallum, as President of Dickinson State University, does serve at the pleasure of the State Board of Higher Education. However, the State Board, barely one month before these termination proceedings were initiated, extended Dr. McCallum’s contract on June 29, 2011, for an additional year, to June 30, 2013. Had the State Board been dissatisfied with Dr. Richard McCallum’s performance, they could have simply chosen not to renew his contract. Instead, they awarded him a raise and extended his contract for another year. Less than five weeks later,
You will learn that Chancellor Goetz, on August 3, 2011, gave Dr. McCallum a 24-hour ultimatum, resign by tomorrow or else I will, quote, go to the press, release the audit and seek your immediate termination for cause. No negotiation. No meaningful opportunity to respond. No review by the full State Board of Higher Education, just an ultimatum.

I met Dr. McCallum for the first time that weekend. I've had the pleasure of spending a great deal of time with him since that time. I have found, and I believe the evidence will show you, Judge, that he is the kindest, most professional and most respectful person that I have met in a very long time. He doesn't have a malicious bone in his body.

Why is this significant to a termination proceeding? It's significant because the allegations against Dr. McCallum are in part personal, accusing him of bullying and disrespectful conduct. We intend to offer testimony to show the opposite to be true. Many witnesses will testify to Dr. McCallum's gentle and respectful demeanor. He is not politically astute, perhaps, and he has been caught up in what appears to be a political process, but he's not naive. He understands that, for whatever reason, if the Board decided he should go, there's a process for that. The Board could have chosen not to renew his contract. The Board could
even have asked Dr. McCallum to resign before his term ended and to negotiate his early departure. Most of us know that that is what has occurred in virtually every other -- with every other president that has resigned in recent history and resigned under circumstances much more serious than what Dr. McCallum is accused of.

Instead, the evidence will show Dr. McCallum was not given that opportunity. Chancellor Goetz chose to utilize an aggressive public means to terminate Dr. McCallum for cause. He did this without the knowledge or approval of the full Board of Higher Education. As a result of how this matter has been handled, the burden of proof properly rests with the University System to establish just cause for terminating Dr. McCallum's term as president.

Now, section 25 of the North Dakota University System Human Resources Policy Manual does state that just cause includes, quote, Conduct related to the employee's job duties, job performance, or working relationships which is detrimental to the discipline or efficiency of the institution, close quote. However, in analyzing just cause, courts have consistently applied several factors when determining whether an employer's action is sustainable. Those just cause factors are approximately five in number and we would ask the Court to utilize those factors in applying the just cause standard.
No. 1: Notice. Was the employee given forewarning or foreknowledge of the possible consequences of the employee's action? In this case, clearly, Dr. McCallum was not. He received no notice and no opportunity to correct any perceived errors.

No. 2: Fair investigation. Was the employer's investigation conducted fairly and objectively? It was not. The investigation relied on anonymous sources, in many cases unsubstantiated and conclusionary statements. Dr. McCallum was not allowed to review or respond prior to the public disclosure of the investigative audit.

Three: Did the employer obtain substantial evidence or proof that the employee committed the alleged misconduct? We believe the evidence will show that Dickinson State University employees submitted enrollment information that was later determined to be incorrect. That is undisputed. However, there is no evidence to establish that Dr. McCallum instructed DSU employees to intentionally submit incorrect information.

In opening statements it was pointed out that DSU promises to establish that Dr. McCallum directed employees to submit false information. None of the reports -- and we've received over a thousand pages of reports -- none of the reports establish that Dr. McCallum directed anyone to intentionally submit false enrollment information. In fact, the evidence will show that Dr. McCallum
wasn't even involved in the submission of much of this enrollment information.

The fourth factor to be considered in determining whether just cause exists is equal treatment. Has the employer applied its policies, rules and disciplinary decisions evenhandedly and without discrimination to all employees? We submit that it has not. For whatever reason, Dr. McCallum has been singled out for this type of treatment that has not been afforded to any other president in similar situations.

And, finally, appropriateness of the discipline. This is the classic did the punishment fit the crime, or was the degree of discipline imposed reasonably related to the seriousness of the offense, given the record of the employee during his service with the employer. You will learn that there are no serious allegations of intentional, ongoing or uncorrected misconduct by Dr. McCallum. Equally importantly, you will learn that Dr. McCallum received consistently positive performance evaluations, the most recent of which was in June of 2011, less than two months before his termination of employment. He has been the subject of no discipline, no reprimand or no serious criticism leading up to his termination. In short, Dr. McCallum was blind-sided by this ultimatum that he tender his resignation.

As mentioned, you will hear a great deal of testimony regarding enrollment numbers that were
submitted by Dickinson State University. I would respectfully request that two things be kept in mind as this testimony is received. Number one, it will be undisputed that one of Dr. McCallum’s priorities was to maintain and, if possible, increase enrollment levels at Dickinson State University. Everybody knows that that is a goal shared by all university presidents in North Dakota. Enrollment, after all, is the straw that stirs the drink. Dr. McCallum, you will hear, actively and frequently informed his staff that he expected them to work hard to address these enrollment concerns. What you won’t hear is proof that Dr. McCallum ever instructed any employee to submit intentionally false enrollment information to anyone.

I ask that you pay close attention, as well, to Exhibit 33, which I expect to be offered shortly. This is an enrollment matrix prepared by North Dakota University System that sets forth the criteria which should be applied going forward by universities in determining how enrollment figures are to be submitted. That document, Exhibit 33, is an effective tool that provides helpful guidance to universities. I’d like you to look, when that exhibit is offered, at the date of when the matrix was finalized. That date is April of 2011, a full six months after the erroneous fall enrollment figures were submitted by Dickinson State University.
What does this mean? It means that Dr. McCallum was terminated or they're seeking to terminate Dr. McCallum for not following criteria that hadn't even been established at the time the enrollment numbers were submitted.

Based on the evidence to be presented over the next few days, we respectfully ask that you conclude that North Dakota University System has not met its burden of proof, has not established just cause for Dr. McCallum's termination. Once you so find, the State Board of Higher Education, may, if it chooses to do so, terminate Dr. McCallum's contract without cause. This is the same option they had available in August. Moreover, under these circumstances, the State Board of Higher Education would not have to pay Dr. McCallum's salary for the remainder of his two-year contract, but, instead, under the terms of the policies that govern the parties, the State Board of Education would be obligated to pay one year or less of his current salary.

We ask that you find that just cause for termination has not been established. Thank you.

JUDGE FETCH: Thank you, Mr. Thomas.

At this time we're going to proceed with Dickinson State University's case in this matter. Ms. Donarski, are you ready to call your first witness?

MS. DONARSKI: I am. We call Mike
Hillman, who is the NDUS Vice Chancellor for Academic and Student Affairs.

JUDGE FETCH: Good morning.

THE WITNESS: Good morning.

MS. DONARSKI: You are the NDUS --

JUDGE FETCH: Hold on. Hold on.

Will you spell your full name for the record, please?

THE WITNESS: Michel Hillman.

M-i-c-h-e-l. H-i-l-l-m-a-n.

JUDGE FETCH: All right. Thank you.

Please raise your right hand.

Do you solemnly swear the testimony you're about to give shall be the truth under pains and penalties of perjury?

THE WITNESS: I do.

JUDGE FETCH: Thank you. Go ahead, Ms. Donarski.

MS. DONARSKI: Thank you.

DIRECT EXAMINATION

BY MS. DONARSKI:

Q. Mr. Hillman, you are the -- or, Dr. Hillman, you are the Vice Chancellor for Academic and Student Affairs?

A. That is correct.

Q. How many years have you held that
position?

A. Fifteen years with the North Dakota University System.

Q. And as the Vice Chancellor, briefly describe your duties as it relates to this evidentiary hearing.

A. I’m the chief academic and student affairs advisor to the Chancellor and to the State Board of Higher Education.

Q. Briefly go through your prior work history.

A. Prior to coming to the North Dakota University system in 1996, I served as the Chief Academic Officer with the South Dakota University System for approximately 15 years. And served in various academic research positions in a university setting before that.

Q. So you’ve been in the university setting for how many years?

A. My entire career, since 1976.

Q. And briefly describe your educational background.

A. I’m a baccalaureate graduate of Slippery Rock University, state college at the time, in Pennsylvania. Master’s degree from Indiana University of Pennsylvania, and a Ph.D. in experimental psychology from the University of South Dakota.

Q. Now, with respect to this matter of President McCallum, what was your role?
A. My role began when I received a phone call on the morning of February 4th, 2011, from the National Survey of Student Engagement indicating that Dickinson State University survey process had been suspended.

Q. Okay. So explain the entity that that phone call came from.

A. The State Board of Higher Education at the time was required by State law, which has since changed in the 2011 legislative session, but at the time we had a number of formal accountability measures that we had to report on on an annual basis to the Legislature. The accountability measures included student achievement, student satisfaction, employee satisfaction, and a number of fiscal measures that I'm not directly involved with.

We, as a system, had contracted with the National Survey of Student Engagement as a means to track student engagement and student satisfaction, which has been demonstrated by research to be very directly related to student success. The State Board of Higher Education strategic plan is directly pinned to students' success, helping students to be successful, so this was a key survey.

Q. Okay. And that survey company is also referred to -- the acronym is NSSE, N-S-S-E?

A. That's correct.

Q. Okay. They were the survey company that was hired to survey what?

A. They surveyed all of the six universities'
Students in the North Dakota University System.

Students are asked about satisfaction with access to instructors, satisfaction with access to extracurricular activities, student satisfaction in general. That then data is collected, analyzed at the national level. The survey is conducted nationally, so we don't get any of the responses. They produce a report that gives us national averages, North Dakota University System averages and individual campus data.

Q. Okay. So turn to Exhibit 15. Is Exhibit 15 the system participation in NSSE, which is the National Survey of Student Engagement, is that information that explains that survey?

A. This is -- yes, this is information that describes University Systems' participation in general in the NSSE process.

MS. DONARSKI: Okay. Thank you. We offer Exhibit 15.

MR. THOMAS: No objection.

JUDGE FETCH: Thank you. Exhibit 15 is admitted.

Q. (MS. DONARSKI CONTINUING) I'd like you to now turn your attention to Exhibit 19.

Is Exhibit 19 your email that identifies the phone call received from NSSE regarding the student file provided for survey administration?

A. That's correct. That documents that on the morning of February 4th, I received a call from NSSE regarding suspension of the DSU survey.
MS. DONARSKI: Okay. We offer Exhibit 19.

MR. THOMAS: No objection.

JUDGE FETCH: Thank you. Exhibit 19 is admitted.

Q. (MS. DONARSKI CONTINUING) When you say "suspension of the survey," explain what that means.

A. I had received a call that morning from survey administrators at NSSE indicating that they had suspended collection and analysis of data from Dickinson State University because a number of students who had received the NSSE survey and were asked to respond as Dickinson State University students had contacted NSSE directly and wondered why they were getting a survey when they were not Dickinson State University students.

Q. Okay. So they put the survey on hold because the data they had was inaccurate?

A. They put the survey on hold because apparently the data would have been inaccurate because students who were not DSU students were receiving the survey, that's correct.

Q. Okay. What did you do next?

A. We happened to have a Chancellor staff meeting that morning, which provided me with an opportunity to brief the Chancellor and other senior staff members on the call and gave me an opportunity to seek guidance from the Chancellor in terms of how...
Q. How did the Chancellor have you address the issue?
A. The Chancellor was very concerned about the phone call and what it meant for the reliability and validity of our processes to provide accountability information to the Legislature, so he asked me to begin the process immediately of understanding exactly what had happened.
Q. And was that an unusual step to take?
A. Certainly not. Given the importance of the mandated accountability reporting and the potential seriousness of the matter, I thought it was very appropriate at the time.
Q. Okay. Turn to Exhibit 20. Exhibit 20 appears to be an email from a Scott Staudinger to yourself. Explain the significance of that to the hearing officer.
A. Scott Staudinger is someone that I have not worked directly with much previous to this, although our office administers the survey process. Julie Schepp in our office, my previous academic associate, had resigned as of December 31st. She had worked directly with Scott. I had not. But Scott wears two hats at Dickinson State University. He's basically the Director of Institutional Research and also involved with Dickinson State University planning efforts, campus planning efforts. Scott was identified as the -- earlier you mentioned Integrated Postsecondary Education Data...
Every campus in our office has what's called a key holder for the data. Scott was the IPEDS key holder for enrollment data, so he was a natural contact for me at Dickinson State to try to understand this issue on abnormal reporting.

Q. And this is Scott's response indicating that he would immediately investigate?
A. That's correct.

MS. DONARSKI: We offer Exhibit 20.
MR. THOMAS: No objection.
JUDGE FETCH: Thank you. Exhibit 20 is admitted. Are you members of the public? Go ahead. We'll take an interruption here and allow you --

MS. DONARSKI: Are they witnesses?
MR. THOMAS: (Shakes head.)
JUDGE FETCH: Pardon me?
MS. DONARSKI: I just asked Mr. Thomas if they were witnesses. They are not.

JUDGE FETCH: All right. Let's resume.
MS. DONARSKI: Thank you.
Q. (MS. DONARSKI CONTINUING) Turning to Exhibit 21, who is Richard Brauhn?
A. As of February of 2011, Dr. Brauhn was assistant to the President. In previous -- previous to July 1 of that year, he was the Chief Academic Officer with Dickinson State University.
Q. What was his involvement with respect to responding to NSSE on the survey?
A. Because of the nature of the call from NSSE that the survey had been suspended and because
we were required to provide data for all campuses for accountability purposes, we had to give immediate attention to getting the situation corrected. At the time Dr. Brauhn was stationed in the physical office space where Scott Staudinger was located. My call to Scott, basically, it was desperation to get everything back on track with the NSSE survey. And so it was my understanding that Scott asked Dr. Brauhn to assist him, given that he was knowledgeable in the operations of the campus and was actually a member of our advisory group prior to that for accountability reporting. So Dr. Brauhn would have been very knowledgeable about these issues.

Q. Okay. And during Dr. Brauhn and Scott Staudinger's investigation, what did they find with respect to the data that was submitted?

A. Initially, of course, we didn't understand how someone could receive a survey as a Dickinson State University student and not know that they're a student. In my years as chief academic officer, this situation had never -- I had never encountered anyone who was a student but didn't know they were a student. So we scrambled to find out exactly what happened in this situation, and this is an example -- this is the correspondence from --

Q. "This" meaning Exhibit 21?

A. Exhibit 21 indicates part of the nature of the enrollments of students who may not have known they were students enrolled in courses at Dickinson
State University. This particular piece of correspondence focuses on what is called dual credit. Dual credit is high school students enrolled in college courses, and it's called dual credit because they're eligible for college credit and high school credit. We have Board policies and procedures, system procedures, on dual credit that for us define it as a college course that at the option of the school district superintendent can also be recognized for high school credit. But this is -- was one of the early indications on February 7th of students who apparently fell into this category of not knowing they were students.

Q. Okay.

JUDGE FETCH: Did you offer 21?

MS. DONARSKI: Not yet.

JUDGE FETCH: Okay.

MS. DONARSKI: We offer Exhibit 21.

MR. THOMAS: No objection.

JUDGE FETCH: Thank you. Exhibit 21 is admitted.

Q. (MS. DONARSKI CONTINUING) How was it that they were able to narrow down the data to the energy symposium, Disney symposium, which is identified on Exhibit 21?

A. As I understand it, of course, the people that called NSSE and said we're not a student, I wasn't a student, why did I get this survey, identified themselves by name to NSSE, and my understanding, that discussions between NSSE and
Scott Staudinger that, then, led to trying to track these students down within the system to see if they were, indeed, registered as students and, if so, how were they registered as students.

Our attention quickly turned to one-credit-hour, one-semester-hour courses at Dickinson State for the fall of 2010.

Q. And when you looked at these one-credit-hour courses, you had the DSU energy symposium and the Disney management symposium that were included?

A. Yes, that's correct.

Q. Okay. And when you turn to -- we're still in Exhibit 21, but starting at Bates No. 93, that is a grade roster for the energy symposium. We've redacted the names of the attendees, but other than that, the information is accurate with respect to the grade roster?

A. That's correct.

Q. Okay. This document is the attendee list of all individuals who attended the energy symposium?

A. This would have been at the end of the term and it included all individuals that were not withdrawn or didn't drop the course, so these would have been the complete list on the grade roster.

Q. Okay. And when you look at the grade roster, you see that everybody was given an A. Is that common to see that?
A. I certainly hope it's not common. It's certainly possible, but it certainly led to questioning of the academic integrity of the course.

Q. And I see the instructor as Jon Brudvig.

Who is Jon Brudvig?

A. Jon Brudvig is -- I don't know if at the time, fall of 2010, I think he was interim academic vice-president. He's since become Academic Vice-President at Dickinson State.

Q. And would it be unusual to have Jon Brudvig teach a special topic in science class?

A. My understanding is that Dr. Brudvig is a historian, was related to the Teddy Roosevelt Center, and would not have been unusual to have an academic VP teach an occasional course in his academic area, but as a science course, that would have been unusual, yes.

Q. This class number, 34112, identified as "special topics in science," was that a class that was created by DSU?

A. Every course on every North Dakota University System campus has a separate identifying class number, which enable us to track sizes of classes, assign classes to rooms, all of those kinds of things. A "399," any course that ends in 99 means that it's not a regular academic course. It's a -- falls into another category, in this case a special topics course. An "SCNC" prefix would mean it's in the sciences, general science category. So three prefix indicates a junior level course. So
this would have been a junior level special topics course on a science topic.

Q. Okay. And the individuals that are all identified on this grade roster, were they all juniors at DSU?

A. If you turn the page to Bates No. 0094, it actually provides the class roster as opposed to the grade roster information, and you'll see in the right-hand column that even though the course was a 399 course, a junior level course, all of the people were -- that were enrolled in the course were listed as freshmen, except for a couple that were identified as seniors.

Q. And how was this class roster created?

A. The class roster is normally created -- I'm afraid I'm going to have to back up to the admissions process because that's how data gets into our system. We have a systemwide administrative system that's affectionally known as "Connect ND."

In addition to ways to track human resources and fiscal operations on our campuses, the largest part of Connect ND is related to student information. So it's -- Connect ND is the North Dakota University System, 11 campus-wide administrative system, which admits students, registers students in courses, assigns courses to rooms, provides grades, provides transcripts to students. So it's a comprehensive administrative system.

The way the system is designed to work and Board policy requires that all students have to be
admitted. Many students come right out of high school and are admitted as degree-seeking students. Some students, for example, students who are still in high school, go through a special admit process, but whatever the process is, there has to be some admission to collect who is this student. Federal financial aid tracking requires us, for example, to ask for student's Social Security Numbers, which does not happen in K-12 education, but we are required. Federal reporting also requires us to ask age, gender and race for discrimination reporting management purposes.

So we have a system that, first of all, a student has to be admitted, either as degree seeking or as a special admit. Once they are admitted then, they are activated to be able to register for a course. In the process of being admitted, we track how many previous credit hours have you earned, what previous degrees have you earned. So a student with 36 credit hours, for example, would not meet the classification of a freshman. They would be classified as a sophomore. So the level of the student, when they go through the admissions process, is determined by the credit hours in the system that can be applied towards the degree.

We came to understand that all of these people, except for the two seniors, which I can address, but all of these people didn't go through an admissions process. So we had no background on their previous academic history. We didn't know
what degrees or credit hours they had earned previously. Therefore, they were showing up as zero previous academic experience and they defaulted to the category of freshmen.

Q. Okay. And for a student to be admitted, that requires the intentional act of the student to fill out the admission form to be a student with DSU?

A. That's absolutely correct. Board policy requires -- and it's Board policy that defines the admissions process and admissions criteria. But, again, whether a student is admitted as a degree-seeking student, as most are coming out of high school or whether -- if I went to DSU and wanted to take a course in carpentry, I would have to go through a special admit process to get into the system to take a course, by example. So, again, the system is designed to have very clear admission steps which follow Board policy and also a very clear course registration process.

Q. Okay. And I want to draw your attention to Exhibit 3. Exhibit 3 is the State Board of Higher Ed policy 402.2, the admissions policy; correct?

A. That's correct, yes.

Q. And is that the policy that identifies at least the admission process for beginning freshmen applicants?

A. That's correct. This specific section of the policy would relate primarily to universities.
It's for baccalaureate programs, admission of students to baccalaureate programs, and it identifies the Board's admission requirements.

Q. Okay. And that policy has been in place for a number of years?

A. That policy has been in place since 1991. It was edited last on June 17th, in 2010. I don't recall exactly what it was. It was probably just an editorial correction at the time.

Q. Okay. Nothing has changed in that policy with respect to this evidentiary hearing, has it?

A. No, it has not.

MS. DONARSKI: We offer Exhibit 3.

MR. THOMAS: No objection.

JUDGE FETCH: Exhibit 3 is admitted.

Q. (MS. DONARSKI CONTINUING) Now turn to Exhibit 4. Exhibit 4 is the State Board of Higher Ed's policy 402.3, which is another admissions policy that identifies additional admissions requirements when admitting students?

A. That's correct. This would identify special admission categories.

Q. Okay. And, again, that's a policy that's been in place and has not changed since the issues involving this evidentiary hearing?

A. That's correct. This policy was last edited November 17th, 2005.

MS. DONARSKI: We offer Exhibit 4.

MR. THOMAS: No objection.

JUDGE FETCH: Thank you. Exhibit 4 is
admitted.

Q.    (MS. DONARSKI CONTINUING) Turn to Exhibit 5. Exhibit 5 is North Dakota University procedure, University System procedure section 402.3.1, which is the dual-credit enrollment application?

A.    That's correct. The -- generally, special admits campuses do have some discretion in terms of the admissions process. However, because -- to qualify for state scholarships, students must either complete AP courses or dual-credit courses. And, therefore, we have statewide policy -- systemwide policies on dual-credit enrollment applications. This policy, paragraph 1 requires that the standard application be used and that a copy of that be submitted to our office for tracking purposes.

MS. DONARSKI: Okay. We offer Exhibit 5.

MR. THOMAS: No objection.

JUDGE FETCH: Thank you. Exhibit 5 is admitted.

Q.    (MS. DONARSKI CONTINUING) Explain again to Judge Fetch what dual credit is.

A.    For us dual credit -- we only offer college courses, period. That's all we offer. We have -- in one of the exhibits we have five pages that define our offerings as our instructors, our curriculum, our grading process, our course syllabus. However, state law permits high school
superintendents in North Dakota to recognize college
credits for high school credit. So dual credit
is -- dual, meaning two, means that a student in
high school can participate in an activity that's
recognized for both formal college academic credit,
but also for high school credit.

Q. And, again, the dual-credit enrollment
application policy has not changed since the issues
arising with this evidentiary hearing?
A. This policy has not changed since June of

Q. Turn to Exhibit 6. And that is NDUS
procedure section 402.3.2, Delivery of Dual-Credit
College Courses. That is a policy that's been in
place for a number of years?
A. Yes. Actually, to clarify a fine point,
we have Board policies. These are formal policy
statements that our Board passes to guide behavior
within the system and our interaction with the
public.

Q. When you say "Board," you're referring to
the State Board of Higher Ed?
A. That's correct. The State Board of Higher

Education has Board policies. Many of those
policies enable that additional details be provided
in what are called system procedures. So this
402.3.2 is a system procedure. It's a formal
process that the University System uses to provide
the details to Board policies.

MS. DONARSKI: Okay. We offer Exhibit 6.
MR. THOMAS: No objection.

JUDGE FETCH: Exhibit 6 is admitted.

Q. (MS. DONARSKI CONTINUING) That formal process has been in place and has not changed with respect to the timing of this evidentiary hearing and the issues?

A. That's correct.

Q. Turn to Exhibit 7. We're just going to walk through the policies now since that's where we're at in the exhibit book, kind of jumping to accreditation; State Board of Higher Ed policy section 420, accreditation; is that correct?

A. Yes. That's correct.

Q. And that policy has, it says, an effective date of February 22, 2002?

A. That's correct.

Q. But it was a new policy in 1984?

A. Yes.

MS. DONARSKI: We offer Exhibit 7.

MR. THOMAS: No objection.

JUDGE FETCH: Exhibit 7 is admitted.

Q. (MS. DONARSKI CONTINUING) Exhibit 7 requires that all institutions must maintain accreditation by the North Central Association of Higher Learning Commission?

A. Yes, that's correct. That's the regional accrediter for approximately a 12-state region.

Q. Okay. And so universities such as Dickinson State University are reviewed for accreditation on a periodic basis?
A. That's correct.

Q. Okay. And when is DSU's accreditation review?

A. I'm sorry. I don't have that information directly in front of me.

Q. Is it every two years?

A. There are two regional accreditation processes. One process, the historical process, permits campuses to be reviewed up to a maximum of every ten years. And frequently our campuses get a 10-year accreditation approval. There's a new process that's more of an ongoing active engagement process that many campuses are moving to. As I recall, I think that Dickinson is still with the historical process.

Q. Okay. Turn to Exhibit 8. And Exhibit 8 is a followup that identifies the criteria for accreditation; is that correct?

A. Yes, that's correct.

Q. Okay. And that is applicable to the universities under the North Dakota University System?

A. That's correct. Because the Board policy requires all of our campuses to maintain that accreditation status, then this would apply by reference to all of our campuses.

MS. DONARSKI: We offer Exhibit 8.

MR. THOMAS: No objection.

JUDGE FETCH: Exhibit 8 is admitted.

Q. (MS. DONARSKI CONTINUING) What are the
key criteria identified in this policy that would be applicable to DSU?

A. There are -- of course, they would all apply. And these are -- by way of example, these are not hard-and-fast rules, you have to do it exactly this way. These are by example. But these are examples of good evidence that you've met the criteria, so these are perhaps best-practice examples. All of these would apply. Some of them that relate particularly to this discussion have been flagged here. I'm looking on Bates 0020, core component 1d, an item has been flagged. "Faculty and other academic leaders share responsibility for the coherence of the curriculum and integrity of academic processes."

Q. How has the integrity of the academic process been affected with respect to DSU?

A. If Dickinson State University was offering an offering curriculum, offering a course or courses that were not the result of faculty governance on the campus with faculty control of the curriculum, if they did not appropriately admit and place students into the appropriate courses, if some of the other criteria that are listed here, for example, every course has to have assessments. If there were no assessments on the course, if there's no course syllabus on file, then, really, there's very little basis for any integrity of the course.

Q. And the investigation that was found with respect to the enrollment issue, was that criteria
there?
A. We didn't find any evidence for any of the criteria I mentioned, except one of the courses in
question had a course syllabus that was from the previous year. That was as close as we got to
documentation of a valid academic course.
Q. Okay. We've identified additional applicable areas by an arrow with respect to the criteria for accreditation?
A. Yes. The second arrow indicates, "The Board exercises its responsibility to the public to ensure that the organization operates legally, responsibly, and with fiscal honesty." And, of course, the Board exercises its responsibility here. That expectation is very clear.
And then the last one that's flagged on this page, "The organization incorporates in its planning those aspects of its history and heritage that it wishes to preserve and continue."
One of the main reasons that the Chancellor asked me to review this is to make sure that a precedent was not being set for future operations at Dickinson, but also for other campuses, because the -- a lot of credibility rests on our enrollment reporting. University Systems does not have formula funding, for example, such as state foundation aid formula, but ultimately enrollments do drive resources for planning purposes.
and especially for credibility purposes. So this was very important that we understand what happened at Dickinson.

Q. Okay. Turning to the next page, Bates No. 21, you've also identified additional key areas that are applicable here with the criteria for accreditation?

A. Yes, at the bottom of the page. North Central Commission on Higher Education in the past, I would say, 12 years at least, has been very focused on assessment. Every campus has to implement programs of student assessment. In fact, Dickinson State has been a leader in some of this. When the Board has met in the past at Dickinson State University, I asked Dr. Brauhn and others to present to the Board information on the Dickinson State assessment program. So they -- they are very far along with the NCA overall expectations of assessment, but the expectations of assessment also relate to the course level.

At the bottom of Bates 0021, a number of items have been flagged that relate directly to the symposium courses at Dickinson. The first one flagged indicates, "Assessment of student learning provides evidence at multiple levels: course, program, and institutional." So there is expectation of assessment at the course level. "Assessment of student learning includes multiple direct and indirect measures of student learning." There has to be some basis for a grade. Students
have to be assessed in order for a grade to be awarded.

"The organization integrates into its assessment of student learning data reported for purposes of external accountability." And, of course, that's a big part of what we were interested in, was the accountability reporting.

And the last issue, "Faculty are involved in defining expected student learning outcomes and creating the strategies to determine whether those outcomes are achieved." You'll recall that I mentioned that our system works on students have to be admitted, then they have to be registered. The process was not followed in the examples that we're discussing today.

The other part where there was a failure was the curriculum process. A course number, title, faculty member was assigned in an ad hoc manner, so this was not a regular part of the Dickinson State curriculum process, curriculum under the control of the faculty. Basically, the administration said these are courses without, really, the knowledge of the faculty.

Q. Was this something that -- the process followed by DSU, was that different in the fall of 2010 with respect to admissions and registration?
A. Yes. All of the evidence that we were able to find is that the practices that we're discussing with these symposium courses were not in place before fall of 2010.
One of the other things the Chancellor asked me to do was to check enrollment reporting practices on the other ten system campuses and so I administered a survey to campuses and we analyzed the information in our office and we did not find these practices for these courses we're discussing at the other campuses, either historically or currently.

Q. Okay. And let's look at that survey that you did. Turn to Exhibit 17. Exhibit 17 is the internal review report.

MS. DONARSKI: We offer Exhibit 17.

MR. THOMAS: No objection.

JUDGE FETCH: Thank you. Exhibit 17 is admitted.

Q. (MS. DONARSKI CONTINUING) Briefly explain to the hearing officer what the internal review report is and then we'll get to your survey at the end.

A. The University System had recently hired an internal auditor, Bill Eggert, who is one of the people on the witness list. When this issue surfaced on February 4th, in the senior staff discussion the Chancellor asked me to take the lead in enrollment reporting, but also he asked Bill Eggert to work with me on that and to identify other issues at Dickinson State that might be a concern. So Bill Eggert and I, because of legislative session and other things, we weren't able to actually visit the campus, but our first physical visit to
Dickinson State was on May 4th. And then Mr. Eggert had a number of other telephone calls and face-to-face discussions that resulted in producing this internal review report, which he authored, but which includes a number of issues related to the enrollment reporting that we just discussed.

Q. Okay. And you had referred to surveys that you did with other institutions within the University System, and where would they be at? They are on the end of the internal review report?

A. The summary of the survey -- the survey questions are repeated here beginning on Bates 0076. The questions that were asked of each campus and the answers that were provided are summarized here in this document.

Q. And what was your purpose of surveying the other universities with respect to enrollment practices?

A. One of the concerns was, if this could happen on one campus, is it possible that it could happen on other campuses? How broad is this practice that students attending conferences are enrolled in degree-credit courses? It was a major concern.

Q. And the institutional responses, what did they tell you with respect to that?

A. The institutional responses, we weren't -- we haven't discussed yet the Board policy specifically on enrollment reporting, but State Board policy identifies three distinct kinds of
student enrollment that we're asked to track and report on.

The first, the primary kind, is degree-credit enrollment. We have been talking about IPEDS. When IPEDS asked for enrollment numbers, IPEDS wants degree-credit student enrollments only, students who are enrolled in classes that can be applied towards an academic degree. That defines degree-credit. That's defined the same way and consistent with IPEDS and Board policy. So the primary basis for system enrollment reporting is degree-credit enrollments. The credits have to apply towards a degree.

The Board also asked us to report on the numbers of all students served, not just those degree-credit students, because we have a lot of other services to students beyond degree credit. So Board policy identifies two other kinds of student enrollment that we report on.

The second kind is called non-degree credit. That's often known as continuing education credit. We have thousands of teachers across the state every year who take a non-degree credit course. They're enrolled in a course related to improving their teaching, for example, how to integrate math in the sixth-grade classroom, but those courses are not part of degree programs. They're valid academic activities, but they do not apply to any degree that that campus is offering.

Q. And, thus, they're not reported to IPEDS
as a degree-credit enrolled student?

A. That's correct. And they are also not included in our system fall, initial fall enrollment number. So, again, that's often known as continuing ed. A lot of our activities in this area are for people to continue licensing. Valid academic activity, just happens they don't apply directly to a degree, called non-degree credit.

The third type of credit is called non-credit. An example of non-credit, we have thousands of students across the State who are involved in workforce training activities. For example, I've been to Bismarck State College for Windows training, one-day training in Windows. I did not apply. I was not admitted. I applied only to participate in this non-credit activity. I ended up with a little certificate at the end. We have thousands of students in support of State workforce development that are in non-credit activities. And that's a large and growing piece. Those are a large part of the students that we serve, very valid activity, but, again, not part of official Board degree-credit enrollment reporting or IPEDS reporting.

So that's three different kinds that Board policy draws a sharp distinction between the three.

Q. Okay.
A. So our question was, what practices on the campus differentiate degree-credit, non-degree credit and non-credit enrollments so that we understand how that works.

Q. And that was a question that was posed to all of the institutions within the North Dakota University System?

A. That's correct.

Q. Okay. And, again, you're referring to Bates No. 76, which is in Exhibit 17?

A. And the response to that question is summarized with the statement that, Campuses consistently reported practices in compliance with Board policy that details semester enrollment reporting, annual reporting and IPEDS reporting definitions.

So the other ten campuses said we understand the differences between degree-credit, non-degree credit and non-credit activities.

Q. Okay. And they were consistently following the policy?

A. That's correct.

Q. Okay. And so this identifies the survey questions and the results that you received. What did you find, then, comparing what other institutions were doing with what DSU was doing on enrollment practices?

A. We found that what Dickinson was doing with taking course -- or taking symposium registrations and calling them degree-credit courses
was a practice that was only -- that only Dickinson State University was involved in and, to our knowledge, Dickinson State had not been involved in that activity prior to the fall of 2010.

Q. So they were following the policies prior to the fall of 2010?
A. That's correct.
Q. Did not follow the enrollment policies the fall of 2010?
A. That's correct.
Q. Let's go to the enrollment policies.

Let's start with Exhibit 9. Exhibit 9 is State Board Higher Ed policy 440, enrollment reporting.

MS. DONARSKI: We would offer Exhibit 9 at this time.
MR. THOMAS: No objection.
JUDGE FETCH: Thank you. Exhibit 9 is admitted.

Q. (MS. DONARSKI CONTINUING) Explain the enrollment reporting policies identified in 440.
A. Board policy 440 relates specifically to enrollment reporting. It's a policy that has not been edited since December 20th, 2007. It's a policy that as we implemented ConnectND as our student admission and registration system, we did update it as a part of that process, but it hasn't changed in recent years.

The first statement in policy 440 is that System degree-credit enrollment reporting is intended to be consistent with IPEDS reporting. And
so that links us to the federal report. So the numbers provided to the federal government should be exactly the same as numbers provided to — that the campuses report and that we report as a system. This creates a consistency that’s important for accountability purposes or credibility purposes.

Q. Has IPEDS’ definitions for reporting changed within the last few years?

A. The IPEDS’ definition of degree-credit reporting has not changed in recent years.

Q. Okay. And so walk through the reporting. We have the fall and spring enrollment reports and then we have annual enrollment reports. Can you briefly walk through that reporting requirement?

A. Yes. The fall enrollment report is the degree-credit report that’s consistent with the numbers, the enrollments that are reported to IPEDS. Again, the Board asked us to also report the number of total students served, so we needed to have a policy that’s consistent with the IPEDS report, but also that covered the other types of student enrollments, the non-degree credit and the non-credit enrollments. So one policy explained how all of this is supposed to work.

The first paragraph indicates that we provide enrollment reports for the fall and the spring terms based on the number of students enrolled on the 20th scheduled day of the fall and spring semesters. That 20th day we call the census date. Enrollments on our campuses vary every day of
the term. We have students drop out. We have students leave. We have students withdraw. Occasionally a student is added. We have second eight-week courses. A number of things happen. The Board, for management purposes, presidents and the media, are very interested in enrollment numbers. It attracts a lot of attention. So we had to pick a date to report enrollments that wasn't the first date, because a lot of things are still swirling at that time, but no one is going to wait until December 23rd for an enrollment report. We picked the 20th day of the term, which is after the drop/add period, which is usually the first two weeks of the term. It's after all the data has had a chance to be inputted and analyzed and vetted so that the numbers are relatively solvent, even though students withdraw after that date, courses are added after that date, but it's the date, the census date that we've all agreed to, this is when we're going to report enrollment for consistency purposes.

Q. Okay. So relating this to the DSU fall enrollment, the census date, then, would be September 20, 2010, for DSU fall enrollment that's at issue here; correct?

A. That's correct. Same census date for all 11 campuses.

Q. Okay. And on September 20, 2010, DSU was to report what?

A. Again, paragraph 1 clearly indicates the report relates to enrollments for that term for
degree-credit students based on the number of students enrolled on the 20th day of the class. And the policy goes on to further define "enrolled" means that the student has registered and paid tuition and fees. Occasionally, we have a student that the financial aid has not come through or we're pending something, so making arrangements to pay on an individual student basis is also possible. But the student -- the policy says there has to be documentation that the student is registered and in attendance in order for them to be counted as an enrolled student in a degree-credit class.

Q. Okay. The participants in these symposiums, do they meet the requirements of being enrolled as a degree-credit student who has registered and paid tuition and fees?

A. If the courses that they were registered in were academically valid degree-credit courses, then, yes, they could have been counted. It might be good for me to explain how it is possible for a conference or symposium to be the basis of a degree-credit course.

Q. Certainly.

A. There are a lot of conferences across the State that it is possible to work with a campus and make a conference or a symposium the basis of a degree-credit course. That means that you'll have people who are attending a conference who have been
admitted, special admit status, registered for a course. The course will have a syllabus. The course will have student expectations. The course will have a measurement of student outcomes, in other words, assessment as the basis for a grade. Many teachers will come to a conference and register for one credit, one graduate credit even, but when they do that, they will receive a syllabus for a course, the expectations of this, these are the things that have to be done. Oftentimes there are scheduled discussions by the students in the course with the instructor. Many times a journal or a log is made. For teachers, for example, an example of an assessment might be a teacher goes to a conference on improving math instruction in the middle school. The attendees of that conference will be asked to explain to us how you're going to integrate what you've learned in this conference in your curriculum when you go back to school this fall.

So this is a document that a student provides that's the basis for assessment. The assessments can vary from quizzes, tests, essays, portfolios, examples of revised curricula, but for a valid academic activity there has to be an assessment or a basis for a grade.

It is possible -- an example of a student enrolls in an advanced CPR course, and I don't know that this is a great example, but a student participates in the course and they either pass or
fail. So many of these things are pass/fail, satisfactory/unsatisfactory. Either they got an advanced CPR certification or they didn’t. But there is an assessment, no matter whether or not it’s not a valid academic activity.

Q. Okay.

JUDGE FETCH: Ms. Donarski, we’re going to take a brief recess here. We’re going to take ten minutes and we’ll come back.

(Recessed at 10:46 a.m., to 11:00 a.m., the same day.)

JUDGE FETCH: Okay. We’re back on the record. At this time we will continue with questioning of this witness, Ms. Donarski, and this is Michel Hillman.

MS. DONARSKI: Yes. Thank you, Your Honor.

Q. (MS. DONARSKI CONTINUING) We were continuing on Exhibit 9, policy 440, on the second page, Bates No. 26, goes into the definitions that you had earlier testified to with respect to degree-credit students, non-degree credit students?

A. That’s correct. The first three definitions relate to the three important types of enrollment reporting that I explained earlier; degree-credit, non-degree credit and non-credit and how each of those are defined. The other definitions take it to another level of detail, defining full-time equivalent and a number of other things, but I think our policy on enrollment
reporting, again, hasn't changed in several years. That core policy is still in place and has served us very well.

Q. And for IPEDS' purposes, the fall reporting date is reporting degree-credit students that are enrolled at the university?
A. That's correct.

Q. Okay. And the question then is, were the students that were enrolled by DSU in the symposium, were they DSU degree-credit students?
A. That's correct. Because if they are degree-credit students, then they are included in our enrollment report, they are included in the IPEDS enrollment report, and as we've come to learn, they're included in a number of other reports that campuses must provide for financial aid management and other purposes.

JUDGE FETCH: I'm not sure that that was responsive to the question.
MS. DONARSKI: Right. I'll follow up.
JUDGE FETCH: Thank you.

Q. (MS. DONARSKI CONTINUING) And what your investigation revealed was that those students, were they the degree-credit students that should have been included in that reporting?
A. Our conclusion on the review of these courses, the -- I work very -- the Chancellor directed me to understand and correct any problems with the enrollment reporting in the system. And in that he directed me to work with the appointed
16 person from Dickinson State University. The
17 appointed person that Dr. Coston, the interim
18 president appointed to work with me, was Scott
19 Staudinger, the person that I had worked with on
20 getting the NSSE survey corrected.
21 JUDGE FETCH: Dr. Hillman, I know you're
22 wanting to, you know, bring in a lot of
23 understanding, but please listen to the question and
24 answer the question. That was not the question.
25 THE WITNESS: All right.

Q. (MS. DONARSKI CONTINUING) What was the
outcome of what DSU reported to IPEDS on
September 20, 2010?
A. DSU reported to IPEDS student enrollments
in these courses related to the conferences that we
determined to be not valid degree-credit courses.
Q. Okay. And that resulted in the reporting
of how many additional students?
A. Approximately 200 additional students were
reported to IPEDS. One hundred eighty-six, I think
to be more exact.
Q. Okay. They were students that DSU
reported as degree-credit students who, in fact,
were not valid degree-credit students?
A. That's correct.
Q. Okay. And that would be in violation of
section 440, policy 440?
A. That's correct.
Q. Okay. Now, let's turn to Exhibit 11. Is
Exhibit 11 the -- what is Exhibit 11?
A. Exhibit 11 is the Board policy 608.2 on system employees nonrenewal and dismissal and where --

Q. Okay. I'm sorry. Exhibit 10. I'm one ahead of myself. There you go. Exhibit 10?

A. Exhibit 10, as a result of our comprehensive review of Dickinson and system campus enrollment reporting practices, we determined that the core policy on enrollment reporting still serves us well. No changes were required to that policy.

Q. Meaning which policy -- 440?

A. Policy 440, Exhibit 9.

Q. Okay.

A. However, there were a lot of practical nuances that campuses had to address in the practice of administering students. So just to remove any doubt at all about what the Board's expectations were, we drafted, in cooperation with System Academic and Student Affairs Council and input from System Registrars the Exhibit 11, which is still draft.

Q. Exhibit 10.

A. I'm sorry. Exhibit 10, which is still draft at this point, but it's further detail on enrollment reporting.

MS. DONARSKI: We offer Exhibit 10.

MR. THOMAS: No objection.

JUDGE FETCH: Thank you. Exhibit 10 is admitted.

Q. (MS. DONARSKI CONTINUING) Explain to the
hearing officer what change or additional detail
Exhibit 10 offers to the enrollment requirements.

A. Exhibit 10 is two pieces, one is a Board
policy draft piece that the Board policy asks the
Chancellor to define -- not just define the
categories, but to define the requirements for
degree-credit, non-degree credit and non-credit
activities in subcategories within those activities.
Also, we're in the process of building a system data
warehouse so these definitions would apply to data
that's maintained for historical purposes in the
data warehouse.

So, again, it's still draft. It's been
through one hearing at a Board meeting. It's
been -- at the first hearing -- it's expected that
the Board will adopt this at its November 17th
meeting.

Q. Were there any changes to the definition
or requirements of degree-credit that would affect
what happened at DSU with respect to reporting
degree-credit students in the fall of 2010?

A. Again, no changes to the base definition
of degree-credit, non-degree credit, all of those
categories. No changes to those at all, but the
changes -- for example, Board policy 420 that you've

already discussed requires that all campuses meet
accreditation requirements. We took it to another
level in this policy in paragraph 2, page 30.
Paragraph 2 says that to maintain NCA accreditation this is what we expect for assessment. So that was only in policy 440 referred to by reference, actually 420 by reference. In the 441 draft we're proposing that we be very explicit so there can be no confusion.

Q. In your investigation of DSU's reporting of enrollment in violation of 440, was there any change that's identified now in the procedure 441 that would be material to what DSU was doing when they were reporting in the fall of 2010?
A. No. I don't think there's any material change at the level of the DSU fall 2010 enrollment reporting.

Q. And the same would apply bringing us into the spring of 2011?
A. That's correct.

Q. Okay. I want you to turn to Exhibit 33. Does Exhibit 33 tie into the policy 441 with respect to degree-credit, non-degree credit and non-credit?
A. Exhibit 33 is a background document that we developed that led to the suggested wording that you find in Exhibit 10. So the background in 33 relates to the final format of Exhibit 10.

MS. DONARSKI: We offer Exhibit 33.

JUDGE FETCH: Any objections, Mr. Thomas?

MR. THOMAS: No objection. And I'm not sure if 10 was offered or not?

JUDGE FETCH: It was. It was admitted.
MR. THOMAS: Thank you.

JUDGE FETCH: All right. Exhibit 33 is admitted.

Q. (MS. DONARSKI CONTINUING) So explain the -- you say that Exhibit 33 is the background which ultimately then created Exhibit 10, policy 441; is that correct?

A. That's correct, yes.

Q. Okay. And did you have any discussions with Dr. McCallum with respect to Exhibit 33?

A. When Bill Eggert and I visited the campus, Dickinson State campus, on May 4th, there were various forms of Exhibit 33 that were under development and discussion. When we have a policy of this significance and importance, we discuss it with all the relevant system councils. So earlier versions of this would have been discussed with the Academic and Student Affairs Officers across the system, would have been discussed with the Registrars' group. There was an earlier version that was actually discussed at the Chancellor's cabinet meeting to talk about these issues, so Dr. McCallum was aware of these issues in general because he would have been participating in cabinet meetings at the time.

Q. And with the documentation of degree-credit, non-degree credit, non-credit activity that's identified on Exhibit 33, does that change any of the practices that DSU followed with respect to enrollment at issue at this hearing?
A. In my mind, no, it does not. Again, our review identified other issues on the campuses that we lacked the standard definition. So Exhibit 33 proposes standard definitions, but they're all in areas that I don't think relate at all to the issues with Dickinson State.

Q. Okay. So when you surveyed the other institutions, there were additional issues that were identified that resulted in, then, the creation of Exhibit 33 and the ultimate proposed policy 441?

A. That's correct.

Q. Can you give a brief example of an issue that was outside of the evidentiary hearing?

A. One example might be we have a lot of students that are older than average students that come to us with a lot of experience in their field. We don't want them to have to take courses related to materials that they have already mastered. So if you look at the bottom of Bates 262 in Exhibit 33, we define challenge examinations and what that means. We're proposing a definition of an institutionally-developed exam that enables a student to earn credit for a course through testing rather than course enrollment.

All right. So we're now proposing a challenge exam as an official definition for the future in the system. This doesn't relate at all to the Dickinson fall 2010 enrollment situation, but it was an issue that we identified as part of our overall review. What we're proposing on -- in
paragraph B. on Bates 262 is that this definition --
we could also refer to it by credit by exam. Some
institutions call it advanced standing, so that
eliminates that confusion. These can be degree-
credits. Students actually earn credits towards a
degree by completing a challenge exam. They're
recorded on the official transcript, usually as an
undergraduate career, but we do not report those for
head count enrollment reporting or FTE enrollment
reporting. We also refer to the Board policy on
course and program fees and, typically, the student
pays 50 percent of the regular tuition rate to take
a challenge exam.

Q. So the -- Exhibit 33, which has also been
identified as the enrollment matrix, there was no
determination that DSU did not follow the criteria
that was established in this enrollment matrix?
A. No. This enrollment matrix, again, was
identified -- addresses issues that came out of our
overall review, not specifically to address the
Dickinson State situation.

Q. Okay. So we talked about the survey and
your survey of the institutions and we've gone
through the policies with respect to the admission
practice and the enrollment practice; correct?
A. That's correct.

Q. Okay. After you surveyed the
institutions, what was the next step in the internal
review process?
A. After surveying the institutions, there
were multiple paths. One -- the results of the surveys were included in that internal audit report.

Q. Exhibit 17.

A. Exhibit 17 referred to earlier. We proceeded with the development of policy and procedure 441, again, related to enrollment reporting issues, but not the issues related to Dickinson fall 2010 that we were concerned about, but we also continued to work on how do we correct Dickinson fall 2010 enrollment reporting, because it's like unringing a bell. Once those numbers were out there and integrated, it was very difficult to go back and figure out how to correct it. And, also, I continued the process of review, primarily with Scott Staudinger at the Dickinson campus.

The final step in our review, we asked the president of the DSU faculty senate to also sit in on that summary discussion. And so the summary of -- you know, were these appropriate degree-credit courses or not, that summary discussion included myself, Scott, and the president of the DSU faculty senate and we unanimously concluded that these courses did not have the academic rigor to be considered as degree-credit courses.

Q. Okay. Let's turn back to Exhibit 21. Exhibit 21 has already been offered into evidence. When you say "these courses," Exhibit 21 identifies the Disney course and the energy course class roster.
as well as the grade roster; correct?

A. That's correct, yes.

Q. Okay. Let's turn to Exhibit 22. Let's jump to 23 first. Exhibit 23, does that include the Theodore Roosevelt symposium class roster and grade roster?

A. Yes, it does.

Q. Okay. And that was another class, again that, there were community attendees that were registered as students at DSU, assigned ID numbers and enrolled into a class without their application or knowledge?

A. That's correct.

MS. DONARSKI: Okay. We offer Exhibit 23.

MR. THOMAS: No objection.

JUDGE FETCH: Thank you. Exhibit 23 is admitted.

Q. (MS. DONARSKI CONTINUING) Turning back to Exhibit 22. So at some point in time after the first phone call on February 4, 2011, there was an identification of the specific courses and attendees that were misreported that were corrected to complete the NSSE survey?

A. That's correct, yes.

Q. Okay. And, again, this is just a survey to contact students, enrolled students of DSU; correct?

A. That's correct.

Q. Okay. So on February 9, 2011, five days later, it looks like Scott Staudinger identifies the
students and is able to, then, update, to take necessary steps to complete the NSSE survey?

A. Again, the NSSE survey had very tight deadlines. If we were to complete that survey, which we were required to do for enrollment reporting, we had to get NSSE an updated list, student list, that excluded students that on quick review we determined were not in valid academic courses and the students themselves probably didn't consider themselves students.

Q. Okay.

A. So you see the number on Bates 103 totals 148. At the time we had received an explanation that system procedures and Board policy was followed in the award of dual credit. So all of the activities that we're talking about relate to the -- to the list of the course. However, there could be multiple sections. For example, for the TR symposium, there could be a dual-credit section, for example, and a general public section. The number

148 on this page does not reflect a number of those students who were described as dual-credit, but who were also later declared as non-degree credit students. So this was the initial cut that because of the timing, we had to get through quickly.

MS. DONARSKI: Okay. We offer Exhibit 22.

MR. THOMAS: No objection.

JUDGE FETCH: Thank you. Exhibit 22 is admitted.

Q. (MS. DONARSKI CONTINUING) So Exhibit 22
is an identification of the initial courses and
number of students that were not -- had not been
through the admissions and enrollment process at
DSU?

A. That's a good general description. Again, I refer to the seniors as perhaps being an exception.

Q. Okay.

A. It is possible that students were in a section -- for example, we were told for honor students where there were valid Dickinson State students who were taking other Dickinson State courses who may have been enrolled as seniors in a special topics course, which would be, you know, a valid reason to have a special topics course, actual degree-seeking students. And, of course, it has an instructor with a syllabus and expectations. So the seniors were kind of in a gray area at this point, but the importance was to get NSSE the list of names where no student was going to call NSSE and say, I wasn't a student, why am I getting the survey, because then NSSE would have pulled the plug permanently, so we had to identify, again, students quickly and get them.

Q. And that was step one?

A. Yes, that was the first step.

Q. President McCallum has indicated that the correction to NSSE was turned around within a 24-hour period of time. Was that true?

A. I think the record will indicate that the
notification came on February 4th and that there was
a weekend involved, but I think the wrap-up occurred
around February -- February 9th we were still
sorting it out. February 11th I think we had a
better understanding, but Scott's memo, which was,
again, that first cut, was from February 9th. So
there would have been five days involved and likely
a weekend.

Q. Okay. Turn to Exhibit 24. Exhibit 24 is
your email to IPEDS?

A. Exhibit 24 is my message briefing the
Chancellor on where we're at on changes to Dickinson
State enrollment reporting as of February 23rd.

MS. DONARSKI: We offer Exhibit 24.
MR. THOMAS: No objection.
JUDGE FETCH: Thank you. Exhibit 24 is
admitted.

Q. (MS. DONARSKI CONTINUING) So now we're
getting into the issue of correcting the data that
has been reported to federal IPEDS; correct?
A. That's correct, yes.
Q. And is the data -- has the data been
corrected with respect to the inaccurate data
reported by DSU to IPEDS?
A. Some of the reports have been corrected
and some are still in the process of being
corrected.

Q. Okay.
A. You'll note on Exhibit 24 it refers to
Julie Schepp as the key holder. To correct any
IPEDS data, several things have to happen. The first part -- the first step is that IPEDS has to open up a window for correction. Okay. So they have to say you are now -- it's now okay to edit what you sent us in the fall of 2010. Then the campus key holder has to unlock the data electronically so that they can access it, but the key holder in our office, again, Julie Schepp, had been the key holder, retired at the end of December, and a new key holder had not been appointed. So there were several steps involved in correcting the IPEDS data.

Q. And that is still ongoing?
A. Yes. We have a window of opportunity this fall. We were told by IPEDS you can correct it within this window that's actually into October, November of this year. However, they changed the rules on us and said, no, they want to change some things before they do that. So that change to the IPEDS fall 2010 report, it's my understanding is still pending. Again, I'm not the key holder, but the last briefing I had was that that was still pending because IPEDS said they were going to open the window, but did not open the window.

Q. And the key holder is Scott Staudinger?
A. Scott Staudinger is the key holder on the Dickinson campus and Julie Schepp's replacement in our office is the system key holder -- actually, the statewide key holder.

Q. Okay. I'd like you to turn to Exhibit 26.
Exhibit 26 goes back to the string of emails confirming that they've corrected the status with NSSE; is that correct?

A. That's correct.

Q. And that indicates that Dickinson State University had been reinstated for the NSSE survey tool February 11th?

A. That's correct.

Q. Seven days after the notice?

A. That was the date of Dr. McCallum's correspondence, that's correct.

MS. DONARSKI: Okay. We offer Exhibit 25.

MR. THOMAS: Twenty-six?

JUDGE FETCH: I think you mean 26?

MS. DONARSKI: Oh, 26.

MR. THOMAS: No objection.

JUDGE FETCH: Thank you. Exhibit 26 is admitted.

THE WITNESS: And February 11th was the same date of the NSSE memo and all of the other memos, so, yes, February 11th would be the date that NSSE data was corrected.

Q. (MS. DONARSKI CONTINUING) Okay. Turning to Exhibit 27, Exhibit 27 is an email from Marshall Melbye to yourself and others. Who is Marshall Melbye?

A. Marshall Melbye is the Registrar at
Dickinson State University.

MS. DONARSKI: Okay. We offer Exhibit 27.

MR. THOMAS: No objection.

JUDGE FETCH: Thank you. Exhibit 27 is admitted.

Q. (MS. DONARSKI CONTINUING) Marshall Melbye indicates in his email that he sincerely apologizes for not being aware of the IPEDS classification requirement, non-degree, for dual-credit students and that it was an unintentional oversight on my part. Was that something that you accepted as an acceptable response, an explanation?

A. Actually, I was very surprised at receiving this because we work very closely with the registrars on the definitions that are used for both IPEDS and system enrollment reporting. So to have a registrar in the system not understand that high school students, because they haven't graduated from high school, are in a non-degree classification, really, really surprised me.

Q. Was Marshall Melbye a seasoned Director of Academic Records?

A. Marshall was the registrar at Dickinson State for many years, yes.

Q. And during your investigation, did you discover that procedures were changed --

MR. THOMAS: Objection. Leading. You can let the witness just provide information as opposed to being led to his answers. I think it would be more helpful to the process.
JUDGE FETCH: I'm going to overrule. Go ahead.

Q. (MS. DONARSKI CONTINUING) During your investigation, did you find that there were changes that were implemented in 2010 that were different than prior years' practices?

A. Yes. We found that -- we had no evidence to indicate that what happened with the conference courses at Dickinson in fall 2010 had been -- that practice had been used in the past. And one of the reasons for that is identified in Marshall Melbye's memorandum. Again, when students go through the admissions process and register themselves in courses, the data that the system needs to provide reports is entered as a part of that process. By administering -- by having an administrator enter data for students, in this case he's referring to dual-credit students, loading them into courses, then we don't know the gender of the students, we don't know their age, we don't know their demographic, you know, status. So this indicated that not -- students not going through the required admission and registration process caused other problems in reporting.

Q. The dual-credit students, is that separate from the degree-credit student issue?

A. Yes, it is. And this can be confusing. Let me try to explain. We -- the discussion that we've had this morning relates to degree-credit and non-degree credit classes. Okay. So that -- and
that's what IPEDS and system enrollment reporting is based on. Can the class that you're enrolled in apply towards a degree? That's what defines degree-credit.

However, we also have students of various categories and classes. Federal rules basically say we can't say a student is seeking a degree on one of our campuses unless they are fully admitted. They can't be fully admitted in a post-secondary program unless they're a high school student. So here's a category where high school students were put in degree-credit classes, but a high school student in general is listed as a non-degree student.

It would be like me taking the carpentry course I described at BSC. I would take it for personal growth and development. I'm not interested in a degree from BSC, but that course could be -- for students in the carpentry program, those would be degree-seeking students. I'm a non-degree student when I take the carpentry course, so it can be confusing.

Q. Okay. And in one of those symposiums, specifically the Theodore Roosevelt symposium, there were high school students that were on the attendee list; correct?
A. That's correct, yes.
Q. And they were high school students from Belfield High School?
A. That's correct.
Q. Okay. And they -- were those students
reported to IPEDS as DSU degree-credit enrolled students?

A. Yes. We did find a class section that related to the Belfield High School students who were reported as degree-credit students.

Q. What's wrong with that?

A. The initial response to the Chancellor's question to President McCallum on enrollment reporting practices indicated that Dickinson State was following Board policy insisted procedure on dual-credit students. So the initial -- our initial analysis indicated that, okay, these are valid dual-credit students.

Q. Okay. Now let me stop you there. So when you say the response, turn to Exhibit 28. Exhibit 28 is President McCallum's response to the Chancellor with respect to questions on the enrollment issue?

A. That's correct.

MS. DONARSKI: We offer Exhibit 28.

MR. THOMAS: No objection.

JUDGE FETCH: Exhibit 28 is admitted.

Q. (MS. DONARSKI CONTINUING) Part of Exhibit 28 contains a memo from Dr. Jon Brudvig that is addressing the dual-credit issue. Is that what you are referring to?

A. Yes. Bates 124 in that exhibit, the paragraph that begins in the center of the page, "Please note," provides a description that's actually a pretty good description of how a
dual-credit course should be offered. It indicates that Dr. Brudvig and Mr. McDowell, with the approval of Superintendent Remington, developed a series of lessons to ensure follow-up study on the topics that students learned about their participation in the 2010 Teddy Roosevelt symposium.

So, in other words, as I described before, a conference or a symposium can be the basis for a valid academic activity based on lessons, based on assessment of students.

Q. Okay. And did that information that Dr. Brudvig and Dr. McCallum provided to the Chancellor February 22, 2010, was that determined to be accurate?

A. Further analysis of that particular section indicated that a course syllabus did not exist, indicated that Dr. Brudvig, although he had plans to visit Belfield High School and participate in an actual course, that never materialized. So there might have been plans, but we had no basis for any student assessments. No basis for grading. We determined that although it might have been a plan to have a valid academic activity, it did not end up as such.

Q. And how did that impact, then, the Belfield High School students that were reported to IPEDS as degree-credit students?

A. That meant we had to go back and add that
group of students to the list of students who were not valid degree-credit students. And, also, Dickinson State was to notify students that -- the action that we were taking to remove them from the course, but they probably didn't know they were in the course because they didn't receive any grade.

Q. Okay. Turn to Exhibit 32. What is Exhibit 32?

A. The U.S. Department of Education, on picking up on the news on issues with Dickinson State University enrollment reporting, drafted a letter to Chancellor Goetz, a certified letter, which is actually Exhibit 31.

MS. DONARSKI: Stop for a second. We offer Exhibits 31 and 32.

MR. THOMAS: No objection.

JUDGE FETCH: Exhibits 31 and 32 are admitted.

THE WITNESS: And in the letter in Exhibit 31, the U.S. Department of Education was very concerned about the accuracy of IPEDS enrollment reporting they refer to as "IPEDS surveys." And they reminded us that the expectation is to have timely and accurate information reporting. They asked the Chancellor to provide a description of the situation and the current status of the situation to a U.S. Department of Education official, Mitch Cary, who is located in their Denver office, to provide that within 30 days.

Q. (MS. DONARSKI CONTINUING) Did you assist
in putting together the response to the U.S. Department of Education, Federal Student Aid?

A. Yes. The Chancellor asked me to assist in providing a response.

Q. And that response is Exhibit 32?

A. Yes, that's correct. Exhibit 32 is a copy of the response.

Q. Attached to that response was the internal review audit that Bill Eggert performed?

A. That's correct.

Q. Also attached was a 2010 fall enrollment document?

A. Yes. By reference we refer to system enrollment reporting and so, yes, by reference that was also attached.

Q. Explain to the Hearing Officer the significance of the 2010 fall enrollment report which starts at Bates No. 207.

A. The system fall enrollment report is the official enrollment report, again, by Board policy designed to be completely consistent to reconcile with the data provided to IPEDS for enrollment reporting purposes. This is the official report that we use to provide information for accountability reporting to the Legislature. This is the report -- when we talk about University System enrollments, this is the official document that describes the enrollments and all the sub-categories on all 11 campuses and at the system level that's provided to our Board and to
Legislators for policymaking purposes.

Q. Is the enrollment data for DSU accurate in this report?
A. The data in this report, no, is not accurate, has not been corrected for Dickinson State.

Q. I'd like you to turn to Bates No. 232. Can you identify for the Hearing Officer an example of the data that is inaccurate in this report?
A. Bates 232 is a five-year summary of enrollment at all 11 system campuses. If you look on the right-hand side of the page, there's a column that indicates the year 2010. The third campus down is Dickinson State University. Dickinson State University -- "HC" refers to head count. "FT" refers to full-time. And "FTE" refers to full-time equivalent. Full-time equivalent is simply all the credit hours taken by everyone at Dickinson State University in degree-credit courses divided by 15, since 15 credit hours is considered a full-time load for this purpose. If you look at the number 2,668, that number for Dickinson State University was over-reported by approximately 186 students. It didn't really affect the full-time number. One credit hour didn't really have much of an impact, but it did also impact the full-time equivalent because now all of those credit hours were now taken out of the Dickinson State total. So the numbers for Dickinson State 2010 head count and FTE were inaccurately reported in our system fall enrollment report, which
also would have been on the fall IPEDS report.

Q. So what? What does that affect with respect to DSU?

A. In my opinion, the primary impact is a creditability issue. By not having reliable, valid numbers that we as a system and each campus has provided to the Legislature, it's serious -- it's a serious problem with credibility. If we gave them numbers that were inaccurate, how can they trust us in the future? We work hard and as you can, I think, see, from Board policy very explicitly define expectations for enrollment reporting. When the system breaks down, however it breaks down, it affects credibility.

Q. Does the Legislature utilize this report when it looks at funding?

A. I would say they certainly do look at the report when they look at funding. Again, unlike K-12 education, higher education does not have a funding formula that's enrollment driven. However, we do have a finance plan that ultimately determines our request to the Legislature based on enrollment numbers. The enrollment numbers that we're talking about would reduce Dickinson State head count below 2,500. We don't know what a new finance plan is going to look like. The Legislature expects us to develop one, but this could -- this change could put Dickinson in a completely different enrollment category under the new plan, below 2,500 and above 2,500 enrollment on a campus.
So, again, it's not -- you know, this over-reporting resulted in X dollar impact. We can't say that explicitly, but certainly the reliability and validity issue, but also the long-term issue of planning for higher education finances is impacted.

Q. Okay. Now I'd like you to turn to Exhibit 34.

MS. DONARSKI: I offer Exhibit 34 at this time.

JUDGE FETCH: Any objections?

MR. THOMAS: No objection.

JUDGE FETCH: Exhibit 34 is admitted.

Q. (MS. DONARSKI CONTINUING) Explain to Judge Fetch what Exhibit 34 is, what it identifies.

A. Again, Scott Staudinger and I were working on the analysis of all of the one-credit hour sections and further detail on those that were -- did not have syllabi on file and were potentially problematic as non-degree reporting students. This September 26, 2011, memorandum from Scott to me was his official report to me of the completion of his review, that this was the total number of students that we were now focusing on, 217 individual students, and because there were some duplicates, some of these people went to both the Teddy Roosevelt symposium and the energy symposium, so we didn't have to remove 217 names from the enrollment report. The final number was 213 students that needed to be removed in the fall.
Q. Okay. And this report, this memo summarizes, then, the affected courses as well as the number of students that were misreported?

A. That's correct.

Q. Turn to Exhibit 35. Does Exhibit 35 contain the list of individuals that were incorrectly reported with, obviously, their personal identifying information being redacted for obvious purposes of the name, address, phone number, birth date?

A. Yes. This is an identification of individuals that were registered in those course sections.

Q. Okay. To correlate to the number identified on the summary memo?

A. That's correct.

MS. DONARSKI: We offer Exhibit 35.

MR. THOMAS: No objection.

JUDGE FETCH: Thank you. Exhibit 35 is admitted.

Q. (MS. DONARSKI CONTINUING) Turning now to Exhibit 36, is Exhibit 36 a summary of the energy symposium, the quality service and the Theodore Roosevelt symposiums?

A. Yes. Exhibit 36 is actually part of the response that Dr. McCallum provided to president --
or to Chancellor Goetz's questions about enrollment reporting. So it was an attempt to document the view of those symposia in regards to student enrollment.

MS. DONARSKI: We offer Exhibit 36.
MR. THOMAS: No objection.
MS. DONARSKI: Thank you.
JUDGE FETCH: Exhibit 36 is admitted.
Q. (MS. DONARSKI CONTINUING) Exhibit 37 is the propaganda or the pamphlet for the Theodore Roosevelt symposium?
A. That's correct. It was a marketing brochure for the Teddy Roosevelt symposium.
Q. Okay. And that's a marketing brochure. Do universities do marketing brochures for their courses?
A. No. We don't do marketing brochures for courses. Again, it's possible for a course to be designed around a symposium, but -- and so there might be a course that's related to a symposium that has a marketing brochure, but this is not -- this, for example, is much different than an academic catalog entry for a validly offered course.

MS. DONARSKI: We offer Exhibit 37.
MR. THOMAS: No objection.
JUDGE FETCH: Just a couple questions for foundation. Where did this come from? Who developed this?
THE WITNESS: Your Honor, I don't think I'm in the best position to provide that, but it did
come from the campus. If your question is who on
the campus developed it, I can't answer that.

Q. (MS. DONARSKI CONTINUING) But it was DSU
that developed the marketing brochure?
A. Yes. This would have come from -- been
released by the campus.

JUDGE FETCH: All right. Exhibit 37, if I
didn't say earlier, was admitted.

Q. (MS. DONARSKI CONTINUING) Turn to Bates
No. 294. And we're still on Exhibit 37, the
Theodore Roosevelt marketing brochure. Now, it says
there that one semester hour graduate continuing
education or one semester hour undergraduate credit
is awarded to all who attend the fall symposium.
Anything wrong with that?
A. Again, back to my analogy with teacher
conferences. It's possible to structure a degree-
credit course around a conference or a symposium.

My understanding is that the graduate course,
because Dickinson did not have permission to offer
graduate credit at the time, we encourage campuses
to work together, so in partnership with Minot State
University, someone attending the symposium would
have had to meet the criteria for class
participation at Minot State University and would
have been eligible for credits if they completed all
those requirements. Now, again, I think that this
is described as one semester hour graduate/
continuing ed credit. At least -- well, no, there
isn't a slash in there. It's hard for me to tell on
this copy. But the continuing ed credit, you'll recall, falls in the category of non-degree credit, not reported to IPEDS, not reported to system enrollment reports. So continuing ed credit is not degree-credit.

But the other point here, an opportunity for academic credit and, indeed, it's possible to structure a valid academic course around the conference, that students could be eligible for one semester hour of undergraduate credit from Dickinson State University. When I see this, this indicates to me that everyone attending the conference is not enrolled in a course, that, oh, by the way, you do have opportunity to attend a course and earn credit, part of which involves attending the symposium.

Q. The opportunity was there for academic credits if individuals chose to do so in attending the symposium; correct?

A. From this it would appear to me to be optional whether they did any of it or optional for continuing ed credit or undergraduate credit.

Q. If a student who attended the seminar or a participant who attended the seminar wanted to obtain the one hour, one semester hour undergraduate credit, what would they have to do?

A. For a valid activity, the student would have to fill out an application. It could be as a special student, as a non-degree student. In my carpentry example, for example. They would then receive an ID number. They would receive
authorization to enter the system to register themselves in the course.

Q. And did that occur with respect to the participants that you've identified as inaccurately reported by DSU?

A. Our review indicated that, again, the students that we're discussing did not go through an admission process, did not register themselves in courses, but that they were administratively admitted and registered by someone on the DSU campus.

Q. Turning to Exhibit 38, is that the marketing propaganda for the energy technology symposium?

A. Yes.

MS. DONARSKI: We offer Exhibit 38.

MR. THOMAS: No objection.

JUDGE FETCH: Exhibit 38 is admitted.

Q. (MS. DONARSKI CONTINUING) Turn to page Bates No. 298, which is in Exhibit 38. On the lists of attendees who were enrolled by DSU as freshmen, did that include some of the speakers, the guest speakers that were at the energy symposium?

A. Yes. I do identify some of the names of the people listed as speakers also registered as students in the symposiums.

Q. And registered not only as students in the symposium, but was that information, then, registered into DSU as students attending DSU as freshmen?
A. Yes. Dickinson State then took the names of those conference registrants, put them into a course in the ConnectND system and, therefore, by doing so, they appeared as degree-credit students.

Q. To show how far-reaching it was, who were some of the attendees that, in fact, DSU enrolled as freshmen students?

A. I recall seeing the name of Senator Wardner. I think Paul Steffes was also listed as a student. Others were also possible. I don't know for sure.

Q. Okay. And those would have been energy experts or panelists that, in fact, spoke and may have attended the energy symposium?

A. That's correct.

Q. Turning to Exhibit 39, is that the marketing propaganda for Disney's symposium on quality service and hospitality?

A. Yes, it is.

MS. DONARSKI: We offer Exhibit 39.

MR. THOMAS: No objection.

JUDGE FETCH: Exhibit 39 is admitted.

Q. (MS. DONARSKI CONTINUING) The first page of Exhibit 39 states, "All attendees will receive continuing education credit through Dickinson State University." Continuing education credit is a non-degree credit?

A. That's correct.
JUDGE FETCH: What page is that on?


JUDGE FETCH: Thank you.

Q. (MS. DONARSKI CONTINUING) Right under "you'll learn to," the last wording in italics. So, "All attendees will receive continuing education credit through Dickinson State University."

You said that was non-degree credit?

A. Continuing education credits are non-degree credits.

Q. And those are not reportable to IPEDS?

A. That's correct, not reportable to IPEDS or as a part of system enrollment reporting.

Q. But all attendees that attended this seminar were reported to IPEDS as degree-credit students; correct?

A. Yes. But I do want to clarify one point. You said "all attendees." There is one criteria that Dickinson State monitored for attendance at the symposium. The general expectation and Board policy and accreditation requirements is that there are 15 contact hours for every credit hour. So this is how you determine how many credit hours a course is worth, that kind of thing. Typically, 15-week semester, a three-credit-hour course would meet three times a week for each of the 15 weeks. Dickinson State did have one criteria whether they were counted or not. They monitored the attendance at the symposia and someone had to attend all of the
parts of the symposia in order to then be registered in the degree-credit class. So that's the only criteria we could find that these courses did meet, was the 15-credit-hour contact hour expectation for credit hour.

Q. Okay. So that criteria was I physically sat at the symposium for two days and I've got the hours in the seat; right?

A. Yes.

Q. What's the other criteria that was not met?

A. The other criteria that was not met includes there's no course syllabus. The faculty were typically appointed in an ad hoc manner. Some faculty didn't realize until the end of the term that they were the listed faculty of record in the course. The students were not assessed. All of the students received A grades. They were given a grade of an A, but none of the students received a notification that they did receive a grade, so none of the students were able to go onto ConnectND because they didn't go through the admission or registration process and get the grades that they received in this case. So those are the ones that come to mind.

Q. Okay.

A. And, of course, the overall criteria that we had people that were called students who didn't consider themselves students. It's important that -- the student application process is important
because federal financial aid administration requirements require students to report on every course attempted in their whole academic life, so if a student doesn't know they were enrolled as a student, that could be very problematic in financial aid administration.

Q. To the student?
A. Yes, to the student.

Q. So not only is there detriment to DSU, there's detriment to these attendees who were registered as degree-credit students and reported as that by DSU?
A. Correct.

Q. I'd like you to turn now to Exhibit 85.
And what is Exhibit 85?

A. Exhibit 85 was my report to the Chancellor and Scott Staudinger's report to Interim President Coston on the status of our review of the Dickinson State fall 2010 enrollment reporting.

MS. DONARSKI: Okay. We offer Exhibit 85.
MR. THOMAS: No objection.
JUDGE FETCH: Thank you. Exhibit 85 is admitted.

Q. (MS. DONARSKI CONTINUING) You identify the particular degree credit course offerings that did not meet NDUS and DSU requirements?
A. That's correct.

Q. And were there breaches attributable to those five courses or sections that were identified?
A. Yes. Our research into these courses
indicated that none of the courses had any of the
criteria that I mentioned earlier; that is, student
assessments, student admission, student registration
into courses, student knowledge that they were even
in a course, with the one exception, the bottom one,
Cataloging All Things Roosevelt, we actually did
find a year-old course syllabus for that course. It
was an abbreviated course syllabus, but that piece
you could say was in place for that, but none of the
courses had any of the other characteristics.

Q. And those would be violations of NDUS and
DSU policies and procedures?
A. Yes. Again, Board policy requires
students be admitted, either fully admitted as
degree-students or special admits. They require
students to register in the courses and by reference
to the accreditation requirements, we require that
academic offerings be valid academic offerings that
necessarily have to include assessment and none of
these course sections involved any assessment of
students as a basis for awarding a grade.
Q. Okay.
A. And all of the students, by the way, in
all of these that were awarded grades got grades of
A, as I recall.
Q. Turning to Exhibit 87, now that you’ve
identified the specific attendees and sections that
were incorrectly reported, does Exhibit 87 identify
the enrollment reporting correction steps?
A. Yes.
Q. Is that a document you prepared?
A. I prepared Exhibit 87 with help and comments from others, but it is just a broad summary of all of the steps needed to be completed to correct the Dickinson State fall 2010 enrollment situation.

MS. DONARSKI: We offer Exhibit 87.
MR. THOMAS: No objection.
JUDGE FETCH: Thank you. Exhibit 87 is admitted.

Q. (MS. DONARSKI CONTINUING) How many hours and resources have been invested to correct the enrollment reporting errors by DSU?
A. We did not explicitly track hours, at least I didn't, but there were many weeks where half of my time was spent on the Dickinson State enrollment reporting situation. I think in my discussions I asked Scott Staudinger to do a lot of the legwork collecting syllabi and that involved going down to the department and faculty level, so I know that almost all of Scott's time was consumed in doing this. We had many other people in our office, technical staff.

I didn't realize how complex this would be when we first started it. I really think we opened up Pandora's box, for this reason. We knew who was registered in the courses for those conferences, but we didn't necessarily know when they were registered in the courses, was it before or after the census date that drove the enrollment report. So we had to
track down not just were they registered, but when they were registered. And then for students who were, the seniors that I mentioned that were valid Dickinson State students, we couldn't take them out of the system completely. We had to do step-by-step for every student. Some students were in multiple of these courses so we had to figure out what’s the unduplicated count. We're at -- level one is indicating completed, but we have many more steps to go through to complete the rest of the corrections. I should say that the left-hand box, there was a deadline for Dickinson to complete the financial aid status report, which that's FISAP report, and we went all the way up to the deadline and we provided the most accurate information possible because the campus financial aid is dependent upon that, but we'll have to continue to review that the numbers that we gave them are absolutely accurate, because, again, even though we've identified the set, we're going through all the nuances of these students in the system.

Q. Is this a serious issue?
A. Oh, this is a very serious issue. As you reported, not only can the campus be fined for misreporting this information, but the campus can lose its federal financial aid eligibility. And,
typically, our campus -- our campuses, about 80 percent of the students on every campus receives federal financial aid. So if -- the future of the campus is very much dependent upon that aid being available.

Q. Did you have any discussions or did you include President McCallum with respect to interviewing him during the investigation on this issue, give him an opportunity to respond and explain?

A. When the Chancellor asked me and asked Bill Eggert to review the situation, because we were in the middle of a legislative session, we weren't able to schedule a visit to the campus until May 4th, 2011. When we set that visit up, I worked with Dr. McCallum's administrative assistant and we gave him the option of doing an entry interview with us, an exit interview or an interview as part of the regular process. Because of his timing that day, he chose to meet with us during a part of the regular process. So Bill Eggert and I had, I believe it was a half-hour meeting scheduled with Dr. McCallum.

Q. Okay. And when did that occur?

A. That occurred on the morning of May 4th, 2011.

Q. And what -- how did that interview or meeting go?

A. We started the discussion by again explaining -- the Chancellor had indicated to President McCallum that we would be there and the
purpose for our visit. We explained again the purpose for our visit was to understand enrollment reporting issues at Dickinson State that had led to the suspension of the NSSE survey. The Chancellor had asked us to formally look at this and to meet with everyone that was involved in the process so that we had a full understanding.

At the time we were most interested in developing an understanding of what happened. The Chancellor did not say, You need to get quotes from people, you need to, you know -- you need to get people on record. That wasn't the purpose of our visit at that time. The purpose of the visit was to develop an understanding of what happened at Dickinson that led to the -- to students being surveyed who didn't think they were students. And so we did have a half-hour meeting scheduled with President McCallum.

Q. What was President McCallum's responses to what happened with respect to the enrollment issue?
A. We got through the basic summary of why we were there and President McCallum was interested in talking about -- we just -- after the break we talked about policy and procedure 441, the issues in policy and procedure 441, that had just within the previous couple days, I believe, been discussed by the Chancellor's cabinet. And the Chancellor's cabinet thought that the additions that we were looking at in policy 441 made sense. There were no questions, comments or concerns at the Chancellor's
cabinet with the additional level of detail that we
were discussing in policy and procedure 441, so we
thought we were in good shape, but that -- President
McCallum wanted to talk about that particular issue
that had been discussed at the cabinet.

Q. "Issue" meaning policy 441?
A. The issues within policy 441.

Q. But I thought that was unrelated to the
enrollment issue at DSU?
A. I don't think it is related because it's
different issues, really, that were identified with
the broad survey and clarification. Certainly, you
know, lack of assessment was one of the issues in

Dickinson enrollment reporting and policy 441 does
further clarify assessment, but that's not the core
issue. He had a concern that as the enrollment
reporting described in 441 was laid out, that
enrollment reporting would not reconcile with
tuition collections. And that was really the
complete basis of our discussion with President
McCallum. We weren't able to get into any of the
other issues of what happened, what didn't happen on
campus.

Q. Did you have an opportunity to explain at
all to President McCallum that 441 was not the issue
or your intended purpose for the visit?
A. Well, Dr. McCallum indicated not only did
he have concerns, but other presidents had concerns
and I asked him what other presidents, because no
one had said anything in the cabinet meeting and he
suggested that if I was doing my work right, I would
find out about other presidents.

Q. The Chancellor's cabinet, who is that?
A. The Chancellor's cabinet are the 11 campus
CEO's, that's 10 presidents, and the executive dean
at Bottineau and the University System Vice
Chancellors and Randall Thursby, who is the system

Q. With respect to the reporting errors at
DSU, did President McCallum provide to you any
insight as to his understanding of what the errors
were or his recognition of the severity of the
errors?
A. No, because we had already corrected the
NSSE piece of this, which is only a small piece, he
took the approach that these have been corrected,
you know, it's not an issue anymore, you know, we
don't need to worry about it.

Q. Do you believe that you gave President
McCallum full opportunity to provide any information
that was needed as part of your investigation on
enrollment?
A. Well, certainly we provided the
opportunity. We were following up on the
Chancellor's questions to President McCallum on
enrollment reporting and his responses. The
Chancellor informed him we were there to review
Dickinson State enrollment reporting. At the
beginning of the meeting we told him we were there
to review Dickinson State enrollment reporting. So I think certainly the opportunity was there.

Q. You said the meeting was only a half-hour.

Why?

A. I think that's -- again, we were meeting with a number of people that day, but that's what we were able to work into the schedule.

Q. Into the President's schedule?

A. That's correct.

Q. Exhibit 14 identifies definitions for IPEDS, which is the Integrated Postsecondary Education Data System?

A. Yes, that's correct.

Q. Okay. And the significance of that would be IPEDS' definition of fall enrollment?

A. Yes.

MS. DONARSKI: We offer Exhibit 14.

THE WITNESS: And, again, the --

MS. DONARSKI: Hold on.

JUDGE FETCH: Just a moment. Any objections?

MR. THOMAS: No objection.

JUDGE FETCH: All right. Thank you.

Exhibit 14 is admitted.

Q. (MS. DONARSKI CONTINUING) What is IPEDS' requirement or definition with respect to the fall enrollment reporting?

A. And, again, the IPEDS report, if you look
at the third paragraph, the report is based on students that are those enrolled in classes creditable towards a degree or other formal award. So the IPEDS' definition clearly expects that students be in degree-credit classes, classes that students can use to build a degree program. And, again, that's consistent with the Board recording policy 440.

Q. Any other campus do what DSU did with respect to the reporting of these attendees?
A. To my knowledge, no.

Q. Has this occurred before 2010?
A. To my knowledge, at Dickinson State, no.

Q. Your investigation revealed that policies were changed or practices were changed specifically in the fall of 2010?
A. Yes, that's correct. All the evidence that we have indicates that there was a special effort made at Dickinson to enroll students in degree-credit courses and that resulted in the practices that we just discussed.

Q. Who was directing that change?

MR. THOMAS: Objection. Foundation.

JUDGE FETCH: A little more clear on that objection, please.

MR. THOMAS: Well, does this witness have knowledge of who was directing any of these employment -- or any of these employees to submit inaccurate enrollment reports, because we have heard none so far? I'm sorry, Your Honor. If the witness
doesn't know, he should state that he doesn't know as opposed to speculating.

MS. DONARSKI: Let me ask some additional questions.

JUDGE FETCH: Thank you.

Q. (MS. DONARSKI CONTINUING) As part of your investigation, did you interview DSU employees?

A. We interviewed, yes, a number of DSU employees.

Q. What did the DSU employees tell you with respect to the fall 2010 enrollment reporting?

A. We interviewed a number of employees and, therefore, we received answers at many different levels. For example --

MR. THOMAS: Your Honor, I object. There were only two people that submitted the reports that are in question. Mr. Staudinger submitted the report to NSSE and Mr. Melbye submitted the IPEDS report. Those were the employees that accepted responsibility for submitting those reports. If those employees were specifically directed by Dr. McCallum to submit false reports, we haven't heard about it and we certainly received no evidence about it. But what other employees not directly responsible for the submission of those reports would have to say is, frankly, not significant and not responsive to the objection that we raised.

JUDGE FETCH: I'm going to sustain the objection.

Q. (MS. DONARSKI CONTINUING) The data that
is reported to IPEDS, where does that come from?

Which offices at DSU?

A. The IPEDS data, again, there's multiple factors, human resources and finance would come from those offices, but in this case the enrollment information could come through the Office of Institutional Research, but it would have to be based on data that others have entered into the system.

Q. Okay. And who were the others that would enter the data into the system?

MR. THOMAS: Same objection, Your Honor.

There was an institutional employee who had responsibility for submission of these reports and the witness hasn't described who that person is with respect to either the IPEDS report or the NSSE reports and I think that's responsive to the inquiry.

MS. DONARSKI: The reports include data that somebody at DSU had to enter.

MR. THOMAS: The reports are the responsibility of an institutional employee to assemble and to attest to the accuracy of those reports. Those employees are Mr. Staudinger and, apparently, Mr. Melbye. And anybody who provides information leading up that chain is not significant.

MS. DONARSKI: That's inaccurate.

MR. THOMAS: What's significant is who submitted those documents.
JUDGE FETCH: Aren't you going to be having those witnesses testify?

MS. DONARSKI: We are. But we have Dr. Hillman, who did an investigation that included the admissions, registrations, the registrar. Not all of those individuals are going to testify. Some are unavailable. Some are no longer at DSU. Some are in different states. As part of his investigation it included an understanding of what were the steps that were taken with admissions, with registrations, and those employees explained that to him and how that changed in 2010. That was part of his investigation, as well as Bill Eggert's that went directly into the internal review audit which is Exhibit 17.

MR. THOMAS: Your Honor, the inquiry was whether any of these employees were specifically instructed by Dr. McCallum to submit knowingly false and inaccurate information to either NSSE or to IPEDS. If the witness has specific information about that, relating to those employees who submitted the allegedly intentionally inaccurate information, I'd like to hear that. I think that's relevant, but anything else is not significant.

JUDGE FETCH: I agree with you, Mr. Thomas. I'm going to sustain the objection. I thought we were maybe winding up with this witness, but it's now 20 after 12. Can you give me an estimate of how much more time you are going to need for direct examination?
MS. DONARSKI: For direct exam, probably another ten minutes.

JUDGE FETCH: We're going to break at 12:30 so we'll go another ten minutes. Go ahead.

Q. (MS. DONARSKI CONTINUING) I'd like you to turn to Exhibit 55. I'll give you a chance to look through those emails.

A. (Witness reviews document.)

Q. Exhibit 55 contains a string of emails with respect to the participants who attended the conferences that we've been discussing. Are you familiar with those emails?

A. Yes. I have seen this background information before.

Q. Okay. First one is --

MS. DONARSKI: Well, first of all, we offer Exhibit 55.

MR. THOMAS: Your Honor, I would object on foundation grounds. It appears that this witness wasn't involved in the email correspondence at all and it also appears that the authors of the emails contained within Exhibit 55 are among the witnesses that the other side intends to call. So we would object on foundation grounds.

Q. (MS. DONARSKI CONTINUING) Did you receive these --

JUDGE FETCH: Just a moment. What was your last part? These are witnesses you are intending to call?

MR. THOMAS: They're on the other side's
witness list, I believe, Your Honor.

JUDGE FETCH: All right.

MS. DONARSKI: They are not. Some are.

Not all of them.

JUDGE FETCH: Before I rule on the objection, let me hear a little more about what the question is going to be.

MS. DONARSKI: Certainly.

Q. (MS. DONARSKI CONTINUING) As part of the investigation, did employees from the Office of Extended Learning provide emails in response to how participants were registered as degree-credit students?

A. Yes.

Q. And are these emails the emails that you received from the Office of Extended Learning employees relating to how the symposium attendees were registered as degree-credit DSU students?

A. These are copies of correspondence that Bill Eggert received as a part of his background work on this issue, yes.

Q. Okay. And in working with Bill, you received these copies as well?

A. That's correct.

MS. DONARSKI: Okay. We again offer Exhibit 55.

MR. THOMAS: Same objection, Your Honor.
The fact that this witness has seen these exhibits before doesn't lay foundation for them. He didn't prepare them. He has no personal knowledge of the contents of them, and he wasn't even the person that prepared the investigative report in which these documents were apparently considered, so our objection is still on the grounds of foundation.

JUDGE FETCH: I'm going to sustain the objection. It's now 12:25. We're going to recess for lunch. We will stand in recess until 1:45, Central Time.

(Lunch recess was taken from 12:25 p.m., to 2:01 p.m., the same day.)

JUDGE FETCH: Okay. Let's come back to order. It's two o'clock p.m., and we are going to resume the hearing in the matter of the appeal of Dr. Richard McCallum.

We had a conference with counsel just before we went on the record revisiting the admission of Exhibit 55, and upon reconsideration, I am going to admit Exhibit 55. And at this point I'm not certain what weight I will give that when I make my findings, but after I've heard all the evidence and I'm making my decision, I will give it whatever appropriate weight I feel it should have when I make my findings. So Exhibit 55 is admitted.

And one other thing I want to mention for the record, the State Board of Higher Education is not an administrative agency under North Dakota Century Code Chapter 28-32. It is exempt from the
provisions of that chapter, so the Rules of Evidence
need not strictly be applied at this hearing.
However, in the interests of due process and since
the parties are represented by attorneys, I am going
to substantially adhere to the Rules of Evidence.
In any event, only relevant evidence will be
admitted at this hearing.

Counsel, did I leave anything out that we
should put on the record?

MR. THOMAS: Not from Dr. McCallum's
perspective, no, Your Honor.

MS. DONARSKI: No, you did not.

JUDGE FETCH: Thank you. All right. We
agreed before the lunch recess that we were going to
at this time take a witness out of order for
Dr. McCallum because of nonavailability after this
afternoon.

So at this time, Mr. Thomas, please

identify your witness and have her spell her name.

MR. THOMAS: Your Honor, the next witness
is Gail Ebeltoft. She is the coordinator of Human
Resources for Dickinson State University.

JUDGE FETCH: Ms. Ebeltoft, please spell
your first and last name.

THE WITNESS: Gail, G-a-i-l. Ebeltoft,
E-b-e-l-t-o-f-t.

JUDGE FETCH: Thank you. And I don't
believe you were present earlier when I instructed
witnesses that all testimony at this hearing is
taken under oath and is subject to penalties for
perjury. By law I'm required to inform witnesses that the penalties for perjury -- which in North Dakota is a Class C Felony. The penalties are a maximum fine of $5,000, a maximum five years in prison, or both.

Please raise your right hand.

Do you solemnly swear the testimony you are about to give shall be the truth under pains and penalties of perjury?

THE WITNESS: I do.

JUDGE FETCH: Thank you. Go ahead, Mr. Thomas.

MR. THOMAS: Thank you, Your Honor.

GAIL EBELTOFT,

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THOMAS:

Q. Ms. Ebeltoft, could you state for the record your position again at Dickinson State University.

A. I'm the Coordinator of Human Resources.

Q. And for how long have you held that position?

A. Fourteen years.

Q. Could you briefly describe what some of your duties are as Human Resources Coordinator at DSU?

A. I'm in charge of recruitment for all staff positions, retention initiatives, employee benefits
administration. I supervise payroll, employee personnel issues, surveys.

Q. And to whom do you report at Dickinson State University?

A. Vice-President For Business Affairs, Mr. Alvin Binstock.

Q. Ms. Ebeltoft, I'm showing you two documents that have been marked as Exhibits Q and R.

Could you please take a look at those two documents?

A. (Witness reviews documents.)

Q. Do you recognize those documents?

A. Yes, I do.

Q. And I should point out, you and I haven't had the opportunity to meet before today; is that correct?

A. That's correct.

Q. What are Exhibits Q and R?

A. Exhibit Q is the hiring procedure for staff positions. There is a typo at the top. I only work with faculty after a certain point. But this is the step-by-step hiring procedure for staff positions.

Q. And Exhibit R?

A. That was written in -- when Dr. McCallum requested me to provide any information related to pending claims of illegal hiring practices, claims of hostile work environment reporting and criminal history background check audit.

Q. And did you prepare each of these memos, Exhibit Q and Exhibit R?
A. Yes, I did.

Q. And the date of each of those memos is May 27, 2011?

A. That's correct.

MR. THOMAS: Your Honor, we would offer Exhibits Q and R at this time.

MS. DONARSKI: No objection.

JUDGE FETCH: Thank you. Exhibits Q and R are admitted.

Q. (MR. THOMAS CONTINUING) Ms. Ebeltoft, could you tell the judge what the context was that you were asked to prepare these two documents?

A. President McCallum said that he was requesting information and he had to prepare a 12-point -- a response to 12 questions that the Chancellor had asked him and he asked me for information regarding these two areas.

Q. And could you refer to Exhibit EE, which should also be in front of you?

A. (Witness reviews document.)

Q. Is that the letter from Chancellor Goetz that was directed to President McCallum which references the 12 points, some of which you were asked to address in your memos?

A. I imagine it is. I did not see the letter before this time.

Q. But the letter from Chancellor Goetz talks about Dr. McCallum preparing a response to these
12 points and discussing questions such as turnover at DSU, working relationships between Dr. McCallum with administrator staff, faculty and students; is that correct?

A. That's correct.

Q. And are those issues which you addressed in your two memos that have been marked as Exhibits Q and R?

A. Yes, I did.

MR. THOMAS: Your Honor, at this time we would offer Exhibits Q, R and Exhibit EE. Excuse me. I guess Q and R are already in. Just EE.

MS. DONARSKI: No objection.

JUDGE FETCH: Thank you.

Exhibit EE is admitted.

Q. (MR. THOMAS CONTINUING) Ms. Ebeltoft, let's begin with Exhibit Q, and in that email you discuss Dickinson State's policy regarding fair, open and competitive searches. Would you summarize what you reported in your email -- in your memorandum to Dr. McCallum dated May 27?

A. Let's see. The way you make sure that you have an open and competitive search is you have the position description that forms the basis for the advertisement. Then you create the advertisement, make certain that the advertisement attracts all types of individuals that are qualified for the position, does not discriminate against anyone. The way you post it, the places you post it have to be reviewed to make certain that you're posting in a
wide variety of places so that you're reaching the widest audience.

And then when the applications come in, we use a 100-point ranking scale, which gives veterans preference, 5 or 10 points, and then the other 90, the criteria have to be taken from the posted criteria advertised in the advertisement. A committee meets to rank the individuals based upon the criteria in the ranking sheet, the user applications, and then the committee meets again. They either summarize -- they either look at the ranking sheet and say, We'll take the top three numerically or they can see, These are our numerical rankings, we wish to take number two and interview them, number one, and this is how we're changing the rankings.

Then when it goes after that, the next step is to conduct usually a telephone -- reference checks first and then telephone interview, if it's a large search committee, for preliminary, you know, narrowing of the field from maybe six different candidates. Then we usually bring about three candidates on.

Q. Let me ask you, with regard to Exhibit EE at point 11 Dr. McCallum was asked to, quote, Describe the process used at DSU in regard to personnel issues inclusive of hiring policy, which you've just discussed, background checks and appropriate record filing of such related process and issues. And it continues, "Are there pending
personnel cases and, if so, how are they being dealt with?"

Did you reference in this Exhibit Q any personnel, pending personnel cases that DSU was dealing with?

A. No, I did not.

Q. Okay. Can you explain for the Judge a description of personnel issues that you faced as Human Resources Coordinator under President McCallum's leadership and compare that with the personnel issues that you faced either before Dr. McCallum came aboard or after Dr. McCallum's departure?

A. The issues were fairly similar prior to and inclusive of. There are individuals that have difficulty working with their managers. There are managers who have difficulty dealing with certain employees.

Q. When did Dr. McCallum come on as President of Dickinson State?

A. I believe it was April 2009. 9, 10, 11 or 8.

Q. 2008?

A. Okay.

Q. Since 2008, can you tell the Judge whether or not there have, by your assessment, been an unusual number of personnel problem, an unusual number of disgruntled employees or reports by employees of intimidation, harassment or bullying conduct by Dr. McCallum?
A. Not by Dr. McCallum, no.

Q. Okay. Moving on to Exhibit R, could you discuss what is summarized in this interoffice memorandum to Dr. McCallum?

A. His request was to provide any information I had regarding pending claims of illegal hiring practices, pending claims of hostile work environment or bullying and the criminal history background check audit.

Pending claims of illegal hiring practices, at that time we did have one. It was a one-sentence statement in an EEOC claim where the person who was an applicant said that she had been discriminated against based upon a disability. I worked with the system office, Ms. Goulet, and we had received no information regarding this applicant prior to her application that she was disabled. We had no knowledge of that. We prepared our response and since the time that this memorandum has been submitted, that charge has been dismissed by the EEOC. So that was the one claim of an illegal hiring practice, which has now gone away.

Pending claims of hostile work environment or bullying. There have never been any. I am one of three intake people that deal with the harassment policy. I have never had any hostile work environment or bullying claims. The ones I've had, which Mr. Eggert has -- Mr. Eggert has actually the entire file. He has reviewed everything from 2006 on. They were mostly related to a professor that
was being charged by a student for inappropriate
contact or text messages.

Q. Not relating to Dr. McCallum in any way?
A. No. No. I do not have any related to
Dr. McCallum.

Q. All right. As the Human Resources
Coordinator for Dickinson State University, would
you be in the best position or in as good a position
as anybody to assess Dr. McCallum's working
relationship with employees and coworkers in the
context of whether any of those coworkers had come
to you expressing any concerns regarding
Dr. McCallum's leadership style or personality or
aggressiveness?
A. I believe I would for two reasons. The
first one is that I am one of the intake individuals
for -- if you want to file a claim, so that would be
at least, you know, one reason that I think I would
be a good judge. The other reason I think I would,
is that if someone has a problem, if they report
directly to the President and they feel that they
are not being treated correctly, I would be the
first place to start because HR is for -- generally
speaking, is there for the employee.

Q. And did you ever receive any of those
complaints with regard to Dr. McCallum's
performance?
A. No, I did not.

Q. What was Dr. McCallum's directive to you,
if any, regarding harassment training and prevention
at Dickinson State University?

A.  He had a very strong philosophy regarding the harassment training. We did two. We did two mandatory trainings, one in 2009 and one again in 2011. All benefited faculty and staff were required to attend. It was an hour for each regular employee, an hour-and-a-half for staff -- excuse me -- managers. In addition, I meet with every new benefited faculty and staff. I spend a half-hour with them in individual orientation. I go over the policies and the harassment policy is one I stress; the methods of reporting, who you can report to. I encourage people that since they deal with students who are often at the mercy of a professor for a grade, they can bring someone in if they're worried about it. So we just have a really, really strong philosophy processing these types of complaints.

Q.  Excuse me. There was a reference in Chancellor Goetz's letter, Exhibit EE, at No. 4 that states, quote, Describe reasons why there is unusually high turnover that appears to be prevalent at DSU, close quote.

As Human Resources Coordinator, would you be in the best position to assess whether during Dr. McCallum's leadership there was an unusually high turnover rate?

A.  I would. I've tracked turnover since
2006. Not as far as percentage, but I have a spreadsheet that has the name of the employee and when they do their individual exit survey with me. All staff do. Faculty, it's optional. I track the reason. So I have data from 2006 through present.

Q. And what does that data reflect?
A. That the last three years we've had about -- the last four years. The last year Dr. Vickers was here and then these last three years, we have had about 25 or 26 people. That is still below the national norm, still below the norm in North Dakota, and I believe that turnover, you can't just take a statistic. You have to look at the reasons. There are people whose spouses move and they go with their spouse. There are people who stay home to take care of aging relatives, et cetera. So it isn't just dependent upon a president or an administration.

Q. Who conducts those exit interviews, typically?
A. The individual ones, I do. There is a survey that goes to the system office as well. They have paper copies of those.

Q. And based on your conducting these exit interviews and your review of the exit surveys, can you tell the judge whether or not those employees who did depart expressed as a reason for leaving Dr. McCallum or Dr. McCallum's conduct or demeanor or leadership style?
A. There weren't any.
Q. One of the issues at this hearing relates
to enrollment and reporting of enrollment that apparently contained errors. During your time as Human Resources Coordinator, have you ever been approached by any employees at Dickinson State University who have indicated to you that they were asked to or felt compelled to submit enrollment information that they knew to be false or inaccurate and that came from Dr. McCallum?

A. No, I have not.

MR. THOMAS: Thank you. Those are all the questions I have, Your Honor.

JUDGE FETCH: Thank you. At this time, Ms. Donarski, you may cross.

MS. DONARSKI: Thank you.

CROSS-EXAMINATION

BY MS. DONARSKI:

Q. As HR coordinator, have you ever had anyone come to you to file a complaint or a claim about any president?

A. No, I have not.

Q. Were you the beneficiary of a $2,000 birthday party sponsored by President McCallum?

A. It was not $2,000. The tablecloths that Mrs. McCallum had ordered for another event were charged to that event, so it was not $2,000. I can even tell you the menu.

Q. Okay. You were a recipient of a birthday party put on by President McCallum on your behalf for you?

A. Yes, I was.
MS. DONARSKI: I have nothing further.

JUDGE FETCH: Any redirect, counsel?

MR. THOMAS: Yes.

Redirect Examination

BY MR. THOMAS:

Q. I'm curious, Ms. Ebeltoft, based on that line of questioning, whether or not you feel that your testimony here today is any less truthful or credible because you received an award from Dr. McCallum or a party sponsored by Dr. McCallum?

A. Oh, you mean the birthday party?

Q. Yes.

A. The award that I received was not from Dr. McCallum. It was from the Alumni Association.

My husband and I were nominated.

JUDGE FETCH: I don't know that the witness understood the question. Do you want to rephrase that, Mr. Thomas?

MR. THOMAS: Sure. I will. Thank you, Your Honor. It was a confusing question.

Q. (MR. THOMAS CONTINUING) Ms. Ebeltoft, has your testimony today been affected by, colored by or in any way different from what it would have been had you not received a birthday party from Dr. McCallum?

A. No.

MR. THOMAS: All right. Thank you.

THE WITNESS: I told the truth.

MR. THOMAS: Thank you. Those are all the questions I have, Your Honor.
JUDGE FETCH: Any recross, counsel?

MS. DONARSKI: No.

JUDGE FETCH: Thank you. Were you subpoenaed to appear?

THE WITNESS: No, I was not.

JUDGE FETCH: All right. Thank you then. You are excused.

MR. THOMAS: Thank you, Your Honor, for allowing her to be called out of turn.

JUDGE FETCH: You're welcome, counsel. At this time let's proceed with where we left off.

Dr. Hillman -- let me just make a couple of quick notes.

Okay. Dr. Hillman, you are still under oath.

THE WITNESS: Yes, Your Honor.

JUDGE FETCH: Go ahead, Ms. Donarski.

MS. DONARSKI: Thank you.

Q. (MS. DONARSKI CONTINUING) Dr. Hillman, what is the IPEDS report based on?

A. The IPEDS enrollment report, as it's defined, is based on actual enrollments in degree-credit courses. So to generate the report, the system has to get -- the information has to be in the system. In other words, we don't ask campuses what are your enrollments and then they generate the data off of whatever. The system is designed, the statewide ConnectND system is designed, to register students and then all of the information for IPEDS and system enrollment reporting comes from that.
system. So anyone generating a report, the data has
to be in the system. If the data is in the system
incorrectly, then the report is incorrect.

Q. Okay. So the report is driven by the data
that's been entered in the system?
A. That's correct.

Q. And in this case the data was originally
entered into the system at what level? And when I
say "data," we're talking specifically about the
incorrect enrollment data.
A. Again, the system, ConnectND, was designed
to be student self-service. It was designed so that
students can apply online, be admitted online. Once
they're admitted, they get a pass code, etcetera,
so that they can then register for courses online.
The system was designed to be student self-service.
In the case of the courses that we're talking about,
the data was entered administratively as indicated
in the exhibit.

Q. Okay. Administratively at -- what office
handles the symposiums we're dealing with? What
office would that be?
A. Actually, probably a number of offices
would be involved, but because it was an intent to
get student enrollment, it was handled by the Office
of Extended Learning.

Q. So the data would be entered by the Office
of Extended Learning; correct?
A. Only in this case. Not typically, but the exhibit evidence indicates that the Office of Extended Learning identified the people in the conference and then they were going to register them in the system in the courses.

Q. And that's Exhibit 55 that you're referring to?

A. That's correct.

Q. Okay. And that is a procedure that is not correct?

A. That's not a typical procedure. That's not how the system is designed. It's unusual to generate complete classes that way, certainly.

Q. Why did the Office of Extended Learning enter that data?

A. Again, with the system designed to be student self-service, we thought it was very unusual. The discussions indicated that the concept of using seminars and conferences as a means to get student degree-credit enrollments was a part of a campus strategy to at least maintain enrollments, if not to grow enrollments.

Q. Okay. Campus strategy created by -- by whom?

A. The data that we collected indicated that the President had clear expectations on the numbers that were expected to grow, how many students needed to be registered for the next term, what that meant per week, expectations were then put on administrators to generate those numbers.
Q. Okay. And what happened next?
A. As the -- as pressure increased, it ended up that -- the Exhibit 25, the first correspondence --
Q. Exhibit 55?
A. Fifty-five. Sorry. Is from Marty Odermann-Gardner. She was under such tremendous pressure --
MR. THOMAS: Objection, Your Honor.
JUDGE FETCH: Sustained. Without going into the -- your speculation about what pressure she was under, continue.
THE WITNESS: If I had a conversation with her, Your Honor, is that --
MR. THOMAS: Objection. Hearsay.
JUDGE FETCH: I'm still going to sustain the objection.
Q. (MS. DONARSKI CONTINUING) With respect to Exhibit 55, what was your understanding of why that data was entered?
MR. THOMAS: Same objection, Your Honor.
If the answer is calling for the witness's reporting of that which you just excluded, the same objection would apply.
JUDGE FETCH: I don't know what it's going -- the answer is going to be until I hear it, counsel. That's the problem.
MR. THOMAS: I guess I would rather -- if it's objectionable, I would rather that the
objection be addressed before the answer is given. If this witness is not going to testify based on what he was told by this witness, then so be it. But if the witness intends to answer based on evidence that you’ve already ruled is inadmissible, then it’s just asking the same question a different way.

JUDGE FETCH: The exhibit speaks for itself and I've allowed the exhibit in and, as I indicated, I will consider that when I have the record as a whole and determine what weight to give it.

Q. (MS. DONARSKI CONTINUING) With the information being entered through the Office of Extended Learning, how did that impact the IPEDS report?

A. Again, the IPEDS report and system enrollments are based on data actually in the system, so if incorrect data is entered in the system, then the reports that come out of the system are necessarily incorrect. So if an activity was classified as a degree-credit activity and students were registered into that activity and, in fact, it was not degree-credit activity, then that necessarily meant that the reports were inaccurate that came out of the system.

Q. Okay. And did your investigation reveal that the reports were inaccurate?

A. Yes. The reports -- again, we found that the seminar courses were not valid academic courses.
That meant all the students enrolled in those courses through an administrative process -- excuse me -- were not actual enrollments and, therefore, necessarily the IPEDS report and our system enrollment reports were inaccurate.

Q. And that was a process that was unique to 2010?

A. And to Dickinson State University, that's correct.

MS. DONARSKI: Thank you. I have nothing further.

JUDGE FETCH: Thank you, Ms. Donarski.

Mr. Thomas, you may cross-examine.

MR. THOMAS: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. THOMAS:

Q. Dr. Hillman, I apologize if I jump around a little bit here, but try to follow with me, if you will. And I'm going to begin with the NSSE reporting that you initially started talking about, and I think the first exhibit that I'd like to visit with about that is Exhibit 19, if you would take a look at that.

As you're looking for Exhibit 19, let me see if I remember your testimony correctly, that the NSSE survey was intended to be sent to all students of Dickinson State University and what apparently happened was that the survey was sent to too many people, including people who were not students; is that a fair summary?
A. Again, real technical adjustment. NSSE specifically wanted to survey freshmen and seniors so the name and contact information of all freshmen and seniors in the administrative system was provided to NSSE.

Q. And the information that was provided to NSSE included the names of students who should not have been included; true?

A. The students that we talked about, again, were encoded as freshmen and, therefore, they appeared on the list as freshmen students to NSSE.

Q. And they got surveys?

A. That's correct.

Q. And they shouldn't have gotten surveys?

A. They should not have gotten surveys because they were not degree-credit students.

Q. And the reason that this came to your attention ultimately is because these students received surveys and they're wondering why they're getting the surveys and they said, I'm not enrolled in a degree-type class and why am I getting this?

A. That's correct. The students contacted NSSE, who was the survey administrator.

Q. Now, if you look at Exhibit 19 -- excuse me. Exhibit 19, on February 4 you sent an email to Randall Thursby indicating that this -- quote, This morning I became aware of an apparent enrollment reporting related issue.

And I believe you testified that that was the first time that this issue was brought to your
attention, on February 4; correct?
A. No. I indicated that that was the first solid evidence of something happening at Dickinson that was unusual came to my attention.
Q. Okay. Well, you write, quote, This morning I became aware of an apparent enrollment reporting related issue..." What did you mean by that?
A. That meant that I had received the phone call from NSSE that students were receiving a survey to respond as Dickinson State students and they were not -- did not consider themselves to be Dickinson State students.
Q. And that phone call was received on February 4; correct?
A. That's correct.
Q. And at some point Scott Staudinger at DSU was informed of this information; true?
A. That's correct. Scott would be the local contact for the NSSE survey.
Q. And if you look at Exhibit 20, you will see an email that Mr. Staudinger sent to you also on February 4, 2011; correct?
A. That's correct.
Q. Dr. McCallum's name is nowhere on the emails thus far; true?
A. As I recall, no.
Q. All right. And in that email from Mr. Staudinger to you, he writes, quote, We are pleased to be given the opportunity to handle this matter internally and take this concern very seriously. DSU staff will immediately begin to investigate the current population file to identify all individuals that were inadvertently enrolled for credit, close quote. Did I read that correctly?

A. I believe so.

Q. Now, on February 9, you received an email from Mr. Staudinger and that's found at Exhibit 22. Could you take a look at that?

A. (Witness complies.) Okay.

Q. And in that email Mr. Staudinger writes, "Mike, below please find a list containing all courses that I can ascertain at this time that 'might' have been involved in causing the improper enrollment concerns raised by NSSE, close quote. And that email was sent to you on February 9; is that correct?

A. That's correct.

Q. And you replied the same day indicating, quote, Thanks for the update, Scott. Please take the necessary steps to complete the NSSE survey. Our office will be requesting an explanation of practices leading up to this situation from campus administration, close quote. Is that also correct?

A. That's correct.

Q. Now, thus far, again, we're up to February 9th and Dr. McCallum has not been involved
in any of these email exchanges, as far as you know; correct?
A. That's correct.
Q. And, in fact, Dr. McCallum didn't submit the information to NSSE, Mr. Staudinger submitted the information to NSSE; is that your understanding?
A. Again, based on the information encoded in the system, that's correct.
Q. Now, would you agree, Dr. Hillman, that the email that you sent to Mr. Staudinger was friendly and cordial, you thank him for the update, you say, Please take the necessary steps to complete the NSSE survey? Nothing threatening or intimidating about your response to Mr. Staudinger; true?
A. I would agree to that, yes.
Q. Even though it was Mr. Staudinger that submitted the documentation to NSSE that was incorrect; true?
A. Again, Mr. Staudinger can only provide information from inside the administrative system, so if the information that was in the system was incorrect, then his report to NSSE would have to necessarily be incorrect.
Q. Well, let me ask you this: At no time during your investigation did you ever learn that Mr. Staudinger intentionally submitted information which he knew to be false to NSSE, did he? Was that ever reported to you? Yes or no?
A. Never reported to me.
Q. Now, would you please turn to Exhibit 25?
A. (Witness complies.)

