

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:
COLUMBIA UNIVERSITY,
Employer,
And
GRADUATE WORKERS OF
COLUMBIA-GWC, UAW,
Petitioner.

Case No. 02-RC-143012

The above-entitled matter came on for hearing pursuant to Notice, before GREG DAVIS, Hearing Officer, at the National Labor Relations Board, Region 2, 26 Federal Plaza, New York, New York, 10278, in Room 3811, on Thursday, May 21, 2015, at 9:30 a.m.

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	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>	<u>VOIR DIRE</u>
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5	Dorothea	851	866	880	--	--
6	von Muecke					
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8	Longxi Zhao	883	911	926	--	892
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11	Soulaymane	932	935	--	--	--
12	Kachani					
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	<u>EXHIBITS</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
1		<u>E X H I B I T S</u>	
2			
3	JOINT		
4	J-11	952	952
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14	PETITIONER'S		
15	P-20 (amended)	898	898
16	P-52	878	(not offered)
17	P-53	885	886
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26			

1 (Pause off the record.)

2 HEARING OFFICER DAVIS: Okay, let's go back on the record.

3 THE WITNESS: I received a state exam in German and
4 English, in Germany, from the University of Manheim. And I
5 received a PhD in 1988 from Stanford University in Comparative
6 Literature.

7 BY MR. PLUM:

8 Q When did you start teaching at Columbia?

9 A 1988.

10 Q And you've been there ever since?

11 A Yes.

12 Q What's your current position at Columbia?

13 A I am professor of Germanic languages and literatures, and
14 currently I am chair of the department.

15 Q Would you give us a general description of the department
16 of Germanic languages and literature?

17 A It's a department that houses various languages. It
18 houses -- as language, it houses German, Yiddish, Dutch,
19 Swedish, and Finnish. Its mission is undergraduate training
20 and graduate training and research. The undergraduate training
21 consists in the exposure to these languages and cultures from
22 the beginning in a full enriched curriculum. And in the
23 graduate program, it is also exposure to -- we only have a
24 graduate program in German and in Yiddish, and there it is
25 teaching our graduate students to a broad range of literary,

1 cultural knowledge, and to teach them how to teach that
2 engagement, index engagement with German or Yiddish literature
3 and culture through engagement with the language and also
4 teaching that. So they are trained in their research abilities
5 and in their abilities as teachers, the graduate students in
6 Yiddish and in German.

7 Q About how many faculty members are there in the
8 department?

9 A There are eight professorial faculty members, seven in
10 German, one professorial faculty member in Yiddish. And there
11 are two, now three senior lecturers, one in Dutch, two in
12 German; a junior lecturer in Yiddish. And currently we have a
13 vacant position in Swedish. That's just the senior lecture.

14 Q What graduate degrees are offered? What kind of graduate
15 degree programs are offered in the department?

16 A The graduate degree programs are in German and in Yiddish,
17 and they are PhDs. In principle, there on the books, we also
18 offer an MA-only. But we have very rarely students who apply
19 for that and who would go for that degree.

20 Q So for the students who are in the PhD program, do they
21 progress through the MA, M.Phil, and then PhD?

22 A Yes.

23 Q Could you give us a general description of how that looks
24 sort of starting with the first year and taking us through the
25 program?

1 A Generally, the first phase, the MA phase, comprises
2 exposure to a very broad range of German literary and cultural
3 literature -- literary and cultural history, course work and
4 reading from suggested reading lists, and it also involves
5 first introduction to teaching, teaching methodology, and the
6 pedagogy workshop. And that phase concludes at the -- usually,
7 after three semesters with an MA exam, which is a written exam
8 and an oral exam. So that's the MA phase. That generally
9 lasts three or four semesters.

10 And then the second phase, the M.Phil phase, our graduate
11 students continue with taking classes and with developing their
12 teaching skills. And they narrow in on the area where they
13 will write their dissertation. They learn to articulate the
14 theoretical concerns that will inform their research. They
15 develop a specialization. And that phase, that usually takes
16 about four semesters. It varies. Culminates with the M.Phil
17 exam, which is a take-home written exam and an oral examination
18 based on that exam.

19 And then three months after that M.Phil exam, our students
20 are asked to show and defend a dissertation prospectus, which
21 defines more clearly, more narrowly where and how they will
22 write their dissertation.

23 Q And how --

24 A And then in the last stage they will just write their
25 dissertation, sometimes go abroad, do research, often.

1 Q How long does it typically take for the students to
2 complete their full PhD?

3 A An average six, sometimes seven years.

4 Q Once they complete the program and have their degrees,
5 what types of careers do they typically go into?

6 A Many hope and so far our program has been very successful,
7 hope to find teaching positions at four-year colleges. Some
8 also go and teach at private schools. We have two or three
9 recent PhDs that teach in private boarding schools, in the
10 northwest of the U.S. Occasionally, our PhDs go into research
11 administration. That's a rare area. It has happened that a
12 former PhD of ours went into journalism. But, generally, our
13 students go into four-year colleges, universities for teaching
14 in the United States, but also abroad. We have one who is
15 teaching in the Netherlands, one who is -- several who found
16 professorships in Germany.

17 Q As part of their education, do your PhD students have
18 instructional appointments while they're going through their --
19 you mentioned that they do some teaching in the first and
20 second -- or in the second or third years.

21 A It's part of their education that they are involved. They
22 learn how to teach German language and culture through the
23 elementary. Generally, they begin with elementary German or,
24 in the Yiddish case, with elementary Yiddish. And that happens
25 through accompanying pedagogy instruction and supervision.

1 Q So when do the PhD students typically get an instructional
2 appointment?

3 A Typically, they get to teach in their second year.

4 Q How long do they typically teach? How many semesters?

5 A Three out of the five years that they are fully funded we
6 expect them to teach.

7 Q What courses do they teach?

8 A It varies. It varies also according to the linguistic
9 capacities and background of our graduate students. But,
10 again, typically, ideally, what we aim at, because that gives
11 them the fullest range of teaching experience and training, the
12 model would be elementary German, intermediate German, and then
13 a more advanced class that would involve, for instance, a
14 conversation class or German for reading knowledge class. In
15 these classes, the students are increasingly involved in
16 bringing into the classroom original materials.

17 Q So how does it work? Like when the student first starts
18 teaching, what role do they play? What are they actually
19 doing?

20 A They have their own class. And they are the responsible
21 instructor for the class. So, in that sense, they get the
22 chance to teach a real class. But before they are exposed to
23 that, they will have an introductory workshop before the
24 beginning of classes and they will have visited classes, and
25 they will also be visited by the director of other language

1 program. And they will prepare a lesson plan, like everybody
2 who teaches that kind of class. And the way the class -- these
3 classes work is very much like our also small, than higher
4 level classes work. They are small classes. They are
5 seminars. And it's not that the teacher imparts the knowledge,
6 talk down to the students, but the language, the knowledge, the
7 engagement with the culture, the literature is generated from
8 the students. It's that what our students do and what they
9 learn is to, at various levels, engage with the products of
10 Yiddish, or German literary cultural history in the original,
11 in an engaged active way.

12 So our students do that and we, as teachers, do that; and
13 our graduate student teachers also learn to engage their
14 students in that way. So the main distinction would be, say, a
15 Rosetta Stone or Berlitz School approach where the point is to
16 teach students to use the German language so that they can buy
17 a bus ticket or get train information. And our aim is a much
18 deeper, richer, fuller active engagement with the original
19 language through reading, writing, speaking, and listening
20 skills.

21 Q You said that before the graduate students start teaching
22 that they're in an orientation program. Could you describe
23 that for us?

24 A That orientation, sometimes one day, sometimes two days,
25 it varies according who does it, according to various student

1 populations. The idea of it is to get the new teachers the
2 experience what it means to learn foreign language. So often
3 in these orientations, we also involve languages that most
4 participants will have never been exposed to. We used to
5 involve our senior Finnish linguist lecturer to just start the
6 workshop with the Finnish lesson to give everybody the
7 experience of being exposed to a foreign language. And then to
8 reflect on what it means to engage with the foreign language
9 and culture.

10 And then there are hands-on exercises, observations, and
11 exposure to what goes into the preservation of a class, what
12 goes into writing, what goes into getting a good classroom
13 setting where everybody is involved, where the students listen
14 to each other, engage with each other, get the right timing,
15 get the right rhythm of the class going.

16 Q And after the --

17 A These are the principles. It's different each time we do
18 it.

19 Q And after the orientation program, do the teaching fellows
20 also participate in a pedagogy seminar?

21 A Our graduate students have, as part of their requirements,
22 they need to complete and take a pedagogy seminar, which is
23 taught generally by one of our senior lecturers or the language
24 director.

25 Q What is the content of the seminar?

1 A It's broad-ranging from foreign language acquisition
2 approaches to foreign language teaching, and foreign language
3 teach -- to also aspects of their professionalization about
4 teaching philosophy. I have, well, I have sometimes some
5 history of language pedagogy and then more concrete specific
6 exercises. It works best and usually that's also why we try to
7 have it in the second year when they are actually teaching for
8 the first time, so that the language pedagogy seminar can have
9 an immediate connection with what is actually going on in the
10 classroom. So there is a practical and a theoretical
11 component.

12 Q How often does the pedagogy seminar meet?

13 A It meets once a week, like a regular graduate seminar.

14 Q And the graduate students are in this seminar for how
15 long?

16 A For one semester. It's just one, the equivalent of a
17 regular class.

18 Q Professor von Muecke, why is teaching required of students
19 who are receiving a PhD degree in German? Why is it a
20 requirement?

21 A Well, we believe that this is part of the education that
22 will make them the kind of liberal arts -- future of liberal
23 arts faculty member that they aim to become with their PhD.
24 And that the kind of teaching we engage with and we teach them
25 is also the part of how we want to engage with a foreign

1 culture.

2 Q Is there a relationship between the teaching appointment
3 that the graduate students get and their own development in
4 terms of their language skills or their ability to engage in
5 the culture that you've described?

6 A It probably varies from person to person. With some, I
7 believe, teaching can make them more confident in presenting
8 materials or engaging or moderating a discussion. With some,
9 at a more advanced stage, I've heard -- from some students I've
10 heard at a more advanced stage where they are writing already
11 their own dissertation that it can be very satisfying to have
12 the immediate contact with students. When you teach a good
13 class, you know it, like when you cook a good dish. And if it
14 doesn't succeed, you can make up for it. Whereas a research
15 project goes over a much longer time, so it is a way of being
16 part of the community of learners/teachers that can ground
17 somebody who might otherwise be in a very lonely corner in the
18 library exclusively. That's what I've heard. But it depends
19 from person to person.

20 Q How many Yiddish graduate students are in the program?

21 A We admit on average one a year, but it's a very small
22 pool. We have one of a handful of PhD programs in the world,
23 Columbia has. It's a very, very small field. There have been
24 years with none. There have been years with two. Last year,
25 we admitted two. And next year, we will have one new graduate

1 student from China.

2 Q From China, in the Yiddish program?

3 A She will want to become the first translator of Yiddish
4 into Chinese. She stated that in her proposal.

5 Q Do the Yiddish graduate students also have opportunities
6 to teach?

7 A The Yiddish graduate students do have the opportunity to
8 teach. And we have alternated; sometimes, they have their own
9 pedagogy, and, sometimes, we've combined the pedagogy with the
10 pedagogy for the German graduate students.

11 Q What kind of classes do they teach?

12 A Pretty much the same sequence of elementary, intermediate.
13 There, it's more difficult, because also in the recent years,
14 the Yiddish undergraduate -- I mean it's not divided by
15 undergraduate/graduate, but the basic classes of Yiddish have
16 shrunk. The demand has shrunk, so they are very small, that we
17 can't always offer the whole range from elementary, through
18 intermediate to advanced; but, so far, we've been able to let
19 them teach at least at the elementary level.

20 Q When a Yiddish graduate student or PhD candidate teaches
21 elementary Yiddish, how many students are typically in that
22 class?

23 A Again, it varies. It can be four. It was last semester,
24 Georgia Prince (ph.) taught a class with four in elementary.

25 Q Professor von Muecke, I'm just going to ask you to take a

1 look at a couple of documents so that we can have them admitted
2 into evidence.

3 MR. PLUM: What's our last?

4 MR. MEIKLEJOHN: I have 105 as the last one, but I'm not
5 the most reliable.

6 HEARING OFFICER DAVIS: I think that's right. So let's
7 mark this as Exhibit 106.

8 (Employer's E-106 identified.)

9 MR. MEIKLEJOHN: I'm assuming I have a copy already, but
10 could I see what it is?

11 MR. PLUM: I didn't give you one?

12 MR. MEIKLEJOHN: What?

13 MR. PLUM: I thought I gave you one, my apologies.

14 MR. MEIKLEJOHN: That's all right.

15 (Pause.)

16 BY MR. PLUM:

17 Q Professor von Muecke, have you seen this before?

18 A Yes.

19 Q Can you tell us what it is?

20 A It's how the Graduate School of Arts and Sciences presents
21 our PhD program.

22 MR. PLUM: I'd like to have 106 admitted into evidence.

23 HEARING OFFICER DAVIS: Any objection?

24 MR. MEIKLEJOHN: One quick question. This is from the web
25 page of the department?

1 THE WITNESS: That's from the Graduate School of Arts and
2 Sciences' webpage.

3 MR. MEIKLEJOHN: Okay, no objection.

4 HEARING OFFICER DAVIS: Employer's 106 is admitted.

5 (Employer's E-106 received.)

6 MR. PLUM: Why don't we mark this as Exhibit 107?

7 (Employer's E-107 identified.)

8 BY MR. PLUM:

9 Q Professor von Muecke, can you tell us what Exhibit 107 is?

10 A I believe it's -- I believe it's the program for the
11 pedagogy -- the orientation workshop. So this is what we offer
12 to incoming teaching fellows before they are in the classroom
13 to give them quick introduction to various aspects of what will
14 be expected from them to prepare as they start teaching.

