

In the Matter of:
Investigative Hearing

TRACY CLARK

February 15, 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,

9 _____ /

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Deposition of: TRACY CLARK

14

Date Taken: February 15, 2019

15

Time: 2:32 p.m. - 6:03 p.m.

16

Location: UCF Communications & Marketing
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Reported By: Emily W. Andersen, RMR CRR FPR
Stenograph Shorthand Reporter
and Notary Public, State of
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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: Yes.

9 TRACY CLARK,
10 having first been duly sworn, testified under oath as
11 follows:

12 DIRECT EXAMINATION

13 BY MS. MITZ:

14 Q. Good afternoon, Ms. Clark.

15 A. Hi.

16 Q. Have you ever given a deposition before?

17 A. One time, yes.

18 Q. How long has it been?

19 A. Let's see. Fourteen years.

20 Q. Okay. So let me give you a little refresher on
21 what's going to happen today and some of the ground
22 rules.

23 So we've asked you to come today just to get
24 some more information about what happened at UCF. As
25 you know, we didn't sit in on the interviews conducted

1 by Bryan Cave, so this has been our first opportunity to
2 see people face-to-face and get some context behind the
3 words that we've seen on paper.

4 We're not going to be asking any trick
5 questions. There is no right or wrong answer. We're
6 just simply trying to fill the holes where we just don't
7 know what happened.

8 As you know, the court reporter is taking
9 everything down, so please speak up and speak, you know,
10 clearly; no nodding of the head or uh-huh, huh-uh. If
11 you know something because someone else told you, let us
12 know that. If you're estimating or approximating
13 something, please let us know that you are doing that.

14 If you don't know something, "I don't know" is
15 a great response. I don't want you to guess at
16 something if you don't know. If you need something
17 reasked again or rephrased, just let us know and we'll
18 ask the question again or rephrase it for you, and I
19 think that's about it.

20 So are you ready to start?

21 A. Yes.

22 Q. Okay. Can you please state your full name for
23 the record?

24 A. Tracy Clark.

25 Q. And have you discussed this deposition with

1 anybody aside from your attorneys?

2 A. No.

3 Q. Did you have an opportunity to review your
4 interview notes from the Bryan Cave interview?

5 A. No.

6 Q. Okay. Did you review anybody else's interview
7 notes?

8 A. No.

9 Q. Okay. How many times were you interviewed by
10 the Bryan Cave firm?

11 A. Three.

12 Q. Okay. And was everything that you told
13 Mr. Burby true?

14 A. I felt like that interview was intimidating, so
15 I never got to review my notes. I felt like there was a
16 lot of times he was trying to lead me to certain
17 answers, so that's the best I can say.

18 Q. Okay. Let me ask you this. Do you recall
19 making a statement that you felt wasn't accurate or
20 wasn't truthful?

21 A. I don't know.

22 Q. Okay. All right. Well, we'll go through our
23 questions and I ask that you be honest. If you recall
24 as you're answering one of our questions that you gave a
25 different response to the Bryan Cave investigator,

1 please let us know that.

2 A. Okay.

3 Q. All right. At any time while you were still at
4 UCF, after this whole Trevor Colbourn Hall audit thing
5 came about, did anybody interview you or start asking
6 you questions: Your immediate supervisor, the general
7 counsel's office, the president's office?

8 A. Can you -- can you state that again?

9 Q. Sure. Basically, what I'm trying to find out
10 is if anybody at UCF asked you to come in for an
11 interview or answer questions about this or if Bryan
12 Cave was the only one who ever asked you questions about
13 this.

14 A. So Scott Cole, general counsel, asked me about
15 this.

16 Q. Okay. Is that the meeting that occurred in
17 September?

18 A. Yes.

19 Q. Is that the meeting at which Ms. Mitchell was
20 also present?

21 A. Yes.

22 Q. And Ms. Tant, I think?

23 A. Yes.

24 Q. Let's go ahead and talk about that.

25 I actually have a copy of an e-mail that I

1 would like to show you.

2 Don, do you have that packet out?

3 MR. RUBOTTOM: Yes, I do. Which tab is it?

4 MS. MITZ: I think it's tab seven.

5 BY MS. MITZ:

6 Q. Ms. Clark, if you wouldn't mind taking a look
7 at that, and once you're done, let me know.

8 A. Okay.

9 Q. Do you recognize that e-mail?

10 A. Yes.

11 Q. Do you remember it?

12 A. Yes.

13 Q. Do you recall what the attachments were?

14 A. The attachments were projects that my office
15 had identified, and Facilities and Safety had identified
16 that had used E&G funds that exceeded the \$2 million
17 that we were made aware of at that time.

18 And so that's what was on the -- they were
19 projects to discuss with Scott Cole and Kathy Mitchell.

20 Q. And is that what was discussed at the meeting
21 referred to in this e-mail?

22 A. Yeah. That was part of what was discussed in
23 the meeting. That was the purpose of the meeting; that
24 was the intended purpose of the meeting.

25 Q. Okay. And it was just the four of you; you,

1 Ms. Tant, Ms. Mitchell, and Mr. Cole?

2 A. Yes.

3 Q. And were all four of you in the meeting the
4 entire time?

5 A. Yes, to the best of my recollection.

6 Q. Okay. So why don't I just have you tell me
7 what happened? You got to the meeting and what was
8 said?

9 A. So we were talking about the projects that were
10 on the list and whether -- trying to determine whether
11 or not there was a question about whether or not they
12 were allowable uses of E&G funds and whether or not we
13 should reverse them under the rules that were sort of
14 being brought to our attention at that time.

15 So we were trying to get -- they were all
16 projects that we had thought were allowable use of E&G,
17 but we were trying to get the general counsel's opinion
18 at that point because of the investigation that started
19 and some of the rules that we were hearing at that time.
20 So that was kind of what started the meeting.

21 And then at some point during the meeting,
22 Scott Cole started asking Christy and I questions about
23 what Dale knew, when Dale knew it, what exact words were
24 used.

25 So this e-mail -- I got upset because it was

1 kind of -- I felt like we were getting interrogated and
2 I felt like the general counsel was trying to get us to
3 say, in his specific words, that Dale was not aware of
4 the issues that were, you know, coming forward about
5 Trevor Colbourn Hall.

6 **Q. So did he succeed in getting you to say that?**

7 A. No.

8 **Q. Okay. What did you tell him?**

9 A. I said that I -- I knew that Dale knew that the
10 use of E&G funds might produce an audit comment and
11 that, in my opinion, that would have told Dale that
12 there was something to question.

13 **Q. Okay. Did the conversation address only Trevor**
14 **Colbourn Hall or all the projects?**

15 A. The -- well, the projects were discussed
16 separate from that line of questioning about Trevor
17 Colbourn Hall. So the general counsel's questioning of
18 what Dale knew about what and when and what exact words
19 were used was only about Trevor Colbourn Hall.

20 **Q. Okay.**

21 A. If that's what your question is.

22 **Q. It is; yes.**

23 **So did you ever volunteer to Mr. Cole that Dale**
24 **was aware that E&G had been used on multiple projects?**

25 A. At that meeting?

1 Q. Yes, at that meeting.

2 A. Not at that meeting.

3 Q. Okay. Did you tell him before or after that
4 meeting?

5 A. After that meeting. After that meeting, I --
6 my office produced information for both Scott Cole and
7 -- well, for leadership. I'll say for Kathy Mitchell,
8 who shared it with the rest of leadership, and that was
9 shared with Dale Whittaker, the other projects that used
10 E&G funds.

11 Q. Okay.

12 A. I'm not sure if that was responsive or not.

13 Q. You answered my question. That's good.

14 So is there anything else from that discussion
15 with the four of you that was said by you that you
16 haven't already told us specific to Dale Whittaker's
17 knowledge?

18 A. Just that I told Scott Cole who was saying
19 specific words, like, well, was X, Y, Z, said? And I
20 said, well, not those exact words were said, but -- so I
21 felt like he was trying to pin me into, you know, if it
22 was phrased this way, then that meant that Dale
23 Whittaker knew. But if it wasn't phrased that way,
24 then, you know, then that says he didn't know.

25 And I tried to say it wasn't phrased that way,

1 but, in my opinion, he knew.

2 Q. I got you. So then did you become upset
3 because of the way he was questioning you or were you
4 upset because of what you had to say?

5 A. I was upset because I felt like he was trying
6 to put words in my mouth and trying to make me reach
7 conclusions based on his words versus my own
8 conclusions.

9 Q. Okay. Very good. So let's go back to the
10 introductory stuff.

11 What was your position before you left UCF?

12 A. Associate provost for budget planning and
13 administration and associate vice president for finance.

14 Q. And how long had you been with UCF?

15 A. Almost 12 years.

16 Q. And who did you report to?

17 A. I reported to Dale Whittaker and Bill Merck. I
18 had a dual report.

19 Q. So let's talk about that. Did Dale Whittaker
20 start with the university on August 1st of 2014?

21 A. Yes, sometime around then, yes.

22 Q. Okay. How soon after that did you start
23 reporting to him?

24 A. He -- in March of 2015, he started a
25 reorganization analysis, if you will, or had HR work on

1 a reorganization analysis of the provost's office. And
2 that took several months, but that was started, I would
3 say, within three to four months after he got there.
4 And then it took a while for that to happen, and then
5 the reorganization got put in place.

6 Q. So did you start reporting to him as part of
7 that reorganization or before?

8 A. As part of that reorganization, my reporting to
9 him was part of all of that, yes.

10 Q. So in about March?

11 A. Yes, 2015.

12 Q. Prior to March, did you provide him any
13 information --

14 A. Yes.

15 Q. Okay. You did?

16 A. Yes.

17 Q. All right. Okay.

18 MR. GREENE: Let her finish her question.

19 MS. MITZ: No, I had stopped. I had to think.

20 BY MS. MITZ:

21 Q. So let's talk about that initial period. From
22 the time you started in August until March, what did he
23 ask you for in terms of budget documents?

24 A. Well, from the time he started, we participated
25 in what were called budget chat meetings or budget

1 operations group meetings. They had a couple of
2 different names. Those were meetings that were started
3 by a prior provost, between the provost and their
4 support personnel, and the CFO and their -- his support
5 personnel. So those meetings continued once Provost
6 Whittaker came.

7 So it was in those meetings that I ended up
8 working with Dr. Whittaker. So those meetings started
9 right away. They were either every week, sometimes
10 every two weeks.

11 At that time Christy Tant and I both attended
12 from the CFO's office; the provost attended and his
13 support staff. And so during those meetings, I was
14 asked to produce lots of budget information and answer
15 lots of budget questions and help educate the provost on
16 the budget at the university.

17 **Q. When he -- when you started working with him,**
18 **did he seem to have any level of understanding of**
19 **university budgeting or did you have to help him along**
20 **to get there?**

21 A. Well, I would say he had an understanding of
22 university budgeting, but I helped educate him on
23 university budgeting.

24 **Q. Did he ever talk about funds that he would have**
25 **worked with at Purdue that would have been similar to**

1 E&G funds here in Florida?

2 A. I don't recall.

3 Q. Okay. Who else would have regularly attended
4 the budget chat meetings besides you, Christy, the
5 provost, and his staff? Like did Mr. Merck attend?

6 A. Yes. In fact, Christy and I were there to
7 support as Bill Merck's support staff, and the provost
8 had his support staff which I think at the time was Lynn
9 Gonzalez and Megan Deal (phonetic).

10 Q. So tell me about the documents that would have
11 been presented or reviewed in those budget chat
12 meetings. I've heard a lot about E&G commitment lists
13 and E&G allocation lists. Were those documents reviewed
14 in budget chat meetings?

15 A. Yes. So the E&G commitments list was a staple
16 in those meetings. It was a tracking document that kept
17 track of all of the decisions that were made -- that the
18 provost made and all the allocation decisions from the
19 central reserve that the provost approved in those
20 meetings. That's what we call the E&G commitments list.

21 Q. Okay.

22 A. It went out five years, and would keep -- it
23 was the tracking document. It was created before
24 Christy and I were involved in this process, so we
25 carried it on.

1 Q. Did -- I'm sorry. Go ahead.

2 A. That's okay. Go ahead.

3 Q. Finish your answer.

4 A. So that was a common document.

5 There were lots of documents produced for those
6 meetings. The -- what the balance in the central
7 reserve would be rolling forward multiple years was a
8 document that we produced so that you could see, you
9 know, basically what available funds there were.

10 After all of those commitments that were on the
11 E&G commitments list were fulfilled, capital funding
12 projects, if any existed, you know, would have been
13 brought to those meetings. Any -- any topic that was
14 coming up that needed kind of a financial schedule put
15 together to help explain or help inform the discussion
16 would have been brought to those meetings.

17 Q. So these meetings weren't limited to just
18 academic budgeting matters. It also included capital
19 funding issues, too; right?

20 A. Yeah. It was actually not limited to academic
21 only. It was -- it was for the whole university budget;
22 anything to do with the whole university budget,
23 whatever that was a facility issue, whether that was
24 union negotiation issues which had financial
25 consequences, whether it was requests for more police

1 force, whether it was a request for a raise for the
2 faculty. You know, any university conversation that
3 might require resource decisions or resource
4 allocations.

5 Q. Okay. So the few documents that you discussed
6 that were presented during those meetings, did you ever
7 -- like how carefully did you review those with the
8 provost? I mean, was he just handed a copy, he looked
9 at it and if he had questions he asked them or did you
10 go line by line through it? What was the interaction
11 there when he was given documents?

12 A. So we would go basically line by line.

13 So if they were documents that were prepared by
14 finance and accounting, then we would explain the
15 documents thoroughly.

16 Q. Would that include project by project?

17 A. Yes.

18 Q. So it would have been clear to him that Trevor
19 Colbourn Hall or the Colbourn Hall renovation was on the
20 list, E&G was used to fund it, and X amount of dollars?

21 A. Absolutely.

22 Q. And he would have seen numerous versions of
23 those documents as the construction plans changed?

24 A. Yes.

25 Q. Okay. So you can definitively say it wasn't

1 just one document that he saw with E&G for those
2 projects. He would have seen multiple?

3 A. Correct.

4 Q. Okay. And then in addition to the documents,
5 did you guys ever have conversations about the use of
6 E&G for either the Colbourn Hall renovation or the
7 Trevor Colbourn Hall construction?

8 A. Yes. That would have been discussed when the
9 resource allocation decision for the \$10 million, which
10 was when Dr. Whittaker was here, was made. When that
11 decision was made to allocate an additional \$10 million
12 towards Trevor Colbourn Hall, that would have been a
13 discussion with the provost and with Mr. Merck.

14 Q. And would you have been there?

15 A. Yes, because it appears it occurred at a budget
16 chat meeting.

17 Q. All right. Did you ever inform Provost
18 Whittaker about the regulation 9.007 and what E&G funds
19 could be used for?

20 A. No.

21 Q. Did you ever tell him what E&G funds could not
22 be used for, aside from the audit comment?

23 A. I don't recall.

24 Q. Okay. Were you the one that presented the
25 August, 2014, E&G allocation document that required his

1 signature, as well as President Hitt's?

2 A. Yes.

3 Q. And do you recall that time when you presented
4 it to him?

5 A. I recall that I would have had a meeting and
6 gone over that report with him in detail, yes.

7 Q. Okay. So then identifying each project and
8 their funding or why they are on the form to begin with?

9 A. I think it was -- I think it was either a two-
10 or three-page document. We would have gone over those
11 couple of pages. Was it a two-page document? In 2014,
12 was it a two-page document?

13 MS. MITZ: We may have it.

14 MR. RUBOTTOM: It may be in your packet. I'm
15 not sure. I'm trying to find out here.

16 MR. PARKER: 2013/14 was a two-pager.

17 MR. RUBOTTOM: The 2014/15.

18 UNIDENTIFIED SPEAKER: It was a three-pager.

19 THE WITNESS: If I could look at it, it would
20 be helpful.

21 MR. GREENE: Do we have it? Oh, don't just put
22 it in my hand. Make it clear.

23 MR. RUBOTTOM: Tracy, could I see the big
24 packet and see if it's in there, because then we can
25 discuss the particular tab.

1 But go ahead and look at that. That's fine.

2 THE WITNESS: So I would have spent a
3 considerable amount of time with Dr. Whittaker going
4 through this document, explaining what it was for,
5 what it represented, why I was giving it to him,
6 what the process was for him to sign it and for him
7 to take it to Dr. Whit -- Dr. Hitt, sorry, for
8 Dr. Hitt to sign.

9 And we would have gone through -- I don't know
10 if we went through line by line every single, you
11 know -- police, three new officers, but we would
12 have gone through what this document -- what the
13 components of this document were, what it was doing;
14 that it was giving the budget office authority to
15 allocate these items, how it related to the overall
16 university budget. So I would have --

17 BY MS. MITZ:

18 **Q. Okay.**

19 A. I -- I would have extensively gone over how
20 this document fits in to the university's budget, what
21 it was -- what the authority that -- the authority that
22 it was giving us and why he was receiving it and why he
23 was having to take it to Dr. Hitt.

24 **Q. Okay.**

25 A. For both their signatures.

1 Q. Very thorough. Okay. So do you recall whether
2 he asked a lot of questions?

3 A. Yes, he would have asked a lot of questions.

4 Q. Okay. And were you in a position to answer all
5 of those questions?

6 A. Yes.

7 Q. And did he ultimately sign the form?

8 A. Yes.

9 Q. Okay. During the time that Dale Whittaker was
10 the provost, can you give me an idea -- and I am asking
11 for an estimation here -- of how many times he would
12 have been presented with these various documents that
13 reflected the funding for either Colbourn Hall or Trevor
14 Colbourn Hall as being from E&G?

15 A. So can you restate that again?

16 Q. Sure. What I'm looking for is an estimation of
17 how many times you think Dale Whittaker would have seen
18 documents that showed E&G as the source of funding for
19 the Trevor Colbourn Hall or the Colbourn Hall project?
20 Would it be one document? Did he see ten? Did he see
21 fifty? Can you estimate?

22 A. Yes. So it wouldn't be just one type of
23 document. The E&G commitments list had it, the
24 allocation documents had it, capital funding documents
25 had it, e-mails that he was copied on where the budget

1 transfers were occurring, he was copied on those as the
2 source of the -- as the decision source on those
3 allocations.

4 So I would say -- I would give an estimate of
5 at least 30 documents that he would have seen that on.

6 Q. Okay. And at no time in looking at those
7 approximately 30 documents did he ever ask about E&G and
8 why it was being used for these projects?

9 A. No, not to my knowledge.

10 Q. He didn't ask you?

11 A. Right.

12 Q. Okay. And correct me if I'm wrong, but my
13 understanding is when he took the position as provost,
14 he was responsible for the university's annual budget.
15 Does that sound right to you?

16 A. Yes, that's right.

17 Q. So that encompasses the whole budget; right?

18 A. Yes, yes.

19 Q. Okay. While he was provost, did he claim
20 ownership over the university's budget or did he limit
21 himself to the academic budget?

22 A. No. He claimed ownership over the whole
23 university's budget.

24 Q. Did he give himself a name like university
25 budget officer or something to that effect?

1 A. I don't have knowledge of him giving himself a
2 name.

3 Q. Okay. Did you ever get the sense that Provost
4 Whittaker was intimidated by Mr. Merck?

5 A. No, not at all.

6 Q. Did you ever get the sense that Provost
7 Whittaker was afraid to stand up for anything that he
8 believed in or to ask for anything that he wanted?

9 A. No, not at all.

10 Q. Have you heard his statements, his public
11 statements about how he didn't think that he could
12 question Mr. Merck's decision to use E&G because he had
13 been with the university for so long and was effectively
14 tight with Dr. Hitt? Have you heard that statement?

15 A. Yes.

16 Q. And do you disagree with that statement? Well,
17 let me ask you this way. Do you disagree that it
18 appeared that he felt like he couldn't question
19 Mr. Merck?

20 A. Yes, I disagree with that.

21 Q. Okay. Did you ever see him question
22 Mr. Merck --

23 A. Yes.

24 Q. -- or challenge him?

25 A. Yes.

1 Q. Can you give us an example?

2 A. I can't think of a specific example, but it --

3 Q. Let me ask -- go ahead.

4 A. So in the budget chat meetings, there were
5 requests for funding that were brought forward either by
6 people contacting Dr. Whittaker for a funding need or
7 people contacting Bill Merck for a funding need.

8 All of those funding needs were discussed in
9 those meetings between those two, and it would not be
10 uncommon for Dr. Whittaker to question or not approve or
11 disagree with a funding request that had come forward.

12 Q. From Mr. Merck?

13 A. Yes.

14 Q. Okay. That's a good example. Okay.

15 A. I wanted to say one more thing, if it's okay,
16 for the budget chat meetings. The other --

17 Q. Okay.

18 A. The other thing that became a conversation at
19 the budget chat meetings was the -- the budget processes
20 that were being developed under Dr. Whittaker's
21 leadership.

