

JOHN C. HITT

[REDACTED]
Oregon, WI 53575

R. Joseph Burby, IV, Esquire
Bryan Cave Leighton Paisner, LLP
One Atlantic Center, 14th Floor
1201 W. Peachtree St., N.W.
Atlanta, GA 30309-3471

Re: Trevor Colbourn Hall Investigation

Dear Mr. Burby:

I am writing to follow up our interview on October 25, 2018. This letter addresses some of the issues raised during the interview as well as thoughts that I had afterwards when I continued to deliberate about the matters we discussed. My intent is to make sure there is a complete and accurate record of my position concerning the matter which is the subject of your investigation, and I also wanted to comment on the process.

Frankly, I was unprepared for an interview that was, from my perception, unexpectedly adversarial. I probably should have reviewed documents in advance of the interview and/or had counsel with me to make sure I was prepared and that the process was otherwise fair. In all candor, I think I was led to say some things that were not accurate and I want to correct them here. Since the interview, I have reacquainted myself with facts that occurred years ago. I now provide this statement to make sure my position is not misconstrued in some way.

There are several overriding points that need to be made: First, the Colbourn Hall situation presented a real emergency because we were facing a catastrophic situation which required immediate action. Second, the action we took was, as far as we knew, legal and within the scope of my authority as President of UCF. Third, E&G carry forward funds were sometimes used for capital projects and there was no clear guidance from the Board of Governors concerning the use of such funds. Fourth, we did not conceal any facts associated with the Trevor Colbourn Hall project and it was reported in the same manner as we did other capital projects.

Fifth, moving forward with the Trevor Colbourn Hall project saved UCF and the State millions of dollars and was the only financially responsible route to travel. Sixth, and most importantly from my perspective, I and everyone that worked with and for me, always acted with the best interests of UCF being their objective and no one –no one– intentionally did anything wrong or engaged in actions that were designed for their personal benefit.

First, the old Colbourn Hall, which was constructed in 1974, was a very old building indeed. Beginning in the early 2000's, the building became the subject of increasing complaints by faculty and staff. It was suspected that because of continuing moisture intrusion there was a severe ongoing mold problem in the building and there were several complaints of respiratory ailments.

In 2013 and 2014, we received reports from independent professional engineers which revealed that the problems were far worse than we had thought. Not only was there a serious mold issue, the structure of the building was deteriorating and, it was reported to me, would soon be so unsafe that it would be uninhabitable.

This presented a real problem because we had the building on the list of projects for which we had requested specific PECO funding for years, but no funding was forthcoming. We were also faced with rapidly rising construction costs, while the useful life of the building was near its end. Moreover, it was my obligation to look out for the health and safety of UCF students and personnel who used the building. The condition of the building posed a real threat to their health and safety; the health and safety of those who trusted me with their care was my primary and greatest concern. I was also concerned with the risk of damage to the reputation of UCF which had clear proof that the people who used Colbourn Hall could be injured if nothing was done. Finally, UCF was also exposed to possible legal action because it could be sued if someone was injured or caused to be sick by the conditions of which we now had positive proof. This was a real problem that needed to be solved.

Bill Merck, Dale Whitaker, and those who worked under them set out to find a solution to the problem. The solution was found in the availability of E&G carry forward funds to finance the construction. Bill Merck told me that we might receive a comment from auditors concerning the use of the E&G carry forward, if we

decided to go that route. However, we still thought it was the appropriate course of action because (1) the Board of Governors had approved the use of E&G carry forward for smaller capital projects on other occasions, (2) we believed it was permissible to use E&G carry forward for renovation projects, which is how this project began, (3) we were facing a real emergency, and (4) we had no other viable choice. Thus, being cognizant of my obligations to act in the best interests of UCF, I told Merck and Lee Kernek that there was no other option and we should proceed with plans to replace the old building with a new one, using E&G carry forward to the extent we needed to do so.

Second, the old Colbourn Hall was virtually destroyed and had to be replaced. The use of E&G carry forward to replace buildings destroyed by catastrophe is specifically authorized, I have been advised, by Florida law. I refer you in that regard to Florida Statutes, Section 1013.74. Moreover, my obligation as President of UCF was to act as the "chief executive officer" of the University. As such, I was "responsible for the operation of the university, including efficient and effective budget and program administration" and was otherwise obligated to act in "the best interest of the university." Section 5.1, Seventh Amended and Restated Bylaws of UCF Board of Trustees. I felt I was acting in the best interests of UCF when I approved the Colbourn Hall project.

Third, E&G carry forward was sometimes used by UCF – and I believe other universities – for the construction of various capital projects. There was certainly no clear guidance from the Board of Governors. Indeed, Chris Kinsley of the BOG approved the use of E&G carry forward for some capital projects at UCF and, I am told, at other universities. Although I have recently heard discussions about a two million dollar limit on those projects, no one ever told me about such a limit during the time when we were considering the Trevor Colbourn Hall project.