15 Q So this is in connection with the one or two-day
16 orientation workshop?

17 A Correct.

18 MR. PLUM: I'd like to have 107 in evidence, please?

19 MR. MEIKLEJOHN: It looks like a two-day workshop to me.

20 MR. PLUM: She testified it was one or two days.

21 MR. MEIKLEJOHN: This one appeared to be --

22 MR. PLUM: Yeah, August of 2014, it looks like it was two
23 days, yes.

24 MR. MEIKLEJOHN: No objection.

25 HEARING OFFICER DAVIS: Employer's 107 is admitted.

1 (Employer's E-107 received.)

2 THE WITNESS: Yeah, you have what is called shop classes.
3 And here it is Czech and Arabic, what I described before as
4 Finnish, this idea of being exposed to a language that you
5 might never have studied before.

6 MR. PLUM: Let's mark this as 108.

7 (Employer's E-108 identified.)

8 BY MR. PLUM:

9 Q Professor von Muecke, can you tell us what Exhibit 108 is?

10 A Yes, that's how our department comes up on the web.

11 Q On the website, on the webpage?

12 A Um-hum.

13 Q When you say comes up?

14 A Yeah, when you click on department of Germanic languages,
15 this is the part of our website.

16 MR. PLUM: Mark that in evidence, please.

17 MR. MEIKLEJOHN: You're understanding of the webpages is
18 like mine. This is, again, the department of -- I mean the
19 Graduate School of Arts and Sciences' webpage?

20 THE WITNESS: No. This is the department. It's
21 confusing. Columbia University has a separate website for the
22 Graduate School of Arts and Sciences within the different
23 graduate programs which actually are not exclusively arts and
24 sciences. It could also be in the medical school. And then
25 the departments have their own websites. And this one is from

1 the department.

2 MR. MEIKLEJOHN: Thank you. No objection.

3 HEARING OFFICER DAVIS: Employer's 108 is admitted.

4 (Employer's E-108 received.)

5 MR. PLUM: Okay, we have some more website material which
6 we'll mark as 109.

7 (Employer's E-109 identified.)

8 BY MR. PLUM:

9 Q Professor von Muecke, you're looking at Exhibit 109.

10 A Yes.

11 Q Can you tell us which part of the website this comes from?

12 A It's also from the department. And they are from the part
13 of -- it's more details. It's about how the graduate education
14 is structured, what I talked about before, the so-called three
15 phases, the MA, and the M.Phil, and the dissertation phase as
16 part of the graduate student's trajectory.

17 MR. PLUM: Mark that 109 in evidence.

18 MR. MEIKLEJOHN: No objection.

19 HEARING OFFICER DAVIS: 109 is admitted.

20 (Employer's E-109 received.)

21 MR. PLUM: And let's mark this one as 110.

22 (Employer's E-110 identified.)

23 BY MR. PLUM:

24 Q Professor von Muecke, this 110, we said is the graduate
25 Yiddish program.

1 A Um-hum.

2 Q Is this also from the department website?

3 A Exactly. And it is basically structurally the same. It's
4 outlining the trajectory of a graduate student in Yiddish, the
5 trajectory of their course of studies, the MA, M.Phil, and the
6 dissertation phase.

7 MR. PLUM: I'd like to move this into evidence as well,
8 110.

9 MR. MEIKLEJOHN: No objection.

10 HEARING OFFICER DAVIS: 110 is admitted.

11 (Employer's E-110 received.)

12 MR. PLUM: We're just going to take a minute or two.

13 HEARING OFFICER DAVIS: Yes. Let's go off the record.

14 (Whereupon, a brief recess was taken.)

15 HEARING OFFICER DAVIS: Back on the record. Any further
16 questions?

17 MR. PLUM: No, we have no further questions.

18 HEARING OFFICER DAVIS: Thank you. Mr. Meiklejohn?

19 CROSS-EXAMINATION

20 BY MR. MEIKLEJOHN:

21 Q Guten Morgen (ph.).

22 A Good morning.

23 Q Just wanted to clear up one item that I think may be
24 confusing in the record, but it confused me anyway. You have
25 Finnish as one of the undergraduate programs that's offered,

1 correct?

2 A It's not an undergraduate program. It's a language
3 culture that we have in our program, yes.

4 Q Do you have a Finnish lecturer, at this time?

5 A No, we don't.

6 Q How do you offer the Finnish?

7 A Right now, we have so few students that we offer only
8 elementary Finnish and that we offer through an adjunct.

9 Q Okay. So in addition to the lecturers and the tenure
10 track faculty members that you mentioned, you do have adjuncts
11 as well?

12 A Yes. And it varies how many. That's why I did not
13 mention them, because there is no fixed number.

14 Q Well, is there a range that you can give us?

15 A I'm not absolutely certain, maybe between one and four.

16 Q That's a range. In the undergraduate side, you say that
17 you have -- strike that. Do you offer undergraduate degrees in
18 some of these languages?

19 A In German, we offer a major.

20 Q A major, that's within that, yes?

21 A That's what we do, yes.

22 Q These other language programs that are offered, are they
23 offered to fulfill a language requirement of the university?

24 A The language requirement for Columbia College is four
25 semesters of study of a foreign language and culture. And any

1 of our classes that are taught in the original can count for
2 that.

3 Q So someone could fulfill that requirement in Swedish,
4 assuming you find someone to teach Swedish, by taking four
5 semesters of Swedish?

6 A Correct.

7 Q But there is no major in -- undergraduate major in
8 Swedish?

9 A Correct.

10 Q You have offered some testimony and some materials
11 regarding the educational programs that are offered to graduate
12 students as they begin teaching. Are those classes and
13 programs unique to your department? That is the people who
14 attend those classes and participate in the seminar, are they
15 all German students?

16 A In the type of class or in our class?

17 Q In your class.

18 A Sometimes and sometimes we also let other graduate
19 students participate. Sometimes, even undergraduates. It
20 varies.

21 Q Under what circumstances would an undergraduate attend one
22 of those classes?

23 A For instance, we had a German major and she wanted to
24 continue with becoming -- she probably wanted to go on with
25 graduate school, but maybe even teach before then in a private

1 school. And she took the pedagogy workshop.

2 Q So to get to the other way that you understood my
3 question, do -- are there other departments that offer similar
4 programs?

5 A Yes.

6 Q Do you know some of the ones that do?

7 A I know of them. I don't know the details. I know the
8 French department offers a pedagogy class.

9 Q Do you know whether Slavic languages offers a pedagogy
10 class?

11 MR. PLUM: I'm sorry. Do you know what languages?

12 MR. MEIKLEJOHN: Slavic.

13 MR. PLUM: Slavic.

14 THE WITNESS: I don't know. I don't know. I have not
15 looked into it.

16 BY MR. MEIKLEJOHN:

17 Q How do you know that the French department has similar
18 classes?

19 A Because I have another friend in college, in the French
20 department, and I also do research on French literature, and
21 publish in French, and have taught in France.

22 Q Okay. What other language departments are there at the
23 Graduate School of Arts and Sciences? What other language
24 departments are there at GSAS?

25 A I'll try to respond in a complete way, but there is ELAC,

1 that's East Asian languages and literatures. There is Middle
2 Eastern and African languages and cultures. There is Slavic
3 languages and literature department. There is a Latin American
4 and Iberian culture department. There is romance languages and
5 philology department. There is an Italian department. And
6 there is Germanic languages.

7 Q And French?

8 A That's part of the romance languages.

9 Q That's part of the romance, okay. And do you know whether
10 any of these other departments besides the French segment of
11 the romance languages offers pedagogy seminars?

12 A I don't know.

13 Q Okay. Are there any that you know of that don't offer
14 such programs?

15 A I don't know.

16 Q You don't know, okay.

17 A Oh, I forgot, there is a classics department.

18 Q Oh, yes, okay.

19 A And Hellenic studies.

20 Q Okay. You testified that it takes -- well, you testified
21 about the process that you go through or that a student goes
22 through to attain their PhD in Germanic languages. And they
23 get both an MA and an M.Phil in the course?

24 A Yes.

25 Q And you said that, well, you said that something takes six

1 to seven years. I take it that's the entire process, correct?

2 A Correct.

3 Q Okay. You testified that one of the responsibilities or
4 one of the things that a new teaching fellow does is to prepare
5 a lesson plan like everybody else.

6 A Well, what I meant with this is that before you go into
7 your class, you have to have the class broken down into various
8 segments, what you do the first 10 minutes, the following 15
9 minutes, etc. That's a lesson plan.

10 Q That's a lesson plan. Who is the "everybody else" who
11 prepares a lesson plan?

12 A Everybody who teaches a small seminar or a larger class,
13 everybody who teaches.

14 Q And that would include all the faculty categories that you
15 mentioned?

16 A Yes

17 Q So you teach these classes, yourself?

18 A And I make a lesson plan, correct.

19 Q My wife is a teacher. I have a pretty good idea what a
20 lesson plan is. I suppose it's different at this level from a
21 first grade level.

22 A No, maybe not so different.

23 Q I'm sure you run into some of the same class management
24 issues.

25 A I am sure.

1 Q How many language classes are taught by the Germanic
2 languages department to undergraduates each semester?

3 A The language classes are not segregated by population.
4 Anybody who is registered can take a language class.

5 Q Okay, I'm sorry. So most of the students in these classes
6 are undergraduates, at least at the first and second year
7 level?

8 A Not necessarily. It can be, yes, it can be. But, for
9 instance, we also teach German for reading knowledge. There,
10 the population is often graduate students.

11 Q How many language classes overall are taught by the
12 department each semester?

13 A Again, it depends on enrollments and at what level.
14 Recent years, we had four or five elementary sections, four or
15 five intermediate, and maybe two advanced, and then
16 conversation. And then one accelerated, usually.

17 Q So I'm getting about 12, maybe a little more than a dozen
18 per semester?

19 A Maybe. I don't have the exact figures.

20 Q No, no, I understand. And of those, roughly, how many
21 would be taught by graduate students and how many by the rest
22 of the faculty?

23 A It also depends on the size of the cohort of our graduate
24 students, the size of the competence of our graduate students.
25 We try to let every graduate student, as soon as possible, in

1 their second year teach elementary, and then build on that. It
2 has happened that their linguistic abilities were not strong
3 enough, then we would send them to Germany or give them extra
4 lessons and help them to improve their German so that they
5 could actually teach. Sometimes, the cohort is small. Our
6 cohort may just, in average, from two to five. So then you
7 would have from say five elementary classes between two to five
8 graduate students teaching the elementary class, just depending
9 on the class size.

10 Q So it could be if you have -- you could have all the
11 elementary classes taught by grad students? I think I got
12 that.

13 A It would be possible. It would be possible, yeah, if we
14 have -- it depends on the size of the graduate cohort. It
15 depends on their capacities. It depends on how many
16 undergraduates or language learners we have. It also depends
17 on our language pedagogues. They make an effort to rotate
18 regularly through all levels so that they also teach the same
19 classes regularly that our graduate students teach. So it
20 varies, that's all I can say.

21 Q But the rest would be taught by either tenure track
22 faculty adjuncts or lecturers, is that correct?

23 A Correct.

24 Q You said that one of the factors in deciding whether a
25 graduate student will be assigned to each a class is whether

1 they have the competence, basically. I think you said whether
2 they are ready or whether they have the skills.

3 A Right.

4 Q What you're saying is they have to be sufficiently
5 prepared, have the capacity so that the students in the class
6 will actually learn from them. Is that right?

7 A Correct.

8 Q It is one of the functions of the graduate students who
9 teach these classes to expose the students in the class to the
10 language and culture of Germany or the class they are teaching
11 in-depth and in a fully enriched manner, the way you described
12 the function.

13 A Um-hum.

14 Q You have to give a yes or a no.

15 A Yes. Yes.

16 Q Okay. So they are there to fulfill the mission of the
17 department in educating the students in the class?

18 A Correct.

19 Q The graduate students who are teaching, are they all
20 classified as teaching fellows?

21 A Yes.

22 Q So you don't have any teaching assistants in your
23 department?

24 A Normally not.

25 Q Okay. Do you have tutors?

1 A Not in our department.

2 Q I think it may be in the paperwork. You may have touched
3 upon this in your testimony, but when an individual is admitted
4 to -- oh, here it is. When an individual is admitted to the
5 PhD program in GSAS, in the Germanic languages department, is
6 the individual informed that they will get a -- customarily
7 informed they'll get a five-year funding package?

8 A Yes.

9 Q And the normal five-year funding package includes three
10 years of teaching responsibilities?

11 A Yes.

12 Q And that is -- those are the responsibilities that you
13 have described in your testimony.

14 A Yes.

15 Q If they don't do the three years of teaching -- fulfill
16 their three years of teaching responsibilities, they don't get
17 the funding, correct?

18 A I can't say.

19 Q It's never come up?

20 A I'm not even sure about that, if it has never come up.

21 Q You described the typical program as being six to seven
22 years.

23 A Yes.

24 Q Which is more than five, obviously.

25 A Correct.

1 Q Even though you're not a math professor.

2 A I can handle that.

3 Q Pardon?

4 A I said I can handle that.

5 Q You can handle that part, right. Me, too. After the
6 fifth year, are PhD students able to obtain funding?

7 A Often, what we hope, and encourage, and help our students
8 to do, they obtain research support to work in archives, often
9 in Germany. It doesn't need to be Germany. It can be other
10 archives. And that is frequently the way in which they support
11 themselves during the sixth year.

12 Q Who would those research grants come from?

13 A An agency that is called the German Academic Exchange
14 Service is a main sponsor. Fulbright can also be a sponsor.
15 There is a Social Science Research Council which as sometimes
16 provided fellowships for our students to go for a year to
17 Germany. And then there is another program in Berlin and the
18 name escapes me.

19 Q Do these agencies provide the funding to the university or
20 do they provide it directly to the students?

21 A Strictly to the individual.

22 Q Do you know whether if their funding falls short of what
23 the university provides, does the university supplement that?