22 So the university budget committee was
23 resurrected. We talked in those meetings about who
24 should be on that committee, how that committee should
25 operate, how many people -- you know, what types of

1 processes we wanted to implement in those committees.
2 That type of a conversation would occur, not just a
3 resource decision.

4 And Dr. Whittaker and I worked very closely on
5 the university budget committee processes, procedures,
6 and that was a university-wide committee or -- that
7 committee dealt with university-wide budget issues.

8 I was going to say, and in fact one of the big
9 things that that committee did was about a little over a
10 year after Dr. Whittaker was here, we held a -- what was
11 called a budget philosophy meeting where we were trying
12 to sort of educate the university community, all the
13 VPs, all the deans that had all the -- that had all the
14 units about, you know, kind of the university budget
15 philosophy, resource -- you know, the appropriate use of
16 good, fiscal, sound resource management, if you will, of
17 those units. And considering all of the resources and
18 making smart, you know, use decisions of their
19 resources.

20 And Dr. Whittaker basically recommended that
21 budget philosophy meeting, and we presented that to the
22 whole university community.

23 **Q. Okay. And you guys also worked on the**
24 **facilities budget committee together; is that correct?**

25 **A. Yes.**

1 **Q.** And is that the -- was it your idea, his idea,
2 a combination of both of your ideas to form that
3 committee?

4 A. It was my idea.

5 **Q.** Okay. And how did that come up, I guess?

6 A. Well, the university budget committee became a
7 collaborative way for representation across the
8 university units to have sort of a say in resource
9 allocation decisions or at least, you know, have a
10 voice. And so that same process wasn't really happening
11 with facilities decisions.

12 And so because that one was working well, I
13 brought it up as an idea to Dr. Whittaker. He had seen
14 something similar at Purdue, so he liked the idea, had
15 some immediate knowledge of how that could be, you know,
16 an effective process. And so we started that so that
17 prioritization of what facilities were needed on campus
18 could be collectively discussed by multiple -- you know,
19 represented areas.

20 **Q.** Who attended the facilities budget committee
21 meetings?

22 A. They were attended by the members of the
23 committee which had a representative, kind of a senior
24 representative, like normally a vice president or maybe
25 another senior officer within an area across campus. So

1 there was probably about 12 to 14 members of the
2 committee.

3 It was -- Dale Whittaker was the executive
4 sponsor of it, as well as Mr. Merck. There were support
5 staff that attended, so myself was a support staff,
6 Christy was a support staff, a couple more people in my
7 office were support staff, and some members of the
8 Facilities and Safety department were support staff.
9 And some members from -- it's called SPA, like the
10 academic affairs space office. They attended as support
11 staff.

12 So we were there to help provide information to
13 the committee for the committee to consider and work
14 with.

15 **Q. When you say Provost Whittaker was the**
16 **executive -- executive sponsor?**

17 A. Sponsor, yes.

18 **Q. Is that effectively a chair?**

19 A. Yes.

20 **Q. Okay. All right. How often did that committee**
21 **meet?**

22 A. I think it met monthly.

23 **Q. And was E&G funding discussed in those**
24 **meetings?**

25 A. Yes. The meetings were more discussing what

1 the facility needs were.

2 Q. Okay.

3 A. It really had just gotten up and running. I
4 think it had been in existence -- it was getting its
5 legs so the first sort of task of the committee was to
6 start trying to identify what the university's facility
7 needs were and to help prioritize those needs. And with
8 the ultimate goal of once that occurred, helping to
9 figure out how we could get that accomplished.

10 Q. Okay. Do you recall whether the Colbourn Hall
11 renovation or the Trevor Colbourn Hall construction
12 project were discussed in the facilities budget
13 committee meetings?

14 A. I don't recall.

15 Q. Okay. Do you have any recollection as to
16 whether that was discussed in the university budget
17 committee meetings?

18 A. It was not.

19 Q. All right. If you don't mind, I would like you
20 to flip to tab one in that packet. I just want to run a
21 couple of documents by you.

22 The document at tab one should be the agenda
23 for the March 13, 2017, facilities budget committee
24 meeting. Do you see that?

25 A. Yes.

1 Q. Do you recognize that?

2 A. Well, I recognize it's the minutes prepared by
3 Mark Wray from that meeting.

4 Q. Okay.

5 A. I don't recall that I read them --

6 Q. Right.

7 A. -- previously.

8 Q. I want to ask you a couple of questions. So
9 the first page, there's a line that's highlighted. It
10 says "four categories on the list," and then what
11 follows is one, PECO, two, CITF funding, and then on the
12 bottom of the following page, three, other state sources
13 and then four, non-state sources.

14 Am I to understand that these four categories
15 were discussed in this meeting and that's why they are
16 reflected in the minutes?

17 A. Yes. It looks like that.

18 MR. GREENE: Do you have a copy for us?

19 BY MS. MITZ:

20 Q. And that's specific to what --

21 MR. GREENE: I apologize.

22 MS. MITZ: That's okay.

23 BY MS. MITZ:

24 Q. The four forms of funding, do you recall
25 discussing that with members of the committee or that it

1 was discussed?

2 A. So it looks like in reading the beginning of
3 these minutes, this was what was being discussed in this
4 meeting as the CIP, the capital improvement plan. So it
5 looks like these -- these categories which are, I think,
6 on the CIP were being described to the committee as what
7 they were.

8 Q. This was like introductory material to them for
9 the CIP?

10 A. This was the -- so the committee was formed. I
11 don't recall exactly when it was formed, but it was --
12 soon after it was formed, one of the tasks that it sort
13 of took on was at least familiarizing itself with the
14 CIP, with the intent that, going forward, it would be
15 able to influence or -- help, not influence -- but help
16 inform the projects on the CIP list.

17 Q. Okay.

18 A. And so the problem was the committee hadn't
19 been up and running well enough yet to really be able to
20 inform, I think, the CIP list that was due then. But it
21 was kind of the first time it was presented. The folks
22 on the committee were not necessarily familiar with the
23 form, so it was more of an educational process.

24 And to the extent that there was any thoughts
25 or conversation about the projects on the CIP form, it

1 would have been discussed.

2 **Q. Okay.**

3 A. So that's my memory that happened in the
4 beginning of this committee, was the CIP sort of came
5 first before the committee had had a chance to work on
6 what it -- what it thought the internal priorities were
7 and what it thought was a good list for facilities, and
8 it was presented with this form that was due. And so we
9 were trying to kind of educate the committee and work
10 through that.

11 **Q. Okay. If you could flip to page 2 of that**
12 **document, there's a portion in the third full paragraph**
13 **that's highlighted, and it says the review sequence is**
14 **budget committee, to Hitt, to trustees, to BOG.**

15 **Do you agree with that statement, that the**
16 **five-year capital improvement plan would go through**
17 **those hands before making it to the BOG?**

18 A. So the process -- so by budget committee here,
19 I'm not sure which budget committee it's referencing, if
20 it's referencing the facility's budget committee.

21 What I recall -- I don't know if these are the
22 right minutes for it, but what I recall is that the plan
23 was for that document to go from the facility -- the
24 facilities budget committee, once it was up and running
25 and had its legs, then to Dr. Hitt, and then to the

1 trustees, and then to the board of governors. I don't
2 know if it happened. I don't know if it was happening
3 at this time or not.

4 Q. Okay. Let's say prior to this, so prior to
5 March of 2017, did the five-year capital improvement
6 plan also go through the hands of the general counsel
7 and the chief of staff prior to making it to the board
8 of trustees?

9 A. Well, prior to the facilities budget committee,
10 I had no involvement with the capital improvement
11 plan --

12 Q. Okay.

13 A. -- other than to see it in the facility, on the
14 agenda. And my office kind of did a quality control of
15 materials presented to the -- to the facilities and
16 finance committee, made sure things footed and, you
17 know, were aesthetically nice. So that's the only
18 involvement that we had on the CIP is when it was on the
19 agenda.

20 Q. Okay.

21 A. So I don't know who it went through and I
22 didn't really understand it until -- until the
23 facilities budget committee started to get educated on
24 it.

25 Q. That makes sense.

1 A. And I was involved in the facilities budget
2 committee.

3 Q. Okay. One last question on this document. If
4 you glance towards the bottom, the last paragraph on
5 page 2, "'internal' list" is highlighted. If you could
6 read that, that sentence or that paragraph, and my
7 question for you is, do you know what the internal list
8 is?

9 MR. RUBOTTOM: What about referencing the March
10 document, Carine -- I mean the September, the
11 September document.

12 MS. MITZ: What tab is that?

13 MR. RUBOTTOM: Three. If you look to the
14 attachment, would that be what you are calling the
15 five year internal list?

16 THE WITNESS: Yes.

17 MR. RUBOTTOM: It looks different from a CIP.
18 It seems to have the same buildings.

19 THE WITNESS: Yes, yes.

20 MR. RUBOTTOM: But it includes sources of funds
21 categorized as external or internal and then funding
22 needs.

23 THE WITNESS: Yes. So what we were trying to
24 go with the facilities budget committee was come up
25 with an internal list that was maybe more realistic.

1 We hadn't gotten there yet, but my understanding of
2 the CIP is any potential project that might come up
3 has to be on that plan or there's no authority to do
4 it or something like that.

5 And so it oftentimes was described as the wish
6 list, and so that was -- and always totaled this
7 huge dollar amount that was unrealistic and
8 unreasonable.

9 And so what we were trying to do with the
10 facilities budget committee, Dr. Whittaker and I,
11 was actually get to something more realistic that
12 the university was functioning from as opposed to a
13 big long list of every potential project that might
14 happen.

15 So we started off with, okay, this is really
16 the internal list based on the way things used to
17 work, which was gathering of facility needs by
18 different people before the formation of the
19 facilities budget committee. But the intent was to
20 move forward with the facilities budget committee
21 actually informing and having input into that
22 internal list and have it be a more realistic list.

23 So we started off with just here's an internal
24 list of everything that we know, but the plan was
25 and we had a facilities budget retreat at some point

1 after this time period to start to better -- better
2 -- create a list that was more appropriate for the
3 university's priorities.

4 BY MS. MITZ:

5 Q. Okay.

6 A. Does that make sense?

7 Q. It does, yes.

8 So let me have you flip to tab two. It's
9 another set of minutes from the facilities budget
10 committee meeting that occurred on April 7, 2017. In
11 the fifth paragraph down, you see Colbourn Hall is
12 misspelled, but also highlighted.

13 So I wanted to see if you had any recollection
14 about any discussions that occurred about Colbourn Hall
15 at that meeting.

16 A. So it looks like here we're discussing the
17 capital improvement plan. I'm not sure.

18 Q. Do you have any recollection about discussions
19 surrounding Colbourn Hall at that meeting?

20 A. I am not sure what -- I'm not sure -- I'm not
21 sure what list this is referring to. If this is
22 referring to the capital improvement, the CIP, or the
23 internal list.

24 Q. Okay. Fair enough.

25 A. So I don't know about what the discussion

1 around it would have been.

2 Q. Okay. On the second page we've highlighted the
3 sentence that starts out, Whittaker confirmed that the
4 arts building amount, in parens, \$33 million, is
5 supported internally. Do you know what he meant by
6 supported internally?

7 A. I think that means -- I don't know how to
8 phrase it; like wanted, like that it was a priority for
9 the university, not funding. I think -- I think --
10 that's what I think this is talking about is that the
11 university desperately was interested in getting a
12 performing arts center and had been for years, and that
13 interest was still strongly there.

14 Q. Okay. I appreciate that clarification.

15 Let's see. So let's go back to the third tab,
16 back to that September agenda, and I want to direct you
17 to the attachment we were just at a few minutes ago, the
18 five-year internal capital improvement plan.

19 The second page lists Trevor Colbourn building
20 and Colbourn Hall demolition under the heading academic?

21 A. Uh-huh, yes.

22 Q. It has the full amount, \$38 million, and then
23 under secured funding sources, the \$38 million appears
24 under total internal.

25 So when Provost Whittaker would have seen this

1 document, would he have an understanding of what
2 internal and external secured funding sources were?

3 A. Yes, I think he would.

4 Q. And do you think that based on conversations
5 that you had with him or your review of this document
6 with him?

7 A. I think that based on the fact that it -- E&G
8 had been represented on many prior documents that had
9 the 38 million.

10 Q. Okay. So not being familiar with any of this
11 stuff, I guess my question is, why do some lists break
12 down the funding sources down to E&G, auxiliary, the
13 other CITF, and this one is more -- less detail. Why is
14 there a difference in the two forms?

15 A. I think this one, the purpose of this one was
16 to -- this one was more exhaustive. It was -- the
17 bigger purpose was to identify projects that had funding
18 needs that had not been fulfilled, not to really -- not
19 to really inform of what the secured funding source was
20 for the other projects.

21 If any questions were asked, they could have
22 been answered, but because I think actually the funding
23 sources are in this document, you know, in hidden rows.

24 Q. Oh, I see.

25 A. But the purpose of this was to come up with,

1 kind of like I said, that total list of what's being --
2 what's been brought forward as a facility need up to
3 this point in time, and whether or not it had -- funding
4 had been identified for it already or not.

5 And the focus would have been more on the large
6 400 million of projects on the list that don't have any
7 funding source identified.

8 Q. All right. Let's see. Can you flip to
9 document number four? If you could just take a look at
10 that e-mail and let me know when you've had a chance to
11 review it.

12 A. Okay.

13 Q. All right. Do you know -- do you recall what
14 was meant by, we're going to "review the status of the
15 facility reserves and to discuss the potential use of
16 such reserves"?

17 A. So the only facility reserves, if you will, at
18 the university was a \$1.5 million allocation that the
19 university budget committee had made towards facility --
20 deferred maintenance and facility needs.

21 So I don't recall the year that allocation was
22 made, but it was an allocation made of recurring money
23 so that every year there was at least a million, five
24 available for, you know, projects that popped up like a
25 lab renovation or a clean up of a lab or anything that

1 -- and that, that reserve was given to the purview of
2 the provost and Mr. Merck to decide what the most
3 critical uses of that million, five was each year.
4 That's what I think this is talking about.

5 Q. Okay. And just to skip backwards for a second,
6 when we were looking at the attachments to the agenda
7 for the September meeting, would you have given those
8 sorts of things to Provost Whittaker ahead of the
9 facilities budget meeting so that he could be prepared
10 for the meeting or would he be seeing those sorts of
11 documents for the first time in the meeting?

12 A. Both would occur.

13 Q. Okay.

14 A. So we might -- we would oftentimes give him
15 documents that we were preparing also for the facilities
16 budget committee, or any meeting, actually. So it's
17 likely that he would have received this, yes.

18 Q. Okay. Did you ever intentionally withhold any
19 information from him concerning funding sources for any
20 capital project?

21 A. No, no, absolutely not.

22 Q. All right. Let me ask you about the statement
23 that Mr. Merck made in Provost Whittaker's presence and
24 possibly President Hitt's presence about the audit
25 comment.

1 **Were you there when Provost Whittaker heard the**
2 **comment?**

3 A. Yes, I believe I was.

4 **Q. Can you kind of set the stage for me and tell**
5 **me where, what they were talking about, what was said?**

6 A. So my recollection of -- I have a recollection
7 of a meeting where I was in Dr. Hitt's office. I wasn't
8 usually in Dr. Hitt's office, rarely, so I have a
9 recollection of that. I was there with Bill Merck and
10 Dr. Whittaker, and I don't recall the materials we had,
11 but I am sure we had a list of projects and the funding
12 sources of those projects.

13 That would have been the common way. That's
14 probably why I was there was my team might have produced
15 that document, and so therefore I was there to answer
16 any questions about it.

17 And the funding sources for the projects on
18 that list were discussed. It was brought up that it
19 would have been like the other capital project lists
20 that have been produced in this investigation that
21 showed, here's the project, here's the funding sources
22 that are -- have been identified for those projects, and
23 that the projects and the funding sources would have
24 been discussed in that meeting.

25 **Q. Okay. And so in what context did Mr. Merck**

1 make the comment that proceeding this way might result
2 in an audit comment or audit hit?

3 A. So in the context of talking about Trevor
4 Colbourn Hall or the Colbourn Hall renovation and the
5 replacement building, and the fact that it was being
6 funded from E&G, that would have been on the schedule,
7 the comment that it might produce an audit comment was
8 made.

9 Q. And did either Dr. Hitt or Provost Whittaker
10 respond to that statement?

11 A. I recall Dr. Hitt responding to the statement
12 that he and -- you know, that they felt like that was a
13 -- it was an emergency situation and a justifiable use
14 of the funds.

15 Q. So he okayed it?

16 A. Yes, absolutely.

17 Q. Do you recall -- okay.

18 Do you recall Provost Whittaker saying
19 anything?

20 A. I don't recall if he did or not.

21 Q. Okay. Do you think you would have recalled if
22 he said, wait a minute, that doesn't sound right, I need
23 to better understand this, or if he started questioning
24 it, do you think that would have stayed with you?

25 A. Yeah. He absolutely didn't challenge the

1 decision or the -- to me, this was a decision that he
2 was involved in, so there was -- I don't recall him even
3 saying anything necessarily about it, but there was
4 definitely no challenging the decision.

5 **Q. Okay. And did you ever witness any other**
6 **conversations where that audit comment was made in**
7 **Provost Whittaker's presence?**

8 A. I think it would have been made in a budget
9 chat meeting, but I don't have a specific recollection
10 of who was present when that comment was made.

11 **Q. Why do you say you think it was made? Like do**
12 **you recall hearing it, you just don't know the specifics**
13 **or someone else told you that may have happened?**

14 A. No. I recall hearing that comment many times.
15 I just don't recall the exact locations, forum, people
16 who were in attendance as it was stated.

17 **Q. Okay. So what I'm hearing is that you may not**
18 **be able to tell us definitively that Whittaker was told**
19 **that it may result in an audit comment more than once,**
20 **is that correct, in your presence?**

21 A. I don't have a specific recollection.

22 **Q. Okay. That's fair.**

23 A. I do know that Dr. Whittaker, after the
24 investigation started, told me that he recalled Bill
25 saying it would cause an audit comment or would cause an

1 audit hit or whatever term.

2 Q. He made that admission to you after Bryan Cave
3 was retained?

4 A. Yes. The day that he met with all of Bill's
5 direct reports to say that -- that, you know, Bill had
6 resigned and was gone, and Misty Shepherd and Kathy
7 Mitchell were interims. He met with all of Bill's
8 direct reports.

9 And after that meeting, I met with him and
10 that's when he said he recalled Bill saying it would
11 produce an audit comment or might produce.

12 Q. Okay. Were you in the meeting or did you just
13 meet with him after the meeting?

14 A. I met with him after the meeting and I was in
15 the meeting.

16 Q. Okay, good. I have some questions for you
17 then.

18 What exactly -- what was the purpose of the
19 meeting that he called? Was it just to let everybody
20 know that Merck was leaving and there would be other
21 people to report to?

22 A. Yeah. That was the purpose, as well as to talk
23 to the team.

24 Q. Okay. And do you recall President Whittaker
25 making any comments about maybe initially wanting to

1 present what happened in one way, but then had been
2 swayed or coached to present it another way?

3 A. Yes, I recall that.

4 Q. Can you tell me a little bit about that?

5 A. So in that meeting he stated that -- I think
6 they had just come back from the board of governor's
7 meeting. And in the meeting he was praising Bill, he
8 was telling, you know, all of us that we should reach
9 out to Bill, thank him for his service, that he
10 respected Bill's decisions, that Bill had built this
11 campus, that kind of thing. So he was speaking very
12 highly of Bill.

13 Q. This is after the BOG meeting?

14 A. Yes.

15 Q. Okay.

16 A. And encouraged all of us to reach out to Bill.
17 And he said that he wanted to -- I think -- I
18 don't recall in what order, but with -- with regard to
19 how he handled this topic at the board of governor's
20 meeting, he said that he wanted -- that he wanted to
21 discuss more than -- than the UCF incident that was
22 being considered a violation. He wanted to talk about
23 the lack of capital funding and less restrictions on the
24 use of funds, but he was advised not to, sort of in the
25 halls of Tallahassee, and to just sort of be contrite

1 for this situation that UCF was in.

2 Q. Okay. So it sounds to me like what he was
3 saying was, listen, I was coached not to tell the BOG
4 that we had justifications for doing this, and just to
5 basically accept responsibility and kind of keep quiet.
6 Is that kind of what you are conveying?

7 A. Yep. Be contrite and, in my words, take the
8 beating and raise other questions or concerns with the
9 system, if you will, at a later date.

10 Q. Okay. Did he ever mention who suggested this?
11 The coaching, did that occur by someone in Tallahassee
12 or someone at UCF or do you know?

