

**In the Matter of:**

**UNIVERSITY OF CENTRAL FLORIDA'S USE OF EDUCATION AND GENERAL FUNDS**

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**PRISCILLA KERNEK**

*February 12, 2019*

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UNIVERSITY OF CENTRAL FLORIDA'S USE OF EDUCATION AND GENERAL FUNDS  
KERNEK, PRISCILLA

1 IN RE:

2 UNIVERSITY OF CENTRAL FLORIDA'S USE  
3 OF EDUCATION AND GENERAL FUNDS.

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5 DEPOSITION OF: PRISCILLA LEE KERNEK

6 DATE: TUESDAY, FEBRUARY 12, 2019

7 TIME: 9:39 A.M. - 1:48 P.M.

8 PLACE: CHARLES M. GREENE, P.A.  
9 55 EAST PINE STREET  
ORLANDO, FLORIDA 32801

10 STENOGRAPHICALLY  
11 REPORTED BY: JAZZMIN A. MUSRATI, RPR

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

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15 Charles Parker - Legal Assistant

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1 C O N T E N T S

2 TESTIMONY OF PRISCILLA LEE KERNEK

3	EXAMINATION	4
4	BY MS. MITZ AND MR. RUBOTTOM	
4	EXAMINATION	158
	BY MR. GREENE	
5	CERTIFICATE OF OATH	185
	CERTIFICATE OF REPORTER	186
6	ERRATA SHEET	187
	READ AND SIGN LETTER	188

7

8 E X H I B I T S

9 EXHIBIT PAGE

10	Exhibit 1.....	40
	University of Central Florida - Journal	
11	Entry Summary	
	Exhibit 2.....	57
12	Letter from Priscilla Kernek	
	Exhibit 3.....	77
13	Text Message Screenshot	
	Exhibit 4.....	94
14	University of Central Florida -	
	Five-Year Capital Improvement Plan	
15	Exhibit 5.....	102
	5/20/2015 Meeting Invite	
16	Exhibit 6.....	119
	11/7/2016 Email String From Lee Kernek	
17	To Judith De Jesus.	
	Subject: Please Print	
18	Exhibit 7.....	184
	UCF Facilities Projects Five-Year	
19	Internal Capital Plan	
	Exhibit 8.....	184
20	1/20/2015 Email String From Tracy Clark	
	To Christina Tant.	
21	Subject: FW: Colbourn Hall	

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1 P R O C E E D I N G S

2 \*\*\*\*\*

3 (Whereupon, the proceedings began at 9:39 a.m.)

4 THE COURT REPORTER: Raise your right hand,  
5 please.

6 Do you swear or affirm that the testimony you  
7 are about to give will be the truth, the whole truth  
8 and nothing but the truth?

9 THE WITNESS: Yes, I do.

10 Thereupon,

11 PRISCILLA LEE KERNEK,  
12 having been first duly sworn or affirmed, was examined  
13 and testified as follows:

14 EXAMINATION

15 BY MS. MITZ:

16 Q. Ms. Kernek, have you ever given a deposition  
17 before?

18 A. Not that I recall.

19 Q. Okay. Let me just go over some ground rules with  
20 you.

21 First and foremost, we want you to be honest.  
22 You just have sworn to tell the truth. We ask that you  
23 be truthful in your responses.

24 For Madam Court Reporter, we need to be audible.  
25 So if you're going to answer a yes or no, we ask that

1 you say yes or no. And not uh-huh, uh-uh, because the  
2 court reporter can't take that down.

3 If you don't know the answer to something, that's  
4 a perfectly reasonable answer. If you don't remember,  
5 that's fine. If you're going to tell us something that  
6 you know only because someone else told you, I ask that  
7 you let us know that.

8 If you're going to be estimating anything or  
9 approximating anything, please let us know you're doing  
10 that.

11 And I am guilty of this: I have a tendency to  
12 speak fast. And I know court reporters hate that. So  
13 if that's a tendency that you have, I ask that you try  
14 to be conscious and speak slowly. And answer the  
15 question that's being asked. I know there's a lot of  
16 information, probably a lot more than we are going to  
17 cover today. There may be things that you feel are  
18 important for us to know.

19 I just ask that you answer the question that's  
20 being asked. We will give you an opportunity at the end  
21 to tell us anything else that may be important to our  
22 investigation.

23 Your attorney will probably have an opportunity  
24 to ask some questions. And we can always talk at  
25 another time to get that additional information.

1 Do you have any questions?

2 A. No. I think we're ready to go.

3 Q. Okay. Let's get started then.

4 State your name and spell your last name for the  
5 record.

6 A. My name is Priscilla Lee Kernek, K-E-R-N-E-K.

7 Q. And are you currently employed?

8 A. I am not.

9 Q. Okay. Where was the last place of employment?

10 A. I worked for the University of Central Florida  
11 from 2007 to January of this year.

12 Q. All right. And while you were employed by UCF,  
13 were you interviewed by the firm Bryan Cave concerning  
14 the use of E&G carry-forward funds for the renovation of  
15 Colbourn Hall and/or the construction of Trevor Colbourn  
16 Hall?

17 A. I was.

18 Q. And were you put under oath prior to that  
19 interview?

20 A. No.

21 Q. Okay. Despite that, were your responses honest  
22 and truthful?

23 A. They were.

24 Q. Okay. What was the last position that you held  
25 at UCF?

1           A. I was the associate vice president responsible  
2 for facilities and safety.

3           **Q. And was that always the position that you held**  
4 **there?**

5           A. It was.

6           **Q. Okay. And what were your duties?**

7           A. I oversaw several departments. And I will try to  
8 list them off.

9           **Q. Okay.**

10          A. Facilities planning and construction. Facilities  
11 operations and maintenance; sustainability and energy  
12 management; landscape and natural resources;  
13 sustainability and initiatives. And it's not actually  
14 sustainability and energy management; we changed that.  
15 It's now actually utilities and energy services.  
16 Environmental health and safety; quality management and  
17 improvement; resource management.

18                   And for a time I also oversaw the UCF Police  
19 Department and emergency management.

20          **Q. Okay. And in that position, who did you report**  
21 **to?**

22          A. I reported to Bill Merck, who was the vice  
23 president for administration and finance and CFO.

24          **Q. And how would you describe the relationship you**  
25 **had with him? Did you guys work well together?**



1 A. I thought we worked well together.

2 **Q. Okay. Did you work closely together?**

3 A. We had a lot of autonomy. But, yes, I believe we  
4 worked closely together.

5 **Q. Are you close to the speakerphone, by any chance?**

6 A. Yes. Can you -- he's going to turn it, in case  
7 it will be better.

8 MR. GREENE: Is that better?

9 MR. RUBOTTOM: You were cutting off a little  
10 bit.

11 BY MS. MITZ:

12 **Q. Okay. So have you kept in contact with Mr. Merck**  
13 **since you left UCF?**

14 A. I have talked with him.

15 **Q. Okay. And have you guys talked about this**  
16 **investigation?**

17 A. We seldom talk about the investigation. I try to  
18 do a pulse to see how he's doing.

19 **Q. Okay. When you did talk about the investigation,**  
20 **what was it that you guys discussed?**

21 A. I think that we both feel we're in a wronged  
22 position. I know that I, personally, feel that I am in  
23 a wronged position. That I have been scapegoated  
24 because of others who are trying to save themselves.

25 **Q. We'll definitely get to that this morning.**

1           You didn't really talk about the facts so much as  
2 your feelings about what happened; is that correct?

3           A. That's correct.

4           Q. While you were employed at UCF were you -- did  
5 you work closely with either Tracy Clark or Christina  
6 Tant?

7           A. I didn't work closely with them or often with  
8 them. But, yes, I worked with them.

9           Q. Have you maintained contact with either of them  
10 since you left UCF?

11          A. Only to tell them I was sorry for them as well.  
12 Again, more about feelings.

13           We haven't really talked about matters related to  
14 the investigation.

15          Q. Okay. Under which president did you work?

16          A. I worked under John Hitt. And recently under  
17 Dale Whittaker.

18          Q. Okay. Can you describe the relationship that you  
19 had with President Hitt, if there was one.

20                 What I am trying to understand is if you worked  
21 closely with him; if you only saw him in meetings; or if  
22 you had a better relationship, where you just could pick  
23 up the phone and call him. Can you kind of just set  
24 that scene for me?

25          A. Yeah. I really didn't have a close relationship

1 with him. I would sometimes be taken to meetings where  
2 he was present, or I had to present something to him.  
3 Other than that, we didn't speak often.

4 **Q. Okay. Do you recall who his chief of staff was?**

5 A. Early on his chief of staff was Beth Barnes. And  
6 it later became Rick Schell; his actual name is John  
7 Schell; he goes by Rick.

8 **Q. And did you work closely with them?**

9 A. I don't think I can say that I worked closely  
10 with them. We actually had to send materials through  
11 them, when they would go to the board of trustees. So I  
12 worked with them on those types of materials.

13 **Q. And did either of those chiefs of staff that you  
14 just identified ever ask you questions about anything  
15 that you provided them?**

16 A. Yes. They would edit documents that were sent  
17 forward, or they would ask questions about documents if  
18 they felt there may be editing needed.

19 **Q. In the event that there was some editing done by  
20 either one of those chiefs of staff, would the document  
21 come back to you? Or would it go from the chief of  
22 staff to the board?**

23 A. Sometimes I saw the edits come back; sometimes I  
24 did not.

25 **Q. Okay. Can you describe President Hitt's mental**

1 state during the last few years of the presidency; was  
2 he completely plugged in?

3 A. I don't know that I am in a position to answer  
4 that. I really wouldn't know.

5 Q. Okay. That's fair. Thank you for that.

6 Can you describe your relationship with President  
7 Whittaker, beginning when he came in as provost. Again,  
8 did you work closely with him?

9 A. I did not work closely with him. I had worked  
10 more closely with other provosts in the past. But I did  
11 not spend much time with him. The only time I was with  
12 him was when called forward to go over documents.

13 Q. Is there any particular reason why you worked  
14 more closely with other provosts and not Whittaker?

15 A. I don't know that answer.

16 Q. Okay. Who was -- did Provost Whittaker have a  
17 chief of staff, or did he only get a chief of staff when  
18 he became president?

19 A. Well, he formed a position and had a person by  
20 the name of Ronnie Korosec in that role, to act as the  
21 chief of staff, chief of operations for him.

22 Q. And did you communicate with her often?

23 A. Not often. But, yes, I did communicate with her  
24 more often.

25 Q. Okay. And then the same question I asked

1 concerning President Hitt, did you have to provide  
2 documents to her that would then go to Whittaker?

3 A. Yes. Or have conversations with her that would  
4 then be relayed to him.

5 Q. Do you recall what sort of documents?

6 A. We exchanged emails. She probably had documents  
7 that were related to space. When they were -- when they  
8 were redoing their office. She had documents related to  
9 Trevor Colbourn Hall that would have gone to him.

10 Q. Do you recall what those documents were?

11 A. Not offhand.

12 Q. Okay. Do you recall whether they would have had  
13 any information concerning the funding for the building?

14 A. I don't recall those kinds of documents going  
15 forward from my office to him. There would be something  
16 relating to the rising costs relating to the building.

17 Q. Okay. Let's move on to the trustees.

18 What was your working relationship with the board  
19 of trustees?

20 A. My normal working relationship with the trustees  
21 would be through my boss, and possibly through the chief  
22 of staff.

23 Q. When you say through them, do you mean that you  
24 would relay information to your boss and/or chief of  
25 staff who would then relay it to the board?

1           A.   Yes.   That was normally the case, unless I was  
2   giving a presentation.   There were conversations where  
3   one of the trustees might want to talk to me about  
4   something.   I always make sure that my boss was aware of  
5   those conversations.

6           **Q.   Okay.   So would the same be true for Chair**  
7   **Marchena?   Any communications would go through Mr. Merck**  
8   **or the chief of staff?**

9           A.   Or the president, normally.   I do have -- I have  
10   had some conversations with him when my boss  
11   specifically asked me to call him or to meet with him.

12          **Q.   Do you recall what any of those discussions**  
13   **pertained to?**

14          A.   Some of the conversations pertained to delivery  
15   methods on how we were delivering a building.   He  
16   expressed more than once that he was opposed to  
17   construction management at risk.   He expressed his  
18   desire that we take on owner's authorized  
19   representatives.   We did talk about Trevor Colbourn  
20   Hall, along with the architect, when we were trying to  
21   convince him that we needed to use a construction  
22   manager at risk for that facility.

23          **Q.   Okay.   That discussion that you just described,**  
24   **is that what led to the -- your department being**  
25   **audited?**

1 A. I don't know the answer to that.

2 Q. Okay. We'll get to that later.

3 All right. Did you see much of the interaction  
4 between Chair Marchena and the other trustees outside of  
5 board meetings?

6 A. No.

7 Q. Okay. Did you attend most, if not all, board  
8 meetings?

9 A. I attended most of the finance and facilities  
10 committee meetings. I often did not attend the full  
11 board meetings, unless there was something relevant to  
12 what I was doing in my area.

13 Q. When you attended the finance and facility  
14 meetings, was Mr. Marchena the chair of that committee?

15 A. He was the chair of finance and facilities for  
16 quite some time. And later became the chair and Alex  
17 Martins became the chair of finance and facilities.

18 Q. Okay. While Mr. Marchena was the chair of  
19 finance and facilities, did you have an opportunity to  
20 observe him in those meetings?

21 A. Yes.

22 Q. And would you be able to say whether he appeared  
23 to be prepared and knowledgeable of the matters that  
24 were coming before the committee?

25 A. Yes.

1 Q. Okay. Did he appear to be shy about asking  
2 questions?

3 A. No.

4 Q. Did he appear to be shy about voting against  
5 matters that he disagreed with or wasn't comfortable  
6 with?

7 A. No.

8 Q. Did you ever observe any interactions between  
9 Chair Marchena and President Hitt?

10 A. Only in meetings.

11 Q. Okay. And could you pick up anything from their  
12 interactions to describe what kind of relationship they  
13 had?

14 A. The interactions appeared to be professional.

15 Q. Okay. Same question for Chair Marchena's  
16 interactions with Mr. Whittaker, in both the capacity of  
17 provost and president; did you observe their  
18 interactions?

19 A. Again, only in meetings.

20 Q. Okay.

21 MR. RUBOTTOM: Lee, this is Don. I want to ask  
22 one follow up on Marchena's chairmanship.

23 BY MR. RUBOTTOM:

24 Q. Did he seem prepared for the meetings? Did he  
25 look at the agenda and ask "what's this about"?



1           A. He seemed prepared for the meetings. He was  
2 engaged in the meetings. He had packets ahead of time  
3 in order to be prepared for the meetings.

4           **Q. Do you know if he got briefings from anybody on  
5 staff, like the chief of staff or Mr. Merck?**

6                   **Did he ever ask for any briefing from you before  
7 leaving on one of the projects or anything?**

8           A. I believe that Bill Merck did brief him often  
9 before the meetings.

10           **Q. Do you believe that Mr. Merck briefed him about  
11 the sources of funds of these various projects that were  
12 planned, including Trevor Colbourn Hall?**

13           A. I don't know that he did in separate meetings.  
14 But I do know that, regarding Trevor Colbourn Hall,  
15 Chair Marchena asked about the source of the funding for  
16 that. And he was told that it was carry-forward funds.

17                   MR. RUBOTTOM: Right. Well, we'll get to those  
18 meetings. I think 2014 and 2015 there were  
19 discussions. But I will let Carine finish her  
20 questions. Thank you.

21 BY MS. MITZ:

22           **Q. Okay. So I understand that at some point Chair  
23 Marchena did seek, I guess an audit is the best way to  
24 describe it, of facilities and safety.**

25                   Can you tell me a little bit about that, when it

1     **occurred; how it came about?**

2           A. Prior to that, I had asked -- actually, I had had  
3 one audit performed by McGladrey, specifically looking  
4 at our funding on our projects.

5           **Q. When was that?**

6           A. It was a long time ago. Maybe '14 or '15.

7           **Q. Okay.**

8           A. We made a number of changes based on that. In  
9 particular, looking at our contracts in order to develop  
10 some cost avoidance measures.

11           Chair Marchena -- we were in the process of  
12 looking for a firm to look at facilities planning and  
13 construction, to advise us on how we could best  
14 reorganize so that we could put best practice measures  
15 in place. So we had undertaken that initiative. And I  
16 had spoken to Bill Merck about that initiative. At the  
17 same time I understand that Chair Marchena decided to  
18 undertake an audit of that particular department.

19           We had already put out an invitation to  
20 negotiate. We had developed the parameters for that  
21 through purchasing, and we had formed a committee in  
22 order to make a selection.

23           And Chair Marchena decided that he was concerned  
24 that there might be bias in the selection. So he left  
25 the ITN in place. And he hired people to evaluate the

1 proposals, which actually resulted in the same company  
2 that I had rated first. And I do not know what other  
3 committee members had done.

4 That company did -- did come in and Chair  
5 Marchena was -- from what the gentleman told me, who was  
6 running it, Chair Marchena was interested in -- in  
7 bringing on owner's authorized representatives to lead  
8 rather than the project managers we had. And that is  
9 not the result of the -- of the study. The study  
10 clearly showed that owner's authorized representatives  
11 would cost us more than what we were doing with our  
12 project managers.

13 BY MR. RUBOTTOM:

14 **Q. Lee, was that the Hill report, the Hill --**

15 **A. That is the Hill report, yes.**

16 **Q. When you say he decided to hire somebody to**  
17 **evaluate, did, like, the board of trustees vote on that?**  
18 **Or did the finance and facilities committee vote on**  
19 **that? Or did he do that on just his own authority?**

20 **A. I don't know if anyone voted on it.**

21 What I learned is that Rhonda Bishop, who was our  
22 chief compliance officer, in working with the trustees,  
23 that they were hiring outside consultants to review the  
24 proposals.

25 **Q. That would have been through the president and**

1 the compliance office then?

2 If there was authority outside of -- Mr. Merck  
3 didn't want to do it that way; he didn't want to do it  
4 that way, then -- and if the board didn't vote on it,  
5 would it have been the president and the compliance  
6 office -- had the authority to do that?

7 A. I don't know.

8 MR. RUBOTTOM: Okay. That's -- thank you very  
9 much.

10 BY MS. MITZ:

11 Q. Okay. So did that report conclude with  
12 recommended changes?

13 A. It did. It had a number of changes. We  
14 undertook the changes that we were able to undertake.  
15 Some of the changes were internal; some of them were  
16 external to us; some of them involved money to do them.

17 The chair leaned over in the board meeting and  
18 whispered to me, "I really am helping you here. Because  
19 I am going to give you some money to do the things you  
20 need to do." That did not happen.

21 Q. Okay. Okay. How did that work --

22 A. That did not happen.

23 Q. Okay. Did Marchena's act in seeking this audit  
24 affect your relationship at that point?

25 A. No.

1           Again, I didn't really have a close relationship  
2 with him. We were trying to undertake that -- that  
3 audit ourselves. Because we believe that we needed to  
4 see -- to -- to revamp that department. We had about  
5 ten project managers managing 500 projects at any -- at  
6 a given time, we had project managers managing 30 to 35  
7 to 40 projects apiece. And we knew we needed to  
8 reorganize; we needed additional funds; we needed to  
9 staff up in order to do our jobs.

10           So we had requested that that study be done  
11 before anything else happened.

12           **Q. Okay. You've kind of touched upon earlier your**  
13 **contact with trustees before board meetings, if they had**  
14 **questions or needed to be prepared.**

15           **In your experience, were there any trustees that**  
16 **were more apt to contact you for assistance than others?**

17           A. Yes. In the past --

18           **Q. Okay.**

19           A. -- Harris Rosen often contacted me. Chair  
20 Walsh -- not Dave Walsh -- but Rick Walsh, Mickey  
21 Grindstaff contacted me. Dave Walsh, on this particular  
22 board, contacted me. Bev Seay often contacted me.

23           **Q. Okay. So I would like to actually get into Dave**  
24 **Walsh, Trustee Dave Walsh.**

25           **Did he ever ask you for assistance in better**

1     **understanding the documents that you have presented,**  
2     **such as the capital improvement plan or the capital**  
3     **outlay budget?**

4           A. He did ask about the capital improvement plan in  
5     the board meetings. He talked about needing a capital  
6     expenditure budget, often referred to as Cap-Ex.

7           With my boss's permission, I spoke to Dave Walsh  
8     about how we would go about doing Cap-Ex budgeting. And  
9     he did spend time with me helping me learn to do the  
10    Cap-Ex budget.

11           The problem with Cap-Ex is that you also need  
12    your operational expenditures to feed into that. And I  
13    was unable to do the Op-Ex that would feed the Cap-Ex.

14           **Q. Why weren't you able to get those documents?**

15           A. At that same time that Dave Walsh -- and I did  
16    also speak to Marcos Marchena about the Cap-Ex -- at the  
17    same time the trustees had asked me to do Cap-Ex  
18    budgeting Dale Whittaker had asked Tracy Clark to --  
19    to -- to look at how facilities budgeting was working.  
20    And I was unable to get the information I needed from  
21    finance and accounting to do that.

22           BY MR. RUBOTTOM:

23           **Q. About when was that?**

24           A. Probably 2017.

25           **Q. Did any other -- did any trustees ever ask you**

1 about the annual capital outlay budget?

2 A. No.

3 BY MS. MITZ:

4 Q. Okay. I want to clarify something that I think I  
5 heard you say. Around the same time that Trustee Walsh  
6 is asking for assistance about the Cap-Ex, Provost  
7 Whittaker was asking Tracy Clark for information about  
8 how facility budgeting worked; is that correct?

9 A. They were trying to form the facilities budget  
10 committee and put it in the line with the university  
11 budget committee. So he was asking Tracy to set up the  
12 facilities budget committee and how facilities would be  
13 budgeted.

14 Q. Okay. And I have got more questions on that, but  
15 we'll get to that in a little bit.

16 Okay. So ultimately, then, with Trustee Walsh  
17 you would ask for the information from Chair Marchena  
18 and then he never provided it?

19 A. He did say that he would notice a meeting, if  
20 necessary, so that he and Dave Walsh and I could be  
21 present. And he could get the information we needed to  
22 complete the Cap-Ex budgeting, but that did not happen.

23 Q. So did Trustee Walsh come to you and ask you what  
24 the status was or what was going in?

25 A. No. Instead when the facilities budget committee

1 had been convened, there was a determination made that  
2 in order to get our arms around a true five-year budget  
3 need for facilities, each of the colleges would present  
4 their needs. And they were allowed their top two needs  
5 and then one slide on the other.

6 And so each college would come present. We would  
7 hear from athletics; we would hear from facilities and  
8 safety on some of the things we felt were great needs.

9 And presentations were made. Dave was allowed to  
10 sit in on those presentations to hear what people were  
11 presenting for -- for their needs and then to watch the  
12 process. Because it was a brand new process to the --  
13 to watch the process to see how those facilities were  
14 going to be prioritized. So Dave participated at that  
15 point.

16 **Q. Okay. Were there any other departments, outside**  
17 **of the one that you oversaw that you worked closely**  
18 **with?**

19 A. Well, because what I oversee is a service  
20 organization, we support others. So everything we do is  
21 in support of what others do for the university. So I  
22 would -- I would often have meetings with folks in the  
23 colleges, athletics. I worked closely with -- I thought  
24 closely with -- audit, compliance, general counsel --

25 **Q. Okay.**



1 A. -- government relations.

2 BY MR. RUBOTTOM:

3 **Q. What did audit focus on in working with your --**  
4 **with your areas?**

5 A. So audit explained to me that they had -- that  
6 they had a schedule of audits that they would perform  
7 on -- on areas; that's routine. If something came to  
8 their attention where they needed to do an audit, they  
9 would do that. I often brought things to their  
10 attention. Not just in other areas, but in my own area.  
11 And I asked them to look at things that I thought might  
12 be -- might be an issue.

13 So I had interactions with them on that level. I  
14 also had interactions when one of the departments was  
15 going to be audited by them, and on the results that  
16 came out of those audits.

17 BY MS. MITZ:

18 **Q. Was there ever a time when you asked the audit**  
19 **department to look into something and they declined?**

20 A. There was a time, at least one time, when I  
21 talked to them about decisions that were being made  
22 above me that I thought were problematic. And what I  
23 was told was those were vice presidential decisions. It  
24 was a vice presidential risk and that it was not my  
25 problem.

1 Q. Would that have anything to do with what we're  
2 talking about today, about Trevor Colbourn Hall or the  
3 Trevor Colbourn Hall renovation?

4 A. I don't know if that was on the list. There was  
5 a list of things. I do know that athletic funding was  
6 on the list.

7 Q. Would you by any chance have a copy of that list?

8 A. I can certainly look.

9 Q. Yeah, that would be appreciated.

10 And do you recall when -- what year this  
11 happened?

12 A. No. But it was quite some time ago. I am  
13 guessing three years ago.

14 BY MR. RUBOTTOM:

15 Q. Do you remember anything else that was on your  
16 list?

17 A. I don't. But I specifically remember athletic  
18 funding, because that has been a problem issue.

19 Q. Welcome to America.

20 A. Yeah.

21 It possibly also involved permitting. A lot  
22 involved athletics and doing things without permits, and  
23 how to get that under control.

24 BY MS. MITZ:

25 Q. Okay. As part of your job, were you required to

1     **be familiar with applicable law and regulations?**

2           A.   Actually, I would go to general counsel for -- if  
3   I had questions on law.  Or I would go to BOG staff, if  
4   I had questions on law or regulation.

5           Q.   Okay.  How did you -- did UCF have a method in  
6   which they would disseminate information to staff about  
7   the possibility of a new BOG reg being amended or when a  
8   reg was going to be amended?  Would the general  
9   counsel's office provide that information to you guys?

10          A.   No, they wouldn't.

11          Q.   So how were you supposed to know when something  
12   changed or something was adopted?

13          A.   That was one of my problem areas.  And I brought  
14   that up more than once.

15          Q.   Who did you bring that up to?

16          A.   I brought it up to Bill Merck.  And I also talked  
17   to at least one of Scott Cole's attorneys.

18          Q.   Someone who would have been junior to him?

19          A.   Yes.

20          Q.   Okay.  And how long ago did you bring that up?

21          A.   A long time ago.  Probably eight or ten years  
22   ago, because --

23          Q.   Nothing changed?

24          A.   Nothing changed.

25          Q.   Okay.  How did you become aware of the regulation

1     **that is at issue in this investigation,**  
2     **Regulation 9.007, which basically sets forth the**  
3     **authorized uses of E&G funds?**

4         A. I wasn't even aware of that regulation until the  
5     investigation.

6         **Q. Who told you about it?**

7         A. I believe that Tracy Clark told me about it.

8         **Q. All right. Now, were you ever present for any**  
9     **discussions between Mr. Merck and President Hitt**  
10    **concerning the use of E&G funds for either the Colbourn**  
11    **Hall renovation or the investigation of Trevor Colbourn**  
12    **Hall?**

13        A. I was present in about May of '15 when -- I  
14    believe we were with Dr. Hitt to discuss return on  
15    investment documents, or something that we were  
16    preparing. And Bill Merck told him at the time that we  
17    had this problem with Trevor Colbourn Hall, and that he  
18    didn't see any other way -- we had people's lives at  
19    risk. And Dr. Hitt said he did agree with him. He  
20    didn't see another way, that we had to do it.

21        **Q. Would he be responding to Mr. Merck 's suggestion**  
22    **that they use the E&G?**

23        A. Yes.

24        **Q. So that was in May of 2015?**

25        A. I think so.

1 Q. Okay.

2 BY MR. RUBOTTOM:

3 Q. Do you believe they'd ever discussed that issue  
4 before?

5 Because I know the building -- the new renovation  
6 was planned in '12 or '13; monies were already being  
7 targeted for that. The building was approved 2014.  
8 Dr. Hitt made the decision to do the combined project in  
9 January 2015.

10 Do you believe that Merck and Hitt had discussed  
11 the E&G aspect of it prior to the May meeting?

12 A. I don't know if they would have or not. I do  
13 know there was a meeting in September with Tracy Clark,  
14 where she advised Bill about the funding. And he said  
15 he needed to tell Dr. Hitt.

16 Q. Was that September 2014?

17 A. Yes.

18 MR. RUBOTTOM: Okay. Thank you very much.

19 BY MS. MITZ:

20 Q. Okay. So in that meeting did Mr. Merck say that  
21 he would talk to the president?

22 A. Yes.

23 Q. Okay. And do you -- did you ever find out  
24 whether that actually occurred?

25 A. I did not find out whether it actually occurred.

1 But I was in the meeting in May of the following year  
2 when it was discussed.

3 **Q. Okay. All right. Were you present for any other**  
4 **discussions with any -- the same people or other people**  
5 **when this was addressed again?**

6 A. Prior to that, I had been in meetings where  
7 various people were talking about how they were going to  
8 fund this building. The provost at the time, or acting  
9 provost at the time was committing some funds.  
10 Different people were trying to find out how they were  
11 going to -- they were talking about, yeah, we have 10  
12 million of it, but we are going to need more.

13 So I was present -- it was not my area of  
14 discussion, but I was present when they were talking  
15 about some of the -- the ways that they were looking at  
16 funding the building.

17 **Q. And would that provost have been Ms. Chase?**

18 A. There was quite a turnover during that time. But  
19 I believe that Tony Waldrop might have been in some of  
20 those, Diane Chase.

21 So as the provost turned -- as the provost turned  
22 over, they -- they were still discussing the project.

23 **Q. Okay. Do you recall whether Provost Whittaker**  
24 **was involved in any of those discussions, once he came**  
25 **aboard?**

1           A. He created a position for Tracy Clark to report  
2 directly to him. And they had meetings set up weekly  
3 and conversations almost daily about funding.

4           **Q. Do you know whether those discussions about**  
5 **funding were limited to academic, such as, you know,**  
6 **faculty salaries? Or if it encompassed the entire**  
7 **university budget?**

8           A. It encompassed the entire university budget,  
9 which is why he created the position. In the past  
10 provosts concentrated on academic funding and had a  
11 person or people in their office for that. He revamped  
12 the way budgeting was being done. So he would have  
13 oversight for all budgets for all of the university.

14                   And he reinstituted a university budget committee  
15 that met every month to talk about the funding and how  
16 funding was being spent. And one of the regular topics  
17 was the use of carry-forward funds.

18 BY MR. RUBOTTOM:

19           **Q. Lee, did Tracy, during the time that she was in**  
20 **that report -- having the regular meetings with**  
21 **Whittaker, did she ever tell you or give you any**  
22 **indication that they had discussed funding sources, and**  
23 **particularly E&G on the construction program?**

24           A. I believe that in -- in admin and finance  
25 meetings, I believe she did talk about funding. You

1 know, that she and Dale were talking about funding. And  
2 that's how I knew that they had -- that it had changed  
3 and that all funding was going through him.

4 **Q. So this was department meetings?**

5 A. These would be like admin and finance meetings  
6 where Bill Merck would have his direct reports  
7 convened --

8 **Q. Right.**

9 BY MS. MITZ:

10 **Q. Did you attend all or most of the facilities**  
11 **budget committee meetings?**

12 A. I did attend most of the facilities budget  
13 committee meetings, after it was put in place.

14 But I was a voting member of the committee. I  
15 did not lead the committee. And we were not making  
16 decisions on fund sources. The facilities budget  
17 committee determined what needed to be funded and to  
18 prioritize those. And then those recommendations would  
19 go to the university budget committee where funding  
20 decisions were made.

21 **Q. I see.**

22 BY MR. RUBOTTOM:

23 **Q. Is it your understanding that the university**  
24 **budget committee would have committed E&G funds, say,**  
25 **for any of the downtown projects?**



1           A.  If they were committed for that, yes.  That is my  
2  understanding.

3           **Q.  So for anything after the formation of that**  
4 **committee, that committee would have checked off on the**  
5 **commitment of E&G for -- I mean, there's eleven or**  
6 **twelve projects on the list that we're looking at, I**  
7 **think.**

8                   But that committee would have checked off on  
9 **that; is that your understanding?**

10          A.  That is my understanding.

11          **Q.  Thank you.  That's very helpful.**

12  BY MS. MITZ:

13          **Q.  And Whittaker was also on the UBC?**

14          A.  He chaired the UBC.  And Scott Cole was also a  
15 voting member.  I was not on the UBC.  But Scott Cole  
16 was a voting member of that committee.

17  BY MR. RUBOTTOM:

18          **Q.  Was Cole or anybody from the general counsel on**  
19 **the facilities budget committee?**

20          A.  I don't remember seeing him in the room on that.  
21 There were other vice presidents on the facilities  
22 budget committee.  But I don't recall seeing Scott on  
23 there.  I would have to go back through to find out who  
24 the committee had on it.

25

1 BY MS. MITZ:

2 Q. Okay. Do you know anything about the working  
3 relationship between President Hitt and then-Provost  
4 Whittaker, now President Whittaker?

5 A. I know I was told by Dr. Hitt and by a couple of  
6 trustees that Dr. Hitt recruited Dale Whittaker to the  
7 position of provost. And that he said that it was in  
8 his belief that Dale would be his successor.

9 Q. Okay. Do you know whether the general counsel's  
10 office was aware that capital projects were being funded  
11 with E&G funds?

12 A. I don't see any way that they could not be aware.  
13 Scott sat in on the university budget committee. He  
14 received all of the packets that went to the trustees  
15 ahead of time.

16 He saw all of the forms that were put together  
17 ahead of time. I don't see any way he could not be  
18 aware.

19 Q. And he never approached you, contacted you, to  
20 ask what was going on with the funding for these  
21 projects, correct?

22 A. Correct.

23 Q. Okay. All right. So we have been provided with  
24 notes that were taken during your interview with the  
25 attorneys at Bryan Cave. And so I want to address some

1 of the things that were jotted down to see if, one, if  
2 you have a recollection. And, two, if you can provide  
3 more information, more context to these notes.

4 So the first thing I have is that the notes  
5 indicate that you had reported, that you had heard Scott  
6 Cole say something to the effect of we'll just have to  
7 take that ding, in referring to an audit comment  
8 possibly made by Mr. Merck.

9 Do you recall telling Mr. Burby that?

10 A. I do.

11 Q. Can you tell us -- give us some context; explain  
12 the situation, please.

13 A. It would have been early on, when I was at UCF.  
14 And I was in a -- a meeting where Bill Merck and Scott  
15 Cole were in the meeting. I don't recall exactly the  
16 issue at the time. But I do recall that -- that it had  
17 to do with athletics funding again, and expenditures of  
18 E&G for athletics, possibly moving money to athletics.  
19 And Scott's position, I think at the time, was that DSOs  
20 are allowed to use university property. That the  
21 athletics DSO was created for that purpose. And that  
22 the moving of funds to them met the requirements of  
23 being university property.

24 And the auditors -- the State auditor had  
25 disagreed with that. And Scott still felt that his

1 position was the right position. And he said, "Well,  
2 we'll just have to take that audit ding; we're not  
3 changing."

4 BY MR. RUBOTTOM:

5 Q. So this was in the context of a previous audit  
6 and -- and they just disagreed with the auditor?

7 A. Correct.

8 Q. Do you know what year that was?

9 A. No. But it would have been fairly early on.

10 Q. Was that in -- and was it your understanding that  
11 was recorded in the audit?

12 A. Again, it was a limited conversation, with me  
13 having limited knowledge. Because I had just -- --

14 Q. Right.

15 A. -- not been there very long. But I do recall him  
16 saying to take the audit ding on that.

17 Q. Thank you.

18 BY MS. MITZ:

19 Q. Okay. So I am trying to better understand how  
20 the funds that UCF has get distributed to the different  
21 departments. So I am hoping that you can educate me in  
22 the next few questions.

23 So your department had, like, a pot of E&G  
24 carry-forward funds; is that correct?

25 A. Primarily, what we had was plant operations and

1 maintenance money, and so --

2 **Q. What was that money supposed to be used for?**

3 A. That money is for maintaining your physical  
4 plant, for operations, for maintenance, for utilities --  
5 utilities services. And for, again, whether it's --  
6 talking to Chris Kinsley and getting a lot of guidance  
7 over the years. I asked a number of questions about it.

8 So I would ask, "Can PO&M be used for  
9 renovations?" And he would say yes. "Can PO&M be used  
10 for replacement?" We talked about that last week. And  
11 he said yes. Can interest funds be used for projects?  
12 And he said as long as they were related to the project.

13 So my understanding of what we could do with  
14 those plan operations and maintenance monies came almost  
15 entirely from Chris, or from other universities where we  
16 had these discussions. And we had them a number of  
17 times. And I asked a number of times for written  
18 guidance on it. And I was always told there was none.

19 BY MR. RUBOTTOM:

20 **Q. We've asked for that guidance too.**

21 **Can -- and when did you learn that PO&M is E&G?**

22 A. I didn't learn that until this investigation.  
23 Because it always came into us as PO&M funds.

24 **Q. Other than the construction projects that we've**  
25 **looked -- that we're looking at, do you recall any other**

1 **E&G carry-forward funds from the central reserve being**  
2 **transferred to facilities?**

3 A. No. In the normal course of me doing business, I  
4 really wouldn't even see that. So I look at the  
5 document you gave to me, and I see these -- I normally  
6 wouldn't even see a document like this. Finance and  
7 accounting -- or even admin and finance, it was their  
8 funds -- would transfer funds into a construction  
9 account. And the facilities and safety business office  
10 would see those funds coming in.

11 Normally, I didn't even see what the funds were  
12 coming in. And I think that's -- that may --

13 **Q. So how would --**

14 A. -- be true that --

15 **Q. How would you know that a project was fully**  
16 **funded so you could go out and contract?**

17 **Would that just be -- you would inquire when you**  
18 **were in that procurement process?**

19 A. If we were moving forward with a project, the  
20 facilities and safety business office had a  
21 responsibility for ensuring that all of the funds were  
22 in the construction account.

23 Normally we insisted that 100 percent be in the  
24 construction account prior to starting. If it was  
25 something that was being funded internally, we allowed

1 that those funds could be put in over -- over time, as  
2 long as they were there prior to being needed. And that  
3 was --

4 **Q. Did you ever --**

5 A. -- that was --

6 **Q. I'm sorry.**

7 A. -- only within the division.

8 **Q. I'm sorry. I interrupted you.**

9 A. It's okay.

10 **Q. Would you just restate your last statement.**

11 A. That was only within the division. So if it was  
12 a college, we wouldn't allow that. If it was athletics,  
13 we definitely wouldn't allow that. The money had to be  
14 there in order for us to do the project.

15 **Q. Do you ever recall any of those -- I mean, I**  
16 **understand some of these funds were accumulated over**  
17 **time. Do you ever recall any time when any of those**  
18 **accounts loaned money to other projects or other**  
19 **activities?**

20 A. I think -- speaking -- you know, we speak now  
21 from what we know now, as opposed to what we knew then,  
22 and that becomes problematic. Because I know now that  
23 funds were loaned to the combined heat and power plan  
24 and paid back with energy savings from that plan. But I  
25 didn't know at the time what those funds were.

1 BY MS. MITZ:

2 Q. So the money that -- that you're -- was allocated  
3 to your department, was there anything in writing that  
4 specified who had the authority to say, okay, use this  
5 money for this reason?

6 A. No. When I got there, there were very few  
7 policies or procedures. And I worked very carefully  
8 with audit, and with general counsel, to develop  
9 policies and procedures to be able to say, you know, who  
10 has to sign change orders; who can spend the funds  
11 within their department. Those kinds of things.

12 Q. So which department actually monitored the -- the  
13 movement of funds in the account that was designated for  
14 your department?

15 A. So we have a facilities and safety business  
16 office. It resides within the directorate called  
17 resource management.

18 Resource management comprises a number of  
19 consolidated operations.

20 Q. And did they, then, pass that on to finance and  
21 accounting? Or did that information just stay in that  
22 department?

23 A. They had regular contact with finance and  
24 accounting.

25 Q. Do you know -- and this may be outside of your,



1 you know, understanding or knowledge, but I will ask it  
2 anyway: Do you know whether your department was ever  
3 allowed to carry a negative balance in either an account  
4 or on a project?

5 A. I don't know that. It took quite a while for me  
6 to explain the difference between cash and budget.

7 Q. Okay. All right.

8 Okay. I think I want to direct your attention  
9 now to the documents that we have provided.

10 A. Okay.

11 Q. If you can flip to the first page of Number 003  
12 at the bottom, it's like a spreadsheet.

13 A. Okay.

14 (Whereupon, Exhibit 1 was marked for  
15 identification.)

16 BY MS. MITZ:

17 Q. Okay. So this was a document that we received  
18 that purports to show all of the E&G funds transferred  
19 for projects that were constructed in addition to Trevor  
20 Colbourn Hall.

21 So what I would like to do is kind of go through  
22 the projects and see what -- what information, if any,  
23 you have concerning them.

24 So let me start with the venue. What was your  
25 involvement in the construction of that project?

1           A.    The venue, so I went back through some -- tried  
2    to go back through some things last night.  Because  
3    again I didn't even see a form like this until the  
4    investigation.