Q. This is the letter that was sent from Chancellor Goetz to Dr. McCallum and it's dated February 10, 2011. It appears to be the first correspondence directed to Dr. McCallum regarding this NSSE reporting issue.

Are you aware of anything prior to this that was sent to Dr. McCallum?
A. I'm not aware of it, no.

Q. All right. As far as this letter is concerned, I see that it's signed by Chancellor Goetz. Did you have any role in authoring this letter?

A. Yes, I'm sure I did.

Q. Describe that role.
A. Because I'm responsible for enrollment reporting in the system, I would have been involved in the development of the questions related to enrollment reporting.

Q. All right. So those five questions that are set out at the bottom of Exhibit 25 would have been likely questions that you helped formulate?
A. Some of them certainly. I don't work on the fiscal side so the revenue deposited would have not have been in my area.

JUDGE FETCH: This exhibit was not offered or admitted.

MR. THOMAS: I'll offer it at this time, Your Honor, Exhibit 25.
Q. (MR. THOMAS CONTINUING) Would you agree, Dr. Hillman, at the bottom of Exhibit 25, page 110, it says, quote, This issue carries a course of immediacy in response, close quote. Do you see that?

A. Yes, I do.

Q. Somewhat less cordial than your response to Mr. Staudinger; would you agree?

A. Yes, I would.

Q. Now, this was dated February 10 of 2011 when this issue was brought to Dr. McCallum's attention. Could you please turn to Exhibit 26?

A. (Witness complies.)

Q. Is that a fax cover sheet from Dr. McCallum to Chancellor Goetz regarding this NSSE reporting issue?

A. That's what it appears to be, yes.

MR. THOMAS: And I believe 26 is in, Your Honor?

JUDGE FETCH: Yes, it is.

Q. (MR. THOMAS CONTINUING) Now, the fax from Dr. McCallum to Chancellor Goetz says, quote, Attached please find the string of emails confirming that we have corrected our status with NSSE, close quote. Do you see that?

A. Yes.

Q. And then if you look at page 113 of the
That's still part of Exhibit 26. You'll see that there is an email from NSSE to Scott Staudinger, dated February 11, 2011. Do you see that?

A. Yes, I do.

Q. And it says, quote, Scott, we've released the hold on your survey administration and updated your mailing schedule as follows: And it lists more information, and at the end it says, quote, Thanks for working with us to get a new population file. Let us know if you have further questions, close quote. Do you see that?

A. Yes.

Q. And that was sent from NSSE to Scott Staudinger; correct?

A. Yes.

Q. And then also on February 11, Mr. Staudinger sends an email to you stating, quote, Dickinson State University has been reinstated for the NSSE survey tool. Do you see that?

A. Yes.

Q. And there was earlier testimony about the length of time that it took to have this issue addressed and my question to you is this: If Dr. McCallum was first made aware of the NSSE reporting concern on February 10 and it appears from this exhibit that NSSE notified Mr. Staudinger on February 11 that the hold on the survey
administration had been released and the matter resolved, would you agree, Dr. Hillman, that the time period is one day from reporting to Dr. McCallum until the issue was resolved?

A. If that, indeed, was Dr. McCallum's first notification, that's right. Again, now --

Q. There's no question before you. Just a moment. Exhibit 28, if you could please refer to that exhibit?

A. I'm sorry. Which one?

Q. Exhibit 28. Now, you'll recall we talked about the directive that you said you helped author, but Chancellor Goetz signed, which directed Dr. McCallum to address these NSSE reporting concerns. Do you remember that testimony?

A. Yes.

Q. And Exhibit 28 appears to be Dr. McCallum's response to that request and it's dated February 25, 2011; is that correct?

A. Actually, there were two pieces of correspondence and a couple of sets of responses. One was the response to Chancellor Goetz's letter and that's this one. The other one was a response to the survey that I had conducted independently.

Q. My question is as to Chancellor Goetz's letter, Exhibit 28 is what responds to that February 10 letter; is that correct?

A. Yes.

Q. Now, Exhibit 28 includes as an attachment to Dr. McCallum's letter, a memorandum from Dr. Jon
Brudvig. Do you see that? It would be beginning at page 123.

A. One twenty-three, yes.

Q. And is there anything in Dr. Brudvig's response, this written response -- have you reviewed it before today?

A. Of course.

Q. Anything in that response that suggests that Dr. McCallum encouraged or instructed Dr. Brudvig or Mr. Staudinger or anybody else to submit information to NSSE that was knowingly inaccurate? See anything in the document that does that?

A. No, I don't see anything in the document that does that.

Q. In fact, Dr. Brudvig responds at page 125 to a question regarding the enrollment of students in degree-credit courses and Dr. Brudvig writes, "Marshall Melbye noted: Based upon my interpretation of policy 440 and given the fact that all students, including those who were involved in our various special topic classes for the Teddy Roosevelt symposium, et cetera, who were subsequently reported on our official enrollment reports were actually credit-earning students. I don't believe that we were in violation of policy 440." Do you see that?

A. Yes, I do.

Q. I take it you disagree with that assessment.
A. In fact, I think there's later correspondence from Mr. Melbye that also indicated he misunderstood at that point.

Q. But no correspondence from Mr. Melbye that indicated that he was instructed by Dr. McCallum, either implicitly or explicitly, to submit false information; true?

A. Not that I'm aware of.

Q. Dr. Hillman, I'd like to ask you a few questions about Exhibit 17, which has previously been received into evidence. That's the internal review report dated August 1, 2011.

You concluded or at least it was concluded in that report that Dickinson State University appeared to be the only university that was experiencing these types of enrollment errors, is that -- do I understand your testimony correctly?

A. Again, I was not the author of this report. I did have a chance to review it and suggest comments and edits, but, yes, that's correct.

Q. And then when you talked about the other campuses that were surveyed, tell us a little bit about that. We know what was done at Dickinson State University. You -- there were interviews conducted on campus, several different -- well, tell us. How many different people were interviewed at Dickinson State University regarding these enrollment issues?

A. The first day that we were able to
schedule interviews I believe we had seven or eight interviews scheduled. Those ranged from the President and Vice-President down through the Registrar and data entry people, so we had a wide range of people. The follow-up interviews were conducted by Bill Eggert and not by me. So he also had follow-up interviews with some of the same people, but also added additional people, too.

Q. Would it be fair to say that in addition -- or in excess of 15 interviews were conducted with regard to this audit?

A. I think that is fair to say, yes.

Q. And you talked about surveying other campuses as well. How many interviews were conducted on any other campuses other than Dickinson State University regarding enrollment concerns with respect to this audit?

A. This audit specifically related only to Dickinson State University because that was the only campus that we had a report of students receiving surveys who do not consider themselves students.

Q. And yet you concluded that Dickinson State University was the only university at which these problems existed, and I'm wondering how you were able to conclude that without conducting interviews at any other university.

A. Again, we conducted a survey of all campuses related to their enrollment reporting practices.

Q. Tell us about the survey, if you could.
I'm sorry to interrupt.

A. And, again, the results of the surveys are summarized beginning on page 76.

Q. All right. Now, with regard to the results that you received, this was self-reporting; correct?

A. That's exactly right, yes.

Q. And what steps were taken following the self-report to verify the accuracy of the information submitted? In other words, were any interviews conducted following your receipt of these surveys from any of the other institutions in North Dakota?

A. There would have been discussions at System Academic Affairs Council, Student Affairs Council and registrars on these issues, but we did not make -- again, because we only had a survey suspension on one campus, I was only involved in face-to-face interviews on that campus that had the problem.

Q. So to be fair then, you didn't visit any of the other campuses; true?

A. That's correct.

Q. You didn't interview any other presidents as Dr. McCallum had been interviewed; true?

A. Again, we would have had discussions in Chancellor's cabinet --

Q. True?

A. -- but face-to-face, one-on-one interviews with other presidents, no.
JUDGE FETCH: Excuse me. This is off the record.

(Discussion off the record.)

JUDGE FETCH: Back on the record.

MR. THOMAS: Thank you, Your Honor.

Q. (MR. THOMAS CONTINUING) Dr. Hillman, I'd like to move on to Exhibit 33, if we may. It's been referred to by counsel as the enrollment matrix. That's been our characterization of it. Is that an accurate characterization of Exhibit 33, or would you like to give it your own description?

A. I think that's a fair description.

Q. All right. And who prepared it?

A. This was prepared in my office.

Q. And at -- what prompted the preparation of this enrollment matrix?

A. Again, the phone call from NSSE, the subsequent discussions that we had with the councils within the system and the survey that I conducted with all 11 campuses identified these issues to be placed on the matrix.

Q. And I think your earlier testimony was that this matrix is to be used to guide universities with respect to reporting enrollment; is that fair to say?

A. I think it's probably fair to say it's most directly related to how to use ConnectND in
certain situations and, yes, that does determine how
enrollment is reported.

Q. Okay. And you talked about certain
classes, certain courses that could potentially be
reportable and I think you talked about a CPR
course, for example, is the hypothetical that you
used?

A. Yes.

Q. If you're able to, Doctor, could you
utilize this matrix and help us understand how a
university might be guided in determining whether,
for example, a CPR course might be reportable in
terms of their enrollment reports? Are you able to
do that?

A. I would have to first determine if it was
a degree-credit course, non-degree credit course or
non-credit course.

Q. Okay.

A. And then we could walk through it.

Q. Let's assume it's a non-degree course and
take us through it.

A. It is a credit course, but for non-degree
credit?

Q. Correct.

A. All right. Let me look here. The
developmental course would be an example of that. A
developmental -- a student who is enrolled only
in -- we used to call them remedial, a remedial
course. And this would be at the top of Bates 267,
developmental course.
Q. Okay.

A. All right. The student is currently enrolled in one or more semester hours of degree credit or a student is exclusively enrolled in developmental courses. Actually, that's a complex example because it makes a difference which category it's in.

Q. Well, I guess I picked it for you, so perhaps it's my fault, but maybe it illustrates the point that I was going to make with you, was that you said -- I think I quoted this correctly, there are, quote, practical nuances that all campuses had to address, not just DSU.

So that was one of the reasons why this matrix was prepared, I take it; is that a fair statement?

A. Yes. Again, nuances -- not to quarrel about nuances. I could have answered your question better by looking at the middle blue category on Bates 267, a non-degree credit activity. It gives three examples here on how those are handled within the system.

Q. To whom was this matrix distributed after it was developed and implemented by your office?

A. This matrix and earlier and perhaps later versions of the matrix were broadly distributed across the system, to system councils. Registrars are largely responsible for the structure of enrollment reporting on the campus, but registrars, on about half of our campuses, report to Student
Affairs, on about half they report to Academic Affairs, so all discussions like this, we discussed with the registrar/records staff, Academic Affairs Council and Student Affairs Council, which typically meet once a month.

Q. Okay. Now, the reporting errors that we have been talking about today, the IPEDS reporting errors and the NSSE reporting errors, were errors that related to enrollment for the fall of 2010; is that correct?
A. That's correct.
Q. And I believe that you indicated that some of those reports, the snapshot date was 20 days after the school year began, so fairly early in the fall semester of 2010?
A. True, September 20.
Q. Thank you. And document Exhibit 33 indicates that what we're looking at is the April 29, 2011 draft; correct?
A. That's correct.
Q. Is there a draft more recent or is there a final version?
A. Actually, one of the exhibits that we reviewed was policy and procedure 441.
Q. Yes.
A. That's the final version of how this matrix discussion then ended up in suggested changes to Board policy procedure.
Q. Okay. So is it fair to say, then, that the universities can be expected to utilize both the
enrollment matrix at Exhibit 33 and the new policy 444 to help guide them with respect to enrollment reporting issues?
A. In the future the formal document will be policy and procedure 441.
Q. Okay. But this is also a tool?
A. The matrix was helpful in identifying the issues and deciding which category each one fell in.

Q. Okay. And I asked you before about the date of this document, Exhibit 33, and you said it was April 29th, and you referenced earlier that there were prior versions of this. Can you tell us when the first enrollment matrix was developed, say the first draft of Exhibit 33, approximately?
A. I can only tell you that it was after the February 4th call from NSSE and before this email date.
Q. So sometime in February of 2011 is when the process for the development of this matrix began; true?
A. Of this matrix, that's correct.
Q. Okay. So certainly nothing would have been in existence in, say, the fall of 2010, true, with respect to this matrix?
A. That's correct, because the definitions for degree-credit, non-degree credit and non-credit had been in place for many years.
Q. Now, Exhibit 27 was discussed briefly and that's the email from Marshall Melbye to you and to Scott Staudinger and to Jon Brudvig. Do you see
Exhibit 27?
A. Yes, I do.
Q. And you indicated surprise that Marshall Melbye didn't know of the proper reporting procedure. Do you remember that --
A. Yes, I do.
Q. -- testimony?
A. Yes.
Q. Do you see anything in this memo from Marshall Melbye to indicate that the IPEDS classification or the enrollment reporting errors had anything to do with any pressure, direct or indirect, that had been received by Dr. McCallum?
A. Not in this memo, no.
Q. You indicated that Dr. McCallum was given the interview -- the opportunity to be interviewed in this matter, and that that interview took place in May of 2011; is that correct?
A. That's correct.
Q. Now, at that time Dr. McCallum was aware that this enrollment matrix was being prepared and I think you testified that he was hopeful that the development of that matrix would prevent future errors like this from occurring; is that a fair summary of your testimony?
A. No. Actually, Dr. McCallum thought that the matrix was not helpful and would create more problems than it would address.
Q. All right. In any event, the matrix hadn't been developed or at least had not been finalized as of when the enrollment errors occurred; true?
A. That's true.
Q. Now, I think you testified that with the interviews and the investigation, I believe the phrase you used was that it, quote, opened Pandora's box. Do you remember using that phrase to describe this process?
A. Yes, I do.
Q. Now, after the Pandora's box was open, so to speak, was Dr. McCallum ever re-interviewed after the first interview?
A. I was not -- again, I made one visit to the campus to do interviews.
Q. To your knowledge, was Dr. McCallum ever re-interviewed?
A. I can't answer that. I think the Chancellor or Bill Eggert would be in a better position.
Q. I appreciate that. And so you wouldn't be in a position to indicate whether or not Dr. McCallum was presented with any of the additional information that was obtained from the internal review report at any time after he was interviewed?
A. No, that's correct.
Q. What's correct, you don't know or he wasn't --
A. That I don't know.

Q. Okay. And looking at the internal review report, it's dated August 1 of 2011, but it indicates that the first report draft date was all the way back to June 21 of 2011. When were you first provided with draft reports of the internal review report?

A. I don't recall exactly, but I do know that I saw, I think, two earlier versions of the report.

Q. Okay. Were prior copies or drafts sent to Dr. McCallum for his review or response; do you know?

A. I don't know that they were. Again, when we actually had the face-to-face meeting with Dr. McCallum, he did not seem interested in discussing the issues.

Q. Well, if this was the report that was the basis for his termination, don't you think it would be of interest to him to have seen earlier reports of it so that he could respond to it before it was released to the press?

MS. DONARSKI: Objection. Are you asking him to speculate what President McCallum wanted?

MR. THOMAS: Yes.

MS. DONARSKI: You can't ask him to speculate.

MR. THOMAS: I am. I am asking him to speculate.

JUDGE FETCH: Objection sustained.

Q. (MR. THOMAS CONTINUING) Well, the point
is, you saw at least two prior drafts of this
document before it was released in August; true?
A. Because I was involved in the
investigation of what happened, yes. I'm
responsible for enrollment reporting.
Q. Well, as is Dr. McCallum; true?
A. Yes.
Q. And, finally, Dr. Hillman, I just want to
confirm a couple things. With respect to the NSSE
reporting errors, is it fair to say that NSSE is
still processing these surveys for Dickinson State
University?
A. I believe it's fair to say that they have
completed the process. They had relatively tight
time frames. That's why we had to respond quickly
and I believe they have completed their process.
Q. Now, Ms. Donarski asked you with regard to
these enrollment reporting errors, so what, I
believe was her question. And your response was
that, quote, In my opinion, the credibility of the
university has been harmed.
My question is a little bit more specific.
As we sit here today, as a result of the enrollment
errors that you believe occurred, no funding has
been cut by the Legislature towards Dickinson State
University, as we sit here today; true? Yes or no?
A. The Legislature has not met since this
happened, so, no.
Q. Okay. No accreditation has been withdrawn
with respect to Dickinson State University, as we
sit here today; true?
A. That's true.
Q. No federal action has been taken with respect to Dickinson State University; true?
A. Not that I'm aware of, although certainly federal interest, but not action, to my knowledge.
Q. And I believe you testified that you can't point to any dollar amount damage that has been suffered by Dickinson State University with respect to these enrollment errors was your testimony; true?
A. That's correct.

MR. THOMAS: Thank you. Those are all the questions I have, Your Honor.
JUDGE FETCH: Ms. Donarski, any redirect?
MS. DONARSKI: I have no redirect.
JUDGE FETCH: Is this witness appearing under subpoena?
MS. DONARSKI: He is not.
JUDGE FETCH: You're excused, Dr. Hillman. Let me get a sense of who your -- it's a little after three. We're going to take a recess, but who is going to be your next witness?
MS. DONARSKI: My next witness will be Joanne Fields. I anticipate her testimony being approximately 15 minutes.
JUDGE FETCH: Oh, okay. Is she here?
MS. DONARSKI: She is. We're going to go get her.
JUDGE FETCH: We'll take ten minutes.
(Recess taken from 3:05 p.m., to 3:19 p.m.)
JUDGE FETCH: We're back on the record.

All right. At this time, Ms. Donarski, please identify your witness and ask her to spell her name.

MS. DONARSKI: Yes. I call Joanne Fields.

THE WITNESS: J-o-a-n-n-e. Fields,

F-i-e-l-d-s.

JUDGE FETCH: Is Joanne all one word?

THE WITNESS: Yes, ma'am.

JUDGE FETCH: All right. Ms. Fields, all witness testimony at this hearing is taken under oath subject to penalties for perjury. There should be a sheet in front of you. Would you take a look at that? That will give you the penalties -- that will tell you what the penalties for perjury are.

All right. Would you please raise your right hand?

Do you solemnly swear the testimony you're about to give will be the truth under pains and penalties of perjury?

THE WITNESS: I do.

JUDGE FETCH: Please speak up nice and loudly.

THE WITNESS: I do.

JUDGE FETCH: Thank you.

Go ahead, Ms. Donarski.

MS. DONARSKI: Thank you.
JOANNE FIELDS,
having been first duly sworn, was examined and
tested as follows:

DIRECT EXAMINATION

BY MS. DONARSKI:

Q. Joanne, what is your title?
A. I'm the administrative assistant for the
Dean of College of Arts and Sciences, the
administrative assistant for the Office of Extended
Learning and the West River Teacher Center at
Dickinson State University.

Q. And what does the Office of Extended
Learning do?
A. We are involved with online classes and
also with conferences and seminars throughout -- at
the university.

Q. And the conferences and seminars, would
that include the Theodore Roosevelt symposium?
A. Yes.

Q. And the energy symposium?
A. Yes.

Q. And the Disney symposium?
A. Yes.

Q. Okay. How long have you been employed
with the Office of Enrollment Services?

A. I'm sorry. Office of Extended Learning.

JUDGE FETCH: I'm sorry. I can't hear
THE WITNESS: Office of Extended Learning, I'm in my eleventh year.

Q. (MS. DONARSKI CONTINUING) In working for the Office of Extended Learning for 11 years, are you familiar with the process in the symposiums?

A. Yes.

Q. And in enrolling students for the symposiums?

A. I've been involved with conferences and seminars since I began 11 years ago. Up until that fall 2010 we had never enrolled participants at symposiums for credit.

Q. Okay. So explain to the Hearing Officer what you did, what the standard procedure was prior to 2010.

A. Prior to 2010, I would -- I was in charge of accepting all the registrations for the conferences and symposiums. I kept databases. I received all the payments from the individuals, deposited those. Helped with the planning of and the execution of those conferences.

Q. How did that change in 2010?

A. One of my new responsibilities in 2010 was to have these conferences and seminars available to register online, and last year when I was asked to set up the registrations for both -- for all three, the TR symposium, the energy symposium and the Disney conference --

Q. And TR is Theodore Roosevelt?
A. Yes, ma'am.
Q. Okay.

A. I would always ask for the following information: First name, last name, home mailing address, city, state, zip code, home phone number, email and that was all. Last year I was asked to inquire or ask for two more pieces of information. One was the gender of the individual and the second was the date of birth of the individual.

Q. And why would you need gender and date of birth?
A. These last -- those three symposiums that I mentioned, on the online registration pages it was stated that people who attended the full symposium would be receiving one credit from Dickinson State University. That information would be needed, along with the other information, all that information would be needed for registration for enrolling that person for the credit.

Q. And when you say "enrolling that person," what do you mean by that?
A. I received that information -- I would get that information from the individuals and then at the end of the symposiums, I, in turn, sent all that information to Kay Erickson. And from that point on, I am not involved with enrollment so I didn't know what that information -- at that point my part of the symposium registration was finished.

Q. And who is Kay Erickson?
A. Kay Erickson is the staff assistant for
the Office of Extended Learning.

Q. And what does she do?
A. She enrolls students in classes for the university through the Office of Extended Learning. And I apologize, I don't know her full responsibilities.

Q. Okay. But for purposes of the issues at this hearing, she enrolled the students from the symposiums?
A. Yes, ma'am. What I did was, at the end of all three symposiums, I put together a spreadsheet of all the individuals who had attended the full symposium and then I sent that spreadsheet to Kay, and from there she did her part of the registration process.

Q. And is that something that you had ever done before?
A. No.

Q. You had never done that before under any other president in the 11 years you worked at the university?
A. No, ma'am.

Q. And what was your understanding as to why you were doing that in 2010?

MR. THOMAS: Objection to the extent it would call for a hearsay response, Your Honor. As long as the witness is testifying from her own observations and not what others may have said to her, I would have no objection, but I just would like that cautionary statement made to the witness.
JUDGE FETCH: All right. Ms. Fields, you may answer that question from your own observations, not from what someone told you. Understand?

THE WITNESS: Would you repeat the question?

MS. DONARSKI: Sure.

Q. (MS. DONARSKI CONTINUING) The question is, what was your understanding as to why that process was changed in 2010?

A. I do know that the staff of the Office of Extended Learning had been asked to help increase the enrollment numbers and this would be one way, is to have those people registered as students.

Q. What -- with respect to increasing the enrollment numbers, what was the culture of your work environment like in 2010 with respect to enrollment?

A. Stressful.

Q. And why is that?

A. We had been asked to increase the enrollment through our office and we realized that with the changes in the area of southwest North Dakota, there were -- enrollment was down because a lot of young people that previously probably would have gone to school, were now working in the oilfields because of the pay rates, the pay that they were receiving, and so we knew that a lot of these young people, especially the young men, would be working in the oilfields making the wages that they were and that in a few years a number of them
had said that they would be coming back to school, then they wouldn't have to have all those student loans as part of their education because they would be able to pay for their education upfront.

Q. Had there been an enrollment emphasis placed on the Office of Extended Learning by other presidents?
A. Not to my knowledge, no.

Q. And you had been there for 11 years?
A. Yes. There was only one previous president I worked under prior to -- there was only one other president I worked under, and we had never been asked to increase our numbers like we had been last fall.

MS. DONARSKI: Thank you. I have nothing further.

CROSS-EXAMINATION

BY MR. THOMAS:

Q. Is it possible, ma'am, that the reason you weren't asked to increase your enrollment numbers was that for most of those previous years the enrollment had been increasing; true?
A. Yes.

JUDGE FETCH: I'm sorry. I didn't hear that.

THE WITNESS: Yes, sir.

JUDGE FETCH: Thank you.

Q. (MR. THOMAS CONTINUING) And with respect
to the emphasis on increasing enrollment, it would make more sense that there would be greater emphasis on increasing enrollment during time periods when enrollment had shown a decline; is that fair to say?

A. Yes.

Q. The Office of Extended Learning was asked to increase enrollment not just with respect to Dickinson State University, but also at the Bismarck State program; true?

A. I'm sorry. I don't work with that part of the office.

Q. Or Williston State, you don't know if the same emphasis had been placed on that institution, either?

A. No, sir.

Q. You didn't regularly interact with President McCallum; is that fair to say?

A. That's fair to say.

Q. And is it also fair to say that you would have no personal basis of knowing why it was that these students of these symposia had been listed on the enrollment roster for Dickinson State University; true?

A. Would you repeat that, please?

Q. You would have no personal knowledge as to why these students were listed as enrolled students on the data that was submitted by DSU?

A. I was just aware that I had been told that I was to get that information so they could be enrolled.
Q. And you were told that by your boss; is that what you’re saying?
A. Yes, sir.
Q. Okay. And your boss is who?
A. Marty Odermann-Gardner.
Q. Not Dr. McCallum?
A. No.
MR. THOMAS: Thank you. That’s all I have.

JUDGE FETCH: Any redirect, Ms. Donarski?
REDIRECT EXAMINATION
BY MS. DONARSKI:
Q. Marty Odermann-Gardner was the Director of the Office of Extended Learning?
A. Yes.
Q. And did you do her scheduling?
A. Yes, I did.
Q. And did she have scheduled appointments with the President?
A. Yes, ma’am, she did.

Q. And did she report to the President the enrollment, the status of enrollment from the Office of Extended Learning?
A. Yes, she did.
Q. When she returned from the meetings with the President, what did she exhibit? What did you see?
A. Last fall I noticed -- I worked with Marty for 11 years and last fall especially, towards the end of last summer, early last fall, I noticed she
would come back to the office quite agitated. There were times I saw her in tears. There were times she would go in her office and shut the door and this was definitely not the Marty Odermann-Gardner I had worked for for ten years at that point. There was a time where she called her husband to come and get her. I also saw, like I said, her leave in tears. She would leave and come back to work. On a number of occasions she was quite agitated, which was very much unlike Marty.

Q. And what was the cause of that agitation?

MR. THOMAS: Objection. Foundation. She wasn't present in those meetings, Your Honor.

Q. (MS. DONARSKI CONTINUING) But you did witness her in the work environment. Do you know why she was agitated?

MR. THOMAS: Doesn't mean she knows what happened at the meeting, Your Honor.

JUDGE FETCH: Sustained.

Q. (MS. DONARSKI CONTINUING) Why did the tension in the Office of Extended Learning change?

MR. THOMAS: Again, object to the extent it's based on statements or observations other than what this witness observed.

MS. DONARSKI: She worked in the Office of Extended Learning for 11 years.

JUDGE FETCH: Do you want to rephrase the question, counsel?

Q. (MS. DONARSKI CONTINUING) In your 11 years of working with Marty Odermann-Gardner,
what was your working relationship like with her?

A. Very good. She was a visionary. She started a lot of very good programs that are still being used at Dickinson State. She was a go-getter. I mean, she was passionate about her job and that was one reason I enjoyed working with her. She was passionate about her students, about her fellow employees, the other staff and faculty. She was dedicated to Dickinson State University.

Q. And did you see a change in your director during the 11 years you worked with her?

A. Yes. I saw a physical change. Towards the end it seemed -- before she retired, I saw that she just wasn't the energetic, passionate person she was. She wasn't excited like she used to be. There was just a change about her. I guess I can't quite put it into words. It was just something I observed. It just wasn't the Marty I had started to work with. I slowly saw her -- I guess you could say the spirit in her was not there.

Q. When did you first notice that change?

A. I would say probably spring of 2010.

Q. And had the expectations placed upon the Office of Extended Learning changed in 2010?

MR. THOMAS: Objection. Foundation. This witness doesn't know what expectations were placed on Ms. Odermann-Gardner.

MS. DONARSKI: I asked the Office of Extended Learning.

JUDGE FETCH: Yeah, I'm going to overrule.
THE WITNESS: Would you repeat?

Q. (MS. DONARSKI CONTINUING) Sure. Had the expectations placed upon the Office of Extended Learning changed in 2010?

A. Again, we were encouraged to help with the enrollment of the University. Therefore, we were all asked to, you know, come up with -- we were -- let's see how I want to say this. We were all working together as a staff to help with that enrollment request.

Q. Okay. And in doing that, you indicated that things were changed differently in 2010; is that correct?

A. Yes, ma'am.

Q. And were you -- were you comfortable or did you question at all the changes that were taking place with the processes in your office in 2010?

A. I found it unusual that we were being asked that question as far as when I told to put those two new criteria in the registration until I was told it would be because they were going to be given credit. It just seemed -- there were changes.

Q. And were the changes focused upon increasing enrollment?

A. Most definitely.

MS. DONARSKI: Nothing further. Thank you.

JUDGE FETCH: Mr. Thomas, any recross?

MR. THOMAS: Just a couple questions.
BY MR. THOMAS:

Q. Ms. Fields, were you aware that prior to her departure from Dickinson State University, your boss, Ms. Odermann-Gardner had sought a position elevation at DSU and asked to be appointed as a dean at Dickinson State University? Were you aware of that?

A. No, sir.

Q. Okay. So you weren't aware of whether or not her request was denied then, I take it.

A. No.

Q. Well, you must know that it was denied if it was made because she was not a dean when she left; true?

A. That's true.

Q. So you wouldn't know whether or not if that were true, that might affect her happiness or unhappiness or her demeanor within the workplace, would you?

A. No, sir.

MR. THOMAS: Thank you.

REDIRECT EXAMINATION

BY MS. DONARSKI:

Q. Do you know why she left her employment with DSU?

A. She told the staff that she was --
MR. THOMAS: Objection. Hearsay.

MS. DONARSKI: He opened the door.

MR. THOMAS: No, I didn't. I asked about observations, just as you asked about observations.

MS. DONARSKI: You asked if she knew whether she applied and whether that affected her, which would be direct communications with Ms. Odermann.

JUDGE FETCH: Let me ask, Ms. Fields, can you answer the question from your own knowledge without what you were told?

THE WITNESS: No, ma'am.

JUDGE FETCH: You need to speak up. I don't know --

THE WITNESS: No, ma'am.

JUDGE FETCH: -- if the court reporter can hear you.

THE WITNESS: No, ma'am.

JUDGE FETCH: So it would be what someone else relayed to you or you heard somehow?

THE WITNESS: Why she left?

JUDGE FETCH: Other than from Ms. Odermann-Gardner.

THE WITNESS: She said she couldn't handle the --

MR. THOMAS: Objection. Same objection, Your Honor. It calls for hearsay response. She's just about to testify as to what she was told by a witness who isn't here to testify or be cross-examined.
JUDGE FETCH: I'm going to overrule that if she can relate directly what this individual told her.

THE WITNESS: She said she couldn't handle the stress anymore. She wouldn't handle being abused anymore, I think is the word she used.

Q. (MS. DONARSKI CONTINUING) Abused by whom?

MR. THOMAS: Same objection.

JUDGE FETCH: Overruled.

Q. (MS. DONARSKI CONTINUING) Abused by whom?

A. Dr. McCallum.

MS. DONARSKI: Thank you.

JUDGE FETCH: Any further cross-examination?

CROSS-EXAMINATION

BY MR. THOMAS:

Q. And you believe that this reason for termination had something to do with enrollment reporting, or do you know? Do you believe that Ms. Odermann-Gardner's departure had anything to do with pressure that she felt to report inaccurate enrollment information?

A. I believe --

Q. If you know. If you don't know, I'm sure the judge would prefer that you say you don't know.

A. I don't know.

Q. So you don't know why she left other than what you just reported?

A. No.

Q. And you wouldn't know what she may have
listed in her unemployment claim for when she did leave, that would be the best evidence, right, what she said herself?

A. Yes.

MR. THOMAS: All right. I have nothing further, Your Honor.

JUDGE FETCH: Anything further?

DIRECT EXAMINATION

BY MS. DONARSKI:

Q. You were just going to answer the question of whether it was related to enrollment. Did Marty tell you when you were saying the abuse and stress, that the enrollment was a factor?

A. I was going to say enrollment was a factor, yes. Being asked to continually increase that enrollment, because you can only have -- you can't go get people off the street. She kept being -- we all were told repeatedly that we needed to come up with more students. We needed to keep that enrollment growing, because for so many years it kept increasing and increasing and it looked like it was not going to be increasing for the fall.

MS. DONARSKI: Thank you.

JUDGE FETCH: Anything further?

MR. THOMAS: Yes. Could I have that marked as Exhibit UU, I believe, Judge?

(Deposition Exhibit UU was marked for identification.)

MR. THOMAS: Your Honor, I hadn't intended to offer this but for the evidentiary rules and the
testimony of this witness so I don't have an extra
copy. May I approach the witness so I can show her
my copy?

JUDGE FETCH: Yes.

MS. DONARSKI: I'll show her my copy.

MR. THOMAS: Thank you.

RECROSS-EXAMINATION

BY MR. THOMAS:

Q. Ms. Fields, I'm showing you what's been
marked as Exhibit UU, which is a document entitled
"Notice of Claim For Job Insurance Benefits," which
was submitted by Marty Odermann-Gardner, and the
date of this document appears to be December 6 of
2010. Do you see that?

A. Yes, I do.

Q. Now, you had testified just a few minutes
ago that you believe Ms. Odermann-Gardner's demeanor
changed in the spring of 2010, that was your
testimony; correct?

A. Yes, sir.

Q. And you believe that that was directly
related to pressure that she felt regarding
enrollment issues; is that true?

A. Yes, sir.

Q. And the document that you have before you
is a Notice of Claim For Job Insurance Benefits,
which Ms. Odermann-Gardner submitted following her
resignation from Dickinson State University. Would
you look at that document and tell me when it was
that Ms. Odermann-Gardner believes that the work
environment at DSU, quote, turned hostile? What was
the date that she listed?
A. September of 2008.
Q. Now, look through this report that
Ms. Odermann-Gardner herself submitted and tell me
if there’s any reference in there to any pressure
that she felt or any directive that she was given
without notification from counsel, please.
MR. THOMAS: Your Honor, Ms. Donarski is
underlining items for this witness who apparently is
otherwise not able to answer the question herself.
JUDGE FETCH: Ms. Donarski, please refrain
from altering the document.
Q. (MR. THOMAS CONTINUING) Show me in the
document, if you can, ma’am, any reference that
Ms. Odermann-Gardner, herself, made to pressure that
she felt to misreport enrollment numbers in either
the fall of 2010 or the spring of 2010? Do you see
any reference to enrollment at all? Yes or no?
A. No, sir.
MR. THOMAS: Thank you. That’s all I
have. We would offer Exhibit UU, Your Honor.
JUDGE FETCH: Any objections?
MS. DONARSKI: No objection.
JUDGE FETCH: Exhibit UU is admitted.
MR. THOMAS: No other questions.
MS. DONARSKI: I have no further questions, either.

JUDGE FETCH: Is this witness under subpoena?

MS. DONARSKI: She is not.

JUDGE FETCH: Did you have any witnesses under subpoena?

MS. DONARSKI: No.

MR. THOMAS: Nor us.

JUDGE FETCH: Then I will discontinue asking that. Thank you. You're excused. And who is your next witness?

MS. DONARSKI: Kay Erickson. Joanne, would you have Kay step in? Thank you.

JUDGE FETCH: Ms. Erickson, there should be a witness instruction in front of you telling you what the penalties for perjury are. Would you take a moment and look at that?

THE WITNESS: (Reviews document.)

JUDGE FETCH: All right. All witness testimony at this hearing is taken under oath and subject to those penalties you've just read. Would you please raise your right hand?

THE WITNESS: Yes.

JUDGE FETCH: Please speak up nice and loudly.

THE WITNESS: Yes.
Please have the witness spell her full name.

KAY ERICKSON, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. DONARSKI:

Q. Would state your name and spell it.
A. Kay Erickson, K-a-y, E-r-i-c-k-s-o-n.

Q. And are you employed with DSU?
A. Yes.

Q. What office are you employed with?
A. The Office of Extended Learning.
Q. And what do you do for the Office of Extended Learning?
A. I'm a staff assistant, and I help register students in online classes and I also keep the main database for the office of all of our students.

Q. How long have you been employed with the Office of Extended Learning?
A. Three-and-a-half years.

Q. And during the three-and-a-half years with the Office of Extended Learning, did you work with the students who register for the symposiums?
A. Yes.

Q. Symposia, yes. Briefly explain that process of what your role would be with respect to the symposium students.
A. I received their names and information, I then sent that to our application specialist. She
made them active in Campus Connection. Once they
were active in Campus Connection, I then registered
them in the DSU class.

Q. And that's what you did in 2010?
A. Yes.
Q. Was that different than what you had done
in prior years?
A. Yes. I had never registered symposium
attendees before.
Q. When you say "registered," what does that
mean?
A. Registered them in a DSU class for credit.
Q. Okay. Register them as DSU students?
A. Yes.
Q. And that's something you had never done
before?
A. No.
Q. But you did that in 2010?
A. Yes.
Q. Why did you do that in 2010?
A. I was directed that I would be enrolling
those participants by my director.
Q. Okay. And what was the significance of
enrolling those participants as DSU students?
A. To increase the final census number.
Q. Okay. And the final census number being?
A. The final DSU number that was our total
head count for that fall semester.
Q. Okay. What was the census date?
A. I believe it was September 21st of 2010.
Q. September 20, 2010; does that sound about right?
A. It could be, yes. I know it's always four weeks after school starts.

Q. Okay. Prior to that final census date, what was the tone of the office, keeping in mind that that census date was closely approaching?
A. It was very stressful, because we were under a lot of pressure to make sure we made our enrollment numbers as an office.

Q. Okay. Had there been enrollment goals or increase in numbers placed on that office prior to 2010?
A. Yes. Each semester we would work with our director to set a percentage to increase our enrollment and meet that goal. It was usually two or four percent.

Q. Okay. Did things change with respect to enrollment expectations out of your office?
A. We were always expected to increase our enrollment every semester.

Q. Okay. So why was it different in 2010?
A. Because these students, I didn't have them fill out a registration form, nor did I have them fill out an application. I just received their information in a spreadsheet.

Q. Okay. And who gave you that spreadsheet?
A. Joanne Fields.

Q. And the spreadsheet was what?
A. People who had attended the symposiums for
the entire event or had signed up to attend the symposiums in their entire event.

Q. Okay. And they were individuals who had not requested or filled out an application or registration form?

A. No.

Q. Okay. So they had not requested to be registered, but you registered them?

A. Correct.

Q. And was there a deadline of when those individuals had to be registered?

A. Before final census.

Q. So they could be counted in the final census?

A. Right.

Q. By enrolling, by you registering those individuals, what do you register them into? Explain that process.

A. They are put in Campus Connection so I can then enter them in a five-digit class number, which then at the end of the semester, they received how many credits the class was set up for. And so if I registered them in that class, at the end of the semester the instructor would give a grade or an S or a U for satisfactory or unsatisfactory and then they would have a DSU transcript. So without putting them in the class, they wouldn't have showed up on any final census.

Q. Okay. So you had to do that registration?

A. Yes.
Q. That's something you had not done before?
A. No.
Q. And it was for the final census?
A. Yes.
Q. The final census meaning the report that ultimately goes to -- the IPEDS report?
A. I believe so.
Q. Okay. Were you, yourself, ever asked to enroll yourself as a student in a class to increase enrollment numbers?
A. Yes.
Q. Is that an expectation so you can be counted as an added student for enrollment purposes?
A. Yes.
Q. Had that happened prior to 2010?
A. Yes.
Q. And, again, was it for the enrollment count?
A. Yes.
Q. What was your working relationship with Marty Odermann-Gardner?
A. It was a good working relationship. We had respect for each other and I looked up to her as a leader and she guided me since I was new to working full-time. And we worked very well together.

Q. Okay. When you registered students in
2010 -- let's do this. Exhibit 55 is in front of you. And the first page of Exhibit 55 is Bates numbered 50. That's an email. Have you seen that email before?

A. Yes.

Q. And, in fact, you're included on that email?

A. Yes.

Q. Now, that's an email that you received from Marty Odermann-Gardner August 11, 2010?

A. Yes.

Q. And not only are you included, but President McCallum is also included on that email as well; correct?

A. Correct.

Q. Generally describe the other individuals that are included on that email.

A. The majority of them are people from our Bismarck Office of Extended Learning and our Dickinson Office of Extended Learning. There is also the VPAA, the registrar, and the VPAA of Business Affairs, our University Relations Director, a dean, upper administration of DSU, the Enrollment Services Director.

Q. So we have a broad range of DSU officers and administration that were included on that email from Marty; correct?

A. Correct.

Q. Okay. And the subject line is "energy students." And it states, "FYI...we had 44
participants attend both days of the energy
cference. They will be registered ASAP."
The statement "they will be registered ASAP" means what?
A. They will be registered in a DSU credit
class.
Q. Okay. And that -- is that what you did?
A. Yes.
Q. And why ASAP?
A. Because --
MR. THOMAS: Objection to the extent that
it calls for a response that was made by Marty
Odermann-Gardner. This person was a recipient of an
e-mail. She was not the one that wrote the email, so
how could she possibly know what Marty Odermann-
Gardner meant when she stated that they will be
registered ASAP. It calls for a hearsay response.
JUDGE FETCH: Let me ask, Ms. Donarski,
are you asking this witness what her understanding
of that is?
MS. DONARSKI: I am. She was the
individual who registered the students, so I'm
asking her why there was a sense of urgency.
MR. THOMAS: But a sense of urgency would
have been through Marty Odermann-Gardner, unless
this witness testifies otherwise. I just -- I don't
want this witness trying to testify as to what sense
of urgency some person may have felt that isn't even
here to testify or be cross-examined.
MS. DONARSKI: She can testify as to what
she was directed to do and what the sense of urgency was. It's firsthand.

MR. THOMAS: If she felt a sense of urgency herself based on instructions that she was given from her direct supervisor, Ms. Odermann-Gardner, I suppose she can testify to her feelings about what sense of urgency she may have felt as a result of that, but surely she's not able to testify to what sense of urgency Marty Odermann-Gardner felt or anything about Marty Odermann-Gardner because she's not here.

JUDGE FETCH: I'll sustain the objection. I think, counsel, you can get to what you're looking for by another question.

Q. (MS. DONARSKI CONTINUING) The registering of the students, at this point, August 11, 2010, had the energy symposium been concluded?

A. Yes.

Q. In fact, the energy symposium was August 8 through August 10, 2010; correct?

A. Correct.

Q. Okay. So when it states they will be registered ASAP, that did not mean they would be registered to attend the symposium?

A. No.

Q. Because the symposium was over?

A. Correct.

Q. Okay. So they were registered, then, as what you did, which was what?

A. To put them into a DSU credit class so
they would show up on final census.

Q. Okay. And when did you register them?
A. Within a period after this email was sent, because we needed to obtain their birth dates to get them in Campus Connection, so some of them needed to be called to see if they would give us their birth date. I then had to wait for them to be active in Campus Connection to put them in the class.

Q. Okay.
A. So it was maybe a couple days after this email was sent, that I actually got them in the DSU class.

Q. What was your understanding as far as when these individuals had to be registered?
A. Before final census.

Q. Before September 20, 2010?
A. Correct.

Q. And when you say they were entered into the -- is it ConnectND?
A. Correct.

Q. And the ConnectND data that you entered, then, is the data that's ultimately reported in IPEDS?
A. Correct.

Q. Okay. What -- you had indicated you register so you can create the class. What would -- prior to 2010, what would the director, Marty Odermann-Gardner, have to do to take these steps to
register these students in this class? What was the process?

A. To create the class?

Q. Correct.

A. She would need to have an instructor agree to teach the class, the department chair of that instructor needed to approve it. The dean of that department needed to approve it and then the VPAA ultimately needed to approve it.

Q. Okay. And was that something that occurred in 2010?

A. That I don't know.

Q. Okay. Now, when you look at Exhibit 55, page 500, what -- it says, "We had 44 participants attend both days of the energy conference. They will be registered ASAP." Okay. So you went ahead and you did the registration process --

A. Yes.

Q. -- of registering them? Okay. Turn, then, to the next page, 501. And do you recognize that to be an email from yourself?

A. Yes.

Q. And that's dated August 12, 2010?

A. Yes.

Q. Okay. And explain the email that you have there to the Hearing Officer.

A. This email was sent to Lyn Welk, our enrollment specialist, who anytime somebody applies
to DSU, she puts them into ConnectND so that they are able to register in DSU classes. So my email is explaining to her the spreadsheet that I had attached, which was the spreadsheet of the participants, and on there was their name, their address and their birth dates and phone numbers and I'm saying that -- that I knew this wasn't the normal way so I wanted to explain to her so she wasn't mad at me, why are you sending me just a spreadsheet, not an application. So I was explaining to her why it was a spreadsheet and what the point of the spreadsheet was.

Q. And you say, "I was told that I'm registering them for credit"?
A. Correct.

Q. You wanted her to know that you were directed to do that?
A. Correct.

Q. Okay. And what was your understanding of where that directive came from?

MR. THOMAS: Objection. Foundation. How would she possibly know unless it was conveyed directly to her?

JUDGE FETCH: I believe that is the question, is it not?

MS. DONARSKI: It is.

JUDGE FETCH: Who told you that you're registering them for credit, is that the question, Ms. Donarski?

MS. DONARSKI: Correct.

Q. (MS. DONARSKI CONTINUING) And was it your understanding that she was -- was she doing that on her own or was it your understanding that she had the directive from the President?

MR. THOMAS: Same objection, Judge. She would have no way of knowing that.

MS. DONARSKI: Working in the office and working with her director.

JUDGE FETCH: Maybe if the question were worded such that, do you know if the directive came from the President and you know -- I'm not sure we can get to that or how do you know?

MR. THOMAS: It seems to me, Judge, there's two people that know the answer to the question. One is Marty Odermann-Gardner and the other is President McCallum. That would not call for a hearsay response. Any other answer would have to call for a hearsay response, particularly if this witness is going to testify that she was told by Marty Odermann-Gardner that she felt direct or indirect pressure from President McCallum, which would be clearly hearsay.

JUDGE FETCH: We discussed this off the record. Let's discuss this on the record. Marty Odermann-Gardner is listed on the witness list for DSU. Where is Marty Odermann-Gardner?

MS. DONARSKI: Marty Odermann-Gardner is in Colorado. She was unavailable to testify for
health reasons. We have tried to make her available. Because of that, we have the staff members to testify as to the process that has taken place. It is not excluded under hearsay. They are in the Office of Extended Learning and have knowledge of why they are doing what they're doing.

MR. THOMAS: Judge, it's nothing -- it's classic hearsay. And as to Ms. Odermann-Gardner's unavailability, we have each disclosed witnesses, several witnesses whom we intend to call by telephone, and I know there are telephones in Colorado and Ms. Odermann-Gardner can be made available to testify by telephone. She could have been deposed prior to these proceedings taking place. She is the best evidence other than

Dr. McCallum as to this line of questioning and to try to get it in through this witness is obvious hearsay.

MS. DONARSKI: I agree she's the best evidence, but she is unavailable. She has medically indicated she cannot testify. It's not that she doesn't have a telephone in Colorado. She is medically unable to testify. I don't know what else I can do, but to have her own office explain what was going on at the time.

MR. THOMAS: It's not an exception to the hearsay rule, Your Honor.

MS. DONARSKI: It's the best evidence that we have.

JUDGE FETCH: When you say she is
medically unavailable, why is she medically unavailable? Is she in a hospital treatment facility? What?

MS. DONARSKI: She has indicated that she has filed for disability. The result of filing for disability was precipitated by the abuse that was given, created, directed to her by President McCallum. For her to be subjected to additional abuse is a setback and she has been directed by her physician to not subject herself to any additional

stress.

JUDGE FETCH: Okay. She's in Colorado. You can't subpoena her.

MS. DONARSKI: Correct.

JUDGE FETCH: So unless you voluntarily get some agreement from her to testify, she doesn't have to.

MS. DONARSKI: Correct.

JUDGE FETCH: She doesn't have to make herself available.

MR. THOMAS: She doesn't have to make herself available, but it doesn't make the testimony of this witness any more admissible.

JUDGE FETCH: Okay. Mr. Seaworth, you wanted -- you had your hand up, you were trying to get my attention?

MR. SEAWORTH: I just had some information, but Ms. Donarski explained it.

JUDGE FETCH: Thank you. The problem is without -- you know, if I let in all this evidence,
how does Dr. McCallum have an opportunity to
cross-examine where this came from? How does he
have an opportunity to rebut it?

MS. DONARSKI: Through his own testimony.

MR. THOMAS: But that's not fair. He's

entitled to cross-examine the witnesses against him
and it's not fair that the other side would be able
to present one side of a witness's testimony without
us being able to help the Judge determine the
credibility of that witness by cross-examining that
witness. You can't have it both ways.

MS. DONARSKI: We've identified 16
witnesses. You've identified 14. Dr. McCallum has
plenty of opportunities to call witnesses to deal
with the testimony.

MR. THOMAS: It strikes me, Your Honor,
that if we are on the third witness of 16 and it
appears that the other side has 13 others to choose
from, that would be a logical way to proceed.

JUDGE FETCH: Okay. Okay. Let's cut
through this. You have another witness that is
available to testify that can testify to what you
are trying to get at through this unavailable
witness; is that right?

MS. DONARSKI: I do not.

JUDGE FETCH: Mr. Staudinger?

MS. DONARSKI: No. Marty Odermann-Gardner
was the only director in the Office of Extended
Learning at this period of time.

JUDGE FETCH: And the only individual who
had -- who claimed that there was pressure from
President McCallum or a directive --

MS. DONARSKI: Yes.

JUDGE FETCH: -- to put these students --

she's the only one?

MS. DONARSKI: For the Office of Extended
Learning, yes.

MR. THOMAS: If that's the case, Your
Honor, if that's the sole witness, it makes it even
more important that we be able to cross-examine her
and allow the Court to determine her credibility as
a witness, particularly if she's the only one who
allegedly felt pressure to submit false information.

MS. DONARSKI: She was not the only one
who allegedly felt pressure. I don't want to
misrepresent that. Her testimony is a piece in the
puzzle and the piece --

JUDGE FETCH: Okay. But my question was,
is she the only witness who would be testifying that
there was pressure from President McCallum?

MS. DONARSKI: No.

JUDGE FETCH: So you have other witnesses
to establish that?

MS. DONARSKI: Yes.

JUDGE FETCH: Then I'm going to sustain

the objection. Let's move along.

Q. (MS. DONARSKI CONTINUING) Back to
Exhibit 501, which is your email with respect to the spreadsheet of participants for the energy symposium; correct?

A. Correct.

Q. Okay. And you're indicating to Lyn Welk, who is in what office?

A. Enrollment Services.

Q. Okay. That you were told to register them for credit?

A. Correct.

Q. So you went ahead and enrolled them, registered them for credit?

A. Okay.

Q. Turning, then, to the next page, 502, and that is another email from yourself to Lyn Welk?

A. Correct.

Q. Dated August 26, 2010?

A. Correct.

Q. Okay. And what is that?

A. This is a second email with a second spreadsheet of energy symposium participants. The reason they were broke out into two batches was because we didn't have some birth dates for others.

So we went ahead and registered the ones we had the birth dates for and called the other registrants that didn't provide their birth dates, got those birth dates from them, and then put them in for a second batch. So this was my second email of energy symposium people that gave us their birth dates.

Q. Okay. Now, if the students wanted to
They would have completed, I think you said, a registration form?

A. Correct.

Q. And that registration form would have had that data on it?

A. Correct.

Q. You didn't have a registration form?

A. No.

Q. Turning, then, to page Bates No. 505, and this is another email from yourself to Lyn Welk?

A. Correct.

Q. Dated September 15, 2010?

A. Correct.

Q. Okay. Now, this is involving the Theodore Roosevelt symposium?

A. Correct.

Q. And explain to the Hearing Officer the significance of this email.

A. This email is the spreadsheet of everyone who attended both -- the entire symposium that I was told will be registered for credit and this spreadsheet was those participants.

Q. Okay. And, again, you did not have birth dates?

A. Some birth dates we did and I broke out a second tab for people who did not give us their birth dates.

Q. Because you need the birth dates to enroll into ConnectND?

A. Correct. You can't have duplicates.
Everyone is assigned one ID number and you cannot have duplicate ID numbers so you need that birth date to make sure that person is not already in ConnectND.

Q. And, again, for the Theodore Roosevelt symposium participants, you did not have any registration forms for those individuals indicating they wanted to register as students?

A. No.

Q. Turning next to 506, that's another email from yourself to Lyn Welk?

A. Correct.

Q. And that's now dated September 20, 2010?

A. Correct.

Q. Okay. And explain to the Hearing Officer the significance of that email.

A. This is the last list of the TR participants, so these were the people we didn't have birth dates for that we contacted us -- contacted and they gave us their birth dates. I then sent this to Lyn so she could get them active in ConnectND, so I could then register them in the TR class.

Q. Okay. And it says, "We are hoping to get them into the final census." Why was that?

A. That way they would count on our final census.

Q. Okay. And at the same time you indicate, "Joanne is supposed to be sending me a list of Disney institute participants as well that are to be
18 in the final census"?
19 A. Correct.
20 Q. Had you ever been in this position where
21 you are registering students from Excel spreadsheets
22 and not a student registration form?
23 A. No.
24 Q. And then look at the next page, page 507.
25 And that's another email from yourself to Lyn Welk?

1 A. Correct.
2 Q. And there we -- again, it's dated
3 September 20. And we have the Disney conference
4 participants?
5 A. Correct.
6 Q. Okay. And there were 86 total?
7 A. Correct.
8 Q. So you, then, entered all of those
9 participants?
10 A. Correct.
11 Q. Okay. And when was the final census date?
12 A. That Monday, so Tuesday, September 21st,
13 it would have been.
14 Q. At 12:01?
15 A. I think so.
16 Q. Okay. And then after that is a final
17 report then. Turn to page 508. It's a final
18 report, then, sent to all. It looks like Stacy
19 Wilkinson sent a final report to all?
20 A. Correct.
21 Q. Okay. And Stacy, who is Stacy?
22 A. She is our online advisor for our online
Q. And did she provide enrollment reports by email like this one?

A. Yes, weekly.

Q. Weekly. Okay. Why was enrollment such a focus?

A. To increase the final census number.

MS. DONARSKI: Thank you. I have nothing further.

JUDGE FETCH: Thank you. Mr. Thomas, you may cross.

MR. THOMAS: Thank you.

CROSS-EXAMINATION

BY MR. THOMAS:

Q. Ms. Erickson, can you clarify for us to whom you reported or to whom you do report now at DSU?

A. Right now who I report to?

Q. Yes.

A. John Hurlimann.

Q. Okay. For how long have you reported to John Hurlimann?

A. Since he was hired. I'm not sure which month that was. Beginning of this year.

Q. This academic year?

A. No, this year.

Q. Calendar year?

A. Calendar year.
Q. And before that, to whom did you report?
A. Steve Glasser.
Q. Obviously, you've never reported directly to President McCallum during the time that he was -- has been President; true?
A. True.
Q. And did you ever even interact with Dr. McCallum on a significant basis while he was serving as President?
A. There was a time where I sat in his office just to answer the phone while he had no secretary, but there was no interaction.
Q. And no directives from Dr. McCallum to you about anything, especially anything relating to enrollment; is that a fair statement?
A. Yes.

MR. THOMAS: Thank you, Ms. Erickson. Those are all the questions I have.

JUDGE FETCH: Any further questions?

REDIRECT EXAMINATION

BY MS. DONARSKI:
Q. Did Steve Glasser know that you were registering these students for enrollment purposes?
A. Yes.

MR. THOMAS: Objection. Your Honor, I'm not sure how this witness would know what Steve Glasser knew.

MS. DONARSKI: He was the director after Marty.

MR. THOMAS: He would know.
MS. DONARSKI: How would he not know what his employee is doing?

JUDGE FETCH: I'm going to overrule. You can answer that.

THE WITNESS: Yes.

MS. DONARSKI: Thank you. Nothing further.

MR. THOMAS: Nothing else, Your Honor.

JUDGE FETCH: I just want to be clear. I thought Joanne Fields or Marty Odermann was your — I thought you reported to Marty Odermann.

THE WITNESS: I reported to Marty, but right before John Hurlimann was Steve Glasser. Steve came in after Marty left. So it was Marty Odermann-Gardner, Steve Glasser and then John Hurlimann.

JUDGE FETCH: Got it. Thank you. Any further questions?

MS. DONARSKI: I do have a followup on timing.

REDIRECT EXAMINATION

BY MS. DONARSKI:

Q. When did Marty Odermann-Gardner leave?

A. She saw us through the first week of school and then she left.

Q. Okay. Through the first week of September 2010?

A. School starts in August and she saw us through that first week that school started and then she left.
Q. And then it was Steve Glasser?
A. Correct.
Q. From that period of time until John started the beginning of -- sometime in 2011?
A. Correct.

MS. DONARSKI: Okay. Nothing further.
MR. THOMAS: Nothing else, Your Honor.
JUDGE FETCH: All right. Thank you. You're excused. And who is your next witness?
MS. DONARSKI: Stacy Wilkinson.
JUDGE FETCH: Is someone getting Stacy Wilkinson?
MS. DONARSKI: Yes, she is walking in right now.
JUDGE FETCH: Let's begin by having you spell your full name for the record.

THE WITNESS: Stacy, S-t-a-c-y. Lynn, L-y-n-n, and last name is Wilkinson, W-i-l-k-i-n-s-o-n.
JUDGE FETCH: All right. All witness testimony at this hearing is taken under oath and is subject to penalties for perjury. Take a look at that witness instruction sheet in front of you that will tell you what those penalties are.

THE WITNESS: (Reviews document.)
JUDGE FETCH: All right. Please raise your right hand.

Do you solemnly swear the testimony you're about to give shall be the truth under the pains and penalties of perjury?
DIRECT EXAMINATION

BY MS. DONARSKI:

Q. Stacy, what is your title with DSU?

A. Currently, I am Student Support Specialist in the Office of Extended Learning.

Q. Okay. And how long have you been in the Office of Extended Learning?

A. Four years.

Q. Okay. And what's your duties as --

A. In my position currently, I am the advisor for all of our online programs. Right now we service eight online programs. And so I assist with helping them with the application process, just supplying them with the forms. Primarily, I assist with registration and classes. I help them decipher, you know, how many classes are comfortable for them to take in any given semester, do they want to be totally online or be coming on campus. I help with the audits, auditing their transcripts and sending it on to the department chairs so that we know what classes they have left to continue their degree and finish. And then I just -- I'm just customer services, really. I really help with, you
know, whatever needs they have, if they have to get
ahold of an instructor. And then I also help our
on-campus students, our older-than-average students
that are married, have children, want to take
classes after hours or in the evening and things
like that and those that are pursuing the university
studies degree. They all come to my office, so I do
have some on-campus students as well.

Q. When you say "I help them with the
application process," you assist students with the
online application process?

A. I do. I direct them to where to go on the
online app, and then if they want me to email the
hard copy one, I email PDF and they can send that
directly on to Enrollment Services or they can send
it to me and then I'll forward it on for processing.

Q. Okay. So you've been there four years.
Did the process change in 2010?

A. As far as?

Q. As far as enrolling students or the
applications from the students?

A. The process to enroll a traditional or
nontraditional was an application process, $35
application fee, and then transcripts for the
online. If they come on campus, it's still a
medical history form and shot records and then if
they're under 24 years of age, ACT and a high school
transcript if they don't have 24 credits, college
level credits. So it's been -- I've worked at DSU
for 13 years and it hasn't changed since I've been
there.

Q. Okay. Was the process with respect to registering the students different in 2010?

A. For the students I work with it's the same, same process.

Q. Okay. And your involvement with respect to the enrollment, I want to draw your attention to an exhibit. It's Exhibit 55, Bates No. 508. Is that an email that you had sent to a number of individuals?

A. Yes.

Q. And it's dated September 21, 2010?

A. Yes.

Q. And you sent the email to whom?

A. I always send it to the President. I sent it to Enrollment Services, because we send them a report as well, so he kind of likes to know what the right hand and left hand are doing so he gets it.

It was the Vice-President of Academic Affairs at the time or acting at the time. He wasn't actually the actual. He was interim. And then everybody in our office. That includes our Dickinson local and then also our Bismarck Extended Learning Office, and then on that particular one I also copied the University Relations Director because it was a census email.

Census had been run that night before so she could use the information to do any publications that she
seemed necessary. And then I also copied the
President's secretary just in case he was really
busy and she could print it for him and bring it to
his attention.

Q. And the subject line is "final OEL fall
2010 enrollment report." What is OEL?
A. OEL is just an abbreviation of our office,
Office of Extended Learning.
Q. And that's the office you work at?
A. Correct.
Q. And you indicate in your email, you
provide an update as to the goal, the four percent
OEL goal, we needed 780 students. What does that
mean?
A. That particular year that I -- that we've
done this, we were given a specific goal. It was
brought down from our director, but she was given --
my understanding of it is that --

MR. THOMAS: Objection, to the extent it
calls for a hearsay response. I appreciate it came
from her director. Beyond that, I don't think she
would be able to testify.

JUDGE FETCH: Sustained.

THE WITNESS: Can I keep answering it?
JUDGE FETCH: No, wait for a question.
Q. (MS. DONARSKI CONTINUING) What was your
understanding with respect to the goals for the
Office of Extended Learning?
A. My understanding was that the entire
university, the key players in the departments that
help enrollment were each given a percentage by the
President's administration.

Q.  Okay.

A.  We have a strategic enrollment management
committee on campus, which has a lot of the
department chairs.  I don't know all of them, but
they were the people that, you know, set things in
motion for campus and come up with strategic plans
on how we can get the enrollment increased.  So it
was my understanding that that came from there.  It
was set.  We were held to that goal and then our
office, under the direction of Marty Odermann-
Gardner, came up with strategies that we could meet
that goal.

Q.  Okay.  And you have reported to all,
including President McCallum, “We have made up the
difference through the following conferences:
Energy symposium, add an additional 36; TR

symposium, that's the Theodore Roosevelt symposium?

A.  Mm-hmm.

Q.  “Add an additional 49; Disney Institute,
add an additional 82”?

A.  Mm-hmm.

Q.  What do you mean by “add an additional”?

A.  That email attached to that was just
strictly the Office of Extended Learning.  That is
our actual students, those other than symposiums and
during this particular fall, at the time this email
was actually sent, we were -- anybody who was
anybody knew we were counting these conferences in
head count. So this email is adding that onto that. Marty would have still stated that because we track how many participants we have in conferences and she would have just said that we have this many people attending conferences. So she still would have, because our office actually reports on the conferences. We run the conferences, and so that would have been in there, but this particular fall they were actually being counted into head count and since our office is in charge of the conferences, we laid it within the email. So if we would be able to add to our existing 718 people, I think we had, that would bring up our goal, because our office is the department that actually houses the conference coordinator, which at the time was Marty Odermann-Gardner, and we help with registration for those conferences and then report on the numbers and actually run the conferences.

Q. Right. And so this year, I think you indicated that the difference in 2010 was that the conference attendees were actually added as students for the enrollment head count?

A. Correct.

Q. And that was for the census deadline?

A. At the date of this, which would be the date. The census was ran the night before. This was actually factual head count that we pulled from Campus Connections that day.

Q. Okay. As of September 21, 2010, President McCallum knew that the Office of Extended Learning
had made up the difference by adding students, attendees from each of these symposiums as you've indicated in your email?
A. Right. I mean, because he was emailed and so was the secretary so I believe it would have crossed his desk at some point.

MS. DONARSKI: Thank you. I have nothing further.

JUDGE FETCH: Mr. Thomas?
MR. THOMAS: No questions, Your Honor.
JUDGE FETCH: All right. Ms. Wilkinson, that's all the questions for you. Thank you.
Let's take a ten-minute break.
(Recess taken from 4:26 p.m., to 4:37 p.m., the same day.)
JUDGE FETCH: I was informed some witnesses are kind of hanging out in the hallway. Let me see if they are ones that can come in and sit down or if they need to be sequestered.
(Recess taken in place.)
JUDGE FETCH: Okay. We're back on the record. All right. And your witness, Ms. Donarski, is John Askvig?
MS. DONARSKI: Josh.
JUDGE FETCH: Josh Askvig. Sorry. Would you please spell both of your names for the record?
THE WITNESS: No problem. First name is J-o-s-h. Last name is A-s-k-v, as in Victor, -i-g.
JUDGE FETCH: Mr. Askvig, all witness
take a look at that?

THE WITNESS: (Complies.)

JUDGE FETCH: All right. Please raise your right hand.

Do you solemnly swear the testimony you're about to give shall be the truth under the pains and penalties of perjury?

THE WITNESS: I do.

JUDGE FETCH: All right. Thank you. And, Ms. Andrews, you're going to be examining this witness, I understand?

MS. ANDREWS: Yes. Thank you, Your Honor.

JUDGE FETCH: Go ahead, please.

JOSH ASKVIG, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. ANDREWS:

Q. Could you please explain your current affiliation with Dickinson State University?

A. I'm the President of the Dickinson State University Alumni Association.

Q. And how long have you served in that capacity?

A. A little over a year.
Q. And have you been associated with the Alumni Association for longer than this last one-year period?

A. I've been on the Alumni Association since either late 2007 or early 2008. I can't remember exactly.

Q. Okay. Since you've been involved with the Alumni Association and since President McCallum has been the President of Dickinson State University, can you please describe generally the interactions that you've had with him?

A. Most of my interactions with President McCallum were through our alumni board meetings. We generally meet four times a year, sometimes less than that, and so my interactions were generally reserved to that. Obviously, other functions where I would attend, we'd bump into each other casually. But most at alumni board meetings, for the most part.

Q. And do most of your alumni board members live in town or do they come from out of town?

A. Most of us live out of town. I'm trying to think of the makeup of the Board and we've had some transition, but I think there are two or three that live in Dickinson and the rest are generally in the surrounding areas. Some as far away as Montana, western Montana. Some as close as Bismarck.

Q. And are these in-person meetings?

A. They are in-person meetings.

Q. Okay. Can you please explain
Dr. McCallum's interactions when he came to the Board and presented on behalf of Dickinson State University?

A. Generally, when we would hold meetings, and we hold them quarterly, so generally it's September, October'ish, December, March and June, roughly, just for the time frame. My experience was that he would show up either right on time or slightly after we would start the actual meeting, give his update from the University and then leave.

Q. Did Dr. McCallum participate in discussions with the Alumni Association when he came to those meetings?

A. He -- as soon as he would give his update, generally he left the meeting and so, I guess to say participate, when he was giving his presentation, he certainly would allow people to ask questions, but wouldn't stick around afterwards to hear about the rest of what we were talking about.

Q. In your experience, did Dr. McCallum encourage interaction with the Alumni Association and with him?

A. The experience I have is, no, not necessarily. From the standpoint of when he would come and present, it would be a very factual matter and that was it. It was, here's what I have to say and see you later.

Q. And did the Alumni Association ever communicate with Dr. McCallum outside of those meetings via email or other means?
To my recollection, every email we would send about meeting updates or things, he was generally included on as an ex officio member of the Board.

Q. So is it accurate to say that Dr. McCallum was included in the communications involving the Alumni Association?

A. As far as I'm aware of, yes.

Q. Did you ever receive or were you ever aware of any accusations by Dr. McCallum regarding anything that he believed was inappropriate or any inappropriate communication with the Alumni Association?

A. Well, I mean, there was one instance before I was president, where he was unhappy with our executive director, that he wasn't satisfied with how he was reporting or not reporting or something of that matter.

Q. Was the association working on a project with Dr. McCallum regarding the centennial project?

A. Yes.

Q. Can you please describe what that project included?

A. Well, the project was yet to be defined in that the centennial is coming up in the next seven years, I guess now, and that when I started on the Board, we had said we were willing to work together and help out and that, to date, in my tenure on the alumni Board, even though we've asked a couple times, have heard nothing back on where that's at,
what our input or role will be, even though we asked.

Q. And to clarify, you asked Dr. McCallum what input or involvement they would like from the association?
A. Correct.

Q. Do you recall when you first asked or offered involvement?
A. I don't, no. Within the last two years.

Q. And since that time, you've heard nothing further from Dr. McCallum?
A. No.

Q. So is it fair to say that that project is essentially stalled in terms of the association's involvement with it?
A. I think the question is still -- we just had an alumni Board meeting and the question was where are we at on that, and the answer is no one knows.

Q. Okay. How would you describe the association's relationship with Dr. McCallum prior to his notice of intent to dismiss?
A. I will tell you my personal interaction with him was that it was generally cool. I mean, always welcome, but very at an arm's length.

MS. ANDREWS: Okay. Thank you. I have nothing further, Judge.

JUDGE FETCH: Thank you. Mr. Thomas.

CROSS-EXAMINATION

BY MR. THOMAS:
Q. I'm trying to stay focused on the issues that bring us here, Mr. Askvig, so I just want to make sure I'm not missing something here. First of all, you don't have any testimony to present or any information regarding any of the enrollment issues that have been discussed today; is that fair to say?

A. No.

Q. Consider yourself lucky. I'm looking at the amended notice of intent to dismiss, which I take it you haven't seen. Or maybe you have seen it, the notice of intent to dismiss President McCallum?

A. To my recollection, I have not seen it.

Q. So you don't know whether any concern with regard to Dr. McCallum's relationship with the Alumni Association was listed as a basis for his termination of employment; true?

A. I have no idea.

Q. Okay. Can you tell me, Mr. Askvig, since you are the President of the Alumni Association, if you recorded or if there's anything that we could look to from you that would demonstrate that you felt there was a problem, if you felt there was a problem between you and Dr. McCallum or the association and Dr. McCallum? Anything ever reduced to writing or any letters ever sent to Dr. McCallum to try to improve what may have been a bad relationship?

A. To my recollection, recording, no.
Q. Did you ever talk to him about any concerns that you had?
A. Well, when he would come to meetings, we had very limited ability to do that.
Q. Okay. I understand. I guess maybe I'll ask it this way. Did you ever go to his office, ask to see him at times other than those meetings?
A. I live in Bismarck and so it wasn't like I could take off and do that necessarily.
Q. I appreciate that. How about picking up the phone and calling him with any concerns that you may have, did that ever occur?
A. It did not.
Q. Okay. And I think that you testified that the Board meetings -- or I mean the Alumni Association Board only meets, I think you said fewer than four times per year; is that right?
A. Generally four, but, yes, sometimes fewer.
Q. And he attended all of those meetings?
A. To my recollection, yes.
Q. Okay. How about alumni events that Dr. McCallum would attend outside of those meetings, was he a regular attendee of those alumni events?
A. My recollection is that events I was at, he was there.

Q. Events that you were at, he was there?
A. Generally, yeah.
Q. And that would include locations not just in Dickinson, but also in Bismarck?
A. True.
Q. Phoenix?
A. I was never in Phoenix.
Q. Okay. Do you know if he attended alumni events in Phoenix?
A. I have no idea.
Q. Or San Francisco?
A. No idea.

MR. THOMAS: Thank you. Mr. Askvig, those are all the questions I have.
MS. ANDREWS: Just brief followup.

REDIRECT EXAMINATION

BY MS. ANDREWS:
Q. Did you ever express the concerns that you had with Dr. McCallum with the Chancellor?
A. Yes.
Q. And can you please explain to the Administrative Law Judge generally what those concerns were?
A. There was a time in -- would have been, I don't know, February or March where I went and visited the Chancellor in his office and expressed the very things I expressed to you about the fact that there was very little communication or interaction.

MS. ANDREWS: Okay. Thank you. That's all I have, Judge.
MR. THOMAS: If I may, Your Honor, based
on that.

JUDGE FETCH: Go ahead.

RECROSS-EXAMINATION

BY MR. THOMAS:

Q. Why? Why the Chancellor? Why not the person with whom you perceived some problems?

A. Simply from the standpoint of, A, I knew where the Chancellor was and saw him on a daily basis.

Q. Okay. So you don't have any knowledge of what efforts the Chancellor may have made to --

A. No.

Q. -- discuss with Dr. McCallum these concerns?

A. No.

Q. And, again, just so I understand what the concerns were, it was that he didn't arrive early for the meetings or he wasn't responsive to the Alumni Association, or what am I missing?

A. So as I said and I'll just -- and maybe this isn't a fair comparison, but to place it into context I know, is that if we were to be engaged and a part of the university, we meet four times a year or less and that the limited amount of time that he would be there, which would be nothing ahead of time, so really little room for informal conversations about, hey, how is it going or here's this concern or this concern, give his presentation and then leave.

So I would guess my opinion would be that
if you truly wanted to have some engagement or involvement from your Alumni Association that you would want to take some time to have that interaction.

Q. Okay. Fair enough. I guess I'm still confused as to why Dr. McCallum wouldn't be approached with that concern, but the answer is you haven't, yourself, you never approached him?

A. No.

MR. THOMAS: Thank you. That's all I have.

JUDGE FETCH: Anything further?

MS. ANDREWS: No. Thank you.

JUDGE FETCH: That's all, Mr. Askvig. Thank you. You may leave or you may stay. I believe you said you had one more witness you could call, Ms. Donarski?

MS. DONARSKI: I have a witness I can start today or this evening.

JUDGE FETCH: Start?

MS. DONARSKI: Right.

JUDGE FETCH: How long is that witness going to take?

MS. DONARSKI: This witness will take at least an hour.

JUDGE FETCH: Then we won't get started then. That, you know, is fairly nonproductive.

MS. DONARSKI: Understandable.

JUDGE FETCH: All right. The time is about 12 minutes to five, Central Time, and we're
going to conclude the proceedings for today. We will reconvene tomorrow morning. Let's get started at 8:30. All right. Back here at OAH.

(RECESS AT 4:49 P.M., THE SAME DAY.)

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STATE OF NORTH DAKOTA
STATE BOARD OF HIGHER EDUCATION

IN THE MATTER OF:               )
) OAH File No.
) 20110365
Richard McCallum               )

TRANSCRIPT OF HEARING

Office of Administrative Hearings
2911 North 14th Street, Suite 303
Bismarck, North Dakota
October 20, 2011
Volume 2

Before Bonny M. Fetch
Administrative Law Judge

APPEARANCES

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FOR DICKINSON STATE UNIVERSITY.
(The following proceedings were had and made of record, Thursday, October 20, 2011, commencing at 8:55 a.m.)

JUDGE FETCH: All right. I'm going to open the hearing. Today is October 20th, 2011. And we are present at the Office of Administrative Hearings in Bismarck for the hearing requested by Dr. Richard McCallum to appeal a notice of intent to dismiss his employment from Dickinson State University.

All right. At the conclusion of yesterday's proceedings, we were in the middle of the case for Dickinson State University and so we'll pick up there this morning.

And, Ms. Donarski, and, Mr. Thomas, before we begin, are there any preliminary matters for the record?

MR. THOMAS: No, Your Honor.

MS. DONARSKI: No, Your Honor.

JUDGE FETCH: All right. Thank you.

Then, Ms. Donarski, please identify your witness.

MS. DONARSKI: Thank you. I call Norman Coley, who is the DSU Director of Enrollment.
Mr. Coley, for the record, please spell your first and last name.

THE WITNESS: Norman, N-o-r-m-a-n. Coley,

JUDGE FETCH: All right. Mr. Coley, all witness testimony at this hearing is taken under oath and is subject to penalties for perjury. There's a witness instruction sheet there. If you would take a moment and glance at that, that will tell you what the penalties for perjury are.

THE WITNESS: (Reviews document.) I understand.

JUDGE FETCH: Thank you. Please raise your right hand.

Do you solemnly swear the testimony you're about to give shall be the truth under pains and penalties of perjury?

THE WITNESS: I do.

JUDGE FETCH: Thank you. Speak up nice and loudly.

All right. Ms. Donarski.

MS. DONARSKI: Thank you.

DIRECT EXAMINATION

BY MS. DONARSKI:

Q. Norman, you're the Director of Enrollment
Services?

A. That is correct.

Q. What duties does that include?
A. That includes the intake of all students that are enrolled at Dickinson State University, which includes degree-seeking as well as non-degree seeking students.

Q. And how long have you held that position?
A. This past August would be two years.

Q. What did you do prior to that?
A. I was actually at the Center for Multicultural Affairs at Dickinson State University and prior to that I worked at North Dakota State University in Wahpeton, North Dakota.

Q. How long have you been in the University System?
A. Now 13 years.

Q. And briefly describe your educational background.
A. Oh, wow. Okay. I went to school in South Dakota. I achieved a Bachelor's of Administration in Business Administration with an emphasis in management. I then went on for my Master's Degree, my MBA, through Colorado Tech University. I received that in '97 and then went on to the University of North Dakota for a Ph.D. in Educational Leadership Administration.

Q. Perfect. So as director of enrollment services, who do you report to?
A. I report directly to the President of
Dickinson State University.

Q. And with respect to the issue of enrollment, was there a strategic enrollment management team that was set up?

A. Yes, ma'am. Prior to my arriving at Dickinson State University, DSU had engaged in putting together a strategic enrollment plan, which the overall team was comprised of cross membership from across DSU community as a whole. It had vice-presidents, deans, directors, students, as well as faculty and staff.

Q. Okay. And were you one of the chairs of that team?

A. At taking the appointment on August 3rd, I was then appointed as a cochair for that strategic enrollment team, yes.

Q. August 3rd of what year?

A. 2009.

Q. Okay. And who was your other chair for that team?

A. Ms. Marty Odermann-Gardner, the Director over Extended Learning.

Q. Okay. So you two were chairs of the strategic enrollment management team?

A. Yes.

Q. And explain to the Hearing Officer what your role was or what the role of the strategic enrollment management team was.

A. The overall scope of the project was to develop a guide, a plan that would help move the
institution forward to grow its overall enrollment, to identify and to benchmark ways of being able to assess our overall growth and then, also, to be able to put together a comprehensive recruiting plan as well as a marketing plan. Again, this was essential for the overall health of the institution to be able to have a plan that we can, then, look at to see how we had done overall from one year to the next. This plan was originally designed to be a three- to five-year plan.

Q. And did the team work closely with President McCallum on the status and what they were doing with respect to the enrollment?

A. From the beginning, yes. President McCallum, upon my arriving to this position,

Noel-Levitz was the facilitator for this overall plan. With that, there was a large kickoff in October 2009 to which he was very supportive. He sat in on the majority of the meetings that we had during that time frame. After that time period, he would invite both Marty and myself to come in and update him personally and then we were also invited to apprise the President's cabinet with regards to the overall progress of that strategic enrollment plan.

Q. What were the expectations of the team?

What were the President's expectations of the strategic enrollment management team?

A. One, that we would communicate effectively. Two, that we would be able to
effectively create a plan that would help increase enrollment at Dickinson State University, that would also be able to engage the entire community in this overall plan, versus for so many years they had not had a plan for enrollment, and so this was a way to be able to more effectively manage enrollment.

Q. And you had indicated that you did have enrollment management meetings, you and Marty Oermann-Gardner with the President?
A. That is correct.

Q. And those meetings would occur how often?
A. It was fairly irregular as far as the time frames that we met. We met once during the fall of 2009. We also met again during the spring of 2010.

Q. Okay. Describe the enrollment management meeting that you and Marty had with the President in the fall of 2009.
A. That meeting was fairly open, very warm from the standpoint that I was just getting started. Trying to get a better handle on what all had taken place, where we were with the overall scope of the project. With that Joyce Kincaid also had met with President McCallum to --

Q. Who is that?
A. She was a facilitator for Noel-Levitz to be able to help explain the overall scope of the project, as far as where we were, we were entering into basically the last phase. This overall project had been in progress, prior to my arriving there, for about two-and-a-half years.
And so with that, during the fall of 2009, in essence, we were truly trying to get a handle on what was the overall direction from the President and/or his cabinet of where they wanted to see overall enrollment. We needed to have, basically, that type of a game plan to be able to go back to the strategic enrollment management team to be able to say, here is the President's direction as far as overall growth.

During this conversation we had discussed how much should we grow, and at the conclusion of the conversation the decision was that we were to grow at least one percent each year for five years. And, subsequently, after that, we went back to the strategic enrollment management team to discuss that. We started putting together action plans that all represented the one percent overall growth for the institution for up to five years.

Q. Okay. Now, you indicated you had another enrollment management meeting, you and Marty Odermann-Gardner, with the President in the spring of 2010?
A. That is correct.
Q. Okay. Describe the details of that meeting to Judge Fetch.
A. We were apprising the President that basically we were coming to the end of our contract with Noel-Levitz.
Q. Back up. Explain what Noel-Levitz is.
A. Okay. Noel-Levitz is a recruiting,
retention, marketing company out of Iowa. They basically work with universities and colleges across the nation. They are actually viewed as one of the premier leaders with regards to overall strategic enrollment, as well as marketing. Each year they put on an annual national conference to be able to help individuals that work in retention, that works in marketing, that works in enrollment to better help them to do environmental scanning, to be able to do assessments on how well their plans are working. They also work with individuals as far as generating leads to be able to get prospective students into your enrollment funnel.

Q. Okay. Going back to the spring 2010 meeting that you and Marty Odermann-Gardner had with the President.

A. We were apprising him with regards to the overall progress. We were talking about in April, basically, our contract was up and so what would be those next steps; would we need to continue with Noel-Levitz, specifically, Joyce Kincaid as our overall facilitator liaison. We also apprised him basically what each of the subcommittees were doing. There were four subcommittees. One focused on academic programs. One focused on financial aid and

scholarships. One focused on retention and the other one focused on recruitment and marketing.

And so we were giving an overall update of

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that. At that point in time he seemed very understanding of where we were and he apprised us to be able to set a time frame to come in and discuss this also with the cabinet.

Q. Okay. And who is the cabinet?
A. The cabinet is comprised of direct reports to the President, so these would be the Vice-President of Business Affairs, the Vice-President of Academic Affairs, the Vice-President of Student Development, the Dean, at that time Doug LaPlante, the Athletic Director, the Director of the Foundation Alumni, as well as the Director of University Relations and then the Executive Director for the Strom Center.

Q. Okay. So after the spring of 2010, did you and Marty Odermann-Gardner have additional meetings with President McCallum with respect to the enrollment?
A. With regards to that, we were actually invited to several coffee conversations. And this was meetings where the President would invite individuals that had direct influence over enrollment. So this would be comprised of the Athletic Director, the rodeo coach for ag. We had the Director for the Center for Multicultural Affairs, the Vice-President of Business Affairs, Academic Affairs, Student Development, Extended Learning, myself, and the Director of the University Relations, as well as the Strom Center Director would all be invited to these meetings to talk about
overall enrollments and what the scope of fall
enrollment or spring enrollment would be.
Q. Okay. And with respect to scope of fall
enrollment, are you talking fall 2010?
A. That is correct.
Q. Okay. And what was the scope of fall
2010?
A. Our objective was to be able to keep the
momentum that we had already gained in 2009, where
our enrollment had eclipsed 2,700 students. With
that, he wanted to make sure that we did not lose
focus, that we were examining all potential leads to
be able to garner enrollment.
Q. "He" meaning President McCallum?
A. That is correct.
Q. And was President McCallum continually
apprised of where you were at? When I say "you," I
mean the strategic enrollment management team, where
everyone was at with respect to the enrollment
requirements or goals?
A. Yes. Yes. President McCallum was always
kept apprised of all the goings-on, if you will,
with regards to enrollment. There is a secondary
team that, upon coming into Enrollment Services, I
put together, and this team was comprised of
vice-presidents, deans, directors, to be able to
make sure that I had a firm handle on overall
enrollment and what was going on. This was an
avenue to open up the lines of communication and
this also came at the recommendation of my
supervisor, President of the institution.

With that being said, each week I put together a weekly application report, which basically highlighted how many applications DSU had received that were actually matriculated, which makes them eligible to register at DSU.

Q. Explain the term "matriculated."

A. Matriculation is basically a student that is interested in attending Dickinson State University. They have to comply with the rules and regulations that is established by both the University System, as well as the State Board of Higher Education. With that, they are required to do a common application. They are required to pay a $35 application fee. They are required to, then, adhere to the North Dakota Core, which says you have to have so many credits in reading, so many credits in science, so many credits in mathematics. They also have to adhere to the overall policy with regards to if they have attended any other institution, they have to provide a transcript, they have to have taken the ACT.

And so for students to become matriculated, those things have to be satisfied. If they have not been satisfied, then that application, the applicant is then left in a pending file, meaning that there are still some things that he or she still needs to do to actually complete the application. Once the individual is matriculated, then he and/or she is encouraged to register for a
Q. Once the individual is eligible to register for a class, when does that student, then, get into the ConnectND enrollment for reporting purposes?

A. Okay. Once an application has been received, whether it is Enrollment Services or Extended Learning, because they had a satellite site here in Bismarck, once that application has been received, that information is immediately put into PeopleSoft and now we have a subsidiary, which is Hobsons. So a prospective student can actually apply online.

Q. Okay.

A. So that was not active for DSU until 2010 just for base of information.

Q. Okay. So they’re entered into PeopleSoft?

JUDGE FETCH: Counsel, could you have this witness --

THE WITNESS: Speak up?

JUDGE FETCH: -- explain what PeopleSoft is and also explain a little more what ConnectND is?

MS. DONARSKI: Absolutely.

JUDGE FETCH: I mean, I know what those are. I work in State government, but not everyone does. So let’s get that clear in the record, please.

MS. DONARSKI: Okay.

Q. (MS. DONARSKI CONTINUING) Would you explain what PeopleSoft is and how it relates to
Connect ND?

A. PeopleSoft is the overarching network that the University System has utilized since 2004 to be able to manage the overall student information. With it there are at least three, four modules that are comprised in PeopleSoft. One is human resource management. One is student module. There's also an axillary, which is comprised of parking as well as housing. These things are basically utilized to help facilitate managing the students' information, whether they go from one institution or another. It also archives information for an extended period of time.

Q. Okay. And then Connect ND?

A. The Connect ND, Connect is what it's called. This is an opportunity for a student to be able to access PeopleSoft or their portal to be able to check the status of their accounts, to be able to register for classes, to be able to accept or decline their financial aid.

So, basically, the intent, at least from my understanding, PeopleSoft is to create a one-stop shop so that a student has access, so that the faculty staff administration for the State of North Dakota also has access, as compared to the paper and the old Legacy system that we used to utilize.

Q. And the student information, then, is
essentially maintained within PeopleSoft?
A. That is correct.
Q. And that's the same data that is used to report enrollment numbers through to IPEDS?
A. That is correct, as well as NSSE and HERI and all those other subsets that institutions as well as the University System would report on on an annual basis.
Q. And to report that information, PeopleSoft would have the enrollment data or enrollment report; is that correct?
A. Yes, ma'am.
Q. And then you would take the data from that report and that would be, then, reported to IPEDS, NSSE?
A. Correct.
Q. In the enrollment focus, did the meetings that you had with President McCallum, whether it was the co-chair meetings you had or the team meetings, did the tone of those meetings change in the fall of 2010?
A. Yes, ma'am, they did.
Q. And how did they change?
A. In the fall of 2010 Dickinson State did not achieve their enrollment goals. With that, we were aspiring to get an enrollment of 2,795. With that, our enrollment came in at 2,668, which mathematically was a failure. With that, we did not meet formally as a strategic enrollment team until October. With that, I had a direct report to the
President with regards to overall fall enrollment. With that, he asked me to prior insights on what happened, why we were not able to achieve our goals. I met with the enrollment management team and we discussed concepts and basically what were the lessons learned.

I provided that to President McCallum. He was extremely disappointed. It was a very somber, heavy meeting. Because, in essence, leading up to this, we had momentum, especially in April of 2010, with regards to our overall enrollment. We tried to maintain that. But, with that, along the way, President McCallum met with me and talked to me about overall trajectory, what are we doing to be able to get us to our target, of which there were a number of analogies that were utilized to help illuminate what he was expecting. For example, he would say, you know, how do you eat an elephant, and it’s one bite at a time. He was basically trying to express that you have to be very intentional about the steps that you take to be able to get enrollment. You have to make sure that you’re communicating across the campus to make sure that people were on the same page. But in the meeting during the fall, in essence, because we as a team had failed, there was a lot of disappointment, that we had dropped the ball.

Q. Had the team dropped the ball?
A. In my assessment, the team had not dropped the ball. In essence, the team had worked very hard
to be able to secure overall enrollments. With that, there is national research and data that had been published that basically illuminated that the State of North Dakota by far was going to have a very tumultuous time with its overall enrollments because of declining populations within the State of North Dakota, South Dakota, Montana, and Minnesota. And so with that, I would include those informations in my reports to say that, you know, we really need to look at some other avenues. With that, my champion was simply we need to really focus on retention. Upon coming into Enrollment Services, it was very clear to me that the enrollment was front-loaded, and my meaning with that is, we bring a number of students in during the fall semester.

Those students do not persist from fall semester to spring semester. We would have a large exodus of students that would actually continue on to the spring, and my hope was to be able to address the retention issue. This would later come into play for spring enrollments where I was told that, basically, the fact that I was trying to address the retention component was a failure on my part.

Q. Retention was not a focus of President McCallum?
A. Not at that time, no.

Q. What was the directive or the focus of President McCallum? You say enrollment was front-loaded and there was no retention. What was his focus with respect to enrollment?
A. In meeting with President McCallum, we would have conversations with regards to how the State of North Dakota placed a lot of emphasis on overall head count. He had mentioned that this was the only state that had put so much pressure on enrollment, whether he was meeting with State Legislators, whether he was meeting with people in the community, one of the first things that they would ask him was how is DSU’s enrollment. And I think he felt a significant amount of pressure with that. That, then, became my marching call as well, what can I do to be able to make sure that DSU had its enrollments.

Q. So focus on numbers, not necessarily quality?
A. Persistence, that is correct.

Q. In the fall of 2010, were the enrollment goals that were placed on each of the team members realistic?
A. In my assessment, no.

Q. Why not?
A. The reason that it was not was because we hadn’t truly, honestly sliced or peeled back the onion to be able to see truly where we were. In essence, we were told that we had lost a number of students over a period of time. There was actually a letter that was sent out to members of the Enrollment Management Team, as well as the Strategic Enrollment Management Team that talks about 455 students that was lost since 2008.
In looking at those numbers, I think there was some misinterpretation of the data. Specifically, some of the individuals that were deemed as being lost, never had any aspirations to get a degree from Dickinson State, so they should not have been a part of that overall retention to begin with, so they really weren't lost. Those objectives were actually achieved.

The other component of that is, we had a number of students that were involved in community classes offered through the Strom Center or Extended Learning. This did not equate persistence and so these individuals would stop out, thus creating a gap or a challenge, then, for the spring enrollment. So, in essence, again, it was front-loaded. We get them all in the beginning. We take this snapshot of these individuals for our census, but then the spring and summer were really inconsequential, because, again, that persistence mechanism was not in place.

Q. Were the census dates a priority when you were looking at getting students enrolled?

A. Yes. There are a couple things that come into play here. For freshmen and transfer students, everything is predicated on the first day of class, because those individuals, the window to be able to add a class is basically right around the corner from the very first day of school. If an individual is coming in as an international student, they have a little bit more time to be able to be enrolled at
Dickinson State University.

And so, with that, the application reports each week would give you a clear indicator of whether or not your enrollment really is going to be up or if it's going to be down and you do use that in comparison to subsequent years. With that, the indicators leading up to 2010, the indicators were that enrollment was going to be down. With that, we had worked very hard to be able to gain enrollment and to try to convert them into overall registrations, subsequent enrollments at Dickinson State University. The only avenues of enrollment opportunities would then be international students and/or through Extended Learning.

Q. And why was that, that the only avenues of enrollment opportunities would be between what did you say?

A. Between the -- for our international students?

Q. International students and then the Office of Extended Learning?

A. Correct.

Q. Was that Marty Odermann-Gardner's office?

A. That is correct. And the reason for that is, based on the time frames when classes were starting and how an individual can enroll, in essence, she had a little -- that Office of Extended Learning has a little more flexibility of being able
to set up classes and defer that starting time, so then an individual could be actually captured for the census for that time frame. With that, freshmen transfer students, those individuals that are coming right away in August and so, with that, unless there was a significant number of walk-ups that were coming on August 23rd, or what have you, for classes, there was very little movement that you can have with transfer students.

Q. For enrollment reporting purposes in the fall of 2010, was inaccurate data used to increase or inflate the student enrollment number at DSU?
A. Yes.
Q. I turn your attention to Exhibit 55, Bates No. 503.
A. Yes.
Q. I'll give the Hearing Officer a moment to get there.

JUDGE FETCH: These books are a little unwieldy.
Q. (MS. DONARSKI CONTINUING) Okay.
Exhibit 55, Bates No. 503. Is that a memo that you prepared?
A. Yes, ma'am, it is.
Q. All right. Or an email that you prepared?
A. Yes, ma'am.
Q. And that's an email that you sent to President McCallum?
A. That is correct.
Q. On September 13, 2010?
A. Yes, ma'am.

Q. Explain the significance of this email.

A. Okay. Leading up to our overall enrollment, there were several symposiums that Dickinson State offered, and one of the offerings was a Theodore Roosevelt symposium. With that, because it was offered early in September versus October when it’s traditionally held, there was the premise that individuals could actually enroll for continuing education credit. And, with that, a high school had participated at least for one year subsequent to this memo or email being drafted. And in this conversation they had expressed to the coordinator that they would enjoy the opportunity of being able to further discuss --

Q. Who is “they”?

A. They would be Belfield High School, would enjoy being able to discuss more issues surrounding Theodore Roosevelt long after the symposium is done.

And, with that, I was actually approached. This memo, this email was created on September 13th, the week prior. I was approached by the director of the TR Center, as well as the acting Vice-President of Academic Affairs.

Q. Who would that be?

A. That would be Dr. Jon Brudvig and Ms. Sharon Kilzer, to discuss the opportunity of being able to partner with Belfield High School, specifically Randy McDowell, who is an instructor at Belfield High School, to be able to offer their
students undergraduate credit for participating in the symposium with the understanding that they would continue their conversations about TR throughout the entire semester. And so with that we discussed logistics, with Dr. Brudvig would serve as the faculty of record. Ms. Kilzer would work on being able to secure opportunity for books for those students. In essence, this was basically framed in the same light as what dual-credit would be.

Q. And was it dual-credit?
A. I now learned that, no, it was not dual-credit.

Q. And why was it not dual-credit?
A. It did not follow the protocol that requires for a class to be offered, it has to go through a department chair. It has to be accepted through that department chair. It has to go -- be a part of the curriculum committee. There has to be a conversation with that. And it has to overall -- be a part of the overall course offering. It was done on very short notice so there was no transparency with this at all. With this, there was really no conversations with regards to how this was going to be paid for, which, in essence, is what this email was actually referencing, had a conversation with President McCallum and talking about the logistics with this, I was instructed to be able to put together a proposal with regards to funding and that he would actually approve it if I sent it in, which is why I put together this email. And as you can
see, there is an approval with that and the date that it was actually approved and this is all before our census date.

Q. Okay. And was the intent to, then, push this through so the Belfield High School students could be counted in the head count for the census date?

A. That is correct.

Q. You indicate in the second paragraph, "To enhance Dickinson State head count, these students would enroll for undergraduate credit at the cost of $50 per student." Why did you state "to enhance Dickinson State head count"?

A. Because that's exactly what it was meant to do. It was meant to be able to add those students to the overall head count.

Q. And that's something President McCallum clearly understood was happening?

MR. THOMAS: Objection. Speculation. How would he know what President McCallum knew?

MS. DONARSKI: He directly reported to President McCallum.

JUDGE FETCH: I'm going to sustain the objection. I'm going to sustain the objection. You can ask another question.

Q. (MS. DONARSKI CONTINUING) The email went to President McCallum?

A. That's who the email was addressed to, yes.

Q. Did he ever ask you why you were trying to
enhance Dickinson State head count?

A. No, ma'am, he did not.

Q. And he understood that these students are enhancement in Dr. McCallum's mind to know what Dr. McCallum understood?

MS. DONARSKI: He's a direct report.

MR. THOMAS: It doesn't matter. He's not inside Dr. McCallum's mind to know what Dr. McCallum understood.

MS. DONARSKI: I will rephrase.

JUDGE FETCH: Thank you.

Q. (MS. DONARSKI CONTINUING) So you reported to Dr. McCallum that you were enhancing Dickinson State head count?

A. Yes.

Q. That was for purposes of increasing enrollment?

A. Yes.

Q. It increased enrollment by how many students?

A. There were approximately 39 students that were in the junior and senior class that was taking this class. With that, there were several of these
students that were already enrolled for dual-credit and subsequently could not be added -- for the 39 people could not be added to the overall head count. So there were approximately about 20 students that were added to DSU's head count that normally would not have been a part of our enrollment.

Q. Okay. And when you say "normally not a part of," what policies were violated in getting this additional head count?

A. State Board policy 402. State Board policy 400. In essence, these individuals did not satisfy all of the requirements that were prescribed with regards to enrolling as a student. Now, they could have enrolled as a non-degree student, which is the round that dual-credit falls under and that was the premise that I was of the impression that they were, but because they were enrolled in a 299 class, in essence, that is earmarked basically for individuals that had completed their diploma or their GED and had been accepted at the University. So, in essence, they should not have been put in there.

Q. The significance between the non-degree and the degree-credit is that degree-credit students are those that count in the enrollment census?

A. Actually, the non-degree, it counts, but, with that, in essence, it is a clear distinction that these are individuals that are looking for either a dual-credit class or they're just looking for continuing education. For example, if you or I
wanted to take a piano class or what have you. We would be a part of the head count because we are literally taking a class, but it's not persistent to an overall degree. This class, because it was a 299, suggests that these students that were enrolled in this class were already -- they had already satisfied their postsecondary or their secondary degree of achieving the diploma or the GED, and that was not the case.

Q. Okay. And, again, they were not degree-credit students?
A. No.

Q. There was no admission process for these students?
A. These students did actually complete an application. The application was actually developed through the TR Center and, with that, the cost of $50 was one that had been utilized by the TR Center for the TR symposiums in years past. With that, that number would not be something that would come from enrollment. The dollar amounts that would have come from the Office of Enrollment Services would be $35, because that's the cost for the application fee.

Q. Okay. So the application fee was not paid?
A. That's correct.

Q. And it says here the total cost for the students is $4,500 for these students to attend the TR symposium. And those fees were paid from what?
A. These were Presidential Roughrider scholarship dollars that were allocated or utilized for this and allocated.

Q. And you ask the President to authorize the utilization of Roughrider scholarships, in addition to additional funds to cover the cost, and the signature down below is approved and signed by President McCallum?

A. That is correct.

Q. On September 14, 2010?

A. Correct.

Q. And that was to enhance Dickinson State head count?

A. Yes, ma'am.

Q. What type of pressure was placed on yourself and team members by President McCallum to continue to enhance Dickinson State head count?

A. I felt that President Richard McCallum applied tremendous amounts of pressure with regards to our enrollment. With that, President McCallum is very, very thoughtful and intentional about his methodologies, as far as overall where we need to be as an institution. With that, we would receive phone calls asking, basically, for updates, where are we with things, would you come to the office, can you just update me or apprise me of what's going on, would even have members of the cabinet asking the same questions, where are we with overall enrollments? There was a significant amount of pressure to the point that my colleagues would feel
very uncomfortable.

MR. THOMAS: Objection, Your Honor.

Foundation. This person wouldn't know how his colleagues felt.

Q. (MS. DONARSKI CONTINUING) What did you witness --


Q. (MS. DONARSKI CONTINUING) What did you witness from your colleagues' reaction to the pressure that was placed by President McCallum?

A. After my direct report meetings with the President, I would often have strategic management meetings immediately following, and so they would see how dejected, how emotional I was coming into those meetings. And I am the type of individual that I try to be as open and transparent as possible, often to a fault. And, with that, I would discuss with them what the directives, what the message or the crux of the meetings were with regards to enrollment and how that we were not doing enough.

There is a situation that actually arose for spring enrollment that we were asked to increase our enrollment. And this is spring 2011. We were asked to increase our enrollment. We were given a letter saying what we needed to achieve for spring enrollment, as well as what we needed to achieve for fall enrollment.

Q. That was a letter from President McCallum?
A. That is a letter from President McCallum. With that, my letter specifically said that I needed to obtain 65 freshmen. I needed to obtain 120 transfer students for spring 2011. We had worked increasingly hard, to the point that we were going to different places that we had not been to be able to get a better net of letting people know about Dickinson State. We had changed our methodologies for going about enrollment.

We didn't want to do the same thing over and over again. I believe it's Albert Einstein that said, "To do the same thing over and over again and to expect a different result is insanity." And so we were stepping outside of the box to try to gain enrollment. We achieved as an institution one of the highest numbers of freshmen, beginning freshmen for spring enrollment; 100 students, whereas traditionally, we would get about 40 to 50 students usually for spring. We got 100. Our overall transfer students was right at 105. In essence, for the transfer students, I was 15 short.

The overall letter that I got from President McCallum, the overall tone of my direct report with President McCallum is that this was a failure. Everything that you did was a failure because, in essence, you didn't achieve that 120 students for transfer students. And as one of those situations, I tried to explain my position with regards to, one, what we are seeing out in the field, the increased competition, the fact that
there are some variables that are taking place in western North Dakota that, in essence, truly does have an impact overall. I was told I can't use that. It's an excuse. I was demoralized. And it was very hurtful that all of those efforts was basically diminished to just, hey, you came 15 short. Regardless of the fact that we had some successes, throughout the University we had successes, but we could never acknowledge those successes. That is hurtful.

Q. Did you give it your 110 percent?
A. In my time in higher education I've always been a team player. I have given my all, oftentimes at my own expense as far as my health. I had ended up with an illness that landed me in the hospital in 2009. And even from the hospital bed I'm calling, inspiring my team members, touching bases with colleagues on how we can get enrollments.

And subsequently, that fall, that spring enrollment had fallen as well. And so the overall premise was, that if you have down enrollment for the spring -- we actually were a little ahead for summer, but that wasn't viewed as a success, either. And then you are down for the fall. And then you are down for spring again. People look at this as a trend. This is what he said to me. "This is a trend. We don't want to continue this trend." And I understood that, but the thing was, I was very
intentional. I was very purposeful as far as to lay out what my recruitment plan was, because that is what he requested of me. Although we had already done this with the strategic enrollment plan through Noel-Levitz, he asked for an additional one; specifically of me, as well as the Center of Multicultural Affairs, he specifically also asked for a marketing plan that the Director of University Relations would work with both Ronnie Walker and myself to be able to showcase we knew what we were talking about.

And we stuck closely to that plan. We understood that there were some variables that truly are outside of our scope of control. I can't discount to the nature that Wyoming discounts. I cannot discount tuition in the nature that South Dakota does and, therefore, those places that we traditionally get students from is starting to wean, and so, with that, this was an excuse.

Q. What about housing?
A. Housing was -- we were told housing is not an issue because to increase our enrollments, students don't have to be at Dickinson State. They can be online. They can be in Bismarck. They can be in Williston. But we didn't need to look at the housing component because, as an institution, we had only passed the threshold of maximum capacity one time. I was extremely distraught about this, because in my previous career, I was the director of residential life. In looking at the graphs and
things that were presented with regards to housing, it was very clear we're not comparing apples to apples.

And I stated that. This is not a correct reflection of overall housing because your housing is broken into traditional. It's broken into apartments. It's broken into family units. And unless you are truly honestly just going to throw them all into a smattering, which is the graphs that were reflected, they were thrown into a smattering, here's all the beds that we have and this is how we're looking at it, you're not comparing apples to apples.

And, with that, I conveyed the sentiments that were conveyed to me when I was out on the road by prospective students, their parents, counselors, as well as high school administrators. I conveyed those things not only to the President, but to the enrollment management team, that Dickinson State has an image issue that we really need to work to repair. It was inconsequential. In the Noel-Levitz findings, they concurred with that assessment.

Q. That housing was an issue?
A. Housing was definitely an issue and students are not okay with being tripled up. There were some students that, yes, they looked at this as being something that was positive, but for the most part, no, it was not acceptable and this was one of the things that we can directly point to with our student attrition.
Q. Directly related to housing. What was the President's response when you raised housing as a certain in affecting enrollment goals?
A. This is an excuse.

Q. I'd like you to turn to Exhibit 56, which is the next document. Is that an email that you had sent to President McCallum just giving an example of an update on enrollment?
A. Yes, ma'am, it is.

MS. DONARSKI: We offer Exhibit 56.
MR. THOMAS: No objection, Your Honor.
JUDGE FETCH: Thank you. Exhibit 56 is admitted.

Q. (MS. DONARSKI CONTINUING) Okay. Explain to the Hearing Officer the information that's contained on Exhibit 56.
A. During a conversation with President McCallum in November of 2010, I had -- still following up with the fall 2010 enrollment. He asked that, in essence, as we're moving forward, that we have some critical checkpoints to be able to assess whether or not we are on track to be able to make our enrollment. And, subsequently with that, with my application report or what have you, I started to include, basically, based on the overall goals that were set, how we were actually progressing towards those and those critical checkpoints of whether or not we were going to make our enrollments or not.

The information that you have in front of
you is basically a contingency plan of the fact that we were not actually on point to get to 2,480, so here were the contingencies. If we receive so many new students, then we would be able to make a secondary target. And last case scenario, to be able to increase it marginally above the previous year’s enrollment. So he had basically a barometer, as he liked to always reference, a barometer to be able to gauge where overall we were as an institution being able to get to our overall enrollment goals.

Q. Turn to Exhibit 58. Is that a memo that all direct reports have received -- or did receive from President McCallum?
A. Yes, ma'am.
Q. And you're included in that?
A. Yes, ma'am, I am.
Q. It's dated July 6, 2010 regarding fall enrollment, 2010 enrollment?
A. Mm-hmm.
MS. DONARSKI: Before I ask you another question, we're going to offer Exhibit 58.
MR. THOMAS: No objection.
JUDGE FETCH: Okay. Thank you. Exhibit 8 is admitted.
MS. DONARSKI: Fifty-eight.
MR. THOMAS: Fifty-eight.
JUDGE FETCH: Isn't that what we are looking at, 58? What did I say?
MR. THOMAS: Eight.
Q. (MS. DONARSKI CONTINUING) The memo starts off, "I write to share my concern and my sense of urgency," and it identifies the enrollment pattern and then when you turn to the second page of that memo, it states, "We have 11 weeks before we submit our official enrollment census. We still need 1,300-plus enrollments to achieve our goal and accommodate the expected withdrawals that occur during the early weeks of the summer. Consequently, we need to develop action plans that will enroll about 120 students per week for the next 11 weeks."

Was that a reasonable or realistic goal?

A. In my assessment, no.

Q. Why not?

A. The timeframe of this memo is during summer school and, with that, whether we stay within the parameters of the State of North Dakota, Minnesota, South Dakota, Wyoming, there are only so many schools that's offering summer school and so, with that, the overall pool of students to be able to garner 120 students per week was truly unrealistic. My team and I were actually sent out to California, to Nevada, to Arizona during the summertime to be able to acquire additional transfer students.
With that, as you look at the time frame of the memo, the letter that's sent out, when we arrived to these individual places, what we found is very few students, because they were also on vacation as well. And so we truly felt like we were spinning our wheels, because the things that we had set out in a plan initially was not good enough and so now we're in contingency mode, operating as ambulance chasers to go and try to find additional enrollment. With that, what is the quality of students that you're actually trying to get? And, with that, we netted very little.

And so this was also a letter to be able to engage other parts of the institution, that they needed to step outside of their comfort zone to do more registration as well, because DSU does not do any registration in July, which in an enrollment period is a very critical time for us to be able to register students. And so he was also trying to convey that, as an institution, we need to truly, honestly step outside of those traditional means to be able to get our enrollment. And he was very upset that we did not meet this objective. As an institution, as a whole we would not be able to meet these objectives.

We were also told that we need to have a person that was responsible for registration each day, whereas traditionally it would go through the Academic Success Center for an overall early-bird situation. Subsequently, the Vice-President of
Student Development, the acting Vice-President of Academic Affairs worked together to be able to identify individuals that were on campus, that each day a certain person was responsible for overall registration, whether it was a call-in, whether it was a walk-up, we would facilitate that.

Q. Okay. What was the amount of pressure at this stage with respect to the enrollment expectations placed on you by President McCallum?

A. That I needed to make sure that we had our numbers.

Q. Turn to Exhibit 60. Is Exhibit 60 a memo you received from President McCallum, dated September 10, 2010?

A. Yes, ma'am, it was.

Q. Regarding future recruitment goals?

A. Yes, ma'am.

JUDGE FETCH: We offer Exhibit 60.

MR. THOMAS: No objection.

JUDGE FETCH: Thank you. Exhibit 60 is admitted.

Q. (MS. DONARSKI CONTINUING) In the memo it states, "After today's conversation, this letter will confirm our agreement and the urgency to formulate a recruitment plan for new full-time students." And there are enrollment goals in the memo and then it states, "With this responsibility, there will be accountability."

How do you perceive that?

A. As a new member to President McCallum's
team, the accountability that I perceived, that I felt, was that positions would be terminated if the objectives were not met.

Q. And did you feel that your position would be terminated if you did not meet President McCallum's directive with respect to enrollment?

A. Yes, ma'am, I did. As the overall enrollment manager, I took -- I felt complete responsibility for enrollments, and so I looked at this as make your numbers or we'll find a new director.

Q. Did you do everything you could to work with President McCallum in attempting to achieve his goals and requirements?

A. Again, I tried as a manager to keep him apprised of information, both written as well as verbally. With that, he would let me know his thoughts on everything. He would invite me and six other individuals to his house for oftentimes more coffee and conversation to talk about the overall importance of enrollments. Right after -- right after this letter came out, we had a breakfast at his residence and, with that, he expressed his overall concerns with enrollment and that it is critically important for us to be able to rebound from this and that it is critically important for everyone to take ownership with this.

He then further commented that it is not the President that can fire people, that that's not his scope, to which I immediately took exception to
it, because I report directly to him. If he's not
the person to fire us, fire me, then how does that
work? And so the message was very convoluted, but
it felt -- at least to me, it felt very, very
course. It felt very, very hostile, you-all need to
make this happen, you-all are failing me overall and
I'm not going to put up with it, and I felt under
tremendous duress with that.

Q. Did you ever have any discussion with the
President about using -- the utilization of

inaccurate information being used in the fall 2010
census head count?

A. I was -- I had a conversation with
President McCallum in May of 2010 that focused on
being able to utilize the symposiums for head count.
At that point in time, it was not on my purview. It
was not in my realm at all. Because at that point
in time I was focused on freshmen and transfer into
credit students. But with this, he said, you know,
here are some avenues that we can utilize that would
be able to help us in our overall enrollment and
that I needed to coordinate with Marty Odermann-
Gardner, the Director of Extended Learning, with
regards to the Disney, the energy symposium and the
Theodore Roosevelt symposium.