24 A In the sixth year?

25 Q Yes.

1 A No.

2 Q And if they are unable to obtain independent funding, are
3 there other alternatives available for the sixth or seventh
4 year students? Well, let me ask you, are there occasions where
5 students in their sixth or seventh year are offered the
6 opportunity to continue to teach in exchange for receiving
7 funding?

8 A No.

9 Q Your department doesn't do that?

10 A No.

11 Q Do you know that other departments do?

12 A Not that I'm aware of. But I should say I don't know.

13 Q Did you recently teach a class, a literature humanities
14 class in the core curriculum with the university?

15 A Yes, I did.

16 Q I understand you found that to be a learning experience
17 for yourself.

18 A I did.

19 Q Do you find that as you continue to teach, that learning
20 is part of one of the ways that you benefit from continuing to
21 teach?

22 A Correct.

23 Q But you do get paid for teaching and learning, correct?

24 A Yes.

25 Q And you consider that your relationship with the

1 university is an employment relationship, correct?

2 A Yes.

3 Q Do students in the Germanic languages department often
4 teach summer classes as well?

5 A Often? What is often?

6 Q Do you know how -- well, I'll ask you. Does it occur and
7 if so how frequently?

8 A I believe it does occur. How frequently, I don't know.

9 MR. MEIKLEJOHN: Could I have this -- I didn't check this.
10 I want this to be marked as the next Petitioner's exhibit.

11 HEARING OFFICER DAVIS: I believe it's 52.

12 (Petitioner's P-52 identified.)

13 BY MR. MEIKLEJOHN:

14 Q Have you had an opportunity to review Petitioner's
15 Exhibit 52?

16 A Yes.

17 Q Do you know who Chris Cardillo is?

18 A No.

19 Q Is this a letter that is sent to graduate students when
20 they are appointed to each summer classes in the Germanic
21 languages department?

22 A I don't know.

23 MR. MEIKLEJOHN: I guess I won't offer it then.

24 BY MR. MEIKLEJOHN:

25 Q What do you know about the summer languages classes?

1 A Very little.

2 Q They are offered, correct?

3 A I know that they are offered sometimes, yeah.

4 Q Do you know who they are offered to, who the student body
5 for those classes is?

6 A Not really.

7 Q Is it a school within Columbia?

8 A The School of Continuing Education is part of Columbia,
9 yes. It's not part of my department.

10 Q Oh, it does say continuing education. You know that there
11 are occasions when graduate PhD students in the Germanic
12 languages department teach there?

13 A I have heard of it.

14 Q You don't know how they get the positions there?

15 A No.

16 MR. MEIKLEJOHN: Can I have a minute?

17 HEARING OFFICER DAVIS: Sure, let's go off the record.

18 (Pause off the record.)

19 HEARING OFFICER DAVIS: Back on the record.

20 Mr. Meiklejohn?

21 MR. MEIKLEJOHN: No further questions.

22 MR. PLUM: We're going to take one more minute.

23 HEARING OFFICER DAVIS: Okay, let's go off the record.

24 (Pause off the record.)

25 HEARING OFFICER DAVIS: Back on the record.

1 Mr. Plum, do you have any questions?

2 MR. PLUM: We have nothing further.

3 HEARING OFFICER DAVIS: Mr. Meiklejohn?

4 MR. MEIKLEJOHN: No further questions.

5 HEARING OFFICER DAVIS: I have just a simple question. Do
6 any of the grad students who work in your department function
7 as research assistants?

8 THE WITNESS: Some do.

9 HEARING OFFICER DAVIS: How many serve that function?

10 THE WITNESS: I don't know. It would be outside their --
11 they would be compensated and employed beyond their regular
12 graduate student package. And I have -- I can only speak for
13 myself in this case. I have employed graduate students as
14 research assistants in the preparation of a book manuscript to
15 proofread or help me with the index, and then paid them out of
16 my research funds for these kinds of help. And I know my
17 colleagues also sometimes, not all, we also have different
18 research funds, employ graduate students for our own research,
19 with library research and manuscript preparation usually.

20 HEARING OFFICER DAVIS: Okay. Thank you.

21 MR. PLUM: I have a follow-up to that, if that's okay?

22 HEARING OFFICER DAVIS: Sure.

23 REDIRECT EXAMINATION

24 BY MR. PLUM:

25 Q These circumstances that you're describing, I think you

1 said this is not part of the program?

2 A Well, it's not part of the structured course of studies,
3 as their course work, their writing, and their teaching and
4 pedagogy is. It's much more on an ad hoc base. Say I am
5 finishing a book manuscript and I would then ask one or the
6 other graduate student would they be interested. I would know
7 what they're working on, would they be interested in working
8 with me on that. And then pay them by the hour in addition out
9 of my research funds.

10 Q Do you know whether these payments are made out of what's
11 been referred to sometimes as the casual payroll?

12 A No. For all I know, when I have, and what I know from my
13 colleagues, they are paid out of -- professorial laddering
14 (ph.) faculty has research funds and they differ. But it's
15 paid through our department administrator out of these research
16 funds of the respective faculty member who employs the graduate
17 student research assistant.

18 Q And do these research -- do these students have any kind
19 of appointment from the university in these circumstances?

20 A No, not that I know. I mean it's our department
21 administrator who processes the payment and there is no
22 employment letter or anything given.

23 Q Thank you.

24 MR. PLUM: I have nothing further.

25 HEARING OFFICER DAVIS: Mr. Meiklejohn?

1 MR. MEIKLEJOHN: No questions.

2 HEARING OFFICER DAVIS: Okay, thank you very much.

3 THE WITNESS: Thank you.

4 HEARING OFFICER DAVIS: You're excused.

5 (Witness excused.)

6 HEARING OFFICER DAVIS: So it's my understanding that our
7 next witness is going to appear at one o'clock. Is that
8 correct?

9 MR. MEIKLEJOHN: That's the schedule, yes.

10 HEARING OFFICER DAVIS: Okay, so for now let's go off the
11 record.

12 (Whereupon, at 11:01 a.m., a recess was taken.)

13

1 A F T E R N O O N S E S S I O N

2 (Time Noted: 1:33 p.m.)

3 HEARING OFFICER DAVIS: On the record.

4 Mr. Meiklejohn, do you have a witness, at this time?

5 MR. MEIKLEJOHN: Petitioner calls Longxi Zhao.

6 HEARING OFFICER DAVIS: Please raise your right hand.

7 (Whereupon,

8 LONGXI ZHAO,

9 was called as a witness by and on behalf of the Petitioner and,
10 after having been duly sworn, was examined and testified as
11 follows:)

12 HEARING OFFICER DAVIS: Please state your name for the
13 reporter and spell your first and last name.

14 THE WITNESS: My name is Longxi Zhao, L-O-N-G-X-I, last
15 name is Zhao, Z-H-A-O.

16 MR. MEIKLEJOHN: Do you want to have him write it down,
17 like the last witness did?

18 (Pause.)

19 HEARING OFFICER DAVIS: Speak slowly and clearly so we can
20 all understand. Mr. Meiklejohn?

21 DIRECT EXAMINATION

22 BY MR. MEIKLEJOHN:

23 Q I should call you Mr. Longxi?

24 A Sure.

25 Q Are you a student at Columbia?

- 1 A Yes.
- 2 Q What degree and program are you a student in?
- 3 A I am right now in a PhD program, studying from the spring
4 2015.
- 5 Q What program?
- 6 A PhD program.
- 7 Q In what --
- 8 A Oh, chemical engineering, sorry.
- 9 Q Which school is that?
- 10 A Columbia University.
- 11 Q Which division of Columbia?
- 12 A Engineer school, Fu Foundation.
- 13 Q Fu Foundation Engineering School?
- 14 A Yeah.
- 15 Q Where is your home?
- 16 A China.
- 17 Q Could you just tell us a little bit about your past
18 education starting with your undergraduate degree?
- 19 A I study chemistry, material chemistry in Peking
20 University, and I earned my bachelor degree in 2013. And then
21 I came in Columbia University for a master's degree in chemical
22 engineering. I earn my master's degree two months ago.
- 23 Q A few months ago?
- 24 A Two months.
- 25 Q When did you --

1 A I received my master's degree in February, actually, three
2 months ago.

3 Q February of --

4 A Yeah, yeah.

5 Q When did you start as a PhD student?

6 A This spring.

7 MR. MEIKLEJOHN: I'd like this document marked as
8 Petitioner's Exhibit 52, I think.

9 HEARING OFFICER DAVIS: 53. You offered 52. I don't know
10 if you're going to withdraw it.

11 MR. MEIKLEJOHN: We'll keep it open. I don't think we'll
12 get back to it, but --

13 HEARING OFFICER DAVIS: Okay. So this would be 53.

14 (Petitioner's P-53 identified.)

15 BY MR. MEIKLEJOHN:

16 Q Have you had an opportunity to review Petitioner's
17 Exhibit 53?

18 A Yes.

19 Q What is this?

20 A This is an admission letter for my master degree.

21 MR. MEIKLEJOHN: I move the admission of Petitioner's
22 Exhibit 53.

23 HEARING OFFICER DAVIS: Any objection?

24 MR. PLUM: No objection.

25 HEARING OFFICER DAVIS: Petitioner's 53 is admitted.

1 (Petitioner's P-53 received.)

2 BY MR. MEIKLEJOHN:

3 Q You say you started as a PhD student in the spring of
4 2015?

5 A Yeah.

6 MR. MEIKLEJOHN: I'd like this marked as Petitioner's
7 Exhibit 54.

8 (Petitioner's P-54 identified.)

9 BY MR. MEIKLEJOHN:

10 Q Have you had an opportunity to review Petitioner's --

11 A Yes.

12 Q -- 54?

13 A Yes. Sorry.

14 Q Try to wait till I finish the question. I know it's
15 obvious what my questions are going to be, but wait till I get
16 there. What is Petitioner's 54?

17 A This is the admission letter for my PhD program.

18 MR. MEIKLEJOHN: I move the admission of Petitioner's 54.

19 MR. PLUM: No objection.

20 HEARING OFFICER DAVIS: Petitioner's 54 is admitted.

21 (Petitioner's P-54 received.)

22 BY MR. MEIKLEJOHN:

23 Q While you were enrolled as a master's student, did you
24 have any appointments as teaching assistant or research
25 assistant?

1 A No.

2 Q When you were appointed -- when you became a doctoral
3 student, a PhD student in the beginning of this year, did you
4 receive an assignment or appointment, a teaching appointment?

5 A Yes.

6 Q What was that assignment?

7 A I was appointed as a teaching assistant for Professor
8 Banta's course.

9 Q That's Banta, B-A-N-T-A?

10 A Yeah.

11 Q What was the subject of his class?

12 A Kinetics or you may call reactor design. There are
13 multiple names.

14 MR. PLUM: Can you say the second one again, kinetics or
15 what?

16 THE WITNESS: Kinetics or you may say reactor design.

17 BY MR. MEIKLEJOHN:

18 Q What kind of design?

19 A Reactor.

20 Q Reactor.

21 A Yeah, sorry.

22 Q How is that class, if in any way, related to what you're
23 studying as a chemical engineering student?

24 A Yes, because I had a master degree here and so this class
25 is basically about how reaction is proceeded, like the

1 direction speed and how long you have to wait, and how much
2 stuff you have to put in your records, and something like that.
3 I have learned it from my master degree.

4 Q What is the normal funding program for a student in -- a
5 PhD student in chemical engineering who comes in with a
6 master's, like yourself?

7 A So everyone, every PhD student has to be funded as a TA
8 for a whole year, for the first year. And then he will have to
9 be funded as an RA, which means research assistant, for the
10 rest of his study.

11 Q So getting back to your job or your position as a teaching
12 assistant for Professor Banta, first, could you explain how
13 Professor Banta -- well, what level of students, what type of
14 students were in this class?

15 A Undergraduates.

16 Q Can you explain how he conducted his class?

17 A Basically, he has two classes every week. One class he
18 uses for give inquiries (ph.). And after he give inquiries, he
19 give a short explanation about his last homework or so. And
20 the other class, he use it to give some small lectures and give
21 some extended problem which are supposed to be help with our --
22 with us TAs.

23 Q I'm sorry. The TAs are supposed to help the students
24 solve the problems?

25 A So that the extended problems means you have to, as a

1 student, you have to solve the problem in the class. And as a
2 TA, we help students to solve the problems.

3 Q Were you the only TA for the class?

4 A No, we have two.

5 Q Who was the other TA?

6 A Her name is Natalie Labrador.

7 Q Natalie might be enough for our purposes. Besides helping
8 the students solve problems, what were your other duties as a
9 TA?

10 A Like grading the homeworks, grading mid-terms, photocopy
11 the quizzes, and proctor the quizzes, grading quizzes, yeah.

12 Q Were you expected to hold office hours?

13 A Oh, yes. Yes, holding office hours, and giving some
14 answers to the problems.

15 Q What were the days that the class met? What days of the
16 week?

17 A My office hours --

18 Q No, what were the days of the week that the class met?

19 A The class is on Tuesday and Thursday, in the morning.

20 Q If a student in the class, one of the undergraduates,
21 failed, didn't pass one of the quizzes, what would happen?

22 A So he will have to take another quiz and make-up quiz
23 during my office hour or Natalie's office hour. If he keep
24 failing the quizzes, he couldn't take the next quiz.

25 Q So before he could take the next quiz, he or she had to

1 pass the make-up quiz on the previous quiz?

2 A Exactly.

3 Q What happens if that individual didn't pass that make-up
4 quiz?

5 A He take another make-up quiz, so this lasts forever if he
6 didn't pass.

7 Q Were there occasions when students didn't pass the first
8 quiz?

9 A I'm sorry, can you repeat your question?

10 Q How often did it happen that students didn't pass the quiz
11 the first time?

12 A Usually, one-third of the students who fail the first
13 quiz.

14 Q On average?

15 A On average.

16 Q Were there occasions where students failed more than once?

17 A Yeah, like usually for every week, we usually set out
18 three make-up quizzes.

19 Q Who conducted the make-up quiz?

20 A Me and Natalie.

21 Q When would you do the make-ups?

22 A Usually, our office hour. And because, like I said, we
23 usually do three make-up quizzes, so there is always an actual
24 office hour because you don't want student to fail all the week
25 and couldn't take another quiz next week.

