

In the Matter of:
Investigative Hearing

WILLIAM F. MERCK, II

February 16, 2019



1 BEFORE THE FLORIDA HOUSE OF REPRESENTATIVES
2 Public Integrity & Ethics Committee

3 IN RE:

4 Investigative Hearing on the
5 Unauthorized Use of Appropriated
6 Funds for Fixed Capital Outlay
7 Projects at the University of
8 Central Florida,

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Deposition of: WILLIAM F. MERCK, II

14

Date Taken: February 16, 2019

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Time: 1:04 p.m. - 5:23 p.m.

16

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1 A P P E A R A N C E S:

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S T I P U L A T I O N S

It is hereby stipulated by and between counsel for the respective parties that the reading and signing of the deposition be waived.

1 THE REPORTER: Would you raise your right hand,
2 please.

3 THE WITNESS: (The witness complies.)

4 THE REPORTER: Do you solemnly swear that the
5 testimony you are about to give will be the truth,
6 the whole truth, and nothing but the truth so help
7 you God?

8 THE WITNESS: I do.

9 WILLIAM F. MERCK, II,
10 having first been duly sworn, testified under oath as
11 follows:

12 DIRECT EXAMINATION

13 BY MS. MITZ:

14 Q. All right. Good afternoon, Mr. Merck.

15 A. Good afternoon to you as well.

16 Q. Have you ever given a deposition before?

17 A. It's been a while, but yes.

18 Q. Okay. Since it's been a while, I just want to
19 cover a couple of ground rules so that we're all on the
20 same page.

21 As I'm sure you know, the purpose of today's
22 deposition is just for Don and I to get a better
23 understanding of what happened at UCF.

24 We have only been provided with documents. We
25 didn't get to sit in on any of the interviews conducted

1 by Bryan Cave, so the last few days have been very
2 enlightening for us to be able to hear from the people
3 involved.

4 So we're just here to figure out what happened.
5 We're not trying to get anybody in trouble. We're not
6 going to be asking any trick questions. It's really
7 just to get some information.

8 So for today, I ask that you speak loudly
9 because I'm on the other end of the phone and I need to
10 hear everything, and also because Madam Court Reporter
11 needs to hear everything to be able to type it down
12 accurately. Particularly if you're going to be giving
13 like a yes or no answer, please try not to nod your head
14 or say uh-huh, huh-uh; say yes or no so that it's clear
15 for the record.

16 If you are going to guess at something or
17 estimate or approximate, please let us know that you are
18 doing that. If you don't know something, you can say I
19 don't know. If you know something because someone else
20 told you, please let us know that. And if at any time
21 you are confused by our questions, and you want us to
22 restate it or rephrase it, please ask us to do so and we
23 will.

24 Do you have any questions of me?

25 A. Not at this time, I don't. Thank you for that

1 introduction.

2 Q. Okay, great. Well, let's just jump in and get
3 started. Can you please state your full name for the
4 record?

5 A. William F. Merck, II.

6 Q. And are you currently employed?

7 A. No.

8 Q. Okay. What was your last place of employment?

9 A. University of Central Florida.

10 Q. And what was your position there?

11 A. Vice president for administration and finance
12 and chief financial officer.

13 Q. And how long were you at the University of
14 Central Florida?

15 A. Twenty-two years.

16 Q. Were you always in the same position?

17 A. I was in the vice president for administration
18 and finance position to start my tenure there, and a few
19 years back, maybe seven, I was -- had the title chief
20 financial officer added to the role.

21 Q. Okay. And who did you report to in that
22 capacity?

23 A. The president of the university.

24 Q. Okay. Would that be true for your entire time
25 at UCF?

1 A. Yes.

2 **Q. Okay. And what relevant education, training or**
3 **experience did you bring to UCF?**

4 A. My experience, after part-time jobs in college,
5 three years in the Army, was -- was 14 years at James
6 Madison University. The last five I was vice president
7 for business affairs there. And then I spent ten years
8 at the College of William & Mary in the role of vice
9 president for administration and finance, and then came
10 here.

11 **Q. Okay. And so as CFO at UCF, what were your job**
12 **duties or responsibilities?**

13 A. My job duties and responsibilities were to some
14 extent intertwined with my role as vice president for
15 administration and finance.

16 An easy way maybe to explain what my role was
17 is to say it this way. The mission of the university is
18 teaching, research, and service. In my division,
19 administration and finance which has about a thousand
20 people on the staff, our role was to provide the best
21 environment that we could for those teaching, research
22 and -- teaching, research, and service functions to
23 function as well as they could with the resources that
24 we had available to us to create that environment.

25 **Q. Okay. When you say there was about a thousand**

1 people in that division, did you supervise all those
2 people?

3 A. It was a hierarchical arrangement. I had about
4 eight direct reports, and they had their direct reports
5 and so on down the line.

6 Q. Okay.

7 A. So my role was to provide a leadership level at
8 about the 30,000-foot level for all the efforts of those
9 performing those services.

10 Q. I understand. Okay. And under which
11 presidents have you worked at UCF?

12 A. Dr. Hitt until Dr. Whittaker took over last
13 July.

14 Q. Okay. Can you describe the relationship that
15 you had with President Hitt? Did you guys work closely
16 together? Did you have good lines of communication?

17 A. Yes. We worked very closely together. We had
18 good lines of communication. He was, I think, perfect
19 for the role as president.

20 Q. I would assume, and correct me if I'm wrong,
21 that you probably had a lot of interaction with him and
22 it wasn't just limited to noticed meetings. Is that
23 fair to say?

24 A. That's fair to say.

25 Q. And then can you give me an idea of what sort

1 of relationship you had with Dale Whittaker when he came
2 in as provost? Did you guys start working together
3 immediately?

4 A. Yes, we did.

5 Q. Okay. And were you aware of the experience
6 that he came to UCF with?

7 A. Based on what I had heard and seen from the
8 search process that brought him here, I knew he was at
9 Purdue. He had worked as a dean and some other
10 capacities at that university.

11 MR. GREENE: Did you finish your answer about
12 your relationship with Dr. Whittaker? It seems like
13 you had a pregnant pause there. I wasn't sure. If
14 you did, that's fine.

15 THE WITNESS: I think whenever you have a new
16 relationship with -- with a president or anybody
17 that you are reporting to, it takes a little time to
18 start to learn how -- what they want, how they work,
19 what their expectations are of me in this particular
20 case. And so I was still going through that process
21 of trying to work through that with Dr. Whittaker.

22 BY MS. MITZ:

23 Q. Oh, yeah, I get that. I totally understand
24 that, and we'll talk about that relationship in depth in
25 a little bit.

1 So can you describe in general the relationship
2 that you had with the trustees?

3 And what I'm looking for is like did you just
4 talk to them in meetings? Did you spend some time with
5 them preparing them for meetings? Was there like kind
6 of an open door policy in that if they had questions
7 about things that were appearing on the agenda, they
8 could call you? I mean, kind of talk about those
9 things.

10 A. Sure. And as you know, the boards change over
11 time. Someone's tenure ends, new board members come in.
12 They all have their own personalities, their own
13 interests, their own backgrounds, and some board members
14 have much more interest in knowing how things operate.
15 Some are maybe less interested.

16 But my door was certainly always open to them,
17 and I encouraged them if they ever had questions or
18 anything that they wanted to know about items that would
19 be coming before them in board meetings, that I was
20 always open to talk with them about it and try to
21 explain it to them.

22 When a new board member would be coming in, I
23 made a point of offering them an opportunity for me and
24 usually one of our finance folks, like Tracy Clark or
25 before her Vanessa Fortier, for us to have a one-on-one

1 meeting with them, just for us to review how budgeting
2 worked in a university setting, which often was
3 different from the accounting and reporting that they
4 would do in the private sector. And I thought those
5 were fruitful and really helped them with their
6 understandings of how things went.

7 Also, prior to committee meetings that I was
8 responsible for, like finance and facilities, I'd
9 arrange a call or a personal meeting with the chair to
10 review the agenda items to see what, if any, questions
11 they might have about the agenda items so that we could
12 better prepare them for the meeting that was coming up,
13 and I found those useful.

14 **Q. Okay. So did that also include Chair Marchena?**

15 A. When he was chair of the finance and facilities
16 committee, the answer is yes. When he rotated off and
17 became board chair, the interaction was more between he
18 and the president.

19 But I was certainly available to answer any
20 questions that he might have, and if he wanted to meet
21 with me, that would be fine.

22 And we had a -- I had a relationship with
23 Dr. Hitt such that he had no qualms about me talking
24 with board members off line without him being there or
25 anything. You know, some organizations, there are

1 prohibitions against a staff member talking to a board
2 member outside of a formal meeting. We didn't have
3 that.

4 **Q. Okay. So let me go back to something you said**
5 **about a minute ago which was the orientation or the**
6 **training that you provided to new chairs of the finance**
7 **and facility committee.**

8 A. It was -- I'm sorry. Let me interrupt for a
9 second.

10 That orientation was to any board member, all
11 board members, not just the chairs.

12 **Q. Good. Thank you for that.**

13 **Do you recall specifically who you did that**
14 **with, say, since 2013?**

15 A. I can't answer that specifically. The only one
16 that comes to mind that I did not do it with was Danny
17 Gaekwad, who was a new member, and we just couldn't seem
18 to meet his calendar requirements to have that
19 orientation. But I believe we had that with all of the
20 others.

21 There may have been an exception that I am not
22 recalling, but I don't think so other than Mr. Gaekwad.

23 **MR. GREENE:** Can you spell Gaekwad for the
24 court reporter?

25 **THE WITNESS:** Probably not.

1 THE REPORTER: I can find it.

2 THE WITNESS: I'll give it a shot. It's
3 G-A-E-C-K-W-A-D [sic], I believe.

4 MS. MITZ: That sounds right. Okay.

5 BY MS. MITZ:

6 Q. So in those orientation training moments, did
7 you guys talk about the different kinds of funding
8 sources, including E&G?

9 A. That was the primary purpose for it, because
10 we, in higher education, use terms that aren't used in
11 the business world, things like education in general or
12 auxiliaries or direct support organizations. The
13 different auxiliaries sometimes are unfamiliar to them.

14 And we would give them an orientation as to the
15 size of the budget, the general way that it was divided
16 up among the various components of the university, and
17 how the state played into it with general fund
18 appropriations, the tuition from the students, and then
19 all of the revenue-generating opportunities on a campus
20 that bring in revenue as well, like the housing
21 operations, the book stores, food service, those sorts
22 of things.

23 Q. Okay. Do you recall whether in the orientation
24 there would have been a discussion about the different
25 ways that a source of funds could be referred to? And

1 the example that comes to mind is how some people think
2 carryforward is E&G. Would you have discussions that
3 specific?

4 A. We may have. I don't recall that, but we may
5 have very well done that because those meetings would
6 last an hour or more and it was free-flowing, and
7 sometimes I would be talking, sometimes Tracy Clark or
8 Vanessa Fortier would be talking with them.

9 Q. Okay. So as a result of having done this, has
10 it surprised you to hear that some of the trustees have
11 come out and said that they didn't know that
12 carryforward could be E&G?

13 A. Yes.

14 Q. Okay.

15 A. It does.

16 Q. All right. Now, in your position, did you work
17 particularly close with any specific department? I
18 would imagine maybe facilities.

19 A. I worked with all of them and it depended on --
20 it depended on what was going on in their world at the
21 time, whether they needed my input or advice or if it
22 was something that was abnormal, something unusual.
23 Often it would be issues with personnel, problems
24 relating to HR type issues, things likes that. It could
25 be budgeting issues. It could be anything. It was all

1 over the park. No one day was the same.

2 Q. Okay. Did you have occasion to work closely
3 with any of the attorneys in the general counsel's
4 office?

5 A. The three that I worked with the most would
6 have been Scott Cole, Youndy Cook, and Jordan Clark, and
7 it depended on the issue.

8 Q. Were they, like each attorney, assigned to a
9 specific subject area?

10 A. Scott Cole would have been more of the
11 generalist. Youndy Cook would have been more involved
12 in maybe litigation-type matters or personnel issues
13 that were contentious. And Jordan Clark was more
14 oriented towards legal activities that involved the
15 athletic association.

16 Q. Okay. I would like to take a step back in time
17 and ask you about a conversation that I believe you had
18 with Scott Cole approximately 10 years ago, maybe even
19 11 years ago.

20 MR. GREENE: Woo.

21 BY MS. MITZ:

22 Q. Do you recall having a discussion with him
23 about the fact that funds were being either transferred
24 or loaned to the athletic association and telling Scott
25 that that -- that idea of transferring or loaning those

1 funds may lead to an audit hit or comment?

2 A. No. What I do remember -- what I do remember
3 is that, and I don't remember the timeframe, I'll be
4 clear on that. Probably ten years ago, I'll use that as
5 a very round number.

6 Q. Okay.

7 A. After one of the board meetings, and that, I
8 believe, was when the old board of regents was in place,
9 not the board of governors. A question came up in a
10 board meeting, not to me, but -- in fact, I was not even
11 in the room, about could we help out the athletic
12 department in some way to help them grow the program and
13 move ahead?

14 So the president asked me if we could loan them
15 a million dollars.

16 I double checked that with our then controller,
17 Linda Bonta, and we agreed there was no prohibition
18 against doing that, and so we did. And over the years
19 we added to that.

20 And then a few years later, the state auditors
21 had a problem with that that they expressed, and so we
22 stopped doing that. And subsequent to that, the
23 athletic department has been making annual payments back
24 to repay those loans.

25 Q. Okay. I have -- actually, Don has a copy of

1 what I think might be the auditor general report that
2 you just referred to. So if you could just flip to --

3 MR. RUBOTTOM: Document 1.

4 BY MS. MITZ:

5 Q. It should be page seven of the audit. It will
6 be the first document in your packet. If you can kind
7 of glance through that and see whether that is sounding
8 like the situation you just described?

9 A. The -- it looks -- it looks -- I'm just
10 generally looking at it, and it looks like it's
11 appropriate except for the part where it says that only
12 two of the loans have been approved by the university
13 president and none of the loans were approved by the
14 board of trustees.

15 I never was involved in loans to the athletic
16 department that the university president was not aware
17 of.

18 Q. Okay.

19 A. And so from there, I wouldn't have been
20 involved with wanting to bring it up or even needing to
21 bring it up with the board of trustees. That would have
22 been something between the president and the director of
23 the athletic association in some of their conversations
24 and meetings.

25 So I didn't unilaterally make a loan without

1 having the president know that that's what we were
2 doing.

3 Q. Gotcha, okay. Do you -- do you have any
4 recollection of Scott Cole being involved in this?

5 A. No.

6 Q. Okay. Do you have any recollection of Scott
7 Cole ever mentioning to you that something he was
8 intending to do may end up in an audit comment or an
9 audit ding?

10 A. I'm sorry. Say that again.

11 Q. Sure. Do you have any recollection of Scott
12 Cole saying to you that an action he intended to take
13 may result in an audit comment or an audit ding?

14 A. An action Scott was taking would result in an
15 audit comment?

16 Q. Yes.

17 A. Not offhand.

18 Q. Okay.

19 A. Wait. Let me think for a minute.

20 Well, no. This was not a comment about an
21 action to be taken. It was just a conversation about
22 the -- the problem that was statewide with all the
23 universities having to do with faculty reporting hours,
24 and it was an issue that no one had a good way to really
25 do that accurately.

1 And we knew that we would continue to get audit
2 comments about that, and it was one of those problems
3 nobody had a real answer to across the system. Those
4 were the kind of conversations I might have had with
5 Scott about audit issues.

6 **Q. Okay. Was Scott Cole on the facility budget**
7 **committee?**

8 MR. RUBOTTOM: Hey, Carine, can I just go back
9 and go through a few of the details on that?

10 MS. MITZ: Sure.

11 MR. RUBOTTOM: Because we are trying to figure
12 out what that working relationship was like.

13 We don't know anything more about the loan than
14 what we read in the audit reports. I think it was
15 referred to again two years later, but they
16 mentioned there were promissory notes. Were those
17 promissory notes executed each time that monies were
18 -- were loaned --

19 THE WITNESS: Yes.

20 MR. RUBOTTOM: -- to the DSO or were any of
21 those executed later?

22 THE WITNESS: I can't define later. It would
23 have been -- it would have been a reasonable amount
24 of time.

25 MR. RUBOTTOM: You wouldn't have just put a

1 loan on the books?

2 THE WITNESS: No.

3 MR. RUBOTTOM: You would have --

4 THE WITNESS: No.

5 MR. RUBOTTOM: You would have evidenced those
6 loans?

7 THE WITNESS: Absolutely. Those loans were
8 evidenced in some sort of a document that would have
9 been handled through finance and accounting, yes.

10 MR. RUBOTTOM: Thank you.

11 THE WITNESS: Yes.

12 MR. RUBOTTOM: And I'm not very good at this,
13 so that's why I'm talking over you, so I'm sorry.

14 Would the general counsel's office have
15 participated in or reviewed the promissory notes
16 before they were executed?

17 THE WITNESS: I wouldn't have been involved in
18 that transaction, so I don't know. It could have,
19 but I know there was a good working relationship
20 between finance and accounting and the general
21 counsel's office. So there very well may have been
22 conversations about the documents and how they were
23 worded, but I wasn't involved in it.

24 MR. RUBOTTOM: One thing that I find
25 interesting is that on that 2008 audit, there's

1 extensive discussions about the general counsel's
2 opinion about the validity of those loans.

3 So the university was, in response to the
4 audit, appeared to be disputing the auditor's
5 conclusions, and we understand that happens in
6 audits.

7 THE WITNESS: Right, right, right.

8 MR. RUBOTTOM: I'm trying to figure out if you
9 have any recollection if the general counsel's
10 office got involved before the exit interview or if
11 that would have been interaction after the exit
12 interview?

13 THE WITNESS: I don't recall that. I don't.

14 MR. RUBOTTOM: Do you recall any audit comment
15 over the last ten years where you brought -- where
16 the finance department brought or any department
17 brought the general counsel in before the exit
18 interview to help understand the validity of the
19 auditor's concerns or anything like that?

20 THE WITNESS: Depending on the issue, I know we
21 would have talked to the general counsel about
22 various things. But I can't specifically -- if
23 you're asking -- if you're asking me was there a
24 working relationship between F&A and the general
25 counsel's office, the answer is yes.

1 MR. RUBOTTOM: Right.

2 THE WITNESS: I can't really relate to you all
3 the specifics of the conversations they might have
4 had because there could have been telephone calls,
5 there could have been meetings. They could have
6 been brought up in other meetings. But there was a
7 working relationship between those two departments.

8 MR. RUBOTTOM: Who would, in the process of
9 dealing with the auditor -- I mean, we've got access
10 to a bunch of e-mails from last spring where these,
11 the Colbourn Hall issues were being discussed.

12 Who would ordinarily, in your department,
13 engage general counsel in analysis at that stage of
14 an audit?

15 THE WITNESS: It would have been somebody,
16 probably, that reported directly to me. If it was a
17 financial issue, it would have been Tracy Clark,
18 more than likely. It could have been Misty -- not
19 Misty, but Christy Tant, more likely Tracy. If it
20 was a building issue, it would more than likely have
21 been Lee Kernek, and she would have talked to Scott
22 primarily, possibly Jordan Clark.

23 If it was a police matter that police reported
24 to me, they would have more than likely worked with
25 Youndy Cook. She got involved in a lot of the

1 police issues.

2 So there was that working relationship between
3 my direct reports and general counsel on a regular
4 basis depending on the issue involved and who was
5 the knowledge expert.

6 MR. RUBOTTOM: This spring when the auditor was
7 asking questions about Trevor Colbourn Hall and the
8 funding source, is it -- who do you think was point
9 on that, on that issue?

10 THE WITNESS: I believe there were two people
11 that were point, and it would have been Tracy and
12 Christy; Tracy Clark and Christy Tant.

13 MR. RUBOTTOM: And why would that not be Lee,
14 because it's funding rather than a --

15 THE WITNESS: Exactly. It's a funding issue
16 more so than a construction issue. Lee may have
17 been in the conversation, but not as the point
18 person.

19 MR. RUBOTTOM: Okay, okay. Did they consult
20 with you during that process? When did you get
21 brought into the loop on that?

22 THE WITNESS: They kept me informed of what the
23 conversations were at kind of a 30-foot --
24 30,000-foot level. I didn't get into the details of
25 every conversation, but they would let me know we're

1 having this conversation, they're asking questions
2 about this kind of thing, and these are the
3 responses that were given. And it was for my
4 information.

5 MR. RUBOTTOM: Right. Did you at any point
6 before the exit interview bring the issue up to
7 either Dr. Hitt, because it was going on during his
8 last couple of months, or Dr. Whittaker after he
9 succeeded the presidency?

10 THE WITNESS: I feel confident -- I can't say
11 for sure, but I feel confident that Tracy Clark and
12 Christy would have been talking to the provost about
13 it because Tracy Clark reported -- she had a dual
14 reporting relationship. She reported to the provost
15 as well as reporting to me. And those -- in the
16 last year or so, she actually had more regular
17 meetings with the provost than she did with me.

18 So it would strike me as odd if that
19 information wasn't conveyed to the provost.

20 MR. RUBOTTOM: Okay, Carine.

21 BY MS. MITZ:

22 **Q. So was Scott Cole on the facilities budget**
23 **committee?**

24 A. I don't know if he was an official member, but
25 I know that he or one of the other auditors would sit in

1 on those meetings when we were having the discussions.
2 There's a record somewhere of who the official members
3 were, and there may have been minutes as to who was
4 there.

5 Q. Okay. Do you recall whether he was also on the
6 university budget committee?

7 A. Again, officially, I am not sure, but I know I
8 distinctly remember him sitting in on all the meetings,
9 so he was there.

10 Q. Okay. So with that recollection that he was
11 present at the meetings, would it be fair to say he
12 would have heard discussion about the use of E&G for
13 capital projects?

14 A. Absolutely.

15 Q. Okay. And do you recall him ever questioning
16 it or objecting to it?

17 A. No.

18 Q. And do you think he would have heard those
19 discussions on more than one occasion?

20 A. Absolutely, yes.

21 Q. Okay. Now, to your knowledge, do you know if
22 documents that were prepared for the board of trustees,
23 such as the five-year capital improvement plan and the
24 annual capital outlay budget, do you know whether those
25 documents passed through Scott Cole's hands before they

1 **made it to the board of trustees?**

2 A. Scott Cole got advance copies of all of the
3 materials going to the board meetings, both the full
4 board or the committee meetings in advance of those
5 meetings, as did our internal audit -- auditor. And if
6 I'm not mistaken, all those materials were forwarded to
7 the board of governors as well.