Q. In what respect?

A. To be able to get our overall enrollment.

Q. To use those attendees in the --

A. In our head count.

Q. In your head count. And that was a
Did you ever discuss with the President any concern you had in that not being an accurate way to report enrollment?

A. That was my direct report, yes.

Q. Did you ever discuss with the President any concern you had in that not being an accurate way to report enrollment?

A. I didn't understand why we were utilizing this, because the scope that I was familiar with from the time that I was an interim director was the community classes and oftentimes in my conversation I would utilize the term about the community classes that were set up. And there was one where he got a little stern with me. He goes, "No, this is outside of those community classes." He felt that the community classes did not fulfill what the overall intent of them were as far as number of people that were enrolling in them. And so the symposiums would, in essence, give a better boost with this. Because the community classes, there were four classes that were offered. There was the social media. There was the supervisory and leadership. There was also like a Microsoft and then a financial literacy, and these were classes that members of DSU were offered to participate in in order to be able to learn more about financial literacy, supervisory leadership, so on, and so forth.

The symposiums were bigger than that. In essence, the symposiums would have at least 120 people that would attend, so, in essence, all those individuals could be counted towards overall enrollment.
Q. Okay. When you say the symposiums were bigger, you’re specifically talking about bigger meaning head count?
A. Head count, yes.
Q. And that was at the directive of the President in May 2010?
A. That was my direct report to the President.

JUDGE FETCH: Excuse me. I want that answer clarified. The question was, "Was that the President’s directive to you?" And you did not answer that question. You said that was my direct report to him. So what is your answer to the question? Did President McCallum direct you to use those symposium students in the head count?

THE WITNESS: Thank you, Your Honor. I will clarify that. The answer to that question is, President McCallum instructed me to work with Marty Odermann-Gardner with regards to the enrollment.

Q. (MS. DONARSKI CONTINUING) And direct the two of you as cochairs to --

MR. THOMAS: Objection. Leading. Let the witness say what he was directed to do.

JUDGE FETCH: Sustained. This is a critical question.

THE WITNESS: I understand.

JUDGE FETCH: All right. This a critical question. Can you tell me in your own words exactly
what President McCallum instructed you to do?

THE WITNESS: In essence, President McCallum told me that we were utilizing the Disney, the energy symposium and the TR symposium for our enrollment and that I needed to coordinate and work with Marty Odermann-Gardner to be able to make that happen. Because this is one that it's not in my purview.

JUDGE FETCH: Thank you.

Q. (MS. DONARSKI CONTINUING) And when you say "not in your purview," what do you mean by that?

A. The classes or the conferences would come through Extended Learning. They operated, for the most part, as a stand-alone. So, in essence, I was responsible for the additional enrollments of students, but, ultimately, all the students that are -- that come in through her funnel will enter into the overall enrollment line and so, in essence, that's why there had to be that coordination.

Q. Okay. Turn to Exhibit 69. Is that an additional memo that you received from President McCallum dated March 18, 2011?

A. Yes, ma'am.

Q. And, again, the focus is on enrollment?

A. Yes.

MS. DONARSKI: We offer Exhibit 69.

MR. THOMAS: No objection, Your Honor.

JUDGE FETCH: Thank you. Exhibit 69 is admitted.

MS. DONARSKI: I have nothing further.
JUDGE FETCH: Thank you, Mr. Thomas.

MR. THOMAS: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. THOMAS:

Q. Good morning, Mr. Coley.

A. Good morning.

Q. My name is Ben Thomas. I represent Dr. McCallum.

I'd like to touch on some questions that Judge Fetch posed to you with regard to your conversation with Dr. McCallum as it relates to these symposiums. You testified, if I understood correctly, that Dr. McCallum instructed you to work with Ms. Odermann-Gardner to ensure that these classes could be used for enrollment purposes; true?

A. The symposiums, yes.

Q. Yes. And what Dr. McCallum's directive to you was, was to work with Ms. Odermann-Gardner to make sure that those symposia were academically sound and, therefore, would meet the requirements for being listed for enrollment purposes; true?

MS. DONARSKI: Objection. Misstatement of what he testified to.

MR. THOMAS: I'm asking him if that's what Dr. McCallum said.

JUDGE FETCH: I'm going to overrule. You may answer that.

THE WITNESS: Could you rephrase your question?

Q. (MR. THOMAS CONTINUING) Sure. Wasn't
Dr. McCallum's directive to you to work with
Ms. Odermann-Gardner to make sure that the symposia were academically sound so that they could be used for enrollment purposes?

A. I could not say that that was his directive, to assure that those were academically sound.

Q. And you talked about what was within your purview, and so forth. That would be something within the purview of Ms. Odermann-Gardner, would be to make sure that the symposia were academically sound for purposes of being used for enrollment purposes, wouldn't it?

A. Seeing the fact that we had not, at least since I had been there, utilized any symposiums for enrollment, it struck me as odd that we would be using specifically these three for enrollment.

Q. But, again, that wasn't within -- I think your words, it wasn't within your purview; correct?

A. Correct.

Q. Now, we talked about some encouragement and some goal-setting by President McCallum. You would agree that it's appropriate that the President of the University set goals for his faculty and his staff; true?

A. Yes.

Q. And defining challenges would be another responsibility of a President of a University?

A. Yes.

Q. Encouraging effort, maintaining focus, all
leadership qualities that you would expect from the President of a University; true?
A. Yes.
Q. Now, we talked about some of the -- well, let's talk about your relationship a little bit with Dr. McCallum.
A. You said that in 2009, when these enrollment goals were discussed, the atmosphere was cordial and friendly and you joined President McCallum with regard to the goals that he was setting for increasing enrollment; is that right?
A. With regards to the strategic enrollment management plan, yes.
Q. Right. And I think you testified that you were part of the team to develop a plan to grow the overall enrollment of the University; correct?
A. Yes.
Q. And I think your words were you share those goals and that increasing enrollment was, quote, essential to the overall health of the University --
A. Yes, sir.
Q. -- true?
A. Correct.
Q. All right. Now, the document that Ms. Donarski reviewed with you, if you could start with Exhibit 60, talked about that goal setting; correct?
A. Yes.
Q. And it talks about, "...this letter will
confirm our agreement and the urgency to formulate a recruitment plan..." Talk to me about the agreement portion of this.

A. In essence, President McCallum had asked me to provide to him the average of the last three years leading back to 2008 with regards to first-year students and transfer students.

Q. Okay. And that was the agreement that's referenced in this memo, you believe?

A. As far as?

Q. Well, it says, "This letter will confirm our agreement and the urgency to formulate a recruitment plan for new full-time students"?

A. Yes.

Q. And then Ms. Donarski asked you about the portion that said, "With this responsibility, there will be accountability." But it doesn't state in there that anybody would be fired or demoted if the goals were not met; true?

A. In this letter it does not state that anyone would be fired or terminated.

Q. And if you look at subsequent memos, Exhibit 69, for example, that was March of 2011 that was prepared; correct?

A. That is correct.

Q. So that would have been after -- well after the goals that were set forth in Exhibit 60
had not been met; true?
A. The goals were partially met.
Q. Well, they were not completely met and that was the basis for the letter to you dated March 18 of 2011, true, to express disappointment?
A. Yes.
Q. And so that was after the period by which we could determine whether the recruitment goals and the enrollment goals had been fully met; correct?
A. With respect, the agreement obviously would accommodate for fall 2011. So, in essence, it would be premature to just look at spring 2011 for that overall assessment since everything had been predicated based off of the fall 2010.
Q. Right. Perhaps it would help if we look at Exhibit 69 together.
A. Okay.
Q. All right. And in Exhibit 69, which is the letter to you, he talks about various benchmarks the spring of 2010, the summer of 2010, the fall of 2010, and you would agree that, at least with regard to those three benchmark time periods, the goals that had been set had not been met; true?
A. The goals that had been set did not come from President McCallum wholeheartedly.

Specifically, let's look at summer of 2010. There were no directions with regards to summer enrollment.
Q. Okay.
A. And then, with that, the issue here is
compared to the summer of 2009, we actually made that enrollment target, so then he utilized summer of 2008, which is an unfair assessment because I wasn't here during that time frame.

Q. I appreciate and we'll talk later about whether you think that the goals were fair or unfair. But the bottom line is, that in this letter Dr. McCallum references that DSU was down 200 students compared to spring of 2009. You see that?

A. I do see that, yes.

Q. And for the summer of 2010 entry, he writes that we, quote, missed this goal by 46 students, close quote. You see that?

A. I do see that.

Q. And then for the fall of 2010, he writes, quote, We lost our concentration early during the fourth quarter of the recruitment process and fell short of our goal by 100 students, close quote. Do you see that?

A. Yes, I do.

Q. And then for the spring of 2011 entry, he writes at the last sentence of that paragraph, quote, We again missed our goal by more than 220 students. Do you see that as well?

A. I do, yes.

Q. Okay. The reason I ask this is because you indicated that you were concerned about what the effect of the word was where he said there will be, quote, accountability?

A. Mm-hmm.
Q. You're obviously still employed by DSU today; correct?

A. Mm-hmm.

Q. Is that yes?

A. Yes, sir.

Q. And you weren't fired by Dr. McCallum?

A. No.

Q. You weren't reprimanded by Dr. McCallum, reduction in pay, suspended, demoted, anything of that sort?

A. No.

Q. All right. You talked about the meetings with Dr. McCallum after some of these benchmarks had not been met and I think you described the tone of the meetings, your word was, quote, somber; is that right?

A. Yes.

Q. You talked about the effect that this pressure had on you. You said you had some health problems, and so forth. Did you communicate with Dr. McCallum during those times --

A. Yes.

Q. -- when you were having health problems?

A. Yes.

Q. Was he supportive?

A. He asked, basically, what the overall prognosis was. He wanted to know when I would subsequently be getting out of the hospital.

Q. Did he visit you in the hospital?

A. He did visit me.
Q. All right. Did he appear to be supportive, sympathetic?

A. I can't answer to what extent what his demeanor was. As an individual that was in a not-well state, it was surprising that he was -- that he actually showed up to the hospital, yes.

Q. Did you appreciate the personal visit from him?

A. Actually, I was a little mortified, to be perfectly honest with you.

Q. I see. Did you approach Dr. McCallum with any other personal issues, any family issues, without going into detail, to discuss those with Dr. McCallum?

A. With regards to the situation where I had a death in the family, yes.

Q. Okay. Why would you approach Dr. McCallum with that?

A. He was my immediate supervisor.

Q. Was he supportive? Did he offer you time off?

A. He did grant me time away, yes.

Q. Did you approach Dr. McCallum with -- or was Dr. McCallum involved with any issues regarding your leadership, any issues that he had to address with regard to any leadership problems you were having, problems within your department?

A. I inherited a department that at that period of time, in Dr. McCallum's assessment, did not have focus, was not respectful, was the words
that he had expressed to me. And, with that, his
directive was that I need to get them to basically
perform and to get on board with regards to the
overall strategic enrollment plan as well as the
enrollment goals of the institution.

Q. Did Dr. McCallum utilize Deb Nelson to do
team-building exercises within your unit?
A. Yes, sir, he did, as well as other
departments.
Q. Was that helpful?
A. No, it was not. It created more of an
environment of untrust.
Q. Now, you were asked about a document that
you sent to Dr. McCallum, I believe Bates stamped
503, if you could find that document.
MS. DONARSKI: Exhibit 55.
Q. (MR. THOMAS CONTINUING) Exhibit 55, page
503, at the bottom. And you authored this email
yourself, is that right, Mr. Coley?
A. Yes.
Q. And it was your request that the
Roughrider scholarship funds be used for -- to
assist these students with enrollment expenses;
true?
A. That was after conversation with President
McCallum, because at that point in time I did not
have any means of how we could support this.
Q. All right. But you made the request to
Dr. McCallum, that's what this email says; correct?
A. Per his request, yes. He instructed me to
Q. Now, at the time that you sent this email to Dr. McCallum, you didn't have any indication or any definitive knowledge that enrolling these students in these symposia would make them ineligible for submission for DSU's enrollment reports; correct?

A. At this point in time, putting these students in through these means, I understood that this was to enhance our head count.

Q. Okay. But you wouldn't have included these numbers if you knew them to be knowingly false, would you?

A. Could you rephrase that, please?

Q. Sure. You would not -- are you responsible for submitting any enrollment numbers yourself?

A. The information that I put together I do submit to the Academic Records Officer, yes.

Q. And did you submit any of these enrollment figures to that officer?

A. The enrollment figures, what do you mean?

Q. For these students, the students reflected in the memo dated September 13, did you submit any of that information?

A. The students' applications, once they were processed, that information did ultimately go to academic records because it was actually put into
our overall head count.

Q. It went to them from you?
A. Yes.

Q. Okay. And did you submit them knowing them to be inaccurate?
A. I was of the impression that this would follow the same protocol as what dual-credit followed.

Q. My question to you, sir, was whether you submitted any of these names or numbers knowing them to be inaccurate?
A. They were not inaccurate from my vantage point, no.

Q. Okay. One last area, if I may, Mr. Coley. You talked about the goals that were set by President McCallum and you thought that they were unrealistic. And I believe you testified that it was because the data that you had reviewed suggested that there would be an unavoidable downward enrollment period for Dickinson State in the upcoming time period; have I summarized that fairly?
A. Is there a question?

Q. Well, I want to ask you if I've summarized your earlier testimony so that we can get into the next area?
A. Yes, I did apprise him, as well as Noel-Levitz, with regards to the overall population issues that were pending.

Q. Okay. And that was one of the issues that was pending, was what you perceived to be an
inevitable downward trend?

A. Yes.

Q. I understand. But help me understand, was that same trend being felt by other universities in North Dakota? Because it was my understanding that enrollment at other universities was staying steady or increasing and that DSU seemed to be an anomaly in the sense that its enrollment was going down, but you would know better than I. What can you tell us about that?

A. With that, WICHE had released some information, basically a longitudinal study with regards to overall population for graduates and, with that, it had projected that 2010, 2011 and subsequently 2012 would be tumultuous years for specifically the upper Great Plains with regards to student graduation rates. With that being said, we are a liberal arts university in western North Dakota and so where we actually garner our traditional students from would be the State of Montana, the State of Wyoming, the State of South Dakota. With that, they also had declining populations as well and so, with that, yes, there was some impending we are going to have down enrollment.

Q. And to my question, then, if you’re able to answer, if you know, was Dickinson State’s enrollment trend different from the enrollment trend of other universities within the system?

A. With what regards?
Q. Was it increasing or decreasing or staying steady?
A. Well, Dickinson for at least 13 years had consecutive enrollment growth, whereas in sister institutions, it was mixed. Some institutions had reported growth. Some had reported basically staying even.

Q. I understand. And, again, if you don't know, that's okay, but my specific question is, as of, say, academic year 2009-2010, academic year 2010-2011 compare DSU's enrollment with the enrollment of the other institutions within the system.

A. I don't think that's a fair comparison to make.

Q. I appreciate whether you think it's fair or not, but I'm just asking if you know, if you could give us an answer to the question?
A. Their enrollments were up. They reported that their enrollments were up.

Q. The other universities?
A. Yes.

Q. And DSU's was down?
A. Yes.

MR. THOMAS: That's all the questions I have. Thank you.

JUDGE FETCH: Any redirect?
MS. DONARSKI: No redirect.

JUDGE FETCH: Thank you. You're excused.

You may either remain as a spectator or you may
leave. We're going to take a ten-minute recess at this time.

(Recessed at 10:17 a.m. to 10:34 a.m., the same day.)

JUDGE FETCH: All right. Let's come back to order.

All right. Ms. Donarski, at this time who is your next witness?

MS. DONARSKI: John Hurlimann, who is the Director of the Office of Extended Learning.

JUDGE FETCH: Morning, Mr. Hurlimann.

THE WITNESS: Good morning.

JUDGE FETCH: All witness testimony is taken under oath and is subject to penalty for perjury. By law I'm required to inform witnesses as to those penalties. There is a sheet in front of you. Would you take a moment and review that?

THE WITNESS: (Reviews document.) Thank you.

JUDGE FETCH: Thank you. Please raise your right hand.

Do you solemnly swear the testimony you're about to give shall be the truth under pains and penalties of perjury?

THE WITNESS: I do.

JUDGE FETCH: Thank you. Please spell your first and last name for the record.

THE WITNESS: John, J-o-h-n. And Hurlimann is H-u-r-l-i-m-a-n-n.

JUDGE FETCH: Thank you. Ms. Donarski,
JOHN HURLIMANN,
having been first duly sworn, was examined and
testified as follows:

DIRECT EXAMINATION

BY MS. DONARSKI:

Q. John, you are the Director of Office of
Extended Learning?

A. Yes. And I actually have two roles at
Dickinson State; the Director of Office of Extended
Learning and the Director of the West River Teacher
Center.

Q. Okay. And how long have you held the role
of Director of Extended Learning?

A. Since February 1st, was my official date,
of 2011.

Q. February 1, 2011. Who was your
predecessor?

A. Marty Odegard.

Q. Marty Odermann-Gardner?

A. Odermann-Gardner, yeah.

Q. Okay. And when you first stepped into
this position February 1, 2011, did you receive a
telephone call from President McCallum?

A. Yes, I did.

Q. And was that call regarding increasing
enrollment?

A. Yes, I was in Bismarck. That day was Friday, February 4th, and he called well, the call came in. It was one of his administrative assistants. I don't know which one. Both are Kari, asked said that President McCallum wanted to talk to me. He came on line and we talked a little bit about enrollment. And he said, "John, I need you to put together a class of 32 students," and I said, "Okay, I will do that." And that was basically the end of the conversation. And then I began to think about this and, first of all, I don't have the authority to put together a class because it has to go through -- I'm a direct report to the Vice-President, the VPAA.

Q. And who is that?

A. Jon Brudvig. He was the interim at that time. And we were basically four weeks into the semester.

Q. The spring semester?

A. The spring semester, because the census report was taken on the following Monday -- this was Friday, the 4th. So Monday at midnight or 12:01 the report is taken by the Board, I guess the Board or office or whoever takes that report.

And so I went and talked to some of my team and the faculty that were in Bismarck of, you know, what is this? How do we put together a class that he would want in such a short time? And what he told me or what they told me was that the past
practice had been that we watch -- you know, we
create a class, like a Microsoft Office class,
something that we would put together and have our --
have your staffs and different people open that were
staff or faculty on campus be allowed to take.

Q. To attend the class?
A. To attend the class, yes.
Q. And they would attend it solely for the
purposes of increasing enrollment?

MR. THOMAS: Objection. Leading. Your
Honor, can we just have the witness testify, as
opposed to Ms. Donarski leading him through the
testimony?

JUDGE FETCH: Yeah, I'm going to sustain
that. You can rephrase that question, Ms. Donarski.

Q. (MS. DONARSKI CONTINUING) And why was
staff attending these classes?
A. Well, my feeling is, is that we would have
the -- it's a way to get numbers because some of the
classes -- I asked my team and I said, "Were you
told you had to attend?" They said, "It was
strongly recommended that we attend these classes."
And so, with that, I made a couple calls back to
Dickinson State, talked to Scott Staudinger.

Q. And who is Scott Staudinger?
A. He is the Institutional Research Director.
Q. For DSU?
A. For DSU. And he told me, he said, "John,
I just talked to Dr. Brudvig this morning."

MR. THOMAS: Objection. Hearsay. I
believe Mr. Staudinger is a listed witness, too,
Your Honor.

MS. DONARSKI: He's discussing the
collection he had with Mr. Staudinger. It's not
asserted for the purpose. It's asserted for the
steps he took in response to the request.

MR. THOMAS: Of course it is. It goes
directly to what Mr. Staudinger said to this
witness.

MS. DONARSKI: Statement against interest.

MR. THOMAS: Against Mr. Staudinger's
interest?

MS. DONARSKI: No, against Mr. Hurlimann.

MR. THOMAS: That doesn't make it any less
hearsay, Your Honor. Mr. Staudinger is here to
testify later and I presume will be asked the same
question. It will be better asked of him than
somebody who heard it secondhand.

JUDGE FETCH: Is Mr. Staudinger going to
testify?

MS. DONARSKI: Mr. Staudinger is going to
testify, but if you're going to restrict this
witness on not being able to testify on the steps he
took.

MR. THOMAS: It's not the basis for the
objection, Your Honor.

JUDGE FETCH: I understand, Mr. Thomas.
The objection is not on the steps he took. The
objection is what Mr. Staudinger said, told him or
said to him. That's the difference. The steps
would -- you know, you can ask him what steps he took.

MS. DONARSKI: And that's what he's trying to tell us.

JUDGE FETCH: And we'll hear from Mr. Staudinger.

THE WITNESS: Okay. Can I rephrase?

MS. DONARSKI: I will rephrase.


Q. (MS. DONARSKI CONTINUING) So the President had telephoned you on February 4, 2011?

A. Yes.

Q. And the request was to put together a class for 32 students?

A. Yes.

Q. Why 32? What was the significance of that number?

A. Well, 30 would have matched our number from the spring for the year before and 32 would have put us over, so we would have had an increase in enrollment from the previous spring.

Q. By two students?

A. Two students, yes.

Q. Okay. And had the Office of Extended Learning -- does the Office of Extended Learning have the authority to create a class?

A. No. I do not have that authority. At this time -- past history, I don't know what the past history was of the office, but at this time we
do not have that authority. When I want to create a
class or put together a new class, I talk to the
department chairs, have their sign off and the dean
sign off on it and then it goes to the Vice-
President to sign off to approve it. It's added.

And that's how I set up the procedure when I got
there.

Q. Okay. And that was the necessary and
required steps that are taken to set up a class for
students to enroll in?

A. Yes.

Q. Okay. What was your understanding of this
class that you were asked to put together of 32
students?

A. Well, I would have called it a community
class, because to be asked that on Friday, there's
no way I could have gotten permission by Monday to
even create because I wasn't in Dickinson, so I
would not have the ability to put the forms
together, to get the signatures that I wanted in
place so that I knew I had sign-off and everybody's
approval before a class could be offered. With the
community classes, I just -- I questioned and that's
why I made the call back to Dickinson to talk to
Scott because, in my opinion, we were not authorized
as an institution to offer continuing education
credits, so that's why they had to be, I guess,
degree granting is the correct term. And so I just
said, if we're going to do that in the future, for
the energy symposium from now on, the TR symposium
and other things we did, we have to change our ability to offer those types of classes by doing three things; either getting, one, another institution to offer that for us on our behalf, like Minot State, UND, NDSU, someone that is granted that authority; two, to get certification from the State to offer continuing education credits.

Q. Because DSU is not authorized to offer that?

A. That's what I was told, not authorized.

Or, third, is to put it in our catalog as a regular course, so it would be listed as maybe Teddy Roosevelt TR History 301, you know, something like that.

Q. Okay.

A. So it's in the course. And then I said, "I would have no trouble with the courses," but, I said, "We can't make up courses at the spur of the moment just for those things." So after I talked to Scott and decided that I was not going to do that, I came back Monday morning, talked to Dr. Brudvig, went into his office and told him that I was not going to offer this class, allow this class to go through, and his response to me was, "Well" --

MR. THOMAS: Objection. Hearsay, Your Honor. Dr. Brudvig is also a witness that's scheduled to testify, too.

MS. DONARSKI: We can either get the
testimony out now or we can have Dr. Brudvig testify--

MR. THOMAS: He's one of my witnesses. He will testify.

MS. DONARSKI: Mr. Hurlimann as rebuttal, then, if there's a distinction on what was said.

JUDGE FETCH: Okay. Sustained. Just explain -- you said you decided you were not going to do that.

THE WITNESS: Right, but I had to go tell Dr. Brudvig because he is my -- I'm his direct report and -- can I ask a clarification? Am I not allowed to say what he told me?

JUDGE FETCH: That's exactly correct.

MS. DONARSKI: As a direct report in the process.

JUDGE FETCH: Pardon?

MS. DONARSKI: As part of the request to set up the class, the testimony is, "I did not because my director told me not to," but what you're telling him is he can't say what his director said, which goes to the whole process.

JUDGE FETCH: You can't say word-for-word, you know, this is what Dr. Brudvig told me. This is what Dr. Brudvig said. The distinction is, that Dr. Brudvig has not testified. He is not here. If he's going to be testifying later, Dr. Brudvig can say what he told you. Okay. You can say what your understanding was or what action you took as a result of the meeting or the call.
THE WITNESS: Okay. My understanding of the talk that I had with Dr. Brudvig was that we were not going to do that. It was agreed upon that we were not going to do that, offer those classes any longer and that he supported my idea not to offer the class and that was it.

Q. (MS. DONARSKI CONTINUING) And why would you not do that? What was wrong with the request to put together a class for 32 students?

A. Well, I guess the question I had about it was a lot of it was financial. If all of our staff are taking this class, they're exempt from paying tuition, okay, so if I have 30 members -- 32 members, excuse me, taking a class and our staff and faculty do not pay tuition and then I have to pay a faculty member $700 a credit hour, or $2,100, there's no revenue being generated, so to me that didn't make sense to offer a class that there was no revenue being generated when all it was, was for enrollment to me at that point.

Q. And when was the enrollment reporting census date in the spring of 2010?

A. It would have been the following Monday. I'm not sure of the interpretation, but I think it's Tuesday at 12:01 a.m. in the morning, is when it's pulled by the system, from my understanding.

Q. Okay. And you received the call directing you to do this from the President when?

A. Friday, roughly around 11, 12 o'clock. I can't remember. I was in Bismarck. Sometime
Friday.

Q. Was there any indication as to when this had to be done?
A. He just -- no, not really. He just said, you know, We need it right away.

Q. Okay. And did you understand that to correlate to the census date?
A. Probably -- I guess in all honesty, I probably didn't even think about the census date, to be honest with you, at that time because how do I put together a class right away? And when I started getting more information, more questions came up in my mind why this wasn't making sense to me.

Q. Exhibit 70, is that a memo that you received from President McCallum?
A. Yes.

Q. And it says, "Dear Jon and John." Who would that be?
A. Dr. Brudvig and myself.

MS. DONARSKI: We offer Exhibit 70.
MR. THOMAS: No objection, Your Honor.
JUDGE FETCH: Thank you. Exhibit 70 is admitted.

MS. DONARSKI: I have no further questions.
JUDGE FETCH: All right. Thank you.
Mr. Thomas.

MR. THOMAS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. THOMAS:
Q. Good morning, Mr. Hurlimann. I have just a few questions for you, I think. I'm going to try -- I don't want to oversimplify your testimony, but I'm a simple man, so tell me if I've got this right. You were contacted on February 4th by Dr. McCallum and he requested that you put together a class for 32 students? Yes?

A. Correct.

Q. And you didn't think you had the authority to do that, so you subsequently spoke with Dr. Brudvig and Dr. Brudvig said, We can't create this class; correct?

A. Well, I talked to Scott Staudinger first and he told me that he had informed the university that morning that we were being investigated for these inaccuracies in our reporting and that we should not be doing this probably at this stage, talk to Dr. Brudvig, which I did.

Q. All right. And following your conversation with Dr. Brudvig, it was concluded that you weren't going to create this class?

A. Correct.

Q. And the class was never created?

A. Correct.

Q. And students were never enrolled?

A. Correct.

Q. And numbers regarding enrolled students were never submitted with regard to any of those classes that, obviously, were never created; true?

A. For that particular class, yes.
Q. For that particular class, and that's all you were testifying about, was that class?

A. Exactly. Yes.

Q. And you said in your testimony, quote, it was, quote, my feeling is that it was a way to get numbers, close quote.

A. Right.

Q. Do you remember that testimony?

A. Right.

Q. But you later testified that at the time that you received the request from Dr. McCallum, you, quote, didn't think about the census date, close quote.

A. Right.

Q. So it came up afterwards, it was a concern, your feeling that it was a way to get numbers was presumably after your conversation with Mr. Staudinger, or was it? I don't want to put words in your mouth.

A. I guess I didn't think of the census date because I'm not involved in that part of it to know when the census is pulled and things like that.

Q. Sure.

A. But we had talked about the week prior to Friday about enrollment and enrollment was important and our numbers were going to be down.

Q. I understand. So this was a class that
Dr. McCallum wanted to create that was never created?

A. Correct.

MR. THOMAS: All right. Thank you, Mr. Hurlimann. Those are all the questions I have.

JUDGE FETCH: Any redirect?

MS. DONARSKI: No redirect.

JUDGE FETCH: Thank you, Mr. Hurlimann, you're excused. You may either stay or you may leave.

MR. THOMAS: Oh, Judge, I apologize.

JUDGE FETCH: One more question?

MR. THOMAS: Yes. My apologies to you, Mr. Hurlimann, as well.

THE WITNESS: Sorry for standing up.

Q. (MR. THOMAS CONTINUING) No. That was my mistake. Following what transpired and the fact that this class was never created by you, did you ever have any conversations with Dr. McCallum about you not creating the class?

A. No. He had never brought it up to me. We had conversations about enrollment, but at that time he never brought it up.

Q. Didn't reprimand you, wasn't angry with you for not following through, nothing of that sort?

A. No. No.

Q. I understand.

A. Can I just add one thing to that?

Q. Sure.

A. When we did have the follow-up meeting, I
knew the -- because he made it very clear
enrollment -- we all knew enrollment was an issue
and it was important, so from that standpoint, I
could tell he was concerned about enrollments, but
he never reprimanded me.

Q. Never talked about this particular class?
A. Not to me, no.

MR. THOMAS: I understand. Thank you very
much. Thank you, Your Honor.

JUDGE FETCH: Thank you.

MS. DONARSKI: No, I do not have any
additional questions.

JUDGE FETCH: All right. At this time,
then, you're excused. Who is your next witness?

MS. DONARSKI: Our next witness is Deb
Dragseth, and Ms. Andrews will be asking her the
questions.

JUDGE FETCH: All right. Your name is Deb
Dragseth?

THE WITNESS: Debora Dragseth, correct.

JUDGE FETCH: All right. Could you spell
your first and last names for the record, please?

THE WITNESS: Sure. It's D-e-b-o-r-a,
Debora. Dragseth, D-r-a-g-s-e-t-h.

JUDGE FETCH: Thank you.

THE WITNESS: Mm-hmm.

JUDGE FETCH: Witness testimony at this
hearing is taken under oath and is subject to
penalties for perjury. Would you take a moment and
look at that witness instruction sheet in front of
you there on the table? That will tell you what the penalties for perjury are.

THE WITNESS: (Complies.) Okay.

JUDGE FETCH: All right. Please raise your right hand.

Do you solemnly swear the testimony you're about to give shall be the truth under the pains and penalties of perjury?

THE WITNESS: Yes.

JUDGE FETCH: Speak up nice and loudly.

THE WITNESS: Yes, I do.

JUDGE FETCH: Thank you. All right.

Please proceed.

MS. ANDREWS: Thank you.

DEBORA DRAGSETH,

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. ANDREWS:

Q. Where are you currently employed at, Deb?
A. Dickinson State University.

Q. And how long have you been employed there?
A. Twenty-two years.

Q. What's your current position at Dickinson State?
A. I'm a full professor.

Q. In what department?
A. In Business Administration.

Q. Okay. Have you served on the Senate
Faculty Committee?

A. Faculty Senate, I've served on the Faculty Senate for many years. I've been president of Faculty Senate three times.

Q. And you said that you've served for many years. Approximately how many years since you've been at Dickinson State?

A. I would say about half the time I've been at least a Senator and three times I've been elected Faculty Senate president.

Q. What's the role of the Dickinson State University Faculty Senate?

A. The role of the Senate is to advise curriculum, to advise the -- any policies that affect students and faculty in particular, so we're an advisory committee.

Q. Okay. Are there policies that govern the Dickinson State University Faculty Senate?

A. Yes, there are. We have Faculty Senate bylaws that are about maybe eight or ten pages and then we have subcommittees under the Faculty Senate, like faculty policies committee, you know, salary committees, but the Faculty Senate is one person from each department is elected to Faculty Senate and then there is an at-large for each of the two schools, so that's 13, and then the President of the University is an ex officio member.

Q. Thank you. When you were serving on the Dickinson State University Faculty Senate, and I'll refer now to the time frame of about 2008-2009.
A. 2008-2009 I was Vice-President. 2009-2010 I was President.

Q. Okay. Thank you. At some point, did the issue of a faculty sick leave policy arise?

A. Yes. In the fall of 2009, one of our fellow faculty got ill. I believe it was October, November, somewhere around that area, and he had been president prior to that and he had asked me to check out and see what our sick leave policy was. And I went into the rules, the faculty handbook, which is different than the Faculty Senate. The faculty handbook and there's a line that says faculty have no sick leave policy. And then I went online and thought, well, I wonder what other schools have and found out that the Board of Higher Ed had required us, every campus to have a paid faculty sick leave policy since 2004, and we didn't.

So at that point the Faculty Senate decided that was something that had to do with faculty welfare, which is in our bylaws to recommend policies for faculty welfare, and we talked to the Board office, the attorneys here. We looked at other campuses and their policies and we really liked the Minot State policy, and that's what we brought to faculty senate on December 10th and we had a unanimous vote to recommend almost a mirror copy of the Minot State policy for our campus.

Q. Was Dr. McCallum present at that meeting?

A. Dr. McCallum was in the hallway. At the
one of the things in Faculty Senate is if you can't make it, you can send someone in your stead. For example, if I couldn't be at a meeting, I might have another person from the business department go for me, if I was out of town or something. So Dr. McCallum had -- apparently Dr. Brauhn was there in his stead. Dr. Brauhn was in the Faculty Senate meeting room and Dr. McCallum was in the hallway.

Q. And did Dr. McCallum -- or excuse me -- did Dr. Brauhn indicate whether or not he approved or was in agreement with this policy?

A. We put it to a vote and it was unanimous and, yes, he did vote for the policy.

Q. Please explain at that point what happens pursuant to Dickinson State University policies when the Faculty Senate makes a vote. What happens to it at that point?

A. Then we write it up as, you know, what we want and say this was voted on, unanimously voted on, and took it to Dr. McCallum's office later that afternoon. Faculty Senate meetings are at noon, noon to one, so it was just later that afternoon, probably around two or three, I guess I dropped it off at Dr. McCallum's office.

Q. And, again, just for my reference, what was the time frame, month and year, approximately, that that was going on?
A. That was December 10th, 2009.
Q. 2009. After it was presented to the President, what response did you receive at that point?
A. I received a phone call on the 11th of December.
Q. From?
A. From Dr. McCallum. Sorry.
Q. Thank you.
A. And he basically said, you know, he wasn't aware this was happening, he really believed in the sick leave policy, he really wanted it to happen, but he wanted it to happen with more communication. He wanted to put together a committee. He wanted to study it. He wanted to look at it from, I believe, there were five or six different lenses and he would not recommend, he would not put into place the Faculty Senate recommendation. He wanted to get his own committee.
Q. Did he indicate why he felt the Faculty Senate was insufficient to make a recommendation to him, that he wanted to appoint his own committee to review the same issue?
A. He was unhappy with what the Faculty Senate had recommended.
Q. Did he indicate specifically what he was unhappy about in the policy?
A. No.
Q. Okay. When was the next time that you heard further about the status of this faculty sick
leave policy after President McCallum took it over and decided he was going to appoint a committee to review the issue?

A. I believe it was a letter to Faculty Senate from Dr. McCallum outlining what he wanted the makeup of the committee to be. And on the phone conversation on December 11th we talked about that a little bit, and I kind of pushed back a little bit and said that I wasn't sure that any committee appointed by the President would be more representative of the faculty than the people who are elected by the faculty to represent the faculty. Did that make sense?

Q. (Nods.)

A. Okay. And that committee, then, had faculty members on it, two chairs, department chairs, as well as the Human Resource Office, Gail Ebeltoft.

Q. Thank you. In your experience serving on the Faculty Senate and forwarding recommendations on to the sitting President, did you ever experience a situation where the President said, thank you for the proposal, but I'm going to appoint a separate committee to just review and duplicate your efforts?

A. No.

Q. Thank you. When is the next time after Dr. McCallum had his own committee look at this issue that you then received any kind of an update on the policy?

A. Can I look at my notes? Because I did
write down the dates.

Q. Even if you just have an approximate month or year.

A. Sure. We met as a committee -- the new committee. I was on the new committee. And we started meeting sometime in January, I guess, later in January. We came to some conclusions. There were, you know, just a lot of, you know, back and forth and we came to faculty orientation in August.

Q. Of what year?

A. That would have been 2010. August of 2010 we came to Faculty Senate -- or faculty orientation, which is the week before school starts. We all come in a week early to get oriented and meet the new people, that kind of thing, and Dr. McCallum and all the presidents give a state of the university address. And on our letter that we got at home a couple weeks ahead of time saying what the agenda would be, it said sick leave policy was going to be discussed, and when we got there and we got our agenda that day, it was removed from the agenda, but when Dr. McCallum gave his state of the University address, toward the end he said, you have a sick leave policy now, it went on the Web site yesterday and that's what you have.

Q. According to the Faculty Senate policies, was the sick leave policy supposed to be reviewed by the Faculty Senate prior to being implemented?

A. Correct, that's State Board policy.

Q. Were you involved with the smoking policy
issue at Dickinson State University?

A. We began that in 2009-2010, talking about that at Faculty Senate. By the time it was implemented I was no longer -- it was a year later. The sick leave issue took about a year-and-a-half and I believe the smoking policy took over a year.

Q. Was it a concern to you and discussed with other staff members about not having a sick leave policy in place for a period of that length?

A. Absolutely, we discussed that, and the executive committee was brought into Dr. McCallum's office and he said, "What's the rush? What's the rush? Why not -- if it's tomorrow, if it's next week, if it's next month, what's the rush?" Well, during that time we had two faculty members who had gotten gravely ill and one of them in particular was kind of overnight, he had an aneurysm, and my point that I said to Dr. McCallum was there is a rush, that for this particular person next week was much different than last week because of his health and he became incapacitated and unable to work within a few days. And so we saw, the Faculty Senate members were certain -- speaking for myself, saw it as something that did need to be expedited.

MS. ANDREWS: Thank you. I have nothing further.

JUDGE FETCH: Mr. Thomas.

MR. THOMAS: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. THOMAS:
Q. Ms. Dragseth, I think you've got a --

A. Dr. Dragseth.

Q. I apologize, Doctor. Could you look at the exhibits that I believe are before you and turn to page 492 -- excuse me -- 497. That's part of Exhibit 52 that I'll represent, for the record, is an anonymous letter that was sent to Chancellor Goetz on March 23, 2011, a two-page letter.

Do you recognize that letter?

A. One moment.

Q. Sure.

JUDGE FETCH: Which exhibit are we at?

MR. THOMAS: Fifty-two, Your Honor.

MS. DONARSKI: Do you want to offer that now, Ben? I have not offered that.

MR. THOMAS: Not until she tells me if she recognizes it.

THE WITNESS: No, I've never seen this.

Q. (MR. THOMAS CONTINUING) Never seen it.

Okay. Thank you. How about Exhibit 51? And let me back up before we get to Exhibit 52. Do you know who submitted this letter to Chancellor Goetz?

A. No.

Q. You weren't consulted in the writing of this letter?

A. No.

Q. Okay. The only reason I ask is it talks a
lot about the faculty sick leave policy that you
discussed and it's anonymous, so I didn't have any
other way of knowing if it might be you.

How about Exhibit 51, do you recognize
that document?

MS. ANDREWS: Isn't that what you just
asked about?

MR. THOMAS: No, I asked about 52.

THE WITNESS: I do recognize pieces of
this document. They look like a general listing of
communications.

Q. (MR. THOMAS CONTINUING) Okay. So --

A. I didn't write this document.

Q. Did you provide the information that is
contained within this document?

A. I did not directly provide any information
for this document.

Q. Okay. Can you help us understand how you
recognize it then?

A. This is a document that was -- and I don't
recognize it in this -- I recognize pieces of it,
that people were communicating that were concerns.

Q. People were communicating?

A. Faculty were communicating that were
concerns in order to kind of put it all into one

piece. This looks like the end piece of that, that
I have not seen.

Q. Okay. And you said "people were
communicating." Were you among those people?

A. In any organization I think people talk.
Q. I'm just trying to learn --
A. Yeah. I understand that. It would be weird if I didn't communicate with my coworkers and talk about the problems at Dickinson State, so absolutely.

Q. Do you know who did ultimately author this document?
A. No.

Q. All right. And did you have any communications with the Chancellor's office regarding your concerns with respect to Dr. McCallum and his leadership?
A. Yes, I did.

Q. Can you describe that?
A. In, I believe, it was March of 2011, I was asked by numerous faculty members to call the Chancellor's office because -- a little bit of background on that. I had been there 22 years and when I was hired, Chancellor Goetz hired me.

Q. And just a second, ma'am. I don't mean to cut you off, but I know we have a lot of questions so can you just answer the question what communications you had with the Chancellor's office?
A. Right.

Q. Thank you.
A. I called the Chancellor's office, left a message, and said that I was concerned about things that were happening at Dickinson State and if the Chancellor wanted to visit with me, he could call me back.
Q. And did he?
A. Yes, he did.
Q. Okay. And what was the extent of that conversation?
A. It was quite brief. It was -- as I look at this document, probably a lot of the same issues, other than enrollment problems; morale, culture, those type of issues. I remember expressing to Chancellor Goetz that in my 22 years I had never seen morale at a lower level.
Q. Okay. And so -- I'm sorry.
A. It would reflect that. I hadn't seen morale at a lower level. I hadn't seen turnover at a faster rate and that it was more culture and morale issues.

Q. And so, if I can summarize, you contacted doctor -- or excuse me -- Chancellor Goetz to express numerous concerns about President McCallum's leadership; fair to say?
A. I think that's fair.
Q. And after that conversation with Chancellor Goetz, did you have any additional conversation with any representatives from his office or from NDUS?
A. No.
Q. All right. Thank you. And as to Exhibit 51, your testimony is that you don't know who authored this or where it was ultimately -- to whom it was ultimately submitted; correct?
A. Correct.
Q. And same with Exhibit 52, you don't know who authored that?
A. I've never seen Exhibit 52.
Q. And the contents of 52 you don't recognize like the contents of 51?
A. I recognize the contents of 51. I know that the North Dakota State Employee Union Representative brought issues to the Chancellor's office and I'm assuming this is a list of those issues that were taken to the Chancellor --

Q. Got it.
A. -- by Stuart Savelkoul.
MR. THOMAS: Thank you very much. That's all I have, Your Honor.
MS. ANDREWS: Briefly, just to --
MS. DONARSKI: Ms. Andrews.

REDIRECT EXAMINATION

BY MS. ANDREWS:
Q. Mr. Thomas asked you about Exhibit 51, and you indicated that you were familiar with some of the concerns that were addressed in Exhibit 51; correct?
A. Correct.
Q. And those involved -- I'll just briefly run through those, and you have it in front of you as well. The hostile work environment?
A. Correct.
Q. Were you familiar with that issue, the hostile work environment at DSU?
A. Yes.
Q. Can you please explain a little bit more what you witnessed?
A. One of the things when you're president of Faculty Senate or a mayor of a small town or anything, you kind of -- you're the striking point, everybody sort of like wants to bring to you the problems, and I would say once weekly, sometimes biweekly, but at least every other week during that 2009-2010, I would get stopped on my way to class, on my way to get mail, from faculty members, oftentimes staff members asking if the Faculty Senate would put forth a vote of no confidence.

Q. And did the faculty senate put forth a vote of no confidence on Dr. McCallum?
A. During my year as president, 2009-2010, we didn't. Every time that question would come to me, why don't we do that, I said, "I'm the president, I can't make a motion. I can't second a motion. If you come to Faculty Senate and make the motion, someone seconds it, it will be voted on, but as president, I can't make that happen." And no one was willing to do that and I believe personally that was because of fear of retaliation and the hostile work environment.

Q. The second issue addressed in Exhibit 51 is failure to communicate or make decisions. Can you please briefly describe to the Administrative Law Judge the concerns that you either witnessed or had presented to you?
A. I think the two came up a year-and-a-half
to get sick leave, over a year to get a no-smoking policy. There was just many items that went to committee for months and months and months, so there was -- it was a -- decisionmaking seemed to be very slow, which kind of made people outside of higher ed laugh because they think we're just slow anyway, but even slower than what I've seen in my experience.

Q. And last question for you. How would you describe Dr. McCallum's management style?

A. I think it was hostile. I think it was intimidating. I think that he was welcome to Dickinson State when he came. I think that the environment that we have had the last couple of years has been built by poor leadership.

MS. ANDREWS: Thank you. I have nothing further.

MR. THOMAS: No questions.

JUDGE FETCH: I have just a couple.

EXAMINATION

BY JUDGE FETCH:

Q. Did you feel intimidated by Dr. McCallum, you, personally, not someone else?

A. Good question. No.

Q. So you did not experience intimidation from him?

A. Well, as a 22-year member of the academy and a tenured faculty member, it's kind of hard to intimidate, I think, tenured faculty.
Q. Okay. So you did not feel it?
A. Right. Correct.
Q. Was he hostile to you, toward you?
A. Yes.
Q. In what way?
A. Conversations that we had. I'll go back to the example of the sick leave. I can remember him saying to me, people will get hurt if this -- you know, if the faculty doesn't vote for my sick leave policy. I could throw it in the garbage, if I wanted to. And to me I wasn't intimidated, but I felt that it was comments that, you know, people will get hurt, I could throw this in the garbage, you can have no sick leave policy, I could change it at any time. It's a living document.
Q. Okay. You testified earlier that you pushed back?
A. Mm-hmm.
Q. Did you engage in hostile communications with Dr. McCallum? Would you characterize your own responses or your own style as hostile?
A. No. No.
Q. Okay. Tell me what you mean 'you pushed back.'
A. Well, I think that, for example, when I -- that one time in particular when Dr. McCallum noted that he was going to put together his own committee and I said, I don't believe there could be any committee that would be more representative of the faculty than the faculty representatives who are
voted on. You know, a hand-picked committee is never going to be as representative as the representatives that have been voted on by each department. And that's what I meant by "push back," is that I disagree with you. I don't think your committee is going to be better in a sense that it's more representative than a committee that's made up -- Faculty Senate that's made up of elected individuals, so that was, I guess --

Q. Are you a faculty person that others look up to?
A. Maybe. I've been there a long time.
Q. You were giving that impression, they were coming to you --
A. Yes. Correct.
Q. -- and asking you to intercede, take some action, go to the Chancellor?

A. Correct.
Q. You said that -- were you incensed or angry that Dr. McCallum did not immediately adopt what the Faculty Senate recommended? It's a yes or no question.
A. Yes, I was angry.
Q. Okay.
A. I would say, no, I wasn't incensed.
Q. All right. Have you ever been an administrator?
A. No.
Q. Okay. Do you think it's unusual for an administrator of a large institution to want to take
some time to appoint a committee to look into a proposal? You had indicated that this policy was supposed to have been in effect since 2004?
A. Correct.
Q. And this is now, what, five or six years later?
A. 2009.
Q. Five years later. Do you think it's unusual for an administrator to want a committee to look into a new policy?
A. I would not have expected Dr. McCallum or the president of any university to say, Well, we'll take whatever you have and not even look at it, I will just put it into place tomorrow. However, there was such a hostile response to the recommendation, that that's probably where --
Q. As you testified earlier?
A. Right. Right.
Q. So you don't think it would be unusual for an administrator of a large facility or institution, agency, et cetera, to say, you know, however say it, I want my own committee appointed, you being on the committee to look into development of a new policy. Is that unusual or not?
A. I've never experienced that, but the way you're framing it, I would --
Q. Do you think -- okay. Fair enough. Give me just one minute.
You also testified that you told Chancellor Goetz that in 22 years you had never seen
19 morale at a lower rate and you also referenced high
turnover.
20 A. Mm-hmm.
21 Q. Do you know what the -- what that turnover
22 was a result of?
23 A. There was an article in the paper that I
24 believe, if I remember correctly, over ten months we
25 had a 25 percent turnover. The people that I
26 personally knew that left, left for a variety of
27 reasons. Obviously, people are people. But there
28 were a lot of people also looking for positions and
29 just telling me that they felt that they didn't want
30 to work here any more, didn't want to work for the
31 University.
32 Q. Were there -- I assume you know most of
33 the faculty at Dickinson State.
34 A. Mm-hmm.
35 Q. Were there some that disagreed, that
36 didn't have low morale? Were there some that did
37 not?
38 A. I would -- if I were to take a guess,
39 maybe five percent, maybe four, five who liked the
direction that the University was going.
40 Q. Four or five percent?
41 A. Right.
42 JUDGE FETCH: So that's all the questions
43 I have. Any more direct examination, Ms. Andrews?
44 MS. ANDREWS: No. Thank you.
45 JUDGE FETCH: Mr. Thomas, any more
46 questions?
MR. THOMAS: Thank you. No, Your Honor.

JUDGE FETCH: All right. You're excused.

You may either remain in the room or you may leave.
Okay. Who is going to be your next witness?

MS. DONARSKI: The next witness will be Ronnie Walker, and she is the Director of Center for Multicultural Affairs for DSU.

JUDGE FETCH: Okay. Is someone getting the witness?

MS. DONARSKI: Yes.

JUDGE FETCH: Please identify your witness.

MS. DONARSKI: This is Ronnie Walker. She is the DSU Director of the Center for Multicultural Affairs.

JUDGE FETCH: Ms. Walker, witness testimony at this hearing is taken under oath and is subject to penalties for perjury. By law I'm required to instruct witnesses as to those penalties. There's a sheet there in front of you, a witness instruction sheet. Would you take a look at that, please?

THE WITNESS: (Complies.)

JUDGE FETCH: You've read those?

THE WITNESS: Yes.

JUDGE FETCH: Thank you. And you need to
speak up nice and loudly, please.

Please raise your right hand.

Do you solemnly swear the testimony you're about to give shall be the truth under pains and penalties of perjury?

THE WITNESS: I swear.

JUDGE FETCH: Thank you.

Go ahead, Ms. Donarski.

MS. DONARSKI: Yes, thank you.

RONNIE WALKER, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. DONARSKI:

Q. Ronnie, you are the Director of the Center for Multicultural Affairs?

A. That's correct.

Q. How long have you held that position?

A. Two years, four months.

Q. Okay.

JUDGE FETCH: I'm sorry. We need to have her spell her name for the record.

Q. (MS. DONARSKI CONTINUING) Would you spell your name, your first name and your last name?

A. The legal spelling? I go by Ronnie,

R-o-n-n-i-e. W-a-l-k-e-r.
Multicultural Affairs two years ago?

A. No, I did not.

Q. Okay. Identify to Judge Fetch what your duties include as Director of the Center for Multicultural Affairs.

A. As the Director, I'm responsible for overseeing the office of the Center for Multicultural Affairs. I have two staff members. We are responsible for the enrollment and support services for our diversity students, is one aspect. Those are our American domestic students of diverse background, primarily Native Americans. And the other part of the job is the enrollment and support and immigration piece for our international students.

Q. And as Director, were you part of the management team to address enrollment at DSU?

A. Yes. There's actually two enrollment and management groups and, yes, I'm a member of both of them.

Q. Okay. And explain what the two different groups are.

A. It's a really fine line between the two. We have a meeting every -- once a week, and we discuss -- that's our strategic enrollment management where we discuss on a weekly basis how we're going to get our numbers to the goal. So we would meet as mostly directors, what each of us were doing.

Q. And who is "we"?
A. I'm not sure I can list the whole group. It's led by Norman Coley.

Q. And can you give the titles as well?

A. Norman is the Director of Enrollment Services. This is a challenge. Jon Brudvig, the Vice-President of Academic Affairs; Lydia Dworshak, the Director of Residents Life. Hal Haynes, Vice-President of Student Development. Doug LaPlante, Dean, and I'll never be able to tell you what his title is. He's a Dean of Business Arts and Sciences. Kevin Holten, and he's from Alumni and Foundation. Connie Walter, before she resigned, she was the Director of University Relations. That's all I can think of off the top of my head who is in that.

There's another enrollment management -- I don't remember the name of that one. I'm sorry. It was built off of our Noel-Levitz plan, so there were several members from the Noel-Levitz group. When Noel-Levitz came in and helped us do our strategic planning, a team came together for that and we met once a month, something like that, to go over what our goals were and how we were going to meet those and our priorities.

Q. Okay. Goals and priorities with respect to increasing enrollment at DSU?

A. And services to students. It wasn't just enrollment. There was a retention piece to that. There was the enrollment services. It was the big picture. Our strategic enrollment management on the
Monday mornings once a week were immediate, right now. The piece with the Noel-Levitz was our big five-year plan.

Q. And was the President part of any of those meetings?
A. No.

Q. Were there direct reports to the President as to the status?
A. I believe so. I believe Norman reported, Norman Coley reported our weekly meetings. I do not know who did the reporting for -- I can’t even remember what we called that one. One is strategic enrollment management, and the other one was just enrollment management, I think.

Q. And part of the strategic enrollment management team was Marty Odermann-Gardner?
A. Yes.

Q. And you worked with her as well?
A. Yes.

Q. Turn to Exhibit 59.
A. Is it behind or in front?
Q. It’s behind. Do you recognize that to be a memo that you would have received from President McCallum?
A. Yes.

Q. And the memo is dated August 10, 2010?
A. Yes.

Q. The memo indicates that, “After today’s conversation, this letter will confirm our agreement and the urgency to bring the multicultural/
international student Web page information up to date." And then it goes into accepting responsibility to restore the international student enrollment. And, "Specifically, our spring 2011 international student enrollment must be 350 and our fall 2011 international enrollment must be 400. These goals are a critical part of our future enrollment plans."

Were those enrollment numbers that were achievable or reasonable?

A. I don’t believe so.

Q. Why not?

A. There are a lot of things that had gone on prior to this. You know, our numbers had dropped from the year prior to my coming on, but there were reasons behind the drops, but --

Q. What were the reasons?

A. Well, the first year, this was after my -- I started July of 2009, so this was a year into it. When I started in July of 2009, recruiting had already been done. When you’re recruiting international students, we’re talking a year, at least a year in advance that you start that process, because not only do you have the admissions piece, but you have the immigration piece. By July of 2009 there was no chance of doing any recruiting at that point, any additional admissions. It’s already too late. Immigration documents should have been issued by that point.

So the numbers that came that fall didn’t
really have anything to do with me. It had to do with what had happened before. And then in 2010, early 2010, we had -- our agents in China had had some issues between themselves and had broken -- their company had broken apart. And prior to our visit to China, Nicole, one of our headhunters, one of our agents in China, had been given a letter saying that we didn't intend to keep her as a recruiter. And we knew when that was done, that that was going to affect our numbers because she usually sent us well over 100 students every semester. So we already went into that knowing that we would lose her numbers.

MS. DONARSKI: We offer Exhibit 59.

MR. THOMAS: No objection.

JUDGE FETCH: Thank you. Exhibit 59 is admitted.

Q. (MS. DONARSKI CONTINUING) President McCallum continues in the memo, "With this responsibility, there will be accountability."

How did you interpret that?

A. Well, I took it as a threat to my job. I was really -- I mean, it was upsetting to me and I took it that way. I called Hal Haynes, who is my direct supervisor, and asked for a meeting with him.

I knew he had received this as well and I asked him if I should be concerned for my job and he said, "Yes." He believed -- he took it the same way.
MR. THOMAS: Objection. Hearsay. This is also a witness that's scheduled to testify, Your Honor.

JUDGE FETCH: Sustained.

Q. (MS. DONARSKI CONTINUING) With the accountability, what was the culture like in meetings, in the work environment, in your work environment, in trying to meet those enrollment goals?

A. Well, I was under a lot of pressure to meet these goals. And our meetings, our enrollment meetings -- not the enrollment meetings. Sorry. The meetings we would have on occasion with Dr. McCallum, everybody would report where they were with numbers, were they going to make our goals. And I always had to say I wasn't going to meet these goals. It was a very uncomfortable position to be in, but I was always very honest, that, you know, I have a chart, I can go back five years and analyze how many applications, how many visas -- how many immigration documents we issue and how many students from each country get these. So I had a good analysis of where we would be and I always tried to be very honest about that. I believe that's my job, is to advise the President, his staff on where we are with things. But it was very tense. I always felt that I was disappointing to Dr. McCallum because I would say I didn't believe that we would meet our goals, so --

Q. How were you treated by President McCallum
when you indicated you would not be meeting goals?

A. Generally, he would sit back, cross his arms across his chest and just stare at me, so I didn't get -- you know, there was never yelling. There was never reprimand. It was just the look, so --

Q. And with the -- holding the accountability, what was it, then, that made you think that your job was on the line if you didn't reach the enrollment goals of President McCallum?

A. The tone of the letter. The meetings that we had. This was -- this letter in particular was -- we had had a meeting. We actually went into a classroom. He pulled up our Web site and went over that. So we did try and discuss some of that, but it was really just Dr. McCallum explaining to us what was wrong with it and what we needed to do. He also at the same time had me write a marketing plan. I think it was always just the tone, the message, the meetings that we had, that made me believe that my job was -- you know, there's no indication that there's any opportunity to do anything, any questions on how we could be supported, how we could -- you know, do we need any additional support? All those things that you would think if we're given goals, we kind of hope that if the President knows that we can reach this, if these are his goals, there's got to be a reason why he believes we can get there, but there was none. No direction. No --
Q. Were there resources to support the increase in international student enrollment to be 350 in the spring 2010 and 400 in the fall of 2011?

A. What do you mean, were there resources?

Q. Were there resources to support those international students, the goals to bring in that level of international students?

A. Financial resources, you know, we were -- we had budget issues. We were always concerned about our budget.

Q. What about student services to serve those international students at that level?

A. That's a very big concern of ours. And in my office, no, we do not believe that there's an infrastructure at all. There's not housing resources. We do not have the food services for the number of students. And my staff is seriously strained. Not only do we have -- I mean, right now we have 354 international students, but we also work with our -- like I said, part of our office is also with our diversity students, and I believe there's like 250 of those. So with me with a staff of two trying to serve that many students and meet their needs, these are high-need students, particularly our Native American students need quite a bit of support services and, no, I do not believe we have had enough support staff to meet these.

Q. To meet the increase of international students as indicated on Exhibit 59 from the President?
A. That's correct.

Q. Okay. I'd like you to turn to Exhibit 64.

A. Okay.

Q. Is Exhibit 64 a memo you received from President McCallum?

A. Yes.

MS. DONARSKI: We offer Exhibit 64.

MR. THOMAS: No objection.

JUDGE FETCH: Exhibit 64 is admitted.

Q. (MS. DONARSKI CONTINUING) Exhibit 64 is subject line, "Spring 2011 International Student Enrollment." It's dated March 8, 2011. And it starts off, "This letter will confirm my sincere disappointment."

What were the steps that you took -- let me ask you this: Did you try to meet President McCallum's directives and goals?

A. Yes.

Q. And what were the steps that were taken?

A. We actually -- we increased our -- every week I would submit an application chart. We actually increased the number of applications we processed. We did increase substantially, probably by 700, 800 -- I don't have those charts -- but immigration documents alone that we issued over the year before to those students. Unfortunately, you know, we don't have any control. Once the immigration document leaves our office, that's all in the hands of the embassy staff and then the port of entry officials. So we don't have -- you know,
there's only so much we can do at that point.

We did -- when I had come into the job,

there were certain things that had changed. Prior
to my coming on, the University did accept scanned
copies of transcripts, et cetera, and I put a stop
to that. I don't believe that's something that we
should do. We had also been taking scanned copies
of financial documents, which is not a really good
idea, so we stopped doing that, but in order to meet
these requirements, I did start allowing them again
to take scanned copies of financial documents, but
never again of the transcripts.

Q. Why wouldn't you accept scanned copies of
transcripts?
A. Because they are not official and they are
easy to change once they are scanned in.

Q. What was your response when you received
this March 8, 2011, memo from President McCallum?
A. My response, well, I was -- I guess I was
disappointed. I was. I mean, we had worked. We
had increased our number. We increased our number
over spring, which is hard to do because spring
numbers generally go down a little bit. You can
anticipate a decrease. So we did increase our
number by 32, 33 so I was short the goal by 20.
There's no recognition that we had actually made
some amount of growth over a time when it is -- so I
guess I was disappointed. I was really let down by this letter.

Q. Did you give him your 110 percent commitment to reach those goals?
A. I think my staff and I, yeah. I'm pretty sure we did 110 percent. You know, we work long hours. We don't work our eight-hour days. We work much more than that and I believe that we really have a commitment to -- but our commitment is to our students and to the quality of students, not to just getting numbers.

Q. Okay. Turn to 66.
A. Okay.

Q. Do you recognize that document?
A. Yes.

Q. What is it?
A. It's our dashboard.

Q. It says "Fall 2010 Enrollment Dashboard"?
A. Mm-hmm.

JUDGE FETCH: Please answer yes.
THE WITNESS: Yes.

Q. (MS. DONARSKI CONTINUING) Who did you receive that from?
A. Dr. McCallum.

MS. DONARSKI: We offer Exhibit 66.

MR. THOMAS: No objection.
MS. DONARSKI: And we offer 67, which is the spring 2011 enrollment dashboard.
MR. THOMAS: No objection.
JUDGE FETCH: All right. Exhibits 66 and
67 are admitted.

Q. (MS. DONARSKI CONTINUING) Explain to the Hearing Officer what these documents are.

A. These documents are a breakdown of all of the -- when we have the President's council.

Q. Cabinet?

A. No. So it's council, yes. The President's council is made up of about 40 -- I want to say there's 48 of us that attend this meeting. It was usually scheduled once a month. And he would hand this out and it would break down all the major groups and where our enrollments were. And red means that the number is down and green means the number is up.

Q. This is a document that President McCallum would hand out?

A. Yes.

Q. And during those meetings, what did you exhibit with respect to President McCallum's conduct on the red circles, meaning the certain areas that did not meet those goals?

A. I'm sorry. Can you -- I'm sorry.

Q. Sure. Were you ever in any meetings where President McCallum expressed anger or he was upset in certain groups not meeting these numbers?

A. Yeah. Any time he showed us this, he was. Only once did he get very angry and slammed his fist down on the table, told us that we needed to meet his goals and then he did walk out of that meeting. And I can't tell you which date it was. It was -- I
remember the room. But, yeah, only once did he get, you know, physically angry and pounded on his desk, but he was pretty adamant that this was -- our goal was to get these all into the green.

Q. Were these stressful meetings?
A. Very stressful. Very stressful.

Q. You said there was only one meeting where he slammed his fist down. Were the other meetings stressful or just the one?
A. They were. I don't -- these were the meetings where we would all have to report where our numbers were going to be and people were afraid and they would always say that their numbers would be up, their numbers would be in the green the next semester, even if we spoke outside of the room and they knew that their numbers probably weren't going to be, they always said they would, but I would always tell him -- I mean, I was always honest. My numbers were not going to be up and it was stressful. Nobody wants to be the person to say you are not going to be able to meet those goals. But they were stressful meetings.

Q. Turn to Exhibit 71. Do you recognize that to be a memo that you had received from President McCallum?
A. Yes. Hal and I were called in and he actually physically handed this to us.

JUDGE FETCH: I'm sorry. What number is that?
MS. DONARSKI: Exhibit 71.
Q. (MS. DONARSKI CONTINUING) Who do you report to?
A. To Hal Haynes.

MS. DONARSKI: We offer Exhibit 71.
MR. THOMAS: No objection.

JUDGE FETCH: Thank you. Exhibit 71 is admitted.

Q. (MS. DONARSKI CONTINUING) You had said that this was a memo that was hand-delivered to you and Hal from President McCallum?
A. Yes, when we came into the meeting.

JUDGE FETCH: I'm sorry. What did you just say?

THE WITNESS: When we came in for the meeting, he handed us this.

JUDGE FETCH: Thank you. You need to speak up a little bit.

Q. (MS. DONARSKI CONTINUING) How did that meeting go?
A. Not well. He gave us this letter. He read us this letter, actually. It's been a while so I can't remember all the details of that, but at the end of this, I did tell him that, you know, I would be able -- that, technically, I could get him 800 students for the fall, if that's what he wanted, but that I wouldn't because I have to report -- I mean, everything I do goes through the Department of
Homeland Security and we're under scrutiny all the time and legally I could not, you know -- technically, I could do it, if I just let everybody in, if I gave everybody admissions documents, we could have those numbers, but I did tell him that I was not able to do that. And I also did take responsibility that perhaps our numbers were down because of some decisions that I had made, that the director that had been there before me had been a looser -- had interpreted regulations a little looser than I did, so I did cut back on the amount of employment that students were allowed to have, which then did cause some students to transfer away. That I had been more restrictive in the application process and the documents that we received and that that could have affected our numbers in enrollment, but that I was guaranteeing that the students we had were quality students, that they met our requirements, that hopefully they could pay, that sort of thing. So I did tell him that in this meeting.

Q. And what was his response?
A. He crossed his arms across his chest and stared at me.

Q. Any other response?
A. No.

Q. How did you take that?
A. Well, I assumed that he didn't like what I had said. No feedback. When you don't get feedback, you don't know if you're doing the right
thing or the wrong thing. You don't know what direction you're supposed to take. You know, other than just giving me these numbers, which I don't know how he came up with the 350 and 400, I don't know how he came up with those numbers, why he believed those to be the numbers we needed to reach. So without any of that feedback, when we have those conversations, I don't know how to take it. I don't. I just assumed I had done -- had not done the right thing. That I shouldn't have spoken up, but I believe that's my job as a director to advise and give some guidance on what I'm an expert in.

Q. And how was your work culture at that time?
A. My work culture? Sorry.
Q. Was it stressful? Did you enjoy it?
A. Oh, no. When I first came to Dickinson, I was very excited to work there. I mean, I had heard wonderful things about the school and at first it was, but then it became very, very stressful. My staff was being asked to put in more time, more effort into admissions and less into retention. My focus was -- I'm not a numbers person. I was honest when I took the job. I love student services. I love the immigration piece. I love working with the students, but recording numbers has just never been my thing, but that's what my job became, was running reports, doing analysis of the numbers. So, no, it
became very stressful and, you know, I would have loved to have an 8-to-4:30 job, but it became late nights, working weekends.

Q. What was the source of that stress?
A. Trying to meet the numbers, trying to meet the goals, making sure I still had a job come this fall. I really did fear that this fall I would lose my job because I knew that there was no chance of reaching these numbers. My staff was feeling the stress. You know, I have great staff, but they knew -- you know, what would happen to them if I lost my job, what was going to happen with theirs, so --

Q. Was there an emphasis on quantity versus quality of the students?
A. Absolutely.

Q. Where was that coming from?
A. The pressure to -- all the pressure we had to increase our numbers meant, you know, bringing more in and not giving the support to the students, so we had students leaving as they weren't getting the support that they needed. You know, that's my opinion, but I feel that we weren't supporting them the way we needed to. But all the emphasis on bringing recruiting and less on the retention and support services.

Q. Turn to Exhibit 81. And I'll let you look through that. Do you recognize Exhibit 81 to be documents relating to the Roughrider Homestead Scholarship?
A. Yes, I've seen this. I don't work directly with the Roughrider, but, yes, I've seen this, yes.

Q. Okay. So as we go through, do you recognize the document to be the identifying criteria for the Roughrider scholarship?

A. Yes, that was the original. Well, it says Roughrider Homestead scholarship was the original outline for the criteria required for this, yes.

Q. Okay. And then the Roughrider scholarship award, that document also identifies the criteria?

A. Yes.

Q. And continuing on, we have the application and then at Bates No. 575 and 576, would those be two memos that you had prepared with respect to the Roughrider scholarship?

A. I did.
clarify that. In my office the Roughrider -- I'm not sure why this works this way. When the Roughrider Scholarship is awarded to athletes who come from diverse backgrounds, the memos come through my office and one of my staff members, Holly, maintains a database of all the students who are receiving the Roughrider. We do not award the Roughrider out of my office. We maintain the database.

Q. So you're familiar with page 575, obviously, because you authored that; right?

A. Yes.

Q. Then how about as to pages 570 through 574, are you familiar with or do you utilize those documents in your job?

A. I'm familiar with them. We use the application. Our diversity students, again, to submit the Roughrider Scholarship award application to our office, but we don't -- we just don't do the awards for that. They come to us, but we don't actually award them.

MR. THOMAS: Okay. Thank you very much.

No objection to Exhibit 81, Your Honor.

JUDGE FETCH: Thank you. Exhibit 81 is admitted.

Q. (MS. DONARSKI CONTINUING) So in 81, I'd like you to turn to Bates page 575.

A. Okay.

Q. And is that a document that you authored?

A. Yes.
Q. And whose directive?
A. Dr. McCallum.
Q. And why were you asked to do that?
A. Well, back through the whole history of -- this student had had an issue with her volleyball coach and she had lost her volleyball award and there was questions as to why he had taken it away.

She had also come to us and told us that the coach had been --

MR. THOMAS: Objection. Hearsay.
THE WITNESS: She came to me -- sorry.
JUDGE FETCH: Sustained. Go ahead.
THE WITNESS: Okay. She had come to my staff, told us --
MR. THOMAS: Same objection. I'm not sure the witness understands, Judge, your ruling on the question.
JUDGE FETCH: You're really running on. The question --
MS. DONARSKI: Let me rephrase.
JUDGE FETCH: Go back to the question, please.
Q. (MS. DONARSKI CONTINUING) Is this memo a document that President McCallum asked you to prepare?
A. Yes.
Q. You prepared it at his directive? Yes?
A. Yes.
Q. And he approved it?
A. Yes.
Q. Same question for the next memo.

JUDGE FETCH: Are we on page 576?

MS. DONARSKI: Correct.

Q. (MS. DONARSKI CONTINUING) Is that a memo that President McCallum asked you to prepare?

A. Not directly. I was not at the meeting he had with this student. I was out of state at the time. I was told by --

MR. THOMAS: Objection. Hearsay. Unless it's Dr. McCallum.

Q. (MS. DONARSKI CONTINUING) Why did you prepare the memo?

A. Eventually I was told to by Dr. McCallum.

Q. Thank you. Was it unusual for you to prepare memos like this with respect to the Roughrider Scholarship?

A. Yes.

Q. Why do you think you were asked to do it?

A. I do not know why I was asked to do that. I assumed that because the students were international students was why I had originally been included in this, but I do not award the Roughrider awards. I have no authority to.

Q. Okay. And you've never asked for that before in the past?

A. No.

MS. DONARSKI: I have no further
questions.

JUDGE FETCH: Thank you, Mr. Thomas.

MR. THOMAS: I know we're close to lunch, Your Honor, but I think I have about five minutes with this witness.

JUDGE FETCH: Let's go. Let's proceed.

CROSS-EXAMINATION

BY MR. THOMAS:

Q. Ms. Walker, I want to review just a little bit of your testimony starting with the concern that you testified to that -- I believe I got this correct -- the University simply didn't have the resources to meet the needs of 400 students, even if you were able to attract that many students. Do you remember that testimony?

A. Yes.

Q. And that was a concern of yours?

A. (Nods.)

JUDGE FETCH: Please, you need to verbally answer for the record.

THE WITNESS: Yes.

JUDGE FETCH: Thank you.

Q. (MR. THOMAS CONTINUING) And could you please turn to Exhibit 66 that you previously testified from?

A. (Witness complies.)

Q. And if you'll look at page 524, the red circle that says "international," that represents the number of international students that were enrolled in 2008, 2009 and 2010; is that correct?
A. That's correct.
Q. And if you look at the entry for 2008, can you tell me how many international students were enrolled in 2008?
A. Four hundred thirty-two.
Q. And so, in fact, the University had been serving not only the needs of 400 international students, but 432 as of 2008; true?
A. That's correct.
Q. Now, could you turn to Exhibit 59, please? This was the memo that you received from Dr. McCallum in August of 2010 and I believe that your testimony was that you were concerned following receipt of this memo about whether you were going to lose your job; correct?
A. That's correct.
Q. All right. You would agree that as Director of the Center for Multicultural Affairs, you have accountability to your superiors; true?
A. I accept that, right.
Q. And yet it was referencing that accountability which made you fearful for, according
to your testimony, your job security?

A. Correct.

Q. All right. But you would also agree, wouldn't you, that at the conclusion of that memorandum, Dr. McCallum says, quote, Thank you for your continued support and assistance; yes?

A. Yes.

Q. And offers his, quote, best regards, close quote, at the conclusion of that letter; yes?

A. Yes.

Q. Now, you testified that you felt that the goal that he set in this memorandum dated August 10 was unreasonable, that's the goal where he sets -- states that, quote, international student enrollment must be 400, close quote. Do you see that?

A. Yes.

Q. But if there were 432 international students in 2008, which was, as I understand it, the year that Dr. McCallum began his presidency; correct?

A. I believe so.

Q. He wasn't seeking to increase the number of international students, he was just trying to make up for some of the loss that had occurred since 2008; isn't that true?

A. I believe so.

Q. And so what he was seeking, if I understand these numbers correctly, looking at Exhibit 66, is he was trying to get from 298 up to 400, which would still be 32 students fewer than
when he started in 2008. Have I got the math correct?

A. I believe so.

JUDGE FETCH: Please speak up.

THE WITNESS: I believe so.

JUDGE FETCH: Thank you.

Q. (MR. THOMAS CONTINUING) Now, you talked about Dr. McCallum crossing his arms and you referred to getting, quote, the look from Dr. McCallum, but you're still employed as Director for the Center for Multicultural Affairs?

A. I am.

Q. He didn't -- following receipt of these disappointing reports, he didn't -- obviously, he didn't fire you; true?

A. True. He wasn't there when the numbers came out for this fall, so I don't know what would have happened at the fourth-week report this year.

Q. Well, right, but, I mean, he sent memos in the spring of 2011 where these goals had not been met; correct?

A. When he told me there would be accountability.

Q. So let's find out what the accountability was. You testified he didn't fire you. You testified earlier that you, quote, were never reprimanded; correct?

A. Correct.

Q. No loss in pay, no pay cuts of any sort; correct?
That's correct.

Okay. No disciplinary memos in your file or anything of that sort?

Not that I'm aware of.

MR. THOMAS: Okay. Thank you. Those are all the questions, I have, Your Honor.

JUDGE FETCH: Thank you. Any redirect, Ms. Donarski?

REDIRECT EXAMINATION

BY MS. DONARSKI:

Q. You had testified to not being able to meet the student needs of 400 students?

A. That's correct.

Q. And Mr. Thomas had indicated that in 2008 you actually served 432. Why would you not be able to meet the needs of the 400 students in 2010?

A. I don't believe they were being met in 2008 and, actually, I believe our numbers a year prior to that might have actually been up closer to 500. We had a huge number of students transferring out every semester. It was very fluid. The number of students who came in then would transfer out a semester after they came. Their needs were not being met. We didn't have staff who could give them the support that they needed.

And, again, it's not just those students that we are serving. We're also serving the diversity students and that number has been increasing in small amounts, but -- so we're not just looking at one number, just those 432. We're
looking at additional numbers from that as well.

But, no, I do not believe that those students were getting the language support, the advising support that they should have been. When the numbers did go down somewhat -- and I have -- my assistant works with our students and she helps advise them when they're thinking of transferring out, she takes the time with them to do that and our numbers of transfer-outs have decreased. We can't do that if we have too many students.

MS. DONARSKI: Thank you. I have nothing further.

JUDGE FETCH: Mr. Thomas.

MR. THOMAS: Just a couple based on that.

JUDGE FETCH: Go ahead.

RECROSS-EXAMINATION

BY MR. THOMAS:

Q. Although you believe those needs weren't being met, I was wrong, it wasn't the needs of 432 students, you think there may have been as many as 500 international students?

A. The year before that, perhaps. I'm not -- it was before me. I know I had seen at one point.

Q. And you were down to 298 and Dr. McCallum wanted you to get up to 400 students; right?

A. That's correct.

Q. And during the last two years, approximately two years ago, didn't Dickinson State
University add an ESL or English as a Second Language position to enhance its support for international students?

A. I do not know when they added that. It was here before I came, but there is an ESL support service and it supports our Chinese students.

Q. And that was something -- if Dr. McCallum were to testify that that happened approximately two or two-and-a-half years ago, you don't dispute that?

A. No.

Q. And that would be something that would have been put in place after what appears to be the peak in international student enrollment of 500, which would have been in 2007, correct, if you know?

A. (Shakes head.)

JUDGE FETCH: And you just shook your head no.

THE WITNESS: I'm sorry. I don't know. I don't think when that number --

MR. THOMAS: That's fair. Thank you.

That's all I have, Your Honor.

MS. DONARSKI: I have nothing further.

JUDGE FETCH: All right. Thank you. You're excused. You may leave or you may stay. It's now 12:10 p.m. Ms. Donarski, who are you going to anticipate calling next?

MS. DONARSKI: My next witness will be Hal Haynes.

JUDGE FETCH: Okay. We'll take up with Hal Haynes after we break for lunch. It's now
12:10 p.m., Central Time, and we will reconvene and start promptly at 1:30.

(Lunch recess from 12:10 p.m. to 1:40 p.m., the same day.)

JUDGE FETCH: Okay. We're back on the record. Before we proceed with the next witness, I want to put on the record that when I sequestered witnesses yesterday, I instructed the witnesses in the sequestration area that they were not to talk about any aspect of this hearing or what went on in the hearing and that they were not to discuss this matter, period, until the hearing ended.

Now, I can't be there to baby-sit to see that they're complying. However, my administrative assistant is right there. It's right in the same office area. I also gave a couple copies of my written sequestration instructions to the witnesses for their reference and review so they'd know what is expected.

When we broke for lunch, my administrative assistant brought to my attention that there's been some violation of my instructions to the witnesses. In particular, the witness who testified this morning, Deb Dragseth, left the hearing, went in and was spilling her guts, as my assistant termed it, to the other witnesses. Yesterday, Joanne Fields was apparently highly emotional after the testimony. That's not unusual, but she was in and also expressing some displeasure at how the hearing had gone for her, but my administrative assistant was
not able to discern whether Ms. Fields said anything about the particulars of the testimony.

All right. I don't know that there is any relief that I can grant for this matter. If witnesses have been corrupted, they've been corrupted. If this were a trial, it could very well result in a mistrial, but this is a hearing before an ALJ and not before a jury. I'm going to have to consider this, but, as I said, I don't know that there is any relief. I'm not certain that either party wants to start over with a new proceeding. I don't know what benefit there would be to that, because, as I said, if witnesses have been corrupted, they've been corrupted and a new hearing isn't going to do anything to remedy that. However, it may have some impact on credibility of the witnesses. I guess, you know, we'll have to see where that goes. As witnesses appear, I may ask them if and what they have heard from prior witnesses as to what the testimony was. Counsel may also address this in your post-hearing briefs.

As I said, I don't know that there's anything more that we can do at this point. I have gone in now and again made witnesses aware of my instructions and, beyond that, there isn't much more I can do at this point.

All right. No response from counsel?

MR. THOMAS: No, Your Honor.

MS. DONARSKI: No response.
MR. THOMAS: I share your concern, but I appreciate the information.

JUDGE FETCH: All right. Thank you. Then at this point we will continue. And I don't recall who you were having as a witness at this point, Ms. Donarski.

MS. DONARSKI: Hal Haynes, who is the Vice-President for Student Development.

JUDGE FETCH: All right. Thank you. Mr. Haynes, please spell your first and last name for the record.


JUDGE FETCH: All right. Mr. Haynes, there is a sheet in front of you. It's a witness instruction sheet that will tell you what penalties for perjury are. All witness testimony at this hearing is taken under oath and is subject to penalties for perjury. Would you take a moment and read those?

THE WITNESS: (Reviews document.)

JUDGE FETCH: All right. Thank you. Please raise your right hand.

Do you solemnly swear the testimony you're about to give shall be the truth under the pains and penalties of perjury?

THE WITNESS: Yes, ma'am.

JUDGE FETCH: Thank you. Please speak up nice and loudly as you give your answers.

And I'm going to ask you, did you hear
anyone who had been in here to testify talk about their testimony or what happened in the hearing room?

THE WITNESS: No, ma'am. And in particular, the person you referred to, I was on the telephone at the time dealing with an issue related to the University, so I wasn't aware.

JUDGE FETCH: Okay. Thank you.
All right. Thank you. Ms. Donarski.

MS. DONARSKI: Thank you.

HAL HAYNES, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. DONARSKI:

Q. Hal, as Vice-President for Student Development, are you a direct report to the President?

A. I am.

Q. Okay. And what do your duties include as Vice-President for Student Development?

A. My division, I'm responsible for eight departments; ranging from campus security, resident life, student activities, The Academic Success Center, health and wellness programs, student health services, as well as the Center for Multicultural Affairs.
Q. And the Center for Multicultural Affairs, would include the director, who is Ronnie Walker?
A. That is correct.
Q. Jumping right to the issue at hand, have you had an opportunity to work with President McCallum directly?
A. Yes.
Q. Okay. And you had indicated you report directly to President McCallum?
A. That is correct, since 2008.
Q. Since 2008?
A. Correct.
Q. How long have you been with DSU as an employee?
A. As an employee, since May of 1992.
Q. Okay. And briefly describe your work history with DSU.
A. Sure. The entire 21 years of my employment at the University has centered in the Division of Student Affairs. I’ve been a resident director, director of resident life, a director of student activities, coordinator of student activities and residents' life, senior director for student life, interim Vice-President and, eventually, in 2007 was named full-time Vice-

Q. If I could draw your attention to Exhibit 58.
A. Yes.
Q. It's a memorandum from President McCallum. The individuals identified in the "to" section, are those all individuals that include direct reports to President McCallum?

A. Not all, no.

Q. Majority of them are?

A. No. Actually, I would say there's only two, three, four.

Q. Identify the direct reports.

A. The direct reports would be myself, and as I do recall, Dr. Brauhn, Mr. Roger Ternes, and Dr. Jon Brudvig. Well, yeah, Dr. Jon Brudvig, yes. Those are the direct reports that I'm aware of.

Q. And this is a July 2006 -- excuse me -- July 6, 2010 memo regarding President McCallum's sense of urgency on enrollment; correct?

A. Yes, that is correct.

Q. Turning to the second page, the second page is the one that identifies the we still need 1,300-plus enrollment to achieve the goal.

"Consequently, we need to develop an action plan that will enroll about 120 students per week for the next 11 weeks." Is that an achievable goal?

A. In my opinion, no, at that time.

Q. Why not?

A. Simply because, historically, my experience in working with students is that you see a downtime, particularly from early July until about mid-August, and then you see a real flurry of activity with students who choose to enroll. That
had been my experience in pattern of watching enrollment during the course of my time at DSU. It's a real -- for lack of a better word, it's a
dead time. It's a dead zone time from early July until about mid-August. So I guess my concern was,
120 -- we may be lucky to get just 120 from early July to mid-August.

Q. Okay. Was there a luncheon in August 2010 that you attended with President McCallum?
A. Yes, August 2nd, 2010, we had an enrollment luncheon in the basement of the student
center and that included virtually all of these people listed in the memorandum from July 6th.

Q. Which is Exhibit 58?
A. Mm-hmm.

Q. That's a yes?
A. Yes. Yes, ma'am.

Q. Okay. Describe for Judge Fetch what occurred at that lunch on August 2, 2010, with President McCallum.
A. Well, he gathered us all, provided lunch, and he outlined where we were via the dashboard or barometers, which included a gauge of 12 indicators of where we were with enrollment, ranging from new, first-time freshman, transfer students, international students, TR scholars, and so forth. And he indicated to us at the time, I believe, that how he did the dashboard gauge, is that he color-coded it. Indicators of red meaning we were in trouble. Green indicating that our targets for
enrollment for those particular areas were okay. But as I recall, the dashboards at that
time indicated that we were behind or they were
indicating red in, I believe, nine of the 12 areas,
as I recall. It might have been the other way a
little bit, maybe eight, four, but it was in the
neighborhood of eight, four, nine, three. And it
was simply an indicator and he used that as a visual
aid to say we are in serious trouble. We need to
come up quickly with a strategy to recoup our losses
and to move as quickly as we can and to essentially
get our heads into the game. To make sure that we
could reach the enrollment target that he had
overall outlined for us through weekly meetings and
also through graphs that he had distributed.
He was very firm, very clear about what	hose expectations were. Actually, he appeared very
angered about where we were at the point in time in
August, August 2nd, and alarmed. And then he simply
explained this process to us and that we have our
work cut out for us. He closed his book and he
walked out of the room.
Q. And how did you interpret that meeting?
A. I interpreted that meeting in several
ways, but primarily this is your warning, get your
head in the game and get this target.
Q. Okay. Shortly after that -- I'd like to
turn your attention to Exhibit 59. This is an
August 10, 2010 memo, which is eight days later?
A. Mm- hmm.
Q. From President McCallum to yourself, as well as to other directors?
A. Correct.
Q. And it indicates on that letter that, "With this responsibility, there will be accountability." How did you interpret that?
A. I interpreted that to mean that if -- and if you tie it in with our communique that we received from him on August 2nd, is that if we did not reach these targets, there would be consequences. Again, I interpreted it in a very serious way, that my position at the university could potentially be on the line if I did not perform or if I did not follow through.
Q. The August 10, 2010, memo from President McCallum indicates that the international student enrollment -- "Specifically, our spring 2011 international student enrollment must be 350" --
A. Right.
Q. -- "and our fall must be 400. These goals are a critical part of our future enrollment plans." Were they reasonable, achievable goals?
A. They were not.
Q. Why not?
A. Earlier in 2010, actually, it was May of 2010, I personally delivered a letter to a colleague in Chung Ching, China, where we dissolved a longstanding partnership that had provided us with as many as 200 Chinese students for an academic year. Ending that partnership, we had all agreed
that ending it would probably mean our enrollment would go down. And, sure enough, we saw a decrease from 150 Chinese students in the previous semester to only 100 for the fall semester. We knew that that would have consequences. We had discussed that between myself, Dr. McCallum, Mr. Binstock, at the time Dr. Brauhn and also Ms. Walker. We knew ending that partnership would have ramifications. And we saw that. We saw that decrease.

Q. Was that something that President McCallum recognized in setting the goal for your department?
A. The way I read the memo and the way things worked out, no, he did not take into account that important process that we followed and we all agreed upon in May of 2010.

Q. I'll turn your attention now to Exhibit 62. Is that a memorandum that you, as well as others, received from President McCallum --
A. Yes.

Q. -- dated November 2, 2010, regarding enrollment?
A. Correct.

JUDGE FETCH: We offer Exhibit 62.
MR. THOMAS: No objection.
JUDGE FETCH: Thank you. Exhibit 62 is admitted.

Q. (MS. DONARSKI CONTINUING) It indicates on the memo each of you must answer these key
enrollment questions with one of the questions, c.,
being, “Do you aspire to move forward and take our
head count well beyond 3,000.”

Did you aspire to do that?
A. Me, personally?
Q. Sure.
A. In my position?
Q. Yes.
A. No, I did not.
Q. Why not?
A. Because I did not believe we had the
appropriate infrastructure at the University that
could accommodate that number. And particularly if
we were going to try to increase the number of
international students. Clearly, we would have been
hard-pressed. Added onto that was beginning to
develop a real housing shortage, a lack of available
space to have students, to place students, to
accommodate them.
Q. Is that something that President McCallum
recognized?
A. In my estimation, no.

Q. And that factored into your ability or
inability to reach the goals set by President
McCallum?
A. I think it factored, yes.
Q. Did you have further discussions with
President McCallum regarding the inability to meet
those enrollment goals?
A. Did I have further discussions?
Q. Yes.
A. Yes. As a matter of fact, oftentimes when we had our one-on-one meetings, we had discussions about where we are with our present targets, where we’re at and what we -- basically, I would give him an update and let him know this is where we’re at and this is where I think we’ll end up being, but here are some of our challenges as we move forward.
Q. What was the tone of those meetings?
A. It grew contentious.
Q. Can you give some examples?
A. Well, specifically, my last meeting with Dr. McCallum on August 1st.
Q. Of what year?
A. Of this year, 2011.
Q. Okay.
A. Was very contentious. Two items, first of all, I informed him that there was no way we’re going to meet the 400 total. And, second of all, I thought that it was unreasonable to be disappointed in us for not reaching the 350 in the spring, but the 400 total, I was happy that we were not going to reach because we had run out of available space in college and university residence halls. I have no place to put them. I have a housing crisis.
So even estimating that we might only be at 350, I was quite relieved that for the fall semester we weren’t going to get the 400, because I had no space to put them.
Q. What was President McCallum’s response to
that?
A. He responded by reminding me that his philosophy is that as a public institution in the State of North Dakota, we would remain accessible and affordable for everyone and to make that happen. I'm sorry.

Q. Did you feel threatened at all by President McCallum?
A. I felt that if I did not get the 400 as he told me I needed, even reminded me at that meeting that I needed to get my head in the game. And, ultimately, I viewed that in a very hostile way and I felt threatened.

Q. Now, prior to that, you had achieved a large goal with the Confucius Institute. Can you identify that for the Hearing Officer?
A. Sure. I spent about 40 to 50 percent of my time this past academic year in pursuit of a Confucius Institute for Dickinson State University. I traveled to Washington, Minneapolis twice, Kentucky, Tennessee, made two trips to Beijing, spent an extensive amount of time writing and rewriting the draft proposal for the establishment of Confucius Institute.

Q. And what is that?
A. An institute is a partnership between an American university and a Chinese university to establish the study of the language, the culture and history on the American coast campus. And it is funded primarily by the Central Ministry of
Education in China. And there are only, up until the time we acquired one, 72 other institutes in the United States, but I spent a significant amount of time working that, dealing with our partners, and frankly, that consumed much of my effort and energies.

Q. Was that recognized at all by President McCallum?

A. President McCallum recognized that in the form of a taxi-drive meeting from our location at Tianjin to the airport by thanking -- well, all three of us; Dr. Chip Poland, Dr. Jon Brudvig and myself after we were returning from China after signing the agreement on April 7th.

Q. Okay. I want to draw your attention to Exhibit 63. Exhibit 63, is that another memorandum that you had received from President McCallum?

A. Yes.

MS. DONARSKI: We offer, if I haven't already, offer 62 and 63.

JUDGE FETCH: Exhibit 62 was offered and admitted. Exhibit 63, any objections?

MR. THOMAS: No, Your Honor.

JUDGE FETCH: Thank you. Exhibit 63 is admitted.

Q. (MS. DONARSKI CONTINUING) President McCallum starts the memo, "This letter will confirm my sincere disappointment"?

A. Yes.

Q. Indicating that your goal was missed by 20
Q. Why was your goal missed by 20 students?
A. Again, we were still recovering, I believe, from the loss of the partnership from the year before. But yet we had made significant progress to recoup those losses. I also liked to remind Dr. McCallum that the enrollment of international students for spring semester at Dickinson State University for 2011 was the highest in the North Dakota University System. Ratio, percentagewise we were the highest and if, indeed, we were the highest, how could that be a disappointment? How could that possibly be something wrong? And in light of our continued effort to establish a Confucius Institute, I was disappointed to get this note of disappointment.

Q. Because of all the hard work you had put into the Confucius Institute?
A. That is correct, as well as the hard work that my colleagues in the Center for Multicultural Affairs had put in with trying to restore the lost numbers from the partnership that we severed the year before.

Q. Okay. You had earlier testified to dashboards. I want you to turn your attention to 66. Is that the sample of the dashboard that you
are referring to?
A. Yes, it is.
Q. Okay. And I want you to turn then to 71.
A. Yes.
Q. Is that a memo that you had received from
President McCallum?
A. Actually, Ronnie and I together had
received this when we had a personal visit with Dr.
McCallum, as I recall.
Q. Okay. And, again, that was a memo that
was given to you after you had obtained the
Confucius Institute?
A. Three weeks to the day.
Q. With no recognition of that
accomplishment, but, again, the focus on enrollment?
A. Correct.
Q. What were you experiencing with respect to
President McCallum's focus on enrollment at this
time?
A. In my professional opinion, he was
obsessed with the enrollment numbers to the point
that we were overlooking the genuine hard work of
multiple people on our campus trying to reach goals,
trying to work hard toward attaining goals, but the
sole focus was just on enrollment and a number.

Q. In addition to getting the memo from
President McCallum, were you also receiving emails
from Mrs. McCallum?
A. Yes.
Q. Regarding enrollment?
A. Yes.

Q. Turn to Exhibit 77.

A. Yes.

Q. Is this an email that you received from Mrs. McCallum regarding DSU enrollment?

A. Yes, it is. It was sent to me on Valentine's Day. It was immediately - - well, certainly right about the time we were releasing our enrollment numbers for the spring 2011 semester.

MS. DONARSKI: We offer Exhibit 77.

MR. THOMAS: No objection.

JUDGE FETCH: All right. I want to ask a question.

How do you know this is from Mrs. McCallum?

THE WITNESS: She signed it, actually, or it said her name at the end, Julie.

JUDGE FETCH: Okay. So the email address djmacwrite@aol.com, you take to be her email?

THE WITNESS: Well, I took it actually to imply it could be either from Dr. McCallum or Julie McCallum, dj, Dick or Julie McCallum, but I would always look at the end of the email to determine, okay, which person is sending this, and in this particular case it was signed Julie.

JUDGE FETCH: Thank you. All right.

Exhibit 77 is admitted.

Q. (MS. DONARSKI CONTINUING) Identify for Judge Fetch the significant points in this email from Mrs. McCallum directed to you.
A. All right. Well, first of all, the email starts off at the top of the email that it's really intended for Hal, Alvin, Connie, Steve, Norman and John, when, in fact, I was the only one that received this email. At least to the best of my knowledge, I'm the only one. In talking to my colleagues, they didn't receive this. But she also starts it off by thanks for your response, Hal. One must remember I was responding to an email that she sent on February 11th.

Q. What's the significant issues in this email that you would like the Hearing Officer to be aware of?

A. The part that was most disturbing to me is at the very end of the email where it stated that -- she says, "Betrayal is a bitter pill to swallow, Hal." And then she goes on to say, "I once read in a leadership book a quote by the author and he said something like this...remember leaders, the higher up the ladder you go, the larger target your ass becomes. This is when you find out who your true friends and supporters are...when you are taking unfair hits. You have a nice day, Hal. Julie."

Q. You're reading from Bates page 565?

A. Yes, ma'am.

Q. And how did you interpret that from Mrs. McCallum?

A. I felt that as very -- I interpreted it as very -- well, accusatory in a way, that I'm not
working hard enough, I'm not doing enough, and that if I didn't start working harder, then clearly my butt is a target. I took this in a very threatening way.

Q. You had indicated you also felt threatened by President McCallum. Now, the August 1, 2011, meeting that you had with him --

A. Yes.

Q. -- what was your feeling from that meeting as far as your job security?

A. Well, again, I reminded him at the time we're not going to make the 400 goal for international students and I'm actually quite happy that we're not going to meet that goal. He was very disturbed about that. And I reminded him that we are in the middle of a critical housing shortage at Dickinson State University, and even in the City of Dickinson there is no available space. I wouldn't know where to begin or what to do to place these additional students, so I'm relieved that we are not getting 400. At 350 we are going to be lucky if we still don't have a crisis, which we ended up tripling students regardless.

And also reminding him that we have to address the housing problem. And that -- his response, as I recall, is that the housing problem is something that you and the director of residents life continue to make larger than it really is. And I informed him, no, we have real challenges. And he would pull out the previous 15 years' chart and say
you never reached this target. We've always been below capacity. And that's not a fair piece to refer to because we lose some of the students at the beginning of the semester. But as this semester has turned out, we still have 30 rooms where we have triple occupancy in double design.

I'm very glad that we did not get the 50 additional students, but I knew he was deeply disappointed in me. He would not shake my hand when I left. It was a very cold meeting and when I left the meeting, I really was frightened for my position as the Vice-President for Student Development.

Q. You thought you were going to lose your job?
A. Yes, I did.
Q. Okay. Anything happen after that that supported that belief?
A. On August 21st I was informed by Mr. Alvin Binstock, Vice-President for Business Affairs, that --
Q. On August 2, you mean? You said 21st.
A. Or 21st. I'm sorry. 21st.
Q. August 2nd?
A. I'm sorry.
Q. What was the date? You're saying August 21st.
A. I'm sorry. I believe it was August 22nd. It was three weeks almost to the date of my last meeting with Dr. McCallum. I might be wrong on the exact date. It's either the 21st or the 22nd, but I
Q. Let's back up a minute. You said the meeting you had with President McCallum was August 1?

A. August 1, right. But I was informed on August 21st or 22nd, and I'm not sure about that date.

MR. THOMAS: Objection. Your Honor. Hearsay. He couldn't have been talking to Dr. McCallum since Dr. McCallum had received his notice of intent to be terminated two-and-a-half weeks earlier, so it must be somebody else. That would appear to be hearsay.

JUDGE FETCH: Well, I need to know a little more. If he met with Dr. McCallum even after the fact or --

MS. DONARSKI: I think the testimony is confusing.

JUDGE FETCH: Go ahead.

Q. (MS. DONARSKI CONTINUING) What did you learn on August 21st or 22nd?

A. I learned that on August 2nd, the day after I meet with Dr. McCallum, that he sent a memo to the Director of Human Resources inquiring about my eligibility to be the Vice-President for Student Development at Dickinson State based on the fact that I had not completed my dissertation and asking the Director of Human Resources to check whether or
4 not that had been a condition for my employment as
5 established by his predecessor, Dr. Lee Vickers.
6 Q. Do you think you would have lost your
7 employment?
8 MR. THOMAS: Objection. Speculation.
9 Rank speculation.
10 JUDGE FETCH: I'm going to allow the
11 question.
12 THE WITNESS: I interpreted it to mean
13 that he was starting to take some serious steps
14 towards removing me as Vice-President of Student
15 Development.
16 Q. (MS. DONARSKI CONTINUING) Why are you
17 still there today?
18 A. Because Dr. McCallum is not there.
19 MS. DONARSKI: I have nothing further.
20 JUDGE FETCH: I have to go back and get
21 clear. When did you become aware of that? What was
22 the date -- August?
23 THE WITNESS: 21st or 22nd, only -- well,
24 three weeks later.
25 JUDGE FETCH: Okay. Thank you.

Mr. Thomas, you may cross.

MR. THOMAS: Thank you, Judge.

CROSS-EXAMINATION

BY MR. THOMAS:

Q. Mr. Haynes, you seem to be doing a lot of
interpretation of documents and events. Let's talk
about the facts. The memo that was sent to you, and
if you'd like to refer to it, it is Exhibit 59.
This was the document that you interpreted. I don't want to speak for you, so please correct me if I'm wrong, but I believe you testified that you interpreted this memo as meaning that if you didn't meet these goals, that your job was in jeopardy; is that what you testified?

A. That is correct.

Q. All right. And you were intimidated by this memo --

A. Correct.

Q. -- you said? Even though the memo at the end thanks you for your continued support and assistance; true?

A. Correct.

Q. And it offers his best regards; true?

A. Correct.

Q. Now, we talked a little bit about that enrollment dashboard. That's at Exhibit 66, if you could refer to that.

A. Mm-hmm.

JUDGE FETCH: Please say yes or no. You need to make a verbal response.

THE WITNESS: Yes. Sorry. Yes.

JUDGE FETCH: Thank you.

Q. (MR. THOMAS CONTINUING) I think you testified that during the meeting that you attended with Dr. McCallum, that you thought maybe you had failed to meet the goals in 9 of 12 or 8 of 12. It looks like it's 7 of 12 where it wasn't met; true?

A. True.
Q. And one of those was international, that's toward the right side, toward the bottom?
A. Correct.
Q. And is it fair to say, Mr. Haynes, that that would be the area that would be most within your scope of your duties at DSU?
A. No, actually the Native American Indian population that falls under the Center for Multicultural Affairs as well.
Q. Both of them?
A. Correct.
Q. All right. And if you look at the enrollment numbers, let's focus on the international --
A. Correct.
Q. -- you would agree that the numbers for international in 2008 were 432?
A. All-time high.
Q. And in 2009 they went down to 398?
A. Correct.
Q. And a precipitous drop from 2009 to 2010 from 398 to 298?
A. Correct.
Q. And the goal that Dr. McCallum had set for the spring of 2011 was 350, so that would allow you to recoup maybe less than half of what had been lost since 2008; fair to say?
A. Fair to say.
Q. All right. And that goal was not met?
A. Correct.
Q. And that failure to meet that goal was reflected in the subsequent memo that was sent to you in March of 2011?
A. March 8, I believe.
Q. All right. So Dr. McCallum knew in March of 2011 that this goal had not been met. Let's find out what the consequences to your employment were, because you would agree that Dr. McCallum remained as President through the months of March, April, May, June, and July and received the notice of intent in early August; true?
A. Correct.
Q. So during those five months, were you disciplined by Dr. McCallum?
A. I was not.
Q. Were you demoted by Dr. McCallum?
A. I was not.
Q. Did you receive a cut in pay from Dr. McCallum?
A. I did not.
Q. Was there anything that was placed in your personnel file by Dr. McCallum reflecting any poor performance as a result of the failure to meet this goal? If you know, was there anything in your personnel file?
A. Not to my knowledge, no.
Q. All right. Let's talk about the email that you received from Dr. McCallum's wife, because you did some interpretation of that document, as well.
A. Mm-hmm.

Q. And the interpretation that you were talking about dealt with the last -- second to the last paragraph where she talks about the higher you get up the ladder, the bigger a target you are?

A. Right. Could you --

MS. DONARSKI: Exhibit 77.

Q. (MR. THOMAS CONTINUING) Bates stamped 565 on the bottom. Now, if you look at the entire email, a couple things become apparent. First of all, in the email at page 564, the beginning of the last full paragraph, Mrs. McCallum writes, quote, Tomorrow night around midnight he will return from D.C., close quote.

So Dr. McCallum wasn't even present, at least as far as we can tell, when his wife sent this email; true --

A. True.

Q. -- as far as we can tell? And, then, my interpretation of this, having read the entire email, is that she sounds like a fairly protective wife and was concerned about perhaps some treatment of her husband that she feels is unfair. I take it you didn't interpret it the same way.

A. I did not.

Q. So when she says -- if you would look at the bottom of page 563, the last two lines and it
carries over to the next page, it reads, quote, When Dick is approached by the Chancellor, Board and Legislators, the very first -- and that's in caps -- question out of their mouths before even saying hello, Dick, is, quote, how is your enrollment, close quote. The first -- and that's in caps -- out of the city government's mouth and business leaders in Dickinson and elsewhere when they greet Dick is the very same question, quote, how is your enrollment, close quote. Part of Dick's evaluation depends on sustained enrollment, sound budget, and the sustained health and well-being of programs, students, staff and faculty. I would wonder about a president who did not care about these issues and I applaud Dick for wanting to push DSU forward despite the resistance/confusion he encounters almost daily and not just concerning enrollment, but other issues as well. I would also wonder about an individual who did not perceive his supervisor's enrollment goals as a significant concern. Despite the latest proposed action by the Faculty Senate, Dick has remained accessible and willing to discuss issues whether pleasant or not, close quote.

Does that sound like a protective wife to you?

A. Does it sound like a protective wife?

Q. Correct. You wouldn't interpret that as the comments of a concerned, protective wife? If the answer is no, sir, that's fine. I just want to know if your assessment is the same as mine.
A. I do not share your assessment.

Q. I appreciate that. So one last question.

With regard to the accountability that's discussed at Exhibit 59, page 517, "With this responsibility, there will be accountability." In fact, there were no negative repercussions as far as your position at DSU was concerned as a result of the failure to meet those enrollment goals; true? I mean, we can speculate about what you thought might have happened had Dr. McCallum not been terminated, but as the date he departed DSU, there had been no consequences against you with respect to your employment at DSU; true?

A. True.

MR. THOMAS: Thank you. That's all I have, Your Honor.

JUDGE FETCH: Ms. Donarski, any redirect?

MS. DONARSKI: Thank you.
Q. Again, you're interpreting, you don't know of anything that was placed in your personnel file in the form of a reprimand from Dr. McCallum; true?
A. That is true.

MR. THOMAS: Thank you.

JUDGE FETCH: Anything further, Ms. Donarski?

MS. DONARSKI: Nothing further.

JUDGE FETCH: All right. Mr. Haynes, thank you. You're excused. And I am going to tell you that you may not go back to the room where the other witnesses are and discuss your testimony or what has happened in the hearing, nor may you go out to lunch or dinner, although I'm not going to accompany you there, and, you know, apprise other witnesses what has happened.

THE WITNESS: So I need to remain in the building?

JUDGE FETCH: No, you do not need to remain in the building. You're free to leave.

THE WITNESS: I'm free to leave. Okay.

Thank you.

JUDGE FETCH: No one has asked that you be, you know, retained for possible recall, so you may leave.

THE WITNESS: Okay. Thank you.

JUDGE FETCH: Let's go over the witnesses again. You are still going to be calling the Chancellor?

MS. DONARSKI: Yes.
JUDGE FETCH: And who else?

MS. DONARSKI: The next witness is Roger Kilwein. After that, we'll call Rich Brauhn, Stuart Savelkoul, Bill Eggert, Chancellor Goetz.

JUDGE FETCH: And how much more time are you going to need?

MS. DONARSKI: I don't know. My goal is to try to get everybody in today.

JUDGE FETCH: "Today" meaning?

MS. DONARSKI: Before midnight. I'm just kidding. Just a little humor in a long day.

JUDGE FETCH: We're talking about attainable goals.

MR. THOMAS: In all seriousness, Judge, we planned on spending a day-and-a-half on our case because the other side had a day-and-a-half for their case. We agreed that the amount of time that they would have been extended to two days, which will necessitate us coming back and necessitate us moving a great majority of our witnesses who had planned on being here tomorrow, who will now have to come back next week. That's an inconvenience to my client and to I.

Now, we both learned that the other side intends to call five witnesses; one of whom authored the audit that was the basis for my client's termination, one of whom was the person who signed the notice of intent to terminate my client. These are witnesses who are going to take an extensive amount of time and there are three additional
witness that Ms. Donarski intends to call on top of that.

There's no way that we are going to finish at a reasonable hour today. My client doesn't have a hotel in town here. He is driving back and forth to Dickinson. And I don't think it's in anybody's interest that we have 12-hour days of hearing time, especially if we're coming back tomorrow. We planned for a day-and-a-half and we planned in advance of these hearings to be able to get our case on in a day-and-a-half. It doesn't strike me as fair to my client or to the process that we keep pushing that deadline back. And as hard as Ms. Donarski will likely try to get these witnesses in before day's end today, it's simply not realistic.

JUDGE FETCH: Ms. Donarski, other than the Chancellor, and is it Mr. Staudinger who authored the investigation report?

MS. DONARSKI: Correct.

MR. THOMAS: Actually, it was Bill Eggert.

MS. DONARSKI: That was Bill Eggert.

JUDGE FETCH: Other than those two, are these other witnesses you're planning to call, is this testimony -- some of it seems to be becoming cumulative. Are these witnesses that are going to just be giving the same kinds of cumulative testimony that I'm beginning to hear?

MS. DONARSKI: There may be one or two that would be cumulative that we could review and
perhaps not call. Professor Kilwein is offering new testimony. And the witnesses we anticipate are 10, 15 minute witnesses.

JUDGE FETCH: Nonetheless, if it's cumulative, I suggest we move along and get to those that have new testimony that we need to hear, because I agree. You know, we're not going -- we're not going to unreasonably go into the late evening hours and have people on the road driving.

MS. DONARSKI: I understand. We are doing the best we can, but with this many witnesses and with all the hearsay exceptions and issues, we have to call each witness to testify. And that has been taking quite a bit of time. The witnesses were all disclosed and all on our witness list.

MR. THOMAS: My concern, Judge, isn't the number of witnesses that were disclosed, which was 20-some witnesses. My concern is, frankly, the poor planning that puts us in this position here. We have the same case to put on as the other side had and we have the same constraints that the other side was placed under, but those constraints seem to be moving day by day and that's not anybody's -- that's not our fault.

JUDGE FETCH: Well, these proceedings, you know, the best planning, you know, sometimes goes awry in terms of when you get into the proceeding itself, but I am going to suggest, Ms. Donarski,
when we take a break, that you revisit the witnesses you need to call and let's not have any more of the same kinds of cumulative questions.

MS. DONARSKI: Certainly.

JUDGE FETCH: And this is -- I'm sorry.

Kilwein, what's the first name?

THE WITNESS: Roger. R-o-g-e-r, Roger.

JUDGE FETCH: Okay. Mr. Kilwein, would you please spell your full name for the record?

THE WITNESS: R-o-g-e-r. And my last name is K-i-l-w-e-i-n.

JUDGE FETCH: Mr. Kilwein, all witness testimony at this hearing is taken under oath subject to penalties for perjury. Please read the witness instructions on that page in front of you regarding the penalties for perjury. It's in that little folder there.

MS. DONARSKI: I'll hand it to you.

THE WITNESS: I've read it.

JUDGE FETCH: All right. Thank you.

Please raise your right hand.

Do you solemnly swear the testimony you're about to give shall be the truth under the pains and penalties of perjury?

THE WITNESS: I do.

JUDGE FETCH: All right. Before you came into the hearing room, were you in the room down the hall where the witnesses are sitting?

THE WITNESS: Yes, I was.

JUDGE FETCH: All right. Did you hear any
previous witness come in and say anything about their testimony or questions they were asked or what went on in the hearing?

THE WITNESS: When they did come back, the bailiff or whoever it was called came in and told them to leave.

JUDGE FETCH: My administrative assistant?

THE WITNESS: The gal out there in front, whoever is in the front there.

JUDGE FETCH: Okay. I guess before she told them to leave? Are you sure that's what she said?

THE WITNESS: She -- when she would see them come back, she said, "If you were a witness, you must leave."

JUDGE FETCH: Okay. Did you hear anyone come in and say anything about the hearing?

THE WITNESS: There was a little bit of discussion, but I never -- there's nothing I can remember that would be pertinent to anything. And then she came in and told us. At the time we didn't even know that they couldn't come in. They should have been stopped before they got there. Apparently, now you can't go back.

Judge Fetch: All right. Proceed, Ms. Donarski.

MS. DONARSKI: Thank you, Ms. Andrews.

MS. ANDREWS: Thank you.

DIRECT EXAMINATION

BY MS. ANDREWS:
Q. Dr. Kilwein, where are you currently employed at?
A. Dickinson State University.
Q. And how long have you been employed there?
A. Forty-two years.
Q. Are you the senior faculty member?
A. I am.
Q. What's your current position?
A. I'm the Chair of the Department of Business.
Q. I'm just going to cut to the specific issues that we're discussing at this particular hearing. Did you have a conversation with Marty Odermann-Gardner in the summer of 2010 regarding a symposium that was going to be offered?
A. She came to me with a proposal to offer -- I've got the paper right here. A proposal to offer a course called DSU Seminar Credit Offering and Quality Service and Hospitality.
Q. Thank you.
A. It was a proposal.
Q. And can you please describe, I guess, what the expectation was regarding this particular symposium or class?
MR. THOMAS: Your Honor, if the witness wants to testify -- and I apologize for interrupting. If he wants to testify regarding the contents of that document, maybe we should --
MS. DONARSKI: It is in the exhibit book. I'll find it.
MR. THOMAS: And if he's going to testify as to his conversation with Ms. Odermann-Gardner, we would object on the same grounds that we've objected continuously.