1 Q Okay. What was the schedule for the office hours for you
2 and Jennifer -- you and --

3 A Natalie. My office hour is on Wednesday and Natalie's
4 office hour is on Friday. This is stated at the beginning of
5 the semester by email to -- by emailing to all the classes.

6 MR. MEIKLEJOHN: I'd like this document marked for
7 identification as Petitioner's Exhibit 55.

8 (Petitioner's P-55 identified.)

9 BY MR. MEIKLEJOHN:

10 Q Take a look at Exhibit 55. You testified that the office
11 hours were sent by an email, sent at the beginning of the
12 semester. Is this that email?

13 A Yeah.

14 Q And it's from Natalie. Is that the person who sent this
15 out, the other TA?

16 A Yeah, that's the other TA.

17 Q Who was it sent to?

18 A To all the class.

19 Q All the class?

20 A Yeah.

21 MR. MEIKLEJOHN: I move Petitioner's 55.

22 HEARING OFFICER DAVIS: Any objection?

23 MR. PLUM: Just a second.

24 HEARING OFFICER DAVIS: No objection?

25 MR. PLUM: I just want to voir dire for a moment.

1 HEARING OFFICER DAVIS: Sure.

2 VOIR DIRE EXAMINATION

3 BY MR. PLUM:

4 Q Were you copied on this email?

5 A Me?

6 Q Yes.

7 A Yes. Because this is done by the course work system and I
8 am one of the receivers.

9 Q You are one of the receivers.

10 A Yeah, including Professor Banta, the two TAs, and all the
11 class.

12 MR. PLUM: I have no objection.

13 HEARING OFFICER DAVIS: Petitioner's 55 is admitted.

14 (Petitioner's P-55 received.)

15 CONTINUED DIRECT EXAMINATION

16 BY MR. MEIKLEJOHN:

17 Q Now around or shortly after you became a TA, did you make
18 a request to Professor Banta for a vacation?

19 A Yes.

20 Q Could you explain what the request was that you made?

21 A At the beginning, the first time we might, he explained my
22 duty, and at the end of the conversation, I asked him if I go
23 back to China for a couple of weeks during the spring break.
24 He immediately decide this is very strange and very weird, I
25 have to talk to your PI, which means a principle instructor,

1 about this, this year.

2 Q Who is your PI?

3 A Professor Kumar.

4 MR. PLUM: Who is that again? Sorry.

5 THE WITNESS: Professor Kumar.

6 MR. MEIKLEJOHN: K-U-M --

7 THE WITNESS: K-U-M-A-R. Sorry.

8 BY MR. MEIKLEJOHN:

9 Q No, that's all right. Did you tell him exactly when you
10 wanted to take the break?

11 A Yeah.

12 Q Is there a spring break during the Columbia spring
13 semester?

14 A Yes.

15 Q When does that take place?

16 A It is in the middle of March, the 13 March to -- I don't
17 exactly remember, sorry.

18 Q We'll get you a calendar.

19 MR. PLUM: Before we go any further, I have an objection
20 to this line of questioning. Given the nature of the issues in
21 this hearing, which are whether these folks are students or
22 employees, I'm not sure when this student went on spring break
23 or didn't go on spring break, what the relevance of any of this
24 whole line of questioning is.

25 HEARING OFFICER DAVIS: So your objection is relevance.

1 MR. MEIKLEJOHN: The answer is this individual was fired
2 from his job as a teaching assistant for taking a vacation.
3 And so we are introducing evidence regarding the events that
4 led up to his termination from his job. It's relevant to this
5 hearing to show that the way in which this was handled is
6 treating it as employment.

7 HEARING OFFICER DAVIS: Overruled.

8 BY MR. MEIKLEJOHN:

9 Q So the vacation is in the middle of March.

10 A Yes.

11 Q And it's about a week?

12 A Yes.

13 Q Were you asking to take a longer period?

14 A Yes.

15 Q Did you explain what you thought could happen with your TA
16 duties, if you took longer than a one-week vacation?

17 A Yes. I decide because we have two TAs, basically, we
18 alternate every week, so every two week, I have one off, and
19 plus the spring break I will have two weeks, and if I can only
20 take another week off, and then I will make it up to the other
21 TA. So I will have like three weeks in total.

22 Q That was your proposal?

23 A Yes, that's my plan.

24 Q And you presented that to Dr. Banta?

25 A Yes.

1 Q Did you get an answer to that request?

2 A That answer is no.

3 Q How was that answer of no -- who communicated the no to
4 you?

5 A So he didn't speak to me March. He talked to my PI,
6 principle instructor, Professor Kumar, and he also talk to
7 Professor Chan (ph.), who is the committee -- graduate
8 committee chair. And Professor Chan send me an email saying
9 let me give you my opinion as graduate committee chair, you
10 shouldn't go back to China during the semester, you have job
11 here and your duty is to do your job, so you can't go.

12 Q Did you end up taking a trip to China?

13 A Yes.

14 Q When did you leave?

15 A During the spring break.

16 Q I had promised you a calendar.

17 MR. MEIKLEJOHN: Just to facilitate and clarify the
18 testimony of the witness, I would like to include in the record
19 as Petitioner's Exhibit 56, a calendar of March of 2015.

20 (Petitioner's P-56 identified.)

21 MR. MEIKLEJOHN: I don't think I have to have the witness
22 identify that. I assume we can all authenticate that by
23 looking at our pocket devices. Or maybe you'll remember that
24 Friday the 13th was -- that there was a Friday the 13th this
25 year. In any event, I move the admission of Petitioner's 56.

1 MR. PLUM: I don't think we have to make a calendar an
2 exhibit.

3 HEARING OFFICER DAVIS: You can use it to refresh
4 recollection. I'm going to admit it. It's no harm.

5 (Petitioner's P-56 received.)

6 MR. MEIKLEJOHN: It is probably unnecessary, but it's
7 easier this way.

8 BY MR. MEIKLEJOHN:

9 Q So using the calendar -- oh, do you have the calendar?
10 Not yet. Now you do. Using the calendar, what day did you
11 leave New York?

12 A It is the 13th.

13 Q Friday the 13th?

14 A Yeah.

15 Q When did you return? When did you get back to New York?

16 A The 23rd.

17 Q Where did you fly into?

18 A China.

19 Q When you came back, what airport did you come to?

20 A LaGuardia -- I'm not so sure right now. But I can --

21 Q It's not -- you got back.

22 A Yeah.

23 Q And you got back on the 23rd?

24 A Yeah.

25 Q Which was a Monday.

1 A Yeah.

2 Q And when you got back to New York, did you receive a
3 letter from Professor Kumar?

4 A Yes.

5 MR. MEIKLEJOHN: We previously had marked as Petitioner's
6 Exhibit 20, a redacted version of this document. And what I
7 would propose -- I don't believe it was admitted. So what I
8 would propose to do is withdraw what was previously marked as
9 Petitioner's 20 and substitute this as Petitioner's 20.

10 HEARING OFFICER DAVIS: Is it identical except for the
11 name, except for the redactions?

12 MR. MEIKLEJOHN: Except for the redactions, it's the same,
13 yes.

14 HEARING OFFICER DAVIS: Okay. That's fine with me. Do
15 you have any objection to that?

16 MR. PLUM: I'd like to see the document.

17 HEARING OFFICER DAVIS: Sure.

18 MR. MEIKLEJOHN: I will have it identified.

19 (Pause.)

20 MR. PLUM: I have no objection.

21 HEARING OFFICER DAVIS: So what was previously marked as
22 Petitioner's 20, which is a redacted document dated March 23rd
23 is being withdrawn by counsel and substituted with the same
24 number. And counsel has represented that is, in fact, the same
25 letter without the redactions. Is that correct?

1 MR. MEIKLEJOHN: That's correct, yes.

2 HEARING OFFICER DAVIS: Okay.

3 (Petitioner's P-20 [amended] identified.)

4 BY MR. MEIKLEJOHN:

5 Q Is this the letter that -- oh, not yet. You don't have it
6 yet. Don't answer questions about it till you get that. Is
7 this the letter you received from Professor Kumar when you got
8 back from China?

9 A Yes.

10 MR. MEIKLEJOHN: It's been received?

11 HEARING OFFICER DAVIS: Offer it again.

12 MR. MEIKLEJOHN: Okay, I'll offer it now that it's been
13 identified.

14 HEARING OFFICER DAVIS: Any objection?

15 MR. PLUM: No objection.

16 HEARING OFFICER DAVIS: Petitioner's 20 is admitted.

17 (Petitioner's P-20 [amended] received.)

18 BY MR. MEIKLEJOHN:

19 Q I'm not going to have you read the letter. It speaks for
20 yourself as to what occurred on that day. This letter gives
21 four reasons for terminating you from your position as a
22 teaching assistant, but not from your status as a doctoral
23 student. The first issue is making and implementing decisions
24 without approval from the course instructor. Do you see that
25 bullet point?

1 A Yes.

2 Q Can you explain, to your knowledge, what it is that you
3 did that led to the claim that you made decisions without
4 approval from Professor Banta?

5 MR. PLUM: I just want to renew my objection, because
6 we're now into a whole collateral. We've established that a
7 student was terminated from his teaching assistant position,
8 which we don't dispute. And I'm not sure that getting into --
9 I actually don't see any relationship between the issues in
10 this case and the underlying fact pattern that led to his
11 termination. Frankly, from the practical purposes of this
12 hearing, if we get into this, we're going to have a collateral
13 proceeding about why this student was terminated and we're
14 going to need to put on testimony to respond, which we are
15 prepared to do, but there will be more testimony.

16 HEARING OFFICER DAVIS: Can we excuse the witness for a
17 second?

18 MR. MEIKLEJOHN: You want him to leave?

19 HEARING OFFICER DAVIS: Yes.

20 MR. MEIKLEJOHN: Okay.

21 HEARING OFFICER DAVIS: Could you just step --

22 THE WITNESS: Sure, of course.

23 (Whereupon, the witness exits the hearing room.)

24 HEARING OFFICER DAVIS: I generally want to avoid long
25 objections. That wasn't long, but avoid long explanations with

1 the witness present, so that's why I asked the witness to
2 leave. I'm going to overrule the objection. I think Mr.
3 Meiklejohn is trying to show that graduate students who are in
4 these positions are treated, in fact, or in part as employees.
5 So I think he's entitled to ask such questions. If you have to
6 call additional witnesses, you can do so.

7 MR. PLUM: That's fine. You have our objection for the
8 record.

9 HEARING OFFICER DAVIS: Okay. So could someone ask the
10 witness to come back in?

11 (Whereupon, the witness returns to the hearing room.)

12 HEARING OFFICER DAVIS: Do you want counsel to repeat the
13 question?

14 THE WITNESS: Yes.

15 HEARING OFFICER DAVIS: Okay, please.

16 BY MR. MEIKLEJOHN:

17 Q Chances are it'll come out a little differently, but,
18 basically, I asked you about the first bullet point on the --
19 do you still have the dismissal letter in front of you?

20 A Yes.

21 Q I asked you about the first bullet point. Do you know
22 what that first bullet point about making decisions without
23 approval of the course instructor, what that refers to?

24 A Yes, I think I do.

25 Q Could you explain what happened?

1 A So there is one time he assigned a homework and student
2 trying to hand in homework. But this is the first time he
3 trying to make the student do it by computers. And so some of
4 students have a hard copy, but some of them don't have a hard
5 copy or half hard copy and half computer files. So some of
6 them were asking me can they -- could they hand it in later and
7 I said yes. I sent an email to all the class saying I will
8 admit -- I will say yes to all the late homework as long as is
9 handed in by the end of tomorrow.

10 After this, I received an email from the professor saying
11 you can't do this, we have a half point took off, like a
12 convention. And within two hours, I send an apology to the
13 class saying I'm sorry, the professor say we can't do this, and
14 this is like the best I can do. What I am trying to do is just
15 like the students has already finished the homework, so there
16 is not much sense to just took half off, just because, you
17 know, they can't hand in the computer file on time. So I was
18 trying to be reasonable.

19 But like even if I can't and the professor said no, and I
20 immediately admit my mistakes and send apologize -- I
21 apologized through email to Professor Banta and I send an email
22 to all the class saying so this is how it will be done. And I
23 think that's it.

24 Q I think it's clear, but just so that it's clear for the
25 record, what you're saying happened is the students --

1 MR. PLUM: I'm going to object. I mean it's obviously
2 leading.

3 MR. MEIKLEJOHN: It is leading. I'll concede that. And
4 my only purpose for asking a leading question is to make sure
5 when the transcript is printed that it actually reflects what
6 he says. If counsel thinks I've mischaracterized the
7 testimony, he can say so.

8 HEARING OFFICER DAVIS: I'm sorry?

9 MR. PLUM: That goes to the very nature of an examination.
10 You're not supposed to testify to make sure what the record
11 says. It's leading. I object.

12 MR. MEIKLEJOHN: The issue I'm objecting is the language
13 issue, not the substance of his testimony.

14 MR. PLUM: The language was perfectly clear. I understood
15 the answer.

16 HEARING OFFICER DAVIS: Yeah, we understood it. I don't
17 know if the reporter is going to accurately transcribe what we
18 just heard, but I'm going to sustain the objection.

19 MR. MEIKLEJOHN: Can I ask if you would be willing to
20 reiterate the testimony with the witness to see that it's --

21 HEARING OFFICER DAVIS: Well, it's the same objection. I
22 think he adequately explained your answer.

23 MR. MEIKLEJOHN: I do, too. All right.

24 BY MR. MEIKLEJOHN:

25 Q Let's go to the second point then, it states sending

1 inappropriate email correspondence to students.

2 A Yeah.

3 Q Do you know what email correspondence that refers to?

4 A Yes.

5 MR. MEIKLEJOHN: I'd like this document marked for
6 identification as -- did we include the calendar as an exhibit?
7 We did. This would be Petitioner's 57.

8 (Petitioner's P-57 identified.)