8 And I know in recent times when we went from
9 paper to electric copies of all the materials, the board
10 of governors had access to all the materials, including
11 the attachments that would be present in a board
12 meeting. So everybody had everything in advance that we
13 were giving to the board for their review and comment,
14 if any.

15 **Q. And would that everybody include Whittaker's**
16 **chief of staff?**

17 A. I don't know how the distribution was in the
18 provost's office, but it was certainly available. It
19 was nothing that would have been kept from them in any
20 way. It was readily available.

21 So how the distribution went in the provost's
22 office, I couldn't say.

23 **Q. Okay.**

24 A. But there was -- it was not controlled by the
25 provost in that it was readily available to anybody that

1 wanted it. I'm just thinking of the official
2 distribution list.

3 Q. Okay. All right. So what I would like to
4 discuss now is the discussion or discussions that you
5 had with President Hitt regarding the use of E&G funds
6 for what was initially the Colbourn Hall renovation, and
7 then what turned into the Trevor Colbourn Hall
8 construction.

9 I understand that you had a conversation with
10 him at one point, and so I'd like you to give me as much
11 detail as you can. If you recall the date, who else
12 might have been present, and what was said, I would
13 greatly appreciate that.

14 A. Well, as we established earlier, I had a
15 relationship with Dr. Hitt where I could drop in. We
16 talked about things in formal meetings, but also just
17 outside of formal meetings.

18 And this project started off as what was going
19 to be -- well, first of all, that project started with
20 increasingly mounting complaints about the health
21 issues, the air quality and all that in the old Colbourn
22 Hall. And so we initiated a formal request to the
23 legislature for -- through the board for PECO money for
24 renovation.

25 And so I know we talked about it, the board

1 talked about it. There was a lot of discussion about
2 it. As time went on with that project and we got our
3 professionals involved, the architects, the engineers --
4 you've probably read some of the documents. That
5 project slowly morphed from a small -- smaller
6 renovation into a bigger renovation, and the more we
7 learned about that building, the worse we realized it
8 was.

9 There was a period where we were going to build
10 a new building that just replicated the size of the old
11 Colbourn Hall, and once that was finished, move
12 everybody into it. That turned out -- I'll get to this
13 in a minute, but through those discussions until it
14 finally got to the point of being the full-blown Trevor
15 Colbourn Hall, at that point where the provost was
16 really deeply involved in that one. And we added about
17 10 million because of the increased scope to the
18 building to accommodate all the new faculty hires and so
19 forth.

20 The president and I had off and on
21 conversations about that through that process.

22 When -- and remember, our role in that
23 process -- when I say "our," I mean administration and
24 finance and some of the budget committees, our job was
25 to make recommendations to the provost and the

1 president, and the decisions as to what to do fell to
2 those two, and then if it required board action, it went
3 there.

4 So I remember being in a meeting. I couldn't
5 give you the exact date, but I remember being in a
6 meeting with Dr. Hitt when it was getting to be a bigger
7 project, up to that \$38 million, and we were using
8 carryforward money for it. I did not know that there
9 was a specific legal prohibition against that, and I
10 want to make that emphatic, that statement.

11 I really did not know there was a prohibition
12 against it, but I knew it was something that had not
13 been -- it was not a conventional way of paying for a
14 building. In the past, before the PECO money dried up,
15 we would make requests, we would get PECO money
16 allocated by the legislature, and we would take care of
17 things. If it was a revenue-generating building, we
18 would issue a bond and take care of it that way.

19 But with the building deteriorating, life
20 safety becoming a real issue, and we looked at the other
21 sources, other avenues, and carryforward, the leftover
22 money from the prior years seemed to be something we
23 could use to get the people out of harm's way.

24 So that was my recommendation. I told him
25 because of -- I don't recall exactly my words, but I

1 said because of the size, 38 million, and it was not
2 done in a conventional way, that the auditors would
3 certainly flag that for review and have some comment
4 about it.

5 So I said we will probably get an audit -- I
6 think I used the phrase, "audit hit," for the way we
7 handled this, but I felt that I could explain it because
8 of the emergency nature of what we were doing, and we'll
9 work out some kind of solution with the auditors.

10 I didn't think it would be anything near what
11 has turned out to be a concern for everybody now. And I
12 think that's partly because I didn't know that it was --
13 I was going to be charged with doing something, quote,
14 illegal.

15 Also, at that time, I didn't know -- and nobody
16 seems to pay any attention to this, but there's also a
17 state statute out there -- the calamity statute, I'll
18 refer to it as -- that says under calamitous situation,
19 E&G money is appropriate to use for a building, but I
20 didn't know that, either.

21 **Q. Okay.**

22 **A.** Neither one of those things. I just thought
23 that because it was 38 million, unconventional in the
24 way we were doing it, the auditors would surely have
25 something to say about it. And they did.

1 Q. Okay. President Whittaker has come out and has
2 admitted to being in a meeting, just like the one you've
3 described where that statement was made. Do you recall
4 if the meeting that you are discussing right now is that
5 one or whether you --

6 A. No.

7 Q. -- guys would have discussed this again with
8 Whittaker in the room?

9 A. I don't recall that. What my memory is, is
10 that was I focused on Dr. Hitt, and Lee Kernek was with
11 me, and there was somebody else in the room, but I
12 wasn't focused on that or them. So I would have to rely
13 on others to say who else was in the room at the time.

14 Q. Do you recall whether you had that discussion
15 with Dr. Hitt on more than one occasion?

16 A. I don't recall having a conversation with him
17 necessarily directly about the -- about the potential
18 for an audit comment. But I mentioned it so many times
19 to -- I bet I talked about the fact that that was going
20 to happen to over a hundred or more people in the course
21 of that event.

22 It was just a way of preparing them for -- the
23 way it would come up in a meeting is we'd talk about
24 Trevor Colbourn Hall, the lack of funding from the state
25 to do anything about it, the fact that Lee had -- Lee

1 Kernek had tried to go through the board of governors to
2 get some assistance with that project, and she was told
3 there was no money. And essentially, the way she
4 expressed it to me, they said you're on your own.

5 And so I think another report that I got from
6 -- from some of the folks that work for me was that
7 through some of the legislative staff, they had said
8 basically the same thing. You know, you're on your own
9 on this one. You're not --

10 **Q. Okay.**

11 **A. You're not getting any relief from the state.**

12 So when I would bring that up with people and
13 say because we're doing it in this way, which is
14 unconventional, we'll probably get an audit comment for
15 it, but considering the emergency that we were facing
16 with students, faculty, and staff in a building that was
17 going to harm them, all that I talked to agreed with me,
18 we really had no other choice. We were truly between a
19 rock and a hard place as far as what to do.

20 And my recommendation was certainly to take
21 care of the people and worry about how to respond to an
22 audit comment later, which I did not think would be that
23 difficult to do.

24 As it turns out, in hindsight, it turns out to
25 be a very difficult thing to respond to, but at that

1 time I did not think it would be because of the
2 situation we were faced with.

3 Q. Okay. When you just said that most or
4 everybody that you talked to about this understood and
5 agreed that this was the route you had to take, would
6 that include Provost Whittaker?

7 A. He was present in some of those conversations
8 I'm sure, because some of the times I did it were at --
9 I was asked periodically to appear before different
10 groups, maybe a meeting of faculty, a dean's meeting or
11 different ones that the provost would be -- sometimes
12 he'd be present, sometimes not. And that would come up
13 in some of those meetings.

14 I know when I did orientations with student
15 groups for the ones -- the students that were doing
16 tours at campus and were explaining what the visitors
17 were going to see, and we'd hit on the new construction
18 that was going on, I would describe it there and often
19 say that this is something that's unconventional, we'll
20 probably take some audit criticism for it, but
21 considering the safety involved, I think it's something
22 that we should go forward with. And I really believe
23 that was the right thing to do.

24 So I talked to a lot of people about it. I
25 brought it up in a board meeting one time after we were

1 talking about --

2 Q. Okay.

3 A. We were talking about capital projects, and I
4 made the comment after Trevor Colbourn Hall came up that
5 I thought we would get an audit comment as a result of
6 that. And I got no -- nobody on the board said
7 anything, and the provost was there.

8 Q. Do you recall what board meeting that occurred
9 at?

10 A. No, I don't. I'm sorry. It was not something
11 that I was thinking about recording until the questions
12 started coming up now.

13 But I distinctly remember doing it, and being a
14 little bit surprised there was no comment or anything.
15 It just went on.

16 And Scott Cole was there, too, at that meeting.
17 It was a regular meeting so everybody was there that
18 normally is, which would include either Scott or
19 somebody on the general counsel's group and the board
20 members.

21 MR. RUBOTTOM: Carine, let me ask a couple.

22 Was that the full board or the finance and
23 facilities committee?

24 THE WITNESS: As I recall, it would have been
25 the finance and facilities meeting.

1 MR. GREENE: Try to let him finish his question
2 and try not to talk over him.

3 THE WITNESS: Okay.

4 MR. GREENE: You're doing pretty good.

5 MR. RUBOTTOM: You talked earlier about when
6 the issue of the loan came up, of talking to the
7 controller about that.

8 We've heard discussions about Lee and others
9 around the state, who when they have a concern about
10 the size of a capital project that they are doing
11 with E&G, that they go to Chris Kinsley for counsel
12 on that.

13 THE WITNESS: Yeah.

14 MR. RUBOTTOM: One of our questions that keeps
15 arising is where we get our expertise when we lack
16 it. And I'm curious why you wouldn't go to audit
17 for a question about -- internal audit for a
18 question about a loan, the legitimacy of a lending
19 practice or go to general counsel about the -- why
20 you would go to the controller.

21 Would you expect the controller to have a solid
22 working knowledge of all those -- all the legal
23 requirements about things like lending money?

24 THE WITNESS: That's an interesting question,
25 but let me -- I'll have to answer it in the sense

1 that at any particular point in time, you have staff
2 that have strengths and some that have weaknesses.

3 At that particular time, Linda Bonta had been
4 around for decades and was probably the most
5 knowledgeable person that I could go to, to answer a
6 question about the efficacy, if that's the right
7 word.

8 MR. RUBOTTOM: Propriety?

9 THE WITNESS: Propriety of a loan like that.
10 She was -- and also, she was probably the most
11 conservative financial person on the campus at the
12 time.

13 MR. RUBOTTOM: Can you spell her last name for
14 the reporter?

15 THE WITNESS: B-O-N-T-A.

16 MR. GREENE: V as in victor?

17 THE WITNESS: Linda Bonta, B, bravo.

18 MR. RUBOTTOM: I understand that.

19 Let's talk about facilities issues. And the
20 reason I ask is, it's my understanding that in
21 recent years, if a university came to Chris Kinsley
22 and said we've got a renovation of \$5 million, that
23 his response would be you can't go over two.

24 And what I'm trying to figure out is, my
25 understanding of this, the Colbourn Hall

1 renovation -- forget the new building.

2 THE WITNESS: Okay.

3 MR. RUBOTTOM: The Colbourn Hall renovation
4 started, from my recollection, at five to seven. I
5 believe sometime in 2013, you all committed about
6 \$8 million. We've seen an allocation document
7 signed by Provost Waldrop and Dr. Hitt in August
8 of 2013 that memorialized that commitment as an
9 \$8 million E&G carryforward to a renovation project.
10 And at that time, that's the only project that was
11 on the books.

12 Did you have audit hit concerns about that size
13 of a renovation project?

14 THE WITNESS: No, no. At that particular time,
15 we all thought that renovation projects were okay
16 for E&G carryforward dollars. That was just what we
17 all thought. We all believed that, and therefore
18 nobody questioned it because we all believed that
19 was okay.

20 MR. RUBOTTOM: Did you draw a line if a
21 renovation like involved an expansion of a building
22 or did -- yeah, let's just say expansion. Did you
23 draw a line there in your understanding at that
24 time?

25 THE WITNESS: I didn't; others may have, but I

1 didn't.

2 MR. RUBOTTOM: Do you have -- I've been
3 learning a lot of accounting terms --

4 THE WITNESS: Okay.

5 MR. RUBOTTOM: -- that I never wanted to learn.
6 Chris Kinsley talks about capital renewal.

7 THE WITNESS: It's confusing.

8 MR. RUBOTTOM: There's discussions of deferred
9 maintenance. I think I understand what maintenance
10 is. I think I understand what deferred maintenance
11 is.

12 I'm curious what you -- what your understanding
13 of fixed capital outlay is in the state university
14 system.

15 THE WITNESS: Capital outlay refers to a
16 physical asset. Fixed means it's exactly that, it's
17 fixed in place. It's not things that are added to
18 the building afterwards, like furniture, fixtures,
19 equipment, all that sort of thing. So it would be
20 the fixed, nothing added into it later. It's a
21 capital asset, if that makes sense. It does to me.

22 MR. RUBOTTOM: It does.

23 Who in finance administration would have been
24 the most expert on that definition for purposes of
25 working with state funds and working -- putting

1 together PECO list, all those things?

2 THE WITNESS: Well, there's two questions sort
3 of embedded in that one.

4 The expertise was in the people at the top of
5 that organization. It would have also been in Lee
6 Kernek's area. But when it comes to the second part
7 of that question having to do with the forms that we
8 fill out and send into the state, those were forms
9 that the way they were to be filled out was dictated
10 to us because there was a desire at the state level
11 to be able to compare universities -- then 11
12 universities, later 12, but to compare all
13 universities in how they were using their money.

14 And so there were -- I know there were a number
15 of questions from our folks about how to fill out
16 some of these forms, what expenditures to put in
17 what columns. And I know that all of them felt and
18 believed that they were filling them out
19 appropriately as the instructions dictated.

20 And I also was told by them that they did make
21 some calls to the board of governors about some of
22 their issues to make sure they were putting them in
23 the correct columns.

24 So there was no intentional misleading of
25 anybody, if that's where this is going, on those

1 forms that were filled out, because they were
2 filling them out the way they were told to fill them
3 out. And upon questioning, they still believed they
4 were doing them the way it was supposed to be done.

5 MR. RUBOTTOM: Okay. Thank you. Carine?

6 BY MS. MITZ:

7 Q. Okay. When Provost Whittaker assumed the
8 presidency late last year or last summer, did you have
9 any like kind of briefing with him or any meeting to
10 kind of get on the same page or develop a game plan or
11 anything?

12 A. Not really. We had meetings, but I didn't -- I
13 was not -- I didn't -- I don't feel that I was really
14 developing any deep rapport there, if that's fair to
15 say.

16 Q. Okay. Sure.

17 MR. GREENE: It's fair if it's true.

18 BY MS. MITZ:

19 Q. Can you describe the status of the relationship
20 prior to the president asking you to resign?

21 A. I think it was a surface relationship. I don't
22 think he really understood the way that a university
23 operated outside of some of the academic areas.

24 I mean, he understood them. Let me make a
25 distinction there. He understood those operations, but

1 I don't think he was really that interested in them.

2 Q. Okay.

3 A. And that was worrisome for me because
4 everything -- to make an organization function properly,
5 everything has to be balanced within that organization.

6 An example would be if you are going to add a
7 hundred new faculty, you need to add support staff to
8 serve those faculty, and you're going to have more space
9 being utilized. You're going to need more people to
10 take care of the space. There's just a whole series of
11 things that need to happen.

12 An example might be if you -- if you took a
13 stock car, pick any car, and you decided you were going
14 to add a bigger engine to it, that would be great.
15 You'll get more power. But if you don't also beef up
16 the brakes and the braking system, the tires that are
17 going to be put under stress for all the -- the bigger
18 engine, that sort of thing, you're going to have a mess
19 on your hands.

20 And I've had a little sense of that, that we
21 can add more faculty and do some of those kinds of
22 things, but I don't know that there was a real
23 understanding of the implications down through the
24 ranks. So I think that was a little bit of my
25 uneasiness.

1 Q. Okay. So when the news came out that the audit
2 finding was made or going to be made and people started
3 realizing that this was going to be an issue, I
4 understand that the president talked to you about taking
5 your resignation, and initially you were going to be
6 working through the end of the year?

7 A. Yes.

8 Q. At that time, did he convey any disappointment
9 in you or your decision to use E&G?

10 A. What he said was that he thought that I did the
11 right thing; I chose the wrong method to do it. And
12 he --

13 Q. Did he seem upset with you? Understanding?

14 A. No, no.

15 Q. Sympathetic?

16 A. No, not at all. He -- in retrospect, looking
17 back -- of course, I was thinking about this since then.
18 What he implied or said was that you did the right
19 thing, you chose the wrong method. You are going to
20 take some heat for this over the next few months, and
21 then we'll get past this.

22 And thinking back on it, I think he clearly
23 meant you will take some heat, not we, and I should have
24 read something, figured something was going on there.
25 We'll have -- you can offer your resignation, retire.

1 And I said how about December 31st?

2 And he said sure, that's fine, and we'll have a
3 party in the meantime and all that.

4 I said that would be a little hypocritical. I
5 don't think that's appropriate.

6 And then I wrote a letter of resignation, as he
7 requested, citing retirement and so forth. And that's
8 the way that was until the audit -- let's see -- until
9 -- I'm trying to keep my sequence of events straight in
10 my head here.

11 When I think it really started to go downhill
12 for me was when the chancellor called a conference call
13 with the president and several other people, including
14 me, to talk about the audit and his concern about it.
15 He started the conversation with asking if Bill Merck
16 was present, and I said, yes, I am.

17 And then he -- the chancellor really was --
18 sounded angry and was asking me about, didn't I know
19 that that was wrong, and what did I know, and blah, blah
20 blah. And then he wanted to know -- just scratch the
21 blah, blah, blah.

22 MR. GREENE: She's not going to scratch
23 anything. Everything you said is on the record, so
24 answer the question.

25 THE WITNESS: Okay. So when -- when he was

1 really drilling down on me about that, and Vikki
2 Shirley joined in, too, about, well, you couldn't
3 have done -- been involved in this stuff alone.
4 There must have been other people involved.

5 And it was my feeling at that point, my sense
6 was that there was no way I was going to start
7 taking innocent people that work for me and start
8 throwing them under the bus in some craven attempt
9 to protect myself. I just wasn't going to go there
10 and do that when I was being attacked like that.

11 So what I said was, to deflect that, I just
12 said, look, I'm the chief financial officer -- I
13 think I said CFO. I'm the CFO, and it's my
14 responsibility as CFO, rather than getting into
15 answering questions about who else was involved and
16 all that sort of stuff.

17 BY MS. MITZ:

18 Q. Okay.

19 A. And later, my statement there later got morphed
20 into a little larger statement where Dr. Whittaker
21 started saying Bill took full responsibility for
22 everything that happened.

23 That's -- that's an exaggeration in the sense
24 that what I was trying to get across was things of a
25 financial nature that the people that report to me were

1 involved in as CFO, that's my responsibility. That's
2 what I was trying to get across; not that I was taking
3 on the responsibility for the president, for the
4 provost, for the general counsel, for the chief auditor.
5 They all have responsibilities, too, in everything that
6 happens.

7 But I think in the next few days in an effort
8 to protect the president and the board, the theme
9 started to be Bill took full responsibility, an
10 exaggeration, and it's all on him and none of us knew
11 anything about anything.

12 **Q. Right.**

13 A. That was not -- I was just, frankly, highly
14 disappointed at the lack of integrity and the lack of
15 honesty that I was experiencing with the leadership at
16 that time, to the point that I can tell you I could
17 never work with that group again under any circumstance,
18 because I would not trust them at all.

19 **Q. Sure. So were there any discussions between**
20 **you and President Whittaker immediately before that**
21 **phone call?**

22 A. If there were, I don't recall them because they
23 were so inconsequential.

24 **Q. So it's not like anybody, the president or the**
25 **general counsel or anybody like that came to you and**

1 said, listen, we want you to accept responsibility. You
2 did that, it sounds like, to protect Lee Kernek, Tracy
3 Clark, those guys; is that right?

4 A. Exactly. You're right.

5 MR. GREENE: Well, Bill, tell them about the
6 conversations that you had about your appearing --
7 your request that you be allowed to appear at the
8 BOG.

9 MR. RUBOTTOM: Can we hold that for just a
10 minute and let me go deeper?

11 One of the things that we're curious about that
12 we really don't have information about is what the
13 internal conversations were between the exit
14 conference and the conference call with Chancellor
15 Criser.

16 Do you recall any of the interactions between
17 the -- the upper ranks of the administration? Do
18 you recall who was at the exit conference?

19 THE WITNESS: At the exit conference, my memory
20 is a little sketchy, but I can tell you it would
21 have been Tracy and Christy and Joel Hartman,
22 because of IT, not because of any of this. One or
23 two of the internal audit staff would have been
24 present. There was probably, I'd say, ten or more
25 people in the room. I think there was somebody from

1 student affairs in the room. There were a lot of
2 people in the exit conference meeting.

3 MR. RUBOTTOM: Was Bev Seay there?

4 THE WITNESS: No, Bev Seay was not there.

5 MR. RUBOTTOM: Was any trustee there?

6 THE WITNESS: I don't recall.

7 You know, when you said Bev Seay, I don't
8 recall her being there. That's not to say she
9 wasn't. I wouldn't have focused on it. But I don't
10 remember her being there.

11 MR. RUBOTTOM: Did you hear about or
12 participate in any conversations with trustees about
13 the audit between the exit conference and the
14 chancellor's phone call?

15 THE WITNESS: I don't recall. It was all
16 happening pretty fast. There was only a couple of
17 days or so there.

18 MR. RUBOTTOM: But you don't recall -- do you
19 recall any -- any serious concerns from the general
20 counsel, the president's office, Mr. Heston, Robert
21 Taft, anybody else in audit about the finding with
22 respect to using E&G for Trevor Colbourn Hall before
23 the Criser phone call?

24 THE WITNESS: I don't recall. I mean, there
25 was certainly always concern when you -- let me

1 think about it. In the exit conference, when -- in
2 the exit conference when it came up, since I had
3 been talking about getting an audit comment for
4 probably a year before, if not that, to many, many
5 people, when that was the last one he mentioned and
6 when he brought it up, I said -- I think I said
7 "This is on me," because it was -- it happened in an
8 area I was responsible for.

9 And I think -- I don't know if people were
10 surprised by that or not, but again, CFO, financial
11 comment, that's my area. It's not an IT issue. It
12 was not a student development services issue. It
13 was in my area of responsibility.

14 MR. GREENE: You think he's asking you a
15 different question than the one he asked. He's
16 asking you who was there and were there any
17 discussions with anyone from the administration
18 before the actual report came out.