13 A. I interpreted it to be in Tallahassee --

14 Q. Okay.

15 A. -- and possibly governors and possibly other --
16 you know, other people.

17 Q. Okay.

18 A. So he didn't name names, I can say that.

19 Q. Gotcha, okay. And so what was discussed in the
20 meeting that you had with him right after? Was it just
21 the two of you?

22 A. Yes.

23 Q. Okay. What did you guys discuss?

24 A. So I just stopped in to ask him to actually
25 speak to Christy Tant. She was very upset -- everybody

1 was very upset about the situation. And so I wanted to
2 -- Christy and I worked very closely with him over the
3 years.

4 And I asked him -- it had been a nice meeting,
5 that he spoke to all of us to talk to us about, you
6 know, Bill's departure, and basically it was a good
7 leadership meeting to make you feel like, okay, things
8 aren't going to fall apart here. Bill, our strong
9 leader, was gone, but we're all still here.

10 And so I asked him to have that conversation
11 with Christy, and he wouldn't. He said -- he said -- he
12 said, well, with you there? And I said, well, no. I
13 just wanted him to speak to Christy because they worked
14 very closely together.

15 And so he said, you know, no, that that
16 wouldn't happen.

17 So that was the nature of the meeting. And
18 then he said he didn't even know what was going to
19 happen to him out of this investigation, and that he --
20 you know, that he knew that Bill had said that it might
21 produce an audit comment. So that's what I remember
22 about that meeting.

23 **Q. Okay. So during your course of employment and**
24 **I guess particularly when you worked closely with**
25 **Provost Whittaker, did you have occasion to work closely**

1 with any of the trustees?

2 A. No, not really. The only trustee I worked
3 closely with was Bob Garvy on the investment policy, the
4 investments of the university.

5 Q. Okay. And I think we might have some questions
6 for you about that later.

7 Just as a side note, is that athletic building
8 named after him, the Garvy athletic something or other?

9 A. Yes. He was a donor. That donation occurred
10 just within the last couple or three years or within the
11 last few years. He made a large donation for the Garvy
12 Nutrition Center, I think it is.

13 Q. Okay.

14 A. I think his son played football here, so he had
15 a big interest in nutrition for the athletes and made a
16 large donation for it.

17 Q. Very nice. Okay. So I understand from the
18 things that I've read that you were aware of the
19 regulation 9.007 before this happened, and that you may
20 have mentioned it to Mr. Merck when you found out that
21 E&G funds were going to be used for Trevor Colbourn
22 Hall.

23 And that he told you, well, if it's something
24 we have to do, we might get an audit comment. And you
25 respected his seniority and believed that he was doing

1 the right thing and you didn't object anymore. Is that
2 kind of a condensed version of what happened?

3 A. Well, I was not aware of the regulation, and I
4 didn't bring the regulation to Bill Merck's attention.

5 Q. Okay.

6 A. So I was -- or at least I was not aware of the
7 regulation. I had seen e-mails now where it's attached
8 and -- but I didn't -- it wasn't in my mind, that
9 regulation.

10 And I didn't understand that regulation to
11 relate to the Trevor Colbourn Hall situation and I
12 didn't bring it to Bill Merck's attention --

13 Q. Okay.

14 A. -- in that vein.

15 Q. Okay. Did you ever tell him, oh, this might
16 not be right or voice any concerns about the use of E&G
17 for that construction project?

18 A. So when the construction project first started,
19 it was a renovation. So at a point in time it became a
20 renovation and then a replacement, kind of a combination
21 of the two.

22 And at that point, I mentioned to Bill that I
23 wasn't aware that we were able to use E&G funds for new
24 construction. I didn't know -- it hadn't been done
25 before.

1 So I brought that to his attention, that that
2 wasn't a normal -- a normal course of using E&G funds.

3 **Q. Okay. And what was his response?**

4 A. His response was that -- that he didn't feel
5 that he had other options, that there was an emergency
6 situation -- it was an emergency situation, and so he
7 felt like it was justifiable use of E&G funds or -- or a
8 justifiable use of funds or a justifiable situation.
9 I'm paraphrasing what he said, obviously.

10 **Q. Of course, of course, yeah.**

11 Can you estimate about how long before the
12 meeting we talked about earlier, the meeting in Hitt's
13 office where the audit comment was made, how long before
14 that that you had this conversation with Mr. Merck?

15 A. I have no idea. I don't know.

16 **Q. Okay. All right. So if you don't mind, I**
17 **would like you to flip to Document 5 in the packet.**
18 **It's another e-mail, so I'd just ask that you take a**
19 **look at it, get familiar with it, and let me know when**
20 **you're ready.**

21 A. Okay.

22 **Q. Okay. Do you remember this e-mail?**

23 A. I remember it now that I've read it.

24 **Q. Okay. So if you can, if you know, what I'm**
25 **trying to figure out is what happened before this**

1 e-mail.

2 So I see David Noel is initially e-mailing,
3 asking about using that \$3 million. Do you know
4 anything about any conversations that happened prior to
5 this e-mail being sent?

6 A. I don't recall, but the e-mail infers that
7 David had asked whether it was -- in some form, I don't
8 know if it was by phone. I don't know if it was asked
9 to Lynn, and Lynn asked me. I'm not sure.

10 Q. Okay.

11 A. I'm not sure what precipitated this e-mail.
12 But clearly, it was him asking if they could do this.

13 Q. All right. Yeah, yeah. Okay.

14 Who is David Noel?

15 A. He was the CFO, I think his title was, for the
16 College of Medicine.

17 Q. And who was Deborah German?

18 A. She is the Dean of the College of Medicine.

19 Q. And who is Steven Omli?

20 A. He is the director of finance for the College
21 of Medicine.

22 Q. Okay. So all medicine people, gotcha. Okay.

23 Now, do you have any recollection as to whether
24 you had to do some research to send this e-mail or if
25 you were already familiar with the regulation by the

1 time you sent this e-mail?

2 A. I don't recall.

3 Q. Okay. Do you recall whether you got a lot of
4 e-mails like that, asking whether E&G could be used for
5 whatever reason?

6 A. Not normally like this.

7 Q. Okay. So if you don't mind, flip to tab six.
8 It's another e-mail. This time you were just cc'd on
9 it. But if you could take a look at that and let me
10 know when you've had a chance to review it.

11 A. Okay.

12 Q. Do you remember this e-mail?

13 A. I do not. I mean, I read it now, but --

14 Q. Okay, yeah. No one seems to have any
15 recollection of this e-mail.

16 At this time in March of 2015, was Ronnie
17 Korosec Dale Whittaker's chief of staff?

18 A. Probably not.

19 Q. Okay.

20 A. Only because I think March of 2015 is when the
21 reorganization first went into place -- sometime in
22 March, 2015 -- and Ronnie was not chief of staff right
23 off the bat, is my recollection.

24 Q. All right. Do you have any recollection as to
25 whether you would have followed up on this, because you

1 were cc'd on it? Do you know if you would have
2 responded or chimed in?

3 A. I would not have. A lot of times, E&G -- these
4 kind of questions would go to internal audit, and
5 internal audit would address the issues. Whether it was
6 coming from a college or a unit or somebody at the
7 university, they would -- university audit was sort of
8 the source of these kinds of answers.

9 So unless I was involved in whatever was
10 underneath this, receiving this as a cc would not have
11 prompted a response from me.

12 Q. Okay. All right. We've already talked about
13 the e-mail at seven.

14 Let's talk a little bit about the presentations
15 to the board of trustees. Do you have any recollection
16 of discussions of E&G being the funding source for
17 either Colbourn Hall or Trevor Colbourn Hall at any
18 committee meeting or any board meeting?

19 A. I've seen the transcript where it was -- where
20 I said that carry forward funds were being used for
21 Trevor Colbourn and Colbourn Hall, so.

22 Q. Let's talk about that. What does -- what does
23 carry forward mean to you?

24 A. It's E&G funds that are not spent in one year
25 or E&G funds that are received by the university that

1 are not spent in the year that they are received and
2 they carry forward to the next year.

3 Q. Okay. So in your normal practice when you were
4 employed at UCF and you were talking about E&G with
5 Christy Tant or someone else in your office, would you
6 refer to it as carry forward or would you refer to it as
7 E&G or something else?

8 A. The funds that roll over would be referred to
9 as carry forward.

10 Q. I should have clarified. So would you call it
11 E&G carry forward or would you just call it carry
12 forward?

13 A. Carry forward.

14 Q. Okay. And was that common in the finance and
15 accounting world in that part of the university?

16 A. Yes.

17 Q. Do you know whether the trustees would be
18 familiar with that term and know that carry forward
19 meant E&G?

20 A. In my opinion, yes.

21 Q. Okay. Why do you say that?

22 A. Well, carry forward funds was not -- it was a
23 topic over multiple years, carry forward funds. It was
24 a state topic, it was a university topic. And so I just
25 feel like carry forward funds were known across the

1 whole university and by the board of trustees and what
2 they were, because it wasn't -- it wasn't a topic not
3 normally discussed.

4 Q. Okay. Do you recall any other time during the
5 board meeting when you would have referred to carry
6 forward as a funding source for any other project?

7 A. I don't recall.

8 Q. Okay. If you read the Bryan Cave report, then
9 you probably read that some of the trustees disagree
10 that this can be an E&G.

11 So aside from what you just described, is there
12 anything else that you can point to, like do you know if
13 they were trained when they first became trustees on the
14 different sources of funds?

15 A. On a couple of occasions, I do think -- on a
16 couple of occasions I accompanied Bill to meet with a
17 new trustee to explain the university's budget. We
18 would go through kind of the -- you know, the budget
19 packet, if you will, to try to explain the terms, the
20 categories, that kind of thing.

21 So I -- so that training sometimes happened
22 that I was involved in. I think Bill Merck did that
23 more often. I was involved in, I think, training a
24 couple of trustees that way.

25 Q. So it would be done on an individual basis. As

1 a new one came on board, you would spend some time with
2 him or her?

3 A. Yes, the couple of times that I was involved,
4 that was the case.

5 Q. Do you have any recollection as to which
6 trustees you sat in on?

7 A. I know I sat in on trustee Alex Martins'
8 because I had to go down to the Amway building, and I
9 forget who the other trustees were. I might have done
10 one or two other trustees.

11 Q. Okay. And you feel confident during that
12 meeting it would have been explained that carry forward
13 meant E&G?

14 A. I can't say that those specific words were
15 used, but we talked about, you know, all the different
16 categories, E&G, auxiliary, the overall university
17 budget, DSOs, that kind of a training occurred.

18 Q. And do you recall whether the trustees that you
19 sat with were engaged, asking questions, or sitting
20 there absorbing everything?

21 A. I would say a little of both.

22 Q. Okay. And then back to that board meeting
23 where you were asked to describe the source of funding,
24 and you said carry forward. Did any trustee ask you any
25 questions about that?

1 A. No.

2 Q. So did you feel as if they accepted that answer
3 and were comfortable with it?

4 A. Yes. In fact, I think Mr. Merck asked me to
5 even expand a little bit on what carry forward was. So
6 I think I tried to explain that it rolled over from one
7 year to the next, unspent funds in the prior year, and
8 received no questions.

9 Q. Okay. Did you have --

10 MR. RUBOTTOM: Let me ask, do you recall which
11 board meeting that was? Because we've listened to a
12 bunch of tapes that were committee and board
13 meetings in '14 and '15 -- at least a committee
14 meeting in '15 where these projects were discussed.
15 Certainly in '16, the committee and the board both
16 met on the final plan.

17 Do you recall which meeting you are talking
18 about where you explained carry forward?

19 THE WITNESS: It's in the Bryan Cave exhibits
20 or it's in his report.

21 MR. RUBOTTOM: So one of those meeting that he
22 had excerpts from?

23 THE WITNESS: One that he has transcripts,
24 because I didn't even recall it until he showed it
25 to me.

1 MR. RUBOTTOM: Okay. Since then, have you gone
2 back and listened to any of those meeting tapes or
3 reviewed any of those meeting materials to recollect
4 for your own recollections of how those meetings
5 went down?

6 THE WITNESS: No, because I don't know how to
7 get to the recordings. They are not on the website.
8 In fact, we even asked. After Bryan Cave asked me
9 about that transcript, we asked for a copy of that
10 transcript, and he wouldn't give it to me and my
11 attorney.

12 MR. RUBOTTOM: Did you ever ask the president's
13 office for copies of the tapes or the transcripts?

14 THE WITNESS: No.

15 MR. RUBOTTOM: That was all while you were
16 still employed; correct?

17 THE WITNESS: Yes.

18 MR. RUBOTTOM: Do you have any recollection of
19 the April 14th finance and facility committee
20 meeting where Colbourn Hall construction, those
21 three options or three subdivided options of -- and
22 they talked about deferring renovation. Do you have
23 any recollection of the committee meeting where
24 finance and facilities first approved the new
25 building?

1 THE WITNESS: No.

2 MR. RUBOTTOM: Okay.

3 THE WITNESS: I don't have specific
4 recollection.

5 I didn't recall that later meeting until Bryan
6 Cave showed me the transcript.

7 MR. RUBOTTOM: How many times do you think
8 you've addressed the board or a committee about
9 carry forward or other categories of money?

10 THE WITNESS: So, I normally did not address
11 the board of trustees unless there was an agenda
12 item that I was presenting.

13 So we presented the annual operating budget,
14 which has all the categories, E&G, auxiliary,
15 concession funds. So I would present that to the
16 board for the annual budget. I would present the
17 quarterly investment reports, so I would address the
18 board then.

19 But normally, unless there was an agenda item
20 under my name, I wouldn't be addressing the board
21 unless somebody asked me a question, like Mr. Merck
22 did that day.

23 MR. RUBOTTOM: But that was a finance and
24 facilities meeting, I believe?

25 THE WITNESS: Yes. That's what I'm actually

1 talking about.

2 MR. RUBOTTOM: But on a building, it would have
3 been usually Merck and Kernek explaining the
4 project?

5 THE WITNESS: Yes.

6 MR. RUBOTTOM: You wouldn't ordinarily be
7 getting up and talking about sources of funding?

8 THE WITNESS: Right.

9 MR. RUBOTTOM: So Bill called on you in that
10 meeting?

11 THE WITNESS: Yes.

12 MR. RUBOTTOM: And you gave an answer, a direct
13 answer, and I think Merck followed that up with some
14 comments.

15 THE WITNESS: Yes.

16 MR. RUBOTTOM: Did you have any sense in that
17 meeting -- well, your only recollection is from
18 reading that.

19 Okay. I'll stop interrupting, Carine.

20 MS. MITZ: It's okay. I think we've covered a
21 lot of stuff already.

22 MR. GREENE: Do you want a break?

23 MR. RUBOTTOM: Do you guys want to take a
24 break?

25 THE WITNESS: I'm okay.

1 MR. RUBOTTOM: Well, let us know when you want
2 to stop. We'll probably need to stop at least once.

3 BY MS. MITZ:

4 Q. Ms. Clark, did you ever get the sense -- well,
5 let me ask it this way.

6 When you started working closely with Provost
7 Whittaker, did it appear to you that he was grasping the
8 information that you were sharing with him or trying to
9 teach him or show him or did it seem like he was having
10 difficulty following?

11 A. No, he was -- he was grasping it.

12 Q. Okay.

13 A. We spent a lot of time together, me going over
14 information.

15 In fact, what I had heard as to why he wanted
16 me to be a direct report to him is he thought I
17 explained things very well. He liked the quality of the
18 information me and my team produced, and he felt like I
19 explained things in an understandable way.

20 And so -- and I'm kind of a teacher in that
21 regard, so I usually go into a lot of detail. I can
22 start at a bigger picture and then walk people through
23 the details.

24 And so I did that continuously, and he was very
25 engaged, always asked a lot of questions. I tried to

1 always make sure he and anybody else I was, you know,
2 trying to get to understand an Excel spreadsheet that
3 they didn't prepare, that you or your team did, that
4 they understood what the spreadsheet said.

5 We oftentimes prepared summaries that then
6 worked their way down to the detail level so the people
7 understood what, you know, the finance and accounting
8 office was putting together, because it was a lot of
9 detail. And so I spent a lot of time doing that.

10 **Q. And I mean, he was effectively your boss when**
11 **you had the dual reporting; right?**

12 A. Yes, yes.

13 **Q. So you wanted to prepare your boss?**

14 A. Yes.

15 **Q. Was there any incentive for you to not**
16 **adequately prepare him?**

17 A. No. I was a huge supporter to Dr. Whittaker.

18 **Q. Okay. I just want to skim through the other**
19 **capital projects that were later discovered to have been**
20 **funded with E&G.**

21 Do you know who -- I think I know the answer,
22 but I want to know if you know the answer.

23 Do you know who directed those E&G funds to be
24 transferred to those construction projects?

25 A. So which projects are you talking about?

1 Q. For instance, the band building.

2 MR. RUBOTTOM: Hey, Carine, I have on my screen
3 that -- that date-ordered list that I use. Can I
4 just show that to her?

5 MS. MITZ: Sure.

6 MR. RUBOTTOM: I think you're familiar with
7 that, Tracy. These are kind of the short versions
8 of the transactions that Bev Seay provided me a few
9 weeks ago. And I sorted them by date order because
10 it was real informative to us how decisions were
11 being made and timely.

12 So, for instance -- and let's try to talk about
13 the bigger transfers. There's a global transfer in
14 June, June 30th of 2016, for the global UCF
15 1.6 million. Who would have directed that transfer
16 in June of 2016?

17 THE WITNESS: So the -- the -- so there's a
18 difference between making the commit -- making the
19 resource allocation decision and then the transfer
20 itself.

21 MR. RUBOTTOM: I was going to get to that, yes.

22 THE WITNESS: So before we were fired, I wasn't
23 asked to look into any of those answers to these
24 questions -- for these projects, like who asked for
25 the transfer, when did it occur. So I never got an

1 opportunity to look at, say, Christy's e-mails where
2 she was making the transfer and what she might have
3 been referencing as to what prompted it.

4 MR. RUBOTTOM: Okay.

5 THE WITNESS: So I can't answer that question.
6 I can answer some questions on like when -- how the
7 decisions were made.

8 MR. RUBOTTOM: Well, let's talk about that one.
9 When would the commitment have been made to the
10 global -- that level of commitment made to the
11 global UCF project?

12 THE WITNESS: I don't know when it was made,
13 but it was made -- it was on one -- it was on an E&G
14 commitment list, which that was kind of a constantly
15 changing document. And I've seen --

16 MR. RUBOTTOM: Would that have been -- I'm
17 sorry.

18 Would that have been discussed in the budget
19 chats with Dr. Whittaker in the meeting?

20 THE WITNESS: Yes, absolutely.

21 MR. RUBOTTOM: I cut you off.

22 THE WITNESS: That's okay.

23 MR. RUBOTTOM: You had said you had seen --

24 THE WITNESS: Just I've seen that on some of
25 the E&G commitment lists, so that tells me it was

1 centrally -- it was funded from the central
2 resources.

3 MR. RUBOTTOM: Now, I've seen capital projects
4 lists that don't have years out there. And then
5 I've seen like that one we looked at a while ago
6 that kind of has a five-year plan on when funds were
7 being allocated or planned.

8 Did you always have a five-year plan on when
9 funds would be transferred?

10 THE WITNESS: No. So that --

11 MR. RUBOTTOM: Okay.

12 THE WITNESS: That five-year plan that we
13 looked at for the facilities budget committee, that
14 was a new endeavor.

15 MR. RUBOTTOM: Okay.

16 THE WITNESS: So we -- we were -- one of the
17 things that Dr. Whittaker and I talked about when I
18 started working for him was we need a five-year
19 operating plan and we need a five-year capital plan.
20 So those were actually goals or -- you know, goals
21 that I was going to start to be held accountable to
22 trying to get a five-year operating plan for this
23 university done, which is a bear, and a five-year
24 capital plan.

25 MR. RUBOTTOM: Did Dr. Whittaker understand

1 those goals?

2 THE WITNESS: Yes. He and I spoke about them,
3 and those were the goals he was going to hold me to
4 for my performance for the next year. So that
5 five-year capital plan for the facilities budget
6 committee was the first time we ever tried to do
7 anything out multiple years.

8 MR. RUBOTTOM: Let's go to the last big day,
9 because October 31st, there was about \$20 million
10 transferred for three downtown projects.

11 When would those have been programmed or when
12 would those have been approved on a commitment list?

13 THE WITNESS: I don't know when those would. I
14 don't know the dates.

15 MR. RUBOTTOM: Would they be discussed in a
16 budget chat?

17 THE WITNESS: They should have been discussed
18 in a budget chat meeting, yes.

19 MR. RUBOTTOM: The university budget committee
20 had been meeting for some time. Would those
21 commitments have been discussed in the university
22 budget committee?