9 BY MR. MEIKLEJOHN:

10 Q You've had an opportunity to review Petitioner's 57?

11 A Yes.

12 Q And drawing your attention to the email correspondence at
13 the top of the page first, is this the email that you
14 understand was deemed to be inappropriate?

15 A Yes.

16 Q And you sent this on February 3rd?

17 A Yes.

18 Q Who was that email sent to, in this case?

19 A To all class, including the professor and the other TA.

20 MR. MEIKLEJOHN: I move the admission of Petitioner's 57.

21 MR. PLUM: No objection.

22 HEARING OFFICER DAVIS: 57 is admitted.

23 (Petitioner's P-57 received.)

24 BY MR. MEIKLEJOHN:

25 Q Now as you sit here now, do you now understand what it is

1 that was deemed inappropriate about the email?

2 A I think I do. It is about the F word.

3 Q The F word?

4 A Yeah, in the email. That's inappropriate.

5 Q Did you receive any complaints from students about using
6 the F word in an email?

7 A No. Like this is the only reply about to this particular
8 email.

9 Q When you say this is the only reply you got, you're
10 referring to the email at the bottom of the page?

11 A Yes.

12 Q And that came from a student?

13 A Yes.

14 Q In the class?

15 A Yes.

16 Q All right. Did you receive some verbal feedback
17 concerning this letter back on February 3rd, when it happened?

18 A Yes.

19 Q How did that -- what kind of feedback did you get?

20 A I didn't directly heard from Professor Banta. I heard
21 from PI.

22 Q That's Professor Kumar?

23 A Yeah, Professor Kumar. He send an email to me stating he
24 wants to talk to me. And then he decide, look, you can't --

25 Q Did you meet with him? Did he talk to you?

1 A Yes, I did. I met with him. And he say this really
2 pissed off Professor Banta and you know he has -- he hasn't
3 been very fond of you, like not only him but also Professor
4 Chan. They don't like you at the beginning, so something like
5 you have to lay low or something like that.

6 Q Did he advise you to do anything in response to the
7 letter?

8 A Yes. He suggest me to apologize for the inappropriate
9 email. And I did within one or two hours.

10 Q Okay.

11 MR. MEIKLEJOHN: I'd like this marked as Petitioner's
12 58 -- no, this isn't it. This is it.

13 (Petitioner's P-58 identified.)

14 BY MR. MEIKLEJOHN:

15 Q You've had an opportunity to look at Petitioner's 58?

16 A Yes.

17 Q Is this the apology that you sent?

18 A Yes.

19 Q And you sent it to Professor Banta?

20 A Yeah. And I cc'd Professor Chan.

21 Q And Professor Kumar?

22 A Yes.

23 MR. MEIKLEJOHN: Did you -- strike that. I move
24 Petitioner's 58.

25 HEARING OFFICER DAVIS: Any objection?

1 MR. PLUM: Yeah, just I have a continuing relevance
2 objection to this whole line. But given that you've overruled
3 it, I'm not going to object to this particular document.

4 HEARING OFFICER DAVIS: I understand your objection is to
5 the entire line of questioning. So we're going to admit 58.

6 (Petitioner's P-58 received.)

7 BY MR. MEIKLEJOHN:

8 Q Did Professor Banta ever say anything directly to you
9 about the email that used the F word?

10 A No.

11 Q Was any other action or did you hear anything more about
12 your mail using the F word before you left for China?

13 A No.

14 Q When you came back from China, in addition to the
15 termination letter that's been admitted, was there another
16 letter waiting for you regarding your alleged conduct?

17 A Yes.

18 MR. MEIKLEJOHN: And I would like this one marked as
19 Petitioner's Exhibit 59, please.

20 (Petitioner's P-59 identified.)

21 BY MR. MEIKLEJOHN:

22 Q Is Petitioner's 59 the letter that was waiting for --
23 another letter that was waiting for you, when you got home?

24 A Yes.

25 Q And this letter makes reference to harassing others as

1 conduct on your part.

2 A Yes.

3 Q And it notes that a hearing was scheduled for March 24th,
4 which was --

5 A Yes.

6 Q -- Tuesday, after you returned.

7 A Yes.

8 Q When you went to that -- or did you go to that hearing?

9 A Yes.

10 Q And when you went to that hearing, did you learn what the
11 harassing others accusation was?

12 A Yes.

13 Q What was it?

14 A It's about me sending the improper email and with the
15 F word.

16 Q The February 3rd email?

17 A Yes. But the thing is if he really tried to protect the
18 students, he didn't even --

19 HEARING OFFICER DAVIS: Hold on one second. It's not
20 appropriate for you to explain your answer.

21 THE WITNESS: Okay.

22 HEARING OFFICER DAVIS: Okay? Generally, he's going to
23 ask you what was said to you and what you said, or what someone
24 said to you, rather than an explanation.

25 THE WITNESS: Okay.

1 HEARING OFFICER DAVIS: All right. I'm sorry.

2 BY MR. MEIKLEJOHN:

3 Q To your knowledge, were there any complaints from students
4 about that email?

5 A No.

6 Q Okay. You don't have to argue, but this hearing was held
7 on March 24th, which was the day after the day of the
8 termination letter, correct?

9 A Yes.

10 MR. MEIKLEJOHN: I move the admission of Petitioner's 59.

11 MR. PLUM: No objection.

12 HEARING OFFICER DAVIS: 59 is admitted.

13 (Petitioner's P-59 received.)

14 BY MR. MEIKLEJOHN:

15 Q The final item on the termination letter, the final bullet
16 point is taking a vacation during the semester without approval
17 -- oh, I'm sorry, no. We skipped failing to proctor a quiz on
18 Friday, March 13th. I knew that was supposed to come up next,
19 okay.

20 HEARING OFFICER DAVIS: You're referring to?

21 MR. MEIKLEJOHN: I'm referring to Petitioner's 20.

22 BY MR. MEIKLEJOHN:

23 Q Were you scheduled to -- you testified earlier that you
24 proctor the quizzes during your office hours, correct, the
25 make-up quizzes?

- 1 A Yes.
- 2 Q And your office hours were Wednesdays?
- 3 A Yes.
- 4 Q Were you scheduled to hold office hours on Friday,
5 March 13th?
- 6 A I never schedule an office hour on Friday.
- 7 Q Of any week?
- 8 A Of any week.
- 9 Q So you left on vacation, March 13th, correct?
- 10 A Yes.
- 11 Q And the following week -- we may not have brought that
12 out. Was the following week spring break?
- 13 A Yes.
- 14 Q So were there any classes scheduled that week?
- 15 A No.
- 16 Q Did you have office hours that week?
- 17 A No.
- 18 Q The students, the undergraduates, they get spring break
19 then, too?
- 20 A Yes.
- 21 Q And you came back on Monday, the 23rd?
- 22 A Yes.
- 23 Q Did you have office hours scheduled on that day?
- 24 A No.
- 25 Q When you got back -- so the fourth bullet point is taking

1 vacation during the semester without approval. And then it
2 says you were previously warned that if you proceeded to take
3 an unapproved vacation that interfered with your teaching
4 position, you would be subject to dismissal. Did you miss any
5 scheduled appointments or duties as a teaching assistant during
6 your trip to China?

7 A No, never.

8 Q Did the trip to China interfere with your teaching duties?

9 A No.

10 Q Did Professor Banta discuss any of the items mentioned in
11 Petitioner's Exhibit 20 with you before he fired you or before
12 you were fired?

13 A No.

14 MR. MEIKLEJOHN: I have no further questions.

15 HEARING OFFICER DAVIS: Do you need time?

16 MR. PLUM: Yeah.

17 HEARING OFFICER DAVIS: Let's go off the record.

18 (Whereupon, a brief recess was taken.)

19 HEARING OFFICER DAVIS: Let's go back on the record.

20 I think this conversation was off the record, so I'm just
21 going to clarify. I gave the witness a standard instruction
22 just before we -- just after we went off the record not to
23 discuss his testimony. He asked if he could say something. I
24 told him he could not, that he should only respond to questions
25 asked by counsel. Then he asked could he ask me a question and

1 I said no, but after all questions were asked maybe. So that
2 was the conversation that I believe was off the record. And so
3 that being said, I just want to ask the witness another
4 question -- a question before Mr. Plum starts and that is what
5 is your natural language?

6 THE WITNESS: I'm sorry?

7 HEARING OFFICER DAVIS: What is your primary language?

8 THE WITNESS: Chinese.

9 HEARING OFFICER DAVIS: So English is a second language
10 for you?

11 THE WITNESS: Yes.

12 HEARING OFFICER DAVIS: Okay, that's fine. Thank you.
13 Mr. Plum?

14 CROSS-EXAMINATION

15 BY MR. PLUM:

16 Q Mr. Longxi, when are quizzes graded normally? When are
17 they normally graded?

18 A The day after we proctor the quizzes.

19 Q So if the --

20 A Sometime, we grade it during the same day.

21 Q During the same day.

22 A As soon as possible.

23 Q Were you the one who graded all the quizzes?

24 A So it's always like this, if I proctor the quizzes, I
25 grade the quizzes. But if I didn't proctor the quizzes, so it

1 will be the other TA who grade the quizzes.

2 MR. PLUM: Could you give the witness, Union Exhibit 55?

3 BY MR. PLUM:

4 Q Can you take a look at the third paragraph, where it
5 starts by saying once Longxi is done grading the quizzes?

6 A Yes.

7 Q Can you tell me what that means?

8 A So it's basically saying after I graded the quizzes, I'll
9 send an email to all the classes. And they could see the score
10 on the course work. And the first quiz will -- the first
11 make-up quiz will be Wednesday, at 4 p.m.

12 Q So what happened when Natalie graded the quizzes -- did
13 Natalie grade quizzes?

14 A Yes.

15 Q But there is no reference to that in here, in this
16 exhibit.

17 A So the convention is Natalie's office hours are on Friday,
18 so if we proctor make-up quizzes on Friday, and then he grade
19 all the quizzes that's taken on Friday.

20 Q Insofar as you understand it, when did spring break begin?

21 A It begins from -- can I have my calendar?

22 MR. PLUM: Can you get the witness 56, please?

23 THE WITNESS: So officially it starts around the 16th to
24 22nd. And as Saturday, all the Saturday and Sunday are also
25 vacations, so I would say the spring break start from the 14th

1 to 22nd.

2 BY MR. PLUM:

3 Q Now you had a conversation, a specific conversation with
4 Professor Banta about the 13th, didn't you?

5 A Yes.

6 Q Am I correct that he told you that you needed to be there
7 on the 13th?

8 A No.

9 Q He didn't tell you that you needed to be there on the
10 13th?

11 A There is no duty for me on 13th.

12 Q That's not my question. My question is did you talk with
13 Professor Banta about taking off on the 13th?

14 A Yes. I asked him whether I can go outside of New York
15 around the spring break and I decide I will not miss one single
16 class. I have an unexpired passport, can I go? He said yes.
17 That's the conversation.

18 Q He said you can go during spring break.

19 A Around the spring break.

20 Q But didn't you have a conversation with him specifically
21 about the 13th?

22 A No.

23 Q How about Professor Kumar, did you have a conversation
24 with him about the 13th?

25 A No.

1 Q And your recollection is that Professor Banta told you,
2 you could take off during spring break?

3 A Yes.

4 Q Did you ever tell Professor Banta which day you would be
5 leaving?

6 A No.

7 Q Did you ever tell Professor Kumar which day you would be
8 leaving?

9 A I think I told him I was leaving at the Friday.

10 Q I'm sorry?

11 A I think I told him I was leaving on Friday.

12 Q You think you told him you were leaving on Friday?

13 A Yeah, because I check my email, there is no email, but I
14 think I verbally told him.

15 HEARING OFFICER DAVIS: Let's go off the record.

16 MR. PLUM: We just need a couple of minutes.

17 HEARING OFFICER DAVIS: Yeah.

18 (Pause off the record.)

19 HEARING OFFICER DAVIS: Back on the record.

20 (Employer's E-111 identified.)

21 BY MR. PLUM:

22 Q Mr. Longxi, you've been given a copy of a document that's
23 been marked as Exhibit 111. Do you have that in front of you?

24 A Yes.

25 Q Is this a copy of an email that you got from Professor

1 Banta?

2 A Yes.

3 MR. PLUM: I'd like to move Exhibit 111 into evidence,
4 please.

5 HEARING OFFICER DAVIS: Any objection?

6 MR. MEIKLEJOHN: No objection.

7 HEARING OFFICER DAVIS: 111 is admitted.

8 (Employer's E-111 received.)

9 BY MR. PLUM:

10 Q You testified a moment ago that you never had a
11 conversation with Professor Banta in which you told him you'd
12 be away on the 13th, am I correct?

13 A Yes.

14 Q But you did have a conversation with him on March 9th,
15 correct?

16 A Yes.

17 Q When you spoke to him on March 9th, did you know that you
18 were leaving on March 13th?

19 A I'm sorry, did he know --

20 Q No, did you know? When you spoke to Professor Banta --

21 A Yes.

22 Q -- on March 9th, did you know that you were going to be
23 gone on March 13th?

24 A Yes.

25 Q But you didn't say anything to him about that?

1 A No.

2 MR. PLUM: I'm going to mark this as 112.

3 (Employer's E-112 identified.)

4 MR. PLUM: Are we ready?

5 HEARING OFFICER DAVIS: Yes, we're still on the record.

6 BY MR. PLUM:

7 Q Okay. Mr. Longxi, you have Exhibit 112 in front of you?

8 A Yes.

9 Q This is a statement that you prepared, am I correct?

10 A Yes.

11 MR. PLUM: I'd like to move 112 into evidence, please.

12 MR. MEIKLEJOHN: No objection.

13 HEARING OFFICER DAVIS: 112 is admitted.

14 (Employer's E-112 received.)

15 MR. PLUM: I'm going to mark this as Exhibit 113, please.

16 (Employer's E-113 identified.)