5           **Q.    Right.**

6           A.    And that's when Kathy Mitchell and others started  
7    meeting to say -- I think the State had asked what all  
8    funds had been spent.  So they started coming with the  
9    spreadsheet to say, "Well, what is this?  Is this one  
10   okay or not?"  And these projects were determined to be  
11   permissible within E&G in those.  This first \$75,000 was  
12   for an investigation of retrofit.  The venue had -- and  
13   don't know if was boilers or HVAC, something that was  
14   falling apart at the time.  And the \$75,000 was used to  
15   do an investigation to determine if the retrofit was  
16   possible.

17          **Q.    Okay.  Do you know who would have directed the**  
18   **transfer of those funds?**

19          A.    I don't.

20          **Q.    Okay.  All right.  How about the next project,**  
21   **the facilities surplus showroom?**

22          A.    That's what it says here.  That was never a  
23    facilities surplus showroom.  And it wasn't even noticed  
24    to the State as that.  It was a warehouse and storage  
25    facility.  It was used for warehouse.  It was used for

1 surplus; it was used for storage. And the project was  
2 less than 2 million in construction, which is what Chris  
3 said it needed to meet, less than 2 million in  
4 construction. So it was a minor project.

5 Per the BOG regulation, Chris Kinsley okayed the  
6 use of two things: One was surplus monies as part of  
7 putting the facility together. And the other one was  
8 E&G funds. Chris had okayed both of those.

9 This, I know, was directed by Bill Merck. And I  
10 actually told Bill Merck, "I went behind your back and I  
11 asked Chris Kinsley if it was okay. And Chris told me  
12 yes, based on the fact that it was part of our plan."  
13 And that it was used for swing space for space for --  
14 for renovations, that it was used for the storage and  
15 maintenance. That it was okay to use those funds.

16 **Q. Okay. What -- what is surplus money?**

17 A. So when you have surplus, you form a surplus  
18 committee and you determine what to do with that  
19 surplus. And what to do with the funds that occur when  
20 you sell off surplus. It's usually things like -- well,  
21 they used to have compounded bicycles, and then it sat  
22 for a year. It might be things like old computers that  
23 people have turned in. It might be furniture that they  
24 might not be using. It could be things that are surplus  
25 to the university. And we would actually put those out

1 first to see if somebody else could use them. Because  
2 the best use is reuse.

3 So we would first put them out to see if someone  
4 else could use them. Then we would put them up for  
5 sale; funds for those sales are only allowed to be used  
6 for certain purposes as well.

7 And the committee oversees that. And that's why  
8 we asked Chris if the surplus funds could be used  
9 towards this project as well. And they were.

10 **Q. Okay. Thank you for that explanation.**

11 **All right. Moving along, then. Global UCF, what**  
12 **involvement did you have in that project?**

13 A. Global UCF was a facility for international  
14 students. I am not sure what the \$6,500 was used to do.

15 **Q. On a sidenote: Do you have any idea of where the**  
16 **students for Global UCF were located or recruited?**

17 A. Yes. There was a company that was brought in, I  
18 think their name is Shorelight. And that company was  
19 the one that was determining the best fit students,  
20 because they didn't want to just bring in anybody and  
21 not have them be successful.

22 BY MR. RUBOTTOM:

23 **Q. Would the university pay Shorelight for that**  
24 **service?**

25 A. I don't know the answer. But I am guessing that

1 they would have to pay them.

2 BY MS. MITZ:

3 Q. Okay. All right. I see Global UCF again at a  
4 million-6. But you're not -- even though that figure is  
5 there, you still don't recognize -- you don't remember  
6 any involvement in that, right?

7 A. The million-6 could have been because of the  
8 chilled beam. It was an energy measure to save money  
9 and provide better comfort for the occupants of the  
10 building. And I had thought that that was coming from  
11 auxiliary. But, again, I don't know the source of  
12 funds. But it looks like the amount is probably for the  
13 chilled beam.

14 Q. Okay. How about the band building?

15 A. The band building, we were at risk of losing  
16 accreditation on our music department because we had  
17 kids marching in the lightning. And they had their  
18 equipment in the trailer. And they had no place to  
19 store the equipment. And the trailer had holes in the  
20 floor. And the accreditation folks said you've got to  
21 do something about this.

22 One of the 300,000 here I think came from the  
23 college. One of them came from central reserves. And  
24 the 262,704, I put a question. It might have been  
25 administration and finance carry-forward. I was trying

1 to look at sheets last night to find out the sources of  
2 the moneys, based on the meetings we had during the  
3 investigation.

4 Q. I appreciate that.

5 All right. Moving along, then, the Center For  
6 Emerging Media?

7 A. The Center For Emerging Media is an existing  
8 building located downtown. And the \$5 million would be  
9 for renovation.

10 Q. Okay. And then how about the Research 1  
11 building?

12 A. The Research 1 building, the 3 million and 6  
13 million, I believe, was for buildout. We had a building  
14 that had a lot of shell and undetermined research. And  
15 Dale Whittaker determined that faculty clusters needed a  
16 home. And that they were going to go into a research  
17 building. And so they needed to apply funds for  
18 buildout of those facilities for the faculty clusters.  
19 And I believe that Dale made the decision on those  
20 funds.

21 BY MR. RUBOTTOM:

22 Q. Did you ever talk to Kinsley about buildouts  
23 on -- I am --

24 A. Yes, we did.

25 Q. I think I understand furniture and equipment, in

1 the four months I have been studying this, but -- and I  
2 think understand the renovation of old facilities --  
3 what I am curious about is you have a new building. It  
4 seems to me like buildout is completion of the new  
5 building.

6 How would Chris Kinsley discuss buildout with you  
7 in a new building?

8 A. Chris Kinsley told us that we could use funds for  
9 buildout. That was verified on a CAFA call during the  
10 investigation, when the universities were looking at  
11 what we knew or didn't know about what we could spend.  
12 CAFA members were verified the use for buildout.

13 **Q. And what would a buildout entail?**

14 A. In that particular research building, the vice  
15 president for research at the time, had decided he  
16 wanted more space, less stuff. And that's his quote.  
17 And so they might not have included fume hoods for some  
18 of the labs. They might not have included case work in  
19 some of the labs.

20 And then you have researchers who come in, and  
21 generic labs don't work for them anyway. They have very  
22 specific needs within a lab building -- within a lab for  
23 their kind of research. And so it could entail specific  
24 research needs, buildouts, or it could be the case work,  
25 for example.

1 Q. Would case work be like the -- the cabinetry and  
2 the --

3 A. Yes.

4 Q. -- and work the --

5 A. Yes.

6 Q. -- the horizontal workspaces and things like  
7 that?

8 A. Yes.

9 BY MS. MITZ:

10 Q. I will lump the three downtown projects into one.  
11 Did you have any involvement about those  
12 projects?

13 A. I didn't have any involvement on the source of  
14 funding on the projects. But on -- actually, getting  
15 the projects done, that's where I come in, is getting  
16 them built; overseeing that. The downtown campus  
17 infrastructure is related to what goes underground. And  
18 it might be hardscape, landscape, piping, all of these  
19 kinds of thing, the infrastructure to support putting a  
20 campus on that site.

21 The downtown central energy plant, would be -- we  
22 looked at several things for this. We actually looked  
23 at whether it would be a co-gen plant whether it would  
24 be a tri-gen plant, whether it would be a central energy  
25 plant, whether we could just fund through OUC utilities.



1           And we did some analyses. We had engineers that  
2 we brought in to do analyses on -- which would be  
3 better, financially, and which would possibly give us a  
4 return on investment.

5           So in our area, we did those kind of analyses.  
6 But we never did look at the source of funds for it.

7       **Q. Okay.**

8 BY MR. RUBOTTOM:

9       **Q. Did you have any conversations with Chris Kinsley**  
10 **on those three projects?**

11       A. There were a number of conversations about the  
12 downtown and all the projects related to the downtown.  
13 These were not like one-on-one conversations that I had  
14 with Chris, which would be normally what I'd have. I  
15 did sit in some of the other meetings. I know there  
16 were a lot of other meetings, which I wasn't involved in  
17 where they were talking about these projects.

18       **Q. There's something that I am not clear on. And I**  
19 **am just trying to get clear -- because you've talked**  
20 **about not knowing about the regulation and limitations**  
21 **on E&G, but you talked about frequent conversations with**  
22 **Kinsley about whether you were permitted to use -- I --**  
23 **I am thinking we're talking about E&G on these various**  
24 **repairs, renovations, whatever. Was that -- why would**  
25 **you talk to Kinsley if it wasn't about the funding**

1 **source?**

2 A. It was about the funding source. I was asking  
3 for guidance to say, can I -- can I do this with this  
4 money? Is there anything that tells me what I can and  
5 can't do with this money?

6 **Q. So you were just --**

7 A. Just give us something.

8 **Q. After the money was committed you would be**  
9 **clarifying with Kinsley; is that accurate?**

10 A. What I am saying -- the one I had the  
11 conversation with him is on the facilities surplus  
12 showroom, that conversation was prior to the funding.  
13 Because I said I am being asked to fund this through  
14 surplus funds and carry-forward funds. So I explained  
15 to him what the building was going to do. And he said,  
16 yes, you can do those things.

17 **Q. Okay. But in your mind, did you make a**  
18 **distinction between carry-forward and E&G or were you**  
19 **even aware of the idea of E&G?**

20 A. And when I would ask questions of Chris, it was  
21 about my PO&M carry-forward.

22 **Q. Yes, ma'am. That makes a lot of sense to me.**  
23 **And it clears up a lot of the things that you've talked**  
24 **about, those conversations. So thank you very much.**

25

1 BY MS. MITZ:

2 Q. Okay. Let's address the last project. Did we  
3 do --

4 A. No. And we have the downtown student center. I  
5 believe that is a buildout. That is a -- the downtown  
6 student center is not a UCF building. It was a buildout  
7 to do things like students coming in to make their  
8 payments. Some of that -- some of the student  
9 development- and enrollment-type space. That is a  
10 buildout space.

11 BY MR. RUBOTTOM:

12 Q. Is that property being leased or loaned to the  
13 university? You said it's not university property?

14 A. I believe it's under a lease to the university.

15 Q. Okay.

16 A. It's going to go in the housing project, as far  
17 as I understand it.

18 BY MS. MITZ:

19 Q. Okay. How about your involvement in Creole?

20 A. I don't know what the \$17,000 is on Creole. I do  
21 know that Creole -- the Creole has had expansions and  
22 renovations over time.

23 And I know that they are -- they are -- you have,  
24 again, the -- the Creole up above the 4 million and then  
25 the 17,000 down below. Those go together. And I

1 believe that the 4 million and the 17,000 are related to  
2 what they're currently working on, which is an addition  
3 and buildout. And that was Dale -- I was in a meeting  
4 where Dale said that he was funding that.

5 Q. But Dale Whittaker said he was funding the Creole  
6 project?

7 A. That's correct.

8 Q. What do you -- what did you get from that?

9 Like, meaning coming out of the provost budget,  
10 or...

11 A. Yes.

12 Q. Okay. Do you recall when he said that --

13 A. No. It would have been -- yeah, I don't  
14 really -- it would have been within the last couple of  
15 years.

16 BY MR. RUBOTTOM:

17 Q. Well, that transfer was in February of '16.  
18 Would it have been before that?

19 A. It would have probably been before that.

20 BY MS. MITZ:

21 Q. Okay. Do you know whether that actually  
22 happened, money from the provosts' office was used?

23 A. I don't know. And I don't know if that was part  
24 of the payback. And then they decided the funds could  
25 be used. I don't know if that was part of the payback

1 or not.

2 Q. Okay. All right. So do you know -- I'm sorry  
3 hold on just a moment.

4 So are you aware of any transfers out of your  
5 department back into central E&G carry-forward that  
6 would have occurred after the State auditor began  
7 questioning the funding for Trevor Colbourn Hall?

8 A. I know that I received a call from Tracy Clark  
9 saying that they were going to be taking all of the  
10 auxiliary funds. At the time I said, "Well, we have  
11 auxiliary funds for a purpose; that's to run the  
12 auxiliaries. Because they are business operations. And  
13 won't be able to run those business operations, such as  
14 surplus, if I don't have any auxiliary funds to do so."

15 BY MR. RUBOTTOM:

16 Q. When was that call?

17 A. I am guessing September of this last year.

18 Q. And you didn't hear about any refunding  
19 activities before then?

20 A. No. That was the call when they were telling us  
21 they were going to be taking -- sweeping auxiliaries in  
22 order to repay those funds.

23 Q. Thank you.

24 BY MS. MITZ:

25 Q. Do you know whether they did take your auxiliary

1     **money?**

2           A. I know that they did take it. And, again, when  
3 we started having the meetings, to tell the State what  
4 else we had spent. I brought up the point that I had  
5 certain auxiliaries that could not run at all without  
6 their -- without their funds. And Kathy Mitchell was  
7 marking those to come back to later, to say, you know,  
8 if we find out that we don't have to pay this one or  
9 that one back because it does meet the requirements,  
10 then we'll make sure that those funds come back early.

11          **Q. You said that was a meeting with the State. What**  
12 **state official was involved in that? And do you know**  
13 **when that meeting was?**

14          A. I don't know about a meetings with the State. I  
15 do know that there were conversations where the State  
16 had said that they wanted all of the universities to go  
17 back to them with a report on any other projects, like  
18 Trevor Colbourn Hall, where E&G funds had been spent.

19                 And as part of that, Kathy Mitchell pulled Tracy,  
20 Christy Tant, LaShanda Brown-Neal, and me into meetings  
21 to look over spreadsheets on funds. And that was at  
22 that time that I saw something similar to what you have  
23 here on Page 3.

24          **Q. So you think -- it sounds to me like that they**  
25 **were moving money back to E&G, so they wouldn't have to**

1 report those on that certification; is that what you --

2 A. I don't think that was the intent. I think the  
3 intent was that auditor had said you can't spend that  
4 kind of money. And so they were digging to find out  
5 sources of money to pay that back.

6 Q. I understand that process was going on. But none  
7 of us understand why the university only certified  
8 Trevor Colbourn Hall as built with E&G when they said  
9 these other -- some of these other projects were built,  
10 so --

11 A. I think it was because of the assumptions that  
12 the counsel of counsels set forward, and the other  
13 projects they felt met those assumptions. And I am here  
14 to tell you --

15 Q. So were those assumptions in writing?

16 A. Yes. Kathy Mitchell sent those forward. I  
17 believe the counsel of counsels also put something  
18 together -- I heard that they had put something together  
19 and that it had gone forward as well.

20 Q. Thank you. That helps a lot.

21 BY MS. MITZ:

22 Q. All right. Besides the people you just  
23 identified as having sat in meetings with to go over the  
24 spreadsheets, has anybody else talked to you about these  
25 additional projects, in either August or September?

1           A. No. It would have been -- it would have been  
2 that time frame when we started looking at them.

3           Bill Martin -- we asked Bill Martin as well about  
4 certain things. Because he said, you know, what was  
5 this money used to do? So he would have had the  
6 information on -- specifics on where the money was  
7 applied.

8           **Q. Did anyone from the general counsel's office**  
9 **inquire?**

10          A. Not of me.

11          **Q. Okay. And did any trustee talk to you about**  
12 **these additional projects?**

13          A. No.

14          **Q. Okay. All right. Were you ever instructed to**  
15 **omit details or provide as little information as**  
16 **possible to trustees concerning any matter?**

17          A. No.

18          **Q. Was it ever suggested or was that maybe an**  
19 **understanding amongst staff?**

20          A. I don't believe that we were ever instructed or  
21 that there was any understanding that we were to  
22 conceal.

23                 I personally have no spin. I tell it like it is;  
24 some people don't like that. And so I have often been  
25 counseled not to just put things on the table.



1           As far as any of this funding was concerned, I  
2 was never asked to conceal anything; we didn't try to  
3 conceal anything.

4           **Q. Okay. Was there ever a time in a committee or**  
5 **board meetings where you intentionally didn't identify**  
6 **funds of E&G?**

7           A. No.

8           **Q. Okay. If you had described the funds of**  
9 **something other than E&G, would there -- would there**  
10 **have been a reason to do so?**

11          A. It would have only been because we didn't know.  
12 You'll see oftentimes when I put "internal funds," it's  
13 because that's all I knew, that it was coming from  
14 internal. So it wasn't an attempt to disguise. That's  
15 what I knew.

16          **Q. Okay. Do you know whether this term "E&G" was**  
17 **used more frequently with the presidents and the**  
18 **provosts than the trustees?**

19          A. I don't know.

20          **Q. Okay. Did you ever hear Mr. Merck say something**  
21 **to the effect of, "If I told the trustees that E&G was**  
22 **funding Trevor Colbourn Hall, they would have never**  
23 **approved the project"?**

24          A. I never heard him say that. Scott Cole told me  
25 after the fact that he heard that said. I did -- I told

1 him I didn't believe it.

2 Q. Okay. Okay. So I would like to direct your  
3 attention, now, to the second document in the packet,  
4 which is the --

5 MR. GREENE: Can we take a 90-second break?

6 MS. MITZ: Sure.

7 MR. RUBOTTOM: Three minutes is great.

8 (Whereupon, a break was taken from 10:54 a.m.  
9 to 10:57 p.m.)

10 (Whereupon, Exhibit 2 was marked for  
11 identification.)

12 BY MS. MITZ:

13 Q. I would like to draw your attention to the second  
14 document in the packet, which starts with Page 7.

15 Do you recognize this?

16 A. I do.

17 Q. Is this a letter that you typed?

18 A. This is a letter that I wrote.

19 Q. Okay. Who is it addressed to?

20 A. It was addressed to Misty Shepherd, who is the  
21 interim vice president for administration and finance.

22 Q. Okay. And was this in response to a letter that  
23 she wrote you?

24 A. It was.

25 Q. Okay. Can you give me some background on what

1 her letter said that prompted your response?

2 A. I wish I had it with me. But she told me that I  
3 was going to be held in insubordination.

4 And I would like to give you a little background.

5 Q. Okay.

6 A. After meeting with Joey Burby, I came away from  
7 there feeling very abused and upset. I told him in the  
8 interview that I didn't know if I could trust him. And  
9 I knew that I didn't trust others at UCF. And that I  
10 had the notes, and I was going through my notes. And I  
11 was willing to provide information from the notes. He  
12 told me that he would contact me the following day and  
13 would probably want those notes.

14 He didn't do that. The day of that was a Friday  
15 and I was on personal leave. And I was sent an email  
16 from compliance and ethics saying, "Bring us all of your  
17 notes we're going to copy them here with general  
18 counsel." And I said, "Please don't take offense, I  
19 don't trust you with my notes. And I can't bring them."

20 I was also told to turn in my phone and they were  
21 going to scan everything on my phone, and that they  
22 could go through anything on my phone. And I said, "I  
23 have a lot of personal information. This phone is  
24 personal, and I also use it for business. But I have my  
25 bank account information. And I have notes to my

1 husband. I have all kinds of things on here. And I  
2 can't allow you to do that either."

3 They waited. And I was still trying to go  
4 through the notes for them to find out things. They  
5 waited until a Friday afternoon, when I was in a meeting  
6 and they knew I was in the meeting with Kathy Mitchell  
7 going through documents. They waited until I was in  
8 that meeting and at 3 o'clock on that Friday afternoon,  
9 I was sent an email and a letter was dropped off in my  
10 office -- where I wasn't -- telling me if I didn't  
11 deliver everything that was pertinent to this  
12 investigation by Monday close of business, I would be  
13 held in insubordination.

14 **Q. Okay. And so did you respond, then, the**  
15 **following week with this letter?**

16 A. I responded with this letter. I responded with  
17 copies of pertinent texts from my cell phone. I went  
18 through about, I don't know, 10,000 or more texts on my  
19 phone to try to find anything that was pertinent, not  
20 just to Trevor Colbourn Hall, but to Trevor Colbourn  
21 Hall, to funding, to reporting that I had done.

22 And I printed out, I think, a thousand pages of  
23 screenshots from my phone. I also continued to work  
24 through trying to find pertinent notes from my notebook.

25 And on that Monday, I was also -- I was supposed

1 to be in meetings and that I could not get out because I  
2 was on a selection committee. And the State says, you  
3 must serve throughout. And I was in a selection  
4 committee from 1:00 until 5:00.

5 And so I had my husband deliver -- not to Joey  
6 Burby, because by that time I had retained counsel. And  
7 so I had him deliver the letter. I had him deliver the  
8 documents that I had come up with. And a -- a piece of  
9 paper that I asked that Misty sign saying that she had  
10 received the information.

11 Q. Okay. So we've been -- we were privy -- I guess  
12 UCF agreed to allow us to seek Bryan Cave's  
13 investigative material because we were asking for a lot  
14 of the same stuff.

15 At some point we did get some text messages that  
16 we were led to believe were from your phone. We were  
17 also given copies of what appear to be your handwritten  
18 journals or notebooks.

19 The difficulty I am having is determining whether  
20 we -- what we were provided was what you had attached to  
21 this letter.

22 So do you know whether any of the information  
23 that you just described, the texts, the notes that you  
24 provided to Bryan Cave, are valuable but yet are not  
25 mentioned in the Bryan Cave report?

1           A. I believe that the notes that I provided had  
2 value in more than one way. So some of them were  
3 related to Trevor Colbourn Hall. Again, some of them  
4 were -- were related to questions that I might have been  
5 asking Chris Kinsley, or information that I was given by  
6 others in order to do my job.

7           So I didn't create these notes for -- for a  
8 deposition. I didn't create these notes for -- for  
9 lawyers. These notes were created by me in meetings or  
10 discussions for me to be able to do my job.

11           **Q. Sure.**

12           MR. GREENE: The question was: Did you -- were  
13 any of those notes left out of the Burby report that  
14 you thought were significant in some way that was  
15 important to the investigation.

16           THE WITNESS: I believe they were significant.

17           MR. GREENE: Explain to them what you believe.

18 BY MS. MITZ:

19           **Q. If those notes were not addressed in the report,**  
20 **what I would like to know is if we can get copies of the**  
21 **notes, the texts, whatever you had that you think was**  
22 **important that did not show up in the report?**

23           MR. GREENE: Yes.

24           A. Yes. I think I can do that for you.

25           MS. MITZ: That would be really appreciated.

1 Thank you.

2 MR. RUBOTTOM: Would it be possible to  
3 accompany an affidavit to authenticate them.

4 THE WITNESS: Yes.

5 MR. GREENE: Yes.

6 MR. RUBOTTOM: Is that okay, Chuck?

7 MR. GREENE: Yes.

8 MR. RUBOTTOM: Thank you.

9 BY MS. MITZ:

10 Q. In this letter -- I think we're on the first  
11 page -- you describe your interview as an interrogation.  
12 And you stated that Mr. Burby did not like the answers  
13 that you were providing to his questions.

14 And I think later on in the letter you say that  
15 he kind of had an idea, basically, of how he wanted this  
16 to go. And that your answers weren't fitting into that.

17 Can you explain to me how you got that  
18 impression; what was going on in that interview?

19 A. So I wrote notes during the interview. And I  
20 will share those as well.

21 Q. Okay. Did he --

22 A. He was --

23 Q. -- try to -- go ahead.

24 A. He was accusing, with his tone, with his  
25 demeanor, with his words. He was, I felt, threatening

1 saying things like, "You're confusing everyone in here.  
2 Just answer the questions. Just give me a yes or no.  
3 Did you know this or didn't you? Seriously, you expect  
4 me to believe that," those kinds of things throughout  
5 the interview.

6 **Q. Okay. Your letter also says that you feel that**  
7 **President Whittaker and Chair Marchena are disseminating**  
8 **false narratives to conceal their responsibility or**  
9 **roles in approving the use of E&G for these projects.**

10 Can you tell me a little bit about that, what the  
11 false narratives are, why they would be doing this?

12 A. Well, I think when someone says "one day," the  
13 staff never told us about sources of funding. And then  
14 the very next day, when he goes before the board of  
15 governors, and he changes his story to say the staff  
16 deceived us about the source of funding.

17 One of those can't be true.

18 **Q. Okay.**

19 A. When someone says, "I didn't know anything about  
20 funding. I was the provost. And I only did provost  
21 stuff and Bill Merck did all of the other stuff," and  
22 yet on his own curriculum vitae, he was the university  
23 budget officer. He takes credit for all of the funding  
24 things, as well as facilities and other things in his  
25 curriculum vitae.



1           He formed -- reformed the university budget  
2 committee and chaired it. He reformed the newly formed  
3 budget facility. He created Tracy Clark's position to  
4 report directly to him and met with her regularly on  
5 funding.

6           Leave that to say that something is also not  
7 truthful there.

8           **Q. Okay.**

9           MR. GREENE: Are we finished?

10 BY MS. MITZ:

11           **Q. All right. Do you know anything about the**  
12 **missing audio recording of the board meeting that has**  
13 **become an issue in this matter?**

14           A. No. But I believe that that's further attempt on  
15 their part not to provide all of the information.

16           **Q. Do you know who was in charge -- or who would**  
17 **have been in charge of recording meetings in 2014 and**  
18 **2015?**

19           A. I don't know who was in charge of it. They  
20 generally had someone sitting in on those meetings who  
21 ran audio-visual. But those -- those documents are  
22 housed in the office of the president. So the chief of  
23 staff and the president would have those.

24           **Q. Would have access to them, okay.**

25           All right. Continuing on in your letter you

1 discuss an ethics complaint that you previously filed  
2 against Dale Whittaker for falsifying his résumé. You  
3 just touched upon it. I believe that's the résumé that  
4 he submitted to Iowa State.

5 Can you tell me how you learned about the résumé;  
6 whether you saw it; who you talked to about it?

7 A. Well, one of my employees -- I didn't, at the  
8 time, even know that he was competing for the position  
9 at Iowa State. One of the employees walked in my office  
10 and dropped it on my desk and said, "You're not going to  
11 believe this." And so, yes, I saw it.

12 And he showed me in there where information that  
13 we had been requested to provide -- such as all of the  
14 facilities under design, construction, and where they  
15 were in the process -- his office had asked that we  
16 provide that; and we provided it. And it went in there  
17 verbatim in his résumé.

18 He had not done any work on any of those  
19 facilities, other than spent quite a bit of time on  
20 Trevor Colbourn Hall and on his office suite. Other  
21 than that, he didn't work on any of the other  
22 facilities.

23 And so looking throughout the résumé, it appeared  
24 he took credit for everything that happened at UCF  
25 during the time that he was there.

1           **Q. Okay.**

2           A. This employee said that he was going to report  
3 it; later asked if I would report it. I talked to Bev  
4 Seay. I talked to Dave Walsh. I told them to stay  
5 clean. That the -- that this wasn't clean; they needed  
6 to stay clean.

7           I also sent a hidden mail, ProtonMail, to a  
8 couple of news sources and to Florida BOG. The Florida  
9 BOG was rejected. I sent a couple of emails to the  
10 chancellor; they were not rejected. So those emails did  
11 go through. And I --

12 BY MR. RUBOTTOM:

13           **Q. Was that Chancellor Keyser?**

14           A. Yes, it was.

15           **Q. What email address did you send those from?**

16           A. I send it from a ProtonMail address. And I can  
17 look it up. I think --

18           **Q. That's your private email, right?**

19           A. It's actually an email that doesn't let someone  
20 know your name.

21           **Q. Okay.**

22 BY MS. MITZ:

23           **Q. So he -- he could have read the email, but not**  
24 **known who to reply to?**

25           A. He could have replied to that email address that

1 was sent to him. You can -- you can send email and you  
2 can reply to email. You could have replied to, but he  
3 did not.

4 **Q. Okay. Okay. Did you ever confront Whittaker**  
5 **about this, or you just talked to people you just**  
6 **described?**

7 A. I did not confront him. I talked to, again, the  
8 two trustees. Dave Walsh then went to UCF compliance  
9 and ethics and told them that my staff and I had  
10 concerns. They called me to speak with them.

11 And I spoke with them, Christina Sera, on  
12 compliance and ethics. Our chief audit officer, Robert  
13 Taft. And I know there was an HR person in the room for  
14 at least part of the discussion.

15 **Q. Okay. And what was the result of that**  
16 **discussion?**

17 A. I don't believe anything happened. Because the  
18 process continued. Dale Whittaker's résumé was changed.  
19 His CV was changed. One of the knight news folks picked  
20 up on -- or somebody had seen Christina with his CV on  
21 her desk working on it. It said she was only changing a  
22 comma, and she didn't know she couldn't work on it in  
23 her professional duty time. And that they would tell  
24 her she couldn't do that.

25 The entire CV was changed. And the process went

1 forward. And he was selected as president.

2 Q. Okay. So just for clarification, although it  
3 sounds like a lot of the information on his CV was not  
4 accurate, that he was taking credit for things he didn't  
5 actually do. The fact -- the listing of Trevor Colbourn  
6 Hall was something that he was involved in; is that  
7 correct?

8 A. Yes.

9 Q. And the fact that he took responsibility for the  
10 university's budget on his CV is also a fact, correct?

11 A. Yes.

12 Q. Okay. So it's just the other projects that he  
13 took credit for, he didn't have any involvement in?

14 A. That and I think there were other areas where  
15 he's taking credit for everything that happened at the  
16 university, some of which wasn't even under him.

17 BY MR. RUBOTTOM:

18 Q. Lee, I am a little confused now on timing.

19 Because I believe he filed this CV with Iowa  
20 State or something?

21 A. That's correct.

22 Q. And when would that have been? Was that like  
23 2017 or something?

24 A. Probably. He was -- he was in the final four for  
25 Iowa State when I was told by one of the trustees that

1 they conducted a save-the-Dale campaign outside of the  
2 Sunshine, in the president's football box, the trustees  
3 had -- and they had a lot of high-level people make  
4 commitments to him to get him to withdraw from Iowa  
5 State.

6 Two days later Dr. Hitt announced his retirement  
7 and our selection process began.

8 **Q. When did you file your complaints?**

9 A. I filed it during the period that this was all  
10 going on.

11 **Q. After he withdrew from Iowa State or before?**

12 A. I think it was right after he withdrew from Iowa  
13 State, when all of this was going on.

14 **Q. So at that point, he was in the process of**  
15 **preparing to apply for the UCF job?**

16 A. Yes.

17 **Q. Okay. That might have been kind of scary, wasn't**  
18 **it?**

19 A. I don't know.

20 It's just -- I kind of feel like the university  
21 and the students deserve somebody with ethics running  
22 it.

23 BY MS. MITZ:

24 **Q. Yeah.**

25 **All right. Now, did you notice whether the**

1 people that you spoke with, Mr. Taft, Ms. Sera, or  
2 whoever from HR, were they taking notes?

3 Was there any documentation prepared at the time  
4 of this?

5 A. They were taking notes.

6 Q. Okay. Do you have any idea how long they  
7 maintain things like that?

8 A. I don't.

9 Q. Okay. All right. Back to your letter.

10 You also discussed having filed a complaint or  
11 having complained on multiple occasions about Chair  
12 Marchena trying to get people from the Orlando airport  
13 involved in overseeing projects at UCF.

14 I think you touched upon this in the beginning of  
15 our deposition. I want to ask you about your  
16 complaints.

17 Were they verbal or written, and who you went to  
18 about them?

19 A. They were verbal complaints. I discussed it a  
20 number of times with Bill Merck. I discussed it a  
21 number of times with Scott Cole. I also discussed it  
22 with Chris Kinsley.

23 Q. Okay. And did you pretty much provide the same  
24 information to --

25 A. Yes.

1           **Q. So could you tell me what each person's response**  
2           **was?**

3           A. I know Scott told me that it was not the chair's  
4           business to be involved in our operations. And if he  
5           contacted me again, I should just say that I passed it  
6           to Scott, which I did, at least one time.

7                     Bill Merck didn't believe that there was much  
8           that could be done about it. Chris Kinsley told me that  
9           I could backdoor information to him about the chair's  
10          involvement, if I wanted to. I also reported that to  
11          Bill Merck. And he said that he did not believe that we  
12          should backdoor the information.

13          **Q. Do you know whether anybody talked to Marchena**  
14          **about this?**

15          A. I do not know.

16          **Q. Okay. After you had these discussions with these**  
17          **three individuals, did Chair Marchena persist?**

18          A. He persisted over time. And as I go back through  
19          notes, I can see several times where he, again, wanted  
20          to bring in owner's authorized reps. He was determined  
21          to direct the delivery method of our projects so that it  
22          would result in hard bid, where some of the folks  
23          speaking to him would have better opportunities to get  
24          in as opposed to qualifications-based selections.

25                     And he did persist over time with trying to push



1 forward with us putting OARs in place on projects, even  
2 though we showed it would cost us a lot more money to do  
3 so.

4 Q. Is sounds -- and like correct me if I'm wrong.  
5 But it sounds like, then, these requests of Chair  
6 Marchena happened after the Hill report was done?

7 A. They happened before and after.

8 Q. Before and after, okay.

9 Okay. Your letter also states that you and  
10 others have documents and proof that demonstrate that  
11 both President Hitt and Whittaker expressly approved the  
12 use of E&G carry-forward funds to construct Trevor  
13 Colbourn Hall.

14 We discussed a lot, I am familiar with the  
15 building program, with the capital outlay budgets that  
16 went before the board.

17 Is there any other documents that would  
18 demonstrate that, their knowledge?

19 A. The university budget committee had those  
20 spreadsheets that showed funding sources.

21 BY MR. RUBOTTOM:

22 Q. Would those be the spreadsheets that had, like,  
23 auxiliary, bond, E&G, et cetera? We've seen those from  
24 a lot of staff meetings.

25 A. Yes.

1 Q. I'm trying to -- we're trying to nail down that  
2 Whittaker or Hitt or any trustee ever saw those  
3 spreadsheets.

4 A. I know that Whittaker would have seen those. He  
5 saw them regularly. And the university budget committee  
6 saw those.

7 Q. Would Tracy have given those to him?

8 A. Yes.

9 Q. Okay.

10 BY MS. MITZ:

11 Q. All right. I am assuming that you've read the  
12 Bryan Cave report?

13 A. I have read all of the pertinent sections that I  
14 thought were applicable to -- to facilities and to me,  
15 yes.

16 Q. Okay. I want to kind of dive into any parts that  
17 you disagree with, with the caveat that I understand  
18 that you're going to disagree with the conclusions that  
19 they have reached regarding you, your knowledge. Let's  
20 put that aside for a moment and focus more on the  
21 knowledge of higher-ups, the knowledge of Provost and  
22 then-President Whittaker and President Hitt.

23 Is there anything in the report that you disagree  
24 with in terms of their knowledge of the use of E&G?

25 A. I believe that the report seeks to absolve Dale

1 Whittaker and his knowledge, but he was instrumental in  
2 funding decisions on the budgets. Again, he created  
3 those committees. He worked with Tracy side by side.

4 He, at one point, made a statement that he only  
5 did provost things and he relied on Bill Merck to do  
6 financing. And when asked about why his name appeared  
7 on documents, he said, yes, his name appeared there as  
8 if by magic and that Bill Merck had told him to sign.

9 I don't think a name appears on documents, and I  
10 don't think somebody at that level just signs things  
11 that somebody else tells them to sign. So I think that  
12 the report does not point out the full knowledge that  
13 Dale Whittaker had.

14 I think that one of the failures in the report is  
15 that it was led by the UCF trustees and the general  
16 counsel, who should have been included in the  
17 investigation.

18 **Q. What do you mean by "led by" the general counsel?**

19 A. Dale Whittaker wrote to Scott Cole and told him  
20 that he was to find the company that was going to do the  
21 investigation and that he would be working with that  
22 company to do the investigation. And Scott Cole was  
23 receiving information from the investigation.

24 **Q. Tell me about that.**

25 **How do you know that, and what did he receive and**

1     **when?**

2           A.   Recently, there was some documents surfaced by  
3   local news that showed that he had copies of the draft  
4   report before it became a report and had opportunities  
5   to review those.

6   BY MR. RUBOTTOM:

7           **Q.   Right.  We understand that.**

8                   **But was there anything before that, that you know**  
9   **of?**

10          A.   We don't know.

11   BY MS. MITZ:

12          **Q.   Okay.  All right.  Do you have any information**  
13   **that Chair Marchena was told that E&G carry-forward**  
14   **funds could not be used for capital projects?**

15          A.   I don't have anything where he would be told that  
16   it could not be used for capital projects.  But the same  
17   general counsel who was supposed to advise the staff was  
18   also supposed to be advising the trustees.

19          **Q.   All right.  Okay.  Are you aware of anybody**  
20   **making the audit comment or audit Hitt comment in Chair**  
21   **Marchena's presence with regard to the Trevor Colbourn**  
22   **Hall project?**

23          A.   I am not.

24          **Q.   Okay.  And just briefly, when you talked to the**  
25   **BOG and Chris Kinsley specifically -- we touched upon**

1 this last week -- you asked about permission for  
2 replacement, renovations. You didn't ever ask if you  
3 could -- if it was okay to construct a brand-new  
4 building with E&G funds, correct?

5 A. I didn't ask about a brand-new building.

6 Q. Okay. Your letter indicates that you have spoken  
7 to representatives of other universities and that they,  
8 too, have identified E&G funds they have used for  
9 capital projects.

10 Do you recall which universities those were?

11 A. I don't, because there is an -- there's a group  
12 of people called CAFA, and it's the vice president --  
13 vice president through administration and finance of the  
14 universities. They regularly met, usually on conference  
15 call. And I think they also had meetings. And when I  
16 sat in on a CAFA call during the investigation, when all  
17 of the universities were being asked to talk about the  
18 other projects, that's where I think some of the  
19 assumptions came out and where, also, they said that  
20 they had talked to Chris Kinsley and they had received  
21 similar guidance, similar verbal guidance.

22 Q. All right. So I want to direct your attention to  
23 the third document in your packet, which is on Page 13.  
24 It's just a one-page text conversation.

25

1                   (Whereupon, Exhibit 3 was marked for  
2           identification.)

3                   Let me know when you're there.

4           A.   Yes.

5           Q.   Do you recognize that?

6           A.   I do.

7           Q.   Is that a text message -- or a text conversation  
8           from your phone?

9           A.   It is.

10          Q.   Okay.  Who was Elliot?

11          A.   Elliot Potter was working for me at the time.  I  
12          had hired him on an emergency hire to do contracts and  
13          real estate.

14          Q.   Did you say his last name was P-O-T-T-E-R?

15          A.   It is.

16          Q.   Okay.  So I am interested in the bottom portion.  
17          The last text says:  "Honestly, I do now" -- maybe  
18          that's --

19          A.   Not.  Should be not.

20          Q.   -- "know how you maintain any motivation when it  
21          is obvious no one cares about standards and possible  
22          illegality and corruption."

23                   Who wrote that text?

24          A.   Elliot wrote that.  And --

25          Q.   Okay.  Yeah, can you tell me, do you remember why

1     **or what this was about?**

2           A. I do. This was about a building. It's actually  
3 the South Orlando campus.

4           And what had -- Elliot had surfaced -- we were  
5 trying to give that property back to the state. And so  
6 Elliot was looking at the real estate portion of that  
7 and found that UCF had two private leases on that  
8 property, one to a Christian academy and the other one  
9 to Acorn Stairlifts.

10           And Elliot went back through the documents and  
11 found that that property, when given to us from the  
12 state and when donated to the state, had language in  
13 there that said that the property was to be used only  
14 for public higher education and research purposes.

15           And so when Elliot brought it to my attention, we  
16 did report this, first of all, to Bill Merck, who told  
17 us that we needed to report it to general counsel, and  
18 we did.

19           General counsel was the one that had formed the  
20 lease to the private Christian academy. And we showed  
21 them language in there that would allow them to get rid  
22 of that lease. And to my knowledge, they never did get  
23 rid of the lease.

24           **Q. Okay.**

25

1 BY MR. RUBOTTOM:

2 Q. What was the end result of that property? Did it  
3 ever get reverted back?

4 A. It has not yet been reverted back. And you'll  
5 see this was 2013, I think. It has not yet been  
6 reverted back.

7 But the county has some interest in the property.  
8 And so we have been working -- our government affairs  
9 office has been working with the county on their  
10 possible interest.

11 So when we did not get where we were trying to go  
12 with general counsel on this, we did report this to the  
13 division of state lands.

14 BY MS. MITZ:

15 Q. Division of state lands?

16 A. Yes.

17 BY MR. RUBOTTOM:

18 Q. Would that --

19 A. This appears in here --

20 Q. I'm sorry. I didn't mean to interrupt you.

21 A. Go ahead.

22 Q. Did UCF take in a lot of property they didn't  
23 really have any need for and would just lease out or --  
24 later or --

25 A. No. This -- this South Orlando campus had been



1 used in prior years, my understanding is. And they no  
2 longer had a use for it. They didn't have the  
3 population there to use it. And so they wanted to -- to  
4 give it back to the state.

5 **Q. And who was -- who wanted to give it back to the**  
6 **state, and why didn't they accomplish that?**

7 A. I wanted to give it back to the state because it  
8 was a money drain. This was one of the properties that  
9 was old, and so fit into that base budget PO&M. So I  
10 wasn't even getting enough money to maintain the  
11 property. We wanted to turn it over. It was not being  
12 used. We wanted to get it off our books. We didn't  
13 want a failing property and homeless people in the  
14 buildings and, you know, issues about the liability of  
15 having the property. And in --

16 **Q. Did Mr. Merck agree with you on that?**

17 A. He agreed with us, yes.

18 **Q. Was the president told?**

19 A. I don't know. Bill Merck would have had to tell  
20 the president. But Mr. Merck agreed with us that we  
21 needed to give this back, and we undertook actions to do  
22 that.