23 THE WITNESS: I don't know if they were or not.

24 MR. RUBOTTOM: Okay. What about -- what about
25 the \$3 million and \$6 million commitments for

1 Research 1, both of them in May of 2017? Would
2 those have been before the -- would those have been
3 committed before the university budget committee had
4 started working or --

5 THE WITNESS: Well, those were -- so those were
6 not discussed in the university budget committee.
7 They -- that was -- a lot of the funding for those
8 came from the different units that were going into
9 the research building. So that was a funding plan
10 that Dr. Whittaker and I worked on with the
11 different units that were putting researchers into
12 the research building and trying to get different
13 people to be -- you know, different people to
14 contribute towards the build out and the furniture
15 and fixtures and equipment in the research building.
16 So a lot of that funding didn't come from central.
17 A lot of it came from the units, like the College of
18 Engineering and different colleges.

19 MR. RUBOTTOM: But those would have been on
20 commitment list, E&G commitment lists or would those
21 have been secondary institutional transactions
22 between these departments?

23 THE WITNESS: Exactly. They would have been
24 second.

25 So they wouldn't have been -- the E&G

1 commitment list was only a commitment against
2 central resource.

3 MR. RUBOTTOM: So these would have been E&G
4 funds in those departments who were contributing
5 that?

6 THE WITNESS: Exactly. So we worked on what
7 the total -- the total contribution plan,
8 Dr. Whittaker or I did with all of these units,
9 working with Dr. -- with Dale who the deans were
10 working with, reporting to him. The provost's
11 division, which had some of its own funds,
12 contributed towards some of the common areas that
13 the different colleges would be using.

14 So that was kind of a whole plan put together
15 to help fund the build out, furniture and equipment
16 in the research building, and those funds came from
17 multiple units, including the provost's office.

18 MR. RUBOTTOM: Okay. I heard you earlier
19 mention that you saw a distinction when we went from
20 renovation to new construction, that you saw -- that
21 gave you pause about proper use of E&G.

22 I am confused about the build out deal. I
23 understand furniture and equipment. I understand
24 that systemwide everybody agrees furniture and
25 equipment for a new building is a proper E&G

1 expenditure.

2 How do you -- how have you come by clarity or
3 do you have clarity about the build out part of a
4 new -- a new construction? To me, it's one thing to
5 come into an old building and remodel for lab space
6 for a new use, but it's a curiosity to me that you
7 -- that your internal finish is somehow treated
8 different from the internal of a new building.

9 So can you explain to me how you got or if you
10 have clarity about the appropriateness of build out
11 funding?

12 THE WITNESS: So it was my understanding that
13 build out, furniture, fixtures and equipment were
14 all allowable uses of E&G funding. I didn't
15 differentiate if it was build out for an existing
16 building and build out if it was a new building,
17 particularly if it was build out to a particular
18 researcher's specifications.

19 MR. RUBOTTOM: I guess what I'm trying to get,
20 what's the difference between furniture and
21 equipment which tend to be things that can be moved
22 around, some of them might be fixtures, but they are
23 subject to being maybe repurposed at some point.
24 And I was thinking build out included cabinetry and
25 maybe internal walls and, you know, glass

1 enclosures, things like that.

2 Did you categorize all those things in one
3 category or did you distinguish furniture and
4 equipment from internal walls and space -- internal
5 dividing walls and things like that?

6 THE WITNESS: So I just use the -- or I just
7 understood the term build out, not what the
8 components of the build out would be. And I didn't
9 differentiate between, you know, build out -- I
10 don't know that that included internal walls, but I
11 think it would include, you know, cabinetry, tables,
12 some things like that, that maybe were fixed, you
13 know, or fixtures or build out.

14 MR. RUBOTTOM: Well, I'm sorry I don't have
15 those listings, but I've seen a lot of listings
16 where this was furniture and equipment. It says
17 furniture and equipment, and then other times it
18 says build out.

19 So it doesn't seem to me like the words are
20 used interchangeably. So I'm just exploring that.
21 I have no clue, and I just want to know what your
22 understanding of that is.

23 THE WITNESS: So I do think build out is
24 different than furniture, but I thought build out
25 and furniture and equipment was all an allowable use

1 of E&G.

2 MR. RUBOTTOM: Well, and everybody might think
3 that. We're kind of asking the whole system right
4 now.

5 THE WITNESS: Yeah.

6 MR. RUBOTTOM: Thank you for that. Okay,
7 Carine.

8 BY MS. MITZ:

9 Q. So what I would like you to do is take a look
10 at the document behind tab eight. It's another e-mail.
11 Let me know when you've had a chance to review it.

12 A. Yes.

13 Q. Do you recognize this?

14 A. Yes.

15 Q. Okay. Did you have any discussions with anyone
16 after you received this e-mail?

17 A. So, yes, I had conversations with Kathy
18 Mitchell and Christy Tant.

19 Q. Okay. And what did you guys talk about?

20 A. So we talked about, I guess after this, what
21 came back to Christy and I was the more limited list of
22 -- of projects that were going to be presented to the
23 board of trustees, which was, I think, 13.8 million.

24 So we talked to Kathy about why is the full
25 46.5 million not being presented? And she informed us

1 that the president's office wanted to just present the
2 13.8, and we expressed some concern about that because
3 we had put forward the whole list.

4 We were sharing that with or shortly thereafter
5 we shared all of that with the auditor general's office,
6 the full 46.5 million, and so we had concerns about only
7 presenting the 13.8.

8 **Q. And what was her response again to why she**
9 **wasn't going to provide that to the board?**

10 A. Well, my recollection is it was the president's
11 office call, not hers.

12 MR. RUBOTTOM: Do you know if that would have
13 been Mr. Heston or the president or --

14 THE WITNESS: I would be guessing that it was
15 probably a combination of the two. This e-mail went
16 to Dr. Hitt or -- I mean Dr. Whittaker.

17 MR. RUBOTTOM: Thank you.

18 THE WITNESS: I don't know because I wasn't
19 actually in those meetings.

20 MR. RUBOTTOM: And who else was privy to that
21 conversation with Kathy?

22 THE WITNESS: So, Christy.

23 MR. RUBOTTOM: Christy?

24 THE WITNESS: Christy and I.

25 MR. RUBOTTOM: And this was a verbal

1 conversation?

2 THE WITNESS: Yes.

3 MS. MITZ: Very interesting. Okay.

4 BY MS. MITZ:

5 Q. So did you ever -- were you ever tasked with
6 locating any of the funds that were used to replenish
7 the E&G accounts?

8 A. Yes, Christy and I were.

9 Q. Okay. And --

10 A. Is that what you were asking, the 13.8, the
11 replenishment of the -- yes, yes.

12 Q. Okay.

13 A. Christy had to do the most of that work because
14 I broke my wrist and was out for a couple of days at
15 this point.

16 Q. Okay. All right. Do you ever recall Dale
17 Whittaker asking that money out of a provost budget be
18 used to fund, in part or entirely, either the CREOL
19 Building or the nursing building?

20 A. Yes.

21 Q. Okay. Which one?

22 A. So the provost's office had some funding that
23 it set up as like a loan fund to the colleges so that if
24 the colleges had a need, instead of just asking the
25 provost to contribute towards something, he wanted to be

1 able to do a -- loan them the money so that there could
2 be an ROI on, you know, the use of money and just not
3 sort of provide it without asking them to pay it back.

4 So on the CREOL Building, the university budget
5 committee was involved in the CREOL allocation for the
6 first \$4 million. It was a decision made by the
7 university budget committee to fund the \$4 million for
8 the CREOL expansion.

9 MR. RUBOTTOM: Was that E&G?

10 THE WITNESS: Yes.

11 MS. MITZ: I wanted to know, too. Okay. Wait
12 a minute. I have to interrupt you. I'm sorry.

13 THE WITNESS: That's okay.

14 BY MS. MITZ:

15 **Q. So Provost Whittaker is offering E&G money out**
16 **of the provost budget for construction of a building?**

17 A. So the loan fund was not E&G.

18 **Q. Okay.**

19 A. The loan fund was from auxiliary money. The
20 university had some sold some broadband capacity at one
21 point and received money, you know, money from, I think,
22 Clearwire and Sprint.

23 So there was a balance of that -- of that sort
24 of windfall to the university, if you will, that Dale
25 wanted to then make available, a part of that broad --

1 I'll call it the broadband money. It was auxiliary
2 money to provide loans to the colleges and have them pay
3 those loans back.

4 So the CREOL -- the CREOL project, originally
5 the request to the university budget committee -- units
6 submitted requests to the university budget committee.
7 It was called an exception funding request process. So
8 CREOL submitted a request for \$4 million for the CREOL
9 expansion, so that was one of the items on the list that
10 was being considered. The university budget committee
11 only had available to it E&G funds to distribute.

12 So in that first year of the university budget
13 committee, the CREOL Building was approved to be funded
14 to the tune of the \$4 million dollars, which is what the
15 request was, and that was from E&G carry forward funds.

16 What happened that year is the university
17 budget committee -- actually, there was no new money, so
18 it decided it was going to reallocate carry forward from
19 units that had it. The carry forward at the university
20 is held by all the units and then there's some that are
21 held centrally. There might be some held at a division
22 level, and then -- but mostly all the units keep their
23 carry forward year after year.

24 So that year we evaluated the funding held at
25 the unit level, and decided there were areas that had

1 more than they needed, and we wanted to reallocate that
2 to more critical needs.

3 So \$10 million was identified to reallocate.
4 We basically took that \$10 million from those units, and
5 then used it for whatever the university budget
6 committee decided, from the long list of requests, were
7 the most strategic priorities.

8 So in that process, the \$4 million was selected
9 by Dale, Bill Merck, Dean German, M.J. Soileau, who was
10 a VP for research. Dean German was the dean for the
11 College of Medicine, and Bill and Dale. They worked
12 together. We split up into groups to decide how to
13 allocate that \$10 million.

14 And a chunk of the \$10 million was given to
15 Deborah German and M.J. Soileau who are researchers or
16 have research areas under them to decide how to use that
17 funding. Dale and Bill were given \$2 million for
18 deferred maintenance and facilities projects, and decide
19 how to -- what was most critical on the list for that,
20 and then there was a student success group.

21 Dale and Bill and the research group got
22 together, and the \$4 million CREOL project was on Dale
23 and Bill's list, but they got together and decided that
24 was the most critical need, and so they combined their
25 money. Basically, there was \$4 million and \$2 million,

1 and put \$4 million of that \$6 million towards the CREOL
2 project.

3 MR. RUBOTTOM: So Dale and Bill with the
4 concurrence of the research group chose to put the
5 CREOL Building ahead of deferred maintenance?

6 THE WITNESS: Yes, ahead of any other projects
7 on the list.

8 MR. RUBOTTOM: Do you know when this -- when
9 this UBC meeting was?

10 THE WITNESS: I can -- I can find out. It was
11 -- I'm guessing now. I want to say May of '15,
12 possibly.

13 MR. RUBOTTOM: Do you know whether that \$4
14 million was ever transferred to construction for
15 this project?

16 THE WITNESS: Yes, it was. That's this \$4
17 million on this list.

18 MR. RUBOTTOM: Oh, I didn't see that.

19 THE WITNESS: Uh-huh.

20 MR. RUBOTTOM: I'm still looking for it.

21 THE WITNESS: It's the \$4 million number. It
22 says CREOL.

23 MR. RUBOTTOM: Wait a minute. I've got a
24 mistake. That happens to me every time I open this
25 thing. It -- it starts on line 17. So there we go.

1 There's the \$4 million. Okay.

2 Gotcha. So it was transferred in February
3 of '16. And when was the UBC formed?

4 THE WITNESS: Oh, I don't recall.

5 MR. RUBOTTOM: Okay.

6 THE WITNESS: And this is when the transfer
7 might have -- so I don't -- I don't have the
8 information of the dates the money --

9 MR. RUBOTTOM: Can we look at that September
10 '17 document again for the FBC?

11 THE WITNESS: So this is the UBC that I am
12 talking about.

13 MR. RUBOTTOM: I understand. I want to see if
14 CREOL -- do you know when construction was started?

15 MS. MITZ: CREOL expansion is there.

16 THE WITNESS: That's the same thing.

17 MS. MITZ: Okay.

18 MR. RUBOTTOM: 6.7. And that was estimated to
19 be spent in FY18 on this chart, and total internal
20 was 6.7.

21 THE WITNESS: Right.

22 MR. RUBOTTOM: So \$4 million came from that
23 collaborative process. Where did the other
24 2.7 million come from?

25 THE WITNESS: So a part of that came from the

1 loan fund, the broadband loan fund money.

2 MR. RUBOTTOM: Okay.

3 THE WITNESS: And so -- so after the \$4 million
4 was approved, you know, by the university budget
5 committee, then the dean of CREOL or the dean of
6 optics and photonics, in the next year they started
7 working with facilities on cost estimates for this
8 expansion. And there were multiple options that
9 kind of got put forward, you know, some having more
10 space than others.

11 So I recall working with that dean and Dale on
12 options for the CREOL expansion that ranged from
13 like \$5 million to \$6.8 million. I've recently seen
14 an e-mail to this effect.

15 And, you know, they just had more space, more
16 offices, more labs. Really, the interest was to get
17 more lab space. There was an auditorium that they
18 were also trying to build.

19 So the decision got made to go with the
20 \$6.8 million option. And so then the UBC had only
21 allocated \$4 million, so the dean had to come up
22 with the balance if he wanted that larger -- that
23 better building, if you will.

24 MR. RUBOTTOM: Could he spend his E&G on that
25 project?

1 THE WITNESS: Well, we didn't discuss what he
2 could spend on it or not.

3 Well, I mean, I remember him identifying
4 sources, but I don't remember us discussing what he
5 could or couldn't use.

6 MR. RUBOTTOM: Okay. Well, back to the
7 broadband and the loan fund.

8 In that context, do you believe Dr. Whittaker
9 had a pretty clear notion of colors of money and
10 that he could use that money differently than he
11 could use E&G funds?

12 THE WITNESS: No.

13 MR. RUBOTTOM: You don't think he had that
14 clear notion?

15 THE WITNESS: Well, I guess this allocation was
16 made by the UBC and nobody thought it was wrong. So
17 nobody -- that was just the available, like the
18 broadband money was what the loan fund just happened
19 to be funded from.

20 MR. RUBOTTOM: Okay.

21 THE WITNESS: Does that make sense?

22 MR. RUBOTTOM: Yes, it does, with the exception
23 that -- so why wouldn't he just treat all of his
24 funds the same in the provost's office? Why would
25 there be a separate categorization that this is

1 broadband money and that the loan fund would just be
2 limited to that piece?

3 THE WITNESS: Well, that was just an available
4 source of money that he had to be able to make these
5 loans from.

6 MR. RUBOTTOM: Okay.

7 THE WITNESS: He could have done the same thing
8 with some available E&G carry forward he had if he
9 had wanted to.

10 What we were going to do with the loan fund was
11 there was -- you know, he received annually some
12 funding from continuing education, a share of the
13 continuing education funding to the tune of about
14 \$400,000 a year. So we were going to use that to
15 replenish the loan fund as colleges maybe started to
16 use it, because otherwise the loan fund would be
17 gone.

18 The thing is, none of the colleges hardly ever
19 used the loan fund so we kind of ended up disbanding
20 that practice.

21 MR. RUBOTTOM: I saw a long range kind of
22 funding plan that was at the department level, kind
23 of the vice president level. And it looked like the
24 provost's office had showed their annual revenues
25 and it showed their accumulations. It looked like

1 the provost's office was accumulating a large amount
2 of money over a period of time.

3 Do you recall anything like that?

4 THE WITNESS: So the provost's office was
5 accumulating a large amount of carry forward funds.

6 MR. RUBOTTOM: What was the purpose of those
7 accumulations?

8 THE WITNESS: Well, so the reason that was
9 happening is a lot of the new performance funding
10 that the university was receiving was going towards
11 a hiring plan. So I don't know if you've heard,
12 there was like a plan to hire a lot more
13 tenure-track faculty because we had a bad
14 student/faculty ratio.

15 We had, during the economic downturn, colleges
16 had turned to adjunct faculty, and there's
17 accreditation issues with that. And so there was a
18 need for more tenure track faculty.

19 MR. RUBOTTOM: But you're accumulating carry
20 forward, and it's really hard to commit carry
21 forward to a recurring expenditure like a faculty
22 member.

23 And when was that going to start being spent
24 and how was -- how was the recurring, was that going
25 to be used to like five-year or ten-year fund a

1 position?

2 THE WITNESS: So the hiring -- so the hiring
3 plan, the provost lines we called them, were that
4 money was held at the provost level. It was
5 expected that when we would get the recurring money
6 from the State, we would allocate it to the colleges
7 for them to hire faculty. They would start
8 searching for that faculty either that year or the
9 next year, and the accumulation of those funds would
10 help the -- would fund the start up packages for
11 those new faculty.

12 So that's why all those funds were accumulating
13 is it takes a while to hire the faculty. There is
14 actually a need to accumulate those funds because
15 there is a big startup package commitment.

16 And so that was all happening in the provost's
17 office because until the colleges hired the faculty
18 member, it was kept at the -- at the divisional
19 level, if you will.

20 MR. RUBOTTOM: But there were recurring funds
21 to support those positions?

22 THE WITNESS: Yes.

23 MR. RUBOTTOM: And so those -- those reserves,
24 they would be reported in the fund composition
25 report to the BOG as carry forward that's committed

1 to some faculty project?

2 THE WITNESS: Yes, yes.

3 MR. RUBOTTOM: Okay. That helps me a lot,
4 because a lot of the universities had some big
5 numbers there, and that -- that makes sense to me.

6 THE WITNESS: And one reason over the last few
7 years that UCF carry forward had grown was because
8 we were -- we were very lucky and successful in
9 receiving performance funds and a whole bunch of it
10 got committed to hiring faculty.

11 They were put towards cluster, you know,
12 research clusters were created and developed. Those
13 were harder to -- those positions were harder to
14 fill because you're really looking for top-notch
15 experts, like one was a cyber, a cyber cluster, one
16 was like a prosthetics cluster.

17 So we were looking, you know. We wanted to
18 hire the best faculty, not do it quickly.

19 MR. RUBOTTOM: Right.

20 THE WITNESS: And so that was causing some of
21 those funds to accumulate; some purposely so we
22 could use them for startup, and then others just if
23 it took longer to hire the faculty members, it
24 caused some accumulation of funds that then were
25 available for the provost to use for other things.

1 MR. RUBOTTOM: Thank you. Do you believe the
2 BOG understood those kinds of accumulations?

3 THE WITNESS: Well, the universities have been
4 trying to explain that, and I do think that they do,
5 because I heard them describe that in meetings,
6 whether it's staff, talking about this -- you know,
7 this issue with the need to have startup funds
8 sitting around.

9 MR. RUBOTTOM: Right.

10 THE WITNESS: It looks like they're reserves,
11 but they're really not.

12 MR. RUBOTTOM: Okay. Thank you. And we're
13 trying to stay away from true academic expenditures
14 and we've been focusing on capital.

15 But back to the CREOL decision in 2015. You
16 described your reaction in 2014 to the decision to
17 take those E&G commitments for the new Trevor
18 Colbourn Hall, but you said in May, '15, nobody even
19 questioned the CREOL commitment.

20 Is that because everybody got comfortable with
21 the Trevor Colbourn Hall decision and moved on or in
22 your mind was it just a totally different --

23 THE WITNESS: In my mind, it was like a
24 renovation, so we didn't.

25 MR. RUBOTTOM: The CREOL was a renovation?

1 THE WITNESS: Yes. It was actually an
2 expansion, but we didn't know anything different
3 between a renovation, a \$4 million renovation for
4 the CREOL Building. In fact, the third floor was
5 currently being renovated with labs prior to this
6 allocation and expansion.

7 MR. RUBOTTOM: Have you ever looked at the
8 statutory definition of fixed capital outlay?

9 THE WITNESS: I have since this investigation
10 started. I did not before.

11 I didn't know there were any laws or
12 regulations that governed these capital
13 appropriations, these capital expenditures.

14 MR. RUBOTTOM: Now that you have reviewed that,
15 can you see why an expansion would seem to fit under
16 that definition and not under a
17 renovation/maintenance type of definition?

18 THE WITNESS: Well, I've learned now that
19 additional square footage, you know, makes it
20 different than a renovation, but I --

21 MR. RUBOTTOM: Did the BOG provide any guidance
22 on those things to the university?

23 THE WITNESS: Not that I know of.

24 MR. RUBOTTOM: Who would you expect to train
25 you, the other finance and facilities staff, on

1 those types of policies?

2 THE WITNESS: I would have expected it to come
3 from general counsel and the board of governors.

4 MR. RUBOTTOM: Do you consider the -- I
5 understand the idea of the president hiring bright
6 people and counting on them to do their job.