17 BY MR. PLUM:

18 Q Mr. Longxi, you have a copy of Exhibit 113 in front of
19 you?

20 A Yes.

21 Q And this is a copy of an email from Professor Banta, is it
22 not?

23 A Yes.

24 Q You got a copy of this email?

25 A Yes.

1 Q In this email, this email forwarded to you and to Natalie
2 a copy of the quiz that was supposed to be administered on
3 March 13th?

4 A Yes.

5 Q Before this email, Professor Banta had forwarded to you
6 the quiz?

7 A Yes.

8 Q And so you would agree based on this email that Professor
9 Banta expected you to be there on the 13th?

10 A No.

11 Q No? Why did he forward -- no?

12 A No.

13 Q But he did forward you the quiz for that morning?

14 A I think the thing is he didn't --

15 Q No, no, no. Did he forward you the quiz --

16 A Yes.

17 Q -- for the 13th.

18 MR. PLUM: I'd like to have 113 in evidence, please.

19 VOIR DIRE EXAMINATION

20 BY MR. MEIKLEJOHN:

21 Q I guess it's implied, but, just to be clear, was there an
22 attachment to 113?

23 A A what?

24 Q Was there a document attached to 113?

25 MR. PLUM: I'm not sure this is --

1 HEARING OFFICER DAVIS: Yeah, it's proper voir dire.

2 THE WITNESS: I'm sorry. I don't understand the question.

3 BY MR. MEIKLEJOHN:

4 Q When this email went to Natalie, you know you send emails
5 with things, with documents attached, right?

6 A You mean the quiz.

7 Q Was the quiz attached?

8 A Yes.

9 MR. MEIKLEJOHN: Okay. Well, no objection to 113.

10 HEARING OFFICER DAVIS: 113 is admitted.

11 (Employer's E-113 received.)

12 CONTINUED CROSS-EXAMINATION

13 BY MR. PLUM:

14 Q And just to be clear, the quiz that was attached to this
15 was the same as the quiz that was sent to you by Professor
16 Banta?

17 A Yes.

18 Q Mr. Longxi, you testified earlier that you thought that
19 you spoke with Professor Kumar about leaving on March 13th.
20 When did you do that or when do you think you did that?

21 A Because he is my PI.

22 Q No, when do you think you did that?

23 A On that Tuesday.

24 Q That Tuesday?

25 A Tuesday, yeah.

1 Q What did Professor Kumar say when you told him you were
2 leaving on the 13th?

3 A He said did you ask the permission of Professor Banta and
4 I said yes.

5 Q You said yes.

6 A Yeah.

7 Q But you testified earlier that you never told Professor
8 Banta that you were leaving on the 13th.

9 A I didn't tell him I'm leaving on the 13th, but I told him
10 I'm leaving during spring break, around the spring break.
11 That's exactly what. And that's, like I said, I implied that I
12 won't -- I'm not implying. I said specific the word I won't
13 miss a single class of yours and I won't miss any TA duties
14 during the conversation. And I ask I go out of New York around
15 spring break.

16 Q Which did you tell Professor Kumar, that you were leaving
17 on the 13th or that you were leaving around the spring break?

18 A I think it's after the Tuesday class of Professor Kumar.

19 Q What exactly did you say to him?

20 A I said I am going out of New York and I have already asked
21 the permission of Professor Banta, he said yes. And then
22 Professor Kumar said if he said yes, yes, go.

23 Q And you told Professor Kumar that you had permission from
24 Professor Banta to leave on the 13th?

25 A I didn't tell him that. I tell him I have the permission

1 to go around the spring break.

2 Q So then you didn't tell either one of them that you were
3 going to be going on the 13th?

4 A I -- no.

5 Q I'm sorry?

6 A No.

7 Q No, okay. That's a little different than what you said
8 before.

9 MR. MEIKLEJOHN: Objection, argumentative.

10 MR. PLUM: I'm not -- I'm trying to clarify the record.

11 HEARING OFFICER DAVIS: It wasn't a question really. I
12 don't know if it's an appropriate comment, but it wasn't a
13 question.

14 BY MR. PLUM:

15 Q So just to be clear, is your testimony that you didn't
16 tell either one of them that you were going to be gone the
17 13th?

18 A I didn't say the specific words I'm leaving on 13th, but I
19 did tell them I'm going around spring break. I didn't say the
20 exact word. That's what no means.

21 Q Is there a reason -- I need a document.

22 MR. PLUM: Where is the one that he got in January? Which
23 number is that?

24 (Pause.)

25 HEARING OFFICER DAVIS: You said you had the conversation

1 with Professor Kumar on Tuesday.

2 THE WITNESS: Yes.

3 HEARING OFFICER DAVIS: Is that Tuesday, March 10th, in
4 the same week that you left?

5 THE WITNESS: Yes.

6 HEARING OFFICER DAVIS: Okay, I just wanted to clarify.
7 Thank you.

8 MR. PLUM: Can you show the witness the document that's
9 been put into evidence as Exhibit 111?

10 BY MR. PLUM:

11 Q So is it clear to you from this email that Professor Banta
12 expected you to be present in New York through the end of the
13 semester?

14 A Yes.

15 Q And you decided on your own not to be here on March 13th,
16 even though that was still during the semester, correct?

17 A No, I asked for his permission.

18 Q Well, you didn't ask his permission to be away during the
19 semester, did you?

20 A I asked him whether I can be out of New York around the
21 spring break.

22 Q Around the spring break.

23 A Yes. And I said I won't miss a single class of yours. I
24 think I'm implying I will go like some day before and come back
25 after the spring break and --

1 Q Can you say that again? I didn't hear the beginning.

2 Could you just repeat your answer?

3 HEARING OFFICER DAVIS: You just said that you think you
4 were implying. Is that what you just said?

5 THE WITNESS: Yes.

6 HEARING OFFICER DAVIS: Okay. We don't really want to
7 know what you were thinking or what you were implying. We want
8 to know what you said to him and what he said to you.

9 THE WITNESS: Okay.

10 HEARING OFFICER DAVIS: Okay? So, anyway --

11 BY MR. PLUM:

12 Q Okay. I'm trying to understand what you said exactly to
13 the professor that you were working for, who had said to you I
14 need you to stay in New York and serve as a TA through the end
15 of the semester. When you decided to leave before the semester
16 ended, what exactly did you say to Professor Banta?

17 MR. MEIKLEJOHN: I'm going to object. He's answered that
18 at least twice.

19 MR. PLUM: Different ways each time.

20 MR. MEIKLEJOHN: No. Both times, his answer was that he's
21 going to be leaving around spring break and he was not going to
22 miss any TA duties or make -- one time he said TA duties and
23 one time he said any classes.

24 HEARING OFFICER DAVIS: I'm going to sustain the
25 objection. He's answered this question. You can argue

1 different ways, at different times. But you have asked it
2 several times already. I think the record is clear what his
3 testimony is.

4 BY MR. PLUM:

5 Q Is there a reason that you just didn't come out and say to
6 Professor Banta or Professor Kumar, I'm not going to be here on
7 the 13th?

8 MR. MEIKLEJOHN: Objection, relevance.

9 HEARING OFFICER DAVIS: Overruled.

10 THE WITNESS: I want to answer that question.

11 MR. MEIKLEJOHN: He said you can. The hearing officer
12 said answer it. Go ahead, answer it.

13 THE WITNESS: Yes. But I mean if you think I shouldn't,
14 I --

15 HEARING OFFICER DAVIS: No. He objected to the question
16 and I overruled his objection, which means you can answer the
17 question that counsel asked.

18 THE WITNESS: Okay. All right, I don't understand
19 English, sorry.

20 HEARING OFFICER DAVIS: So the question is why didn't you
21 tell Professor Banta or Professor Kumar that you were leaving
22 on the 13th? I think I rephrased the question, but that's
23 essentially it.

24 THE WITNESS: So the thing is I don't want to piss them
25 off. And they are not fond of me from the beginning, like I

1 was told. And I -- since he is not so willing to communicate
2 with me all the time, I think the less I say, the safer I will
3 be.

4 HEARING OFFICER DAVIS: You said he. Who are you
5 referring to?

6 THE WITNESS: Professor Banta.

7 HEARING OFFICER DAVIS: Thank you.

8 BY MR. PLUM:

9 Q So you didn't want to piss him off and you didn't want --
10 you didn't think he wanted to communicate with you.

11 A Yes.

12 Q But you didn't want to communicate with him, either, by
13 directly being --

14 A I was.

15 Q Well, if you wanted to communicate with him, you would
16 have told him you were not going to be there the 13th.

17 MR. MEIKLEJOHN: Objection.

18 HEARING OFFICER DAVIS: Hold on.

19 THE WITNESS: I can --

20 HEARING OFFICER DAVIS: Hold on.

21 THE WITNESS: Sorry.

22 HEARING OFFICER DAVIS: What's your objection?

23 MR. MEIKLEJOHN: It's argumentative. And, as you would
24 say, it's not a question, although it's going to get an answer.

25 HEARING OFFICER DAVIS: I'm going to allow this question

1 and this answer, but I think the bona fides of what happened,
2 while not irrelevant, because that was your objection in the
3 very beginning --

4 MR. PLUM: We're down that road. You wanted to go down
5 the road.

6 HEARING OFFICER DAVIS: I allowed the question and I
7 allowed the answers, yes. But I think we're exhausting
8 ourselves. The credibility of the witness is not an issue in
9 the proceeding. It's not going to ultimately help the reader
10 of the record decide whether grad school students are employees
11 under the Act or not. I don't know that it matters too much.
12 But you're right. So ask your question again and let's see if
13 we can move on.

14 MR. PLUM: Well, the only -- look, the only conceivable
15 relevance this whole line of questioning has is whether, and we
16 objected to it at the beginning.

17 HEARING OFFICER DAVIS: Yes.

18 MR. PLUM: The only conceivable relevance and I think the
19 whole inquiry points out the wisdom or lack of wisdom of
20 importing this kind of relationship into --

21 MR. MEIKLEJOHN: I'm going to object to this speech. He
22 overruled the objection. You already won the argument.

23 MR. PLUM: I'm responding to the comment that was made.

24 HEARING OFFICER DAVIS: Yes. Safe it for argument.

25 You'll have a long time to write briefs and this is a very

1 important case. This is not the place really to make
2 arguments. I've already ruled that this issue was relevant in
3 terms of the facts that were developed, so I've allowed direct.
4 I'm allowing cross. But I think we've come to the point almost
5 where we have diminishing returns.

6 MR. PLUM: Okay. We have nothing further for the witness.

7 HEARING OFFICER DAVIS: Okay. So, Mr. Meiklejohn?

8 MR. MEIKLEJOHN: I have a few questions, very little
9 redirect.

10 HEARING OFFICER DAVIS: You go first.

11 MR. MEIKLEJOHN: Could you take a look at -- may I
12 approach the witness?

13 HEARING OFFICER DAVIS: Sure.

14 REDIRECT EXAMINATION

15 BY MR. MEIKLEJOHN:

16 Q Would you take a look at Employer Exhibit 111? Do you
17 still have that one there? It's the -- well, my copy has
18 highlighting on it. It's the January 20th email.

19 A Oh, this one.

20 Q That's the one. That email was sent at the beginning of
21 the semester, correct?

22 A Yes.

23 Q It was sent in the context --

24 MR. PLUM: Objection, leading.

25 HEARING OFFICER DAVIS: Let him finish the question first.

1 BY MR. MEIKLEJOHN:

2 Q It was sent in the context of the conversation that you
3 testified about on direct where you asked for permission to
4 take more than --

5 MR. PLUM: Objection.

6 MR. MEIKLEJOHN: To take two or three weeks for vacation.

7 HEARING OFFICER DAVIS: Sustained. Rephrase the question.

8 BY MR. MEIKLEJOHN:

9 Q What was the context in which you sent this email?

10 A Which email?

11 MR. MEIKLEJOHN: See, you don't need to worry.

12 BY MR. MEIKLEJOHN:

13 Q Employer Exhibit 111, the January 20th email. You see
14 that?

15 A Yeah.

16 Q Were you having a conversation or had you made a request
17 to Professor Banta at the time you -- around the time of this
18 email?

19 A Yeah, it was before this email.

20 Q What was that request?

21 A I was asking him can I go back to China for a couple of
22 weeks.

23 Q For a couple of weeks.

24 A Yes, three weeks, actually.

25 Q And did you go to China for a couple of weeks?

1 A No.

2 Q Did you appeal -- some of these documents that have been
3 offered were part of an appeal that you submitted to your
4 termination?

5 A Sorry?

6 Q Did you appeal your termination to a higher level within
7 the School of Engineering?

8 A Yes.

9 MR. MEIKLEJOHN: I would like this document marked as
10 Petitioner's Exhibit 60.

11 (Petitioner's P-60 identified.)

12 BY MR. MEIKLEJOHN:

13 Q Do you have Petitioner's 60?

14 A Yes.

15 Q And what is this?

16 A This is a result for my appeal.

17 MR. MEIKLEJOHN: I move Petitioner's 60.

18 MR. PLUM: No objection.

19 HEARING OFFICER DAVIS: Petitioner's 60 is admitted.

20 (Petitioner's P-60 received.)

21 MR. MEIKLEJOHN: Actually, I have one other document that
22 relates to the teaching assistants. This is from the webpage.
23 Maybe we don't have to have the witness testify about it. I'd
24 like this marked as Petitioner's 61.

25 (Petitioner's P-61 identified.)

1 THE WITNESS: Do I need to have that?

2 MR. MEIKLEJOHN: What?

3 THE WITNESS: Can I have that?

4 MR. MEIKLEJOHN: Yeah, he can have it. Can we agree that
5 this is from the Fu Foundation, the Department of Engineering
6 website?

7 MR. PLUM: That's what it looks like to me.

8 MR. MEIKLEJOHN: Okay, I'll move Petitioner's 61.

9 MR. PLUM: No objection.

10 HEARING OFFICER DAVIS: Okay, 61 is admitted.

11 (Petitioner's P-61 received.)