JUDGE FETCH: I understand. Do we have an exhibit?

MS. DONARSKI: Yes, it's in the exhibit book.

MS. ANDREWS: Your Honor, in regard, again, to that objection, we would renew the response to the objection on hearsay grounds, in that there are exceptions in the hearsay rule regarding the unavailability of witnesses, sickness, refusal to testify. So if we're not able to have that testimony, we would ask that we be able to make an offer of proof.

JUDGE FETCH: Okay. Let's find the exhibit.

MS. DONARSKI: The exhibit is not hearsay.

MS. ANDREWS: And, Your Honor, I don't need him to testify on that particular exhibit. We can move on and we can ask him again.

MR. THOMAS: Your Honor, for obvious reasons, an offer of proof at a public hearing like this would be inappropriate. If we'd like to do that in chambers, we can certainly do that, but the hearsay exception that Ms. Andrews refers to is not applicable. There is -- has been and it's required by Rule 804(a), before a witness can be deemed unavailable, there has to be a finding that the
witness, quote, is unable to be present or to
testify at the hearing because of death, or then

existing physical or mental illness or infirmity,
close quote. There has been no showing, other than
an offhand statement by counsel that this witness is unavailable. This witness isn't dead. This witness isn't comatose. This witness has obviously been providing information for the last six months to the other side. We have witnesses that are appearing by telephone. They could have had witnesses appearing by telephone. What has been presented here today does not form the basis for Your Honor to conclude that the witness is medically unavailable to testify.

MS. ANDREWS: Your Honor, we are not able to have the witness appear by telephone, because, again, she has indicated that due to her health and condition, that she is unable and unwilling to testify. So for that very reason, again, we are not able to call her by telephone to testify.

JUDGE FETCH: Well, counsel, you know that it requires more than a mere statement that I'm unable to because of my health. Is there something from a physician? Do you have a document from a physician that would verify that she's unable to appear either in person or by phone because of her health?
MS. DONARSKI: We have an email from her disability attorney and we have no jurisdiction. I mean, she's in Colorado. We're not able to subpoena her. We're not able to force her to appear, so she's inaccessible to us and her attorney has indicated that, no.

MR. THOMAS: Your Honor, the rule states that she's -- under that exception, she's only considered unavailable if she, quote, persists in refusing to testify concerning the subject matter of the declarant's statement, despite an order of the Court to do so. There is no such order. And I think that the other side is now simply grasping at straws, going from one potential hearsay exception to the other hearsay exception, neither of which apply in this case.

JUDGE FETCH: Has Ms. -- without telling me what the exact basis of your communications have been, counsel, have you been in touch with Marty Odermann-Gardner in preparing for this hearing?

MS. DONARSKI: I have attempted to and I have been directed to only go through her attorney, who has indicated that she will not discuss this with me. The University System counsel has been in contact with her and did speak with her.

MR. THOMAS: So it's clear --

JUDGE FETCH: I'm going to sustain the objection.

Q. (MS. ANDREWS CONTINUING) Dr. Kilwein, I'm going to refer you now to Exhibit 40, if you can
look in the exhibit book and reference that, not the
document you have in front of you. Do you have
Exhibit 40 in front of you?
A. Yes.
Q. Is this a copy of the document that you
were presented with when you met with Marty
Odermann-Gardner?
A. Yes, it is.
Q. And were you informed that this was going
to be a class that was going to be offered that you
were going to be the instructor of record on?
A. You know, I don't remember exactly. I
don't remember my name being on it. She asked if --

MR. THOMAS: Objection. Same concern,
Your Honor. I think he's about to testify to what
Ms. Odermann-Gardner told him.
JUDGE FETCH: I'm sorry. What was the
question, counsel?
MS. ANDREWS: Whether or not he ever
received confirmation that he was the instructor of
record for the class.

THE WITNESS: No, I never received
confirmation.

JUDGE FETCH: Are we looking at a
particular exhibit now?
MS. ANDREWS: Exhibit 40, yes.
THE WITNESS: Because --

JUDGE FETCH: Just hold on. Wait for a
second.

MS. ANDREWS: It's Bates No. 308 withi
JUDGE FETCH: Page 308. Okay. Do we have that in evidence yet?

MS. ANDREWS: No. And I will now, Your Honor, offer Exhibit 40.

JUDGE FETCH: The entire exhibit or just 308?

MS. ANDREWS: Just 308, Your Honor.

MR. THOMAS: No objection.

JUDGE FETCH: Okay. Exhibit 40, page 308, is admitted.

Q. (MS. ANDREWS CONTINUING) After you were presented with the proposed DSU seminar credit offering, did you ever receive confirmation that you were to be the instructor of record for this particular class?

A. No, and because this particular form -- document is not authorization to offer a course at any time.

Q. What is it, if you can just explain briefly?

A. This is just a proposal for a DSU seminar credit offering. They have never used this to authorize a class. Our policy is you must have this other document, schedule addition and change form. That's the only way you can add a class after a schedule is once completely accepted, like back in March for the fall semester.

Q. Did you ever attend the class that is referred to in Bates 308?
A. No, I did not. I didn't know it was approved.

Q. So you did not attend the class, nor were you the instructor for this particular class?

A. I did not know that this class -- it never went forward to be approved by the administration. It requires to be approved and it requires the signature of the Dean of the University and the Vice-President. That's the only way in the past. I checked all my records. We've never done this other form. I don't know where it came from.

Q. When did you learn that you were, in fact -- or how did you learn that you were, in fact, the instructor of record for this particular class?

A. It was much later in the semester. After the seminar had completely passed on by, it was after that sometime I learned about it.

Q. And just to specify, this is the quality service and hospitality seminar that's listed on this exhibit; is that correct?

A. Correct.

Q. Okay. And explain to the Court how you discovered that you were, in fact, listed as the instructor of record for this class?

A. Well, at the beginning of the semester you go in and you check and they give you a printout of your class schedule. It was not there at that time. That class was added at a later date as even a class and it was not populated, apparently, until the morning of the fourth week.
Q. The fourth week being approximately what date in 2010?
A. It would be September -- well, school started August 23rd, four weeks after that, September, right around there.

Q. Okay. So go ahead and continue. When did you discover that, in fact, you were listed as the instructor of a class that you had not attended?
A. It was on the report that I had not -- in September it appeared on some of the reports at the college, but I didn't see it myself because there was no feedback to me. And normal process is that the person in charge, which is Extended Learning, Marty Gardner, would come back to me with the number of students who enroll in the course and ask for a syllabus and the information for the students that did have assignments.

Q. Was there assignments that you provided in this class?
A. I didn't, no. No one ever came back to me. Marty quit in August and no one ever got back to me and I assumed the class was not going.

Q. So needless to say, there wasn't a syllabus as well?
A. No syllabus. No contact. I never even attended the seminar.

Q. Okay. So, again, getting to the point when you discovered you were, in fact, listed as the instructor of record, please explain to the Court when you learned that and how you discovered that.
A. Well, when I went into PeopleSoft, the list was there. It was later on in the semester the first time I really went in there and looked and it was toward the end that you start posting grades and all of a sudden I come up with this list. And I thought to myself, where did all these people come from, because normally when there’s a seminar, people sign up for it ahead of time and what we did in the past for something like the Strom conference, there would be 20, 25 students sign up out of 400. Well, here there was a whole big list of people and I thought this was highly strange because I was not notified. I did not give a syllabus. I did not give an assignment and now they are in my list to give a grade to.

Q. What did you do when you discovered that you were, in fact, listed as the instructor of record for this class? What action did you take at that point?

A. Well, the first thing, I went down the hallway and talked to one of the faculty members. I was really upset that this would even happen to me, because I felt like where did these people come from. I was not notified that I even had the class, these students were in this. I had no opportunity to give them an assignment.

So the next thing I did, you know, I went over to Marshall Melbye. He’s been a friend of
mine, very supportive. You know, he's in admissions -- or academic records and I said, you know, I had nothing, what can I do? He said, "Well, give me an example that" --

MR. THOMAS: Your Honor, objection.

Hearsay. Same objection.

JUDGE FETCH: Without saying, you know, exactly what he told you, just tell us the steps that happened.

Q. (MS. ANDREWS CONTINUING) Dr. Kilwein, if you can just explain what you did upon learning that you were, in fact, the instructor of record and the expectations of you as to whether you were to assign a grade to those students?

A. I was in a quandary because I had nothing to base it on, so I went to Marshall Melbye and I said, you know -- he explained to me that there are times when --

MR. THOMAS: Same objection, Your Honor.

JUDGE FETCH: Sustained. Listen carefully to counsel's question.

Q. (MS. ANDREWS CONTINUING) Dr. Kilwein, you can't repeat what Mr. Melbye said to you. That's the hearsay that the Judge is saying we can't allow. So if you can just limit your testimony to what actions you took upon the directive that you may have received or may not have received, what actions you took upon discovering that you were listed as the instructor of record to deal with the issue that you were --
A. That's what I did. I went to talk with Marshall Melbye and he explained to me that this is often done --
MR. THOMAS: Same objection, Your Honor.
Q. (MS. ANDREWS CONTINUING) Dr. Kilwein, you can't say when you say he explained, what he told you. You just need to, at this point, because the Judge is saying that's not admissible, just indicate what steps you took.
A. The next step was I needed to turn in a grade. I was the teacher of record and so Marshall went over to the computer. He said, well, you have to decide. Marshall entered the grade for everybody.
Q. You did not enter the grade for these students?
A. Huh-uh.

Q. Why didn't you enter a grade for the students that you were listed as the instructor of record for?
A. Because I didn't know how -- I did not know how to put all the -- I gave them all the same grade because I have no way to separate them. So Marshall said, "I know how to do that." So he went over there, gave him the name of the class and put it in.
Q. Did you witness Mr. Melbye inputting the grades for those students?
A. Mm-hmm.

JUDGE FETCH: Please answer yes or no.
THE WITNESS: Yes.

Q. (MS. ANDREWS CONTINUING) And do you recall what grades were assigned to all the students?

A. I assigned them all an A.

MS. ANDREWS: Thank you, Judge. I have nothing further for this witness.

JUDGE FETCH: Any cross?

CROSS-EXAMINATION

BY MR. THOMAS:

Q. Dr. Kilwein, I just wanted to make sure I caught the last sentence. You said you assigned them all an A or Mr. Melbye did?

A. He asked me what grade to give them. I did. Because it was set up -- it wasn't set up for pass/fail. I would have preferred to put an S in. The class was set up for A, B, C, D, F, and it would be very difficult for me to give them any other grade. It's an hour-and-a-half seminar -- a day-and-a-half seminar, 15 hours. It would be like doing something for athletics, you have one credit for taking bowling. So, I mean, I chose the grade.

Q. Okay. So you're in a meeting with Mr. Melbye and you have this discussion and somebody inputs a grade for each of the attendees of this seminar; is that correct?

A. He has a process I didn't know about. You can give the whole class the same grade in one stroke, so he did that.

Q. Who entered that stroke?
Q. Okay. And you talked about -- earlier about you assigning an A to everybody, so you told Mr. Melbye to give everybody an A?
A. Right.
Q. And you did that because this wasn't a pass/fail class and you didn't know what else to give them, so you just told --
A. Right.
Q. -- Mr. Melbye to give everybody an A?
A. Right.
Q. So he pushed a button and that's what was input?
A. Yes.
MR. THOMAS: Thank you. That's all I have.

REDIRECT EXAMINATION

BY MS. ANDREWS:
Q. Just a followup. Why did you instruct Mr. Melbye to give everybody an A if you didn't have a basis upon which to assign a grade?
A. How could you do anything else? How could I dock everybody because I had no basis other than attendance and if they all attended, that was success. And I felt very uncomfortable about it, but I had no other basis. I would have preferred an S grade, but it wasn't set up that way, satisfactory. And the other thing was, I looked down the list and my boss was on the list. You know, Legislators were on that list. They weren't
normal looking students to me.

Q. Who else was on that list? I'm sorry.

A. Somebody from the Legislature, I remember. Maybe the Mayor's wife I think. I can't remember. It's been a long time.

Q. Were you comfortable assigning grades?

A. No, I was very uncomfortable. I felt like how come somebody did this to me. I was put in a position to do this. I get no compensation for it. It was just something assigned to me. It was not part of my load.

Q. Was it an expectation that you assign a grade to this last?

A. Well, if you're a teacher of record, you are expected to assign a grade.

Q. Has this happened to you in any of the other years that you've been at Dickinson State?

A. Never in my life have I seen anything like that.

MS. ANDREWS: Thank you. That's all, Your Honor.

JUDGE FETCH: Any recross?

MR. THOMAS: Just one or two.

RE CROSS-EXAMINATION

BY MR. THOMAS:

Q. Dr. Kilwein, you were obviously uncomfortable with this process. Did you approach
Dr. McCallum with your concerns?

A. No, I did not.

MR. THOMAS: Thank you. That's all I have.

JUDGE FETCH: Any further?

MS. ANDREWS: No, nothing further.

JUDGE FETCH: Thank you, Dr. Kilwein.

You're excused. You may go back into the room with the other witnesses, but you may not discuss your testimony or any questions that were asked of you. Do you understand? Or you may leave the building.

THE WITNESS: I'm leaving. Thank you.

JUDGE FETCH: Who is your next witness, Ms. Donarski? Ms. Andrews?

MS. ANDREWS: Stuart Savelkoul. It will also be very brief.

JUDGE FETCH: Is someone getting the witness?

MS. DONARSKI: I'll go get him.

JUDGE FETCH: All right. For the record, please spell your first and last name.

THE WITNESS: First name is Stuart, S-t-u-a-r-t. Last name Savelkoul, S-a-v, as in Victor, e-l-k-o-u-l.

JUDGE FETCH: All right. Mr. Savelkoul,

all witness testimony at this hearing is taken under oath and is subject to penalties for perjury. There is a sheet in that plastic -- probably stuck inside there. Take a moment and review that. That will tell you what the penalties are for perjury.
THE WITNESS: (Reviews document.) All right.

JUDGE FETCH: Please raise your right hand.

Do you solemnly swear the testimony you're about to give shall be the truth under the pains and penalties of perjury?

THE WITNESS: I do.

JUDGE FETCH: All right. Thank you.

Before we begin, you have been present in the room down the hall since the beginning, have you not?

THE WITNESS: No, I have not. I was there yesterday morning for about ten minutes and then I've been there this afternoon since one o'clock.

JUDGE FETCH: Okay. So just ten minutes yesterday and then now since one o'clock?

THE WITNESS: Mm-hmm.

JUDGE FETCH: All right. Have you -- this may not pertain then. You were there yesterday morning when you heard me instruct as to witnesses who are sequestered and not being able to -- not conversing with one another about testimony or what they hear in the hearing or the details of this case while sequestered.

THE WITNESS: Right.

JUDGE FETCH: All right. Have you heard any witnesses who have testified who have said what they heard in testimony here, either while you were here in the building or when you are out for lunch
or dinner or whatever?

THE WITNESS: Just what I saw in the news and read in the paper this morning.

JUDGE FETCH: I'm asking if --

THE WITNESS: No.

JUDGE FETCH: -- any of the individuals who have been in here and testified, have you heard them discuss anything?

THE WITNESS: Nothing -- I think the answer is no. Nothing of real consequence comes to mind. They mentioned that -- I heard that things were running a little behind.

JUDGE FETCH: All right. Thank you.

Ms. Andrews.

MS. ANDREWS: Thank you.

STUART SAVELKOUL, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. ANDREWS:

Q. Where are you currently employed at?

A. I'm the Executive Director of the North Dakota Public Employees Association.

Q. And how long have you been in that position?

A. Almost three years.

Q. Can you, please, briefly describe the mission of NDPEA?

A. Sure. NDPEA's job is to be an advocate for public employees across the State of North
Dakota, both at the worksite and at the Legislature.

Q. And can you, please, describe some examples of the work that you do on behalf of your NDPEA members?

A. Sure. Well, NDPEA membership is voluntary. We essentially are a labor union affiliated with the American Federation of Teachers. So the work that we do for our members would range from representing them in a grievance process all the way through, in many cases, administrative hearings not so different from this one. Sometimes it can be as simple as having a conversation with a superior that the member themselves might not be willing to have and, you know, then, of course, we do lobbying work as well. We work with the State Legislature and other State entities like the State Board of Higher Education and county commissions, some city commissions.

Q. Okay. Thank you. I'm going to just jump into the issues at hand here and I'm going to refer you to the 2010-2011 period. Were you contacted by Dickinson State University during this time period regarding concerns they may have had at Dickinson State?

A. Yes.

Q. And can you please describe generally the nature of those concerns?

A. Faculty at Dickinson State were concerned that their voice simply wasn't being heard on campus, that the President, Dr. McCallum, was...
unresponsive to their concerns and they had just an
overall sense that the University was not headed in
a good direction, and that that could have
consequences that would affect them professionally
and certainly the University and the students.

Q. Okay. Were these typical concerns that
you receive as the Director of NDPEA or were they
more far-reaching and numerous?

A. Yeah, I get concerns -- I get contacted
all the time by various different public employees
across North Dakota. I would say that what
separated Dickinson State from other entities is
that the concerns were so widely held. It's nothing
to have an employee call you up and say, well, can
my boss do this or this happened with one of my
coworkers. It's quite different to hear concerns
from dozens of individuals about the same person and
the same issue.

Q. Upon receiving these concerns from the
various Dickinson State employees, what did you do
with that information?

A. I took it to the Chancellor.

Q. And I'm going to refer you to Exhibit 40,
if you can flip to Exhibit 40?

MR. THOMAS: Are you sure?

MS. ANDREWS: Actually, I'm sorry.

Fifty-three.

JUDGE FETCH: Fifty-three, did you say?

MS. ANDREWS: I'm sorry. It's 51, Judge.

Q. (MS. ANDREWS CONTINUING) Is this the
document that you authored?
A. Yeah.
Q. And what information did you obtain in order to put this document together?
A. Sorry?
Q. Was this document a result of the concerns that you had received --
A. Yes. Yes.
Q. -- from the Dickinson State employees?
A. This -- I mean, the most accurate way to describe this document would be that it was essentially notes that I compiled through conversations with the faculty and some staff at Dickinson State. So after visiting with Chancellor Goetz about these issues, I said, "Don't worry about taking notes, I'll just get you a copy of my notes after the meeting." And so this, essentially, was meant to be the notes that I used in my conversation with Chancellor Goetz.
Q. And there's a handwritten notation on top there of February 13, 2011? Is that your handwriting?
A. I don't think so.
Q. Does that somewhat accurately reflect the date --
A. Yeah, it should.
Q. -- that you recall providing this to the Chancellor?
A. Yeah.

Q. And do you recall when you had a conversation with the Chancellor regarding this issue, approximately?

A. I thought that I visited with the Chancellor on February 10th, but, I mean, yeah, so I would have maybe sent him the notes the next day or two.

MS. ANDREWS: Your Honor, I would offer Exhibit 51.

MR. THOMAS: Your Honor, could I voir dire for a moment?

JUDGE FETCH: Yes, you may.

VOIR DIRE EXAMINATION

BY MR. THOMAS:

Q. Mr. Savelkoul, you testified that the contents of this document, Exhibit 51, is a compilation of statements that you received from others; is that true?

A. Yes.

Q. And during this period in time you were not employed at Dickinson State University; true?

A. True.

Q. And so any of the information that is contained within this document is not based on your personal knowledge, but is, instead, based on information that you received from others; true?

A. True.

Q. And there's been no effort made to -- by you in this document to attribute any particular
statement or allegation to any person or persons that reported the information to you; is that fair to say?
A. Yes.
Q. So what we've got, then, if I understand it correctly, is a series of statements that you have taken and put in your own words into this document without describing from whom the statements came; true?
A. True.

MR. THOMAS: We would object on hearsay grounds, Your Honor.

MS. ANDREWS: Your Honor, this is a document that he prepared in the scope of his employment and as the Executive Director of NDPEA for a task that he frequently performs for his members. And he testified that this accurately reflects the information that he obtained.

MR. THOMAS: He's not an auditor. He's not an investigator. He's not an employee of the Chancellor's office or the State Auditor or any other entity involved in these proceedings. This can in no way be characterized as an investigative report. This is, with all due respect to Mr. Savelkoul, a listing of grievances from an anonymous source that I have no ability to cross-examine on because I don't even know who made those allegations, let alone whether they are credible or not. It's clear hearsay.

JUDGE FETCH: Let me ask you a couple
EXAMINATION

BY JUDGE FETCH:

Q. Were the individuals who gave you this information, are they members of NDPEA.

A. To a person, yes.

Q. They are members of NDPEA. Why did you not indicate who made those comments to you, who gave this information?

A. Judge Fetch, if you'll see in here, I talk about a hostile work environment and a culture of fear that was prevalent among many of the employees of Dickinson State, and so the idea of having their names attached to their concerns was one of great concern for them.

Q. Okay. Is that how you generally conduct business, then, when you get grievances?

A. There's a difference between a formal grievance and what happened between the Chancellor and I. This was -- this was a compilation of concerns that faculty and staff had at Dickinson State that, rather than filing a grievance, they just wanted to know if NDPEA could, on their behalf, forward their concerns on to somebody that had the power to look into it.

MR. THOMAS: Your Honor, there's no way for us to determine whether or not this is accurately reported and how could I possibly begin to determine the veracity of these if the person who made these statements isn't here?
JUDGE FETCH: Okay.

Q. (JUDGE FETCH CONTINUING) Let me ask, Mr. Savelkoul, if I understand correctly, these -- you said these are the notes you compiled of conversations you had with Dickinson State University faculty?

A. And staff, certainly.

Q. Faculty and staff.

A. Certainly predominantly faculty in this case.

Q. And you used these in your conversation with Chancellor Goetz?

A. That's correct.

Q. Did you give Chancellor Goetz this document?

A. My guess is that's where this document came from.

Q. You authored this?

A. Yes. I then emailed -- I emailed this very document to Chancellor Goetz in one or two days after our meeting, if not the next day.

Q. Why didn't you sign it as having authored it or where it came from?

A. There was no need to do it because it was attached to my email.

Q. But you can see this doesn't have that, so it could be taken out of context or --

A. That could -- when I sent Chancellor Goetz these notes, it wasn't so that they could someday be used in a hearing regarding the dismissal of
Dr. McCallum. They were so he knew -- so that
didn't have to take notes during our meeting and

certainly, you know, again, all --

Q. Were the notes reviewed during the meeting
with Chancellor Goetz --

A. Yes.

Q. -- that you had?

A. These notes --

JUDGE FETCH: All right. I'm going to let
the document in for that purpose, as illustrative of
what you discussed with Chancellor Goetz. I will
give it -- in terms of the truth of the statements
made, that I'm going to sustain counsel's objection
as to that part of it. In other words, it gets
complicated. I'm going to let the document in, but
I am aware that these are anonymous. These are
notes of -- you know, nothing is attributed to
anyone, so it's a list of anonymous grievances as it
were, but I'll let it in for the purpose of what you
discussed with Chancellor Goetz and, beyond that,
you know, I'll consider it on those terms.

MS. ANDREWS: Thank you.

JUDGE FETCH: Anything further,

Mr. Thomas?

MR. THOMAS: No, Your Honor.

JUDGE FETCH: Thank you. All right.

Ms. Andrews, continue.
MS. ANDREWS: Just one more follow up, Judge.

Q. (MS. ANDREWS CONTINUING) Did the individuals that contacted you wish to remain anonymous?

A. Of course.

Q. Can you please explain why they would want to be anonymous?

A. I'll try not to review too much of the document, but folks at Dickinson State had experienced significant turnover by this time and, you know, the faculty and staff that remained at the university were very troubled by the way that the President had wielded his authority thus far. The reason why the faculty would go through me in an anonymous capacity was so that they didn't have to have their names associated with these accusations, thereby putting what they would feel a giant target on their back.

MS. ANDREWS: Thank you. I have nothing further.

JUDGE FETCH: Thank you. Mr. Thomas, you may cross.

MR. THOMAS: Thank you.

CROSS-EXAMINATION

BY MR. THOMAS:

Q. Mr. Savelkoul, did you intend this to be an objective recitation of information that you had been provided by staff and faculty at DSU?
"Objective" meaning purely factual, as opposed to subjective which would include your interpretations and your opinions?

A. Under those -- see, I don't think that it would be either, Mr. Thomas. I don't know that it can be objective, because this was certainly their impressions, so I was passing along the concerns that the faculty and staff had.

Q. Let me try it this way.

A. So subjective --

Q. Hold on.

A. Go ahead.

Q. Let me try it this way: Did you include any of your opinions in this document?

A. I don't think so.

Q. Let's talk about some of the statements. You tell me if this is not your opinion. Last paragraph on page 496. Quote, DSU is in a vulnerable position, close quote. That wasn't your opinion, that was somebody else reporting that to you?

A. Yes.

Q. "And finding a new President would undoubtedly be a difficult task, but doing this now would be better -- doing this now would be better than later, close quote. That wasn't your statement, that was a statement that somebody gave to you?

A. True.

Q. Quoted to you?
A. Yes.
Q. Do you have notes of any of these, by the way?
A. I believe that's what this is.
Q. So you wrote this document contemporaneously to receiving the information from those that disclosed it to you?
A. In a word processor, yes.
Q. As you talked to each of these witnesses -- it's your testimony under oath today, that as you talked to each of these anonymous witnesses, you would type their statements into your word processor and then at some point thereafter, you took these quotes verbatim and put them into this document? That's your testimony under oath?

That's not what happened, is it?
A. Well, I wouldn't say that. I mean, more or less that's what happened. This document is the -- is the compilation, is the collection of the notes taken from conversations with them.
Q. Where are those notes?
A. I believe they are here. I mean, like -- Mr. Thomas, as I was compiling the information, you know, as things were repeated, they would get deleted from the notes.
Q. Mr. Savelkoul, if this is, as you say, an objective recitation of quoted information from anonymous sources, then you must have a series of notes that directly list the quotes from these anonymous sources, don't you?
A. Not beyond this. Not beyond this document.

Q. So what you did, then, was you talked to people who expressed concerns to you and then, based on your memory of those conversations, you prepared this document; true?

A. That is not what happened.

Q. All right. Then what did you use to prepare this document?

A. This is what remains of the notes taken from the conversations with the faculty and staff of Dickinson State.

Q. And those notes were taken how? Did you have them handwritten somewhere?

A. No. I was on the phone during the conversations and so, therefore, you know, typed out the conversation as I was having it.

Q. Just to be clear, remember you’re under oath, every time you would talk to these people, you would be sitting at a computer and you would type in verbatim their statements to you; true?

A. Yes.

Q. And those notes must be somewhere in your word processor; true?

A. No.

Q. Because why?

A. Because I edited the document ongoing and didn’t save multiple copies.

Q. You didn’t save any copies?

A. I saved this copy, sir.
Q. But this copy doesn't contain any direct quotes from the witnesses. I don't see a single quote from any witness in here.

A. I would say -- I would say that if it were my work, I couldn't include sentences like if we ask ourselves. I don't see how I would be included as part of the we.

Q. So just so we're clear, none of the information, none of the commentary, none of the opinions set forth in this document come from anybody but the witnesses whom you interviewed and none of them are shared by you?

A. I'm not sure that it's not the same -- I'm not -- I don't disagree with the commentary offered by the members of NDPEA.

Q. And there are no conclusory statements here that are your conclusions?

A. No.

Q. None. You're an outspoken detractor of Dr. McCallum; true?

A. I would say that I represent -- it's my job to represent the concerns of faculty and staff.

Q. Given interviews to the Dickinson Press in which you indicate, quote, Dickinson State is without question the most frustrated campus in the State right now from an employee standpoint. You gave that quote to the Dickinson Press?

A. I did.

Q. Were you -- last question. Were you provided with any information from the Chancellor's
office regarding the internal audit that was conducted from the Dickinson State University System that was ultimately published in early August of 2011? Were you made aware of that audit?

A. No. From the last -- the last -- the last correspondence I had with the Chancellor's office regarding these issues was during the legislative session and it was a conversation in the hallway between the Chancellor and I and all it was, is that the members are still concerned that there are problems out at Dickinson State.

Q. That's what Chancellor Goetz said to you?

A. No, that's what I said to Chancellor Goetz. There was no follow -- there was really no followup from the University System or the State Board of Higher Ed or the Chancellor regarding these issues. What he did with them or what was done with them, I don't know.

Q. So February 13 of 2011 appears to be the date that you believe that this was -- these anonymous quotes were sent to Chancellor Goetz?

A. Yeah. Like I said, I think the conversation took place on the 10th and I thought I sent the email on the 11th, but the 13th is pretty close.

Q. Did Chancellor Goetz request that you send this information to him?

A. No.
Q. So you had a conversation with him. Tell us about that conversation.

A. I had a meeting. I set up a meeting with Chancellor Goetz through his administrative assistant. Came into the meeting, shared with him these concerns, the concerns that are detailed in this document, and said I will send you my copy of these notes. I probably meant to do it that day. Like I said, I think it was the next day.

Q. So you had already conducted these interviews by the time you met with --

A. Yes.

Q. -- Chancellor Goetz? And it's your testimony you have had no conversation with Dr. Goetz -- excuse me -- Chancellor Goetz since this was submitted; true?

A. Not regarding these issues, no.

Q. Any issues involving President McCallum or Dickinson State --

A. No.

Q. -- that you have spoken with Chancellor Goetz about?

A. No.

Q. How about anybody from his office?

A. No.

Q. How about anybody from the internal audit staff at NDUS?

A. No.

MR. THOMAS: Thank you. That's all I have, Your Honor.
BY JUDGE FETCH:

Q. Just to be clear on Exhibit 51 --
A. Yes.

Q. -- those are your notes?
A. Yes.

Q. The faculty and staff you met with, was that one-on-one or was it as a group?
A. It was always on the phone, as phone calls. I think as I understand, from what they told me.

Q. You always met via telephone?
A. Yes. And it was only with one at a time. I think they had meetings back on campus. I assume most chapters of NDPEA do.

JUDGE FETCH: Okay. That's all I wanted to know.

Anything further, Ms. Andrews?
MS. ANDREWS: Nothing further.

JUDGE FETCH: Mr. Thomas?
MR. THOMAS: No, thank you.

JUDGE FETCH: Mr. Savelkoul, you're excused. If you go back to the room where the other witnesses are, you may not discuss your testimony or questioning, et cetera, at this hearing.

THE WITNESS: Sure.

JUDGE FETCH: Thank you. It's 3:15. We're going to take a ten-minute recess.
(Recessed from 3:15 p.m., to 3:37 p.m., the same day.)
JUDGE FETCH: All right. I'm sorry. Who was the next witness?

MS. DONARSKI: The next witness is Bill Eggert. Before we call the witness, I'd like to offer some exhibits that we stipulated to.

JUDGE FETCH: Yes, Ms. Donarski.

MS. DONARSKI: Dickinson State University now offers Exhibits 1, 2, 11, 12, 13, 16, 18, 29, 30, 43, and 49 at this time.

JUDGE FETCH: And, counsel, have you stipulated to admission of those?

MR. THOMAS: Yes.

JUDGE FETCH: All right. Exhibits 1, 2, 11, 12, 13, 16, 18, 29, 30, 43 and 49 are admitted. All right. Thank you. Ms. Donarski, please identify your witness.

MS. DONARSKI: Bill Eggert, who is North Dakota University System Director of Internal Audit and Risk Assessment.

JUDGE FETCH: Good afternoon, Mr. Eggert.

THE WITNESS: Good afternoon.

JUDGE FETCH: All witness testimony at this hearing is taken under oath and is subject to penalties for perjury. There should be -- you've already read --

THE WITNESS: Already read it.

JUDGE FETCH: -- the instruction? Thank you. Please raise your right hand.

Do you solemnly swear the testimony you're
about to give shall be the truth under the pains and penalties of perjury?

THE WITNESS: I do.

JUDGE FETCH: Thank you. Before we begin with your testimony, you were in the room down the hall sequestered with some other witnesses, were you not?

THE WITNESS: I was.

JUDGE FETCH: All right. Did you hear any prior witnesses come in and talk about questions they were asked or their testimony or what happened in the hearing?

THE WITNESS: It wasn't questions they were asked. The answer is, yes, but it was more of objections, I guess.

JUDGE FETCH: More of what?

THE WITNESS: The amount of objections that were being placed.

JUDGE FETCH: So they did talk about the hearing?

THE WITNESS: Every time they said something, yeah.

JUDGE FETCH: All right. Thank you.

Ms. Donarski.

BILL EGGERT, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. DONARSKI:

Q. Before we begin into the key of your
testimony, what you did hear in the witness room, did that influence or change any facts that you know about this case?

A. No, nothing at all.

Q. It wasn't any discussion about any specific facts about this case?

A. No.

Q. The discussion was just that there were a lot of objections?

A. Yes.

Q. Now, you are the North Dakota University System Director of Internal Audit and Risk Assessment?

A. That is correct.

Q. How long have you held that position?

A. February 15th of this year I started.

Q. Okay. And what did you do prior to that?

A. I came out of public accounting, internal audit in public accounting.

Q. Give the Hearing Officer a brief background of your work history.

A. I got into internal audit in 1994 with a very large Fortune 25 company, multinational company. From there went into a large, at the time called Big Five accounting firm, Arthur Andersen, in Minneapolis. Andersen went away in 2002. From there I went to a couple smaller accounting firms,
ended up with a firm called Baker Tilley in Chicago. All of that time from '94 to well, currently, doing internal audit for numerous companies, numerous industries, worldwide.

Q. How many years have you acted as an internal auditor?
A. You're testing my math now. 2004 to -- 16, roughly.

Q. Identify your role in this matter of President McCallum.
A. I was asked by the Chancellor to go out and investigate the enrollment issues that were -- that came up via the NSSE survey.

Q. Okay. And in front of you is Exhibit 17. Is that your internal review report as a result of your investigation?
A. This is my report.

Q. Can you generally describe the steps you took in investigating and rendering this report?
A. The steps taken in any internal audit are fairly similar. It starts out by interviewing a lot of people to understand the process. And I'm an internal auditor. We look at the internal control structure. So I'm looking for those internal controls. I'm looking that those controls have been met and are working adequately. So through interviews, you develop the process of what happened, what should be happening, what controls are in place, are working, are not working.

You then move on to recommendations,
making sure that if there was an issue, it is mitigated so it cannot happen again.

Q. And in doing this audit, did you act fairly and objectively?
A. That is internal audits whole purpose of being here. It's a very independent look.

Q. What directive did the Chancellor give you as far as what you were to investigate?
A. It was the seminar symposium enrollment recording and enrollment processing process.

Q. In investigating the enrollment reporting issue, did you discover other issues?
A. Yeah, there were several issues that came to light during my investigation.

Q. Identify those issues for the Hearing Officer.
A. Some of those other issues were obviously the tone at the top, campus culture. There were some issues with the athletic department, the NAIA sanctions. There were some HR issues that came to light. I believe, yeah.

Q. Did you identify each of those issues in your report?
A. Yes, they are. They would be under the leadership.

Q. Okay. So turn to the page and direct the Hearing Officer to where you've identified each of the issues.
A. What specifically do you mean?
Q. The outcome, your findings.
A. Oh, findings, sure.

Q. Where are your findings in this report?

A. Not a problem. If you would turn to Section 2. It is page 12 of the report or page 66. These are the internal review results.

Q. And did you accurately identify your findings in Section 2 of this report?

A. Yes.

Q. Okay. So when you look at Section 2, No. 1 is enrollment processes and recording?

A. Yes.

Q. That's on page 12 and 13 of your report. Is that your findings with respect to enrollment processing and recording?

A. What the process is here, under No. 1 you have background. That's just a quick synopsis of what I found, and then the issue and then some potential impacts and then the corresponding policies that have been in violation on the right-hand side.

Q. Okay. So the issue is what?

A. The issue is that the DSU officers knowingly entered nonstudents as students, thus, overstating the enrollment.

Q. And what was -- what are the findings with respect to that issue?

A. The impact of those, of that action?

Q. The findings. The findings are identified right under the issue? Is that where the findings -- to answer that issue?
A. Yep. The DSU officers, what they did was take conference attendees, basically signed them up as students to increase enrollment. By doing so, the enrollment data for DSU, for the State, for federal numbers has -- since that date, September 20th, 2010, it's been overstated and will remain overstated or invalid.

Q. Your findings indicate that that was intentional. What facts did you find to indicate that it was intentional?

A. That comes from my investigation that -- again, I look at a process. So I'm looking at the enrollment process and with each process they have internal controls. A lot of those controls are State Board policies or they have forms to fill out or they have approvals. Those are controls. So looking at the enrollment section and looking at OEL, Office of Extended Learning, they, too, have processes. They, too, have an internal control structure. Whereas finance, whereas academic records, all of these departments work together. So one person cannot put all of these attendees in as students. One department does this. One department does this. It's segregation of duties and that's good. That's what we need.

So what one person in that campus controls two, three, four departments, and that was the office of the President.

Q. So there was a number of steps along the way involving different departments that were
required to result in the entering of inaccurate numbers?

A. That is correct. Several breakdowns within several processes. Several controls were either purposely or intentionally overridden, ignored, yes. So, again, one department can't do this. One person, even two departments can't do this.

Q. And you've identified the corresponding policy that would be the University System or State Board of Higher Ed policies that have been violated as a result of this enrollment processing and recording?

A. Yes, those are all listed.

Q. Okay. You also identify the potential impact. What is the potential impact for DSU's enrollment for the DSU officers intentionally entered conference attendees in the fall enrollment numbers?

A. The impact again, internal audit, we objectively look at a situation and then determine what the potential outcomes of these actions are. So in this case, by overstating enrollment, first and foremost, this gives a really bad reputation for DSU and the system itself. You really can't put a dollar amount on a bad reputation and it takes years to rebuild. No. 2, the potential funding allocation discrepancies. The University System is developing a new funding model and if that funding model includes enrollment numbers, DSU would probably get
a higher amount than they deserve. Again, that's being worked on so, again, potential.

No. 3, potential penalties or fines. IPEDS has a fine. When IPEDS is misstated, there's a $27,000 fine per incident. In this case -- well, my report says 180. It's now up to 213, 217 but at the same time 180 people were identified. So 27 times 180 is $5.8 million, $6 million of potential fines that could come in. Now, we already did receive a letter from IPEDS that they are aware of this issue and are looking into it.

No. 4, other potential state or federal fiscal repercussions. As you know, the State Legislators have already cut our budget $750,000. They could easily do that again. They could easily penalize Dickinson somehow fiscally. Again, my job is to get the system ready for anything that is coming down.

No. 5 is quite important. Potential accreditation reviews. Several of these actions went directly in violation of Higher Ed accreditation criterion. That -- obviously that's pretty important. If DSU loses their accreditation, again, that's going to extremely affect the reputation of the campus and the system.

Q. Now, DSU is -- its accreditation is not up yet?

A. 2015.
Q. Is when DSU is reviewed again?
A. Yes.

Q. Okay. Going back to the potential impact to No. 4, potential other state or federal fiscal repercussions, what are the federal fiscal repercussions?
A. Once a student is entered into Connect North Dakota, that database feeds NSSE. It feeds IPEDS. It feeds a lot of different databases. So there are -- this could go into a financial aid issue, Title 4. If any of those students were found to get financial aid and did not have the right credit hours, we would have a fine or some kind of penalties on that as well.

Q. Okay. Continuing on in your report, we then turn to page 14 of your report, which is Bates 68?
A. You skipped 13.

Q. Oh, sorry.
A. There's two more -- on page 13 there's two more potential impacts.

MR. THOMAS: Just a minute. Your Honor, I don't have page 13. I don't know if you do.

JUDGE FETCH: Yes, I do.

MS. DONARSKI: I'll give you my copy.

THE WITNESS: On the top of page 13, the state auditors may do a systemwide audit of enrollment practices. The state auditors are currently doing a review of Dickinson as we speak. I, too, have been directed to do an enrollment audit
at all the other schools as well.

No. 7, the state's database ConnectND is incorrect. They are working on fixing it, but in order to fix ConnectND, it involves writing new code so it's going to take a long time to get this corrected, if it can be corrected.

Q. (MS. DONARSKI CONTINUING) Okay. Let's, then, turn to page 14, which is Bates No. 68. That identifies the second component of your investigation, which was leadership and internal control structure?

A. Yes.

Q. Okay. Identify for the Hearing Officer what that issue is and what you found.

A. The issue here is, like I said earlier, every process has an internal control structure. That is why I'm out there. I'm there to verify that the controls are working as designed or are in place. In this review it was very apparent that there was several controls that were purposely overridden or ignored.

Q. Such as?

A. These policies on the side for one. Oh, I can go into a lot of detail about the actual process, is that what you're asking?

Q. No, the policies identify the processes that were overridden?

A. Yes.

Q. And we'll talk in greater detail of the steps that you're talking about, but I just wanted
you to tie in the policies.

A. Yep. Everything, all of these breakdowns went -- or were in violation of these policies. So there were a lot of actions taken or a lot of missteps that were in violation. So, for example, I'm just picking one here. Like No. 308.8, officers or employees must not make or engage in any false record or communication of any kind, whether internal, external, including but not limited to, enrollment is listed. Well, obviously, enrollment was overstated. I mean, it's in clear violation of State Board policy.

Q. Okay. And then you also identify the potential impact with respect to your findings of leadership and internal control structure?

A. Yes. Again, the reputational impact of all of this is extremely large.

Q. Okay.

A. Those interviewed have suggested leadership has created an intimidating and distrustful culture. That leads to a lot of turnover. There was -- on campus at the time the morale was extremely low. A lot of distrust, a lot of disrespect. That is -- when I say "leadership" or when I use the word "leadership," it can be tone at the top, it can be governance. It's the whole culture. But in this case, I'm used to the word "governance," but with discussions with the Chancellor, governance is what the State Board does, so let's use the word "leadership." So they were
Q. Did your investigation include a meeting with President McCallum?
A. Yes, it did.

Q. Okay. And identify that meeting to Judge Fetch.
A. That meeting was held on the first day that Dr. Hillman and I went to DSU. I believe it was May 5th, 2011.

Q. And describe for her the conversation that took place.
A. We were just starting the review at that time so we just gave him, basically, an update on what was going on, what we were doing. We were verifying some answers on Dr. Hillman's survey that was sent out earlier to all of the campuses, and that we were going to do some further research into the enrollment process.

Q. What was President McCallum's response with respect to the enrollment errors?
A. He stated that those have been corrected within 24 hours.

Q. Did he identify that there were any other issues with respect to enrollment?
A. No.

Q. Did he provide you any other information with respect to enrollment, the enrollment issue that you were investigating?
A. No, not that I recall.

Q. Okay. For brevity purposes, I'm not going
to walk through every detail of your report, but you've identified the corresponding policies as well as attaching a copy of the policies that you found were violated?

A. That's correct.

Q. Okay. And then your report also contains a summary of the steps that were taken during your investigation, and that would be found starting on page -- actually starting on page 9?

A. Yes. Actually, page 7 if you want to go to 7. That -- it starts on page 7, the background and work performed. And what this does is goes chronologically through what I did and all the way through, I guess, page 11.

Q. And so pages 7 through 11 identify your investigation and the steps that you took?

A. That's correct.

Q. Do you have anything, as you sit here today, to add to what is contained in your report with respect to those steps that you took?

A. Well, there are several issues at DSU, but this report only focused on the seminar symposiums.

Q. Okay. What my testimony (sic) is, does this accurately reflect what you investigated upon --

A. Yes, it does, very accurately.

Q. Are there other issues that you discovered
that are not identified in this report?

A. Yes.

Q. What were those issues?

A. Well, I already mentioned NAIA issues.

There's a few HR issues. Are you speaking with the enrollment?

Q. Let me ask you this way.

A. Okay.

Q. Are there other issues -- once you issued this report, obviously, this was given to the Chancellor?

A. Yes, it was.

Q. Okay. And the other issues that you discovered, did you share those with the Chancellor as well?

A. Yes, I did.

Q. Okay. Tell the Hearing Officer what the other issues were that you shared with the Chancellor.

MR. THOMAS: Judge, can I just voir dire for a moment on this?

JUDGE FETCH: You may.

MR. THOMAS: Mr. Eggert, the testimony you are about to give in terms of what you provided to the Chancellor, was that ever reduced to writing in the form such that Dr. Richard McCallum has seen it?

THE WITNESS: No, sir.

MR. THOMAS: I think it seems sort of unfair at this point, Your Honor, for this witness to be testifying about concerns that he reported to
the Chancellor that have never been made part of the record, not included as a basis for his termination, never provided to Dr. McCallum for an opportunity to review. I would object on relevance grounds.

JUDGE FETCH: What is the relevance, Ms. Donarski?

MS. DONARSKI: The Chancellor is the one who ultimately reviewed the investigation and had additional information from the investigator, the internal review investigator, to make the decision that he made to issue the notice.

JUDGE FETCH: Mr. Thomas, I would think you would probably want to know what that information, that additional information was if the Chancellor used that in making his decision.

MR. THOMAS: I would, Your Honor. I would have preferred to know it three months ago, however, is my concern.

JUDGE FETCH: Nonetheless, if it was information that the Chancellor received and used in his decision, I think that would be helpful to know.

MR. THOMAS: Better late than never, I guess, Your Honor.

JUDGE FETCH: So I'm going to overrule and permit the question.

THE WITNESS: Can you ask the question again, please?

Q. (MS. DONARSKI CONTINUING) Certainly. What was the additional information that you discovered as part of your investigation that's not
in your report, but that you shared with the Chancellor?

A. Are you referring to the Chancellor update, the update that I gave the Chancellor?

Q. In whatever form it may be. The question is, is there stuff in your -- not in your report that you discovered as part of your investigation?

A. Well, again, there were several issues which I did alert the Chancellor to. We touched on a couple of them. The NAIA, the HR issues. There were several other tone at the top-type issues, the intimidation, the -- I guess I -- I guess I tried to roll those under the leadership. Did that answer your question?

Q. The intimidation is in your report under your leadership section?

A. Yeah, the whole culture, the whole tone is under the leadership.

Q. The NAIA, what is that issue?

A. That is an issue where there were potential athletes being paid cash under the table.

Q. And that's something that you were made aware of or you discovered during your investigation?

A. That is correct. During my interviews, yeah, people brought up several, these other issues.

Q. And you shared that with the Chancellor as well?

A. Yes, I did.

Q. Why was that not in your report?
A. That -- at the time, through discussions with Mr. Seaworth, we wanted to stick specifically with one audit. Let's do the enrollment audit, then let's do another audit and then let's do another audit. Let's break them up. Let's not throw everything into one.

Q. Okay. So the NAIA, is there an audit relating to those type of issues?

A. It is not complete yet.

Q. But that's a separate audit?

1. A. That's separate, yep.

2. Q. Who is doing that audit?

3. A. I'm doing that one.

4. Q. Okay. Are you doing another audit?

5. A. I am. I'm working on an HR audit, as well, human resources. That is also in progress right now.

6. Q. What's the issue with that?

7. A. The issue there was a lot of duties were not being completed or not completed accurately. So a lot of claims being made that were not being handled or followed through.

8. Q. What do you mean by claims?

9. A. Claims; sexual harassment claims, verbal abuse claims. A lot of, let's just call it harassment. They have a harassment policy that includes several things, so it is literally called harassment.

10. Q. Unrelated to President McCallum?

11. A. No. I would say that, again, is part of
the tone at the top. That's the culture.

Q. Okay.

A. So, of course, yeah, I would say it's directly related because it's the campus culture. It's a very negative place so people want to report all of these issues.

Q. So during --

A. So, yes, just to add on, there's two separate pieces here. So, yes, one piece would. One piece is completely separate.

Q. The piece that is completely separate is what?

A. Would be those sexual harassment claims.

Q. That's unrelated?

A. Completely unrelated. That's why it's not in here.

Q. The other ones with respect to the work environment are identified in your report?

A. Yes, they are.

Q. Once you completed this report, did you have any other discussions with the Chancellor?

A. Yeah, several discussions, I guess.

Q. Okay. In updating the status of your investigation?

A. Yes.

Q. When you were conducting your investigation and continued to conduct your investigation, have you been objective and fair in how you have proceeded?

A. Extremely.
Q. Has the Chancellor given you any directive on what he wants you to find against the President?
A. Actually, no. No. Not at all.
Q. The -- you have talked about some steps that were skipped in the process with respect to enrollment, and I'd like to draw your attention to Exhibit 40. Do you recognize the documents in Exhibit 40?
A. Yes, 40, I'm looking at 306, yeah, 307, 308, yes.
Q. Okay. And identify for the Hearing Officer what those documents are.
A. These are the forms that DSU uses to set up an extended learning or seminar as it states right on the top, proposed DSU seminar credit offering.
Q. And they're filled out. What's the information?
A. It would describe the class. Again, this is a proposed class. So what it is, is -- let me just pick one. So No. 308, this would be a quality service and hospitality class or a seminar and it goes through. It gives you when it's going to be, fall '08 -- or fall '10, excuse me, regular season. It describes the dates, the place and signatures of approval.
Q. These documents you received as part of your investigation?
A. Yes, I did.
Q. And they are used by DSU?
A. Yes, they are.

MS. DONARSKI: We offer Exhibit 40.
JUDGE FETCH: All right. Page 308 of Exhibit 40 is already in evidence, so you're offering the rest of it, Ms. Donarski?
MS. DONARSKI: That is correct.
MR. THOMAS: No objection.
JUDGE FETCH: All right. Exhibit 40 in its entirety is admitted.

Q. (MS. DONARSKI CONTINUING) What's the significance of the information that's on these documents for the Hearing Officer?
A. Well, the major -- again, several issues with these. One being, as you probably have heard, the teachers that -- the instructors on here may not have instructed these classes. This is a seminar credit offering so this should have never been entered into a DSU catalog-type of a class. So there's no way students should have been entered into these classes. It's a seminar, not a class.

Q. Okay. So we have page 305, Bates 305 is relating to the Theodore Roosevelt symposium?
A. And I would point out on page 306, Dr. David Meier, if you notice his time stamp on the bottom there, it says David A. Meier. If you look at the date, it's 2010, 09-21. September 21st he approved this class. However, the class was September 16 through the 18th, so it's kind of hard
Q. And that supported your -- how did this affect or impact your investigation?
A. What I was doing was validating the five or six classes that were offered in fall of ’10. So what I did was verify the class was set up. I wanted to make sure it was a legal class, look at the students that were entered into the class. It's just a piece of evidence that I used to help validate my research, my investigation.

Q. And these show what?
A. These show that -- well, this is the form -- the proposed form. This isn't the final form even.

Q. That the classes were properly set up, not properly set up?
A. On the surface -- well, again, that's an issue as well, because they used this form to set up a class. This is not the form that DSU uses to set up a class. This is a proposed form, so, no, those classes should not have been set up.

Q. Okay. Turning now to Exhibit 41.
A. This is the form that you set up a class with.

Q. And are these documents that you received as part of your investigation from DSU?
A. Yes.

MS. DONARSKI: We offer Exhibit 41.
JUDGE FETCH: Any objection?
MR. THOMAS: No, Your Honor.
JUDGE FETCH: Thank you. Exhibit 41 is admitted.

Q. (MS. DONARSKI CONTINUING) Briefly identify for the Hearing Officer what is significant with respect to these forms.

A. This is a -- this is how you set up a new class. And I guess the main thing here is, you've got your class, you've got your instructor. This form, again, being the internal auditor, I'm looking for internal controls. The controls here are, you need approval from the department chair, the college dean and the VP of AA, Vice-President for Academic Affairs for all of these classes.

So if you look at page 310, for example, you have Roger Kilwein. You've got Doug LaPlante, and you've got -- I believe that is Brudvig's signature. Yes, it is. So that's fine. No. 311 is fine. The problem I had with page 309 is that Brudvig signed all three of these, again, on 9-17, when I believe this class was offered 9-16 through 9-18. And it was approved -- well, I guess the approval process is the issue with this one. So I also questioned David Meier. Did you know that you approved this class and he was not aware of it and then I questioned Kathy Meier, who enters the data from this sheet into Connect North Dakota, thus setting up the class, and she -- her main control is that if the Vice-President for Academic Affairs signs the form, that's all she looks at it. So this class was set up.
Q. And, again, we've got a September 17, 2010 date, and that was during the class?
A. Correct.
Q. The class had already started then?
A. Correct.
Q. Okay. Continuing on with Exhibit 42, what is that?

A. This is the form for seminars. The way the process had always worked is that if you attend the seminar and you want that one degree or that one credit, you fill out this form requesting the credit and what it does, obviously, it asks have you ever had a DSU class before. If you say, yes, you enter your student ID number and then your information. Again, optional. So I went to Teddy Roosevelt in 2009, I paid my entrance fee or my registration fee, I sat and listened to some speakers, I got up and went home. I could have filled this out if I wanted my one credit. In 2010 this form was not used, so if I went to Teddy Roosevelt in 2010, I ended up as a freshman in Dickinson State University with an A in a class.

Q. Without a student filling out the registration form to be registered?
A. Without going through the application process, without going through enrollment. So this form was completely ignored in 2010.

MR. THOMAS: No objection.
MS. DONARSKI: All right. And the
redactions are why?

THE WITNESS: Personal information.

JUDGE FETCH: All right. Thank you.

Exhibit 42 is admitted.

Q. (MS. DONARSKI CONTINUING) I'd next like to draw your attention to -- you talked about processes. Turn to Exhibit 90. And that's way at the end.

A. Last one.

Q. Yes. Is this a document that you created?

A. This is.

Q. Okay. And what does it identify -- hold on. Let's let the Hearing Officer get there.

A. What you have in front of you is two process maps for how the enrollment worked in 2009 and 2010. This is a fairly basic process map and if you look going down the left-hand side, those are the individual departments. It starts with OEL on top and then Office of Enrollment, Academic Records. It ends with instructor on the bottom.

What this shows is, for example, No. 1, box No. 1 proposed additional form and then with a little brief snippet over here on your right-hand side, but what this does, it shows you the paper flow through the departments and how a class and people get entered or registered.

So I put this together because once people
see their process in black and white, they can immediately say, no, I don't do that or, oh, you forgot a step. And, again, I use these to point out the internal controls as well and then, again, as an internal auditor for the system, I want to make sure that this process looks similar to the other schools.

Q. So we have the first chart, DSU symposium enrollment, fall 2009, that identifies the steps that were taken in 2009 and prior years with respect to symposiums?

A. Yes, it is. And the one big difference is box No. 2 and which was that -- right up on top. That was the form we just discussed, the registration form. And if you flip to 2010, they use simply the sign-in sheet that when you walked in in the morning to get people into the system.

Q. No registration form was used in 2010?

A. That is correct.

Judge Fetch: Thank you. This is for illustrative purposes, I assume.

THE WITNESS: Yes.

Judge Fetch: Exhibit 90 is admitted.

Q. (MS. DONARSKI CONTINUING) The comments on the right-hand box of Exhibit 90 on Bates 594, what are those?

A. Those explain the process in a little more detail. So if you look at, just for an example,
No. 5, since it's close, No. 5, the box says "set up three-ring binders for each class," and it's just a little more information.

Q. Of the steps that are followed?
A. Of the actual steps, yeah.

Q. By each of the different departments that are identified on the left-hand side?
A. Yes, that's correct.

Q. So there are a number of different departments that are involved when you actually enroll a student and register a student?
A. Yes, several departments are involved.

MS. DONARSKI: I have no further questions.

JUDGE FETCH: All right. Mr. Thomas, you may cross-examine.

MR. THOMAS: Thank you.

CROSS-EXAMINATION BY MR. THOMAS:

Q. Let's start with Exhibit 90 since we are there now, Mr. Eggert. Maybe you can help me understand. You talked about the different levels and it suggests to me that if a class was not being properly designated for enrollment, it could have or should have been detected at any one of these levels; right?
A. You are correct, yes.

Q. And it wasn't; right?
A. Correct.

Q. And --
A. Well --

Q. Let me ask you this question: How many
different levels of review does there appear to you
to be on Exhibit 90? Starts with the dean or with
the instructor of record?

A. Goes to the VP -- it goes instructor. It
goes to VPAA. Marshall Melbye would have reviewed
it.

Q. So that would be the third one?

A. That's third. It goes to enrollment.

Q. That's the fourth?

A. And then -- yeah, and then -- well, yes,
it's five. It's all of them because OEL has to
actually set up the form.

Q. All right. Five. And yes or no, none of

those levels include the President's office; true?

A. The President -- true.

Q. Thank you. Could you turn -- it's going
to be in a different packet that Ms. Donarski is
going to have to show you. Exhibit B.

Do you recognize that document?

A. Yes, I do.

Q. Did you author that draft document?

A. Yes, I did.

MR. THOMAS: We would offer Exhibit B,
Your Honor.

JUDGE FETCH: Any objections?

MS. DONARSKI: No objection.

JUDGE FETCH: All right. Exhibit B is
admitted.
Q. (MR. THOMAS CONTINUING) What is Exhibit B, Mr. Eggert?

A. This is a real early draft of my report.

Q. If you look at the first of page of it, it says first report draft date June 21, 2011; is that accurate?

A. Yes.

Q. And this was, in fact, the first written draft; true?

A. To the best of my recollection, yes.

Q. Okay. If you turn to page 6 of the document. I note that there's two page 4's, but skip over that. Go to page 6, please. And paragraph No. 3 towards the top of page 6, do you see that?

A. Yes.

Q. You discussed this draft with Chancellor Goetz before writing it; true?

A. Not this report.

Q. Okay. Well, here's why I ask. If you look at No. 3, it says -- and this is in what you say is the first draft. Quote, After debriefing the Chancellor on the information gathered, it was determined that I continue to interview additional people to determine the source of the approval for having the people registered as students.

A. Correct. That is also in my report as well.

Q. Okay. So you had these discussions with the Chancellor, obviously before June 21?
A. That is correct.
Q. And before those discussions with Chancellor Goetz, you had already interviewed some people and the people whom you had interviewed are described at the bottom of page 5 and carrying over to the top of page 6; true?
A. That is correct.
Q. All right. And, apparently, you, quote, debrief the Chancellor and he suggested, then, that you interview these additional six witnesses; true?
A. No.
Q. All right. Well -- go ahead.
A. He requested that I continue investigating.
Q. All right. And didn't suggest any of the names to you, is your testimony?
A. No. No.
Q. But it was after your discussions with Chancellor Goetz that it was determined that you interview these six additional people; true?
A. That is correct.
Q. And just for the record, who is your direct report? To whom do you directly report?
A. To the Chancellor.
Q. And it was the Chancellor, I believe you testified, that suggested you to initiate -- to begin this audit; true?
A. Yes.
Q. Could you turn to page 3 of that same exhibit, Exhibit B, and toward the top of page 3
where it states NAIA probation, the first line of that paragraph reads, quote, The past coach of the women’s volleyball team knowingly played ineligible players. This was brought to the attention of the President; however, a decision was made not to proactively control the outcome, thus the team was placed under NAIA sanctions due to violations including inappropriate conduct and the use of ineligible players.

As of the date that you prepared this, June 21, had you interviewed the athletic director, Tim Daniel?

A. No.

Q. And were you aware at the time that this was written that Tim Daniel had conducted an investigation as to the allegations that the women’s volleyball team knowingly played ineligible players?

A. I was not aware of that at that time.

Q. And yet you felt confident putting a statement in this draft concluding that, quote, a decision was made not to proactively control the outcome, close quote; true? You put that sentence in there without interviewing Tim Daniel or without reviewing his investigative report?

A. Hence it’s not in there now.

Q. You subsequently learned that Mr. Daniel did conduct an investigation; true?

A. Very thorough.
Q. And he was not able to conclude the allegations contained in this draft in his conclusions?

A. In his conclusions, yeah, he could not.

Q. Could you tell us, Mr. Eggert, because it's stamped across the top of this document, it says "NDUS confidential." That's on page 1 of Exhibit B. What's the rule that you follow?

A. Okay. This -- I've been in internal audit quite a long time, so everything that I do is marked confidential or if you see that paragraph on the bottom, I put that in there as well.

Q. What does that mean?

A. It's just habit. It's just habit.

Q. Okay. All right. The reason I ask is, this document is dated June 21 and appears to have been, according to your own description on page 2, says "draft report distribution: Chancellor Goetz and Michel Hillman." Do you see that?

A. Yes.

Q. And those are, I take it, the two people to whom you distributed this document on June 21st.

A. No, there would be more than that.

Q. Why did you just list those two people?

A. Again, it's a draft. There were probably several things in here that are wrong.

Q. All right. Well, let's talk about that. Was this a confidential document, or not?

A. It's a draft document and per State law, yes, it's confidential.
Q. Okay. To whom was it distributed?
A. I would probably add Pat Seaworth to that list at the time.
Q. Obviously, not Dr. McCallum?
A. No.
Q. He wasn't given a copy. Anybody else, other than Chancellor Goetz, Michel Hillman and Pat Seaworth?
A. That would be it.
Q. And the reason -- were you aware that on the same -- or within a day of the issuance of this report there was an article in the Dickinson Press that contained many of the factual allegations that are set forth in this draft audit?
A. I was not aware of that.
Q. And if that were the case, your testimony today would be you would have no reason to know whether or how this draft document was distributed to the Dickinson Press; true?
A. I wouldn't, yeah.
Q. But what you would be able to testify to is the only three people to whom you provided copies was Chancellor Goetz, Michel Hillman and Pat Seaworth?
A. To the best of my knowledge.
Q. So you probably wouldn't be aware, then, that Dr. McCallum, as a result of that newspaper article, was asked to respond to allegations contained in this document that he had never seen?
A. Was not aware of that.
Q. How about after the release of the audit?

Now I'm talking about Exhibit 17. What are the -- or even subsequent drafts, because I note that on Exhibit 17, if you'll give me a moment to get to it, and maybe you can turn to that as well. It talks about prior drafts of this document. Talks about first report draft date, fieldwork, second report draft date, and so forth, all contained at Exhibit 17, page 54. Do you see that?

A. I see it.

Q. Do you know to whom those other documents were distributed?

A. All of these drafts went through Dr. Hillman and Pat Seaworth. Once it got to a more final stage, Lisa Johnson reviewed it.

Q. Who is she?

A. She is -- I'm not sure of her title. She works at Minot State. She works with Dr. Hillman. She used to be a registrar, so she has very intimate knowledge about this process, so she was kind of our subject-matter expert.

Q. Fair enough. Anybody else?

A. At a final point then, yes, Deborah Anderson also reviewed it.

Q. Who is she?

A. She is the Director of Communications for the System Office, and that was more of a grammatical, make sure I had my commas and everything in the right place.

Q. On what date would she have reviewed it?
A. I do not recall.
Q. Sometime before the issuance date of August 1, I take it.
A. Yes. Yes, of course.
Q. Did you provide instructions to any of these people as you distributed the documents to them, that this was a confidential document?
A. When it's -- it's my understanding when it's stamped "draft," it is not to be released to the public.
Q. And the date -- if you look at page 55, August 2, 2011, is the date on which you sent this document to Chancellor Goetz; true?
A. That's probably -- that's actually the final release date. That's the final report.
Q. Okay. So the August 1 date on page 54 is -- which one is correct?
A. August 2nd.
Q. All right. And then it lists, the bottom of page 55, the people to whom it was distributed on that date; right?
A. Correct.
Q. And Dr. Richard McCallum is not listed --
A. Correct.
Q. -- on that? What are the rules you talked about with regard to if -- this audit was clearly the basis for the notice of intent to terminate President McCallum; true?
A. I don't know.
Q. Don't know. Okay. Fair enough. Are
there rules that auditors are required to follow in terms of allowing the person who is the subject of an audit to review a draft of the audit before it's made public and to comment on it and to respond to any of the allegations? Do you abide by any of those?

A. There's a difference between a review and an audit and there's agreed-upon procedures. There are several different things. This is a review, so, no, he did not have to review it.

Q. Sure. So tell us about that for those of us who don't know. What's the difference?

A. An audit is, yes, much more formal. It would be -- the biggest difference is that I would be polling a sample of the population of what I'm looking at. I would be taking a statistically correct sample to make sure all the controls are working. A review is much less formal. I'm out there gathering data, essentially.

Q. And with respect to the person who is the subject of the review or the audit, what's the difference between the two in terms of what rights they have to review the document?

A. Well, during either one -- during an audit I would say, yes, there are meetings to say here's what we found and a review, no, that is not necessary.
Q. And in this case, do you have any knowledge of whether Dr. McCallum was provided with a copy of your internal review?

A. I believe it's when the Chancellor gave it to him. To tell you the truth, I'm not sure.

Q. Okay. And if I tell you that that meeting was on August 3rd, you would have no reason to dispute that?

A. I'd take your word for it.

Q. And if I tell you that that was the same day on which Dr. McCallum was told he had to resign or else he would be fired, you have no reason to dispute that, either?

A. I would agree with you there, too. I don't know.

Q. And, to your knowledge, were copies of the internal review report distributed to anyone other than those listed on the report or, for example, to the press prior to Dr. McCallum receiving it?

A. Not to my knowledge.

Q. Could you go back to Exhibit 17, page 64, please.

A. (Witness comply.)

Q. At No. 7, about halfway through the paragraph -- maybe I better read the whole paragraph so you have the proper context. You write, "DSU had at least three different opportunities to stop these attendees from being registered in degree-credit courses; the Office of Extended Learning, Office of Enrollment and Admissions Office should have
rejected these students due to a lack of an
application for admission."
You believe that to be true; correct?
A. That is correct.
Q. And then you write, "Because of the
collaboration between offices and the overriding
nature of SBHE policies, these activities were
directed and approved by the Office of the
President."
I understand your testimony that there
were three different levels, but you are going to
have to help me understand how it was that President
McCallum directed each of these three levels
specifically to submit intentionally false
enrollment.
A. There's no other person that could have
directed this.
Q. So that was supposition on your part?
A. Mm-hmm.
Q. Yes?

A. Yes. Actually, let me --
THE WITNESS: Can I say something, Judge?
MR. THOMAS: No.
JUDGE FETCH: Just wait.
THE WITNESS: Okay.
Q. (MR. THOMAS CONTINUING) Let me ask you
this, Mr. Eggert. Isn't there a less sinister
possibility than your supposition; isn't it possible
that, whether feeling pressure or not, these
officials saw an opportunity in good faith to enroll
these students in classes that they believed would qualify for purposes of the enrollment reports? Isn't that a possibility?

A. Not in this case.

Q. And even though these witnesses may have testified -- for example, let's look. Marshall Melbye, Director of Academic Records, submitted a separate report. That's Exhibit 27. Let's look at that. He would be one of the people who should have, in your view, rejected these classes for enrollment; true?

A. This should have raised a red flag in his group.

Q. And let's look at Exhibit 27 where Mr. Melbye writes -- and this is, I presume, part of your internal review? Yes?

A. I have not seen this before, I don't think.

Q. Really. He writes, quote, I sincerely apologize for not being aware of the IPEDS classification requirement (non-degree) for dual-credit students. This was an unintentional oversight on my part. I hope (and assume) that I will be able to correct the most recent data that I submitted and perhaps make appropriate edits to some of the data submitted in previous fall terms.

You've never seen that before?

A. This is irrelevant to my report.

Q. Have you seen it before?

A. No, I haven't.
Q. Is it indicative of somebody who was specifically instructed by the President to include intentionally false enrollment?
A. You're asking me to assume.
Q. Well, you didn't mind assuming when you assumed that Dr. McCallum directed these three subordinates to submit incorrect information, so, yeah, I'm asking you to assume.
A. I can't speak for Marshall.
Q. But you could speak for the President?

A. I was told.
Q. Next, Exhibit 28, could you look at that? Beginning at page 123, what is that document?
A. This is a document in response to Chancellor Goetz's questions.
Q. Did you utilize this in your internal review?
A. I reviewed this, yes.
Q. Is Dr. --
A. Yes, I did.
Q. Excuse me. Is Dr. Brudvig one of the people in the levels that should have known that these classes were improper to be submitted for enrollment?
A. He approves them, yes.
Q. Do you see anything in the five-page document submitted by Dr. Brudvig on February 22 that indicates that he submitted these classes for credit because he was instructed to do so, knowing them to be false?
A. I don't believe that's stated in here.

Q. And, in fact, you refer to no documents in your internal review, no documents that establish that Dr. McCallum specifically directed these employees to knowingly submit false enrollment information; do you? I can repeat the question, if you like.

A. No, I heard you. I'm just thinking if I have any -- no. There's plenty of documents. Nothing directly from the President, no.

MR. THOMAS: That's all I have for this witness.

JUDGE FETCH: Thank you. Any redirect?

MS. DONARSKI: Yes, Your Honor.

REDIRECT EXAMINATION

BY MS. DONARSKI:

Q. You were referred to Bates No. 64 which is in your report, Exhibit 17, under paragraph 7. And Mr. Thomas asked you the question about your statement that these activities were directed and approved by the Office of the President.

What information do you have as a result of your investigation to support that statement?

A. This is kind of the basis of the investigation. As I stated earlier, that each department has a series of internal controls. One of those leaders of that group, the director of that group, cannot put these attendees in as students or get them registered as employees, so it had to involve two, three, four different groups. I know I
Interviewed those people. They did not have a little meeting to discuss, hey, let's enter all these people as students. Thus, who was the one person who controls the campus and has access to all four? It's the Office of the President. Furthermore through interviewing Norm, Norman Coley, he specifically stated that he was directed to do so by the President.

Q. So you, in fact, had individuals that specifically indicated these activities were directed by the Office of the President?

A. Yes. And I used the word "collusion," because there's no other way that this amount of data goes through the system and all those systems of checks and balances without working together. And no one group can do it. Even two or three groups can't do it. It's got to be orchestrated by someone.

Q. Did your investigation reveal whether each of these steps, and specifically the steps that were missed, whether they were inadvertently skipped over in 2010 or whether it was intentional?

A. It was intentional.

Q. And what information do you have to support that this was intentional?

A. We have several emails that lay out the whole timeline. There's documents. There's missing documents or lack of documents. There's several
Q. When you say emails, are you talking emails from the Office of Extended Learning?
A. I am.
Q. Okay. Will you turn to Exhibit 55? Are those the emails that you are referencing? I'll give you a chance to take a look at it.
A. Yes, these are the emails. So, again, part of the process, as I have mentioned, I interview people and being objective, I basically say, you know, can you support what you're saying? Several people knew this was wrong and not a normal course of business, thus, they kept a lot of documentation. Simply because they didn't want their name attached to this, so they wanted to clear their own name.
Q. You were asked questions about that confidential stamp that you put on top of your report.
A. Yes.
Q. Was that something that you would commonly do when you were working in the private industry?
A. All the time. That's why I said it's just out of habit.
Q. And it's my understanding you just joined the public sector in February?
A. February.
Q. So that was something that you continued from your private into the public sector?
A. Yeah. Internal audit has access to a lot
of sensitive information and being in public accounting for so long, you just don't talk about what you're doing.

Q. Were you subsequently advised that that draft report was not confidential?

A. What do you mean?

Q. Being in the public entity, were you subsequently advised that that was not a confidential report, but perhaps an exempt record since it was a draft report?

A. I was told if it's a draft, it cannot be released to the public. Did that answer your question?

Q. Under the public records, not necessarily confidential, but under the public records exception?

A. Right, it cannot be released out, yes.

MS. DONARSKI: Okay. Thank you. I have nothing further.

JUDGE FETCH: Any re-cross?

RECROSS-EXAMINATION

BY MR. THOMAS:

Q. I'm confused. Did you consider the document confidential or not?

A. Confidential in the fact that it cannot be released to the public.

Q. Okay. So you testified that Mr. Coley told you that he had been specifically directed by President McCallum to include false enrollment information?
A. Yes.

Q. And would it surprise you that during his testimony during these proceedings Mr. Coley described no such conversation or direction from President McCallum?

MS. DONARSKI: Objection.

Mischaracterization of testimony.

MR. THOMAS: Well, I was here. I didn't hear it.

MS. DONARSKI: I was here. I did.

MR. THOMAS: I'll let the Judge decide.

Q. (MR. THOMAS CONTINUING) So I was trying --

JUDGE FETCH: Hold on. Hold on. What was your answer?

Q. (MR. THOMAS CONTINUING) I asked if it would surprise you?

A. It would surprise me, yes.

JUDGE FETCH: Thank you.

Q. (MR. THOMAS CONTINUING) So backing up a little bit from where your redirect went, your testimony, if I understand it, is that you found no evidence of meetings between the Department of Academic Record and the Office of Enrollment Services and these other departments to suggest a plot to intentionally submit false enrollment information; true?

A. That is correct.

Q. And because of the absence of that information, that's what prompted you to conclude
that it was done at the President's direction?

A. A couple of things. One, I asked several people who told you to do this and it was my supervisor. One being Norman Coley, who asked you to do this? My supervisor. I said, Who do you report to? The President. Two, spending years in business, this is a very common thing in business

and it's always done by the one person who controls all of those departments.

Q. So let me ask you this then: If there were so many checks and balances, why wouldn't Jon Brudvig have said, no, this doesn't qualify, this can't be approved?

A. I can't answer that.

Q. Because he was part of a conspiracy, or what?

A. Didn't use the word "conspiracy." I can't answer for Jon.

Q. And why wouldn't, then, Marshall Melbye have stepped in and said, these courses aren't eligible, they shouldn't be used?

A. That's a great question. He couldn't answer it.

Q. And your theory -- because you've made suppositions here. Your supposition is what?

A. It takes several departments to do this and this is a -- this is a very simple process. You are attending a seminar. You shouldn't even be enrolled in a class or enrolled in DSU.

Q. I'm trying to connect the dots to the
President. You've apparently been able to do that and I don't see it.

A. Through Norm Coley.
Q. Norm Coley is your only source that would connect the dots?
A. Yes.
Q. Now, could you turn -- and I'm almost done here. Page 66, that's part of Exhibit 17.
A. Yes.
Q. Where you talk about the issue, that's about halfway down on the left-hand side of the page. "Issue: DSU officers"?
A. Mm-hmm.
Q. And then underneath that you write, quote, DSU officers intentionally entered conference attendees in the fall 2010 enrollment numbers in an attempt to increase enrollment.

Identify, if you would, for the Judge, those DSU officers who did that?
A. That would be the people -- if you look at that process map. It would be anyone who touches enrollment. So that would be OEL, Department of OEL, and at that time that would have been Marty and Glasser. That would have been Norm Coley. That would have been Marshall Melbye. There's also a tuition piece to this, so if they were actual students, they should have paid tuition, so the
controller would come into play, so several people again.

Q. All of those people, in your assessment, intentionally entered conference attendees in an attempt to increase enrollment?

A. Intentionally had a piece of it. Again, one department can't do everything.

Q. Were any of those employees reprimanded, disciplined, fired, other than President McCallum?

A. Not that I know of.

Q. Last question. You talked about the potential ramifications to DSU as a result of these enrollment reporting violations, and you talked about some pretty big numbers on the same page, page 66. You said that with regard to the IPEDS reporting violations, quote, Currently the penalty amount is $27,000 per occurrence, close quote. You didn't mean to testify that DSU has been fined $27,000 per occurrence, did you?

A. No, potentially.

Q. In fact, they haven't been assessed a dime in penalties, have they?

A. Correct.

MR. THOMAS: Thank you. That's all I have.

JUDGE FETCH: Any further questions, Ms. Donarski?

MS. DONARSKI: I do.

REDIRECT EXAMINATION BY MS. DONARSKI:
Q. With respect to the IPEDS penalties, is that still under investigation?
A. That is under investigation currently, yes.
Q. So there has not been any determination yet?
A. A letter was received last month sometime from the Department of Education, yes. They are -- it's under investigation.
Q. Okay. And you indicated that Norman Coley was one individual who told you that the President directed him. Was Marty Odermann-Gardner also included in that?
A. I did interview her twice, via the phone.
Q. And did she tell you she was directed by the President?
A. Yes.
Q. What did she say?
A. I called her to ask her about the enrollment process. She stated quite simply that she was under constant pressure to get enrollment up. They talked about the seminar attendees being enrolled. Quote, Marty said, We can't do that. That's illegal. And I was told that McCallum's response was, Do it anyway.
JUDGE FETCH: That's really vague. Expand on that. You said she testified "that's illegal. We can't do it." What? What are you talking about?
THE WITNESS: Enrolling the seminar attendees as students and enrolling them in a class.
She said, "You can't do that. That's illegal."

They're not students. They are attending a seminar.

Q. (MS. DONARSKI CONTINUING) And she said that to whom?

A. To Dr. McCallum.

Q. And what was his response?

A. Just do it anyway.

Q. And that's what Marty Odermann-Gardner told you during your investigation?

A. That's correct.

MS. DONARSKI: I have nothing further.

JUDGE FETCH: Mr. Thomas?

RECROSS-EXAMINATION

BY MR. THOMAS:

Q. Mr. Eggert, not five minutes ago you were asked who it was on which you based your conclusion that Dr. McCallum had directed this incorrect enrollment information and your answer was Norm Coley, and I said, "Just Norm Coley?" And you said, "Yes, Norm Coley." How do you explain that?

A. Simply forgot, I guess.

Q. That's a pretty big fact to forget, don't you think?

MR. THOMAS: Nothing further, Your Honor.

MS. DONARSKI: Nothing further.

JUDGE FETCH: You're excused. And as I have other witnesses, I will caution you that you may not speak with any other potential witnesses about your testimony or what the questioning was or what's taken place in here.
Mr. Staudinger is the one remaining individual?

MS. DONARSKI: Yes.

JUDGE FETCH: And how long is Chancellor Goetz's testimony going to take?

MS. DONARSKI: I would anticipate 45 minutes.

JUDGE FETCH: All right. We may have to have Mr. Staudinger sit outside in a chair because our office needs to be locked up. All right. Let's take about ten minutes recess.

(Recessed from 4:56 p.m. to 5:11 p.m., the same day.)

JUDGE FETCH: Chancellor, I believe you've heard me instruct as for penalties for perjury, have you not?

THE WITNESS: Yes, I have.

JUDGE FETCH: All right. Thank you. Please raise your right hand.

Do you solemnly swear the testimony you're about to give shall be the truth under the pains and
penalties of perjury?

THE WITNESS: I do.

JUDGE FETCH: Is that sun bothering you?

THE WITNESS: No.

JUDGE FETCH: It's kind of -- maybe we

need to draw those blinds over there a little.

Thank you.

All right. Spell your full name for the

record, please.

THE WITNESS: William, W-i-l-l-i-a-m.

Middle initial G. Last name Goetz, G-o-e-t-z.

Judge Fetch: Thank you. Ms. Donarski or

Ms. Andrews?

MS. DONARSKI: Ms. Donarski.

JUDGE FETCH: All right. Thank you.

Please proceed.

WILLIAM G. GOETZ,

having been first duly sworn, was examined and
tested as follows:

DIRECT EXAMINATION

BY MS. DONARSKI:

Q. Chancellor Goetz, how long have you been
employed with the University System?

A. Inclusive of my 30 years at Dickinson
State University, I have -- it was my first
employment and since that time I have been with --
as Chancellor, I've been Chancellor now for a little
over four years total. So service to the University
System would be a combination of those, both those
durations of time.
Q. And briefly describe your prior work history.

A. Dickinson State University was my first employment, and during that time I served as a faculty member, the School of Business. I served in capacity of Dean of the School of Business. I was also the Executive Vice-President for the Dickinson State University Foundation, and I also was Director of Continuing Education. I had multiple hats, multiple duties. Certainly not -- at various times of duration in my 30 years at Dickinson State.

During that time as well, I served in the North Dakota Legislature. I was elected to the House of Representatives. I served in the House for 12 years. That was the same time frame as I was at Dickinson State University. While I was in the House of Representatives, I served as the caucus chairman for a number of sessions, leadership of our caucus, and, then, secondly, I was the assistant majority leader in the house. I made a decision to move over, run for the Senate. I did. Was successful, and served in the North Dakota Senate for eight years and also during that time was the assistant majority leader.

Following my stay at Dickinson State University, I was asked by Governor Schafer to serve as his Chief of Staff. I did serve as his Chief of Staff for the last three years of his term. When
Governor Hoeven was elected, he asked me if I would remain on as Chief of Staff so I served Governor Hoeven as Chief of Staff for seven years, so a total of ten years as Chief of Staff.

When I reached a point where I felt ten years was long enough as Chief of Staff, I -- this position as Chancellor did become available. I gave it a lot of thought. I had very strong passion for higher education and it was, I felt, a good way to complete my professional life, back into higher education. As a result, that's where I'm at today.

Q. As Chancellor for the University System, what is your working relationship with the university presidents?

A. The University relation -- the university presidents report directly to the Chancellor. The protocol, the way policy reads is that, of course, the Board of Higher Education is a governance board. I report to the Board. The presidents report to the Chancellor, and it is my responsibility to make certain that things are well on the campuses. I work with the presidents relative to budget issues, policy. Policy is critical. It's the foundation upon which all operations must adhere to and dictate to the presidents and to the Board as well and to staff what the guidelines are along with what has been referenced earlier, not only policies, but procedures as well.

It is critically important for the Chancellor also to convey the importance of
initiatives, the strategic plan, adherence to the strategic plan, the adoption of the presidents of the Board's strategic plan, because in turn they develop their plan, their work objectives, of which then I evaluate in accordance with their work plan. So there are infinite number of responsibilities that the Chancellor has. Some are very predictable and some are not.

Q. And what was your working relationship with President McCallum?
A. My working relationship with President McCallum the duration of his presidency, we had an open line of communication. We -- President McCallum made a point of particularly communicating with me on a capital project that Dickinson State, along with the community at large, undertook, Badlands Activity Center. He was very, very focused on making sure that that was conducted in a very responsible way. It was -- I always felt that we had an open line of communication. The -- certainly, we had issues that we did discuss on a periodic basis, but overall open line of communication.

Q. I'd like to you turn to Exhibit 44, which is right in front of you. Is that a document that you prepared?
A. Yes, it is.

Q. And is that a timeline of events that you prepared to identify some significant dates in the DSU enrollment dates?
A. Yes, it is.

Q. Okay. And -- hold on. And then you identified key findings and a response, that's something you put together?

A. That information was gathered, put together, yes, in my office by my assistant.

Q. And that also assists you in the key dates in testifying here today?

A. That is correct.

MS. DONARSKI: We offer Exhibit 44.

JUDGE FETCH: Any objection?

MR. THOMAS: No, Your Honor.

JUDGE FETCH: Thank you. Exhibit 44 is admitted.

Q. (MS. DONARSKI CONTINUING) Why don't you pull this out so in case you need to refer to it. I'd like you now to turn to the notice of intent, which is found at Exhibit 16. Was that notice of intent to dismiss, that was -- that you directed to President McCallum?

A. That is correct.

Q. Okay. I'd like you to identify to the Hearing Officer what information you utilized in reaching the decision to issue a notice of intent.

A. The information that I used, utilized to assist in my judgment and ultimate decision was that of the audit report that our internal auditor produced.

Q. Which is Exhibit 17; correct?

A. Correct.
Q. Okay.
A. Along with that, I was certainly very much interested in the risk assessment that was conducted at Dickinson State University most recently. I also supplemented that, upon the issue arising, with the quality survey that was conducted early on and made available as a survey that was produced and as a result of the system and the institutions, number of institutions participating in that.

Q. Okay. Let's talk about the risk assessment, and I want you to turn to Exhibit 46. Is that the document that you were referring to earlier that you used as part of your decision?
A. Yes. Yes, it was.
Q. Identify for the Hearing Officer what that risk assessment -- how that risk assessment report came about.
A. This is a tool that we have -- that we initiated for the purpose of assisting each of the campuses to make good management decisions, to address issues that certainly vary as to the degree of risk. It encompasses, as you can see, issues that -- or areas that relate to academic affairs, the finance side, governance, IT, which would be information technology. It is a tool. It is not an audit. I want to make that absolutely clear. It is not an audit. It is an assessment that this firm, Larson Allen, conducted on each campus to profile the institution in the various areas as to the degrees of risk that they are subject to relative to
assets that are available, the conduct of personnel, governance, certainly, was an area that I was very interested in here relative to this assessment. So it's overall tool. It's not an audit, and it is supposed to help enhance management as well as board decisionmaking.

MS. DONARSKI: We offer Exhibit 46.

MR. THOMAS: No objection.

JUDGE FETCH: Thank you. Exhibit 46 is admitted.

Q. (MS. DONARSKI CONTINUING) Identify for Judge Fetch exactly what information in the risk assessment result was used as part of your decision on the notice of intent.

A. I would draw notice to the area, the category referred to as governance and --

Q. What Bates page is that?

A. Page 0437. The color code on the risk assessment is such that red is high, moderate is yellow, and low would be green. Each, of course, characterized by certain factors that determine each of those categories. I would note to Judge Fetch that when we look at the high category under governance, it is made known that, "A subset of senior leadership is providing an overall culture, environment and tone at the top that is not supported and respected by staff and faculty."
There is obviously a proposed recommendation that is made and then an institution response to that.

I would also draw notice to another high category under governance and that is a, "Lack of communication and interaction between the Foundation and a subset of senior leadership at the institution. In addition a subset of senior leadership at the institution has different strategic visions for long-term goals and growth than the foundation."

As I have indicated, again, this is just another area that I use as a tool in helping make the decision.

Q. Now, let me ask you a question: When you identified the relationship between the Foundation and senior leadership, provide to Judge Fetch what information you had with respect to President McCallum's relationship with the DSU Foundation.

A. There were -- there are several sources of information that was drawn to my attention. One was certainly President McCallum himself, in discussions that I had with him, he made note with me on several occasions that there were issues between he and the Foundation. There were -- those issues were very prevalent and certainly played out in a number of ways relative to the -- what I would reference as the Director of the Foundation, some of the Board members. He acknowledged these issues.

Q. Who is "he"?

A. President McCallum.
Q. What are the issues?
A. The issues were a working relationship with the director. There was a feeling by the Board, board members, that President McCallum was not engaged in the foundation, the objectives in the foundation. It reached a point where the Board made a decision to fully employ the director of the Foundation. Whether -- to what extent that was a result of the working relationship, I am not in a position to acknowledge, but it was a part of the happenings that took place in that relationship.

Q. What is the significance of having a good working relationship between the Foundation and the President?
A. In this day and age, revenue streams to an institution are critical. It is more than tuition. It's more than fees. It's more than grants. Critically important to an institution is the work of the foundation. There must be an alignment between the institution's objectives and that of the foundation. If you do not have that, you are not going to have a good environment for fundraising. This -- in my mind -- and the Board has high expectations. When they hire a president or when a president is hired, there are very high expectations that the president has a good working relationship with the foundation or foundations of that institution and there's also high expectation that the president involves him or herself in fundraising.
Q. And did President Richard McCallum have a good working relationship with the Foundation?
A. No.
Q. And did he involve himself with fundraising?
A. I do -- I cannot comment on the extent of the fundraising, but he did make reference to doing some fundraising in his annual evaluation.
Q. What -- is there anything else in the risk assessment result that you utilized?
A. There was a reference on page 0431, which drew my attention. And that is the firm Larson and Allen identified the --

JUDGE FETCH: Excuse me. What page?
THE WITNESS: 0431, Judge.

THE WITNESS: That at the top under high, red coded, the reference is made that, "There is significant pressure to increase domestic and international student head count. Concerns included the diversity of the student body, potential overspending and certain students not meeting admission requirements criteria." You will note as well that there is a proposed recommendation and that, then, leads into the institution response and that Enrollment Services does report directly to the President, and additional language in regard to what I felt in this case was somewhat of a weak response relative to the statement as brought forth by Larson
Q.  (MS. DONARSKI CONTINUING) The weak response of DSU is what?
A.  Just simply that they have begun to address many of these issues through the strategic enrollment management team. I was aware that there were issues in that regard relative to the management team. I was, at that point, aware that there were discussions relative to the expectations of that team and so, certainly, this response was, I felt in regard to that issue as stated by Larson Allen, weak and could have been much more direct.

Q.  Who is Larson Allen?
A.  They are a consulting firm of CPA's that do these kind of studies. They are a consulting firm. There was a review process that the University System office conducted to retain the firm. This is the first time that the system has conducted such a risk assessment. And I would also make note of the fact that this kind of management tool is also going to begin to take place in all of State government.

Q.  Now, you said this was the first time the risk assessment tool was used. Why was it used now?
A.  Upon hiring Mr. Bill Eggert, the internal auditor, this is a very important tool that will be used for him to begin to develop his internal audit strategies. It provides a basis of information of each of the campuses and it will be a tool he would use, as I have indicated, to build his internal
Q. So this was a step in the process that was implemented in the hiring of Bill Eggert?
A. It is a result of his hiring, correct.
Q. Unrelated to the investigation that Bill was doing as a result of the DSU investigation?
A. This risk assessment, as we have it presented here as this exhibit, had nothing to do in terms of the situation at Dickinson State. This was what I would refer to as good, routine management business that has been undertaken by the University System for all institutions. And, by the way, it was agreed to by the presidents.
Q. When you say "agreed to by the presidents," what do you mean by that?
A. The cabinet -- we had cabinet discussion of this as it was advanced and review made and the presidents did agree that they wished to have the risk assessment conducted on their campus.
Q. Did the results in the risk assessment, were they consistent with the results that you had seen in the internal review report?
A. The consistency is, again, one of information that establishes a tone of what was taking place on the campus, as well as addressing a fundamental issue, and that had to do with enrollment. Again, in approaching my decision, which was ultimate dismissal, I approached it in a very methodical way. I wanted to make sure that I was accessing as much information as I possibly
could, and this was just another one of those tools that I utilized.

Q. Okay. Another tool that you indicated you utilized was the campus quality survey. I'd like you to turn to Exhibit 45. Is that the document that you also utilized in your decision?

A. Correct. Yes.

Q. Explain to the Hearing Officer what the campus quality survey is.

A. The campus quality survey is conducted by the campus itself, certainly every two years. I believe that this may have been -- and I'm not to be held to the exact number of times this has been conducted -- but I think it's been five -- on five -- there have been five different assessments or surveys, I should say.

Again, this is a consulting group that conducts this survey to gain -- and the purpose is to gain insight as to the environment on the campus relative to support staff, faculty, department chairs, administration. What I like about this is it gives you, again, another -- a tone of what's taking place as far as the culture of the campus is concerned and it does comparatives to the previous years in which this survey has been conducted.

Q. Is the survey conducted by an independent consulting group?

A. Yes, it is.
Q. And it's unrelated to the risk assessment, it's separate from the risk assessments?
A. Yes, it is.

MS. DONARSKI: We offer the campus quality survey, which is Exhibit 45.

MR. THOMAS: No objection, Your Honor.

JUDGE FETCH: Thank you. All right.

Exhibit 45 is admitted.

Q. (MS. DONARSKI CONTINUING) Identify the key areas in the campus quality survey that you utilized with respect to the notice of intent.
A. I can go to page 13 -- or it would be, I'm sorry, 0335, and it would list there the ten areas where we would have the largest -- those would be the areas of concern as it related to the survey taken. And you can see there that we're looking at the feedback from staff, faculty, administration relative to communications between departments, a feeling that employee suggestions are not being taken up as they feel should be. When I go down, I see No. 7, administrators pay attention to what I have to say is a negative and a decline from previous surveys.

Again, what this led me to is more of what was taking place or what is prevalent just recently as it relates to the overall campus environment. And we can -- if we get into this in a bit more detail, you can see specifically where these areas -- where these gaps take place in terms of previous years in which this study has been
conducted.

What drew my attention to this is that, comparatively speaking, to other institutions in the system, Dickinson was -- Dickinson State University was an institution that was very noticeable in the decline of what we would consider good performance.

Q. And what was the declining good performance related to?
A. It was one of a work environment. It was -- there are notations made or areas that are looked at relative to the quality and the productivity of work. We have concerns that I certainly my attention was drawn to and that was top management leadership and support.

Q. What page are you looking at?
A. I'm looking at page 0357.
Q. And what does it identify on page 357?

A. The gaps that -- the gap that we see a change taking place relative to previous years relative to, again, top management and leadership.

Q. Identify where that gap is.
A. It would be zero up in the bottom table, 2008, 2010 change.

Q. Okay. Under which category?
A. Top management leadership support.
Q. Where it shows a decline under the change?
A. Right.
Q. Okay. Now, I note on many of these pages there are colored flags and highlighting. Is that from you?
A. Yes. I had staff go through this and highlight in this case areas that were to be noted where we have seen substantive points of change relative to the -- to the institution. So I had staff do this so that I could better review the results.

Q. The categories or any other categories in this -- let me word it this way. The information contained in the campus quality survey that is pertinent to the notice would be tabbed and highlighted; is that correct?

A. Yes.

Q. Okay. So you've indicated you utilized the internal review report, you've utilized the risk assessment report and you utilized the campus quality survey. What other information did you utilize when rendering your decision on the notice of intent?

A. One -- Judge, the one area that I feel very confident about in helping make my determination is the staff that's around me. I have the greatest of confidence in the staff; namely, the Vice Chancellor for Academic Affairs, Dr. Hillman, who has testified. I have the utmost confidence in Mr. Bill Eggert, our recently hired internal auditor. My senior staff, of whom I spent a great deal of time discussing these issues over a period of months, certainly have helped me make the decision that was made. Dr. Hillman understands thoroughly the details of enrollment reporting, the
policies that are related and I certainly with the reports, the internal audit report, the quality assessment to a lesser degree, the risk assessment to a greater degree and the briefings that I have received, the information that was provided to me, again, brought me to a point where I felt confident in the decision that was made.

Q. In addition to those three different reports and the information you obtained from Dr. Hillman, did you also have other individuals or representatives come visit with you with respect to President McCallum?
A. Yes. Yes, I did.
Q. And describe that for the Hearing Officer.
A. I had individuals; namely, faculty, administration. I had -- as was testified, I had the North Dakota Public Employees Association representative visit with me. There was expression of concern and verbal visitations, the duration of roughly six to seven months. However, I was very cautious in terms of the information that was being conveyed to me because it was information verbal, but I've learned through the years that when you are in a leadership position and you're dealing with management, my experience in working with 17 agencies as a chief of staff, having numerous issues, have led me to a path of experience that you make a decision based on good information, not just verbal. And as you can tell, the duration of time that lapsed regarding the decision was one based on
a very methodical process with good information.

Q. Did the information that you were hearing from those different representatives and individuals, was that supported by what you received in each of these reports?

A. Yes, it is consistent.

Q. Going back to the notice of intent, which is Exhibit 16, it indicates here that, "In consultation with the president of the State Board of Higher Education, Grant Shaft, I take this action following receipt of and based in large part on an August 2, 2011, internal review report, a copy of which is attached." And that would be the report that's attached as Exhibit 17?

A. That is correct.

Q. Okay. "The report documents improper enrollment reporting by DSU officials contrary to applicable State Board of Higher Ed policies and federal IPEDS and other reporting standards for the purpose of inflating DSU enrollment numbers."

You relied on -- the information in that report is how you gathered that identification in the notice of intent?

A. Yes.

Q. Okay. Likewise, for the same statement, "Responsible DSU officials and employees report they improperly reported these numbers under your
direction or under pressure from you to do so."

A. Yes.

Q. And, "The DSU officials and employees report other concerns related to a campus culture that is divided and one of distrust, with staff being pressured to engage in unethical, suspect or wasteful activities to meet demands."

That was supported by the information in the internal review report?

A. Yes.

Q. Was that also supported by information in the risk assessment and quality survey?

A. Yes, it certainly was. Again, the information did support this ultimate audit report.

Q. What were the unethical activities?

A. The unethical activities would be the violation of policy. Those have been well outlined by Mr. Eggert in his internal audit report. Violation of the code of conduct at both Dickinson State University itself as an institution has, as well as the code of conduct that the North Dakota University System has. Adherence to the code of conduct was violated. Policy was violated. Certainly, when we look at the federal side of it, there was violation at that level as well.

Q. And what was the violation of the federal level?

A. Improper reporting to IPEDS and ultimately improper information then being conveyed -- or I should say to the NSSE report and then ultimately
Q. And what was the wasteful activities?

A. The wasteful activities that enter in here relative to improper reporting would be certainly the -- when we look at the resources, how financial resources were attached to the decisions that were made in regard to how enrollments were being brought forward in terms of improper information, that stands out for me as a very important factor. The fact that Dickinson State University gave up tuition is certainly a factor. Improper utilization of a scholarship fund would be another.

Q. And did that wasteful activity -- or the information you obtained with respect to those wasteful activities, what did you do with that?

A. This, again, was another reason why I asked the investigation take place by way of our internal auditor and Vice Chancellor Hillman. And I also -- Judge, I also had communication with the State Auditor's office as well to pursue a more detailed determination as to the handling of revenue in this regard.

Q. The notice of intent references that on Wednesday, August 3rd, you instructed the Chancellor -- or excuse me -- the President to telephone you on August 4th to discuss these matters?

A. That is correct.

Q. Okay. "Not only did you fail to contact me, but you have refused to respond to repeated
attempts by my administrative secretary to contact you, including phone calls to your administrative secretary, your cell phone, your wife at your home, who yesterday reported that you are unavailable. These actions constitute insubordination."

Describe to the Hearing Officer what the significance of those events was.

A. On August 3rd I had a visit with President McCallum in my office. I reviewed with him the issues at hand.

Q. Being?

A. The internal audit report, the subject matter of that report, the continuation of that issue that I had discussions with him earlier at his -- at the time of his evaluation. You will note in his evaluation that I do make reference to the enrollment issue and that it was going to be a continuing issue that needed to be further addressed. I had indicated at that time that we were dealing with an issue here that is serious, that it's not -- that it is policy violation that absolutely will not be tolerated, cannot be tolerated. It not only has implications on violation of policy, but certainly implications on the University System at large and the North Dakota University -- Dickinson State University, as well as the University System at large.

I instructed or I informed President McCallum at that point that this was serious enough where I am looking for a change in leadership. I
put it in those terms. And I gave him three --
three options. I indicated to him at that time that
we could easily take care of this with a straight
resignation and we could discuss that resignation.
The second option was that the Board, I would inform
the Board and the Board would take direct action.
Or I would take the third option, which is this
option, and that is to offer an intent to dismiss.
I indicated to him that he should give
this careful thought and that he was to get back to
me the next day, August 4th. He failed to do that.
These were instructions that I provided to him. He
failed to do that. Therefore, the reference of
insubordination. That is referenced in the intent
letter and I was unable to make contact with him
thereafter. He failed to make contact with me, I
should say, thereafter and that is the reference
made here regarding insubordination. In all my time
in public service, I have never, ever had a case of
insubordination.

Q. What's so significant about President
McCallum kind of going missing in action after your
meeting on August 3rd?
A. To this day I don't -- I cannot -- I don't
understand what took place. I have no knowledge or
understanding what his motive was, what his
reasoning was and it -- I gave -- I felt I gave him
ample opportunity that next day before I needed to
make another decision. I fail to understand what
his motivation was.
Q. What about the state of the university, did you have any concerns with respect to the inability to get ahold of a president?

A. Very much so, Judge. My responsibility as Chancellor was to make sure that there was -- that operations at the university continued, that there was leadership, that there was someone there to make the necessary decisions that needed to be made. I had concerns of staff, personnel. I had concerns about security, as you would have. As Chancellor, it was my responsibility to be very cognizant of ramifications of the situation, not only for the institution itself and the community, but also the concerns I had for staff on campus. And I was -- that was a day I don't want to go through again.

Q. What were the concerns you had for the staff on campus?

A. I received information from campus they were concerned about retaliation. I think you will note that there was concern of individuals who had been very much involved in what I would consider a lot of pressure. Coercion may not be exactly the right reference, but I'll put it in that context, and rightfully so. The information I had was such that I did not in any way want to take risk that would jeopardize these individuals until we had proof and understanding of the circumstances in total relative to the campus and their welfare.

Q. And when you say "pressure," what do you mean?
A. The pressures that were brought to mind in terms of the audit report and circumstances that individuals had communicated with me directly relative to the pressures that they were put under by the President where -- I was very much aware of those and caused me concern as to, you know, what next could happen and I just simply did not want to take that risk.

Q. The second page of the notice of intent at Bates No. 53 identifies policy violations. Those are the policy violations that you believe President McCallum -- policies you believe President McCallum violated?

A. Yes.

Q. And you believe those actions constitute grounds for dismissal for cause?

A. That is correct, yes.

Q. Having you turn to Exhibit 18, Exhibit 18 is an amended notice of intent?

A. That is correct, yes.

Q. Explain to Judge Fetch the procedures between your authority to issue the notice of intent and then the State Board of Higher Ed's issuing of the amended notice.

A. Judge, the intent that I presented of dismissal was one that the Chancellor has the authority to take such action on an interim basis until such time as the Board acts. My communication
with the President, as well as legal counsel was one that, again, I had the authority to move forward expeditiously on the dismissal and the Board then followed up with action relative to their action and this is a bit more detailed in detail of which, then, the president of the Board communicated to Mr. Thomas the amended notice.

Q. When you issued the notice of intent, did you consult with members of the State Board of Higher Ed?

A. Yes, I did.

Q. Who did you consult with?

A. I was in consultation on this issue with the president of the Board as well as the vice-president of the Board.

Q. And when you issued the notice of intent, was that something that you did on your own?

A. In -- the action that I took was in consultation with the president of the Board and vice-president of the Board.

Q. Now, in issuing the notice of intent -- or let's walk through some of the exhibits. You've been questioned -- turn to Exhibit 47. Actually, 48 we'll start with. Is 48 the annual assessment of Dr. McCallum's performance goals for the year July 1, 2010 through June 30, 2011?

A. Yes, it is.

Q. And is that what you had referred to earlier where you indicated you had discussed the enrollment issue with you with him?
Q. And when you discussed the enrollment issue, what was it that you discussed with President McCallum?

A. The discussion of enrollment encompassed a number of associated issues. It is not only the discussion that we had relative to the pending issue that was on the table and the continued work that would be undertaken relative to the -- the report, enrollment numbers, so I drew attention to that in the enrollment report or in the evaluation. I have to also say that I had very frank discussions with President McCallum relative to the -- the issues of international students, the large number of international students. I did hasten to add, I recall vividly, that it was not my purpose in that discussion to in any way jeopardize the importance of diversity on a campus. However, I felt that the large numbers of international students on campus and the efforts that were being made were posing other issues on campus particularly in the area of housing.

Dr. McCallum had -- I had discussions with him about this the previous evaluation as well. My concern was that it was brought to my attention we had triple bunking in dorm rooms. He led me down the path that this was not a big issue, in fact, it was very well-accepted by students. And my information thereafter up through this evaluation was one that's changed substantially. I had
parents, parents talk to me about this issue. And so enrollment discussion was one of, yes, reporting, but also it encompassed other areas; namely, the international students, and -- I'll put it in the category of services being provided.

I have been a staunch advocate the duration of my Chancellorship to talk about on a continuous basis student success, student success. The manner in which in this case the enrollment issue was discussed was that I felt the quality of education was being put aside in favor of simply enrollment numbers.

Q. And had you that discussion with President McCallum?
A. Yes, I did.
Q. And that would have been at the time of the annual assessment?
A. That is correct.
Q. Did you have that discussion with him in prior times?
A. I did. Well, the previous evaluation it was a bit different tone, the fact that I was beginning to become concerned about this, and he assured me that things were fine on campus and it was not a concern. We talked about -- also, this evaluation I talked to him about --
Q. When you say "this," you're referring to the July 1, 2010 through June 30, 2011?
A. That is correct.

MS. DONARSKI: We offer Exhibit 48.
President McCallum was my concern about the climate on campus, the working environment on campus and the information that I was receiving relative to his leadership and his relationship to employees. I used the word “harassment.” I used the word “bullying” in my discussions with him. That I was at a point where I was getting very, very concerned about the information that was coming back to me. We had discussions of that. I received little response from President McCallum at that time in this regard. However, he did indicate that he felt it was not a -- not a problem. I took exception to that. I felt that there were issues there that needed to be addressed.

Therefore, a recommendation I made to him in this evaluation was I felt strongly that he should associate himself with another president in the system and undertake some mentoring, that I felt a mentoring relationship with another president might be beneficial to him as a President in dealing with some of these issues that were very apparent on campus.

Q. In knowing those issues, why, then, did
24 you approve a raise for President McCallum?
25 A. These issues, I felt at this time, at the
evaluation time -- and I want to make sure that we
understand the dates here. This evaluation was
written June 7th. The Board needed to approve
contracts by June 16th. My position -- and it was a
difficult one. I was very -- I had some degree of
uncertainty as to the direction I should take. And
I think Dr. McCallum -- well, I know President
McCallum at that time sensed my frustration and also
my position on salary, as well as what I felt was a
consideration as to the assistance that he needed
conducting himself as president. He received
ultimately the lowest pay increase of all presidents
in the system. He also was the lowest in terms of a
category that is defined relative to rating where
his presidency, his leadership was expressed in so
many words, needed additional attention and the
factors of attention were drawn out in the
evaluation.

I gave President McCallum at that time the
benefit relative to my decision. I felt that until
such time that there is more substantive information
relative to the enrollment issue and more
substantive information than I could really get my
arms around in terms of the environment on the
campus, I would give the benefit. I also reached
the conclusion that if, in fact, there is, as a result of the audit report in the weeks ahead and the months ahead, pointing to a serious problem, a violation of policy and that, in fact, there was proof of violation of that policy, that I could, then, come forward with an intent to dismiss or ask for resignation. My approach to this was one of being cautious, yet fair until I had enough substantive information to reach a decision. And that was the reason why in this case there was some recognition for a pay increase and another one-year extension. It's highly unusual for a president to get only a one-year extension to a contract. In fact, as long as I've been Chancellor, that's not been the case. But in his case that is what took place. Two percent increase in salary, which is an indication, a very, very vivid indication that I had already some deep concerns relative to his performance.

Q. So having deep concerns relative to President McCallum's performance at that time, why extend his contract by one year?

A. Because what -- Judge, the issue here was not extending the contract for one year would have meant that the signal would have been that he would have had to seek other employment. And, again, at that point I was hesitant to take that position until, again, I had more information.

Q. At the time of the June 7, 2011, annual assessment, you had the risk assessment report?
A. June 7th the risk assessment report, yes.

Excuse me. I had a draft of it.

Q. Okay.

A. I'm sorry. I'm sorry. I'm getting my reports -- I'm sorry, Judge. The risk assessment report was not available until July 15th as a draft.

Q. When did you receive a first draft of the risk assessment report, that was July 15th?

A. Yes.

Q. Okay. So that was after this performance evaluation?

A. I'd have to go back to the date on the risk assessment, Judge, because I want to make certain I have my dates straight here.

JUDGE FETCH: Do you want to look at Exhibit 46?

THE WITNESS: Yes. Yes. The risk assessment here in this case is dated May 16th.

Q. (MS. DONARSKI CONTINUING) So you had the risk assessment report at the time that you did

President McCallum's evaluation?

A. Yes.

Q. And you had the campus quality survey at the time you did President McCallum's evaluation?

A. Yes, I did.

Q. And you had a draft of the internal review done by Bill Eggert?

A. A draft.

Q. Okay. Why -- why wait? Why not act then?

A. As is known in my office, I had a draft,
but I had a number of meetings with Vice Chancellor Hillman, as well as Mr. Bill Eggert, that I insisted and I asked the question over and over again about the report, the certainty of the outcomes, and I was bearing an awful lot of the decision that I felt ultimately may have to be made, making certain that I was getting good information, making certain that they were comfortable with the information that was in the report and again, therefore, being cautious about not taking steps that would be premature in the ultimate decision that I did make.

Q. In discussing the enrollment issue and the campus culture issue with President McCallum, did he recognize those issues as concerns?

A. It was very evident, Judge, that the enrollment issue was very much minimized. It was referenced that this has been taken care of. The enrollment numbers are a matter of -- a matter of -- a matter of hours that this could be corrected and it was very much minimized. That information changed dramatically for me once I became much more familiar with the issue and the indications that were brought forward to me by staff that it was more than just a trivial happening that didn't amount to anything.

The second part of your question was, I think, relative to the overall climate on the campus?

Q. Correct.

A. We had discussions of that, Judge, and the
reference was made to me that these were simply individuals who were troublemakers on campus and he said, in fact, you know some of these people and how they operate, and so it was cast as if these individuals were contributing to a situation with the President that were nothing more than not cooperating and subscribing to an overall campus environment that should have had a much broader -- as I reflect now, a much broader initiative effort other than putting all their eggs in one basket and

that's being obsessed with enrollment numbers.

Q. Did you ever direct or require President McCallum to increase enrollment numbers at DSU?

A. Absolutely not. I can expand on that, if you wish.

Q. Why do you think it was such an issue for President McCallum?

A. I fail, Judge, to understand why the obsession. It appeared to me as if, now, after having gone through the recent months, that there wasn't anything else important on that campus other than enrollment numbers and the Teddy Roosevelt Center. And it puzzles me that we can have someone who leads an institution and conduct business as was conducted with such a focus. It is very clear, Judge, that when I look at the strategic plan that the institution -- that the system put together, the emphasis of that strategic plan has been on retention, affordability. It has been on quality of education and not on enrollment. The matter of
enrollment is expressed in such a way that you do --
we need to refocus our attention on retention. We
need to focus on our application of student
services. We need to cast our focus on quality of
education when, in fact, the objectives of the

enrollment obsession, was one that, in my mind,
caused deterioration in the quality of learning in
the classroom. Students who could not speak English
had difficulty in the classroom that pose challenges
for faculty. Again, I hasten to add diversity is
critically important, but if you do not have the
support services and you're only bringing people in
for the sake of head count, that poses a serious,
serious problem.

Q. Did you give President McCallum the
opportunity to respond to these issues and to
correct these issues?
A. Judge, I did. And his assurance to me was
that they had -- and I can't exactly remember the
references, but he had a committee or council
working on this issue. The same thing with housing,
there was -- after our discussions, he assured me
that -- excuse me -- the housing issue was being
looked at. I didn't know to what detail. But the
discussions and his response were very, very
limited. It was a matter of acknowledging what I
did bring forward and a very brief response in terms
of how he was going to deal with it.

Q. Do you have any reason to doubt that the
investigation conducted by Bill Eggert was not
fairly or objectively prepared and investigated?
A. Quite to the contrary. I am fully confident in the investigation. It is -- parts of it will continue, at least on related issues. I have asked them to continue those efforts, not only at Dickinson State University, but other campuses as well. And my confidence level after having spent numerous times being briefed on this and gaining assurance from my staff and the credibility of the reports, led me to a high level of confidence.
Q. Was President McCallum given equal treatment as to how you would treat other presidents in this type of situation?
A. Judge -- would you just maybe point me a little bit better?
Q. Let me rephrase. Was President McCallum treated differently, meaning was he treated more harshly or severely because of a policy violation than perhaps what might have been done to other presidents in the University System?
A. Judge, I can -- I can relate to additional experiences in terms of presidents in the system. We had the President at North Dakota State University of which I dealt with as an issue. There was no different treatment that I was proposing for

Dr. McCallum than I would have -- than I did relative to that president, as well as the President at Williston State College.
Q. And why -- sorry. Go ahead.
A. The openness that I had in regard to next steps for President McCallum were very much in line with the same approach that I have used with the previous two presidents that also had issue.
Q. What do you mean by "openness"?
A. The three options that were given to President McCallum. The first one was resignation and, certainly, there weren't any parameters at that point arrived at relative to his being willing to offer up a resignation in terms of some consideration.
Q. Explain to Judge Fetch why the notice to dismiss was appropriate related to the conduct of President McCallum.
MR. THOMAS: Your Honor, I think this has been asked and answered.
JUDGE FETCH: I believe so, too. It's getting late and we're getting repetitive now. I said we would go to seven, counsel, and I'm going to hold to that.
MR. THOMAS: I've got at least a half-hour of cross-examination, Judge.
MS. DONARSKI: I've got some exhibits I need to get in. We'll go through and do that and then I think we've got the testimony covered.
Q. (MS. DONARSKI CONTINUING) I'd like to draw your attention to Exhibit 43.
JUDGE FETCH: Okay. That's been admitted by stipulation.
MS. DONARSKI: I understand. I'm going to just ask him one quick question.