7 Do you see the president as having any
8 responsibility to ensure that those people
9 understand their job and the rules within which
10 they've been called to work?

11 THE WITNESS: Yes. I think that -- I think the
12 lack of training and education at the institution --
13 at this institution, and I can't speak for any
14 others, but it's the responsibility of the
15 institution.

16 So if you're going to hire people from the
17 corporate world, if you will, and have them come do
18 your accounting, then there needs to be a training
19 process so that they understand the difference
20 between, you know, expansion or renovation.

21 My office, there's still confusion on these
22 rules.

23 MR. RUBOTTOM: I understand.

24 THE WITNESS: And in fact, that list, they're
25 still saying some of those are okay and some aren't.

1 MR. RUBOTTOM: Right.

2 THE WITNESS: And after like four months of
3 talking about this, ad nauseam, really, there's
4 still not clarity. And I know my office did not
5 understand this clarity.

6 MR. RUBOTTOM: Do you think -- have you heard
7 the various reforms, that the university has
8 instituted policies? Do you think those policies
9 address that clarity issue?

10 THE WITNESS: No. I should say I do think that
11 going through multiple people helps, if those
12 multiple layers of people are educated as well. So
13 it does no good for the CFO and the general counsel
14 and the president to sign a form unless they know
15 the rules, you know, clearly as well.

16 So the education has to come first and the
17 clarity has to come first, you know, a real list of
18 what the rules are.

19 And the conversations that I've had since this
20 all started, that I got to sit in when the CFOs are
21 talking, there's still not the clarity amongst the
22 universities -- amongst the different universities.

23 MR. RUBOTTOM: There's been a number of
24 systemic kind of reshaping in the past 18,
25 19 years. The BOG was created by referendum, which

1 took some authority from the legislature and gave it
2 to this new board. The legislature reorganized the
3 education statutes in the early 2000s and put
4 universities and college boards under some policies
5 that had been applicable to school boards.

6 In those major transformations -- you were here
7 before 2000, weren't you? When did you come?

8 THE WITNESS: 2007.

9 MR. RUBOTTOM: 2007. So that would have been
10 after the statutory. Was that after the BOG was
11 created?

12 THE WITNESS: Yes.

13 MR. RUBOTTOM: So you weren't here when those
14 changes happened, so you wouldn't know what training
15 or university-wide communications went out with, oh,
16 we've got a new legislature, they're called the BOG,
17 anything like that?

18 THE WITNESS: Right. So I think the devolution
19 I've heard occurred in 2003. So by the time I came,
20 the university was very independent.

21 MR. RUBOTTOM: Right.

22 THE WITNESS: So those of us who came from
23 corporate sort of brought that work experience with
24 us.

25 MR. RUBOTTOM: So there would have been

1 mentality there that the board of trustees is kind
2 of the law giver, like in a corporation?

3 THE WITNESS: Yes.

4 MR. RUBOTTOM: And not a consciousness that
5 there's these state statutes and BOG regs?

6 THE WITNESS: Absolutely.

7 MR. RUBOTTOM: Okay.

8 THE WITNESS: In fact, I looked to the board of
9 governors' staff as kind of liaisons, and they --
10 you know, they just ask us for lots of information.
11 So we always provided them lots of information, you
12 know, not so much the other way back.

13 I didn't -- one of the challenges I found when
14 I came to the university was you don't have that
15 like CPA firm that you can go ask questions, you
16 know, like you can in the private world if you don't
17 understand something or -- you know, you have
18 resources to help you understand.

19 MR. RUBOTTOM: Well, would you take those --
20 some questions like that to the internal audit
21 department?

22 THE WITNESS: Yes, I would take questions to
23 the internal audit department if they came to mind.

24 MR. RUBOTTOM: Did you ever take questions to
25 the IG at the BOG?

1 THE WITNESS: No. I never even heard of the IG
2 until this investigation.

3 MR. RUBOTTOM: Wow.

4 THE WITNESS: Until they sat in on the Bryan
5 Cave.

6 MR. RUBOTTOM: Are you familiar that with --
7 that Lee would on occasion call Chris Kinsley at the
8 BOG to ask about some of these renovations,
9 maintenance, can we do this, can we not do that?

10 THE WITNESS: Yes, I am familiar with that,
11 mostly now.

12 MR. RUBOTTOM: But you weren't --

13 THE WITNESS: Right.

14 MR. RUBOTTOM: -- being advised of those things
15 at the time. That's just how she is spending money
16 that's already been in her -- already in her E&G or
17 PO&M money or some of these other transfers?

18 THE WITNESS: Yeah, yes.

19 MR. RUBOTTOM: And so that was just advisory
20 from BOG facilities to UCF facilities.

21 THE WITNESS: Yes.

22 MR. RUBOTTOM: So there wasn't any real legal
23 or audit type of inquiry and response?

24 THE WITNESS: I think that was just Lee's way
25 and she developed a relationship with Chris Kinsley.

1 MR. RUBOTTOM: Right.

2 THE WITNESS: And that gave her a source. We
3 didn't have, you know, that relationship --

4 MR. RUBOTTOM: Right.

5 THE WITNESS: -- with the board of governors.

6 MR. RUBOTTOM: They were working regularly on
7 PECO lists and things like that --

8 THE WITNESS: Right.

9 MR. RUBOTTOM: -- that created that.

10 Did you feel like the general counsel's office
11 was available for those kinds of inquiries?

12 THE WITNESS: Well, if the inquiry -- if you
13 had a question, then yes, you could ask the general
14 counsel's office. I would say we would go to
15 internal audit more often than general counsel.

16 MR. RUBOTTOM: Okay.

17 THE WITNESS: They seemed to have more answers,
18 I would say.

19 MR. RUBOTTOM: Okay. And I don't know if I
20 asked this, but did budget chats continue after the
21 UBC was formed?

22 THE WITNESS: Yes.

23 MR. RUBOTTOM: Would those be like preliminary?
24 Would they prepare documents to present to UBC or
25 would the issues come from totally different places

1 and the results go to totally different places?

2 THE WITNESS: I would say both. So we might
3 discuss what was going to happen on the -- what
4 would be on the UBC agenda. So it could be
5 preparatory for the agenda for the UBC or we might
6 discuss other budget issues.

7 MR. RUBOTTOM: Do you recall any capital
8 project that was considered by the budget chat group
9 after the UBC was formed that was not put before the
10 UBC for its recommendation?

11 THE WITNESS: Yes. I think this whole list,
12 except for CREOL, was decided by -- outside of the
13 UBC.

14 MR. RUBOTTOM: And who would you think made the
15 final decision as a result of the budget chat?
16 Would that be Dr. Whittaker or Mr. Merck?

17 THE WITNESS: Dr. Whittaker.

18 MR. RUBOTTOM: Okay. Carine, that's all I've
19 got right now.

20 BY MS. MITZ:

21 Q. I just want to go through the remainder of the
22 exhibits real quick.

23 So Ms. Clark, if you don't mind flipping to tab
24 nine?

25 A. Yes.

1 Q. Do you recognize that e-mail?

2 A. Yes.

3 Q. So I found it interesting that this is
4 August 11th. So 11 days on the job, and Dr. Whittaker
5 apparently is asking for a lot of information that goes
6 beyond the academic budget; is that correct?

7 A. Yes.

8 Q. Okay. And the e-mail that Christy Tant sent at
9 the bottom, at 6:06 p.m., that listing continues on to
10 the next page or the back of the page. It bears
11 Colbourn Hall, does it not?

12 A. Yes.

13 Q. And what's the amount there?

14 A. \$18 million remainder of \$28 million commitment
15 made in '13/'14.

16 Q. So this may have been -- this would have been
17 the second document that we know of that would have gone
18 past Dr. Whittaker's eyes reflecting E&G funds to
19 Colbourn Hall within the first two weeks on the job?

20 A. Yes.

21 Q. Is that about right?

22 A. Yes.

23 Q. Okay. Let's flip to the next tab, number 10.
24 And we should both be looking at an e-mail from you to
25 Whittaker and Merck sent on March 22, 2016. Is that

1 what you have in front of you?

2 A. Yes.

3 Q. Can you explain to me what's being provided
4 here?

5 A. So this was a list that Dr. Whittaker asked me
6 to have prepared that showed funded and -- like unfunded
7 and funded capital projects for him to discuss with Dr.
8 Hitt.

9 Q. Okay. Capital projects?

10 A. Yes.

11 Q. We're talking about buildings?

12 A. Yes.

13 Q. Not faculty salaries or electric bills; right?

14 A. Correct.

15 Q. Okay. And do we see Colbourn Hall here?

16 A. Yes.

17 Q. We do. We see Trevor Colbourn Hall, and it
18 appears to list it at \$23 million under E&G; is that
19 correct?

20 A. Yes.

21 Q. And if you slide up to the top of the page, I
22 see CREOL Building, phase two build out. Is that the \$2
23 million that -- no, we were talking about \$4 million
24 previously.

25 Is this related at all to the discussion we had

1 earlier?

2 A. So if you look down below, it looks like CREOL,
3 under -- below Trevor Colbourn Hall.

4 Q. Yes.

5 A. There is CREOL lab phase one and phase two, \$6
6 million. I would expect that to be --

7 Q. Go to the right. There's the four on your
8 division unit resources?

9 A. Yes.

10 Q. So is that the \$4 million we were just talking
11 about?

12 A. Let's see.

13 MR. RUBOTTOM: It's only showing \$2 million E&G
14 there.

15 THE WITNESS: Right.

16 MR. RUBOTTOM: Would that --

17 THE WITNESS: I'm not sure why this list had --
18 unless --

19 MR. RUBOTTOM: That's central reserve.

20 THE WITNESS: Well, the \$2 million here for
21 central reserve is based on -- I'm not sure why
22 there's \$2 million in the E&G column and \$4 million
23 in the division unit resources, unless --

24 MR. RUBOTTOM: Would department E&G be in that
25 \$4 million?

1 THE WITNESS: It might be. Although \$4 million
2 was -- my memory is \$4 million was allocated from
3 central.

4 MR. RUBOTTOM: And that was transferred. We
5 just saw that.

6 THE WITNESS: Yes.

7 MR. RUBOTTOM: But that was transferred before
8 this.

9 MS. MITZ: Yeah.

10 MR. RUBOTTOM: That was transferred in
11 February.

12 THE WITNESS: That's okay, though. This wasn't
13 showing what wasn't transferred. It was showing
14 what funded it.

15 So I think that \$4 million should be in the E&G
16 column there and \$2 million in the division unit
17 resources, if that CREOL lab phase one and phase two
18 is talking about --

19 MR. RUBOTTOM: Well, this is about a month
20 after. Is it possible who created that list just
21 hadn't -- and who would --

22 THE WITNESS: Yeah.

23 MR. RUBOTTOM: And who would have created that
24 list?

25 THE WITNESS: Christy, Christy or her team.

1 BY MS. MITZ:

2 Q. So if we want to track, on the documents we've
3 already received, if we want to track the funding on
4 CREOL, which description do we look at? Because I have
5 -- I'm now seeing expansion, I'm seeing CREOL lab, phase
6 one and two, CREOL Building, phase two build out. So
7 what should we be following?

8 A. I don't know.

9 Q. Okay.

10 A. I'm not sure what the phase one and phase two
11 is.

12 Q. But there's only one CREOL Building?

13 A. Yes.

14 Q. Okay.

15 A. I think -- I think that the CREOL phase one and
16 phase two, \$6 million is probably the -- it was \$6.8
17 million, though, so I'm not sure why this says \$6
18 million.

19 The phase two build out of \$2 million where
20 funding hasn't been identified, I think was the -- in
21 the CREOL project was an auditorium that wasn't built
22 out because there wasn't enough money to do that. So
23 the dean of optics and photonics was going to -- at
24 least wanted the auditorium built, because if you didn't
25 do it when you were doing the expansion, you couldn't

1 come back and do it. So they did it. They were not
2 going to build it out, and then he was going to try to
3 fundraise to get the money to build out the auditorium.

4 And so that's what I'm thinking maybe this
5 build out for phase two up top is referring to, is the
6 additional need to go raise some money to build out the
7 auditorium.

8 Q. Okay. All right. So let's move on to the next
9 tab, number 11, please. And this is the page that I've
10 heard a lot about that bears handwriting, and I would
11 like you, if you are able, to tell me whose handwriting
12 is on the attachment identified as the Capital Projects
13 Current Funding Plan.

14 A. That's Dale Whittaker's handwriting.

15 Q. Okay. Were you with him when he made these
16 notes?

17 A. No.

18 Q. Okay. Do you -- were you briefed after the
19 meeting at which these notes were made?

20 A. It looks like his secretary was telling me that
21 he wanted a follow-up phone call.

22 Q. Okay. Do you have -- go ahead.

23 A. Nothing.

24 MR. RUBOTTOM: Would he have made those notes

25 -- I'm sorry.

1 Would he have made those notes by himself
2 studying that document or would that have been in a
3 meeting, do you think?

4 THE WITNESS: I would be speculating.

5 MR. RUBOTTOM: Okay.

6 BY MS. MITZ:

7 **Q. Do you recall whether you had that follow-up**
8 **conversation with him?**

9 A. I don't recall, but I probably did, but I don't
10 recall the conversation, the phone call.

11 I mean, if I wanted to -- I was just going to
12 say that I would think these would have been made during
13 the meeting, because I don't think all of this
14 information would have come from just the schedule that
15 I gave him.

16 MR. RUBOTTOM: Would you frequently do
17 follow-up conversations with him after those kinds
18 of meetings and analyses?

19 THE WITNESS: Just if he had something that he
20 needed to run by me.

21 MR. RUBOTTOM: Okay.

22 THE WITNESS: So yes and no.

23 BY MS. MITZ:

24 **Q. Okay. There should be another, tab 12. Okay.**
25 **And you may have actually touched upon this earlier. I**

1 think we may have been talking about this without having
2 identified it.

3 If you could look at your e-mail to Mr. Merck
4 that you sent on November 23, 2016 at 1:37 p.m.?

5 A. Okay. Yes.

6 Q. What are you referring to by saying your
7 "challenge 2020 meeting with Dale." What is that?

8 A. That was a performance review type meeting.

9 Q. Okay. Is this where you discuss those goals
10 that you were addressing earlier?

11 A. Yes.

12 Q. All right. So again, you're talking about
13 doing work for him, information you are going to provide
14 to him about the operating budget and the capital
15 budget?

16 A. Yes.

17 Q. That's well beyond the academic budget;
18 correct?

19 A. Yes. There is no doubt that all the work I did
20 for Dale Whittaker was about not -- about the whole
21 university budget. That's all -- that's all I do. I
22 mean, I do the complete picture.

23 I shouldn't say that. The other thing I did
24 when Dale brought me under him is that we also supported
25 -- we also played the role of supporting the academic

1 affairs budget division needs, which means I started to
2 work with the deans and learned a little bit about the
3 deans' needs and work with them, attending his meetings
4 with all his vice provosts, which included more than
5 just the deans, but all the other -- many other areas of
6 university research, student development and enrollment
7 services.

8 So I did -- we did also do the academic affairs
9 divisional budget work out of my shop, and then -- but
10 for the most part, Christy and I did the total
11 university budget information.

12 **Q. Do you have any idea why people who are**
13 **employed at UCF would have believed that Dale Whittaker**
14 **dealt with only the academic budget for the first year**
15 **or year and a half of his employment?**

16 A. No.

17 **Q. All right.**

18 MR. RUBOTTOM: Have you heard Dr. Whittaker say
19 that in his public statements about this whole
20 investigation?

21 THE WITNESS: Yes.

22 MR. RUBOTTOM: What's your reaction to his
23 statements that he -- that his focus was academics
24 or he only had responsibility for academic budgets?

25 THE WITNESS: I think that's false. That was

1 not -- my interactions with him was not just on
2 academics, the academic budget.

3 The academic budget is about two-thirds of the
4 budget of the university. So the allocation
5 document is the entire E&G budget. It's the
6 authority to distribute the E&G budget to all of the
7 divisions. The university budget committee received
8 requests from everybody.

9 He did ask me to create a college budget model
10 which was going to funnel the student tuition
11 funding, like growth funding from increased credit
12 hours, basically, if you will. We have two of the
13 colleges where sort of the burden of those
14 additional credit hours fell, and we also put some
15 performance metrics in there.

16 So the university budget committee used to have
17 authority over all of the incremental E&G money,
18 which included any new state appropriations and
19 growth -- additional tuition money, if we grew
20 credit-hour wise.

21 By creating the college budget model, it was
22 about half and half, depending on the year of the
23 state appropriations. By creating the university --
24 or the college budget model, we basically took away
25 from the university budget committee all the tuition

1 money. That funded the colleges, and then what we
2 were left with was any performance funding or state
3 funding that we received.

4 So that university budget committee then had to
5 address all the rest of the university's needs out
6 of that -- out of that half, if you will.

7 MR. RUBOTTOM: Under that design, what
8 responsibilities would go to those colleges? Would
9 they have to pay for their own maintenance of the
10 buildings that they occupied? Would they have to
11 pay for the landscaping of those buildings? Would
12 they have to pay for their utilities of those
13 buildings? What -- what non-payroll? Would they
14 pay for their janitorial?

15 What responsibilities were -- were going to go
16 with that, that delegation of money?

17 THE WITNESS: So we started the budget -- the
18 budget model, I want to say, three years ago now, if
19 I've got that correctly. And we were still in that
20 hiring plan for faculty.

21 So by taking a large chunk of the money away
22 from this central process, if you will, the
23 university budget committee, to the colleges, there
24 wasn't -- there wasn't money to hire -- to continue
25 to allocate funds towards the new hiring plan.

1 It was a 400 faculty member hiring plan.
2 Before the university budget committee was formed,
3 200 lines were funded from performance funding that
4 we received. That left another 200 lines to fund.
5 And the college budget model went into effect, and
6 so we basically had to ask the colleges to fund some
7 of those lines.

8 So the first couple of years they didn't have
9 as much discretion over how to use those funds as
10 they would have liked, because Dale was very strict
11 on continuing this 400-person hiring, this 400
12 faculty hiring plan.

13 MR. RUBOTTOM: Was that focus to reduce the
14 ratio or would that 400 include expansions of areas
15 of scholarly pursuit? In other words, expanding
16 programs as opposed to lowering ratios. Was it
17 both?

18 THE WITNESS: It was both. It was tenure
19 track, so we were looking to grow research. So you
20 grow research -- this is what I understand now. You
21 grow research through hiring tenure track faculty
22 because they tend to do -- they do research.

23 It was also to help address, you know, the
24 teaching load, if you will. But it was to get -- it
25 was to get our tenure track ratio in better line

1 with what I understand accreditation looks for with
2 regard to -- they want you to have tenure track
3 faculty of some percentage. I don't really know the
4 criteria.

5 So it was to promote research. It was to
6 promote -- provide more instructional support.

7 MR. RUBOTTOM: And do you believe that
8 Dr. Whittaker knew when these E&G allocations were
9 being made to capital projects, do you think he
10 understood that that was reducing the amount of
11 money available for these other initiatives?

12 THE WITNESS: Well, the hiring of the faculty
13 needed recurring money. So these projects were
14 coming from nonrecurring money. So that's a little
15 bit of an apple and an orange, although there is the
16 need for startup.

17 But because there's the delay in hiring,
18 allocating the new recurring money towards faculty
19 helps accomplish that.

20 MR. RUBOTTOM: Okay. Thank you.

21 MS. MITZ: Don, I don't think I have anymore
22 questions.

23 MR. RUBOTTOM: Are there -- are there facts
24 that you know that have not been brought out in the
25 Bryan Cave investigation or that we have not covered

1 today that you think that the house committee that's
2 trying to understand all this needs to know,
3 information that you have that's relevant to the
4 investigation?

5 THE WITNESS: So with regard to the Bryan Cave
6 report, there's a few things that I feel about that.

7 One is I think it falsely attributes decision
8 making responsibility or authority to finance and
9 accounting that wasn't there. Sorry, but you know,
10 finance and accounting, and myself included, had no
11 authority to allocate money in this university.

12 We had no -- we couldn't have taken that
13 central reserve and said -- any of those, and
14 allocated any of those funds. Those decisions were
15 made either by the UBC, which we were the support
16 staff to, and it was a well-run process by us so
17 that that group of VPs could make intelligent
18 decisions.

19 If it didn't go through the UBC, then it was
20 the provost, the CFO, the president making
21 allocation decisions. No other VP could come to us
22 and make an allocation request and we would have
23 processed it. So the vice president for research
24 didn't get to come, you know, say, hey, Christy,
25 Tracy, you know, I need a million dollars for, you

1 know, grad stipends, put it on the list. We
2 wouldn't have accepted anything like that. It had
3 to come from those four areas.

4 We explained that to Bryan Cave very strongly,
5 and yet I feel like that report just attributes all
6 the decision making to either Bill Merck or
7 sometimes he talks about other university officials,
8 like he's inferring that we had any of that
9 authority. So that's number one.