19 MR. RUBOTTOM: Well, from the time they stopped
20 talking to the state auditor in the exit conference
21 until they heard from Chancellor Criser his extreme
22 disappointment, was there any conversation among the
23 higher administration?

24 THE WITNESS: Nothing that I recall of any
25 great significance.

1 MR. RUBOTTOM: Okay.

2 THE WITNESS: Nothing I recall of any great
3 significance, because it all came down on me after
4 the chancellor's call.

5 MR. RUBOTTOM: That's what we understand.

6 Now, when -- you were beginning to talk about
7 how the leadership responded to you after that, the
8 board meeting on the 6th, the governor's meeting on
9 the 13th, those are all highly publicized.

10 THE WITNESS: Right.

11 MR. RUBOTTOM: We watched most of them. Carine
12 came down to the September 20th meeting herself.

13 But in that timeframe, would you say that the
14 focus of the board of governors was on understanding
15 how it happened or would you say that their focus
16 was on finding people to blame or neither?

17 THE WITNESS: Both. I would say both.

18 MR. GREENE: Tell him about the conversations
19 that you had with them about your request you be
20 allowed to appear at the BOG meeting on the 13th,
21 all the things they were telling you.

22 So step back, take a breath, hold on. Take a
23 breath, and now tell everything that happened before
24 you resigned and the things you were being told.

25 THE WITNESS: Well, I was called to a meeting

1 right after that, but prior to a board meeting, a
2 board of trustees meeting, by Grant Heston, who is
3 the chief public relations officer for the
4 president, his chief of staff and PR guy, and Scott
5 Cole, who is the legal counsel to the president, who
6 I believe sees his first duty is to protect the
7 president.

8 They asked me at the board meeting the next
9 day, what would I say, what would I do? And I went
10 through some stuff with them.

11 And apparently they decided it was best if I
12 didn't show up at the meeting, because I thought it
13 would be important for me --

14 MR. GREENE: What meeting?

15 THE WITNESS: The board of trustees' meeting.
16 It was very important for me at that time, since I
17 could see I was starting to get accused of a lot of
18 stuff, to explain why we did what we did.

19 It still hadn't sunk in, the reported
20 illegality of it. It was the -- I didn't think
21 people truly understood why we did it and how
22 important it was to have done that, and I wanted to
23 talk about that.

24 Well, anyway, they told me it would be best if
25 I didn't come to the board of trustee's meeting. So

1 I never got a chance to answer questions or say
2 anything to the board of trustees.

3 Following that --

4 MR. RUBOTTOM: Excuse me. That was a
5 September 6th meeting, that first meeting?

6 THE WITNESS: It was the first meeting right
7 after whatever date that was.

8 MR. RUBOTTOM: Okay.

9 THE WITNESS: And then following that, we were
10 going to have -- there was a board of governors'
11 meeting; right?

12 MR. RUBOTTOM: The 13th, I believe.

13 THE WITNESS: And it was suggested at first
14 that I not show up. They said it's going to
15 probably be kind of ugly; it's best that you're not
16 there. I know I wasn't understanding that exactly.

17 And I said okay, and then I started thinking
18 about it, and it didn't make any sense to me for me
19 not to be there. First of all, I didn't want to
20 make it appear that I was afraid to be there,
21 because I wasn't.

22 The second part of it was, I started to not
23 believe that they would explain anything about the
24 circumstances, why we did it or that we didn't
25 understand it was not legal.

1 And so I thought, this is a two-day meeting.

2 And so right at the beginning of the first day, I
3 guess it was, I called some of the people who were
4 already down at the meeting site in Sarasota. And I
5 called to talk to Scott and say that I would like to
6 attend that meeting, even though they said they
7 didn't think I should be there. I thought it was
8 important that I show up at that board of governors'
9 meeting so that I could explain some of those
10 things.

11 And he said, no, the president doesn't want you
12 there. But I said I think I should be there.

13 And he said if you show up when the president
14 told you not to, it's going to be an act of
15 insubordination.

16 Well, that means you get fired instead of
17 resigning; didn't sound like a good choice.

18 And so he said, do you want to talk to the
19 president about it? And I said yes.

20 So he put Dr. Whittaker on the phone.

21 Dr. Whittaker repeated he didn't think it would be a
22 good idea for me to be there. It wouldn't be good
23 for UCF if I was there. It wouldn't be in the best
24 interest of UCF for you to be there.

25 And I said, well, it could be in my best

1 interest because they're going to be talking about
2 me, and I'm subject to losing -- well, I'm losing my
3 job over it and everything. So it's important to me
4 to be there.

5 And he said something about, well, I'll try to
6 keep it -- I'll keep it away from you being fired in
7 the meeting, but I don't want you here.

8 So what was I going to do? So I didn't. I
9 watched it on the computer screen like everybody
10 else did and was appalled at what I saw.

11 After the meeting was over, I think he was in a
12 break room with some of the board members
13 afterwards, and they were asking is this person that
14 had been vilified -- me -- still on the campus?

15 And so he left the break room, called me on his
16 cell phone, and said, they are giving me a lot of
17 heat about you being there. I want you to -- I
18 think we should up your resignation to right now.

19 So 15 minutes later, I left my office, and that
20 was it, the end of a 22-year stint at UCF. Plastic
21 bag in my hand with pictures of my wife. It was --
22 it was pretty brutal.

23 MR. RUBOTTOM: I understand.

24 Between the Criser phone call and that
25 September 13th BOG meeting, did you have any

1 conversations with BOG staff about what happened,
2 why it happened?

3 THE WITNESS: I talked to Chris Kinsley because
4 I was afraid the story about why we were doing it
5 wouldn't be told.

6 So I went over it with him, but he was not
7 allowed to speak at that meeting. He normally gave
8 the introduction to the facilities committee about
9 what they were going to talk about and all that. So
10 when I was watching it on the screen, I was
11 surprised that he didn't do it.

12 And I called him ahead of time saying I
13 wouldn't be there, but at least can you make sure
14 people know why we were doing this, that we had a
15 dangerous emergency situation on our hands.

16 MR. RUBOTTOM: Thank you. Thank you.

17 But they never reached out to you in that
18 timeframe?

19 THE WITNESS: No.

20 MR. RUBOTTOM: Okay. Let's go back a week.
21 Leading up to the September 6th, which I believe is
22 the emergency meeting of the board of trustees,
23 between the Criser phone call and that meeting, did
24 any trustees reach out to you and ask how did this
25 happen, why did this happen?

1 THE WITNESS: No.

2 MR. RUBOTTOM: Did you reach out to any of
3 them.

4 THE WITNESS: Yes, yes. I don't remember the
5 timeframe, but -- you know, down to the day.

6 MR. RUBOTTOM: Right.

7 THE WITNESS: But I reached out and I was in
8 some meetings where one or two or three of the --
9 like one of them was David Walsh, another was Bob
10 Garvy, and one was Mr. Lord, John Lord.

11 MR. RUBOTTOM: Who would have called these
12 meetings?

13 THE WITNESS: One was a medical school meeting.
14 It was totally unrelated to any of this.

15 MR. RUBOTTOM: Okay.

16 THE WITNESS: All three of these things were
17 totally unrelated situations. They happened to be
18 there, I happened to be there. And I was feeling
19 that they didn't understand what had gone on with
20 the -- they had heard me saying before there would
21 be an audit comment.

22 And I was feeling really bad about everything
23 that had happened at that point, and I wanted to
24 make sure they understood the rationale, even though
25 it had been talked to them before. I just felt

1 obligated, because I had respect for these guys, to
2 at least talk to them about what had happened.

3 MR. RUBOTTOM: Thank you. I think Carine has
4 some more questions about some of those interactions
5 later. I just wanted to get the context within the
6 framework of these meetings where --

7 THE WITNESS: Right.

8 MR. RUBOTTOM: -- your work was discussed.

9 THE WITNESS: Right.

10 MR. RUBOTTOM: One other thing: Did you watch
11 the video or a recording of Scott Cole's
12 presentation on the 6th where he went through the
13 history of the project?

14 THE WITNESS: No.

15 MR. RUBOTTOM: You've never watched that?

16 THE WITNESS: No.

17 MR. RUBOTTOM: So have you reviewed the agenda
18 items that were published for the 6th?

19 THE WITNESS: I probably did, but I don't
20 remember it.

21 MR. RUBOTTOM: If you had, I was going to ask
22 you if you disputed any of that.

23 On the 6th, he indicated that refunding had
24 already occurred. Are you aware of any refunding of
25 E&G that had occurred prior to September 6th?

1 THE WITNESS: No.

2 MR. RUBOTTOM: Are you aware of any planning of
3 refunding prior to September 6th?

4 THE WITNESS: The first -- the first comment
5 about refunding came up in the actual exit
6 conference when Kathy Mitchell was -- she was one of
7 the ones attending the exit conference, and she
8 asked the auditors, is a potential remedy for this
9 to replace those funds?

10 And they responded that they're just making the
11 report up the chain. They will have to get back
12 with us about responses to that.

13 MR. RUBOTTOM: But to your knowledge, between
14 April when the questions started being asked and
15 that, did finance and administration then begin to
16 think about that possibility?

17 THE WITNESS: Oh, oh. When they started
18 getting the questions that was leading to the
19 potential that we didn't know it was wrong and they
20 were saying it was, they started looking at some of
21 the planned expenditures with carryforward money and
22 started to reverse -- to replace some of that, yes.

23 That was in response to their -- the inquiries
24 and where the audit was going, they felt like that
25 was going to be an audit comment and we might as

1 well start taking some corrective actions now.

2 MR. RUBOTTOM: When you say they --

3 THE WITNESS: That would have been finance and
4 accounting.

5 MR. RUBOTTOM: And who particularly?

6 THE WITNESS: It would have probably been Tracy
7 and Christy.

8 MR. RUBOTTOM: Okay. Thank you. I'm sorry,
9 Carine. I know we'll get back to some of that again
10 later.

11 MR. GREENE: I'm sorry for interrupting.

12 BY MS. MITZ:

13 Q. Okay. I want to ask you some more questions
14 about President Whittaker.

15 So at any time during discussions between the
16 two of you after the BOG call, did he express any
17 disappointment in you or did he appear upset or even
18 accuse you of having misled him?

19 A. No, no. I could tell he was not happy -- not
20 happy is not the right word. Let me rephrase it.

21 He was concerned about the criticism.

22 Q. But he never outright accused you of having
23 misled him or not informed him of what was going on?

24 A. That all came later.

25 Q. Okay. So apparently, President Whittaker

1 contacted Trustee Walsh at some time while Trustee Walsh
2 was in England. I don't know what time that was. I'm
3 suspecting it was after the BOG call.

4 And it's alleged that President Whittaker told
5 Trustee Walsh that he had signed documents authorizing
6 the use of E&G funds for the Trevor Colbourn Hall
7 project, and that he was furious with you because you
8 had -- you basically tricked him into signing that form.

9 Number one, do you know when Trustee Walsh was
10 in England so I can figure out when this phone call
11 would have happened?

12 A. And so the fairytale began. I don't know when
13 he was in England and I don't -- I was not told about
14 that particular conversation, and I did not -- I did
15 not.

16 Q. Do you know what form President Whittaker would
17 have been referring to?

18 A. No, I was not privy to the conversation so I
19 don't know what they were talking about at all.

20 Q. Did he ever tell you that you tricked him into
21 signing a form?

22 A. No.

23 Q. Okay.

24 A. Nope.

25 Q. Did he -- did Provost Whittaker start

1 discussing the university budget immediately or almost
2 immediately after joining UCF?

3 A. He was very interested in the budget, yes. The
4 way it works at UCF is that the president looks to the
5 provost to be the number two-person on the campus, the
6 chief academic officer, and also the chief budget
7 officer.

8 And so he was interested in budgets, and over
9 time made moves to get more involved, like, for
10 instance, with Tracy Clark who reported to me as an
11 associate vice president. He came to me and wanted to
12 split her responsibility between me and him.

13 And so we gave her another title that's so long
14 I can't remember it, but he -- he wanted her to be able
15 to tell him about budget matters in some great detail.
16 And I know they met quite frequently after that.

17 Q. Did you ever object to that request, that she
18 start reporting to him as well?

19 A. I had concerns about it that I expressed and we
20 talked about it.

21 And I said I've had dual reporting
22 relationships before; they often don't work out. It
23 will only work if the people involved want them to work
24 and we are cooperative about it. And I felt that --
25 that with Tracy and me and Dale, we could make it work.

1 But I had trepidation about it.

2 I think in one of Tracy's annual evaluations, I
3 wrote that in there that initially I had reservations
4 about the dual reporting, but it appeared that it was
5 working out well and so my concerns were alleviated. I
6 said something to that regard in an annual evaluation of
7 Tracy's.

8 **Q. Okay.**

9 MR. GREENE: Do you need a break? Do you need
10 the bathroom or anything? You're not chained to
11 your chair.

12 MR. RUBOTTOM: I'm going to need one in about
13 15 minutes.

14 MR. GREENE: Good.

15 MS. MITZ: Okay. I'll keep moving then.

16 MR. RUBOTTOM: Are you okay, Carine?

17 MS. MITZ: Yes, I'm fine. I can wait
18 15 minutes. Yes, I'm good. Thank you.

19 BY MS. MITZ:

20 **Q. So Mr. Merck, did Provost Whittaker ever seem**
21 **intimidated by you --**

22 A. Oh, no.

23 I'm sorry for interrupting. I'm sorry for
24 interrupting. No.

25 **Q. Okay. Did he sometimes challenge your ideas or**

1 your position?

2 A. Not really.

3 Q. Did he ever question you or your decisions?

4 A. No, not that I recall.

5 Q. Okay. Did he seem to grasp the budget
6 information that he was being provided when he first
7 came on board?

8 A. I can't answer that. I don't know what he was
9 grasping versus what he was told or given.

10 Q. Okay. In discussions that the two of you had,
11 did he ever refer to his experience at Purdue working
12 with state-appropriated operating funds?

13 A. No. If he did, it was in general terms, not
14 that specific. I don't recall it.

15 Q. Okay. Did you -- when you used the term or
16 hear the term carryforward, what does that mean to you?

17 A. It means leftover -- leftover operating money
18 from the prior year.

19 Q. And when you say operating money, do you mean
20 E&G?

21 A. In the context of carryforward, yes.

22 Q. Are there other carryforward funds in
23 university accounts?

24 A. Yes. There would be a carryforward, say, in
25 some of the auxiliaries, like the housing budget would

1 have money left over in the housing budget that would
2 carry over to the next year or the parking services
3 budget would have money left over that would
4 carryforward.

5 But in the context of carryforward in the
6 meetings that we were talking about here, it was E&G.

7 **Q. And so with Provost Whittaker regularly**
8 **attending those meetings, would you expect that he, too,**
9 **would have understood that the term carryforward meant**
10 **E&G carryforward?**

11 A. Yes.

12 **Q. Did he ever express any confusion about the**
13 **term or ask what does that mean?**

14 A. No.

15 **Q. What does the university's annual budget**
16 **include? Does it go beyond the academic budget?**

17 A. The annual budget of the university last year
18 was right at \$1.8 billion, and that's a little hard for
19 people to grasp, and that's why we have the meetings
20 with the trustees to go over it. And I could elaborate
21 on that if you want, but I don't know that it would
22 help.

23 **Q. No, I don't think that's necessary right now.**

24 MR. RUBOTTOM: Let me ask. I think our
25 question goes to when you refer to the budget

1 responsibilities of the provost, which I take means
2 Waldrop, before. This is just --

3 THE WITNESS: Right, right.

4 MR. RUBOTTOM: -- how Dr. Hitt ran the
5 university.

6 THE WITNESS: Exactly.

7 MR. RUBOTTOM: So those budget
8 responsibilities, obviously, they entailed academic
9 budgets, the E&G budget. Would that include the
10 auxiliary budgets?

11 THE WITNESS: At a high level, yes.

12 MR. RUBOTTOM: Would that include the capital
13 budgeting at a high level?

14 THE WITNESS: Yes, absolutely.

15 MR. RUBOTTOM: Okay. Would that include the
16 non-academic operational -- I assume there's got to
17 be some plant, physical plant operation that's not
18 necessarily --

19 THE WITNESS: Right.

20 MR. RUBOTTOM: -- designated as academic,
21 infrastructure.

22 THE WITNESS: I'm thinking about that. I'm not
23 quite sure how to answer because I'm not quite
24 following the question.

25 MR. RUBOTTOM: Well, there's nothing that goes

1 in to the entire budget of the university that's not
2 under that umbrella you described in the provost
3 office; is that correct?

4 THE WITNESS: Correct, yeah.

5 BY MS. MITZ:

6 Q. Did at any time Provost Whittaker try to
7 distance himself from having responsibility over the
8 university's entire budget and just claim responsibility
9 over the academic budget?

10 A. I think that really became clear after the
11 audit and after the chancellor was expressing
12 displeasure. I think that's when that distancing began
13 in earnest, yes.

14 Q. Okay. All right. Did the provost have
15 approval authority over the operating budget presented
16 to the board of trustees?

17 A. He recommended -- well, my role was in
18 recommendations, not decision making. He and the
19 president would make the decision, but usually it was
20 the provost's recommending it to the president, but the
21 two of them would make the decisions as to what would go
22 before the board of trustees.

23 Q. Did the provost have approval authority over
24 proposed capital projects?

25 A. Only to the extent that he would be part of

1 formulating the recommendations that would go to the
2 president, that he presented to the president and went
3 to the board. But he was intimately involved in the
4 process, yes.

5 **Q. Okay. And did he have approval authority over**
6 **the source of funds for capital projects?**

7 A. That's a complicated question. It depends on
8 the project and what's -- what we're talking about. If
9 it was -- if it was a PECO project, the legislature
10 decides what we're going to get and appropriates it. So
11 he wouldn't be in an approval process there.

12 If we were issuing bonds for housing or
13 something like that, he wouldn't be in the approval
14 process for that.

15 When it comes to money that comes in, say for
16 purposes of making this simple, in a lump sum from the
17 state and its apportioned among the different entities
18 on the campus, yes. He's involved in approving those
19 things, how it's distributed internally.

20 MR. RUBOTTOM: Let me ask a follow-up to that,
21 Carine.

22 Would he also be -- have approval authority
23 over any E&G -- any central reserve E&G commitments
24 to capital projects?

25 THE WITNESS: He would be -- he would be

1 intimately involved in the discussions among --
2 well, repeat the question. I'm starting to lose my
3 answer.

4 MR. RUBOTTOM: Would he have approval authority
5 over any commitments of central reserve, E&G
6 carryforward to a capital project?

7 THE WITNESS: Yes.

8 MR. RUBOTTOM: And then it's my understanding
9 that the university earns overhead from the
10 auxiliaries --

11 THE WITNESS: Right.

12 MR. RUBOTTOM: From the various services that
13 are provided --

14 THE WITNESS: Right.

15 MR. RUBOTTOM: -- and that those revenues are
16 seen as kind of an enterprise revenue or whatever,
17 but they don't have strings attached, like E&G or
18 PECO.

19 THE WITNESS: Left over E&G, correct.

20 MR. RUBOTTOM: So those are revenues that are
21 in the big mix.

22 Would the provost have approval authority over
23 commitments of those funds to -- to a capital
24 project?

25 THE WITNESS: Yes, yes.

1 MR. RUBOTTOM: Thank you.

2 MR. GREENE: Is this a good time to take a
3 break?

4 MR. RUBOTTOM: It probably is.

5 (Brief recess.)

6 MS. MITZ: Back on the record.

7 BY MS. MITZ:

8 Q. Mr. Merck, I would like to ask you a little bit
9 about Tracy Clark. How long had you worked with her
10 prior to her taking on the additional responsibility of
11 reporting to Provost Whittaker?

12 A. Oh, gosh. I can't tell you exactly. I think
13 probably -- I'm guessing maybe four years before, maybe
14 four or five years -- four years before we split the
15 role.

16 Q. Okay. Can you describe her as an employee?

17 A. I can't say anything but good things about her.
18 She is very intelligent. She is -- knows accounting, a
19 good personality, easy to work with.

20 She does the work of two people. In fact,
21 that's one of the things that I am really sad about when
22 I hear that the president is getting rid of Tracy and
23 Christy Tant, because between the two of them, they
24 seriously do the work of four people. They are just
25 absolute assets to UCF.

1 Q. So knowing the type of employee that she was,
2 would you have expected her to fully explain and educate
3 Provost Whittaker on budgetary matters or documents that
4 she provided him so that he would be knowledgeable and
5 prepared to discuss them?

6 A. Absolutely. No doubt in my mind.

7 Q. Did you ever instruct Ms. Clark, Ms. Tant or
8 any other employees to withhold information from Provost
9 Whittaker?

10 A. No, never.

11 Q. Did you ever instruct any employee to withhold
12 information from anybody?

13 A. Nope, nope.

14 Q. Did Ms. Clark ever discuss her meetings with
15 Whittaker with you?

16 A. If she thought I needed to know the information
17 they discussed, she would. She liked to try to keep us
18 both informed of important things, so it depended on the
19 importance of the topic.

20 Q. And do you know whose idea it was to form the
21 facilities budget committee?

22 A. It was Dr. Whittaker's.

23 Q. Okay. And was it also his idea to resurrect
24 the university budget committee?

25 A. I'm hesitant. I'm hesitating because it was,

1 but it might have been with input from the president.

2 Q. Okay.

3 A. But he was the one that implemented it.

4 Q. All right. Well, did either one of those
5 committees remove any budget powers from you?

6 A. Well, my role is really recommending things,
7 not approving things at that level. So it didn't take
8 any of my input away.

9 Q. Very good. Okay.

10 Did the provost have approval authority over
11 all the budget decisions made in the budget chat meeting
12 and the meetings of the university budget committee and
13 facilities budget committee?

14 A. There's really two parts to my answer on that.
15 One of them is if it were smaller things, like in the
16 hundreds of thousands, a few hundred thousand dollars,
17 he would decide and implement things. If it gets into
18 the millions, he should and I believe he did go to the
19 president for approval for those things.

20 Q. Okay. Do you recall any time when you took
21 something over Provost Whittaker's head to the president
22 to override Provost Whittaker?

23 A. I'm thinking, and I'm not coming up with -- I'm
24 not coming up with anything, no.

25 Q. Okay. Did you ever discuss using E&G funds for

1 **other capital projects with President Whittaker?**

2 A. In the -- in the budget meetings when we were
3 looking, this university budget committee, the one that
4 you just mentioned that he reinstated, when we would
5 have a big meeting, we would talk about what our needs
6 were that would bubble up from the deans and the other
7 vice presidents.