Q. (MS. DONARSKI CONTINUING) You referenced the code of conduct. Is that the code of conduct that President McCallum has signed and agreed to?

A. Judge, that is correct.

Q. And that's also the code of conduct that's in the university policy?

A. The code of conduct of the North Dakota University System would be different than the code of conduct adopted by Dickinson State University.

Q. Okay. The performance review that you provided to President McCallum the year prior is marked as Exhibit 47.

MS. DONARSKI: We'd like to offer that exhibit at this time.

JUDGE FETCH: Is there any objection,

Mr. Thomas?

MR. THOMAS: No, Your Honor.

JUDGE FETCH: Exhibit 47 is admitted.

Q. (MS. DONARSKI CONTINUING) Turn now to Exhibit 50. Is that an email that you had sent to President McCallum?

A. Judge, I'm not sure if this would be email or a letter. Are we looking at the evaluation of 2010?

Q. No. Continue on. We're at Exhibit 50. I jumped ahead.

A. I'm sorry. I'm sorry. I'm sorry. The question being?
Q. Is that an email that you sent to President McCallum commending him on his outstanding article?
A. Yes.

MS. DONARSKI: We offer Exhibit 50.
MR. THOMAS: No objection.

JUDGE FETCH: All right. Exhibit 50 is admitted.

Q. (MS. DONARSKI CONTINUING) Turn to Exhibit 52. Identify for the Hearing Officer what that document is.
A. This is a letter I received, dated March 3rd, and it was a letter that was anonymous. I have no reference as to who this was penned by and it was also sent to Mr. Backes, who then was president of the Board, Mr. Shaft, who was the vice-president of the Board, and John Girad, who is the faculty representative on the State Board of Higher Education.

Q. Does the information contained in this letter, is that consistent with what you were hearing from the Faculty Senate and the representatives?
A. Yes.

MS. DONARSKI: We offer Exhibit 52.
MR. THOMAS: No objection.

JUDGE FETCH: Exhibit 52 is admitted.

Q. (MS. DONARSKI CONTINUING) Turn to Exhibit 53. Is 53 an email that you had received from the Director of Bands at Dickinson State
University?

A. Yes, it is.

Q. And is that email one where it identifies the overall -- the -- you can say what it identifies.

A. It identifies for me, number one, a frustration level of an individual who is -- I would

surmise as being professional, has the utmost support for the University and expresses concerns relative to expectations of the President and the inability by this individual to cast a program initiative without appropriate resources and the failure of expectation of a President without the necessary support, both moral, as well as financial to make an objective of the President take place or be successful.

MS. DONARSKI: We offer Exhibit 53.

MR. THOMAS: No objection.

JUDGE FETCH: Exhibit 53 is admitted.

MS. DONARSKI: I have no further questions.

JUDGE FETCH: Okay. How long is your examination of Mr. Staudinger expected to take?

MS. DONARSKI: I would say about 20 minutes.

JUDGE FETCH: We aren't going to get to him today, so I think we'll go and release him and let my administrative assistant also go. We'll take just five minutes.

(Recessed from 6:27 p.m., to 6:34 p.m.,
the same day.)

JUDGE FETCH: All right. We're back on the record. Mr. Thomas.

MR. THOMAS: Thank you, Your Honor.

JUDGE FETCH: You may cross.

MR. THOMAS: Thank you.

CROSS-EXAMINATION

BY MR. THOMAS:

Q. Chancellor Goetz, I was going to say good afternoon. I guess good evening is more appropriate. I'm going to do my best for brevity here to answer -- or ask you questions that will call for a yes or no answer where appropriate, and if you could try to provide that yes or no answer where applicable, I would appreciate that.

A. Understood.

Q. I'm going to begin with Exhibit 16 that's before you. Exhibit 16 is the original notice of intent, dated August 5, 2011, and you drafted that document; correct?

A. With the help of legal counsel, yes.

Q. All right. And with respect to the internal review report, which you reference in that document, and that internal review report is the next exhibit, Exhibit 17, it would be fair to say that Dr. McCallum was not given a chance to respond to the internal review report before he was informed...
of your decision that you wanted his resignation; true?
A. That's right.
Q. And, in fact, he received the internal review report at the very same meeting on August 2nd at which you instructed him that he would need to resign or else you would seek his termination; true?
A. Yes.
Q. And the deadline which he was given -- and I'm going to check my calendar here, but I believe that that meeting was a Wednesday, correct, with Dr. McCallum?
A. You know, the days all run together.
Q. Wednesday, August 3rd?
A. Yes.
Q. And what time of the day was that meeting, if you recall?
A. I believe it was in the p.m.
Q. And the deadline that you imposed on Dr. McCallum to submit his resignation was the following day; correct?
A. Yes.
Q. Could you turn, please, to Exhibit 46?
A. (Witness complies.)
Q. That's the Dickinson State University Risk Assessment results from Larson Allen that you testified about. Do you recall that?
A. Yes.
Q. Could you turn to page Bates 437, which is part of that exhibit? At that page you indicated a
couple areas listed in red that you felt were of particular concern and, if I remember correctly, you said you relied on these areas in your determination to seek Dr. McCallum's resignation; correct? You relied on this in part?

A. In part.

Q. And if you look at that first section on page 437 that's marked in red, it talks about, "A subset of senior leadership is providing an overall culture/environment and tone at the top that is not supported and respected by staff and faculty."

I suspect by a subset that means more than one person in senior leadership; is that your assessment as well?

A. Certainly would be, yes.

Q. And then at the far end of that column it states as an institution response, quote, The newly implemented code of conduct should address many of these issues. Do you see that?

A. Yes.

Q. Now, you talked about, still on that page, Dr. McCallum's relationship with the foundation and I believe the words that you used that I put in quotes were that that relationship was, quote, critically important; is that right?

A. That is correct.

Q. Now, I have marked, and if you could please turn to Exhibit C.

A. Excuse me.

Q. Exhibit C. This may have subsequently
been received or already received as Exhibit 48 and I think it has. So as to avoid duplication, if you could look at Exhibit 48, please.

A. Yes, sir.

Q. You discussed Dr. McCallum's -- and I should point out for the record that this is the letter dated June 7, 2011, which is essentially Dr. McCallum's annual assessment of performance goals for that year; true?

A. That is true.

Q. And you talk about in that letter at page 2, Dr. McCallum's relationship with the foundation. Do you see that towards the bottom where it says "fundraising"?

A. I see the category, yes.

Q. I'll read it to you. It says, quote, You have briefed me on numerous occasions of the strained relationship with the foundation and alumni board. I note that your situation, in some respects, is shared by presidents at other institutions, both in and out of state. I appreciate your accounting of the circumstances at Dickinson State." Did I read that correctly?

A. Yes, sir.

Q. And notwithstanding your appreciation as of June 7, 2011, Dr. McCallum's resignation was sought less than two months thereafter; true?

A. That's right.

Q. Could you next turn to Exhibit 48, please?
MR. THOMAS: I apologize. I had taken it out.

Q. (MS. ANDREWS CONTINUING) Could you look at page 3 of that document?

MR. THOMAS: Excuse me.

JUDGE FETCH: That's fine.

Q. (MR. THOMAS CONTINUING) You, at page 3, make reference to the risk assessment that was previously testified to as well. Do you remember that?

A. Yes.

Q. And at page 3 of Dr. McCallum's performance evaluation you wrote, quote, The risk assessment report will be reviewed as process calls for. We surely will have many discussions in that regard in the months ahead, as will be true of all campuses. Do you see that?

A. Yes.

Q. Now, to the extent that you were going to have discussions with other campuses, it's true to say that Dr. McCallum is the only President of any university that's currently facing termination of employment for cause; true?

A. Yes.

Q. Could you please turn to Exhibit 45, Chancellor Goetz?

A. (Witness complies.)

Q. You also testified regarding this exhibit, which is the campus quality survey, that was
21 distributed to Dickinson State University employees
22 and staff; is that correct?
23 A. Yes.
24 Q. Are you familiar with how this survey was
25 distributed? Was it provided to every staff and

faculty member?
A. Judge, the process in which the
distribution takes place, I cannot answer.
Q. Okay. And I looked through the survey and
I didn't see the method of distribution and I am
told by Dr. McCallum that the stacks of forms are
left out in public areas at Dickinson State and
whomever would like to fill them out, can fill them
out. Do you have any reason to disagree with that?
A. Based on what I know how the process
works, I cannot comment on that.
Q. Okay. But they are anonymous; you do know
that; correct?
A. Yes, sir.
Q. All right. And we've discussed that
throughout this testimony for which you've been
present that obviously there were a number of
employees at Dickinson State University that were
not supporters of Dr. McCallum and didn't support
his presidency; would you agree with that?
A. Yes.
Q. To the extent that these were stacks of
surveys and they were anonymous surveys and perhaps
I'm paranoid, but it wouldn't preclude anyone from
submitting more than one survey, as far as you know?
A. Judge, I can't respond to that because I would not have a good basis to answer.

Q. I appreciate that. Could you turn to page 345 of that survey, please, which is part of 45?

A. I'm sorry, 345?

Q. Yes, please. And you've highlighted or somebody has highlighted some portions of this document, and would you agree that the majority or 70 percent of the respondents to this survey indicate that they are either, quote, satisfied or very satisfied with their employment at Dickinson State University; is that correct?

A. Yes. Mr. Thomas, if I could, could I comment further on that?

Q. Perhaps Ms. Donarski will ask you some questions on redirect, but I appreciate that you've answered my question.

A. Yes.

Q. Now, you testified and I've written in my notes here that your decision to terminate or seek termination of Dr. McCallum was based in large part on the reliance that you placed on your senior staff, the trust that you have in their judgment as well; is that true?

A. My capacity as Chancellor, as you know, in any kind of complex business or operation and certainly the University System, as a leader, as manager, rely greatly on good staff.
Q. And as does Dr. McCallum, I presume, as President of the University?
A. I would hope so.
Q. Right. And that reliance, you would agree, would extend to such issues as accuracy of enrollment information; true?
A. It -- it certainly should.
Q. Okay. Thank you. Now, Chancellor Goetz, you testified that Dr. McCallum -- and I don't know if this was your word or Ms. Donarski's, was AWOL on that Thursday and Friday following your Wednesday afternoon meeting with him. Do you recall that testimony?
A. Yes, I do.
Q. And I believe you testified that efforts were made to contact his staff or his administrative staff to locate him and that was unsuccessful?
A. Yes.
Q. Did any of those staff members whom you contacted confirm to you that Dr. McCallum had called in and had taken vacation time for Thursday and Friday?
A. I was not aware of that.
Q. Even to this point you haven't been aware of that?
A. No.
Q. And he's, I presume, entitled to take vacation time or personal time as President?
A. Absolutely, but --
Q. And your concern is that the efficiency
and the safety of the university would not be
impeded during times when the President is taking
vacation time or personal time, true, in general?
A. In general, but not in this case.
Q. Okay. Your testimony at the beginning of
your testimony was that you've been Chancellor for
four years; is that correct?
A. Just over four years, yes.
Q. And is there an end to that term, or is it
indefinite?
A. I have served notice to the Board that I
will be retiring at the end of August of 2012.
Q. And you talked about your association with
Dickinson State University. Are you a Dickinson
resident originally?
A. No, I'm not. I'm a resident of North
Dakota, grew up in Hazen.

Q. Okay. Any plans to return to Dickinson
following your resignation?
A. No.
Q. Now, is it fair to say, Chancellor Goetz,
that until the spring of 2011 you had been generally
complimentary of Dr. McCallum's performance as
President?
A. What date, sir, did you use?
Q. Until the spring of 2011.
A. Yes. Generally speaking, yes.
Q. Could you refer, Chancellor Goetz, to
Exhibit D, please, and if this has been received as
a numerical exhibit, I'll refer to that one, but I
I don't think it has.

Q. (MR. THOMAS CONTINUING) Chancellor Goetz, do you recognize Exhibit D?

A. I need to take a look at this, to be honest with you, to bring back recall.

Q. And while you are reviewing that, I'll just indicate for the record that this is an email that you sent addressed to President McCallum and that attached is a newspaper article from the Dickinson Press, dated September 19, 2010. Do you see that?

A. Okay. Now it comes together. I didn't realize there was an attachment here, sir.

Q. Is that a copy of the email that you sent to President McCallum?

A. You know, I would have to say yes, because my name is associated with it. I actually do not recall sending it, but there are a lot of things that take place where you begin to lose track.

Q. I understand. Lots of documents.

MR. THOMAS: We would offer Exhibit D, Your Honor.

MS. DONARSKI: No objection.

JUDGE FETCH: Thank you. Exhibit D is admitted.

Q. (MR. THOMAS CONTINUING) The reference in this exhibit was to the BAC, and the BAC, Chancellor Goetz, stands for what?

A. Badlands Activity Center.
Q. That was -- that's a stadium; correct?
A. Correct.
Q. And it was constructed and completed under President McCallum's direction; true?
A. That is correct.
Q. Multimillion-dollar project?
A. If I recall, $16 million.

Q. And completed on time and under budget, as I understand; correct?
A. On time and, yes, under budget is correct.
Q. Now, had you a meeting with President McCallum on May 26 of 2011. Do you remember that meeting?
A. I would have to -- to be honest, I would have to know what the agenda was or what the purpose of the meeting was.
Q. Sure. Could you turn, Chancellor Goetz, to Exhibit 30, please?
A. (Witness complies.)
Q. This has already been received into evidence. Do you recognize the letter?
A. Yes.
Q. And was this delivered to President McCallum on May 26th?
A. It's dated May 26th.
Q. All right. Did you have a meeting with Dr. McCallum at which time you presented him with this letter?
A. Yes.
Q. All right. And in that letter you ask him
or direct him to submit responses to 12 different questions; is that correct?

A. That is correct.
Q. Do you happen to recall, if we assume that the meeting took place as indicated on May 26, 2011, whether that was during the morning or the afternoon?
A. You know, I can't answer that.
Q. If --
A. I can't answer -- I'd have to check my calendar.
Q. I understand. And if I tell you that May 26th was a Thursday, the Thursday before Memorial Day, would you accept that?
A. If that's the case, yes.
Q. So May 26th was a Thursday and you met with Dr. McCallum and instructed him to provide responses to 12 different issues and you write, quote, I ask that you provide me a written response to the questions below by Monday, May 30th. And, for the record, Monday, May 30th, was Memorial Day.
So would you agree that that's the time frame that you imposed on Dr. McCallum?
A. That is correct.
Q. And in response to your letter, Dr. McCallum submitted documents that are attached as pages 149 through 201, more than a 50-page
A. That is what we have before us, correct.

Q. Did you realize at the time you imposed the deadline that you were requiring Dr. McCallum to respond to these items and have them delivered to you by Memorial Day, on a holiday?

A. Sir, Judge, I didn't even realize or think about Memorial Day as being any -- I wasn't -- not part of my thought process. Certainly was not consequential on any motivation or motive that I may have had.

Q. In any event, Dr. McCallum did work on the project over Memorial Day, that weekend, and hand-delivered it to your office --

A. Yes.

Q. -- as directed; correct?

A. Yes.

Q. Do you recall the tone or substance of that meeting with Dr. McCallum on May 26?

A. This was the date that was scheduled to discuss his performance evaluation. I felt that it was essential, based upon outstanding issues and questions, that I have him prepare for the record a written response to each of the questions as cited.

Q. Did you tell Dr. McCallum during that meeting that it was your intention to recommend that the State Board of Higher Education not renew his contract for another year?

A. That it was my intent?

Q. Yes.
A. It was certainly -- when we looked at the issues, I said that were certainly pending issues here that could result potentially in that occurrence, but, again, I would be looking at the facts and the substantive evidence as it relates to these questions before any final consideration would be made.

Q. Did you tell Dr. McCallum during that meeting that he had the, quote, poorest relationship with a community of any president in the history of Dickinson State University?

A. I did not.

Q. Did you say anything similar to that to Dr. McCallum?

A. I may have made reference to the definition of "community," because I may have used it, would have been used inclusive of Dickinson State University itself as a community, and I certainly would have known better relative to the community of Dickinson.

Q. Okay. And so with regard to the community of Dickinson, whether it be the University or the community as a whole, what did you tell Dr. McCallum? What was your assessment as to his relationship with that community relative to prior presidents at Dickinson State University?

A. I indicated to him that we have to acknowledge that there are issues on campus relative to his leadership. That I have had communication of his style of leadership, his relationship not only
to his administrative staff, but also to faculty and
staff within the system.

Q. And in response, following that meeting
with Dr. McCallum, you received two letters of
support on his behalf and those are marked as
Exhibits S and T. Could you take a look at those,
please?

A. Yes. Yes. Mm-hmm.

Q. And you received both of these letters?

A. Yes.

MR. THOMAS: Your Honor, we offer Exhibits
S and T at this time.

JUDGE FETCH: Still getting to them
counsel.

MS. DONARSKI: No objection.

JUDGE FETCH: All right. Thank you. I'm
there. All right. Exhibits S and T are admitted.

Q. (MR. THOMAS CONTINUING) The response
that's contained within Exhibit 30, the response
that Dr. McCallum prepared, dated May 30, 2011, was
that lengthy response given to Mr. Eggert for
inclusion in his internal review?

A. I do not recall.

Q. Okay. You would agree, wouldn't you,
Chancellor Goetz, that the lengthy response that
Dr. McCallum submitted addressed many of the issues
that are ultimately referred to in the internal
review; correct?

A. That certainly would be the case.

Q. And yet as we sit here today, you can't
recall whether you provided this document to
Mr. Eggert for inclusion or reference?
   A. In all honesty, I do not recall.
   Q. Would you agree that having this
information at his disposal as he prepared his
internal review would have been a helpful thing for
him?
   A. Any kind of information in terms of a
report that's generated, certainly is of value for
consideration.

Q. Thank you. Could you turn, please to,
   Exhibit B.
   MR. THOMAS: And I think that's already
been received into evidence?
   JUDGE FETCH: Yes, it has.
   THE WITNESS: Exhibit B.
   Q. (MR. THOMAS CONTINUING) B as in boy, yes.
   And for your information, Chancellor Goetz,
   Exhibit B is the June 21 draft of the internal
review report.
   A. Yes.
   Q. You received this draft -- according to
the cover letter from Mr. Eggert, it was distributed
to you and to Michel Hillman on June 21, 2011. Does
that seem accurate to you?
   A. So indicated, I would assume so, yes.
   Q. And Mr. Eggert indicated that you two were
the only ones to whom he provided this draft;
correct?
   A. Dr. Hillman and myself, yes. That's as
Q. And I reported or suggested to Mr. Eggert that there was an article in The Dickinson Press within a day of this initial June 21 report that discussed many of the matters contained within this draft internal review report. When you received this document, Chancellor Goetz, what did you do with it?

A. I stuck it in my desk drawer and locked it.

Q. And distributed it to no one; correct?

A. That is correct.

Q. Could you refer, please, to -- and it's bad enough that we're using letters, but this is a double letter, Exhibit GG, please. Do you recognize this email?

A. (Witness reviews document.) This would have been sent, yes, I would imagine by direction from me by my assistant.

Q. And what this is, is an email enclosing or attaching in email form the notice of intent to dismiss Dr. McCallum dated August 5, 2011; correct?

A. That is correct.

MR. THOMAS: Your Honor, we would offer Exhibit GG at this time.

MS. DONARSKI: No objection.

JUDGE FETCH: All right. Thank you. Tabs would have been helpful.

MR. THOMAS: I'll remember that, Judge.

Thank you.
JUDGE FETCH: All right. Exhibit GG is admitted.

Q. (MR. THOMAS CONTINUING) Chancellor Goetz, you would agree that, according to the information contained at the top of this email, the notice of intent to terminate was sent to NDBHE@LISTSERV.NODAK.EDU. What does that mean?

A. North Dakota Board of Higher Education, which is the list of the Board members.

Q. Okay. So that's where the Board got it from. And then if you look below that, it was sent at 4:17 p.m. to dsufaculty@listserv.nodak.edu and to dsustaff@listserve.nodak.edu. Who would get it based on that address?

A. Well, I would have to -- I'd have to know what's inclusive of the list serve of both those areas.

Q. Would it be your best assessment, Chancellor Goetz, that DSU faculty and DSU staff means that this document would have been sent to all DSU faculty and all DSU staff?

A. I could not make that assumption, because this individual who did send this would be President McCallum's administrative assistant.

Q. And yet it says -- it's addressed, you would agree, Dickinson State University personnel, which seems rather inclusive; correct?

A. That's the reference she used. Apparently
Q. And it further states, quote, The attached message is sent at the request of Chancellor William Goetz, close quote?

A. The message -- I'm not sure, Judge, that this is the message. I would have to reconcile my thoughts on this. I do recall a message being sent to Kari Hanstad that I asked be disseminated to the University faculty and staff relative to the assurance to them that the campus was going to be well-managed. I had talked to Mr. Alvin Binstock and others that were needed to be in place for necessity for addressing reporting protocol, and so forth.

Q. So if I --

A. I can't imagine that I would have directed the notice of intent to dismiss to this individual to be disseminated across the campus. I just don't see that happening.

Q. And, yet, if I were to tell you that it was disseminated to all staff and faculty at DSU, you have no reason to refute that; true?

A. Without my knowledge, I can't -- I cannot speculate.

Q. And so your speculation would have to be that Kari Hanstad either misunderstood or intentionally disregarded your directive because she indicates that the message is being sent at the request of you? It would have to be one or the other?
A.  Sir, Judge, that's what -- this is what causes me to wonder whether or not this message being sent was the intent of dismissal or my message that I wanted disseminated across the campus relative to assurance of leadership at the campus upon dismissal.

Q.  And, yet, this is the document that was attached; true?

A.  That's what's in here, but I would really take exception to the fact that that's a valid conclusion.

Q.  Well, I would have to say for the record, Chancellor Goetz, that I received these in response to a discovery request, so these are not my documents.

A.  Yes.

Q.  In any event, the reason I ask this question is that as of 4:17, p.m. on Friday, August 5th, Dr. McCallum, himself, had not received the notice of intent to dismiss; true? That was delivered to him by a Highway Patrolman on the following Sunday evening?

A.  That's right.

Q.  So the staff and faculty was provided with Dr. McCallum's notice of intent to dismiss at least two days before he received it; true?

A.  From what I see here, that -- I cannot substantiate that, because I have no way of knowing what the address contained in terms of what was sent and the accuracy of the attachment.
Q. Do you have knowledge of the service of this document on Dr. McCallum by two highway patrol officers on that Sunday?
A. Would you repeat the question, please?
Q. Sure. Do you have knowledge of how Dr. McCallum was served with this notice of intent by two uniformed highway patrol officers that Sunday?
A. Yes, I do.
Q. Tell us what that information is.
A. Because of the inability to make contact with President McCallum, the duration of that full day, I believe it was August the 5th, and what appeared to be just a drop out of sight and numerous efforts being made by my administrative assistant to make contact so that this could get into his hands yet that day, was unsuccessful.
Q. And if I were to tell you, Doctor -- or Chancellor Goetz, that the reason that he wasn't in Dickinson was that he was in Fargo meeting with his legal counsel, me, you would have no reason to doubt that; true?
A. If that's the case, why would I?
Q. So tell us who directed the Highway Patrol officers to deliver this document to Dr. McCallum.
A. Upon numerous attempts to determine a way in which this could be appropriately put into the hands of Dr. McCallum, and I put "appropriately" in bold terms, and that is my judgment throughout the day and my asking myself what would be the best way...
to do this in light of the circumstances, I finally made the determination that I would discuss this with the Highway Patrol and ask them if they would service this document.

Q. And you had them dispatched from Bismarck to travel to Dickinson to wait for Dr. McCallum to present this document to him?

A. I did not have them dispatched. I discussed with them the most convenient way in which this could be accomplished. They assured me that, again, it would not be out of the ordinary to do such a service and it would not be an inconvenience in terms of their regular patrol procedures and schedules.

Q. Do you think that's, in hindsight, an appropriate way to deliver a message like this, is to have two uniformed officers waiting at Dr. McCallum's residence in uniform and presenting him this document as though it was -- do you see how it might make him feel like a criminal, in hindsight?

A. I -- again, this is a judgment call that one has to make relative to getting what is an important document to the hands of the individual recipient. I was at a loss as to how best to do this with a sense of immediacy.

Q. Okay.

A. And all things considered and my judgment said that this was something that was critically important that he had this information. I'm very
familiar with the kind of services that the Highway Patrol exercises. Again, I emphasized with the
Highway Patrol that in no way did I want them to go out of their way in terms of this process. It had
to be part of their routine. They assured me that that was the case. And it's news to me that it
involved two officers that their schedules involved and they did not sit in front of the house and wait.
They checked periodically, is the information I have, as to the availability and appearance of
Dr. McCallum.

Q. And your testimony is it was at your direction that that method of delivery was utilized; true?
A. That is correct.

Q. Did you, subsequent to the delivery of the notice of intent to terminate, receive letters of support from Dr. McCallum? I think your office provided those to me last week. Do you remember subsequent to August 6 receiving from supporters of Dr. McCallum letters of support?
A. We already have, I believe, looked at those.

Q. Okay. I'm not sure we have, so why don't you look at them with me, please? F, G, H and I.

JUDGE FETCH: Did you say F, G --

MR. THOMAS: F as in Frank. G as in G. H
JUDGE FETCH: It's late.
MR. THOMAS: Been a long day, Judge.
JUDGE FETCH: I understand.
Q. (MR. THOMAS CONTINUING) Chancellor Goetz, the letters that you referenced earlier that I referenced were letters that you received in June and all of these were dated in August or later. Do you see those?
A. Yes, sir.
Q. And you would agree that Exhibits F, G, H, and I are all letters of support that you received on Dr. McCallum's behalf?
A. That is correct, yes.
MR. THOMAS: Your Honor, we would offer Exhibits F, G, H, and I at the time.
MS. DONARSKI: No objection.
JUDGE FETCH: Thank you. Exhibits F, G, H and I are admitted.

Q. (MR. THOMAS CONTINUING) And, finally, Doctor -- excuse me -- Chancellor Goetz, one last exhibit that I would like you to refer to and that is Exhibit E. As you are reviewing Exhibit E, let me ask you, Dickinson State University maintains a Web site; is that correct?

A. Yes, they do.
Q. And the Web site contains various pages, among them being a listing of the former presidents at Dickinson State University; is that also true?
A. I have not seen this, but it appears that
that would be the case.

Q. Exhibit E, as you indicate, would appear to be a listing, two-page listing of the presidents, former presidents of Dickinson State University dating from 1918 through to the present; correct?

A. That's the appearance, yes.

Q. And at the top of that page it lists past presidents; true?

A. Yes.

Q. And Dr. McCallum is listed as a past president? He's on that page that's identified as past presidents?

A. That's what it appears to be, yes.

MR. THOMAS: We would offer Exhibit E, Your Honor.

MS. DONARSKI: No objection.

JUDGE FETCH: Exhibit E is admitted.

Q. (MR. THOMAS CONTINUING) Did you direct that Dr. McCallum be listed among the past presidents of Dickinson State University?

A. No.

Q. Finally, Chancellor Goetz, you attended a meeting at Dickinson State University following the delivery of the notice of intent to terminate. Do you remember meeting with faculty and staff on campus at Dickinson State University?

A. Yes, I do.

Q. And do you remember being asked by a member of the faculty or staff if the Office of Administrative Hearings finds in favor of
Dr. McCallum, will he be reinstated? Do you remember being asked that question?

A. I believe I do, yes.

Q. And was your answer, quote, absolutely not?

A. Under the -- as I recall, that would be the case, yes.

MR. THOMAS: Thank you, Chancellor Goetz. Those are all the questions I have.

THE WITNESS: Thank you.

JUDGE FETCH: Any redirect, counsel?

MS. DONARSKI: There is. Would you like me to proceed?

JUDGE FETCH: Yes.

REDIRECT EXAMINATION

BY MS. DONARSKI:

Q. If President McCallum had returned your calls, would you have needed to have the notice of dismissal delivered to him?

A. No.

Q. When you had asked President McCallum to contact you the following day, did he at any point in time indicate he was taking vacation?

A. No.

Q. When messages were left by your administrative assistant, at any point in time were you advised that he was taking vacation?

A. No.

Q. And President McCallum, himself, never
advised that?

A. No.

Q. Exhibit 45 is the campus quality survey, and you were asked a question on Bates page 345. And at 345 that was with respect to level of satisfaction with employment and you were going to expand upon your answer, but you were not given the opportunity. Would you like to expand upon your answer on the level of satisfaction of employment?

A. Certainly. Judge, I believe there's an

interpretation here in terms of satisfaction of employment. One can -- my judgment is and my conclusion here is, that one can have the enjoyment and quality of a good job and be very satisfied with, as is indicated here, their employment. There may be any number of reasons for that, but at the same time there can be an environment that exists within that entity that certainly would not be conducive to a good working environment. I believe that any number of us may have been at a job that we're very, very satisfied with the employment at that particular entity, but there may also be at the same time turmoil that is being tolerated.

MS. DONARSKI: I have no further questions.

MR. THOMAS: Nothing.

JUDGE FETCH: Any re-cross?

MR. THOMAS: No. Thank you.

JUDGE FETCH: All right. Thank you. You are excused.
THE WITNESS: Thank you.

JUDGE FETCH: All right. That brings us to the end of today. The time is about 7:17 p.m., Central Time. We will reconvene tomorrow morning, that's Friday morning, at nine o'clock, here at OAH.

(Recessed at 7:17 p.m., the same day.)
STATE OF NORTH DAKOTA
STATE BOARD OF HIGHER EDUCATION

IN THE MATTER OF:
Richard McCallum

TRANSCRIPT OF HEARING

Office of Administrative Hearings
2911 North 14th Street, Suite 303
Bismarck, North Dakota
October 21, 2011
Volume 3

Before Bonny M. Fetch
Administrative Law Judge

APPEARANCES

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FOR DICKINSON STATE UNIVERSITY.
(The following proceedings were had and made of record, Friday, October 21, 2011, commencing at 9:03 a.m.)

JUDGE FETCH: All right. We'll come to order. For the record, today is October 21st, 2011. It's about 9:03 a.m., Central Time, and we're present at the Office of Administrative Hearings in Bismarck for the continuation of the hearing requested by Dr. Richard McCallum to appeal from a notice of intent to dismiss his employment from Dickinson State University.

Do I need to state who is present? It's the same parties in appearance. And for those of you who have not been present prior to today, my name is Bonny Fetch, and I'm the Administrative Law Judge designated by the State Board of Higher Education to conduct this hearing and make recommended findings and decision for the Board in this matter.

I believe at the end of yesterday, Ms. Donarski, you indicated you had one more witness, Scott Staudinger?

MS. DONARSKI: That is correct.
JUDGE FETCH: All right. And we'll start today with Mr. Staudinger. He's been patient, waiting for the last two days. And then we will proceed with Dr. McCallum's case.

Mr. Staudinger, all witness testimony at this hearing is taken under oath and is subject to penalties for perjury. By law I'm required to inform you as to those penalties. Perjury in the State of North Dakota is a Class C Felony. It is punishable by a maximum fine of $5,000, maximum five years in prison, or both.

Please raise your right hand.

Do you solemnly swear the testimony you're about to give shall be the truth under the pains and penalties of perjury?

THE WITNESS: I do.

JUDGE FETCH: Okay. Speak up nice and loudly, please, when you give your testimony.

THE WITNESS: Okay.

JUDGE FETCH: And, Mr. Staudinger, as I indicated, I know you have been waiting for two days.

THE WITNESS: Yes, ma'am.

JUDGE FETCH: And you've been sequestered during that time?

THE WITNESS: Correct.

JUDGE FETCH: Would you, at this time,
tell me, as other fact witnesses have finished, completed their testimony and gone into the witness room where you were, did you hear fact witnesses say anything about what happened in the proceeding or what they may have been asked?

THE WITNESS: The only thing that was brought up is the fact is the cross-testimony is very difficult and challenging for them.

JUDGE FETCH: Okay. You heard fact witnesses talk about cross-examination --

THE WITNESS: Cross-examination.

JUDGE FETCH: -- was difficult?

THE WITNESS: Yes, ma'am.

JUDGE FETCH: Did you hear any specifics about questions?

THE WITNESS: No, ma'am.

JUDGE FETCH: All right. Thank you. Ms. Donarski, you may proceed.

MS. DONARSKI: Thank you.

SCOTT STAUDINGER, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. DONARSKI:

Q. Scott, would you state your title?

A. I'm the coordinator of Office of Institutional Research and Planning at Dickinson State.

Q. And as coordinator, what are your duties?

A. My overall role is to be accountable for
assessment and accountability measures for Dickinson State.

Q. How long have you held that position?
A. Twenty-three months.
Q. And what did you do prior?
A. Prior to that, I worked for TMI Systems Design Corporation as a sales and marketing manager for 18 years. I also worked for Consolidated Telecom as an account executive for three years, and I served 20 years in the National Guard and active Army military.

Q. Identify your role in the matter of Richard McCallum.
A. My role to date is to, basically, deal with the accountability measures and the assessment and to try to collect the data and report for the IPEDS, the NSSE, and all the different federal and state databases that we need to correct.

Q. Explain your role with respect to NSSE.
A. Okay. Dealing with the NSSE survey,

Dickinson State does that every year. This year will be our twelfth year participating in that survey through the University of Indiana. My role is to grab the population file after our census report is taken and submit that population file to the NSSE organization. Once that is completed, then they actually conduct a survey.

Q. You say "submit the population file." What's the population file?
A. The population file consists of all
freshmen and juniors at Dickinson State in the fall of any specific semester.
Q. And where does that data come from?
A. The data comes from the ConnectND databases.
Q. And who enters the data into the ConnectND databases?
A. Throughout each organization, individuals, you can have Enrollment Services, Office of Extended Campus, Academic Records. Typically, that information comes from different sources.
Q. It would all be individuals employed at DSU?
A. That's correct.
Q. And you were involved with the issue of NSSE contacting DSU and putting the survey on hold?
A. That is correct. On February 4th, I received a phone call from Dr. Hillman and he informed me that NSSE had contacted him stating that they had several individuals that had contacted NSSE stating that they were not students at Dickinson State. He asked me to try to resolve that issue.
At that point, I, of course, went downstairs, reported to my direct report, which was Vice-President of Academic Affairs, at the time Jon Brudvig, and I discussed the issue with him. He told me to try to resolve it as soon as possible. We left that meeting. He went into the President's office, and I went back upstairs to send out an email to try to clarify exactly what was going on.
Q. Okay. In the 12 years that DSU has done the NSSE survey, has there been issues in the past with DSU data?

MR. THOMAS: Objection. Foundation. The witness says he's only been there 23 months so he wouldn't have personal knowledge.

JUDGE FETCH: I'm going to allow him to answer. He may have knowledge from training, learning, et cetera. Go ahead.

THE WITNESS: I actually have all 11 NSSE files in my office. We have never had an issue before and this is my second -- well, 2012 will be my third NSSE. So I actually had one NSSE survey prior to this one and I did not have any issues with it.

Q. (MS. DONARSKI CONTINUING) And you said you had the prior years, all 12 years of NSSE surveys in your office?

A. That is correct.

Q. And you have not seen an issue with those? In reviewing those files, you haven't seen an issue in the past?

A. Dickinson State has never had an issue with their NSSE surveys prior to the fall of 2010.

Q. Turn to Exhibit 20. That's the email that you had sent to Mike Hillman in response to the NSSE population file concerns?

A. Correct.

Q. Okay. And you indicate in this email and it's dated February 4, "DSU staff will immediately
begin to investigate the current population file to identify all individuals that were inadvertently enrolled for credit.” Was that part of your role, to begin the investigation?

A. That is correct. This email was stated --

or generated right after I met with my direct supervisor, Vice-President of Academic Affairs, Jon Brudvig, and in response to Dr. Hillman's request.

Q. Okay. And you indicate that they were inadvertently enrolled for credit. Did you later discover that that was not to be the case?

A. That is correct. At this time we were under the presumption that it was just a couple individuals, and as the investigation took place and we started to dig deeper and deeper, we realized that the problem was very systematic and a lot larger than we expected at that time.

Q. Okay. I'd like you to turn Exhibit 57. Okay. What is Exhibit 57?

A. It's a complete list of attendees that we removed from the NSSE file. I removed those individuals on the 7th of February, which would be the Monday that we were requested by NSSE to remove or correct our population file. We were contacted on Friday, the 4th, and I was told that I had to have a corrected population file back to NSSE by no later than the close of business on the following Monday. And that was due to the fact that we have 6,400 universities all participating in NSSE surveys at that time, and if Dickinson State did not meet
that close of business deadline, we would be removed from the national survey. So it was very important that we could continue to participate because we had ten years of benchmarking up to that point.

Q. When the survey was put on hold, how does that impact the NSSE survey of the other universities?
A. It puts the whole cohort on hold because, at that point, Dickinson State is part of the national cohort and if we were removed from it, then we would actually change that cohort. Other universities use Dickinson State as a comparable benchmark.

Q. Okay. And so the list attached as Exhibit 57 represents the individuals that were removed for the NSSE report?
A. That is correct. And this list was generated by my inquiries and emails to Office of Extended Campus, to Enrollment Services and to the Academic Records Department. This was our best guess at the time of the different courses that we felt were -- did not meet academic rigor.

MS. DONARSKI: We offer Exhibit 57.
MR. THOMAS: No objection.
JUDGE FETCH: Exhibit 57 is admitted. And just for the record, the redaction, is that personal information?
THE WITNESS: That is correct.
JUDGE FETCH: Thank you.

Q. (MS. DONARSKI CONTINUING) I'd like you to turn to Exhibit 82. What is Exhibit 82?

A. Exhibit 82 is my NSSE survey timeline dealing with the change of events that took place prior and after the NSSE call from Dr. Hillman.

Q. That identifies the steps you took when you -- actually, it identifies prior to when you received the call; correct?

A. That is correct.

Q. Okay. Until March 14th?

A. That is correct. The overall process of the NSSE survey through that time and after.

Q. And can you briefly describe the overall process to Judge Fetch?

A. Sure. Basically, the NSSE survey starts in August. We have to sign up for it. We have to pay for it. We get billed for it according to the amount of students that we typically put in. The consortium registration is open. It’s closed. They wait until after our fall census report is taken. At that point that’s when we pull our population

file. Again, it only deals with freshmen and juniors. Once we submit that population file, because there is 6,400 institutions, it takes a while for NSSE to go through this. And that’s why if you’re wondering, we submitted already in the fall and yet they didn’t call us until February, that’s how long it takes to go through 6,400 different institutions.
At that point I will submit different invitational documents, that when they email to each one of the different students, they understand it is coming from Dickinson State, that we know about the survey, but most of the responses have to go back to the University of Indiana.

MS. DONARSKI: We offer Exhibit 82.
MR. THOMAS: No objection.
JUDGE FETCH: Thank you. Exhibit 82 is admitted.

Q. (MS. DONARSKI CONTINUING) I'd like you to turn back to Exhibit 34. Exhibit 34 is the memo you prepared to Dr. Hillman identifying the academic courses?
A. Correct.
Q. Okay. Explain to Judge Fetch the distinction with respect to the five courses that are identified there in yellow.
A. Distinction?
Q. Are each of these courses identical or are there differing factors with respect to each of the courses?
A. Oh, no. That was the kind of interesting fact. All five of these courses have different sets of situations that took place. As an example, some of the courses deal with high school students. Some of the courses deal with individuals that were photocopying. Some of the individuals were staff members. Some of the individuals in the courses came from Hawks Point. So each course has a totally
different demography, ethnicity and internal composition. So it became very challenging trying to identify these courses as we proceeded with our investigation.

Q. So not only did you identify a list of the attendees at the symposium, the three different symposiums; correct?
A. Correct.

Q. But, in addition, you had the five different courses that were identified as well?
A. Correct. And these five courses were not the original five courses that were removed from the original NSSE. So as the NSSE was completed, then we started the investigation with the internal auditor, and as that process went, we started to use or I started to use different benchmarks and cross-examinations to try to figure out exactly which students and which courses were not meeting our academic rigor. And in going through that, these were the five courses that ended up. We started with 1,008 courses for the fall of 2010 and we eliminated it down to these five.

Q. At what point in time did you understand the seriousness of the issue?
A. When I received the phone call from Dr. Hillman on February 4th, I had a sinking feeling in my stomach, due to the fact in my prior professional business experience, I worked for TMI System Design Corporation, and one of our board members at the time happened to be Dr. Kindle Baker
from the University of North Dakota and he had resigned due to enrollment concerns at his university and I was part of that experience. So as soon you start hearing you have concerns with enrollment at Dickinson State dealing with the population file, it was -- it was very unsettling.

Q. So let's now walk through the NSSE survey.

You provided your timeline of the steps that were taken and then NSSE was no longer on hold and NSSE was allowed to survey the population files that DSU sent to them?

A. Correct.

Q. Okay. And, again, that data is all originally entered by administration in ConnectND?

A. That is correct.

Q. Explain the reporting to IPEDS.

A. In reporting to IPEDS, IPEDS actually has three different, we call them census times, in the fall, winter and the spring. Each one of those different census times they receive different information from the individual institutions that report to them. IPEDS, of course, is a federal database and is required by federal law for us to actually submit that information as accurate as possible. What goes on with the IPEDS, of course, is it deals with enrollment numbers. It deals with demography, ethnicity, FTE, which deals with your full-time credits. It deals with financial aid. It deals with housing. Basically, completely covers the gamut of all information of an individual
Q. How does DSU's data or that criteria get to IPEDS, get reported to IPEDS?

A. I'm the actual individual key holder for Dickinson State. Underneath me I have sub-holders that I actually give them the passwords. Those sub-holders, of course, would be Marshall Melbye from Academic Records. He's the Registrar. The other one is Mark Lowell from the Business Office. He's the controller. The third one is Gail Ebeltoft. She's the Human Resources Coordinator. And the fourth one is Sandy Klein, and she's the Director of Financial Aid. Those are the four big pieces of the pie to put the information into IPEDS. At that point, once they put it in --

Q. Slow down. Put the information into IPEDS, explain that process.

A. Each individual sub-holder puts in their specific area of expertise. So if it's the financial aid portion of it, Sandy Klein will pull her financial aid reports from ConnectND and then put that information into that specific part of that census.

So as an example, the fall census, there might be four or five smaller surveys that deal with enrollment, financial aid, housing, so those specific individual sub-holders will input their
information into that survey.

Q. So they will take the information from Connect ND?
A. That is correct.
Q. And they, then, enter that information into an IPEDS --
A. Database.
Q. -- form?
A. Nope. Nope. It's an actual live database that I give them the passwords for. So when we're inputting that information, it's going all the way to wherever the national database is stored at. I believe ours is in Colorado.
Q. So if the information is incorrectly entered into Connect ND, how does that impact the data going into IPEDS?
A. It would be bad going in, bad coming out, so we would be in noncompliance at that point.
Q. Okay. What is your role with respect to the IPEDS report?
A. I am the checks and balances after that point. What I typically do as Dickinson State's key holder is, I'll go back and try to spot-check it, a second entity to make sure that the information was input correctly. And, of course, I'm not an expert in every one of those areas, so you try to do your best to just summarize and put a lot of faith in the ones that go before you. So once I lock it, then it's passed off to the State. The State --
Q. Okay. Now, stop for a minute. When you
say you check it --
A. Correct.
Q. -- physically explain how that works.
What do you check? What are you looking at?
A. As an example, for the enrollment, when we
look at the enrollment numbers, we pull that
official census report. That official census report
is placed on my Web site at Dickinson State. We try
to be transparent. I will take that report and I
will go through each line by line of the input as an
example for census information would be Marshall
Melbye and I go through and verify what he input was
correct.
Q. Okay. So you print out a census report
from the data on ConnectND?
A. Correct.
Q. And you take the data on that census
report and you look at that to see if Marshall
Melbye, for example, correctly entered it into
IPEDS?

A. That is correct.
Q. So that the data in ConnectND parallels
the data that has been entered into IPEDS?
A. That is correct.
Q. They're two separate databases?
A. Right, one is a federal and one is State.
Q. Okay. And so the only way to get that
data into the federal is to take the information you
have from ConnectND?
A. Right, from the State database and carry
Okay. Turn to Exhibit 86. What is Exhibit 86?

A. Exhibit 86 is my master spreadsheet. There really isn't any precedence in trying to investigate falsified enrollment numbers, and as the investigation took place, we started with the NSSE, went through the internal auditor and then, again, we went into the letter from the Department of Education requesting us to answer our questions dealing with the federal databases.

In doing so, we were -- we, myself and Dr. Hillman and other individuals at the University System, were well aware that we only had one chance to direct this. The way IPEDS works is they give you one opportunity to go back to the prior year and fix any inconsistencies. Now, our inconsistencies were 217 individuals. And what we had to do, then, is to make sure that these five courses were the only courses at Dickinson State in the fall of 2010 that we had to change.

And what you're looking at here is an example. Column one, which is a number. That's the number of actual students. The next column is the courses.

Q. Okay. Hold on. Number of actual students what?

A. These are all the students for those five courses that we felt did not meet academic rigor and had to be removed from specific parts of the IPEDS
Q. Okay.
A. Okay. Second column is the courses and, of course, that's basically the courses that were involved. The third column is the ID's and, of course, they are redacted out. Once -- the thing about the ID's, the reason it's on here, of course, is it validates the individual students and allows access to their personal database, but we noticed that as the investigation proceeded, that we had certain classes that over half of the students had their student ID's all in a row. And that absolutely raises a red flag, because it's almost impossible for one class to have half of its occupants all having student ID's in numeral order. That means that they were all put in at the same time and enrolled in that class at the same time. When you have -- Connect ND has 46,000 students in it and all 11 institutions are enrolling students at the same time, it raises a red flag. So we used that as another checks and balances.

The name, of course, is the individual students. The grade basis, deals with that they were all graded courses. The units, that the credits that they had. Program and plan, most of them were non-degree. The level, again, the level is your freshmen, sophomore, whatever grade level they're in. Tuition paid, that column --

Q. Back up. You say whatever grade level they're in?
A. They're in.
Q. But there were individuals that were not freshmen that were actually registered as freshmen?
A. That is correct.
Q. So it's whatever grade level they were registered as?
A. Registered as.
Q. Okay.
A. Tuition paid, that information there, as you notice, it's zero. I received that column from our business office, Alvin Binstock and Mark Lowe. Source of payment also came from that department. And you're looking there, most of it was either DSU or staff development funds.
International column, self-explanatory, deals with international students that are enrolled in this course. Dual-credit would be identifying any students enrolled in those courses that were previously dual-credit.
The FISAP, that deals with the Title IV funding for all of our student financial aid from the domestic side of it.
Q. What does FISAP stand for?
A. It's a Financial Aid Institutional Student -- I'm not sure what the last part is. Sandy Klein would be able to address that part of it. Basically, deals with the federal student financial aid Title IV funding category. So every one of those individual students were on that report so we had to remove them, also, from the FISAP
report, which deals with the Title IV funding, which is all the money that we get from the federal government.

Q. Explain how students, these individuals that were enrolled, how they end up on the financial aid report?

A. Again, all the information goes into ConnectND and when Sandy Klein pushes her button for her FISAP report to come out, those students then transferred over. And in the past, as our investigation proceeded, we decided to find out. In the past we usually have 20 to 30 one-credit students in the fall. In this case, we had 250, which was, again, another cross-reference that we used to validate these five courses.

Q. And who is Sandy Klein?

A. Sandy Klein is the Director of the Financial Aid Office at Dickinson State.

Q. Okay.

A. Okay. The next column is the 999. This was also used as a check and balance. Typically, the 999 in ConnectND are for individual students that do not have a Social Security number. Your international students typically do not. All domestic students, we're all aware, when you're born in America, you would have a Social Security Number. So I used that column also to verify if any students did not have Social Security Numbers and, as you can
notice there, that is how many students did not have Social Security numbers.

Q. And what, then, did the University do when there was no Social Security Number available?

A. This would tell you that when these specific students were put in, that they did not have their Social Security Numbers and they just put them in as a 999.

Q. So assign the Social Security Number as what 999-dash?

A. 999-99-9999. Yeah, this is just a generic Social Security Number. And, again, that column showed all the individuals. So, again, it was another cross-reference to verify that these courses were not valid.

Application date, that one comes off of ConnectND. What the application date states is whoever input those individual students, they put in a date for when they actually applied to attend Dickinson State. Again, it was another checks and balances. If you look there, most of the dates are all the same.

Q. You say "when they applied." The app date is -- I thought there were no apps, so explain what you mean by "when they applied."

A. Whoever input the information into the system used the application date stating that -- typically, if you were enrolling a number student, that is when they applied to attend Dickinson State. In this case, there was no applications so whoever
input, either as an example, either Kay or Lyn.

Q. Use their full names and the title.
A. Kay Erickson, she is the admin for Office of Extended Campus and Lyn Welk is the administrative assistant for Enrollment Services.

When they enroll these students -- I shouldn't say enroll. When they registered these students, they put them into the ConnectND database, they used a generic date of 8-23.

Q. And what is significant about having the date of 8-23 for the majority of these students?
A. We have five different courses with a whole different gamut of students and, yet, if you look at the application date, every student in all five courses is put in almost at the same time. So, again, that was another checks and balances. As you can see, we're trying to systematically go through and cross-check and try to validate each one of these courses to make sure we're not making a mistake because we only have one chance to change it.

Q. When you say "making a mistake," that's in identifying the students that were -- the individuals that were enrolled and registered as students at DSU?
A. The federal government was giving Dickinson State one opportunity to fix what we had done. And in doing so, you're faced with a $27,400 fine for each block. It's very critical that we try to do the best possible job that we can moving
Q. Now, in the app date, there's some that say no app. What does that mean?
A. Those individuals actually didn't have an application date, so they don't even go as far as putting in a generic number. It was just left blank.
Q. Okay. And when you say "they," we're still talking about entering that information into ConnectND?
A. ConnectND, by whoever did it.
Q. So whoever entered it, did not put an app date in?
A. That is correct.
Q. Okay. But there was no -- let me ask you this. Was there an application completed by any of these individuals to be a student at DSU?
A. There was not.
Q. Okay. Continue on with the next column.
A. The next column -- actually, I'm going to go into the next three columns. You have additional coursework prior to, coursework during and after. We needed those three columns because we started with the 217 students that we identified. Those are duplicated numbers. "Duplicated" meaning that they were counted in multiple courses. As an example, we went down to unduplicated in those five courses is 213. Out of those 213 students for the SITS folks, which is the System IT Staff that deals with the ConnectND, to go back and hand-input and rewrite
basic code for our databases, they needed those
three columns to make sure that we weren’t removing
somebody that we weren’t supposed to.
Q. Okay. And then notes, what the notes
column represent?
A. The notes, again, were just generic
information that we put beside trying to identify

some of these individuals so we could either contact
them or verify if they knew they were a student or
not.
Q. Now, some of the individuals on this list
you’ve identified on the column in the note section
of what their title may be?
A. That is correct.
Q. Many of the individuals would be DSU
faculty or staff?
A. Some of them are, yes.
Q. Okay. That were enrolled as freshmen?
A. That is correct.
Q. For example, the Vice-President of
Academic Affairs, Jon Brudvig, was he registered,
enrolled as a student at DSU?
A. He was enrolled as a freshman student at
DSU.
Q. Okay.
A. And he has a Ph.D.
Q. And at some point was he, then, withdrawn
as a student or no longer enrolled as a student?
A. He was administratively withdrawn two days
after the census date was polled. So he was
enrolled prior to the census date and as soon as the enrollment information was pulled out of Connect ND, he was withdrawn from that course.

Q. What's the significance of that?
A. It would imply that he was enrolled just for enhancing our enrollment prior to the census date and as soon as that information was polled, he was withdrawn from the course.

Q. Dr. McCallum has listed Dennis Johnson as a witness to testify on his behalf. Do you know who Dennis Johnson is?
A. I do.

Q. Who is Dennis Johnson?
A. Dennis Johnson is the CEO and owner of TMI Systems Design Corporation. He is also the mayor of Dickinson, City of Dickinson.

Q. Was he registered as a student at DSU?
A. He was registered as a student at DSU.

Q. Is he on this list as well?
A. He is on this list as well.

Q. And how is he identified?
A. He is identified as a freshman at Dickinson State.

Q. And how about his wife?
A. His wife is also on this list.

Q. How is she identified?
A. She's identified as a freshman and she is
registered in two courses.

Q. And Dennis Johnson or his wife, are they freshmen at DSU?
A. They are not freshmen at Dickinson State.

In fact, Dennis Johnson, I believe, has an advanced degree from NDSU.

MS. DONARSKI: We offer Exhibit 86.
MR. THOMAS: No objection.
JUDGE FETCH: Thank you. Exhibit 86 is admitted.

Q. (MS. DONARSKI CONTINUING) I'd like you to turn to Exhibit 88. Identify for the Hearing Officer what that document is.
A. This document comes from Mick Pytlik. He is actually the individual executive director of ConnectND. He's in charge of the SITS folks. And the SITS folks deal with the systems IT staff and he was the individual assigned with trying to correct both our historical database and the archival database that's locked up in the vault.

Q. Okay. And what's the significance of the information contained from him?
A. What's going on right now is, of course, Dickinson State and the University System are working hand-in-hand to try to correct ConnectND so that we can generate the correct census report, which then will feed the IPEDS databases, which will then feed the financial aid FISAP reports, which will then feed the HLC, Higher Learning Commission, AIDU report. Again, the census report is -- with no
better way of stating it, it is the Bible that we need to proceed to correct all the numbers that are out. Some of the numbers, as we found out earlier this week, we cannot change them. They are locked for historical reference going forward. Some of those will be dealing with the IPEDS databases.

Q. What is the status of the Department of Education's investigation into this?

A. At this point we have responded -- or the Chancellor's office has responded saying that these are the different steps that we are going through to correct the issues and I do not believe at this time we've had a response yet back from the Department of Education.

MS. DONARSKI: We offer Exhibit 88.

MR. THOMAS: No objection, Your Honor.

JUDGE FETCH: Thank you. Exhibit 88 is admitted.

Q. (MS. DONARSKI CONTINUING) Turn to Exhibit 83. What is Exhibit 83?

A. Exhibit 83 is an email from myself to a group of individuals and this was on February 4th, right after I received the phone call from Dr. Hillman. And at that point I sent out an email saying does anybody know of any of those courses or students that can be an issue.

And what you're looking at there is a response from Steve Glasser, who at the time was Executive Director of the Strom Center and the interim Director of the Office of Extended Campus,
and he identified three courses immediately that he felt were of concern. I asked him, Are you sure these courses are mentioned in the fall census, and he verified that, yes, they were.

Q. What's the significance of Steve Glasser's response right away on February 4th identifying those classes?

A. The issue to me is 30 minutes after I sent out an email, he can verify three classes that he knew were enrolled in the fall census report that were wrong. That would be significant.

Q. Did he ever, prior to you soliciting that information, indicate to you that he thought enrollment was wrong with those classes?

A. He did not. And, actually, a couple days earlier than that, I received a phone call from a different student that also had received information and they wanted to be taken off of Dickinson State's freshmen orientation packet list, et cetera, et cetera, so I sent out just a generic email saying, does anybody understand why this individual student would be calling us up saying he's receiving information, that he's not a freshman at Dickinson State and I received no responses from any of these individuals.

Q. Now, when you investigated into Steve Glasser's response where he identified the list from Disney Institute, did you, in fact, find that, in fact, those individuals were incorrectly reported in the enrollment?
A. That is correct.

Q. Okay. He also identifies QuickBooks and Microsoft courses. What about those two courses?

A. Those two courses we actually did remove from the NSSE population file. After we, of course, closed the NSSE portion of it and the internal auditor came in, we went back through and did validate that those courses did meet certain academic rigor. There was a syllabus for the course. There was as instructor, and the students were aware that they were actually in those courses.

MS. DONARSKI: We offer Exhibit 83.

MR. THOMAS: No objection.

JUDGE FETCH: Thank you. Exhibit 83 is admitted.

Q. (MS. DONARSKI CONTINUING) Turn to Exhibit 84. And what is Exhibit 84?

A. It's an email from myself to Norman Coley, who is the Director of Enrollment Services, Marshall Melbye, the Registrar, and to my supervisor, Vice-President of Academic Affairs, Jon Brudvig.

Again, this was March 11th, 2011, and at that point we were into a lot of our investigation of 2011 and this is where we found another course that previously at this point had not been discovered.

Q. Okay. What course was that?

A. That was the History 399 course. And we uncovered that there was 46 additional students that were in it due to the fact that we received a phone call from an individual over at Hawks Point who had
contacted us saying that she had never completed the
eighth grade, went to country school, and she likes
the Blue Hawks, but that she had definitely not
attended college. And that's when we uncovered this
additional.

Q. What's Hawks Point?
A. Hawks Point is a retirement-type facility
that's located on Dickinson State's campus.

MS. DONARSKI: We offer Exhibit 84.
MR. THOMAS: No objection.
JUDGE FETCH: Exhibit 84 is admitted.

Q. (MS. DONARSKI CONTINUING) Turn to
Exhibit 75.

JUDGE FETCH: I'm sorry, counsel, which
one?

MS. DONARSKI: Seventy-five.

JUDGE FETCH: Thank you.

Q. (MS. DONARSKI CONTINUING) What is that?
A. Seventy-five is a memo that I authored and
sent to Dr. Hillman in response to -- again, my
immediate supervisor, Vice-President of Academic
Affairs, Dr. Brudvig, emailed a memo to me regarding
dual-credit instructors that were in charge of the
history 299 course. The issue with the memo is the
fact that history 299 course was an undergraduate
level course and was not a dual-credit course and
those instructors that were listed as instructors
were not dual-credit certified or undergraduate
certified. So this was in response to his email.

Q. This would be relating to the Belfield
High School students?

A. This is relating to the Belfield High School students.

Q. And they were also included in the enrolled students for the census reporting?

A. That is correct.

MS. DONARSKI: We offer Exhibit 75.

MR. THOMAS: No objection.

JUDGE FETCH: Exhibit 75 is admitted.

Q. (MS. DONARSKI CONTINUING) And now turn to Exhibit 74. What is Exhibit 74?

A. Exhibit 74 is a breakdown of tuition and fees that were another checks and balances to verify if these five individual courses were valid or not valid. We wanted to make sure, as an example, if someone had paid for the course, there's a pretty legitimate chance that they had registered as a student.

As you notice here, in this case of History 299, the only thing that was paid was a special course tuition fee of $50 and I received information from the business office and they sent me the actual pay for each one of the students which comes out of ConnectND, and in this case the document you're looking at in front of you shows that we are missing $259.77.

Q. Per student?

A. Per student.
Q. And, again, that's the students that were incorrectly identified for enrollment purposes?
A. That is correct.
Q. So you don't know who paid or what department paid to identify these individuals as students?
A. That is correct.
Q. And what is the status of that?
A. That is currently being investigated by the State Auditor's Department.
Q. Is that another implication of this whole process with the incorrect reporting of enrollment?
A. Yes.
Q. You had indicated earlier that you later found out that the incorrect reporting was not inadvertent, but was intentional. What information do you have to support that it was intentional?
A. As you go through this, the fact that we have five different courses, nobody -- no one individual at Dickinson State can possibly do this by themselves. It takes Enrollment Services. It takes Office of Extended Campus. It takes the Registrar's office. It takes the Business Office. As you can tell, we have many different facets of enrolling the students. You are talking grades. You are talking payments. You are talking bills going out. You're looking at transcripts. It has to be numerous departments all working together to make this happen.

MS. DONARSKI: We offer Exhibit 74.
MR. THOMAS: No objection.

JUDGE FETCH: Exhibit 74 is admitted.

Q. (MS. DONARSKI CONTINUING) The DSU list serve for email purposes, who would that include?

A. The President should be on the DSU staff, the DSU faculty, but would not be on the DSU student list serve.

Q. But on the staff and faculty list serve?

A. Absolutely.

Q. Turn to Exhibit 54. What is Exhibit 54?

A. Exhibit 54 is Assessment of Effective Communication for the faculty. This was a survey that was conducted by the faculty senate for the faculty in the spring of 2011. And it's a report of, basically, their environment, their concerns and any responses and issues that they have.

Q. And what is your involvement with respect to this document?

A. My involvement was after they conducted the survey, they felt that they wanted a transparent part of department of Dickinson State to go through and collect all the information, put it into a report format, and that is what my office did at this time.

Q. And what's the significance of the data contained in this faculty survey?

A. The significance of most of the data states that there was concerns already in the
spring, which were echoed again with the campus quality survey in the fall.

Q. And when you say "spring," what year?
A. This was 2011.
Q. 2011?
A. I'm sorry. 2010.
Q. Okay. And the campus quality survey is the fall of 2010?
A. Fall of 2010, correct.

MR. THOMAS: Your Honor, can we go off the record for a moment?

JUDGE FETCH: Yes.

(Discussion off the record.)

JUDGE FETCH: Let's take a ten-minute --
MR. THOMAS: I'm sorry. Your Honor, if she wants to finish with the witness, I'd prefer that we get that done, if it's okay with Your Honor, because I don't expect my cross to take more than ten minutes.

JUDGE FETCH: All right. Let's move along.

MS. DONARSKI: Offer Exhibit 54.
MR. THOMAS: No objection.
JUDGE FETCH: Exhibit 54 is admitted.

MS. DONARSKI: Thank you. I have no further questions.

JUDGE FETCH: Thank you. Mr. Thomas, you may cross.

MR. THOMAS: Thank you, Your Honor.
BY MR. THOMAS:

Q. Mr. Staudinger, let's begin with your conclusion that these errors were intentional. And if I understand, it's similar to what another witness testified, that because so many departments were involved, that there had to be, I presume, some type of a colluded effort to submit this incorrect information; is that your conclusion?

A. That would be my conclusion.

Q. And yet you found no evidence or you're not aware of any evidence that these departments did, in fact collude with each other to intentionally submit false information, are you?

A. Can you restate that?

Q. You have not been provided with any information to allow you to conclude that these departments specifically colluded with each other to intentionally submit false information; true?

A. That would not be true.

Q. Which departments colluded with each other to intentionally submit false information, and how did they do that?

A. Okay. As an example, for instance, if you have the Office of Extended Campus, they had to do one part of it. The way that this process is set up is there's definitely checks and balances in place.

Q. Let me interrupt because I'm not sure you're answering my question. When I talk about collusion, I'm talking about communication between
departments to intentionally submit false information. Do you have any evidence that these

departments communicated with each other with the specific intent of submitting intentionally false information? Yes or no?

A. No.

Q. You do not. And you certainly don't have information to suggest or to prove that the President, himself, colluded with these same departments directing them to intentionally submit false information, do you?

A. No.

Q. Let's talk about the enrollment of Mayor Johnson and his wife and Dr. Brudvig. You are not here to testify that those parties did not attend the symposium that you referred to; correct?

A. Correct.

Q. They did, in fact, attend, as far as you know?

A. As far as I know.

Q. And isn't it true, Mr. Staudinger, that the PeopleSoft software that DSU utilizes automatically classifies someone as a freshman if they have less than 24 hours on record with DSU?

A. That is correct.

Q. And so if I've got multiple Ph.D.'s from Harvard and I go to work at DSU and I attend a
symposium, PeopleSoft is going to list me as a freshman if I don't have 24 hours of credit at DSU; true? That's how it defaults as of the time that they had their information inputted, that's what PeopleSoft did; true?

A. If you're not -- if you're attending a symposium, you should not be entered in PeopleSoft.

Q. My question is, isn't that how PeopleSoft classifies attendees as freshmen, if they have fewer than 24 hours on record at DSU?

MS. DONARSKI: Objection. He answered the question.

JUDGE FETCH: No. Overruled. He did not answer the question. Listen very carefully, Mr. Staudinger. There's a distinction here.

Q. (MR. THOMAS CONTINUING) Does PeopleSoft automatically, by default, list as freshmen any attendee that does not have more than 24 hours on record at DSU?

A. If you are a registered student at Dickinson State and have less than that, that is correct, you would be a freshman.

Q. And that's why Dr. Brudvig and Mayor Johnson and his wife were listed as freshmen because they had fewer than 24 hours on record at DSU; true?

If you know.

A. At Dickinson State they would.

JUDGE FETCH: And you're nodding, so I assume your answer is yes.

Q. (MR. THOMAS CONTINUING) Let's get back to how you originally became involved in this enrollment issue. And I'd like to do that by having you turn to Exhibit 20, please. This is the email that you indicated that you authored to Mr. Hillman on February 4, 2011; correct?

A. Correct.

Q. And this was on the very first day that you were aware that incorrect information had been submitted to NSSE; is that true?

A. That is correct.

Q. Who submitted the incorrect information to NSSE?

A. The population file, I did.

Q. All right. And you asked -- and when you did that, I presume that you didn't realize that the information was incorrect?

A. That is correct.

Q. So you weren't part of the collusion to intentionally submit incorrect information for enrollment purposes; true?

A. I just took the population file and submitted it to NSSE, that's correct.

Q. I understand. And you were the one that fixed the problem; right?

A. That is correct.

Q. And you were made aware of the problem, you reported the problem to Mr. Hillman and you stated, quote, We are pleased to be given the opportunity to handle this matter internally and
take this concern very seriously, close quote.
Those are your words; right?
A. That is correct.
Q. And I note that in that email Dr. McCallum
is not referenced at any point; true?
A. True.
Q. And you went about correcting that problem
without involving Dr. McCallum in any way; true?
A. Correct.
Q. And would you turn to Exhibit 25, please.
That's a letter that's been received into evidence
from Chancellor Goetz to Dr. McCallum referencing
the reporting problems with respect to NSSE. Do you
see that?
A. I do.

Q. And then the next exhibit, Exhibit 26, is
Dr. McCallum's response to that, which was
received -- or which was sent by Dr. McCallum one
day later on February 11; true?
A. That's what the documents state.
Q. And that document attaches a string of
e-mails between you and a gentleman named Steven
Hernandez, who I understand is associated with NSSE;
correct?
A. That is correct.
Q. So let's look at that exhibit, specifically Bates 113. Do you see that?
A. Bates 113? Oh, I see it.
Q. And that would be an email that you
received from Mr. Hernandez on February 11
indicating that, quote, We've released the hold on your survey administration and updated your mailing schedule as follows:” And then he lists some dates. Do you see that?

A. I do see that.

Q. And he sent that to you after you corrected the information that you mistakenly sent to NSSE; correct?

A. I didn't mistakenly send it. I sent it.

Q. The information that you sent to NSSE that was incorrect?

A. Correct.

Q. And then you corrected it?

A. That is correct.

Q. And Mr. Hernandez sent you an email saying, We've released the hold; true?

A. That is true.

Q. And that was on February 11, which would have been seven days after the problem was initially called to your attention; true?

A. That is correct.

Q. And there have been no repercussions with respect to NSSE since that point, they haven't refused to process your surveys, they haven't refused to work with Dickinson State University, no financial penalties? There was a seven-day hold and it was released; true?

A. That is correct.

Q. Even to this day, no consequences with respect to NSSE; true?
A. That is correct.

Q. And in all of this correspondence from February 4, and it continues over to page 112, where you report the corrections to Mr. Hillman and Mr. Hillman replies, "Thanks Scott, I am glad to see that this is back on track." And only then on February 11 does Dr. McCallum even become -- is he made aware of this email exchange between you and Mr. Hernandez, as far as you can tell; true?

A. True.

Q. So this process, the reporting of the error, the correction of the error, was all done without the knowledge or involvement of Dr. McCallum; true?

A. Dr. McCallum was supposed to be made aware of the situation on February 4th.

Q. But he wasn't, as far as you know?

A. I know that my Vice-President of Academic Affairs walked right into his office after we broke that morning --

Q. Well --

A. -- with the intent to notify him.

Q. All right. But the only written correspondence we have is dated February 10; true?

A. True.

Q. And he wasn't copied on any of the emails between you and Mr. Hillman or Mr. Hernandez; true?

A. True.

Q. And, in fact, any of the subsequent -- if we move on now to the IPEDS reporting issues,
Dr. McCallum wasn't involved in those communications that you referenced in these exhibits, was he?

A. He was not.

Q. He was kept out of the loop; true? You corresponded with Mr. Hillman, you corresponded with Mr. Eggert, corresponded with the Chancellor's office, but you didn't correspond with Dr. McCallum and say, we've got these IPEDS problems, how did they happen, how are we going to fix them; true?

A. I did not have any correspondence with Dr. McCallum.

MR. THOMAS: Thank you. That's all I have, Your Honor.

JUDGE FETCH: Any redirect?

MS. DONARSKI: Yes.

REDIRECT EXAMINATION

BY MS. DONARSKI:

Q. Who is your direct report?

A. Dr. Jon Brudvig, the Vice-President of Academic Affairs.

Q. And did you report directly to your direct report?

A. I did.

Q. Was it your understanding that President McCallum was, in fact, advised of this NSSE?

A. It was my understanding.

Q. And what was your understanding with respect to his involvement, President McCallum's
A. Well, I was under the understanding that as soon as we broke that morning of February 4th, that he was in complete understanding of what we were doing to correct the problems.

Q. What do you base that on?

A. I based it on the fact that when my direct supervisor and myself left his office, he was walking into Dr. McCallum's office.

Q. Who is "he"?

A. Again, Dr. Jon Brudvig, the Vice-President of Academic Affairs.

Q. And is he a direct report to the President?

A. He is a direct report to the President.

Q. Do you have any reason to question that he would not have reported directly to the President on this issue?

A. I would not in any way, shape or form. Something this important he would definitely want to tell the President.

Q. You were also questioned on collusion.

A. Some of this comes from a business
standpoint, but if you have this many departments in the organization all working toward a common goal, you, as the chief executive officer -- I mean, it's almost impossible not to know that's going on underneath of you.

Q. Do you have individuals as part of your investigation that told you that President McCallum directed them to do this?

A. There were two individuals, Norman Coley, Director of Enrollment Services, and Marty Odermann, Office of Extended Campus.

Q. And what did they say?

A. They basically said that the President --

MR. THOMAS: Objection. Hearsay. We have been down this road a dozen times.

JUDGE FETCH: Sustained.

Q. (MS. DONARSKI CONTINUING) Was it your understanding that they were directed by the President?

A. It was my understanding.

Q. You were questioned on PeopleSoft and attendees at these seminars and how they would be entered as people in the PeopleSoft. And how does that affect -- first of all, explain how attendees are entered in PeopleSoft and then the next step, which is how those attendees should be reported for enrollment purposes.

A. Attendees of symposiums should not be put into PeopleSoft because it's a symposium. The only individuals that go into PeopleSoft are students of
a university, if you're taking an undergraduate course or if you're taking a continuing education course. So if you're taking a symposium and you're going to the symposium, you should never be entered into PeopleSoft, unless you're taking a specific course or a continuing education that's attached to that symposium.

Q. And Mr. Thomas asked you questions about your involvement with reporting this inaccurate data to IPEDS. Isn't it true that's just almost like a data dump, where you take the data that's in and you then send it to IPEDS?

A. That is correct.

Q. You didn't inadvertently -- you didn't enter the incorrect data, you took the incorrect data that was intentionally entered and submitted data, dumped it into the IPEDS report?

A. That's correct.

MS. DONARSKI: I have nothing further.

MR. THOMAS: Nothing further, Your Honor.

JUDGE FETCH: Thank you, Mr. Staudinger.

You're excused. All right. Let's take a ten-minute recess and then we will come back. And, as I understand it, Dickinson State's case in chief is concluded?

MS. DONARSKI: That is correct.

JUDGE FETCH: Thank you, counsel.

(Recessed from 10:03 a.m., to 10:19 a.m., the same day.)

JUDGE FETCH: Good morning. My name is
Bonny Fetch. I am an Administrative Law Judge with the Office of Administrative Hearings. And you've been called as a witness to testify in the hearing regarding Dr. Richard McCallum. Do you understand?

THE WITNESS: Yes, I do.

JUDGE FETCH: All right. Since this is by telephone, for your information, present here in the hearing room is Dr. Richard McCallum, his attorney, Ben Thomas. And William Goetz is present, and Attorney Michelle Donarski and co-counsel, Krista Andrews, for Dickinson State University. Patrick Seaworth, who is general counsel for the State Board of Higher Education is also present. There are a number of other individuals present. I'm not going to attempt to name everyone. And members of the press are here.

Mr. Johnson, all witness testimony at this hearing is taken under oath and is subject to penalties for perjury. By law I'm required to inform witnesses of those penalties. Perjury in the State of North Dakota is a Class C Felony. It's punishable by a maximum fine of $5,000, a maximum five years in prison, or both. Do you understand?

THE WITNESS: Yes, I do.

JUDGE FETCH: Did you solemnly swear the testimony you're about to give shall be the truth under the pains and penalties of perjury?

THE WITNESS: Yes, I do.

JUDGE FETCH: Thank you. I'm going to turn the volume up as loud as I can. First of all,
Mr. Thomas will be asking you some questions and then there will be cross-examination. If you have problems hearing, let me know.

THE WITNESS: All right.

DENNIS JOHNSON, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THOMAS:

Q. Mayor Johnson, good morning. Can you hear me okay?

A. Yes, I hear you fine.

Q. Thank you. Mayor Johnson, could you please state by whom you are employed?

A. I'm employed by TMI Systems Design Corporation.

Q. What do you do for TMI Systems?

A. I'm the chief executive officer and chairman of the board.

Q. And for how long have you held those positions?

A. Oh, well, I've -- I would suppose I've been chief executive officer since -- and chairman of the board since 1985.

Q. Okay. And what kind of business is TMI?

A. It is a manufacturing business; manufactures institutional furniture.
Q. I understand. And in addition to that position, you also serve as Mayor of the City of Dickinson; true?
A. That is correct.
Q. And for how long have you served as Mayor?
A. Just over 11 years.
Q. And generally describe for the hearing officer your duties as Mayor.
A. Well, technically I'm not the Mayor. I'm president of the city commission. It's a commission consisting of five commissioners and so I preside at the meetings. I help set the agenda for the meetings, and then as president of the commission, I, you know, appear at many official functions on behalf of the city.
Q. Okay. Do you generally carry the title of Mayor so that I can address you correctly?
A. Yes, I do. That's what I'm commonly referred to as.
Q. All right. And Mayor Johnson, are you acquainted with Dr. Richard McCallum?
A. I am.
Q. I understand your relationship is not that of personal friends, but more so as Mayor and President of Dickinson State University; is that also correct?
A. That would be correct.
Q. All right. To begin, Mayor Johnson, can you describe generally the interaction that you've had with Dr. McCallum since he became President of
Dickinson State University in spring of 2008?

A. Yes. You know, most of my interaction with Dr. McCallum would be at official functions where both the DSU President and the city Mayor might be present. Also, I attended a number of DSU functions, say, at the DSU Alumni and Foundation House. I also interacted with Dr. McCallum on the Badlands Activity Center construction project.

Q. Could you describe for us what that interaction included?

A. Well, the Badlands Activity Center, you know, was constructed by Dickinson State University, but the City of Dickinson helped finance it. The City of Dickinson pledged $6 million of the $16 million project. So in conjunction with that pledge, you know, I would have occasion to interact with Dr. McCallum. He also would appear periodically before the city commission and give an update on how the project was progressing and then he generally made other comments regarding Dickinson State.

Q. Is it fair to say, Mayor McCallum -- or Mayor Johnson, rather, that Dr. McCallum was charged with the responsibility of properly applying the city's $6 million contribution toward the construction of the BAC?

A. Yes.

Q. From your perspective, Mayor Johnson, can you tell the Hearing Officer whether the construction process of the BAC was a success or a
failure or something in between?

A. No. I would very much say it was a success. It came in, I think, on budget or under budget and we have a wonderful, high-quality facility.

Q. In your interactions with Dr. McCallum, did he attend city council meetings?

A. On occasion he appeared before the city commission and would, as I stated previously, would give us an update on the status of the Badlands Activity Center and also comment again about other activities going on at the University.

Q. Okay. Can you tell us what involvement, if any, the city had with respect to the annual Theodore Roosevelt symposium that is conducted at Dickinson State University?

A. The city has supported it financially. I think our annual support is $20,000.

Q. And I understand from prior testimony that you and your wife may have actually attended at least one of those symposiums; is that correct?

A. That's correct. We attended more than one.

Q. Mayor Johnson, can you tell me anything about a project involving a statue of Teddy Roosevelt that is soon to be dedicated in the City of Dickinson?

A. Well, I can tell you that I think it's a statue of young Teddy Roosevelt. It's on the site where he gave the speech, which is where the Stark
County Courthouse is presently located, and the city agreed to contribute financial support to that statute, I think along with the county.

Q. All right. And do you -- can you describe for the Hearing Officer what Dr. McCallum's involvement in that project has been?

A. Well, as I recall, I think he was the first one from Dickinson State to approach me as Mayor and see if there would be some interest and support or at least one of the first. I think Clay Jenkinson also approached me and talked to me about supporting that particular project.

Q. And that project is to be dedicated soon, I understand?

A. Later this month.

Q. Okay. Can you tell the Hearing Officer, Mayor Johnson, in your -- because this has been raised as an issue in this hearing, could you describe generally President McCallum's working relationship with you and other city leaders, whether it was effective, cordial or something otherwise?

A. Well, I think I can speak for myself, my fellow commissioners and our city administrator, and we found dealing with Mr. McCallum or Dr. McCallum to be -- you know, our relationship with him was very good. I would just say we had good dealings with him.

Q. Okay. Was he available and accessible to you on occasions when you had occasion to have
contact with him?
A. Yes, he was.

MR. THOMAS: Mayor Johnson, thank you.
Those are all the questions I have. Ms. Donarski may have some questions now.

JUDGE FETCH: Ms. Donarski, any questions for Dennis Johnson?

MS. DONARSKI: I do. Thank you.

CROSS-EXAMINATION

BY MS. DONARSKI:

Q. Mayor Johnson, did you ever fill out a registration form to be enrolled as a freshman student at DSU?

A. I don't believe so.

Q. And did you ever pay tuition for a degree-credit class at DSU in the fall of 2010?

A. No.

Q. And you have no information with respect to Dr. McCallum's relationship between himself and his faculty; correct?

A. No, I don't.

MS. DONARSKI: Okay. Thank you. I have nothing further.

MR. THOMAS: Nothing further for this witness, Your Honor.

JUDGE FETCH: All right. That's all the questions, Mayor Johnson. Thank you. And at this time you may hang up the telephone.

THE WITNESS: Okay. Thank you.

Did you have another phone witness that you're taking now?

MR. THOMAS: Next witness is live. Carl Larson is our next witness.

JUDGE FETCH: All right. Do you want to get Mr. Larson?

MR. THOMAS: Yes.

JUDGE FETCH: Good morning, Professor Larson. My name is Bonny Fetch. I'm the Administrative Law Judge conducting this hearing. All witness testimony at this hearing is taken under oath and is subject to penalties for perjury. And by law I'm required to infer witnesses as to those penalties. I had an instruction sheet there. I'm not sure where it is now. You have that in front of you. Take a look at that, would you, please? That will tell you the penalties.

THE WITNESS: (Reviews document.)

JUDGE FETCH: Thank you. Please raise your right hand.

Do you solemnly swear the testimony you're about to give shall be the truth under the pains and penalties of perjury?

THE WITNESS: I do.

JUDGE FETCH: Thank you. Mr. Thomas.

MS. ANDREWS: Your Honor, if I may just briefly interject, if you could ask maybe the same questions of him regarding his information or
knowledge regarding this hearing. I believe his
wife has been sitting in throughout the hearing
taking notes, so just to ensure he doesn't have any
information or knowledge.

JUDGE FETCH: Sure, Ms. Andrews.
Professor Larson, have you spoken with or
has anyone present here in the hearing room talked
with you about questions that have been asked or
testimony that has been given in this hearing?
THE WITNESS: Not for the hearing.
JUDGE FETCH: I'm sorry. What?
THE WITNESS: Not for the hearing.
JUDGE FETCH: Not about the hearing.
THE WITNESS: No.
JUDGE FETCH: About the case in general?
THE WITNESS: Nothing other than it's
going on and it's taking a while.
JUDGE FETCH: Okay. So your wife or no
one else has talked with you outside of this room
and said these are the questions that have been
asked and what people have been answering and --
THE WITNESS: I don't know anything about

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who said what to whom.
JUDGE FETCH: All right. Let's proceed.
Mr. Thomas.
MR. THOMAS: Thank you.

CARL LARSON,
having been first duly sworn, was examined and
tested as follows:

DIRECT EXAMINATION
BY MR. THOMAS:

Q. Dr. Larson, could you state your full name and spell your first and last name.
A. Carl, C-a-r-l. Larson, L-a-r-s-o-n.
Q. And are you currently employed, Dr. Larson?
A. No.
Q. You are retired?
A. Yes.
Q. Can you describe your association with Dickinson State University prior to your retirement?
A. I started at Dickinson State in 1963 and have been connected with the college in some capacity for 48 years, which is over half of the school's existence.
Q. Could you describe some of the positions that you held at Dickinson State University?
A. I was professor of English until I retired in 2005 and I have -- I served as department chair for four years.
Q. Did your association with Dickinson State University continue after that?
A. In a sense it did, in that later on I was asked to serve as the director of the Everett C. Albers Institute, and that involved primarily organizing the humanities festival. That took a bit of time, but not a lot. I was chair of the committee. We met about once a month.
Q. Have you also been -- can you tell us specifically when your employment with Dickinson
State University ended?

A. As a professor I retired in May of 2005.

Q. Have you also been involved to any extent with any projects involving the upcoming Dickinson State University centennial, which I understand is in 2018; is that right?

A. That's correct.

Q. Can you discuss your involvement with that?

A. In July of 2009 President McCallum asked me to come to his office so that he could discuss with me his dreams and plans for the centennial in 2018. And he specifically asked me if I would be willing to start working with the archives, and so I agreed to do that.

Q. And for how long did your work in that regard continue?

A. Until last spring.

Q. The spring of 2011?

A. Yes.

Q. What prompted you to end your involvement in that project?

A. My contract ended.

Q. I understand that notwithstanding your retirement, you continue to be actively involved with other former retired employees of Dickinson State University; is that true?

A. Yes.

Q. And can you generally explain to the Hearing Officer your connection to those former
employees?
A. Well, every Monday through Friday at
9 o'clock we meet down at the student union and have
coffee and visit.
Q. Okay. For how long has that been going
on?
A. Oh, I started going down there when I
retired, but they were always at the next table
while I was still teaching and so I was still, you
know, hearing a part of their conversations.
Q. Okay. And does that meeting with these
former employees, does that continue even to this
day?
A. Oh, yes.
Q. During his term as President of Dickinson
State University, did Dr. McCallum attend any of
those morning briefings?
A. Some, yes.
Q. Can you describe in what context? Why
would he -- why would he show up at your meetings?
A. He would drop down and have coffee with us
and visit.
Q. Would he discuss the ongoing activities at
Dickinson State University and some of the projects
he was involved in himself at the university?
A. He might have, although it was primarily a
social visit.
Q. Okay. Did these -- some of these
employees or former employees of Dickinson State
University include alumni of Dickinson State or
24 contributors to Dickinson State University Foundation?

A. Yes, some of them did.

Q. And have you attended, you and your wife -- your wife's name is what?

A. Esther.

Q. Have you and your wife attended events at Dickinson State University that Dr. McCallum hosted?

A. Oh, certainly. Social events, as well as emeritus faculty are invited to various events on campus, not just academic, but also social.

Q. How many presidents of Dickinson State University have you had the opportunity to be associated with since coming to Dickinson State?

A. Including Dr. McCallum, six.

Q. One of the issues involved or that has been raised with regard to these proceedings involves Dr. McCallum's leadership, his relationship within the community and his character in general. Have you had an occasion since becoming acquainted with Dr. McCallum to form an opinion with regard to any of those issues?

A. Yes.

Q. Could you describe that for the Hearing Officer, please?

A. Well, I have been impressed with Dr. McCallum's professionalism, sense of integrity,
and I would say, based on my experience with presidents past, that Dr. McCallum would exhibit as high a level of professionalism as one could want, and I would say that one would have to go all the way back to Dr. DeLong in the 1960's to find his equal in terms of his high professionalism and his integrity.

Q. Is he quick to anger?
A. I've not seen it.

Q. Is he honest?
A. Yes, absolutely.

Q. At some point, Dr. Larson, did you have an occasion to submit a letter to Chancellor Goetz on behalf of Dr. McCallum?
A. Yes.

Q. Dr. Larson, I'm showing you what's been marked as Exhibit S. Could you take a look at that and tell me if it's the letter that you sent on Dr. McCallum's behalf?
A. Yes, it is.

Q. Can you tell the Judge what the context was for you sending that letter to Chancellor Goetz?
A. I was informed that Dr. McCallum's contract was not going to be renewed and I was dismayed, disheartened, and I chose to write to the Chancellor to urge him to reconsider.

Q. There was prior testimony with regard to a meeting that occurred in May of 2011. Well, let me just ask you this: Was this letter prompted by a conversation you had with Dr. McCallum?
A. Yes.

Q. And there was testimony about whether or not Dr. McCallum in May of 2011 had been told that Dr. Goetz intended not to renew Dr. McCallum's contract as president, and without repeating anything that may have been told to you by way of hearsay, was it your understanding, at least at the time that you wrote this letter in June of 2011, that that was Chancellor Goetz's intention?

A. That was my understanding.

MR. THOMAS: We would offer Exhibit U at this time.

MS. DONARSKI: S, Ben?

MR. THOMAS: S. Thank you.

MS. ANDREWS: Thank you. No objection.

JUDGE FETCH: Exhibits S is admitted.

MR. THOMAS: Thank you. Those are all the questions I have for this witness, Your Honor.

JUDGE FETCH: Thank you. Ms. Andrews, are you questioning?

MS. ANDREWS: I will cross-examine.

JUDGE FETCH: All right.

CROSS-EXAMINATION

BY MS. ANDREWS:

Q. You were not a professor at Dickinson State University while Dr. McCallum served as President; correct?

A. No. No.

Q. So you wouldn't have any personal knowledge of any of the enrollment issues that
have --

A. No.

Q. -- arisen?

A. No firsthand knowledge.

Q. Okay. And final question, who informed you that Dr. McCallum's contract would not be reviewed?

A. He did.

Q. And do you recall approximately when that conversation occurred?

A. No, I don't.

Q. It would have been prior to that?

A. Prior to that, yes.

MS. ANDREWS: Okay. Thank you. I have nothing further.

MR. THOMAS: No other questions.

JUDGE FETCH: Thank you, Professor Larson.

Did you have something else?

MR. THOMAS: No. That's all, Your Honor.

Thank you.

JUDGE FETCH: Sure?

MR. THOMAS: Yes. Thank you.

JUDGE FETCH: All right. Now that you've testified, you may remain in the room or you may leave as you wish, Professor Larson.

And who is your next witness, Mr. Thomas?

MR. THOMAS: My next witness, Your Honor, is Dr. McCallum.

JUDGE FETCH: Dr. McCallum, would you please have a seat there at the end.
MR. THOMAS: Your Honor, since we're going to be sharing an exhibit book, if I may -- unless is that an extra copy?

MS. DONARSKI: Of the DSU, yes.

MR. THOMAS: Then I think I'll stay here, if I can.

JUDGE FETCH: Of the DSU exhibits or your own?

MR. THOMAS: I have some of my own. I'll be relying primarily on DSU exhibits. To the extent I need to slide down, I'll do that.

JUDGE FETCH: All right. Dr. McCallum, I see you are reading the instructions for witnesses. Would you please raise your right hand?

Do you solemnly swear the testimony you're about to give shall be the truth under the pains and penalties of perjury?

THE WITNESS: Yes, I do.

JUDGE FETCH: Thank you. Mr. Thomas.

MR. THOMAS: Thank you.

RICHARD McCALLUM, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THOMAS:

Q. Dr. McCallum, could you state your full name and spell your first and last name, please.

A. Richard McCallum. R-i-c-h-a-r-d. Middle initial J, as in Joseph. Last name, M-c-C-a-l-l-u-m.
Q. Dr. McCallum, can you give us a little bit of personal information, where you were born, where you were raised, things like that?
A. Born and raised in Nebraska, northeast corner of Nebraska. Grew up on a farm in rural part of northeast Nebraska. Graduated from high school at Bloomfield High School in Bloomfield, Nebraska. Went to college at Wayne State College, which is a teacher's college about 60 miles from my hometown. Following completion of my bachelor's degree, I eventually completed a master's degree and a Ph.D. from the University of Nebraska.

Q. Are you married, Dr. McCallum?
A. Yes, I am.
Q. Your wife's name is Julie?
A. Julie.
Q. For how long have you been married?
A. We're getting ready to celebrate our 30th anniversary.
Q. Dr. McCallum, would you refer to Exhibit U that's in the binder that's before you, please? What is this document?
A. I recognize it as a curriculum vitae.
Q. For yourself?
A. Yes.
Q. And you prepared that document?
A. Yes, I did.
MR. THOMAS: Your Honor, we would offer Exhibit U.
MS. DONARSKI: No objection.
JUDGE FETCH: Thank you. Exhibit U is admitted.

Q. (MR. THOMAS CONTINUING) Dr. McCallum, I'd like to take you through some of your professional history and I'm going to work backwards a little bit. You talked about your education. Can you tell us where you began your employment following completion of your education?

A. Yes, I can. That would be page 6 of the curriculum vitae.

Q. Go ahead.

A. 1972, I started working for the Department of Health, the Nebraska Department of Health. I was a health educator and grant administrator. While I was working at the Nebraska Department of Health, I was also going to school part-time, working on a master's degree.

Q. Following that?

A. I had the opportunity for a promotion in my career and I moved to Omaha; Omaha, Nebraska. I began working as a program associate at the University of Nebraska Medical Center. I continued my work part-time as a student on my master's degree, commuting back and forth from Omaha to Lincoln.

Q. And that ended in 1976?

A. Correct.

Q. What happened at that point?
A. In 1976 I finished my master's degree and I wanted to pursue an advancement in my career. I was scanning the horizon for an opportunity and I found one with the University of Missouri. And so for approximately the following 18 years, I had a variety of administrative duties and also for part of that period of time I was an assistant professor on the Columbia campus at the University of Missouri.

Q. Okay. It appears that following your association at the University of Missouri-Columbia, you became actively involved with the U.S. Army. Can you tell us about that?

A. I actually started as a member of the Nebraska National Guard while I was going to school at Wayne State College. I used the National Guard as an opportunity to earn extra money in order to pay for school. I also took advantage of the fact that in Nebraska at the time, membership in the National Guard granted you a tuition waiver.

As you look at the years on my resume, you'll see that while I was working at the University of Nebraska and the University of Missouri, I was also maintaining a second career and that was in the Nebraska National Guard. When I had the opportunity to go to work for the University of Missouri, I transferred from the Nebraska National Guard into the Missouri National Guard and that continued. I was part of the Missouri National Guard that was mobilized for the Gulf war. I was
Q. The first Gulf war or the second Gulf war?
A. The first Gulf war. I was the senior commander from the State of Missouri that was mobilized and served in Desert Storm.

Q. When you say "the senior commander from the State of Missouri," could you give us a little more description of that?
A. My rank at the time was Lieutenant Colonel. I commanded a unit out of Kansas City. The rest of the units from Missouri that were mobilized were at the company level and so the rank that those individuals would have held was captain.

Q. During your time with the U.S. Army between 1994 and 2001, was that full-time involvement?
A. Yes. That came about as an unusual set of circumstances. I did not realize it at the time, that my service in the Gulf war would actually place me on an Order of Merit list. I was selected as one of the top 15 Lieutenant Colonels in the United States on the Order of Merit List, and at that time I was offered the opportunity to attend the Army War College as a resident student. It was a significant decision for my wife and I, but I accepted the assignment to the Army War College and that launched a different trajectory for me in my career. The residency at the Army War College was approximately a year, a little over 11 years.

Following that, I was offered an
assignment at the Pentagon. I had been carrying a very high classification, top secret SCI as a result of my time in the Gulf war. That qualified me for a special project at the Pentagon working for the Joint Chiefs of Staff. We worked on a classified project on that effort for about a year. I then was offered the assignment at Fort Monroe. That was active duty. Following my assignment at Fort Monroe, I was offered a promotion to full colonel and an assignment at the Army War College wearing a couple of different hats. I chaired the research department of the Army War College, and I also chaired the Commandant's Initiative Group, which was a group of staff that worked to support the commandant's writing and briefing.

Q. As a colonel in the U.S. Army, can you briefly summarize for the Judge any awards or decorations that you received in that regard?

A. There were many awards. I was decorated five times in the Gulf war, including the Bronze Star.

Q. Did you see active battle during your time in the Gulf war?

A. I was in the combat zone of the Gulf war. Our unit was stationed on the border between Saudi Arabia and Iraq.

Q. Can you describe for those of us without a military background how one receives the decorations that you did? What's the basis for receiving an award like that?
A. Many of the awards come as a result of senior commanders recognizing outstanding work. You are nominated for an award. Generally, the awards have a review process. That review process sometimes involves a panel review, such as the Bronze Star. After the panel makes a recommendation subject to the commander's recommendation, the award is granted. Some of the awards occur because of longevity of service and so by virtue of years of service, you are given longevity awards to recognize your commitment over time.

Q. Can you explain to the Judge, again, for those of us who don't have a military background, as a full colonel or other titles that you held, how many people you oversaw or commanded while associated with the U.S. Army?

A. Each assignment carries different organizational structures. As a young company commander, I commanded an infantry company. An infantry company would have, at that time, an organizational chart of somewhere around 150 to 170 people. The unit that I took to the Gulf war, as I recall, Judge, my staff numbered 73 or 74. When I was working at the Army War College, my command responsibilities as department chair and as chair of the Commandant's Initiative Group involved a mixture of civilian and military personnel working in team configurations. Those teams would number somewhere between 10 and 25.

Q. And your active duty with the U.S. Army,
it appears, ended in 2001. Was that a retirement at
the rank of full colonel, I take it.

A. That is correct. The rules have changed
since that time, but at the time that I was
commissioned, we -- there was a rule in place which
was called mandatory removal date, MRD. We
affectionally called it the drop dead date, and
basically that meant that you could only be a
commissioned officer for so many years. The rule
that I was commissioned under said that I could
carry my commission for 28 years. You can only go
beyond those 28 years if you achieve the rank of
general and then at that point, there is an
exception to policy. And so I completed my 28 years
as a commissioned officer.

Q. And forgive my ignorance, but I know
enlisted people are granted honorable discharges.
Is it the same with colonels, or what's the label
that's placed on your discharge?

A. Same, honorable discharge.

Q. We're going to talk a little bit more
about the events leading up to your termination, but
because we're talking about your military service,
I'd like to call your attention to Exhibit 16, which
is the notice of intent to dismiss that you received
from Chancellor Goetz. Can you find that in the
Dr. McCallum, at the bottom of Bates 52, which is the first page of Exhibit 16, Chancellor Goetz talks about your failure to contact him the morning following your meeting with him on August 3 of 2011 and Doctor -- excuse me -- Chancellor Goetz concluded by virtue of your failure to contact him that your actions, quote, constitute insubordination, close quote. Do you see that at the bottom of page 52?

A. Yes, I do.

Q. What is that -- well, first of all, do you believe you were being insubordinate in not contacting Chancellor Goetz the following day?

A. The answer to that is no. If by his definition insubordination means that I did not return that phone call, then I accept his definition, but in my experience I felt like his requirement with the resignation the next morning was unfair. I felt it was extremely harsh, and I also had the intuition that it was legally unsound.

Q. As a military officer, what does the label of insubordination mean to you?

A. There's not an insubordinate bone in my body. I take this as a great insult. It carries significant impact in a military career. I served and wore the uniform for 31 years, including my enlisted time, and there was never a time when I was insubordinate.

Q. Including as President of Dickinson State University?
A. In my opinion, that is true.

Q. Continuing on with your curriculum vitae, at page 5 it appears that your next position was between May of 2001 and June of 2004 at Central Connecticut State University. Can you tell us a little bit about that?

A. As I indicated to you, I knew that I was approaching my mandatory removal date as a commissioned officer and that was going to be retirement of my military career. I knew that my active duty would come to a close. I started to scan the horizon for a job opportunity, and I submitted some resumes back into higher education because that was the essence of the beginning of my career. And I was offered the chance to become an Associate Vice-President for Academic Affairs at Central Connecticut State University. That is a university in New Britain, Connecticut.

Q. And that continued until June 2004. Where did you go after that?

A. In June of 2004 I was offered the assignment as a Vice-President for Academic Affairs. It was a career advancement and a promotion from Associate Vice-President to a full serving Vice-President. I accepted the assignment and my wife and I moved back to Missouri and I began serving as the Vice-President for Academic Affairs in July of 2004.

Q. And Missouri was a second home to you, to the extent that you had been there from '76 to '93;
is that right?
      A. That is correct.
      Q. While at Missouri Southern, did you apply
      for the position as President of Dickinson State
      University?
      A. Yes, I did. I remember that process very
      well.
      Q. And can you describe it for the Judge?
      A. I had became very active in the National
      Academic Affairs Officer group through the National
      AASCU. That is a acronym, the American Association
      of State Colleges and Universities. I had made
      friends with the chief academic officer at AASCU.
      His name is George Mehaffey. You'll see him listed
      here as a reference in my resume. After

Dr. Mehaffey got to know me, he periodically would
suggest that I should think about advancing to the
level of president. I wanted to be selective in
terms of where I might look. I saw the opportunity
at Dickinson State. Everything in the job
announcement touched my heart and the fiber of my
values. And so on my birthday, I mailed my resume,
hoping that that would bring good luck, and I
submitted my application for the presidency at DSU.

Q. And that was -- you were appointed
president on what date, approximately?
A. The interview process was quite extensive.
You will see on page 1 of the curriculum vitae --
I'm on Exhibit U -- that after going through a
series of interviews, I was selected and announced
by the Board on December 5th, and that selection and
appointment carried an effective date of April 5th
and that was in the year 2008.

Q. And April 5th is when you began your term
as president; correct?

A. That is correct.

Q. Okay. Dr. McCallum, in the smaller binder
in front of you, can you see if you can locate
Exhibit X? And I'll represent to you that this is
the written performance assessment that you received

from Chancellor Goetz dated May 27, 2009 and which
covers the performance goals and objectives for the
year July 1, 2008 through June 30, 2009. Do you see
that document?

A. Yes, I have it before me.

MR. THOMAS: Your Honor, we would offer
Exhibit X at this time.

MS. DONARSKI: No objection.

JUDGE FETCH: Exhibit X is admitted.

Q. (MR. THOMAS CONTINUING) Dr. McCallum,
this document would seem to cover your first full
calendar year of your term as President of Dickinson
State University, July 1, 2008 through June 30,
2009. And I'd like to ask you if you can explain to
the Judge what you believe some of the
accomplishments were that you achieved during your
first year as President of Dickinson State?

A. The first year at Dickinson State was a
very busy time in a sense that I had to establish
myself within the community and on the campus in a
simultaneous fashion. Certainly, the launching of a strategic plan for the University was a significant effort. There was a clarion call for a strategic plan for DSU that, actually, I became aware of in the interview process when I was on campus for campus interviews as a candidate. We launched a very comprehensive strategic planning process. That process was a significant effort in that first year because we tried to include a very broad range of stakeholders. And when I say "stakeholders," I'm talking not only about the campus relative to the faculty senate, the staff senate, the student senate, the administrative team, I'm also talking about retired faculty, alumni, foundation representatives, community representatives within Dickinson and we also included some of the surrounding communities where we had representatives from a couple of different communities in and around Dickinson.

The challenge for that group was to create a vision for DSU's future and with that vision a set of goals. It was a deliberate effort. It was based on consensus. We hired a facilitator from Bismarck who helped us achieve that consensus as a group and we formulated what became nicknamed and known today as DSU 2015. The reason that we chose 2015 was because some members of the group were not comfortable looking out as much as ten years. Some members thought the future was only three or four. 2015 became significant to the group because that is
the next time that DSU faces reaccreditation process
with the Higher Learning Commission.

And so our goals attempted to synchronize
three sets of guideposts, seven institutional goals
relative to DSU. Guiding off of the State Board’s
goals and cornerstones that were in existence at
that time. Guiding off of the criteria that the
Higher Learning Commission uses for reaccreditation.
And so our challenge was to formulate a plan for the
future that guided us institutionally, made us a
part of the University System team and made us
prepared for the Higher Learning Commission’s
reaccreditation.

Q. Where were you at with that process as of
the end of this assessment year, June 30, 2009?
A. As I recall, we had completed the
committee work with a vision and we had completed
the committee work with the goals.

Another significant effort that was going
on during this first year included the challenges of
the Badlands Activity Center. When I arrived, there
was a committee that was in place that was
representative of the community at large. The
opinions of that committee were very diverse. And
when you are going through a wish list process and

you’re trying to focus on what this new sports
complex could be, should be, might look like, what
can we afford, we were dealing with the challenge
that our wish list was tabulated at over $24 million and our authorization from the State Legislature and the Board was $16 million and the challenge of putting a finance plan together for that $16 million was also before us.

And so while working on the 2015 plan, we were also working with this advisory committee to come to grips with what we could afford, what we wanted and how we would finance a $16 million construction project.

Q. And can you -- since we're talking about the BAC, just briefly summarize when that project began, when it was completed and what your involvement was with respect to that project.

A. That answer is complex because we actually did a timeline for the dedication ceremony. That project started conceptually almost ten years before. And it had been reauthorized by the Board and the Legislature multiple times.

As I recall -- and, Your Honor, this is from memory. As I recall, the first authorization was $4 million, second authorization was somewhere around $12 million, the third authorization of $16 million was reviewed by the Legislature and the Board prior to my arrival. So conceptually there was ten years of conversation about that project.

My challenge as a new president was to take concepts and convert them into action and to convert those ideas into reality. In answer to your question, that project was dedicated this past year
and when I say that, I'm talking September of 2010 during our homecoming ceremony.

We just -- prior to my departure from the campus, we were just completing the final purchasing of the final pieces of furniture and items to support the facility. Within North Dakota the requirement for construction authorization also includes the furnishings within the building. And, as I recall, the last thing that we were purchasing when I departed the campus was new whirlpools for the training room. I believe -- I do not know, but I believe the books and the journals have been closed on that project. It is my understanding prior to my departure that we were under budget and I am convinced that we finished under budget, even though I don't know for sure.

Q. Thank you. Returning to Exhibit X, if you look at the second page of that document, these are comments by Chancellor Goetz regarding your first year of performance. And he writes at the top of that second page, quote, Your effectiveness as president is demonstrated by the positive oversight of Dickinson State University's leadership, staffing and infrastructure. I note your careful survey for good information, listening and analysis as a basis for sound decisionmaking."

Is it fair to say that your first year at Dickinson State University, you received support from the Chancellor's office?

A. Absolutely. One of the comments that the
Chancellor would say to me on a frequent basis, I should think of him as my coach and as my mentor and together we would stand shoulder to shoulder and solve problems together.

Q. And he states, if you look about seven or eight lines down at that page, too, he writes, quote, I offer encouragement to continue the management style you utilize and do well at, close quote. Is that consistent with your prior statement?

A. Yes.

Q. And then about halfway down the page he writes, quote, Your objective of being inclusive is well demonstrated. As you have dealt with personnel and student issues, fairness has been priority without violating sound principle and policy. Do you see that?

A. Yes, I do.

Q. Can you tell the judge whether or not your approach or your leadership concepts changed at any time from when this was written until your departure from DSU?

A. My approach never changed. In fact, I would like to think that with years of experience, that experience fine-tuned my skills. One of the things that I said in my interview and one of the things that has served me throughout my leadership career has been my reflective listening. I concentrate on listening to what people say and I try to listen carefully to ensure that I understand
what the issue is, what the message is, what the problem is. Defining the problem is a central part of my listening skills. Being inclusive is another part of my fabric and it has always been projected in the way that I have involved individuals.

Now, I will hasten to add, and I know this to be true, that when you are participatory and you are inclusive, it is a process that takes time. And that time can sometimes be perceived as too long by those who want to move quickly and, yet, if you're looking for participatory, inclusive consensus, it takes time in order to develop that.

Q. That seems to relate to me to the testimony that was received yesterday regarding requests by faculty to develop a smoking policy. Is that an example of the participatory leadership style that you're talking about?

A. Yes. There were a couple of challenges that came forward in the last couple of years. One certainly was the smoking policy. One was the faculty sick leave policy. Using a process that is participatory and inclusive and builds consensus takes time. And I realize that there were individuals on the DSU campus that actively criticized me for taking that time and, yet, I must say that that is part of the fabric of my leadership style. And to violate that would not be me. To violate that would not be true to my leadership values.

Q. Dr. McCallum, we've talked about your
first -- generally about -- I know it's difficult to summarize, but we've talked generally about your first year on campus. Could you turn to Exhibit 47, which is the evaluation that you received for your second year, July 1, 2009 through June 30, 2010?

JUDGE FETCH: Which exhibit?

MR. THOMAS: That is Exhibit 47.

Q. (MR. THOMAS CONTINUING) Can you summarize for the Judge -- now, this would take us up to June 22 of 2010, is when Exhibit 47 was prepared; is that right?

A. That is correct.

Q. Could you summarize first what you believe your accomplishments during your second year of your term at Dickinson State University included?

A. Your Honor, on Exhibit 47 on the first page there is an a section there labeled "Institutional Agenda." I think that that set of bullets clearly outlines a number of major accomplishments during that year. Clearly, taking the abstract nature of a vision and starting to translate that into action steps was an important part of that time period. The strategic enrollment plan was making very good progress. As you've heard, Your Honor, we used the Noel-Levitiz consulting group to help us lead that effort. We had a number of other objectives that we were
advancing, both as an institution and in support of the Board's strategic plan and so those are listed there.

Not to repeat myself, but it goes without saying that during this second year, the Badlands Activity Center was in a critical stage of development. We were crossing the no-return line in the sense that we had the authorization for $16 million, we had the approved finance plan. We were moving into the demolition of the old stadium and the construction of the new stadium.

And I would like to say that throughout my time as President, I always considered that construction project my most critical vulnerability. That was the lightning rod that I thought could strike me dead faster than anything else, because there is a sensitivity in the State of North Dakota for construction management and I believe everyone in the room understands the sensitivity after the problems that were experienced in Fargo and in Grand Forks.

This was a major construction project, $16 million. I knew that if it came in $1 over, there would be headlines somewhere that said project over budget. And so I had a very careful, methodical weekly effort to ensure that as we broke ground and started construction, that we complied with all the policies on construction and that we stayed within budget.

Q. Since we're talking about budgetary
matters, and I'll return to Exhibit 47 in a moment, but could you keep that page and turn for a moment to Exhibit V, as in Victor, in the other binder?

A. Yes.

Q. And while you're looking, I'll represent that this is a letter that you sent to Chancellor Goetz on August 26, 2010, which would have been right about the time of this reporting period ending June 30, 2010, and it relates to the new fiscal year, July 1, 2010. Can you describe what's contained within this letter to Chancellor Goetz?

A. Yes. As the letter indicates, I am confirming that we're starting the new fiscal year with a carry-forward positive balance of $1,477,356.

Q. How did that financial state compare with the financial state of other universities within the North Dakota system?

A. I cannot answer the question regarding carry-forward, but I do know that using a number of different guideposts for financial well-being, that

DSU had a very, very healthy financial well-being and in my Memorial Day essay, I tried to outline some of the major benchmarks. We had, as I recall, the best viability ratio in the State of North Dakota. And, as I recall, the definition of the viability ratio is assets to debt. I also recall that we had the second best reserve. I also know that during my time as President, we were lowering our debt and while we were doing all of this, we were finishing well in the black.
Q. And just for the record, the Memorial Day essay to which you refer is found at Exhibit 30. That's your letter to Doctor -- or Chancellor Goetz, dated May 30, 2011. And the financial issues to which you refer are found at No. 8 or page 6 of that document; is that correct?

A. I'm turning. On the copy that I have paragraph 8 provides financial information and issues actually starts on page 154 and continues over on 155.

Q. That's correct.

A. And as you can see, it specifically outlines some of the things that I just verbally explained. These numbers are based on an annual report. As I understand it, it's prepared by the Chancellor's staff and given to the State Board on an annual basis. You will see that we were either the best or second best in a number of different categories relative to guideposts that are used to measure financial well-being.

Q. And -- I'm sorry. Go ahead.

A. I just wanted to make one additional comment.

Q. Sure.

A. The Exhibit V, V as in Victor, the 1.4?

Q. Yes.

A. I was not -- I was removed from the campus before we finalized this last fiscal year, but the information that I had, Your Honor, prior to my departure from the campus was if I would have
continued in the position, I would have written a
letter similar to Exhibit V, and in that letter I
would have reported to the Chancellor that we
finished the last fiscal year $1,660,000 in the
black.
Q. So higher than what's listed in Exhibit V?
A. Those are the numbers that the Vice-
President for Business had provided to me prior to
my departure. But, again, I was removed before that
was finalized.

MR. THOMAS: Your Honor, we would offer
Exhibit V at this time.
JUDGE FETCH: Any objections?
MS. DONARSKI: No objection.
JUDGE FETCH: Exhibit V, as in Victor, is
admitted.
Q. (MR. THOMAS CONTINUING) Dr. McCallum, if
you could go back to Exhibit 47 for a moment, that's
your June 2010 evaluation from Chancellor Goetz.
The second page of that evaluation under "internal
relationships," Chancellor Goetz writes, quote, As
evidenced by your personal assessment, I note your
continued efforts of inclusiveness. Particular note
is Vision 2015 and preparation for the Higher
Learning Commission, close quote. Do you see that?
A. Yes, I do.
Q. So did your efforts at inclusiveness
continue into the 2009-2010 year?
A. Absolutely.
Q. And as part of Exhibit 47 and attached to
that document is your letter to Chancellor Goetz, dated April 1, 2010, which is your self-assessment for that time period; correct?

A. What page is that?

Q. That would be the third page of Exhibit 47. Mine doesn't have Bates on it, but I can look here. I take it back. I'll offer that separately.

Let me just ask you, Dr. McCallum, did you, in addition to this assessment from Chancellor Goetz, submit your own self-assessment for that same year time period?