23 **Q. Would there be documents of those actions?**

24 A. There should be documents within the general  
25 counsel and with the contracts and real estate office

1 and with the division of lands. There were a lot of  
2 things -- we had to do surveys. We also did an  
3 environmental because we found that the creek running  
4 behind it had environmental issues. So there were  
5 surveys done. As part of trying to give this back, we  
6 had certain documents that we had to do.

7 And so there should be records of those, yes.

8 **Q. And do you know what authority blocked that from**  
9 **happening? Was that somebody at the state didn't want**  
10 **it or --**

11 A. No. It became that, again, the county has an  
12 interest in the property. And so UCF, as part of its  
13 relationship with the county, is working to turn it over  
14 to the county.

15 **Q. When was that started?**

16 A. Probably during the time that they were working  
17 on the downtown.

18 So it was part of partnership with the county on  
19 the downtown and the county wanting this property. So  
20 government --

21 **Q. How long -- how long between the time that you**  
22 **started to try to give it back to the state and that**  
23 **interest, how long a time period was that?**

24 A. It was a matter of years.

25 **Q. And in those years, what kept y'all from giving**

1     **it back to the state?**

2           A. Those leases that were still on the property were  
3 one of the reasons.

4           Q. Okay. That -- that makes sense. I -- that's  
5 just the piece that was missing. Thank you.

6           A. Uh-huh.

7           Q. Okay. I'm going to go through, now, a little bit  
8 about capital outlay budgets and the capital improvement  
9 plans. And I will be coming back to those later. I  
10 appreciate your patience with us.

11                  Mr. Merck called us a few weeks ago. And we just  
12 kind of had a general ranging conversation. I asked him  
13 about capital outlay budget and -- and he acted like he  
14 really didn't know anything about that and others did  
15 it.

16                  So who was responsible for preparing the annual  
17 capital outlay budget?

18           A. The capital outlay budget would have been  
19 prepared within facilities and safety. I would have  
20 reviewed it. It was then also reviewed by finance and  
21 accounting. It was also then sent forward in packets.  
22 So the vice president for government affairs, the CFO,  
23 our chief audit officer, general counsel, chief of  
24 staff, a number of people would see that as it was going  
25 into packets for the trustees. And then it would go

1 into the finance and facilities committee packets, and  
2 UCF tried to have those packets out 30 days prior to the  
3 board meetings.

4 **Q. You reviewed them, but who put them together?**

5 A. They would be put together by Gina Seabrook.

6 **Q. Were there any instructions on doing that for**  
7 **them? Was there any -- any standard methodology that**  
8 **went into completing that form?**

9 A. No. There was nothing that told us how to do it.  
10 We tried to follow the board of governors regulation,  
11 which is what we were told to do. The board of  
12 governors regulation doesn't even tell you what to put  
13 in it.

14 **Q. And if it tells you more than you were doing, who**  
15 **would have been responsible to figure that out?**

16 A. If the regulation told us more than we were  
17 doing?

18 **Q. Yes, ma'am.**

19 A. Then we would be advised by Scott Cole or it  
20 would have come to us from an audit or from any of those  
21 people who looked at it.

22 Again, we passed this through a number of hands  
23 every year.

24 **Q. Right. And it looks kind of the same every year.**

25 **And so that's --**

1 A. It does.

2 Q. I understand how -- how it happened -- in a  
3 bureaucracy.

4 A. It was used the same way --

5 Q. Was this circulated -- was this circulated with  
6 the capital improvement plan --

7 A. No.

8 Q. -- and the university -- with the operating  
9 budget? Would they circulate all together or separately  
10 or what?

11 A. It did not go to the capital improvement plan.  
12 They were submitted at two different times.

13 Q. Okay.

14 A. I do believe it was on the same agenda as the  
15 operating budget.

16 Q. Typically, yes.

17 A. Uh-huh.

18 Q. Okay. So did you instruct Gina how to fill them  
19 out?

20 A. Actually, the knowledge of how to fill them out  
21 came when I got there to say this is how we have always  
22 filled this out. So historical knowledge of this is how  
23 we've always filled this out. So and I didn't instruct  
24 her how --

25 Q. How did you educate yourself to improve that?

1           A. By going through -- now, I read the board of  
2           governors regulation on it, which didn't really tell us  
3           anything. And the -- the changes we made were to try to  
4           improve it. So you'll notice that at one point we  
5           put -- put some of the PO&M on there, even though it's  
6           not capital, and I explained that to the trustees, that  
7           I was putting that on there so that they could see that  
8           they weren't getting that money. Because lack of PO&M  
9           and deferred maintenance was becoming a hot topic, so we  
10          added that.

11                 We added the separate columns so that they could  
12          say -- so that they could see a column that says here's  
13          what we asked for in one column and then here's what we  
14          got in the second -- in the -- it's actually the third  
15          column because the title is in the first column.

16                 So we say, okay -- for example, we asked for  
17          \$38 million for Trevor Colbourn Hall. And then at the  
18          second column, you'll see a dash that's a zero. So  
19          here's what we asked for. Here's what we got.

20           **Q. So when you were making those changes, did you**  
21           **ask for help from the general counsel's office?**

22           A. No.

23           **Q. Were you aware that there was a statute that also**  
24           **regulates capital outlay budgets?**

25           A. We were not aware of that until this year.

1           **Q. Okay. Did the auditor's findings on that**  
2           **surprise you? Did you read those findings?**

3           A. I did. Now -- and it surprised me a lot.

4           **Q. Did that --**

5           A. I was curious, first of all, why I had not been  
6           invited to the -- the exit interview. Normally, when  
7           there's an item that's your item, you're invited to that  
8           exit interview so that you can have discussion. I  
9           believe if I had been invited to that interview, we  
10          could have had that discussion to say, wait a minute,  
11          this is not how we use this form. Certainly, we're open  
12          to learning better on how we should use this form.

13          **Q. Is it possible that the legislature, the BOG, and**  
14          **everybody above the university level has been lax in --**  
15          **in directing and instructing and holding accountable on**  
16          **those regulations and laws?**

17          A. Absolutely. Absolutely. I can't tell you how  
18          many times I asked for guidance and did not get it.

19          **Q. Did you ever ask for guidance on capital outlay**  
20          **budgets?**

21          A. We asked for guidance on capital improvement  
22          plans, capital outlay budgets, any of the other forms we  
23          were required to fill out. We asked for guidance almost  
24          every time.

25          **Q. Well, one of our hopes is that they will be**

1 getting that after we're through with this project.

2 A. I do too.

3 Q. What is your understanding of the purpose of the  
4 capital outlay budget?

5 A. Well, again, my knowledge now and my knowledge  
6 then are two different things. My knowledge now, after  
7 finding the statute and reading the statute, is that it  
8 is to show all fund sources for your capital outlay.

9 Q. Right. But before this --

10 A. Until that, we understood it that the state told  
11 us what -- what funds were coming in. We presented it  
12 to our trustees and they approved that. You would  
13 hear -- if you listen to any of the transcripts, you  
14 would hear me saying to the trustees every year, well,  
15 here you are again approving the budget that the state  
16 just gave you.

17 Q. Did it ever strike you as odd that you would --  
18 let's think about 20 -- think about the '16-'17 fiscal  
19 year. I guess that would have been adopted in May of --  
20 of -- of '16, or sometime in the spring.

21 A. Uh-huh. Uh-huh.

22 Q. Did you know that you would be starting Trevor  
23 Colbourn Hall before the end of the next fiscal year?

24 A. We knew that we were moving forward with Trevor  
25 Colbourn Hall. And we had a project approval by the



1 trustees. And we thought that that --

2 Q. Did it strike you as odd --

3 A. We thought that that was what we needed, was that  
4 project approval.

5 Q. Right. I understand that.

6 But did it strike you as odd that you put a  
7 budget in front of them for that building and it said  
8 zero?

9 A. No, it said zero next to PECO. So it shows --

10 Q. It meant zero PECO?

11 A. Yes, it shows that for PECO, I asked for 38 and I  
12 got zero. That's what those columns showed.

13 Q. Right. So you just -- I don't want to go further  
14 on that because we really have more important things to  
15 talk about.

16 So you talked about the board authorization, I  
17 guess the 2014 authorization, the 2016 authorization.

18 Those -- those board approvals, that was the only  
19 board approval of Trevor Colbourn Hall construction; is  
20 that right?

21 A. As far as I know, yes.

22 Q. And you -- and that was board approval of funding  
23 as they were discussed in those meetings, right?

24 A. Yes.

25 Q. Do you remember anything -- well, I'm going to

1 get to that later.

2 What -- what documents would the president have  
3 approved to authorize the building? Was it programs --  
4 the TCH program documents published in February or March  
5 of '17? Would that have been the only document that the  
6 president would have signed?

7 A. He signed that document. Can't think of others  
8 that he would sign.

9 Q. Do you know if Mr. Merck had any delegation of  
10 authority from the president to approve projects or  
11 transfer funds for capital projects?

12 A. I believe he had up to \$500,000.

13 Q. Okay. So on his authority would have  
14 transferred -- I mean for Trevor Colbourn, there was  
15 10 million the first year, 18 million the second year,  
16 and 2 million the third, whose authority would those  
17 transfers -- would that not have been in your area of  
18 responsibility?

19 A. It would not. So we would be on the receiving  
20 end of transfers. And then normally, I wouldn't even  
21 see which funds were being transferred.

22 Q. But that generally -- back to the annual capital  
23 outlay budget, do you recall any annual capital outlay  
24 budget that showed any source of funds that was  
25 university funds or internal funds?

1           A. No. Again, we did not even -- it had never been  
2 used that way before I got there or after to show  
3 internal funds. It was always used to show here's what  
4 the state has allocated this year. And then the  
5 trustees approved it.

6           **Q. So let's go to the capital improvement plan. Who**  
7 **was responsible for preparing those?**

8           A. Those also were prepared by Gina Seabrook and  
9 then came to me. I would take them to Bill Merck first,  
10 to the provost second, and then to the president third  
11 for their input and changes. And then we would mark  
12 those changes. At some point we started marking them in  
13 red because the trustees had asked that they wanted to  
14 see the line-throughs and see the changes. So at some  
15 point we started marking them. And then they would go  
16 to the trustees.

17                   Then after the trustees had their say on any  
18 changes they wanted made, they would clean them up and  
19 then send them to the board of governors.

20           **Q. How would the trustees direct changes? Because**  
21 **my -- the meetings I have looked at, they voted for the**  
22 **plan. I don't remember any amendments being voted. How**  
23 **would the trustees direct changes?**

24           A. I recall only -- I only recall one year when they  
25 wanted to make a change. It was in a -- it was in one

1 of their board meetings. And they -- we made the  
2 change. I don't recall what project it was. But we  
3 made the change.

4 **Q. Okay. Would that have been a priority change --**

5 A. I think it was a priority change.

6 **Q. -- or adding a project?**

7 A. I think it was a priority change.

8 **Q. Okay. Thank you. I just missed that one.**

9 Do you get a form for that from the BOG, or do  
10 you guys develop your own form?

11 A. This came to us from the board of governors. And  
12 we're filling it out as we've been instructed by them.

13 **Q. If a project was on there, like Trevor Colbourn,**  
14 **that the administration had already identified and**  
15 **secured university funding for, would either provost,**  
16 **would Waldrop or Whittaker, or President Hitt have ever**  
17 **asked, Why is this on PECO when we're paying for it**  
18 **ourselves?**

19 A. No, we actually had those discussions. Chris had  
20 advised us to put a project anywhere it might be funded.  
21 And if we --

22 **Q. I understand.**

23 A. If we were still requesting PECO, perhaps as a  
24 payback for what the university was funding, we would  
25 still put it under PECO. And Chris was aware that Bill

1 was asking for payback. And that happened on --

2 Q. Were there other projects that Bill asked for  
3 payback? I think I saw a facilities workshop in 2017,  
4 where Merck and Whittaker were asking the BOG for  
5 payback on the research, for research 1.

6 A. Yes. Yes, on research 1. There were  
7 conversations with Chris on research 1 about  
8 self-funding first and then using PECO as a payback.  
9 There was also a -- you can't call it a joint use  
10 facility because it gets into other issues.

11 So Chris had advised us on a building in Osceola,  
12 where one of the state colleges needed 7 1/2 million  
13 dollars and had come to us for that, that we could put  
14 it on the PECO list, understanding that -- and fund it  
15 ourselves with the understanding that PECO may not come.  
16 So that was a risk. But yes, you could put it on there  
17 and ask for the payback.

18 Q. Do you know of any building that you did get PECO  
19 for after you had spent university funds to do the  
20 project?

21 A. I don't know of any.

22 Q. When -- when you say Chris said it, was that  
23 something he would volunteer or would that be something  
24 that he would say, yeah, that makes sense to try?

25 A. On that Valencia -- Valencia or Seminole State --

1 I can't remember which -- on that building, there was a  
2 meeting and there were several people in the room  
3 having -- asking the questions. On the board of  
4 governors' side, Chris and Mickey, I believe, were both  
5 in the room. Scott and Bill and I were in the room on  
6 our side. I think Vanessa Fortier was also in the room,  
7 maybe some others, where they were talking about how to  
8 go about doing this -- putting the money onto that  
9 building because they didn't have enough money to  
10 complete the building. And so it was a -- it was a  
11 large group talking about how to fund that.

12 And that's how the discussion came out that we  
13 could put it on there. And they gave us several things  
14 to do, like move it up on the priority list, make sure  
15 that we asked for a spot survey. And he gave us time  
16 frames. And the reason I am remembering this clearly is  
17 because I saw it last night. Make -- making sure that  
18 we have the survey on time, sending them a memo on what  
19 they were going to do with it, and that they would try  
20 to help get the funding, but with the understanding that  
21 we may not get the payback.

22 **Q. Okay. Let me ask you to look at the document**  
23 **that starts on Page 17. I think that's the capital**  
24 **improvement plan that was adopted in 2014 --**

25 A. Uh-huh.

1 Q. -- which would have been right after the board  
2 approved the new building. And I guess this is the  
3 first time Trevor Colbourn Hall, then, would have  
4 appeared on the capital improvement plan.

5 A. I think that's correct.

6 (Whereupon, Exhibit 4 was marked for  
7 identification.)

8 BY MR. RUBOTTOM:

9 Q. Okay. And I'm sorry I didn't -- I don't know  
10 which year to look at. But let's just look at that  
11 form.

12 When -- there's once or twice where I think  
13 Trevor Colbourn and/or the renovation were included in  
14 PECO and then also included in the other state sources  
15 category.

16 Do you recall putting them in both categories?

17 A. That's correct. And that was based on guidance  
18 from Chris Kinsley to say, put projects in any place  
19 where you might get funding or spend -- spend money.  
20 And so oftentimes we would have projects in more than  
21 one category.

22 Q. Okay. Do you ever recall putting one on one of  
23 those state categories, but also on the request from  
24 nonstate sources?

25 A. That could also possibly happen. So it might be

1 like a building that we might have donor funds for some  
2 of it. And so we might have put it under possible state  
3 funding as well as nonstate, which would be the donor  
4 funds portion.

5 Q. Okay. Would -- did you ever consider putting  
6 Trevor Colbourn Hall in that category, given the fact  
7 that you were funding it internally?

8 A. No, because my understanding was that they were  
9 spending internal funds. And to me, internal funds  
10 could mean a number of things. Primarily, their  
11 internal funds would be E&G funds, but it could also be  
12 auxiliary sources or other sources.

13 Q. So when you look at nonstate funds, that would  
14 haven't included internal. That would have been  
15 donations and debt?

16 A. It would have been donations and debt, for  
17 example.

18 Q. Okay. Well, that makes sense. I think that  
19 helps me.

20 MR. RUBOTTOM: I'm going good. But does  
21 anybody need a break?

22 MR. GREENE: We're fine.

23 MR. RUBOTTOM: Okay.

24 BY MR. RUBOTTOM:

25 Q. There's three -- in there, I think 17, 16, and



1 14.

2 A. I think you have --

3 Q. Do you recognize those?

4 A. I think you have them maybe out of order.

5 So you have the one upfront on Page 18 that's '15  
6 through '20.

7 Q. Uh-huh.

8 A. And then you have the one on Page 25 that's '17  
9 through '22. And then you have the one on Page 31  
10 that's '18 through '23.

11 Q. Right. I intentionally left the -- the third one  
12 out.

13 A. Okay.

14 Q. Those were the three years that you included the  
15 building on the BOB-2 form, I believe.

16 Were these CIPs ever discussed with the board  
17 chair -- with the financing facilities or the board of  
18 trustees' chair prior to the meeting?

19 A. Not by me.

20 Q. Okay. The BOB-2 in 14 and 16 both showed Trevor  
21 Colbourn at \$20 million. On Page 27 is the BOB-2 forms.  
22 They don't have the year, but that would be the -- the  
23 2016 BOB-2.

24 And the first one also shows -- the 2014 also  
25 shows 20 million.

1           A. I think the 2014 at 20 million was correct. It  
2 was 80,000 gross square feet. And I think when it went  
3 to 135-6, the project amount didn't get changed there.

4           **Q. Think that's just a mistake?**

5           A. I think it's a mistake because that's when the  
6 building went up.

7           **Q. Okay.**

8           A. So if you look at the CIPs and the story they're  
9 telling, if you go to the first one -- sorry. In the  
10 first one what you see is Trevor -- you have Colbourn  
11 Hall renovation. And that's when we were still thinking  
12 we were going to renovate the building and then build  
13 the smaller new building, Trevor Colbourn Hall.

14          **Q. Uh-huh.**

15          A. When you get to the next one, the 17 through 22,  
16 you see that it now becomes one building.

17          **Q. Right.**

18          A. So the renovation comes off and you have one  
19 building and a demolition.

20          **Q. Right.**

21          A. And what you see in the other state sources is  
22 they come off of there because Chris said all we had to  
23 do was notice, notice the -- the board of governors that  
24 they were doing that. So when they were on there  
25 before, they noticed the state that we were doing it and

1 they could come off at that point.

2 And so the story, then, goes is that you're  
3 taking the renovation off and you're putting the -- now  
4 it's one building and the demolition, that happens  
5 there.

6 And then --

7 **Q. Right.**

8 A. -- in '18 through '23, you see the full, again,  
9 at the top, Trevor Colbourn, and the -- and they  
10 disappear from the state sources because they've already  
11 been noticed.

12 **Q. Why do -- why -- why was the building added again**  
13 **to the BOB-2 for the '18 -- 2018 through '23, or**  
14 **whatever. That -- the one adopted in July of 2017? Why**  
15 **is --**

16 A. So you see that in red?

17 **Q. Right.**

18 A. Red is what -- how Gina was showing that we had  
19 already requested it. And no money had come. This  
20 was -- this got caught up in the part where PO&M wasn't  
21 coming to us anymore.

22 **Q. Right.**

23 A. And so she was putting the things on there that  
24 said, hey, these are all the ones we've asked for  
25 before, but no money came. So they're in red. And the

1 ones in black are the new adds.

2 Q. Did you-all understand what the legislature did  
3 with the BOB-2 list?

4 A. Well, Chris just told us to put it on here this  
5 way and that they -- that he, then, would take the --  
6 the -- the board of governors staff would, then, take  
7 the BOB-2 lists and they make up their own BOB-2 that  
8 would be sent forward to the legislature for their  
9 approval.

10 Q. Right. But what I'm asking is, did you know the  
11 legislature approved the building in the 2015 general  
12 appropriation act and the 2017 general appropriation  
13 act? So those first two requests, the second one was  
14 the larger -- the larger. So it made sense to request  
15 approval for the larger building?

16 A. Uh-huh.

17 Q. Were you aware that the legislature had approved  
18 the building both of those years?

19 A. Not that I recall.

20 Q. Well, that helps me understand a lot. And there  
21 it goes back to the -- to the guidance. Okay?

22 Because the legislature did approve it, and then  
23 they reapproved it in last year's general appropriation  
24 act. Okay? So the legislature has repeated itself on  
25 that building. And we didn't -- we didn't understand

1 why it was on the list. And that's why you kept putting  
2 it back on the list. So --

3 A. Correct.

4 Q. Am I -- am I summarizing your understanding  
5 accurately?

6 A. That's correct.

7 Q. Okay. I start talking about what I know  
8 sometimes, and I know it messes up the deposition.

9 So -- okay. Thank you for that.

10 And just -- just to kind of shorten the time, I  
11 believe that we have heard you say, or others say,  
12 you -- I just want to see if this is accurate to your  
13 understanding.

14 You would put E&G as the funding source on a  
15 BOB-2 if you weren't certain whether or not you would  
16 get any other money for it and -- but you didn't have  
17 donations or bonds or something; is that accurate?

18 A. On the BOB-2, Chris had instructed us that if we  
19 didn't know the source of the building -- source of  
20 funding, but we knew that it was an E&G building, we  
21 should put E&G as the source. Or if it was E&G, E&G  
22 went there. But he said on the buildings we didn't know  
23 what the source was, we should put E&G there, if it was  
24 meant to be an E&G building.

25 Q. Okay. Okay. Has -- has anybody ever asked you,

1 any trustee, any president, any provost, anybody at the  
2 BOG, ever asked you about an E&G notation on a BOB-2 for  
3 any building?

4 A. Not until all of this started, no.

5 Q. Okay. Did you think that the BOG was approving  
6 E&G as a funding source when -- when the process -- was  
7 ongoing?

8 A. Based on guidance from Chris, I believed that --  
9 that by us noticing it under the other state sources, we  
10 had told them that we were doing it. And -- and no one  
11 told us that we couldn't do it.

12 Q. Right. I understand. But I'm talking about the  
13 BOB-2, particularly. Did you consider that an  
14 additional notice?

15 A. I do consider that a notice. But, again, it  
16 could go two ways, based on the guidance we had from  
17 Chris that it could be there just because it's an E&G  
18 building or it could be there because it's E&G funding.  
19 And we got that guidance both ways from Chris.

20 Q. Okay. Well, that's helped me a lot.

21 But you understand -- did you understand that the  
22 main purpose of the BOB-2 was to authorize future plan  
23 operation and maintenance --

24 A. Yes.

25 Q. -- funding for those buildings?

1 A. Yes.

2 Q. Okay. In 2015, I think we see on a calendar for  
3 a meeting. It's Document 5, Page 37. Show you on a  
4 calendar for a meeting with Dr. Whittaker to talk about  
5 the capital improvement plan for that year.

6 A. Yes.

7 (Whereupon, Exhibit 5 was marked for  
8 identification.)

9 BY MR. RUBOTTOM:

10 Q. Was that -- would that kind of meeting occur  
11 every year?

12 A. It would.

13 Q. Okay. What -- what was the purpose of that  
14 meeting?

15 A. That would be -- as I was talking about earlier,  
16 the way capital improvement plans would flow, Gina would  
17 put anything that she knew on there. She would reach  
18 out to sources to find out what was -- you know, what's  
19 happening with the -- with the projects. She would  
20 bring it through me. I would take it through Bill  
21 Merck, would be the next stop. And then I would go to  
22 the provost, that's the next stop. Then I would go to  
23 the president. And he would make --

24 So they all had their opportunities to say what  
25 they thought should be changed or added or deleted. And

1 after the president had his stop, then that's how we put  
2 together what was going to -- the -- the trustees.

3 Q. Okay. Other than the current draft of the CIP --  
4 let's say that was the May 20th meeting. Other than the  
5 current draft of that CIP, what other information would  
6 you provide to Dr. Whittaker in that meeting?

7 A. It would have the other forms with it as well.  
8 And we would talk about what those other forms were, you  
9 know, the -- the authority to -- to take on debt, which  
10 I think is the BOB-1, and the PO&M, BOB-2. So we would  
11 go over all of the forms, not just the first one.

12 And we would talk about anything that had come to  
13 us. So perhaps athletics was coming to us for projects  
14 or housing or, you know, something that he might not  
15 have from his own deans. We would tell him what we were  
16 getting from the general population on the needs. And  
17 we might -- depending on questions that were asked, we  
18 might talk about the educational plant survey at the  
19 same time.

20 Q. Would you talk about funding sources?

21 A. Not really, no.

22 Q. Did they ever ask questions about the BOB-2,  
23 other than what is -- what buildings are on this list?

24 A. No. They never asked a question about it.

25 Q. Okay. Last July, the board of trustees



1 considered the current capital improvement plan. And  
2 last June, the finance and facilities committee  
3 considered that plan. And for the 2018 capital  
4 improvement plan, BOB-2, Trevor Colbourn Hall is there  
5 again. And it shows CF auxiliary as the funding source.  
6 And that's document -- I think that's on Page 48.

7 No, I'm sorry. Let me figure out what document I  
8 am on.

9 I'm still looking at the previous year. No, I  
10 don't -- I don't think I have it in the list.

11 Do you recall that funding source being on the  
12 BOB-2 for the current CIP?

13 A. No. And the only -- and I would not have made  
14 that change. The only way it would have changed is when  
15 it went forward to finance and accounting. Because they  
16 reviewed these each year. Finance and accounting could  
17 have made that change.

18 Q. So Mr. Merck or Tracy could have made that  
19 change?

20 A. They could have. Or the chief of staff could  
21 have. I'm not sure that he would know a funding source.  
22 Again, the document went through a number of people  
23 before it ever was put in their packets. And it was  
24 reviewed by finance and accounting every year. It was  
25 reviewed by the CFO. It was reviewed by -- I believe --

1 I believe all of those kinds of document were reviewed  
2 by the vice president for government affairs, the chief  
3 audit officer, general counsel.

4 Q. But in the months of June and July, you didn't  
5 hear Mr. Merck or Tracy talk about trying to refund the  
6 E&G that the auditor was asking about?

7 A. No. And I don't even know exactly when that exit  
8 interview was. If the exit interview --

9 Q. The exit interview was August. This is what I'm  
10 trying to get to -- and I'm going to ask Tracy and  
11 Mr. Merck -- it looks like there was a -- they were  
12 beginning to plan the refunding, which makes perfect  
13 sense.

14 A. Uh-huh.

15 Q. I'm just trying to figure out who -- who -- who  
16 knew about those decisions.

17 A. I did not know --

18 Q. If you saw CFAUX, would that mean carry-forward  
19 auxiliary to you?

20 A. Yes, it would.

21 Q. Okay. If you didn't know anything about that,  
22 that saves me a lot of time.

23 Let's talk about master plans for a minute. I  
24 know we had a conversation last week about that. But  
25 for the record: Who was responsible for developing the

1     **2015, 25 master plan?**

2           A. That was also within facilities and safety. We  
3 had brought back the former director, Pete Newman, to  
4 assist with that because we had a brand -- new planner,  
5 Maria Timouri. And Maria and Pete led that effort. The  
6 master plan is not written by an individual. We have  
7 the element group leaders for each of the element  
8 groups. And the facilities and safety team works with  
9 those element group leaders to get their changes made  
10 and to incorporate them into the master plan.

11           The only element that we outsource is the  
12 transportation element because that's usually the most  
13 critical element, and it's usually also the one that our  
14 host local government concentrates on as far as  
15 concurrency. We --

16           **Q. There's a funding element, isn't there?**

17           A. And that would have gone to the element group  
18 leader responsible for funding. There are seven.

19           **Q. Who would that have been?**

20           A. I would have to look. We actually keep record of  
21 who the element group leaders are for each element.

22           **Q. If I ask the university, they could provide me**  
23 **that list?**

24           A. Yes.

25           **Q. Okay.**

1           A.   And the person that you would ask is probably --  
2   Maria Timouri is still there.  She's no longer in that  
3   role.  She's now doing more project management-type  
4   things.  And I hired someone -- as I mentioned last  
5   week, I hired Suzy Hutson from Purdue to come in and  
6   look at -- to do our planning, master planning, space  
7   planning, working with us on space planning because she  
8   did that job specifically at Purdue.

9           **Q.   Okay.  Who developed the master plan amendments**  
10   **that were submitted to the board in December, this last**  
11   **December?**

12          A.   This last December would have been Suzy Hutson,  
13   Susan Hutson, H-U-T-S-O-N.

14          **Q.   Do you know who would have worked with her on**  
15   **that?**

16          A.   Yes, she was working -- and always all of our  
17   amendments would be put together in facilities and  
18   safety.  I would review them.  They would go forward to  
19   Scott Cole.  And instead of one of his junior attorneys,  
20   Scott would review all of the master plan amendments and  
21   master plan himself.

22          **Q.   Did you see the changes -- next to the building**  
23   **name, there were changes in those amendments that**  
24   **changed the funding source.**

25                 **Are you familiar with those changes?**

1 A. No, I'm not even sure which amendment we're  
2 talking about.

3 Q. I'm sorry I didn't -- I'm sorry I didn't -- did  
4 you review the amendments that were put in front of the  
5 board in December?

6 A. If I was there, I reviewed them. Remember I --

7 Q. I didn't send you the document, but --

8 A. I got very ill after.

9 Q. I understand.

10 A. Yeah, and so I was -- I was out for some time.

11 Q. I understand.

12 Do you ever recall putting funding sources on the  
13 building line in the master plan?

14 A. Oh, I know what you're talking about because Gina  
15 Seabrook showed them to me. You're talking about the  
16 capital improvements list that goes in the master plan.

17 Q. Exactly, yeah. I'm sorry.

18 A. And Gina added that column because I asked about  
19 it. I said, "Do we have this column on all of the  
20 things, Gina? Because this would clearly show that they  
21 had an opportunity to see this." And she said, no, they  
22 had not been on there. She, at some point, decided that  
23 it would be helpful to have them on there. And so she  
24 started putting them on there.

25 Q. You don't know if anybody directed her to do that

1 or if there was any discussion that that might be a good  
2 idea or not?

3 A. She normally would ask me. She didn't. And I  
4 didn't direct her to do it.

5 Q. Is it possible that Scott Cole or Kathy Mitchell  
6 or President Whittaker or President Whittaker's chief of  
7 staff might have directed that?

8 A. It's possible. Gina also had a lot of  
9 conversations with Chris Kinsley. So Chris could have  
10 suggested it. Scott could have suggested it --

11 Q. Well, what -- what bothered me is -- is when you  
12 amend something, you're changing what it was to what it  
13 is. And that thing shows E&G crossed out and CF  
14 auxiliary added. And I have never seen a master plan --  
15 I have never seen a capital improvement list component  
16 of a master plan that included the E&G, so I didn't  
17 understand. We'll talk to Gina about that.

18 A. And I had not seen it either.

19 Q. Okay.

20 A. As I was digging through documents to find out  
21 who knew what, I saw that and said, "Hey, Gina, was this  
22 on all of the years?" And she said, no, she had added  
23 it. So I'm not so sure if anyone else suggested that it  
24 be added. I know I did not. I found it as I was going  
25 though documents.

1 Q. Do you think the trustees would have understood  
2 that change when it was presented to them in December?

3 A. I think that because we made our changes in red  
4 so that they could see what we were doing, many of the  
5 trustees who had asked us to do that said that they  
6 were -- they would specifically look at those changes.

7 Q. Thank you very much.

8 Let's talk briefly about the plant survey. There  
9 was a full plant survey completed in late 2015 that  
10 found Colbourn Hall satisfactory.

11 Do you recall that plant survey?

12 A. I do recall the 2015 survey.

13 Q. I think Mr. Kinsley was on the survey group.

14 Do you recall that?

15 A. I don't know if he was on the survey group or  
16 not. Those surveys are --

17 Q. Those are peer groups --

18 A. That's correct.

19 Q. -- of the university to the BOG people?

20 A. That's correct. And it's usually Ken Ogletree  
21 from the BOG. It's usually not Chris. It's usually Ken  
22 and then Peter.

23 Q. Do you consider the plant surveys to be serious  
24 planning activities or do you -- or do you consider them  
25 just another hoop to jump through in the process?

1           A. I believe that they can be extremely helpful in  
2 how you're planning. I don't know if -- I don't know if  
3 they are taken seriously by all parties. I think we try  
4 to -- we try to take them seriously.

5           **Q. Right. But there's some discussion about**  
6 **Colbourn Hall and they look at it and they find it**  
7 **satisfactory, and yet very shortly thereafter you-all**  
8 **decided to demolish it.**

9                   **Did anybody ask about the satisfactory rating on**  
10 **that building?**

11           A. No, but I did have conversations with Chris  
12 Kinsley later, when we were looking at demolition. And  
13 Chris said he felt all along it should have been  
14 demolished and that he believed that the building was  
15 in demolishable state. That's when I was asking them to  
16 come back out and do a spot survey. And Chris and Kim  
17 decided that no one needed to come back out, that they  
18 were fully aware of the conditions of -- of -- of  
19 Colbourn Hall. And Chris said that he believed that it  
20 was a smart move on our part to demolish that building  
21 and that it was definitely in demolishable state.

22           **Q. I understand that.**

23                   **But if he was on the plant survey team, would it**  
24 **make any sense for him in the -- in -- in the fourth**  
25 **quarter of 2015 to say satisfactory on that building?**



1 A. It was definitely not satisfactory at the time.

2 Q. Okay. Thank you.

3 I have a bunch of questions about carry-forward  
4 commitment lists.

5 Have you ever worked on those carry-forward  
6 commitment lists or allocation lists?

7 A. That's the carry-forward -- I think there's a  
8 report that's still not -- you're talking about the  
9 report -- it goes forward --

10 Q. The final one with the BOG. In August, and then  
11 sometime asked for supplement.

12 A. No. Those are done in finance and accounting.  
13 Christy Tant had, I know at least one occasion, maybe  
14 more, asked about buildings that we were working for  
15 deferred maintenance. And we provided lists to her of  
16 the buildings and what we were doing with deferred  
17 maintenance at the time.

18 And that's -- we didn't really fill out the list.  
19 I understand it was a form that had certain categories  
20 she had to fill out. And she filled those out with the  
21 BOG categories. We provided those.

22 Q. Do you have copies of those lists that you  
23 provided her each year?

24 A. I don't know. I'm trying to think who might. I  
25 have very little access at this point.

1           **Q. I understand.**

2           A. But it's possible that LaShanda Brown-Neal might  
3 have copies of the list that were provided.

4           **Q. Are you aware of the -- of the -- of the amounts**  
5 **of deferred maintenance dollars that were on those**  
6 **documents in 2013, '14, '15, '16, and '17?**

7           A. No. I think that there was an email at one  
8 point -- I saw one email in one year saying something  
9 about whether they had a certain amount of deferred  
10 maintenance.

11                   We always could have had enough deferred  
12 maintenance. You can't -- you can't spend the money  
13 fast enough to do everything you have to do at one time.  
14 But we have enough deferred maintenance that could fill  
15 up a list.

16           **Q. Understand.**

17                   Did -- do you know who made the decision of how  
18 much of your deferred maintenance would go on that list?

19           A. No, I don't know.

20           **Q. Did you ever hear anybody discussing putting**  
21 **money for Trevor Colbourn Hall or any other new projects**  
22 **into the deferred maintenance number on that list?**

23           A. No. I think Isis recently told us our deferred  
24 maintenance is sitting at about \$260 million. So we  
25 don't have to -- we don't have to fudge it.

1 Q. Do you know who would have presented that  
2 commitment list to -- to -- to Provost Waldrop or  
3 Provost Whittaker for an allocation list about the time  
4 of the commitment list? Do you know who would have  
5 presented those to -- to the provosts for signature  
6 before they went to the president?

7 A. No. Sorry. I don't.

8 Q. Okay. Okay. I'm going to let Carine take back  
9 over. We actually skipped some stuff. So I'm sorry.

10 MS. MITZ: No, we're trying to get through  
11 this.

12 BY MS. MITZ:

13 Q. I was just reviewing the notes again that  
14 Mr. Burby took while -- or -- or the other attorneys  
15 said while they were interviewing you. And I want to  
16 ask you about some of those things mentioned in the  
17 notes.

18 They jotted down that you had mentioned a meeting  
19 that occurred on September 27th of 2014 with Tracy Clark  
20 and Mr. Merck in his office in which a discussion  
21 occurred regarding the \$9 million that had been  
22 allocated for Colbourn Hall. And then apparently Tracy  
23 Clark mentioned something about an auditor having told  
24 her that there would be a problem with using those  
25 funds.

1           **Based on what I just said, do you recall that**  
2 **conversation?**

3           A. I do.

4           **Q. Can you tell me a little bit more about it?**

5           A. The conversation I believe was in one of my  
6 one-on-ones, and there were a number of topics being  
7 discussed. I noticed -- when I -- when I was trying to  
8 pull that note for -- for Burby, that it said with  
9 Tracy, which to me means that she's entered the room or  
10 something. And she does talk about -- I think at the  
11 time, maybe it was \$29 million on the project and 9 of  
12 it was -- was E&G and that the use of that could be the  
13 other funds at risk or that the auditors were unhappy.

14           And then we went on and talked about a number of  
15 other topics again. And at the end of the conversation,  
16 Merck came back and said that he would need to tell the  
17 president.

18           **Q. Okay. So when Tracy Clark referred to the**  
19 **auditor, do you know whether she was referring to a**  
20 **state auditor with the auditor general's office or one**  
21 **of your internal auditors?**

22           A. I don't know.

23           **Q. Okay. And do you know whether Merck reported to**  
24 **the president?**

25           A. I don't know what happened after that. But I --

1 again, in May of the following year, when we were  
2 talking about -- I think we were there talking about  
3 return on investment or CIP, we were there talking about  
4 one of those kind of things, and I know he discussed it  
5 with him then.

6 **Q. Okay. Another notation in the interview notes**  
7 **says that you said audit has said that VP/president can**  
8 **make the decision. I can't determine the context of**  
9 **that statement within these notes.**

10 **Do you recall saying something to that effect?**

11 A. Yes, I think it was similar to what we talked  
12 about. It might have been the exact thing we were  
13 talking about earlier in the conversation today,  
14 where -- when I had reported that I thought some things  
15 weren't compliant with the vice president level, the  
16 audit office told me -- and I believe it was Kathy  
17 Mitchell -- told me that's at the -- the  
18 presidential/vice presidential level, it's their  
19 decision.

20 First question was, "Did you make the decision?"  
21 And I said, "No." And then the answer that I got back  
22 then was, "Well, that's at the vice  
23 presidential/president level. It's their decision.  
24 It's their risk. It's not your problem." And I believe  
25 I responded, "It might be their risk, but it still could

1 be my problem."

2 Q. Okay. And what was that -- I know we talked  
3 about it earlier, but in the last three hours,  
4 everything is so jumbled up in my mind.

5 What was the initial subject that led to her  
6 making that comment?

7 A. It was a list that I had taken to her of issues.  
8 And I believe that primary on that list was the  
9 athletics funding and athletics -- athletics and DSOs  
10 going around facilities, not getting permitting, hiring  
11 their own vendors, and the funding going to those DSOs.

12 BY MR. RUBOTTOM:

13 Q. But you never discussed E&G spending for  
14 construction with Kathy Mitchell in that context?

15 A. No, because I didn't -- you know, again, if I was  
16 reporting something, it's because I thought there was  
17 something was wrong. And I didn't -- I didn't see  
18 anything wrong. So I didn't report it.

19 BY MS. MITZ:

20 Q. Okay. All right. And, you know, feel free to  
21 let me know if I've asked this question before. I feel  
22 like some of the questions I'm asking two or three  
23 times.

24 And I think we did touch upon this earlier. But  
25 when Dale Whittaker came in as provost, he was

1 responsible for the university's annual budget; is that  
2 correct?

3 A. I don't know if that was correct immediately when  
4 he came on board.

5 Q. Okay.

6 A. But yes, he did -- he did become responsible for  
7 the -- for the university's budget.

8 Q. Do you know whether that came in time or with a  
9 promotion or was there anything that led to that  
10 responsibility?

11 A. I don't know, but I know that when a person comes  
12 on new as provost, they're provost. And when they are  
13 well within performing all of the duties, they become  
14 provost and executive vice president. And Dale  
15 Whittaker did become provost and executive vice  
16 president.

17 Q. Do you know whether Dale Whittaker, when he first  
18 came on board, met with Mr. Merck regularly?

19 A. Yes, he did.

20 Q. He did, okay.

21 Were you involved in any of those meetings?

22 A. No.

23 Q. Okay. Okay. I would like to direct your  
24 attention to Document 6 in the packet, which I believe  
25 is Page 51 and 52. Let me know when you've had a chance

1 to take a look at that.

2 A. Okay. 51 I have. 52 I have.

3 (Whereupon, Exhibit 6 was marked for  
4 identification.)

5 BY MS. MITZ:

6 Q. I would like you to pay particular attention to  
7 Page 52. It's a chart. I think it's entitled "Capital  
8 Project Funding Update." And I know that Don asked you  
9 a couple of questions about a form like this earlier.