8 And then we'd look at the resources that were
9 available to meet those needs. There would be a mix of
10 things like E&G carryforward or the overhead dollars or
11 state appropriated -- you know, we looked at all of the
12 revenue sources and then planned expenditures all as a
13 group like that. And so he was intimately involved in
14 all of that.

15 **Q. Okay. Do you recall a time when Provost**
16 **Whittaker offered funds from his -- from the provost**
17 **budget to be used to fund CREOL, the CREOL Building?**

18 A. It seems to me I've seen something later about
19 that, but I wasn't really focused on that particular
20 project. There -- in the things that I do with
21 facilities, at any given time we probably have close to
22 300 minor projects that are under way, and we'll have
23 two or three, depending on the year, large projects that
24 I'll get involved in.

25 And that CREOL project fell kind of in the

1 middle there, and I didn't really pay much attention to
2 it. It was something the budget committee wanted to do,
3 and if the provost volunteered money from his budget to
4 accomplish that because of his interest in research,
5 that easily could have happened.

6 Q. Okay.

7 A. I wasn't -- I wasn't personally involved in
8 that one.

9 Q. Okay. Do you know who directed that E&G funds
10 be transferred for the band building?

11 A. That one was one that I was involved in, unlike
12 CREOL. The problem was expressed to me by the dean of
13 the College of Arts and Humanities. They were
14 undergoing an accreditation review at the time, and the
15 accrediting members -- the body of the accrediting group
16 had told them that we had an unsafe situation for our
17 band members practicing on the field on the south side
18 of campus. In the season of the year when they
19 practice, there were frequent thunderstorms, lightning
20 and thunderstorms, and there was no close-by place for
21 them to get out of inclement weather.

22 And they had said that if we don't have a plan,
23 a way to get a shelter down there to prevent them from
24 being harmed, that we could lose our music
25 accreditation.

1 So I know I talked with several people. I'm
2 sure I talked with the provost and the dean, and then
3 there was no -- there was an urgent situation. There
4 was no real money available. So Lee Kernek and I pooled
5 some money from our two budgets. We might have gotten a
6 little bit from one of the deans to build the band
7 shelter, and avoid a negative accreditation report.

8 And everybody was really thrilled with the
9 outcome. Provost Whittaker did kind of a ribbon cutting
10 ceremony down there and praised everybody that was
11 involved, including me. I wasn't there, but he did
12 that.

13 I know I felt good because the band members,
14 after, they took two base drum heads and had all 300
15 members of the band sign -- autograph the drum heads,
16 and gave one to me and one to Lee as thank you for
17 getting them out of the situation they were in.

18 MR. RUBOTTOM: And Carine, let me interrupt for
19 just a minute.

20 Mr. Merck, just to save time, we appreciate all
21 of the sound reasonings for doing the projects. We
22 understand the needs of this university over the
23 past -- during this growth the past 20 years. We
24 understand all those pressures were there.

25 We're really trying to get just to the issue of

1 who was making decisions how to fund those projects
2 and when those decisions were made vis-a-vis
3 transactions. So I don't want to discount at all
4 the validity of all of the policy reasons for doing
5 the projects, but it's going to save us some time if
6 we can just save those -- those narratives. I
7 appreciate them, but I want to get home tonight, so.

8 THE WITNESS: Okay. I understand. I
9 understand and I appreciate that. You'll have to
10 forgive me because I just get exited when some of
11 these projects that I was so intimately involved in,
12 I am so proud of the way they turned out, and so
13 happy that we were able to solve a problem, I can't
14 resist talking about them, but I will do my best in
15 the future to do that.

16 MR. RUBOTTOM: Thank you.

17 BY MS. MITZ:

18 Q. Do you know who directed the transfer of E&G
19 funds for purposes of building the Research 1 building?

20 A. Here again, it would have been a discussion in
21 our small group, I'm sure, between the provost, me,
22 Tracy, Christy, and so that would have been -- the
23 provost would have been the one involved in that. His
24 interaction about the president on it, I don't know.

25 Q. Okay. How about the Center for Emerging Media?

1 A. I'm not really familiar with that one.

2 **Q. Okay. And the downtown campus infrastructure?**

3 A. There would have been a number of us involved
4 in that one. I'm trying to couch my answers so I don't
5 give you a story that will take time.

6 But to be as concise as I can, that project was
7 initially going to be a \$60 million project. It was one
8 that the legislature said we'll give you 20 million, if
9 you come up with 20 million philanthropically and 20
10 million out of your budget. They didn't specify what
11 budget or anything, just out of your budget.

12 And so that was there. And as the project
13 progressed, there were some infrastructure needs that
14 were above and beyond that. So we had to figure out how
15 to get water, sewer, some of that kind of stuff all
16 incorporated into it.

17 And so while I was involved in the discussions
18 of what to do and that sort of thing, I wasn't directing
19 money to be transferred from any particular place to do
20 it.

21 **Q. Okay. How about the venue?**

22 A. I'm not that familiar with that particular
23 project. Can you be more specific about what was
24 happening?

25 **Q. That's all I know. I don't know what the venue**

1 is. I just know it's called the venue.

2 A. Okay. It's -- it's an attachment to the
3 convocation core that is a university-owned asset. It
4 does not belong to a DSO or anything.

5 Q. Okay. But you don't recall having any
6 involvement in the transfers of E&G funds to that
7 construction account?

8 A. No. I'm not trying to get out of anything. I
9 just don't recall. It is not on my radar as something
10 that I would have been that much involved in.

11 Q. Okay. Well, the same question for the main
12 campus district energy plant. Do you know who directed
13 the transfer of E&G funds for that project?

14 A. It would have been another one of those
15 discussions among a number of people that were looking
16 at budgets, available resources against what we were
17 trying to accomplish.

18 And having been away from there since September
19 13th, when they talk about -- now when they talk about
20 the district energy plant, I'm not sure which -- what
21 they're talking about exactly. There was a plant to
22 produce chiller water on the north side of campus. Is
23 that the one they were talking about?

24 Q. I'm not sure.

25 A. Yeah. If so, it was one of those necessary

1 things to not allow -- so we did not allow air
2 conditioning to fail on the north part of the campus.
3 And the building part of that was more metal and brick
4 facade to cover equipment. It was primarily chilling
5 type equipment that the expenditure was for, if that's
6 the one they're talking about.

7 **Q. So that's something that would have been**
8 **discussed at the UBC meeting?**

9 A. Yes, yes. In fact, our energy person made a
10 presentation to the UBC about the need for it and the
11 things that would happen if we didn't meet that need.
12 So it was discussed in detail.

13 **Q. So it sounds like that project, the district**
14 **energy plant, along with Research 1 were discussed in**
15 **the UBC meetings?**

16 A. Right.

17 **Q. So is it proper for me to assume that Dale**
18 **Whittaker, as provost, was present?**

19 A. Absolutely, yes, no -- no question about that.

20 MR. GREENE: Let her finish her questions.

21 You're talking over her a little bit.

22 BY MS. MITZ:

23 **Q. And he also heard that E&G funds were going to**
24 **be transferred for purposes of those projects?**

25 A. I don't know if he heard it, but I'm sure he

1 saw it on written documents that were provided to him by
2 facilities and accounting.

3 Q. Okay. So, I have two more projects to ask you
4 about. The Global UCF Building, do you know who
5 ultimately directed transfer of E&G funds for that
6 project?

7 A. I understand your question, but let me -- and I
8 don't want to get into a story here, but that particular
9 building was funded -- it was a \$16 million project.
10 The bulk -- all of the construction funds came from
11 earnings on our equities in our investment portfolio.
12 The money that came from E&G was for furniture,
13 fixtures, and equipment that were placed in the
14 building. And as I understand today, that is an
15 acceptable use of E&G funds.

16 Q. Okay. All right. And we've already talked
17 about CREOL, so we don't need to talk about that one
18 again. Let's see here.

19 MR. RUBOTTOM: Carine, I've got the transfer
20 list up. Can I just go through those three downtown
21 projects?

22 MS. MITZ: Sure.

23 MR. RUBOTTOM: Okay. I think Kathy pulled
24 together E&G transfers into construction probably
25 during the September, October period or at some

1 point maybe in early September.

2 And Bev Seay made a major presentation to the
3 board about that last -- at the last, I think, the
4 September 24th meeting. I don't know if you
5 followed that at all.

6 THE WITNESS: I didn't.

7 MR. RUBOTTOM: The last big transfers like that
8 were all on October 31st of 2017. There's
9 4.8 million for downtown campus infrastructure,
10 which I think you might have just discussed the
11 project. There was 11.5 million for the downtown
12 central energy plant, and there was 5.4 million for
13 downtown student center.

14 So with those -- all of those commitments -- we
15 haven't talked about the commitments list yet, but
16 all of those commitments prior to those transfers in
17 October, would all of those commitments have been
18 made by the university budget committee or be
19 reviewed by the university budget committee before
20 those decisions were made?

21 THE WITNESS: Yes, except I'm not certain about
22 the student center thing that you mentioned.

23 MR. RUBOTTOM: Okay.

24 THE WITNESS: That one I am not clear on, but
25 the rest of them would. Thad Seymour, T-H-A-D,

1 Seymour, S-E-Y-M-O-U-R, was the person, the
2 associate provost that was responsible for the
3 downtown campus.

4 And so he would have had a lot of conversations
5 with the provost about some of the things happening
6 down there and been involved in a lot of the
7 recommendations for that.

8 MR. RUBOTTOM: I'm sorry. I zoned out. Did
9 you say he is the provost for the downtown campus?

10 THE WITNESS: He reports to Dale. He's an
11 associate provost, and his --

12 MR. RUBOTTOM: So he reported to the provost
13 last year?

14 THE WITNESS: And his responsibility was to
15 oversee the construction -- well, when I say
16 construction, I don't mean the brick and mortar
17 project of it, but oversee the scheduling and
18 working with Valencia College and our academic
19 people about what's going in there, just the whole
20 operation.

21 And he had people under him that were looking
22 at the budget needs to complete all of the
23 facilities, so.

24 MR. RUBOTTOM: But those issues -- you would
25 have expected those issues were brought up in the

1 university budget committee?

2 THE WITNESS: Yes, except for I just said I
3 don't recall that student center piece.

4 MR. RUBOTTOM: Let me have a couple more
5 follow-ups on some of the things that we've -- that
6 you talked about.

7 I think that Carine asked you about the level
8 of approval authority the provost had, and I took
9 your answer to mean that he might have had a
10 delegation up to a certain amount, but the president
11 would have had final authority on those larger
12 things.

13 THE WITNESS: Right, basically.

14 MR. RUBOTTOM: You've described your role as
15 recommending?

16 THE WITNESS: Right.

17 MR. RUBOTTOM: Others have described your --
18 the role of both of you in the university budget
19 committee as co-chairs of that committee?

20 THE WITNESS: Right.

21 MR. RUBOTTOM: That you co-chaired that group.

22 THE WITNESS: Right, right.

23 MR. RUBOTTOM: So those major decisions that
24 the provost wouldn't have had any kind of delegation
25 from the president, would you consider those

1 proposals to be joint recommendations of yourself
2 and Dr. Whittaker --

3 THE WITNESS: I didn't dis --

4 MR. RUBOTTOM: -- to the president?

5 THE WITNESS: I didn't disagree with anything.
6 The provost would be the one that would actually
7 make the recommendation to the president based on
8 everything that happened, and I supported the
9 recommendations.

10 MR. RUBOTTOM: Okay. And then finally, we
11 watched a video of yourself and Dr. Whittaker in
12 front of the BOG. There was a facilities workshop
13 in, I think, October of 2017.

14 THE WITNESS: I'm sorry you had to watch me on
15 video.

16 MR. RUBOTTOM: Well, I hope you're not watching
17 me on video.

18 And you were discussing the Research 1 project,
19 which was almost through, and you were making a plea
20 for PECO.

21 And they were -- I think Chair Huizenga was
22 questioning, and some of the trust -- the governors,
23 the way this is already built, why should we give
24 you PECO?

25 And I believe you said that, well, we've

1 actually funded this with some internal loans in the
2 university, and if we are given the PECO money to
3 pay for the project, we'll be able to repay those
4 internal loans, and be able to -- it sounded to me
5 like you were talking about research --

6 THE WITNESS: Yes, yes.

7 MR. RUBOTTOM: -- goals.

8 Would all of those loans that you were talking
9 about that day have been from research funds, grant
10 and research type funds? Would any of those loans
11 have been -- let me just ask it that way. Would all
12 of those have been research revenues?

13 THE WITNESS: Probably not all together. It
14 was kind of open-ended. To save time, I'll try to
15 make this short.

16 MR. RUBOTTOM: That's fine.

17 THE WITNESS: But we had an extreme shortage of
18 square footage in research needs on the university
19 campus. We were hiring faculty hand over fist, a
20 lot of whom had research commitments to make, and we
21 were out of space altogether. So we weren't getting
22 the PECO money, so we figured out how we could do
23 that Research 1 on the campus and get everybody in
24 it, but it didn't nearly cover all of the needs.

25 So if we could have gotten PECO money to repay

1 what we had internally done on that, then that would
2 have freed us up internally the same kind of way to
3 do some kind of internal borrowing or something,
4 unknown at the time, but something to get another
5 research building that we desperately needed.

6 So sometimes we talk about using these internal
7 funds so early we're not defining exactly what they
8 will be at that moment.

9 MR. RUBOTTOM: But at that point, a building
10 was almost completed, so you had taken cash from
11 somewhere?

12 THE WITNESS: Yes.

13 MR. RUBOTTOM: Were any -- is it your
14 recollection, were any E&G accounts used there?

15 THE WITNESS: That would be a Tracy Clark and
16 Christy question. I don't know.

17 MR. RUBOTTOM: Would any investment earnings
18 have been used for that project?

19 THE WITNESS: It's possible.

20 MR. RUBOTTOM: Okay. We're going to talk about
21 investment earnings in a minute.

22 THE WITNESS: Okay.

23 MR. RUBOTTOM: Okay. Carine, are we done with
24 the other projects?

25 MS. MITZ: Yes.

1 MR. RUBOTTOM: Okay.

2 MS. MITZ: Yep.

3 BY MS. MITZ:

4 Q. So Mr. Merck, I want to go back to the
5 statement that you made in Provost Whittaker's presence
6 about -- about the possibility of an audit comment for
7 the use of E&G funds in relation to the Trevor Colbourn
8 Hall building.

9 A. I don't know how he could not have heard me
10 talk about that since I talked about it so frequently,
11 including at a board meeting.

12 Q. Did he ever ask you what that meant?

13 A. No.

14 Q. Did he seem confused?

15 A. No.

16 Q. Okay. Did you -- prior to making that
17 statement, did you ever have discussions with Provost
18 Whittaker about the auditor general and how they
19 routinely conduct audits of universities?

20 A. I don't recall any conversations like that, but
21 anybody that works in a university is pretty familiar
22 with the way that works; any university, not just UCF.

23 Q. Right. I would imagine that would include
24 universities outside of the state of Florida, too?

25 A. Absolutely, particularly if they are public

1 institutions. We all have similar state audits,
2 financial audits and operational.

3 MR. RUBOTTOM: Carine, let me --

4 BY MS. MITZ:

5 Q. Do you have any recollection of him discussing
6 audits being conducted while he was at Purdue?

7 A. I never had a conversation with him like that.

8 MR. RUBOTTOM: Carine, let me ask something on
9 that real quickly.

10 Have you ever heard an academic equate an audit
11 comment to an accreditation type comment?

12 THE WITNESS: No; two separate animals.

13 BY MS. MITZ:

14 Q. I mean, accreditation means you're asking for
15 something, right, you're seeking accreditation?

16 A. Yeah. You're asking -- well, if you've been
17 accredited, whatever the body was that gave you the
18 accreditation usually comes back periodically, maybe
19 every five or ten years to review what they accredited
20 before to make sure they want to allow you to keep that
21 accreditation.

22 Usually, you seek it in the beginning. If you
23 have a program that's not accredited, you ask the
24 accrediting body to come in, do an assessment. And if
25 you meet their criteria, you will become accredited.

1 Q. Okay. All right. So what I would like to do
2 now is kind of explore your knowledge of former Chairman
3 Marchena.

4 What was your relationship with him? Did you
5 work with him often?

6 A. Not extremely often, no.

7 Q. And I know earlier you said that you worked
8 closely with him or maybe more closely with him when he
9 became the chair of finance and facilities. He's an
10 attorney; right?

11 A. He is an attorney.

12 Q. Did you ever witness him to or have knowledge
13 of him offering his legal training and experience to
14 assist either staff, administration or his fellow
15 trustees?

16 A. Not legal training. He -- he opined often on
17 how he thought we should bid out capital projects, and
18 he professed to be an expert in concessions when we were
19 doing concession contracts.

20 Q. Okay. Are you aware of what he practices, what
21 types of law?

22 A. No.

23 Q. Would you describe him as a trustee who did his
24 homework and was usually prepared and knowledgeable of
25 the issues that were coming before him?

1 A. Selectively is the way I would say that.
2 Things that were of interest to him, like the -- like
3 the College of Medicine or when we were entertaining
4 taking over Sanford Burnham, things like that, he would
5 be intimately involved in. But just general? Not so
6 many.

7 Can I go back to your earlier question? I know
8 he is -- his -- him personally, I don't know. His
9 staff, I know, have advised clients on things like small
10 business, airport operations, things like that. But I'm
11 not familiar with the niche that his firm involves
12 overall.

13 MR. RUBOTTOM: Carine, let me ask this.

14 Did you know that he was general counsel for
15 the Airport Authority?

16 THE WITNESS: Yes.

17 MR. RUBOTTOM: And in that role, he would have
18 had some interaction with major facilities and --

19 THE WITNESS: Airports, yes.

20 MR. RUBOTTOM: -- colors of money --

21 THE WITNESS: Yes.

22 MR. RUBOTTOM: -- federal money, state monies,
23 revenues.

24 THE WITNESS: Absolutely.

25 MR. RUBOTTOM: Operating revenues.

1 THE WITNESS: Yes, absolutely, yes. No
2 question about that.

3 BY MS. MITZ:

4 Q. All right. As a board member, did he appear to
5 be shy about asking questions?

6 A. No, just the opposite.

7 Q. Was he shy about voting against matters he
8 wasn't comfortable with?

9 A. Not at all.

10 Q. Was he shy about complaining?

11 A. About complaining?

12 Q. Yes.

13 A. No, not shy about complaining.

14 Q. Do you recall an instance when he actually came
15 to you or somehow you got wind of a complaint that he
16 had about facilities, which led to an audit of that
17 department?

18 A. I do.

19 Q. Okay. And what, if you could just state
20 briefly, what was his complaint related to facilities?

21 A. He -- he had, I believe, heard that some of the
22 people that he had worked with in other venues weren't
23 getting work at UCF. And I think they had told him that
24 they believe they weren't getting the work there because
25 the people that were getting the work were getting

1 favorable treatment or were offering some sort of
2 kickback or some word like that, none of which was true,
3 but somebody had whispered that in his ear.

4 He believed it, and he told me he would like to
5 have that -- that work done.

6 He also had some -- some of his own ideas about
7 how projects should be awarded through hard bid versus
8 CM or some of those other type of delivery methods,
9 design/build. He had very strong opinions about that,
10 and I think in some cases he would disagree with Lee
11 Kernek's way of doing it.

12 And these kind of comments come up periodically
13 with any organization that invests a lot of money in
14 construction. People that don't get the work always
15 feel there's something nefarious going on and that's the
16 reason they didn't get the work, so they complain about
17 it.

18 And that had come up long before Lee Kernek was
19 there. I've been there 22 years, and it comes up about
20 every six or seven years. And I would get our internal
21 auditors to go and do an investigation to see if there
22 was anything to any of those claims, and it always came
23 out negative, zero.

24 But he insisted that we hire somebody to look
25 into it again, and we did. And they actually reported

1 in the board meeting that they found nothing in the way
2 that anything was being handled incorrectly, in that
3 sense. But they did have a lot of recommendations for
4 how to improve operations, which was great, and we took
5 those seriously.

6 **Q. Okay. Did you observe enough of Chairman**
7 **Marchena's interactions with Whittaker to be able to**
8 **describe what kind of relationship they had?**

9 A. No, but he did seem protective of President
10 Whittaker. Other than that, I don't have an impression.

11 **Q. When did you say you first noticed that he**
12 **seemed protective of him?**

13 A. Certainly when this audit came up. That
14 became, to me, fairly obvious.

15 **Q. Based on what?**

16 A. Well, I felt like there was a concerted effort
17 to shift any blame for anything that was being
18 criticized to me, and to protect Dr. Whittaker from any
19 -- any culpability or responsibility for anything that
20 was going on.

21 And I just felt like the chairman was very much
22 in favor of protecting the president, as I believed that
23 the general counsel and the chief of staff were.

24 **Q. Do you have any thoughts on the interim CFO,**
25 **Mitchell? Do you think she has the same motive?**

1 A. No. I worked with Kathy Mitchell for a number
2 of years and I found her to be a very straight shooter,
3 very straightforward, and she -- she believes that the
4 university is a great place, as I do. And I think her
5 motives are to do whatever she can to protect the -- not
6 protect the university, that's the wrong choice of
7 words -- to -- to advance the university's mission. And
8 so I just wish her the best in this interim role.

9 Q. Okay. Do you know -- well, can you say whether
10 Marchena appeared to have a good understanding of
11 capital funding sources?

12 A. I would say yes.

13 Q. And do you know whether he was ever told about
14 carryforward meaning E&G carryforward?

15 A. I don't know how he would have not known that.

16 Q. Okay. And what do you base that on?

17 A. Everybody else knew it. I mean --

18 Q. Okay.

19 A. -- it was --

20 Q. Do you remember doing one of those orientations
21 with him?

22 A. I don't recall that specifically, no.

23 Q. Do you ever recall telling him directly that
24 E&G funds were going to be used for either Trevor
25 Colbourn Hall or any capital project?

1 A. I know we told him in one of the meetings that
2 carryforward funds would be used for Trevor Colbourn
3 Hall. That was in response to a direct question, and we
4 have in some of the material, I think, a transcript of
5 that meeting where we were going over Trevor Colbourn
6 Hall, and he asked what the source of funds was.

7 Tracy Clark responded "Carryforward."

8 And I asked -- and this is on the transcript.
9 I asked Tracy if she could explain it a little bit more.
10 And she explained that it was basically the leftover
11 money from the prior year and so forth.