A. Yes, I did. And the self-assessment process is anchored off of a reporting of institutional goals. The institutional goals are developed at the beginning of the year. We must synchronize our institutional goals with the Board's strategic plan and then we report on the progress. That becomes a key part of the evaluation for each president because those institutional goals, in essence, are presidential goals that the president is held accountable for.

With that report on the institutional goals, I elected to submit a supplemental set of materials that articulated some of the accomplishments in addition to the institutional goals.

Q. Dr. McCallum, could you turn to Exhibit Y, as in yellow? That includes the first two pages much Exhibit 47, but attached to this document,
Exhibit Y, is your self-assessment dated April 1, 2010; is that correct?

A. That is correct.

MR. THOMAS: Your Honor, we would offer Exhibit Y at this time.

MS. DONARSKI: It's already contained under Exhibit 47.

JUDGE FETCH: The entire document?

MS. DONARSKI: Starting at Bates 463.

Q. (MR. THOMAS CONTINUING) Could you turn to Bates 463, Dr. McCallum?

A. Yes, I'm there.

Q. And does that contain the same information as contained in Exhibit Y, the third page and subsequent?

A. I'm just checking. The first page is the same. If appears to all be there.

Q. And you referenced, Dr. McCallum, an additional supplement that you prepared in addition to the April 2010 document; is that right?

A. It would have been -- there's two pieces and they're both there. The second piece is page 0465, and that's the institutional presidential goals and the report that was made and so what you see there on 465, 466, 467 -- I don't have 68 for some reason -- 69, 70, 71, those are the institutional goals which are presidential goals which support the Board's strategic plan. That's
the key submission that we make for our self-
evaluation. The letter that precedes that on page
63 and 64, dated April 1st, is the supplemental.

JUDGE FETCH: So they appear to be the
same as in Exhibit 47, except that in Exhibit 47
there is one page missing?

MS. DONARSKI: Are you missing that page
as well?

JUDGE FETCH: Yes.

MS. DONARSKI: That was 466?

MR. THOMAS: 468.

JUDGE FETCH: It's Bates page 468.

MS. DONARSKI: We'll make copies and
insert that in each of the binders.

MR. THOMAS: With that proviso, Your
Honor, we don't need to offer the other exhibit at
this time.

JUDGE FETCH: Thank you, counsel.

Q. (MR. THOMAS CONTINUING) So, Dr. McCallum,
now we're into your third year of employment as
president of Dickinson State University. And I'd
like to skip ahead now to talk about some of these
enrollment issues and since it appears that the NSSE
issue was the first to arise, I'd like to talk to
you about that first.

Beginning with Exhibit 25, could you turn
to that? What is Exhibit 25?

A. Exhibit 25 is a letter dated February 10.

Q. 2011?

A. 2011. From Chancellor Goetz outlining the
difficulty that we had with the National Survey of Student Engagement, and in that letter he poses five questions relative to this problem.

Q. And was this the first written notification that you received of any enrollment reporting problems at Dickinson State University?
A. Yes, it was.

Q. And if you would turn to the following exhibit, Exhibit 26, is that an email that you sent to Chancellor Goetz, actually, looks like a fax sent to Chancellor Goetz, the following day, February 11, 2011?
A. Yes. Exhibit 26 is a fax cover sheet with my signature addressed to the Chancellor. It also contains a string of emails which are part of the communication.

Q. What was your understanding of the enrollment reporting issue that had arisen with respect to the information submitted to NSSE?
A. You know, defining the problem was an important part of what I was trying to do. It was my understanding at the time that we had submitted the database for the NSSE survey and in that database there were students who were clearly part-time students that were receiving the NSSE survey. It's my understanding that the NSSE survey focuses on issues of student success, student retention, student graduation rate. They try to predict involvement in academics and involvement in campus life as variables that advance success and
ultimately graduation.
The information that I received was that there were students that were classified as freshmen by PeopleSoft and, as I understand PeopleSoft, anything less than 24 credits in PeopleSoft categorizes you automatically as a freshman. They were part-time students who received the survey. The survey did not make sense to them and that they had called the NSSE organization and asked about why they were receiving the survey.

Q. When you say 'they called the NSSE organization,' these would be students who had received the survey?

A. That was my understanding.

Q. All right. And when did you obtain this understanding of the problem?

A. When I received this letter on February 10th, I immediately started interacting with Dr. Brudvig and we were able to work with Mr. Staudinger and confirm that our corrective action with NSSE was successful and, therefore, we were able to proceed with the NSSE survey itself.

Q. What role did you, as President, play in the assembly or submission of these enrollment numbers to NSSE?

A. None.

Q. Were you even aware that Mr. Staudinger had submitted this information to NSSE that was subsequently determined to be incorrect?

A. No. It was -- as I believe has been
explained, it was a routine process that had been
taking place for a number of years. It was not on
my radar screen as something that was going on.
Q. And if you are able, how many levels
before or below your position as President would
this type of decision be made?
A. Well, this whole process involves four
levels of the organization below me. And so, you
know, when you look at who is involved and how the
database is developed and the database is submitted,
you're looking at a variety of different offices as
has already been explained. But it involves four
different levels below me in terms of the process.
Q. But you ultimately did become involved
ones you learned that there was a problem; correct?
A. I did. And my -- my comment to
Dr. Brudvig was oh, my garsh, we have to fix this
immediately. And he assured me that we were in the
process of doing that. And, as you can see, the
next day, I was very pleased to receive the email
from Jon Brudvig dated February 11th.
Q. That's Bates 112?
A. That's correct. And it confirmed, as I
read the string of emails, they were back on track
and that's the phrase that was used by Dr. Hillman.
Q. However, you had received a letter from
Chancellor Goetz dated February 10. Did you feel
the need to respond to that?
A. The February 10th letter calls for an
immediate response and the reason that I sent the
fax so quickly the next day was to comply in part to
the immediate response. There is another piece of

the immediate response, though, that was
supplemental to the fax dated February 11th.

Q. Could you turn to Exhibit 28?
A. I'm sorry. Which one?
Q. Exhibit 28.
A. Twenty-eight.
Q. Yes.
A. Yes.
Q. Is that the subsequent response that you
sent to Chancellor Goetz regarding his February 10
letter?
A. Yes. And I would like to explain the time
lapse between February 11th and February 25th.
Q. Go ahead.
A. The Chancellor called me during that time
period. He was waiting for the answer to those five
questions. I explained to him that our registrar
was out because of a death in the family and that we
needed the registrar's involvement in order to
accurately and effectively address these five
questions.
Q. And that registrar is whom?
A. That registrar is Mr. Marshall Melbye.
Once I explained to the Chancellor that Mr. Melbye
was attending his mom's funeral, the Chancellor was
understanding. I assured the Chancellor that we would complete the answer to those five questions and submit it as soon as Mr. Melbye was back and we were able to do the analysis. I had Dr. Brudvig, the Vice-President for Academic Affairs, he was serving as the interim at the time, working on the questions. He ultimately authored the report and I believe that starts on page 123.

Q. And in that report, he indicates at the bottom of page 123 as a partial explanation as to how this mistake occurred, this is the second line from the bottom, "I discovered that the current registration process for proposed seminar on workshop offerings automatically defaults to graded unless specific mention of a non-graded offering is noted." Do you see that?

A. Yes, I do.

Q. What -- can you explain that to us, if you understand it?

A. I cannot explain the technical aspects of it. PeopleSoft is a complicated system and I know, Your Honor, that you've already received some explanation on it. I must tell you I am not an authorized PeopleSoft user. I've never had the training. There is a log-in protocol. I don't have a password to log into PeopleSoft. The suggestions that have been made that I did this in the dark of the night is impossible because I'm not authorized to use PeopleSoft.

In answer to your question, Mr. Thomas, I
believe that there are a number of automatic
defaults in the PeopleSoft program. We talked about
one previously and that was less than 24 credits
makes you automatically a freshman in PeopleSoft.
My understanding would be that this automatic
default is similar to that.

Q. At page 125 of Dr. Brudvig's -- Bates 125,
which is the third page of his response, he quotes
Marshall Melbye as noting, quote, Based upon my
interpretation of policy 440 and given the fact that
all students, including those who were enrolled in
our various special topics classes for the TR
symposium, et cetera, who were subsequently reported
on our official enrollment reports were actually
credit-earning students. I don't believe that we
were in violation of policy 440." Do you see that?
A. Yes, I do.

Q. Did you have any personal information
about that issue and whether the students were
properly or not properly enrolled or were in
violation or not in violation of policy 440?
A. No. I did not have personal information
regarding this. I was trusting my academic team to
do the procedures in an appropriate way. And when I
saw that a long-serving, talented registrar went on
record indicating that there was no violation of
policy, I trusted his judgment. And you will note
in my cover letter on February 25th -- and that's
page 122 -- I emphasize to the Chancellor in my
cover letter, "Please note Mr. Marshall Melbye's
assessment that the academic integrity of these classes was not jeopardized and no policy violations occurred."

Q. And I apologize for jumping back for a moment, but with respect to the NSSE reporting, if I didn't ask you this already, are you aware of any negative consequences with respect to NSSE that remained as a result of the reporting errors based on the information that Mr. Staudinger submitted?

A. I am not aware of any negative consequences.

Q. So you submitted this correspondence on February 11th to Chancellor Goetz, the fax indicating the problem with NSSE had been resolved and then you submitted this document, Exhibit 28, which is your letter dated February 25 of 2011; is that correct?

A. That is correct.

Q. What was your understanding of the status of the problem at that point, after February 25?

A. This letter dated February 25 sat on the corner of my desk, paper-clipped, for almost two months.

Q. The copy, you mean, it had already been sent?

A. Correct.

Q. So Chancellor --

A. I had understood that the questions had been answered. The answers did not prompt a comeback from the Chancellor. After almost two
months of time, I assumed that this issue was resolved. That's the first time in a total of three times when I had the impression that this issue was resolved.

Q. Now, there's been testimony and exhibits submitted through February and March of 2011 where various other witnesses have been communicating regarding these problems. Were any of those communications delivered to you?

A. No, they weren't. In fact, I was quite surprised when through the discovery process we obtained copies of those materials. There were clearly a number of background conversations occurring that I was not aware of and did not discover until we received copies of those documents about a week ago.

Q. Could you turn to Exhibit 29, please? Was that the first communication that you received from Chancellor Goetz following your February 25 submission?

A. That is correct. And it took me by surprise.

Q. Why?

A. Because, as I indicated to you, this material had laid on the corner of my desk for almost two months. Not hearing back from the Chancellor, I came to the conclusion that it was a resolved issue. And what surprised me about this was the fact that the communication was, in my opinion, vague, evasive, and I could not understand
why Vice Chancellor Hillman was being sent out to interview people, but I accepted the fact that the Chancellor sent this email and I asked my staff to support the effort.

Q. How soon after receipt of the letter from Chancellor Goetz did you send out that directive?

A. The same day.

Q. Did interviews with your staff subsequently occur?

A. Yes.

Q. Were you included in those interviews?

A. Yes, I was. It was a very brief meeting, as I recall.

Q. Who was in attendance?

A. The attendance was Dr. Hillman and Mr. Bill Eggert.

Q. During his testimony, I believe Dr. Hillman testified that you minimized the enrollment issues. Do you remember that testimony?

A. Yes, I do.

Q. Is that your assessment as well of your characterization of the enrollment issues?

A. No, it is not. I remember that meeting in a very different context.

Q. Tell us what you recall.

A. I remember Mr. -- Dr. Hillman calling and asking for an appointment and he asked if I wanted the appointment to be at the beginning of the day, during the day, or at the end of the day. I indicated to him that I knew I already had several
things scheduled that day and that it would probably be most effective if he chose the time and worked it out with my secretary because my secretary keeps my calendar. And so when that time was scheduled, as I recall, it was scheduled between Dr. Hillman and my secretary. It was, as you received testimony previously, during the middle of the day. I remember it to be late morning, but I cannot tell you for sure what time it was.

Q. Do you remember dismissing Dr. Hillman or telling him that you had to cut the meeting short?

A. No. In fact, it was just the opposite. Dr. Hillman had scheduled a 30-minute appointment. He and Mr. Eggert arrived a few minutes late. And I think that was just by virtue of the fact that they had been visiting with other individuals and had ran a little bit over with the previous conversation. My recollection of the meeting was it was more like 20 minutes instead of 30 minutes. I remember a couple of very specific parts of that conversation and I would be happy to report that.

Q. Go ahead.

A. I remember having this document that had been laying on my desk.

Q. Your February 25 letter?

A. That's correct. I had it in my hand and I asked, "What specifics are you looking at relative to additional information based on the report that
we submitted February 25th?" The response was very vague and evasive. There was no clear indication of what areas were being looked at. I wasn't even sure what individuals were being interviewed through the day.

When we started talking about the February 25th letter that contained the February 23rd report, I suggested that, in my opinion, the new enrollment matrix was going to do a great service to clarifying interpretations. As you know, policies are applied differently based on different interpretations. And what I thought was so great about the enrollment matrix was the fact that it laid out in a very clear fashion a guide -- a set of guideposts that would help with the uniform interpretation.

I did raise concerns about the enrollment matrix, and those concerns came from our staff discussions. And I did express those concerns. And at the time it was my understanding the enrollment matrix was still in draft form. And, therefore, it was appropriate to discuss it. After what I recall to be about a 20-minute conversation --

Q. And I'm sorry to interrupt, but the enrollment matrix to which you refer, is that what's contained at Exhibit 33?

A. That is correct.

Q. And having heard the testimony and with the benefit of hindsight, do you believe that the use of this -- an application of this matrix by the
staff that was involved in these enrollment reporting issues, the use of this matrix would have avoided some of the reporting errors that occurred?

A. Yes, I do. And I made reference to that in my Memorial Day weekend essay, and I thought in my last evaluation that the Chancellor's comment was referring to the further development of this enrollment matrix.

Q. Okay. And as an -- I'm sorry to interrupt, but as of the time, then, that you met with Dr. Hillman on May 4, 2011, you had never seen this enrollment matrix, at least in its final form, it hadn't yet been implemented; true?

A. It was still in draft form at the time that we were meeting. I had seen the copy of this in draft form previously at the Chancellor's cabinet meeting.

Q. All right. So I interrupted. What happened after this -- well, let me just ask you this: Did Dr. Hillman or anybody else at that meeting provide you with any information regarding what they had been communicating with each other in terms of other information relating to these enrollment errors?

A. No, they did not, and that was the secrecy that concerned me. Please recall my previous comment. The Chancellor had repeatedly said to me, "Think of me as your mentor. Think of me as your coach. We stand shoulder to shoulder solving problems together." I was puzzled by the secrecy...
that was unfolding here.

The other part of this that I wanted to mention to you is this email, and I'm looking at Exhibit 29, page 147. "With the intent of bringing DSU's enrollment practice issues to steps of closure, I have asked Vice Chancellor Mike Hillman..."

Q. And one of the other witnesses, I forget if it was Dr. Hillman or Mr. Eggert, made reference to just the opposite. He talked about opening Pandora's box. Was that the implication that was given to you during these meetings?

A. No, it was not. And as we adjourned after that brief meeting with Dr. Hillman and Dr. Eggert, I asked the question, "Mike, will I get some feedback? Can you give me an update?" And he said, "Sure, I'll either try and get to you at the end of the day or I'll call you in the next day or two with an update."

Q. Did you ever hear anything?

A. No, I did not.

JUDGE FETCH: All right. With that counsel, I'm assuming you have a few more questions.

MR. THOMAS: Yes.

JUDGE FETCH: It's five minutes to 12, Central Time. We are going to take a lunch recess at this time. We'll come back and pick up.

MR. THOMAS: At?

JUDGE FETCH: At, I'm going to say, 1:20 p.m.
Lunch recess from 11:55 a.m., to 1:30 p.m., the same day.)

JUDGE FETCH: Okay. Let's come to order.

All right. The time is 1:30 p.m., Central Time.

And this is October 21st, 2011.

And at this time, Mr. Thomas, you asked for a break in President McCallum's testimony in order to accommodate a witness that is not going to take very much time?

MR. THOMAS: That's correct.

JUDGE FETCH: And who is that witness?

MR. THOMAS: Stan Koppinger.

JUDGE FETCH: All right.

Mr. Koppinger, my name is Bonny Fetch.

I'm the Administrative Law Judge.

All witness testimony at this hearing is taken under oath and subject to penalty for perjury.

There should be a witness instruction sheet there.

Have you looked at that?

THE WITNESS: Yes, I have.

JUDGE FETCH: Thank you.

Please raise your right hand.

Do you solemnly swear the testimony you're about to give shall be the truth under the pains and penalties of perjury?

THE WITNESS: I do.

JUDGE FETCH: Thank you. Mr. Thomas.

MR. THOMAS: Thank you, Your Honor.

STANLEY KOPPINGER,

having been first duly sworn, was examined and
testified as follows:

BY MR. THOMAS:

Q. Mr. Koppinger, could you state your full name and spell your first and last name.

A. My full name is Stanley Carl Koppinger, K-o-p-p-i-n-g-e-r.

Q. And where do you live, Mr. Koppinger?

A. I have two residences. I live between Dickinson and Beach, North Dakota.

Q. And by whom are you employed?

A. American Bank Center, in Dickinson.

Q. And what do you do for American Bank Center?

A. I'm the President, CEO and a board member of the bank.

Q. Are you affiliated with American State Bank?

A. American Bank Center changed its name from American State Bank a number of years ago. There are American State banks in North Dakota, but we are not one.

Q. Are you associated with more than one bank in North Dakota?

A. We are one bank with 14 locations in the western two-thirds of the state.
Q. And your title with the bank is what?
A. I'm the managing officer, president and CEO.

Q. For how long have you held that position?
A. Approximately five years.

Q. Have you had occasion to interact with Dr. McCallum since he became President at Dickinson State University in 2008?
A. Yes, I have.

Q. Could you summarize for the Judge what generally your contacts with Dr. McCallum have been?
A. Over the course of that time?
Q. Yes, please.

A. Just briefly, probably met him in the early summer of '08 when he got here, probably April, May, somewhere in there. By invitation he invited myself and the president of our holding company, Mr. George Ehlis, to his office, just to get to know one another. We went up there. We were invited back another time. I brought some other people with us that he had invited from the bank. At that time it was myself, Vaune Cripe and Frank Frederick, I believe.

I've gotten to know Dr. McCallum professionally and as a friend over the last three years and five months. On many different occasions we have been invited to a number of things, worked with -- I worked on the Strom Center Advisory Board with a number of other businessmen in Dickinson, along with Dr. McCallum and those from the
university.

Q. For those of us not familiar with Dickinson, can you tell us what the Strom Center is?

A. Well, the Strom Center is basically kind of a business development -- I have a hard time explaining it. There's so much going on there. I know some of the particulars, but it's a business development center. Of course, a gentleman by the name of Mr. Strom is the lead on it and he -- there's a number -- you know, a lot of different consulting to local businesses, new businesses in the area. There's a number of things that they do. They work with REAP zones. They work with a lot of different entities in our region.

Q. You said the what zones?

A. REAP, R-E-A-P.

Q. And that stands for?

A. Rural Economic Area Partnerships.

Q. And what is the Strom Center advisory committee?

A. I came into it probably after it had been going for a while. I don't profess to be an expert in it. What it is, though, in a nutshell, is a group of business people and university members and others, I'm sure, that are intended to give their -- to just give some guidance, interaction based on how things that are done in there affect the community, how they might affect your institution, for example, how they might affect the greater Dickinson area.

Q. Okay. And do you know who initiated the
Strom Center advisory committee?
A. No, I don't.
Q. And you sit on that advisory committee with others?
A. Yes, I do.
Q. Can you identify some of the other committee members?
A. Chuck Rummel, Brian Rummel, Guy Moos, Paul Steffes, Dennis Johnson, Don Hedger, of course, Dr. McCallum.
Q. Dr. McCallum was a member of that committee?
A. I don't know if he's considered a member or if he sits in. I don't get that far into it. And then Roger Kilwein, Joe Freed, Joe Rothschilder, Joel Bleth.

Q. And you talked a little bit about the Business Development Center and what it does. Could you tell the Judge what, in your words, the advisory committee is tasked with doing?
A. The advisory committee?
Q. Yes.
A. What we're tasked with doing?
Q. Yes.
A. Again, it's to give -- to listen to the reports, to ask good questions, to relate in our world how those things might or might not apply, and to offer as we choose our thoughts on things.
Q. Can you discuss -- you were talking about your interaction with Dr. McCallum, both
professionally and as a friend. Can you tell us whether you had any contact with Dr. McCallum in the context of the DSU Foundation or any donations that your banks have made to DSU projects?

A. Did we have any conversation about those things?

Q. Any contacts with Dr. McCallum in the context of your banks being a contributor to any projects at Dickinson State University?

A. No, he never once asked for money from me.

Q. Okay. Has American --

A. I have had contact with him about things that relate to that, but never once was he asking for money.

Q. Okay. Has your bank or the bank that you are associated with, been a donor to Dickinson State University?

A. Yes, we have.

Q. Okay. In that context, have you had occasion to observe Dr. McCallum's interaction with Foundation members and other donors to the University?

A. The Foundation members?

Q. Or donors to the university.

A. Oh, of course. You know, I was invited a couple, three years, I don't remember how long, to the donor appreciation evening, an event that recognizes all who have donated. Dr. McCallum generally has been one of the speakers and as others were.
Q. And as the BAC was being constructed, did Dr. McCallum consult with you regarding various aspects of that project?

A. I wouldn't say he consulted with me. We visited about some things. Not various aspects, one in particular. I think he probably confided in me, and I'm guessing others. I don't know that to be a fact.

Q. As a member of the business community in Dickinson, have you had occasion to form an opinion as to Dr. McCallum's relationship with other business members in the Dickinson community?

A. Yes, I have.

Q. Can you describe that for the Judge?

A. I'll do my best. I don't sit around and look for it, so it doesn't come easy to me, but I see it when I see it. City commissioners that I know talked to me and tell me that they have never had so much interaction and so much information fed to the city commission. I refer to Carson Steiner, who refers to others on the city council.

MS. DONARSKI: Objection. Hearsay.

THE WITNESS: Carson told me this.

JUDGE FETCH: Okay. Hold on. Here's the thing, Mr. Koppinger, you can testify in general, but if you're going to say "so-and-so said this to me," that's not allowed.

THE WITNESS: Okay.

JUDGE FETCH: Do you understand?

THE WITNESS: Yes, I do.
Q. (MR. THOMAS CONTINUING) So what I'm asking for, Mr. Koppinger, is your opinion as to Dr. McCallum's reputation within the business community.

A. He has a very high opinion -- or the community has a very high opinion of him in the business community, in my opinion.

Q. Thank you, Mr. Koppinger. Mr. Koppinger, at some point in June of 2011, did you send a letter to Chancellor Goetz expressing concern about Dr. McCallum?

A. Sometime around June of this year, yeah.

Q. Okay. Could you turn to Exhibit T and tell me if that's the letter that you sent to Chancellor Goetz?

A. Yes, it is.

MR. THOMAS: Your Honor, we would offer Exhibit T.

MS. DONARSKI: No objection.

JUDGE FETCH: This is a letter? Okay. It's an email; right?

MR. THOMAS: That's right, Your Honor.

JUDGE FETCH: Okay. Exhibit T is admitted.

Q. (MR. THOMAS CONTINUING) What prompted you to send this letter to Chancellor Goetz, this email to Chancellor Goetz?

A. I guess a number of things probably
prompted me to do it. I put it off for a while as I gathered information that would satisfy me without looking -- I don't go digging, but what I hear, and so forth. And I know I can't speak to what I hear, but I will say that I have talked with Dr. McCallum. As I said, on a professional as well as on a personal basis, we know each other. We do not talk very much, but one day he called me and said, You could blow me over with a feather right now. His words not mine. He said, "I just finished a meeting with the Chancellor." And no one ever asked me to write this letter. I did.

Q. You write in the email to Chancellor Goetz with regard to Dr. McCallum, quote, He is a professional, honest, thoughtful, considerate and well thought of gentleman, close quote. What's your basis for reaching those conclusions?

A. I've never, ever seen anyone quite like that before, that long. For real. Those are honest words. They're short words.

Q. You indicated in your email to Chancellor Goetz that you had concerns about the possibility of quote, nonrenewal of Dr. McCallum's contract, close quote. What was the basis for your having that concern?

A. A phone conversation while I was in the car driving to work with Dr. McCallum, very brief one.

Q. Did you receive a response from Chancellor
Goetz to this letter?

A. Not yet, I haven't.

Q. And this letter was sent in June of 2011?

A. June 13 at 9:49 a.m.

Q. Actually --

A. That was wrong. June 6th, 12:51 p.m.

Q. That's correct.

MR. THOMAS: And for the record, Your Honor, I asked Mr. Koppinger to send me a copy and so the top part of this is Mr. Koppinger's email to me attaching that email.

Q. (MR. THOMAS CONTINUING) Is that correct, Mr. Koppinger?

A. That is correct.

MR. THOMAS: Thank you. Those are all the questions I have for this witness, Your Honor.

JUDGE FETCH: Thank you. Ms. Donarski or Ms. Andrews?

MS. DONARSKI: Ms. Donarski.

CROSS-EXAMINATION

BY MS. DONARSKI:

Q. I have just a few questions for you, Mr. Koppinger.

A. Sure.

Q. You are here obviously as a character witness. Do you have any information with respect to the enrollment issue at DSU and Dr. McCallum's involvement with that?

A. None whatsoever.

Q. And you indicated that before you drafted
that email that you put it off for a while. How long was it between when you first received that call from Dr. McCallum to when you actually wrote the email?

A. I couldn't give you the exact period of time, but I'm guessing it was maybe close to two months.

Q. Okay. So two months before that President McCallum had contacted you and had indicated that there were some issues with respect to his status or potential status of his employment at DSU?

A. I believe that would be correct, yeah.

MS. DONARSKI: Okay. Thank you. I have nothing further.

MR. THOMAS: Nothing else, Your Honor.

JUDGE FETCH: Anything further? There's nothing further. Thank you.

THE WITNESS: Thank you.

JUDGE FETCH: You were not out there when I instructed the other individuals waiting about certain instructions about sequestration. When you leave here, you may not discuss your testimony or questions that were asked of you in the hearing. Do you understand?

THE WITNESS: Yes, I do.

JUDGE FETCH: Thank you.

THE WITNESS: Thank you.

JUDGE FETCH: You are excused.

Mr. Thomas, how do you wish to proceed?

MR. THOMAS: We will recall Dr. McCallum.
JUDGE FETCH: Okay. And you have about three or four other people out here waiting?

MR. THOMAS: Judge, I do. Those witnesses will take considerably longer and so in order to avoid disrupting the flow of Dr. McCallum's testimony, my preference would be to complete him, his testimony, and if we can get those witnesses on today, that would be great. If not, I believe that most have indicated an ability to return next week, if need be.

MR. KOPPINGER: Your Honor, is this an open hearing? Can we stay for a bit?

JUDGE FETCH: Yes, you certainly may. Once you've testified, yes, you may. And the person with you is not going to be testifying?

MR. KOPPINGER: That's my wife.

MR. THOMAS: No, she is not.

JUDGE FETCH: All right. Then, Dr. McCallum, we'll resume with your testimony. All right. Let's resume.

MR. THOMAS: Thank you, Your Honor.

Q. (MR. THOMAS CONTINUING) Dr. McCallum, when we broke for lunch, you were discussing the interview that you had with Dr. Hillman on May 4, 2011. Do you remember that testimony?

A. Yes, I do.

Q. And following that interview with Dr. Hillman on May 4 of 2011, what was your understanding of the status of any inquiry with respect to the enrollment issues at Dickinson State?
A. Well, as I had indicated to you in the first part of my comments, the email from the Chancellor announcing that they would be on campus May 4th indicated the intent of the interviews was to bring closure. I also indicated earlier in my testimony that Dr. Hillman had indicated he would get back to me either at the end of the day or in a day or two afterwards relative to the findings of his interviews. That did not occur. It was a very, very busy time in terms of the academic calendar. We were preparing for commencement and so I moved forward, focusing on our commencement planning.

Q. And what was your next contact with regard to the investigation of this enrollment matter?

A. On the 13th of May, I was in Bismarck to go to the airport and pick up our commencement speaker. I had made a special effort to coordinate with the Chancellor’s office to bring the commencement speaker to his office for a courtesy call so that she could meet him and he could meet her. She is the president of AASCU.

Q. And what did you find upon your return?

A. We had a great meeting between the commencement speaker and the Chancellor and his office the afternoon of the 13th of May. We drove the commencement speaker and her husband to Dickinson. We had a dinner that evening,
recognizing the commencement speaker. The next day
was Saturday, the 14th. We had our commencement
ceremony, and I subsequently found when I came back
to work on Monday, that there had been additional
interviews on the 13th that I was not aware of. I
did not know that there was going to be a follow-on
visit with additional interviews. And until we went
through this information recently, I was not sure
who was on that complete list of individuals who had
been interviewed on the 13th.

Q. So these were employees at Dickinson State
University that you oversaw and you were not
informed that Dr. Hillman was interviewing and you
didn't get -- you were not given advance notice of
that; true?

A. I believe the interviews were conducted by
Mr. Eggert, if I remember correctly. I did not know
that the second round of interviews was going to
occur. As I recall, and I would have to look at the
list on the 13th, not all of them were DSU
employees. One of the interviews included the
foundation director, who is not an employee of the
university.

Q. In any event, you were not given advance
notice of these interviews; correct?

A. No, I was not.

Q. On May 26th, were you summoned to Bismarck
by Chancellor Goetz for your annual evaluation?

A. Yes, I was.

Q. Did you attend that meeting?
A. Absolutely.

Q. Can you tell us a little bit about what happened at that meeting?

A. Prior to the process of going through the evaluation, each of us as presidents are required to submit an institutional report. We have talked about this earlier in the day. The institutional report that we had submitted to the Chancellor's office was what we referred to as the goal share report. That is a Web-based program that outlines the institutional goals and then we fill out the accomplishments that we have made in support of the Board's strategic plan and in support of the president's objectives.

I had submitted that. In addition to the goal share report that, again, is anchored on the Web, there were some things that had been accomplished during the year that were not specifically addressed in the Web-based program and so I had elected to submit a supplemental report that was additional accomplishments that we were proud of that had been completed during the year. I told my wife as I got ready to drive to Bismarck that, as I reflected on the past year and I reflected upon the things that had been accomplished, in all honesty, it was probably the most successful year of my entire 40-year career.

Q. Dr. McCallum, not to interrupt you, but could you looked at Exhibit DD, please?

A. (Witness complies.) Sorry.
Q. That's okay. I should have tabbed them, I've been told.

JUDGE FETCH: Oh, well, there are all kinds of learning experiences in life, Mr. Thomas.

MR. THOMAS: Agreed. It's a steep curve.

Q. (MR. THOMAS CONTINUING) Have you found that, Dr. McCallum?

A. I'm there.

Q. Is that the supplement to which you referred?

A. It is. It's dated the 31st of March. I don't see my attachments. There were some attachments to this document, but this is the baseline letter of communication.

MR. THOMAS: Your Honor, we would offer Exhibit DD at this time.

MS. DONARSKI: No objection.

JUDGE FETCH: Thank you. Exhibit DD is admitted.

Q. (MR. THOMAS CONTINUING) And so having submitted this document, you arrived at your meeting with Doctor -- with Chancellor Goetz on May 26; correct?

A. That is correct.

Q. Tell us more about the meeting. What happened at the meeting?

A. It was a very difficult meeting. I had my notes. I had all of my materials that had been submitted for my self-evaluation. As I had indicated, I thought that we had been very
successful throughout the year, a number of great things had been accomplished. The decorum of the Chancellor was very serious. He laid on the table a letter with, as I recall, 12 questions.

Q. Could you turn to Exhibit 30, please?

While you are looking for Exhibit 30, let me just ask you, you were expecting to receive your 2010-2011 performance evaluation at this meeting; correct?

A. That is correct.

Q. And looking at Exhibit 30, the first page is a letter to you from Chancellor Goetz that reads, in part, quote, Today was scheduled for us to meet regarding your 2010-11 performance evaluation. Before I can prepare a written evaluation for you, I would like for the two of us to have a discussion about several points, which are listed below.

Have I read that correctly?

A. Yes.

Q. And then he references the 12 points that you alluded to as well; correct?

A. Yep.

Q. All right. Tell us more about the meeting.

A. My memory of the meeting is very clear. It was a very disheartening meeting. It lasted approximately an hour-and-a-half. We had, during that time period, a verbal discussion extemporaneous. He wanted to know what any initial thoughts were relative to these 12 questions. I,
not knowing that these 12 questions were going to be before me, tried to respond verbally as best I could. Please keep in mind that in my folder in front of me I had all of the accomplishments that had been completed for the year that I thought we were going to discuss. I tried to weave some of those accomplishments into my response to these questions. As the conversation proceeded, it became increasingly difficult. The Chancellor both verbally and nonverbally was upset at me.

Q. What were the nonverbal indications to you that he was upset?

A. It was very clear when I would try to respond to the questions verbally that he was disagreeing and not accepting my responses. He would shake his head no. At times he would make editorial comments regarding things that I had said. For example, I talked about one of the accomplishments that had been completed and his response was something like, “The reason these good things are happening at Dickinson State is because you are bullying the good people to work for you.” I objected to that. There were a couple of times as a nonverbal gesture where he would take his hand and thump the table as a point of emphasis.

At the end of the meeting, he was very insistent that I respond in writing by Monday, the 30th. Please keep in mind the puzzlement that I had on this, not only relative to the presentation of these questions, but also to the fact that it was
Memorial Day weekend and my wife and I had planned a weekend getaway.

Q. Let me stop you. Had you been given any indication prior to this meeting that there were these concerns or that you would be tasked with writing a report over Memorial Day weekend?

A. Not at all.

Q. Okay. And let me ask you as well, Dr. Goetz's recollection was that the meeting took place during the afternoon of Thursday, the 26th; is that your recollection as well?

A. That is correct. I cannot tell you the exact time, but I do remember that I had an appointment in the afternoon.

Q. Okay. Since we're talking about interpretation, there's been a lot of testimony about interpreting contents of letters. What was your interpretation of Chancellor Goetz's instruction that you provide him with a response by Monday, May 30th?

A. As I indicated to you, I was very puzzled by that because it is a holiday. And, yet, I wanted to try to comply to the demand as best as I could. And so I called my wife as I was driving back to Dickinson. I told her we were canceling our plans to travel and that I was going to spend the weekend writing essays.

Q. Before we get to what happened over the
weekend, let me ask you a couple questions about the meeting with Chancellor Goetz.

During that meeting on May 26, did Chancellor Goetz indicate to you that it was his intention that your contract not be reviewed for the 2012-2013 academic year?

A. It was very clear. He told me that there would be zero percent increase in pay.

Q. For the upcoming year?

A. For the next coming year and that there would not be a renewal and that he was going to let my one year that still existed on my contract run out.

Q. So let me stop you. As of that meeting, you already had a contract in place for the 2011-2012 academic year; correct?

A. That is correct.

Q. Traditionally, would the contract have been renewed at approximately that time of year for the subsequent 2012-2013 year?

A. Yes, that would have been the traditional cycle of extending, but as you heard yesterday, the traditional extension would have been more than one year. I can't tell you what is always used, but I can tell you that the hope is that the contracts are renewed for at least two more years to push you three years out in terms of future employment.

Q. But Chancellor Goetz told you that it would not be renewed at all?

A. That is correct.
Q. Did he indicate during that meeting that you had, quote, the worst relationship among the community of any president in the history of DSU?
A. That is correct. And it relates to one of the specific questions, and I'm on Exhibit 30 right now. Question No. 5, "What is your current relationship with the DSU foundation, Alumni Association and the City of Dickinson"?
Q. And what, if you recall, did Chancellor Goetz state in response to that No. 5?
A. When I tried to discuss -- again, this was extemporaneous and verbal. As we were going through those 12 questions, I tried to explain where we were with the Foundation, the Alumni Association and the City of Dickinson. He indicated to me that he had received feedback that was contrary to my perception and he felt like I had the worst community relationships of any president at DSU that he knew.

Q. Following that meeting with Chancellor Goetz, did you contact any community leaders with regard to that statement by Chancellor Goetz?
A. Yes, I did.
Q. Whom did you contact?
A. After I called my wife and told her that the weekend trip was canceled, I called three community leaders and at that point I was hoping that they would be willing to rebut the Chancellor's position.
Q. And those three community leaders whom you contacted were?
As I recall, it was Mr. Stan Koppinger, Mr. Jack Olin, and the third one would have been Lavern Jessen.

Q. And those are community leaders in Dickinson?

A. That's correct.

Q. So what happened after this meeting with Chancellor Goetz?

A. I drove back to DSU. I immediately went to work on the development of my essays. I had Friday to have access to my staff and I knew that some of the essays required a level of detail that I could not compose by myself. And so I asked Mr. Binstock to prepare a summary on the financials. I asked Gail Ebeltoft to prepare a summary on the personnel, and I asked the athletic director, Tim Daniel, to prepare a summary on the volleyball team.

Q. And is your response to Chancellor Goetz found at Exhibit 30, beginning at Bates page 149?

A. I don't see the attachments. I do see my essays.

Q. Okay. So attached as Exhibit 30 is -- just to make sure we've got the same documents, starting at page 149 is your response to Chancellor Goetz?

A. Yes. And my essays go through page 158. But I do not see my attachments and there were several.

Q. One sixty-five, do you have a 165, Bates?

A. One sixty-five is my first supplemental
submission.

Q. And can you describe what other attachments you included that are not part of Exhibit 30?

A. Yes. And, of course, they are referred to in each of the essays. I talked about the attachment relative to the volleyball team problems, and that was an attachment that was prepared by the athletic director that presented the chronologic sequence of events and how we went through the self-reporting process. There was a one-page summary of the financials that I referred to in my essay relative to the financial well-being of the institution. There was several attachments prepared by Gail Ebeltoft, which as I recall, Your Honor, was actually reviewed with Gail Ebeltoft during her testimony.

Q. Let me stop you there for a moment, Dr. McCallum. Could you look at Exhibit FF, please?

A. Yes, I'm there.

Q. And could you continue further into Exhibit FF and tell the Judge whether or not this document does contain all of the attachments that you submitted to Chancellor Goetz on May 30th?

A. Your Honor, without walking through all 12 essays and cross-referencing each attachment, I can't tell you for sure, but at this point in time, as I do a preliminary review, it does seem to be the complete set of attachments.

MR. THOMAS: Your Honor, we would offer
Exhibit FF at this time.

MS. DONARSKI: Objects as duplicative of all the documents that contained in Exhibit 30.

MR. THOMAS: Well, Your Honor, we could piece meal the documents as to what's contained and what is not. I think it would just be easier if we had the entire document as one exhibit.

JUDGE FETCH: Agreed. I will admit Exhibit FF.

Q. (MR. THOMAS CONTINUING) So you worked on this essay over the weekend. Were you able to have others prepare documents on the Friday before the weekend so that you could submit this document to Chancellor Goetz as directed?

A. Yes. In order to stay on time and because I didn't want to interfere with anyone else's Memorial Day weekend, I asked those three individuals to prepare those documents on Friday, which they dropped everything and did for me. I then spent Friday night, all day Saturday and all day Sunday and all day Monday writing the balance of the essays. Given the fact that the Chancellor had strictly stipulated that he wanted this on May 30th, I assumed that the Capitol Building was locked on a holiday. I didn't expect the Chancellor's office to be open on a holiday. I made the decision that the best thing that I could do would be hand deliver it...
early Tuesday morning and so that's what I did. I
got up early and I drove in and I hand-carried the
complete packet to the Chancellor's office on
Tuesday morning.

Q. Did you receive any response or reply to
that document that you submitted?
A. Not until I went back for my official
performance evaluation.

Q. And when was that?
A. I believe the date on that was June 7th.

Q. Could you turn, Dr. McCallum, to Exhibit
48?
A. Say that again, please.

Q. Exhibit 48. And I'll tell you for the
record that this is the exhibit that's previously
been received and it's a letter from Doctor -- from
Chancellor Goetz to you, dated June 7, 2011. And
that would appear to be your annual assessment of
the period July 1, 2010 through June 30, 2011; is
that right?
A. That is correct. I would note that there
is one piece missing from this exhibit.

Q. And that is?
A. My first supplemental, my first
submission, the one that we just reviewed a few
minutes ago. The one that we reviewed that was
dated March, I believe, 31st.

Q. That would be Exhibit DD? You can look at
my copy.
A. That is correct.
Q. All right. So this was provided to you from Chancellor Goetz personally, Exhibit 48?

A. Yes, it was.

Q. And describe that meeting.

A. I arrived on the 7th of June. Given the fact that I had been told my contract would not be renewed and that there would be a zero percent increase in pay, I was very apprehensive going into the meeting. The tone was 180 degrees different. He was very kind. He was very thoughtful. He even offered me a cup of coffee. He asked me to review the document and then he wanted to talk about it. I quickly read the document and I was surprised by the positive nature of this June 7th document as I reflected back on our previous conversation the 26th of May.

Q. I'd like to ask you about some of the items contained within this performance evaluation, but let me step back first.

Is there an indication in this document or elsewhere that, in fact, your contract was going to be extended an additional year for the 2012-2013 year?

A. He wanted to talk about the content of this document and I asked if I was still in a situation where there would be no renewal and a zero percent salary increase. He told me that he would rather talk about the document first and then get into the contract terms, but since I had brought the contract terms up, he would go there first. And so
he informed me that my contract would be extended for one year, which would put me two years out, and he told me that my salary increase would be three percent.

Now, following this June 7th meeting, prior to the board meeting on the 16th of June, he sent me an email which said upon conversations with the board president, my salary increase would be two percent instead of three percent. But after he had put my mind to rest regarding the extension of the contract and the increase in pay, we talked about the general context of what is outlined within this evaluation.

Q. Okay. Let's talk about that a little bit together. Could you turn to Bates 481. That's the second page of the document.

A. I'm there.

Q. General management and planning, Chancellor Goetz writes, quote, Your leadership portrays one of inclusiveness and a participatory approach, close quote. Do you see that?

A. Yes, I do.

Q. Did your leadership style change at all between June of 2011 and the date on which you received the notice of termination in August of 2011?

A. No.

Q. He writes later in that section, quote, Your attention to the university's infrastructure, plant management and institutional planning continue
to be of high priority. This is attributable to your leadership and a team dedicated to this objective for years, close quote.

Were you gratified by that recognition?

A. Yes, I read that to recognize our commitment to maintaining the facilities, our success with construction of the Badlands Activity Center. We spent $1 million-plus on the renovation of Stickney Hall. That was another major construction effort. We also in this cycle had

updated our campus master plan for facilities. And so this statement, as brief as it is, represents a lot of work by a lot of people.

Q. On the next page under external relationships, Chancellor Goetz quote, I have received very positive feedback relative to external relationships throughout the Dickinson State University community. In the conduct of this assessment this feedback was primarily at my initiation, close quote. What did that tell you?

A. Things had changed significantly in a period of ten days. I went from very poor community relationships to very positive. I looked at that and thought that when I made those three phone calls going down the interstate, that there must have been some people who spoke up on my behalf.

Q. Under the next section where it says "other perspectives," Chancellor Goetz writes, "Attention is made relative to the issue of enrollment reporting. I recognize your response in
this regard; however, work with the System Office remains in resolving issues of reporting and definitions." What did that statement mean to you?
A. Please keep in mind that in my analysis, I was anchoring off of my essays, my Memorial Day weekend essays. And so if you look at essay No. 6 in my Memorial Day essays.

Q. This would be No. 6?
A. Essay No. 6. It's Exhibit FF.

Q. The sixth page of that document?
A. No, it's paragraph 6, question No. 6.

Q. Where it says "recent enrollment reporting"?
A. Yes.

Q. Okay.
A. The last sentence in my essay acknowledges my belief that the new NDUS enrollment matrix, which has been discussed previously by other witnesses, will clarify future reporting procedures and help us as we move forward. And so in answer to your question, when I read that sentence, it was my understanding that the resolving issues of reporting and definitions was the continued work that was going to occur on the enrollment matrix.

Q. Now, just so we're clear, as of the date of this document, there had been interviews from Dr. Hillman and Mr. Eggert on campus, you had been spoken to once on the issue of enrollment. What was your understanding as to the level of concern with regard to that issue based on what was contained in
your evaluation?

A. I read the evaluation and I benchmarked it against my essay response. I thought that the issue of our enrollment reporting was resolved. I had no indication that the investigation was continuing.

Q. Continuing with Chancellor Goetz's evaluation, he writes in the next sentence, this is at Bates 482, quote, I am pleased of our response to the Quality Assurance Report. Dealing with the issues pronounced in this report directly is the appropriate action to take on behalf of the University, Close quote.

Having heard Chancellor Goetz's testimony yesterday that the campus quality survey was, quote, one of the three pillars, close quote, that caused him to conclude that your employment should end, how do you reconcile that with the content of this evaluation?

A. Honestly, I am not able to reconcile it. When I heard it yesterday, I was very surprised, because I had kept the Chancellor appraised throughout the campus quality survey reporting process and the work of the committee. And when he gave me this statement on my evaluation, I really thought he was sincere when he said "I am pleased with your response." We have a committee. To my knowledge, that committee is still working to address and resolve the issues that came up in that
campus equality survey. I formed that committee to respond to that campus quality survey. I also gave that committee a number of resources, one of which is, we did the research and we found an article, which I subsequently shared with the Chancellor, that outlines the ten top reasons why employees are satisfied with their job and what makes a good working environment. The work of that committee, which I think is still ongoing, is to take the survey results, the campus quality survey results, and benchmark it against those top ten reasons for job satisfaction and develop recommendations to address the concerns, enhance the communication and move the University forward in a positive way. And so my surprise yesterday was significant.

Q. So following this meeting on June 7 with Chancellor Goetz, you received your contract for the 2012-2013 year; is that correct?

A. That is correct. It was extended one year and I did get the two percent increase in pay.

Q. And that's reflected at Exhibit 49; is that correct? Would you take a look at that?

A. That is correct. The contract was extended to June 2013 and my new salary is reflected.

Q. And just -- it looks like it was signed on June 29, 2011, if you look at the bottom of page 49; is that correct?

A. That is correct.

Q. And within five weeks of your contract
being extended for another year and you receiving
the two percent raise, you received a notice of
intent to terminate; true?
A. That is correct. I would -- I mean, I say
that's correct. I would have to look at a calendar,
but it sounds about right.
Q. Now, while this was all going on, and we
heard about this from our testimony yesterday, there
was a draft report of the internal review that had
been prepared on June 21st. Do you recall that
testimony?
A. I do recall the testimony. And I have
seen that draft as one of the exhibits, I believe.
Q. You didn't see it when it was in draft
form, obviously?
A. No, I did not.
Q. And you didn't see the second draft or any

subsequent draft of that until it was -- until it
was released to the public; correct?
A. The first time that I saw that document
was when it was laid on the table in front of me and
I was told that I was going to be terminated.
Q. Was that on August 3rd?
A. That was Wednesday, August 3rd.
Q. Were you contacted about the contents of
the internal review, however, prior to August 3rd?
A. I was, and I was surprised.
Q. Who contacted you and when were you
contacted?
A. I cannot tell you the exact date, Judge,
but it was somewhere in the last week of June. I remember that timeframe very clearly. It was a reporter. And the reporter wanted to interview me about the enrollment investigation and her questions used very key phrases like "fraud." I was very puzzled by this. In fact, she kept saying enrollment investigation and I said, I'm not aware of an enrollment investigation. She talked about charges of fraud. I said, I'm not aware of charges of fraud. Ultimately, Judge, that article was published in The Dickinson Press on the 4th of July weekend and I believe the date was Saturday, July 2nd.

Q. What was going on on campus on that weekend?
A. It was the July 4th weekend. It's a huge, huge weekend for the community of Dickinson. Typically, my role and my wife would have been to ride in a convertible in the 4th of July parade and to participate in the celebration that the community has for the 4th of July.

Q. Did you do that?
A. We did not. That article was on the front page, top fold, huge bold headlines. The article was an incredible embarrassment to both me and to my wife. Honestly, given the embarrassment, we could not pull ourselves together to ride in the convertible down Main Street and so I politely excused myself from the parade and we did not participate.
Q. And at this point you had not received any information from the Chancellor's office or anyone else, other than The Dickinson Press, as to what was being investigated or what the concerns were?
A. That is correct.
Q. How about during the month of -- remainder of July, did you receive any information at that time regarding enrollment issues from the Chancellor's office or from anybody else?
A. No, I did not. And the month of July was peaceful, relative to the campus, my work and the time that I had with my wife. We did take about a ten-day vacation and traveled to visit family. There was no communication during the month of July from the Chancellor's office that I recall at all.
Q. Were you summoned by the Chancellor to appear in his office on August 3rd?
A. That is correct. I remember the sequence very clearly.
Q. Tell us what happened.
A. The afternoon of August the 2nd, which, as I recall, was a Tuesday, it was midafternoon. The Chancellor called me. He was very cordial. He was very warm.
Q. What did he say the reason for the meeting was?
A. He said, "Hey, Dick, can you make it to Bismarck tomorrow? I just want to talk to you a little bit about our enrollment report." I said, "Sure, I'll rearrange my meetings. What time do you
want me in your office?" He said, "I want you here at 3 o'clock." I said, "Is there anything you want me to read to prepare for the meeting?" He said in a very casual way, "No, everything is still in draft form, just come on in and I'll give you a chance to review the materials and we'll discuss it."

Q. Now, before you continue, would you look at Exhibit 17, please? That's the internal review report that is dated August 1, but I understand from testimony yesterday was actually issued on August 2.

A. Exhibit 17, I'm there.

Q. Is that the document that was presented to you at your meeting with Chancellor Goetz on Wednesday, August 3rd?

A. That is correct.

Q. The front page of that document indicates the key dates include a first report draft date of June 21, a second report draft date of July 21, and then some reviews all leading up to a final report date of August 2. Do you see that?

A. I do.

Q. Did you see any of those documents prior to this being handed to you on August 3rd?

A. I had not.

Q. Any explanation why Doctor -- or why Chancellor Goetz didn't provide it to you or at least reference it prior to your meeting on the 3rd?
A. I have no idea.

Q. I interrupted. Tell me what happened at the meeting.

A. I arrived at three o'clock as requested. I went to the Chancellor's office. Once again, he was very serious in terms of his decorum. He handed me this report and he said, "I have a private space set aside for you. I want you to review this report and come back to my office and we'll discuss it."

And so we went down the hall. There was an empty office. And I took the report and began to review it. I probably spent 15 minutes reviewing it. I did not read every word, page for page. You don't have to get very far into the document to realize the serious magnitude of what is covered in this report. So in about 15 minutes I had the gist of what this report contained.

Q. So your meeting with Chancellor Goetz resumed at that point?

A. I went back down the hall. He was seated at his deck. He invited me to come in and we both sat down at his conference table in his office. He talked in preliminary terms about this report. I remember asking him specifically if we would have the opportunity to staff it and respond to it. And

please keep in mind that the day before, I asked if there was anything to read prior to coming to the meeting and he had said everything is in draft form. He informed me that there was no time for staffing. It was an official, publicly-released
report and that he had already released it to the
news media and there was no time for me to respond.
He clearly indicated three options. And I remember
those options very clearly.

Q. What were they?
A. He said, "You know, Dick, you can take
this report, drive back to Dickinson, call me
sometime the next morning," which would have been
Thursday, "and voluntarily resign."
The second option, Your Honor, is
different than what was explained yesterday. The
second option was if you don't voluntarily call
tomorrow morning, I will publicly call for your
resignation that afternoon. I subsequently learned
that he was true to his word.

Q. How did you learn that?
A. Because it came out in the news.
Q. On what day?
A. I believe that news broke on the 4th of
August.

Q. Which would have been the Friday?
A. No, Thursday.

MS. DONARSKI: Judge Fetch, may I
interrupt just a moment? I notice that Dr. McCallum
is reading from notes and he has been, so I'd like
to at least get copies of that and have them marked
as an exhibit. Since he's testifying from notes
that are sitting in front of him, that would only be
appropriate that it be marked and identified.

MR. THOMAS: Only if it's necessary for
the witness's recollection. Merely having notes is not the same as needing them for his testimony, so perhaps the inquiry should be made first.

Q. (MR. THOMAS CONTINUING) Dr. McCallum, do you need to have notes before you to recall these events?

A. No, I don't.

MR. THOMAS: Then I don't think they're needed for admission, Your Honor.

JUDGE FETCH: Overruled. And you've put them away, for the record.

MS. DONARSKI: One more note. I am going to continue to object just because he has referred to them and read off of them as part of his testimony, so I think the evidence is clear that the notes, in fact, have assisted in his testimony. And so we continue to object, that those should be marked as an exhibit.

MR. THOMAS: Based on your -- I'm sorry.

JUDGE FETCH: I'm going to overrule. I would like him, however, to go back and repeat the second option.

THE WITNESS: The second option was, clearly, if I refused to voluntarily resign the next morning, that afternoon he was going to go public to the news media and call for my resignation.

The third option, if I did not cooperate, he had talked to the chairman of the Board, Mr. Shaft, and Mr. Shaft was prepared to immediately call for my termination.
Q. (MR. THOMAS CONTINUING) And was there any discussion during that meeting about what the terms of your resignation would be if you were to resign? Did Chancellor Goetz make any comments?

A. Yes, he did, and they were very blunt.

Q. What were they?

A. I asked if I voluntarily resigned, when my pay would stop. He said the minute that he received my resignation. I asked when would I have to vacate the house. He said, "By the 15th of August," which in my recollection, was 12 days from the time that I was with him. I asked, "What about my vacation time," and he said, "I'll think about it." I asked about the value of my contract and he said, "There will be no severance pay. There will be no settlement. There will not be a dime."

Q. What did Chancellor Goetz say with respect to vacation or other leave time that had you accrued?

A. I think he was trying to encourage me to call the next morning with a voluntary resignation and so he said, "I'll think about the vacation time pay and I'll think about perhaps more time to get moved out of the house. You call me in the morning with your resignation and we will discuss those terms."

Q. So this was Wednesday afternoon; correct?

A. That is correct.

Q. August 3rd. And he told you to call him the next day, Thursday morning. Did you do that?
Q. Okay. The next day, what did you do?

A. It was a very difficult night and a very long day. I talked to a couple of friends who unanimously said seek legal counsel.

Q. Can you tell the Judge, was there information published in The Dickinson Press on Thursday, August 4, that would be the day the deadline had been imposed, was there information published on that date with regard to the release of the internal review or with regard to Chancellor Goetz seeking your resignation?

A. My recollection, Your Honor, is that on that Thursday there were two stories that were carried by The Dickinson Press. One of them had to do with the enrollment report. I assumed that that came about because the Chancellor had indicated to me in the meeting that it was a public document and he had already released it to the news media. The second article, again, true to his words, was his indication that I was being asked to resign.

Q. So had you resigned on that Thursday, you would have resigned during the same news cycle, if you will, as the release of this internal review document that alleged enrollment errors at Dickinson State University; true?
A. That is correct.
Q. All right. So I interrupted. Again, I apologize. You did what on Thursday?
A. I spent the day trying to identify legal counsel. At the end of the day I was convinced that I needed the assistance of an attorney. I knew that I needed the day to find legal counsel. And, in my recollection, I sent an email to my secretary asking her to process me for a day of vacation because I did not want to be AWOL, so to speak, from my work status.
Q. And that day of vacation would have been the Thursday --
A. Thursday.
Q. -- the 4th?
A. Subsequently, I sent another email on Friday asking my secretary to process a second day of vacation and I believe that I also asked her to cancel the upcoming Monday cabinet meeting because, Mr. Thomas, you and I had talked Friday morning and you had asked me to drive to Fargo.
Q. Okay. And without discussing what you and I specifically talked about, when was our first face-to-face meeting?
A. I drove -- my wife and I drove to Fargo on Thursday. We got into Fargo, as I recall, about seven in the evening and you and I met face-to-face for the first time at your office Saturday morning
and, as I recall, we spent most of the day together, both Saturday morning and Saturday afternoon.

Q. So you didn't contact Chancellor Goetz on Thursday or Friday as directed; is that correct?
A. That is correct, but when you and I talked on Friday, you had indicated that from this point forward, you were representing me and that you would make contact with the Chancellor's office on my behalf.

Q. Or the Chancellor's representatives?
A. (Nods.)

Q. Yes?
A. Yes.

Q. All right. So Sunday you returned to Dickinson; is that correct?
A. That is correct. As I had indicated, you and I, Mr. Thomas, spent the better part of Saturday together. My wife and I elected to stay a second night in the motel in Fargo.

Q. Chancellor Goetz discussed the distribution of the notice of intent to terminate and that it was apparently disseminated to the staff and faculty of Dickinson State University. Were you able to --

MS. DONARSKI: Objection.

JUDGE FETCH: The record will reflect what the testimony was.

MR. THOMAS: That's true.

Q. (MR. THOMAS CONTINUING) With regard to
the dissemination of the notice of intent to terminate, were you able to access the electronic notice of intent to terminate?

A. No, I was not, and I did not know that that email had been sent out to the campus community that Friday. I didn't know that that occurred until we went through the discovery documents just recently.

Q. Did you --

A. My email was turned off on Saturday morning. When I was with you, Mr. Thomas, we tried repeatedly to access my email and my email message kept coming up invalid password. I would add that I have not had access to my email since it was turned off that Saturday.

Q. So you returned to Dickinson on Sunday and what happened upon your arrival?

A. We arrived midafternoon, approximately 2:30 or 3 in the afternoon. We pulled in the driveway at the president's house. There was an ongoing news blitz, so to speak, with daily articles that we were confronted with when we returned home. The Dickinson Press newspapers were laying on our doorstep. I was still unloading suitcases from the trunk of the car and I was surprised to see the Highway Patrol pull up.

Q. What happened then?

A. A very polite, young Highway Patrolman asked me to identify myself. I did so. He handed me a sealed envelope that had my name on it. He was
very polite and courteous. He said, "I've completed
my mission. Please excuse me." I wished him well.
And at that point I received the official letter
with intent to dismiss.

Q. That was the same document that had been
sent on Friday to others?
A. Correct.

Q. How did it make you feel to be served with
the document by a Highway Patrolman?
A. Well, as I indicated, this was a time with
a great deal of emotional turmoil. The
conversations that you and I had had on Saturday

relative to my situation, the pressure from the news
reports that were ongoing, the uniformed officer,
shook me a little bit. I've never been served
papers before by a uniformed officer like that. It
made me feel like I was some kind of a criminal.

Q. President McCallum, since being served
with that notice of intent, what has your access
been to the university?
A. I use the term with my family that I have
felt like I was under a quasi house arrest. The
conditions that were imposed by the Chancellor were
so severe that my wife and I elected to leave
Dickinson.

Q. What were those conditions?
A. Well, as you know, in the notice of intent
to dismiss, the campus was off limits. The
buildings and facilities were off limits. I was
restricted from interacting with DSU employees. I
did not know this at that point in time, but I subsequently discovered that they were also restricted from talking to me. My wife was worried about where to walk the dog.

Q. And if I can stop you for a moment. I'm looking at the amended notice to terminate, which is Exhibit 18, and it reads at the last paragraph with reference to you, quote, "He is directed to refrain from entering the office of president or any building on campus or owned or controlled by DSU, under the Chancellor's direction or with the Chancellor's consent, close quote.

What did that mean to you?

A. Would you show me which page you are on?


A. Bates 87.

Q. Second to last sentence.

A. It was very clear to me that the campus was off limits. Any building on the campus or owned or controlled by the campus was off limits. I have a running program going on. I fell in love with the BAC after it was built. I'm a regular runner on that track at the BAC. I did not have access to run the track. Again, as we read that, my wife and I worried about where we were permitted to walk the dog.

And so in the midst of all of this, the phone never stopped ringing because of the news media. I cannot tell you how many invitations I've had to go on talk shows. We had reporters standing
on our front porch with cameras trying to get pictures of us. We had reporters positioned in vehicles in front of our house waiting to catch us to talk to us. I went to Wal-Mart to try to get groceries and someone tried to interview me at Wal-Mart while I was trying to get groceries. It was a very, very intense situation and that's why I referred to it as quasi house arrest.

Q. And yet the characterization in the press was that you were, quote, AWOL. I believe that was Chancellor Goetz's phrase as well, AWOL. Do you believe you were AWOL?
A. Not at all. I was trying to cope as best I could with the circumstances that had been levied upon me.

Q. Dr. McCallum, I'd like you to turn back to the first page of Exhibit 18, since that is the amended notice of intent to dismiss and contains the allegations that bring us here today. I'd like to spend some time talking to you about that.
Have you got that before you?
A. I do.

Q. The letter references the August 2 internal review report and we'll talk about that subsequently, but I'd like to talk about the specific allegations in this letter that begins with, the report documents, quote, improper
enrollment reporting by DSU officials, contrary to
applicable SBHE policies and federal IPEDS and other
reporting standards for the purpose of inflating DSU
enrollment numbers, close quote.

First, Dr. McCallum, with the benefit of
hindsight and having now been provided with copies
of all of these documents regarding the enrollment
reporting issues, as you sit here today, do you
believe that there were mistakes made with regard to
the recording of DSU enrollment numbers?

A. Yes, I do. It's very clear that we made
mistakes as we went through this process.

Q. And I presume you believe that the buck
stops with you; correct?

A. I completely understand the Harry Truman
philosophy and I understand where the buck stops and
that's at my desk.

Q. Okay. The next statement in that letter
states, quote, Responsible DSU officials and
employees report they improperly inflated numbers
and reported inaccurate and inflated numbers under
President McCallum's direction or under pressure
from him to do so, close quote.

Your response to that?

A. That is not true.

Q. Have you ever, as President of Dickinson
State University, ever directed any employee of
Dickinson State University or anybody else to
intentionally submit inaccurate enrollment numbers?

A. Absolutely not.
Q. The letter continues that, "Conference or symposium attendees were assigned student ID numbers and enrolled and reported as degree-credit students even though they had not applied for or been admitted as DSU students."

In hindsight, having now, through the discovery process, received copies of these documents, do you know whether or not that actually occurred?

A. Having looked at the documents, I do believe that did occur.

Q. Were you aware of it at the time that it was occurring?

A. I was not.

Q. Did you direct that it take place?

A. I did not.

Q. It states that, "Also, in 2010 and prior years, President McCallum instructed DSU officials and employees to create additional degree-credit classes or sections and enroll DSU employees or others in degree-credit classes prior to the enrollment reporting deadline established by SBHE policies." Could you respond to that?

A. It is very vague to me. I've read this statement several times. I do not recall instructing officials to do anything that would violate policy. I do know that we were repeatedly looking for ways to expand our curriculum and for ways to serve students and to be accessible and responsive to the learning needs of the students in
the area.

And so part of this sentence, to me, talks about creating new learning opportunities and that part I say, yes, we are constantly looking for ways to respond to learning needs, but the part of this that troubled me was the fact that it implies that I was trying to undermine the policy.

Q. The next paragraph of the amended notice of intent to dismiss states that, quote, DSU officials and employees report other concerns related to a campus culture that is divided and one of distrust with staff being pressured to engage in other unethical, suspect or wasteful activities to meet demands.

Do you have any idea what is being referenced in that allegation?

A. I do not.

Q. Have you ever pressured any staff member to engage in unethical, suspect or wasteful activities?

A. I have not.

Q. It alleges that, quote, Employees report increasing use of state appropriated funds for scholarships for student athletes and international students and retroactive awards or other scholarship awards made and approved by President McCallum in the absence of or contrary to established guidelines.

Could you discuss that, please?

A. This is the same issue that I addressed
last week with the State Auditor's Office.

Q. And before we begin with that, let me ask you about that. You've been instructed to participate in an audit conducted by the State Auditor's Office; correct?

A. That is correct.

Q. Who initiated that audit?

A. It's my understanding the audit was initiated by the Chancellor.

Q. All right. And with respect to this allegation, talk about what information you provided previously.

A. I have not had access to our financial records since my departure, which now numbers about 78 days. And so without having access to the numbers, I cannot give you today specifics. I can tell you in a general sense that we never exceeded our Roughrider budgets and we watched those expenditure of scholarship dollars in the Roughrider account very carefully. The State Auditor asked me how many presidential Roughrider scholarships would I do in a year. My response, from memory, was very few. Five a year, six a year. I'm not sure. It probably fluctuated. That was institutional resources that was available to recruit, retain and advance student success.

JUDGE FETCH: Okay. Mr. Thomas, at this time we need to take a brief break. The court reporter needs a little break and probably several other people. It's 3 o'clock. We're going to take
a ten-minute recess.

MR. THOMAS: Thank you, Your Honor.

(Recessed from 3:00 p.m. to 3:19 p.m., the same day.)

JUDGE FETCH: Okay. We’ll come back to

order. Ms. Donarski, was there something that you wanted to put on the record?

MS. DONARSKI: There was. Exhibit 19.

JUDGE FETCH: Yes.

MS. DONARSKI: Actually, both the notice and the amended notice, there is one stipulation. It wasn’t 19. Amended notice is at 18. And the same would apply to the original notice.

JUDGE FETCH: At 16?

MS. DONARSKI: Correct. When you look at the first full paragraph, it references a date which is, "Also, in 2010 and prior years." It’s in the middle of the second full paragraph and it references a time period, "Also, in 2010 and prior years."

MR. THOMAS: I think it’s only in the amended one, Judge.

MS. DONARSKI: The stipulation is that that statement, "Also, in 2010 and prior years," the stipulation is the 2010 would be reference to the 2010-11 academic year. So it’s not just the fall of 2010, it obviously goes into the spring and summer of 2011.

JUDGE FETCH: I’m totally lost. What are we looking at, Ms. Donarski?
MR. THOMAS: It's just on 18. I don't think it's on 16, if you look. It's just on Exhibit 18, the amended one. Second paragraph of page 1 of Exhibit 18.

MS. DONARSKI: See where it says 2010?

JUDGE FETCH: Yes. Yes.

MS. DONARSKI: Okay. So the stipulation is that the 2010 year actually references the 2010-11 academic year, not just the calendar year of 2010.

JUDGE FETCH: Okay. So that's a correction or a clarification?

MS. DONARSKI: Yes.

MR. THOMAS: We have no objection.

JUDGE FETCH: Okay. Thank you. All right. With that, are we ready to resume with the examination of Dr. McCallum?

MR. THOMAS: Yes, Your Honor.

JUDGE FETCH: Thank you. Please proceed, Mr. Thomas.

MR. THOMAS: Thank you, Your Honor.

Q. (MR. THOMAS CONTINUING) Dr. McCallum, we had been discussing Exhibit 18, the amended notice of intent to dismiss, page 2, which is Bates 86, beginning at the second full paragraph. Do you see that? That paragraph begins, quote, President McCallum's reaction to the enrollment reporting issues was to minimize the seriousness of those
concerns and suggest that others had made some minor errors and the problems had been corrected, close quote. Do you see that?

A. Yes.

Q. Do you believe that that's an accurate reflection of your assessment of the enrollment reporting issues?

A. Not at all.

Q. Explain.

A. I never once attempted to minimize this. And in my Memorial Day essay, I indicated that I had repeatedly apologized and I had repeatedly offered to correct. I will tell you that even the day that I was given my indication of dismissal, which would have been the day that I reported to the Chancellor's office to receive the three options, I asked the Chancellor, "Is there anything you want us to do relative to corrective action?" His response was, "The IPEDS reports will have to be adjusted, but we will do that here in the central office."

Q. And that conversation was when?

A. That was the day that I was given the three options.

Q. Oh, the notice of termination?

A. I believe that was August 3rd.

Q. The last sentence of that same paragraph reads, quote, In any event, McCallum did nothing to correct anything until after a system audit and then only under system direction, close quote.

Do you even know what that is a reference
to?

A. No, I don't. And as I had indicated to you, I repeatedly tried to define the problem. I repeatedly, at least three times, thought the issue was resolved. And I repeatedly apologized and offered to make corrections.

Q. The next paragraph talks about your failure to contact Chancellor Goetz on Thursday, August 4, when directed to do so and we have already discussed that at length.

The last sentence of that says, "These actions constitute insubordination." Your testimony as to whether or not you believe you were insubordinate is what?

A. If the definition of not calling him on Thursday morning is insubordination, I would say so be it. But I repeat, I do not feel that that expectation of resigning Thursday morning was a fair request. I could not bring myself to confess to something that I had not done.

Q. And so -- I'm sorry. Go ahead.

A. Voluntarily resigning as a result of that enrollment audit would have been a clear admission that I had done something wrong. I was asked by the State Auditor what parts of that report do you object to and I said, "The entire report." That's why I've requested the hearing.

Q. So the only way to have complied with Chancellor Goetz's directive and not be insubordinate would be if you had called on Thursday
to resign?
A. That was my understanding of the terms.
Q. Okay. And now that refusal is being used as a basis for your termination because it's being labeled as insubordinate, insubordination?
A. That is my understanding.
Q. The next paragraph states that your,

"...actions regarding enrollment reporting contribute to a campus culture in which employees are expected, encouraged or directed to engage in improper activities or ignore applicable SBHE policies..."

Did you ever expect, encourage or direct any employees at DSU to engage in improper activities or ignore applicable SBHE policies?
A. I never did. And it would be totally contrary to my values and my leadership philosophy. And in my Memorial Day essays I provided the Chancellor with a copy of those values and philosophy.
Q. Dr. McCallum, I don't intend to spend a lot of time on the internal review, even though it was identified as one of the bases for your termination, but if you could turn to Exhibit 17, I'd like to ask you just a few questions.
And I'd like to begin several pages into the internal review. If you could please turn to Bates 64, which is page 10 of the internal review. No. 7 on that page, halfway through the paragraph reads, "Because of the collaboration between offices
and the overriding nature of SBHE policies, these activities were directed and approved by the Office of the President?"
And you'll recall there was some testimony from Mr. Eggert regarding that yesterday. Do you recall?
A. Yes, I do.

Q. Dr. McCallum, did you ever direct or approve of the submission of any false or intentionally incorrect enrollment numbers at DSU?
A. No, I never did. In fact, when those seminars were first proposed as credit courses, my initial guidance was, make sure they are academically and financially sound, make sure the Vice-President of Business and the Vice-President of Academic Affairs are developing these activities in accordance with the policies.

Q. Three symposia were discussed; an energy symposium, the Teddy Roosevelt symposium, and a Disney symposium, and the record will speak for itself, but my recollection was that there was testimony that these were symposiums that had not resulted in attendees being listed for enrollment purposes at DSU in years prior to 2010. Do you remember that testimony?
A. Yes, I do.

Q. Can you explain to Judge Fetch why it is that only in 2010 was it that attendees of these symposia were listed on the enrollment information that was submitted by DSU?
A. Yes, I can.
Q. Please do.

A. Your Honor, you repeatedly heard testimony yesterday that DSU does seminars and workshops for credit. One of the witnesses talked about the Strom conference. Another one, I believe, mentioned business challenge. What made this unique was, as my understanding of enrollment reporting, there is a window of time when the snapshot is representative of and that window begins sometime early in August and ends sometime in September, generally four weeks after the start of the semester. So there is approximately a seven-week window where the enrollments that were processed are used for the fall head count.

This year, 2010, was the first time that these three seminars occurred in that window. For example, I believe we had had four or five previous Theodore Roosevelt symposiums. Typically, those Theodore Roosevelt symposiums were always held in October. That would have occurred long after the freeze-count census date had occurred. The energy symposium was the first time we had ever done one and it was funded through a grant. There was no precedent for energy symposiums prior to receiving the grant in order to conduct the symposium. The Disney seminar was a world-class, rare opportunity
that was brought to the community during this window of time. So it was a unique set of circumstances that occurred within this window of time when the census date is generated and formulated.

Q. So had these symposiums taken place in February or March, they would not have been includable in the enrollment report?

A. Not in the fall enrollment.

Q. Now, that addresses whether they would be eligible for inclusion in the enrollment report, but there would, you would agree, still be other steps that would have to be taken in terms of qualifying as classes for which the students can be enrolled and their numbers submitted; right? There are other criteria other than the dates on which these symposiums take place?

A. Absolutely.

Q. And was that part of your responsibility in determining whether or not those criteria had been met before the enrollment information was submitted?

A. I understand where the buck stops. But there is a point where a president cannot micromanage all the details. Your Honor, I will tell you honestly as the President, I've never looked at a course syllabus. I've never looked at the evaluation process that a course is being implemented in terms of assessment of student learning. I don't look at grade rosters. There are four levels of organization below me that are
entrusted to take care of the academic integrity of those details.

Q. How about with respect to how the students were enrolled and whether employees of Dickinson State were enrolled as attendees of these symposiums, did you have any involvement in that process?

A. I have never gotten involved in the registration process for the enrollment process. And, as I indicated before, I am not authorized to access or use PeopleSoft. The fact that employees were enrolled in the Disney seminar is a commitment that we made as an organization because the Disney seminar was focused on hospitality and customer service and we wanted employees to take advantage of this world class symposium in order to enhance our ability to be more customer friendly to our students and parents and stakeholders.

Q. There was previous testimony that you were obsessed with enrollment. Can you respond to that contention?

A. Yes, I can. I will honestly tell you that I am not obsessed with enrollment. Your Honor, if you look at the curriculum vitae that we talked about earlier today, there's a list of accomplishments in there. I don't remember, there's 23 or 24. Only one of those accomplishments even speaks to the issue of enrollment. I have also indicated previously in my remarks that I considered the construction of the Badlands Activity Center as
my number one vulnerability. I was not obsessed with enrollment.

When you look at the submission that I made for my performance evaluation, the first submission, and you look at the major projects that were accomplished this past year, it dealt with other issues than enrollment.

I talked about securing the authorization for limited graduate credit. I talked about the agreement with Harvard for the Theodore Roosevelt Library, the digital library. I talked about the movement of our campus into a different athletic conference. I talked about the Badlands Activity Center. There are a variety of projects and priorities that I was overseeing.

Q. Can you explain -- there was a great deal of testimony from witnesses referencing emails that you would send out regarding enrollment goals and whether goals were being met or not met. Can you respond to the testimony where witnesses indicated that they felt pressure to meet these enrollment goals that you had clearly set out for them?

A. I think part of a leader's responsibility, regardless of what level of organization that they are functioning in, is to clearly define goals, clearly maintain focus, encourage and motivate individuals in order to achieve those goals. And encourage the team effort toward success. My attempt in those communications was to maintain the
focus, encouragement, and to maintain the energy that we needed in order to be successful.

Q. Had Dickinson State experienced a drop in enrollment that concerned you?

A. Yes. As was previously testified, there were drops in our enrollment. We were starting to encounter the financial pinch, so to speak. For example, a loss of full-time students, which we suffered this past year, resulted in a loss of student fees that resulted in a loss of money that we had for our student activities and our student programs. A loss of revenue from tuition and fees is significant.

Your Honor, as you know, in North Dakota the State of North Dakota has a process where the Board and the Legislature and the Chancellor's office work together and they come to an agreement relative to salary increases. And so when the agreement is to give four percent or five percent salary increase, ultimately, the Legislature, in their allocation to the campus, is only giving the campus about 40 percent of what they need. The other 60 percent of the revenue stream has to be generated through tuition, fees, and grants. And so in order to balance the revenue with expenses, there is pressure to be successful financially.

Q. And was your concern regarding enrollment shared with other members of the community at Dickinson State and Higher Ed in general in North Dakota?
A. I believe that there were individuals on our campus who truly bought into the idea that our enrollment had to grow, but I also know that from direct experience that there was an element on the campus that didn’t want enrollment to grow. In fact, as the president of the Faculty Senate told me a couple years ago, it would sure be nice to go back to 1,500 students, the way it used to be. And so in answer to your question, there was not unanimous support for the idea of growing enrollment. But we tried to build a consensus with that Noel-Levitz strategic enrollment planning process where there was a buy-in to this idea. And I would just reiterate that, as you heard in previous testimonies, it was very modest. The modest expectation in the overall five-year plan was one percent a year.

Q. With respect to the staff that you oversaw regarding enrollment issues, it’s clear that some of your goals, many of your goals regarding enrollment went unmet; is that true?

A. The last couple years, that is true.

Q. Can you think of a single instance where you ever penalized, reprimanded, fired or in any way punished an employee at DSU who had failed to meet the enrollment goal that you had established?

A. No.

Q. I’d like to turn, Dr. McCallum, to the testimony of some of the witnesses from the last few days and ask you to respond to some of their
comments that pertain to you. I'd like to begin
with the testimony that we heard from Dr. Hillman.

Dr. Hillman testified that during the interview process, that you had an opportunity to be interviewed and to respond to his interview questions. Can you explain whether that was the case?

A. As I had indicated earlier in my comments, the meeting with Dr. Hillman and Mr. Bill Eggert was very brief. The total time was clearly less than 30 minutes. I remember it more to be 20 minutes. I remember the focus of the conversation was primarily the enrollment matrix. I remember that we closed the conversation with my question regarding whether I might receive some feedback. And so that conversation was very brief.

Q. One of the witnesses that testified yesterday was a witness named Norm Coley, and he makes reference to fearing that he was going to be fired as a result of his failure to meet the enrollment goals that had been set.

Can you tell us a little bit about your relationship with Mr. Coley and your interaction with him in that regard?

A. My relationship with Mr. Coley was very cordial and supportive. I worked hard to support him through a number of challenges and difficulties, both personally and professionally. My support for
him never wavered. I encouraged him. I tried to offer ideas that would help him solve his problems relative to his staff. He was experiencing some consternation within his unit. We collectively agreed to hire a consultant for some team-building experiences. I know that he addressed that yesterday in his remarks, but it was a concerted effort on my part to support him and his leadership.

Q. He testified that with regard to a conversation in May of 2010 that you were talking about a particular symposium and that Mr. Coley questioned whether we could use the symposium for enrollment, the quote that he attributed to you was, quote, We can utilize these symposia for enrollment, and that you were quite strident in that.

Do you remember any such conversation like that with Mr. Coley?

A. I do, but I remember it in a little bit different focus. I had already started the process where I was assured that these seminars, these three seminars that we're talking about, would be processed legitimately and appropriately for academic credit. And so I recall Mr. Coley's comments relative to working with Marty Odermann-Gardner. My comments and guidance to him was, It appears as though these courses are going to be approved internally for credit. Work with Marty Odermann in order to support that effort.

Q. And whose idea was it initially that these courses be used for enrollment purposes or for
credit, rather?

A. Yes, the Director of Extended Learning came to me. She was quite excited. She had indicated to me that they had just finished one of their enrollment committee meetings and that they had realized that within this seven-week window there were going to be three symposiums and that if we were able to process the symposiums for credit, that it would give us an additional opportunity for additional enrollment.

Q. That person was who?

A. Marty Odermann-Gardner.

Q. And your response to her was what?

A. My response was ensure that they are academically and financially sound and feasible, work with the Vice-President for Business and the Vice-President for Academic Affairs to make sure that everything is done appropriately. I also, by virtue of initial thought, was aware of the requirement for contact time and I indicated to her that one of the things we had to be very conscious of was, I believe the contact time is 15 hours of contact for one hour of credit. And so that idea actually came to me.

Q. From her?

A. Yes.

Q. I'd like to -- before we leave Mr. Coley, he talked about your support of him or whether he believed it was support, and he talked about a visit that you paid to him in the hospital. What was the
purpose of your visit to Mr. Coley in the hospital?

A. He had just had surgery. He was someone that I cared about. I wanted to go by and wish him well.

Q. Were you there to talk about enrollment issues?

A. No.

Q. Did you talk about enrollment issues?

A. No, I did not. His wife was with him. I did not want to disturb him. He clearly was in the aftermath of the surgery with some pain. And I told him that he was in my prayers and that I wished him the very best.

Q. Moving on to the testimony of John Hurlimann, I don't know if you recall that testimony, but he testified that in February of 2011, you contacted him and instructed him to create a new class. Do you remember any type of discussion like that with John Hurliman?

A. You know, I've thought about that phone call that he testified to. I do not recall the specifics of the phone call. And so in all honesty, I can't answer the details of that phone call.

Q. In any event, this would have been in February of 2011 after the fall 2010 enrollment issues had occurred; true?

A. That is true. In fact, I believe that he was not employed with us until after the holiday break.

Q. Regarding the testimony of Debora
Dragseth, she talked to some disagreement that she had regarding the adoption of policies that had been passed by, I believe, the Faculty Senate?

A. That is correct.

Q. Her testimony was that she, quote, didn't experience intimidation, close quote, but that you made comments that she interpreted as hostile and

two of those comments were, number one, that during a meeting at which she was present you stated, quote, People will get hurt, close quote.

Do you remember making any such statement in the presence of Ms. Dragseth?

A. I probably said something similar to that, but it's completely out of context.

Q. What was the context?

A. The context was that as we were trying to transition into a new faculty sick leave policy, we had two individuals who were privately experiencing health problems and we were trying to support them. The implementation of our new sick leave policy had to be done in a manner which did not hurt or harm the two individuals who were having problems and looking at the prospect of disability.

Q. So when you said, People will get hurt, what did you mean?

A. I meant that in order to implement the new faculty sick leave policy, we needed to worry about taking care of people and I was not in a position to divulge names because of trying to keep their situation confidential, but I wanted to make sure
that when we made the transition into a faculty sick leave people, we were not going to be harming someone who was already working toward disability.

Q. And how about the statement that she attributed to you that was, quote, I can throw this in the garbage, close quote. Do you remember making a statement like that?

A. A statement like that is completely out of context. And what I do recall relative to the discussion, there had been an impasse reached between the Faculty Senate and my predecessor on the issue of faculty sick leave and the story or the legend that goes around the campus is --

MS. DONARSKI: Objection. Hearsay. He wasn't at the campus at that time. The only way he would know is what somebody had told him what the story or legend was. He was not there.

JUDGE FETCH: We've heard from other people about not direct so-and-so told me, but this was what went around. I'm going to allow it.

Q. (MR. THOMAS CONTINUING) Go ahead.

A. The history, as I understood it, was as a result of the impasse that was established between the Faculty Senate and the president, all of the materials were placed in the trash can and there was no resolution. And what I was trying to convey was my commitment to work with an enduring obligation to
develop a faculty sick leave policy that could be implemented. I subsequently made -- scheduled appointments with all the departments and I talked to them that spring about my commitment to implementing a faculty sick leave policy. I promised them in those spring meetings that when they returned for the next contract year in the following August, that we would have a faculty sick leave policy. I did that with a promise and a commitment that I took very seriously.

And in the remarks that were made in that testimony, again, the presentation of the facts was out of context. There is a Board policy which authorizes the president of a university to implement a faculty sick leave policy on an interim basis for 180 days, and during that 180 days the policy then needs to be reviewed and approved by the Faculty Senate. And so when we came back that fall, I did announce at that assembly that we had a new faculty sick leave policy and that it was an interim policy and that was clearly communicated to the faculty at that assembly.

Q. Were your communications with Dr. Dragseth ever hostile?
A. No.

Q. The last witness that I want to review with you is Hal Haynes. And he testified from an exhibit which has been marked as Exhibit 58. If you could please turn to that. And while you are looking for Exhibit 58, page 2 of Exhibit 58 is the
section that I want to ask you about in which you
write in an email to Mr. Haynes and several others,
toward the top of the page at 516, quote,
"Consequently, we need to develop action plans that
will enroll about 120 students per week for the next
11 weeks, close quote.

And I believe that Mr. Haynes testified
that that was an unrealistic expectation on your
part. Can you explain?

A. Yes. What was not offered as part of that
discussion was the fact that we moved into a period
where we started tracking the enrollment by week.
And every Monday morning at a cabinet meeting we
would lay on the table this four-year history of
enrollment tracking by week. And so -- it's a bar
chart. And so when you go through and you look at
the four-year history and you look at where you were
at this time last year and you see you're either
ahead of the pace or below the pace in terms of
where you were previously. Fundamentally, this

statement is clearly defining that bar chart. In
other words, if you were going to take that bar
chart and track for the remaining weeks and try to
reach the goal that we were hoping to achieve,
mathematically that came to 120 students per week.

Q. Mr. Haynes also testified to some
international students that were lost from China and
how he believed your expectations regarding that
international student enrollment population was
unrealistic. Can you explain why you don't believe
that to be true?

A. As I recall Mr. Haynes' testimony, he also included the fact that we had been in China for a series of meetings.

Q. You, personally?

A. Myself and Mr. Haynes. During the time that we were in China, we met with one of our representatives who was recruiting for us. And his name was Dr. Lu. When we were experiencing the problems that Mr. Haynes referred to with one of our recruiters, Dr. Lu indicated to us at that dinner meeting that he was willing and committed to recruit and make up the difference that we might suffer if we chose to break or end our contract with Nicole. And so as Mr. Haynes testified, we did end our contract with the recruiter and her name was Nicole.

But in my mind, I had the dinner conversation and the promise that Dr. Lu had made that he would do his very best to make up the difference in lost ground. And so it did not appear to be mission impossible.

Q. And the goal that you set was not met; true?

A. True.

Q. And no repercussions or penalties were imposed on Mr. Haynes as a result?

A. True.

Q. Dr. McCallum, is your presidency at Dickinson State University the first position of presidency that you've held?
A. It is my first presidency.
Q. How old are you?
A. I just turned 62.
Q. Based on your tenure as president of Dickinson State University and what you've observed from other institutions, tell the Judge about what the career path, typically, of a president of a university is. When does one typically get to become president of a university and how long can you expect a career to last?

A. Of course, Your Honor, the age that one becomes president varies, but generally it's a culmination of at least 30 years of experience in higher education. And once that you have that accumulated experience, you become a viable candidate for a presidency. I achieved my first presidency earlier than I thought I would in terms of my chronologic age. I committed my heart and soul to the job and to the community and to the campus. I signed my initial contract with the hope and the dream that I would be there ten years.

Q. After receiving the notice of intent to terminate your employment, did you receive communications from others from around the country and, if so, when?

A. I received many phone calls of support from colleagues and friends around the country. They all had a central message. That central message was that I should not voluntarily resign and admit to something that I did not do, that I needed
to try to restore my reputation and my honor. In order to advance in my career, it is critical that I be able to do that.

Q. Chancellor Goetz testified that relative to other presidents that you had been treated no differently than they. Do you agree?

A. I do not agree.

Q. Why not?

A. I, of course, am in no position to explain the intimate details and private conversations that occurred, but I do know from my observation in my early years here, that the reference that the Chancellor made to the president at Williston did not explain what I observed. It's my understanding that the president at Williston was granted the opportunity to serve out his contract and I was here in North Dakota when he did serve out his contract. It's my understanding his contract was not renewed, but he did get permission to serve out his contract.

Q. With regard to how this termination process has been handled, as it stands now, how has it affected your employability as a president of a university?

A. It has been totally devastating. The information age is a new era for all of us and there is something unique about the information age that we have is a second order implication and that is the fact that bad press, slander, lives forever. It's searchable on the Internet 7/24. And I am convinced that the news blitz and the articles that
have unfolded as a result of this situation is devastating to my future and that is why I have asked for this hearing and that is why I am trying to restore my reputation and my honor.

Q. How could the matter have been handled differently? You serve at the pleasure of the State Board of Higher Education. If they didn't want you to continue your employment, what could have been done differently?

A. There could have been a number of avenues that developed where just cause was not used as the grounds for termination. There could have been negotiations. There could have been an opportunity where we came to terms through mediation. I believe that there were a number of more rational approaches that could have been pursued.

I would also say that the course of action that has unfolded has not only hurt me professionally in terms of my career and my future, but it has also hurt DSU. There is a long-term implication that is unfolding for DSU. And so I believe in more subtle diplomatic ways, we could have come to terms and resolution with no harm to DSU.

Q. What's -- we've talked about professionally. What's been the effect of this process on you personally, physically, emotionally?

A. It's been huge. It's been devastating. I
mentioned to you the fact that my wife and I could not live under these quasi house arrest parameters that we were faced with. I’m reminded of the old process that was used in the Roman Empire. When someone got in trouble with the emperor, one of the sentences was self-imposed exile.

And so in order for my wife and I to carry on, it was a self-imposed exile that we placed upon ourselves. We left Dickinson because the environment was untenable. We left our friends, our home, our clothes, our possessions. We lived out of a suitcase, with family members, for the last 78 days. My wife gave up her career to support me, DSU and the community of Dickinson. She is brokenhearted. The impact upon her emotionally is super huge. Your Honor, I don’t recognize -- I don’t recommended worry as a diet program, but I can tell you that in 78 days I’ve lost 25 pounds. And so there is a huge impact that we have been through, and it continues.

Q. Dr. McCallum, do you believe that just cause has been established for termination of your employment as President of Dickinson State University?

A. I do not.

MR. THOMAS: Thank you. Those are all the questions I have, Your Honor.

JUDGE FETCH: All right. At this time, Ms. Donarski, you may cross.

MS. DONARSKI: Thank you.
BY MS. DONARSKI:

Q. You don't believe just cause has been established, but you do agree that as the President of DSU, you are ultimately responsible for what occurs at that institution; correct?

A. Correct.

Q. And you do acknowledge and agree that there were inaccurate enrollment numbers reported through IPEDS to the federal government; correct?

A. Correct.

Q. And you also acknowledge and agree that there were inaccurate enrollment data reported through ConnectND?

A. Yes.

Q. And if -- with that inaccurate enrollment data, you heard the testimony of, for example, Norman Coleman (sic), who indicated that he knew it was wrong, but he was directed by the President to enroll the symposium students for head count purposes. You had indicated that you even told them to be academically and financially sound and to follow policy.

Was there some concern at first when they raised the symposium attendees as possible enrollment students for you to say make certain it's academically and financially sound?

A. It was an innovative idea, as I indicated. It was something that we had done because the window of time, as I indicated, was unique. I wanted to
make sure that as we tried to do this innovative approach, that we were conforming with policy and making sure that the academic integrity and the financial integrity were sound.

Q. What did you do to make certain that that was sound?

A. I specifically asked Marty Odermann-Gardner, who brought the idea to me, to work with the Vice-President for Academic Affairs and the Vice-President for Business Affairs to process according to the policies and to make sure that everything was appropriate.

Q. Who is the Vice-President of Business?

A. That is Mr. Alvin Binstock.

Q. And who is the Vice-President of Academic Affairs?

A. That's Dr. Jon Brudvig.

Q. And what did you do to follow up, to make certain that Marty Odermann-Gardner was working with Alvin Binstock and Jon Brudvig and following State Board of Higher Ed policies with respect to enrollment for these symposiums?

A. I cannot recall the time frame, but a few weeks after the idea was presented to me, I was told that it appeared as though everything was going to be able to be developed and that individuals were working to make sure that this project was appropriate and in compliance with policy.

Q. Who told you that?

A. It was a conversation, as I recall, that
occurred between Marty Odermann-Gardner and I in the hallway as I was walking down the hallway.

Q. Did you ever check on that and follow up with the VP of Business Affairs, Alvin Binstock?
A. No, I did not.

Q. And did you ever follow up with the VP of Academic Affairs, Jon Brudvig?
A. No, I did not.

Q. Why not?
A. Because I trusted them to be sure that everything was appropriate.

Q. And they knew they were to follow policy?
A. Yes.

Q. So in not following policy, are you pointing the finger at Alvin Binstock and Jon Brudvig?
A. No, I am not. Because I think it has been clearly indicated here that multiple mistakes were made by several different individuals.

Q. And those multiple mistakes being made through the several individuals, many of those individuals report directly to Jon Brudvig, the VP of Academic Affairs; correct?
A. That is correct.

Q. And many of those individuals actually report directly to you, as a direct report to the president; correct?
A. That is correct.

Q. You were involved in enrollment in the meetings that you had with the direct reports and
other departments on meeting the fall 2010 enrollment goals that you set in place for these individuals and departments; correct?

A. We had multiple conversations, yes.

Q. And during those multiple conversations, do you remember setting goals that individuals had indicated to you were unrealistic and not reachable?

A. I remember conversations where we talked about the goals and the challenge that were going to be had to overcome in order to achieve those goals.

Q. And, in fact, enrollment was so important to you that you said you had weekly enrollment meetings with these individuals?

A. No. I said we had weekly cabinet meetings.

Q. And was enrollment a discussion during those weekly cabinet meetings?

A. The enrollment discussion, depending on the cycle in terms of where we were, would have been part of a cabinet meeting. There are times when enrollment is not part of a cabinet meeting. And as I indicated earlier, as we approach the window of time where we are starting to track our progress, at those cabinet meetings we used a four-year tracking chart that showed week by week where we were previously and where we were at that point in time.

Q. Do you recall John Hurlimann's testimony
yesterday where he received a phone call from you February 4, 2011, to set up a class of 32 students? You have no recollection of that conversation?

A. I do not recollect the details of that conversation, as I testified earlier.

Q. So you have nothing to dispute John Hurlimann's sworn testimony, under oath, that that conversation took place and that he was asked by you to set up a class of 32 students?

A. To be honest, if I were to dispute it, I would not be honest and so I am not disputing it.

Q. And the fall--or the spring census date would have been in February 2011; correct?

A. Correct.

Q. That would have been days after the conversation that you had with John Hurlimann with respect to the setting up the class of 32 students?

A. Chronologically, that's correct.

Q. And you indicate that the enrollment issue, you had not heard anything about it until the written notice on February 10, 2011; is that correct?

A. The first time that it became a red flag to me was the letter that the Chancellor sent to me on the 10th. There could have been an earlier brief conversation and I have talked about this with my attorney, but if there was a previous conversation, it was one where the discussion would have been we’re working on it to correct it. The first time it became a red flag to me was February 10th.
Q. So did Jon Brudvig, your Vice-President of Academic Affairs, come into your office on February 4, 2011, and notify you that the university had been contacted by NSSE and that the enrollment data was incorrect and they were going to suspend the survey?

A. I do not recall that conversation.

Q. Do you recall the testimony of Scott Staudinger where he indicated he was notified on February 4, 2011, from NSSE?

A. Yes, I do.

Q. And that Jon Brudvig was, likewise, notified on that same date?

A. Yes, I do.

Q. And that Scott and Jon had a conversation, Jon Brudvig, about the NSSE survey?

A. Yes, I do.

Q. And Alvin -- or excuse me -- Jon Brudvig is a direct report to you; correct?

A. Correct.

Q. And so if your direct report, Jon Brudvig, knew on February 4, 2011, what -- what -- let me phrase it this way. If he knew on February 4, 2011 about that, wouldn't you be upset if he didn't come to you and tell you something of that nature involving enrollment?

A. With hindsight, the answer to that is yes, clearly.

Q. That's something you would want to know?

A. Yes.
Q. What discussions did you have with Dr. Brudvig regarding the February 4, 2011 call from NSSE about the survey?
A. I thought we just addressed that. I don't recall a specific discussion on that window of time that you are referencing. There could have been a conversation where he indicated that we were working to correct the problem, but I do not recall the specifics of that. The first time it became a red flag to me was the 10th.

Q. Scott Staudinger is a DSU employee; correct?
A. Yes.

Q. And he was the DSU employee who was assigned to address the NSSE survey issue?
A. That is my understanding.

Q. Did you ever follow up with Scott Staudinger at any point in time and ask him the status of the survey or whether that was corrected, the data was corrected?
A. No, I did not because after I saw the string of emails, which I subsequently sent to the Chancellor, I knew that the NSSE database error had been corrected.

Q. But you also sent in May 2011 a response to the Chancellor in his questions that he had with respect to the enrollment issue, and at that time you still knew enrollment was an issue and there were additional corrections that needed to be made with the enrollment data; correct?
A. Tell me the time frame you're talking about again.

Q. In May, the Memorial -- I think you referred to it as the Memorial response to the Chancellor's questions.

A. As I indicated in my essay, we acknowledged the fact that there had been mistakes and that we were attempting to address those concerns. And I'm looking at my essay. And I indicated in my essay -- it's No. 6 in my essays, that Mr. Melbye's assessment was that the academic integrity of these classes was not jeopardized, and I also indicated that I felt like the North Dakota University System enrollment matrix would clarify future reporting procedures.

Q. Your response is, "With the departure of Marty Odermann-Gardner and the change of VPAA, we experienced coordination and communication slip-ups. However, these mistakes were human errors and not intentional."

What did you base that on?

A. I base that on the report that had been developed by Dr. Brudvig and Mr. Marshall (sic) that was submitted to the Chancellor on, I believe, the 25th of February.

Q. And did you do any further investigation or have anybody else look into this issue?

A. At what time frame are you talking about?

Q. You said this response is based on this report?
A. Okay.

Q. So once you got the report, did you do any further investigation?

A. No, I did not.

Q. Didn't require any further detail from them?

A. No, I did not. As I indicated, I thought the issue was resolved.

Q. Now, you believed the issue was resolved, but in June and July there's news articles that both reference the enrollment issue and, in fact, have asked you to comment on the enrollment issue and McCallum would not comment. So are you now saying that you didn't know the enrollment was an issue in June and July when, in fact, it was in the press? You cite to articles in your testimony earlier.

A. No, I think you're taking this out of context, because in June and July I had completed my evaluation process with the Chancellor. June 16th the Board extended my contract. I believe that I had a very overall positive evaluation. I thought the enrollment issue was resolved. And so I was surprised with that July 4th weekend newspaper article.

Q. But in the --

JUDGE FETCH: Counsel, I'm looking around the room and the amount of fatigue I see is rather amazing. I'm going to -- I'm going to recess the proceedings for today. You know, in the interests of fairness to the parties, I think that we've had
three extremely long days and it's time that we recess now.

And we have another day of hearing scheduled. And I'm going to repeat this for everyone because I'm not going to send it out in writing. This hearing will reconvene next week Wednesday. I'm looking for my notes. Next week Wednesday, the 26th of October, and we are going to reconvene not here, because there are other proceedings going to be taking place. But we are going to reconvene -- and, Mr. Seaworth, please help me out. It's at the Horizon Building, which is either on or next to the Bismarck State College campus; is that correct?

MR. SEAWORTH: That is correct. The street address is 1815 Schafer Street, I believe. It's a three-story glass and brick building up on a hill. It overlooks the Regional Human Services Center that used to be a bowling alley there and overlooks that on the north side. On the south side -- immediately to the south side is the Votech Center on the BSC campus.

JUDGE FETCH: Okay.

MR. THOMAS: Is it second floor, third floor?

JUDGE FETCH: I believe it's the main floor.

MR. SEAWORTH: It's the ground floor.
There's a ground floor conference room.

JUDGE FETCH: Is it evident where to go, or is there a receptionist or someone?

MR. SEAWORTH: No receptionist. Just turn to your left and the door is immediately to the left from the entryway.

MR. WETZEL: It's about the same distance as it is from your office to here.

JUDGE FETCH: Mr. Wetzel is helping us out. Apparently, it's right, you know, as you come in.

And time, counsel, we were talking about time. You know, some people have to travel in and may or may not be able to get here, you know. There is a time change, so I'm going to say 9 o'clock. We can go a little later that day. Apparently, they don't lock up the building or we can go a little later on Wednesday, if we need to.

All right. It is four -- we'll call it 4:30 p.m., Central Time, on October 21st, 2011, and we are in recess for today.

(Concluded at 4:30 p.m., the same day.)
STATE OF NORTH DAKOTA

STATE BOARD OF HIGHER EDUCATION

IN THE MATTER OF:  Richard McCallum

OAH File No. 20110365

TRANSCRIPT OF HEARING

Office of Administrative Hearings
1815 Schafer Street
Bismarck, North Dakota
October 26, 2011
Volume 4

Before Bonny M. Fetch
Administrative Law Judge

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FOR Dickinson State University.
(The following proceedings were had and made of record, Wednesday, October 26, 2011, commencing at 9:03 a.m.)

JUDGE FETCH: All right. We will open the record. Today is October 26th, 2011. The time is nine o'clock a.m., Central Time. And this is the continuation of hearing requested by Dr. Richard McCallum to appeal an amended notice of intent to dismiss his employment from Dickinson State University.

My name is Bonny Fetch. I am the Administrative Law Judge designated by the State Board of Higher Education to conduct this hearing and make recommended findings of fact, conclusions of law and a recommended decision for the Board.

All right. I would like the parties today to state their appearance for the record. And since we are in the middle of Dr. McCallum's case, we'll begin there.

MR. THOMAS: Thank you, Your Honor. My name is Benjamin Thomas. I'm the attorney for Dr. McCallum, and he's seated at the witness stand.

JUDGE FETCH: Thank you. And for the
University?

MS. DONARSKI: Thank you. I'm Michelle Donarski, representing Dickinson State University, and with me is Chancellor William Goetz, and Krista Andrews, who is also co-counsel representing Dickinson State University.

JUDGE FETCH: All right. Good morning, everyone. There are members of the public present as this is an open hearing. We also have members of the press with us, and Linda Gingery, who is the court reporter.

All right. We will begin in just a moment where we left off last week with cross-examination. Ms. Donarski, you were cross-examining Dr. McCallum and we'll begin there in just a moment, but just a few instructions, as it were, or matters before we begin.

Mr. Thomas, since I'm not going to be aware if someone enters if they're one of the witnesses you called or if it's someone from the public who wants to observe, witnesses are being sequestered, so if anyone appears, please let me know and we will get them to another area.

MR. THOMAS: I'll do my best, Your Honor. Some of them I have not met, but I'll do my best, with Dr. McCallum's assistance, I'm sure.

JUDGE FETCH: Okay. Thank you. All
right. Any preliminary matters, counsel, before we start with the evidence?

MS. DONARSKI: No, Your Honor.

MR. THOMAS: No, Your Honor.

JUDGE FETCH: All right then. At this time we'll proceed with Ms. Donarski's cross-examination.

I administered the oath to you last week, Dr. McCallum, and I'll remind you, you are still under oath.

THE WITNESS: Yes, Your Honor.

JUDGE FETCH: Thank you. Proceed.

MS. DONARSKI: Thank you.

Q. (MS. DONARSKI CONTINUING) Good morning, Dr. McCallum.

A. Good morning.

Q. In front of you is the DSU exhibit book. Could you open that to Exhibit 65?

A. Yes.

Q. And do you recognize that to be a memo that you drafted to Ms. Connie Walter?

A. Yes.

Q. And that's regarding spring 2011 international student enrollment?

A. Correct.

MS. DONARSKI: We offer Exhibit 65.

JUDGE FETCH: Any objections?

MR. THOMAS: No, Your Honor.

JUDGE FETCH: Thank you. Exhibit 65 is admitted.
Q. (MS. DONARSKI CONTINUING) Dr. McCallum, will you also turn to Exhibit 68?
A. (Witness complies.)
Q. Do you recognize Exhibit 68 to be an email from djmacwrite@aol.com?
A. Yes.
Q. Whose email is that?
A. That's the personal email that my wife and I use.
Q. Okay. And your wife's name is?
A. Julie.
Q. And do you recognize that to be her name at the bottom of this email?
A. Yes, I do.
Q. And that would be an email that she had sent to DSU employees on February 11, 2011?
A. That is the way it appears.
MS. DONARSKI: We offer Exhibit 68.
MR. THOMAS: No objection.
JUDGE FETCH: Thank you. Exhibit 68 is admitted.
Q. (MS. DONARSKI CONTINUING) Please turn to Exhibit 72. And what is Exhibit 72?
A. The title on the chart says "2008-2009 Tuition Waiver Information." The column on the left appears to be a listing of all of the campuses in North Dakota.
Q. Is that a document that you've seen before?
A. Yes.
Q. Okay. And how have you seen it?
A. I would guess that I've seen it in multiple settings. Probably at a Chancellor's cabinet meeting, probably also with the work that we have done at the University.

MS. DONARSKI: Okay. We offer Exhibit 72.
MR. THOMAS: No objection, Your Honor.
JUDGE FETCH: Thank you. Exhibit 72 is admitted.

MS. DONARSKI: And we offer Exhibit 73 as well.

JUDGE FETCH: And please identify what that is.

MS. DONARSKI: Exhibit 73 is the tuition waiver information form for the following year, 2009-2010.

JUDGE FETCH: I'm sorry. Did you say there was no objection, Mr. Thomas?
MR. THOMAS: I haven't yet, but I have no objection to 73 as well.

JUDGE FETCH: All right. Thank you. Exhibit 73 is admitted.

Q. (MS. DONARSKI CONTINUING) Dr. McCallum, I think I recall your experience is that you have more than 30 years of experience in higher ed; is that correct?
A. That is correct.

Q. Okay. And that would include former Chief of Academic Affairs Officer or the Vice-President of Academic Affairs?
A. That is correct.

Q. And so are you familiar with the distinction between degree-credit and continuing education credit?

A. Yes, I am.

Q. And there is a distinction between those two credits for enrollment purposes; correct?

A. Yes. And I believe that we clearly indicated that when we discussed the complexities in the enrollment matrix.

Q. Okay. And you know that the accredited institutions may not award degree-credit to individuals who merely show up for a conference?

A. I would have to check with the rules on that.

Q. Okay. What rule would you check?

A. I would go to the North Dakota policies and also the Higher Learning Commission policies to check that.

Q. Okay. Would that include policy 440?

A. Without looking at the policy, I couldn't say for sure, but I do know that policy 440 is central to Academic Affairs.

Q. Okay. And enrollment?

A. Yes.

Q. Okay. And part of the requirements in getting a degree-credit, for example, a degree-credit for attending the symposium, that would include having a class syllabus; correct?

A. As I recall Mr. Hillman's testimony, that
Q. Okay. And as well having a faculty instructor assigned?
A. Correct. That is part of Mr. Hillman's testimony as well.

Q. And having an assignment or assigned paper or some other form of assessment to assess the student?
A. Yes, I agree that was testified as well.
Q. As well as some type of legitimate grading?
A. Yes, I agree.
Q. Now, you're referring to Dr. Hillman's testimony. Do you have an independent knowledge of what the requirement is with respect to degree-credit?
A. I'm not sure I understand your question.
Q. Sure. I was asking questions on what's required in order to get a degree-credit, specifically in this case for an attendee who attends the symposiums, and you have responded referring to Dr. Hillman's testimony.
My question was, do you, yourself, have an understanding of what the requirements are relating to a degree-credit?
A. Yes, I do.
Q. Okay. And that's something that goes to your 30 years of experience in higher ed?
A. Yes.
Q. You've worked with that before in the
past?
A. Yes, I have.
Q. And so you understood the steps that need
to be taken in order to have these symposiums
qualify, the attendees at the symposiums qualify for
degree-credit students?
A. Yes.
Q. Okay. And you would agree that following
these enrollment policies and procedures in
registering students and enrolling them in the class
is very important?
A. Yes, I do.
Q. Okay. And that requires obtaining student
information on an application; correct?
A. Yes.
Q. As well as background check for the
student?
A. Yes.
Q. Tuition paid for the student to be an
enrolled DSU student?
A. Yes.
Q. Okay. And you're familiar with IPEDS and
the requirements of the reporting to IPEDS?
A. Yes, in a general sense, I am familiar.
Q. Okay. And as prior Vice-President of
Academic Affairs, had you worked with IPEDS before
or familiar with the data that is reported to IPEDS?
A. I've never worked with IPEDS directly. I
had an institutional research coordinator who handled all of the IPEDS information.

Q. Okay. But as Vice-President of Academic Affairs, you would enter data or make certain data within your unit was entered properly for the enrollment reporting purposes?

A. I never entered the data myself. I always had someone in the staff who did that.

Q. And you would make certain that that data was entered correctly?

A. I would always get periodic updates from that individual to ensure that we were up-to-date, yes.

Q. And you would agree that's important, getting those periodic updates or following up with that individual to make certain the data was entered correctly?

A. Yes.

Q. And that's pretty critical because that goes directly to IPEDS; right?

A. Yes.

Q. Now, do you understand it's a crime to provide false information in a government report?

A. Yes, I do.

Q. You were asked questions about the president goal share and I think you had talked about preparing the president goal share, but your president goal share, now, that was a report that was prepared by somebody else; correct?

A. That is correct.
Q. And that would have been prepared by who?
A. We used a process of collecting the list of accomplishments and Dr. Brauhn was the Director of Special Projects this past year and worked to assemble the information that was then in goal share.

Q. Okay. And who is Dr. Brauhn?
A. Dr. Richard Brauhn, this past year has been the Director of Special Projects. Prior to that, he was the Vice-President for Academic Affairs.

Q. Okay. Which was a role that you had held in the past?
A. Correct.

Q. Do you recall a conversation with Dr. Brauhn in 2009 where you asked him to register the symposium attendees as degree-credit students for enrollment purposes in 2009?
A. The conversation dealt with the registration of those attendees and the importance of making sure that we had academic integrity with those symposiums.

Q. And the symposium attendees in 2009 were not counted in DSU's enrollment as degree-credit students, were they?
A. I could not answer directly without looking.

Q. Do you recall, Dr. McCallum, in your discussion with Dr. Brauhn that he had indicated in 2009 you cannot count those attendees at the DSU
symposiums as degree-credit students, that would violate policy?

A. In 2009 would you clarify what symposium you're talking about?

Q. The TR symposium.

A. The TR symposium could not count because it was outside the window in 2009 for the census date.

Q. Okay. What window is that?

A. As we discussed previously, there is a window of time where the enrollments are counted and tabulated. Previous testimony has indicated that

that enrollment census date is normally the fourth week of the semester. As I recall, in 2009 the TR symposium was conducted late in October, which would have been well past the census date.

Q. Okay. And since it's past the census date, those students would not be able to be reported in the enrollment data; correct?

A. Yes, that is my understanding.

Q. Now, the -- so in 2010, we have the Disney Institute, which was held after the census date. In fact, the Disney Institute was held September 29 and 30, more than a week after that window of opportunity had closed. But that was still allowed to be reported in the enrollment data census reporting. Did you know that?

A. I would have to actually go back and look at that.

Q. Okay. I'd like you to turn to -- and when
Q. Okay. Let me show you the handout for the Disney symposium that gives the dates. That is found at Exhibit 39. And do you see on the first page of Exhibit 39, which is Bates No. 301, it identifies September 29, 30, 2010?

A. Yes, I do.

Q. So the symposium was held outside the window of opportunity; correct?

A. Yes.

Q. And now turn to Exhibit 55.

A. (Witness complies.) Yes.

Q. Specifically Bates No. 507. Actually, Bates No. 508. And do you recognize 508 to be an email from Stacy Wilkinson to yourself, as well as others?

A. Yes, I do.

Q. Okay. And that's dated September 21, 2010?

A. Yes, it is.

Q. And the subject is final OEL, which stands for Office of Extended Learning; is that correct?

A. Yes.

Q. The subject is final OEL fall 2010 enrollment report. And you see down below where it includes, "We have made up the difference through the following conferences: Disney Institute - add an additional 82"?
A. Yes.

Q. Okay. So add an additional 82 students and that was for the fall 2010 enrollment report. And you were included on that. So wouldn't that raise a red flag to you, September 21, 2010, that there is a symposium outside this window of opportunity where 84 -- excuse me -- 82 students were, in fact, counted for DSU's fall 2010 enrollment report?

A. Yes, but in order to answer your question, I would have to look at the policy related to late starts.

Q. What policy is that?

A. I can't tell you the number.

Q. But you had earlier testified to since this fell within that window of opportunity, that's what counted in adding these seminars this year as compared to 2009?