10 You see how there's different columns of -- for  
11 different forms of funding?

12 A. Yes.

13 Q. Okay. Do you know whether documents like this  
14 would have been provided to Provost Whittaker routinely?

15 A. They were. I know that Tracy Clark -- again,  
16 they set up -- they set up weekly meetings. They didn't  
17 always meet weekly, but they set up weekly meetings.  
18 And she was corresponding with him almost daily. And  
19 she was providing him all of these kinds of documents.

20 Q. And would you have seen documents like this in  
21 the facilities budget committee meeting?

22 A. I did not see this one. This is the first time I  
23 have seen this one. But there's a longer spreadsheet  
24 that we did see, if it was passed out in the facilities  
25 budget committee, so that -- the facilities budget



1 committee could be educated by Tracy on the funding,  
2 Tracy and Dale. And then it also went to the university  
3 budget committee. And that's the longer version. I  
4 don't know where this one came from.

5 **Q. So on that note, why don't you flip to the next**  
6 **document, on Page 55. Is that by any chance the longer**  
7 **version that you're talking about?**

8 A. Yes, this looks like one that I have seen.

9 **Q. Now, this, however, does not show the different**  
10 **forms of funding?**

11 A. There's one just like this that -- that is  
12 expanded, that has all of the forms of funding on it.  
13 And it was presented to the university budget committee.

14 **Q. Okay.**

15 BY MR. RUBOTTOM:

16 **Q. Would that have been presented the same time as**  
17 **this shorter version?**

18 A. Yes, I think the shorter version was the one that  
19 was sent out to the facilities budget committee. The  
20 longer version with all the funds sources I understand  
21 went to the university budget committee, and it also  
22 went to Dale Whittaker. And Tracy had meetings with him  
23 about this spreadsheet.

24 **Q. Let me ask you something about facilities budget**  
25 **committee meeting, looking at this, where it just says**

1 "total external, total internal."

2 Did any participants in those facilities budget  
3 committee -- I think the September 2017 meeting would  
4 have been where this one was discussed. Did anybody  
5 ask, Now, remind me what the internal sources are?

6 A. No.

7 BY MS. MITZ:

8 Q. Okay. How soon after starting with the  
9 university did Provost Whittaker begin referring to  
10 himself as the university budget officer?

11 A. I don't know that. But he began meeting with  
12 Merck and Tracy immediately upon becoming provost.  
13 Because those meetings had been started by the person  
14 sitting in the chair before him. Tony Waldrop started  
15 those meetings. So he immediately went into having  
16 those meetings with Bill and Tracy to understand all of  
17 the budget activities.

18 Q. Okay. Okay. Did you ever hear Mr. Merck tell  
19 Chair Marchena that E&G carry-forward funds were being  
20 used for the downtown electric plant?

21 A. I believe that on a board meeting day --  
22 oftentimes on board meetings days, they have side bars  
23 in the -- you know, the break room. And Chair Marchena  
24 had asked us about the -- some information on the  
25 downtown plant. And in the side room, I seem to recall

1 Merck discussing that with him. And he talked about  
2 options for it. And I believe that Marchena was fine  
3 with all of the different options, whichever way we  
4 could go.

5 And I seem to recall Merck saying that the state  
6 seemed to think that we had a lot of cash reserves and  
7 that this would probably be a good way to spend down  
8 some of those cash reserves, the carry-forward.

9 **Q. Do you recall whether Marchena said anything in**  
10 **response?**

11 A. I don't. And I didn't -- you know, if I took a  
12 note, I didn't have it. But I don't -- I don't recall  
13 him saying anything about it.

14 **Q. All right.**

15 BY MR. RUBOTTOM:

16 **Q. Was this in the context of Merck offering to**  
17 **Marchena faster ways to fund that project?**

18 A. I don't know that it was faster ways to fund the  
19 project. We were having discussions, the whole -- it  
20 was a bigger discussion. And it was about, do we go  
21 with a tri-gen? Do we go with co-gen? Do we simply  
22 produce our chilled water needs? Do we try to hook on  
23 with OUC?

24 And so there were options that were presented.  
25 And we talked -- I think at that time, I believe that

1 the -- some of the analysis had been done. Because  
2 originally, we were talking about doing tri-gen. And we  
3 thought that from -- from the engineering reports that  
4 had been done early on, it looked like there would be a  
5 great return on investment by doing that.

6 And later, some of the assumptions were proven  
7 inaccurate. And so a later analysis showed that it  
8 would not be smart to proceed with a tri-gen plant, but  
9 just to produce the chilled water that we needed. It  
10 would still be a payback versus what we would be charged  
11 by OUC to do it ourselves.

12 And so it was a bigger discussion. And as part  
13 of that discussion, they talked about the funding.

14 **Q. Was that discussion happening because that**  
15 **project was on the agenda that day or just coincidence?**

16 A. I do not believe it was on the agenda that day.

17 **Q. Okay. Okay. So going back to interview notes.**  
18 **I actually reviewed the notes of President Whittaker.**  
19 **And he indicated in his interview that he held a meeting**  
20 **with all of Mr. Merck's direct reports the day after the**  
21 **September BOG meeting, during which he told all of the**  
22 **direct reports, including yourself, to be transparent.**

23 **Do you recall that meeting occurring?**

24 A. I do recall that meeting occurring.

25 **Q. Great. I'm interested because the notes also say**

1 that you asked President Whittaker, "Does that mean you  
2 want us to be completely honest, even when we've been  
3 asked to be less than forthright in the past?"

4 Do you recall making that statement?

5 A. I do.

6 Q. Okay. Can you tell us about that?

7 A. He -- as part of his meeting with us, he said  
8 that originally when this investigation -- before this  
9 investigation -- when the auditor came out with saying  
10 that the funds had been misspent, his initial reaction  
11 was to step up and say we had a building in trouble,  
12 life and safety was more important than the old money,  
13 and that he was going to take that tack, but that he had  
14 been coached to respond differently and that he had been  
15 coached to -- to show to the board of governors and the  
16 legislature and others that -- that we were going to  
17 admit that we had done something wrong and that we were  
18 going to try to rebuild their trust by being open and  
19 transparent.

20 And when he went around the room to ask  
21 questions, I was sitting across from him. And I said,  
22 Sir, just as you have been coached about how to respond  
23 to this investigation, I want to tell you that I have no  
24 spin. I'm not able to -- to say things that are partly  
25 true. My daddy used to talk about lies of commission

1 and lies of omissions, and I think they're still lies.  
2 And I have been coached over time to be careful about  
3 what I say. So are you telling me, sir, that I can be  
4 completely open and transparent about -- about what I  
5 know?

6 And he was physically taken aback. Not only did  
7 I notice it, but the chief human resources officer  
8 noticed it. And he stepped back and then he said, Oh,  
9 oh, of course, Lee, of course.

10 **Q. Okay. Do you know who he was referring to when**  
11 **he was describing that he had been coached?**

12 A. He did not say who had been coaching him.

13 **Q. Okay. All right. So based on that comment that**  
14 **you made, have you been forthright about everything**  
15 **since that discussion with President Whittaker?**

16 A. I absolutely have.

17 MS. MITZ: Do you want to --

18 MR. RUBOTTOM: Okay. Yeah, I've got just --  
19 walking through a little bit of history of things,  
20 and I'll try to skip the things that we've already  
21 covered or that you've clarified you might not know  
22 about.

23 BY MR. RUBOTTOM:

24 **Q. In the 2015 finance and facilities meeting, you**  
25 **were talking about the combined project, I think.**

1 And -- and that's after it came out that Mr. Merck was  
2 apologizing for not going back to the board when that  
3 decision was made earlier that year. You said something  
4 about the Trevor Colbourn Hall building program was  
5 about complete, but you needed some time on the Colbourn  
6 Hall. That building from -- because y'all call the  
7 same -- multiple things the same name.

8 Is that just the listing of space allocation? Is  
9 that what you're talking about?

10 A. So over time, that changed.

11 Q. I understand.

12 I'm just trying to figure out what -- you had  
13 that big document, that 50-something-page document --

14 A. Correct.

15 Q. -- that everybody signed in February. And that's  
16 called Trevor Colbourn Hall building program?

17 A. Correct.

18 Q. You weren't talking about that kind of document  
19 in June of '15, were you?

20 A. We had begun preparation of that type of document  
21 at the time. And we were --

22 Q. Had you -- had you gone past just the space  
23 allocation listing?

24 A. I think we probably had space allocation listings  
25 done at that time.

1 Q. Okay.

2 A. Although, it kept -- it kept changing. That also  
3 kept changing. Because the provost wanted to continue  
4 to add faculty to go into the building and --

5 Q. Oh, I understand. Yeah.

6 A. Yep.

7 Q. I understand that was the constant conversation.

8 A. Yes.

9 Q. So what other elements of that would have been  
10 worked on?

11 A. We had been working on developing a template.  
12 Because before that, the building program was really  
13 usually taking the concept to the president and him  
14 approving that in concept. That was the building  
15 program. And I had spoke -- in speaking with Chris  
16 Kinsley, I said, I don't think that that's what a  
17 building program is. Do you have any others or do you  
18 have something that you could provide?

19 And he said he didn't, but I could reach out to  
20 the other universities. He said some of them had, you  
21 know, very thick documents and some of them had a few  
22 pages. So there was no uniformity in the building  
23 program throughout the system either.

24 Q. Did he direct you to any regulations that were  
25 relevant to that issue?



1 A. No.

2 Q. That -- that -- that big document that was signed  
3 by everybody in February -- I understand people signed  
4 at different times -- was that the first time you had  
5 done that kind of a document on a new building?

6 A. It was.

7 Q. And who -- who put together that little history  
8 discussion that included the BOB-2 references that  
9 everybody has been talking about on Page 25 and 26?

10 A. Suzy Hutson is the lady whom I had hired to do  
11 building program. She was trying to base it on a  
12 template that had been developed by Pete Newman, the  
13 former director. But coming in new and trying to put  
14 everything in there she possibly can, doing a lot of  
15 research to put what she could in that document.

16 Q. Well, that helps a lot. Because that's in a  
17 section about master plan compliance. And I can see how  
18 in doing what you described she's doing, that she might  
19 contain a history discussion, but it just -- it seemed  
20 to me extraneous to the conformity to the master plan.  
21 So that's -- I was curious about that.

22 Oh, when did -- when the decision was made -- I  
23 think Mr. Merck said in that meeting the design team  
24 came up with an opportunity to actually renovate the old  
25 building and tie it in mechanically with the new

1 building.

2 Was that at you-all's request -- were you part of  
3 the design team?

4 A. No, the design team is a -- we hire an  
5 architectural engineering group. So it would be an  
6 architect firm, usually, and may bring engineering  
7 consultants with them.

8 Q. Were they just noodling the possibilities and  
9 came up with tying the two buildings together? Or do  
10 you know how that came about?

11 A. Yes. They actually put that together as part of  
12 their presentation to be given to us to compete for  
13 selection. And that was one of the novel ideas that  
14 they put on the table to say, We think we can save money  
15 by tying the two buildings together with -- the share of  
16 mechanical.

17 Q. But that was after the board had voted to build a  
18 new building and put the renovation kind of on hold - --

19 A. Uh-huh.

20 Q. -- right.

21 A. Yes, but they said we -- that would still -- that  
22 would still follow through and build the new building.  
23 And they were trying to figure out how, then, they could  
24 build the mechanical so that later, when we could do the  
25 renovation, it would tie into that mechanical.

1 Q. But that was on their own initiative?

2 A. Yes.

3 Q. And you don't think Mr. Merck asked him to  
4 consider that?

5 A. No.

6 Q. Okay. I'm trying to skip some things. That's  
7 why I'm taking just a second.

8 I notice in that meeting particularly, and I  
9 can't -- I think maybe the -- April -- maybe the 2014  
10 board meetings, I haven't looked at those notes lately.  
11 But I noticed there was funding. April 15th finance and  
12 facilities meeting when I think you were presenting  
13 maybe -- both facilities, I'm not sure. But Colbourn  
14 Hall, and Trevor Colbourn came up. And funding was  
15 discussed again. As soon as somebody asked you, I think  
16 Mr. Merck asked Tracy to answer the question.

17 Is that because she was responsible for funding  
18 sources?

19 A. That's correct. Because I would not have known  
20 the funding source. And so he turned to Tracy, who  
21 would have known.

22 Q. Okay. He noticed that times Mr. Merck or  
23 Tracy -- so Mr. Merck might answer questions as well.

24 A. Uh-huh.

25 Q. Would that -- he would address funding, also,

1 because that wasn't your responsibility?

2 A. Correct.

3 Q. Okay. I think it might have been the full board  
4 meeting in 2014, when the new building was being  
5 approved, and I know that Mr. Marchena was chair of  
6 finance and facilities, so he had been through a meeting  
7 on that building. I think it was that building -- that  
8 meeting where there was a discussion of funding and it  
9 almost was like Trustee Marchena tried to cut off the  
10 discussion or cut it short.

11 I think he said something about let me just be  
12 clear or something. It look -- sounds like he was  
13 looking directly at Mr. Merck, because you-all have  
14 identified appropriate funding; is that correct?

15 Do you recall that? Do you recall Marchena doing  
16 that in meetings?

17 A. That wouldn't be the first time that -- that he  
18 did that in meetings. But I don't know that I recall  
19 that specific time.

20 Q. Would -- when he did something like that. Would  
21 that be because he had a better understanding of the  
22 issues than the other board members who were asking the  
23 questions?

24 A. I don't know his motive for doing it, but I do  
25 know that that was pretty typical.

1 Q. Would Trevor Colbourn have been one of the agenda  
2 items that Mr. Merck would have briefed Marchena on  
3 before facilities -- finance and facilities meeting?

4 A. I believe it would, yes. I think they had regular  
5 meetings before the finance and facilities where he  
6 would go over the items with the chair.

7 Q. Did it surprise you that Marchena was surprised  
8 that the combination project was in the works?

9 A. Yes. I'm sure that he knew.

10 Q. So if he expressed surprise in that 2015 meeting,  
11 that would have been -- he's just trying to bring it  
12 before the other board members or --

13 A. Again, I don't know why he would react that way.  
14 But I would be -- I would be extremely surprised that he  
15 didn't already know. Because he and Mr. Merck had  
16 regular meetings before the finance and facilities. And  
17 Merck -- if there was something problematic, Merck would  
18 also have individual conversations with the other  
19 members.

20 Q. Okay --

21 MR. GREENE: Can we take a comfort break?

22 BY MR. RUBOTTOM:

23 Q. -- we go further to what we have on the --

24 MS. MITZ: What's that, Mr. Green?

25 MR. RUBOTTOM: I'm sorry?

1 MR. GREENE: Can we take a comfort break?

2 MR. RUBOTTOM: Yeah, I think I've only got  
3 about five more minutes. Let's take a break. I need  
4 to check my office.

5 MR. GREENE: Great.

6 MR. RUBOTTOM: Let's take five minutes.

7 (Whereupon, a break was taken from 12:42 p.m.  
8 to 12:45 p.m.)

9 BY MR. RUBOTTOM:

10 Q. I think we're talking about Marchena. You do  
11 believe he was briefed by Merck before those meetings  
12 and -- okay. Let's -- let's -- in the meetings -- and I  
13 understand people use different words and they mean  
14 things and people would say carry-forward or central  
15 reserve or university funds or internal funds at  
16 different times.

17 I'm just curious if it was ever thought of using  
18 university on the BOB-2 form and not E&G. I know other  
19 universities have done that on a BOB-2 form. Was there  
20 any thought of using those other words besides E&G?

21 A. No, because both Gina Seabrook and I had  
22 conversations with Chris Kinsley about how to fill out  
23 the form. And we were following the directions we were  
24 given.

25 Q. Okay. But it never occurred to you-all in the

1 board meetings to use the words E&G to be just more  
2 specific?

3 A. No. On funding, I use words if I -- based on  
4 what I knew. So if I knew something was E&G, I would  
5 say "E&G." But if I just knew that -- that it was  
6 internal, then I would use the word "internal."

7 So it was all -- my words are all based on what I  
8 knew or had asked direction and was told to do.

9 Q. Okay. Well, I -- I -- I don't want to be on a  
10 touchy subject here, but let's just be real clear.

11 A. Okay.

12 Q. Is it your testimony you did not know that Trevor  
13 Colbourn was funded with E&G funds?

14 A. I knew that they had had discussions. I was in  
15 meetings when they talked about pulling sources of funds  
16 together. Until September, I didn't know that the  
17 entire \$38 million was E&G. That was in a conversation  
18 I had with Tracy in September. But yes, I knew that  
19 some was because I was in the room when they were  
20 talking about it.

21 Q. Well, I -- if you go back to Page 52, and this is  
22 an email -- this was attached in an email that you sent  
23 to Judith DeJesus in November of '15. And Page 52 is  
24 one of those attachments, the capital projects funding  
25 update. It's dated January 17th. And that shows for

1 the combined project 38 million of E&G. And that was --

2 You would have seen that document?

3 A. If I sent it, I would have seen it. But I really  
4 don't recall this document.

5 Q. Okay. Okay. Well, I -- I -- thank you. And I  
6 know you're -- I know you're trying to be honest, and I  
7 appreciate that.

8 A. I am. I really do not recall this document.

9 Q. The confusion -- the confusion of everybody --  
10 people using different words and saying everybody knew  
11 what that meant, but you wouldn't necessarily know --  
12 when they said carry-forward in the meeting, you  
13 wouldn't necessarily know that meant E&G? Is that what  
14 you're saying?

15 A. I would know that carry-forward funding was  
16 carry-forward from year to year, and that probably most  
17 of it would have been E&G. It could be other sources,  
18 but most of it, I think, would be E&G.

19 Q. Okay.

20 A. My own carry-forward, most of it would have been  
21 PO&M, or all of it would have been PO&M.

22 Q. Okay. I understand that.

23 A. And I can -- I'm not sure who prepared this  
24 document. And you say it's in an email I sent, then I  
25 sent it. But I can tell you I didn't write it, because



1 I wouldn't misspell Colbourn.

2 Q. Got ya'.

3 Later in that April 2015 meeting -- oh, wait a  
4 minute. During the 2015 finance and facilities meeting,  
5 Dr. Whittaker is quoted as saying, "I would just add,  
6 the way I was looking at it also, would, you know, we  
7 considered this -- moving forward with this  
8 83,000 square feet per net 10 million minus the  
9 demolition cost."

10 Sounds like he was trying to describe the  
11 economic benefits of the combined project.

12 Would I be correct to infer from that that  
13 Dr. Whittaker had a very good grasp on the cost and  
14 value of that project?

15 A. He did. Because when we had meetings with him,  
16 that's the kind of conversation we would have. We  
17 wouldn't have been talking about funding source with my  
18 group, but we -- we were talking about rising  
19 construction costs. We were talking about options. We  
20 provided him options on what we needed to do to try to  
21 get where he wanted to go. There are documents that he  
22 had showing what his options could be to get where he  
23 wanted to go and, you know, what the cost per square  
24 feet might look like for those options.

25 So he had all of that from my team, yes.

1 Q. Do you know if he had discussions about the  
2 project with any trustees during that time period, say,  
3 from January of '15 until -- until the -- the demolition  
4 was -- was decided in 2016?

5 A. I wouldn't know.

6 Q. Okay. Later in that meeting, Mr. Merck mentioned  
7 the shortage of PECO funds, talks about carry-forward  
8 money, interest earnings, a whole bunch of other things.

9 Do you know what he meant by a whole bunch of  
10 other things?

11 A. Can you tell me again what was said?

12 Q. He talked about the shortage of PECO funds and  
13 how they were making it up with carry-forward money,  
14 interest earnings, a whole bunch of other things.

15 Do you know what he meant by a whole bunch of  
16 other things?

17 A. No, I really don't.

18 Q. Okay. Do you think the trustees would have  
19 known?

20 A. No.

21 Q. Okay. After that, you mentioned, continuing your  
22 presentation in that meeting, in carry-forward funds  
23 continuing services contract.

24 Were you talking about your PO&M money?

25 A. That's correct. And I had had a state IG look at

1 that several years before. And he had said that that  
2 was fine, what I was doing with the continuing services  
3 contract and encumbering those -- the only carry-forward  
4 funds there.

5 **Q. So describe that in detail. You would encumber**  
6 **those. You would enter some kind of long-term contract,**  
7 **and those funds would be then -- then committed to**  
8 **paying that contract?**

9 A. They're not committed to paying a specific  
10 contractor. So we are allowed to have continuing  
11 services contracts. And we would have continuing  
12 services construction management firms, continuing  
13 services general contracting firms, even some continuing  
14 services trades.

15 And at the end of the year, when we had PO&M and  
16 carry-forward, we would obligate the funds to -- on a --  
17 sitting in an account to be able to pay any of those  
18 contractors for the work that they might be doing. And  
19 then those would become projects, individual projects.

20 **Q. So how would you obligate the funds if they**  
21 **weren't committed to a particular contract?**

22 A. Getting over my head again. But our business  
23 office would put those funds in a -- an account. And it  
24 might be called "deferred maintenance carry-forward" or  
25 something. She would call it a name, "deferred

1 maintenance account." And she would put the funds in  
2 that account. And we would have -- so we had contracts  
3 with these continuing services vendors.

4 And then when we had a project, then we went  
5 through the full -- the full process for accounting for  
6 a project. And then the funds would then be removed to  
7 that project.

8 **Q. Okay. So that would become the funding source**  
9 **for those contracts which were only paid, what, on**  
10 **invoices or --**

11 A. We would put POs and we also had contract terms.  
12 Again, once a project became a project, then there would  
13 be a -- an amendment to the main contract showing that  
14 they had -- you know, what project they were on.

15 So perhaps I had -- let's just use a company.  
16 Let's use a -- Balfour might be one of the companies  
17 that was under continuing services. But then maybe I  
18 had a -- a boiler that was problematic in an engineering  
19 building. And in order to do the repairs to that  
20 boiler, we -- we got in and we found the duct work was  
21 bad. We found a whole bunch of other stuff bad. And so  
22 it became a million dollar problem. And so then we  
23 would award individual projects.

24 So legal said we could just choose, but I didn't  
25 really want to do that. And so we would have these

1 contractors compete. Even though they were selected  
2 based on the qualifications basis, we still often had  
3 them go through a competition using a GC quote, general  
4 contractor quotes, hidden email, so that there couldn't  
5 be collusion in my own shop by telling somebody, oh,  
6 this guy's going to bid 500,000. You better bid 4.

7 So we had those opened up separately in order to  
8 make sure that we were not only having the contractors,  
9 we selected them on qualifications, but now we can get  
10 the best price.

11 And so then they would get a contract for that  
12 project. And the monies would be put onto that project  
13 at that point.

14 **Q. You stated in that meeting -- again, this is**  
15 **April 2015 -- that you had bought down deferred**  
16 **maintenance from over 200 million to about 116 million**  
17 **at that time.**

18 **Do you recall that?**

19 A. I thought it was about 146 or hundred -- a few  
20 numbers I remember it was down to 146 and then back up  
21 to 164.

22 **Q. Would another \$85 million for deferred**  
23 **maintenance have been helpful?**

24 A. Well, it's always helpful to buy down what you  
25 have. You know, I think we got our -- I think the

1 university got into that. We talked about this a little  
2 bit the other day. I don't think I totally answered  
3 your question the way you wanted it to be answered.

4 But over time, the -- some inefficient  
5 operations, you have your maintenance guys walking their  
6 building, which is what they told me they did. You  
7 don't -- you don't -- your money doesn't go as far.

8 **Q. I understand.**

9 A. So we've put a lot of -- we've put a lot of  
10 efficiencies in place, both in the operations and  
11 maintenance side and in the utilities side, that's  
12 allowed us to have money that can then go back and fix  
13 the things that were deferred for so long.

14 **Q. Right. I think I understand that.**

15 A. Yep.

16 **Q. What I'm trying to understand is what the**  
17 **university did.**

18 **And what would you estimate the deferred**  
19 **maintenance number was at the end of the last fiscal**  
20 **year, last July -- last June 30th?**

21 A. Probably -- based on the reports -- I have a  
22 company by the name of Isis that comes in and looks at  
23 our buildings.

24 Between combining deferred maintenance and  
25 capital renewal, which go hand in hand, I think we're at

1 about \$260 million.

2 Q. Would it disappoint you to know that UCF  
3 characterized \$85 million for these building projects as  
4 deferred maintenance in their reports to the BOG and to  
5 the legislature?

6 A. It would disappoint me to know that if I didn't  
7 have records in my facilities and safety business office  
8 to show that.

9 Q. Did Kinsley or anybody at the BOG ever -- after  
10 they got the August reports on carry-forwards, did  
11 Kinsley ever come to you and say, Hey, can you verify  
12 this 37 million or 27 million dollar deferred  
13 maintenance number?

14 A. No, because that -- I would have had good records  
15 in my facilities and safety business office to show  
16 exactly what we had spent.

17 Q. So like if you -- if you gave them a list -- if  
18 you gave the finance people a list of 130 -- 130 million  
19 in deferred maintenance, and they put 7 of that in this  
20 form and added \$18 -- 18 million for Trevor Colbourn  
21 Hall, you would have been able to show people the  
22 combined number in deferred maintenance to ostensibly  
23 justify it, even if the administration intended 18  
24 million of that for Trevor Colbourn; is that right?

25 A. Yes, we have a pretty good record on what we were

1 actually buying down. I call it "buying down." It's  
2 the things that we're fixing.

3 Q. Right. But they could put any number on that --  
4 on that form they filed with BOG, they put up to 260  
5 million and say we have that much deferred maintenance  
6 to do, right?

7 A. I think the BOG would have objections to that,  
8 but I guess so.

9 Q. I don't think they'd have much objections as they  
10 have to building new buildings --

11 A. Well, I do have \$260 million of deferred  
12 maintenance, according to Isis.

13 Q. And I believe you. And I'm glad I don't have to  
14 be the one to figure out how to do all of that work.

15 Are you aware -- are you aware of any backdating  
16 of transfers to facilities from the central  
17 carry-forward?

18 A. No. I'm not even sure what you mean by that.

19 Q. Well, there were some emails that were going on  
20 in July of '16, I think, that said the 18 million needs  
21 to be backdated to last year, or maybe that was the next  
22 year.

23 But the -- the -- the levers weren't pulled to  
24 move the money until July, but they dated them June  
25 transfers.



1 A. No.

2 Q. But you didn't monitor those --

3 A. No.

4 Q. -- those construction numbers when you weren't  
5 getting ready to build, right?

6 A. That's right.

7 Q. Okay. Just real curious. If you had done the  
8 full renovation of Colbourn Hall, what would you have  
9 expected the life span to be of the renovated building?  
10 Do you have an idea?

11 A. If you can do a complete renovation, you're  
12 probably talking another 50 years again. Generally, we  
13 look at a 50-year life span on a building.

14 Q. Okay. Okay. Mr. Cole publicly went through a  
15 timeline last September I think at one of the board  
16 meetings or something saying that the 2014 engineering  
17 study established the nonfeasibility of renovation.

18 When did you understand that renovation was no  
19 longer feasible? Was that based on your total maximum  
20 budget or was that based on rising costs?

21 A. I don't know exactly when that was. But the same  
22 design team that was working on this and the engineers  
23 that were working on this and -- you know, we had a lot  
24 of things happening. The construction costs were going  
25 up. We -- there are some standard kinds of rules on

1 when you decide to demolish versus renovate.

2 And when -- the -- as my daddy used to say,  
3 poking money down a rat hole to do it, you don't do it.

4 And so we did those analyses. And if you look at  
5 the board -- I think there's some notes in the board  
6 meeting where we talked about the demolition, during  
7 that demolition, the percentages that far outweighed  
8 what the investment would -- it would take to renovate  
9 that building. And that's what was presented to the  
10 board.

11 **Q. Okay. Let's go back to -- did Dr. Whittaker**  
12 **participate in a decision to abandon the joint project**  
13 **and demolish the old building?**

14 A. Yes, he did.

15 **Q. Who took that decision to Dr. Hitt?**

16 A. He did.

17 **Q. Do you know when Dr. Hitt agreed to demolish the**  
18 **old building?**

19 A. I think that there was email that came out from  
20 Dale to Mr. Merck saying that Dr. Hitt approved it. It  
21 might have been an email. Either that or a -- or Merck  
22 called me. I don't remember which. But I was told that  
23 the president had approved it.

24 **Q. I mean, the board took that up in -- I guess May**  
25 **or June of 2016. It would have been shortly before the**

1 board meeting, or it would have been three or four  
2 months before?

3 A. Well, there -- I'm seeing an email Tuesday,  
4 January the 20th of '15 --

5 Q. Well, that was -- that was the decision to do  
6 both buildings. I'm talking about the decision to  
7 demolish the old building.

8 A. Okay. So then the demolition came -- we actually  
9 had meetings with Dale -- the design team, facilities  
10 planning and construction team, and I believe he had  
11 some of the folks from the -- from the original Colbourn  
12 Hall there, talking about what the team had found and  
13 that it was going to be just entirely too costly to --  
14 to do the renovation on Colbourn. And so they presented  
15 options to Dale about increasing the size of Trevor  
16 Colbourn with the same money and demolishing the  
17 building.

18 So that was presented to Dale. And I believe  
19 either Dale or Bill Merck would have taken that to the  
20 president.

21 Q. Okay. Okay. Thank you.

22 Let's go back to the first decision to build the  
23 new building in 2014.

24 I understand that everyone realized that we got  
25 to put these people someplace during the renovation, and

1 so the most efficient thing is to build a new building  
2 that will hold them. And I understand the options that  
3 were presented to finance and facilities committee in  
4 April of '14 and the full board later.

5 Marchena was chair of the committee at that time;  
6 is that correct?

7 A. I think so.

8 Q. Do you recall him asking how the new building  
9 would be paid for?

10 A. No, I don't recall.

11 Q. Do you recall anything about that April 2014  
12 meeting where the recording is lost?

13 A. No. I recall preparing for it and working with  
14 David Norvell on what those options would look like and  
15 what the costs would be to do those. So I recall  
16 preparing the options for the board. I don't really  
17 recall the board meeting.

18 Q. Did you keep notes from the board meetings?

19 A. I normally would take notes from the board  
20 meetings, not in my notebooks, but on the -- whatever  
21 document I had in front of me. And I tried to go  
22 through filing rooms to find any of those. And I was  
23 not able to find many of those.

24 Q. Okay.

25 A. But those would have been filed in filing

1 cabinets somewhere.

2 Q. If the committee had discussed sources of funds,  
3 would Mr. Merck and Tracy have been answering those  
4 questions?

5 A. Yes, they would.

6 Q. Okay. After that -- and, again, I -- I'm not  
7 trying to -- I'm not trying to mischaracterize anything.  
8 But the board seemed pretty explicit in 2014 to put the  
9 renovation on hold. But that October, you -- you  
10 presented to a BOG facility workshop about a \$19 million  
11 PECO request for Colbourn renovation.

12 What -- what -- why were you competent enough to  
13 present that project to the BOG in September of '14,  
14 that the renovation was going to happen?

15 A. Because what the board had said was that they  
16 were going to put it on hold until such time as the  
17 source of funds had been determined. And I recall  
18 reading that somewhere in my notes over the last few  
19 days. But they said that they were putting it on hold  
20 until they could determine how to pay for it.

21 Q. Okay. The capital improvement plan on the PECO  
22 list only shows like 19 million for total cost on the  
23 renovation.

24 A. Uh-huh.

25 Q. But the internal budget reports like the one on

1 Page 52 doesn't ever get above 15.

2 Can you explain the difference between a  
3 \$15 million price on an internal budget document and 19  
4 million in the capital improvement plan, PECO request?

5 A. Yeah, I found differences like that on a number  
6 of budgets in reviewing them.

7 On the capital improvement plan, we're asked to  
8 inflate the numbers by the market. So when construction  
9 was rising at 4 percent per year, we inflated by  
10 4 percent per year. When it was rising by now 11 and  
11 12 percent per year, we're inflating by 11 and  
12 12 percent per year.

13 If there were other things that we were trying to  
14 include, those would have also been in there. And we  
15 would have explained those in the memo that would go to  
16 the state to say, this building includes forest  
17 protection, for example, on a partnership building or  
18 something.

19 But I have found a lot of discrepancies in budget  
20 until numbers are firmed up through an architectural  
21 plan.

22 Q. When they're working on capital projects and you  
23 have a budget, are those just -- you keep a number for a  
24 couple of years until you're working with contractors  
25 and decide, oh, it's going to be more than that, or you

1 don't have any built-in inflation on those; is that  
2 correct?

3 A. Yeah, we often base it on what the current cost  
4 per square foot is. And then as we're --

5 Q. Like on Page 52, your office would have provided  
6 the current estimate of cost on those projects, wouldn't  
7 you?

8 A. I believe we would, yes.

9 Q. And that would be based on per square foot and  
10 the type of building --

11 A. Yes, at that time.

12 Q. Okay. Okay. That helps me a lot.

13 Do you think that -- back to the BOB-2s and when  
14 you would go through the capital improvement plans with  
15 Dr. Whittaker, do you believe he understood the plan --  
16 plan operation and maintenance role of the BOB-2s?

17 A. Yes, he understood it. He said he was quite  
18 familiar with that. He had known it when he was at  
19 Purdue.

20 BY MS. MITZ:

21 Q. Was that before?

22 A. Not -- no, not the Florida form, but --

23 BY MR. RUBOTTOM:

24 Q. PO&M authorization?

25 A. Yes, but seeking plan operations and maintenance

1 money to -- to operate and maintain facilities.

2 Q. Okay. Do you -- do you ever find academics to  
3 try to act like they know more than they do?

4 Chuck doesn't like it when I tell lawyer jokes.

5 A. Well, they often think that they not only know  
6 all of the amazing things that they know, but that they  
7 know how to do all of our jobs better than we do.

8 They'll often tell me that, you know, I can go down to  
9 Home Depot and do that for \$1.98.

10 Q. Do you believe that Dr. Whittaker was diligent in  
11 his role as chief budget officer?

12 A. I believe that he was diligent in -- in trying to  
13 understand those budgets. I believe he did understand  
14 those budgets. And I believe he -- I believe he was  
15 diligent in control of those budgets.

16 Q. Did you find Dr. Whittaker prepared and well  
17 informed at the facilities budget committee meetings?

18 A. Yes. He had -- he had meetings prior to the  
19 facilities budget committee meetings with Tracy so that  
20 he would be prepared.

21 Q. Did those meetings ever discuss the limitations  
22 on use of E&G funds?

23 A. No.

24 Q. Did you ever discuss, in those committee  
25 meetings, your interactions with Chris Kinsley about --



1 about different funding sources and -- or different  
2 projects and the ability to do them.

3 A. No. In the first couple of meetings, we did have  
4 some educational sessions for people who were coming to  
5 the facilities budget committee new. In those, we were  
6 more explaining the forms, the capital improvement form.  
7 They said why do we have, you know, projects in two or  
8 three places. And so we explained that. Chris had told  
9 us to put it in all of those places.

10 Tracy -- Tracy did a lot of education in those  
11 early meetings to talk about what we were trying to do  
12 and how we were trying to really get our arms around  
13 what facilities we could build in the next five years,  
14 what the priorities were, what facilities you could  
15 build or renovate or whatever in the next five years.

16 And so that -- so that we had a -- a smaller  
17 list, a list of what you actually could do in that  
18 amount of time, and not just a wish list.

19 Q. Okay. Thank you.

20 I think I saw some May 2016 emails about the  
21 larger building plan. And I think I saw something that  
22 said 26.8-gross-square-foot occupiable shelf. And that  
23 was in the context of how the building was going to be  
24 used.

25 Was that plan at that time that there was a

1 portion of that building that was not yet occupied or  
2 planned, that that was gross space in that building?

3 A. That was -- based on what Dale had -- had  
4 discussed with his faculty about current needs and what  
5 their planned hires and not knowing what some of those  
6 hires were going to be, that was actually supposed to be  
7 shelf space for the growth in those departments.

8 Q. Do you know if the downtown expand -- the  
9 downtown presence was already in the works in -- in --  
10 in May of 2016?

11 A. I don't know. But I -- I believe that they had  
12 already started discussions on it.

13 Q. Did the expansion to downtown change the space  
14 needs of -- I know Dr. Whittaker has his plan to add all  
15 of the faculty. And did that downtown expansion change  
16 those space demands?

17 A. So we have a group called "SPA," and it's space,  
18 planning, and allocation something. They actually  
19 report to the provost. Unlike many institutions, you  
20 know, that group is tied in with facilities. At UCF it  
21 reports to the provost. And that group has spent a --  
22 quite a bit of time working with faculty, working with  
23 the deans on what their space needs are and how space  
24 will be filled when programs move to the downtown.

25 Q. Okay. Okay. Thank you very much.

1 BY MS. MITZ:

2 Q. So, Ms. Kernek, we're going to wrap up now. Is  
3 there anything else that you think we need to know that  
4 we have not asked today that would help us in our  
5 investigation for the misuse and misdirection of E&G  
6 funds at UCF?

7 A. Well, I think that what you have is a really hard  
8 working group of people. We have all tried to do our  
9 jobs to the best of our abilities. I think not having  
10 written guidance from the state, from our own general  
11 counsel is a -- a huge part of this problem, not just  
12 for the staff, but also for the trustees.

13 I think we had a lot of conflicting guidance,  
14 where on one meeting where I have with -- with Chris  
15 Kinsley and I ask can PO&M and carry-forward be used  
16 to -- upon research fume hoods, or break rooms, or  
17 whatever? And he says no. And then the next meeting,  
18 when I say, How can PO&M carry-forward be used, and he  
19 and Tim Jung say, It's your decision.

20 Yeah. And so I have notes saying those thing s.  
21 Our general counsel hasn't given us any training,  
22 minimal advising. Yes, they'll answer questions, but  
23 that would then mean that we have to know the questions  
24 to ask. So I didn't ask a question about the capital  
25 outlay budgets because I didn't know a question to ask.

1 I didn't know that there was anything wrong with it.

2 We have a lot of circular direction in those --  
3 in the who do we ask. So we -- we go to BOG staff. We  
4 go to audit. We go to general counsel. We go to our  
5 boss. And if you go to one of those, they send you back  
6 to the other one.

7 **Q. Got ya'.**

8 A. So audi would say, Ask Merck. Or Merck would  
9 say, Have you talked to general counsel? Or general  
10 counsel would say, Have you asked audit? And we would  
11 try to do those things.

12 You'll see that I -- that one instance that you  
13 saw in there of -- of a reporting is one of many. I put  
14 that in the -- in my screenshots on purpose, to show  
15 that we had incidents of reporting what we thought was  
16 wrong. Whether it was because we thought it was a  
17 compliance issue or legal issue, we reported those  
18 things.

19 And so if you don't see me reporting this E&G  
20 funding, it's because I didn't know it was wrong. I  
21 would have reported it. I'm --

22 **Q. Sure.**

23 A. I'm going to report things that I think are  
24 wrong.

25 **Q. Yeah. You've demonstrated that with just the**

1 things you've told us today.

2 Well, we're going to ask that if anything else  
3 comes to mind, if you're still reviewing all of your  
4 stuff and something pops out at you and you think that  
5 we would benefit from knowing about it, just please  
6 either ask Mr. Green to communicate to us, give us the  
7 stuff, call us, prepare an affidavit, whatever you need  
8 to do to let us know. Because our investigation is  
9 still ongoing and it's not going to end in the immediate  
10 future.

11 And I also ask -- in the beginning we talked  
12 about those notes that you had prepared. If you can get  
13 us copies of those, that would be greatly appreciated.

14 And lastly, we're going to ask that you don't  
15 discuss this deposition, particularly the questions  
16 asked and the answers that you've given, with anybody  
17 else who we intend on speaking to, at least until our  
18 investigation is closed out.

19 A. I have been avoiding those -- I've been avoiding  
20 those calls -- you know, our conversations on purpose.

21 Q. Okay. Good.

22 MR. GREENE: And I need to ask Ms. Kernek just  
23 a few questions that -- about the nature of what's  
24 going on.

25 MS. MITZ: Sure.

1           MR. GREENE: But can we agree I haven't had an  
2 opportunity for a full and fair cross-examination  
3 like I would do if this was a lawsuit; that the  
4 purpose of the investigation is limited? And so if  
5 somebody should try to use this deposition against  
6 Ms. Kernek in another context, I haven't had the  
7 opportunity of cross-examination and it's effectively  
8 not closed?

9           Do you guys agree to that?

10          MR. RUBOTTOM: Yes. And, Chuck -- yes, we  
11 agree. And, Chuck, I would also add that our rules  
12 allow that if anything is brought up in our committee  
13 meeting, speaking about somebody that's not present,  
14 they have -- they have a right to -- to send a  
15 written statement or appear in front of the  
16 committee, depending on time availability. But they  
17 have a right to respond to anything said about them.

18          So I think I have given you our rule number on  
19 that, but --

20          MR. GREENE: Yeah, you've been very helpful.  
21 And ordinarily if this were a lawsuit, I'd probably  
22 do a three-hour cross-examination just to elaborate  
23 on some points that you made and maybe bring out some  
24 facts that -- that you might not be aware of or that  
25 might not have been punctuated.