12 **Q. Right. I've seen that. I've heard it, too.**

13 **Okay. Do you recall any other trustee**
14 **complaining about staff or an individual department?**

15 A. No. Staff -- I mean, the trustees that I talk
16 to felt like things were really well managed and
17 handled. I had a number of conversations, for example,
18 with David Walsh who was -- he told me quite a number of
19 times how well he thought things were managed and run at
20 UCF.

21 **Q. Okay. So let me ask you a little bit about the**
22 **board meeting.**

23 **What do you know about the process for**
24 **recording the committee and board meeting?**

25 A. I don't know. That's --

1 Q. Okay.

2 A. I don't handle that, so it's usually somebody
3 in the president's office that lines that up for the
4 recordings.

5 Q. So you don't know who actually did the
6 recording?

7 A. No. I think it probably -- I shouldn't say I
8 think. I don't know.

9 Q. Okay. So a number of trustees apparently
10 reported during a Bryan Cave interview that you had come
11 to them after Bryan Cave got involved or at least after
12 the audit findings were released, and that you told
13 these trustees that you would have never told them that
14 E&G was being used because you knew that the board
15 wouldn't approve it.

16 Do you recall making such a statement to any of
17 the trustees?

18 A. I remember those conversations. I don't
19 remember exactly what I said, but I can tell you for
20 sure what I intended.

21 And that was I was still reeling from the
22 accusations that were being made and the audit comments
23 and the chancellor being upset and all of that kind of
24 stuff.

25 And I had a lot of respect for Dave Walsh and

1 John Lord and Bob Garvy, and I saw them independently of
2 some other meetings, and I wanted to express to them how
3 important it was to do what we did, the danger to the
4 students and so forth. I wanted to make sure they
5 understood that part of it.

6 And I was trying -- I was trying to get across
7 that -- that I felt that we were going to get an audit
8 comment for what we did. And when I was describing
9 that, I'm sure I mentioned E&G on that. But not because
10 I thought it was illegal, but because -- I thought
11 because of the size of the project it was going to get
12 the audit comment.

13 I wish I had better prepared them for all of
14 it. I don't think I communicated it very well, and they
15 obviously took away from that something that I didn't
16 really intend.

17 And if you really look at it, when I said -- I
18 didn't tell them because whatever, they said we had done
19 all that. They had gotten information, both written and
20 in presentations, that showed E&G was being used -- E&G
21 carryforward was being used.

22 So they knew. They had been told in writing
23 and orally what we were doing prior to me making some
24 comment about that, where I was trying to -- I was
25 feeling really bad about being told I had done stuff

1 wrong and accused of all kinds of stuff.

2 So I'm sure I was not communicating it very
3 well at that particular time, and I'm sorry they got
4 what they did out of it.

5 **Q. Okay. Let me point you to the second document**
6 **in the packet that Don has there. It's like an agenda**
7 **item for the May 22, 2014, board meeting.**

8 **Can you just take a look at that and let me**
9 **know when you've had a chance to read it?**

10 A. Item FF-4, up in the top right corner?

11 **Q. Yes.**

12 A. Yes.

13 **Q. So my question is, if -- if most people equated**
14 **carryforward with E&G, why did this background**
15 **information refer to the funds as UCF nonrecurring funds**
16 **and not carryforward or even E&G?**

17 A. That's the way we refer to those kind of funds
18 in all the documents in all the other projects that we
19 worked with. It's -- it's a broader term. It means
20 that they are UCF funds in the sense that they are not a
21 new appropriation or they are not philanthropic or
22 anything like that. They are some of our -- it's UCF
23 money.

24 And nonrecurring, referring to the fact that in
25 the case of carryforward, it's leftovers. It's not

1 going to be replaced by new funds in the following year.
2 Use it for one-time expenditures because you're not
3 going to get it back.

4 And so we use that term historically when we're
5 describing these kind of things. That was not, as some
6 would intimate, an attempt to conceal. It was not. It
7 was normal.

8 Q. So do you think that you guys used the term
9 nonrecurring more often than carryforward?

10 A. Probably.

11 Q. I'm sorry?

12 A. Sometimes, yes.

13 Q. Okay. All right. So we listened to the full
14 board meeting that followed this May 22, '14 meeting.

15 Now, in that meeting, it seems like the funding
16 discussion is cut short, and I believe it was by Trustee
17 Marchena.

18 Can you say with any degree of certainty
19 whether by May or June of 2014, Trustee Marchena had a
20 clear knowledge that Trevor Colbourn Hall was going to
21 be built with E&G carryforward funds if PECO funds were
22 not available?

23 A. 2014, hard to say. Hard for me to say. That
24 was four or five years ago. And I know nothing was
25 being concealed from him, and any discussions we're

1 having about the funding were all being discussed. But
2 I don't have a recollection of the specifics of what we
3 were talking about there.

4 Q. Okay.

5 A. So if there's an intimation that we were trying
6 to conceal something or not tell somebody how things
7 were going to be funded, that's entirely erroneous.

8 Q. No. I mean, I'll tell you, it sounds like
9 during the discussion that Chair Marchena kind of cut
10 the conversation short, which left us wondering if maybe
11 he knew it was carryforward and just wanted to move on
12 and move the discussion along.

13 So if you don't recall, that's fine.

14 A. No, I don't.

15 MS. MITZ: All right. Don, do you want to
16 address the replenishment questions?

17 MR. RUBOTTOM: But first I've got a couple of
18 follow-ups.

19 When Tracy was dual reporting, did she ever
20 share any concerns with you about Dr. Whittaker
21 lacking interest in the budget information she was
22 providing or lacking some capacity to comprehend
23 what she was telling him.

24 THE WITNESS: I think it was the opposite. I
25 think he was very interested in the budget

1 information she was providing, and I don't -- I
2 didn't get the impression that there was any lack of
3 comprehension.

4 MR. RUBOTTOM: And you would have gotten that
5 information from her reports back, as well as you
6 were all meeting in these budget chats on a regular
7 basis.

8 THE WITNESS: Exactly.

9 MR. RUBOTTOM: And later the university budget
10 committee.

11 THE WITNESS: Right. I absolutely didn't get
12 any sense of non-comprehension, and I didn't get a
13 sense of a lack of interest, either.

14 MR. RUBOTTOM: Well, nonrecurring and recurring
15 is a concept that I do understand.

16 THE WITNESS: Okay.

17 MR. RUBOTTOM: Because it's talked about a lot
18 at the capital when they are doing their budgeting.

19 And it's my impression, and I need you to
20 correct -- is it accurate to say that nonrecurring
21 is a much broader term than carryforward?

22 THE WITNESS: Yeah -- yes.

23 MR. RUBOTTOM: For instance --

24 THE WITNESS: I'm sorry. Yes.

25 MR. RUBOTTOM: -- if the university sold a

1 patent, those proceeds would be a nonrecurring
2 funding source; correct?

3 THE WITNESS: It would depend on the -- on the
4 contract and whether they were recurring or not.

5 MR. RUBOTTOM: Sold it outright.

6 THE WITNESS: It would be a nonrecurring
7 revenue, yes, yes.

8 MR. RUBOTTOM: But you would never characterize
9 that as carryforward?

10 THE WITNESS: No.

11 MR. RUBOTTOM: I'm just trying to establish,
12 you agree that's a much broader term.

13 THE WITNESS: In our instance, it would have
14 included carryforward, though.

15 MR. RUBOTTOM: I understand that. I think we
16 all know how that building was built.

17 So -- but it's your representation that when
18 you -- that all those categories of monies you would
19 describe as nonrecurring in these kind of board
20 documents, sort of?

21 THE WITNESS: Right, yes, yes.

22 MR. RUBOTTOM: Did you ever hear any questions
23 -- I think you said earlier that the BOG has access
24 to all these documents?

25 THE WITNESS: Right.

1 MR. RUBOTTOM: Did they ever question or ask
2 follow-up questions about board activities?

3 THE WITNESS: No, not really.

4 MR. RUBOTTOM: Okay. So let's talk about -- we
5 talked briefly about beginning efforts to replenish
6 E&G accounts, and I think you indicated that Tracy
7 and Christy might have begun working on that.

8 THE WITNESS: Right, when they heard the
9 concerns of the auditors --

10 MR. RUBOTTOM: Right.

11 THE WITNESS: -- during that audit.

12 MR. RUBOTTOM: Were you, during that time,
13 particularly keeping an eye out for available cash
14 to replenish those funds with?

15 THE WITNESS: Not me personally.

16 MR. RUBOTTOM: That would have been their
17 initiative?

18 THE WITNESS: Well, they were the ones that had
19 the most knowledge of where the replenishment funds
20 were or could come from, because that's what they
21 worked with every day.

22 MR. GREENE: Let him finish his question. You
23 keep talking over him, and let him -- let him get it
24 out.

25 THE WITNESS: I get excited. I'm sorry.

1 MR. RUBOTTOM: I understand, believe me.

2 I know you've become a little bit acquainted
3 with BOB-2 forms in the recent months based on your
4 letter.

5 Were you always very familiar with the BOB-2
6 form that attached to the capital improvement plan
7 submitted, the five year capital improvement plan
8 submitted to the BOG.

9 THE WITNESS: Yes.

10 MR. RUBOTTOM: What is your understanding of
11 the purpose of the BOB-2 listing?

12 THE WITNESS: I want to make sure that I'm --
13 BOB-2, in my understanding, is the same, because --
14 have you got a copy of what we're talking about? Is
15 it the one where we show our priorities, all of our
16 projects that we're submitting for consideration?

17 MR. RUBOTTOM: The capital improvement plan
18 that lists the -- that lists the PECO requests.

19 THE WITNESS: Right.

20 MR. RUBOTTOM: Direct requests --

21 THE WITNESS: Right.

22 MR. RUBOTTOM: -- for this year and the next
23 five years.

24 THE WITNESS: Yes, yes.

25 MR. RUBOTTOM: That's, my understanding, the

1 main capital improvement plan. There used to be
2 three; now there's two attachments to that.

3 BOB-1 is -- my understanding, is the
4 bond-funded projects.

5 THE WITNESS: Okay.

6 MR. RUBOTTOM: So that is submitted to obtain
7 legislative approval of that category of projects.

8 THE WITNESS: Right.

9 MR. RUBOTTOM: BOB-2, the heading is something
10 to the effect of -- I don't know if I have one in
11 your documents, but --

12 THE WITNESS: Other sources?

13 MR. RUBOTTOM: I think it's -- it's requests
14 for projects that are being built with other
15 sources, but that anticipate a claim of E&G plant
16 operation and maintenance --

17 THE WITNESS: Right, right.

18 MR. RUBOTTOM: -- funds after the building is
19 built.

20 THE WITNESS: Right, right, right. I'm with
21 you.

22 THE REPORTER: One at a time.

23 THE WITNESS: Sorry.

24 MR. GREENE: Wait for him. Don't go "right,
25 right, right." Wait for him to finish his question.

1 Listen to it.

2 MR. RUBOTTOM: So the BOB-2 is the one that in
3 2015 and 2017 and 2018, Trevor Colbourn Hall was on
4 that list all three years showing E&G as a funding
5 source.

6 That form has about five columns of
7 information, or six. The most interesting one is
8 the PO&M expectations --

9 THE WITNESS: Correct.

10 MR. RUBOTTOM: -- that our staff has to begin
11 to build in, forward-looking to recurring demands
12 later on. We don't need to talk about whether we
13 fully fund those.

14 MR. GREENE: Wait for the question to finish.

15 MR. RUBOTTOM: But it includes source of funds.
16 And for Trevor Colbourn Hall, all three of those
17 years it said E&G. I think I understand why E&G was
18 put there. I think you mentioned it in your letter.

19 But are you familiar with the fact that Trevor
20 Colbourn Hall was on that list three different
21 years?

22 THE WITNESS: Specifically, no. However, I
23 will say that when anything that we were doing that
24 could be eligible for PO&M money, we always put it
25 on there because we did not -- there were times in

1 past years when we failed to put a building on -- to
2 request PO&M, and we missed one or two years of
3 funding for that particular building.

4 So we always err on the side of too much
5 information as opposed to too little when we're
6 requesting these kinds of things.

7 MR. RUBOTTOM: Is there any consultation with
8 the BOG or with the general counsel or with your own
9 audit people about the proper projects to put on
10 that list?

11 THE WITNESS: Yes. Lee Kernek talks with Chris
12 Kinsley quite a bit about all those things.

13 MR. RUBOTTOM: Okay.

14 THE WITNESS: Occasionally, I think Tracy Clark
15 would probably talk with him, but I think it's
16 mostly Lee and Chris.

17 MR. RUBOTTOM: Okay. This last July while the
18 audit process was still ongoing, before the
19 president and trustees knew that the audit comment
20 was going to be made, Trevor Colbourn Hall shows up
21 on a BOB-2 list again, and this time it shows CFAUX
22 in that funding source.

23 THE WITNESS: I've seen that since not working
24 there anymore, and I'm just as confused by that as
25 you are.

1 MR. RUBOTTOM: Okay. Who would you think --
2 it's my understanding that people in finance
3 administration put those forms together.

4 THE WITNESS: Right.

5 MR. RUBOTTOM: Who would you have expected to
6 be responsible for that -- for that form?

7 THE WITNESS: Finance and accounting.

8 MR. RUBOTTOM: So that would have been Tracy
9 and Christy?

10 THE WITNESS: Or someone working with them or
11 for them.

12 MR. RUBOTTOM: Okay, okay. Thank you. But to
13 your -- you had no knowledge of that in July?

14 THE WITNESS: I'm still confused by what it
15 means, so no, I didn't have any knowledge of it
16 then.

17 MR. RUBOTTOM: Okay.

18 MR. GREENE: You need to wait for him to finish
19 and then answer the question, because sometimes it
20 may be a different question than you think you're
21 answering, in addition to you're talking over him.

22 MR. RUBOTTOM: Did you understand the
23 legislature had authorized the building in three
24 separate years?

25 THE WITNESS: Not specifically, no.

1 MR. RUBOTTOM: And do you know in what form the
2 authorization comes on those projects on that list?

3 THE WITNESS: I'm thinking the appropriation
4 act.

5 MR. RUBOTTOM: Did you -- have you read the
6 audit finding? I believe it discusses the
7 appropriation act.

8 Have you read the audit report that was
9 published? I guess the final one was published in
10 January; the preliminary and tentative findings were
11 published or provided to the university and to us
12 and the BOG on November 27th.

13 THE WITNESS: I was gone September 13th. Some
14 things I've seen; some things I haven't.

15 MR. RUBOTTOM: Okay.

16 THE WITNESS: I will say that I'm just
17 disappointed that I was not there to be able to play
18 a part in responding to that audit request.

19 MR. RUBOTTOM: In the past, if an audit finding
20 was on your department, would you work with the
21 audit department to help prepare the president's
22 response?

23 THE WITNESS: Yes.

24 MR. RUBOTTOM: Okay. Thank you for -- for
25 reminding me about that subject matter, but I did

1 lose my train of thought.

2 Okay. The general appropriation act, the way
3 it deals with those buildings, it says these
4 buildings are authorized to be constructed with
5 non-appropriated funds and may be eligible for plant
6 operation and maintenance after completion.

7 Were you aware that that language is in the
8 general appropriation act?

9 THE WITNESS: Generally aware, but the way it
10 worked at UCF was when the appropriation act came
11 out, our vice president for governmental relations
12 would go through the appropriation act with a
13 fine-tooth comb, and he would come to the
14 president's staff and with a summary sheet of the
15 things that we should know coming out of it.

16 So I didn't spend a lot of time working through
17 the details of the appropriation act because the
18 vice president for governmental relations and his
19 staff did that, and basically told us what we needed
20 to know.

21 MR. RUBOTTOM: And that report might be --
22 those buildings have been authorized?

23 THE WITNESS: I don't think it would have been
24 -- it may or may not have. I don't recall.

25 MR. RUBOTTOM: Would it surprise you to know

1 throughout the State University System there's a
2 lack of comprehension of the results of putting
3 buildings on that list?

4 THE WITNESS: It would not surprise me at all
5 to think there's a lack of comprehension about a lot
6 of the capital process.

7 (Discussion off the record.)

8 MR. RUBOTTOM: Back on the record.

9 Are there -- are you aware of new construction
10 projects for which E&G funds were used prior to the
11 Colbourn Hall commitments?

12 Let me rephrase that; more than \$2 million
13 projects, because that seems to be the number that's
14 important.

15 THE WITNESS: I don't really recall.

16 MR. RUBOTTOM: Okay.

17 THE WITNESS: And it's because prior to that,
18 we were getting PECO funding for most things, and it
19 was not an issue. So I don't think that would have
20 been happening.

21 MR. RUBOTTOM: Okay. These questions might not
22 seem fair, but I feel like it's important we ask
23 them.

24 Are you aware of any other inappropriate issues
25 of restricted funds at UCF?

1 THE WITNESS: No.

2 MR. RUBOTTOM: At the DSO's of UCF?

3 THE WITNESS: No.

4 MR. RUBOTTOM: Did you hear -- well, Trustee
5 Walsh has raised the issue about a prepaid lease
6 that he claimed that he came to talk to you about
7 in, I think, August, thinking that the prepayment
8 amount was larger than would be normally economical.

9 THE WITNESS: Yes.

10 MR. GREENE: Wait for him to finish his
11 question.

12 MR. RUBOTTOM: Do you -- are you familiar with
13 that circumstance and do you know why a large
14 prepayment was planned on that lease?

15 THE WITNESS: Yes.

16 MR. RUBOTTOM: Can you explain that to us?

17 THE WITNESS: It was -- was a lease on a
18 property in the research park for one of our
19 academic departments, and they had money in their
20 current budget that they felt that they could use
21 for the lease.

22 They weren't sure if they -- this is the way I
23 remember it. They weren't sure they would have the
24 same amount of money in future years, so they
25 thought it would be good idea to make a large

1 prepayment on the lease while they had the money for
2 the lease, and then that would relieve some of their
3 problems downstream. That's what I remember about
4 it.

5 He was concerned because if something happened
6 and you made a big prepayment, that was not
7 appropriate and we would have lost any earning or
8 anything we might have had on the money had we not
9 spent it for that purpose.

10 MR. RUBOTTOM: Do you recall saying anything to
11 him in that context that it's important to spend
12 down carryforward or to get this money off our books
13 so the legislature doesn't think we're sitting on
14 money or anything like that?

15 THE WITNESS: I don't remember that in the
16 conversation with him, but there was always constant
17 pressure to spend down carryforward, constant.

18 MR. RUBOTTOM: Okay. Carine, do we have any
19 more? You have the rest of the documents you wanted
20 to walk through.

21 MS. MITZ: Yes. Real quick, I'll breeze
22 through.

23 BY MS. MITZ:

24 Q. Okay. Mr. Merck, if you don't mind turning to
25 Document 3. That should be an e-mail sent out from the

1 State University System in July, 2013. Can you take a
2 look at that, get familiar with it, and let me know when
3 you're ready?

4 A. Okay.

5 Q. All right. So the BOG has told us that
6 included in the group address for SUS counsel for admin
7 and financial affairs included all the CFOs of state
8 universities. So based on that and seeing that e-mail
9 address on the top, do you agree that this was sent to
10 you?

11 A. It would have -- if this -- if it's copied to
12 the counsel for financial and administrative affairs, it
13 would have come to my office, yes.

14 Q. Do you just not recall receiving it?

15 A. No.

16 Q. Okay. Clearly, Scott Cole was also copied on
17 the e-mail. Do you recall him ever discussing it with
18 you?

19 A. No.

20 Q. Okay. Do you recall Tracy Clark or Christy
21 Tant ever discussing this e-mail with you?

22 A. No.

23 Q. What I would like you to do next is flip to tab
24 four or document four, and take a look at that e-mail.
25 And when you're done, let me know.

1 A. Okay.

2 Q. All right. This was the e-mail that was
3 obtained, I think, from Bryan Cave, who would have
4 obtained it from UCF.

5 Your name is in the CC line. Do you dispute
6 that this e-mail was sent to you?

7 A. I don't -- I'm not disputing. I don't remember
8 this particular e-mail. I remember another one on the
9 same topic that was distributed to me and to the
10 provost.

11 Q. Okay. Let's get to that. Why don't you flip
12 to tab five, and I think that might be the e-mail that
13 you are referring to.

14 A. Maybe. There might have been another one, but
15 this one has the same thought that I had.

16 Q. Okay. So this e-mail was sent, it looks like,
17 on December 2nd of 2014.

18 A. Correct.

19 Q. Do you recall when Dale Whittaker started with
20 the university?

21 A. No. It was four years prior to him becoming
22 president, so that would probably have been around 2014.

23 Q. Okay. Do you recall why you cc Dale Whittaker
24 on this e-mail, on your reply?

25 A. Because the College of Medicine reports to him.

1 Q. And do you have any recollection of having any
2 discussions with him or him replying to your e-mail?

3 A. No.

4 Q. Okay. I don't think I have any further
5 questions.

6 Actually, yes. I wanted you to flip to the
7 next tab. That should be six, and there should be an
8 e-mail from Tracy Clark to you and Dale.

9 A. Uh-huh.

10 MR. GREENE: He's got it.

11 THE WITNESS: I've got it.

12 BY MS. MITZ:

13 Q. Okay, great. Does this appear to be something
14 that was routinely either e-mailed or printed out and
15 discussed with you and Dale, the attachment?

16 A. Yes.

17 Q. And does this attachment, which let's call it
18 capital projects current funding plan, does it reflect
19 that certain projects, including Trevor Colbourn Hall
20 and the Colbourn Hall renovation, as being funded by
21 E&G?

22 A. Yes, it does.

23 Q. Okay. And do you recall whether Provost
24 Whittaker ever replied to this e-mail or sent you a
25 subsequent e-mail?

1 A. I don't know if it's this particular one, I
2 think it is, that he wrote back to Tracy with -- there
3 was a handwritten commentary on the form that if it's
4 not this one, it looked just like this, that had a lot
5 of questions for her which obviously showed he had
6 reviewed it in some careful detail and had questions,
7 follow-up questions about it, but no question about the
8 E&G for Trevor Colbourn.

9 **Q. All right. Thank you. Very good. Thank you,**
10 **sir.**

11 MS. MITZ: Okay, Don. I pass it on to you.

12 MR. RUBOTTOM: I have a follow-up. What we've
13 been learning is there's a lack of guidance from the
14 BOG. There's a lack of training at the university
15 level. The BOG themselves have mentioned last month
16 that there's a lack of training for trustees.