10 I also feel like the report downplays the
11 importance of the allocation document and excuses,
12 if you will, senior executives who signed it to say
13 "I didn't really understand what that was." Because
14 that document was around long before I even was
15 working with budget to the level that, you know, I
16 did halfway through my career at UCF.

17 That document was created -- I think it was
18 originally created by my predecessor. She was
19 extremely detailed oriented and very well at
20 explaining things. It was signed by the provost and
21 the president every single year, and it was
22 explained to us as the authority for us to do the
23 budget transfers that we did.

24 MR. RUBOTTOM: Let me ask a follow-up about
25 that because I'm not sure I've seen all the

1 allocation documents.

2 Is it your testimony that all of those projects
3 that we've looked at, that have been talked about
4 within this \$85 million of transfers, that all of
5 those projects and purposes would have been on an
6 allocation document signed by a provost and a
7 president?

8 THE WITNESS: Not necessarily.

9 MR. RUBOTTOM: Okay. There were mid-year
10 commitments, but they would have checked off on
11 those commitments?

12 Would there be anything that Merck and the
13 president would do without the provosts being aware
14 of it in that timeframe?

15 THE WITNESS: Not to my knowledge, there
16 wouldn't have been.

17 Now, a decision -- the allocation document is
18 at a point in time. So that E&G commitments list
19 that we talked about, if -- you know, if it was on
20 -- if it was on that commitment list, which it only
21 got on there if we had approval from the provost who
22 usually worked with the president and the CFO to
23 decide what -- you know, to tell us what they
24 approved to go on that list. If at the end of --
25 you know, if at June 30th, it was -- it was

1 authorized to be allocated in the next fiscal year,
2 it went on that allocation document.

3 If, let's say, October 1st a decision was made
4 to allocate -- to make an allocation from central
5 reserve, let's just say for a project. Let's say
6 for a lab renovation for a million dollars, and then
7 that transfer occurred within that fiscal year, it
8 wouldn't make its way to the next year's allocation
9 document.

10 In fact, that's what I think happened with the
11 \$10 million on Colbourn Hall is it wasn't on the
12 next allocation document because it got approved and
13 transferred.

14 MR. RUBOTTOM: Let me go back though to 2014,
15 okay. The board decided to build a building and it
16 looked like the budget in that period was around 23
17 to 26 million. The board deferred a decision on
18 renovation, which the budget put up in front of them
19 in that 2014, in those options lists, I believe was
20 around seven or something like that.

21 I think there was a big -- a total renovation
22 budget of between 15 and 19 at that time, but there
23 was a commitment by the board to build the building
24 for 23 to 26. There was already 10 set aside for
25 renovation; 18 more was committed in that 2014

1 allocation document, and that 18 says renovation.
2 And to my knowledge, that one number is bigger than
3 any internal renovation budget. I've seen PECO
4 lists that show 19, but everything that we've looked
5 at here shows like 15 for renovation.

6 THE WITNESS: Right.

7 MR. RUBOTTOM: So in what sense was that 18
8 able to be categorized as renovation when the --
9 when the board was already committed to building a
10 23-plus million dollar building, and there was no
11 renovation in the works that would cost 18? How was
12 that characterized as renovation?

13 THE WITNESS: Well, I think it was just added
14 to the same line and the title wasn't changed or the
15 line description wasn't changed.

16 And also, from my memory, it never really
17 totally went away from a renovation project. It
18 became a combined renovation, because even when they
19 approved the new building, there was still work that
20 had to be done on the old building to keep it
21 eligible, if you will, or keep it up to a certain
22 standard so that it could be renovated as they
23 continued to discuss at what point it was going to
24 be or how it was going to be renovated or when it
25 was going to be renovated. It never dropped off as

1 a renovation until that -- much later when I guess
2 it was --

3 MR. RUBOTTOM: 2016.

4 THE WITNESS: -- when it was decided to
5 demolish it, right.

6 So from our perspective, this was like a
7 combined renovation, new building project. You can
8 see that as we started to create new schedules, we
9 started to separate it and tried to separate the
10 dollars associated with the two pieces.

11 MR. RUBOTTOM: But those were never separated
12 outside the allocation documents?

13 THE WITNESS: Right. They were not done at
14 that -- at that -- that happened, like right after
15 the board decided that, it got added to the list,
16 got transferred to the allocation document that way,
17 and got signed.

18 MR. RUBOTTOM: Do you think in Christy's files
19 there would be a commitment list where that division
20 first occurred or would that only be on your -- on
21 your budget, on your capital projects list or your
22 internal capital plan, do you know?

23 THE WITNESS: I think on the capital, because I
24 think on the E&G commitments list, it kind of went
25 on and then went off.

1 MR. RUBOTTOM: It went off when the money was
2 transferred?

3 THE WITNESS: Right, right. So I think that it
4 didn't necessarily maybe get separated on there.
5 Plus, you had pieces of the dollars on there. You
6 didn't have the whole project dollars like you did
7 on the capital projects list where you could
8 separate 23 and 15. You had some other incremental
9 number on that list.

10 MR. RUBOTTOM: You're accumulating funds for
11 whatever you were going to do later?

12 THE WITNESS: Yeah. So we -- we just didn't
13 separate it.

14 MR. RUBOTTOM: Well, I interrupted you. You
15 were talking about how serious those allocation
16 documents were.

17 THE WITNESS: Yeah. And you were saying -- so
18 again, the projects on those -- that project list,
19 some of the projects on that project list I never
20 even saw. They were funded from a unit who has
21 control over their E&G budget and their E&G carry
22 forward. And if they made a -- you know, if they
23 decided to fund a project, they would make those
24 journal entries, if you will.

25 So those wouldn't have come through central,

1 and they wouldn't have ended up on the allocation
2 document, and they wouldn't have ended up on -- they
3 would have been in the allocation document in the
4 overall dollars allocated to the -- if it was a
5 college, academic affairs. But it wouldn't have
6 been as a line item -- the line items on the
7 allocation document were like individual allocations
8 that Christy's office was planning to make. Either
9 new money came in and we knew where we needed to
10 allocate it, so it would be its own line item, or
11 decisions from central funds were on that list.

12 MR. RUBOTTOM: But this 46.5 that was not
13 Colbourn, those were all central reserve transfers
14 to construction; is that right?

15 THE WITNESS: No, no.

16 MR. RUBOTTOM: Those included some divisional
17 or departmental transfers?

18 THE WITNESS: Yes. So the surplus building was
19 divisionally funded.

20 MR. RUBOTTOM: Okay.

21 THE WITNESS: The district energy that's on
22 there was funded from a unit. The band building was
23 funded from a couple of units, I think.

24 MR. RUBOTTOM: So they've done that full
25 systemwide search for those transfers is your

1 understanding, and that's how they developed this
2 list?

3 THE WITNESS: Yeah. So the way we -- my office
4 helped develop that list. We just ran any transfer
5 to construction from the E&G fund, and so that
6 picked up whether -- any -- any transfer.

7 MR. RUBOTTOM: Okay. Thank you. So go on. I
8 didn't mean to interrupt you.

9 THE WITNESS: So I was just going to say, so
10 the ones that were unit-funded would not have shown
11 up on the allocation document. Ones that were
12 mid-year would not have shown up on the allocation
13 document.

14 But ones that did cross over a year were on the
15 allocation document and that allocation document was
16 our authority on an annual, you know, once-a-year
17 basis to allocate out all of the E&G funds. And it
18 also showed the central funds that stayed in
19 central.

20 And then the working document throughout the
21 year would have been the E&G commitments list for
22 central. And then anything that the units did with
23 their own funds, that was decentralized down to, you
24 know, their authority.

25 So at that point, you know -- so the allocation

1 document, it's just an important document. So for
2 people to say they didn't know it was E&G or they
3 didn't understand the importance of it, well, that's
4 -- I don't believe that because -- and I know I went
5 with Dr. Whittaker to Dr. Hitt's office not August,
6 2014, but the next two years. He asked me to join
7 him.

8 And I know I went over that document
9 extensively as to what it was. I created some
10 summaries so that it was easier to understand, and
11 so I could kind of tie it to the overall picture of
12 the university.

13 So I feel like that's understated, the
14 importance of that document.

15 I also feel like the report applies a double
16 standard like crazy, you know, and says things like
17 oh, they didn't understand what they were doing or
18 they didn't understand the laws and the rules and
19 the regulations, and they didn't know what they were
20 signing. Yet we were fired for not understanding
21 these rules, and it implies that we did it
22 intentionally, which is false. It implies we
23 concealed, which I think you can see there was no
24 concealing coming out of finance and accounting.
25 And it implies that we knowingly and deceptively did

1 things that's false.

2 Yet it takes the senior executives and just
3 excuses their knowledge or their, you know,
4 responsibility in, you know, what happened here. We
5 operated, you know, under the supervision and
6 direction of these highly experienced senior
7 leaders. So we wouldn't have even thought to
8 challenge, you know, the nature of Dr. Hitt's
9 experience, Dale Whittaker's experience. He wasn't
10 here very long, but he was the shining star and he
11 was the heir apparent in my mind from the get-go.
12 He was a very strong leader.

13 There was -- you asked at one point about him
14 coming up to speed. He was a very strong leader.
15 He was absorbing everything. He was engaged in the
16 whole university's strategic plan. He was, you
17 know, very respected by those of us who were
18 operating under his direction. And the same with
19 Mr. Merck.

20 And I feel like the report applies all this
21 culpability to the four that they decided they
22 wanted to fire, and yet no culpability to the ones
23 who have 20, 30, 40 years of higher ed experience,
24 were making the decisions, were supervising us. You
25 know, we had to report to them, and yet we lost our

1 jobs and our careers and our reputations over this,
2 and that's just wrong.

3 MR. RUBOTTOM: So when they say that the
4 elimination of these five or six people has
5 eliminated the problem, if the problem is lack of
6 understanding in the institution, that lack, in your
7 mind, still remains. Is that --

8 THE WITNESS: Right. They will implement
9 improvements. I'm not saying there were no mistakes
10 made or you know, a lack of knowledge that the
11 university clearly should have had.

12 But we didn't -- we didn't do anything wrong.
13 We didn't do anything intentional. We worked with,
14 you know, the skill set and the knowledge that we
15 had. We worked very, very hard. We were -- you
16 know, the group of people that got fired were some
17 of the hardest working people at this university and
18 really had huge amounts of improvement to this
19 university.

20 I mean, the facilities budget committee, the
21 university budget committee, all the work that
22 Christy and her team have done improved the quality
23 at this university very, very much, and most people
24 think that, I think. And now we've just been, you
25 know, defamed as being totally, you know, deceptive

1 and incompetent and -- so they'll learn from what
2 was wrong before and do better, but it wasn't wrong
3 because of us. And yet, you know, very severe
4 consequences were cast upon us.

5 That's all I can think of.

6 MR. GREENE: Let me ask you a couple of
7 questions.

8 You worked for UCF from 2007 until you were put
9 on administrative leave --

10 THE WITNESS: Yes.

11 MR. GREENE: -- in January of this year?

12 THE WITNESS: Yes. Actually, I resigned, and
13 they -- they gave me the option to resign or go on
14 administrative leave and go to a predetermination
15 hearing and basically fight the termination.

16 They told me if I resigned -- the misconduct
17 packet that they were waving in my face, they had
18 the regulation attached to it for misconduct and
19 everything. That if I resigned, that would not go
20 in my file.

21 And I said would I -- what would the press be
22 told? Would they be told I resigned?

23 And they said yes, it would be portrayed that
24 it would be said that I resigned.

25 And then three hours later, they said I was

1 terminated and it's been all over the papers that I
2 was terminated for misconduct.

3 MR. GREENE: Prior to being fired, were you
4 evaluated annually every year, your performance?

5 THE WITNESS: Yes.

6 MR. RUBOTTOM: And how were your evaluations?

7 THE WITNESS: Outstanding.

8 MR. GREENE: You came from the corporate world,
9 you said?

10 THE WITNESS: Yes.

11 MR. GREENE: So this was your first experience
12 in higher education?

13 THE WITNESS: Yes.

14 MR. GREENE: Were you trained as to the meaning
15 of or what the permissible uses of E&G carryforward
16 were?

17 THE WITNESS: No. We just learned on the job as
18 we went along.

19 MR. GREENE: Did anybody ever bring BOG
20 regulation 9.007 to your attention specifically or
21 is that something you found?

22 THE WITNESS: Nobody -- nobody brought it to my
23 attention or gave me any education about it. I know
24 it was -- it was circulated when they were making
25 some edits to it, along with some other BOG

1 regulations.

2 We were more concentrated on -- I know Burby
3 put that in his report, and he never even asked me
4 about those e-mails. And the e-mails -- the people
5 I sent that to for them to review were the bursar's
6 office and the people that did the student tuition
7 and fees. And the one that was materially changing
8 in all of those regulations was the tuition and fees
9 regulation, so that's where we were asking. You
10 know, I asked them if they had any comments or
11 concerns, and they said no. And so we sent it back
12 up through -- you know, no, F&A has no concerns.

13 MR. RUBOTTOM: Let me ask one question about
14 that, though, because one of the changes was that
15 the BOG specified that interest on E&G could only be
16 spent on E&G purposes.

17 That was a new addition, I believe. Is that
18 your recollection?

19 THE WITNESS: Yes. We had heard that was
20 happening.

21 MR. RUBOTTOM: Right. Was that something that
22 Mr. Merck was paying attention to? I mean, he was
23 the one collecting all these investment earnings and
24 interest, et cetera. Is that something that he took
25 note of and adjusted whatever plans for those funds

1 accordingly?

2 THE WITNESS: So I recall being told that E&G
3 interest earnings needed to retain the flavor of E&G
4 by Vanessa Fortier, and so we started accounting for
5 it that way. I don't remember when that was,
6 whether that was the first time when that regulation
7 came out that that happened. But we didn't use to
8 account for it that way, and we changed to that.
9 But I remember being informed of that by Vanessa.

10 And then the other big change which we knew
11 about, we had heard it was happening, was that we
12 were going to start in the operating budget
13 submission report including carryforward
14 expenditures, because in the past all you had to
15 submit was your current annual expenditures. No
16 carryforward expenditures were submitted as part of
17 the OB process, they call it.

18 So, that was -- you know, all the universities
19 were kind of talking about that because now there
20 was going to be this weird comparativeness because
21 it was -- you know, the numbers would go way up
22 because you spent carryforward on expenditures and
23 so that was part of that. Those were the things I
24 remember from those -- those edits.

25 MR. RUBOTTOM: But you understand that before

1 and after that, the board has never budgeted
2 carryforward, and that's an --

3 THE WITNESS: Yes.

4 MR. RUBOTTOM: -- administrative kind of loose
5 set of money, that if they save it, then they get to
6 spend it without the board's authorization.

7 THE WITNESS: Yes. And my predecessor taught
8 us that we -- we didn't put forward to our board
9 carryforward for approval because they had already
10 approved the spending of that money.

11 So, you know, if in one year you had \$5 million
12 and it got approved and then you only spent four,
13 that \$1 million left over was already approved. So
14 the next year, we had our board approve the new
15 budget, which was another \$5 million dollars, not
16 six.

17 And her explanation -- and that five, that was
18 a control total for what gets submitted up to the
19 board of governors, which was that \$5 million. So
20 we always had our board approval tied to the control
21 total that we send up to the board of governors, and
22 that didn't include carryforward.

23 So, you know, since this investigation, Christy
24 actually went out and was asking all the
25 universities, like well, what do you present to your

1 board for approval? Do you ask them to approve
2 carryforward? And she got all kinds of -- you know,
3 a hodgepodge of some do, some don't. We never did,
4 and we really followed my predecessor's package in
5 how -- you know, in what we had the board approve.

6 MR. RUBOTTOM: I'm sorry. I don't know if we
7 asked about capital outlay budgets. Did you work
8 with those at all?

9 THE WITNESS: Not at all.

10 MR. RUBOTTOM: Okay.

11 MR. GREENE: Did you try to follow the laws,
12 rules, and regulations that guided your conduct
13 while you were employed at UCF?

14 THE WITNESS: Yes, absolutely.

15 MR. GREENE: Did you at any time, though,
16 purposely violate any law or rule or regulation that
17 you knew about?

18 THE WITNESS: No.

19 MR. GREENE: Did you know there was a rule or
20 statute or regulation that barred the use of E&G
21 carryforward on new buildings?

22 THE WITNESS: No.

23 MR. GREENE: If you had a concern about
24 anything that the university was doing, did you
25 bring it to the attention of your superiors?

1 THE WITNESS: Yes.

2 MR. GREENE: Was there ever a time when you
3 felt like your superiors were doing something wrong
4 that you had brought to their attention?

5 THE WITNESS: No.

6 MR. GREENE: With respect to the \$46 million of
7 other projects that were identified by UCF
8 post-audit, did you believe all those involved
9 permissible uses of E&G?

10 THE WITNESS: Yes.

11 MR. GREENE: Did anyone ever raise any
12 questions about those and say there might be an
13 audit comment or anything else?

14 THE WITNESS: No.

15 MR. GREENE: Now, when you brought the issue to
16 Mr. Merck's attention about the use of the funds for
17 TCH, were you satisfied when he told you that
18 there's an emergency and he thought the use could be
19 justified?

20 THE WITNESS: Yes.

21 MR. GREENE: And later on when there were
22 comments -- when Mr. Merck made a comment about UCF
23 possibly receiving an audit hit, was that something
24 that was concealed?

25 THE WITNESS: No. I heard it said multiple

1 times.

2 MR. GREENE: Was it widely disseminated
3 throughout UCF that this project is being funded by
4 E&G and that we might receive an audit comment for
5 it?

6 THE WITNESS: Yes.

7 MR. GREENE: Were you ever instructed to
8 conceal or hide that or any other information
9 concerning Trevor Colbourn Hall from anyone?

10 THE WITNESS: No.

11 MR. GREENE: You were asked where you might go
12 if you had questions. Didn't general counsel
13 participate in the meetings to the board of trustees
14 and some of the budget committee meetings and other
15 matters concerning the monies that UCF was spending?

16 THE WITNESS: Yes. So they were at every board
17 meeting, and I actually had Scott Cole added to the
18 university budget committee about one year after it
19 got its legs.

20 MR. GREENE: So as a result of his
21 participation in those meetings, Scott Cole and
22 other members of the general counsel had to know
23 that E&G carryforward was being used to fund capital
24 projects, didn't they?

25 THE WITNESS: Yes.

1 MR. GREENE: Did anyone from the general
2 counsel's office ever raise a question and say, hey,
3 this might be illegal, we need to look into it, or
4 raise any concerns whatsoever?

5 THE WITNESS: No, they did not.

6 MR. GREENE: Would you expect general counsel,
7 when they're advised of the facts that show that
8 something being done by the university might break a
9 rule, would you expect that it's general counsel's
10 job to know what that rule is and to bring it to the
11 attention of the employees of the university?

12 THE WITNESS: Yes.

13 MR. GREENE: Did they ever do that?

14 THE WITNESS: No.

15 MR. GREENE: You were asked about what Dale
16 Whittaker called himself. Is it true that he was
17 the chief budget officer for the university?

18 THE WITNESS: That's what I understand, yes.

19 MR. GREENE: That was the title given to him by
20 President Hitt, wasn't it?

21 THE WITNESS: That's what I understand.

22 MR. GREENE: And whether he actually had that
23 title or not, he acted in that capacity, didn't he?

24 THE WITNESS: Yes.

25 MR. GREENE: Is there anything about the

1 post-audit investigation that was done by UCF or
2 presentations UCF made to the board of trustees
3 after that investigation began that you think was
4 questionable?

5 THE WITNESS: So the presentation of the
6 13.8 million to the board of trustees you said,
7 right --

8 MR. GREENE: Yes.

9 THE WITNESS: -- or the board of governors?
10 Board of trustees.

11 So we questioned the 13.8 million. We
12 questioned -- I questioned not bringing to the board
13 of trustees the approval for the \$40 million in the
14 constellation fund and the \$20 million in the
15 deferred maintenance fund.

16 I sent e-mails to Kathy saying I feel like the
17 board of trustees needed to approve those, and --

18 MR. GREENE: Do you think --

19 THE WITNESS: -- she pushed back.

20 MR. GREENE: Go ahead.

21 THE WITNESS: I said she pushed back and was
22 going to get the president's office approval to do
23 that, and she just assured me that at the very
24 least, he would mention that those allocations had
25 been made.

1 MR. GREENE: Do you think the university was
2 less than forthcoming when it was reporting to the
3 -- I don't remember if it was the board of trustees
4 or the board of governors -- making a report with
5 respect to the \$46 million of other projects?