Fourth, no one concealed the fact that E&G carry forward funds were used for the Trevor Colbourn Hall project. It was known and condoned by Bill Merck and Dale Whitaker. Moreover, many honest, competent, and reliable UCF employees who worked under the supervision of Merck and Whitaker were well aware of the project and the fact that E&G carry forward funds were being used for it; none of them ever expressed any concern about the propriety of using E&G carry forward to finance it, either to me or their direct superiors in the UCF hierarchy. Given the extensive involvement of Scott Cole, General Counsel for UCF, in similar matters, I

also believe he was aware we sometimes used E&G carry forward for capital projects and he did not express any concerns.

The use of E&G funds to finance the project was specifically noted in a number of reports, including the Trevor Colbourn Hall Building Program which is signed by myself, Provost Whitaker, and many others. Page 26 of that report expressly states that the Trevor Colbourn Hall project is "funded by E&G." Then Provost and now President Whitaker was well aware of the use of E&G carry forward to fund the project and his handwriting and signature are on multiple documents proving that fact.

The minutiae of our capital projects and funding for them was not reported to the Board of Trustees for any project. The reports for the Trevor Colbourn Hall project were just like the other project reports. Nothing in our reporting process was modified to conceal anything concerning Trevor Colbourn Hall.

We did not typically share all of our thoughts and concerns with the Trustees with respect to any project. It was my job at the University level, and the job of those who worked with me, to get down into the details. What the Trustees wanted was the big picture and summary of our projects and we honestly and accurately gave that to them. The Board of Trustees' role is to make policy and it was our job at the University level to get into the weeds and implement that policy. I did not think that anything we did conflicted with the policies of the Trustees and the overall mission that we were all trying to accomplish. And any Board member could ask for and had access to detailed data concerning any project if he or she wanted it.

We absolutely did not think there was any legal or ethical prohibition against the project or the use of the funds designated for it and we did not fail to report anything that, even now looking back, I think should have been reported. There was an imminent, real, and serious threat to the faculty, students, staff, parents, and others who visited Colbourn Hall and it needed to be fixed.

Tracy Clark made a presentation to all of the Trustees in March of 2017 that expressly went over the fact that E&G carry forward funds were used to construct a new building to replace Colbourn Hall. Neither Chairman Marchena nor any other Trustee objected or raised any concerns about whether such action was

appropriate. Neither did Provost Whitaker who was involved with the project from the very outset. No one at that time considered the use of carry forward funds to be a significant issue.

Fifth, if we had delayed construction of a new building to replace the old Colbourn Hall it would have cost UCF and the State, we estimated, more than \$10 million because of rapidly growing costs of construction. In addition, delaying construction past the time when we were told that the old building would be uninhabitable could have also caused us to be in a situation where we had no place to put 300 faculty members and we would have had to incur increased exorbitant costs to put them somewhere when the old building was no longer usable. These faculty members were involved in core mission activities that were vital to the university. This was not just a staff lounge but was space that the university needed to survive and fulfil its mission.

In addition to the moral dilemma we would face if we had to make the choice of leaving people in an unsafe building or moving them out, we also feared the financial ramifications that would be suffered if someone were injured from a building that we now knew was unsafe. There is the reputational risk I previously noted as well as the fact that there are undoubtedly lawyers who would love to take such a readily provable premises liability case. Regardless of the costs, I, certainly, was not going to compel staff and students who depended on me while I was President to risk their lives and limbs using an unsafe building.

Sixth, in making the decision to move forward with the Trevor Colbourn Hall project, I relied upon what was reported to me by others, including Bill Merck. Mr. Merck and his team were extremely valuable assets of UCF for many years and helped me to help UCF move forward with leaps and bounds. I believed then, and I believe now, that Mr. Merck and those who worked with him reported the relevant facts, findings, and overall situation to me honestly and competently. I have seen nothing that would make me question the honesty or competence of anyone who reported to me.

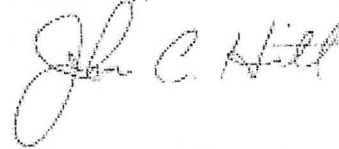
Neither I nor anyone else involved in the decision to move forward with Trevor Colbourn Hall or the implementation of that decision received any personal gain from the project. Rather, all of the people at UCF involved in the project acted in the best interests of the University within the boundaries of the law and our

authorities as we understood them. We were not making decisions to benefit ourselves. We were trying to do our jobs and fulfill our duties to all of those within the UCF family that relied upon us and trusted us.

It is therefore distressing for me to see the manner in which good people from UCF have been pilloried in the press and on UCF's own website. In my view, the focus should not be on finding people to blame but should instead try to identify the issues, paramount among which are the health and safety of our faculty, staff and students. But beyond these, there needs to be a clearer communication of policy and real alternatives to fund health and safety issues in university buildings.

UCF is presently in the national spotlight. I hope your final decision is not harmful to UCF as it attempts to continue its move forward.

Sincerely,

A handwritten signature in cursive script that reads "John C. Hitt". The signature is written in dark ink and is positioned above the printed name.

John C. Hitt, President Emeritus
University of Central Florida