17 So what we've learned from employees is that
18 they learned on the job.

19 THE WITNESS: Right.

20 MR. RUBOTTOM: That Document 5 e-mail where you
21 forwarded to Dr. Whittaker an articulate explanation
22 by Tracy of E&G, is that the type of sporadic
23 communications that an administrator at UCF would --
24 through which an administrator at UCF would be
25 trained on issues like that regulation?

1 THE WITNESS: Unfortunately, yes.

2 MR. RUBOTTOM: And so your own learning on
3 those things would have come through similar types
4 of sporadic interactions, whether it was BOG e-mails
5 or general counsel or audit whatever?

6 THE WITNESS: Or internal conversations.

7 MR. RUBOTTOM: Okay. I want to talk about E&G
8 investments. You told us on the phone a few weeks
9 ago about how you recognized that you had large cash
10 reserves that could maybe be better placed.

11 THE WITNESS: Right.

12 MR. RUBOTTOM: I am not an investments expert.
13 I am not a cash management expert. I did grow up in
14 a household of someone that had some expertise in
15 that area.

16 It kind of surprised me at the time that you --
17 that operating cash might be invested in various
18 equities, whatever.

19 I have looked at the investment policy. I know
20 you are familiar with that. And it does have the
21 category, the pools of what kinds of funds are
22 supposed to be.

23 THE WITNESS: Right.

24 MR. RUBOTTOM: And yet we hear discussions of
25 using unrealized gains to pay for a project.

1 And the best I can understand about that is
2 that you reallocate the ownership shares of the
3 investment pools when you make those kinds of
4 transactions on your cash books. Is that an
5 accurate -- a fair representation of how those
6 things have been managed?

7 THE WITNESS: That's fair, and it's also fair
8 to say that's confusing.

9 MR. RUBOTTOM: My representation is confusing?

10 THE WITNESS: No, the way that's handled.

11 MR. RUBOTTOM: And you understand that would
12 confuse observers?

13 THE WITNESS: Yes.

14 MR. RUBOTTOM: Who made the decision in
15 February, 2010, to move 210 from the SPIA account at
16 the SBA to Bank of New York?

17 THE WITNESS: In 2010?

18 MR. RUBOTTOM: February, 2010, is my
19 understanding of when that occurred.

20 THE WITNESS: That -- I'll have to give you a
21 little bit more.

22 When the big financial crunch hit, all of our
23 money was split between SBA and SPIA. SPIA [sic]
24 had a run on the money. It was frightening to
25 everybody. We got out right before it was shut

1 down, and left about \$5,000 or so in there as a
2 placeholder.

3 That left all of our cash in SPIA, which was
4 concerning. Although SPIA has some agencies like
5 the highway department that have -- that are
6 required by law to keep their cash there so you
7 wouldn't have that danger of a run.

8 But that prompted us to start to look at should
9 we be doing something else.

10 MR. RUBOTTOM: Let me stop you there so I can
11 go back and be clear, because I think you misspoke.
12 You said you took your cash out of SPIA?

13 THE WITNESS: No, out of SBA.

14 MR. RUBOTTOM: And what SBA was that account
15 taken out of?

16 THE WITNESS: I don't know. I just know that
17 SBA, that was the group. That was the fund that the
18 state treasurer ran that had cash balances from
19 state agencies in it.

20 MR. RUBOTTOM: And those were invested at
21 interest, they were liquid? Is that your
22 understanding?

23 THE WITNESS: Yes, yes, yeah.

24 MR. RUBOTTOM: But interest rates also went to
25 zero in those times.

1 THE WITNESS: Yeah, right.

2 MR. RUBOTTOM: So you were trying to figure out
3 what to do with what you had in that particular
4 account?

5 THE WITNESS: And we moved it over to SPIA.

6 MR. RUBOTTOM: Did you get any guidance from --

7 THE WITNESS: Yes.

8 MR. RUBOTTOM: -- the capital or from the BOG
9 or the SBA about making those kinds of transactions?

10 THE WITNESS: One of our university trustees
11 was a financial advisor with Ameriprise, and he was
12 the chair of the finance committee at the time.

13 MR. RUBOTTOM: Which trustee was that?

14 THE WITNESS: I knew you were going to ask me.
15 Let's come back to that.

16 MR. RUBOTTOM: Was it Mr. Gary or another one?

17 THE WITNESS: It was an early -- Conrad
18 Santiago. Conrad Santiago was the chair of the
19 finance committee at the time and had a really good
20 understanding of these things.

21 So the board had us create a small subgroup
22 with he as the chair to look at what we should do
23 going forward as a result of the financial crisis.
24 And the recommendation that we all came to, to the
25 board was that we -- we found that there's a statute

1 that allows us to have alternate investments of our
2 cash, alternate to SPIA, if we had a board approved
3 investment policy.

4 MR. RUBOTTOM: Right.

5 THE WITNESS: So then while we were looking at
6 it, interest rates, as you said, were minimal to
7 zero. And so we thought this might be an
8 opportunity to get a little bit more cash.

9 So we established the principle that we wanted
10 safety of the corpus to be paramount, we wanted
11 liquidity, and we wanted to earn a little bit of
12 money. The third priority was to earn a little bit
13 more money, potentially, than SPIA would give us.

14 So when we looked at all the balances, it's
15 kind of like the gas in your car's tank. I mean, if
16 you're fairly conservative and you go to the pump
17 and fill up your tank on a fairly regular basis,
18 there's always some residual gas in the tank, and we
19 saw that was what was happening with our cash
20 balances. We have cash flowing in in the fall and
21 then January and the summer, and then spending it
22 down. But there was always this residual that we
23 never touched as that money churned through there.

24 So we thought a way to up the returns a little
25 bit and still be safe would be to put a percentage,

1 maybe 10 to 14 percent of our cash in equities,
2 because we thought if the -- if the market went down
3 50 percent, we would lose 6 percent, maybe. It
4 seemed like a fairly minimal risk.

5 Plus since we never had needed that for
6 liquidity purposes, we could ride out a downturn
7 anyway. So the board, everybody agreed that was
8 pretty safe.

9 MR. RUBOTTOM: When you say the board, you mean
10 the finance and facilities --

11 THE WITNESS: Board of trustees.

12 MR. RUBOTTOM: -- committee or the full board?

13 THE WITNESS: The full board, the full board.

14 MR. RUBOTTOM: The full board adopted the
15 investment policy?

16 THE WITNESS: Yes, yes, they did.

17 MR. RUBOTTOM: Who made the particular
18 allocations and did the board approve the
19 allocations?

20 THE WITNESS: We -- we hired a consulting firm,
21 The Bogdahn Group. They've changed their name
22 since, but it was The Bogdahn Group as our outside
23 consultant who helped us work through what would be
24 an appropriate analysis and distribution of those
25 funds, being conservative in mind.

1 So with our finance group that the board had
2 appointed, working with The Bogdahn Group, we came
3 up with that policy, and we still use that company
4 to come back annually to make sure we're adhering to
5 all of the things in the policy, sort of a fiduciary
6 check.

7 MR. RUBOTTOM: I understand that.

8 THE WITNESS: Okay.

9 MR. RUBOTTOM: And I understand your discussion
10 of cash.

11 THE WITNESS: Okay.

12 MR. RUBOTTOM: Was there any discussion at the
13 time of whether that was a permissible use of E&G
14 cash?

15 THE WITNESS: No, because there's no reason to
16 think that it's not permissible. It was all either
17 in SPIA or somewhere already invested in whatever
18 they invested in, bonds. I don't know if they had
19 equities in SPIA, but they invested it in financial
20 instruments that earned interest, and we were doing
21 similar, the same thing.

22 MR. RUBOTTOM: But those weren't all central
23 reserves. Those was cash that was in various
24 departmental and subdepartmental --

25 THE WITNESS: Right.

1 MR. RUBOTTOM: -- programs.

2 THE WITNESS: Right, right.

3 MR. RUBOTTOM: -- or accounts. I don't even
4 know what you call all the pieces.

5 THE WITNESS: Right.

6 MR. RUBOTTOM: So you started with a listing of
7 entities within the university that owned pieces of
8 that. I mean, you knew whose money it was you were
9 putting there.

10 THE WITNESS: And then it pretty much lost its
11 identity once it was in there, but everybody owned
12 shares. It was like a mutual fund.

13 MR. RUBOTTOM: I understand. But how did you
14 track the shares? And how would you assign -- when
15 somebody needed to cash out their share, how would
16 you reassign, because you didn't -- my understanding
17 is there were only about two liquidations in that
18 period --

19 THE WITNESS: Right, right.

20 MR. RUBOTTOM: -- of a total of around 20
21 million.

22 THE WITNESS: Right.

23 MR. RUBOTTOM: And I'm assuming that some of
24 those departments or subdepartments needed some of
25 their money sometimes. So how would you re -- what

1 process would you use to reallocate that?

2 THE WITNESS: I don't know. I don't know.

3 MR. RUBOTTOM: Okay.

4 THE WITNESS: I think Tracy could answer your
5 question there.

6 MR. RUBOTTOM: Okay. Do you remember when the
7 regulation was amended in 2013? The BOG made
8 specific reference to interest on E&G, because
9 apparently some universities may have been using
10 that interest for investment gains for non-E&G
11 purposes.

12 MR. GREENE: Wait for the question.

13 MR. RUBOTTOM: For non-E&G purposes. Do you
14 recall that regulation being expressed, that E&G
15 interest had to keep the E&G color?

16 THE WITNESS: I recall it being expressed. I
17 don't remember reading the particulars, but I know
18 that when we started to allocate funds from the
19 realized gains, Tracy would be careful to make sure
20 that she was using -- I don't know how she did it,
21 whether it was on a percentage basis or what, but to
22 try to make sure that she was using interest on
23 everything but E&G, when we were trying to use those
24 for non-E&G type things.

25 MR. RUBOTTOM: But Tracy was responsible for

1 tracking all of those; is that right?

2 THE WITNESS: Right, right.

3 MR. RUBOTTOM: I believe Christy or somebody
4 delivered to Kathy or somebody a spreadsheet with
5 about 15,000 rows of these various allocations of
6 those investment funds.

7 THE WITNESS: I didn't see that.

8 MR. RUBOTTOM: Some of them had negative
9 balances, some of them had positive balances.

10 Would that, in your mind, on the date of that,
11 that would have been the result of all those
12 allocations over the ten or so years that those
13 funds had been invested?

14 THE WITNESS: I didn't see that. I think I was
15 gone by the time she was doing that, so I'll take
16 your word for it.

17 MR. RUBOTTOM: Did you ever review -- it's my
18 understanding you were the chief executive of
19 investment policy?

20 THE WITNESS: Right.

21 MR. RUBOTTOM: Did you ever review the accounts
22 that she was keeping as to whose money was where?

23 THE WITNESS: Not at that level, not at that
24 level.

25 MR. RUBOTTOM: How did you allocate the

1 earnings? I know you had four different pools. Did
2 you share the earnings alike or did you allocate the
3 earnings to the funds that were appropriately in the
4 particular pool?

5 Let's put it this way. Would everybody's money
6 be spread over the pool pro rata?

7 THE WITNESS: Everybody's money would have been
8 spread over the pool pro rata.

9 MR. RUBOTTOM: Okay.

10 THE WITNESS: Yes. So what they received from
11 the earnings would have been a calculation that
12 Tracy would have done, maybe with The Bogdahn Group;
13 I don't know. But I know the intent was to try to
14 make sure whoever put the money in, got an
15 appropriate amount out after the expenses for
16 running it and those sorts of things.

17 MR. RUBOTTOM: Okay. Did you have any
18 long-term plan on liquidations and reallocations or
19 was that just all using cash to make those kind of
20 reallocations as people needed their money?

21 THE WITNESS: If I'm understanding the question
22 now, the long-term plan?

23 MR. RUBOTTOM: Yes.

24 THE WITNESS: The long-term plan was to build
25 up the unrealized gains to a point that we felt that

1 we could withstand market drops and so forth without
2 going negative on the gains.

3 And when we got beyond that point, and we were
4 thinking about 15 or 20 million, if we got above
5 that point, then we could start thinking about
6 allocating those to university needs, and we --

7 MR. RUBOTTOM: So the goal would have been to
8 make sufficient security of the -- or surety of the
9 principal, that the principal is absolutely safe --

10 THE WITNESS: Oh, yeah, right.

11 MR. RUBOTTOM: -- before you start withdrawing
12 funds to spend?

13 THE WITNESS: Right.

14 MR. RUBOTTOM: Earnings.

15 THE WITNESS: Right, precisely.

16 MR. RUBOTTOM: Okay. Do you know -- are you
17 familiar with a transaction in June of 2013 with
18 respect to 10.9 million realization of gains or
19 liquidation of some kind?

20 THE WITNESS: I can't -- I know it was -- at
21 the time I did. I've lost it now.

22 MR. RUBOTTOM: Okay. Did you ever discuss this
23 cash management strategy with other university CFOs?

24 THE WITNESS: I did, and most didn't know --
25 were not familiar with what I was talking about and

1 there were -- very few were doing it. UF might have
2 been doing it.

3 And I did -- when we'd get the reports of the
4 earnings and everything, every time they would come
5 in from The Bogdahn Group with their analysis of
6 what was going on, I would forward a copy of that to
7 the chair of the finance committee. And I also
8 forwarded it to Bob Garvy, whether he was chair of
9 the committee or not, because he was -- his
10 background was more into that financial area, and I
11 know he had an interest in it.

12 So I always made sure that every time I would
13 get a monthly report or quarterly report of how
14 those funds were doing and what's going on, I would
15 send it to the chair of the finance committee and
16 the BOG.

17 MR. RUBOTTOM: Okay. Did you report regularly
18 to the finance committee --

19 THE WITNESS: Yes.

20 MR. RUBOTTOM: -- about the progress of the
21 fund and --

22 THE WITNESS: Yes.

23 MR. RUBOTTOM: -- would that be quarterly or
24 monthly or --

25 THE WITNESS: It was not monthly. It probably

1 would have been quarterly. I don't remember the
2 frequency. I know it was not monthly, but we did,
3 and that was one of our points that The Bogdahn
4 Group did was to make sure that we were making the
5 required reporting to the board. And that -- and we
6 had the Bogdahn representative there, that were our
7 advisors, present at the meetings to answer any
8 questions that people might have.

9 MR. RUBOTTOM: Okay.

10 THE WITNESS: It might have been annually, the
11 more I think about it.

12 MR. RUBOTTOM: Did anybody consult you at any
13 time before you left about attributing some of the
14 unrealized gains in the fund to repayment of Trevor
15 Colbourn Hall E&G?

16 THE WITNESS: It would have been a logical
17 thing to do.

18 MR. RUBOTTOM: But nobody consulted with you
19 about that?

20 THE WITNESS: They might have been forwarded to
21 me, but not consulted in that sense.

22 MR. RUBOTTOM: I think on September 20th at the
23 board meeting that they laid out, I think Kathy laid
24 out a repayment plan or schedule that included about
25 13 or -- between 10 and 16 million in unrealized

1 gains as part of the refunding mechanism.

2 THE WITNESS: And that makes sense.

3 MR. RUBOTTOM: I understand why it makes sense
4 economically and financially.

5 Where it didn't make sense was when people are
6 expecting E&G cash to be made whole, because they
7 don't understand that some of that money is in the
8 investment pool. So people began to ask questions
9 about it. The auditor commented on that particular
10 mode of refunding.

11 Would you have expected that plan to be
12 developed by Kathy and Tracy during that September
13 period when they were trying to figure out how to
14 repay?

15 THE WITNESS: Yes, yes.

16 MR. RUBOTTOM: Okay. Would you -- when you had
17 the liquidation, would you report that to the
18 finance committee at the next meeting or would you
19 get approval beforehand or --

20 THE WITNESS: Like I said, there were only two,
21 and I don't remember the exact ones, who was
22 involved in it, but it was reported. From then on,
23 if you look at those reports now, they still show
24 even today where those two liquidations occurred.

25 MR. RUBOTTOM: Right.

1 THE WITNESS: So it was totally transparent in
2 that sense. I just don't remember the -- the detail
3 of who was involved in doing it at the time.

4 MR. RUBOTTOM: But you can understand why
5 people would ask questions in light of the fact that
6 the university has taken the position that we can
7 refill a hole with this particular class of asset?

8 THE WITNESS: Sure. I don't see those as
9 hostile questions at all.

10 MR. RUBOTTOM: I believe that category, when
11 they presented that, they showed E&G and they
12 preserved that share of earnings. They showed some
13 federal funds.

14 What categories of federal funds would we have
15 in the investment pool over a ten-year period?

16 THE WITNESS: I don't know.

17 MR. RUBOTTOM: Have you ever been involved in
18 any federal audits questioning that we parked their
19 money or anything?

20 THE WITNESS: No.

21 MR. RUBOTTOM: Okay.

22 MR. GREENE: Can we take a three-minute break?

23 (Brief recess.)

24 MR. RUBOTTOM: Let's go back on the record.

25 Carine, you're next.

1 BY MS. MITZ:

2 Q. Okay. Mr. Merck, is there anything else you
3 think we need to know in order to complete our
4 investigation about the knowledge on the part of certain
5 employees that E&G was being used for construction?

6 A. I think we, the employees, shared a common
7 understanding or a common belief that we were not doing
8 anything illegal. There was no -- no thought that what
9 we were doing was illegal, nothing intentional in that
10 regard. I just want to clarify that.

11 And that really brings me to the four employees
12 that were -- are in the process of being terminated, if
13 they haven't already been. I just want to, on the
14 record, say how unfair I think that is. They didn't
15 deserve that.

16 They were, I believe, intended to divert
17 attention from people higher up in the chain. I think
18 the chairman and the president felt a need to show
19 action in response to the things, the negative things
20 that were being said, and they wanted to, for lack of a
21 better term, to produce some scalps to show. And these
22 four people were on the receiving end of that unfairly.

23 I just --

24 Q. Okay. Thank you for that. If anything else
25 comes to your mind that would help us in our

1 investigation, particularly involving the people who had
2 knowledge of the use of E&G for capital projects, as
3 well as people who had the knowledge that wasn't
4 permitted, would you be willing to put that in a sworn
5 statement or an affidavit for us?

6 MR. GREENE: Yes, we're cooperating. Bill was
7 looking to me, but yes, we'll supplement.

8 MS. MITZ: Okay. Thank you for that.
9 Mr. Merck, do you already know what you want to tell
10 the committee on Tuesday?

11 THE WITNESS: No. I was just hearing from Don
12 a few minutes ago or a few hours ago now, that I'll
13 probably be asked to make about a five-minute
14 opening statement.

15 MR. RUBOTTOM: Likely not more than that. I
16 think we could talk about that off the record.

17 THE WITNESS: Okay.

18 MR. RUBOTTOM: Carine, I do have a couple more,
19 because, I think, of what she asked earlier.

20 Is there anything that -- that you think we
21 might not know about the knowledge level of
22 Dr. Whittaker or any or all of the trustees with
23 respect to the matters that have created -- the use
24 of E&G funds for capital projects over the past six
25 years?

1 THE WITNESS: My sense is that they were
2 informed in writing. They were informed orally.
3 Dr. Whittaker was even more so informed through
4 correspondence, reports, conversations with Tracy,
5 Christy and others in our various meetings.

6 I find it difficult to believe that there are
7 people who are saying they were clueless about the
8 use of E&G funds or carryforward funds towards
9 Trevor Colbourn. That just astounds me that people
10 would say they didn't know that.

11 MR. RUBOTTOM: I just lost my train of thought
12 again. There was one more I had.

13 Oh. I can't remember if we asked you, have you
14 read the Bryan Cave report?

15 THE WITNESS: Yes.

16 MR. RUBOTTOM: Have you reviewed the exhibits
17 in that report?

18 THE WITNESS: Yes.

19 MR. RUBOTTOM: Is there anything in that report
20 you dispute?

21 THE WITNESS: Absolutely.

22 MR. RUBOTTOM: Would you tell us what those
23 matters are?

24 THE WITNESS: I've got some notes here I made,
25 hoping that you would ask me that.

1 MR. RUBOTTOM: Thank you.

2 THE WITNESS: Some are minor and some are more
3 important.

4 The first one that's just me is page 7 says,
5 Merck took full responsibility for the decision to
6 use the E&G funds for TCH. That is a total
7 overstatement.

8 My expression of responsibility was my role in
9 what happened as the chief financial officer, not to
10 take on the responsibility for the general counsel,
11 for the president, for the provost, for the board,
12 for the BOG, all those.

13 It was a narrow expression of mine, but they
14 continued to hammer on that full word that they
15 added as time went on.

16 I felt like -- going back one page, page 6
17 refers to Bill Merck as a "key figure in all of the
18 decisions." To me, that just started off that
19 report with a bias that Bill Merck is going to be
20 loaded up with everything that follows.

21 Page 7 says "the evidence does not support a
22 conclusion that Colbourn presented an imminent
23 health or safety risk requiring emergency action."
24 I just want to say I totally disagree with that and
25 I think that anybody that read the engineer's report

1 would have to conclude that that was a dangerous
2 situation.

3 And then page 7, he says, "nor does it support
4 the claim that there was no other -- " alternative
5 use but "-- alternative but to use E&G funds." I
6 disagree with that, too; that the suggestions that
7 he had about a couple of projects, they just weren't
8 practical or financially feasible to shift those
9 funds at that point. It's just not right.

10 And then page 7, too, he says at Merck's
11 discretion "a new international student center" ...
12 used "permissible funds that could have been
13 applied," et cetera, et cetera. To refer to it as
14 an international student center makes it sound like
15 it's discretionary, kind of frivolous, when in fact
16 the building was an academic building.

17 We had a contract with a company called
18 Shorelight to increase the number of international
19 students on campus. And part of what they offered
20 coming in was to build the facility on our campus if
21 we didn't have adequate facilities to handle it.
22 None of us wanted that. We did not want that. We
23 didn't want them to have a building on our campus.
24 So we and the board, we all decided we would build
25 an academic building to house the academic programs

1 and the academic support functions for those -- all
2 incoming students. So I thought that was
3 downplaying what that building was.

4 Page 8, "We found no evidence that Merck, or
5 anyone acting at his direction, ever specifically
6 told the BOT that the source of funding for TCH was
7 E&G funds." And I disagree, and we provided written
8 documents, and I think also the transcript where we
9 were answering Marchena directly disputes some of
10 that.

11 Page 8 says "We found no evidence that Merck,
12 or anyone acting at his direction, ever explained to
13 the BOT that the funding of TCH was not permitted
14 under BOG regulations and may lead to adverse
15 consequences for the university." On the surface,
16 that's true, but false in that I was not aware of
17 that particular regulation during the
18 decision-making process.