1 Q. When you didn't know the answer, did you seek  
2 guidance from general counsel and other sources?

3 A. Yes, I did.

4 Q. Did you ever, at any time while you're at UCF, do  
5 anything that you considered to be immoral?

6 A. No.

7 Q. How about illegal? Did you ever do anything that  
8 you considered to be illegal?

9 A. No.

10 Q. Did you, at any time while you're at UCF,  
11 participate in any action that you thought violated the  
12 law or the rules or regulations that governed you?

13 A. No.

14 Q. You were asked about your relationship with  
15 Mr. Merck and Christy Tant and Tracy Clark.

16 Do you recall that?

17 A. Yes.

18 Q. Have you in any way tried to influence anything  
19 that they might have to say in connection with this  
20 investigation?

21 A. No.

22 Q. Have any of them tried to influence you?

23 A. No.

24 Q. You were asked about being interviewed by the  
25 attorneys from Bryan Cave.



1           Do you -- do you recall that?

2           A. Yes.

3           Q. And have you seen a -- what purports to be notes  
4 of what you said during your interview?

5           A. Yes.

6           Q. Are those notes -- do they accurately reflect the  
7 things that you said?

8           A. They do not.

9           Q. Do they tell everything -- do the notes  
10 accurately reflect all the things that were said and  
11 done to you during the interview process?

12          A. They do not.

13          Q. And you said earlier you felt you were treated  
14 hostilely?

15          A. Yes.

16          Q. And did you feel that the investigators were  
17 looking for the truth or looking for answers that they  
18 had set out to get when they started their  
19 investigation?

20          A. I think that they had predetermined their answers  
21 and they were forcing us to give the answers that they  
22 wanted to hear.

23          Q. And did they react hostilely when you deviated  
24 from the narrative that they wanted you to tell?

25          A. Yes.

1 Q. You were asked whether your office gave  
2 information to Dale Whittaker about the funding for TCH  
3 being specifically designated as E&G.

4 Do you recall that?

5 A. Yes.

6 Q. And you said your office did not provide that  
7 information to Dale Whittaker; is that right?

8 A. That's correct.

9 Q. But you know that as part of the facilities  
10 budget committee, that Dale Whittaker was given  
11 information at least -- at least monthly?

12 A. He was given that information, yes.

13 Q. And that information related specifically to the  
14 carry-forward of E&G; is that right?

15 A. That's correct.

16 Q. And Dale Whittaker was at least monthly given  
17 spreadsheets showing the projects that were funded by  
18 E&G?

19 A. Yes.

20 Q. And that would include Trevor Colbourn Hall?

21 A. It would.

22 Q. You were asked whether Dale Whittaker diligently  
23 pursued his job as provost. He was also chief budget  
24 officer, wasn't he?

25 A. Yes, he was.

1 Q. And would it be accurate to say that when it came  
2 to UCF, he immediately began staking out his territory  
3 as being the person in charge of budget matters?

4 A. That would be accurate.

5 Q. Did he play a role in forming the facilities  
6 budget committee?

7 A. He did form that.

8 Q. And did he have Tracy Clark act as his direct  
9 report to give him information about the funding of  
10 projects?

11 A. He did.

12 Q. And would that have included Trevor Colbourn  
13 Hall?

14 A. It would.

15 Q. Now, in your -- what was your title while you  
16 were at UCF?

17 A. I was an associate vice president responsible for  
18 facilities and safety.

19 Q. Did you as part -- as -- was your job essentially  
20 to oversee the projects that were being built and  
21 renovations that were doing done at UCF?

22 A. It was to oversee the facilities, whether it was  
23 design, engineering, construction, operations,  
24 maintenance, sustainability, and the safety of those  
25 facilities.

1 Q. Did you have the authority to allocate funds to  
2 your department?

3 A. I did not allocate funds to facilities and  
4 safety, no.

5 Q. Did you have any authority to designate the funds  
6 that were used for Trevor Colbourn Hall?

7 A. No.

8 Q. Did you play any role -- did you decide to use  
9 E&G funds to construct Trevor Colbourn Hall?

10 A. No.

11 Q. Were you asked for any input before that decision  
12 was made to use funds for Trevor Colbourn Hall?

13 A. No.

14 Q. Did you give any input?

15 A. No.

16 Q. Were you ever -- after the decision -- who made  
17 the decision to use E&G carry-forward to fund Trevor  
18 Colbourn Hall?

19 A. I would say the president made that decision in  
20 consultation with the CFO.

21 Q. Did anyone at UCF ever ask you to conceal the  
22 fact that E&G funds were used to construct Trevor  
23 Colbourn Hall?

24 A. No.

25 Q. Was the fact that E&G funds were used to

1 construct Trevor Colbourn Hall reported internally  
2 throughout various departments throughout UCF?

3 A. It was.

4 Q. Was it reported in the same manner that other  
5 projects being conducted by UCF were reported?

6 A. It was.

7 Q. Was there anything done to change the method of  
8 reporting so that the funding source could be in any way  
9 concealed?

10 A. No.

11 Q. Did you ever try to conceal anything connected  
12 with Trevor Colbourn Hall?

13 A. No.

14 Q. Were you ever instructed to conceal anything  
15 connected with Trevor Colbourn Hall?

16 A. No.

17 Q. Do you know of anyone else who was instructed to  
18 conceal anything connected with Trevor Colbourn Hall?

19 A. No, I don't.

20 Q. Now, you were asked about whether Dale Whittaker  
21 gave information to the board of trustees.

22 Do you recall that?

23 A. Been a long interview. No, I don't recall.

24 Q. I'm going to show you a couple of emails dated in  
25 March of 2017 and ask you to look at those for just a

1 second.

2 And here is one from May of 2016.

3 Do you recall that the department that Tracy  
4 Clark headed gathered information for Dale Whittaker  
5 concerning the funding of the projects that were ongoing  
6 at UCF in 2015?

7 A. Yes, they did.

8 Q. And did the projects for which the department  
9 headed by Tracy Clark gathered the information include  
10 the funding source for Trevor Colbourn Hall?

11 A. Yes, it did.

12 Q. And was Dale Whittaker provided with information  
13 that specifically showed the funding source for Trevor  
14 Colbourn Hall being E&G?

15 A. He was.

16 Q. And that was on multiple reports that were given  
17 to him; is that right?

18 A. That's correct.

19 Q. And was it Dale Whittaker who -- was he invested  
20 with the responsibility to report the funding sources  
21 for the capital projects being undertaken at UCF to the  
22 board of trustees?

23 A. He was, as the university budget officer.

24 Q. In 2016 didn't he specifically gather information  
25 so that he could tell the trustees about the funding

1 sources for all the capital projects?

2 A. He did. This was in preparation for a  
3 presentation he was giving to the trustees.

4 Q. And at the time he -- before he gave that  
5 presentation, was he provided with information that  
6 specifically showed that the funding source for Trevor  
7 Colbourn Hall was E&G?

8 A. It showed that it was internally funded.

9 Q. And specifically on the -- on the reports in your  
10 hands -- by the way, of those has nothing on it, doesn't  
11 it?

12 A. Yes, it does.

13 Q. Whose handwriting is that?

14 A. That appears to be Dr. Whittaker's handwriting.

15 Q. And he's circling and making notes about funding  
16 sources for Trevor Colbourn Hall?

17 A. That's correct.

18 Q. And then after he did that, he gave a  
19 presentation to the board of trustees?

20 A. It does appear that it's after this, yes.

21 Q. And would you expect that if Dale Whittaker was  
22 fulfilling his duties as the chief budget officer, that  
23 he would accurately report everything he knew to the  
24 board of trustees?

25 A. He should do that, yes.

1 Q. And if he didn't do that, whose fault would that  
2 be -- never mind.

3 He had the information available to him to make  
4 an accurate report, didn't he?

5 A. Correct.

6 Q. Now, you were asked about Marcos Marchena. He  
7 was chair of the facilities and finance committee; is  
8 that right?

9 A. He was.

10 Q. And was he a -- a potted plant who sat around and  
11 didn't ask questions at the meetings where you attended  
12 where he was present --

13 A. No.

14 Q. -- and in charge?

15 A. He directed those meetings.

16 Q. And you were asked, did he prepare for the  
17 meetings and gather information in connection with  
18 those.

19 Do you recall that?

20 A. Yes.

21 Q. Isn't it true that at least 30 days ahead of  
22 every board meeting, that Marcos Marchena and the other  
23 trustees were provided with a package that gave them  
24 information about the things that they were going to  
25 consider during the upcoming board meeting?



1           A. As a matter of course, those packages were  
2 provided 30 days prior.

3           Q. And when the thing that was going to be  
4 considered was a project that was being funded, would  
5 that include information related to the funding sources  
6 for that particular project?

7           A. The board packets?

8           Q. Yes.

9           A. They -- if it were under the -- the -- the things  
10 that we provided, yes.

11          Q. And did the board members have the opportunity  
12 of -- in advance of and during the meetings to ask  
13 questions?

14          A. Yes, they did.

15          Q. Do you know of anyone at UCF who ever hid  
16 anything from the trustees concerning Trevor Colbourn  
17 Hall?

18          A. I don't.

19          Q. Do you know anyone at UCF who ever hid anything  
20 from the trustees or tried to disguise in some way of  
21 funding source for any project that was being done at  
22 UCF?

23          A. I don't.

24          Q. Was a package that was provided to the trustees  
25 in advance of the meetings -- was that package also

1 provided to the general counsel?

2 A. That package would normally go through a number  
3 of -- of parties. It would go through finance and  
4 accounting if there was finance on it. It would go  
5 through the CFO. It would go through the vice president  
6 in charge of government affairs. It would go to the  
7 chief audit officer. And it would go to general counsel  
8 prior to the -- to going to the trustees.

9 That is my understanding.

10 Q. And with respect to the Trevor Colbourn Hall  
11 project, would information have went through each of  
12 those departments that included information concerning  
13 the funding source for the project?

14 A. It's my understanding, yes.

15 Q. And so Scott Cole, the general counsel, would  
16 have had information showing that E&G was used to  
17 construct Trevor Colbourn Hall?

18 A. Yes, and he also would have had it as part of the  
19 university budget committee.

20 Q. And did Scott Cole readily attend the university  
21 budget committee?

22 A. Yes, he did.

23 Q. And was carry-forward -- the balance  
24 carry-forward and the demand to spend that down that  
25 were being relayed by the state to UCF, were they the

1 subject of discussion at those meetings?

2 A. My understanding was that's a regular agenda  
3 item.

4 Q. Did Scott Cole or anyone from the general  
5 counsel's office ever tell y'all that it was wrong to  
6 use E&G to construct the new building?

7 A. No.

8 Q. Did Scott Cole or anyone from the general  
9 counsel's office ever tell y'all about BOG Regulation  
10 9.009?

11 A. No.

12 Q. Did anyone from the general counsel's office ever  
13 tell you that there were any -- they had any concerns of  
14 that -- or that there was anything wrong with the way  
15 that Trevor Colbourn Hall was being funded?

16 A. No.

17 Q. If you had thought that there was something  
18 illegal or in direct violation of the statute of rule  
19 concerning Trevor Colbourn Hall, would you have reported  
20 that?

21 A. I absolutely would have.

22 Q. You, in fact, throughout your tenure at UCF,  
23 reported things that you thought were wrong when they  
24 came to your attention, didn't you?

25 A. I did. And changes were often made because of

1 it.

2 Q. There's been much ado made about some of the  
3 reports that your office prepared that said the trustees  
4 don't say E&G, they say UCF internal funds, nonrecurring  
5 funds, and similar terms.

6 Were those funds -- were those funds used in any  
7 way to disguise the fact that E&G was used to fund  
8 Trevor Colbourn Hall?

9 A. No. It said internal funds. That's what we  
10 knew. Because we don't control fund sources. All we  
11 knew was that the university was funding it. So we  
12 would have said university funds or internal funds.

13 Q. Is there anyone who could possibly know about the  
14 finances of -- of UCF the way that the chairman of  
15 facilities and finance committee should, the way a chief  
16 budget officer should?

17 Is there any way they possibly could not  
18 understand that the term "carry-forward" included E&G?

19 A. Not if they were doing their jobs, no.

20 Q. Because isn't it true that carry-forward was  
21 composed primarily of leftover E&G?

22 A. I believe so, yes.

23 Q. And so the lingo that y'all used internally --  
24 nonrecurring funds, UCF funds, carry-forward -- were all  
25 of those funds used by y'all to -- to -- with the

1 understanding, at least as you understood it, to include  
2 E&G?

3 A. Yes.

4 Q. And do you think that the persons that you had  
5 conversations with using those terms had a similar  
6 understanding?

7 A. I do.

8 Q. The audit ding you were in -- in a meeting where  
9 Bill Merck told President Hitt that there may be an  
10 audit comment or an audit ding, something of that  
11 nature; is that right?

12 A. Correct. Yes.

13 Q. Now, when that was said, did Bill Merck tell  
14 President Hitt or did President Hitt tell Bill Merck or  
15 did anyone say that they thought they were going to  
16 receive an audit ding because they were violating a rule  
17 or statute?

18 A. No.

19 Q. Did either of them, Dr. Hitt or Mr. Merck,  
20 indicate that they thought they were doing something  
21 illegal?

22 A. No.

23 Q. Did you think they were doing something illegal?

24 A. No.

25 Q. Did you feel that there was an emergency that

1     **justified the action they were taking?**

2           A.    I did.

3           **Q.    Was there an emergency at Trevor Colbourn Hall?**

4           A.    There was.

5           **Q.    Why?   Or at the old Colbourn Hall.   Why?**

6           A.    I had -- the engineers do the reports.  The  
7   engineers said to me, "You might be able to get by with  
8   this building for a couple of more years.  I can tell  
9   you your building is standing, but I can't tell you how  
10  it's standing.  And in a strong wind, I would evacuate."

11          **Q.    When the engineers told you that you had about**  
12   **two years, did they tell you you had about two years**  
13   **before the building fell?**

14          A.    They did.

15          **Q.    And how long would it take to construct a new**  
16   **building?**

17          A.    It would take me that long to design and  
18   construct a new building.

19          **Q.    Now, going back to the audit ding comment, was it**  
20   **uncommon for UCF to receive audit comments?**

21          A.    No.  I think -- we often invited audit in.  I  
22   invited audit into my mix because that was the way that  
23   I would learn how we could do things better.  And there  
24   were audit comments on other audits in the past.  I had  
25   heard our general counsel say on other issues, Well, we

1 might take an audit ding, but we're going to do it  
2 anyway. I think UCF saw it as -- we're either going to  
3 disagree with this and we'll -- you know, we need to  
4 know about it. We'll disagree with it. Or we'll see it  
5 as a way to improve.

6 Q. So audit dings were not uncommon?

7 A. No.

8 Q. Would you agree with the statement that the fact  
9 that somebody thinks there's going to be an audit ding  
10 does not mean that they think that their actions would  
11 be found to be illegal?

12 A. That's correct.

13 Q. And were -- the fact that somebody said there's  
14 going to be an audit ding, did that, to you, profess an  
15 understanding that, Hey, we're going to get looked at  
16 very closely here and we're going to have to explain?

17 A. Yes.

18 Q. You didn't -- you were asked about the allocation  
19 of E&G funds to various departments.

20 You didn't have the authority to allocate those  
21 funds, did you?

22 A. No.

23 Q. I think you testified you did not even know that  
24 the PO&M funds you were allocated originated from E&G?

25 A. I didn't. I was always told those were PO&M

1 funds.

2 Q. You testified about conversations with Chris  
3 Kinsley. He's from the board of governors, isn't he?

4 A. He is.

5 Q. He's a staff member?

6 A. He's staff.

7 Q. He was a liaison between UCF and the state as  
8 well as other universities in the state?

9 A. As well as others, yes.

10 Q. And did he give you conflicting guidance on the  
11 permissible uses of the funds that were allocated to  
12 UCF?

13 A. He did. On some occasions, he would say, yes,  
14 can do that. On other occasions, he would say, no, you  
15 can't spend it for that. On some occasions, he said it  
16 was our decision. And every time I asked for guidance,  
17 there was no guidance.

18 Q. Did you ask for written guidance?

19 A. I did.

20 Q. Did they refuse to give it to you?

21 A. I don't know if it was a refusal, but they never  
22 did give it to us.

23 Q. If you had had written guidance that clearly told  
24 you about Regulation 9.009 or otherwise told you that  
25 the use of E&G for Trevor Colbourn Hall might not be



1 appropriate, would you have reported that somewhere?

2 A. I would have followed it and I would have  
3 reported it.

4 Q. Were the trustees -- without going through all  
5 the detailed information -- but the slides and  
6 everything that were attachments to letters that I sent  
7 to the board of governors on a couple of occasions, did  
8 you have a chance to review those?

9 A. Excuse me?

10 Q. Did you review the slides and other information  
11 that were attached to letters I sent to the board of  
12 governors?

13 A. Yes, I did.

14 Q. That reported -- that included some of the  
15 information that was given to the trustees about Trevor  
16 Colbourn Hall?

17 A. Yes.

18 Q. Were the trustees specifically given information  
19 that showed that E&G was used to construct Trevor  
20 Colbourn Hall?

21 A. They were.

22 Q. Would one of the instances where they were given  
23 that information include when Marcos Marchena, during a  
24 transcribed meeting in September of 2014, was expressly  
25 told that carry-forward was being used for Trevor

1 Colbourn Hall?

2 A. He was.

3 Q. Is there any -- knowing Marchena and what he knew  
4 in your other discussions with him, is there any way  
5 that he could not have known that the carry-forward  
6 being used to construct TCH included E&G?

7 A. No.

8 Q. I'm just briefly, on the Burby report, you were  
9 asked about whether you disagreed with it. Let me just  
10 ask you a few quick questions so we can wrap this up.

11 Do you believe the report of Joseph Burby  
12 downplays his stint of Whittaker's knowledge and  
13 participation in the Trevor Colbourn Hall project?

14 A. It definitely does.

15 Q. Does the Burby report inherently contradict  
16 itself when it uses a letter from Tracy Clark to  
17 attribute a guilty mind to Bill Merck, yet absolves  
18 Whittaker, who was also copied on that same email?

19 A. He was on the same email, yes.

20 Q. Does Joseph Burby's report at all reference  
21 Whittaker's handwriting on the E&G budget carry-forward  
22 that's attached to one of the emails I showed you  
23 earlier?

24 A. It does not.

25 Q. And you know that he had that because I sent that

1 to him before the report was prepared?

2 A. He had it.

3 Q. Does Joseph Burby's report reflect a  
4 misunderstanding of how the terms carry-forward and  
5 nonrecurring funds and UCF internal funds were used  
6 interchangeably with E&G?

7 A. I believe it does.

8 Q. As a person who was fired as a result of the  
9 Burby report, do you think it was fair that Marcos  
10 Marchena, who was within scope of the possible targets  
11 of the investigation, drafted the scope of the  
12 investigation for Joseph Burby?

13 A. I have stated on a number of occasions that it  
14 wasn't right or fair.

15 Q. As a person who was fired as a result of the  
16 Burby report, do you think it's fair that Scott Cole,  
17 who is called "the boy" to Dale Whittaker, had a chance  
18 to review and revise that report before it was  
19 finalized?

20 A. It was not fair.

21 Q. Switching gears. The capital outlay budgets and  
22 the capital improvement plans, there's been mention of  
23 those in the Burby report and questions here today.

24 Did you in any way try to conceal or disguise or  
25 hide anything that was a subject of those reports when

1     **you reviewed them?**

2           A.   No, I didn't.

3           **Q.   Did you instruct anyone who worked under you to**  
4     **hide or use those to disguise anything?**

5           A.   No, I didn't.  And anyone working for me, even  
6     now, not working for me, would tell you that I have  
7     always told them to tell the truth.

8           **Q.   And did you fill out those forms to the best of**  
9     **your ability --**

10          A.   Yes.

11          **Q.   -- as you understood them?**

12                 **Did -- by the way, did Dr. Hitt or Bill Merck**  
13     **review those forms?**

14          A.   They did.

15          **Q.   After they were done?**

16          A.   Yes.

17          **Q.   Did they instruct you -- either of them instruct**  
18     **you as to what to put on the forms or to change anything**  
19     **on them, to your knowledge?**

20          A.   No.  And nor did Scott Cole, our general counsel,  
21     who also reviewed them.

22          **Q.   You said that Whittaker told you that he had been**  
23     **coached as to how to respond to the investigation; is**  
24     **that right?**

25          A.   I said that he had -- yes, that he had been

1 coached as to how to respond to what had come out from  
2 the auditor, yes.

3 Q. And he -- when he said that he had been coached,  
4 he said that he was initially going to tell the  
5 investigators that there was a sick building and that  
6 UCF was trying their best to take care of it. Is that  
7 what he said?

8 A. Along those lines, yes.

9 Q. And you believe -- do you believe if he had said  
10 that, that would have been the truth?

11 A. Yes, I do.

12 Q. But he said he had been coached to say something  
13 else?

14 A. That's correct.

15 Q. He had been coached to -- to blame other people  
16 rather than the sick building?

17 A. I agree.

18 Q. Is that what -- is that what he said?

19 A. I believe that -- what he said was that he had  
20 been coached to admit wrong, to say that our CFO took  
21 full credit to admit wrong, to pretty much let the  
22 university take its licks to -- to show that he was  
23 going to be open and transparent.

24 Q. Did he ever tell you who had coached him to tell  
25 this story?

1 A. He didn't.

2 Q. Part of the coaching was that he downplayed the  
3 emergency that existed because of Trevor Colbourn?

4 A. That is correct.

5 Q. And the emergency that the Burby report also  
6 downplays?

7 A. That is correct.

8 Q. Have you been forthright here today?

9 A. I absolutely have.

10 Q. Have you been forthright throughout this  
11 investigation?

12 A. Yes, I have.

13 Q. Do you feel you were wrongfully terminated?

14 A. I do.

15 Q. Why?

16 A. Every day I have done the best I can do with what  
17 I have to work with. I have saved the university  
18 millions of dollars. When we start talking about  
19 taxpayer money, I have saved the university millions of  
20 dollars through efficiencies, through energy savings  
21 measures, through cost avoidance in contracting, through  
22 any number of -- of measures. We've made that an  
23 efficient organization.

24 We know that we have additional areas that we  
25 need to work on. We tried to work on those. Some of

1     them we work on with -- without the funds to be able to  
2     do that.

3             I have a number of employees and my direct  
4     reports, who are the best and brightest because I have  
5     hired the best and brightest and allow them to do their  
6     jobs.

7             I believe that I was scapegoated by Marcos  
8     Marchena and now Dale Whittaker with him. Dale because  
9     he was put in place by Marcos Marchena. The very  
10    trustees who aren't being investigated and who are  
11    leading the course of the investigation are the ones who  
12    put Dale in place, and who also were operating outside  
13    of the sunshine and putting him in place.

14            The general counsel, who also should be  
15    investigated, is -- is providing -- is selecting the law  
16    firm that's doing the investigation, is corresponding  
17    with the outside investigator through -- through the  
18    process.

19            And so people who should have been investigated  
20    are: Dale Whittaker, driving the investigation; Scott  
21    Cole, leading the investigators; the trustees, who  
22    are -- who do know are all covering themselves by  
23    scapegoating people at lower levels.

24            And so I do believe that it's wrongful  
25    termination. The report in there nowhere says that I

1 was guilty of misconduct, and yet that's what they have  
2 said, that they are firing me for misconduct. They then  
3 also gave me the opportunity to resign or go to  
4 predetermination hearing, which means that it's not yet  
5 settled, and yet my name is all over the media. And  
6 Dale Whittaker is further saying horrible things about  
7 the four of us.

8 And I have not even gone to predetermination yet.

9 **Q. Let's just make that clear, and then I'll stop.**

10 **You were given the option to either be fired for**  
11 **misconduct or to resign so that the misconduct would not**  
12 **be on your record; isn't that right?**

13 A. They said I could resign and it would not go on  
14 any of my records, or I could go to predetermination  
15 hearing.

16 **Q. And then you were given five days to make that**  
17 **decision, weren't you?**

18 A. That's correct.

19 **Q. And then the very same day the university,**  
20 **through Dale Whittaker, announced publicly that you and**  
21 **the three others who were fired were fired for**  
22 **misconduct?**

23 A. That's correct.

24 **Q. That was before you had the opportunity to weigh**  
25 **that decision of the five days that had purportedly been**



1 given to you?

2 A. That's correct.

3 Q. Is there anything else you want to say to the  
4 investigators?

5 A. (Shakes head.)

6 MR. GREENE: That's all I have, Don.

7 MS. MITZ: Don stepped out because he had a  
8 meeting. So I'm the lone soldier left.

9 Madam Court Reporter, I think for this time we  
10 can say that the depo has been concluded and we can  
11 go off the record.

12 (Whereupon, Exhibit 7 was marked for  
13 identification.)

14 (Whereupon, Exhibit 8 was marked for  
15 identification.)

16 (Thereupon, the proceedings concluded at  
17 1:48 p.m.)

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CERTIFICATE OF OATH

THE STATE OF FLORIDA )  
COUNTY OF ORANGE )

I, the undersigned authority, certify that PRISCILLA LEE  
KERNEK personally appeared before me and was duly sworn  
on the 12th day of February, 2019.

Signed the 1st of August, 2018.

*Jazzmin Alicea Musrati*  
\_\_\_\_\_  
JAZZMIN ALICEA MUSRATI, RPR  
Notary Public - State of Florida  
My Commission No. FF984627  
My Commission Expires: April 21, 2020

1 CERTIFICATE OF REPORTER

2

3 THE STATE OF FLORIDA )

4 COUNTY OF ORANGE )

5

6 I, JAZZMIN ALICEA MUSRATI, RPR, certify that I was  
7 authorized to and did stenographically report the  
8 ^ deposition ^ sworn statement ^ examination under  
9 oath ^ statement of PRISCILLA LEE KERNEK, Pages 1  
10 through 188; that a review of the transcript was  
11 requested; and that the transcript is a true and  
12 complete record of my stenographic notes.

13 I further certify that I am not a relative, employee,  
14 attorney, or counsel of any of the parties, nor am I a  
15 relative or employee of any of the parties' attorney or  
16 counsel connected with the action, nor am I financially  
17 interested in the action.

18

19 DATED the 1st of August, 2018.

20

21 Jazzmin Alicea Musrati  
22 JAZZMIN ALICEA MUSRATI, RPR

23

24

25

1 ERRATA SHEET  
DO NOT WRITE ON TRANSCRIPT-ENTER CHANGES HERE  
2 IN RE: UNIVERSITY OF CENTRAL FLORIDA  
INVESTIGATION  
3 DATE: 02/12/2019  
4 DEPONENT: PRISCILLA LEE KERNEK

5	PAGE NO.	LINE NO.	CORRECTION & REASON
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21 Under penalties of perjury, I declare that I have read  
22 the foregoing document and that the facts stated in it  
are true."

23  
24 \_\_\_\_\_  
DATE PRISCILLA LEE KERNEK

25



1 02/15/2019

2 PRISCILLA LEE KERNEK  
3 c/o CHARLES M. GREENE, Esq.  
4 Charles M. Greene, P.A.  
5 55 East Pine Street  
6 Orlando, Florida 32801

7 In Re: 02/12/2019, Deposition of PRISCILLA LEE KERNEK

8 Dear PRISCILLA LEE KERNEK:

9 This letter is to advise that the transcript for the  
10 above-referenced deposition has been completed and is  
11 available for review. Please contact our office at  
12 (800)275-7991 to make arrangements for read and sign or  
13 sign below to waive review of this transcript.

14 It is suggested that the review of this transcript be  
15 completed within 30 days of your receipt of this letter,  
16 as considered reasonable under Federal Rules\*; however,  
17 there is no Florida Statute to this regard.

18 The original of this transcript has been forwarded to  
19 the ordering party and your errata, once received, will  
20 be forwarded to all ordering parties for inclusion in  
21 the transcript.

22 Sincerely,

23 JAZZMIN A. MUSRATI, RPR  
24 Orange Legal, Inc.

25 cc: CHARLES M. GREENE, Esquire  
CARINE L. MITZ, Esquire

Waiver:

I, \_\_\_\_\_, hereby waive the reading and signing  
of my deposition transcript.

\_\_\_\_\_  
Deponent Signature

\_\_\_\_\_  
Date

\*Federal Civil Procedure Rule 30(e)/Florida Civil  
Procedure Rule 1.310(e)

<b>Exhibits</b>	<b>\$85</b> 140:22 142:3	<b>18</b> 89:15 96:5,10 98:8,13 142:20,23 143:20	<b>27</b> 96:21 142:12	<b>7</b>
	<b>\$9</b> 114:21		<b>27th</b> 114:19	
<b>021219_P.KerneK_</b> <b>Exhibit 01</b> 3:10 40:14	<b>0</b>	<b>19</b> 148:22 149:3	<b>3</b>	<b>7</b> 57:14 92:12 142:19 184:12
<b>021219_P.KerneK_</b> <b>Exhibit 02</b> 3:11 57:10	<b>003</b> 40:11	<b>1:00</b> 60:4		<b>8</b>
<b>021219_P.KerneK_</b> <b>Exhibit 03</b> 3:12 77:1	<b>1</b>	<b>1:48</b> 184:17	<b>3</b> 45:12 53:23 59:8 77:1	
<b>021219_P.KerneK_</b> <b>Exhibit 04</b> 3:13 94:6	<b>1</b> 40:14 45:10,12 92:5,6,7	<b>2</b>	<b>30</b> 20:6 83:2 167:21 168:2	<b>8</b> 184:14
<b>021219_P.KerneK_</b> <b>Exhibit 05</b> 3:15 102:7	<b>1/2</b> 92:12	<b>2</b> 42:2,3 57:10 89:16	<b>300,000</b> 44:22	<b>80,000</b> 97:2
<b>021219_P.KerneK_</b> <b>Exhibit 06</b> 3:16 119:3	<b>10</b> 29:11 89:15 136:8	<b>20</b> 87:18 96:6,25 97:1	<b>30th</b> 141:20	<b>83,000</b> 136:8
<b>021219_P.KerneK_</b> <b>Exhibit 07</b> 3:18 184:12	<b>10,000</b> 59:18	<b>200</b> 140:16	<b>31</b> 96:9	<b>9</b>
<b>021219_P.KerneK_</b> <b>Exhibit 08</b> 3:19 184:14	<b>100</b> 37:23	<b>2007</b> 6:11 158:6	<b>35</b> 20:6	<b>9</b> 115:11
<b>\$</b>	<b>10:54</b> 57:8	<b>2013</b> 79:5 113:6	<b>37</b> 102:3 142:12	<b>9,007</b> 27:2
<b>\$1.98</b> 151:9	<b>10:57</b> 57:9	<b>2014</b> 16:18 28:7,16 64:17 88:17 93:24 96:24 97:1 114:19 130:9 131:4 144:16 146:23 147:11 148:8 176:24	<b>38</b> 88:11 135:1	<b>9,009</b> 170:10 175:24
<b>\$15</b> 149:3	<b>11</b> 149:10,11	<b>2015</b> 16:18 27:24 28:9 64:18 99:11 102:2 106:1 110:9, 12 111:25 125:24 132:10 136:3,4 140:15 165:6	<b>4</b>	<b>90-second</b> 57:5
<b>\$17,000</b> 50:20	<b>116</b> 140:16	<b>2016</b> 88:17 96:23 137:4 145:25 152:20 153:10 165:2,24	<b>4</b> 50:24 51:1 94:6 140:6 149:9,10	<b>9:39</b> 4:3
<b>\$18</b> 142:20	<b>12</b> 28:6 149:11,12	<b>2017</b> 21:24 68:23 92:3 98:14 99:12 121:3 164:25	<b>5</b>	<b>A</b>
<b>\$19</b> 148:10	<b>12:42</b> 133:7	<b>2018</b> 98:13 104:3	<b>5</b> 102:3,7	<b>a.m.</b> 4:3 57:8
<b>\$20</b> 96:21	<b>12:45</b> 133:8	<b>2019</b> 158:7	<b>50</b> 144:12	<b>aback</b> 125:6
<b>\$260</b> 113:24 142:1 143:11	<b>13</b> 28:6 76:23	<b>2020</b> 103:4 146:4	<b>50-something-page</b> 126:13	<b>abandon</b> 145:12
<b>\$29</b> 115:11	<b>130</b> 142:18	<b>22</b> 96:9 97:15	<b>50-year</b> 144:13	<b>abilities</b> 154:9
<b>\$38</b> 85:17 134:17	<b>135-6</b> 97:3	<b>23</b> 96:10 98:8,13	<b>500</b> 20:5	<b>ability</b> 152:2 179:9
<b>\$5</b> 45:8	<b>14</b> 17:6 96:1,20 113:6 147:4 148:13	<b>25</b> 96:8 106:1 128:9	<b>500,000</b> 140:6	<b>aboard</b> 29:25
<b>\$500,000</b> 89:12	<b>146</b> 140:19,20	<b>26</b> 128:9	<b>51</b> 118:25 119:2	<b>absolutely</b> 86:17 125:16 158:18 170:21 181:9
<b>\$6,500</b> 43:14	<b>15</b> 17:6 27:13 96:5 113:6 126:19 134:23 137:3 146:4 149:1	<b>26.8-gross-square-</b> <b>feet</b> 152:22	<b>52</b> 118:25 119:2,7 134:21,23 149:1 150:5	<b>absolve</b> 73:25
<b>\$75,000</b> 41:11,14	<b>15th</b> 130:11	<b>260</b> 143:4	<b>55</b> 120:6	<b>absolves</b> 177:17
	<b>16</b> 51:17 87:20 95:25 96:20 113:6 143:20	<b>262,704</b> 44:24	<b>5:00</b> 60:4	<b>abused</b> 58:7
	<b>16-'17</b> 87:18		<b>6</b>	<b>academic</b> 30:5,10
	<b>164</b> 140:21		<b>6</b> 45:12 118:24 119:3	<b>academics</b> 151:2
	<b>17</b> 89:5 93:23 95:25 96:8 97:15 113:6			<b>academy</b> 78:8,20
	<b>17,000</b> 50:25 51:1			<b>access</b> 64:24 112:25
	<b>17th</b> 134:25			<b>accompany</b> 62:3
				<b>accomplish</b> 80:6
				<b>account</b> 37:9,22,24 39:13 40:3 58:25

<p>138:17,23 139:1,2</p> <p><b>accountable</b> 86:15</p> <p><b>accounting</b> 21:21 37:7 39:21,24 82:21 104:15,16,24 112:12 139:5 169:4</p> <p><b>accounts</b> 38:18</p> <p><b>accreditation</b> 44:16,20</p> <p><b>accumulated</b> 38:16</p> <p><b>accurate</b> 49:9 68:4 100:12,17 162:1,4 167:4</p> <p><b>accurately</b> 100:5 160:6,10 166:23</p> <p><b>accusing</b> 62:24</p> <p><b>Acorn</b> 78:9</p> <p><b>act</b> 11:20 19:23 99:12,13,24 151:3 162:8</p> <p><b>acted</b> 82:13</p> <p><b>acting</b> 29:8</p> <p><b>action</b> 159:11 173:1</p> <p><b>actions</b> 80:21,23 174:10</p> <p><b>activities</b> 38:19 52:19 110:24 121:17</p> <p><b>actual</b> 10:6</p> <p><b>add</b> 127:4 136:5 153:14 157:11</p> <p><b>added</b> 85:10,11 98:12 102:25 108:18 109:14,22,24 142:20</p> <p><b>adding</b> 91:6</p> <p><b>addition</b> 40:19 51:2</p> <p><b>additional</b> 5:25 20:8 54:25 55:12 101:14 181:24</p> <p><b>address</b> 33:25 50:2 66:15,16,25 130:25</p> <p><b>addressed</b> 29:5 57:19,20 61:19</p> <p><b>adds</b> 99:1</p>	<p><b>admin</b> 30:24 31:5 37:7</p> <p><b>administration</b> 7:23 44:25 57:21 76:13 91:14 142:23</p> <p><b>admit</b> 124:17 180:20,21</p> <p><b>ado</b> 171:2</p> <p><b>adopted</b> 26:12 87:19 93:24 98:14</p> <p><b>advance</b> 168:12,25</p> <p><b>advise</b> 17:13 75:17</p> <p><b>advised</b> 28:14 83:19 91:20 92:11</p> <p><b>advising</b> 75:18 154:22</p> <p><b>affairs</b> 79:8 82:22 105:2 169:6</p> <p><b>affect</b> 19:24</p> <p><b>affidavit</b> 62:3 156:7</p> <p><b>affirm</b> 4:6</p> <p><b>affirmed</b> 4:12</p> <p><b>afternoon</b> 59:5,8</p> <p><b>agenda</b> 15:25 84:14 123:15,16 132:1 170:2</p> <p><b>agree</b> 27:19 80:16 157:1,9,11 174:8 180:17</p> <p><b>agreed</b> 60:12 80:17, 20 145:17</p> <p><b>ahead</b> 16:2 33:15,17 62:23 79:21 167:21</p> <p><b>airport</b> 70:12</p> <p><b>Alex</b> 14:16</p> <p><b>allocate</b> 163:1,3 174:20</p> <p><b>allocated</b> 39:2 90:4 114:22 174:24 175:11</p> <p><b>allocation</b> 112:6 114:3 126:8,23,24 153:18 174:18</p>	<p><b>allowed</b> 23:4,9 34:20 37:25 40:3 43:5 138:10 141:12</p> <p><b>amazing</b> 151:6</p> <p><b>amend</b> 109:12</p> <p><b>amended</b> 26:7,8</p> <p><b>amendment</b> 108:1 139:13</p> <p><b>amendments</b> 90:22 107:9,17,20,23 108:4</p> <p><b>America</b> 25:19</p> <p><b>amount</b> 44:12 97:3 113:9 152:18</p> <p><b>amounts</b> 113:4</p> <p><b>analyses</b> 48:1,2,5 145:4</p> <p><b>analysis</b> 123:1,7</p> <p><b>and/or</b> 6:15 12:24 94:13</p> <p><b>announced</b> 69:6 183:20</p> <p><b>annual</b> 22:1 82:16 89:22,23 118:1</p> <p><b>annually</b> 158:9</p> <p><b>answering</b> 148:3</p> <p><b>answers</b> 62:12,16 156:16 160:17,20,21</p> <p><b>anymore</b> 98:21</p> <p><b>apiece</b> 20:7</p> <p><b>apologizing</b> 126:2</p> <p><b>apparently</b> 114:22</p> <p><b>appeared</b> 14:22 15:14 65:23 74:6,7 94:4</p> <p><b>appears</b> 74:9 79:19 166:14</p> <p><b>applicable</b> 26:1 73:14 158:23</p> <p><b>applied</b> 55:7</p> <p><b>apply</b> 45:17 69:15</p> <p><b>appreciated</b> 25:9</p>	<p>61:25 156:13</p> <p><b>approached</b> 33:19</p> <p><b>appropriation</b> 99:12,23</p> <p><b>approval</b> 87:25 88:4,19,22 99:9,15</p> <p><b>approvals</b> 88:18</p> <p><b>approve</b> 89:10 99:22</p> <p><b>approved</b> 28:7 56:23 72:11 87:12 89:3 90:5 94:2 99:11,17 131:5 145:20,23</p> <p><b>approving</b> 63:9 87:15 101:5 127:14</p> <p><b>approximating</b> 5:9</p> <p><b>April</b> 130:9,11 136:3 140:15 147:4,11</p> <p><b>apt</b> 20:16</p> <p><b>architect</b> 13:20 129:6</p> <p><b>architectural</b> 129:5 149:20</p> <p><b>area</b> 14:12 24:10 29:13 48:5 89:17</p> <p><b>areas</b> 24:4,7,10 26:13 68:14 181:24</p> <p><b>arms</b> 23:2 152:12</p> <p><b>aspect</b> 28:11</p> <p><b>assist</b> 106:4</p> <p><b>assistance</b> 20:16,25 22:6</p> <p><b>associate</b> 7:1 162:17</p> <p><b>assuming</b> 73:11</p> <p><b>assumptions</b> 54:11, 13,15 76:19 123:6</p> <p><b>athletic</b> 25:5,17</p> <p><b>athletics</b> 23:7,23 25:22 34:17,18,21 38:12 103:13 117:9</p> <p><b>attached</b> 60:20 134:22 176:11</p>	<p>177:22</p> <p><b>attachments</b> 134:24 176:6</p> <p><b>attempt</b> 56:14 64:14</p> <p><b>attend</b> 14:7,10 31:10,12 169:20</p> <p><b>attended</b> 14:9,13 167:11</p> <p><b>attention</b> 24:8,10 40:8 57:3,13 76:22 78:15 118:24 119:6 170:24</p> <p><b>attorney</b> 5:23</p> <p><b>attorneys</b> 26:17 33:25 107:19 114:14 159:25</p> <p><b>attribute</b> 177:17</p> <p><b>audi</b> 155:8</p> <p><b>audible</b> 4:24</p> <p><b>audio</b> 64:12</p> <p><b>audio-visual</b> 64:21</p> <p><b>audit</b> 16:23 17:3,18 19:23 20:3 23:24 24:3,5,8,18 34:7 35:2,5,11,16 39:8 67:12 75:20 82:23 83:20 105:3 116:7, 16 155:4,10 169:7 172:8,10,16 173:19, 20,21,22,24 174:1,6, 9,14</p> <p><b>audited</b> 13:25 24:15</p> <p><b>auditor</b> 34:24 35:6 52:6 54:3 105:6 114:23 115:19,20 124:9 180:2</p> <p><b>auditor's</b> 86:1</p> <p><b>auditors</b> 34:24 115:13,21</p> <p><b>audits</b> 24:6,16 173:24</p> <p><b>August</b> 54:25 105:9 112:10 142:10</p> <p><b>authenticate</b> 62:3</p> <p><b>authority</b> 18:19</p>
--	--	--	--	---