A. Yes.

Q. Now, turn to Exhibit 25. And I think your testimony was that this was your first notice of a NSSE issue or an issue with the NSSE survey?

A. This is the -- Exhibit 25 is the February 10th memo from the Chancellor. It raised the red flag to me relative to the NSSE administration.

Q. Okay. And when you say it raised the red
flag with that, and you had testified earlier to the
response that you provided to the president --
excuse me -- to the Chancellor responding to those
five questions on NSSE. I think that was dated
shortly thereafter, you had provided the response to
the president, which I think is Exhibit 26
indicating that the status had been corrected?

A. Exhibit 26 is the fax that I sent the next
day to the Chancellor with the attachment that we
have reviewed previously, the string of emails
indicating -- starting with the individual at NSSE,
moving through to Dr. Hillman confirming that we
were back on track.

Q. Okay. And NSSE, you understand, is an
independent survey company, it performs a service,
it surveys DSU's enrollment data?
A. Yes.

Q. NSSE is not a governing entity and doesn't
have any authority to penalize DSU for the data
that's submitted; correct?
A. I don't know without looking that up.

Q. What would you look at?
A. I would have to look at the contract that
the North Dakota System has with NSSE.

Q. But you do understand that IPEDS, in fact,
does have the authority to provide penalties for
violations of the data or incorrect data?
A. Yes.

Q. So in between the time period of this
response, which is February 11, to the Chancellor's
February 10th request and the time when you received your notice to dismiss, August 5, what steps did you take to identify the problem and to correct the data that had been incorrectly entered into the system and reported to IPEDS?

A. The steps that we took following the receipt of the February 10th memo was the development of, as you can see in this memo, an immediate response. The Chancellor called me sometime between the 10th of February and the 25th of February, which was when we submitted the response, and asked when we would be completing our response to his five questions. I had indicated to him, and I believe I previously testified, that our Registrar was a central part of preparing this response. He had had a death in the family and he was out and we had to have the Registrar back in order to complete the response on the 25th of February.

And so when you look at the timeline, I believe Dr. Hillman testified his first phone call was the 4th of February. Our response was the 25th of February. That's 21 days or three weeks. In the middle of those 21 days, we received the February 10 letter and the February 11 communication telling us we're back on track with NSSE. And so in that three-week period, from the beginning to our initial report on the 25th, we did a period of time there of three weeks.

Q. Who is "we"?
A. The individuals who were working on that February 23rd report that was attached to my February 25th letter. I don't have it in front of me here, but I believe Dr. Brudvig was the author of that report. I know that our Registrar was a central part of analyzing and responding to these five questions as well.

Q. Okay. And that would have been Marshall Melbye?

A. Yes, this is correct.

Q. Now, is it true that after the February 25 response, when you provided that to the Chancellor regarding the fall 2010 enrollment reports, after that date until August 5th, the date that you received the notice to dismiss, that you had done nothing further during that period of time on this issue?

A. When I submitted the February 25th letter and did not receive any feedback from the Chancellor, I thought that our report had answered the question. When I look at the data that you have presented here at this hearing, I am very surprised by the research that took place from February 25th until the August dismissal letter. I realize now there is a magnitude of errors that I was not aware of on February 25th. The report that we submitted on February 25th is clearly a preliminary diagnosis that was prepared in an attempt to be immediate and prompt with a response that the Chancellor made. It's part of the critical thinking process.
that is used by physicians all the time. You analyze the information that you have, you try to make an assessment and a diagnosis and then you move forward. When I did not receive feedback from the Chancellor, and I now know the communication that took place from February until August, I would say to you that removing me from that information loop, removed me from understanding the information that was being collected. It also removed me from the ability to be part of the solution to the problem.

Q. Well, at the time on February 25th, you knew that the data that DSU had entered with respect to these attendees, registering them as freshmen students, you knew that that data was incorrect; correct? Yes or no?
A. No.
Q. You did not know that data was incorrect on February 25?
A. No, in the sense that we did not think we had violated policy 440 and that was clearly outlined within that letter and within the Registrar's analysis.
Q. Let's turn to policy 440. That's at Exhibit 9. Policy 440 states, "System degree-credit enrollment reporting is intended to be consistent with United States Department of Education Integrated Postsecondary Data System...," which you understand that to be IPEDS; correct?
A. Which paragraph are you in?
Q. The very first sentence in policy 440.
A. Okay.

Q. And you understand the U.S. Department of Education Integrated Postsecondary Data System to be IPEDS; correct?

A. Yes, I do.

Q. Okay. And you see under the first paragraph where it says "Fall and spring enrollment reports," that "Each campus shall report fall and spring semester enrollments for degree-credit students...", so you agree that for enrollment reporting to IPEDS, it is degree-credit students that are reported to IPEDS; correct?

A. That is correct.

Q. Okay. And that's the number of students that are enrolled on the 20th scheduled class day; correct?

A. The fourth week.

Q. And the policy says the 20th scheduled class day?

A. Okay.

Q. And "enrolled" means the student has registered and paid tuition and fees. Did you make certain these students had registered and paid tuition and fees?

A. Not myself personally, no, I did not check that.

Q. Who did that? Who checked that to make certain these students had registered and paid tuition and fees?

A. That would have been members of our
academic staff and our business affairs staff.

Q. Who would that be?
A. Well, the Vice-President for academic affairs would have been Dr. Brudvig at the time. The Vice-President for Business Affairs would have been Mr. Binstock. The Registrar, as we've indicated, is Mr. Melbye.

Q. Did you ever ask them, did these attendees ever register as students at DSU?
A. I did not ask the question in those words. I went down and talked to the Registrar and asked if there had been a policy violation and he had reaffirmed the statement that he had in that February 23rd report that there had been no policy violation.

Q. And that's all you relied upon?
A. That's correct.

Q. You didn't take any further steps?
A. That's correct.

Q. And you left it at that?
A. Yes, I did.

Q. So -- okay. Now, you had indicated that you removed -- you were removed from this process, but isn't it true that your own employee, Scott Staudinger, was instrumental in this process of identifying the incorrect data and correcting it?

A. Yes, that is correct.

Q. And at no point in time did you ever have
any discussion with Scott Staudinger saying, Hey, Scott, what's going on, where are you at on this?

A. I do not recall any conversations with Scott about that and, as I recall, when he testified, he did not indicate that he had talked to me, either.

Q. And you had not requested any update or report back from Scott as to where we are at on this enrollment information?

A. I had not.

Q. Or where you were at with the incorrect data that was still in ConnectND?

A. As I indicated, when I submitted the report on the 25th, that report laid on the left corner of my desk for almost two months. I thought that the report had answered the questions and that the issue was no longer being pursued when I did not hear from the Chancellor. Until I received that mysterious email from the Chancellor dated sometime in April, and I don't remember the date on that email, but it's one of the exhibits, I did not know that there was a continuing conversation about this.

And as I indicated, with all the discovery documents and the exhibits that we have put on the table here this past week, I'm amazed at the level of conversation that was taking place that I did not pick up on.

Q. I'm amazed at the lack of conversation you had with Scott Staudinger, your own employee, who was instrumental in trying to identify and correct
the data.

MR. THOMAS: Ob je ct ion. Foun da tion.

There's no question.

JUDGE FETCH: Sustained. That's argumentative, counsel.

Q. (MS. DONARSKI CONTINUING) So in your words, even though you knew that the NSSE information, that information was incorrect and NSSE had identified that, even though you knew that and you knew that that information was still in ConnectND student information, you took no action, nor did you instruct anybody to correct that data?

JUDGE FETCH: Is that a question, counsel?

MS. DONARSKI: It is.

Q. (MS. DONARSKI CONTINUING) You did not instruct anyone --

JUDGE FETCH: Counsel, I've let this go a long time, but almost every question is so leading and you're testifying and then asking Dr. McCallum to say correct, yes, no. Please, now, as we move forward, be very specific with a question.

MS. DONARSKI: Leading questions are appropriate on cross-exam.

JUDGE FETCH: Well, not to the point where you're doing the testimony.

Q. (MS. DONARSKI CONTINUING) How serious do you believe the implications for misreporting the data are?

A. I believe that it is very serious. And as I have looked this past week at the documents and
the exhibits, I am surprised at the magnitude of errors that have occurred. Again, I would reiterate, I was removed from being part of the conversation and I was removed from being part of the solution to the problem. I previously testified on multiple occasions, I thought the questions in the Chancellor's mind and the issue had been resolved on multiple occasions.

Q. You had indicated that the implications are very serious. What type of consequences or harm could occur to DSU as a result of the misreporting of the enrollment data?

A. I think we've already reviewed that in detail in previous discussions and in previous testimony. Without question, the IPEDS information has to be corrected. I do know that there is a process that allows for the correction of IPEDS information and I believe that that was also outlined in previous testimony.

Q. The question is, what is your understanding of the potential harm or consequences to DSU as a result of this data?

A. Yes, and that is what I was saying. The IPEDS database has to be corrected in order to not be penalized for the errors that have occurred.

Q. Okay. What is the penalty? There is a penalty in place that could occur?

A. I don't remember the number, but it was testified last week $20,000-something per error.

Q. $27,000 per error; does that sound right?
A. I don't remember the number.

Q. And it's also my understanding that as part of this process there was a roster that identified the attendees that had attended each of these symposiums and many of the attendees were obvious community participants, the Mayor, Legislators, individuals from your own team. At any point in time did you ask to see that roster to see who was reported as DSU freshmen?

A. No, I did not and as --

Q. Did you know who had attended the seminar? For example, the Theodore Roosevelt conference, did you know that Mayor Johnson and his wife attended?

A. I saw them in the audience, yes.

Q. And did you see Jon Brudvig in the audience?

A. I'm almost positive that I did.

Q. Senator Warden?

A. Senator Wardner.

Q. Wardner?

A. I'm almost positive that he was there.

Q. Commissioner Falk?

A. I cannot recall.

Q. Okay. But you knew these individuals were there, but you also knew that they had not filled out an application or enrolled at DSU to be freshmen students; correct?

A. I did not check that detailed process. There was a registration process for all of those seminars.
Q. Right. I understand that you register to attend a seminar, but that's different than registering to be a student at DSU; correct?

A. Yes. Yes.

Q. Turn to Exhibit 78. Do you recognize this document?

A. It's my handwriting. It looks as though it's dated the 30th of August.

Q. Of 2010?

A. Correct.

Q. Okay. And this is a note that you took regarding three-week final push for enrollment?

A. Yes.

Q. And your note indicates "562 needed." Meaning we need 562 students to reach our enrollment goal?

A. That would be my understanding. Again, without more context, it would be impossible to say for sure, but that would be my understanding.

Q. And then you break down how that 562 enrollment goal is going to be reached and it looks like you have 50 students with late enrollment, 275 students as dual-credit, 150 as the TR and Disney conferences and 100 in the Strom Center adult classes, which reach the goal, exceed the goal and actually are 575 students; is that correct?

A. Yes.
MS. DONARSKI: We offer Exhibit 78.

MR. THOMAS: No objection.

JUDGE FETCH: Exhibit 78 is admitted.

Q. (MS. DONARSKI CONTINUING) Turn to Exhibit 74, please. Seventy-four is an exhibit that Scott Staudinger testified he prepared identifying the individual student payments. He's identified the tuition, as well as the mandatory fees for the total course cost to a student. Now, the -- when you look at those fees, we have the tuition. What is the tuition resident fee for a DSU resident to pay tuition at DSU? Excuse me. A North Dakota resident to pay tuition at DSU?

A. Off this chart the tuition resident fee is $179.40.

Q. And then in addition to that, there are additional mandatory fees that the student must pay as well per credit hour?

A. I see.

Q. Do you recognize those mandatory fees?

A. I see them listed.

Q. And in order to not pay tuition, that's something that has to go through and be approved by your office; correct?

A. In order to not pay tuition?

Q. If you're going to have a student attend -- for example, a student attend the symposium and not pay tuition for that, meaning a student who has gone through the requirements of getting a degree-credit and not pay tuition for that
credit, that would be something that ultimately the
President's office would have to approve?
A. Yes.
Q. And did you approve that the -- that each
of the registered attendees for these symposiums not
have to pay tuition to get that degree-credit?
A. What we talked about was making the
registration fee that they paid to go to the seminar
in lieu of the tuition fee.
Q. You agree they are two separate fees?
A. Yes.
Q. Did you ever ask Dr. Brauhn whether
counting the attendees at the symposiums in 2010
would be in compliance with policy for the
enrollment purposes?
A. I do not remember a conversation like
that.
Q. Turn to Exhibit 33. Exhibit 33 is the
enrollment matrix that you testified to earlier.
JUDGE FETCH: Which exhibit, counsel?

MS. DONARSKI: Exhibit 33.
JUDGE FETCH: Thank you.
Q. (MS. DONARSKI CONTINUING) You would agree
that this enrollment matrix does not make right or
does not make the incorrect data that has been
reported to IPEDS, doesn't make that right by this
enrollment matrix?
A. No. I -- in fact, it's just the opposite
in my mind. This enrollment matrix clearly defines
the many complexities and nuances that have to be
addressed when enrollments are categorized, counted
and recorded, not only academically, but also
financially.

Q. You heard Dr. Hillman's testimony that the
policy, the enrollment policy 440, that hasn't
changed in years; correct?
A. That is correct.
Q. And that there is no question that these
attendees were not degree-credit enrolled students
at DSU; correct?
A. There's no question at this time, yes.
Q. Now, Exhibit 30 is what you entitle your
Memorial Day essay?
A. Yes.
Q. When Chancellor Goetz gave you the list of
questions and met with you on May 26 and asked for a
response by Monday, May 30th, isn't it true that you
at no point in time indicated that that was a
holiday?
A. I didn't indicate it was a holiday because
that was not part of the conversation, but given the
fact that we were literally two days away from the
holiday, I didn't feel the need to discuss it.
Q. And you heard Chancellor Goetz's testimony
that that was just something that was an oversight
and not intentional?
A. I did.
Q. Turn to Exhibit 54. Fifty-four is the
faculty survey. And the faculty survey is something
that you received a copy of in the fall of 2010?
A. As I recall in the testimony with Mr. Staudinger, you outlined an email where he distributed this survey and I was part of that email distribution.

Q. Okay. And the assessment, the actual survey form itself that's originally sent out, that's a survey that is mailed individually to each faculty with a cover letter from either you or the Chancellor indicating here's the survey for the faculty assessment for the faculty to complete and return; correct?

A. I would have to go back and look at the procedures in order to answer that.

Q. You don't recall ever having a cover letter and sending -- having your office send this out to each of the faculty for the survey?

A. No, not directly. I would have to go back and look.

Q. What is the significance of the faculty considering a vote of no confidence in the president?

A. That's clearly a very significant step.

Q. Would you agree that Norman Coley is a good Director of Enrollment Services, knows and understands his job?

A. Yes, I do.

Q. Would you agree that Hal Haynes is a good Vice-President for Student Development and knows and understands his job?

A. Yes, I do.
Q. Would you agree that Ronnie Walker is a good Director of the Center for Multicultural Affairs and knows and understands her job?
A. Yes, she does.
Q. Would you agree that John Hurlimann is a good Director of Extended Learning, knows and understands his job?
A. John Hurlimann has only been with us during my tenure a few months. I'm just getting to know him, so I cannot answer that completely.
Q. You have no information, as you sit here today, to indicate that he does not understand his job or is not doing a good job; correct?
A. Correct.
Q. And would you agree that Marty Odermann-Gardner was a good Director of Extended Learning and knew and understood her job?
A. She knew and understood her job.
Q. You testified that the Roughrider scholarships, that you had granted five or six a year. But the -- turn to Exhibit 55, page Bates 503. Okay. So Exhibit 55, Bates 503, is that your approval for the Roughrider funds to enhance Dickinson State head count for the Belfield High School students?
A. This is my approval of Roughrider funds to enhance our opportunity to work with Belfield High School for dual-credit.
Q. And that was utilizing the Roughrider funds for 20 to 47 students at the cost of $4,500?
A. That is correct.

Q. And, in fact, it turned out to be 38 students?

A. I'm not sure what the final number was.

Q. And part of the Roughrider funds come from the State appropriated money; correct?

A. Part of it comes from State appropriations. Part of it comes from the revenue that is generated from the oil reserve.

Q. And there are criteria in place with respect to the requirements or eligibility for a student to receive a Roughrider scholarship?

A. That is correct.

Q. I think your testimony was the first time you had seen the notice of intent was when it was delivered to you by a Highway Patrol; is that correct?

A. The first time that I saw the written document was when the Highway Patrol delivered it, that is correct.

Q. You had not seen it at all prior to that?

A. The document was sent to me in an email, which I found on my cell phone, as I recall, Friday night in Fargo. I could not get my cell phone to open the PDF and so I forwarded it to my attorney, Mr. Thomas.

Q. So you did receive a copy of the notice of intent on Friday night, which would have been
August 5th?

A. I received it, but I didn't know what I received because my cell phone wouldn't open it.

Q. Okay. And when you received it, you then forwarded it to your attorney?

A. I did.

Q. And then you met with your attorney Friday or Saturday, August 5th or 6th, opened the document and saw it?

A. I met with my attorney on Saturday. He was able to open it from his computer. And he was able to review it with me at that time.

Q. So your testimony earlier that the first time you had ever seen the notice of intent was when the Highway Patrol delivered it, was false?

A. The first time that I had received it in writing was from the Highway Patrolman when he delivered it.

Q. Isn't that a play on words? You had received it in email that you and your attorney looked at two days before that?

JUDGE FETCH: That's argumentative. Save that for your closing argument, counsel.

Q. (MS. DONARSKI CONTINUING) You had had a meeting with the Chancellor the Thursday which would have been August 3rd and the Chancellor had asked you to call him on August 4th to inform him -- to respond back to that meeting.

Why did you not respond to the voice mail messages from the Chancellor, Chancellor's
administrative assistant on August 4th or August 5th?

A. I believe the meeting with the Chancellor was clearly documented as Wednesday and not Thursday.

Q. Okay. So he told you on Wednesday to call him on Thursday?

A. Correct.

Q. And you don't call and the Chancellor's office leaves voice mail messages?

A. That's correct.

Q. For you?

A. That's correct.

Q. Why did you not return any of the Chancellor's calls?

A. Because I felt like his stipulation to call back the next morning and voluntarily resign was both unfair, very harsh and legally unsound. And at the time I was seeking legal counsel and it was my intuition not to talk to the Chancellor until I had consulted legal counsel.

Q. So you ignored his voice mails; correct?

A. That is correct.

Q. And when there was a call to your house and your wife was asked that you call, you ignored that request as well?

A. That is correct.

Q. And there was no followup with the Chancellor at all on your behalf on August 4th or August 5th?
A. That is not correct.

Q. You contacted the Chancellor?

A. No, my legal counsel contacted representatives of the Chancellor's office.

Q. You at no point in time contacted the Chancellor?

A. That's correct, because after talking to my legal counsel, Mr. Thomas, on Friday morning, he informed me from this point forward he would be representing me and that he would be contacting on my behalf, and it is my clear understanding that he did so.

Q. You had your University cell phone with you during those periods of time, during August 4th and 5th?

A. No, I didn't. I had my University cell phone plugged in at the house and I had my calls forwarded to my personal cell phone.

Q. Along with your emails, because you were able to access the notice of intent on your email through your phone; correct?

A. My email was turned off on Saturday morning. I accessed emails through until Friday and after that, my email system no longer worked starting Saturday morning. In fact, Mr. Thomas and I tried repeatedly to get into the email system on Saturday and we could not. My password was invalid.

Q. With respect to the enrollment expectations that you had with the DSU direct reports, you heard the testimony that housing was an
issue and that the students -- there was not housing
for these students, nor was there support for the
international students. So in order to meet your
enrollment numbers, where had you planned on housing
these students?

A. The question of housing was something that
we addressed comprehensively for more than a year

and it continues to be addressed, is my
understanding looking at the newspaper articles.
There are many, many parts of the enrollment plan
where housing is not an issue at all. We had talked
about growing enrollments here with our program in
Bismarck that requires zero dorms in Dickinson. We
talked about growing our enrollment in partnership
with Williston. We talked about growing our
enrollment online. All of those are enrollment
growth opportunities that do not have any demands on
housing.

In the chart, which I no longer have
access to, but there was a 15-year summary of our
housing occupancy rates and in 15 years there was
only one year in the past 15 where we exceeded our
traditional capacity. The process that we used,
which was vetted with the Chancellor a couple of
years back, was a process where we realized a couple
of years ago that the housing was going to fill and,
therefore, we did not want to say no to a student or
parents of a student who were bringing students to
our campus for enrollment. And so we took the
larger rooms, about 100 in number, we put bunk beds
So you're triple-bunking in a dorm room that suits two?

A. That is correct.

Q. With two Internet accesses?

A. That is correct.

Q. And turn to Exhibit 66, please.

A. Yes, the enrollment dashboard.

Q. And the enrollment dashboard is one tool that you used in monitoring enrollment and determining whether your enrollment goals were reached?

A. That is correct.

Q. And that was a document that you presented to the staff on a periodic basis?

A. Periodically we would review this, yes.

Q. Okay. And how often? Is this a weekly meeting that you would meet with them and provide the dashboard update?

A. No.

Q. Okay. How often?

A. It would be difficult to say the precise number. The conversations could have been once or twice a semester, perhaps.

Q. Okay. So you would have met and discussed the dashboard in the fall of 2010 with the staff?

A. Yes.
Q. Okay. And you would have done it early 2011, but there were no meetings on the dashboard enrollment after the February NSSE notice on the data, incorrect data with respect to enrollment; correct?

A. I don't know. I would have to go back and look.

Q. You don't recall any meeting after that?

A. (Shakes head.)

Q. Is that no?

A. I would have to go back and look.

Q. We earlier talked about the window of opportunity and counting the Disney Institute students after the September 20th date. And isn't it true that the distinction is, that for enrollment -- for enrollments after the census date, they are not counted in the enrollment report?

A. There is a process where there are delayed starts on classes and there are procedures for counting the enrollments that are completed at that time, but I would have to look at that policy in order to review that and answer your question.

Q. Did you look at it at all during the process of when the Disney symposium was included in enrollment?

A. No, I did not.

MS. DONARSKI: Nothing further.

JUDGE FETCH: All right. Thank you. I have a few quick questions and then we'll take a little break.
BY JUDGE FETCH:

Q. I want you to turn to Exhibit 54, please. That's the faculty survey for the 2009-2010 faculty. At the top and under demographic information it states that there are 233 faculty and the number of responses is 54, which is a percentage of responses being 23 percent. That seems to me, just offhand, to be a rather low response rate. That's less than a fourth.

From your experience of these faculty surveys, is that a low response rate, or is that typical?

A. My experience, Your Honor, would say that that is typical.

Q. And any -- why would that be? Are they simply not interested in responding? If this is mailed to them and this is an opportunity for some feedback as to faculty satisfaction, I guess, do you know why this would be typically low?

A. My experience in the past, not only with this kind of survey, but with other surveys, would indicate that many, many times individuals who are content choose to not participate in these kind of surveys.

Q. Okay. Fair enough. Another question that Ms. Donarski asked you and it was a series of directors, she asked you whether the individual was a good director and whether they knew and understood their jobs. Do you recall that line of questioning?
A. I do.
Q. All right. When it came -- when it came to Marty Odermann-Gardner, that question, you did not answer the first part whether -- or you answered it differently than you did the others. You answered that she knew and understood her job. What about the rest of that question, was she a good director?
A. She aspired, Your Honor, for a promotion. She was hoping to have the rank of dean. I did not feel like that was an appropriate promotion and I did not support that request.
Q. What does that have to do whether she was a good director? I guess, was she in the job that she was in -- what was her job again?
A. She was the Director of the Office of Extended Learning.
Q. Right. Was she a good director in that position?
A. Yes, she was, Your Honor.
Q. So your hesitancy to complete that answer was that you did not support her promotion --
A. To dean.
Q. -- to dean? Okay. A couple more questions. Is there -- did DSU have a contract with NSSE?
A. Your Honor, I believe the contract is statewide with the Chancellor's office and, therefore, to my knowledge, we did not have an individual contract. It was a systemwide contract.
Q. Okay. And would that be also true of IPEDS, or is that specific to Dickinson State University?
A. Your Honor, I don't think we have a contract with IPEDS. I think that's statewide again, but it is a national database.

JUDGE FETCH: Counsel, I'm not sure which of you to ask to provide those, but I would like a copy of the contract with NSSE and the contract with IPEDS. And do you have the ability to make that available, Mr. Thomas?
MR. THOMAS: I'm afraid I don't, Judge.
MR. SEAWORTH: Judge Fetch.
JUDGE FETCH: Yes, Mr. Seaworth.
MR. SEAWORTH: IPEDS, that requirement is set out in federal law.
JUDGE FETCH: So there is no contract?
MR. SEAWORTH: There is no contract with IPEDS. There are federal law requirements. Reporting is done according to federal law and regulations.
JUDGE FETCH: What about NSSE?
MR. SEAWORTH: NSSE, I believe, we should have a contract. Yeah, NSSE, again, that's an organization that is under the umbrella of Indiana University and I think we have a contract with them. And, again, I think the testimony was that they -- the information that is -- that NSSE received, the source of that information is the ConnectND information on enrolled students. Okay. So that's
a contract under which NSSE just does a survey for the University System as they do for a number of other universities and colleges around the country.

JUDGE FETCH: Could you provide a copy of that contract for the record?

MR. SEAWORTH: I believe we have it in the Chancellor's office and we can get that.

JUDGE FETCH: Okay. I appreciate that.

Thank you. And with that, before we go to redirect, we will take a ten-minute recess.

(Recessed from 10:13 a.m., to 10:28 a.m., the same day.)

JUDGE FETCH: Okay. Let's come back to order. All right. At this time, Mr. Thomas, I'm going to turn it back to you for any redirect.

MR. THOMAS: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. THOMAS:

Q. Dr. McCallum, good morning.

A. Good morning.

Q. I'm going to work backwards, I think, picking up where the Judge and Ms. Donarski left off with your testimony.

You were asked some questions about the housing issue and how you intended to address that to the extent that enrollment would be increasing. And I'm not sure if you got a chance to finish your response to Ms. Donarski's question or not. If you did, I'll leave it. If there's more you wanted to add to that response on the housing issue, could you
do so now?

A. There was much more that I wanted to add.

The housing issue was something that we had been looking at and considering for the better part of two years. As I indicated, we have a 15-year history of occupancy. There was only one year that we went into the triple-occupancy rate. This past year we did not go into triple occupancy. However, we started a conversation with our administrative council group in the early part of the last academic year. We continued that conversation into a second academic council meeting.

And from the questions and the variables that we discussed, we realized that there needed to be a complete analysis of multiple variables. Demographics, certainly, is one of those, but there are other variables that are taking place and influencing our housing trends. And so we created a task force on our campus, cochaired by two vice-presidents. And that task force was charged with a set of variables that we asked them to analyze.

Q. Do you believe that the housing situation as it existed at DSU at the time was in any way incompatible with the enrollment goal that you had set for the various departments?

A. No, I did not. In fact, we talked about that at length, because, as I had indicated earlier,
there were areas where we were seeking actively to
grow our enrollment where no housing would be
required, such as Bismarck, Williston, and online.

Q. You were asked some questions about the
Roughrider scholarships and I recall your earlier
testimony as well that the number of Roughrider
scholarships was fairly low, and if you refer back
to exhibit -- or page 503, Bates 503, which I
believe is a part of Exhibit 55, could you help the
Judge and the rest of us understand, was the number
of Roughrider scholarships significantly different
in 2010 and, if so, why?

A. Your Honor, in terms of this particular
exhibit, my previous response was dealing with
individuals that I felt I was trying to help with
Roughrider scholarships. When we looked at this
opportunity for dual-credit, I had always considered
and still consider dual-credit as not only an
important part of our four-year institutional
mission, but also an incredible investment in the
future, because what we hope to do, I think what
every four-year institution hopes to do, is

establish a relationship with the public school
district and with students enrolled in dual-credit
classes where they get to know DSU as an institution
and they look to DSU as a first choice after they
graduate from high school. And so this was an
opportunity, in my eyes, to create a relationship
with Belfield High School students.

Q. Would the amount of each Roughrider
scholarship as referenced in this document, page 503, be significantly different from the other Roughrider scholarships that you referenced before for, for example, full-time students at DSU?

   A. No, I don't think so. In fact, I think this would be very modest because of the credit that we're talking about.

   Q. So how about if we were to talk in terms of the amount, total amount of Roughrider scholarships given out by DSU in academic year 2010-2011 as compared with prior years? Can you estimate, if you're able, whether the total amount of Roughrider scholarship dollars was significantly different in that year than previous years?

   A. I actually believe that the amount that particular year was down compared to some of our previous years. The challenge with tracking

Roughrider dollars is not just the new scholarships that are awarded in the beginning, it's also the students that persist and carry the scholarship for four years. The idea is, if they are a full-time student and they're maintaining full-time enrollment and they're maintaining a successful grade point, that that scholarship can go for four years. And so, as I recall, the total dollars in that budget, that particular year it was down a little bit, but I would have to go check to be sure.

   Q. Dr. McCallum, you were asked some questions about Exhibit 78. Can you turn to that exhibit, please? And while you turn to that
document, I'll just remind you that you testified that it was a handwritten document with some numbers that you believe that you wrote.

Do you recall that?

A. That is correct.

Q. Do you recall to whom this document was sent, if anyone?

A. As I recall, this was a brainstorming session where we were looking at our final situation relative to the three weeks as it's labeled up there, the three-week final push. Specifically, I probably used this in a conversation with Norman Coley. I may have used this in a conversation with others, but I don't recall if I did or not.

Q. So you may have communicated some of these numbers to others that were present at that meeting?

A. Yes.

Q. Was it ever your belief when you drafted this document on August 30th or discussed it with others that any of the numbers listed under W, X, Y or Z were improper numbers for submission for enrollment purposes?

A. No, I never intended that to be improper at all.

Q. And I was confused by some earlier testimony about these symposiums and maybe you can help us understand. You initially testified, under questioning from Ms. Donarski, that the Disney symposium date was September 29 of 2010. Do you recall that testimony?
A. Yes, I do.

Q. And I believe you testified or acknowledged that the date of that symposium is outside the date that could be utilized for listing attendees for enrollment purposes; is that also correct?

A. That is correct.

Q. The reason I'm confused is that you were subsequently referred to Bates page 25, which is way at the front of the book. I believe that's part of Exhibit 9. And as I understood the testimony, you discussed enrollment and a definition of enrollment which includes that a, quote, Student has registered and paid tuition and fees, made arrangements to pay or a plan for payment is in place. Do you see that at Subsection 1?

A. Yes, I do.

Q. The reason I -- my question for you is, is it even true that the date of the Disney symposium would automatically make the attendees ineligible to be listed for enrollment purposes if, according to this definition, the student may only have had to have registered and paid fees, but not necessarily have attended the symposium?

Do you understand my question?

A. Yes, I do.

Q. Do you have an answer?

A. As I tried to say earlier, there is a policy, and it's a policy that I would have to ask our Business Affairs officer to address, but there
is a policy where delayed start classes with delayed start can be part of the census, if the enrollments
are completed before the census count is taken.

Q. So under those circumstances, the fact --
the mere fact then that the symposium date was September 29, wouldn't automatically make it ineligible for counting purposes?
A. That is my understanding.
Q. Okay. Dr. McCallum, are these some of the complexities and nuances that you testified were, in your mind, addressed in Exhibit 33, the matrix?
A. Yes, that is correct.
Q. And did you have that matrix available to you as of August of 2010?
A. No, we did not. And that is one of the things that I tried to emphasize in my testimony last week. I am a supporter of this enrollment matrix because it clearly helps individuals make proper interpretations of policy. And as you look down through the different categories and the different ways that they are counted and where they are counted both academically and financially, it's a relatively complex process. And I think that this matrix allows us to better understand the definitions and the procedures that everyone in a uniform way would follow.
Q. Could you turn to page 508? That's part
of Exhibit 55 and you were asked some about that exhibit as well, page 508.

A. (Witness complies.)

Q. This is the email that was sent from Stacy Wilkinson to, it looks like, more than 20 different people at DSU. Do you see that?

A. Yes, I do.

Q. And can you tell the Hearing Officer again who Stacy Wilkinson is?

A. As you recall, Your Honor, she was one of the individuals who testified last week. She works in the Office of Extended Learning. As I understand, one of her many responsibilities is keeping track of the Office of Extended Learning enrollment numbers.

Q. And you were among those who received this email, looks like your email address is on there, your name is on there?

A. Yes, that is correct.

Q. Can you tell the Hearing Officer, Dr. McCallum, whether following distribution of this email any of the addressees contacted you expressing concerns that it would be improper to -- or inconsistent with policy 440 to add those energy symposium, Teddy Roosevelt symposium or Disney Institute attendees for purposes of listing your enrollment numbers?

A. They did not. And this did not raise a red flag to me or subsequently. You're on Exhibit 55; correct?
Q. I am, yes, page 508. You testified that between February 25 when you submitted -- of 2011 when you submitted your report to Chancellor Goetz and April, I believe the date was 18, when you had subsequent contact with Chancellor Goetz, that two-month period of time you received no contact from Chancellor Goetz with regard to the NSSE or enrollment reporting concerns; is that true?

A. That is correct. During that period of time that report sat on the corner of my desk. I set it on the corner of my desk because I thought if there were follow-on questions that the Chancellor wanted to have answered, that he would probably most likely call me and I wanted it to be there within easy reach on the corner of my desk. I did not hear from the Chancellor during that approximate two-month period.

Q. And just -- or from anybody else, Mr. Eggert, Mr. Hillman, any other investigators or auditors contact you during that period?

A. That is correct.

Q. And just for your reference, Exhibit 28 is your letter to Chancellor Goetz and Exhibit 29 is, in fact, dated April 18. It's the letter or email from Chancellor Goetz to you.

So immediately prior to receiving the April 18, 2011 email from Chancellor Goetz, what was your understanding of the level of concern regarding enrollment issues at DSU?

A. I thought the enrollment questions had
been answered in the February 25th letter. There was no followup or additional request for information from me. There was no followup from the Chancellor relative to follow-on questions and so I thought it was resolved. I was quite surprised to receive the April 18th email.

Q. And you were interviewed one time subsequent to April 18 by Mr. Eggert or Dr. Hillman?
A. My interview with Dr. Hillman and Mr. Eggert actually occurred on May 4th, as I recall.

Q. Okay. And nothing subsequent to that?
A. That's correct.

Q. So between May 4 and the date you were notified that Chancellor Goetz was seeking your termination on August 3, three months, a full three months later, did you have any involvement in the process to investigate or correct or assist in identifying any enrollment errors at DSU?
A. No. In fact, as I indicated earlier, I have been very surprised by the level of communication that has occurred during that time period. The Chancellor did address it with me in the May 26 performance evaluation meeting. When he gave me those 12 questions, that was one of the 12 questions. Again, I wrote the essay responding, but other than the essay question and the essay response, I was not part of the investigation that we now know was going on.

Q. In hindsight now, having been provided
with copies of all the documents that were clearly going back and forth relating to enrollment issues, why do you believe you were not made part of the process?

A. That remains a puzzle to me. As I had indicated previously, I always felt like I was on the Chancellor's team and that he was my coach and my mentor. I always felt like we were going to stand together to solve problems, and even to this day, I am puzzled by the turn of events.

Q. Do you have any theories as to why you wouldn't be included?

A. No.

Q. Finally, Dr. McCallum, you were asked some questions about the Memorial Day essay that you prepared and the fact that it was -- the deadline was Memorial Day Monday. Do you recall that testimony?

A. Yes, I do.

Q. The day that you received your assignment or directive from Chancellor Goetz was what day of the week?

A. It was the 26th and my recollection was a Thursday.

Q. And there was questions about whether or not it may have been an oversight that the deadline was Memorial Day Monday and taking that to be true, were you contacted by Chancellor Goetz on Friday, the next day, with an indication that the deadline was Memorial Day Monday and pushing the deadline out
from there?
A. Not at all. I had the impression from the Chancellor that he clearly expected my responses on Monday, the 30th. As I indicated to you, that meeting on the 26th was a very difficult meeting.

That was the meeting that not only included the discussion of the essay questions, but it also was the meeting where the Chancellor told me that my contract would not be renewed and that I would get zero percent salary increase. And so my clear understanding on the deadline for those essays was no question in my mind that he expected it to be there. My dilemma was the fact that it was a holiday. I assumed that I would not be able to get into the Capitol Building and I assumed that the Chancellor's office would not be open on a holiday and that's the reason I drove it in the next morning.

Q. And I apologize. I said that was the last question and I found one other note that I want to follow up with.

You were asked some questions about Marty Odermann-Gardner and about her work performance and her request to be elevated to dean. Can you describe, Dr. McCallum, the circumstances of her departure from Dickinson State University generally?
A. I don't remember all of the details in terms of the timing. I do remember that Dr. Brudvig was the interim Vice-President at the time. As I recall, she had indicated a desire --
Q. (MR. THOMAS CONTINUING) Could you, without describing specific conversations or things that Ms. Odermann-Gardner may have said to you, could you just tell the Hearing Officer, was it your belief that the departure was on good terms or bad terms or something in between?

A. It was my understanding it was good terms because she wanted to move to Colorado to be close to children.

Q. Did you subsequently learn of complaints or allegations that were raised with your human resources director suggesting that she wasn't happy?

A. Yes, I did.

MR. THOMAS: Okay. Dr. McCallum, thank you. Those are all the questions I have, Your Honor.

JUDGE FETCH: Thank you. Any recross, Ms. Donarski?

MS. DONARSKI: I do.

RECROSS-EXAMINATION

BY MS. DONARSKI:

Q. After your February response to the Chancellor, Dr. McCallum, you did not ever follow up with the Chancellor or call him asking whether he had any questions or what the status of this
enrollment issue was?

A. That is true.

MS. DONARSKI: I have nothing further.

MR. THOMAS: Nothing else, Your Honor.

JUDGE FETCH: That's all the questions,

Dr. McCallum. You are excused. Thank you.

MR. THOMAS: Well, kind of excused.

JUDGE FETCH: For now you are excused.

MR. THOMAS: Your Honor, my next witness

is Steve Glasser. He's waiting in the next room.

JUDGE FETCH: Good morning.

THE WITNESS: Good morning.

JUDGE FETCH: Could you please spell your

first and last name for the record?

THE WITNESS: Steve, S-t-e-v-e, Glasser,

G-l-a-s-s-e-r.

JUDGE FETCH: Thank you. Mr. Glaser, my

name is Bonny Fetch. I'm the Administrative Law

d judge conducting this hearing. All witness

testimony at this hearing is taken under oath and is

subject to penalties for perjury. By law I'm

required to inform witnesses as to those penalties.

Perjury in the State of North Dakota is a Class C

Felony, punishable by a maximum fine of $5,000, a

maximum five years in prison, or both.

Please raise your right hand.

Do you solemnly swear the testimony you're

about to give shall be the truth under the pains and

penalties of perjury?

THE WITNESS: Yes, I do.
JUDGE FETCH: Thank you. Please speak up nice and loudly. Mr. Thomas.

MR. THOMAS: Thank you, Your Honor.

STEVE GLASSER, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THOMAS:

Q. Mr. Glasser, could you state your current employment, please?

A. Sure. I'm the Executive Director for the Strom Center for Entrepreneurship and Innovation at Dickinson State University.

Q. For how long have you held that position?

A. Since January of 2009.

Q. Have you held -- and is that a position of employment with Dickinson State University, or are you employed by somebody else?

A. No, Dickinson State University.

Q. Have you held other positions at Dickinson State University?

A. Yes. I first came to Dickinson State University February of 2006 as the Director of Enrollment Services and then I transitioned to the Strom Center in January of 2009 and then fall of -- September of 2010, I filled in in the Office of Extended Learning as the liaison between -- after Ms. Odermann-Gardner had resigned.

Q. Would it be fair to characterize your position as interim Director of Extended Learning,
or is it something different than that?
A. Well, we kind of changed the title to Liaison because I was still full-time at the Strom Center. So in talking with Dr. Brudvig, who that position answered to, as Vice-President of Academic Affairs, we changed that to that title, as I probably spent an average of five to ten hours a week with Extended Learning and the rest of my time was at the Strom Center.

Q. And, again, can you give us the time period during which you were the liaison at Office of Extended Learning?
A. It would have been September of 2010 through January of 2011, until the full-time director was employed.

Q. And that person is who?
A. John Hurlimann.

Q. Mr. Glasser, can you tell the Judge what involvement, if any, you had with regard to three seminars or symposiums that were presented in the fall of 2010, the Disney symposium, the Teddy Roosevelt symposium and the energy symposium?
A. The only involvement I had was with the Disney Institute. And, initially, I believe it was early July of 2010, was when the first planning began for that training, and at that point I was involved just from the Strom Center to assist with getting the word out to our constituents as far as the training. And then -- so I was on a planning committee. There was probably about eight of us,
some community representation, as well as, obviously, the University. And then when Ms. Odermann-Gardner left Dickinson State, then I took over to make sure that the training progressed and took place.

Q. Without discussing specifically any hearsay statements or comments Ms. Odermann-Gardner may have made to you, do you have a general understanding of whose idea it was to seek enrollment credit for these three seminars, the Disney seminar, the Teddy Roosevelt or the energy seminar?

A. Again, to speak to the Disney training, my understanding and from the documents, the planning documents that indicated on the planning documents that all attendees would receive one DSU credit and that was -- my understanding came from Ms. Odermann-Gardner.

Q. Did you have any concerns or even knowledge that those attendees, specifically with the Disney seminar, might be listed as enrolled students at DSU for purposes of reporting enrollment numbers to IPEDS? Did you know in the fall of 2010 that this might be happening?

A. No, I did not. I was aware that if students would fulfill the requirement of the time, the 15 hours in participation, it was always my understanding that, then, they could be given credit, and I have no understanding of how that fits in with the fiscal reporting of enrollment.
Q. Were you among those at DSU who were tasked by President McCallum to attempt to reach certain enrollment goals at Dickinson State University?

A. Yes. Once I became involved with Extended Learning, then I was part -- I guess, let me back up. I was part of some of the meetings as Executive Director of the Strom Center, but then became a little obviously more involved once I went into Extended Learning.

Q. And there was some testimony last week with regard to a consulting agency. I believe the name was Noel-Levitz. Did you work with that agency or attend any meetings that they sponsored?

A. Back when I was in Enrollment Services, I did, but once I transitioned, then I was no longer involved in that process.

Q. Okay. And is it fair to say that the Noel-Levitz consultation or retention of that agency was to address enrollment issues at DSU?

A. Yes, enrollment. There was recruitment and retention and, you know, to build the student body more by design.

Q. Mr. Glasser, could you look at the exhibit book in front of you and turn to what's tabbed Exhibit 61?

A. (Witness complies.)
Q. Page number on the bottom is 0519.
A. Okay.
Q. Do you remember receiving that memorandum from Dr. McCallum in October of 2010?
A. Yes. Now looking at it, I do.
Q. Okay. What is this document?
A. It is a document referring to a plan, to develop a recruitment plan for the Office of Extended Learning for the upcoming -- back then I guess, upcoming spring and the following fall semesters.
Q. There has been a great deal of testimony regarding not necessarily this email, but emails identical to this that were sent by Dr. McCallum to other DSU employees. And so I'd like to get your assessment of this email or this memorandum and tell the Judge how you perceived it, how you interpreted this memorandum from Dr. McCallum.
A. Okay. Just this particular memo?
Q. Yes, please.
A. I guess I perceived it as -- you know, as a strategic plan, an intentional plan to meet these goals.
Q. About halfway through this document it states, quote, "With this responsibility, there will be accountability." Do you see that?
A. Mm-hmm.
Q. Is that a yes?
A. Yes.
Q. Did you interpret that statement from
Dr. McCallum to be a threat to you or intimidating in any way to you?

A. I did not, no.

Q. Subsequent to this memo or at any time before Dr. McCallum's departure in August of 2011, were you ever reprimanded, disciplined or chastised or in any way treated negatively by Dr. McCallum for any perceived failures to reach the enrollment goals that he had previously set out?

A. No.

Q. Can you tell the Judge generally what your interaction was with Dr. McCallum with regard to enrollment issues?

A. You know, to -- really didn't have a lot of conversation with Dr. McCallum regarding enrollment. Most of our -- I was a direct report to Dr. McCallum as Executive Director of the Strom Center and the majority of our conversations had to do with Strom Center business, but, obviously, with enrollment, this was probably the main focus of our conversations, was moving forward with a recruitment plan for spring and fall. I knew that I would probably only be in this capacity for that semester so, you know, tried to get a plan together during that fall semester.

Q. And can you tell us what role you played in the process of reporting enrollment numbers, either to NSSE or to IPEDS?

A. I didn't play any role.

Q. Could you turn, please, to Exhibit 83?
JUDGE FETCH: Are you offering Exhibit 61, counsel?
MR. THOMAS: I apologize. Yes. To the extent it has not been received yet, Your Honor, we would offer Exhibit 61.
JUDGE FETCH: Any objections?
MS. DONARSKI: No objection.
JUDGE FETCH: Thank you. Exhibit 61 is admitted. Okay. I'm sorry. What are we on?
MR. THOMAS: Exhibit 83, please. And I believe this is in, but maybe you can tell me, Judge?
JUDGE FETCH: That has been admitted.
MR. THOMAS: Thank you.
Q. (MR. THOMAS CONTINUING) Mr. Glasser, do you recognize Exhibit 83?
A. Yes.
Q. What is it?
A. It's an email from myself to Scott Staudinger responding to a question about some of the courses that were offered.
Q. There has been prior testimony to indicate that February 4, 2011 was the first date on which concerns were raised about student surveys being sent out to those that should not have received student surveys from NSSE.
Q. Was this the first occasion on which you were made aware of a reporting problem with respect to enrollment numbers and NSSE?
A. Yes.
Q. And can you tell us what role, if any, you played in that?
A. From here on out, is that your question?
Q. Yes.
A. No role.
Q. How about at the time -- why were you included in this email exchange?
A. Because of the courses that, I guess, it refers to the Disney Institute, as well as QuickBooks and Microsoft, which were offered through the Strom Center, so those were the three classes or courses that I was, you know, directly involved in and aware of.
Q. I note that Dr. McCallum was not included in this email exchange. You didn't copy him with any of your emails to Mr. Staudinger or anybody else; is that true?
A. Yes.
Q. Why is that?
A. I guess I, at that point, didn't feel the need to copy Dr. McCallum.
Q. Mr. Glasser, to the extent that you were involved in some of these enrollment discussions and sent information from Dr. McCallum involving email -- or excuse me -- enrollment issues, can you tell the judge at any time prior to Dr. McCallum's departure from Dickinson State University, did he ever direct you to intentionally submit enrollment figures to NSSE or to anybody else within the DSU arena that were false or that you knew to be false
or inaccurate?
A. No.
Q. As a result of the enrollment goals that Dr. McCallum had set, did you feel pressure from those goals to the extent that you, yourself, either turned a blind eye to or ignored what you believed were intentionally incorrect enrollment numbers that were submitted to NSSE or IPEDS or anyone else?
A. No.
Q. Finally, there has been some discussion about Dr. McCallum's demeanor and style and method of leadership at Dickinson State University and how some of the employees at Dickinson State perceived that leadership style. Could you speak to that issue to the Judge and tell her how you found Dr. McCallum's leadership style to be?
A. I guess, my -- you know, the majority of my dealings with Dr. McCallum were related to the Strom Center and then the meetings in the fall, the few meetings with enrollment, and I felt, you know, Dr. McCallum was extremely supportive of the Strom Center, attended all of our functions. I know it was one of his pillars at the University with future goals, so, you know, as far as the dealings with Dr. McCallum with the Strom Center was nothing but positive.
Q. Mr. Glasser, thank you.
MR. THOMAS: Those are all the questions I have, Your Honor.
JUDGE FETCH: Thank you. You may cross-
examine, Ms. Donarski.

MS. DONARSKI: Thank you.

CROSS-EXAMINATION

BY MS. DONARSKI:

Q. Nice to meet you in person finally.
A. Yes. Good morning.

Q. You were asked questions on the Noel-Levitz report for the enrollment services.
A. Mm-hmm.

Q. And you had indicated the report focused on retention and building the student body; is that correct?
A. Yeah, recruitment and retention, yeah.

Q. Okay. And retention as far as maintaining students to enroll them and get them to continue through DSU through graduation; correct?
A. Correct, once they were enrolled, to retain them throughout their college education, yes.

Q. Was the Noel-Levitz report, was that a focus more on kind of the quality of the student, versus just the quantity of students or the number of students?
A. I guess the report, once the report came out, I was no longer involved in enrollment. I was more involved with the initial work with

Noel-Levitz, as far, as you know, getting them on board to come to our campus.

Q. Okay.
A. So I have not read the final report, but I know we were looking at addressing, you know, our retention and graduation rates.

Q. Okay. And when was Noel-Levitz originally hired to come on board and provide that service?

A. To my recollection, 2008. I'm not exactly sure the date or the month.

Q. And at whose directive?

A. I know it was approved under the leadership of Dr. Vickers.

Q. Okay. The symposiums that you were asked questions on and specifically the Disney symposium, you had indicated that there would be one DSU credit. Was it your understanding that that would be a continuing education credit or a degree credit?

A. My understanding was a continuing education credit.

Q. Okay. And one of the requirements for the continuing education would be the 15 hours of seat time?

A. Mm-hmm.

Q. Correct?

A. Correct.

Q. But there are other requirements as well; right?

A. That I was not aware of.

Q. Okay. You were aware of the 15 hours credit?

A. Yes.

Q. Or hours?
A. Hours, yes.

Q. And you were aware of that by whom?

A. Ms. Odermann-Gardener.

Q. Okay. And the other requirements, then, the registration, tuition, assigning an instructor to get that degree-credit, who took care of that?

A. That would have been through Extended Learning office.

Q. Okay. And it's my understanding you were appointed as the liaison for the Office of Extended Learning?

A. Correct.

Q. And who appointed you in that position?

A. Dr. McCallum.

Q. And you have no idea how IPEDS works or the requirements of IPEDS?

A. I do not.

Q. You were asked questions about the memo that Dr. McCallum had sent to you October 11, 2010. And that was to you as the Executive Director of the Strom Center?

A. No, that would have been as filling in, in Extended Learning.

Q. Okay. Turn to Exhibit 61. And with the goals identified in there, did you have discussions with the staff on the difficulty in meeting those enrollment goals?

A. Yes. We had a planning session in Dickinson and those that could attend from the Bismarck office came out to Dickinson and we
tried -- we worked on putting together a plan as far as Bismarck, as it says, online and Williston.

Q. Okay. And when you received this memo, October 11, 2010, at that time you understood that this was a very serious concern of President McCallum's?

A. Yes.

Q. That enrollment was very serious to him?

A. It was very important, yes.

MS. DONARSKI: I have nothing further.

JUDGE FETCH: Any redirect?

MR. THOMAS: No, Your Honor.

JUDGE FETCH: All right. That's all the questions, Mr. Glasser. Thank you. And you are -- I don't know if you are planning to stay. Now that you've testified, you can remain in the room, but if you go back out to where there are other witnesses waiting, I ask that you not discuss your testimony with them. All right.

THE WITNESS: Thank you.

JUDGE FETCH: Who would be your next witness?

MR. THOMAS: Dr. Jon Brudvig.

JUDGE FETCH: Good morning, Dr. Brudvig. My name is Bonny Fetch, and I'm the Administrative Law Judge conducting this hearing.

Would you please spell your first and last name for the record?

THE WITNESS: J-o-n, B-r-u-d-v-i-g.

JUDGE FETCH: Thank you. All witness
Please raise your right hand.

Do you solemnly swear the testimony you're about to give shall be the truth under the pains and penalties of perjury?

THE WITNESS: I do.

JUDGE FETCH: Thank you. Mr. Thomas, please proceed.

MR. THOMAS: Thank you, Your Honor.

JON BRUDVIG, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THOMAS:

Q. Dr. Brudvig, could you state by whom you're employed and what your current title is?

A. I'm employed by Dickinson State University. My title this year is Vice-President for Academic Affairs.

Q. For how long have you been employed by Dickinson State University?


Q. When you were hired in 2007, was it as Vice-President of Academic Affairs?
A. No. I was hired -- I was hired as Director of the Theodore Roosevelt Honors Leadership Program.

Q. What is that?
A. It's an honors program at Dickinson State University. We recruit some of the most talented young people throughout the region. They need a minimum ACT score and a GPA and have to apply for admission to the program.

Q. We've heard some testimony about a Teddy Roosevelt symposium, but what you're talking about is something different; correct?
A. Completely separate. It's an honors program.

Q. Okay. And are you also an officer of the institution at Dickinson State University?
A. I am this year.

Q. What does that entail?
A. To the best of my knowledge, you know, I really can't tell you. I know it comes with some responsibilities and some privileges in terms of where you're put in the band, but last year I was not an officer of the institution.

Q. Is there a President's cabinet at Dickinson State University?
A. Yes, there is.

Q. Are you a member of that?
A. Yes, I am.

Q. Can you tell us what that entails?
A. That involves weekly meetings or at least three meetings a month of different department heads for primarily the vice-presidents, the academic deans, the Athletic Director, Director of University Relations. That's pretty much everybody who attends.

Q. And would that entail periodic meetings, cabinet meetings with President McCallum while he served as President of Dickinson State University?
A. On average, three meetings a month, typically.

Q. Could you speak to your current duties as Vice-President of Academic Affairs?
A. Well, in my capacity as Vice-President of Academic Affairs, I am the chief academic officer of the institution, responsible for oversight of 11 academic departments and two colleges, including other departments and areas, particularly Office of Extended Learning, Academic Records and the Stoxen Library.

Q. And those are responsibilities that you have held since what time?
A. I served beginning July of 2010 in an interim capacity as interim Vice-President for Academic Affairs, as interim dean at the College of Arts and Sciences and full-time director of the Theodore Roosevelt Honors Leadership program.

Q. Can you speak generally as to what your
involvement is with respect to submission of
enrollment data from Dickinson State University to
various reporting agencies?
   A. Our office really has no involvement with
   that.

Q. I'd like to call your attention to a few
exhibits that have been previously entered into
evidence, beginning with Exhibit 26, please. And
I'll represent to you that page 1 of Exhibit 26 is
Dr. McCallum's fax to Chancellor Goetz addressing
some concerns that had been raised regarding
enrollment reports to NSSE, and page 2 of the
document and 3 appear to be email correspondence
that you were part of. Do you see that?
   A. Yes, I do.

Q. Beginning at page 113 there's an
indication that there had been a hold on DSU's
survey administration and that hold was lifted on
February 11th, 2011, and then going back to page
112, Mr. Staudinger cc's an email to you indicating

that Dickinson State has been reinstated for the
NSSE survey tool. Do you see that?
   A. Yes, I do.

Q. And then at the very top of page 112 is an
e-mail from you -- well, first of all, why were
you -- if you're not involved in enrollment
reporting issues, why would you be included in this
chain of emails?
   A. Well, I would -- Scott Staudinger directly
reports to me in my role as Vice-President for
11 Academic Affairs. I think he was keeping me in the
12 loop.
13 Q. Prior to February 11 of 2011, were you --
14 or February 10, I suppose, were you aware that there
15 were any concerns with regard to reports that had
16 been -- or information that had been submitted to
17 NSSE?
18 A. Yes, Scott Staudinger brought this to my
19 attention.
20 Q. Tell us about that.
21 A. I don't remember the exact details. I do
22 remember that he came to my office and indicated
23 that there was -- that there had been an issue. He
24 had spoken with Mike Hillman, wanted to know the
25 approach we should take and I encouraged him to work

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1 with Mike Hillman to correct the situation.
2 Q. Was there any discussion during your
3 initial conversations with Mr. Staudinger or any
4 intimation that these reports had been intentionally
5 misreported by anyone?
6 A. No.
7 Q. And I see that -- and do you know -- as
8 Mr. Staudinger's supervisor, do you know who
9 submitted the incorrect reports to NSSE initially?
10 A. I don't know for sure. I don't want to
11 conjecture who it was. I don't know for sure.
12 Q. Okay. In your email dated February 11 at
13 the top of page 112, you address the email to
14 Dr. McCallum and say "FYI-Jon." Had you had prior
15 conversations with Dr. McCallum regarding this
reporting issue?
A. Once I knew there was an issue, I brought it to his attention in our meeting. I don't know exactly what date that was, but we would have biweekly meetings and I let him know that there was -- that there was an issue with it.

Q. Did he issue any directive to you once you reported the issue?
A. Just encouraged -- if I recall, and this is recalling from memory, but encouraged --

encouraged me to work with Scott to address the issue.

Q. Following this issue, were you asked by Dr. McCallum to prepare a memorandum discussing enrollment reporting concerns that had been raised?
A. My understanding is that Dr. McCallum received a request from the Chancellor to address -- to answer a number of questions. I was given the responsibility of preparing a report that answered those questions. And so I met with the various individuals who could provide information, gathered their responses and prepared a report that was given to Dr. McCallum.

Q. Could you turn to Exhibit 28, please?
A. (Witness complies.)

Q. That's Dr. McCallum's cover letter at page 122. The second page, page 123, appears to be a memorandum from you to Dr. McCallum. Is that the memo that you just referred to?
A. Correct.
Q. And you authored this document?
A. I authored it. Dr. McCallum had an opportunity to review it.

Q. Okay. I'd like to walk you through this memorandum, if I could, beginning at the bottom of page 123 where a question is asked about the practices differentiating degree-credit, non-degree credit and non-credit enrollment at DSU. And then your response is listed below at No. 1. Could you describe generally what your response was to that inquiry?

A. Well, my response was the information I received from the Office of Academic Records and I was informed that the current registration process for proposed seminar or workshop offerings automatically defaults to graded, unless specific mention of a nongraded offering is noted, and it indicates the master catalog determines this.

Q. So to the extent that any symposium attendees were given grades of A, would that have been, to your knowledge, grades that would have been inputted by anybody in particular, or was it a default type action that some computer program did?

A. Well, the information I received, and it's reflected in the report indicated -- I was told indicated that it automatically defaulted to graded, unless specific mention of a nongraded offering is noted.

Q. Okay. And turning over to page 125, please, you were asked whether all of the students,
in your opinion, met policy 440 requirements as enrolled students in degree-credit courses, and you reference Marshall Melbye. Could you tell us about that?

A. Well, I asked Marshall Melbye. Being new in the position, I wasn't even sure about policy 440 and I asked Marshall Melbye, did all of the students meet these requirements and his -- you know, you can read his response. He notes, Based on my interpretation of policy 440, he does not believe that we, DSU, were in violation of policy 440.

Q. When you say you weren't even sure about policy 440, what do you mean by that? You didn't know --

A. Well, I'll just -- I was brand-new in the position. I was doing three jobs at one time, learning two new jobs on the fly, so I was doing the best I could get up to speed. I didn't even have an orientation with the NDUS office until the 15th of October. So in questions like this, getting up to speed and learning, I had to ask and rely on the input of others.

Q. For the sake of time, I'd like you to skip ahead to a subsequent question at page 126 where No. 5, it's asked, "Was a letter grade communicated to all students enrolled in graded courses." And you set forth a response there. What was your basis for that response? Was that personal knowledge or did
you gather that from others?
A. Once again, that's information provided to me by others, particularly, the Office of Academic Records.

Q. Okay. Dr. Brudvig, could you please turn to Exhibit 18? This is the amended notice of intent to dismiss Dr. McCallum. I'd like to ask you a question referring to a comment at paragraph 2 of that letter on page 85. The fourth line of paragraph 2 reads, quote, Responsible DSU officials and employees report they improperly inflated numbers and reported inaccurate and inflated numbers under President McCallum's direction or under pressure from him to do so." Do you see that --
A. Yes, I do.

Q. -- allegation? At least, speaking on your own behalf, Dr. Brudvig, did you ever participate in any way in improperly inflating enrollment numbers under direction or pressure from Dr. McCallum to do so?
A. No.

Q. Were you interviewed, Dr. Brudvig, in the context of any audits or investigations that were being conducted with regard to enrollment issues or other issues involving Dr. McCallum?
A. Yes, I was.

Q. Could you explain under what -- in what context you were interviewed, how many times, things like that?
A. There were several interviews. I don't
know the exact number. But I did meet with --
initially, with Vice Chancellor Hillman, and
Mr. Eggert came as a followup to the report that was
submitted in February, asking questions, trying to
determine what went wrong, what happened. Then
there were followup visits after this notice of
intent to dismiss was given and individuals were
interviewed on campus. I know I met with Mr. Eggert
on at least two occasions.
Q. Can you -- I'm sorry to interrupt. Can
you tell us approximately what months it may have
been that you met with Mr. Eggert?
A. August. I'm not sure if it went into
September, but definitely August.
Q. Okay. How about before Dr. McCallum's
departure from DSU?
A. The only meeting I had was when Vice

Chancellor Hillman and Mr. Eggert were on campus, I
believe it was May 4th.
Q. And were you asked questions about
enrollment issues and allegations of incorrect
enrollment numbers being submitted?
A. If I recall, we focused on the report and
questions were asked about the classes, particularly
the energy symposium, TR symposium, wanting to know
how -- issues related to those classes.
Q. Was that the focus of the interview from
your perspective, or were the interviewers dealing
with issues beyond enrollment and relating to
Dr. McCallum as a whole?
A. I don't think -- from memory, I don't think there was a question about Dr. McCallum. I can't remember if there was or not. May have been a question at the end asking if we wanted anything to say about Dr. McCallum, but the focus of that initial meeting in May was the report and the classes and how they were structured, how it was monitored, if grades were offered, what was the determination of the grade.

Q. Did you accept -- did you directly supervise or ultimately supervise Marty Odermann-Gardner?

A. Briefly. I became -- I took -- I should say I assumed the responsibility of the Vice-President for Academic Affairs on an interim basis when I returned from China. I was teaching in China. So in August I moved into the office. Marty Odermann-Gardner submitted her resignation a very short time after that, so I directly supervised her for a very brief period of time.

Q. And without testifying to any direct statements that would be hearsay from Ms. Odermann-Gardner, can you tell the Hearing Officer generally if Ms. Odermann-Gardner was dissatisfied with Dr. McCallum in general at the time that she left Dickinson State University?

A. I think my direct contact with Ms. Odermann-Gardner indicated that she was disappointed that she was not being promoted, in her opinion, to a dean position because she felt that
her job responsibilities merited a promotion. I advocated on her behalf for a promotion. That was not approved. Following -- when I told her that the request was not approved, she submitted her resignation.

Q. Okay. Could you turn, please, to Exhibit 33?

A. (Witness complies.)

Q. And tell us if you've ever seen that document before.

A. This looks like the revised document that Academic Affairs was working on throughout the last academic year.

Q. It has been, at various times, referred to as an enrollment matrix. Have you heard it referred to as such?

A. Yes, I have.

Q. And did you play any role in the development or implementation of this document?

A. This document was brought to Academic Affairs Council a few times at least. I don't know the exact number. The information was shared. Individuals had an opportunity to participate. If I recall, Lisa Johnson also played a role in this. She's the director of Articulation and Transfer. And there was a Webinar or a teleconference that I participated in, so I did have opportunities to help give input as this was being developed.

Q. What's your understanding of the purpose of this document, Exhibit 33?
A. Well, I think the purpose of this was to clarify and address some of the issues that resulted with policy 440. This -- this makes it really clear what counts for degree-credit, what doesn't count for degree-credit and the different types of activities.

Q. To what extent, if you know, was Exhibit 33 in place or in use in the fall of 2010?
A. It wasn't.

Q. Dr. Brudvig, could you turn to Exhibit 75, please? And I apologize for jumping around here.
A. Brudvig, this a memorandum to Dr. Hillman from Scott Staudinger in which he responds to your August 22 memorandum regarding dual-credit instructors. Now, August 22 would have been after the date that Dr. McCallum departed campus; is that right?
A. Correct.

Q. Can you tell us what type of memo it was that you had prepared and in what context you prepared it?
A. Yeah. I did have an opportunity to review this and in the memo I received, there was no -- I thought it was just he needed -- he needed some information. It didn't indicate what it was for, why it was needed. So my response reflected what I knew off the top of my head and I had asked Cindy
about the dual-credit instructors and how they were entered. Had I known he wanted it for something official or something for Vice Chancellor Hillman, I would have prepared the response a little bit differently. So it was a response best of my knowledge at the time answering a question he had regarding those three individuals.

Q. And if you turn to page 558, is that the memorandum to which Dr. Hillman is referring in his September 1 memo?

A. I'm sorry?

Q. Page 558. It's on the bottom right-hand corner of the page.

A. 558?

Q. Yes, please.

A. Okay. So he's referring to this memo that's at the bottom and then goes into the next page?

Q. Well, the line at page 556, the memo from Dr. Hillman to Mr. Staudinger says, "Re: Response to Dr. Brudvig's 8-22-11 memo." And my question to you is whether what's listed on page 558 is the memo that he's talking about?

A. Yes. Yes. That was my response to that question that Scott asked.

Q. Okay. Have you ever seen pages 556 and 557 before?

A. Only before I came in the room today, was the first time I saw it.

Q. And Mr. Staudinger concludes that -- and
this is at the last paragraph of his letter at page 557. He concludes, quote, It appears that the establishment of the course HIST 299-Special Topics (Theodore Roosevelt symposium) was not in accordance with either DSU policies or NDUS procedures. And most certainly, the enrolled students in that course should not have been included in the fall 2010 enrollment head count."

Do you see that?

A. Yes, I do.

Q. Was that the conclusion that you had reached in your memo on August 22?

A. No, it was not. With the information I had at the time, I prepared that response in good faith.

Q. So to the extent that conclusions have subsequently been made that the course was not established in accordance with either DSU policies or NDUS procedures, that was not an intentional error on your part?

A. It was not an intentional error. Reading this document, there's no question mistakes were made. I take full responsibility for that. I did, indeed, prepare that course when I was approached by Sharon Kilzer to look at an innovative way to include the high schools in the TR symposium. We filled out the coursework. We discussed it with the high school instructor, superintendent. If policies were not followed, it was no way intentional on my part. I would have hoped individuals would have
caught it, brought it to my attention so it could
either have been addressed or the course would not
have moved forward.

Q. And to what extent -- and I appreciate you
accepting responsibility for the errors, but to the
extent that other errors were made, what
involvement, if any, did Dr. McCallum have in the
commission of those errors?

A. None, to my knowledge.

Q. To the extent that incorrect information
was submitted or prepared by you or anybody else
whom you supervise, do you have any reason to
believe that those errors were made as a result of
pressure or direction from Dr. McCallum with regard
to meeting certain enrollment numbers?

A. I can only say I never felt that pressure.
And if I made a mistake, it was a mistake from lack
of knowledge at the time and I accept responsibility
for that. No one at any point came to me and told
me that they were being pressured or that they had
concerns.

Q. With respect to this issue of pressure or
being directed to submit false information, I'm
going to ask you about just one or two more
exhibits, please. Beginning with Exhibit 58. I
know there are lots of documents, but if you could
take a moment to review Exhibit 58. It appears your
name is listed as an addressee. Do you remember
receiving this email from Dr. McCallum?

A. I would have been in China at the time.
So I was out of the country and if I did receive it, I would not have reviewed it until August of 2010.

Q. All right. Well, August of 2010 would have been within a month, anyway, of when it was sent; fair enough?

A. Fair enough.

Q. Others have testified about this email and I'd like your take on it. Dr. McCallum notes that he's -- he writes to share his concern and his sense of urgency; do you see that in the first line?

A. Yes.

Q. And he talks about enrollment goals and targets that he expects the addressees, including you, to meet with regard to enrollment; is that fair to say?

A. Yes.

Q. How -- regardless of when you ultimately got this document, how did you perceive that memorandum from Dr. McCallum? Were you intimidated by it?

A. I wasn't intimidated by it. As I said all along, I always felt accountable. It comes with the position, accountability. And I saw this as knowing that there was a sense of concern and that there was accountability for trying to -- to be part of growing enrollment.

Q. To the extent that some of the targets or goals that Dr. McCallum set were not met, were you, personally, ever chastised, reprimanded, disciplined in any way for failure to reach those goals?
21 A. Never.
22 Q. Finally, could you turn to Exhibit 70, please?
23 A. (Witness complies.)
24 Q. This is a letter that Dr. McCallum sent to many different people, but this copy happens to be addressed to Jon and John, whom I presume is you and John Hurlimann?
25 A. Correct.
26 Q. And it also references enrollment targets and goals. And let me just ask you the same question with regard to this document. Did you feel that it was a threat or attempt to intimidate you to do anything improper?
27 A. No.
28 Q. Finally, Dr. Brudvig, to the extent that you had occasions to interact with Dr. McCallum as a member of the cabinet or just as a direct report to Dr. McCallum, could you describe his leadership style?
29 A. I never had any issues working with Dr. McCallum. I found -- I found him to be very open to ideas and suggestions. In fact, a number of ideas and suggestions resulted in very positive things that came about. I felt I could go to him whenever I had a concern or an issue or a question. I saw him as somebody who cared very deeply about the institution and the people who worked there.
30 Q. Did you ever feel bullied by Dr. McCallum?
A. Never.

Q. Dr. Brudvig, thank you.

MR. THOMAS: Those are all the questions I have, Your Honor.

JUDGE FETCH: All right. We are going to finish with this witness before we break for lunch, but we're just going to take about a five-minute break.

(Recessed from 11:48 a.m. to 11:54 a.m., the same day.)

JUDGE FETCH: We are back on the record.

Ms. Andrews, at this time you may proceed to cross-examine.

MS. ANDREWS: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. ANDREWS:

Q. Dr. Brudvig, you indicated that you were promoted to the Vice-President of Academic Affairs in July of 2011; is that correct?

A. On a permanent basis. July of 2010 I served as an interim VPAA and interim Dean of Arts and Sciences.

Q. And you were indicating that you were wearing a few hats during that time; correct?

A. Three, three hats.

Q. And when you were serving as the interim director, you attended an orientation session in approximately October of 2010; is that correct?
A. Correct.
Q. And at that time were you provided with policies in regards to enrollment and State Board policies?
A. We received a manual and we went through it. I did not receive a complete set of policies and procedures. I requested one from Terry Meier and received it in April, I believe.
Q. Okay. And you're aware that there are State Board of Higher Education policies and Dickinson State policies that directly address enrollment and reporting issues; correct?
A. Yes, I am.
Q. Okay. Prior to the fall of 2010 and, again, to the best of your knowledge, had Dickinson State University ever violated those enrollment policies?
A. To the best of my knowledge, no.
Q. Okay. In the fall of 2010, did Dr. McCallum direct you to ensure that the energy symposium, the Teddy Roosevelt symposium and the Disney symposium were academically sound?
A. I didn't really receive any direction at all regarding those. Those were set up through the Office of Extended Learning prior to my even becoming interim Vice-President of Academic Affairs.
Q. So to clarify, you didn’t have any directive from Dr. McCallum that it was your responsibility to ensure that those three symposiums were academically sound; correct?
A. To my knowledge, to the best of my recollection.

Q. Okay. Thank you. Did you work with Marty Odermann-Gardner and Alvin Binstock to ensure that those three symposiums were academically sound at any point?

A. Once again, those symposia were set up prior to my becoming Vice-President for Academic Affairs, and it was my understanding that Marty was the one who brought the people together who worked on those. So for the symposium Dr. David Meier was brought in. For business, for the Disney Institute, Mr. Glasser was brought in. I think she worked with the appropriate people in those areas. I was not involved in any of the conversations.

Q. So you didn't work collaboratively, then, with Alvin Binstock and Marty --

A. No.

Q. -- Odermann-Gardner to make sure the symposiums were academically and financially sound?

A. No.

Q. Okay. Thank you. You signed off on the forms that approved the symposiums for academic credit; correct?

A. No. If you take a look at materials that were provided, there were the energy symposium, the Disney Institute and the TR symposium. I believe they were all approved in March or April of 2010. The form that I signed off on, I believe from memory, is the QuickBooks; Microsoft, QuickBooks.
Also, the Dean of College of Education, Business and Applied Sciences and the chair signed off on that and I signed off on the course with Belfield High School, the presidential leadership course.

Q. Okay. You were actually registered as a freshman student, though, in one of the symposiums; correct?
A. I have been told that. I did not know that. Because my understanding was in order to receive credit, you had to attend the full symposium. I did not attend the full symposium, so I did not expect to receive academic credit.

Q. Did you agree to be listed as an instructor of record for the energy symposium?
A. No.
Q. You did not agree to that?
A. No. I found out that I had been listed as instructor of record when I went to enter my final grades for my leadership classes.

Q. And when you found that out, when you indicated you went to enter the final grades, what did you do when you realized I wasn't the instructor of record, how can I assign a final grade?
A. Well, I visited with Marshall Melbye and asked and then I visited with the two individuals in the Office of Extended Learning, Ms. Joanne Fields and Elana Stickel and asked, you know, what had happened. They weren't quite sure, but I asked the names, did they attend. They indicated to me at the time that the individuals on the list had attended,
fulfilled the requirements of the symposium. My options were to enter no grade at all. They had fulfilled what the terms were and at least my understanding was they were aware that a grade would be entered if they attended the full symposium, and so I entered the grades because I had been told that they had fulfilled the attendance requirements of the symposiums.

Q. And you indicated that you, in fact, didn’t even complete or attend the entire symposium that you were assigning grades to?
A. I don’t even know -- I don’t even know which one I was entered in. I’m assuming it was the Disney Institute. I believe I was assigned for the energy symposium as instructor of record.

Q. For the students that you assigned the A grade to for the symposium, what basis did you use for assigning that A grade? Was it solely the fact that they attended the course for 15 hours?
A. That’s all -- the symposium was -- when people were talking about, all we ever heard was you have to have the contact hours. That’s all that was ever talked about and that had been talked about for at least a few years. So my understanding was if they had the contact hours, they fulfilled the symposium terms, they would receive continuing education credit. That’s how it was marketed.

Q. So it was your understanding that they would receive continuing education credit, not a one credit as a student of Dickinson State?
A. My understanding the whole time, the way it was marketed and the way that the brochures indicated how a grade would be awarded, my understanding was students would receive a continuing education credit or they could use it towards licensure or professional hours, if they needed it.

Q. Sure.

A. That was my understanding.

Q. So you didn't base your grade on any kind of a paper or a class participation or quiz?

A. It was conveyed to me those individuals fulfilled the attendance requirements of the symposium and, according to the way it was marketed, that they would receive credit.

Q. Thank you. Were you aware that Mayor Johnson was registered as a freshman in one of the symposiums?

A. I only -- I can't tell you. I read it in the paper, but I never saw a list of who was registered and I would only -- the only list I would ever have seen was the students that ultimately were put into a class that I was listed instructor of record for.

Q. Okay. Did you, personally, ever apply as a freshman for Dickinson State for purposes of this symposium?
A. I never applied, no.

Q. Okay. At what point did you discover that there were individuals that were registered as freshmen at Dickinson State University for those symposiums?

A. I guess I -- you know, in terms of when I knew there was a problem or I heard that there was an issue is when Mr. Staudinger came to me and indicated that there were concerns.

Q. And just to clarify, based on your understanding and experience, typically, a continuing education seminar would be provided a pass/fail grade, a one-credit college course would be provided with a letter grade; is that correct?

A. (Nods.)

JUDGE FETCH: Please, you're nodding, but you need to answer verbally.


Q. (MS. ANDREWS CONTINUING) So what was your understanding of why you gave a letter grade for a class that is typically awarded a pass/fail grade?

A. You know, I've discussed this with other instructors of record for these courses and I think we all came to the same conclusion, that what is the alternative? If they fulfilled the terms that they were told, that was marketed and your only option is an A, B, C, D or F, they fulfilled the terms, the option that I would default to would be the A. And that's what I did. I didn't think twice about why an S/U wasn't listed at the time. I was more
concerned how I got named instructor of record.
Q. And why is that?
A. I don't know. I still don't know.
Q. Why were you concerned or more concerned?
A. Because I never saw that course in my
PeopleSoft where I go in to enter student grades and I have email conversations with students. I didn't see that until I went to enter final grades for all my classes.
Q. And approximately the time period that you discovered you were listed as the instructor of record was what?
A. Would be the day I went to enter final grades, roughly the 20th or December, thereabouts.
Q. Did President McCallum ever follow up with up to ensure that those three symposiums were academically sound?
A. No.
Q. Did Dr. McCallum ever follow up with you after Marty Odermann-Gardner had left, which would have been shortly after the energy symposium, but before the other two symposiums were offered, now being interim director, to ensure, again, that these three symposiums were academically sound?
A. I think we had conversations about them, but I don't recall ever having had a conversation about making sure that they were academically sound.
Q. Thank you. To your knowledge, how did the Belfield students get enrolled as Dickinson State freshman?
A. I don't know how they were enrolled. I can tell you how the course came about, if you would like to hear that.

Q. Go ahead, briefly.

A. Sharon Kilzer from the Theodore Roosevelt Center came to me, said, Can we find a way to connect the content of the symposium to the high school? Belfield, in a previous year, had indicated they wanted to have more academic exposure to the content of the symposium, so that's what led to creating that course, working collaboratively with the instructor of record at Belfield. And then in terms of how that became a course, that would have been handled through Enrollment Services.

Q. And you indicated -- or you testified in reference to an exhibit that you, in fact, never did go back out to Belfield to connect with the students; is that correct?

A. I indicated that to Mike Hillman when he visited on campus. There was every intention to do so. We made several attempts to try to connect. That never happened due to particularly some travel commitments on my part and schedule conflicts with Belfield, but the intent was for me to go out there and to lead or facilitate a discussion and that did not happen.

Q. Okay. Do you have any knowledge or information as to how the Disney attendees were enrolled as Dickinson State freshmen?

A. I have no knowledge.
Q. Any knowledge as to how the energy symposium attendees were?
A. I have no knowledge.

Q. Okay. Did Dr. McCallum instruct you to dual enroll the Belfield students?
A. No. Sharon Kilzer came to me, and I said all along, if you want to know why she came to me, ask Sharon Kilzer. I don't know if anybody has done that. All I can tell you is she came to me and indicated -- and we had talked about it as part of the Theodore Roosevelt symposium planning committee, ways that we could engage the area high schools. We bring all of these nationally known presenters and it's a shame not to bring what they have to offer to the schools. And that was the intent. That was the intent, to connect the content of the symposium and these nationally known speakers with the regional schools.

Q. Do you understand that there are accreditation requirements and consequences for the misreporting of enrollment data?
A. Yes.

Q. And do you also understand that there are consequences or issues with the Higher Learning Commission in regards to the reporting or misreporting --
A. Yes.

Q. -- of enrollment data? Do you believe that you're responsible for Dickinson State University's violations of these various policies
and accreditation --

A. No.

Q. -- issues? And could you explain why not?

A. Well, from what I know, I didn't enroll students. I didn't authorize the students to be

enrolled. I may have made mistakes and I have acknowledged those areas where the mistakes occurred and I said I accept responsibility for that, but in terms of enrolling students without their knowledge, I did not play any role in that.

Q. Thank you. Is it your understanding that the individuals that attended the Disney Institute were enrolled as degree-credit students in the fall of 2010 enrollment report, even though that same fall 2010 enrollment census date they were not actually admitted as DSU students?

A. Please --

Q. I'm sorry. That was unclear. Is it your understanding that the individuals who attended the Disney Institute should not have been enrolled as DSU students, but they were, in fact, counted as DSU students for the fall of 2010 census data?

A. Knowing what I know now, yes.

Q. And the same goes -- I'll ask you for the Disney and the energy symposium?

A. Yes.

Q. And you also understand that they had not paid tuition or any of the fees that were required for individuals that obtained one credit through Dickinson State as a student; is that correct also?
A. It's my understanding that those fees were waived through presidential authority.

Q. Okay. Did you receive a call on approximately February 4th of 2011 from Scott Staudinger expressing concerns or a conversation that he had with Vice Chancellor Mike Hillman in regards to the Dickinson State enrollment reporting?

A. I recall I think -- if that's the exact date, I think that's when the matter was brought to my attention.

Q. And at that point did you convey the concerns to Dr. McCallum?

A. I'm sure, I did. I can't recall exactly when, but I'm sure I did.

Q. Do you have any knowledge or recollection of whether it would have been almost instantaneously or within a day or two of receiving that information from Scott Staudinger?

A. It would have been fairly soon.

Q. And do you recall what his response or directive was to you at that time?

A. I don't recall the exact response.

Looking back, I'm sure that I was -- you know, my recollection is to work collaboratively with Scott to address the problem.

Q. And did Dr. McCallum ever follow up with you to ensure that the appropriate steps were taken to correct that reporting issue?
A. As I mentioned before, we would meet biweekly and I know I kept him informed with the progress of what was happening and the information that I was finding out.

Q. You had testified a little bit about the information that you submitted to Dr. McCallum to respond to the Chancellor's office in regards to the reporting concerns, and I think that you had kind a alluded to the fact, and that's what I want you to clarify, that based on the information you had, it was inaccurate? I don't want to put words in your mouth. But if you can please explain a little bit more why you know believe that that information was not accurate and you would not have provided it?

A. Well, that report at the time and the information I provided represented an accurate report on the knowledge and information I was provided at that time.

Q. And what was that and what now differs?

A. Clearly, those questions that were asked, there were a series of questions I had to go to individuals who had the knowledge and the background to give me the response and that's what I did and I collected the responses and I prepared them in the report.

Q. Sure. Now, knowing what you do, what information do you believe was inaccurate that you provided to Dr. McCallum?

A. Oh, I -- the information that you know -- the information that I saw and what I read today,
clearly, the Belfield High School class and whether
or not that was in accordance with existing policies
and procedures. I clearly know now that mistakes
were made. Things would be done differently if that
ever happened again, but, as I said, that's
something that I accept responsibility for and --
right, in that area in particular.

Q. And I think you also had touched on the
fact that the directive that you received from
President McCallum in order to gather information
and respond to the Chancellor's office was maybe
unclear, if I recall what you were saying, and you
didn't quite understand why he was asking you to
gather information. Can you expand on that?
A. I don't think it was unclear. It was just
that there was this letter that came from Chancellor
Goetz. There was concern expressed regarding a
number of key areas, clearly in policy 440 and those
classes, and I was given the task of visiting with
the different areas to find out what happened, to
gather their input and to prepare a report that
would respond to those questions.

Q. And you had testified that you were
keeping President McCallum informed based on the
information that you had received; is that correct?
A. Correct.

Q. So is it fair to say -- or I'm asking you,
I guess, did you inform him that Scott Staudinger
was working on the inaccurate enrollments, the IPEDS
and the classes not meeting the Higher Learning
Commission requirements?

A. Well, at that point the only thing we knew was that there was an issue with the NSSE reporting, and my understanding, if I recall -- I'm just telling you what I remember, was that Scott was working collaboratively with Vice Chancellor Hillman to correct the NSSE data. We didn't really know, and I can be very honest with this, because that report was submitted in February. I didn't really know all of the details or some concerns until the May visit and then until that final report was released.

Q. Do you understand that the information that's reported to NSSE isn't the actual problem, the problem is that underlining data that's placed into the ConnectND system?

A. No, I wasn't -- I don't know all the details surrounding that.

Q. Okay. Did you meet on a regular basis with Scott Staudinger to communicate or to discuss with him what corrections or steps Dickinson State was taking to correct the enrollment reporting areas?

A. To be honest with you, Scott did not keep me in the loop regarding what was happening. I was not kept informed with what was being done.

Q. Did you contact him to request information?

A. I would visit with him repeatedly. Well, not repeatedly, on a few occasions. And
particularly Alvin Binstock and myself did meet with him to express our concerns about not knowing what was happening.

Q. And did you relay your frustrations to Dr. McCallum so he could follow up with Scott Staudinger --

A. This was after. This was after.

Q. -- if -- if I could just finish. If I could just finish. -- if you felt that you weren't receiving information that you needed? While Dr. McCallum was still there, just to clarify.

A. No. I'll just say no.

Q. Okay. Did Dr. McCallum specifically excuse me. Did Dr. McCallum specifically direct you to address the IPEDS report and to make corrections to that report?

A. Not to me.

Q. Did he specifically request that you take actions to correct the fall 2010 enrollment data?

A. I would not be involved with that.

Q. And did he specifically request that you address any of the accreditation concerns in regards to the misreporting of data?

A. I had a conversation with Karen Nelson. She works at Dickinson State, but not directly with Dr. McCallum regarding that issue.

Q. Regarding any of those issues?

A. Not to my recollection, no.

Q. Okay. Thank you. Did Dr. McCallum ever inform you that there would be consequences if these
Q. And I just want to jump briefly to some of the housing issues that have been addressed. Are you aware of the number of rooms that are still in triple mode, as I think I've heard the term used?

A. I believe it's 30.

Q. And that's currently, right now?

A. That's what I believe.

Q. What about in the spring of 2011, are you aware of the triple occupancy or triple mode at that point, approximately?

A. I couldn't tell you.

Q. And all these rooms are designed for double occupancy; correct?

A. Correct.

Q. I want to just briefly jump to Exhibit 28 that you've already reviewed and that you were questioned on in your direct testimony. Are you there?

A. Yeah.

Q. And I'll refer you to the fourth paragraph that says in the last line, "Please note Mr. Melbye's assessment that the academic integrity of these classes was not jeopardized and no policy violations occurred."
Do you agree with the statement that no policy violations occurred by offering these symposiums?

A. Based on what I know now, I think there were definitely issues. At the time that this was written, I would say that based on the information in the report, the information that was provided, that sentence is an accurate reflection of the report.

Q. And then I'm just going to -- last exhibit. If you could change over to Exhibit 58. And it's specifically Bates 516 of that exhibit, so it's the second page of the exhibit. Top sentence or the top paragraph, second sentence indicates, "We still need 1,300-plus enrollments to achieve our goal and accommodate the expected withdrawals that occur during the early weeks of the semester."

Dickinson State has an approximate campus of 2,700 students; is that correct?

A. Approximately.

Q. Did you believe that it was reasonable to obtain 1,300-plus enrollments within an 11-week period?

A. I thought that was a highly aspirational goal.

MS. ANDREWS: Okay. Thank you. I have nothing further, Judge.

JUDGE FETCH: Any redirect, Mr. Thomas?

MR. THOMAS: Just a few Your Honor.

REDIRECT EXAMINATION
Q. Dr. Brudvig, I want to get clear on the timing here. So you prepared a memo in February of 2011 addressing the concerns about the NSSE reporting; correct?

A. Correct.

Q. And you said that from February until you were interviewed in May, you didn't get any additional information or feedback; is that true?

A. True.

Q. So between that time period, did you even understand that any concerns with respect to IPEDS reporting existed?

A. No.

Q. And then you were interviewed in early May; is that correct?

A. May 4th, I believe was the date.

Q. All right. And then you said, quote, Scott did not keep me in the loop as to what was happening, close quote. What period of time was it that you believe you weren't being kept in the loop?

A. I think probably from that visit on.

Q. So from February to May you heard nothing and then you were interviewed in May and you heard nothing on this IPEDS reporting issue until --

A. The report was released.

Q. -- in August?

A. Yes.

Q. So when you were asked questions about what was Dr. McCallum doing to have you correct the
IPEDS errors, how would you have even known that there were IPEDS errors?

A. I just knew there were concerns with the NSSE report, but until that final report was prepared, I didn't know the depth and the level of issues that were being looked into.

Q. And when you're talking about the final report, you're talking about the --

A. The August.

Q. -- early August report?

A. Mm-hmm.

Q. And to the extent that you said that you and Mr. Binstock expressed concerns that you weren't being kept in the loop, what concerns did you express and to whom did you express them? Just each other or others?

A. That would have been in early August and we expressed them to Mr. Staudinger, and I also expressed those concerns with some other cabinet members.

Q. You may not know this, but the internal review, the audit, if you will, that was released in early August of 2011 to which you've been referring, had a first draft that was prepared as early as June 21st of 2011. Were you ever provided a copy of or given any information as to the contents of that first draft?

A. No.

Q. You were asked whether or not Dr. McCallum ever followed up with you to have you ensure that
the seminars or symposiums met the academic requirements, but hadn't those seminars or symposiums already taken place by the time -- maybe you can just tell us. By the time you got involved in those, hadn't they already taken place?

A. They were set up and then they took place, but by the time we knew there was an issue, they were over.

Q. Okay. And the one seminar that you were involved in, I think it was the energy symposium, was that the one that you were most involved in?

A. I wasn't really involved with any of them, but I was named instructor of record for that course.

Q. All right. So it wouldn't even have been your responsibility to ensure that the course met the academic requirements, would it?

A. Well, I was not the initial instructor of record, if you look at the form that created that course, but at some point somebody made the decision to name me instructor of record. I don't know who that is. I don't know when that happened. And then, of course, I was the one that had to enter the grades.

Q. Okay. Dr. Brudvig, thank you.

MR. THOMAS: Those are all the questions I have, Your Honor.

JUDGE FETCH: Any recross?

MS. ANDREWS: Briefly, Your Honor.

RECROSS-EXAMINATION
BY MS. ANDREWS:

Q. Just to clarify in regards to some of the statements or testimony that you had surrounding Scott Staudinger and his reports to you.

You were his supervisor; is that correct?

A. Correct.

Q. So you had the authority to make certain requests or demands of him as a supervisor; correct?

A. Correct.

Q. Did you ever demand that he provide with you periodic updates?

A. I did meet with Scott periodically when reports were going out and I said, Scott, you need to keep me in the loop and I had at least two meetings with him regarding that, and then requests were made as this was going forward. He told people he was ordered -- he was directed not to include us.

Q. I'll stop you there since that's hearsay at that point. Did you ever follow up with any kind of corrective action or discipline to say I specifically asked for these reports and you're not giving them to me?

A. No.

Q. Okay. Because Mr. Thomas brought up the timing of these three symposiums, prior to the symposiums being offered, did you ever receive a directive from Dr. McCallum to ensure that these three symposiums were academically sound?

A. I do not recall receiving that directive.

Q. And just to clarify one other issue in
regard to the grades that were listed for that symposium class that you were mentioned as the instructor of record. Is it your understanding that the accreditation concerns stem from the entry of the grade, a letter grade without any assessment?

A. I found that out on -- during our May 4th conversation, when they visited. That was brought to my attention.

MS. ANDREWS: Thank you. That's all I have, Judge.

MR. THOMAS: One question.

REDIRECT EXAMINATION

BY MR. THOMAS:

Q. As we sit here now, doesn't it strike you as odd that your subordinate would be instructed not to keep you in the loop with regard to this type of an investigation?

A. That was hearsay.

Q. Okay. Forgetting about the hearsay, would it strike you -- forget about that hearsay. Would it strike you as odd that your subordinate hypothetically?

A. If that was true --

MS. ANDREWS: Your Honor, I have to object briefly. It's speculation.

JUDGE FETCH: You know, I'm going to -- go ahead and answer the question. The question is would it strike you as odd?
Q. (MR. THOMAS CONTINUING) That your subordinate would not keep you in the loop, so to speak, with regard to an ongoing investigation of this magnitude?

A. If that was true, yes.

MR. THOMAS: Okay. Thank you. That's all I have.

MS. ANDREWS: Judge, just one followup in regards to that.

RECROSS-EXAMINATION BY MS. ANDREWS:

Q. Would it strike you as odd, if we're allowed to speculate then, that you wouldn't be included in the loop if some of your actions were being investigated?

A. Yes.

MS. ANDREWS: Thank you. I have nothing further.

MR. THOMAS: That's all I have.

JUDGE FETCH: Thank you, Dr. Brudvig. You are excused. You may remain and observe or you may leave.

THE WITNESS: I'm sorry. I think I misunderstood your question. Could you repeat that?

JUDGE FETCH: Okay. You're addressing Ms. Andrews?

THE WITNESS: I'm sorry.

JUDGE FETCH: Do you want to clarify your question?

Q. (MS. ANDREWS CONTINUING) Would it strike
you as odd that you were not included in the discussions involving the internal audit, if part of your actions were what was constituting or what the audit or internal review was about?

A. Then it would not strike me as odd.

MS. ANDREWS: Okay. Thank you for the clarification.

MR. THOMAS: Still no questions.

JUDGE FETCH: Thank you. Dr. Brudvig, as I said, you may remain. You may leave, et cetera, but you may not talk with other upcoming witnesses about your testimony or the questions that were put to you in this hearing. Do you understand?

THE WITNESS: I understand.

JUDGE FETCH: Thank you. The time is 12:25 and we are going to take a lunch recess, but I would like from Mr. Thomas an indication of how many more witnesses are you intending to call?

MR. THOMAS: Four.

JUDGE FETCH: And those would be?

MR. THOMAS: Alvin Binstock, Tim Daniel, Marshall Melbye, Diane Melbye. I can cut it down to three, if I have to in the constraints of time, and I can also represent that I believe that -- well, as credible as I can be, I don't think these witnesses are going to take nearly as much time as the ones that have just testified.

JUDGE FETCH: That doesn't help me at all.

MR. THOMAS: I figured it wouldn't.

JUDGE FETCH: Can you give me a ballpark
idea? Because we are going to finish today.

MR. THOMAS: I'm glad to hear that. Half-hour with each witness, Judge, no more.

JUDGE FETCH: Okay. So two more hours?

MR. THOMAS: Yes.

JUDGE FETCH: All right. We're going to -- as I said, it's about 12:25, from what I can see. We will stand in recess until 1:40 p.m., Central Time.

(Lunch recess from 12:25 p.m. to 1:56 p.m., the same day.)

JUDGE FETCH: Okay. We are back on the record. And at this time, Mr. Thomas, who is your next witness?

MR. THOMAS: Tim Daniel, Your Honor.

JUDGE FETCH: Are you, Mr. Daniel?

THE WITNESS: Yes, ma'am, I am.

JUDGE FETCH: Hi. My name is Bonny Fetch. I'm the Administrative Law Judge conducting this hearing. Would you please spell your first and last name for the record?

THE WITNESS: Tim, T-i-m. Daniel, D-a-n-i-e-l.

JUDGE FETCH: Thank you. Mr. Daniel, all witness testimony at this hearing is taken under oath and is subject to penalties for perjury. By law I'm required to inform witnesses as to the penalties. Perjury in the State of North Dakota is a Class C Felony, punishable by a maximum fine of $5,000, maximum five years in prison, or both.
Please raise your right hand.
Do you solemnly swear the testimony you're about to give shall be the truth under the pains and penalties of perjury?
The Witness: I do.
Judge Fetch: Thank you. Mr. Thomas, please proceed.

Mr. Thomas: Thank you, Your Honor.

Tim Daniel, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Thomas:

Q. Good afternoon, Mr. Daniel. Could you tell the Administrative Law Judge by whom you are employed and what you do for them?
A. I'm employed by Dickinson State University, and I'm the athletic director of the athletic department at Dickinson State University.

Q. And for how long have you served as athletic director at DSU?
A. Full-time, I've been since April 1. I was interim starting July 19th of, I believe, 2010.

Q. Could you describe generally what your duties are as athletic director at DSU?
A. It's my job to direct all activities that are involved within the athletic department and all the sports that entail within the athletic department.

Q. And how many sports, competitive sports
does Dickinson State University have?
A. We have 13 competitive sports that fall under my director jurisdiction. We also have men's and women's rodeo, which is not directly under my supervision.

Q. To whom do you report as athletic director?
A. I report directly to the President of the University.

Q. And who are some of the employees at DSU that report to you?
A. All the coaches, every coach that's coaching in our sports teams. Also, the Sports Information Director and his assistants. The trainer, athletic trainer also reports to me.

Q. Mr. Daniel, as athletic director, did you have occasion to become aware of some NAIA athletic violations that were subsequently self-reported by DSU to NAIA?
A. Yes, I did.

Q. Can you tell us, first, what is NAIA?
A. National Association of Intercollegiate Athletes.

Q. And DSU is a member of that organization?
A. Yes, they are.

Q. And describe for the Judge what the violations were that you became aware of and what
A. We had participation of one of our volleyball players in two contests that were infractions because that individual had not met the requirements for eligibility standards. Therefore, that was an infraction of participation.

Q. I'm sorry. What was the actual infraction, that the player played when they were not supposed to?

A. Played in two contests that they were not certified to play in. All athletes have to be certified as academically able, and this particular person had not been certified and, indeed, was not eligible to compete, but was allowed to compete in two contests.

Q. And this was a female volleyball player?

A. Yes, sir.

Q. And did you -- how did you become aware of this?

A. I was made aware of it through my own observation. She was beginning to participate in one of our home contests. I then did some questioning of why that was going to occur and subsequently put a stop to that. And as I did more research, I found out she had competed two previous times prior to that point, so then I did further investigations to verify she did compete. And then once we had verification, then we started the procedure to self-report the infractions to NAIA.

Q. Did you, in the course of your
investigation, learn whether or not the volleyball coach was aware of the ineligibility at the time the player played in the contest?

A. Yes, he knew she wasn't eligible because the coach has to also sign off on the eligibility report. There's four factions that have to sign off an eligibility report. One is the coach; two is the athletic director; three is the Registrar of the University, and four is the athletic representative of the University, so there's four people on that certification.

Q. And once you became aware of this violation, what did you do next?

A. I started the process of filling out the paperwork to NAIA. There's a process that you have to go to make a self-reporting so I did that paperwork. Beginning that requires information, what occurred, and then also required an action plan that we had to submit, a plan of action or reprimand that had to be submitted on our part toward the individual involved.

Q. And ultimately what sanction, if any, did Dickinson State University receive as a result of these violations?

A. Our volleyball program was placed on a two-year probation, along with our head volleyball coach, Ryan Platt, was also placed on a two-year probationary status.

Q. At some point did you prepare a summary indicating the sequence of events relating to this
violation?
A. Yes, I did.
Q. Could you turn to the large stack of exhibits before you and find Exhibit 30, and at the bottom right-hand page, you'll see it's Bates stamped 0171.
A. The very first page?
Q. Yes, it should say 171 on the bottom right.
A. Yes.
Q. Is that the memo that you prepared regarding this incident?
A. Yes, it is.
Q. And it's directed to Dr. Richard McCallum as President. Can you explain to the Hearing Officer how it came to be that this memo was prepared?
A. Dr. McCallum called me and requested that I put together a timeline of the events that occurred with this situation beginning from the ineligible player to the ultimate completion of the time period when Mr. Platt submitted his resignation and then when we officially opened up the process and, finally, the last date is when we hired a new person for the position.
Q. At what point did Dr. McCallum become involved in the issue relating to the violation that you learned of?
A. Immediately in my next direct report meeting I indicated that we had violations and that
we're going to follow procedures to self-submit that. So as we went through the process, communication also not only came to myself, but to Dr. McCallum and also our faculty representative on the actions that were decided by the NAIA.

Q. Mr. Daniel, were you subsequently involved in another investigation involving the volleyball team with regard to allegations that the volleyball coach paid cash, unauthorized cash, to certain volleyball players?

A. Yes, I was made aware of that initially from the Multicultural Office where that initiated, and from that point, visited with the girls involved, received their information, what they said happened, and then also questioned Mr. Platt about his side of the story. So I tried to gather information from both sides.

Q. What did you determine as a result of your investigation?

A. We found that it was their word against his word. Both were saying one thing and denying the other. We had no information that could prove to us that he was providing cash to them. So being the NAIA is a self-reporting institution, we had no evidence to put forth to the NAIA so we had no ability to file an infraction in a self-reporting situation, so that's where it was completed.

Q. And you conducted that investigation yourself?

A. Yeah, that's through verbal conversations
Q. Do you have access as athletic director to certain accounts which are utilized by the different athletic programs at DSU?
A. Yes, I do.

Q. As part of your investigation, did you review the accounts involving the volleyball program?
A. Yeah. Anything that goes in regarding money in or out has to go through our office. We have to sign off of it. Specifically, I have to sign off of it. There was no discrepancies in the amount of money that went in or went out that related to money being paid to these athletes as it relates to University money. We had documentation of every bit of money that was sent in or sent out in reference to the volleyball program and everything was turned in. Everything met, you know, our standard of where we felt that there was no indication there was any illegal activity involving any University dollars that were specifically used by the volleyball program.
Q. So is it fair to say, then, that the only evidence that you had of these improper payments was that statements from the volleyball players themselves?
A. That's correct.
Q. Was it one or two that made these allegations?
A. Two.
Q. And the volleyball coach is the same coach that was identified with regard to the other violation?

A. Yes.

Q. And the coach's response to the allegation was?

A. Completely false. He denied it.

Q. And at what point did you make Dr. McCallum aware of this investigation or the concerns with regard to these allegations?

A. The exact date I can't recollect, but within immediate notification from the Multicultural, then the athletes coming to me and then I subsequently informed him of the information that I had received.

Q. What instructions, if any, did you receive from Dr. McCallum in terms of either one of these investigations?

A. No specific instructions, other than we were to try to see if we could determine the facts and we had no ability to determine facts because it was a she said, he said situation and we had no ability to determine which party was actually giving us the correct information.

Q. And has Dickinson State subsequently hired a new volleyball coach?

A. Yes. And you see in this memo that person was hired on April 25th of 2011.
Q. Mr. Daniel, is your office or are you, personally, involved in any communications or any issues with regard to enrollment issues at Dickinson State University?

A. As far as the actual being involved in recruitment or the numbers of it? I'm sorry.

Q. Recruitment of players, such as it would affect enrollment numbers at Dickinson State.

A. We are obviously involved in recruitment, because our department has a large number of athletes that are also students, so we have a large number of athletes, so we're involved in that. One of our basic tasks is, obviously, every day to day business is to recruit student athletes for -- not only to compete in our University teams, but also be students at the University.

Q. To that extent, were you among the recipients of periodic emails or letters from Dr. McCallum relating to targets or goals that he had for the University in terms of maintaining or increasing enrollment numbers at Dickinson State University?

A. Yeah. I had seen those from various forms, email or specific enrollment meetings, I had seen indication of our current numbers and projected potential goals.

Q. And I apologize to the Judge to the extent that we're covering ground that other witnesses have testified to, but were you ever pressured or intimidated by Dr. McCallum to increase enrollment
numbers to meet any goals that he set for you or
other employees of Dickinson State?

A. Not individually, no, I wasn't. I was
never individually pressured. I was in attendance
of one meeting early on in my tenure of interim that
enrollment and the subsequent topic of enrollment, I
was in that, but I was in that meeting with a group
of other individuals.

Q. Mr. Daniel, I'm going to show you a
document that's been marked as Exhibit B.

MR. THOMAS: And, Judge, can you tell me
if B has been received?

JUDGE FETCH: Yes, it has.

Q. (MR. THOMAS CONTINUING) Mr. Daniel, I'll
represent that Exhibit B is an early draft of an
internal review report prepared by the North Dakota
University System on June 21, 2011. And I -- and a

final version of this document was submitted in
early August of 2011. But with respect to this
first draft, could you turn to page 3 of the
document? At the top of the page it says "executive
summary," if that helps.

A. Yes.

Q. The third paragraph is entitled "NAIA
probation." Do you see that?

A. Yes, I do.

Q. We talked about the first few sentences
where it's indicated that the past coach knowingly
played ineligible players. And then the next
sentence says, "This was brought to the attention of
the President; however a decision was made not to proactively control the outcome thus the team was placed under NAIA sanctions due to violations including inappropriate conduct and the use of ineligible players." Do you see that?

A. Yes, I do.

Q. Is that an accurate recitation of what happened?

A. As regards to the violations included inappropriate conduct and use of eligible players, that's correct.

Q. How about as to it being brought to the attention of the President, but a decision was made not to proactively control the outcome; is that accurate?

A. I don't think we had control of it. We sent the violation in. We had no control of that once we submitted that.

Q. And to the extent this was, quote, brought to the attention of the President, close quote, it was brought to the attention of the President by you is; that correct?

A. Yes. That's correct, yes.

Q. And it was brought to the attention of the President after the violation had occurred; true?

A. Correct.

Q. And if you'll continue with me, it says, "Additionally, the women's volleyball team members were paid a monthly stipend by the coach to supposedly help offset the cost of off-campus
housing." Do you see that?
A. Yes, I do.
Q. Did your -- you testified you have investigated. Did your investigation confirm what's written here?
A. We had no way to confirm that a monthly stipend was given. We had no ability to determine that.

Q. And next sentence reads, "Although it is still undetermined where the funding for this came from, it appears that a portion of it came from the Roughrider scholarship fund." Did your investigation suggest anything of the sort?
A. Not prior to the violation, no.
Q. Was there anything about Dr. McCallum's response to these concerns that you brought to him that you found to be inappropriate or inappropriately handled by Dr. McCallum?
A. No. I provided him the information, told him the strategy that we'd like to follow and he said that was appropriate and we followed those strategies of informing the NAIA of any infractions and did the subsequent paperwork that was involved with that.
Q. And you said "you informed him of the actions that you would like to take." Those are the actions that you're referring to, self-reporting?
A. Yes.
Q. And investigating the other violation?
A. Yes. And we investigated the other
violation to the best of our ability. Again, as I said before, came down to a point where we had no
ability to have proof that these young ladies were receiving money or if, in fact, the coach did pay them. We had no ability to prove that.

Q. At some point did one or both of these volleyball players that we've been talking about receive other proper scholarship funding from DSU?
A. After the completion of this investigation, then they were afforded Roughriders, after the fact.

Q. And were they eligible for those Roughrider scholarships?
A. According to the criteria. There's minimum criteria that a person has to receive and specifically the grade point average and the number of hours they need to be enrolled in.

Q. Did either or both of -- let me back up. Where did these volleyball players hail from, what geographic area?
A. All of them were international students.

Q. Okay. And did they remain on campus, enrolled as students following this incident?
A. Two of them did. One of them did leave prior to the completion of the semester.

Q. Okay.
A. And she was one that did not receive any
substantial -- or Roughrider. She left prior to
that. The two that received the Roughriders did
stay and completed the semester. One left at the
end of the year last year and the other one, which
doesn't pertain to this violation that we talked
about as far as payment, she had other issues that
referred back to removal of her scholarship from the
preceding coach the year before.

Q. So to the extent you haven't already, can
you walk us through the process by which any of
these three students were given scholarship money
through the normal Roughrider scholarship process,
what happened, who was contacted, that type of
thing?

A. The very first young lady is

. She was a young lady who came and
complained to me that her scholarship was cut and
that was regarding the athletic aid that we give.
We have portions of what we give scholarships. We
have four areas or five areas that we can give
scholarships. One is actually athletic dollars that
are raised by our booster club. We call those
athletic scholarship dollars. Another area that a
student can receive dollars from is the Roughrider
initiatives and, traditionally, in all cases they

were given increments of $500 and $1,000. The third
area a student can receive money would be through
cultural diversity award program for students who
come from diverse cultures, and the fourth one was a
global awareness initiative, which were for
international students, and the last area a student
could receive money that was controlled by the
University, would be Alumni and Foundation dollars.
This specific individual, had
had her athletic dollars removed from Mr. Platt, the
prior coach from the year before. She came to me
and complained that it was a significant amount of
loss of money and she couldn't afford to go to
school. We did not have money. All money from that
account had been allocated, and I told her in the
corversation I had no ability to adjust that for
her. From that point then, she kept pursuing the
situation and it ended up getting eventually to
Dr. McCallum's office and it was addressed there.
Q. And did you recommend a scholarship for
this athlete?
A. I didn't recommend, no, I didn't. That
came as a recommendation from other places. I did
not disagree with what they did.
Q. And she ultimately received a Roughrider

scholarship?
A. She received a Roughrider scholarship and
I believe she received it for two consecutive years.
Q. And was she able to remain on campus as a
student then?
A. Yes, and she still is on campus.
Q. Could you tell us about the next student?
A. The next student --
MS. DONARSKI: Without saying the name.
THE WITNESS: The next student, after the
season had been completed and Mr. Platt had submitted his resignation, she then in a sequence of events complained to the culture diversity -- Multicultural office that she was no longer being able to pay for her cost of school because Mr. Platt was leaving and she was receiving payments from him which were allowing her to pay her bills.

Q. These were the payments you investigated, but weren't able to find proof of?

A. That's correct. It started at the Multicultural office and then made its way to mine. So they were sent to me from the Multicultural office, again, to address this issue. Again, we had no funds available at my disposal to provide to them to help them with the remaining costs. And then it went further on. They kept pursuing it and then it went to Dr. McCallum's office and then, again, we had a joint meeting and the decision was made that this individual would be given a Roughrider to help offset the cost that she supposedly was getting from those payments.

Q. And when you say "a joint meeting," who was in attendance at that meeting?

A. Myself, Dr. McCallum and Ronnie Walker, the Director of Multicultural.

JUDGE FETCH: Hold on one second, counsel.

Ms. Donarski, are student names confidential?

MS. DONARSKI: They are, Your Honor.

JUDGE FETCH: I'm going to direct that the
student's name mentioned earlier be redacted from the record.

MS. DONARSKI: Thank you.

MR. THOMAS: Thank you, Your Honor.

Q. (MR. THOMAS CONTINUING) Mr. Daniel, were all three of those in attendance, yourself, Dr. McCallum and -- sorry. The third person was?

A. Ronnie Walker from Multicultural.

Q. Ronnie Walker, were all three in agreement that this second student receive the Roughrider scholarship?

A. There was no disagreement from my standpoint of the people involved. It was suggested by Dr. McCallum and then it was discussed with the three of us there. There was no disagreement on my part.

Q. And was that student able to stay on as a student at DSU?

A. Yes. She completed the semester and then subsequently transferred out at the end of the year.

Q. And the third student?

A. The third student ended up leaving before the semester. She did not pursue it to the extent that the previous one did and she left before the completion of the semester.

Q. Did you ever learn in that self-reporting process with respect to NAIA, obviously, there was a violation, but from what you determined from NAIA, was there anything different about the self-reporting process that you should have done? Were
you criticized by NAIA in terms of the manner in which you self-reported or submitted that information or investigated?

A. The initial one?

Q. Yes.

A. No. No.

Q. And when you say "initial one"?

A. Talking about the infractions of our volleyball coach with the ineligible player?

Q. Yes.

A. Yes.

Q. Did you make subsequent reports to NAIA?

A. No, did not.

MR. THOMAS: Thank you. Those are all the questions I have for Mr. Daniel, Your Honor.

JUDGE FETCH: Thank you. Ms. Donarski.

MS. DONARSKI: Yes.

JUDGE FETCH: You may cross.

CROSS-EXAMINATION

BY MS. DONARSKI:

Q. Mr. Daniel, will you turn to page 81 or Exhibit 81? Excuse me.

A. (Witness complies.)

Q. Okay. There you go. Turn to the next page, which is page 571.

A. Yes.

Q. And is that the Roughrider Homestead scholarship criteria?

A. Yes, it is.

Q. And the criteria indicates that North
Dakota high school graduates and community college transfer students who have been recommended are eligible for the scholarship; correct?

A. Yes.

Q. Okay. And these students were international students; right?

A. Yes.

Q. Okay. So they didn't fall under the North Dakota high school graduates and community college transfer students; correct?