19 Page 8. "Merck clearly understood that state
20 auditors might find the project to be in violation
21 of the restrictions on the use of E&G funds."
22 That's, to me, a mischaracterization. I thought it
23 would go against the conventional use of
24 carryforward funds, but not a violation of a
25 specific restriction.

1 On page 8, "Merck acknowledged on several
2 occasions that he could not have disclosed the
3 relevant risks to the BOT, because he knew the BOT
4 would not have gone forward with the project had he
5 done so." I think we address that in my letter and
6 the one at Dr. Hitt's, too, that we were talking
7 about -- that we didn't believe it was going to be
8 -- it was not -- we didn't think it was illegal, to
9 start. We thought it was something that we could
10 address and handle, and we didn't want to distract
11 anybody from the major point which was we have a bad
12 building that's going to hurt somebody.

13 Page 9 says speak of Clark and Tant. Burby
14 accused them of mischaracterizing the allocations as
15 being for deferred maintenance, and that is just
16 wrong, wrong, wrong. They followed the BOG
17 reporting guidelines.

18 Page 9. Speaking -- Burby was speaking of
19 Clark and Tant. "Their actions had the effect of
20 concealing the use of those funds for a construction
21 project." No intent was there to conceal use. This
22 word was -- that "conceal" word was picked up by
23 Chairman Marchena later, and I think Mr. Burby used
24 the phrase "the effect of" to sort of cover his
25 speculation that that was what was going on.

1 Page 9. This is not too major, but told by
2 Merck that he might draw an audit comment which he
3 could handle. I didn't know I was doing something
4 that would be considered illegal, so, yes, I thought
5 I could reasonably handle it, talking with
6 reasonable people.

7 Page 10. "Chase denied being aware of any
8 restrictions on the use of E&G funds." My comment
9 is: Like everyone else.

10 Page 10, "We found evidence that ... Whittaker
11 received vague and arguably misleading" evidence
12 "about the source of funding for TCH from Merck and
13 others." That's just patently not true.

14 Page 10. "Perhaps more importantly, Whittaker
15 stated that he was not familiar with restrictions on
16 the use of E&G funds, and we found no persuasive
17 evidence to the contrary." Again, protect the
18 president; blame Merck. As chief budget officer, he
19 was unfamiliar, but Merck as CFO should have been.
20 I am not buying all of that.

21 Page 10. "Whittaker recalled hearing Merck
22 state that the funding for TCH might lead to an
23 'audit comment,' which he said did not worry him
24 because he" -- Whittaker -- "was not familiar with
25 state audits at the time." A career in higher ed

1 and the new president and he's not familiar with
2 state audits? That's difficult to buy.

3 Page 10 [sic]. "Whittaker ... did not feel he
4 was in a position to challenge Merck because he
5 appeared to have the full confidence of the
6 president." My response is Whittaker reported to
7 the president, as did I. The provost is a number
8 two position in the university. He couldn't
9 challenge me?

10 Page 10. Let me just skip that one.

11 Page 13. This is Burby. "There is no
12 available case law or Florida Attorney General
13 opinions interpreting the BOG's regulations during
14 the relevant period, and the BOG does not publish
15 any formal guidance." That's Burby talking. And
16 then -- and I'm saying, and that is the evidence
17 that I should be completely aware, but no one else?

18 And there was a proposed amendment that was
19 circulated in redline format for comment, and no
20 comments were received from the SUS institutions.
21 And that's -- okay.

22 And pages 13 and 14 goes into carryforward
23 funds specifically, finally having the same
24 restrictions as annual E&G funds, "except where
25 expressly allowed by law." So why was there no

1 mention of the statute referenced in our letter,
2 Section 1013.74 of the Florida statutes, which says
3 you can use E&G funds for calamity for a building
4 project?

5 Page 14. Under section three, Colbourn Hall,
6 says by the late -- "By the late 2000s, it was
7 experiencing structural and other problems, some
8 typical of a building of its age." By inserting the
9 phrase "some typical of a building its age," it made
10 the whole sentence seem like there was no emergency.
11 I object to that.

12 Page 18. "Several participants in the budget
13 chats indicated that they believed E&G funds were
14 permitted to be spent on renovation and repair
15 projects. In fact, E&G funds may be used for this
16 purpose, but only up to a limit of \$2 million
17 according to BOG staff. The budget chat
18 participants who were available for an interview
19 stated that they were unaware of the \$2 million
20 limit." I, too, was unaware of the \$2 million
21 limit.

22 Page 20. "Gonzalez stated that she understood
23 that E&G funds could be used for renovations and was
24 unaware of any cap on the use of E&G funds for this
25 purpose." I was of the same mind.

1 Page 21. Speculation by Burby that "It is
2 possible that Hitt, Merck, and others understood
3 that this authority allowed Hitt to add Colbourn as
4 a capital project in the allocation document without
5 seeking further authorization from the board of
6 trustees." That's -- that whole statement is news
7 to me. For Burby -- this speculation on Burby's
8 part adds to some sort of a conspiracy theory that
9 he was trying to weave.

10 The transcripts on page 34, we've already
11 talked about those. That's where Tracy and I
12 explain carryforward in response to a question from
13 Chairman Marchena.

14 Page 34 [sic]. "Both Clark and Tant indicated
15 in their interviews that they were unaware of the
16 specific regulation or law that restricts the use of
17 E&G funds for new construction. Rather, they said
18 it was just something they had learned on the job."
19 And my response is: Me, too.

20 Page 39 was confusing. Quoting: "And in at
21 least one instance, discussed below, Merck" may have
22 -- "may have affirmatively misrepresented to them
23 the source of funding for the projects." What
24 follows this theory of Burby's is a meeting attended
25 by several people looking at a document I did not

1 prepare. I am not sure what he was really talking
2 about there.

3 Page 41, he was -- I think Burby was trying to
4 make a point that the building was not an emergency
5 because he's -- he's saying Kernek's comments
6 regarding the building being safe for occupants for
7 at least the next two years was what I believed to
8 be -- to further the false narrative that there was
9 no emergency. It takes at least two years to design
10 and replace a building, and the clock was ticking.
11 So for a while, it is safe, but it's on its way to
12 being unsafe, and it's not that safe, even at that.

13 At page 46, Merck's conversation with Walsh on
14 August 10th following the August 7th meeting with
15 auditors, exit conference. I was still in shock. I
16 was distressed that I was being accused of doing
17 something illegal. I was trying to address my
18 feelings to Walsh and my regret for the concern that
19 was coming. I was trying to convey my concern for
20 not expressing my thought that we would get an audit
21 comment because that was, as I believed, a minor
22 matter that I could address and didn't want to
23 distract from the emergency. The actual facts show
24 that we did disclose the funding source to the
25 board, regardless of what I was obviously

1 communicating poorly.

2 At page 47, at the September 12th conversation
3 with John Pittman. That twisted up the concern over
4 an audit comment for use of carryforward for a
5 project that is large with the funds themselves.
6 Record of events over the four years show that --
7 over the four years prior showed disclosure was
8 there and nothing about the source of funds was
9 concealed.

10 And somewhere, I don't recall the page number,
11 but there was an e-mail, another one besides what
12 we've already talked about, referencing moving E&G
13 to the College of Medicine's endowment. I think
14 there's another one besides what we looked at, and
15 it mentioned the rule. And that was for an
16 endowment, moving E&G to endowment, which I thought
17 was not right. I did not connect that e-mail with
18 the T -- with the Trevor Colbourn project at all in
19 my mind.

20 And that was supposedly proof that I knew about
21 it, when in fact that same e-mail was addressed to
22 me and Dale Whittaker, and somehow Dale didn't
23 necessarily pick up on it, but I was supposed to
24 have. That, I thought, was fairly ludicrous.

25 But those are my comments on the Burby report.

1 MR. RUBOTTOM: Let me go back to the deferred
2 maintenance issue. We've had discussions with
3 Christy about those. I think she was responsible
4 for the fund composition reports submitted to the
5 BOG.

6 And here's -- here's the logical difficulty
7 that I have, and I would ask you to explain it.

8 I understand the first 8 to 10 million
9 committed to the renovation being placed under the
10 category of deferred maintenance. In 2014, in the
11 spring board meetings, the board approved
12 construction of the new building, and there was no
13 active -- there was a desire to renovate the old
14 one, but that project had not been approved by
15 anybody yet. The board approved building the new
16 building. Obviously, you had to put the people
17 somewhere before you could -- that's very clear.
18 That's spring of 2014.

19 The August filing with the BOG, and somewhere
20 in that timeframe, the provost and the president
21 committed another \$18 million to -- now what we have
22 is two projects pending, but certainly a \$23 to
23 \$26 million new building. There was 10 already
24 there; the 18 was also put under the category of
25 deferred maintenance in August of 2014 when the only

1 project approved was a new building.

2 And no renovation that I've ever seen totaled
3 28 million. I think the highest number I've seen is
4 on the CIP's at 19, but I think your internal
5 budgets usually showed the renovation at 15 and
6 Trevor Colbourn Hall at 23, and that the 38 is
7 there.

8 So I have a difficulty accepting any money for
9 a new building categorized as deferred maintenance.
10 So you already moved 10 under the category of
11 deferred maintenance, and the university was
12 planning in that fiscal year a movement of another
13 18, but categorizing it as deferred maintenance.

14 Do you understand why that's confusing to me?
15 Because that's a total of 28 million deferred
16 maintenance. There's no renovation ever proposed
17 that reached 20 million.

18 THE WITNESS: First, let me just say that I am
19 sure Christy did not do that in an effort to conceal
20 something or deceive anybody.

21 I am confident that she did fill out that form
22 the way she thought she was supposed to, and maybe
23 there could have been some other way to do it, but
24 there was no ill intent on her part doing that, and
25 it is just what it is now. But there was no intent

1 to conceal.

2 MR. RUBOTTOM: Is it possible that the
3 different components were not talking to each other?
4 That this capital -- informal capital budget that
5 you all kept working on in your budget group, that
6 maybe that wasn't communicating to this report
7 that's made to the BOG to where there was any
8 ability to reconcile the different -- different
9 documents?

10 THE WITNESS: Let me make sure I understand
11 your question. Are you asking if you think there
12 was a communication disconnect between the budget
13 group and the people filling out the forms as to
14 what we were doing?

15 MR. RUBOTTOM: Yes.

16 THE WITNESS: And I think the answer is yes to
17 that.

18 MR. RUBOTTOM: Okay. Would you also suspect
19 maybe there was disconnect between the people that
20 built the master plan, the people that built the
21 capital improvement plan, the people that built the
22 annual capital budget?

23 THE WITNESS: Yes, yes. I would definitely say
24 that.

25 MR. RUBOTTOM: If -- if somebody was to

1 describe the problem at UCF being culture, do you
2 think those type of elements would be included there
3 in addition to the kinds of communications with the
4 board, that whatever -- that any cultural problem
5 that contributed to this might be much broader than
6 the administration and finance operation?

7 And we talked about training, how people were
8 educated.

9 THE WITNESS: That's what I was trying to --
10 I'm not sure I would use the word "culture." I
11 think there is a lack of formal training of some of
12 these matters, and that lack of training I think
13 leads to some of the miscommunication problems that
14 we're having between the departments and with the
15 uncertainty about how to fill out the BOG forms with
16 the information that we're trying to plug in there.
17 I think all of those elements led to some
18 misunderstanding in terms of interpreting documents
19 and what was supposed to be being done.

20 Dr. Whittaker referred to the administration
21 and finance as having a broken culture. It's not
22 broken. I think the culture there is strongly in
23 favor of trying to do whatever we can do to make the
24 students' experience the best we can. I think
25 that's a whole different thing than having

1 communication issues that I think stem out of lack
2 of training and understanding.

3 MR. RUBOTTOM: Carine, do you have anything
4 else?

5 MS. MITZ: The only thing I have is, Mr. Merck,
6 we've been asking everybody who's been deposed to
7 agree to not discuss their deposition with anybody.
8 So that would include the questions that we've asked
9 and the answers that you've been providing. Do you
10 agree to do that?

11 THE WITNESS: Yes.

12 MS. MITZ: Okay. Thank you. That's all I've
13 got.

14 MR. GREENE: I've got a few questions and I'm
15 going to try to go fast.

16 CROSS-EXAMINATION

17 BY MR. GREENE:

18 **Q. Before today, you weren't given a chance to**
19 **respond to the accusations that have been made against**
20 **you, were you?**

21 A. No, I was not.

22 **Q. You could have spoken to Mr. Burby, but as I**
23 **read your letter to him, you did not think he would be**
24 **an unbiased audience, did you?**

25 A. Absolutely did not think he would be unbiased.

1 Q. In fact, after reading his report, it is clear
2 to you and to others, isn't it, that he was, indeed,
3 biased, and had the answers he had to get before he even
4 began his investigation?

5 A. Yes.

6 Q. He attributed to you the same documents to
7 attribute -- for example, that e-mail from Tracy, that
8 was sent to him that refers to BOG regulation 9.007, he
9 used that to attribute a level of guilty state of mind
10 to you, but absolved Whittaker who got the same
11 regulation, didn't he?

12 A. Yes.

13 Q. And he ignored the fact that the E&G funding
14 sources, as Mr. Burby was told by Tracy and Christy Tant
15 and others before they were fired and had no reason to
16 not tell them anything other than the truth, he ignored
17 the fact that Dale Whittaker was intimately involved in
18 the decisions to use E&G carryforward for capital
19 projects, didn't he?

20 A. Right.

21 Q. So I'm little bit surprised today when you're
22 given a chance to tell your story, that you're a little
23 less passionate than I would be. You have been accused
24 of doing everything but kidnapping the Lindbergh baby.

25 This is your chance to speak up, so I'm going

1 to ask you some pointed questions.

2 Did you purposefully violate any law, rule or
3 regulation while you were at UCF?

4 A. Absolutely not.

5 Q. Did you know of any statute, rule or law that
6 barred the use of E&G carryforward?

7 A. No.

8 Q. You have seen e-mails and things that referred
9 to regulation 9.007, but did you ever read that rule
10 itself before this --

11 A. No.

12 Q. -- matter began?

13 A. No.

14 Q. Did you connect that regulation to the Trevor
15 Colbourn project in any way?

16 A. No.

17 Q. If you had known that there was a statute that
18 barred the use of E&G carryforward to fund Trevor
19 Colbourn Hall, would you have recommended that?

20 A. I would not have recommended it if I knew we
21 were breaking the law, absolutely not.

22 Q. Did you purposefully do anything wrong, that
23 is, violative of a rule or a statute or a regulation or
24 something you were told you should not do while you were
25 at UCF?

1 A. No.

2 Q. Did you counsel anyone else to do so?

3 A. No.

4 Q. Did Trevor Colbourn Hall present a real
5 emergency?

6 A. It absolutely did.

7 Q. Were you told by the engineers that people
8 literally could die if the facade of that building
9 crumbled and bricks fell off of it while they were going
10 in and out?

11 A. They didn't tell me they could die, but I knew
12 they could because I've been around buildings that had
13 faulty brick, and I knew the conditions in that
14 building. In a heavy wind, you could have had an
15 avalanche of bricks cascading off the side of that
16 building, and anybody walking below would have been
17 killed.

18 Q. Did everyone that was involved in the
19 discussions concerning Trevor Colbourn Hall always agree
20 that there was an emergency situation?

21 A. Yes.

22 Q. Did anyone other than Mr. Burby ever question
23 the fact that there was a real emergency as confirmed by
24 four different engineering firms?

25 A. He was the only one.

1 Q. Did you feel as the person whose job it was to
2 try to find a way to allocate limited resources to
3 fulfill the mission of the university, that you had a
4 duty to the students, staff, and faculty who were at the
5 university?

6 A. Yes.

7 Q. Did you tell the trustees that there might be
8 an audit comment with respect to the funding of Trevor
9 Colbourn Hall?

10 A. In one of the meetings, I did.

11 Q. There is no doubt in your mind you told the
12 full board of trustees?

13 A. I told the -- I'm sure it was the financial and
14 facilities committee; whether the full board was there,
15 don't know, but actually, most of the time we had those
16 committee meetings, the other members were present.

17 Q. Is there any doubt in your mind that the board
18 members who you gave your orientation talks to would
19 know what carryforward meant?

20 A. They should have, even though that was not --
21 carryforward has gotten a lot more attention since this
22 latest audit. But I'm sure we talked about it, maybe
23 not with quite the emphasis we would today when we talk
24 about it, but yes.

25 Q. Is there any doubt in your mind that when

1 Marcos Marchena was told in 2014 that carryforward was
2 being used to fund Trevor Colbourn Hall, that he knew
3 what it meant?

4 A. He knew what it meant.

5 Q. Carryforward, as that term was used by you to
6 the board of trustees, meant E&G, didn't it?

7 A. Yes.

8 Q. You didn't have -- did you make the decision to
9 use E&G carryforward to fund Trevor Colbourn Hall?

10 A. I recommended things. I don't make the
11 decisions.

12 Q. Did you have the final decision making
13 authority with respect to how E&G carryforward was used?

14 A. No.

15 Q. Who made the final decisions with respect to
16 the Trevor Colbourn Hall carryforward?

17 A. Provost and the president.

18 Q. Was general counsel aware that E&G carryforward
19 was being used to fund Trevor Colbourn Hall?

20 A. There is no question he was, because he was in
21 meetings where that was discussed.

22 Q. Did you expect the general counsel would advise
23 you if something that you recommended or an action being
24 taken by UCF was going to violate some sort of rule or
25 regulation, is that something that you would expect

1 general counsel would tell you?

2 A. Absolutely would expect that.

3 Q. Would you even -- do you think you would even
4 know the questions to ask with respect to the propriety
5 of funding sources or is that something general counsel
6 should bring to your attention?

7 A. Should bring it to my attention. Like the
8 saying goes, I didn't know what I didn't know.

9 Q. Did you bring the audit issue to the attention
10 of President Hitt?

11 A. Yes.

12 Q. Did you bring the potential for an audit
13 comment to the attention of President Whittaker?

14 A. He was in meetings where it was discussed, so
15 he had to know about it.

16 Q. Was it -- was, in fact, the potential for an
17 audit comment with respect to Trevor Colbourn Hall
18 discussed in multiple meetings where Whittaker and Scott
19 Cole were present?

20 A. Yes.

21 Q. And was it also discussed in meetings where
22 Marcos Marchena was present?

23 A. Yes.

24 Q. Now, the Trevor Colbourn Hall, Colbourn Hall
25 dilemma, would you agree that it was unique for many

1 reasons?

2 A. It was totally unique.

3 Q. Why?

4 A. It's a little bit longer answer. I'll try to
5 make it short. But we were in a -- in a time period
6 where the state -- the traditional state funds for
7 buildings had dried up. The buildings were continuing
8 to age. We were facing an emergency situation, the
9 likes of which I had not experienced in my 47 years in
10 higher ed -- 46 years. And so it was a unique
11 situation, unusual.

12 Q. So you agree it's unique for -- first of all,
13 because it was an emergency that threatened the life,
14 health, and safety of students?

15 A. Yes.

16 Q. Did you ever have that situation before in your
17 career where somebody said you need to do something to
18 this building or somebody could get sick or die?

19 A. Not to the extent of Trevor Colbourn Hall.

20 Q. And was Trevor Colbourn Hall unique in the way
21 the project evolved from a minor renovation to a more
22 major renovation, to a renovation with a partial new
23 building and then to a total new building?

24 A. That was new in my experience.

25 Q. And this -- this evolution of the project, was

1 it ongoing for years?

2 A. Yes.

3 Q. Was Dale Whittaker there, even though not at
4 the beginning, there for most of the evolution of that
5 project?

6 A. Yes, he was.

7 Q. He was there when it was a minor renovation and
8 when it became a major renovation and then when it
9 finally became what it became; isn't that true?

10 A. Yes, that's true.

11 Q. And you had said earlier on that the provost
12 added \$10 million to the Trevor Colbourn Hall building.
13 Do you recall that?

14 A. Yes.

15 Q. The provost you referred to was Whittaker?

16 A. Yes.

17 Q. Was it Whittaker's decision to add the
18 additional space to the new building that added \$10
19 million to the price tag?

20 A. He added scope to the building because it was
21 hiring additional faculty, and then the prices were
22 determined to be in the neighborhood of 10 million to
23 add that additional scope.

24 Q. Is it accurate to say by the time it got to
25 that point, that Whittaker, assuming you had these

1 weekly budget chat meetings every week, discussing the
2 funding sources for E&G, that he was there at least at a
3 hundred meetings where the funding source for Trevor
4 Colbourn Hall was discussed?

5 A. I'll put it this way. He was there at numerous
6 meetings. I wouldn't want to make a count of them.

7 And another thing that we did, we didn't meet
8 every week because sometimes he was not available. So
9 we would cancel the meeting because we wanted to make
10 sure that anything that was discussed in a budget chat
11 meeting was in the presence of the provost.

12 Q. So the meetings of the budget committees could
13 occur without you, but they could not occur without
14 Provost Whittaker, could they?

15 A. That was our -- our modus operandi.

16 Q. Was anything ever concealed concerning Trevor
17 Colbourn Hall from Dale Whittaker?

18 A. No.

19 Q. Was anything concerning Trevor Colbourn Hall
20 concealed from anyone internally within UCF?

21 A. No.

22 Q. Was anything concerning Trevor Colbourn Hall
23 concealed from the board of trustees?

24 A. No.

25 Q. Was anything concerning Trevor Colbourn Hall

1 concealed from BOG?

2 A. No.

3 Q. Now, you were asked by Mr. Rubottom about some
4 of the forms that were submitted. Did you fill out the
5 forms yourself?

6 A. No.

7 Q. Did you fill out the form where the deferred
8 maintenance was reported or --

9 A. No. I'm sorry.

10 Q. -- where Trevor Colbourn funding was reported
11 as deferred maintenance?

12 A. No.

13 Q. Did you instruct Christy Tant or anyone how to
14 fill out that form?

15 A. No.

16 Q. Do you believe she did it to the best of her
17 knowledge and ability?

18 A. Yes, I do.

19 Q. Do you believe she did it based upon guidance
20 that she got from BOG?

21 A. Yes.

22 Q. Do you think that this woman was trying to do
23 anything illegal or immoral when she filled out that
24 form?

25 A. No. Emphatically, no.

1 Q. Tell me about your conversations with Whittaker
2 post-audit. What did he say to you and what did you say
3 to him?

4 A. He said that basically that he thought I had
5 done the right thing, I had chosen the wrong method to
6 do it; that I, not we, but I would take some heat for it
7 for a few months and then we could go on.