6 THE WITNESS: That's who was --

7 MR. GREENE: When Kathy Mitchell made a
8 presentation concerning -- I think she was
9 reacting -- it had to be the board of trustees
10 because she was reacting to Marcos Marchena's
11 questions concerning why are you just bringing this
12 to our attention, and she said, "We just found that
13 out." Do you recall that?

14 THE WITNESS: Yeah. She said we just found it
15 out. That was totally false.

16 So one of the things I've been hearing recently
17 is the question of when did administration, which to
18 me administration means the president and the
19 president's, you know, closest confidantes, when did
20 they know about this 46 million?

21 Because even, I think, our board of trustees is
22 acting like, oh, we knew about this 13.8 and now,
23 through further investigation, we've found this
24 additional money. And you know, they're attributing
25 a lot of that blame to my office, and my office

1 found it.

2 My office looked for it before the board of
3 governors even asked for the lookback period. We
4 immediately -- once we heard about that \$2 million
5 limit, which we didn't know about before, we went to
6 look because we knew we had renovations for more
7 than \$2 million. So we went to, you know, self-find
8 it.

9 And now the board of trustees, I heard some of
10 them speaking like, you had the opportunity back in
11 September to self-report it and you didn't do it.
12 And administration is acting like they didn't know
13 it. Well, they did.

14 And we, my office, you know, and in conjunction
15 with Lee and her office, did self-report. And we
16 brought it to general counsel to ask them, what
17 should be on this list? You know, what should we
18 reverse?

19 And in an abundance of caution -- that's the
20 terminology they kept using -- Marcus Marchena kept
21 saying, you know, we're going to just reverse
22 everything that might have an issue. So that was a
23 little bit concerning to me because it made it look
24 like this really big number, but I didn't feel like
25 I could challenge that because I felt like it would

1 look like I'm being aggressive on the issues and I
2 didn't want to look that way.

3 So I let them do that or -- you know, of course
4 we did it. And now this \$85 million number is out
5 there all over the place that, you know, that we've
6 done wrong. And throughout the whole four months,
7 they're still trying to figure out, you know, what
8 -- there was still a thought that there was a large
9 amount of overcorrection here, and there was still a
10 thought of we don't really know which ones are right
11 and which ones are wrong.

12 There was even conversation about
13 overcorrection on Trevor Colbourn Hall, because were
14 there parts of that cost that could have
15 legitimately been funded from the E&G? So --

16 MR. GREENE: So you brought the information to
17 the attention of the administration back in
18 September of 2018?

19 THE WITNESS: Yes.

20 MR. GREENE: And it was the administration's
21 decision not to report that; is that correct?

22 THE WITNESS: Yes, absolutely.

23 MR. GREENE: What about this parking of
24 \$60 million of E&G elsewhere after the investigation
25 by -- the Burby investigation began?

1 THE WITNESS: So the board of governors asked
2 for all the universities to have their board of
3 trustees approve a carryforward plan of the part of
4 carryforward that is considered committed. It's the
5 part that's not contractually restricted. It's not
6 encumbered. It's not part of your statutory 5
7 percent reserve. It's -- you know, it's the amount
8 of your carryforward that you have plans for, but no
9 sort of contractual commitment against or statutory
10 commitment against.

11 So UCF's carryforward, because of all of these,
12 you know, reimbursements back to carryforward, was a
13 huge number. And one of -- back to the confusion on
14 whether or not we had overcorrected, Kathy Mitchell
15 was trying to get clarity on which of those projects
16 were considered overcorrections and which weren't,
17 because we had to do this carryforward report as of
18 November 30th. And if there was overcorrection, we
19 wanted to reverse the overcorrection so that the
20 carryforward number wasn't this huge number,
21 falsely.

22 And so she didn't -- she didn't get that
23 clarity. All that carryforward came back in. The
24 number was really large. The university didn't want
25 the carryforward to be swept. So the vice

1 presidents, at Dale's -- with Dale's leadership,
2 started to try to figure out how -- how could they
3 reduce the carryforward number.

4 And first they all started -- and this happened
5 within about a ten-day period. And so they all
6 started trying to find ways to spend it. So, you
7 know, I told them, well, you can't just say, oh,
8 let's go to the cloud, you know, which is a big
9 ticket number, because if you haven't spent it, it's
10 still sitting in carryforward.

11 And so they decided to do -- originally they
12 decide to do \$25 million in financial aid and \$20
13 million in deferred maintenance to remove that from
14 the carryforward numbers so that there wasn't this
15 huge exposure for it to be swept from the
16 university.

17 Dale ended up, after that decision was made --
18 and in fact, all the deans were even informed of the
19 \$25 million. There was a phone call between Kathy,
20 Dale, Marcos, and the provost, Elizabeth Dooley, and
21 they decided to increase the amount of the
22 scholarship fund from 25 million to 40 million,
23 because they felt like what was being left in the
24 committed section was too big of a number.

25 At that point, it was estimated it was going to

1 be about 45 million, which was going to put UCF on
2 the high side of everybody's, you know, committed
3 section, if you will, of the carryforward.

4 And so they decided to -- the provost said to
5 me and all the deans, you know, they got some intel
6 that that would be too high of a number. And so
7 they raised the scholarship amount to 40 million.

8 MR. GREENE: Did anybody ever discuss why they
9 put the money in the scholarship fund?

10 THE WITNESS: Well, they thought that would be
11 a good public relations event or way to use the
12 funds. Clearly, they wanted to support the
13 students.

14 MR. GREENE: Is it unusual to fund scholarships
15 for multiple years?

16 THE WITNESS: Yes. We had not done that
17 before.

18 MR. GREENE: Did anybody make a comment about
19 the state won't ever come back and take this money
20 because they don't want to take money out of the
21 mouth -- the hands of the students or something to
22 that effect?

23 THE WITNESS: Yes.

24 MR. GREENE: Who said what and when?

25 THE WITNESS: I can't tell you for sure which

1 one of the VPs said it, but I was in the VP meeting.
2 I was there as a subject matter expert. And, you
3 know, Dale went around the room and had all the VPs
4 vote to do this \$25 million and the \$20 million for
5 deferred maintenance.

6 And so one of the VPs said, you know, they were
7 -- because I said, I mean, I wasn't -- I didn't even
8 know that -- I was concerned that just because we
9 did that doesn't mean that the board of governors or
10 the legislature wouldn't reverse that. And so
11 that's when they said that.

12 MR. GREENE: And then the 25 million increased
13 to 40 million after a phone call between Dale
14 Whittaker and Marcos Marchena?

15 THE WITNESS: Yes.

16 MR. GREENE: Let me switch gears to the meeting
17 with Scott Cole in September where he interrogated
18 you about Dale's knowledge of the use of E&G.

19 THE WITNESS: Yes, yes.

20 MR. RUBOTTOM: Did you feel intimidated as a
21 result of Scott Cole's questions from being
22 forthcoming about what Dale Whittaker knew?

23 THE WITNESS: Yes. I felt uncomfortable with
24 the pressure that I felt like he was putting on me
25 to cast Dale's knowledge in a certain way.

1 MR. GREENE: Was he trying to get you to say
2 that Dale knew less than he really knew?

3 THE WITNESS: Yes. In my opinion, he was.

4 MR. GREENE: Let me go through a few documents.

5 MR. RUBOTTOM: Let me ask a question about that
6 meeting because I've got about six or seven I
7 forgot.

8 MR. GREENE: Okay. Go ahead.

9 MR. RUBOTTOM: And I want to finish them, but I
10 don't want to interrupt your flow.

11 But on that meeting, does Scott Cole come and
12 go during that meeting or was he present throughout
13 the bulk of that meeting?

14 THE WITNESS: My memory, he was present
15 throughout the meeting.

16 MR. RUBOTTOM: Okay. Was the questioning about
17 Whittaker's knowledge, was that about a particular
18 incident, like the audit hit comment meeting, or was
19 that about your overall communications with him over
20 the four or five years?

21 THE WITNESS: My overall knowledge,
22 communication, you know, anything that -- that Dale
23 might know.

24 MR. RUBOTTOM: And then on the -- where you
25 heard the audit comment, I think you said Whittaker

1 was in the room?

2 THE WITNESS: Yes.

3 MR. RUBOTTOM: Was Hitt in the room?

4 THE WITNESS: Yes.

5 MR. RUBOTTOM: Was Lee in the room?

6 THE WITNESS: I don't recall for sure.

7 MR. RUBOTTOM: Could she have been in the room?

8 THE WITNESS: She could have been in the room.

9 MR. RUBOTTOM: Okay, because she has a similar
10 recollection, and I'm just trying to figure out if
11 we have two clearly different meetings or if it
12 could have been the same meeting.

13 THE WITNESS: It could have been the same.

14 MR. RUBOTTOM: Okay. Thank you. I'm sorry,
15 Chuck. I'll save the rest of them for later, but I
16 thought those were all connected.

17 MR. GREENE: That's fine. Jump in any time.

18 I'm going to go through a few documents with
19 you.

20 (Exhibit No. 1 was marked for identification.)

21 MR. GREENE: Just for the record so we have it
22 in there, is that the e-mail that Kathy Mitchell
23 sent you after this meeting with Scott?

24 THE WITNESS: Yes.

25 (Exhibit No. 2 was marked for identification.)

1 MR. GREENE: And among other things, she says
2 in here that Bill's decision was widely known among
3 university administration?

4 THE WITNESS: Yes.

5 MR. GREENE: Was the decision she was referring
6 to, could it have been anything other than the
7 decision to use E&G for the construction of Trevor
8 Colbourn Hall?

9 THE WITNESS: No.

10 (Exhibit No. 3 was marked for identification.)

11 MR. GREENE: What is Exhibit 3?

12 THE WITNESS: This is the e-mail that Kathy
13 sent to Dr. Whittaker, copied to Grant Heston and
14 Scott Cole on September 18, 2018, informing them
15 that, in addition to the \$38 million for Trevor
16 Colbourn Hall, we will reverse the funding for
17 46.5 million of funds inappropriately used for 12
18 additional projects, and the list of the projects
19 was attached.

20 And the list showed, you know, the total
21 reversal and then the cash replacements that were
22 necessary. Two of these, the numbers are listed at
23 the budget amount, but the actual amounts of cash
24 spent on them actually changed, which is why this is
25 14.4 million instead of the 13.8.

1 MR. GREENE: So you put that information
2 together that is attached sometime before the date
3 of this e-mail?

4 THE WITNESS: Yes.

5 MR. GREENE: And gave it to the administration?

6 THE WITNESS: Yes.

7 (Exhibit No. 4 was marked for identification.)

8 MR. GREENE: What is Exhibit 4?

9 THE WITNESS: This is an e-mail from Kathy
10 Mitchell to the auditor general saying that based on
11 a call, a CAFA call, which is -- CAFA is all the
12 CFOs of all the SUS schools, all the state
13 universities; that "it does appear that UCF
14 overcorrected when the E&G funds were reimbursed
15 last month. After the group's final decisions are
16 distributed and we get feedback from BOG, we may be
17 reversing" a part of the "46.5. But we won't know
18 how much, if any, until after we've submitted our
19 report to" the board of governors "and see the
20 guidance they provide."

21 So that was her talking with the auditor
22 general about that we think we've overcorrected, we
23 still don't really know, we're waiting for guidance.

24 MR. RUBOTTOM: Is that October? I'm sorry.

25 THE WITNESS: Yes, October 7th.

1 MR. GREENE: Now, you've been fired. When you
2 were fired, did they give you any reasons for firing
3 you as Dale Whittaker announced was done?

4 THE WITNESS: They said it was because of the
5 Bryan Cave report.

6 MR. GREENE: Did they tell you any reasons
7 other than that?

8 THE WITNESS: No.

9 MR. GREENE: Are there any reasons expressed in
10 the Bryan Cave report as to why you should be fired,
11 something you can tell other than the general
12 accusations that it makes?

13 THE WITNESS: No. And in fact, a lot of the --
14 I mean, anything that they say, they say the same
15 things with regard to others who weren't fired,
16 namely the president and the --

17 MR. GREENE: Now, one of the things the Bryan
18 Cave report criticizes you and the three other
19 innocent employees who were fired about is your
20 failure to advise Dale Whittaker and others about
21 the restrictions on the use of E&G carryforward.
22 Would you agree with that?

23 THE WITNESS: Yes, or tell anybody.

24 MR. GREENE: Now, the administration itself is
25 very confused about what E&G carryforward can be

1 used for, isn't it?

2 THE WITNESS: Yes.

3 (Exhibit No. 5 was marked for identification.)

4 MR. GREENE: And Exhibit 5 is what?

5 THE WITNESS: Exhibit 5 is Kathy Mitchell, the
6 interim CFO, asking Tracy or Christy and I and Lee
7 and her team to come up a list -- with a list of all
8 the questions that we wanted to present to the board
9 of governors with regard to what was an allowable
10 use of E&G.

11 MR. GREENE: So the administration didn't ask
12 you to answer those questions about the permissible
13 uses. They told you to ask the BOG; correct?

14 THE WITNESS: Right.

15 MR. GREENE: And did you ask the BOG?

16 THE WITNESS: Well, they told us to put
17 together a list, and Kathy was going to ask the BOG.

18 MR. RUBOTTOM: What's the date of that request?

19 THE WITNESS: October 25th.

20 (Exhibit No. 6 was marked for identification.)

21 MR. GREENE: And what's Exhibit 6?

22 THE WITNESS: So Exhibit 6 is Kathy sending --
23 let me back up a little bit.

24 We were trying to get all this clarification
25 because we were trying to do the two ten-year

1 lookback periods. Prior to that, there had been
2 this call with all the other CFOs and there was --
3 you know, the rules were different than what we were
4 hearing from the board of governors, that the school
5 system thought the rules were. And we clearly
6 didn't have a good, you know, knowledge of what all
7 the rules were. So we're trying to --

8 MR. GREENE: Let me stop you there. Sometime
9 after this began, you participated in a conference
10 call with other universities, and they were
11 similarly confused about the permissible uses of
12 E&G?

13 THE WITNESS: Yes.

14 MR. GREENE: All right. Please continue.

15 THE WITNESS: And there was inconsistency
16 amongst the universities, you know, as to what was
17 allowable and what was not allowable.

18 So they were -- we were trying -- you know, and
19 everybody had to do that certification. So we were
20 trying to do it, and we had all these questions
21 about, you know, is this allowed, is this allowed.

22 Like you mentioned earlier, if it's an existing
23 building, is this -- is this allowed? But if it's a
24 new building is the exact same, you know,
25 construction type activity allowed? So questions

1 like that.

2 So we put that list together.

3 And so Kathy Mitchell, on October 24th, sent an
4 e-mail to Scott Cole, the general counsel, and Janet
5 Owens who is the university relations vice president
6 to let them know, do any of you "have any questions
7 or concerns about my sending this list of questions
8 to the BOG for clarification? Mr. Rubottom has also
9 requested a copy of the questions we send to the
10 BOG, as have the investigators. I shared with Grant
11 and he said it looked okay to him."

12 So Scott Cole comes back and tells -- basically
13 tells her, hold off on sending the list of
14 questions. He said that he and Janet had had a
15 meeting with the General Counsels that morning, and
16 that they were going to be discussing with Vikki
17 Shirley, who is the BOG general counsel, I think,
18 how to best clarify these ambiguities.

19 MR. GREENE: And that date of that e-mail from
20 Kathy Mitchell is October 25, 2018?

21 THE WITNESS: Yeah.

22 (Exhibit No. 7 was marked for identification.)

23 MR. GREENE: And then a week later on
24 November 2nd, Kathy Mitchell sent an e-mail to Chris
25 Kinsley.

1 THE WITNESS: Yes.

2 MR. GREENE: That's Exhibit 7, right.

3 THE WITNESS: So Kathy never sent our list of
4 questions.

5 We moved forward with our understanding from
6 the CAFA call of what the rules were to do our
7 certification. The day before that -- actually, it
8 looks like the day of, the day the certification was
9 due, I think, the day of or the day before, Kathy
10 sent an e-mail to Chris Kinsley and Tim Jones
11 saying, you know, basically here's the criteria
12 we're using. Please confirm that this is okay.

13 So basically, I'll read it. "In an effort to
14 ensure UCF provides complete and accurate
15 information to the board of governors, I'm providing
16 the understanding with which we're certifying the
17 appropriateness of E&G funds utilized for capital
18 projects. Based on prior board guidance, we will
19 certify based on the following." And it lists five
20 rules.

21 And asks, "Please let us know early this
22 afternoon if our understanding is incorrect so that
23 we may have time to provide complete and accurate
24 information for the certification the board has
25 requested by the close of business today."

1 (Exhibit No. 8 was marked for identification.)

2 MR. GREENE: And what is Exhibit 8?

3 THE WITNESS: So Kathy didn't get a response to
4 this. We went ahead and filed the certification
5 saying we had no problems other than Trevor Colbourn
6 Hall.

7 So then that was November 2nd.

8 The next week was a board of governors meeting,
9 and Kathy went and she had a -- she confronted or
10 had a conversation with Chris Kinsley to say, you
11 know, I asked for this clarification. Are you going
12 to get back to me?

13 And he -- first he said to her, Nobody asked me
14 for any clarification on the rules or the guidance.

15 And she said, Well, yes, I did. I sent you
16 this e-mail on this date.

17 And he said, Well, I'm not going to answer that
18 e-mail.

19 So she was livid. She came back and told me
20 this, and then she wrote an e-mail summarizing. She
21 was -- she was, like I said, she was livid. She
22 came back and wrote an e-mail to Joey Burby, as well
23 as the Pricewaterhouse person, and she included
24 Julie Leftheris from the board of governors. And
25 basically says "I had a conversation with Chris

1 Kinsley. I've copied Julie ... since she was
2 standing" there "at the time. I know Julie hasn't
3 been in the weeds with us on all of the capital
4 project funding questions, but since she was there,
5 she may have heard some of this differently."

6 This is Kathy saying this to Joey Burby.

7 "I asked Chris if the BOG was going to give the
8 university some written guidance on the use of E&G
9 funds for capital projects. Chris first said that
10 no one had asked for guidance, but I countered that
11 I had indeed sent an e-mail directly to him and to
12 Tim Jones on 11/2 asking precisely for that
13 guidance. He said that he wasn't going to respond
14 to that e-mail. To which I asked if he could
15 understand the position that puts us in? He said he
16 understood. I told him that in the absence of
17 anything definitive from the BOG, the SUS Council of
18 Counsels and the CAFA group, the CFOs, had agreed
19 upon a common set of guidelines, and that UCF had
20 certified as to the use of E&G funds on capital
21 projects using those guidelines."

22 This is her telling Joey Burby.

23 "The time pressure for us now is that BOG has
24 asked all universities to come up with a plan for
25 their carryforward balances, present the plans for

1 approval by the local BOTs, then present the plans
2 for BOG approval by January 4th ... So backing into
3 that timeline, we've picked 11/30 'as of' date as
4 the latest we can --" you know, basically come up
5 with our carryforward number.

6 "Which means that before 11/30, we need to make
7 any reversals to the E&G corrections that were made,
8 including about \$10 million of the \$38 million for
9 Trevor Colbourn Hall, plus all of the \$13.8 million
10 on the other buildings. Chris definitely doesn't
11 want us to reverse anything related to Trevor
12 Colbourn Hall before the AG's report comes out and
13 would prefer that we wait until after the first of
14 the year. But BOG has tied our hands by requiring
15 us" to "send in a report on our planned use of
16 carryforward funds and telling us we'll have to send
17 in another report next year about the actual use of
18 those funds." We have to have our carryforward
19 balances straightened out -- "We have to have our
20 E&G carryforward balances straightened out by 11/30
21 to accomplish both of those things, but we have no
22 control over when the AG report will be released."

23 MR. GREENE: So just a couple -- go ahead.

24 THE WITNESS: Let me just --

25 MR. RUBOTTOM: I missed the beginning. Did

1 Burby solicit this information from Mitchell or did
2 she volunteer it?

3 THE WITNESS: She volunteered it to him.

4 MR. RUBOTTOM: Do you know who may have
5 directed her to send that information in?

6 THE WITNESS: To Burby?

7 MR. RUBOTTOM: Yes.

8 THE WITNESS: No. I think she was trying to
9 let him know, like look, here's the rules we
10 followed.

11 Because at that time I think he was still going
12 to look at these other projects, and he wasn't
13 limited to Trevor Colbourn Hall at some point. So
14 she -- because what she kept telling us is that --
15 that, you know, Burby had a stricter interpretation
16 of what the rules were than what we were coming up
17 with.

18 And so I think this was her just trying to let
19 him know, hey, look, this is where we're at and this
20 is what we've done and we're not getting the
21 guidance we need.