19:2,6 39:4 81:8 89:10,13,16 103:9 163:1,5 174:20 <b>authorization</b> 88:16,17 150:24 <b>authorize</b> 89:3 101:22 <b>authorized</b> 13:18 18:7,10 27:3 71:20 <b>autonomy</b> 8:3 <b>auxiliaries</b> 52:12,21 53:5 <b>auxiliary</b> 44:11 52:10,11,14,25 72:23 95:12 104:5 105:19 109:14 <b>availability</b> 157:16 <b>avoidance</b> 17:10 181:21 <b>avoiding</b> 156:19 <b>award</b> 139:23 <b>aware</b> 13:4 26:25 27:4 33:10,12,18 49:19 52:4 75:19 85:23,25 91:25 99:17 111:18 113:4 143:15 157:24	<b>background</b> 57:25 58:4 <b>bad</b> 139:21 <b>balance</b> 40:3 169:23 <b>Balfour</b> 139:16 <b>band</b> 44:14,15 <b>bank</b> 58:25 <b>Barnes</b> 10:5 <b>bars</b> 121:22 <b>base</b> 80:9 128:11 150:3 <b>based</b> 17:8 42:12 45:2 94:17 101:8,16 115:1 125:13 134:3, 7 140:2 141:21 144:19,20 150:9 153:3 <b>basically</b> 27:2 62:15 <b>basis</b> 140:2 <b>beam</b> 44:8,13 <b>began</b> 4:3 52:6 69:7 121:11 162:2 <b>begin</b> 121:9 <b>beginning</b> 11:7 70:14 105:12 156:11 <b>begun</b> 126:20 <b>belief</b> 33:8 <b>believed</b> 101:8 111:14,19 <b>benefit</b> 156:5 <b>benefits</b> 136:11 <b>Beth</b> 10:5 <b>Bev</b> 20:22 66:3 <b>bias</b> 17:24 <b>bicycles</b> 42:21 <b>bid</b> 71:22 140:6 <b>big</b> 126:13 128:2 <b>bigger</b> 122:20 123:12 <b>Bill</b> 7:22 16:8 17:16 26:16 27:16 28:14	31:6 34:14 42:9,10 55:3 63:21 70:20 71:7,11 74:5,8 78:16 80:19 90:9 91:25 92:2 93:5 102:20 121:16 146:19 172:9,13,14 177:17 179:12 <b>Bishop</b> 18:21 <b>bit</b> 8:10 16:25 22:15 63:10 65:19 82:7 115:4 125:19 141:2 153:22 <b>black</b> 99:1 <b>blame</b> 180:15 <b>blocked</b> 81:8 <b>board</b> 10:11,22 12:18,25 14:5,7,11 18:17 19:4,17 20:13, 22 21:5 56:5 63:14 64:12 72:16 83:3,10, 11 85:1 88:16,18,19, 22 90:19 91:1,11 93:3 94:1 96:16,17 97:23 99:6 103:25 107:10 108:5 118:4, 18 121:21,22 124:15 126:2 129:17 130:10 131:3,22 132:12 134:1 144:15 145:5, 10,24 146:1 147:4, 16,17,18,19 148:8,15 164:21 165:22 166:19,24 167:22,25 168:7,11 175:3 176:7,11 <b>BOB-1</b> 103:10 <b>BOB-2</b> 96:15,20,21, 23 98:13 99:3,7 100:15,18 101:2,13, 22 103:10,22 104:4, 12 128:8 133:18,19 <b>BOB-2S</b> 150:13,16 <b>BOG</b> 26:3,7 42:5 66:8,9 75:25 86:13 91:9 92:4 101:2,5 110:19,21 112:10,21 123:21 142:4,9 143:4,7 148:10,13 155:3 170:9	<b>boiler</b> 139:18,20 <b>boilers</b> 41:13 <b>bond</b> 72:23 <b>bonds</b> 100:17 <b>books</b> 80:12 <b>boss</b> 12:21,24 13:4, 10 155:5 <b>boss's</b> 21:7 <b>bothered</b> 109:11 <b>bottom</b> 40:12 77:16 <b>bought</b> 140:15 <b>box</b> 69:2 <b>boy</b> 178:17 <b>brand</b> 23:12 106:4 <b>brand-new</b> 76:3,5 <b>break</b> 57:5,8 95:21 121:23 132:21 133:1,3,7 154:16 <b>briefed</b> 16:10 132:2 133:11 <b>briefing</b> 16:6 <b>briefings</b> 16:4 <b>briefly</b> 75:24 110:8 177:8 <b>brightest</b> 182:4,5 <b>bring</b> 26:15,20 43:20 58:16,19 71:20 102:20 129:6 132:11 157:23 <b>bringing</b> 18:7 <b>brought</b> 24:9 26:13, 16 43:17 48:2 53:4 78:15 106:3 157:12 <b>Brown-neal</b> 53:20 113:2 <b>Bryan</b> 6:13 33:25 60:12,24,25 73:12 159:25 <b>budget</b> 21:3,6,10 22:1,9,11,12,25 23:2 30:7,8,14 31:11,12, 16,19,24 32:19,22 33:13 40:6 51:9	63:23 64:1,3 68:10 72:19 73:5 80:9 82:13,17,18 84:9,15 87:4,15 88:7 89:23, 24 118:1,7 119:21, 25 120:3,13,19,21,24 121:2,10,17 144:20 148:25 149:3,19,23 151:11,17,19 152:5 161:10,23 162:3,6 165:23 166:22 169:19,21 171:16 177:21 <b>budgeted</b> 22:13 <b>budgeting</b> 21:8,18, 19 22:8,22 30:12 <b>budgets</b> 30:13 72:15 74:2 82:8 85:24 86:20,22 149:6 151:13,14,15 154:25 178:21 <b>build</b> 97:12 129:17, 22,24 144:5 146:22 147:1 152:13,15 <b>building</b> 12:13,16 13:15 28:5,7 29:8,16 44:10,14,15 45:8,11, 12,13,17 46:3,5,7,14, 22 49:15 50:6 72:15 76:4,5 78:2 88:7 89:3 92:11,18 93:1, 9,10 94:2 95:1 96:15 97:6,12,13,16,19 98:4,12 99:11,15,18, 25 100:19,20,24 101:3,18 107:22 108:13 111:10,14, 20,25 124:11 126:4, 6,16 127:4,12,14,17, 22 128:5,11,25 129:1,18,22 131:4,7 139:19 141:6 142:3 143:10 144:9,13 145:9,13,18 146:7, 17,23 147:1,8 149:16,17 150:10 152:21,23 153:1,2 170:6 173:8,9,13,16, 18 180:5,16 <b>buildings</b> 80:14 100:22 101:25 103:23 112:14,16 129:9,15 141:23
<b>B</b>				
<b>back</b> 10:21,23 32:23 38:24 41:1,2 42:10 52:5 53:7,9,10,17,25 54:5 70:9 71:18 78:5,10 79:3,4,6 80:4,5,7,21 81:5,22 82:1,9 89:22 99:21 100:2 106:3 111:16, 17 114:8 115:16 116:21 123:17 125:8 126:2 134:21 140:20 141:12 145:11 146:22 150:13 155:5 173:19 <b>backdated</b> 143:21 <b>backdating</b> 143:15 <b>backdoor</b> 71:9,12				



143:10 146:6	78:3 79:25	60:24,25 73:12 159:25	109:12 127:2,3	<b>circulate</b> 84:9
<b>buildout</b> 45:13,18 46:4,6,9,12,13 50:5, 6,10 51:3	<b>Cap-ex</b> 21:6,8,10, 11,13,16,17 22:6,22	<b>Cave's</b> 60:12	<b>characterized</b> 142:3	<b>circulated</b> 84:5
<b>buildouts</b> 45:22 46:24	<b>capacity</b> 15:16	<b>caveat</b> 73:17	<b>charge</b> 64:16,17,19 162:3 167:14 169:6	<b>clarification</b> 68:2
<b>built</b> 47:16 54:8,9 162:20	<b>capital</b> 21:2,4,5 22:1 33:10 72:15 75:14, 16 76:9 82:8,13,17, 18 84:6,11 85:6,24 86:19,21,22 87:4,8 89:11,22,23 90:6 93:23 94:4 102:5,16 104:1,3 108:16 109:15 119:7 134:24 141:25 148:21 149:4,7,22 150:14 152:6 154:24 165:21 166:1 178:21,22	<b>cell</b> 59:17	<b>charged</b> 123:10	<b>clarified</b> 125:21
<b>built-in</b> 150:1	<b>care</b> 180:6	<b>center</b> 45:5,7 50:4,6	<b>chart</b> 119:7	<b>clarify</b> 22:4
<b>bunch</b> 112:3 137:8, 9,14,15 139:21	<b>careful</b> 125:2	<b>central</b> 6:10 37:1 44:23 47:21,24 52:5 133:14 143:16	<b>Chase</b> 29:17,20	<b>clarifying</b> 49:9
<b>Burby</b> 34:9 58:6 60:6 61:13 62:12 114:14 115:8 177:8, 11,15 178:9,12,16,23 181:5	<b>carefully</b> 39:7	<b>certification</b> 54:1	<b>check</b> 133:4	<b>Clark</b> 9:5 21:18 22:7 27:7 28:13 30:1 52:8 114:19,23 115:18 119:15 159:15 162:8 165:4,9 177:16
<b>Burby's</b> 177:20 178:3	<b>cares</b> 77:21	<b>certified</b> 54:7	<b>checked</b> 32:4,8	<b>Clark's</b> 64:3
<b>bureaucracy</b> 84:3	<b>Carine</b> 16:19 114:8	<b>cetera</b> 72:23	<b>chief</b> 10:4,5,21 11:17,21 12:21,24 13:8 16:5 18:22 64:22 67:12 82:23 104:20 105:2 109:6 125:7 151:11 161:23 166:22 169:7 171:15	<b>clean</b> 66:5,6 90:18
<b>business</b> 37:3,9,20 39:15 52:12,13 58:24 59:12 71:4 138:22 142:7,15	<b>carry</b> 40:3	<b>CF</b> 104:5 109:13	<b>chiefs</b> 10:13,20	<b>clear</b> 48:18,19 131:12 134:10 183:9
<b>buy</b> 140:24	<b>carry-forward</b> 6:14 16:16 30:17 35:24 37:1 44:25 49:14,18, 21 52:5 72:12 75:13 105:18 112:3,5,7 121:19 122:8 133:14 135:12,15,16,20 137:7,13,22 138:3, 16,24 143:17 154:15,18 161:14 163:17 169:23,24 171:18,20,24 176:25 177:5,21 178:4	<b>CFAUX</b> 105:18	<b>chilled</b> 44:8,13 122:22 123:9	<b>clears</b> 49:23
<b>buying</b> 143:1	<b>carry-forwards</b> 142:10	<b>CFO</b> 7:23 82:22 104:25 163:20 169:5 180:20	<b>choose</b> 139:24	<b>close</b> 8:5 9:25 20:1 59:12
<b>C</b>	<b>case</b> 8:6 13:1 46:18, 24 47:1	<b>chair</b> 13:6 14:4,14, 15,16,17,18 15:9,15 16:15,22 17:11,17, 23 18:4,6 19:17 20:19 22:17 63:7 70:11 71:17 72:5 75:13,20 96:17,18 121:14,19,23 131:5 132:6 147:5 167:7	<b>Chris</b> 36:6,15 42:2, 5,8,11 43:8 46:6,8 48:9,14 49:20 61:5 70:22 71:8 75:25 76:20 91:19,25 92:7, 11,22 93:4 94:18 97:22 99:4 100:18 101:8,17,19 109:9 110:21 111:11,13, 16,19 127:15 133:22 151:25 152:8 154:14 175:2	<b>closed</b> 156:18 157:8
<b>cabinetry</b> 47:1	<b>cash</b> 40:6 122:6,8	<b>chair's</b> 71:3,9	<b>Christian</b> 78:8,20	<b>closely</b> 8:2,4 9:5,7, 21 10:8,9 11:8,9,10, 14 23:17,23,24 174:16
<b>cabinets</b> 148:1	<b>categories</b> 94:16,23 112:19,21	<b>chaired</b> 32:14 64:2	<b>Christina</b> 9:5 67:11, 20	<b>clusters</b> 45:15,18
<b>CAFA</b> 46:9,12 76:12,16	<b>category</b> 94:15,21 95:6	<b>chairman</b> 171:14	<b>Christy</b> 53:20 112:13 159:15	<b>co-gen</b> 47:23 122:21
<b>calendar</b> 102:2,4	<b>caught</b> 98:20	<b>chairmanship</b> 15:22	<b>Chuck</b> 62:6 151:4 157:10,11	<b>coached</b> 124:14,15, 22 125:2,11 179:23 180:1,3,12,15,20,24
<b>call</b> 9:23 13:11 46:9 52:8,16,20 76:15,16 92:9 126:6 138:25 143:1 156:7	<b>Cave</b> 6:13 33:25	<b>chance</b> 8:5 25:7 118:25 120:6 176:8 178:17	<b>CIP</b> 103:3,5 104:12 116:3	<b>coaching</b> 125:12 181:2
<b>called</b> 11:12 39:16 67:10 76:12 82:11 126:16 138:24 145:22 153:17 178:17		<b>chancellor</b> 66:10,13	<b>CIPS</b> 96:16 97:8	<b>coincidence</b> 123:15
<b>calls</b> 156:20		<b>change</b> 39:10 90:25 91:2,3,4,5,7 104:14, 17,19 110:2 153:13, 15 164:7 179:18	<b>Christian</b> 78:8,20	<b>Colbourn</b> 6:15 12:9 13:19 16:12,14 25:2, 3 27:10,11,17 40:20 52:7 53:18 54:8 56:22 59:20 61:3 65:20 68:5 72:13 75:21 85:17 87:23, 25 88:19 89:14 91:13 94:3,13 95:6 96:21 97:10,13 98:9 104:4 110:10 111:6, 19 113:21 114:22 126:4,5,16 130:13, 14 132:1 134:13 136:1 142:20,24
<b>campaign</b> 69:1		<b>changed</b> 7:14 26:12, 23,24 31:2 67:18,19, 25 97:3 102:25 104:14 107:24 126:10	<b>circling</b> 166:15	
<b>campus</b> 47:16,20		<b>changing</b> 35:3 67:21	<b>circular</b> 155:2	

144:8 146:11,14,16 148:11 161:20 162:12 163:6,9,12, 18,23 164:1,12,15,18 165:10,14 166:7,16 168:16 169:10,17 170:15,19 171:8 173:3,5 175:25 176:16,20 177:1,13 181:3	<b>committed</b> 31:24 32:1 49:8 138:7,9,21	<b>completing</b> 83:8	<b>confusion</b> 135:9	<b>contractor</b> 138:10 140:4
<b>Cole</b> 32:14,15,18 34:6,15 56:24 70:21 74:19,22 83:19 107:19 109:5 144:14 169:15,20 170:4,8 178:16 179:20 182:21	<b>committee</b> 14:10, 14,24 17:21 18:3,18 22:10,11,12,25 30:14 31:11,13,14, 15,17,19,24 32:4,8, 16,19,22,24 33:13 42:18 43:7 56:4 60:2,4 64:2 72:19 73:5 83:1 104:2 119:21,25 120:1,3, 13,19,21,25 121:3 147:3,5 148:2 151:17,19,24 152:5 157:12,16 161:10 162:6 167:7 169:19, 21 171:15	<b>completion</b> 46:4	<b>connected</b> 164:11, 15,18	<b>contractors</b> 138:18 140:1,8 149:24
<b>Cole's</b> 26:17	<b>committees</b> 74:3	<b>compliance</b> 18:22 19:1,5 23:24 58:16 67:8,12 128:17 155:17	<b>connection</b> 159:19 167:17	<b>contracts</b> 17:9 77:12 80:25 138:11 139:2,9
<b>college</b> 23:6 38:12 44:23	<b>committing</b> 29:9	<b>compliant</b> 116:15	<b>conscious</b> 5:14	<b>contradict</b> 177:15
<b>colleges</b> 23:3,23 92:12	<b>communicate</b> 11:22,23 156:6	<b>comply</b> 158:22	<b>considered</b> 104:1,3 136:7 159:5,8 168:4	<b>control</b> 25:23 151:15 171:10
<b>collusion</b> 140:5	<b>communications</b> 13:7	<b>component</b> 109:15	<b>consolidated</b> 39:19	<b>convened</b> 23:1 31:7
<b>column</b> 85:12,13,15, 18 108:18,19	<b>community</b> 158:15	<b>composed</b> 171:21	<b>constant</b> 127:7	<b>conversation</b> 35:12 49:11,12 76:24 77:7 82:12 105:24 115:2, 5,15 116:13 127:7 134:17 136:16
<b>columns</b> 85:11 88:12 119:10	<b>companies</b> 139:16	<b>compounded</b> 42:21	<b>construct</b> 72:12 76:3 163:9,22 164:1 169:17 170:6 173:15,18 176:19 177:6	<b>conversations</b> 12:3 13:2,5,10,14 30:3 48:9,11,13,21 49:24 53:15 92:7 109:9 111:11 132:18 133:22 156:20 172:5 175:2
<b>combination</b> 132:8	<b>company</b> 18:1,4 43:17,18 74:20,22 139:15 141:22	<b>comprises</b> 39:18	<b>constructed</b> 40:19	<b>convince</b> 13:21
<b>combined</b> 28:8 38:23 125:25 135:1 136:11 142:22	<b>competent</b> 148:12	<b>computers</b> 42:22	<b>construction</b> 6:15 7:10 13:17,21 17:13 30:23 36:24 37:8,22, 24 40:25 42:2,4 65:14 88:19 117:14 136:19 138:12 144:4,24 146:10 149:8 162:23	<b>copied</b> 177:18
<b>combining</b> 141:24	<b>companies</b> 139:16	<b>conceal</b> 55:22 56:2,3 63:8 163:21 164:11, 14,18 178:24	<b>consultants</b> 18:23 129:7	<b>copies</b> 59:17 60:17 61:20 75:3 112:22 113:3 156:13
<b>comfort</b> 44:9 132:21 133:1	<b>company</b> 18:1,4 43:17,18 74:20,22 139:15 141:22	<b>concealed</b> 164:9	<b>consultation</b> 163:20	<b>copy</b> 25:7 58:17
<b>comfortable</b> 15:5	<b>compete</b> 129:12 140:1	<b>concentrated</b> 30:10	<b>contact</b> 8:12 9:9 20:13,16 39:23 58:12	<b>correct</b> 9:2,3 22:8 33:21,22 35:7,24 51:7 68:7,10,21 72:4 76:4 94:5,17 97:1 100:3,6 110:18,20 118:2,3 126:14,17 130:19 131:2,14 136:12 137:25 147:6 150:2 158:8 161:8, 15 165:18 166:17 167:5 172:12 174:12 180:14 181:4,7 183:18,23 184:2
<b>comma</b> 67:22	<b>competently</b> 158:20	<b>concentrates</b> 106:14	<b>contacted</b> 20:19,21, 22 33:19 71:5	<b>corruption</b> 77:22
<b>commended</b> 158:14	<b>competing</b> 65:8	<b>concept</b> 127:13,14	<b>context</b> 34:3,11 35:5 116:8 117:14 122:16 152:23 157:6	<b>cost</b> 17:10 18:11 72:2 136:9,13,23 148:22 150:3,6 181:21
<b>comment</b> 34:7 75:20 117:6 125:13 172:10 173:19	<b>competition</b> 140:3	<b>concerned</b> 17:23 56:1	<b>continue</b> 127:3	<b>costly</b> 146:13
<b>comments</b> 173:20, 24	<b>complained</b> 70:11	<b>concerns</b> 67:10 170:13	<b>continued</b> 59:23 67:18	
<b>commission</b> 124:25	<b>complaint</b> 65:1 70:10	<b>conclude</b> 19:11	<b>continuing</b> 64:25 137:21,23 138:2,10, 11,12,13 139:3,17	
<b>commitment</b> 32:5 112:4,6 114:2,4	<b>complaints</b> 69:8 70:16,19	<b>concluded</b> 184:10, 16	<b>contract</b> 37:16 137:23 138:3,6,8,21 139:11,13 140:11	
<b>commitments</b> 69:4	<b>complete</b> 22:22 93:10 126:5 144:11	<b>conclusions</b> 73:18	<b>contracting</b> 138:13 181:21	
	<b>completed</b> 110:9	<b>concurrency</b> 106:15		
	<b>completely</b> 11:2 124:2 125:4	<b>conditions</b> 111:18		
		<b>conducted</b> 69:1 164:5		
		<b>conference</b> 76:14		
		<b>conflicting</b> 154:13 175:10		
		<b>conformity</b> 128:20		
		<b>confront</b> 67:4,7		
		<b>confused</b> 68:18		
		<b>confusing</b> 63:1		

<p><b>costs</b> 12:16 136:19 144:20,24 147:15</p> <p><b>counsel</b> 23:24 26:2 32:18 39:8 54:12,17 58:18 60:6 74:16,18 75:17 78:17,19 79:12 80:25 82:23 105:3 154:11,21 155:4,9,10 159:2 169:1,7,15 173:25 179:20 182:14</p> <p><b>counsel's</b> 26:9 33:9 55:8 85:21 170:5,9, 12</p> <p><b>counseled</b> 55:25</p> <p><b>counsels</b> 54:12,17</p> <p><b>county</b> 79:7,9 81:11, 13,14,18,19</p> <p><b>couple</b> 33:5 51:14 66:8,9 119:9 149:24 152:3 164:24 173:8 176:7</p> <p><b>court</b> 4:4,24 5:2,12 184:9</p> <p><b>cover</b> 5:17</p> <p><b>covered</b> 125:21</p> <p><b>covering</b> 182:22</p> <p><b>create</b> 61:7,8</p> <p><b>created</b> 30:1,9 34:21 61:9 64:3 74:2</p> <p><b>credit</b> 63:23 65:24 68:4,13,15 180:21</p> <p><b>creek</b> 81:3</p> <p><b>Creole</b> 50:19,20,21, 24 51:5</p> <p><b>critical</b> 106:13</p> <p><b>cross-examination</b> 157:2,7,22</p> <p><b>crossed</b> 109:13</p> <p><b>curious</b> 46:3 86:5 128:21 133:17 144:7</p> <p><b>current</b> 103:3,5 104:1,12 150:3,6 153:4</p> <p><b>curriculum</b> 63:22,</p>	<p>25</p> <p><b>cut</b> 131:9,10</p> <p><b>cutting</b> 8:9</p> <p><b>CV</b> 67:19,20,25 68:3, 10,19</p> <hr/> <p style="text-align: center;"><b>D</b></p> <hr/> <p><b>daddy</b> 124:25 145:2</p> <p><b>daily</b> 30:3 119:18</p> <p><b>Dale</b> 9:17 21:18 31:1 33:6,8 45:15,19 51:3,4,5 65:2 67:18 73:25 74:13,19 117:25 118:14,17 120:2,22 145:20 146:9,15,18,19 153:3 161:2,7,10,16, 22 164:20 165:4,12, 19 166:21 178:17 182:8,12,20 183:6, 20</p> <p><b>dash</b> 85:18</p> <p><b>dated</b> 134:25 143:24 164:24</p> <p><b>Dave</b> 20:20,21,23,24 21:7,15 22:20 23:9, 14 66:4 67:8</p> <p><b>David</b> 147:14</p> <p><b>day</b> 58:12,14 63:12, 14 121:21 123:15, 16,20 141:2 181:16 183:19</p> <p><b>days</b> 69:6 83:2 121:22 148:19 167:21 168:2 183:16,25</p> <p><b>deans</b> 103:15 153:23</p> <p><b>debt</b> 95:15,16 103:9</p> <p><b>deceived</b> 63:16</p> <p><b>December</b> 107:10, 11,12 108:5 110:2</p> <p><b>decide</b> 145:1 149:25 163:8</p> <p><b>decided</b> 17:17,23 18:16 46:15 51:24</p>	<p>108:22 111:8,17 137:4</p> <p><b>decision</b> 28:8 45:19 113:17 116:8,19,20, 23 126:3 128:22 145:12,15 146:5,6, 22 154:19 163:11, 16,17,19 175:16 183:17,25</p> <p><b>decisions</b> 24:21,23 31:16,20 74:2 105:16</p> <p><b>declined</b> 24:19</p> <p><b>deferred</b> 85:9 112:15,16 113:5,9, 11,14,18,22,23 138:24,25 140:15,22 141:13,18,24 142:4, 12,19,22 143:5,11</p> <p><b>Dejesus</b> 134:23</p> <p><b>delegation</b> 89:9</p> <p><b>deleted</b> 102:25</p> <p><b>deliver</b> 59:11 60:5,7</p> <p><b>delivering</b> 13:15</p> <p><b>delivery</b> 13:14 71:21</p> <p><b>demand</b> 169:24</p> <p><b>demands</b> 153:16</p> <p><b>demeanor</b> 62:25</p> <p><b>demolish</b> 111:8,20 145:1,13,17 146:7</p> <p><b>demolishable</b> 111:15,21</p> <p><b>demolishing</b> 146:16</p> <p><b>demolition</b> 97:19 98:4 111:12 136:9 137:3 145:6,7 146:8</p> <p><b>demolitioned</b> 111:14</p> <p><b>demonstrate</b> 72:10, 18</p> <p><b>demonstrated</b> 155:25</p> <p><b>department</b> 7:19 13:24 17:18 20:4 24:19 31:4 35:23</p>	<p>39:3,11,12,14,22 40:2 44:16 52:5 163:2 165:3,8</p> <p><b>departments</b> 7:7 23:16 24:14 35:21 153:7 164:2 169:12 174:19</p> <p><b>depending</b> 103:17 157:16</p> <p><b>depo</b> 184:10</p> <p><b>deposition</b> 4:16 61:8 70:15 100:8 156:15 157:5</p> <p><b>Depot</b> 151:9</p> <p><b>describe</b> 7:24 9:18 10:25 11:6 15:12 16:24 62:11 136:10 138:5</p> <p><b>describing</b> 125:11</p> <p><b>deserve</b> 69:21</p> <p><b>design</b> 65:14 128:23 129:3,4 144:22 146:9 162:23 173:17</p> <p><b>designate</b> 163:5</p> <p><b>designated</b> 39:13 161:3</p> <p><b>desire</b> 13:18</p> <p><b>desk</b> 65:10 67:21</p> <p><b>detail</b> 138:5</p> <p><b>detailed</b> 176:5</p> <p><b>details</b> 55:15</p> <p><b>determination</b> 23:1</p> <p><b>determine</b> 41:15 42:18 116:8 148:20</p> <p><b>determined</b> 31:17 41:10 45:15 71:20 148:17</p> <p><b>determining</b> 43:19 60:19</p> <p><b>develop</b> 17:9 39:8 91:10</p> <p><b>developed</b> 17:20 107:9 128:12</p>	<p><b>developing</b> 105:25 127:11</p> <p><b>development-</b> 50:9</p> <p><b>deviated</b> 160:23</p> <p><b>Diane</b> 29:20</p> <p><b>difference</b> 40:6 149:2</p> <p><b>differences</b> 149:5</p> <p><b>differently</b> 124:14</p> <p><b>difficulty</b> 60:19</p> <p><b>digging</b> 54:4 109:20</p> <p><b>diligent</b> 151:10,12, 15</p> <p><b>diligently</b> 161:22</p> <p><b>ding</b> 34:7 35:2,16 172:8,10,16 173:19 174:1,9,14</p> <p><b>dings</b> 174:6</p> <p><b>direct</b> 31:6 40:8 57:2 71:21 76:22 90:20, 23 109:4 118:23 123:20,22 127:24 162:8 170:18 182:3</p> <p><b>directed</b> 41:17 42:9 108:25 109:7 167:15</p> <p><b>directing</b> 86:15</p> <p><b>direction</b> 134:8 155:2</p> <p><b>directions</b> 133:23</p> <p><b>directly</b> 30:2 64:4 131:13</p> <p><b>director</b> 106:3 128:13</p> <p><b>directorate</b> 39:16</p> <p><b>disagree</b> 73:17,18, 23 174:3,4</p> <p><b>disagreed</b> 15:5 34:25 35:6 177:9</p> <p><b>disappear</b> 98:10</p> <p><b>disappoint</b> 142:2,6</p> <p><b>discrepancies</b> 149:19</p>
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<p><b>discuss</b> 27:14 46:6 65:1 151:21,24 156:15</p> <p><b>discussed</b> 8:20 28:3, 10 29:2 30:22 70:10, 19,20,21 72:14 88:23 96:16 115:7 116:4 117:13 121:4 130:15 148:2 153:4</p> <p><b>discussing</b> 29:22 113:20 122:1</p> <p><b>discussion</b> 13:23 29:14 67:14,16 86:8, 10 93:12 109:1 111:5 114:20 122:20 123:12,13,14 125:15 128:8,19 131:8,10 170:1</p> <p><b>discussions</b> 13:12 16:19 27:9 29:4,24 30:4 36:16 61:10 71:16 91:19 122:19 134:14 137:1 153:12 177:4</p> <p><b>disguise</b> 56:14 168:20 171:7 178:24 179:4</p> <p><b>disseminate</b> 26:6</p> <p><b>disseminating</b> 63:7</p> <p><b>distinction</b> 49:18</p> <p><b>distributed</b> 35:20</p> <p><b>dive</b> 73:16</p> <p><b>division</b> 38:7,11 79:13,15 81:1</p> <p><b>document</b> 10:20 37:5,6 40:17 57:3,14 76:23 89:5,7 93:22 102:3 104:6,7,22 105:1 108:7 118:24 120:6 126:13,18,20 128:2,5,15 135:2,4, 8,24 147:21 149:3</p> <p><b>documentation</b> 70:3</p> <p><b>documents</b> 10:16,17 11:12 12:2,5,6,8,10, 14 21:1,14 27:15 40:9 59:7 60:8 64:21 72:10,17 74:7,9 75:2</p>	<p>78:10 80:23,24 81:6 89:2,4 109:20,25 113:6 119:13,19,20 127:21 136:21 158:1</p> <p><b>dollar</b> 139:22 142:12</p> <p><b>dollars</b> 92:13 113:5 181:18,20</p> <p><b>Don</b> 15:21 119:8 184:6,7</p> <p><b>donated</b> 78:12</p> <p><b>donations</b> 95:15,16 100:17</p> <p><b>donor</b> 95:1,3</p> <p><b>downplayed</b> 181:2</p> <p><b>downplays</b> 177:12 181:6</p> <p><b>downtown</b> 31:25 45:8 47:10,16,21 48:12 50:4,5 81:17, 19 121:20,25 153:8, 9,13,15,24</p> <p><b>draft</b> 75:3 103:3,5</p> <p><b>drafted</b> 178:11</p> <p><b>drain</b> 80:8</p> <p><b>draw</b> 57:13</p> <p><b>driving</b> 182:20</p> <p><b>dropped</b> 59:9 65:10</p> <p><b>DSO</b> 34:21</p> <p><b>DSOS</b> 34:19 117:9, 11</p> <p><b>duct</b> 139:20</p> <p><b>duly</b> 4:12</p> <p><b>duties</b> 7:6 118:13 158:17,19 166:22</p> <p><b>duty</b> 67:23</p> <hr/> <p style="text-align: center;"><b>E</b></p> <hr/> <p><b>E&amp;g</b> 6:14 27:3,10,22 28:11 30:23 31:24 32:5 33:11 34:18 35:23 36:21 37:1 40:18 41:11 42:8 48:21,23 49:18,19</p>	<p>52:5 53:18,25 54:8 56:6,9,16,21 63:9 72:12,23 73:24 75:13 76:4,8 95:11 100:14,20,21,23,24 101:2,6,17,18 105:6 109:13,16 115:12 117:13 121:19 133:18,20 134:1,4,5, 13,17 135:1,13,17,18 151:22 154:5 155:19 161:3,14,18 163:9, 17,22,25 165:14 166:7 169:16 170:6 171:4,7,18,21 172:2 174:19,24 175:25 176:19 177:6,21 178:6</p> <p><b>earlier</b> 20:12 102:15 116:13 117:3,24 119:9 126:3 160:13 177:23</p> <p><b>early</b> 10:5 34:13 35:9 53:10 123:4 152:11</p> <p><b>earnings</b> 137:8,14</p> <p><b>economic</b> 136:11</p> <p><b>edit</b> 10:16</p> <p><b>editing</b> 10:18,19</p> <p><b>edits</b> 10:23</p> <p><b>educate</b> 35:21 84:25</p> <p><b>educated</b> 120:1</p> <p><b>education</b> 78:14 152:10</p> <p><b>educational</b> 103:18 152:4</p> <p><b>effect</b> 34:6 56:21 116:10</p> <p><b>effectively</b> 157:7</p> <p><b>efficiencies</b> 141:10 181:20</p> <p><b>efficient</b> 147:1 181:23</p> <p><b>effort</b> 106:5</p> <p><b>elaborate</b> 157:22</p> <p><b>electric</b> 121:20</p>	<p><b>element</b> 106:7,9,11, 12,13,16,17,21</p> <p><b>elements</b> 127:9</p> <p><b>eleven</b> 32:5</p> <p><b>Elliot</b> 77:10,11,24 78:4,6,10,15</p> <p><b>email</b> 58:15 59:9 66:15,18,19,23,25 67:1,2 113:7,8 134:22 135:24 140:4 145:19,21 146:3 177:18,19</p> <p><b>emails</b> 12:6 66:9,10 143:19 152:20 164:24 177:22</p> <p><b>emergency</b> 7:19 77:12 172:25 173:3 181:3,5</p> <p><b>Emerging</b> 45:6,7</p> <p><b>employed</b> 6:7,12 9:4 158:6</p> <p><b>employee</b> 66:2</p> <p><b>employees</b> 65:7,9 182:3</p> <p><b>employment</b> 6:9</p> <p><b>encompassed</b> 30:6, 8</p> <p><b>encumber</b> 138:5</p> <p><b>encumbering</b> 138:3</p> <p><b>end</b> 5:20 79:2 87:23 89:20 115:15 138:15 141:19 156:9</p> <p><b>energy</b> 7:11,14,15 38:24 44:8 47:21,24 181:20</p> <p><b>engaged</b> 16:2</p> <p><b>engineering</b> 123:3 129:5,6 139:18 144:16 162:23</p> <p><b>engineers</b> 48:1 144:22 173:6,7,11</p> <p><b>enrollment-type</b> 50:9</p> <p><b>ensuring</b> 37:21</p>	<p><b>entail</b> 46:13,23</p> <p><b>enter</b> 138:6</p> <p><b>entered</b> 115:9</p> <p><b>entire</b> 30:6,8 67:25 134:17</p> <p><b>entitled</b> 119:7</p> <p><b>environmental</b> 7:16 81:3,4</p> <p><b>equipment</b> 44:18,19 45:25</p> <p><b>essentially</b> 162:19</p> <p><b>established</b> 144:17</p> <p><b>estate</b> 77:13 78:6 80:25</p> <p><b>estimate</b> 141:18 150:6</p> <p><b>estimating</b> 5:8</p> <p><b>ethics</b> 58:16 65:1 67:9,12 69:21</p> <p><b>evacuate</b> 173:10</p> <p><b>evaluate</b> 17:25 18:17</p> <p><b>evaluated</b> 158:9</p> <p><b>event</b> 10:19</p> <p><b>exact</b> 116:12</p> <p><b>EXAMINATION</b> 4:14 158:4</p> <p><b>examined</b> 4:12</p> <p><b>exchanged</b> 12:6</p> <p><b>Excuse</b> 176:9</p> <p><b>executive</b> 118:14,15</p> <p><b>exemplary</b> 158:13</p> <p><b>Exhibit</b> 40:14 57:10 77:1 94:6 102:7 119:3 184:12,14</p> <p><b>existed</b> 181:3</p> <p><b>existing</b> 45:7</p> <p><b>exit</b> 86:6,8 105:7,8,9</p> <p><b>expand</b> 153:8</p> <p><b>expanded</b> 120:12</p>
--	---	--	---	--

<b>expansion</b> 153:13, 15	143:16 146:9 147:3 151:1,17,19 152:5, 13,14 153:20 161:9 162:5,18,22,25 163:3 167:7 171:15	54:13 62:25 111:13 160:13	<b>firing</b> 183:2	<b>forthright</b> 124:3 125:14 181:8,10
<b>expansions</b> 50:21		<b>figure</b> 44:4 83:15 104:7 105:15 126:12 129:23 143:14	<b>firm</b> 6:13 17:12 129:6 182:16	<b>Fortier</b> 93:6
<b>expect</b> 63:3 166:21		<b>file</b> 69:8	<b>firmed</b> 149:20	<b>forward</b> 10:17 11:12 12:15 37:19 54:12,16,19 68:1 72:1 82:21 87:24 99:8 104:15 107:18 112:9 136:7
<b>expected</b> 144:9	<b>facility</b> 13:22 14:13 22:8 41:25 42:7 43:13 64:3 92:10 148:10	<b>filed</b> 65:1 68:19 69:9 70:10 143:4 147:25	<b>firms</b> 138:12,13	<b>found</b> 78:7,11 81:3 109:24 110:10 139:20,21 146:12 149:5,19 174:11
<b>expenditure</b> 21:6		<b>filing</b> 147:22,25	<b>fiscal</b> 87:18,23 141:19	<b>fourth</b> 111:24
<b>expenditures</b> 21:12 34:17	<b>fact</b> 42:12 56:25 68:5,9,10 95:6 163:22,25 170:22 171:7 174:8,13	<b>fill</b> 84:18,20 86:23 112:18,20 113:14 133:22 179:8	<b>fit</b> 43:19 80:9	<b>frame</b> 55:2
<b>experience</b> 20:15	<b>facts</b> 9:1 157:24	<b>filled</b> 84:22,23 112:20 153:24	<b>fitting</b> 62:16	<b>frames</b> 93:16
<b>explain</b> 34:11 40:6 61:17 62:17 149:2 174:16	<b>faculty</b> 30:6 45:15, 18 127:4 153:4,15, 22	<b>filling</b> 91:12	<b>five-year</b> 23:2	<b>free</b> 117:20
<b>explained</b> 24:5 49:14 85:6 149:15 152:8	<b>failing</b> 80:13	<b>final</b> 68:24 112:10	<b>fix</b> 141:12	<b>frequent</b> 48:21
<b>explaining</b> 152:6	<b>failures</b> 74:14	<b>finalized</b> 178:19	<b>fixing</b> 143:2	<b>frequently</b> 56:17
<b>explanation</b> 43:10	<b>fair</b> 11:5 157:2 178:9,14,16,20	<b>finance</b> 7:23 14:9, 13,15,17,19 18:18 21:21 30:24 31:5 37:6,7 39:20,23 44:25 57:21 76:13 82:20 83:1 104:2,15, 16,24 112:12 125:24 130:11 131:6 132:3, 5,16 136:4 142:18 147:3 167:7 169:3,4 171:15	<b>flip</b> 40:11 120:5	<b>Friday</b> 58:14 59:5,8
<b>explicit</b> 148:8	<b>fairly</b> 35:9	<b>finances</b> 171:14	<b>floor</b> 44:20	<b>front</b> 88:7 108:4 147:21 157:15
<b>expressed</b> 13:16,17 132:10	<b>falling</b> 41:14	<b>financially</b> 48:3	<b>Florida</b> 6:10 66:8 150:22	<b>fudge</b> 113:25
<b>expressly</b> 72:11 176:24	<b>false</b> 63:8,11	<b>financing</b> 74:6 96:17	<b>flow</b> 102:16	<b>fulfill</b> 158:17,19
<b>external</b> 19:16 121:1	<b>falsifying</b> 65:2	<b>find</b> 28:23,25 29:10 32:23 45:1 53:8 54:4 59:4,19,24 74:20 102:18 109:20 111:6 147:22,23 151:2,16	<b>focus</b> 24:3 73:20	<b>fulfilling</b> 166:22
<b>extraneous</b> 128:20	<b>familiar</b> 26:1 72:14 107:25 150:18	<b>finding</b> 87:7	<b>folks</b> 23:22 44:20 67:19 71:22 146:11	<b>full</b> 14:10 74:12 98:8 110:9 131:3 139:5 144:8 147:4 157:2 180:21
<b>extremely</b> 111:1 132:14	<b>fast</b> 5:12 113:13	<b>findings</b> 86:1,2	<b>follow</b> 15:22 83:10 129:22	<b>fully</b> 37:15 111:18
<b>F</b>	<b>faster</b> 122:17,18	<b>fine</b> 5:5 95:22 122:2 138:2	<b>foot</b> 150:4,9	<b>fume</b> 46:17 154:16
<b>facilities</b> 7:2,10 14:9,15,17,19 16:24 17:12 18:18 21:19 22:9,12,25 23:3,7,13 31:10,12,16 32:19, 21 37:2,9,20 39:15 41:21,23 45:18 46:2 49:11 63:24 65:14, 19,22 73:14 82:19 83:1 92:3 96:17 104:2 106:2,8 107:17 117:10 119:21,24,25 120:19,24 121:2 125:24 130:12,13 131:6 132:3,5,16 136:4 142:7,15	<b>fault</b> 167:1	<b>finished</b> 64:9	<b>football</b> 69:2	<b>fund</b> 29:8 31:16 47:25 49:13 87:8 92:14 93:11 122:17, 18 163:17 171:7,10
	<b>feasible</b> 144:19	<b>finish</b> 16:19	<b>forcing</b> 160:21	<b>funded</b> 31:17 33:10 37:16,25 91:20 134:13 161:17 166:8 168:4 170:15
	<b>February</b> 51:17 89:4 126:15 128:3	<b>finished</b> 64:9	<b>foremost</b> 4:21	<b>funding</b> 12:13 16:15 17:4 25:5,18 28:14 29:16 30:3,5,10,15, 16,22,25 31:1,3,19 33:20 34:17 47:14 48:25 49:2,12 51:4,5 52:7 56:1,22 59:21
	<b>feed</b> 21:12,13	<b>fired</b> 178:8,15 183:10,21	<b>forest</b> 149:16	
	<b>feel</b> 5:17 8:21,22 63:6 69:20 117:20, 21 160:16 172:25 181:13		<b>form</b> 22:9 41:3 42:17 83:8 86:11,12 91:9,10 94:11 96:15 112:19 119:9 133:18,19,23 142:20 143:4 150:22 152:6 162:7	
	<b>feeling</b> 58:7		<b>formation</b> 32:3	
	<b>feelings</b> 9:2,12		<b>formed</b> 11:19 17:21 64:1,2 78:19	
	<b>feet</b> 97:2 136:8,24		<b>forming</b> 162:5	
	<b>fell</b> 173:13		<b>forms</b> 33:16 86:22 96:21 103:7,8,11 119:11 120:10,12 152:6 179:8,13,18	
	<b>felt</b> 10:18 23:8 34:25			