12 MR. MEIKLEJOHN: I have no further questions.

13 HEARING OFFICER DAVIS: Okay. Do you have any recross?

14 MR. PLUM: No.

15 HEARING OFFICER DAVIS: I do have a question. I'm going
16 to show the witness Petitioner's -- sorry, Employer
17 Exhibit 112, the affirmation of, well, it looks like a sworn
18 statement by the witness. Did you submit that in your appeal?

19 THE WITNESS: Yes.

20 HEARING OFFICER DAVIS: Thank you. So that's 112. And
21 then it's probably in the record, but I just want to inject at
22 this point. Your position as TA, what was your payment for
23 doing that?

24 THE WITNESS: The exact number?

25 HEARING OFFICER DAVIS: Was it in dollars? Yeah.

1 THE WITNESS: Yeah, in dollars. So I received a stipend
2 for \$7,000.

3 HEARING OFFICER DAVIS: \$7,000?

4 THE WITNESS: At the beginning of the semester. And I
5 keep receiving small like \$100 or \$200 every two weeks. It's
6 really hard for me to keep track for the total amount. But I
7 think it's somewhere little above \$2,000 a month.

8 HEARING OFFICER DAVIS: A month?

9 THE WITNESS: Yeah.

10 HEARING OFFICER DAVIS: In addition to the \$7,000.

11 THE WITNESS: No, no, no.

12 HEARING OFFICER DAVIS: No, as part of, so you got --

13 THE WITNESS: Yeah.

14 HEARING OFFICER DAVIS: I see.

15 THE WITNESS: So if you average all the sevens (ph.).

16 HEARING OFFICER DAVIS: Okay. So after you were
17 terminated or from the TA position, did you continue to receive
18 those payments?

19 THE WITNESS: As you can see in the letter, they
20 terminated my TA and cut my salary from that point.

21 HEARING OFFICER DAVIS: Okay. So you didn't receive
22 payments for that after that.

23 THE WITNESS: I don't think so.

24 HEARING OFFICER DAVIS: Okay, thank you. That answers my
25 question. Anything else?

1 MR. PLUM: No, we have nothing else.

2 HEARING OFFICER DAVIS: Mr. Meiklejohn?

3 MR. MEIKLEJOHN: No, sir.

4 HEARING OFFICER DAVIS: Thank you very much. You're
5 excused. You can leave.

6 (Witness excused.)

7 HEARING OFFICER DAVIS: It's my understanding no further
8 witnesses today, is that correct? Mr. Plum?

9 MR. PLUM: We may -- give us a few minutes? I'm sorry.

10 HEARING OFFICER DAVIS: Okay, let's go off the record.

11 (Whereupon, a brief recess was taken.)

12 HEARING OFFICER DAVIS: Let's go on the record.

13 It's my understanding that Columbia University would like
14 to call a witness, at this time. Is that correct?

15 MR. PLUM: Yes.

16 HEARING OFFICER DAVIS: Please call your witness.

17 MR. PLUM: I'd like to call Dean Soulaymane Kachani,
18 please.

19 HEARING OFFICER DAVIS: Please raise your right hand.

20 MR. PLUM: He's testified before, but you can do it again.

21 HEARING OFFICER DAVIS: Oh, he has?

22 MR. PLUM: Yeah, he has.

23 HEARING OFFICER DAVIS: Okay.

24 (Whereupon,

25 SOULAYMANE KACHANI,

1 was called as a witness by and on behalf of the Employer and,
2 after having been duly sworn, was examined and testified as
3 follows:)

4 HEARING OFFICER DAVIS: Since you've testified before, you
5 don't need to do the name thing again, although the reporter is
6 asking you to write your name down just for the reporting
7 service. Okay, Mr. Plum?

8 MR. PLUM: Professor Kachani, could you -- could we hand
9 the witness Petitioner's 60, please?

10 DIRECT EXAMINATION

11 BY MR. PLUM:

12 Q Professor Kachani, you're the author of Petitioner's 60,
13 is that correct?

14 A That is correct.

15 Q It was your decision to deny the appeal by Mr. Longxi?

16 A That is correct.

17 Q Can you tell us why you denied the appeal?

18 A After careful review of all the elements that were
19 presented by Mr. Longxi in his appeal, the main reason for
20 denying the appeal has to do with him traveling on Friday,
21 March 13, to China against very clear and straight directives
22 from both Professor Banta and Professor Kumar.

23 After we spoke with Professor Kumar and after speaking
24 also to Professor Banta, with regards to the appeal that was
25 submitted by Mr. Longxi, it appears that Mr. Longxi spoke on

1 Monday, March 9th, with Professor Banta, requesting that he
2 travels on Friday, March 13, and miss proctoring the exam, the
3 quiz. Professor Banta rejected that request and asked him to
4 travel after Friday.

5 The following day, Mr. Longxi went to his advisor,
6 Professor Sanat Kumar, and without context asked him the same
7 question. Professor Kumar then asked him to get the express
8 permission of Professor Banta to leave on Friday, March 13.
9 After that conversation, Mr. Longxi ignored both requests and
10 anyway traveled on Friday, March 13, and missed proctoring the
11 quiz.

12 And so that, in addition to the other elements that were
13 presented by the department, in removing Mr. Longxi from his TA
14 duties, that was the primary reason for denying his appeal.

15 Q Can you explain to us the economic consequences of
16 terminating Mr. Longxi's TA position?

17 A The economic consequences that we decided in order to
18 minimize the impact on Mr. Longxi from removing him from his TA
19 duties were to stop his stipend payments starting March 23rd,
20 instead of March 13. The stipend amount that graduate students
21 receive in School of Engineering Applied Science for performing
22 TA duties are around \$2,850 something.

23 However, we decided again in order to minimize the
24 financial impact on him to not prorate his tuition and fees.
25 The tuition amount is \$20,500 something and the fees actually

1 if you -- it's about \$100.

2 Had we prorated those amounts, the financial impact would
3 have been significant, in excess of \$10,000. And so we decided
4 to keep covering the full tuition and fees for the entire
5 semester prior to removing him from his TA duties and the only
6 financial impact he had from being removed was stopping his
7 stipend payment starting March 23, which in effect meant not
8 getting a stipend for a bit less than two months.

9 Q Can you explain the academic impact, if any, of
10 terminating Mr. Longxi's TA position?

11 A The economic impact of removing Mr. Longxi from his TA
12 duties will be determined by the department at the end of the
13 semester. At the end of the semester or at the end of the
14 academic year, each department reviews all the doctoral
15 students in the program of that department and makes decisions
16 with regards to the standing of the doctoral students in the
17 program. That is typically how those decisions are made.

18 My understanding is that all departments have their
19 reviews of doctoral students in the spring semester, shortly
20 after commencement, so my assumption is that the department of
21 chemical engineering will be reviewing all doctoral students in
22 chemical engineering and will also review Mr. Longxi, and make
23 a determination with regards to any academic implications of
24 his dereliction of duties in terms of his TA responsibilities.

25 Q Thank you.

1 MR. PLUM: I have nothing further.

2 HEARING OFFICER DAVIS: Mr. Meiklejohn?

3 MR. MEIKLEJOHN: Yes, I have some questions. Is
4 Petitioner's Exhibit 20 up there, the original termination
5 letter?

6 HEARING OFFICER DAVIS: It is not. The witness now has my
7 unmarked copy.

8 CROSS-EXAMINATION

9 BY MR. MEIKLEJOHN:

10 Q You testified that Mr. Longxi appealed from this letter,
11 correct?

12 A Mr. Longxi appealed this decision.

13 Q This decision, right. And you testified just now that the
14 determination that you made was that the primary justification
15 for terminating him was failing to proctor the quiz on
16 March 13th?

17 A No, that's not what I said. I said that the primary
18 reason for denying his appeal was this element of dereliction
19 of duties and insubordination.

20 Q Okay. So did you reach a conclusion as to whether the
21 first bullet point on this letter was justified as grounds for
22 termination?

23 A I believe all the bullets here are justified, yes.

24 Q You think they're all valid.

25 A They are all valid.

1 Q Now Mr. Longxi testified that the second bullet point
2 related to an email that he had sent about six weeks earlier,
3 in which he had used the F word.

4 A Yes, that is correct.

5 Q Is that what this dismissal letter refers to? The
6 inappropriate email, does that refer to the email where he used
7 the F word?

8 A To the best of my understanding, this is what the
9 department of chemical engineering refers to in this letter,
10 yes.

11 Q Well, you investigated -- did you conduct some kind of
12 investigation of the termination?

13 A We did, yes.

14 Q And based upon your investigation, did you come to a
15 conclusion as to what that bullet point refers to?

16 A That is correct.

17 Q Does it refer to the email that he sent six weeks earlier
18 in which he used the F word?

19 A That is correct.

20 Q Okay. Was any disciplinary action taken against him when
21 he sent the email?

22 A When this was brought up to the dean's office, there was a
23 hearing that was conducting and the termination that was made
24 with regards to this email, yes.

25 Q And that was held the day after he was terminated from his

1 TA job, correct?

2 A That is correct. And that is the --

3 Q So did you --

4 MR. PLUM: Hold on.

5 THE WITNESS: And that is because the student was away
6 from the country and could not appear on a hearing before that.
7 So we waited until he came back from his trip and tried to
8 determine when he could appear for that hearing, and that was
9 the first available date that he could attend the hearing.

10 BY MR. MEIKLEJOHN:

11 Q So the hearing was scheduled for his first day back from
12 his trip out of the country?

13 A If it is March 24th, that would be his second day.

14 Q Okay, right. It wasn't the day that he landed at the
15 airport. It was the day after he landed at the airport,
16 correct?

17 A That is correct.

18 Q But the department did not wait until that hearing was
19 held before deciding to terminate him, correct?

20 A That is correct.

21 Q And in conducting your --

22 A Those are two different matters. The hearing that took
23 place, the dean's discipline hearing with regards to the email
24 that he sent to the class using the F word is fairly separate
25 from his TA duties. He would have been called into that

1 hearing if he had been a student in the class. What triggered
2 this discipline is him sending this email to the students with
3 foul language. We would have treated it the same way had it
4 been a TA or a student in the class. He would have been called
5 into a dean's discipline hearing to determine whether there was
6 a pattern of such behavior and determine the severity of using
7 foul language in this email, in contradiction with policies
8 with usage of emails of Columbia.

9 Q Was there a determination as to whether there was a
10 pattern of using foul language?

11 A There was a determination that there was no history of
12 that, with the exception of that email, and an academic warning
13 was issued by the dean's office with regards to his behavior in
14 terms of sending that email with foul language.

15 Q What you're saying is that the disciplinary procedure with
16 respect to his status as a student, the dean's discipline, is
17 entirely separate from the disciplinary procedure with respect
18 to his status as a teaching assistant, correct?

19 A I am not sure I understand your question.

20 Q Well, you said the March 24th hearing related to -- was
21 the dean's hearing and that hearing could have been -- the same
22 procedure would have been followed if it was a student in the
23 classroom or any other student, correct?

24 A Yes, that's what I said.

25 Q That hearing related to whether disciplinary action should

1 be taken to him in his -- with respect to his status as a
2 student, correct?

3 A That is correct.

4 Q And this termination letter the day before, March 23rd,
5 that was discipline with respect to his status as an employee,
6 correct?

7 MR. PLUM: This is -- I'm going to object to that.

8 MR. MEIKLEJOHN: All right, withdraw. I'll rephrase the
9 question.

10 BY MR. MEIKLEJOHN:

11 Q This discharge letter relates to his status as a TA, not
12 his status as a student, correct?

13 A Yes.

14 Q In the course of your investigation, did you find out when
15 it was that Mr. Longxi allegedly made a decision about late
16 homework without approval from Dr. Banta?

17 A I think it was stated in -- it was pretty clear from the
18 email what the date was. I don't recall the date.

19 Q It was in early part of the semester, correct?

20 MR. PLUM: Why don't we look at the email?

21 MR. MEIKLEJOHN: It's not in the record. I don't think we
22 put that in.

23 HEARING OFFICER DAVIS: Let's go off the record for a
24 second.

25 (Pause off the record.)

1 HEARING OFFICER DAVIS: My perusal of the record doesn't
2 reveal any emails with respect to the question that counsel
3 just asked. So you can ask the next question.

4 MR. MEIKLEJOHN: While I'm looking for the email that you
5 referenced, let me ask you -- I'm sorry. I don't believe I
6 have copies, but maybe I could just show him this document that
7 was produced in response and see if it refreshes his
8 recollection.

9 HEARING OFFICER DAVIS: Show it to counsel.

10 (Pause.)

11 MR. PLUM: This doesn't look like it came from us. It has
12 no Bates stamp on it.

13 MR. MEIKLEJOHN: No, this packet didn't have Bates stamps.
14 But anything that has the big -- I don't use the big redacted
15 stamp. So anything with the big redacted stamp comes from you
16 guys. But, yes, that particular packet was relating to Mr.
17 Longxi, was not Bates stamped.

18 MR. PLUM: Everything else -- all the other ones were. I
19 was finding them by numbers before.

20 MR. MEIKLEJOHN: The copies that were sent to me, you can
21 look through the whole file, nothing's got Bates stamps on it.

22 HEARING OFFICER DAVIS: Let's go off the record.

23 (Discussion off the record.)

24 HEARING OFFICER DAVIS: Mr. Meiklejohn?

25 BY MR. MEIKLEJOHN:

1 Q Professor Kachani, in your testimony, you referenced an
2 email that related to the late homework assignment issue. I'm
3 going to show you this document --

4 A I don't -- I'm not sure I understand that, what I referred
5 to.

6 Q I'll back up. Do you still have Petitioner's Exhibit 20
7 in front of you?

8 A Correct, yes.

9 Q The first bullet point relates to making decisions about
10 late homework submissions.

11 A Correct.

12 Q And I asked you if that incident took place in February.
13 And you said that the date was on the email.

14 A Yes.

15 Q Okay. So do you -- I'd like to show you this document and
16 ask you if this refreshes your memory that the incident that's
17 described in that first bullet point occurred in February.