A. One was a transfer. One young lady was a transfer.

Q. Community college transfer student?

A. Yes.

Q. Okay. The other one was not?

A. That's correct. She was an incoming freshman.

Q. Now, you said there was three. The other student was an international student as well?

A. The initial student that we spoke -- or I spoke of was also international.

Q. Okay. And did she receive a Roughrider scholarship as well?

A. Not initially when she came into the campus, but after the events of the removal of her scholarship by Mr. Platt, she did, yes, that's true.

Q. So we have three international volleyball students that received the Roughrider scholarships?
A. The third one did not receive it. She left before, so it was just two.

Q. Okay. The two of them?

A. Yes.

Q. And then the next criteria indicates that the Roughrider Homestead scholarship is a $500 or $1,000 annual scholarship. Did the two international volleyball students receive greater Roughrider scholarships?

A. Yes, they did.

Q. And I'd like you to turn to -- in the same exhibit. It's Exhibit 81, but it would be Bates No. 575.

A. Yes.

Q. And is that a memo regarding one of the international volleyball students?

A. Yes, that's correct. This is the first young lady that I spoke of.

Q. Okay. And what does it identify for the Roughrider scholarship that this international volleyball player is receiving?

A. Specific to the dates and amounts?

Q. Correct.

A. Fall 2010, $2,000. Spring 2011, $2,000. Fall 2011, $2,000. Spring 2012, $2,000.

Q. Greatly exceeding the $500 or $1,000 annual scholarship under the Roughrider scholarship criteria; correct?

A. Yes, that's correct.

Q. Turn to the next page. It's Bates No.
And, again, is that a memo regarding the second international volleyball player?

A. Yes, it is.

Q. And what is the Roughrider scholarship that was awarded to that player?

A. Spring 2011, $1,578.73.

Q. And, again, well exceeding the Roughrider scholarship criteria?

A. Yes.

Q. And is this part of the office -- state office -- auditor's office, excuse me, investigation that's ongoing with respect to scholarships at DSU?

A. Yes.

JUDGE FETCH: Ms. Donarski, before you move on, on that exhibit I just noticed on page 575 the name, the first name of that student appears.

MS. DONARSKI: I do see that. I'll make certain that that's redacted as well.

JUDGE FETCH: I'm going to redact that right now in this copy. But, yes, please make sure that's redacted in any other copies. Thank you.

Please continue.

Q. (MS. DONARSKI CONTINUING) Regarding the Roughrider scholarship award for these volleyball players and the meeting involving yourself, Ronnie Walker and the President, President McCallum, is it not true that both you and Ronnie told the President you did not support the award because of the precedent would set?

A. We were concerned about the precedent
because of the amount that it was and, secondly, we were concerned this was a copycat situation, that one student had did this and others that were following and it would be a copycat situation, because going back to we had no proof that this actually was taking place with the inappropriate payment.

Q. Okay. Now, you had indicated you did a memo to President McCallum dated May 25, 2011?
A. That's correct.
Q. Okay. And you were asked a question as to when did you inform the President about the ineligible woman's volleyball player, and I think your testimony was immediately in my next direct report meeting; is that correct?
A. I believe so, yes.
Q. When would that have been? When would your next direct report meeting have been from when you first discovered this?
A. I'm not sure of the timeline, exactly how it fit in the timeline, but I had bi-weekly direct reporting meetings with the President. My memory fails me, but I may have went in and informed him of the information even prior to that because it was a situation that required some immediate attention.
Q. Okay.
A. So it was very -- I can't give you the timeline because I can't recall that, but it was in a timely fashion.
Q. Okay. Your timeline indicates that you
discovered this August 20, 2010, and September 10, 2010. So it would have been shortly after that that you would have notified the President?

A. Yes. Yes. And those dates that I have listed there and that's not in front of me, but those are the dates the infractions occurred and when I did -- found out about it, was prior to that.

Those dates were when the actual infractions took place, the August 20th and I believe the other one you said was September --

Q. September 10th.

A. -- 10th. After that point, I found out that this was going on, so that's dating when the actual participation, illegal participation occurred.

Q. Okay. And to let you turn to it, it's Exhibit 30, page 171.

A. Yes.

Q. So you would have, then, discovered sometime between that date and September 28, 2010, when you submitted a written letter?

A. That's correct.

Q. Okay. Now, your memorandum to the President is dated May 25, 2011. You would have told the President long before that date about this incident?

A. Yes. Yes. And our receipt of the sanctions that the NAIA placed on us were received way before that. And I don't know if I put the timeline -- yes. Received notification
November 2nd. Received notification from NAIA eligibility committee that the copies of notifications were sent to the NAIA and that we were placed on probation for 2010-2011 and 2011-12 academic year.

Q. Okay. And you're referring to Bates page 172?

A. Yes, ma'am.

Q. You were asked questions about topics of enrollment and whether you were individually pressured by the President, and you talked about a meeting that you were at where enrollment was discussed and the President was part of that meeting?

A. Yes, that's true.

Q. Can you describe to Judge Fetch what you recall from that meeting and the tone of that meeting?

A. This was a meeting within a short time period of my being named interim athletic director. I was named on July 19 and I believe this meeting occurred in August.

Q. 2010?

A. Yes, ma'am. Yes. And it was a meeting of all people involved in enrollment and we were brought together and the topic of enrollment was discussed and it was made apparent right away that...
the group indicated where they were at with their enrollment numbers and then it was passed on to us that these enrollment numbers were not to the standard of what the President felt we should have and we were told that it was full court press time, and I'm quoting, full court press time, all hands on deck. As unit leaders it was our responsibilities to go back and make sure that we addressed these issues of enrollment as we went into the final weeks before the first day of class.

Q. What were some of the actions taken by the President at that meeting?

A. He was very, very upset. He ended the conversation by slamming his fist onto the table and then subsequently picked up his coat and briefcase and walked out of the room and left the group there just to sit there after he left the room.

Q. Did you find that rather alarming conduct?

A. Very alarming. Very disturbing to myself, especially being my first opportunity to be in such a meeting. I found it very alarming, disturbing.

Q. Was it a stressful meeting?

A. Very stressful.

Q. Now, it's my understanding that as athletic director there was an issue involving the men's basketball trip to China?

A. Yes, there was.

Q. Okay. And describe that for the Hearing Officer.

A. This was a trip that was initiated by the
President's office to have our men's basketball team travel to China to participate in some, what was deemed as friendship games, with institutions that our institution was trying to establish a relationship with. And that was initiated from Dr. McCallum initially to our men's basketball coach, Ty Horton.

And a subsequent problem arose that fundraising was supposed to occur from the President's office and a dollar amount that was not met and, subsequently, the men's basketball team was left with their account, which is an initiative account, which is used by fundraising. All of our sports do various fundraising activity to help enhance their programs. This money was taken out of the account and the men's basketball team did initially筹集 for a large, substantial amount, in fact, the figure of $24,000 came specifically from the men's basketball team that they specifically raised.

Other people were also recruited to give to this. Another group in the University or in the area was the booster club donated $5,000, but the problem arose that this money was going to be raised from the President's office and that money never was raised and it left the men's basketball team with a negative balance in their initiative account and subsequently occurred a lot of concern that the men's basketball program was delinquent in their responsibility to raise funds for that trip.
Q. How negative was the balance?
A. I believe, and I'm only -- I haven't seen the actual count, but I believe it's the extent of $30,000 or higher.

MS. DONARSKI: Thank you. I have no further questions, Judge.

JUDGE FETCH: I just have one question for clarification.

EXAMINATION

BY JUDGE FETCH:

Q. And we need to go back to Exhibit 81. This is on the Roughrider scholarships. Exhibit 81 and that would be Bates page 571, at the bottom there.

A. Yes.

Q. You testified about the criteria?
A. (Nods.)

Q. This sheet in front of us, which is labeled as 571, Roughrider Homestead scholarship. Do you know where this sheet comes from? Is this part of a policy or some manual, that you're aware of?

A. This is the standard application fee that's provided to the different groups that utilize these, athletics being one. Other entities on campus have the ability to use these also.

Q. Okay. But do you know who prepared this or where this comes from?

A. I believe it comes from Enrollment Services.
Q. Okay. Reading again what Ms. Donarski had you look at under criteria, that first sentence where it says, North Dakota high school graduates and community college transfers students who have been recommended may be eligible. Okay.

Do you understand, because you testified that these were international students and one was a community college transfer student. Could this be read two ways, that high school graduates who are from North Dakota and community college transfer students who are from North Dakota, or do you read that separately, that community college transfer students can be from anywhere?

A. Could read it anywhere. If you look to the next page, there's another Roughrider scholarship award and --

Q. Okay.

A. -- it's somewhat different. We have a terminology of Roughrider Homestead and this is Roughrider scholarship. The Homesteader was initiated after the initial Roughrider scholarship to be specifically -- in my knowledge, to be specifically isolated towards North Dakota students.

Q. Which one?

A. The Homesteader one, reference homesteader, being home, North Dakota, was established specifically to go towards those kids from North Dakota in community college.

Q. So what's on Bates page 572 is a separate Roughrider scholarship?
A. Yes. We have two and they're a little bit repetitive. This was the original Roughrider scholarship that was originally established, and timeline, I'm not exactly sure. We also, then, enacted the Roughrider Homestead scholarship. And you can see at the top it says it is designed to provide renewable scholarships to North Dakota students who can demonstrate financial need, academic success, leadership skills or special talents in specific targeted areas.

Q. Okay. So would that international student who transferred from a community college have been eligible for a Homestead scholarship?

A. Not the way the Homesteader is written. This person would have been more apt to be eligible for the original Roughrider scholarship.

Q. Okay. So that might have pertained to the second --

A. Second, yes.

Q. -- scholarship or the one that's on 572?

A. Yes, ma'am.

Q. And you say that the awarding of those scholarships is currently under investigation or has been investigated?

A. Was under investigation. I believe through the internal audit.

Q. Okay. And these students also received a global award and one received, in addition, a separate athletic award?

A. Yes, ma'am.
JUDGE FETCH: All right. Thank you.

Mr. Thomas, any redirect?

MR. THOMAS: Yes.

REDIRECT EXAMINATION

BY MR. THOMAS:

Q. I promise just a couple questions, Mr. Daniel.

If you look at Bates 572, and just so we’re clear here, two Roughrider scholarships were given out following these meetings that you had with Dr. McCallum and with Ronnie Walker; correct?

A. Yes.

Q. And you testified earlier that although you may have raised an issue about setting a precedent or something, you also testified that all three of you were in agreement that the scholarships be given to each of these students; true?

A. Yes, that’s true.

Q. And while the page that Ms. Donarski reviewed with you, the Homestead scholarship, references a, quote, North Dakota high school graduate, if you look at Bates 575 and 576, it appears that the students received a Roughrider scholarship and not a Roughrider Homestead scholarship. Do you see that?

A. Yes.

Q. So the criteria for the Roughrider scholarship would not be at Bates 571, but would be
on Bates 572; is that right?
A. That's correct.
Q. And the criteria for the Roughrider scholarship is that the person be a high school graduate, and were both of these students high school graduates?
A. Yes, they were.
Q. And it says "and community college transfer students," and one of the students was a community college transfer student; true?
A. Yes, that's true.
Q. So as we look at Bates 572, as we sit here today, wouldn't both of the students who received the scholarship have qualified?
A. Under the criteria of 572, yes, they would.
Q. And then, finally, with regard to the basketball program, is it true that there were fundraising efforts going on even after the trip to try to cover the expenses that you discussed during your testimony?
A. Not from the athletic department, but we were told there was efforts being done from the President's office.
Q. And do you know if those efforts were continuing even as of the date that President McCallum was removed?
A. Yes. That was a question asked on every biweekly meeting, where were we at with the fundraising, but it was my understanding that those
had to be completed by June 30th, which was the end of the fiscal year, and that's what raised the concern with our men's basketball program.

Q. I see. But it was also your understanding that the efforts, the fundraising efforts continued beyond that date?

A. Beyond June 30th?

Q. Yes.

A. No. I thought it had to be completed. We were under the assumption it had to be completed by June 30th.

Q. I'm sorry. I thought you testified that you were aware that the President's office was continuing with those fundraising efforts beyond that June 30th date?

A. No, I was not aware of that. I did not have a meeting with him after that point.

Q. Thank you, Mr. Daniel.

MR. THOMAS: Those are all the questions I have.

JUDGE FETCH: Anything further, Ms. Donarski?

MS. DONARSKI: I do, Your Honor.

RECROSS-EXAMINATION

BY MS. DONARSKI:

Q. On Bates 572 under the Roughrider scholarship award, the second criteria down states the Roughrider scholarship is for incoming freshmen. Were these international volleyball players, they were not incoming freshmen, they had been students
at DSU; correct?
A. That's correct.
Q. Okay. So when Mr. Thomas asked you if they, then, met the criteria, that was the criteria of the first bullet, high school graduate and community college transfer, but the next criteria is that they're incoming freshmen and that they did not meet?
A. No, they were not -- one was initially an incoming freshman, but both these students had been enrolled. One of them had been enrolled and was within the first semester. The second one was in her, I believe, second year of attendance at the University.
Q. Okay. And the limitation of the scholarship being $500 or $1,000 annual was well exceeded for both of these international students?
A. Yes.
Q. Now, with the investigation that's ongoing on the scholarships, are you aware of a State Auditor's Office investigation?
A. Yes, we've been notified that the State Auditor would be coming through and investigating a number of matters and specifically I believe that this was one of the topics also.
Q. Okay. And that's still ongoing; correct?
A. To my knowledge, I don't know if it's been completed or not.
Q. Okay. And that's separate from any internal audit that perhaps somebody else may have
A. I believe so, yeah. My reference was to the internal audit. I have not been questioned as far as the State audit on this.

MS. DONARSKI: Thank you. I have nothing further.

JUDGE FETCH: Mr. Thomas. Not to beat a dead horse, Judge.

REDIRECT EXAMINATION

BY MR. THOMAS:

Q. But, Mr. Daniel, if you could look at page 572, the bullet point that Ms. Donarski was asking you about?

A. Yes.

Q. It says, The Roughrider scholarship for incoming freshmen is renewable for up to eight consecutive semesters." Doesn't that bullet point to you just mean that if it's for a freshman, it can be renewed for up to eight consecutive semesters, but if it's utilized for someone other than a freshman, the term might be for something less than eight consecutive semesters, or do you understand it to mean that only incoming freshmen are eligible for a Roughrider scholarship, if you know?

A. I don't know. But I'll tell you how we traditionally use it is for incoming students.

Q. Incoming?

A. Incoming students, be it a freshman or a community college transfer, is when these scholarships were initiated.
Q. And I guess that's my point, is because the first bullet point talks about high school graduates and community college transfer students, who clearly wouldn't be freshmen; true?

A. Yes, but I mean in the initial part of their entry into our University, not subsequently once they have been there. We used these as a recruiting tool as part of our financial package to offer incoming students, be it incoming freshmen or junior college transfer students.

MR. THOMAS: Thank you. That's all I have, Your Honor.

MS. DONARSKI: Nothing further.

JUDGE FETCH: All right. Thank you. You're excused. If you are going to remain and visit with any witnesses who have not yet testified, I'm going to ask that you not talk about questions you were asked or your testimony in this hearing.

THE WITNESS: Yes, ma'am.

JUDGE FETCH: Thank you. You are free to stay or go.

MR. THOMAS: Your Honor, our next witness is Marshall Melbye, and I'll go get him now.

JUDGE FETCH: I'm also going to ask individuals present here from the public, as well as those who have previously testified, if you need to visit during this hearing, please step outside.
Otherwise, your actions are becoming distracting.

Mr. Melbye?

THE WITNESS: Yes.

JUDGE FETCH: Hi. My name is Bonny Fetch.

I'm the Administrative Law Judge in this matter.

Could you please spell your first and last name?

THE WITNESS: First name is Marshall, M-a-r-s-h-a-l-l. Last name is Melbye, M-e-l-b-y.

JUDGE FETCH: B-y-e?

THE WITNESS: Yes.

JUDGE FETCH: Thank you. Mr. Melbye, all witness testimony at this hearing is taken under oath and is subject to penalties for perjury. By law I'm required to inform you of those penalties. Perjury in the State of North Dakota is a Class C Felony. It's punishable by a maximum fine of $5,000, maximum five years in prison, or both.

Please raise your right hand.

Do you solemnly swear the testimony you're about to give shall be the truth under the pains and penalties of perjury?

THE WITNESS: I do.

JUDGE FETCH: Thank you. Mr. Thomas, please proceed.

MR. THOMAS: Thank you, Your Honor.

MARSHALL MELBYE,

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION
BY MR. THOMAS:

Q. Mr. Melbye, could you state by whom you're employed and what your title is there?
A. I'm employed by Dickinson State University. My title is Director of Academic Records.

Q. For how long have you served as academic -- Director of Academic Records?
A. I began that particular position in July of 1991.

JUDGE FETCH: I think you meant Director of Academic Affairs, Mr. Thomas?


Thank you.

Q. (MR. THOMAS CONTINUING) And have you held other positions at Dickinson State University?
A. I first came to Dickinson in August of 1980 and I was an admissions representative, admissions counselor, it was called, from 1980 to 1991, which basically was a student recruiter.

Q. So you've been at Dickinson State for a total of 31 years?
A. Correct.

Q. Could you describe for the Hearing Officer some of your duties as Director of Academic Records?
A. I have a staff of three people and our office does a variety of things. I think that's especially true at a smaller-type campus. We prepare class schedules at the direction of the
department chairs, put together the class schedule. We do graduation audits. We provide services, such as the issuance of transcripts to the students, if they need them. The veteran benefits person is also one of my staff members. We record credit from incoming transfer students on our database, and so forth.

So it's quite a variety of things, as well as doing enrollment verifications for students when they need that. And so we serve, of course, not only the current faculty and staff of the University, but our alumni as well with respect to transcript issues or diploma issues, and so forth. That would be kind of the main functions that we do on a regular basis.

Q. Mr. Melbye, I'd like to call your attention to one of the hearing exhibits that's before you. If you could look at the bottom of the page, 114-B. This is going to be part of Exhibit 27, please. And looking at page 114-B and it carries over to 115, this appears to be an email from you to Scott Staudinger, dated February 18 of 2011, which, I'll just represent to you, is about the time that some of these enrollment issues were brought to light.

Can you identify what's contained within page 114-B, what you sent and why you sent it?

A. There was concern that -- well, when I first came to work at DSU and to begin work involving IPEDS, there was a question that I had
that was related to dual-credit students, whether or not they should be considered as degree-seeking students or non.

Q. And, just for the record, a dual-credit student is one who is in high school, but is taking a college class at DSU; is that correct?
A. Correct.

Q. Okay. Go ahead.
A. And I wasn't actually sure how we should classify them, so I was visiting with the instructor at Valley City State University and I asked how they dealt with those and they said they count them as degree-seeking students. IPEDS, on the other hand, wanted them to be recorded, as we found out later, as non-degree students.

Q. As of February 18, did you know whether DSU even had non-degree seeking students?
A. Well, there is a report that could have been run, which I wasn't aware of, that would have identified the non-degree seeking students and now, subsequently, we run that one.

Q. Okay. So as of February 18, there is a -- and help me make sure I'm understanding this correctly. There's an email that appears to begin at the bottom of page 114-B and it carries over to 115. Was that Mr. Staudinger's email to you?
A. Yeah. Well, yeah. There was -- when they were looking at dual-credit enrollment numbers and when we made that correction for them, the question came up about the fact that we had an awful lot of
students in the dual-credit area that were not identified by ethnicity. It was not reported. And my response back to Mr. Staudinger was that the form that I was using to register our dual-credit students, which was a form that was supplied by the system office.

Q. And the system office is where?
A. The NDUS system officer over here, board office. The form that they supplied or that they presented that was the official -- I took to be the official form, didn't ask for ethnicity data on it, so since we didn't collect the data, I didn't report it.

Q. So on page 115 where there's a box that begins "explanation:" is that what you typed in response?
A. I don't know if I typed it or if this was typed in by -- I don't remember typing that particular response. Maybe it was typed in by Mr. Staudinger.

Q. Okay. If you read paragraph 2 on page 115, it says -- the first question asked is why DSU has such a large number in the race and ethnicity unknown column, and then it continues, "As requested by the Error Description pop-up block generated by the IPEDS survey tool at the time of input, you explained this discrepancy as follows:" And then there's the block. Does that refresh your recollection, or do you just not recall?
A. I don't recall, but it might be that that
certainly is my wording in the top part. I don’t remember typing in you already accepted this error,
But I know Scott Staudinger was working with IPEDS and they had accepted the correction.

Q. Okay. Fair enough. And then there’s another email from you to Mr. Staudinger on page 114-B halfway down the page that’s dated just a few minutes later, and that’s where you talk about contacting your registrar at Valley City -- what’s VSCU?

A. Valley City State University.

Q. There must be a typo here.

A. Yeah, my typo.

Q. Tell us about this email.

A. Well, that’s where I had inadvertently not put the dual-credit students on that one column on the IPEDS enrollment report and then Scott Staudinger worked with the IPEDS folks and they agreed to let us move those over into the correct column, which was the non-degree column.

Q. Okay. Thank you. And then could you flip back a couple more pages to page 114. This appears to be an email that you sent to Jon Brudvig, Scott Staudinger and Mike Hillman. Do you see that?

A. Yes.

Q. Tell us why you sent this email to the three I just identified.

A. Well, I knew that there had been some
controversy regarding the IPEDS data and I wanted to
be sure that I was identified as the person who made
this particular error, that it would not be
attributed to Dr. McCallum.

Q. You write in the second to last paragraph,
"If IPEDS would permit us to access our past
enrollment submissions, I would edit them with
correct data regarding our dual-credit student
enrollments. If that access cannot be provided,
perhaps we could submit the correct data directly to
IPEDS and they could perform the edits on their
end." Do you see that?

A. Yes.

Q. Has that occurred?

A. Yeah. Well, again, when I worked with
Scott Staudinger and I worked through him, I didn't
contact IPEDS directly. He indicated to me that the
IPEDS people said just correct the ones on the fall
term and then go on from there.

Q. When you apologize for not being aware of
the IPEDS classification requirement, is it accurate
to say, then, that Dr. McCallum wasn't involved in
any way in that error?

A. That's correct.

Q. Did Dr. McCallum look to you on issues
such as this in terms of what enrollment numbers are
submitted and how they're submitted, or was he as
familiar with and aware of requirements as you?

A. No, we never discussed any of the IPEDS
reports that I am required to fill in in any shape
of fashion. It never came up in any discussion.

Q. That was just your job?
A. That's correct.

Q. Okay. Mr. Melbye, could you please take a look at Exhibit RR, that I'm handing you. It's not in that booklet, but I'm handing it to you now.
A. Okay.

Q. Just going to wait to let the Judge catch up.

JUDGE FETCH: Got it. Thank you.
MR. THOMAS: Judge, can you tell me if that exhibit has been received yet?
JUDGE FETCH: It has not.
Q. (MR. THOMAS CONTINUING) Mr. Melbye, do you recognize Exhibit RR?
A. Yes.

Q. Is that an email that you prepared and sent to Dr. Brudvig in response to some questions that he had?
A. Yes.
Q. And you prepared this email?
A. Yes, I did.

MR. THOMAS: Your Honor, we would offer Exhibit RR.

MS. DONARSKI: No objection.
JUDGE FETCH: Thank you. Exhibit RR is admitted.

Q. (MR. THOMAS CONTINUING) Can you tell us the context? It appears that there was some questions asked, but what led you to draft this
email?

A. Well, obviously, it was a request, I guess, from Dr. Brudvig at some point in time involving the enrollment controversy that had arisen relative to the enrollment numbers that appeared on our official enrollment census for the fall 2010. And our official enrollment census, which is the one that's produced after the fourth week of enrollment at the University and this occurs at all 11 institutions, the only individuals that are supposed to show up on that report as part of our head count FTE units, and so forth, are those students that are registered in what we call degree-credit classes. And because of the fact that we only offer degree-credit classes my response to Jon in the first paragraph there was we were not in violation of 440 because those are the individuals that showed up on that report.

Q. And can you explain that statement that you just made, because we only offer degree-credit classes at DSU, What does that mean?

A. There are some institutions that offer non-degree classes, which we more commonly call in some cases continuing education classes, which would be kind of like a workshop, but yet they are transcripted. There is a course that's put together with a special course number and that would be, then, identified as a continuing education credit, as opposed to a degree-credit. We're not allowed to put those credits and include those on our
enrollments.

Q. What leads you to conclude that DSU offers only degree-credit classes?
A. Well, I've been at the University, again, for 31 years. We've never offered non-degree credit classes since that time. And I did question my -- the Registrar that I did follow and asked him if he was aware of any time that DSU offered non-degree classes and he said no.

Q. So to the best of your understanding then, for example, the three symposiums that were offered, the Teddy Roosevelt and the Disney and the energy symposium, in your mind, because they were classes offered by DSU, they would be degree-credit classes because that's the only classes you offer?
A. Correct.

Q. Okay. The second paragraph of your email to Dr. Brudvig states, "As indicated by Kathy Meyer from our office, classes are defaulted as graded classes unless we are informed that they should be set up as S/U classes." Do you see that?
A. Yes.

Q. Why did you put that in your memo?
A. Evidently, I think the question came up from some individuals as to why the classes were put down as graded classes as opposed to simply S/U classes. And it was simply to explain to people -- and I guess I was under the assumption that all the department chairs that were fully aware of the fact that all of the classes are going to be listed as
 graded, unless they have them set up in the catalog
to be recorded as S/U grades.

Q. And it appears that Dr. Brudvig -- excuse me -- Dr. McCallum was not copied with this email
that you sent to Dr. Brudvig; is that right?
A. No, I don't believe he was.
Q. And any reason why Dr. McCallum would not have been included in that correspondence?
A. I'm assuming it's because the request simply came from Dr. Brudvig and it wasn't an issue,
I didn't think, that was necessarily vital for Dr. McCallum to see.
Q. Mr. Melbye, could you please turn to Exhibit 33? That is in the big packet.
A. (Witness complies.) Yes.
Q. Do you recognize this document?
A. Yes.
Q. What do you know about this document and what involvement, if any, did you have in its development?
A. Well, this was developed -- I think it was kind of finalized and fine-tuned recently. It simply is a way for all of the institutions in our North Dakota University System to be sure that we are on the same page and understand what types of credits are to be reported on the official enrollment census to meet policy 440 and what
different types of credit that might be transcripted by the University that might appear on the transcript, but should not necessarily, then, be considered to be a part of enrollment numbers.

Q. When did you begin -- does your office utilize this matrix?
A. We all have copies of it now. It's a relatively new matrix that just came out not too long ago.

Q. At the top of page 262 it indicates, "Final review April 2011." Was it sometime after that that you began using it?
A. Well, I mean, I was aware of the fact that the only credits that -- or the only individuals that should show up on our enrollment report would be those individuals reporting for degree-credit classes. So there wasn't anything on here that I was necessarily not aware of.

There was one area, if I can find it here. On the bottom of page 263, letter A, "Professional Development Activity -- Attached Credit." We had been using the term "attached credit" to record those types of credits where an individual, let's say, went off to some kind of event and that they would then subsequently be awarded credit after the fact, and the new version of this particular form indicates that that should always only be -- that term should only be used for non-degree credit and that's placed then -- they put in the letter D, above there, I believe prior learning assessment,
which would be usable, they said, for that situation. So it was just a clarification of what we were using as an internal term to post up credit for those individuals that had earned credit outside the regular classroom experience.

Q. Do you find Exhibit 33 now that it’s in use to be a useful tool?
A. Yes, I think it’s going to kind of ensure that everybody in the University System understands and agrees with being consistent across the board with respect to how credit is reported and counted.

Q. And was this matrix in place and being utilized when the enrollment reporting errors occurred in the fall of 2010?
A. I don’t think this particular matrix was available at that time. I think it’s been prepared subsequent to that event.

Q. Mr. Melbye, to the extent that any reporting errors have been made that you’ve subsequently been made aware of -- well, let me back up.

Did you intentionally submit any inaccurate information to IPEDS or to any other enrollment reporting agency?
A. Absolutely not.

Q. Okay. Were you ever directed by Dr. McCallum to submit any intentionally incorrect or inaccurate enrollment information?
A. No.

Q. Notwithstanding any goals that
Dr. McCallum may have set for you or other employees at DSU regarding enrollment or increasing enrollment, did you feel pressured by those goals to the point of your submitting intentionally inaccurate enrollment information?

A. No. Never.

Q. Could you briefly describe for the Judge, because we've heard other testimony, how you interpreted Dr. McCallum's goals with respect to enrollment. Did you feel intimidated or bullied by him or threatened in any way with regard to the setting of those enrollment goals?

A. No, I never felt that. Again, one of the primary reasons that -- I mean, there are three areas on campus where recruitment is taking place most of the time where that's part of their regular duties and that would be, of course, Enrollment Services, Office of Extended Learning and international recruitment again. Those are the three areas where I think recruitment is looked at very carefully, because that's potentially where it occurs.

My office, the Office of Academic Records, really deals with those students after they have been recruited, after they have been enrolled at the institution, so, no, I never felt any pressure along those lines.

Q. Can you tell the Judge to what extent you've been involved in the investigation as to how these enrollment errors occurred and how they were
to be fixed? Had you been interviewed, for example?

A. Yeah. Well, I was first -- I think the first time that I heard that there had been some enrollment irregularities was when Mr. Staudinger, Scott Staudinger, institutional research person, just stopped by my office and said you might want to know that the Board was contacted by some individual or something like that. I can't remember the exact wording, but somebody contacted the Board office indicating that they had been sent one of the surveys that he sent out --

Q. Would that be -- I'm sorry to interrupt. Would that be the NSSE survey?

A. NSSE survey.

Q. Thank you.

A. And that they were wondering why they were getting this survey and that triggered the mechanism to then, I think, begin the investigation into why did that person receive the survey. That happened, I'm guessing, probably, I would think, sometime maybe in November. I'm not exactly sure on the date. I don't know exactly when that report was made to the Board.

Q. It appears that the emails began in early February, February 4.

A. Okay. But, at any rate, subsequent to that time, I was never contacted by anybody relative to whatever type of investigation was going to be held to determine why did this happen and how did it happen.
Q. Were you interviewed in May?
A. I was. I think it was around the first week in May by Dr. Hillman and Mr. --
Q. Eggert?
A. -- Eggert.

Q. Was that the first time you were interviewed?
A. Yes.
Q. Have you subsequently been interviewed?
A. I was interviewed later on by Cynthia --
I'm sorry. I can't remember her last name.
Q. Cynthia Goulet --
A. Yes.
Q. -- the attorney?
A. Yes. And later on, after that, by Pat Seaworth.
Q. Okay. Mr. Melbye, are you a member of the DSU Administrative Council?
A. Yes.
Q. Can you tell me what that is?
A. It's a council that was formed by Dr. McCallum to better keep the institution informed as a whole regarding what's going on in various offices. I think there had been some complaints in prior years, well before Dr. McCallum became President, that communication at our campus was somewhat lacking, that things happened and people weren't made aware of what was going on, what was upcoming, and so forth. The Administrative Council was formed by Dr. McCallum to kind of ensure that
everybody would have a better understanding of what
was going on in other offices, whether they be
initiatives or reports on what had happened in the
past. So it was a way to improve communication
among staff members, faculty members and all the
offices on our campus.

Q. How often did that administrative council
meet?
A. About once a month, I believe it was.

Q. During that context or your other contacts
with Dr. McCallum, did you have an opportunity to
observe Dr. McCallum's leadership style?
A. The only time that I was on -- I served
with him relative to a particular issue was when the
Vice-President position of the VPAA was being
filled. I was a member of that search committee and
was present with him was we conducted the pre-search
meetings of all the search committee members and
then we interviewed the various candidates.

Q. Can you describe generally what other
contacts you would have on a regular or not so
regular basis with Dr. McCallum while he was
President?
A. I really didn't have many meetings with
him on professional issues. He would stop by and
just ask me how are things going, you know, hope you
have a nice day and, you know, those kind of things,
just kind of personal greeting, whether it be in my
office or in the hallway.

Q. Did you have occasion, based on those contacts, to develop an opinion as to his personality or his demeanor toward employees at DSU?

A. Well, like I say, the only -- the only engagement that I ever had with Dr. McCallum was always very pleasant and very professional.

Q. Mr. Melbye, thank you.

MR. THOMAS: Those are all the questions I have, Your Honor.

JUDGE FETCH: All right. Ms. Donarski, you may cross.

MS. DONARSKI: Yes, thank you, Your Honor.

CROSS-EXAMINATION

BY MS. DONARSKI:

Q. Dr. Melbye, nice to meet you.

A. Not Doctor, Mr.

Q. Mr. Melbye, nice to meet you. The energy symposium, the TR Roosevelt symposium and the Disney Institute, they were not classes, were they? I mean, they were symposiums for attendees, whether that would be community participants or students could attend if they so chose; correct?

A. Correct. They were not in what you call the regular classroom situation. They were an event or something, mm-hmm.

Q. Okay. And in order for it to be a class, DSU officials had to create a degree-credit class?

A. Correct.

Q. For example, History 299; correct?
Correct.

Okay. And that's in order to enroll those conference attendees in credit classes so those individuals would be enrolled and registered as DSU students; correct?

Well, it was made available, I guess, you know, to anybody, I guess, who wanted to enroll and earn credit for attending that event.

Okay. And let's talk about credit. There's two different types of credit; correct?

Mm-hmm.

Is that a yes?

Well, there's degree-credit and non-degree-credit, yes.

And non-degree credit could be like a continuing education credit?

Correct.

Okay. And DSU does not offer continuing—or is not authorized to offer—continuation education credits; correct?

Correct.

But they can do that through Minot; right?

I think a number of the institutions offer what we would call continuing education, non-degree credit.

And DSU has done that as well; correct?

Done what?

The non-degree continuing education credits?

DSU has never offered non-degree
continuing education credits.

Q. Through Minot? They're not authorized to do it on its own?
A. Oh, they might have. Minot may have participated in some event down here where credit was granted and transcribed by Minot.

Q. And that's happened with these symposiums; correct?
A. Not that I'm aware of.

Q. Okay. The symposiums indicate that credit is going to be given, and it's your understanding that that was only degree-credit?

A. Well, if a department chair brings down a request to set up a class in my office and they say we would like to have this class set up, the only kind of credit that we can set it up for is degree-credit. We don't have Board authorization to even offer non-degree continuing education credit at the present time.

Q. Right, but that's a class which is separate from the symposium? They're two distinct and different things; correct?
A. Well, a symposium is not necessarily held in the same way that a class is. I mean, there would be certain similarities as far as educational knowledge being dispensed, and so forth, and so on, but it's certainly in a different setting than what you would normally see in a regular classroom.

Q. Okay. So, for example, Mayor Johnson, the Mayor of Dickinson enrolls in one of the symposiums,
to attend the symposium. Okay. Is he a
degree-credit DSU student, freshman student?
A. Not just by attending a symposium.
Q. Okay. What steps have to be taken to have
that individual be a degree-credit DSU enrolled
student that would then be reported to IPEDS?
A. Somebody would have had to at some point

in time entered it into the system. In other words,
they would have had to go through some kind of
application process, which would normally have
occurred, I'm assuming, through Enrollment Services.
Q. Okay. So the individual themselves, in
this case we are using the example of Mayor Johnson,
would have to fill out an application to be a DSU
enrolled student; correct?
A. I would assume that that would be the
normal process. I'm not in the admissions office.
Q. But you've been with the University for 31
years?
A. Yeah. Mm-hmm.
Q. So you have some somewhat of an
understanding of how this works; right?
A. Sure.
Q. Once they're registered as a student, then
the next step is to enroll them in a class; correct?
A. Correct.
Q. Okay. And so in order for a class to be a
degree-credit class, what steps have to be taken?
A. A degree-credit class is -- you mean for
the class to be created?
Q. Correct.
A. The department chair or whoever controls that particular prefix for the class needs to send us a document saying I want you to create this class. We then would, then, put it into the class schedule.

Q. And what's the approval process with that? Who else looks at that and approves that?
A. Well, in building a class schedule, there are a number of different forms that we use to put the class schedule together. It begins with what we call a term rollover where the previous -- like, for example, the previous fall schedule is rolled over into a new version, with a new term on it. Then that class schedule, along with some other forms that our office has designed, goes out to the department chairs where they, then, look over the class schedule, make notations on the hard copy we send them, fill in some forms relative to some new classes they might want to offer.

Then all that data comes back to my office. We then input that into the system. We then print off a new copy, another draft of the fall class schedule, send that back to the chairs and say, Here, look this over, this is what we've got set up now for the fall. If there's any other changes that you spot, you want made in class
additions or minor changes on what has been set up
before, let us know, fill it out, mark it down on
the forms, send it back to us and we'll make those
changes. And that usually happens at least three
times where we send out drafts, comes back and we
send them out the revised forms so that every
department chair can look to see here's what's been
set up under my department relative to courses being
offered.

Q. Okay. Quite a process to get that degree-
credit class?

A. Well, before we finally get our schedule
put together, it probably involves maybe five weeks,
because it takes time to send it out to them, for
them to look it over, get it back to us, for us to
reenter the corrections, to send it out again. So
it takes anywhere from five to six weeks from the
time we sent out that first draft until we finally
agree this is where we're probably going to end up
for the semester.

Q. Okay. And that's entirely different than
a conference or a symposium that's offered to
attendees, whether that is students or community
participants?

A. Well, that whole form, I mean, the whole

class schedule will show everything that's being
offered. If one of the department chairs said, I
would like to offer 299 history class, such as was
offered at the symposium, that would also appear on
that class schedule. So that department chair, by
looking it over, would be able to see, well, here's a class that is on this class schedule that is under my department with this name and this title.

Q. Okay. And then a --

JUDGE FETCH: Ms. Donarski, let's hold up here. Just let me ask, how many more questions? Do you have more than five minutes' worth?

MS. DONARSKI: I would say probably ten.

JUDGE FETCH: We're going to take a brief recess at this time, ten minutes.

(Recessed from 3:25 p.m. to 3:35 p.m., the same day.)

JUDGE FETCH: We're back on the record.

Ms. Donarski, you were cross-examining Marshall Melbye.

MS. DONARSKI: Perfect. Thank you.

Q. (MS. DONARSKI CONTINUING) Mr. Melbye, don't you have to be a high school graduate to be a degree-seeking student?

A. You have to be a high school graduate or have completed a GED.

Q. Okay. So, for example, the Belfield High School students would not be degree-seeking students because they don't have that criteria met?

A. Well, one exception, of course, to the degree-seeking, if they have been enrolled and accepted as a dual-credit student, those students do not have to have completed high school to be -- to at least take a degree-credit class, let's put it that way.
Q. You understand that they were not accepted and approved as the dual-credit; correct?
A. The courses that were set up for the symposiums?
Q. Correct.
A. Correct.
Q. Now, in addition to creating classes and specifically the symposiums, did you have a discussion with Roger Kilwein, Professor Kilwein regarding Professor Kilwein being identified as a professor and requested that grades be assigned, even though he did not instruct the class, nor did he have any student contact?
A. I mean, one of the reasons that we do send out this particular copy of our class schedule which contains all the classes that have been placed in there by the department chair, that they have an opportunity to review that and it gives all the specifics about the class. So if Mr. Kilwein wasn't aware of the fact that he was listed as the instructor of record and that was a graded class, it isn't because he wasn't informed of it. It evidently would be he didn't examine the documents we sent back to him.
Q. My question to you, however, was did you have a conversation with Professor Kilwein regarding entering grades for a class created for these symposium attendees that he did not instruct, nor did he provide that student contact?
A. Yes. He was in my office and he said, I
see I'm the instructor on this particular class and
we indicated, yes, you were because it was requested
by you and you were put down as the instructor of
record. And I said, the class can't be -- if you
don't put any grades in there, there's going to be
no grades that will appear on the transcript, so
either you have to put in some grades or it's going
to remain blank on the transcript.

Q. Is it fair to say that Professor Kilwein
was actually surprised that he was listed as an

instructor for one of these classes?

A. He seemed surprised to me.

Q. And he was upset that you were asking him
or directing him to give a grade to students he had
had no contact with?

A. I didn't direct him to give a grade. I
said, if you don't give a grade, it's going to stay
out there and it's not going to be -- won't be any
grade posted.

Q. Who physically entered the grades -- which
it was my understanding it was all A's; correct?

A. I believe it was.

Q. Who physically entered all A's to each of
those symposium participants for the Professor
Kilwein class?

A. I asked Roger, if you want to give them a
grade, since you're here -- it's up to you if you
want to give them a grade, but if you want to give
them a grade, I can enter them right now for you.

Q. And you physically entered those grades?
A. I did.

Q. Knowing that he did not instruct, nor did he have any student contact with those individuals?

A. Well, I said it was up to him to decide whether or not he felt comfortable giving them a grade or not.

Q. And you understood that he was very concerned about that?

A. He expressed some concern about that, but I said that was his call to make.

Q. Turn to Exhibit 58, please. Fifty-eight is the memo that identifies -- or is the -- excuse me -- memo from the President, President McCallum, dated July 6, 2010 regarding fall 2010 enrollment coordination. And he identifies goals, the goals being specifically we still need 1,300-plus enrollments, which is 120 students per week for the next 11 weeks. Was that a reasonable expectation?

A. Well, since it seemed -- given the conditions out in western North Dakota relative to the decreasing high school graduation population that we're experiencing, the increase in oil activity, which is taking some of our students away from the institution relative to retention issues, that it seemed like a meaningful challenge to be able to do that. Although, again, Enrollment Services and those other folks have a better handle on what might be out there in the way of possibility relative to increasing enrollment, because that's not something my office focuses on.
Q. You agree this was a very difficult enrollment goal to meet?
A. When I first saw it, I envisioned it to be challenging, yes.

Q. Now, you had testified to discussions that you had with Scott Staudinger. Identify to the Hearing Officer -- let me ask you -- let me phrase it this way.

At some point in time, you discussed with Scott when can you actually start making changes to the data, to correcting the IPEDS data?
A. Right. I knew that our office was going to be the office that was going to need to make the corrections, whenever those corrections were possible to be made, because they had to -- and, again, I'm not a computer person, but the IT people at ConnectND had to extract that old history file, then had to run a bunch of tests on it and make sure that it was put in a position where it could be manipulated, because as a history file, you can view only. You can reprint the data, but you can't change the data, unless they put it into a position in some computer element where it becomes active and then we would be then the one -- I was told by Scott that we would be the ones that would be charged with actually removing those students that shouldn't have been in our numbers in the first place, to remove them from those.
Q. That's been quite a process?

A. It was quite a process. It didn't take us long to do it. We did it in less than 24 hours, our part. The process took a lot of computer time, as I understand it, because I don't believe they have ever done this before, the IT people. So it was a process they had to write code for. They had to test it to make sure that what they intended to do in production -- they have a stage environment. So they test the stage environment to see if it looked like it was going to work right, make sure it was going to work right and then move it into production and then make the changes and then tell us to make the changes, which we did, like I say, relatively soon.

Q. How long ago did you make those changes?

A. I wonder if we didn't make them around the second week in October.

Q. Okay. Now, you had indicated earlier when we discussed that you had just gotten permission three weeks ago to correct the student data. What was that?

A. We couldn't correct the student data until that computer had been made live.

Q. So what you were just testifying to?

A. And there was another site delay because some of our administration, I think Mr. Binstock and some other individuals, wanted to be sure that what we were doing was agreeable with the Chancellor's office, and so forth. So there was a slight delay.
from the time that we would have been able to go to
our machines and correct the data until we went --
actually went in the data, because, I said, I'm not
going to change this data until I'm sure that you
tell me we're all set to go, that what we're going
to doing is the correct thing to do.

Q. Okay. And when you said October, that
would have been October of 2011?
A. This current October, yes.
Q. Just this month?
A. Yes.
Q. Okay. Did you find Scott Staudinger
accessible when you had asked him the status?
A. The status of?
Q. The status of where he was at in the IPEDS
and whether that data could be changed?
A. Well, yeah. I think my concern was we
were fast approaching the date when we needed to not
only correct the data for this 2010, at least that
was my initial understanding, but that the three
reports that I had prepared and did for the fall of
2011 needed to be locked and done by October 19. So
we were -- I was concerned that we needed to get
this data changed because we were approaching a
deadline.

I was under the impression originally that
this had to be changed in the system by
October 18th. Subsequent to that, we've now learned
evidently that IPEDS won't permit us to make the
change in the data until the enrollment reports open
up for the fall -- for the spring of 2011, until
next spring. So we've got the data sitting out
there. We've generated and done all the work we've
had to to remove the students, but we can't
physically go into IPEDS and correct the data
because they won't allow us to correct that prior
year data until, I think it's going to be sometime
in February of 2012.

Q. Okay. So all of the data has yet to be
corrected?
A. To be entered on IPEDS, right. We have
corrected the data as far as the reports are

corrected, because I have generated a whole new set
of fall 2010 official enrollment census reports.

Q. Okay. And those official enrollment
census reports, then, remove the symposium
attendees?
A. That's correct.
Q. And you had earlier testified to a
response that you had provided to the President with
respect to back in February when you were asked to
look into the enrollment issue, and I think your
testimony was you simply had looked at whether there
was a degree-credit class, but you didn't look at
the individual students as to whether they were DSU
students; is that correct?
A. You mean, did we look at individual names
that were being enrolled in the classes?
Q. Either individual names or the
requirements of whether they were authorized
students, they followed the procedure in registering and filling out the application and paying the tuition and following the steps that needed to be done?

A. Did I do that? No.

Q. Why didn't you do that when you responded to President McCallum in February with the question on the enrollment data?

A. Well, as I recall the question that came was, I think it was kind of a general question insofar as are we -- is our enrollment data in compliance with State Board 440. And my clear strictly, very straight reading of 440 is that the only people that can appear on that enrollment sheet are those individuals that are registered in a degree-credit class, and since that's the only kind of class that we can offer, that's why I indicated that that was meeting compliance.

Q. So when you responded to the President's question in February, you looked at whether there was a degree-credit class set up? Is that what you looked at?

A. Well, I just -- I didn't necessarily look at anything. I just -- I just knew that the report that was generated on September 21st, in the fall of 2010, with all the figures that were out there and I work with aggregate figures. I don't look up individual student names or anything. None of that goes on reports I do, anyway. When those reports came out, I knew that every person identified as a
number on there was enrolled in a degree-credit class.

Q. And that's all you looked at, you didn't look at who the individual was?
A. No.

Q. Or whether that was a qualified student or registered student at DSU?
A. No.

Q. You just simply printed out the report and said, yep, this is what the report shows?
A. Yeah.

Q. And whose responsibility would it be to look at whether these individuals that are registered in these symposiums followed the process to be DSU enrolled students, degree-credit students?
A. Well, they couldn't have been enrolled unless they were admitted and matriculated by -- historically that would have been Enrollment Services.

Q. Who would that be?
A. Norman Coley's office.

Q. And then what was Jon Brudvig's responsibility with respect to looking at whether the registrants were DSU degree-credit students?
A. I don't know that he ever looked at them or had any responsibility to look at them.

Q. Okay. So you reported to Jon Brudvig the
answer on policy 440?

A. Mm-hmm.

Q. Is that yes?

A. Yes.

Q. And policy 440 has not changed at all through the years or at least in the last few years relating to this issue; correct?

A. Right.

Q. And the matrix enrollment doesn't change the policy 440, that still applies and that's something that you have followed or at least looked to?

A. Right, the matrix that we looked at in here?

Q. Correct.

A. Correct. Yes.

Q. And I think your testimony with respect to the matrix was that it didn't apply -- or nothing on there was nothing that you weren't aware of, there were changes, but the changes didn't apply to the enrollment issue here; is that correct?

A. Yeah. Right. Mm-hmm.

MS. DONARSKI: I have nothing further.

JUDGE FETCH: Any redirect?

MR. THOMAS: No, Your Honor.
testified, you may not speak about questions that
were asked or your testimony given. Do you
understand that?

THE WITNESS: I do.

JUDGE FETCH: You also may remain in the
room and observe, if you wish.

THE WITNESS: I'll leave.

JUDGE FETCH: All right. Thank you. Who

is your next witness?

MR. THOMAS: Alvin Binstock, Your Honor.

JUDGE FETCH: All right. Good afternoon,
Mr. Binstock.

THE WITNESS: Afternoon.

JUDGE FETCH: I'm ALJ Fetch conducting
this hearing.

And would you please begin by spelling
your first and last name for the record?

THE WITNESS: Alvin, A-l-v-i-n. Binstock,
B, as in boy, i-n-s-t-o-c-k.

JUDGE FETCH: Thank you. All witness

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testimony at this hearing is taken under oath and is
subject to penalties for perjury. By law I'm
required to inform you of those penalties. Perjury
is a Class C Felony in the State of North Dakota.
It is punishable by a maximum fine of $5,000, a
maximum five years in prison, or both.

Please raise your right hand.

Do you solemnly swear the testimony you're
about to give shall be the truth under the pains and
penalties of perjury?
THE WITNESS: Yes, I do.

JUDGE FETCH: Thank you. Mr. Thomas,

please proceed.

MR. THOMAS: Thank you, Your Honor.

ALVIN BINSTOCK,

having been first duly sworn, was examined and
testified as follows:

DIRECT EXAMINATION

BY MR. THOMAS:

Q. Mr. Binstock, could you state by whom you
are employed and what you do for them?

A. Employed by Dickinson State University.

Vice-President of Business Affairs.

Q. For how long have you been an employee of
Dickinson State University?

A. Thirty-seven years.

Q. Did you hold any other positions prior
to -- from the time of your education until going to
Dickinson State University?

A. No, I did not.

Q. Went straight from school back to school,
I take it.

A. That's correct.

Q. Okay. For how long have you been
Vice-President of Business Affairs?

A. I think about 32 years. The first few
years I was the accountant in the business office.

Q. Could you describe some of your duties as
Vice-President, please?

A. Oh, the entities reporting to me would be
the computer center, several of the auxiliary
operations, human resources and, of course, facility
operations also reports to the Vice-President of
Business Affairs. And then the standard operations
of the overall business operations of the
institution would be under my office.

Q. Would you be in a position to speak to the
general financial condition of Dickinson State
University?

A. Yes, I would.

Q. I'm going to ask you, if you could, to
give us a general description of the financial
status of Dickinson State University, and to the
extent you're able, relative to other universities
in the system in North Dakota.

A. I can certainly speak to Dickinson State
University. From an auxiliary standpoint, the
indebtedness is very minimal; same point in time our
reserves are more than adequate to meet any
obligations, but the reserves are there to serve us
well as far as replenishing the facilities and
making changes in support of providing additional
student services. So from an auxiliary standpoint,
we are in excellent shape.

State appropriated side of it, as all
institutions in the State of North Dakota, I
believe, are underfunded, but at the same point in
time, as a result of the departments working with us
very closely and leadership also being very
supportive of efficiency efforts, we ended the last
fiscal year with about 1.4 to 1.6, depending on which period of time, final closure, our June 30th balance, so we ended the biennium with a positive balance of $1.4 to $1.6 million. Again, the challenges are certainly there, but the fiscal condition of Dickinson State University certainly, from my opinion, is very solid.

Q. Having been a Vice-President for Business Affairs at DSU for many years, could you compare the financial state of Dickinson State University during the time period before Dr. McCallum became president versus the time period that he has served as president?

A. Well, comparatively, certainly the revenue streams and expenditure streams will fluctuate dramatically depending on certain things like the cost of the utilities, which is a big cost center, depending on the type of capital improvements that are interjected back into the facilities themselves. We have been solvent for a number of years. That reserve capacity on the auxiliary side has increasingly grown. Again, on the appropriations side, that is totally dependent on certain factors, as utilities, but, again, we have been solvent for several years in that area. Facing challenges, but financially we are solvent and have been solvent for a number of years.

Q. Mr. Binstock, could you look at Exhibit MM, which I’m going to hand to you now, and tell me if you recognize this document.
A. Yes. This is a part of a document that came out of the system report that has done -- takes into consideration the 11 institutions in the University System. It’s a summary that provides information to The Board of Higher Education and general public as to the viability of the institution.

Q. Did you prepare this portion of the document?

A. Certainly the comments that are here are reflective of comments that have been either submitted by myself, Mark Lowe, the controller in the office, and/or derived by system documentation that’s available through Connect North Dakota.

Q. And where would this document be submitted? As part of some other document and to whom would it be submitted?

A. This is a document that, as I understand, is put together at the request of the The Board of Higher Education for them to be able to monitor on an annual basis the viability of an institution. It has several ratios that are established to indicate the viability of an institution. And, again, I believe it was primarily a document that was to support the decisionmaking process of the Board of Higher Education.

MR. THOMAS: We would offer Exhibit MM at this time, Your Honor.
Ms. Andrews: No objection.

Judge Fetch: Thank you. Exhibit MM is admitted.

Q. (Mr. Thomas continuing) Mr. Binstock, I asked you earlier about the financial condition of DSU during the time that Dr. McCallum has been president. Could you maybe just, to the best of your recollection, talk about the balance? You talked about between a $1.4 and a $1.6 million positive balance that the University was carrying as of 2011, depending on what month we're talking about. Can you just generally state what that dollar figure has been, say, in the five or ten years preceding Dr. McCallum's presidency and what it's been during his presidency?

A. I can't recall the specific numbers at the close of each fiscal year. Certainly, at the close of the 2011 fiscal year, we were pleased to carry over in support of the upcoming or current biennium's operation the amount that we did. It's more than what we've been able to carry over in the past. Once again, part of that is because of the nature of the expenditure patterns that occurred during the biennium, but certainly also parts of it are the result of intentional decisionmaking which has in mind the best interests of protecting both the present and the future of the institution.

Q. Mr. Binstock, I'm going to ask you some questions about classes at DSU and enrollment issues and find out what, if any, information you have...
regarding that. And I'm going to ask you specifically about what involvement, if any, you and your office has with regard to the energy symposium, the Teddy Roosevelt symposium and the Disney symposium and how those classes are entered into the PeopleSoft database or the enrollees.

Does have your office have any involvement with that?

A. As far as the entrance of the courses, and so forth, in PeopleSoft, we don't deal directly with that. We deal with the fee portion of it. There's a fee segment within PeopleSoft in which a fee for the course is established. It's placed on an individual's account, if that is appropriate for the various workshop or symposium. Some cases it is and some cases it isn't. And then, of course, we record all the expenditures relative to these activities in the various and appropriate general ledger accounts.

Q. But in terms of reporting enrollment numbers, does your office have any direct involvement in that?

A. No, we do not.

Q. Were you copied on emails and other correspondence from Dr. McCallum that discussed enrollment targets and goals for Dickinson State University?

A. Yes, I was.

Q. Okay. And I won't review them specifically with you, but what role, if any, did you believe that you played with regard to
increasing or addressing enrollment concerns at Dickinson State University? Why do you suppose you were included on those types of correspondence?

A. Well, I think overall of the support that is needed in order to facilitate recruitment, retention process, it's best understood if the players involved have an opportunity to share their direct experiences and answer questions relative to the mode of operation that would be most effective in reaching the goal for the institution. In an institution our size primary factions within the leadership need to be all on the same page. We need to understand the various factions that will affect both the recruitment and retention. I feel that's why I was involved in those processes.

Q. How did you perceive Dr. McCallum's style of presenting these goals and targets? Did you find them to be -- or his demeanor in doing so to be inappropriate or intimidating or negative in any way?

A. I did not.

Q. Okay. Did you -- could you turn to Exhibit 33 that's in the binder before you, sir? We've had some testimony regarding this document, which is various times has been referred to as an enrollment matrix, and I'm wondering if you had any involvement in the creation or development of this document or if you've used it since it's been in place?

A. Again, just for the sake of clarification,
are we looking at page 0262?
Q. Yes, sir, and the subsequent pages.
A. Some of these are Board policies which I would be familiar with, but other than that, it's more of an academic document that I wouldn't have necessarily paid much attention to.
Q. Okay. Thank you. Did Dr. McCallum have any discussions at which you were present regarding his concerns or any concerns that he had about the development of either the Teddy Roosevelt or Disney or the energy seminar with regard to the academic integrity of those courses? Were you present for any of those conversations?
A. My recollection is that overall the position of Dr. McCallum had always been one in which the programs, if credit were offered, had to be academically sound and had to meet the requirements associated with acknowledging that fact.
Q. Were you ever aware of any direct or indirect instructions from Dr. McCallum to anyone on campus to submit intentionally incorrect enrollment figures to any reporting agency?
A. No, I was not.
Q. Have you had occasion -- could you just describe for the Judge the context in which you would have interaction with Dr. McCallum, how frequently and what types of settings, and so forth?
A. Well, Dr. McCallum had very much an open door policy. From my perspective, I was able to get
in and see him pretty much on demand. It was an excellent relationship from that standpoint. It provided me the opportunity to run certain factions past him in a very short period of time, make sure we were on the same page and understood the intention of the institution as it related to responding to several financial and other issues. The times we traveled together to various meetings, once again, the opportunity to discuss any issue at almost any point in time with Dr. McCallum was available, was made available to me.

Q. Did you observe his interactions with other members of administration at Dickinson State University and, if so, could you speak to his management style or his leadership style that you observed?

A. Well, certainly had an opportunity at the President's cabinet, at which point in time his primary administration was all brought together. That was a continual meeting held almost every week and the availability was there for the President to be present.

Q. Sorry to interrupt, but you were a member of that President's cabinet?

A. Yes, I was.

Q. Okay. Thank you. Go ahead.

A. In addition to that, there were other
times that supervisors, directors of specific units, if they had any concerns that addressed any financial aspect, whether the budgets were short or they would like to start a new initiative, I was part of those discussions. There's no point in time that I can recall in which I saw anything that was other than, once again, a congenial discussion and one that was held in a professional manner and with the best interests of the institution and the University System in mind.

Q. Mr. Binstock, thank you.

MR. THOMAS: Those are all the questions I have, Your Honor.


CROSS-EXAMINATION

BY MS. ANDREWS:

Q. Good afternoon, Mr. Binstock.

A. Good afternoon.

Q. As the Vice-President of Business Affairs, are you generally familiar with the cost of a one-credit class that a DSU student would incur?

A. Yes.

Q. How much is that, approximately?

A. About $269.

Q. $269. And with that $269 cost there are also additional fees associated with that class; correct?

A. That would be with the fees.

Q. With the fees. And I'm just going to have
you to refer to Exhibit 74 in the binder in front of you.

A. I should comment that would be a resident. There are several different rates.

Q. Do you have Exhibit 74 in front of you? And it's marked as Bates 554 on the bottom right-hand corner.

A. Yes, it is.

Q. And I'll represent to you that this is a document that Scott Staudinger put together and if you could just briefly review that statement.

A. (Witness reviews document.)

Q. Do you believe that this is an accurate reflection of the fee associated with an individual student for a one-credit course at Dickinson State in the fall of 2010?

A. Again, fees have changed, but it appears to be fairly accurate.

Q. With what would have occurred in the fall of 2010?

A. Yes.

Q. Okay. And if you enroll in a class or you enrolled in a class in the fall of 2010, in addition to the tuition resident fee, you'd have an application fee of approximately $35, special course tuition fee of $50 and then all the other mandatory fees that are associated with a one-credit course; is that accurate?

A. Again, for the specific course that he has put this together for, it would be accurate to the
extent that the individual was a first-time student. And so there are several factors relative to an individual billing.

Q. Sure. And then now if you could just jump over to Exhibit 86. And it's a fold-out spreadsheet. I won't have you review in detail all of the information contained in this exhibit. Are you there?

A. 86, 0585.

Q. Correct. And I'll represent that this was a chart that Scott Staudinger put together for attendees of the three symposiums that were offered at Dickinson State in the fall of 2010, to include the energy, the TR and the Disney symposium.

To your knowledge, did the individuals that attended these three symposiums and that would be reflected even though the names are redacted on this chart, did these individuals ever pay the tuition fees to attend one of these three symposium?

A. If the fees were attached to the course, they would have either paid them and/or they would have been paid by the organization that was underwriting the delivery of the course.

Q. Do you have personal knowledge as to whether or not these fees were actually paid, then, by the individuals?

A. Which fees and column were you representing?

Q. Again, I'm just talking generally about all the fees. And we can jump back to that exhibit
on 74. Eighty-six just contained the listing of the students and it had a more detailed breakout, but if you want to jump back to 74 where it says the specific fees that were incurred for each of the attendees of that symposium.

A. Which page is that?

Q. Exhibit 74. Bates 554. To your knowledge, did the attendees at the three symposiums pay the fees that were reflected in Exhibit 74?

A. I'm not -- not specifically sure. If they attended it for credit or if they did not receive credit or under what circumstances they may have -- what circumstances they may have taken the course. They wouldn't necessarily be directly associated with what's on the exhibit on page -- or Exhibit 74.

Q. Let me rephrase the question. Did the attendees at any of these three symposiums pay the tuition fees and the associated mandatory fees that DSU students would pay?

A. I don't believe they paid -- and, again, I'm not totally sure on this, but at least some of the symposiums they did not pay the regular -- regular rate.

Q. Okay. Do you know why they did not pay that regular rate?

A. Again, I think the rationale behind the different rate structure was the basis upon which the symposiums and/or the activity were considered community service-type programs. In addition to that I think there was an effort in some cases to
identify the activity as developmental or institutional faculty and staff, so I think there were a number of reasons that fees associated with these activities do not represent the typical base for tuition and rates that are otherwise charged.

Q. But it's your office's responsibility to collect those fees if, in fact, they were incurred; correct?
A. If, in fact, they are placed on the fee billing system at a given rate, that is what we are obligated to try to collect.
Q. And who determines if they are to be placed on this system?
A. That's determined primarily by the -- any core offerings of our curriculum as it relates to programs, that is pretty much an automatic process in which Connect North Dakota places a fee on a given course. If there are special courses, such as symposiums, workshops, and so forth, that's usually determined through consultation of the director of the program, consultation with the guidelines provided with the revenue sources. For instance, if there's an energy grant associated with it, those types of things. But the dollar amount associated with those, if there's a dollar amount to be charged, would come back through the academic channels from the director through the registrar's office to the business office for special fee classification to be inserted on the fee billing system for the school.
Q. Okay, I think you've totally lost me on this one, so I'm going to try to boil it down a little bit more.

Who has the authority to waive a fee? If there is a fee that should be incurred, who has that authority? If you can just give me either a title or office. Which office or which individual can say we're not going to charge a fee on this particular symposium or this class?

A. The President ultimately would make -- would have that authority.

Q. Okay. So on these particular symposiums, was it your office that said we're not going to charge these individuals a fee to attend and the required mandatory fees that are generally charged for degree-credit earning students?

A. No, it was not our office. It was a process once again -- in most cases it was the Extended Learning office that would have sent the documentation down to the Registrar's office with a recommended fee. Sometimes it's a recording fee, rather than a fee associated with curriculum. So from that standpoint, it comes over from the Registrar's office to the Business Office and is placed on a fee billing for individuals on that basis.

Q. Now, can the Registrar's office unilaterally decide they are going to waive the
fees, or do they need the consent or the directive from the President's office?

A. I don't believe that -- I know the Registrar's office does not have that authority. The discussion usually takes place at the time that the symposiums or the programs were taking place and that would be the discussion between the director and President when this took place.

Q. You said between the director and the President?

A. Director of the event, whether it be the Theodore Roosevelt symposium or whether it be the director associated with the Strom Center as it related to the Disney program and things of that nature.

Q. In conjunction with the President's office?

A. That's the process it should have taken, yes.

Q. Okay. Thank you. In the fall of 2010 did Dr. McCallum ever personally direct you, as a Vice-President of the Business Office to ensure that those three symposiums that we're discussing today be academically and financially sound?

A. No, he didn't direct me to make sure that they were either academically or financially sound. Not specifically directed at me, no.

Q. Okay. Did you ever work with Marty Odermann-Gardner and Dr. Brudvig to ensure that those same three symposiums were academically and
financially sound?
A. There were discussions relative to the financial -- desired financial outcome of each one of the symposiums. They weren't designed to be moneymakers, but they were designed to provide a service and not to cost the institution any resources other than those that were identified available to support that activity within the community.

Q. But in waiving the fees, that necessarily cost the institution, because those weren't fees that, then, you were able to collect and apply towards other items that the University may generally apply one credit fees for; correct?
A. Well, that is correct from the standpoint of generating revenue, but at the same point in time, we do a lot of things for the purpose of development and community service in which we choose and have chosen in the past not to charge a rate or charge the traditional rate.

Q. Mr. Thomas touched briefly on the financial health of Dickinson State University in this last year and referenced a memorandum that you or your office put together; correct?
A. Yes.

Q. And are you able to contribute that financial position solely to Dr. McCallum's leadership?
A. No, I wouldn't say it could be contributed solely to Dr. McCallum's leadership. Certainly the
setting and the support and the decisionmaking processes in general are there. They need to be there from the President to the institution.

Q. Sure.

A. But it's the cooperation of everyone associated with the institution that makes that happen.

Q. Okay. In fact, did you ever have concerns with Dr. McCallum's level of spending for his personal or social issues?

A. I did have a couple discussions with him in regard to invoices that were brought to my attention, which, again, I requested an explanation on.

Q. And what were those expenditures?

A. As I recall, one of them was through the Food Service. It dealt with -- it was basically a dollar amount that indicated -- as I recall, indicated a number of guests that were associated with the event and it seemed, from my perspective, to be high. Since I deal with Food Service, I wanted an explanation for why the costs were either exorbitant as being expended from Food Service and/or, quite honestly, I wanted to understand why the request to the Food Service, on the other hand, would have been leading to a level of the bill that was presented.

Q. Can you just tell me briefly what that level was and what that was used for?

A. I think the bill that I recall having a
discussion with Dr. McCallum was one that he
expressed the same concerns over upon receiving it,
and it was -- I think it was $1,000-some and, again,
I'm trying to recall an exact dollar amount, but it
was of a magnitude which I felt was exorbitant when
first reviewed. I found out it was table coverings
that were incorporated in that and passed on to the

Food Service, so after reviewing, and so forth, it
became much more manageable and acceptable faction
of expenditure.

Q. Were those same linens over-nighted from
New York City? Is that part of the reason the
expenses were so high?
A. I believe they were brought in for an
event, but they were to be reused, so they were not
of the nature of being brought and sent back, but I
think that was part of the expenditure process that
made them as high as they were.

Q. Okay. Did you have similar concerns for
some caviar that was flown in for a dinner party?
A. I wasn't aware of that.

Q. Based on your experience and your
experience working with other presidents, is it a
true characterization that Dr. McCallum's expenses
in this regard, meaning the personal/social budget,
more than doubled that of what President Vickers had
expended?
A. I guess I never compared the two
expenditure patterns of the two in a dollar
perspective. They did have different styles. I
guess I have never chosen to second-guess the president of the institution as to what their expenditures have to be as it relates to what they need to accomplish. I think each president has a different philanthropic challenges, and so forth, and the opportunity to be successful and glean support for the institution and the system is a decision that they are going to have to make.

Q. And just briefly to tie one last thing out, did you ever direct your office or anyone working for you to waive the fees for these three symposiums?

A. No, I did not.

MS. DONARSKI: Thank you. That's all I have.

JUDGE FETCH: Thank you. Any redirect, counsel?

MR. THOMAS: Just one or two.

REDIRECT EXAMINATION

BY MR. THOMAS:

Q. Mr. Binstock, you said that you had a concern regarding one Food Services expense and that you spoke with Dr. McCallum about that expense?

A. (Nods.)

Q. Were you satisfied with the explanation that you received from Dr. McCallum?

A. I was. There was a period of time when
there was some management issues at the Food Service. I felt that the communication between what was ordered and what was presented, what was delivered and the fashion in which it was delivered, the way ordering took place, and so forth, contributed to costs being over and beyond what they should have been.

Q. Was that a Food Service issue or a President McCallum issue?
A. It was a Food Service issue from the standpoint of the order taking place in the fashion that resulted in higher cost.

Q. With regard to some of the events to which Ms. Andrews alluded, did any of these involve entertaining of benefactors of the University who contribute large sums of money to Dickinson State University, did you learn?
A. That was my understanding, yes.

Q. In fact, was the -- one of the events that Dr. McCallum hosted for either the largest or second largest benefactor of Dickinson State University currently, if you know?
A. I don't know.

Q. But it did involve entertaining people who donate large sums of money to Dickinson State University?
A. That and creating relationships which were important to Dickinson State University, yes.

Q. As somebody who has to deal with the inflows and outflows of money from Dickinson State
University, do you see that as an investment or as money well spent if it's to entertain somebody who is contributing a much larger sum to Dickinson State University, or do you have an opinion?

A. I guess from my standpoint, it's certainly a search for venture capital, which is important for the support of new initiatives. I think the management of and the decision making process as to whether or not it's an investment is, again, a call of the President. Certainly he has to evaluate the potential, but, yes, it's a -- can be perceived as an investment and I think it's a practice that without that type of initiative would result in less resources being available for the institution.

Q. And in the course of any of your review of these expenditures, did you ever find that any inappropriate expenditures were incurred by Dr. McCallum for his own personal benefit?

A. No, I did not.

MR. THOMAS: Thank you. That's all I have.

MS. ANDREWS: If I may just briefly follow up on two items?

JUDGE FETCH: Sure. I'm not sure how relevant any of this line of questioning is because I'm trying to look through the notice, the amended notice of intent to dismiss, and I don't see anything in here that would relate.

MS. ANDREWS: Your Honor, this is just building off of Mr. Thomas's line of questioning.
regarding financial stability of the institution.

JUDGE FETCH: I trust, counsel, you'll make me aware in your written briefs as to the relevance.

MS. ANDREWS: That's fine. Briefly then. It will take all of one minute.

RECROSS-EXAMINATION

BY MS. ANDREWS:

Q. Food Service would have been acting at the direction and control of the President and his wife; correct?

A. In regard to a specific event, that is correct.

Q. Okay. Thank you. And are you aware of a spreadsheet or worksheet that Mark Lowe put together and compiled that indicated that Dr. McCallum's expenses on an annual were approximately $65 to $67,000 where President Vickers was approximately $23,000 a year?

A. I don't recall the specifics on that.

There was one document that was put together which included travel expenses charged back to the President's office. If that's the document you're referring to, that included travel in support of development of international programs, that was certainly an additional charge associated with charge back to the President's office that Dr. Vickers did not incur.

MS. ANDREWS: Okay. That's all I have. Thank you.
MR. THOMAS: Nothing else, Your Honor.

EXAMINATION

BY JUDGE FETCH:

Q. Let me just ask you, Mr. Binstock, since you've been there through a number of presidents, I assume.

A. Yes, five.

Q. Okay. In comparing what the expenditures might be from one president to the next or comparing them all, there would be differences, and I think what your testimony is, is differences depend upon what the President's visions and views and goals, et cetera, are; is that fair to characterize it that way?

A. That's a fair assessment. It's all relative to the circumstances.

Q. Okay. So if an amount is more or less from president to president, would that necessarily be a positive or a negative thing either way, or do you know if one president has more expenditures than another?

A. My perspective, it doesn't make much difference one way or the other. The effectiveness of the initiative may or may not be realized, but it is an investment made at the discretion of the President to create additional resources for the institution and it varies by President.

Q. Okay. And so, you know, simply to look at a figure, does that tell you whether that's good or bad?
A. No, it does not.

Q. All right. And, in fact, if someone spends less, might that be because they lack vision or lack ambition?

A. It could be, yes.

JUDGE FETCH: Thank you. Anything further, Mr. Thomas?

MR. THOMAS: No, Your Honor.

JUDGE FETCH: Ms. Andrews?

MS. ANDREWS: No.

JUDGE FETCH: Thank you. You're excused.

You're free to go or stay, but if you leave the room and encounter other witnesses who may be coming to testify, you may not speak about your testimony or questions that were asked. Understand?


JUDGE FETCH: I think you have one more.

MR. THOMAS: Yes. And it will be a short amount of testimony from this witness. Diane Melbye is the witness.

JUDGE FETCH: All right. Good afternoon, Ms. Melbye. My name is Bonny Fetch. I'm the Administrative Law Judge conducting this hearing. Please, for the record, spell your first and last name.

THE WITNESS: First name, Diane, D-i-a-n-e. Last name, Melbye, M-e-l-b-y-e.

JUDGE FETCH: All right. Ms. Melbye, all witness testimony at this hearing is taken under oath and is subject to penalties for perjury. By
I am required to inform you what those are. Perjury in the State of North Dakota is a Class C Felony. It is punishable by a maximum fine of $5,000, maximum five years in prison, or both.

Please raise your right hand. Do you solemnly swear the testimony you're about to give shall be the truth under the pains and penalties of perjury?

THE WITNESS: I do.
JUDGE FETCH: Thank you, Mr. Thomas.
MR. THOMAS: Thank you.
DIANE MELBYE, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THOMAS:

Q. Ms. Melbye, you are not employed by Dickinson State University, correct?
A. Correct.
Q. What do you do for a living?
A. I'm an attorney.
Q. In private practice?
A. Correct.
Q. And how have you had occasion to become acquainted with Dr. McCallum?
A. I became acquainted with Dr. McCallum when he first interviewed at DSU.
Q. And did you have some involvement in that
process?

A. Very little. It was a supper meeting that we were called to and we had an opportunity to talk at that time.

Q. You were not specifically on the hiring committee, were you?

A. I was not.

Q. How about after Dr. McCallum became President at Dickinson State University, what's your relationship with him and his family been since that time?

A. I actually recruited his wife to be a member of Kiwanis and so I would pick her up every single Tuesday for our Kiwanis meetings. But I also have attended many functions at DSU, including those functions where Dr. McCallum was requested or required, I'm not certain which, to give a speech or an opening lecture.

Q. I understand that there was a tragedy at Dickinson State University that occurred shortly after President McCallum was hired and that you attended some events relating to that tragedy.

Could you tell the Hearing Officer about that?

A. Well, that event was a very bad tragedy for all of Dickinson State. Three softball, female softball players were out late at night stargazing and they were in an agricultural field and in the process of going towards the gate, they drove into a stock pond and all three of those students, as well as the dog that was with them, perished in that
water, drowned.

Q. When did that happen?
A. That was two years ago, I believe. It would have been almost exactly two years ago. It would be November of 2009.

Q. Okay. So approximately a year or year-and-a-half after President McCallum began his term?
A. Correct.

Q. You attended -- did you attend any of the memorials or events at which Dr. McCallum spoke or was present?
A. Yes.

Q. Okay. One of the issues that has been raised in these proceedings is Dr. McCallum's relationship both with students, faculty, staff and the community in Dickinson. And based on your attendance at that event and others where Dr. McCallum has been present, can you -- are you able to speak to what you have observed with regard to his relationship with those different segments of population?

A. I believe I am, as well as the Theodore Roosevelt symposium, yes, I believe I would be.

Q. Okay. What can you tell us in that regard?
A. I think he's highly respected. I think he has done a very fine job, especially with that incident -- especially with that incident and the other -- all of the other speeches that I have listened to. He commands respect. He does a very
fine job. He's honest. The integrity comes through. He is always looking out -- every incident that I've seen with him, he's been looking out for what's best for DSU in its totality. He doesn't play to any specific interest group, but he looks at what's in the best interests of Dickinson State University.

Q. You referenced the Teddy Roosevelt symposium. Have you been involved with Dr. McCallum with respect to either symposiums that have been offered or the Confucius Institute or any other programs here at DSU?

A. More particularly as a spectator than as an active policy maker. Just being a part of the audience and -- I guess being in the audience.

Q. Have you had occasion to watch President McCallum interact with staff and/or students at Dickinson State University?

A. Many times.

Q. You share the last name of a witness that recently testified. Is your husband employed at Dickinson State University?

A. He is.

Q. And have you had contact with Dr. McCallum in that context as well?

A. Correct.

Q. Are you able, based on those observations, to speak to President McCallum's leadership style and how he interacts with his subordinates like your husband and others at DSU?
A. Correct. I think he does so in a very respectful fashion. I've also -- we have been invited numerous occasions to the house when other community members have been present. I'm not sure if that's necessarily a fundraising portion or just getting to know the community, but he's always, in my opinion, been very well received by the community and the people he interacts with, be it student, faculty, or community members.

Q. Can you speak to his demeanor in terms of whether he's quick to anger or patient or --
A. Oh, very patient. Excuse me. I'm sorry. I cut you off.

Q. No. Go ahead.
A. Extremely patient. Extremely respectful. He listens to everything that is being said to him. I've not seen him ever be quick to anger or disrespectful of anybody, any student, faculty member, any person in the community.

Q. Ms. Melbye, mercifully, you have no information about enrollment issues at DSU, I take it; is that right?
A. Mercifully, I think that is correct, I do not.

Q. All right. In that event, we won't take you down that road.

MR. THOMAS: And, Your Honor, those are all the questions I have for Ms. Melbye.

THE WITNESS: Thank you.

JUDGE FETCH: Who is going to cross?
MS. DONARSKI: I will. I have no questions for Ms. Melbye, Judge.

JUDGE FETCH: Just one clarification. What is your husband's name?


JUDGE FETCH: Thank you. It was sort of a roundabout way the question was asked. I just wanted to be absolutely clear. Thank you. You are excused.

Is that all the witnesses?

MR. THOMAS: It is, Your Honor.

JUDGE FETCH: Okay. Ms. Donarski, you wanted to recall or have rebuttal witness?

MS. DONARSKI: I do, Your Honor, yes. I have two rebuttal witnesses.

JUDGE FETCH: We'll just take five minutes, come back so we can wrap this up.

(Recessed at 4:40 p.m., to 4:49 p.m., the same day.)

JUDGE FETCH: Okay. We're on the record. Ms. Donarski?

MS. DONARSKI: Yes.

JUDGE FETCH: Okay. You have some rebuttal witnesses?

MS. DONARSKI: I do. The University calls Dr. Richard Brauhn.
JUDGE FETCH: Good afternoon, Dr. Brauhn.

THE WITNESS: For the record, I'm Dr. Richard Brauhn and you spell the last name B-r-a-u-h-n. And I live at 3261 Lakeview Drive, in Dickinson, North Dakota.

JUDGE FETCH: Okay. And that is pronounced Brauhn?

THE WITNESS: Brauhn.

JUDGE FETCH: Okay. Dr. Brauhn, my name is Bonny Fetch. I'm the Administrative Law Judge conducting this hearing. All witness testimony at this hearing is taken under oath and is subject to penalties for perjury. By law I'm required to inform you of those penalties. Perjury is a Class C Felony in the State of North Dakota. It is punishable by a maximum fine of $5,000, a maximum five years in prison, or both.

Please raise your right hand.

Do you solemnly swear the testimony you're about to give shall be the truth under pains and penalties of perjury?

THE WITNESS: I do.

JUDGE FETCH: Thank you. Ms. Donarski.

MS. DONARSKI: Thank you.

RICHARD BRAUHN, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. DONARSKI:
Q. Dr. Brauhn, could you briefly describe your employment history?
A. I've been in higher education for 40 years and 30 years, over 30 years as a senior administrative officer; dean of instruction at Wabash Valley College in Illinois, Vice-President of Academic Affairs at Montmarte College, Chancellor of West Plains Campus at Missouri State University and 20 years at Dickinson State University. And at Dickinson State University, I served as Dean of the College of Arts and Sciences, Vice-President for Academic Affairs, interim president, and my last position was Director of Special Projects and Reports, and I retired on June 30th, 2011.

Q. Were you a member of the President’s cabinet in 2009?
A. Yes, I was a member of the President’s cabinet in 2009.

Q. What was your title at that time?
A. I was Vice-President for Academic Affairs.

Q. And how long did you hold that position?
A. Thirteen years.

Q. Did you attend a cabinet meeting with President McCallum in August 2009 where the enrollment was discussed?
A. Yes, I did. This was in --

Q. Would you describe the details of that meeting to Judge Fetch?
A. At cabinet meeting we discussed the prognosis for the fall enrollment and how it was
going to look and the President basically stood up at the table, at the end of the table and said, I will not be the president that presides over a declining enrollment at DSU. And then he went into an analogy of a football game, saying that achieving our fall enrollment, quota or numbers, was like being in the last two minutes of a football game, being down seven points and that he as coach would either replace players or bench players. And that was the discussion at that point in time and we all took that in.

After the meeting, he basically asked me to come into his office to discuss the enrollment a little bit further and I went into his office, which is right next to the conference room where we held the cabinet meetings, and we sat down and he asked me how the enrollment looked in my area here, and I was responsible for the extended campus. And I said that the extended campus with the numbers in Bismarck, which we have here, looked fairly good and with dual-credit looked pretty good and I was somewhat optimistic. And I said that we probably would pick up a few people at the TR symposium which would be held in the fall, which would do offer in part for credit, for people who want it.

He asked how many people we had registered there and I said, I don't know, maybe about 100 by now and he looked at me and he said, I want to have all those people enrolled as credit-bearing students for the enrollment head count. And I looked at him
and said, no, I could not do this. I said, basically, that, one, it was unethical and illegal, from what I thought, from my own professional opinion. Basically, because you don't enroll students in courses that they have no knowledge of being enrolled in and then given credit for the courses.

I also pointed out that this was deviation from our procedure, that we would have to go through applications, admissions, things of this nature, and

I said, I don't think you can count on anymore than four or five, maybe, at the most and those are people that want to have credit, et cetera. And then I pointed out that it would probably mess up our record in terms of data enrollment. He basically then responded, You need to think about this very strongly, especially if our numbers are low. And I again pointed out that, no, I would not do this and couldn't do this. And then also came back in effect saying that I don't think we needed to do this because our numbers are going to be sufficient, at least from what I could see.

Now, after that, when the investigation of the fall enrollment of 2010 came down and I was project director, I did discover that the President directly ordered the Extended Campus Director to enroll all of the symposium --

MR. THOMAS: Objection. Foundation, Your Honor.

THE WITNESS: -- attendees --
MR. THOMAS: Unless this person is doing the investigation, it sounds like he is making a supposition based on some hearsay statement, and I think we need to find out if that's what the basis of his testimony is.

JUDGE FETCH: Do you want to ask some questions?

MR. THOMAS: Sure. Thank you, Your Honor.

BY MR. THOMAS:

Q. Dr. Brauhn, you were about to testify as to what conclusions that you reached about President McCallum allegedly directing people to submit enrollment numbers. Do I have --

A. No, this is not conclusions. This was directly told to me by the director exactly and twice, on two occasions.

MR. THOMAS: Objection. Hearsay then.

Q. (MR. THOMAS CONTINUING) Who is that director?

A. Marty Odermann-Gardner.

MR. THOMAS: Same --

THE WITNESS: And that's why she quit.

She would not do this.

JUDGE FETCH: Hold on, please.

THE WITNESS: Sorry.

JUDGE FETCH: Wait for a question. This is not an opportunity for you to have a long narrative.
THE WITNESS: He asked me what --

JUDGE FETCH: Hold on.

MR. THOMAS: The objection is as to

hearsay, Your Honor, as to what Ms. Odermann-Gardner

said to this witness. We addressed this many times.

JUDGE FETCH: Sustained. Wait for a

question from counsel.

Q. (MS. DONARSKI CONTINUING) So in August of

2009 you had indicated that the symposium attendees

could not be counted as credit-degree students for

enrollment purposes to the President?

A. Right. I did do this. Now, we do have

some that request to have this and an opportunity

has been made available. Numbers have been small,

but not to the large degree that were discovered

later on in terms of everybody.

Q. And you said it was unethical. What was

unethical about that?

A. Well, I think it's tantamount to identity

theft. You don't enroll students in courses without

their knowledge and then basically use them for head

count purposes. We don't enroll students without

telling them, asking them if they want to be

enrolled. We have never done this for any course,

whether it be symposium credit or whatever. You

just don't do that, in my experience,

professionally.

Q. Isn't it done at the request of the
student versus the request of the University?

A. It's done at the request of the student
and not at the request of the University.

MS. DONARSKI: Thank you. I have nothing
further.

JUDGE FETCH: Mr. Thomas, any cross?

MR. THOMAS: Thank you.

CROSS-EXAMINATION

BY MR. THOMAS:

Q. Dr. Brauhn, what's your current position
at DSU?

A. I'm retired.

Q. Thank you. And when did you leave DSU?

A. June 30th, 2011.

Q. Okay. Had you previously been Vice-
President for Academic Affairs?

A. Yes, I was.

Q. And were you, at President McCallum's
direction, moved from that office to Director of
Special Projects?

A. We did so in terms of a joint agreement
between us to fade myself out for retirement, which

I was coming close to.

Q. Dr. Brauhn, could you please refer to page
561 of the packet of hearing exhibits that's before
you?

A. 561?

Q. Yes, sir.

A. Okay. Under five, dual-credit enrollment?

Q. Just a moment.
MS. DONARSKI: He's referring to Bates number, Dr. Brauhn. What exhibit is that?

JUDGE FETCH: It would be Exhibit 75 and then the Bates number is down in the right-hand corner.

THE WITNESS: Okay. Excuse me. Oh, Exhibit 75?

MR. THOMAS: Seventy-six, actually.

JUDGE FETCH: Thank you. Thank you, counsel.

THE WITNESS: Yeah, I have it. I think I have it; 558?

Q. (MR. THOMAS CONTINUING) 561.

A. Okay. 561, I've got it.

Q. Dr. Brauhn, this includes a letter that you authored to The Bismarck Tribune sometime in September of 2011 after President McCallum's departure; is that correct?

A. That's correct.

Q. And at the top of page 561 it's addressed "dear people" and then there's a paragraph and it's signed Dr. Rich Brauhn, and you authored that; is that correct?

A. Yes, I did.

Q. Is it fair to say, Dr. Brauhn, that this article that you submitted to The Bismarck Tribune was in part because your, quote, name was mentioned in the article entitled "the email trail" in which Dr. McCallum, the former president, made some rather
negative comments about myself*?

A. It was, which I think were unjustified.

Q. Right. And what you were referring to, I take it, Dr. Brauhn, was not statements that Dr. McCallum made to you, but statements that you read in the newspaper that you believe were attributable to Dr. McCallum; is that accurate?

A. I'm assuming that the newspaper printed what he said in the email.

Q. I'm just asking you if that was the basis for your conclusion, is what was in the newspaper article?

A. Yes. Yes.

Q. Thank you.

JUDGE FETCH: Exhibit 76 is not in the record.

MR. THOMAS: Thank you, Judge.

JUDGE FETCH: Hasn't been admitted.

MR. THOMAS: I'll lay a little more foundation and then offer the entire exhibit.

MS. DONARSKI: We have no objection.

There's no need to lay foundation.

MR. THOMAS: Thank you. We would offer 76 at this time.

JUDGE FETCH: Exhibit 76 is admitted.

Thank you.

Q. (MR. THOMAS CONTINUING) Next, Dr. Brauhn, could you refer to Exhibit 21, page 91?

A. Okay. 21, 91. Okay. I have it right here.
Q. This was an email that you authored to Mr. Hillman?

A. Yes.

Q. Excuse me. Dr. Hillman, I believe, on February 7, 2011; is that correct?

A. Yes.

MR. THOMAS: I apologize, Judge, is 21 in the record yet?

JUDGE FETCH: Yes, it is.

MR. THOMAS: Thank you.

Q. (MR. THOMAS CONTINUING) Dr. Brauhn, can you turn to or look at the fourth paragraph of that email to Mr. Hillman?

A. Right.

Q. Let me just ask you this: This document was sent to Mike Hillman. In what context was this sent to Dr. Hillman, do you recall?

A. The context was basically that there were questions, phone calls coming to Dr. Hillman about why people were receiving the NSSE packet as a survey when they had not attended any courses at DSU. And, also, Scott Staudinger had received calls, he's the institutional researcher, from people in the community of Dickinson why they were receiving packets as well. In this situation here, Dr. Hillman visited with me and asked if I could do some research in terms of determining what the situation might be. And I said I would do that and I responded with this email as to what had been found out here in terms of these particular courses.
and those enrollments, at least at that point in
time.

Q. And at this point in your email exchanges,
Dr. McCallum was not included in the process; is
that fair to say?
A. That's right.
Q. And the reason for that, if you know?
A. Because Dr. Hillman requested that I not
tell him.

MR. THOMAS: Okay. Thank you. Those are
all the questions that I have, Your Honor.
JUDGE FETCH: Thank you. Any redirect,
Ms. Donarski?

REDIRECT EXAMINATION

BY MS. DONARSKI:
Q. Do you know why Dr. Hillman had requested
that President McCallum not be included in the
e-mails?
A. Because he had received calls from various
people that they were not students and they
shouldn't be receiving the packet and I think there
were other concerns that faculty and staff had
voiced to either Dr. Hillman or the Board office and
there might have been some investigation going on at
that point in time. I'm not sure.

MS. DONARSKI: Thank you. I have nothing
further.
JUDGE FETCH: Anything further, Mr. Thomas?

MR. THOMAS: No, Your Honor.

JUDGE FETCH: Thank you. That's all the questions. You're excused.

THE WITNESS: Thank you, Judge.

JUDGE FETCH: All right. And did you have another rebuttal witness?

MS. DONARSKI: I do, Your Honor. We call Chancellor Goetz.

JUDGE FETCH: All right. Chancellor Goetz, you previously testified.

THE WITNESS: Yes.

JUDGE FETCH: And I will remind you, you're still under oath.

THE WITNESS: Yes, I understand.

JUDGE FETCH: Thank you. Ms. Donarski.

MS. DONARSKI: Thank you.

WILLIAM GOETZ,

having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. DONARSKI:

Q. Chancellor Goetz, was your response to President McCallum and the enrollment issue at DSU,

was that consistent with your response to concerns at other universities?

A. Yes. Depending on the issue at hand, the response and consideration given to the issue certainly was equivalent in other cases, yes.
Q. Dr. McCallum testified that the President of Williston State College was allowed to fulfill his term. Is that true?
A. It is not.
Q. Okay. What happened with that?
A. The situation was where I had discussions with the President at Williston State College. There were circumstances there that did arise to requesting his resignation and every consideration was given at that time upon the circumstances being considered. That resignation in itself determined the circumstances of resignation.
Q. Okay. So you had asked for his resignation?
A. Yes.
Q. What do you mean the resignation, then, determined the circumstances?
A. The circumstances being that discussions would continue relative to any severance, any concerns about vacation time, sick leave, and so forth, that would enter into the consideration.
Q. Was severance paid to the President of Williston State College?
A. It was not.
Q. Your meeting on August 3, 2011 with Dr. McCallum and the three options that were given, what was Dr. McCallum to do on August 4th, the next day after that meeting?
A. He was to return a call to me relative to the options that I did give him and I confirmed that...
on two different -- two different times the duration
of that meeting, that, in fact, I expected a call
back, communication back from him the following day.

Q. Was your demand that he give you a
resignation on August 4?

A. The options that he was given were
resignation, outright Board action that would
terminate employment or an intent to dismiss.

Q. And what was he to do on August 4?

A. He was to let me know whether or not he
would offer what his choice was in terms of offering
a resignation or going through the two other
alternatives.

Q. If he contacted you on August 4, what
would have happened next?

A. If the contact had been made, obviously,
if his choice would have been resignation, it would
have been -- my consideration and discussion with
him would have been no different than it had been
with other personnel issues that I've had with
presidents, and that would be discussion of things
like owed vacation time, vacation considerations,
which would be due him. Obviously, sick leave
factors, of which he would have been compensated
for. And then, obviously, there would have possibly
been some discussion of consideration relative to
time frame that would have been given and arrived at
relative to continued employment, at least for a
short period of time.

Q. Now, Dr. McCallum testified that there was
discussion about when he had to exit the President's house and you had indicated he would have to do that by August 15th. Do you agree that with?

MR. THOMAS: Objection. That's a misstatement of the testimony.

Q. (MS. DONARSKI CONTINUING) Was there any --

JUDGE FETCH: Just a moment. I don't recall the testimony, counsel.

MR. THOMAS: I appreciate that, Judge, and we'll let the record reflect. My recollection of the testimony was that was not what was said. But objection.

JUDGE FETCH: The record will speak for itself when we go back and look at it. For now I'll let Ms. Donarski proceed.

Q. (MS. DONARSKI CONTINUING) Was there discussion on August 3rd about the President remaining or exiting the President's home on DSU campus?

A. The recall I have is that certainly all factors relative to his presidency, including sick leave, vacation time, residency would all be given due consideration.

Q. What do you mean by "given due conversation"?

A. Well, Judge, I think when you are dealing with a personnel issue like this, I was very sensitive to what was reasonable or what would be reasonable in terms of continued residence.
residence use by the President. I certainly was not

going to take a position where he would be out upon

an agreement of resignation, you know, the next week

or even the next couple of weeks. That certainly is

not reasonable in terms of expectations. So,

certainly, that would have been open for discussion

as well.

Q. Did you threaten to call the news media if

Dr. McCallum did not submit his resignation?

A. Absolutely not.

Q. Did you release any information to the

press?

A. I did not.

Q. Did you email the notice of dismissal to

DSU list serve?

A. I did not.

Q. I'm showing you what has an already been

marked and received into evidence as Exhibit GG.

That's the document where it's an email indicating

that there's an attachment sent to list serve --

A. Yes.

Q. -- correct?

A. That's correct.

Q. Okay. And the date of that email is what?

A. The date of the email from my office was

Friday, August the 5th.

Q. Okay. And the email says what?

A. The email indicates from my administrative

assistant, "Chancellor Goetz has asked that I share

the email that was distributed on" -- is that --
Q. Yes.
A. "On the DSU campus this afternoon."
Q. And what was shared about the campus?
A. At the point that I felt communication at this point was -- communication was absolutely necessary from me to the entire campus.
Q. And why is that?
A. I felt that, obviously, when a decision like this is made that their needs to be a calming effect, there needed to be a statement made relative to continued leadership and management of the campus. I gave that assurance in that email. It was one of, I felt, just positive communication that was necessary in light of the personnel action that had been taken.
Q. Okay. And what personnel action had been taken?
A. At this point relative to the August 5th date would have been the dismissal, the intent to dismiss.
Q. Okay. And at this point in time you had made the decision on issuing the intent to dismiss based on what?
A. Based upon the fact that number one, that was the option that I had left that I felt needed to be taken and that, of course, was based upon my previous testimony relative to the letter of intent to dismiss and it's content.
Q. I'm handing you what I've marked as Exhibit 91. Can you identify that document for the Judge?
A. This would be, Judge, the communication that was sent under the cover, as so indicated. A message, then, from myself to the campus and you have the attached message then to all Dickinson State University personnel.
Q. Exhibit 91, then, is the correct attachment that was sent to DSU list serve campus on August 5, 2011?
A. Correct.
Q. Did you attach to an email, a list serve email, the notice of intent and have it dispersed to everybody on campus?
A. Absolutely not.
MS. DONARSKI: We offer Exhibit 91.
MR. THOMAS: No objection, Your Honor.
JUDGE FETCH: Thank you. Exhibit 91 is admitted.
Q. (MS. DONARSKI CONTINUING) When was President McCallum's access to his email, his DSU email discontinued or terminated?
A. I had held a regular staff meeting of which, obviously, the agenda item was the Dickinson State University matter and it is -- the information that I have is that it was the 8th of August that the discontinuation of his email access took place.
Q. And that would have been the following Monday?
A. Correct.

Q. The notice of intent was emailed to President McCallum when?

A. That would have been August the 5th, I believe. I'd have to check.

Q. August 5th?

A. Fifth. I'd have to check my dates, whatever exhibit that is.

Q. Are you looking for your timeline?

A. Yes.

Q. Your timeline is Exhibit 44.

A. Exhibit 44 is not in here.

JUDGE FETCH: Exhibit 44?

MS. DONARSKI: Sorry. Here you go.

Exhibit 44.

Q. (MS. DONARSKI CONTINUING) So the question is, when was the notice of intent emailed to Dr. McCallum?

A. It would have been emailed the day that he was to get back to me, late afternoon August, the 5th.

Q. And he was actually to get back to you August 4th?

A. Correct.

Q. Okay. So it was mailed a day later?

A. That is correct.

Q. Emailed, excuse me. Okay. Was increasing enrollment an expectation of a North Dakota University System President?

A. There was no expectation of a focus upon
enrollment growth at any of the institutions. That is very well reflected in our strategic plan as to the expectations of current enrollment dealing with retention, affordability. It was certainly not in any way ever discussed in a cabinet meeting that we need to get out -- we need to get out and enhance enrollment and enact requirements upon your staff to -- to set this as a priority. This was a priority, a very clear priority of the President and the President himself.

Q. Was his priority and approach to enrollment similar to what the other North Dakota University System institution presidents may have done?

A. Not that I'm -- certainly not that I'm aware of. Presidents of each of the campuses have their own strategic plan relative to dealing with enrollment and ways in which they recruit students. Again, the evidence that has been brought forward in this case was one that this was -- was very, very high, if not the number one priority of the President, and the directives that were given. Certainly, the profile here is much different than I have seen at the other campuses.

Q. When you received President McCallum's response dated February 25, 2011, to the questions that you had posed to him regarding the enrollment issue, what did you do with his response?

A. Well, certainly, I read it. I read it several times. Based upon the response, based upon
information I had relative to conversations I had, of course, it was very clear to me that continued work needed to be done and investigation needed to be done to pursue this issue and to determine what was taking place or what did take place. Mr. Bill Eggert was hired February the 15th -- or I'm sorry -- he began duties on February 15th and so we had in place for the first time an individual who could address internal audit and risk assessment.

I then asked -- I asked Dr. Hillman to conduct a survey of the other campuses to determine enrollment reporting practices. It was shortly after that, again, as information was coming to me, that continued investigation needed to be made and that is when I directed Dr. Mike Hillman or Vice Chancellor Hillman and Mr. Bill Eggert to pursue a process of interviews and carry on an investigation at the campus of Dickinson State.

Q. Why didn't you follow up with President McCallum?

A. I really didn't see any need to based upon the information that I had and that was coming forward. The one thing that I was very sensitive to was the welfare of employees and the opportunity for Dr. Hillman and Mr. Eggert to conduct without outside influence a clear, objective investigation and, certainly, my assumption is when you have yourself surrounded with good people, as I felt -- as I feel I do and at that time did, I would certainly conclude that that was to be the same kind
of situation that Dr. McCallum had, and that, in fact, any investigation, he would be made aware of.

In fact, Dr. Hillman or may have been Mr. Eggert did make contact with the campus that they would be out pursuing interviews and conducting first steps in investigation.

MS. DONARSKI: Thank you. I have no further questions.

JUDGE FETCH: Mr. Thomas.

MR. THOMAS: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. THOMAS:

Q. Chancellor Goetz, you've used the word "sensitive" a couple different times during your rebuttal testimony here. You honestly believe the manner in which you handled the notice of intent to terminate Dr. McCallum was handled in a sensitive manner by you? Yes or no?

A. Yes.

Q. Now, you talked about how you believe that Dr. McCallum was handled -- his situation was handled in a manner no different or at least similar to how the President of Williston State College was handled. Do you recall that testimony?

A. Yes, I do.

Q. Now, let me just ask you, did you give the President of that institution 19 hours in which to
submit his resignation before proceeding with a notice of intent to terminate in his case? Yes or no?

A. No.

Q. You gave him more time?

A. I gave him --

Q. Yes or no? More time or less time?

A. I'd have to -- to be honest and give you a definitive answer, I'd have to check.

Q. Thank you. Let me ask it this way: I understand the President of Williston State College finished out the year; true?

A. Finished the year or finished his contract?

Q. Finished the year. Well, you tell me how much extra time from the date of your conversation with him until his employment ended, how much additional time did he spend as President?

A. I can't tell you that.

Q. Was it a week, a month, a year?

A. Could have been a month.

Q. Okay. Can you tell the Hearing Officer whether or not on the day that you asked the President of Williston State College for his resignation, if an internal review was being released to the press that day that, in part, accused the President of Williston State College of theft and fraud?

A. No.

Q. And isn't that what happened on the day
that you asked President McCallum for his resignation, was that an article was printed in The Dickinson Press on that very day that you asked him for his resignation which quoted the language from the internal review audit that used pejorative language like theft and fraud; true?

A. The language in the press was one that was there because the press was very close to the campus.

Q. And it was because the internal review document was released and made public the very day that Dr. McCallum was asked for his resignation; true?

A. I can't answer that.

Q. Well, let's look at the date of the review. You recall the testimony, don't you, Chancellor Goetz? Exhibit 17, the document at page 54 is dated August 1, but Mr. Eggert testified that it wasn't delivered until August 2; correct?

A. Correct.

Q. And it was -- the contents of it were released publicly, either on August 2 or August 3; correct?

A. That may well be.

Q. And that was the date that you met with President McCallum and informed him that if he didn't resign the next day, that you would be seeking his termination; true?

A. True.

Q. Is that what happened with the President
of Williston State College?

A. Different circumstances.

Q. Well, you said they were handled similarly. They weren't, were they?

A. Well, certainly I wasn't dealing with a fraud or potential fraud issue and the breaking of federal and state law.

Q. Isn't it true, Chancellor Goetz, that you knew that this internal review report was soon to be released because you had the draft copy of it as early as June 21st; true?

A. Right.

Q. And you could have met with Chancellor -- or with President McCallum weeks before this document was released and discussed with him the potential terms of his resignation under these circumstances? Couldn't you have done that?

A. Judge, the circumstances are different.

When you are faced with issues as was brought forth in the internal report, internal audit report, and you have a situation of employee input, again, I'll use the word "sensitive." I was sensitive to the staff, the administration on campus. You have heard testimony to that effect at -- relative to the concerns that staff had. I, as Chancellor, on behalf of The Board of Higher Education, had to take steps that were sensitive to the concerns of those people who were directly involved in the work relative to this issue.

Q. Do you believe it was sensitive to
Dr. McCallum to present him with a demand for his resignation on the very day that the internal review document was being released to the press?

A. The document on that day was made public.

I gave Dr. McCallum every opportunity to -- I gave him a separate office to spend whatever time he felt necessary to read the report and, in turn, come back and we would discuss it.

Q. And had he resigned the following day as you directed him to, it would have been on the day following the issuance of the report which contains pejorative language such as theft and fraud; isn't that true?

A. That is right.

Q. And you believe that's sensitive?

A. Well, it depends on where you draw the line on being sensitive.

Q. All right.

A. In my charge relative to the Board of Higher Education, the concerns of the welfare of the institution as well as the system, I weighed all of that in the decisionmaking process I made.

MR. THOMAS: That's all I have, Your Honor.

JUDGE FETCH: Any redirect?

MS. DONARSKI: I do.

DIRECT EXAMINATION

BY MS. DONARSKI:

Q. Isn't it true that the internal review report was released on August 2nd or 3rd because the
press had asked for that?
A. Yes.
Q. And as a state entity you are obligated by law to produce it?
A. Judge, that's a very good point. This then was a draft. It was a part of our open records law that we must adhere to. There were requests by the press that as soon as it become public, they wanted it and we had to share it.
Q. It became public as soon as it was final; correct?
A. That's correct.
Q. So it wasn't you voluntarily releasing it, it was complying with an open records request?
A. With the law, as well as the requests.
Q. Williston State College, that was not an enrollment issue?
A. No, it was not.
Q. And it was not a policy violation?
A. No, it was not.
MS. DONARSKI: Thank you. I have nothing further.
MR. THOMAS: Just a couple.
JUDGE FETCH: Go ahead.
RE CROSS-EXAMINATION
BY MR. THOMAS:
Q. Chancellor Goetz, you knew it had to be released to the press on the day that it became final, didn't you?
A. Yes.
Q. And you knew that that was the very day that you were meeting with President McCallum? Yes?
A. That's correct.
Q. And you knew that that report had been in the works for literally months prior to it being made final on August 2; correct?
A. I can't -- the schedule is on the exhibit.
Q. All right. And so if the schedule says that the first draft was prepared on June 21st and you receive a copy of it then, you wouldn't dispute that; true?
A. True.
Q. And you would agree that you had no conversations with President McCallum between June 21 and the date of the release of this internal review document with respect to concerns that you had about Dr. McCallum's continued employment; true?
A. That is correct.

MR. THOMAS: Nothing further.

JUDGE FETCH: Ms. Donarski?

MS. DONARSKI: Nothing further.

JUDGE FETCH: Thank you, Chancellor Goetz. You're excused. Any other rebuttal witnesses?

MS. DONARSKI: No further witnesses, Your Honor.

MR. THOMAS: Judge, there was a stipulation that we can address whenever you would like.
JUDGE FETCH: I would like you to address that at this time, counsel. Mr. Seaworth and Mr. Thomas, I believe.

MR. SEAWORTH: And, actually, Judge Fetch, there would be two matters, I guess in the way of evidence before that is closed. One would be the stipulation and the second is that you asked for the NSSE contract.

JUDGE FETCH: Yes, I did.

MR. SEAWORTH: And I have that. I have that and I guess I'm wondering if just a little bit of explanation would be helpful as to what I have here, but perhaps we should go with the stipulation first.

JUDGE FETCH: Okay.

MR. THOMAS: Thank you, Your Honor. With regard to the stipulation, Mr. Seaworth has requested that we stipulate to some facts regarding communications that occurred beginning on Friday, August 5 of 2011. The stipulation, as I understand it, and Mr. Seaworth can correct me if I've misstated it, is that on Friday of that week, I left a voice mail on -- at Mr. Seaworth's office. He was not available when I contacted him. He says it was mid to late Friday morning. I have no reason to dispute that. And that I left a message indicating I wanted to talk about DSU President McCallum. Understand, Judge, at this point I had not met Dr. McCallum. I had not seen the notice of intent to terminate. I had not been retained by
President McCallum, but I was aware generally of some directive that President McCallum respond to DSU late that week. Mr. Seaworth returned the call to my office early afternoon on that Friday. I was gone for the day. And Mr. Seaworth and I did not communicate again until he contacted my office again later Friday afternoon. I was still gone for the weekend. And our next communication was Monday of the following week when, again, Mr. Seaworth and I were able to speak in person for the first time, I think, regarding this matter.

There is an additional point that I think Mr. Seaworth will agree to and that is that when I was unable to reach Mr. Seaworth on Friday morning, I initiated a separate phone call to Richie Smith, who is also a lawyer and also sits on the State Board of Higher Ed, and I was able to speak directly with Mr. Smith on Friday and indicate that I was meeting with Dr. McCallum regarding this employment issue. The basis for doing that was the fact that as an attorney involving a matter that could involve litigation, I thought it appropriate to speak with legal counsel and that's why I picked Mr. Seaworth and in his absence, Mr. Smith. That was the extent of the communication that occurred on Friday.

JUDGE FETCH: Mr. Seaworth, do you want to add something to that?

MR. SEAWORTH: Judge Fetch, I would say I agree with that summary. I would add only that Mr. Smith did call me, I believe it was Friday
afternoon, and I don't recall when, but he called me, if not Friday, shortly after, to inform me that Mr. Thomas had called him and he reported to me that they had a very brief conversation and that he had informed Mr. Thomas that he couldn't talk about the matter so he called to report that to me, and added that he knew Mr. Thomas very well and he was an excellent attorney and a really good guy.

JUDGE FETCH: Thank you. I'm sure Mr. Thomas thanks you.

MR. THOMAS: I wouldn't object to that.

JUDGE FETCH: Okay. Thank you, counsel, for the stipulation. All right. As far as the NSSE report?

MR. SEAWORTH: The NSSE report.

JUDGE FETCH: Or contract. Contract.

MR. SEAWORTH: Yeah. Judge Fetch, you know, it probably requires just a brief explanation and I could do that if the parties agree. I can stipulate to that or Dr. Hillman could testify if you want to him to do that.

JUDGE FETCH: Let me ask, is there going to be any kind of objection as to the admission of this document?

MR. THOMAS: No, Judge. My suggestion would be we just give it an exhibit number and stipulate to its receipt and I think that's all we need.

MS. DONARSKI: That's acceptable.

JUDGE FETCH: Do you agree, Ms. Donarski?
MS. DONARSKI: Yes.

MR. SEAWORTH: Actually there are three, three separate documents.

JUDGE FETCH: Why don't we label those and they're admitted by stipulation. And do you need to give some background, Mr. Seaworth?

MR. SEAWORTH: Perhaps I could just describe each of the three documents. Exhibit 92 is what is titled "Institutional Participation Agreement," and it appears to be a summary of different types of agreements that colleges and universities can enter into with Indiana University.

Exhibit 93 is titled the "NSSE Consortium/System Data Sharing Authorization," and that appears to be a document that is signed by the institution representative authorizing release of NSSE survey information.

And then Exhibit 93 --

JUDGE FETCH: 94.

MR. SEAWORTH: Excuse me. 94 is an emailed copy of 2011 enrollment confirmation for the North Dakota NSSE, and that document -- or excuse me. It was 2010. And that document then has an -- I don't know if it was an attachment or just subsequent pages that has the terms of the participation agreement. So those are the three documents from NSSE. And, again, I think there's testimony that NSSE is an acronym for the National Survey of Student Engagement. That survey is conducted by Indiana University, so that the
agreement is between the participating colleges and universities and Indiana University, as I understand it, whereby Indiana University contacts students based on a student file that is submitted to Indiana University, contacts selected students and then does a survey of those students. So, hopefully, that explains these exhibits.

JUDGE FETCH: I appreciate it. Thank you.

All right. So we have Exhibits 92, 93 and 94 admitted.

Any other evidentiary matters, counsel?

MS. DONARSKI: I have nothing further.

MR. THOMAS: No, Your Honor.

JUDGE FETCH: Thank you. All right.

Mr. Seaworth has indicated that the transcript of this proceeding will be made available by North Dakota University System or State Board of Higher Education?

MR. SEAWORTH: Yes.

JUDGE FETCH: Thank you, Mr. Seaworth. And I have spoken with counsel about closing arguments. Counsel will submit written closing arguments not to exceed 15 pages, and proposed findings of fact, conclusions of law, which are due November 23rd. Counsel, you may electronically file those, but also follow up by sending a hard copy to me at my office. Also, please attach copies of any
case law cited which are not North Dakota cases.
You do not need to attach North Dakota cases.

After receiving the transcript and the
written closings and proposed findings from counsel,
I will consider the record as a whole. I will
consider the documentary evidence that has been
admitted and, yes, counsel, I do read them. And I
will consider the witness testimony, and I will
thereafter make recommended findings of fact,
conclusions of law and a recommended decision for
consideration of the State Board of Higher
Education. My decision will be issued by
December 9th.

Counsel, are there any questions, or is
there anything else before I close the record?
MS. DONARSKI: Nothing further.
MR. THOMAS: Not from Dr. McCallum, no,
Your Honor.

JUDGE FETCH: Thank you. That will
conclude the hearing in this matter. For the
record, the time is 5:40 p.m., Central Time, on
October 26, 2011. This hearing is closed. Thank
you.

(Concluded at 5:40 p.m., Wednesday,
October 25, 2011.)
DO HEREBY CERTIFY that I recorded in shorthand the foregoing proceedings had and made of record at the time and place hereinbefore indicated.

I DO HEREBY FURTHER CERTIFY that the foregoing typewritten pages contain an accurate transcript of my shorthand notes then and there taken.

Dated at Bismarck, North Dakota, this 21st day of November, 2011.

Linda L. Gingery
Registered Professional Reporter