63:13,16,20,23 64:5 72:20 74:2 88:22 91:15,24 93:20 94:19 95:3,7 100:14, 20 101:6,18,25 103:20 104:5,11,21 106:16,18 107:24 108:12 117:9,11 119:8,11 120:1,10, 12 123:13 130:11, 14,17,20,25 131:8,14 134:3,24 135:15 136:17 139:8 152:1 155:20 161:2 162:9 164:8 165:5,10,13, 20,25 166:6,15 168:5,21 169:13 171:11	<b>gathered</b> 165:4,9 <b>gave</b> 37:5 87:16 93:13,15 142:17,18 161:1 164:21 166:4, 18 167:23 183:3 <b>GC</b> 140:3 <b>gears</b> 178:21 <b>general</b> 23:24 26:2,8 32:18 33:9 39:8 55:8 58:17 74:15,18 75:17 78:17,19 79:12 80:24 82:12, 23 85:21 99:11,12, 23 103:16 105:3 138:13 140:3 154:10,21 155:4,9 159:2 169:1,7,15 170:4,8,12 173:25 179:20 182:14 <b>general's</b> 115:20 <b>generally</b> 64:20 89:22 144:12 158:12 <b>generic</b> 46:21 <b>gentleman</b> 18:5 <b>Gina</b> 83:5 84:18 90:8 98:18 102:16 108:14,18,20 109:8, 17,21 133:21 <b>give</b> 4:7 5:20 19:19 30:21 34:11 48:3 49:7 57:25 58:4 63:2 78:5 80:4,5,7,21 81:5,22 156:6 160:21 162:9 163:14 175:10,20,22 <b>giving</b> 13:2 81:25 166:3 <b>glad</b> 143:13 <b>Global</b> 43:11,13,16 44:3 <b>good</b> 95:20 109:1 122:7 136:13 142:14,25 156:21 158:14 <b>governed</b> 159:12 <b>government</b> 24:1 79:8 81:20 82:22 105:2 106:14 169:6	<b>governors</b> 63:15 83:10,12 85:2 90:19 91:11 97:23 99:6 124:15 175:3 176:7, 12 <b>governors'</b> 93:4 <b>grasp</b> 136:13 <b>great</b> 23:8 57:7 123:5,25 133:5 <b>greatly</b> 156:13 <b>Green</b> 132:24 156:6 <b>GREENE</b> 8:8 57:5 61:12,17,23 62:5,7 64:9 95:22 132:21 133:1,5 156:22 157:1,20 158:5 184:6 <b>Grindstaff</b> 20:21 <b>gross</b> 97:2 153:2 <b>ground</b> 4:19 <b>group</b> 76:11 93:11 106:7,9,17,21 110:13,15 129:5 136:18 153:17,20,21 154:8 <b>groups</b> 106:8 110:17 <b>growth</b> 153:7 <b>guess</b> 16:23 60:11 87:19 88:17 94:2 143:8 145:24 <b>guessing</b> 25:13 43:25 52:17 <b>guidance</b> 36:6,18,20 49:3 76:21 86:18,19, 21,23 94:17 99:21 101:8,16,19 154:10, 13 159:2 175:10,16, 17,18,23 <b>guilty</b> 5:11 177:17 183:1 <b>guy's</b> 140:6 <b>guys</b> 7:25 8:15,20 26:9 91:10 141:5 157:9	<b>H</b>	<b>H-U-T-S-O-N</b> 107:13 <b>Hall</b> 6:15,16 12:9 13:20 16:12,14 25:2, 3 27:11,12,17 40:20 52:7 53:18 54:8 56:22 59:20,21 61:3 65:20 68:6 72:13 75:22 85:17 87:23, 25 88:19 94:3 95:6 97:11,13 104:4 110:10 111:6,19 113:21 114:22 126:4,6,16 130:14 142:21 144:8 146:12 161:20 162:13 163:6,9,12,18,23 164:1,12,15,18 165:10,14 166:7,16 168:17 169:10,17 170:15,19 171:8 173:3,5 175:25 176:16,20 177:1,13 <b>hand</b> 4:4 141:25 <b>hands</b> 83:22 166:10 <b>handwriting</b> 166:13,14 177:21 <b>handwritten</b> 60:17 <b>happen</b> 19:20,22 22:22 94:25 148:14 <b>happened</b> 9:2 20:11 25:11 51:22 65:24 67:17 68:15 72:6,7 84:2 92:1 115:25 <b>happening</b> 81:9 102:19 123:14 144:24 <b>hard</b> 71:22 154:7 <b>hardscape</b> 47:18 <b>Harris</b> 20:19 <b>hate</b> 5:12 <b>head</b> 138:22 184:5 <b>headed</b> 165:4,9 <b>health</b> 7:16	<b>hear</b> 23:7,10 52:18 56:20 87:13,14 105:5 113:20 121:18 160:22 <b>heard</b> 22:5 34:5 54:18 56:24,25 100:11 173:25 <b>hearing</b> 183:4,15 <b>heat</b> 38:23 <b>held</b> 6:24 7:3 58:3 59:13 123:19 <b>helped</b> 101:20 <b>helpful</b> 32:11 108:23 111:1 140:23,24 157:20 <b>helping</b> 19:18 21:9 <b>helps</b> 54:20 95:19 99:20 128:16 150:12 <b>hey</b> 98:24 109:21 142:11 174:15 <b>hid</b> 168:15,19 <b>hidden</b> 66:7 140:4 <b>hide</b> 178:25 179:4 <b>high-level</b> 69:3 <b>higher</b> 78:14 <b>higher-ups</b> 73:21 <b>Hill</b> 18:14,15 72:6 <b>hire</b> 18:16 77:12 129:4 <b>hired</b> 17:25 77:12 107:4,5 128:10 182:5 <b>hires</b> 153:5,6 <b>hiring</b> 18:23 117:10 <b>historical</b> 84:22 <b>history</b> 125:19 128:7,19 <b>Hitt</b> 9:16,19 12:1 15:9 27:9,14,19 28:8,10,15 33:3,5,6 69:6 72:11 73:2,22 75:20 91:16 145:15, 17,20 172:9,14,19 179:12
<b>funds</b> 6:14 16:11,16 20:8 27:3,10 29:9 30:17 31:24 33:11 34:22 35:20,24 36:11,23 37:1,8,10, 11,21 38:1,16,23,25 39:10,13 40:18 41:8, 18 42:8,15,19 43:5,8 44:12 45:17,20 46:8 48:6 49:14 51:24 52:10,11,14,22 53:6, 10,18,21 56:6,8,12 72:12 75:14 76:4,8 87:11 89:11,21,24, 25 90:3 92:19 95:1, 4,9,11,13 114:25 115:13 120:20 121:19 124:10 133:15 134:13,15 137:7,12,22 138:4,7, 16,20,23 139:1,6 148:2,17 151:22 154:6 163:1,3,5,9, 12,22,25 171:4,5,6,9, 12,24,25 174:19,21, 24 175:1,11 178:5 182:1 <b>furniture</b> 42:23 45:25 <b>future</b> 101:22 156:10	<b>G</b> <b>gather</b> 165:24 167:17				

<p><b>Hitt's</b> 10:25</p> <p><b>hold</b> 52:3 129:18 147:2 148:9,16,19</p> <p><b>holding</b> 86:15</p> <p><b>hole</b> 145:3</p> <p><b>holes</b> 44:19</p> <p><b>home</b> 45:16 151:9</p> <p><b>homeless</b> 80:13</p> <p><b>honest</b> 4:21 6:21 124:2 135:6</p> <p><b>honestly</b> 77:17 158:17</p> <p><b>hoods</b> 46:17 154:16</p> <p><b>hook</b> 122:22</p> <p><b>hoop</b> 110:25</p> <p><b>hopes</b> 86:25</p> <p><b>hoping</b> 35:21</p> <p><b>horizontal</b> 47:6</p> <p><b>horrible</b> 183:6</p> <p><b>host</b> 106:14</p> <p><b>hostilely</b> 160:14,23</p> <p><b>hot</b> 85:9</p> <p><b>hours</b> 117:3</p> <p><b>housed</b> 64:22</p> <p><b>housing</b> 50:16 103:14</p> <p><b>HR</b> 67:13 70:2</p> <p><b>hug</b> 154:11</p> <p><b>human</b> 125:7</p> <p><b>hundred</b> 140:19</p> <p><b>husband</b> 59:1 60:5</p> <p><b>Hutson</b> 107:5,12,13 128:10</p> <p><b>HVAC</b> 41:13</p> <hr/> <p style="text-align: center;"><b>I</b></p> <hr/> <p><b>idea</b> 43:15 49:19 62:15 70:6 109:2 144:10</p>	<p><b>ideas</b> 129:13</p> <p><b>identification</b> 40:15 57:11 77:2 94:7 102:8 119:4 184:13, 15</p> <p><b>identified</b> 10:14 54:23 76:8 91:14 131:14</p> <p><b>identify</b> 56:5</p> <p><b>IG</b> 137:25</p> <p><b>ill</b> 108:8</p> <p><b>illegal</b> 159:7,8 170:18 172:21,23 174:11</p> <p><b>illegality</b> 77:22</p> <p><b>immediately</b> 118:3 121:12,15 162:2</p> <p><b>immoral</b> 159:5</p> <p><b>important</b> 5:18,21 61:15,22 88:14 124:12</p> <p><b>impression</b> 62:18</p> <p><b>improve</b> 84:25 85:4 174:5</p> <p><b>improvement</b> 7:17 21:2,4 82:8 84:6,11 86:21 90:6 93:24 94:4 102:5,16 104:1, 4 109:15 148:21 149:4,7 150:14 152:6 178:22</p> <p><b>improvements</b> 108:16</p> <p><b>inaccurate</b> 123:7</p> <p><b>incidents</b> 155:15</p> <p><b>include</b> 149:14 161:20 165:9 168:5 172:1 176:23</p> <p><b>included</b> 46:17,18 74:16 94:13,14 95:14 96:14 109:16 128:8 162:12 169:12 171:18 176:14 177:6</p> <p><b>includes</b> 149:16</p> <p><b>including</b> 16:12 123:22</p>	<p><b>incorporate</b> 106:10</p> <p><b>increasing</b> 146:15</p> <p><b>indication</b> 30:22</p> <p><b>individual</b> 106:6 132:18 138:19 139:23</p> <p><b>individuals</b> 71:17</p> <p><b>inefficient</b> 141:4</p> <p><b>infer</b> 136:12</p> <p><b>inflate</b> 149:8</p> <p><b>inflated</b> 149:9</p> <p><b>inflating</b> 149:11</p> <p><b>inflation</b> 150:1</p> <p><b>influence</b> 159:18,22</p> <p><b>information</b> 5:16, 25 12:13,24 21:20 22:7,17,21 26:6,9 34:3 39:21 40:22 55:6,15 58:11,23,25 60:10,22 61:5 64:15 65:12 68:3 70:24 71:9,12 74:23 75:12 103:5 121:24 161:2, 7,11,12,13 162:9 164:21 165:4,9,12, 24 166:5 167:3,17, 24 168:5 169:11,12, 16 176:5,10,15,18,23</p> <p><b>informed</b> 151:17</p> <p><b>infrastructure</b> 47:17,19</p> <p><b>inherently</b> 177:15</p> <p><b>initial</b> 117:5 124:10</p> <p><b>initially</b> 180:4</p> <p><b>initiative</b> 17:15,16 130:1</p> <p><b>initiatives</b> 7:13</p> <p><b>input</b> 90:11 163:11, 14</p> <p><b>inquire</b> 37:17 55:9</p> <p><b>insisted</b> 37:23</p> <p><b>instance</b> 155:12</p> <p><b>instances</b> 176:22</p>	<p><b>institutions</b> 153:19</p> <p><b>instruct</b> 84:18,23 179:3,17</p> <p><b>instructed</b> 55:14,20 91:12 100:18 164:14,17</p> <p><b>instructing</b> 86:15</p> <p><b>instructions</b> 83:6</p> <p><b>instrumental</b> 74:1</p> <p><b>insubordination</b> 58:3 59:13</p> <p><b>intend</b> 156:17</p> <p><b>intended</b> 142:23</p> <p><b>intent</b> 54:2,3</p> <p><b>intentionally</b> 56:5 96:11</p> <p><b>interaction</b> 14:3</p> <p><b>interactions</b> 15:8, 12,14,16,18 24:13,14 151:25</p> <p><b>interchangeably</b> 178:6</p> <p><b>interest</b> 36:11 79:7, 10 81:12,23 137:8, 14</p> <p><b>interested</b> 18:6 77:16 123:25</p> <p><b>interim</b> 57:21</p> <p><b>internal</b> 19:15 56:12,14 89:25 90:3 95:9,11,14 115:21 121:1,5 133:15 134:6 148:25 149:3 171:4,9,12 178:5</p> <p><b>internally</b> 37:25 95:7 164:1 166:8 171:23</p> <p><b>international</b> 43:13</p> <p><b>interrogation</b> 62:11</p> <p><b>interrupt</b> 79:20</p> <p><b>interrupted</b> 38:8</p> <p><b>interview</b> 6:19 33:24 58:8 62:11,18, 19 63:5 86:6,8,9</p>	<p>105:8,9 116:6 123:17,19 160:4,11 164:23</p> <p><b>interviewed</b> 6:13 159:24</p> <p><b>interviewing</b> 114:15</p> <p><b>invested</b> 165:19</p> <p><b>investigated</b> 182:10,15,19</p> <p><b>investigation</b> 5:22 8:16,17,19 9:14 27:1,5,11 36:22 41:4,12,15 45:3 46:10 59:12 61:15 74:17,21,22,23 76:16 124:8,9,23 154:5 156:8,18 157:4 159:20 160:19 178:11,12 179:23 181:11 182:11,16,20</p> <p><b>investigative</b> 60:13</p> <p><b>investigator</b> 182:17</p> <p><b>investigators</b> 160:16 180:5 182:21 184:4</p> <p><b>investment</b> 27:15 48:4 116:3 123:5 145:8</p> <p><b>invitation</b> 17:19</p> <p><b>invited</b> 86:6,7,9 173:21,22</p> <p><b>invoices</b> 139:10</p> <p><b>involved</b> 19:16 25:21,22 29:24 48:16 53:12 68:6 70:13 71:4 118:21</p> <p><b>involvement</b> 40:25 43:12 44:6 47:11,13 50:19 68:13 71:10</p> <p><b>Iowa</b> 65:4,9 68:19,25 69:4,11,12</p> <p><b>Isis</b> 113:23 141:22 143:12</p> <p><b>issue</b> 24:12 25:18 27:1 28:3 34:16 64:13 127:25 155:17</p>
---	---	--	--	--

<p><b>issues</b> 80:14 81:4 92:10 117:7 131:22 173:25</p> <p><b>item</b> 86:7 170:3</p> <p><b>items</b> 132:2,6</p> <p><b>ITN</b> 17:25</p> <hr/> <p style="text-align: center;"><b>J</b></p> <hr/> <p><b>January</b> 6:11 28:9 134:25 137:3 146:4 158:6</p> <p><b>job</b> 25:25 61:6,10 69:15 107:8 158:24 161:23 162:19</p> <p><b>jobs</b> 20:9 151:7 154:9 171:19 182:6</p> <p><b>Joey</b> 58:6 60:5</p> <p><b>John</b> 9:16 10:6</p> <p><b>joint</b> 92:9 145:12</p> <p><b>jokes</b> 151:4</p> <p><b>Joseph</b> 177:11,20 178:3,12</p> <p><b>jotted</b> 34:1 114:18</p> <p><b>journals</b> 60:18</p> <p><b>Judith</b> 134:23</p> <p><b>July</b> 98:14 103:25 105:4 141:20 143:20,24</p> <p><b>jumbled</b> 117:4</p> <p><b>jump</b> 110:25</p> <p><b>June</b> 104:2 105:4 126:19 141:20 143:24 145:25</p> <p><b>Jung</b> 154:19</p> <p><b>junior</b> 26:18 107:19</p> <p><b>justified</b> 173:1</p> <p><b>justify</b> 142:23</p> <hr/> <p style="text-align: center;"><b>K</b></p> <hr/> <p><b>K-E-R-N-E-K</b> 6:6</p>	<p><b>Kathy</b> 41:6 53:6,19 54:16 59:6 109:5 116:16 117:14</p> <p><b>Ken</b> 110:20,21</p> <p><b>KerneK</b> 4:11,16 6:6 154:2 156:22 157:6 158:3</p> <p><b>Keyser</b> 66:13</p> <p><b>kids</b> 44:17</p> <p><b>Kim</b> 111:16</p> <p><b>kind</b> 9:23 15:12 20:12 40:21 46:23 48:5 54:4 62:15 69:17,20 73:16 82:12 83:24 100:10 102:10 116:4 126:18 128:5 129:18 136:16 138:6</p> <p><b>kinds</b> 12:14 39:11 47:19 59:1 63:4 105:1 119:19 144:25</p> <p><b>Kinsley</b> 36:6 42:5,11 45:22 46:6,8 48:9, 22,25 49:9 61:5 70:22 71:8 75:25 76:20 94:18 109:9 110:13 111:12 127:16 133:22 142:9,11 151:25 154:15 175:3</p> <p><b>knew</b> 20:7 31:2 38:21 46:11 56:13, 15 58:9 59:6 87:24 100:20 102:17 105:16 109:21 132:9 134:4,5,8,14,18 135:10 166:23 171:10,11 177:3</p> <p><b>knight</b> 67:19</p> <p><b>knowing</b> 48:20 153:5 156:5 177:3</p> <p><b>knowledge</b> 35:13 40:1 72:18 73:19,21, 24 74:1,12 78:22 84:20,22 87:5,6 177:12 179:19</p> <p><b>knowledgeable</b> 14:23</p>	<p><b>Korosec</b> 11:20</p> <hr/> <p style="text-align: center;"><b>L</b></p> <hr/> <p><b>lab</b> 46:22</p> <p><b>labs</b> 46:18,19,21</p> <p><b>lack</b> 85:8</p> <p><b>lady</b> 128:10</p> <p><b>lands</b> 79:13,15 81:1</p> <p><b>landscape</b> 7:12 47:18</p> <p><b>language</b> 78:12,21</p> <p><b>large</b> 93:11</p> <p><b>larger</b> 99:14,15 152:21</p> <p><b>Lashanda</b> 53:20 113:2</p> <p><b>lastly</b> 156:14</p> <p><b>late</b> 110:9</p> <p><b>law</b> 26:1,3,4 159:12 182:15</p> <p><b>laws</b> 86:16</p> <p><b>lawsuit</b> 157:3,21</p> <p><b>lawyer</b> 151:4</p> <p><b>lawyers</b> 61:9</p> <p><b>lax</b> 86:14</p> <p><b>lead</b> 18:7 31:15</p> <p><b>leader</b> 106:18</p> <p><b>leaders</b> 106:7,9,21</p> <p><b>leading</b> 182:11,21</p> <p><b>leaned</b> 19:17</p> <p><b>learn</b> 21:9 36:21,22 173:23</p> <p><b>learned</b> 18:21 65:5</p> <p><b>learning</b> 86:12</p> <p><b>lease</b> 50:14 78:20,22, 23 79:23</p> <p><b>leased</b> 50:12</p> <p><b>leases</b> 78:7 82:2</p> <p><b>leave</b> 58:15 64:6</p>	<p><b>leaving</b> 16:7</p> <p><b>led</b> 13:24 60:16 74:15,18 106:5 117:5 118:9</p> <p><b>Lee</b> 4:11 6:6 15:21 18:14 30:19 68:18 125:9</p> <p><b>left</b> 8:13 9:10 17:24 61:13 96:11 184:8</p> <p><b>leftover</b> 171:21</p> <p><b>legal</b> 139:24 155:17</p> <p><b>legislature</b> 86:13 99:2,8,11,17,22,24 124:16 142:5</p> <p><b>letter</b> 57:17,18,22 58:1 59:9,15,16 60:7,21 62:10,14 63:6 64:25 70:9 72:9 76:6 177:16</p> <p><b>letters</b> 176:6,11</p> <p><b>level</b> 24:13 74:10 86:14 116:15,18,23</p> <p><b>levels</b> 182:23</p> <p><b>levers</b> 143:23</p> <p><b>liability</b> 80:14</p> <p><b>liaison</b> 175:7</p> <p><b>licks</b> 180:22</p> <p><b>lies</b> 124:25 125:1</p> <p><b>life</b> 124:12 144:9,13</p> <p><b>lightning</b> 44:17</p> <p><b>limitations</b> 48:20 151:21</p> <p><b>limited</b> 30:5 35:12, 13 157:4</p> <p><b>line-throughs</b> 90:14</p> <p><b>lines</b> 180:8</p> <p><b>lingo</b> 171:23</p> <p><b>list</b> 7:8 25:4,5,6,7,16 32:6 92:14 93:14 99:3 100:1,2 103:23 104:10 106:23 108:16 109:15 112:18 113:3,15,18, 22 114:2,3,4 117:7,8</p>	<p>142:17,18 148:22 152:17,18</p> <p><b>listen</b> 87:13</p> <p><b>listing</b> 68:5 126:8,23</p> <p><b>listings</b> 126:24</p> <p><b>lists</b> 99:7 112:4,6,15, 22</p> <p><b>lives</b> 27:18</p> <p><b>loaned</b> 38:18,23 50:12</p> <p><b>local</b> 75:3 106:14</p> <p><b>located</b> 43:16 45:8</p> <p><b>lone</b> 184:8</p> <p><b>long</b> 17:6 26:20,21 35:15 36:12 38:2 70:6 81:21,23 141:13 164:23 173:15,17</p> <p><b>long-term</b> 138:6</p> <p><b>longer</b> 80:2 107:2 119:23 120:3,6,20 144:19</p> <p><b>looked</b> 36:25 47:22 83:21 90:21 123:4 130:10 174:15</p> <p><b>losing</b> 44:15</p> <p><b>lost</b> 147:12</p> <p><b>lot</b> 5:15,16 8:3 25:21 36:6 45:14 48:16 49:22,23 54:20 58:23 60:13 68:3 69:3 72:2,14,24 79:22 81:1 86:3 99:20 101:20 105:22 109:8 122:6 128:14, 16 141:9 144:23 149:19 150:12 152:10 154:13 155:2</p> <p><b>lower</b> 182:23</p> <p><b>lump</b> 47:10</p> <hr/> <p style="text-align: center;"><b>M</b></p> <hr/> <p><b>Madam</b> 4:24 184:9</p> <p><b>made</b> 17:8 23:1,9</p>
---	--	--	--	--



24:21 28:8 31:20 34:8 45:19 74:4 85:3 90:18 91:1,3 99:14 104:13,17,18 106:9 110:3 113:17 125:14 126:3 128:22 157:23 163:12,16,19 170:25 171:2 181:22	<b>Marchena</b> 13:7 14:4,14,18 15:9 16:15,23 17:11,17, 23 18:5,6 21:16 22:17 63:7 70:12 71:13,17 72:6 75:13 121:19,23 122:2,9, 17 131:5,9,15 132:2, 7 133:10 147:5 167:6,22 176:23 177:3 178:10 182:8, 9	<b>measures</b> 17:10,14 181:21,22	<b>memo</b> 93:18 149:15	149:3,4
<b>magic</b> 74:8	<b>Marchena's</b> 15:15, 22 19:23 75:21	<b>mechanical</b> 129:16, 24,25	<b>mental</b> 10:25	<b>million-6</b> 44:4,7
<b>mail</b> 66:7	<b>marching</b> 44:17	<b>mechanically</b> 128:25	<b>mention</b> 178:22	<b>millions</b> 181:18,19
<b>main</b> 101:22 139:13	<b>Marcos</b> 21:16 167:6, 22 176:23 178:9 182:7,9	<b>media</b> 45:6,7 183:5	<b>mentioned</b> 60:25 107:4 114:16,18,23 137:6,21	<b>mind</b> 49:17 117:4 156:3 167:2 177:17
<b>maintain</b> 70:7 77:20 80:10 151:1	<b>Maria</b> 106:5 107:2	<b>meet</b> 13:11 42:3 53:9 119:17	<b>Merck</b> 7:22 8:12 13:7 16:5,8,10 17:16 19:2 26:16 27:9,16, 21 28:10,20 31:6 34:8,14 42:9,10 56:20 63:21 70:20 71:7,11 74:5,8 78:16 80:16,19,20 82:11 89:9 90:9 92:4 102:21 104:18 105:5,11 114:20 115:16,23 118:18 121:12,18 122:1,5, 16 126:1 128:23 130:3,16,22,23 131:13 132:2,15,17 133:11 137:6 145:20,21 146:19 148:3 155:8 159:15 172:9,13,14,19 177:17 179:12	<b>minimal</b> 154:22
<b>maintained</b> 9:9	<b>mark</b> 90:11	<b>meeting</b> 19:17 22:19 28:11,13,20 29:1 34:14,15 41:7 51:3 53:11,13 58:6 59:5, 6,8 64:12 93:2 96:18 102:3,4,10,14 103:4, 6 114:18 119:21 120:25 121:3,11,21 123:19,21,23,24 124:7 125:24 128:23 130:8,12 131:4,6,8 132:3,10 135:12 136:3,4 137:6,22 140:14 145:6 146:1 147:12,17 154:14,17 157:13 167:22,25 172:8 176:24 184:8	<b>Merck's</b> 123:20	<b>minor</b> 42:4
<b>maintaining</b> 36:3	<b>marked</b> 40:14 57:10 77:1 94:6 102:7 119:3 184:12,14	<b>meetings</b> 9:21 10:1 14:5,8,10,11,14,20 15:10,19,24 16:1,2, 3,9,13,18 20:13 21:5 23:22 29:6 30:2,20, 25 31:4,5,11,13 45:2 48:15,16 53:3,14,20 54:23 56:5 60:1 61:9 64:17,20 72:24 76:15 83:3 88:23 90:21 91:1 118:21 119:16,17 120:22 121:13,15,16,22 130:10 131:16,18 132:5,16 133:11,12 134:1,15 136:15 144:16 146:9 147:18,20 151:17, 18,19,21,25 152:3,11 167:11,15,17 168:12,25 170:1	<b>message</b> 77:7	<b>minus</b> 136:8
<b>maintainance</b> 7:11 36:1,4,14 42:15 85:9 101:23 112:15,17 113:5,10,12,14,18, 22,24 138:24 139:1 140:16,23 141:5,11, 19,24 142:4,13,19,22 143:5,12 150:16,25 162:24	<b>market</b> 149:8	<b>messages</b> 60:15	<b>missed</b> 91:8	<b>minute</b> 86:10 105:23 136:4
<b>make</b> 13:4 17:22 49:17 50:7 53:10 69:3 90:25 93:14,17 99:7 102:23 111:24 116:8,20 140:8 167:3 183:9,16	<b>marking</b> 53:7 90:12, 15	<b>messes</b> 100:8	<b>misspell</b> 136:1	<b>minutes</b> 57:7 133:3, 6
<b>makes</b> 49:22 82:4 92:24 95:18 105:12	<b>Martin</b> 55:3	<b>met</b> 30:15 34:22 54:13 64:4 76:14 118:18	<b>misspent</b> 124:10	<b>mischaracterize</b> 148:7
<b>making</b> 31:15 75:20 85:20 93:17 117:6 124:4 137:13 166:15	<b>Martins</b> 14:17	<b>method</b> 26:5 71:21 164:7	<b>mistake</b> 97:4,5	<b>misconduct</b> 183:1, 2,11,22
<b>management</b> 7:12, 14,16,17,19 13:17 39:17,18 138:12	<b>master</b> 105:23 106:1,6,10 107:6,9, 20,21 108:13,16 109:14,16 128:17,20	<b>methodology</b> 83:7	<b>missing</b> 64:12 82:5	<b>misdirection</b> 154:5
<b>management-type</b> 107:3	<b>material</b> 60:13	<b>methods</b> 13:15	<b>misspell</b> 136:1	<b>misdirection</b> 154:5
<b>manager</b> 13:22	<b>materials</b> 10:10,12	<b>Mickey</b> 20:20 93:4	<b>misspent</b> 124:10	<b>mistake</b> 97:4,5
<b>managers</b> 18:8,12 20:5,6	<b>matter</b> 55:16 64:13 81:24 168:1	<b>million</b> 29:12 42:2,3 45:8,12,13 50:24 51:1 85:17 89:15,16 92:12 96:21,25 97:1 113:24 114:21 115:11 134:17 135:1 136:8 139:22 140:16,22 142:1,3, 12,18,20,24 143:5, 11,20 148:10,22	<b>misspent</b> 124:10	<b>Misty</b> 57:20 60:9
<b>managing</b> 20:5,6	<b>matters</b> 9:13 14:23 15:5 162:3	<b>MITZ</b> 4:15 8:11 16:21 19:10 22:3 24:17 25:24 28:19 31:9 32:12 33:1 35:18 39:1 40:16 44:2 47:9 50:1,18 51:20 52:24 54:21 57:6,12 61:18,25 62:9 64:10 66:22 69:23 73:10 75:11 79:14 114:10,12 117:19 119:5 121:7 125:17 132:24 150:20 154:1 156:25 184:7	<b>misspent</b> 124:10	<b>misunderstanding</b> 178:4
<b>manner</b> 164:4	<b>maximum</b> 144:19		<b>misspent</b> 124:10	<b>misuse</b> 154:5
<b>March</b> 89:4 164:25	<b>Mcgladrey</b> 17:3		<b>misspent</b> 124:10	<b>Mitchell</b> 41:6 53:6, 19 54:16 59:6 109:5 116:17 117:14
	<b>meaning</b> 51:9		<b>misspent</b> 124:10	
	<b>means</b> 115:9 183:4	<b>member</b> 31:14 32:15,16 175:5	<b>misspent</b> 124:10	
	<b>meant</b> 88:10 100:24 135:11,13 137:9,15	<b>members</b> 18:3 46:12 131:22 132:12,19 168:11	<b>misspent</b> 124:10	
	<b>measure</b> 44:8		<b>misspent</b> 124:10	

<b>mix</b> 173:22	<b>natural</b> 7:12	70:2,5 71:19 114:13, 17 116:6,9 123:17, 18,25 130:10 145:5 147:18,19 148:18 154:20 156:12 160:3,6,9 166:15	114:19,21 133:25	<b>operational</b> 21:12
<b>moment</b> 52:3 73:20	<b>nature</b> 156:23 172:11		<b>occurring</b> 123:23,24	<b>operations</b> 7:11 11:21 35:25 36:4,14 39:19 52:12,13 71:4 141:5,10 150:25 162:23
<b>Monday</b> 59:12,25	<b>necessarily</b> 135:11, 13	<b>needed</b> 10:18 13:21 20:3,7,8,14 21:20 22:21 24:8 28:15 31:17 38:2 42:3 45:15,17 66:5 78:17 80:21 88:3 92:12 111:17 123:9 126:5 136:20	<b>October</b> 148:9	<b>opportunities</b> 71:23 75:4 102:24
<b>money</b> 19:16,19 34:18 36:1,2,3 38:13,18 39:2,5 42:16 44:8 49:4,5,8 51:22 53:1,25 54:4,5 55:5,6 72:2 80:8,10 85:8 93:8,9 94:19 98:19,25 100:16 113:12,21 124:12 129:14 137:8,13,24 141:7,12 143:24 145:3 146:16 151:1 181:19	<b>needing</b> 21:5	<b>noticed</b> 41:23 97:25 98:11 115:7 125:8 130:11,22	<b>odd</b> 87:17 88:2,6	<b>opportunity</b> 5:20, 23 14:19 108:21 128:24 157:2,7 168:11 183:3,24
<b>moneys</b> 45:2	<b>negative</b> 40:3	<b>noticing</b> 101:9	<b>offense</b> 58:18	<b>opposed</b> 13:16 38:21 71:24
<b>monies</b> 28:6 36:14 42:6 140:12	<b>negotiate</b> 17:20	<b>November</b> 134:23	<b>offering</b> 122:16	<b>option</b> 183:10
<b>monitor</b> 144:2	<b>net</b> 136:8	<b>number</b> 17:8 19:13 36:7,16,17 39:18 40:11 48:11 70:20, 21 82:24 83:22 95:10 104:22 113:22 115:6,14 141:19 142:13,22 143:3 149:5,23 157:18 169:2 178:13 181:22 182:3	<b>offhand</b> 12:11	<b>options</b> 122:2,3,24 136:19,20,22,24 146:15 147:2,14,16
<b>monitored</b> 39:12	<b>newly</b> 64:2	<b>numbers</b> 140:20 144:4 149:8,20	<b>office</b> 12:8,15 19:1,6 26:9 30:11 33:10 37:9,20 39:16 51:22 55:8 59:10 64:22 65:9,15,20 79:9 80:25 85:21 114:20 115:20 116:16 133:4 138:23 142:7,15 150:5 161:1,6 170:5, 9,12 171:3	<b>order</b> 16:3 17:9,22 20:9 23:2 38:14 52:22 61:6 96:4 139:19 140:7
<b>month</b> 30:15	<b>Newman</b> 106:3 128:12		<b>officer</b> 18:22 63:23 67:12 82:23 105:3 121:10 125:7 151:11 161:24 165:23 166:22 169:7 171:16	<b>orders</b> 39:10
<b>monthly</b> 161:11,16	<b>news</b> 66:8 67:19 75:3	<b>O</b>	<b>official</b> 53:12	<b>ordinarily</b> 157:21
<b>months</b> 46:1 105:4 146:2	<b>night</b> 41:2 45:1 93:17	<b>OARS</b> 72:1	<b>oftentimes</b> 56:12 94:20 121:22	<b>organization</b> 23:20 181:23
<b>morning</b> 8:25	<b>nonfeasibility</b> 144:17	<b>oath</b> 6:18	<b>Ogletree</b> 110:20	<b>original</b> 146:11
<b>motivation</b> 77:20	<b>nonrecurring</b> 171:4,24 178:5	<b>objections</b> 143:7,9	<b>okayed</b> 42:5,8	<b>originally</b> 123:2 124:8
<b>motive</b> 131:24	<b>nonstate</b> 94:24 95:3, 13	<b>obligate</b> 138:16,20	<b>omissions</b> 125:1	<b>originated</b> 174:24
<b>move</b> 12:17 93:14 111:20 143:24 153:24	<b>noodling</b> 129:8	<b>observe</b> 14:20 15:8, 17	<b>omit</b> 55:15	<b>one-on-one</b> 48:13
<b>movement</b> 39:13	<b>normal</b> 12:20 37:3	<b>obvious</b> 77:21	<b>one-on-ones</b> 115:6	<b>one-page</b> 76:24
<b>moving</b> 34:18,22 37:19 43:11 45:5 53:25 87:24 136:7	<b>Norvell</b> 147:14	<b>occasion</b> 112:13	<b>ongoing</b> 101:7 156:9 165:5	<b>ongoing</b> 101:7 156:9 165:5
<b>multiple</b> 70:11 126:7 165:16	<b>notation</b> 101:2 116:6	<b>occasions</b> 70:11 175:13,14,15 176:7 178:13	<b>Op-ex</b> 21:13	<b>open</b> 86:11 124:18 125:4 180:23
<b>music</b> 44:16	<b>note</b> 115:8 120:5 122:12	<b>occupants</b> 44:9	<b>opened</b> 140:7	<b>operated</b> 140:7
<hr/> <b>N</b> <hr/>	<b>notebook</b> 59:24	<b>occupiable</b> 152:22	<b>operate</b> 151:1	<b>operating</b> 84:8,15 182:12
<b>nail</b> 73:1	<b>notebooks</b> 60:18 147:20	<b>occupied</b> 153:1	<b>operation</b> 101:23 150:16	<b>operating</b> 84:8,15 182:12
<b>narrative</b> 160:24	<b>notes</b> 33:24 34:3,4 58:10,11,13,17,19,25 59:4,24 60:23 61:1, 7,8,9,13,19,21 62:19	<b>occur</b> 42:19 102:10		<b>operating</b> 84:8,15 182:12
<b>narratives</b> 63:8,11		<b>occurred</b> 17:1 28:24,25 52:6		<b>operating</b> 84:8,15 182:12