8 Q. Now, Whittaker, did he ever tell you he was
9 surprised at the funding source for E&G when you were
10 having these post-audit conversations?

11 A. No.

12 Q. In fact, he knew what the funding source was
13 before the money was spent, didn't he?

14 A. Yes.

15 Q. And he signed off on the allocation document,
16 didn't he?

17 A. Yes.

18 Q. So when he said you -- you did the right thing,
19 he did it, too, didn't he?

20 A. Yes. The implication, though, was if heat
21 comes from it, it was going to be my heat, not his.

22 Q. Have you ever been advised by anyone, other
23 than me, that Dale Whittaker made a comment or told a
24 group of people after you were terminated that he was
25 going to come forward and tell the whole story about how

1 this was an emergency and UCF was doing the right thing,
2 but that he had been coached instead to find somebody to
3 blame so that UCF could move on from this dilemma
4 quicker?

5 A. The only deviation I would say from what you
6 just said was not someone to blame, but me to blame.

7 Q. When Whittaker said you did the right thing but
8 by the wrong method, he was the person that finally,
9 along with President Hitt, on the allocation document
10 approved the method of funding of Trevor Colbourn Hall,
11 wasn't he?

12 A. Exactly.

13 Q. I want to talk to you about your conversations
14 with Dave Walsh that are mentioned in the Burby report
15 and the other trustees where they say you essentially
16 admitted you did something wrong and you had failed or
17 hid something from the board. Do you recall that part
18 of the Burby report?

19 A. Absolutely, I do, clearly, because I was
20 shocked by it.

21 Q. Did you hide anything from the board of
22 trustees?

23 A. No, I didn't.

24 Q. Did you tell Mr. Walsh that you hid anything
25 from the board of trustees?

1 A. If I recall correctly, I was trying to express
2 to him that I didn't bring up the audit report in a
3 board meeting to distract them from the major problems
4 we were having in the building, but that was not an
5 accurate statement on my part, even then, because we had
6 actually done that. We had brought it up in the
7 meetings.

8 Q. Did you -- did you advise the board of trustees
9 that the funding source for Trevor Colbourn Hall was the
10 E&G carryforward?

11 A. Yes.

12 Q. Did you tell the board of trustees and/or the
13 chair of the facilities and finance committee that there
14 might be an audit comment --

15 A. Yes.

16 Q. -- as a result of that funding decision?

17 A. Yes.

18 Q. Did you think that if there was an audit
19 comment, that it would be something that the university
20 would be unable to defend?

21 A. I thought we would be able to defend it,
22 absolutely would be able to defend it.

23 Q. Did you say that you might receive an audit
24 comment, did you mean to say by that that we're going to
25 break a law or rule or regulation?

1 A. No, no, I did not.

2 Q. What did you mean?

3 A. I meant that because we were using -- we were
4 into an area that was not conventional, we had not
5 received the historical funding from the state to cover
6 this kind of an event, we were charting new territory,
7 that auditors would surely pick out a \$38 million
8 expenditure in a way that was novel and flag it, and we
9 would have to respond to that.

10 Q. Isn't it true that by recognizing that you're
11 probably going to get an audit comment about the Trevor
12 Colbourn project, that you knew from the very inception
13 that this was going to be closely scrutinized?

14 A. Yes.

15 Q. Would you have broken a rule or violated a
16 statute or regulation if you knew it was going to be
17 closely scrutinized?

18 A. No.

19 Q. Would you have violated a rule or regulation if
20 you didn't think it would get any scrutiny at all?

21 A. No, no.

22 Q. Did you mislead Dale Whittaker about anything?

23 A. No.

24 Q. Did you mislead any of the board of trustees
25 about anything?

1 A. No.

2 Q. Did you trick Dale in any way?

3 A. That's ludicrous. No, I did not.

4 Q. From the very beginning of his joining UCF,
5 isn't it true that Dale Whittaker threw himself into
6 budget matters and tried to gain control over them to an
7 extent greater than the provosts that were before him?

8 A. Yes.

9 Q. Isn't it true he reactivated the university
10 budget committee and created the facilities budget
11 committee just so that he could be more apprised of and
12 know about the budget decisions?

13 A. Yes.

14 Q. And he was involved in the budget of the entire
15 university, not just the budget at the academic level;
16 isn't that true?

17 A. That's correct.

18 Q. Let me show you what we'll mark as a composite
19 Exhibit 1.

20 MR. RUBOTTOM: Can we go ahead and mark ours?
21 I don't think we've done that yet, that big group
22 that we gave you.

23 (Exhibit No. 1 was marked for identification.)

24 MR. GREENE: So I'm going to show you what's
25 composite Exhibit 2.

1 (Exhibit No. 2 was marked for identification.)

2 BY MR. GREENE:

3 Q. Is this just the type of information that would
4 have been submitted to Dale Whittaker on a weekly or
5 frequently periodic basis concerning budget matters at
6 UCF?

7 A. The answer is yes.

8 Q. And did the materials that were presented to
9 Dale Whittaker regularly, did they specifically refer to
10 E&G carryforward and what was being done with that
11 source of funds that were available to UCF?

12 A. Yes.

13 Q. Do you believe that Tracy Clark was a
14 competent, honest, and capable employee at UCF?

15 A. She was one of the most competent,
16 hard-working, honest people I know.

17 Q. Is there any doubt that she would have
18 regularly reported all the matters that concerned the
19 budget issue that were relevant to Dale Whittaker?

20 A. I have no doubt that she would.

21 Q. Do you know of anyone that ever tried to
22 disguise that Trevor Colbourn Hall funding as deferred
23 maintenance?

24 A. Not deliberately disguise it, no.

25 Q. You agree that there are problems as

1 exemplified by Trevor Colbourn Hall that need to be
2 fixed, wouldn't you?

3 A. I do. I would totally agree with that.

4 Q. You agree there needs to be more training and
5 better training at UCF?

6 A. I think that's true for all 12 universities,
7 including UCF and the board of governors.

8 Q. Do you agree that there needs to be better
9 communication between the BOG and UCF?

10 A. There needs to be clear, more discrete -- more
11 discrete direction, yes.

12 Q. Do you think it would be a preferable practice
13 that when the BOG was asked for written guidance so that
14 there could be a uniform source of interpretation of
15 permissible uses of E&G, do you think it would have been
16 preferable that Chris Kinsley and others would have
17 provided that guidance when asked?

18 A. Certainly.

19 Q. Do you believe that there needs to be better
20 communication between the board of trustees and perhaps
21 better education in the board of trustees concerning
22 budgetary matters that affect UCF and other
23 universities?

24 A. Yes.

25 Q. Do you think the blame for all of those issues

1 should be placed upon your shoulders?

2 A. No.

3 Q. Did you intend to take the blame for everything
4 wrong with the system when you said I'll take
5 responsibility for this?

6 A. No.

7 Q. Did you resign because you felt some
8 responsibility by virtue of your position with respect
9 to a decision that was obviously -- that people relied
10 upon your recommendation in making, and that in
11 hindsight might not have been the right thing?

12 A. Repeat that.

13 Q. Did you -- did you, by resigning, acknowledge
14 your responsibility and your willingness to take
15 responsibility for any role that you had in what
16 happened with respect to Trevor Colbourn Hall?

17 A. Yes.

18 Q. Did you intend to absolve others who are your
19 peers or your superiors or with other agencies, like the
20 board of trustees, from their responsibility?

21 A. That was not my intent, and the word "full"
22 responsibility, that word, "full," that was added later
23 was not my intent.

24 Q. The Burby report says there's a culture issue
25 at UCF, and he implies that the culture was that people

1 were scared to speak up because of the cabal that
2 consisted of you and Dr. Hitt, so that everybody --
3 everybody else, including President Whittaker, was just
4 scared to say anything. Did that sort of culture exist
5 at UCF?

6 A. No, no, no. It was a very collegial culture
7 and we had no problems speaking with each other about
8 things we agreed with or disagreed with.

9 Q. Did Lee Kernek speak up when she disagreed with
10 things?

11 A. Yes.

12 Q. Do you think you could have shut her up if you
13 wanted to?

14 A. I'll take that as rhetorical.

15 Q. Did others speak up when they had problems at
16 UCF?

17 A. Yes, yes.

18 Q. Did you try did -- did you listen to them and
19 take corrective action if needed?

20 A. I certainly did.

21 Q. Did you ever try to dissuade criticism,
22 discussion or any efforts to make sure everybody was
23 doing the right thing?

24 A. No.

25 Q. Would it, in your view, be more of a

1 communication and education and training issue that is
2 responsible for what happened at UCF rather than a
3 cultural issue?

4 A. I would, and I believe I said that earlier.

5 Q. You were asked a lot of questions, and I'm
6 confused about them because I don't know as much as you
7 and Mr. Rubottom about your investment policy, your
8 liquidation of assets. Was it your policy or was it
9 UCF's policy?

10 A. It was UCF's policy as adopted by the board of
11 trustees.

12 Q. So this was something the board did, not Bill
13 Merck, just to be clear?

14 A. Just to be clear, that was the board's action.

15 Q. You were asked about who was involved in
16 dealing with the auditors during the audit process in
17 2018. Do you recall that?

18 I believe you said it was Christy Tant and
19 Tracy Clark were probably the first --

20 A. Oh, yes.

21 Q. -- level of communication?

22 A. Yes, yes.

23 (Exhibit No. 3 was marked for identification.)

24 BY MR. GREENE:

25 Q. And as Exhibit 3, can you identify that as an

1 e-mail that was sent -- e-mail that was exchanged
2 between you, Christy Tant, and Jeff Brizendine from the
3 auditor's office in April and May of 2018?

4 A. Yes.

5 Q. And does Christy Tant tell the auditor
6 expressly on April 26, 2018, that the construction of
7 Colbourn Hall was fully funded from centrally held E&G
8 carryforward funds?

9 A. Yes.

10 Q. You -- you were asked did Whittaker ever
11 challenge your decisions, and you said no. And I think
12 you -- you read that -- you heard that question in the
13 sense of did he object to things that you did more
14 narrowly than I heard it.

15 So I want to ask you this. When you had to --
16 did you have to go before the budget committee and ask
17 for budgeting for your division from time to time?

18 A. Yes.

19 Q. And did Dale Whittaker rubber stamp all of your
20 requests?

21 A. No.

22 Q. In fact, wasn't there some insurance issue for
23 which you had to fight to try to get funding for, and
24 Dale Whittaker really pushed back hard on it?

25 A. I'm fuzzy on that, but I'm pretty sure the

1 answer is yes, it was.

2 Q. Did Dale Whittaker agree with everything you
3 said?

4 A. No, no. I had some other requests that were --
5 that I thought were pretty important that were turned
6 down.

7 Q. You know that Whittaker knew that
8 carryforward -- that the carryforward was Trevor
9 Colbourn Hall came from E&G, don't you?

10 A. Yes.

11 Q. You're not guessing at that?

12 A. I am not guessing at that, no.

13 Q. And you're not guessing that Marcus Marchena
14 knew, are you?

15 A. No, I'm not guessing, no. They knew.

16 Q. You were asked if the provost had approval
17 authority over capital projects.

18 The final approval authority, at least within
19 UCF, actually rested exclusively with the provost and
20 the president as far as the use of carryforward for
21 capital projects was concerned, didn't it?

22 A. Correct.

23 Q. The allocation documents for E&G carryforward
24 were signed by the president and the provost; right?

25 A. Right.

1 Q. Not by you?

2 A. Not by me. I don't believe they are even
3 copied to me.

4 Q. Tell me more about the four people who were
5 fired, or whatever happened to them, that Whittaker said
6 were fired at UCF. Why do you think they were treated
7 unfairly?

8 A. I think they were treated unfairly as a
9 smokescreen, as a way to deflect attention from the
10 provost and the chairman -- yeah, from the president and
11 the chairman, rather. I think they were -- they were
12 just sacrificed to divert attention from their story
13 that they didn't know anything.

14 Q. You didn't know the law concerning the
15 prohibition against the use of carryforward for new
16 buildings, did you?

17 A. No.

18 Q. It appears Dale Whittaker didn't know because
19 he never told you about that when you were discussing
20 the use of carryforward for Trevor Colbourn Hall, did
21 you or did he?

22 A. No, he didn't.

23 Q. Scott Cole was aware that E&G carryforward was
24 being used for Trevor Colbourn Hall, wasn't he?

25 A. Yes.

1 Q. He never told you it was wrong, did he?

2 A. He did not.

3 Q. Marcos Marchena, who was an experienced
4 construction lawyer, he never told you it was illegal or
5 wrong in any way, did he?

6 A. No, he didn't.

7 Q. Do you know why Burby would go out of his way
8 to find that these four employees that were under
9 everybody I just named in the UCF hierarchy, that they
10 somehow knew, but that Whittaker and others didn't?

11 A. I think there was an objective when that whole
12 Burby report was commissioned, and whether it was
13 written or -- well, it was not written, certainly, but
14 unwritten, and that was to protect the president.

15 Q. Did you ever hear of the "Save the Dale"
16 campaign?

17 A. Yes, I did.

18 Q. What did you hear about that?

19 A. I just heard that when Dale Whittaker was a
20 candidate for a presidency at Iowa State, there was an
21 interest in not letting him leave UCF, but to stay and
22 become president.

23 And so there was conversation among board
24 members and others about let's save Dale, keep him here.

25 Q. Did you ever get the sense that one of the

1 primary proponents behind that move to "Save the Dale"
2 was Marcos Marchena?

3 A. Certainly involved in it heavily.

4 Q. Did you ever get the sense that -- that Marcos
5 Marchena was behind that so strongly because he felt
6 that he might have a little more control over Dale than
7 he had over Dr. Hitt?

8 A. That would be speculation on my part, but it
9 would be speculation that I would endorse.

10 Q. You were asked about Marcos Marchena and some
11 of the things that he did at UCF. He was trying to get
12 an ever-expanding role over capital projects at UCF,
13 wasn't he?

14 A. Yes.

15 Q. He was trying to bring in some of the people he
16 worked with at the Orlando Airport and bring them in to
17 some level of involvement with the administration of
18 construction projects at UCF?

19 A. That was an impression I had, and I know that
20 he was very interested in having these owner's
21 representative type companies come in and manage our
22 projects for us.

23 Q. And Lee Kernek and you had discussions about
24 Marcos Marchena's efforts to bring in OARs, didn't you?

25 A. Yes, yes.

1 Q. And did Marcos Marchena complain about Lee
2 Kernek when she brought the efforts of Marcos Marchena
3 to the attention of President Hitt and objected to them?

4 A. Say that again now?

5 Q. Did Marcos Marchena complain about Lee Kernek
6 when she resisted his efforts to bring in OARs?

7 A. He had complained about her before and after,
8 so that didn't help, the resistance to OARs, which I
9 didn't think was a good idea, either. Our projects were
10 too simple to handle the extra overhead of an OAR.

11 Q. Did you have some concern that Marcos Marchena
12 was trying to bring in some of his cronies from the
13 airport so that they could make money on the back of UCF
14 when their services really weren't needed and would have
15 added a lot more money to the UCF budget problems?

16 A. That would be speculation on my part, but I
17 would not disagree with that speculation.

18 Q. Did you ever tell Scott Cole or Trustee Walsh
19 or anybody else that you had lied to the board of
20 trustees?

21 A. No.

22 Q. Did you ever tell them that you had concealed
23 anything from the board of trustees?

24 A. They interpreted my --

25 Q. Forget how they interpreted. Did you --

1 A. No.

2 Q. -- ever tell them you concealed anything from
3 the board of trustees?

4 A. No, no, no.

5 Q. Did you ever lie to or conceal anything from
6 the board of trustees?

7 A. No.

8 Q. Tell me again, what is it you were trying to
9 explain to Trustee Walsh when you had these
10 conversations about the audit comment and your feeling
11 of embarrassment and remorse at what was going on?

12 A. Well, I obviously felt bad about what was going
13 on, no question about that. And I wanted those guys
14 that I had respect for to understand, first, why we were
15 doing what we were doing, the safety, trying to protect
16 students, faculty, and staff from harm.

17 And that I had not gone into great depth about
18 the potential for an audit comment in a meeting where we
19 were discussing some of those things, although we did
20 actually do it. But I didn't want to make a big deal
21 out of the audit comments, which I thought were -- would
22 have been a very manageable comment to deal with, when I
23 was not aware that it was something illegal.

24 Q. Let's switch gears. The term -- strike that.
25 The board of trustees at UCF was specifically

1 told, at least in some verbal reports and/or some
2 written documents, that E&G carryforward was being used
3 for Trevor Colbourn Hall. Do you agree?

4 A. Yes, I agree.

5 Q. And in some of the slides and things we've
6 seen, the more general term, nonrecurring or UCF
7 internal funds, things of that nature, were used. Are
8 you aware of that?

9 A. Yes.

10 Q. Was there any -- ever any effort to use those
11 terms to conceal in any way --

12 A. No.

13 Q. -- the fact that E&G was being used?

14 A. No.

15 Q. Do you know who prepared those slides and
16 things, which department it was? Would that have been
17 facilities and finance or would it have been budget? Do
18 you know who prepared those things for the trustees?

19 A. Depending on the project, but typically it
20 would have been finance and accounting in conjunction
21 with whatever project was being presented. So there
22 would often be a joint effort on the preparation of the
23 form, the subject expert, and then some of the F&A folks
24 would be involved with the funding source.

25 MR. RUBOTTOM: Excuse me, for clarification. I

1 think you mentioned slides? And I don't know if
2 you're talking about some of the facilities reports
3 that were made. He's talking about forms, which
4 sounds like he's talking about the capital
5 improvement plan.

6 MR. GREENE: I'm talking about the slides and
7 the presentations that were made annually to the
8 board of trustees where the terms "nonrecurring" are
9 used.

10 BY MR. GREENE:

11 Q. Do you know who prepared those slides and
12 things? Would that have been --

13 A. Not specifically.

14 Q. -- Lee Kernek's division?

15 A. Not specifically, but it wasn't me, I know
16 that.

17 Q. Did you ever direct anybody as to how to fill
18 out those?

19 A. No.

20 Q. What to put on those slides for information?

21 A. No, no.

22 Q. Did you instruct all of those below you to be
23 open and honest and try to answer as completely as they
24 could any questions or requests for information that
25 they received from the trustees?

1 A. Of course, for sure.

2 Q. Was Trevor Colbourn Hall in the reports that
3 were submitted to the state, as far as you know, were
4 those -- were the same reports submitted to the state
5 for Trevor Colbourn Hall as would have been submitted
6 for other, similar projects?

7 A. Yes.

8 Q. Was the same process and procedures followed
9 for Trevor Colbourn Hall, the reporting process --

10 A. Yes.

11 Q. -- the same?

12 A. Yes.

13 Q. Was anything understated or concealed or
14 purposefully hidden?

15 A. No.

16 MR. RUBOTTOM: Chuck, I've got a long way to
17 drive and she has a lot to type up in the next few
18 days, so if we could bring it --

19 MR. GREENE: This will be it. Done, sorry.

20 (Exhibit No. 4 was marked for identification.)

21 BY MR. GREENE:

22 Q. Is Exhibit 4 a list of the other projects as
23 far as you know that were identified by UCF post-audit
24 that involved questionable uses or uses of E&G that
25 should be looked into further?

1 A. Yes.

2 Q. Are you aware that Beverly Seay has said that
3 in connection with the dismissal of the four terminated
4 UCF employees, that these projects were the same people,
5 same -- same process, same pattern, same trickery,
6 essentially, as was attributed to them with respect to
7 Trevor Colbourn Hall?

8 A. No.

9 Q. Are you aware of that comment?

10 A. I've heard it, and I disagree with it totally.

11 Q. Were the -- were these other projects
12 completely different from Trevor Colbourn Hall?

13 A. Yes, they were.

14 Q. Did anyone ever say that there might be an
15 audit comment or something might be made with respect to
16 any of those other projects?

17 A. No.

18 Q. Were different people involved in approving and
19 overseeing those projects than were involved with Trevor
20 Colbourn Hall?

21 A. There was an overlap with the budget committee
22 and budget chats and things like that, but all these
23 projects have their own individual identities and there
24 were different subject experts on all of them, so they
25 were handled differently. You cannot compare this list

1 with the Trevor Colbourn Hall business.

2 Q. And at least with respect to most of those
3 projects, Dale Whittaker was involved in approving all
4 of them, wasn't he?

5 A. Virtually all.

6 Q. And are some of those actually the -- was Dale
7 Whittaker intimately involved in a few of those
8 projects? Were these his babies, so to speak?

9 A. Yes, yes.

10 MR. GREENE: That's all we have.

11 So we'll waive reading for purposes of
12 expediting.

13 And Don, do you agree that I haven't had the
14 opportunity to do a full cross-examination that I
15 would do, so that nobody can use this in other
16 litigation? It would essentially remain open?

17 MR. RUBOTTOM: I would agree, yes.

18 MR. GREENE: Thank you.

19 THE REPORTER: Can I confirm that you want this
20 transcript as soon as possible?

21 MR. RUBOTTOM: Yes.

22 (The deposition was concluded at 5:23 p.m.)

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CERTIFICATE OF OATH

STATE OF FLORIDA:
COUNTY OF ORANGE:

I, Emily W. Andersen, RMR CRR FPR, Stenograph
Shorthand Reporter, certify that WILLIAM F. MERCK, II,
personally appeared before me on February 16, 2019 and
was duly sworn.

WITNESS my hand and official seal this 16th day of
February, 2019.

Identification:
Produced Identification
Florida Driver's License

Emily W. Andersen

EMILY W. ANDERSEN,
Notary Public State of Florida
Commission No. GG 258112
Expires October 14, 2022

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CERTIFICATE OF REPORTER

STATE OF FLORIDA:
COUNTY OF ORANGE:

I, Emily W. Andersen, RMR CRR FPR, Stenograph Shorthand Reporter, certify that I was authorized to and did stenographically report the foregoing deposition of WILLIAM F. MERCK, II; that the review of the transcript was requested; and that the foregoing Pages, 4 through 181, inclusive, are a true and complete record of my stenograph notes.

I further certify that I am not a relative or employee of any of the parties, nor am I a relative or counsel connected with the parties' attorneys or counsel connected with the action, nor am I financially interested in the outcome of the action.

DATED this 15th day of February, 2019.

Emily W. Andersen

Emily W. Andersen, RMR CRR FPR
Stenograph Shorthand Reporter

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