18 A February 22, so it would be late February, not early
19 February.

20 Q That is when that incident occurred.

21 A Correct.

22 Q And in the course of your investigation, did you determine
23 whether Professor Banta had discussed that incident with Mr.
24 Longxi?

25 A In person, by email? Can you rephrase the question/

1 Q In the course of your investigation, did you determine
2 whether Mr. Banta had discussed this incident with Longxi in
3 person?

4 A After the email or before the email? I'm not sure what
5 you're asking for.

6 Q Well, maybe I should ask you a different question.
7 According to this, Mr. Longxi made a decision regarding late
8 submission of homework assignments without the approval of
9 Dr. Banta, correct?

10 A That is correct.

11 Q What is your understanding of what Mr. Longxi's conduct
12 was that's referred to in this bullet point?

13 A Making important decisions about the grading of student
14 assignments without seeking input from the faculty.

15 Q You were here when Mr. Longxi testified about that
16 incident, correct?

17 A That is correct.

18 Q And his explanation was that the students were required to
19 submit the homework assignments in a particular format, either
20 electronic format or in hardcopy.

21 A Yes.

22 Q And he told the students that if they had it ready in
23 time, in the wrong format, that he would accept it as long as
24 they submitted it in the proper format within a day or two.
25 Did you hear that testimony?

1 A I heard that, yes.

2 Q Now in the course of your investigation, did you get a
3 different version of what happened?

4 A No. It was consistent.

5 Q So this bullet point refers to Mr. Longxi deciding that if
6 the student had the homework done in time and just didn't
7 submit it in the right format, that that wouldn't result in a
8 deduction. And in your investigation, you concluded that that
9 conduct warranted discipline?

10 A Not only that. So that's not the only part. There is
11 another part which is him deducting points, if I remember
12 correctly, I'm not sure, removing five points from homeworks
13 without seeking input from the faculty. So I think there were
14 two distinct issues. One is making unilaterally a decision to
15 extend homework submission without seeking approval of the
16 faculty and the second one was arbitrarily deciding on points
17 to be taken without seeking input from the faculty.

18 Q So with respect to in his appeal, Longxi addressed that
19 first issue, the telling people that it was okay if they
20 submitted their --

21 A Absolutely, and I --

22 HEARING OFFICER DAVIS: Hold on, let him finish.

23 BY MR. MEIKLEJOHN:

24 Q Did you, in your investigation, you learned there was
25 another incident?

1 A I think so, yes.

2 Q And did you confront Mr. Longxi and ask for his
3 explanation as to that second incident?

4 A If my recollection is correct, that second incident was
5 also included in the package that Mr. Longxi included in his
6 appeal.

7 Q Okay. Now the email that uses the F word was dated
8 February 3rd, correct? That's Petitioner's 58.

9 HEARING OFFICER DAVIS: Let the record reflect the witness
10 is looking at Petitioner's 58.

11 MR. MEIKLEJOHN: No, I'm sorry, 57.

12 HEARING OFFICER DAVIS: 57?

13 MR. MEIKLEJOHN: Yeah, 58 is the apology.

14 HEARING OFFICER DAVIS: The witness now has Petitioner 57.

15 THE WITNESS: It seems so, yes.

16 BY MR. MEIKLEJOHN:

17 Q That occurred almost six weeks before he was terminated,
18 correct?

19 A Yes.

20 Q And I guess about more than five weeks before this dean's
21 hearing was scheduled on this issue, correct?

22 A That is correct.

23 Q Do you have any -- in the course of your investigation,
24 did you determine why this issue surfaced five or six weeks
25 after it occurred?

1 A The dean's office was made aware about this email at the
2 time of the issue with regards to the termination from the TA
3 duties.

4 Q Who informed the dean's office about this?

5 A I believe it was the instructor of the course and the
6 chairman of the department.

7 Q Were there any complaints from students about that email?

8 A Not in the email -- not in the information that was
9 provided by the professor and the department chair.

10 Q Do you have any reason to believe that any students were
11 offended by that email?

12 A That was the subject of the disciplinary hearing.

13 Q Was there evidence that came out at the disciplinary
14 hearing that any students were offended by that?

15 A No. And that is primarily because we did not interview
16 the students. We did not see anything to suggest that students
17 were offended by the email and we did not interview those
18 students. There are similar cases with email where use of foul
19 language in emails where we interview every single student in
20 the class. In this particular case, we did not feel that the
21 email amounted to doing that.

22 Q Did Mr. Longxi explain to you, at some point, that he
23 hadn't been in the country for that long and he heard people
24 use that word all the time, and he did not realize that it was
25 regarded as particularly offensive?

1 A I'm not sure what your question is about. He had been in
2 the country for two years.

3 Q Okay. And he had heard that word used a lot in those two
4 years, correct?

5 A And he was a master's student in the class.

6 Q Pardon?

7 A He was -- he went through two orientations, master's
8 orientation and doctoral orientation, and in both orientations
9 we clearly specify what is proper and not proper etiquette with
10 regards to a variety of things, including email policy.

11 Q Did he tell you that he had heard that that word used in
12 that particular context a lot and didn't realize that it was
13 regarded as offenses?

14 A He did not tell me that.

15 Q Okay. You said that the main issue leading to his
16 termination was failing to proctor the quiz on March 13th,
17 correct?

18 A Not only that, but refusing point blank directives from
19 both Professor Banta and Professor Kumar not to travel on
20 March 13th.

21 Q On March 13th.

22 A Yes.

23 Q Have you seen -- this was not apparently included in the
24 appeal, but have you now seen Petitioner's Exhibit 55? And I'm
25 drawing your attention in particular to the first line of that

1 email after high class.

2 A Yes.

3 Q Where it tells when people's office hours are.

4 A Yeah.

5 Q Did you receive some evidence consistent with that showing
6 that Mr. Longxi's office hours were on Wednesdays?

7 A Yes.

8 Q Was it your understanding that the make-up quizzes were
9 conducted by the TAs on the days of their office hours, during
10 their office hours?

11 A You mean by the TAs or by the TA, just a clarifying
12 question?

13 Q Was it your understanding that each TA conducted the
14 make-up exams on his or her office hours?

15 A I'm not sure that's correct. There were two or three
16 hours times during the week where make-up quizzes were made,
17 where was it in place, and both TAs were responsible for all
18 the make-up quizzes. Because as Mr. Longxi testified, up to
19 one-third of the students failed the in-class quiz and that's a
20 large number of people who then take quizzes, make-up quizzes.
21 And as a result, it is the responsibility of both TAs to
22 proctor all the make-up quizzes.

23 Q Did Professor Banta or anybody else involved in this
24 investigation provide you with any documentation that Mr.
25 Longxi was scheduled to provide TA services on March 13th?

1 A Yes, that's part of your exhibits.

2 Q Which document are you referring to?

3 A I think it's a document about the email that Professor
4 Banta sent to both Mr. Longxi and the other TA, about
5 proctoring the exam. I don't know what the number of that
6 exhibit is.

7 MR. PLUM: Yeah, he's referring to --

8 MR. MEIKLEJOHN: Well, I haven't seen it, I don't think.

9 MR. PLUM: No, no, he -- I know what he's referring to.
10 He's referring to 113.

11 HEARING OFFICER DAVIS: Employer 113.

12 MR. PLUM: We call it Respondent 113.

13 HEARING OFFICER DAVIS: It's marked E.

14 MR. PLUM: But not by me.

15 HEARING OFFICER DAVIS: Okay, the witness has 113 in front
16 of him.

17 THE WITNESS: So Professor Banta explained that both TAs
18 are responsible for all the make-up quizzes and that is why he
19 is sending the make-up quiz to both TAs.

20 BY MR. MEIKLEJOHN:

21 Q Well, actually, he only sent it to Longxi and not to
22 Natalie.

23 A Then he realized the error and Exhibit 113 is him
24 correcting that and saying, sorry, sent this to Longxi this
25 morning but forgot to copy Natalie, clearly stating that both

1 have to be copied and both are responsible for the make-up
2 quizzes.

3 Q And so the documentation in their other email showing that
4 Longxi's office hours were Wednesday and Natalie's were
5 Fridays, that -- you disregarded that in reaching your
6 conclusions?

7 A That's not correct. Two of the three hours for make-up
8 quizzes happened in the first part of the office hours, so that
9 just in case there are no students who show up to office hours
10 to take out the make-up quizzes, they can still ask questions
11 about homeworks. It was done for convenience for the TAs. But
12 both TAs were responsible for proctoring the make-up quizzes
13 and for grading those make-up quizzes, as Mr. Longxi said,
14 either the same day or the following day after those make-up
15 quizzes were taken.

16 Q Mr. Longxi testified that he did them on his office hours
17 on Wednesday and Natalie did them during her office hours on
18 Friday, correct?

19 A I don't think he said that. He said there were three
20 times during the week where make-up quizzes were made and that
21 two of these three times were the first half-hour of the office
22 hours.

23 Q Longxi presented you with his -- in your investigation
24 with his position that he was not scheduled to perform TA
25 duties on March 13th, correct?

1 A And he gave a document that clearly, Exhibit 113, that
2 clearly contradicted that statement.

3 Q So your conclusion that he was being -- that that was
4 inaccurate is based solely on the fact that an email from Dr.
5 Banta sending the quiz --

6 A That is not correct.

7 HEARING OFFICER DAVIS: Well, wait, wait. Let him finish
8 the question.

9 THE WITNESS: I'm very sorry.

10 BY MR. MEIKLEJOHN:

11 Q What else was it based on? Go ahead.

12 A Professor Banta and Professor Kumar both saying that he
13 asked them about not being there on March 13 to proctor the
14 quiz and Professor Banta telling him he has to be there on
15 March 13 to proctor the quiz.

16 Q Did you interview Natalie during your investigation?

17 A I personally did not interview Natalie during the
18 investigation, but my colleague, Tiffany Simon, associate dean
19 of graduate student affairs, did.

20 Q Was Mr. Longxi given an opportunity to question her about
21 what occurred that day?

22 A No.

23 Q Was he given the opportunity to present evidence from her
24 about whether she believed he was expected to proctor the quiz
25 that day?

1 A She did provide information to my colleague.

2 Q But Mr. Longxi wasn't allowed to be present when that
3 evidence was submitted, was he?

4 A There was no evidence submitted. My colleague interviewed
5 the other TA, who told her that he was supposed to be there and
6 he did not show.

7 Q Was Mr. Longxi provided with that evidence and given an
8 opportunity to respond to the evidence that she provided?

9 A No.

10 MR. MEIKLEJOHN: Nothing further.

11 HEARING OFFICER DAVIS: Mr. Plum?

12 MR. PLUM: Nothing further.

13 HEARING OFFICER DAVIS: Nothing further, okay, great.

14 Thank you. You're excused.

15 THE WITNESS: Thank you very much.

16 (Witness excused.)

17 HEARING OFFICER DAVIS: Does that conclude our testimony
18 for today? Mr. Plum?

19 MR. PLUM: We are done for today.

20 HEARING OFFICER DAVIS: Okay. Mr. Meiklejohn?

21 MR. MEIKLEJOHN: Did we want to put any of those documents
22 in that -- I know that the chart you produced in response to
23 subpoena, we could take care of, today.

24 MR. BRILL: Sure, while we're all here. This is going to
25 be Joint Exhibit -- are we on the record?

1 HEARING OFFICER DAVIS: We are.

2 MR. BRILL: So Petitioner asked for information regarding
3 the number of students who received PhD degrees over the last
4 three years in each school without having an instructional
5 appointment. And we had compiled that information. I would
6 hesitate to say it's pursuant to subpoena because there was no
7 one source of this information that required Dr. Rittenberg's
8 (ph.) office to look at several different computer systems, as
9 he explained during his testimony on the first day of the
10 hearing, comparing the appointments in PeopleSoft with the
11 student information system. But he has compiled that
12 information into a chart form, which we supplied to the
13 Petitioner and we have agreed to put it into evidence as a
14 joint exhibit. I don't know what the next joint exhibit number
15 is.

16 MR. MEIKLEJOHN: 11.

17 MR. BRILL: It's 11? So I have some copies in full color.

18 MR. MEIKLEJOHN: If you can spare one.

19 HEARING OFFICER DAVIS: This will be marked as Joint
20 Exhibit Number 11.

21 (Joint Exhibit 11 identified.)

22 HEARING OFFICER DAVIS: I assume you have no objection.

23 MR. MEIKLEJOHN: No.

24 HEARING OFFICER DAVIS: So Joint Exhibit 11 is admitted.

25 (Joint Exhibit 11 received.)

1 MR. BRILL: Just for the record, I think the exhibit is
2 self-explanatory, but it has -- it shows for each academic
3 year, the total number of students receiving PhD degrees and
4 the respective school or division, and those who -- of that
5 number, those who did not have an instructional appointment.

6 HEARING OFFICER DAVIS: Okay. Could I just see it?

7 MR. BRILL: Oh, I'm sorry.

8 (Pause.)

9 HEARING OFFICER DAVIS: Okay, Joint 11 is admitted. Do
10 you have more documents?

11 MR. MEIKLEJOHN: Not today. We need to get a little
12 explanation of the others.

13 HEARING OFFICER DAVIS: Okay. So it's my understanding
14 our next hearing date is May 27th, is that correct?

15 MR. MEIKLEJOHN: Is that Wednesday? Yeah.

16 HEARING OFFICER DAVIS: Okay, so we're adjourned until
17 9:30, on May 27th. Thank you very much.

18 Off the record.

19 (Whereupon, at 4:06 p.m., the above-entitled matter was
20 adjourned, to reconvene on Wednesday, May 27, 2015, at
21 9:30 a.m.)

C E R T I F I C A T E

This is to certify that the attached proceedings done before
the NATIONAL LABOR RELATIONS BOARD REGION TWO

In the Matter of:

COLUMBIA UNIVERSITY,

Employer,

And

GRADUATE WORKERS OF COLUMBIA-GWC, UAW,

Petitioner.

Case No.: 02-RC-143012

Date: May 21, 2015

Place: New York, New York

Were held as therein appears, and that this is the original
transcript thereof for the files of the Board

Official Reporter

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