22 MR. RUBOTTOM: Who is copied on that e-mail?

23 THE WITNESS: Burby, Price -- the
24 Pricewaterhouse guy and the Pricewaterhouse gal,
25 Michelle, and Robert and this Julie from the Florida

1 Board of Governors.

2 MR. RUBOTTOM: Robert Taft?

3 THE WITNESS: Nobody else. And then
4 she said --

5 MR. RUBOTTOM: Which Robert?

6 THE WITNESS: He's the Pricewaterhouse
7 investigator.

8 MR. RUBOTTOM: But Cole is not copied; Bev Seay
9 isn't copied?

10 THE WITNESS: No, but I'll tell you what
11 happened with Bev Seay after this.

12 So -- and down here, she goes on to say, "For
13 BOG," underlined, "to not allow UCF to reverse the
14 overcorrections we've made to our E&G funds puts UCF
15 at a disadvantage compared to our SUS peers. So
16 long story short, we're no better off than we were
17 before the BOG meeting. Can you hear the
18 frustration in my voice?"

19 And she says, "We plan to discuss the situation
20 and possible next steps with" the Board of Trustees
21 "Chairman Marcos Marchena, when he's on campus."

22 MR. GREENE: So just a couple of months before
23 you were fired, the university was still looking for
24 what were permissible issues of E&G carryforward,
25 and they fired you for not knowing that precisely

1 four years before?

2 THE WITNESS: Right.

3 And the other thing -- and so then after this,
4 Joey -- I don't have the e-mail because I can't find
5 it and I don't have access to my e-mails anymore,
6 but Joey Burby wrote back. Joey Burby had a call
7 with Chris Kinsley, got answers to all of these
8 items.

9 MR. RUBOTTOM: We've seen that.

10 THE WITNESS: Sent that to Kathy Mitchell. It
11 was basically a "no, you're wrong here; no, you're
12 wrong here; you're wrong on all of these," which
13 then made our certification maybe, like, was that
14 wrong possibly?

15 And so Joey sent that to Kathy. It basically
16 said I think on all but maybe one of them, you know,
17 you were wrong on this, you were wrong on this, you
18 were wrong on this.

19 And so then I -- Kathy also told me that Bev
20 Seay was involved in that, somehow got involved in
21 this, and told Kathy, Don't put the investigators in
22 the middle of us and the BOG again.

23 So Kathy then backed off of, you know, I guess,
24 talking with Joey Burby as much, and was kind of
25 told to.

1 (Exhibit No. 9 was marked for identification.)

2 MR. GREENE: And what is Exhibit 9? I think I
3 took it out of order.

4 THE WITNESS: Let's see. Oh, one more thing on
5 this. So then our certification is now up in the
6 air.

7 And so Kathy told me that -- so then Kathy and
8 Dale had a call with Chancellor Criser to basically
9 explain this situation and ask what he wanted them
10 to do about the certification that we had filed,
11 maybe based on the wrong set of rules.

12 And he said, oh, don't worry about it. Those
13 aren't the kind of projects that we're looking for.

14 So we never recertified or anything.

15 This e-mail is just an e-mail from -- that Bill
16 Merck's old secretary found and shared with Kathy
17 Mitchell and Misty Shepherd, who ultimately shared
18 it with me, I guess. That's where Tim Jones, Chris
19 Kinsley and Mike McKee, who is the CFO for the
20 University of Florida, were talking about a meeting
21 that -- I think probably a CAFA meeting, because
22 it's titled "Open Questions from CAFA."

23 MR. RUBOTTOM: What's the date of that?

24 THE WITNESS: The date is September 17, 2018,
25 is the last response from Tim Jones. So it's in the

1 September '18 timeframe. And apparently Chris sat
2 in for Tim.

3 Mike says "Tim, Chris did a yeoman's job
4 filling in for you." One of the things -- this is
5 -- here's a couple of items still pending. One of
6 them is a discussion about E&G for renovations, the
7 \$2 million threshold. Mike McKee says, "Chris was
8 going to send the statutory authorization and what
9 kind of work can be done. I think we felt good
10 about where we are at this time in terms of guidance
11 on what is allowed, although the UCF deal may blow
12 that up."

13 Then Chris -- let's see. "I think that was it.
14 Maybe Chris could confirm if I got everything?"

15 Chris then writes, "Good job," Mike -- Mike,
16 "on the summary." And down here he just says
17 researching, and will get back to you with feedback
18 on the E&G for renovation discussion.

19 Chris says what you said about -- Chris
20 Kinsley. "What you said about using E&G for
21 renovations is right; each CAFA member thinks they
22 are following the rules. However, when I talk to
23 folks one-on-one, they interpret the rules
24 differently, which is concerning. We're going to
25 talk about this more as well I am sure."

1 MR. GREENE: Just a couple more questions.

2 Did you make the decision to use E&G
3 carryforward for any project at UCF, ever?

4 THE WITNESS: No.

5 MR. GREENE: Were those decisions made by
6 people who were senior to you both in age and levels
7 of experience?

8 THE WITNESS: Yes.

9 MR. GREENE: Did you trust and respect the
10 people who made the decisions?

11 THE WITNESS: Yes.

12 MR. GREENE: Was the decision to use E&G
13 carryforward for Trevor Colbourn Hall, was that
14 hidden from anyone within the administration?

15 THE WITNESS: No.

16 MR. GREENE: Was it known by Bill Merck,
17 President Hitt, Provosts Waldrop, Chase, and
18 Whittaker --

19 THE WITNESS: Yes.

20 MR. GREENE: -- and Scott Cole?

21 THE WITNESS: Yes.

22 MR. GREENE: Was it widely known amongst staff
23 and faculty members?

24 THE WITNESS: It was known by staff. I don't
25 know about faculty.

1 MR. GREENE: Was it known by Marcus Marchena?

2 THE WITNESS: Yes.

3 MR. GREENE: Did everyone in the budget and
4 finance department know about it?

5 THE WITNESS: Yes.

6 MR. GREENE: Did other departments, including
7 the office --

8 THE WITNESS: Well, let me -- I mean, not
9 everybody in finance and accounting. There's like a
10 140 people there, and so they wouldn't all know.

11 MR. GREENE: Did many people --

12 THE WITNESS: The poor people in the Pcard
13 department don't know.

14 MR. GREENE: Did many people within the
15 department know?

16 THE WITNESS: Yes. All of the relevant people
17 in budget and --

18 MR. GREENE: Was it ever hidden from anybody
19 within that department or any other department?

20 THE WITNESS: No, no.

21 MR. GREENE: Was it concealed -- the decision
22 to use E&G funds, did you conceal it from anyone?

23 THE WITNESS: No.

24 MR. GREENE: Do you know if anybody intended to
25 conceal it from anyone?

1 THE WITNESS: No.

2 MR. GREENE: Did anybody ever tell you to
3 conceal it from anyone?

4 THE WITNESS: No.

5 MR. GREENE: If you thought it was illegal,
6 would you have participated in the use of E&G funds?

7 THE WITNESS: No.

8 MR. GREENE: That's all I have.

9 (Discussion off the record.)

10 MR. RUBOTTOM: Did you ever discuss with
11 Dr. Whittaker plans to construct buildings with
12 donor funds or auxiliary funds?

13 THE WITNESS: Yes.

14 MR. RUBOTTOM: Okay.

15 THE WITNESS: Yes.

16 MR. RUBOTTOM: You described earlier your
17 explanation of the allocation document and some of
18 this other information to Dr. Whittaker.

19 Would that August, 2014, allocation document
20 that he signed on August 8th, would that have been
21 the first time that you had the opportunity to have
22 that kind of extensive discussion with him about the
23 carryforward commitments and the allocation document
24 and --

25 THE WITNESS: Well, I know -- I think that he

1 would have already seen the E&G commitments list by
2 then.

3 MR. RUBOTTOM: In what context would he have
4 seen that in his first eight or ten days on the job?

5 THE WITNESS: Well, we probably had a budget
6 chat meeting.

7 MR. RUBOTTOM: So he probably participated in a
8 budget chat meeting before?

9 THE WITNESS: Yeah. And one of --

10 MR. RUBOTTOM: Thank you.

11 THE WITNESS: One of the e-mails that I found
12 in asking to produce all these e-mails, but I didn't
13 really do anything with it because I didn't have the
14 file it was referring to. But on those E&G
15 commitments list, you might have seen those little
16 ones and two on the left-hand side? Well, that was
17 a Christy legend where -- I'm not going to get this
18 right, but like one meant it had been allocated out
19 and two meant it would be a -- it hadn't been
20 allocated out. So those little ones and twos meant
21 something as to the timing of whether the allocation
22 had occurred or not.

23 So I have an e-mail where Dale is asking me
24 about what do those little ones and twos mean. And
25 I looked around the date of that e-mail for an E&G

1 commitments list that maybe was dated the same, and
2 I couldn't find one.

3 So I can't --

4 MR. RUBOTTOM: Do you know what the date of
5 that e-mail was?

6 THE WITNESS: Well, it was in August of '14.

7 MR. RUBOTTOM: But you don't know if it was
8 before the August date, signing of the allocation
9 document?

10 THE WITNESS: I think it was right around that
11 time, and I can't remember whether it was August --
12 before that time, that day, the day before, the day
13 after, but it was right around then.

14 MR. RUBOTTOM: The August 11th list of
15 questions that we looked at earlier, is it likely
16 that those questions arose out of those -- your
17 discussion about the allocation document and any
18 budget chats he had been to in those first couple of
19 weeks?

20 THE WITNESS: Well, and he was also going to
21 see Dr. Hitt with that allocation document so, you
22 know, you didn't go see --

23 MR. RUBOTTOM: So that was in context with him
24 taking the allocation document to Dr. Hitt?

25 THE WITNESS: That's my assumption.

1 MR. RUBOTTOM: Okay. I didn't check the dates.

2 THE WITNESS: So, you know, but what that
3 e-mail told me, and because I couldn't tie it to
4 what exactly he was referring to, I didn't feel like
5 it was good evi -- that I was -- I didn't share that
6 e-mail with Joey Burby because I couldn't really tie
7 it down.

8 But what that tells me is he was looking in
9 detail at the E&G commitments list at that point,
10 and it was around the time of signing the allocation
11 document. So he was, you know, in an -- he was
12 making the effort to come up to speed on what that
13 was.

14 And then, like I said, I would have spent at
15 least an hour with him explaining it, and then he
16 would have been going -- he would have been
17 preparing himself to go ask Dr. Hitt to sign this.

18 MR. RUBOTTOM: Okay.

19 MS. MITZ: You started to say something about
20 -- it sounded like you were going to say you don't
21 go to Hitt --

22 THE WITNESS: You don't go to Dr. Hitt without
23 being prepared to answer questions. That's my
24 understanding. That's my understanding.

25 MR. RUBOTTOM: Do you recall when -- the

1 timeframe when Dr. Whittaker went to talk to
2 Dr. Hitt, about January 20th of 2015, where they
3 made the decision to do the combined project and
4 raise the Trevor Colbourn/Colbourn renovation up to
5 \$38 million?

6 Do you recall the fact that he had that meeting
7 with Dr. Hitt? Were you involved before that at
8 all?

9 THE WITNESS: Yes. There was a budget chat
10 meeting one week before that, and there's a bunch of
11 attachments to that -- you know, Christy sent me an
12 e-mail that said here's the documents for tomorrow's
13 budget chat meeting.

14 It had a capital projects list. It showed the
15 10 million shortage, if what he took to Dr. Hitt got
16 approved, and it showed other projects. It showed
17 all of the funding sources, whether it was
18 auxiliary, interest earnings or E&G. That was one
19 of the documents.

20 The E&G commitments list was one of them.
21 Where the central reserve sat and would sit over the
22 next four years so that you could make decisions on
23 if we took money from the central reserve, is there
24 enough money there to use.

25 And then there was another document for some

1 central auxiliary resources that were accumulated to
2 help with some of these facility projects.

3 So those four documents Christy prepared and
4 had -- we had ready for the budget chat meeting the
5 next day.

6 MR. RUBOTTOM: We've discussed those with
7 another witness.

8 What I'm trying -- and you weren't directly
9 reporting to him at that time. But you didn't
10 prepare him for that meeting with Dr. Hitt; is that
11 correct?

12 THE WITNESS: Well, I would think that --

13 MR. RUBOTTOM: Other than the activities in
14 that budget chat meeting.

15 THE WITNESS: Right. And the budget chat
16 meeting should have talked about the funding before
17 he went to Dr. Hitt to say, let's go the additional
18 10 million. We would have talked about how are we
19 -- can we do that financially?

20 MR. RUBOTTOM: And it would be your expectation
21 that he would have taken all that knowledge, maybe
22 those documents into that meeting with Dr. Hitt.
23 And would that be the time that you consider that
24 last 10 million was committed, when he came out and
25 said -- told Merck it said yes?

1 THE WITNESS: Yes. So my -- once he got Dr.
2 Hitt's approval to move forward with this change in
3 the plan, if you will, and then Bill forwarding that
4 back to us, referencing back to our conversation a
5 week before about where that was going to come from,
6 then that would have been our -- the closing the
7 loop, if you will, to add \$10 million to the
8 commitments list.

9 MR. RUBOTTOM: Okay. When we talked about the
10 UBC, you said something that confused me a little
11 bit.

12 Would you consider Dr. Whittaker to have been
13 the chair of that as provost or would you consider
14 Dr. Whittaker and Dr. Merck as cochairing that
15 university budget committee?

16 THE WITNESS: They were cochairs.

17 MR. RUBOTTOM: Okay. I want to ask you about
18 something and it's because I'm curious and I'm not
19 asking if somebody did something.

20 I just -- I noticed that the capital
21 improvement plan that was put in front of the board
22 in July included Trevor Colbourn Hall on the BOB-2
23 list.

24 THE WITNESS: Which July?

25 MR. RUBOTTOM: Last July, '18.

1 THE WITNESS: Okay.

2 MR. RUBOTTOM: This is after the auditors were
3 asking questions and before the exit conference when
4 the administration found out about the issue, okay.

5 Trevor Colbourn is back on the BOB-2 list for
6 this last year's submission, and where, in the -- I
7 still don't understand why it was on the BOB-2 list
8 three times. The legislature approved the building
9 three times with non-appropriated funds, but it's on
10 the BOB-2 list again.

11 And this time the only difference I can tell
12 from the previous submission is that the source of
13 funds, it doesn't say E&G anymore. It says CFAUX.

14 Are you familiar with that BOB-2 notation?

15 THE WITNESS: No. And I didn't even know what
16 the BOB-2 was until this investigation. So, you
17 know, I don't know why -- the CF clearly means
18 carryforward; the AUX clearly means auxiliary, so.

19 MR. RUBOTTOM: Does that mean to you
20 carryforward auxiliary funds or carryforward E&G and
21 auxiliary funds?

22 THE WITNESS: Carryforward E&G and auxiliary is
23 what that would mean to me.

24 MR. RUBOTTOM: Okay. And you don't have any
25 idea who would have put that on the BOB-2?

1 THE WITNESS: No.

2 MR. RUBOTTOM: Okay. It gave me the sense that
3 maybe Bill Merck was beginning a refunding plan,
4 knowing that the audit was going to come out and
5 discuss this.

6 Was there any discussion like that --

7 THE WITNESS: No.

8 MR. RUBOTTOM: -- in June or July or August?

9 THE WITNESS: Nope, not at all. There was no
10 discussion of changing the funding source.

11 MR. RUBOTTOM: Does that surprise you that they
12 put the building back on the BOB-2 list when it was
13 going to be completed before that list was even
14 submitted to the BOG?

15 THE WITNESS: I don't know because I don't even
16 really understand what the -- I mean, what I've
17 heard recently is that BOB-2 list asks for PO&M for
18 the building. I don't know if that's accurate or
19 not.

20 MR. RUBOTTOM: Yes. We can talk about it
21 later.

22 THE WITNESS: So I don't know.

23 MR. RUBOTTOM: You wouldn't have anything to do
24 with the Trevor Colbourn Hall building program
25 document that was published in '17 -- in February or

1 March of '17, would you?

2 THE WITNESS: No. I didn't see it until this
3 investigation.

4 MR. RUBOTTOM: When you saw that funding
5 appendix that says PECO zero, CITF zero, something
6 else zero, university, 38 million, when you see
7 university funding, does that mean anything
8 particularly to you?

9 THE WITNESS: To me that could mean different
10 sources, so I would -- I would use university to be
11 -- it could be -- it could be anything. It could be
12 auxiliary, it could be interest, auxiliary interest
13 earnings.

14 MR. RUBOTTOM: Would that be comparable to the
15 use of internal on that -- on that document we
16 looked at?

17 THE WITNESS: Yes, yes.

18 MR. RUBOTTOM: Which just means it's not coming
19 from outside?

20 THE WITNESS: Right.

21 MR. RUBOTTOM: But it could mean donor?

22 THE WITNESS: I don't think it would mean
23 donor, no, no.

24 MR. RUBOTTOM: Okay.

25 THE WITNESS: No, no. Donor I think would be

1 considered external.

2 MR. RUBOTTOM: Oh, on the e-mails that discuss
3 E&G, who would David Noel -- would he be asking that
4 question to the provost's office, would you think,
5 or just directly to Ronnie?

6 THE WITNESS: I think it went to Lynn.

7 MR. RUBOTTOM: Was that the one that went to
8 Lynn?

9 THE WITNESS: That was the one that I think
10 went to Lynn.

11 MR. RUBOTTOM: Oh, I'm sorry. That's right.

12 Would that have been a request to the provost's
13 office that Lynn processed?

14 THE WITNESS: No. It was just a question to
15 Lynn as the provost office budget person back then,
16 because they would have used -- sounded like they
17 were going to use their own money.

18 So the College of Medicine has their own -- you
19 know, it's a little different because it has its own
20 budget entity.

21 MR. RUBOTTOM: All right. But they have E&G?

22 THE WITNESS: And they have E&G. Yes, they
23 have their own E&G budget.

24 MR. RUBOTTOM: Would you have expected Lynn to
25 communicate that exchange to the provost, that that

1 question had been asked and that she'd gotten that
2 answer from the audit folks?

3 THE WITNESS: I don't know for sure whether she
4 would have; maybe more to say they want to use
5 \$3 million to set up an endowment fund. I'm not
6 sure.

7 MR. RUBOTTOM: And then your e-mail to Ronnie
8 then, would she have been asking on behalf of the
9 provost or as a recipient of the provost office
10 or --

11 THE WITNESS: Well, that was Tina's response to
12 Ronnie.

13 MR. RUBOTTOM: Oh, that was Tina. You
14 responded to --

15 THE WITNESS: I was just cc'd.

16 MR. RUBOTTOM: -- Lynn?

17 THE WITNESS: So I responded to David Noel.

18 MR. RUBOTTOM: So Tina's response to Ronnie.
19 I'm sorry for confusing that.

20 THE WITNESS: That's okay.

21 MR. RUBOTTOM: Would that have been a provost
22 office pass-through question to your mind? How
23 would you process that?

24 I know you don't remember it, but --

25 THE WITNESS: So I don't know what the

1 underlying question there was between -- you know, I
2 don't know. I don't know what prompted Tina to send
3 that answer to Ronnie.

4 MR. RUBOTTOM: But you wouldn't have any
5 expectation either way of whether she would have
6 shared that answer with -- with the provost?

7 THE WITNESS: It probably depends what the
8 underlying question was, whether that was a provost
9 level conversation or just something --

10 MR. RUBOTTOM: Okay. Forgive me for not going
11 back and doing those before.

12 THE WITNESS: That's okay.

13 MR. RUBOTTOM: Carine, do you have anything
14 else?

15 MS. MITZ: No.

16 MR. RUBOTTOM: Do you have anything else to
17 close with?

18 MS. MITZ: Well, the only thing we request,
19 Ms. Clark, and we've requested this from everybody,
20 is that you agree to not discuss the deposition with
21 anybody, the questions that we've asked and the
22 answers that you provided. Can you agree to that?

23 THE WITNESS: Yes.

24 MS. MITZ: Thank you.

25 MR. RUBOTTOM: We would appreciate it if she

1 would waive review just because of our timeframe.
2 She has every opportunity to correct anything that
3 shows up in our record, and we would solicit that,
4 but I know the reporter needs an answer to that
5 question.

6 MR. GREENE: Would you agree that I would have
7 a lot more cross-examination, when I haven't had a
8 full and fair opportunity to complete the record and
9 we're going to agree to complete this without
10 reading for purposes of expediting the
11 investigation.

12 MR. RUBOTTOM: I would agree.

13 THE REPORTER: Can I confirm that you have
14 requested today's transcripts to be prepared on an
15 expedited basis?

16 MR. RUBOTTOM: Yes.

17 (The deposition was concluded at 6:03 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 TRACY CLARK personally
appeared before me on February 15, 2019 and was duly
sworn.

WITNESS my hand and official seal this 15th 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 TRACY CLARK; that the review of the transcript was requested; and that the foregoing Pages, 4 through 168, 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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