<p><b>oversee</b> 23:19 162:20,22</p> <p><b>overseeing</b> 47:16 70:13</p> <p><b>oversees</b> 43:7</p> <p><b>oversight</b> 30:13</p> <p><b>owner's</b> 13:18 18:7, 10 71:20</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <p><b>P-O-T-T-E-R</b> 77:14</p> <p><b>p.m.</b> 57:9 133:7,8 184:17</p> <p><b>package</b> 167:23 168:24,25 169:2</p> <p><b>packages</b> 168:1</p> <p><b>packet</b> 57:3,14 76:23 118:24</p> <p><b>packets</b> 16:2 33:14 82:21,25 83:1,2 104:23 168:7</p> <p><b>pages</b> 59:22 127:22</p> <p><b>paid</b> 38:24 139:9 147:9</p> <p><b>paper</b> 60:9</p> <p><b>parameters</b> 17:20</p> <p><b>part</b> 25:25 42:6,12 51:23,25 53:19 64:15 67:14 81:5,12, 18 98:20 111:20 123:12 124:7 129:2, 11 154:11 161:9 162:19 169:18 181:2</p> <p><b>participants</b> 121:2</p> <p><b>participate</b> 145:12 159:11</p> <p><b>participated</b> 23:14</p> <p><b>participation</b> 177:13</p> <p><b>parties</b> 111:3 169:3</p> <p><b>partly</b> 124:24</p> <p><b>partnership</b> 81:18</p>	<p>149:17</p> <p><b>parts</b> 73:16</p> <p><b>pass</b> 39:20</p> <p><b>passed</b> 71:5 83:22 119:24</p> <p><b>past</b> 11:10 20:17 30:9 124:3 126:22 173:24</p> <p><b>patience</b> 82:10</p> <p><b>pay</b> 43:23 44:1 53:8 54:5 119:6 138:17 148:20</p> <p><b>payback</b> 51:24,25 91:24 92:1,3,5,8,17 93:21 123:10</p> <p><b>paying</b> 91:17 138:8, 9</p> <p><b>payments</b> 50:8</p> <p><b>PECO</b> 88:9,10,11 91:17,23,25 92:8,14, 15,18 94:14 137:7, 12 148:11,21 149:4</p> <p><b>peer</b> 110:17</p> <p><b>people</b> 17:25 23:10 29:4,7,10 30:11 42:23 54:22 55:24 67:5 69:3 70:1,12 76:12 80:13 82:24 83:21 93:2 104:22 110:19 128:3 133:13,14 135:10 142:18,21 146:25 152:4 154:8 180:15 182:19,23</p> <p><b>people's</b> 27:18</p> <p><b>percent</b> 37:23 149:9, 10,11,12</p> <p><b>percentages</b> 145:7</p> <p><b>perfect</b> 105:12</p> <p><b>perfectly</b> 5:4</p> <p><b>perform</b> 24:6</p> <p><b>performance</b> 158:10</p> <p><b>performances</b> 158:12</p>	<p><b>performed</b> 17:3</p> <p><b>performing</b> 118:13</p> <p><b>period</b> 69:9 81:23 137:2</p> <p><b>permissible</b> 41:11 175:11</p> <p><b>permission</b> 21:7 76:1</p> <p><b>permits</b> 25:22</p> <p><b>permitted</b> 48:22</p> <p><b>permitting</b> 25:21 117:10</p> <p><b>persist</b> 71:17,25</p> <p><b>persisted</b> 71:18</p> <p><b>person</b> 11:19 30:11 67:13 107:1 118:11 121:13 162:3 178:8, 15</p> <p><b>person's</b> 71:1</p> <p><b>personal</b> 58:15,23, 24</p> <p><b>personally</b> 8:22 55:23</p> <p><b>persons</b> 172:4</p> <p><b>pertained</b> 13:13,14</p> <p><b>pertinent</b> 59:11,17, 19,24 73:13</p> <p><b>Pete</b> 106:3,5 128:12</p> <p><b>Peter</b> 110:22</p> <p><b>phone</b> 9:23 58:20, 21,22,23 59:17,19,23 60:16 77:8</p> <p><b>physical</b> 36:3</p> <p><b>physically</b> 125:6</p> <p><b>pick</b> 9:22 15:11</p> <p><b>picked</b> 67:19</p> <p><b>piece</b> 60:8 82:5</p> <p><b>piping</b> 47:18</p> <p><b>place</b> 6:9 17:15,25 31:13 44:18 72:1 94:18 141:10 182:9, 12,13</p>	<p><b>places</b> 152:8,9</p> <p><b>plan</b> 21:2,4 36:14 38:23,24 42:12 84:6, 11 90:6,22 93:24 94:4 101:22 102:5 104:1,3,4 105:12 106:1,6,10 107:9,20, 21 108:13,16 109:14,16 128:17,20 148:21 149:4,7,21 150:15,16,25 152:21,25 153:14</p> <p><b>planned</b> 16:12 28:6 153:2,5</p> <p><b>planner</b> 106:4</p> <p><b>planning</b> 7:10 17:12 107:6,7 110:24 111:2 146:10 153:18</p> <p><b>plans</b> 82:9 86:22 102:16 105:23 150:14 178:22</p> <p><b>plant</b> 35:25 36:4 47:21,23,24,25 103:18 110:8,9,11, 23 111:23 121:20,25 123:8 167:10</p> <p><b>play</b> 162:5 163:8</p> <p><b>plugged</b> 11:2</p> <p><b>PO&amp;M</b> 36:8,9,21,23 49:21 80:9 85:5,8 98:20 103:10 135:21 137:24 138:15 150:24 154:15,18 174:24,25</p> <p><b>point</b> 16:22 19:24 23:15 53:4 60:15 69:14 74:4,12 85:4 90:12,15 98:1 108:22 112:25 113:8 140:13</p> <p><b>points</b> 157:23</p> <p><b>poking</b> 145:3</p> <p><b>Police</b> 7:18</p> <p><b>policies</b> 39:7,9</p> <p><b>pops</b> 156:4</p> <p><b>population</b> 80:3 103:16</p>	<p><b>portion</b> 77:16 78:6 95:4 153:1</p> <p><b>POS</b> 139:11</p> <p><b>position</b> 6:24 7:3,20 8:22,23 11:3,19 30:1,9 33:7 34:19 35:1 64:3 65:8</p> <p><b>positive</b> 158:12</p> <p><b>possibilities</b> 129:8</p> <p><b>possibility</b> 26:7</p> <p><b>possibly</b> 12:21 25:21 34:8,18 48:3 94:25 128:14 171:13,17</p> <p><b>pot</b> 35:23</p> <p><b>potted</b> 167:10</p> <p><b>Potter</b> 77:11</p> <p><b>power</b> 38:23</p> <p><b>practice</b> 17:14</p> <p><b>predetermination</b> 183:4,8,14</p> <p><b>predetermined</b> 160:20</p> <p><b>preparation</b> 126:20 166:2</p> <p><b>prepare</b> 156:7 167:16</p> <p><b>prepared</b> 14:23 15:24 16:1,3 20:14 70:3 82:19 90:8 135:23 151:16,20 156:12 171:3 178:1</p> <p><b>preparing</b> 27:16 69:15 82:16 90:7 147:13,16</p> <p><b>presence</b> 75:21 153:9</p> <p><b>present</b> 10:2 22:21 23:3,6 27:8,13 29:3, 13,14 148:13 157:13 167:12</p> <p><b>presentation</b> 13:2 129:12 137:22 166:3,5,19</p> <p><b>presentations</b> 23:9, 10</p>
--	---	---	---	--

<p><b>presented</b> 21:1                      87:11 110:2 114:1,5                      120:13,16 122:24                      145:9 146:14,18                      147:3 148:10</p> <p><b>presenting</b> 23:11                      130:12</p> <p><b>presidency</b> 11:1</p> <p><b>president</b> 7:1,23                      9:15,19 10:25 11:6,                      18 12:1 13:9 15:9,17                      18:25 19:5 27:9                      28:21 33:3,4 46:15                      57:21 63:7 64:22,23                      68:1 72:11 73:22                      76:12,13 80:18,20                      82:22 89:2,6,10                      90:10 91:16 101:1                      102:23 103:1 105:2                      109:6 114:6 115:17,                      24 116:15 118:14,16                      123:18 124:1 125:15                      127:13 145:23                      146:20 162:17                      163:19 169:5 172:9,                      14</p> <p><b>president's</b> 69:2</p> <p><b>presidential</b> 24:23,                      24 116:18</p> <p><b>presidential/                      president</b> 116:23</p> <p><b>presidential/vice</b>                      116:18</p> <p><b>presidents</b> 32:21                      56:17</p> <p><b>pretty</b> 70:23 131:25                      142:25 148:8 180:21</p> <p><b>previous</b> 35:5 104:9</p> <p><b>previously</b> 65:1</p> <p><b>price</b> 140:10 149:3</p> <p><b>primarily</b> 35:25                      95:10 171:21</p> <p><b>primary</b> 117:8</p> <p><b>printed</b> 59:22</p> <p><b>prior</b> 6:18 17:2                      28:11 29:6 37:24                      38:2 49:12 80:1 83:2                      96:18 151:18 168:2</p>	<p>169:8</p> <p><b>priorities</b> 152:14</p> <p><b>prioritize</b> 31:18</p> <p><b>prioritized</b> 23:14</p> <p><b>priority</b> 91:4,5,7                      93:14</p> <p><b>Priscilla</b> 4:11 6:6</p> <p><b>private</b> 66:18 78:7,                      20</p> <p><b>privy</b> 60:11</p> <p><b>problem</b> 21:11                      24:25 25:18 26:13                      27:17 114:24 116:24                      117:1 139:22 154:11</p> <p><b>problematic</b> 24:22                      38:22 132:17 139:18</p> <p><b>procedures</b> 39:7,9</p> <p><b>proceed</b> 123:8</p> <p><b>proceedings</b> 4:3                      184:16</p> <p><b>process</b> 17:11 23:12,                      13 37:18 54:6 65:15                      67:18,25 69:7,14                      101:6 110:25 139:5                      160:11 182:18</p> <p><b>procurement</b> 37:18</p> <p><b>produce</b> 122:22                      123:9</p> <p><b>profess</b> 174:14</p> <p><b>professional</b> 15:14                      67:23</p> <p><b>program</b> 30:23                      72:15 89:4 126:4,16                      127:12,15,17,23                      128:11</p> <p><b>programs</b> 89:3                      153:24</p> <p><b>project</b> 18:8,12                      20:5,6 28:8 29:22                      36:12 37:15,19                      38:14 40:4,25 41:20                      42:1,4 43:9,12 50:2,                      16 51:6 56:23 75:22                      87:1,25 88:4 91:2,6,                      13,20 92:20 97:3                      107:3 115:11 119:8</p>	<p>122:17,19 123:15                      125:25 132:8 135:1                      136:11,14 137:2                      139:4,6,7,12,14                      140:12 145:12                      148:13 168:4,6,21                      169:11,13 177:13</p> <p><b>projects</b> 16:7,11                      17:4 20:5,7 31:25                      32:6 33:10,21 36:11,                      24 38:18 40:19,22                      41:10 47:10,12,14,                      15 48:10,12,17                      53:17 54:9,13,25                      55:12 63:9 68:12                      70:13 71:21 72:1                      75:14,16 76:9,18                      89:10,11 92:2 94:18,                      20 102:19 103:13                      113:21 134:24                      138:19 139:23 142:3                      149:22 150:6 152:2,                      7 161:17 162:10,20                      164:5 165:5,8,21                      166:1</p> <p><b>promotion</b> 118:9</p> <p><b>prompted</b> 58:1</p> <p><b>proof</b> 72:10</p> <p><b>properties</b> 80:8</p> <p><b>property</b> 34:20,23                      50:12,13 78:5,8,11,                      13 79:2,7,22 80:11,                      13,15 81:12,19 82:2</p> <p><b>proposals</b> 18:1,24</p> <p><b>protection</b> 149:17</p> <p><b>Protonmail</b> 66:7,16</p> <p><b>proven</b> 123:6</p> <p><b>provide</b> 12:1 26:9                      34:2 44:9 55:15                      58:11 64:15 65:13,                      16 70:23 103:6                      106:22 127:18 161:6</p> <p><b>provided</b> 10:15                      22:18 33:23 40:9                      60:20,24 61:1 65:16                      112:15,21,23 113:3                      119:14 136:20 150:5                      165:12 166:5 167:23                      168:2,10,24 169:1</p>	<p><b>providing</b> 62:13                      119:19 182:15</p> <p><b>provost</b> 11:7,16                      15:17 22:6 29:8,9,                      17,21,23 33:7 51:9                      63:20 73:21 74:5                      90:10 91:15 101:1                      102:22 114:2,3                      117:25 118:12,14,15                      119:14 121:9,12                      127:3 153:19,21                      161:23</p> <p><b>provosts</b> 11:10,14                      30:10 56:18 114:5</p> <p><b>provosts'</b> 51:22</p> <p><b>public</b> 78:14</p> <p><b>publicly</b> 144:14                      183:20</p> <p><b>published</b> 89:4</p> <p><b>pull</b> 115:8</p> <p><b>pulled</b> 53:19 143:23</p> <p><b>pulling</b> 134:15</p> <p><b>pulse</b> 8:18</p> <p><b>punctuated</b> 157:25</p> <p><b>purchasing</b> 17:21</p> <p><b>Purdue</b> 107:5,8                      150:19</p> <p><b>purportedly</b> 183:25</p> <p><b>purports</b> 40:18                      160:3</p> <p><b>purpose</b> 34:21 52:11                      87:3 101:22 102:13                      155:14 156:20 157:4</p> <p><b>purposes</b> 43:6 78:14</p> <p><b>pursued</b> 161:23</p> <p><b>push</b> 71:25</p> <p><b>put</b> 6:18 17:14,19                      22:10 31:13 33:16                      38:1 42:25 43:3,4                      44:24 54:17,18                      55:25 56:12 73:20                      83:4,5,12 85:5 88:6                      91:20,25 92:13,16                      93:13 94:18 95:2                      99:4 100:14,21,23                      102:17 103:1 104:23</p>	<p>107:17 108:4 128:7,                      13,15 129:11,14,18                      138:23 139:1,11                      140:12 141:9 142:19                      143:3,4 146:25                      148:8,16 152:9                      155:13 179:18                      182:9,12</p> <p><b>putting</b> 42:7 47:19                      72:1 85:7 93:8                      94:16,22 95:5 98:3,                      23 100:1 108:12,24                      113:20 148:19                      182:13</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <hr/> <p><b>qualifications</b>                      140:2,9</p> <p><b>qualifications-                      based</b> 71:24</p> <p><b>quality</b> 7:16</p> <p><b>quarter</b> 111:25</p> <p><b>question</b> 5:15,19                      11:25 15:15 44:24                      61:12 103:24 116:20                      117:21 130:16 141:3                      154:24,25</p> <p><b>questioning</b> 52:7</p> <p><b>questions</b> 5:24 6:1                      10:14,17 15:2 16:20                      20:14 22:14 26:3,4                      35:22 36:7 49:20                      61:4 62:13 63:2 93:3                      103:17,22 112:3                      117:22 119:9 124:21                      130:23 131:23 148:4                      154:22,23 156:15,23                      158:3 167:11 168:13                      177:10 178:23</p> <p><b>quick</b> 177:10</p> <p><b>quote</b> 46:16 140:3</p> <p><b>quoted</b> 136:5</p> <p><b>quotes</b> 140:4</p> <hr/> <p style="text-align: center;"><b>R</b></p> <hr/> <p><b>Raise</b> 4:4</p>
--	--	--	---	--

<b>ran</b> 64:21	76:20	39:23 132:4,16 170:2	<b>renovation</b> 6:14 25:3 27:11 28:5 45:9 46:2 94:13 97:11,18 98:3 129:18,25 144:8,11,17,18 146:14,25 148:9,11, 14,23	<b>representatives</b> 13:19 18:7,10 76:7
<b>ranging</b> 82:12	<b>receiving</b> 74:23 89:19	<b>regularly</b> 64:4 73:5 76:14 118:18	<b>renovations</b> 36:9 42:14 48:24 50:22 76:2 162:21	<b>reps</b> 71:20
<b>rat</b> 145:3	<b>recently</b> 9:16 75:2 113:23	<b>regulates</b> 85:24	<b>reorganize</b> 17:14 20:8	<b>request</b> 94:23 99:14 129:2 148:11 149:4
<b>rated</b> 18:2	<b>recognize</b> 44:5 57:15 77:5 96:3	<b>regulation</b> 26:4,25 27:2,4 42:5 48:20 83:10,12,16 85:2 170:9 175:24	<b>required</b> 25:25 86:23	<b>requested</b> 20:10 65:13 98:19
<b>rating</b> 111:9	<b>recollection</b> 34:2	<b>regulations</b> 26:1 86:16 127:24 158:23 159:12	<b>repairs</b> 48:24 139:19	<b>requesting</b> 91:23
<b>reach</b> 102:17 127:19	<b>recommendations</b> 31:18	<b>reinstated</b> 30:14	<b>reorganize</b> 17:14 20:8	<b>requests</b> 72:5 99:13
<b>reached</b> 73:19	<b>recommended</b> 19:12	<b>rejected</b> 66:9,10	<b>repaired</b> 48:24 139:19	<b>required</b> 25:25 86:23
<b>react</b> 132:13 160:23	<b>record</b> 6:5 105:25 106:20 142:25 183:12 184:11	<b>related</b> 9:13 12:7,8 36:12 47:17 48:12 51:1 61:3,4 161:13 168:5	<b>repay</b> 52:22	<b>requirements</b> 34:22 53:9
<b>reaction</b> 124:10	<b>recorded</b> 35:11	<b>relating</b> 12:16	<b>repeated</b> 99:24	<b>research</b> 45:10,12, 14,16 46:14,15,23,24 78:14 92:5,6,7 128:15 154:16
<b>read</b> 66:23 73:11,13 85:1 86:2	<b>recording</b> 64:12,17 147:12	<b>relations</b> 24:1	<b>replacement</b> 36:10 76:2	<b>researchers</b> 46:20
<b>readily</b> 169:20	<b>records</b> 81:7 142:7, 14 183:14	<b>relationship</b> 7:24 9:18,22,25 11:6 12:18,20 15:12 19:24 20:1 33:3 81:13 159:14	<b>replied</b> 66:25 67:2	<b>reserve</b> 37:1 133:15
<b>reading</b> 87:7 148:18	<b>recruited</b> 33:6 43:16	<b>relayed</b> 12:4 169:25	<b>reply</b> 66:24 67:2	<b>reserves</b> 44:23 122:6,8
<b>ready</b> 6:2 144:5	<b>red</b> 90:13 98:16,18, 25 110:3	<b>relevant</b> 14:11 127:25	<b>report</b> 7:20 18:14,15 19:11 30:1,20 53:17 54:1 60:25 61:13,19, 22 64:4 66:2,3 72:6 73:12,23,25 74:12, 14 75:4 78:16,17 79:12 112:8,9 117:18 153:19 155:23 162:9 165:20 166:23 167:4 177:8, 11,15,20 178:1,3,9, 16,18,23 181:5 182:25	<b>resides</b> 39:16
<b>real</b> 77:13 78:6 80:25 134:10 144:7	<b>redoing</b> 12:8	<b>relied</b> 74:5	<b>reported</b> 7:22 34:5 71:10 115:23 116:14 155:17,21 164:1,4,5 170:19,23 176:1,3, 14	<b>resign</b> 183:3,11,13
<b>realized</b> 146:24	<b>reference</b> 177:20	<b>remember</b> 5:4 25:15,17 32:20 44:5 77:25 88:25 90:22 93:1 108:6 140:20 145:22	<b>reporter</b> 4:4,24 5:2 184:9	<b>resource</b> 7:17 39:17, 18
<b>reapproved</b> 99:23	<b>references</b> 128:8	<b>remembering</b> 93:16	<b>reporters</b> 5:12	<b>resources</b> 7:12 125:7
<b>reason</b> 11:13 39:5 56:10 93:16	<b>referred</b> 21:6 115:18	<b>remind</b> 121:5	<b>reporting</b> 59:21 117:16 155:13,15,19 164:8	<b>respect</b> 169:10
<b>reasonable</b> 5:4	<b>referring</b> 34:7 115:19 121:9 125:10	<b>removed</b> 139:6	<b>reports</b> 31:6 123:3, 20,22 141:21 142:4, 10 148:25 153:21 165:16 166:9 171:3 173:6 178:25 182:4	<b>respond</b> 59:14 124:14,22 157:17 179:23 180:1
<b>reasons</b> 82:3	<b>reflect</b> 160:6,10 178:3	<b>renewal</b> 141:25		<b>responded</b> 59:16 116:25
<b>rebuild</b> 124:18	<b>reformed</b> 64:1,2	<b>renovate</b> 97:12 128:24 145:1,8 152:15		<b>responding</b> 27:21
<b>recall</b> 4:18 10:4 12:5,10,12,14 13:12 25:10 29:23 32:22 34:9,15,16 35:15 36:25 38:15,17 51:12 76:10 89:23 90:24 91:2 94:16,22 99:19 104:11 108:12 110:11,12,14 115:1 116:10 121:25 122:5,9,12 123:23, 24 124:4 131:15,18 135:4,8 140:18 147:8,10,11,13,15,17 148:17 159:16 160:1 161:4 164:22,23 165:3 167:19	<b>refund</b> 105:5	<b>renovated</b> 144:9		<b>response</b> 57:22 58:1 71:1 122:10
<b>receive</b> 74:25 172:16 173:20	<b>refunding</b> 52:18 105:12			<b>responses</b> 4:23 6:21
<b>received</b> 33:14 40:17 52:8 60:10	<b>refusal</b> 175:21			<b>responsibility</b> 37:21 63:8 68:9 89:18 118:10 131:1 165:20
	<b>refuse</b> 175:20			<b>responsible</b> 7:1 82:16 83:15 90:7 105:25 106:18
	<b>reg</b> 26:7,8			
	<b>regard</b> 75:21 158:2			
	<b>regular</b> 30:16,20			



118:1,6 130:17 162:17	93:2,5,6 115:9 121:23,25 124:20 134:19	<b>satisfactory</b> 110:10 111:7,9,25 112:1	<b>selected</b> 68:1 140:1, 9	<b>Shepherd</b> 57:20
<b>restate</b> 38:10	<b>rooms</b> 147:22 154:16	<b>save</b> 8:24 44:8 129:14	<b>selecting</b> 182:15	<b>shop</b> 140:5
<b>result</b> 18:9 67:15 71:22 79:2 178:8,15	<b>Rosen</b> 20:19	<b>save-the-dale</b> 69:1	<b>selection</b> 17:22,24 60:2,3 69:7 129:13	<b>Shorelight</b> 43:18,23
<b>resulted</b> 18:1	<b>routine</b> 24:7	<b>saved</b> 181:17,19	<b>selections</b> 71:24	<b>short</b> 131:10
<b>results</b> 24:15	<b>routinely</b> 119:14	<b>saves</b> 105:22	<b>self-funding</b> 92:8	<b>shortage</b> 137:7,12
<b>retained</b> 60:6	<b>RUBOTTOM</b> 8:9 15:21,23 16:17 18:13 19:8 21:22 24:2 25:14 28:2,18 30:18 31:22 32:17 35:4 36:19 43:22 45:21 48:8 50:11 51:16 52:15 57:7 62:2,6,8 66:12 68:17 72:21 75:6 79:1,17 94:8 95:20,23,24 102:9 117:12 120:15 122:15 125:18,23 132:22,25 133:2,6,9 150:23 157:10	<b>savings</b> 38:24 181:20	<b>sell</b> 42:20	<b>shorten</b> 100:10
<b>retirement</b> 69:6	<b>rule</b> 157:18 170:18 172:16	<b>scan</b> 58:21	<b>Seminole</b> 92:25	<b>shorter</b> 120:17,18
<b>retrofit</b> 41:12,15	<b>rules</b> 4:19 144:25 157:11 158:22 159:12	<b>scapegoated</b> 8:23 182:7	<b>send</b> 10:10 66:15,16 67:1 90:19 108:7 155:5 157:14	<b>shortly</b> 111:7 145:25
<b>return</b> 27:14 48:4 116:3 123:5	<b>run</b> 52:11,13 53:5	<b>scapegoating</b> 182:23	<b>sending</b> 93:18	<b>show</b> 40:18 61:22 87:8 90:2,3 102:3 108:20 120:9 124:15 142:8,15,21 155:14 164:24 180:22
<b>reuse</b> 43:2	<b>running</b> 18:6 69:21 81:3	<b>scary</b> 69:17	<b>sense</b> 49:22 82:4 92:24 95:18 99:14 105:13 111:24	<b>showed</b> 18:10 65:12 72:2,20 75:3 78:20 88:12 89:24 96:20 108:15 123:7 165:13 166:6,8 176:19 177:22
<b>revamp</b> 20:4	<b>running</b> 18:6 69:21 81:3	<b>scene</b> 9:24	<b>separate</b> 16:13 85:11	<b>showing</b> 98:18 136:22 139:13 161:17 169:16
<b>revamped</b> 30:11	<b>résumé</b> 65:2,3,5,17, 23 67:18	<b>schedule</b> 24:6	<b>separately</b> 84:9 140:7	<b>showroom</b> 41:21,23 49:12
<b>reverted</b> 79:3,4,6	<hr/> <b>S</b> <hr/>	<b>Schell</b> 10:6,7	<b>September</b> 28:13,16 52:17 54:25 114:19 121:3 123:21 134:16,18 144:15 148:13 176:24	<b>shows</b> 88:9,11 96:24, 25 104:5 109:13 134:25 148:22
<b>review</b> 18:23 75:5 107:18,20 108:4 176:8,10 178:18 179:13	<b>safety</b> 7:2,16 16:24 23:8 37:9,20 39:15 82:19 106:2,8 107:18 124:12 142:7,15 162:18,24 163:4	<b>Scott</b> 26:17 32:14, 15,22 33:13 34:5,14, 25 56:24 70:21 71:3, 6 74:19,22 83:19 93:5 107:19,20 109:5,10 169:15,20 170:4,8 178:16 179:20 182:20	<b>Sera</b> 67:11 70:1	<b>shy</b> 15:1,4
<b>reviewed</b> 82:20 83:4 104:16,24,25 105:1 108:6 123:18 179:1, 21	<b>salaries</b> 30:6	<b>Scott's</b> 34:19	<b>serve</b> 60:3	<b>sick</b> 180:5,16
<b>reviewing</b> 114:13 149:6 156:3	<b>sale</b> 43:5	<b>scope</b> 178:10,11	<b>service</b> 23:19 43:24	<b>side</b> 74:3 93:4,6 121:22,25 141:11
<b>revise</b> 178:18	<b>sales</b> 43:5	<b>Scott</b> 26:17 32:14, 15,22 33:13 34:5,14, 25 56:24 70:21 71:3, 6 74:19,22 83:19 93:5 107:19,20 109:5,10 169:15,20 170:4,8 178:16 179:20 182:20	<b>services</b> 7:15 36:5 137:23 138:2,11,12, 13,14 139:3,17	<b>sidenote</b> 43:15
<b>Rhonda</b> 18:21	<b>sat</b> 33:13 42:21 54:23 76:16 167:10	<b>Seabrook</b> 83:5 90:8 108:15 133:21	<b>sessions</b> 152:4	<b>sign</b> 39:10 60:9 74:8, 11 89:8
<b>Rick</b> 10:6,7 20:20		<b>Seay</b> 20:22 66:4	<b>set</b> 9:23 22:11 30:2 54:12 119:16,17 160:18	<b>signature</b> 114:5
<b>rid</b> 78:21,23		<b>section</b> 128:17	<b>sets</b> 27:2	<b>signed</b> 89:6,7 126:15 128:2,3
<b>rising</b> 12:16 136:18 144:20 149:9,10		<b>sections</b> 73:13	<b>settled</b> 183:5	<b>significant</b> 61:14,16
<b>risk</b> 13:17,22 24:24 27:19 44:15 92:16 115:13 116:24,25		<b>secured</b> 91:15	<b>shakes</b> 184:5	<b>signs</b> 74:10
<b>Robert</b> 67:12		<b>seek</b> 16:23 60:12 159:1	<b>share</b> 62:20 129:15	<b>similar</b> 53:22 76:21 116:11 171:5 172:5
<b>role</b> 11:20 107:3 150:16 151:11 162:5 163:8		<b>seeking</b> 19:23 150:25	<b>sheets</b> 45:1	<b>simply</b> 122:21
<b>roles</b> 63:9		<b>seeks</b> 73:25	<b>shelf</b> 152:22 153:7	<b>sir</b> 124:22 125:3
<b>Ronnie</b> 11:20		<b>seldom</b> 8:17	<b>shell</b> 45:14	
<b>room</b> 32:20 67:13				

158:21	46:16 50:9,10 107:6, 7 126:8,22,24 153:2, 7,13,16,17,23	75:17 82:24 99:6 104:20 109:7 154:12 155:3 175:5,6	<b>stint</b> 177:12	24 43:8 49:11,14 52:14
<b>sit</b> 23:10 48:15			<b>stop</b> 102:21,22 103:1 183:9	<b>surprise</b> 86:2 132:7, 10
<b>site</b> 47:20	<b>span</b> 144:9,13	<b>Stairlifts</b> 78:9	<b>storage</b> 41:24 42:1, 14	<b>surprised</b> 86:3 132:7,14
<b>sitting</b> 64:20 113:24 121:14 124:21 138:17	<b>speak</b> 5:12,14 10:3 21:16 38:20 67:10	<b>staking</b> 162:2	<b>store</b> 44:19	<b>survey</b> 93:15,18 103:18 110:8,9,11, 12,13,15 111:16,23
<b>situation</b> 34:12	<b>speakerphone</b> 8:5	<b>standard</b> 83:7 144:25	<b>story</b> 63:15 97:8 98:2 180:25	<b>surveys</b> 81:2,5 110:16,23
<b>size</b> 146:15	<b>speaking</b> 38:20 71:23 127:15 156:17 157:13	<b>standards</b> 77:21	<b>strike</b> 87:17 88:2,6	<b>Susan</b> 107:13
<b>skip</b> 125:20 130:6	<b>specific</b> 46:22,23 131:19 134:2 138:9	<b>standing</b> 173:9,10	<b>strive</b> 158:17,19	<b>sustainability</b> 7:11, 13,14 162:24
<b>skipped</b> 114:9	<b>specifically</b> 13:11 17:3 25:17 75:25 107:8 110:6 161:3, 13 165:13,24 166:6, 9 176:18	<b>start</b> 40:24 100:7 181:18	<b>strong</b> 173:10	<b>Suzy</b> 107:5,12 128:10
<b>slide</b> 23:5	<b>specifics</b> 55:6	<b>started</b> 6:3 41:6,8 53:3 55:2 81:15,22 90:12,15 101:4 108:24 121:13,14 153:12 160:18	<b>student</b> 50:4,6,8	<b>swear</b> 4:6
<b>slides</b> 176:5,10	<b>spell</b> 6:4	<b>starting</b> 37:24 87:22 121:8	<b>students</b> 43:14,16, 19 50:7 69:21	<b>sweeping</b> 52:21
<b>slowly</b> 5:14	<b>spend</b> 11:11 21:9 39:10 46:11 54:3 94:19 113:12 122:7 169:24 175:15	<b>starts</b> 57:14 93:23	<b>study</b> 18:9 20:10 144:17	<b>swing</b> 42:13
<b>smaller</b> 97:13 152:16	<b>spending</b> 95:9 117:13	<b>state</b> 6:4 11:1 34:24 41:7,24 52:6 53:3, 11,12,14,15 60:2 65:4,9 68:20,25 69:5,11,13 78:5,12 79:13,15 80:4,6,7 81:9,22 82:1 87:10, 15 90:4 92:12,25 94:14,23 95:2 97:21, 25 98:10 101:9 111:15,21 115:20 122:5 137:25 149:16 154:10 169:25 175:7,8	<b>studying</b> 46:1	<b>Switching</b> 178:21
<b>smart</b> 111:20 123:8	<b>spent</b> 30:16 41:8 53:4,18 65:19 92:19 142:16 153:21	<b>stated</b> 62:12 140:14 178:13	<b>stuff</b> 46:16 60:14 63:21 114:9 139:21 156:4,7	<b>sworn</b> 4:12,22
<b>soldier</b> 184:8	<b>spin</b> 55:23 124:24	<b>statement</b> 38:10 74:4 116:9 124:4 157:15 174:8	<b>subject</b> 117:5 134:10 170:1 178:25	<b>system</b> 127:23
<b>someplace</b> 146:25	<b>spoke</b> 21:7 67:11 70:1 127:15	<b>states</b> 72:9	<b>submitted</b> 65:4 84:12 107:10	<hr/> <b>T</b> <hr/>
<b>sort</b> 12:5	<b>spoken</b> 17:16 76:6	<b>status</b> 22:24	<b>successful</b> 43:21	<b>table</b> 55:25 129:14
<b>sounds</b> 53:24 68:3 72:4,5 131:12 136:10	<b>spot</b> 93:15 111:16	<b>statute</b> 85:23 87:7 170:18 172:17	<b>subject</b> 117:5 134:10 170:1 178:25	<b>tack</b> 124:13
<b>source</b> 16:15 44:11 47:13 48:6 49:1,2 63:16 89:24 100:14, 19,21,23 101:6 104:5,11,21 107:24 130:20 136:17 139:8 148:17 164:8 165:10,13 166:6 168:21 169:13	<b>spreadsheet</b> 40:12 41:9 119:23 120:23	<b>statutes</b> 158:23	<b>submitted</b> 65:4 84:12 107:10	<b>Taft</b> 67:13 70:1
<b>sources</b> 16:11 30:22 31:16 45:1 54:5 63:13 66:8 72:20 87:8 94:14,24 95:12 97:21 98:10 101:9 102:18 103:20 108:12 120:20 121:5 130:18 134:15 135:17 148:2 152:1 159:2 165:20 166:1, 16 168:5 171:10	<b>spreadsheets</b> 53:21 54:24 72:20,22 73:3 161:17	<b>stay</b> 39:21 66:4,6	<b>successful</b> 43:21	<b>takes</b> 63:23
<b>South</b> 78:3 79:25	<b>spring</b> 87:20	<b>step</b> 124:11	<b>successor</b> 33:8	<b>taking</b> 52:9,21 68:4, 15 70:2,5 98:3 127:13 130:7 173:1
<b>SPA</b> 153:17	<b>square</b> 97:2 136:8, 23 150:4,9	<b>stepped</b> 125:8 184:7	<b>suggested</b> 55:18 109:10,23	<b>talk</b> 5:24 8:17,19 9:1 13:3,19 28:21 30:15, 25 45:22 48:25 55:11 76:17 88:15 102:4 103:8,12,18, 20 105:5,23 109:17 110:8 115:10 124:25 152:11
<b>space</b> 12:7 42:13	<b>staff</b> 10:4,5,13,20,22 11:17,21 12:22,25 13:8 16:5 20:9 26:3, 6 55:19 63:13,15 64:23 67:9 72:24		<b>suggestion</b> 27:21	<b>talked</b> 8:14,15 9:13 21:5 24:21 26:16 36:10 48:19,21 49:23 54:24 65:6 66:3,4 67:5,7 71:13

75:24 76:20 88:16 115:14 116:11 117:2 122:1,25 123:13 134:15 137:12 141:1 145:6 155:9 156:11	<b>testimony</b> 4:6 134:12	<b>tied</b> 153:20	114:23 116:16,17 123:21 134:8 141:6 145:22 152:8 156:1 172:9 173:11 174:25 175:23,24 176:25 179:7,22	106:12
<b>talking</b> 25:2 29:7,11, 14 31:1 36:6 48:17, 23 93:7,11 100:7 101:12 102:15 108:2,14,15 112:8 116:2,3,13 120:7 123:2 125:25 126:9, 18 128:9 133:10 134:20 136:17,18,19 137:24 144:12 146:6,12 181:18	<b>text</b> 60:15 76:24 77:7,17,23	<b>Tim</b> 154:19	<b>tone</b> 62:24	<b>treated</b> 160:13
<b>talks</b> 137:7	<b>texts</b> 59:17,18 60:23 61:21	<b>time</b> 5:25 7:18 11:11 14:16 16:2 17:6,17 20:6 21:9,15,17 22:5 24:18,20 25:12 26:21 27:16 29:8,9, 18 30:19 33:15,17 34:16,19 38:1,17,25 41:14 46:15 50:22 52:10 53:22 55:2 56:4 60:6 65:8,19,25 67:23 70:3 71:6,18, 25 77:11 81:16,21, 23 86:24 93:15,18 94:3 100:10 103:19 105:22 108:10 112:1,17 113:13 114:3 115:11 118:8 119:22 120:16 122:25 125:2 126:5, 10,21,25 128:4 131:17,19 137:2 140:17 141:4 147:5 148:16 150:11 152:18,25 153:22 157:16 158:9 159:4, 10 166:4 175:16 184:9	<b>Tony</b> 29:19 121:14	<b>Trevor</b> 6:15 12:9 13:19 16:12,14 25:2, 3 27:11,17 40:19 52:7 53:18 54:8 56:22 59:20 61:3 65:20 68:5 72:12 75:21 85:17 87:22, 24 88:19 89:14 91:13 94:3,13 95:6 96:20 97:10,13 98:9 104:4 113:21 126:4, 16 130:14 132:1 134:12 142:20,24 146:15 161:20 162:12 163:6,9,12, 17,22 164:1,12,15,18 165:10,13 166:6,16 168:16 169:10,17 170:15,19 171:8 173:3 175:25 176:15,19,25 177:13 181:3
<b>Tant</b> 9:6 53:20 112:13 159:15	<b>then-president</b> 73:22	<b>timeline</b> 144:15	<b>top</b> 23:4 98:9	<b>tri-gen</b> 47:24 122:21 123:2,8
<b>targeted</b> 28:7	<b>then-provost</b> 33:3	<b>times</b> 36:17 70:20,21 71:19 84:12 86:18 117:23 128:4 130:22 133:16	<b>topic</b> 85:9	<b>trouble</b> 124:11
<b>targets</b> 178:10	<b>thick</b> 127:21	<b>timings</b> 68:18	<b>topics</b> 30:16 115:6, 15	<b>true</b> 13:6 23:2 37:14 63:17 124:25 167:21 171:20
<b>taxpayer</b> 181:19	<b>thing</b> 34:4 47:19 109:13 116:12 147:1 154:20 168:3	<b>Timouri</b> 106:5 107:2	<b>total</b> 121:1 144:19 148:22	<b>trust</b> 58:8,9,19 124:18
<b>TCH</b> 89:4 161:2 177:6	<b>things</b> 5:17 19:19 23:8 24:9,11 25:5,22 34:1 39:11 41:2 42:6,20,22,24 47:6, 22 49:16,23 50:7 55:4,25 59:1,4 63:1, 4,24 68:4 70:7 74:5, 10 81:2 87:6 88:14 93:13 95:10 98:23 107:4 108:20 114:16 116:4,14 124:24 125:19,20 126:7 130:6 133:14 137:8, 10,14,16 141:13 143:2 144:24 149:13 151:6 155:11,18,23 156:1 158:2 160:7, 10 167:24 168:9 170:23 173:23 183:6	<b>title</b> 85:15 162:15	<b>touched</b> 20:12 65:3 70:14 75:25	<b>trustee</b> 20:24 22:5, 16,23 55:11 73:2 101:1 131:9
<b>team</b> 106:8 111:23 128:23 129:3,4 136:25 144:22 146:9,10,12	<b>thinking</b> 48:23 97:11	<b>today</b> 5:17 25:2 116:13 154:4 156:1 178:23 181:8	<b>touchy</b> 134:10	<b>trustees</b> 10:11 12:17,19,20 13:3 14:4 18:17,22 20:13, 15 21:17,25 33:6,14 55:16 56:18,21 67:8 68:25 69:2 74:15 75:18 82:25 85:6 87:12,14 88:1 90:5, 13,16,17,20,23 103:2,25 110:1,5 137:2,18 154:12 164:21 165:22,25 166:3,19,24 167:23 168:16,20,24 169:8 171:3 176:4,15,18 182:10,21
<b>telling</b> 34:9 52:20 59:10 97:9 125:3 140:5	<b>thinks</b> 174:9	<b>told</b> 5:6 16:16 18:5 24:23 27:6,7,16 33:5 36:18 42:10,11 46:8 56:21,24,25 58:2,7, 12,20 63:13 66:4 67:9 68:25 71:3,8 74:8,19 75:13,15 78:16 80:18 83:9,11, 16 87:10 99:4 101:10,11 113:23	<b>trades</b> 138:14	
<b>tells</b> 49:4 74:11 83:14	<b>thought</b> 8:1 23:23 24:11,22 44:10 61:14 73:14 88:1,3 102:25 116:14 117:16 123:3 133:17,20 140:19 155:15,16 158:23 159:11 170:17,23 172:15,20	<b>tomorrow</b> 106:5 107:2	<b>trailer</b> 44:18,19	
<b>template</b> 127:11 128:12	<b>thought</b> 8:1 23:23 24:11,22 44:10 61:14 73:14 88:1,3 102:25 116:14 117:16 123:3 133:17,20 140:19 155:15,16 158:23 159:11 170:17,23 172:15,20	<b>tonight</b> 106:5 107:2	<b>training</b> 154:21	
<b>ten</b> 20:5 26:21	<b>thousand</b> 59:22	<b>tonight</b> 106:5 107:2	<b>transcribed</b> 176:24	
<b>tendency</b> 5:11,13	<b>threatening</b> 62:25	<b>tonight</b> 106:5 107:2	<b>transcripts</b> 87:13	
<b>tenure</b> 170:22	<b>three-hour</b> 157:22	<b>tonight</b> 106:5 107:2	<b>transfer</b> 37:8 41:18 51:17 89:11	
<b>term</b> 56:16 171:18	<b>tie</b> 128:25 129:25	<b>tonight</b> 106:5 107:2	<b>transferred</b> 37:2 40:18 89:14,21	
<b>terminated</b> 181:13		<b>tonight</b> 106:5 107:2	<b>transfers</b> 52:4 89:17,20 143:16,25	
<b>termination</b> 182:25		<b>tonight</b> 106:5 107:2	<b>transparent</b> 123:22 124:19 125:4 180:23	
<b>terms</b> 73:24 139:11 171:5 172:5 178:4		<b>tonight</b> 106:5 107:2	<b>transportation</b>	
<b>territory</b> 162:2		<b>tonight</b> 106:5 107:2		
<b>testified</b> 4:13 174:23 175:2		<b>tonight</b> 106:5 107:2		



<p><b>trustees'</b> 96:18</p> <p><b>truth</b> 4:7,8,22 160:17 179:7 180:10</p> <p><b>truthful</b> 4:23 6:22 64:7</p> <p><b>Tuesday</b> 146:3</p> <p><b>turn</b> 8:6 58:20 80:11 81:13</p> <p><b>turned</b> 29:21 42:23 130:20</p> <p><b>turnover</b> 29:18</p> <p><b>twelve</b> 32:6</p> <p><b>tying</b> 129:9,15</p> <p><b>type</b> 126:20 150:10</p> <p><b>typed</b> 57:17</p> <p><b>types</b> 10:12</p> <p><b>typical</b> 131:25</p> <p><b>Typically</b> 84:16</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>UBC</b> 32:13,14,15</p> <p><b>UCF</b> 6:12,25 7:18 8:13 9:4,10 26:5 34:13 35:20 43:11, 13,16 44:3 50:6 58:9 60:12 65:24 67:8 69:15 70:13 74:15 78:7 79:22 81:12 83:2 142:2 153:20 154:6 158:6,15 159:4,10 162:2,16, 21 163:21 164:2,5 165:6,21 168:15,19, 22 169:25 170:22 171:4,14,24 173:20 174:2 175:7,12 178:5 180:6</p> <p><b>uh-huh</b> 5:1 82:6 84:17 87:21 93:25 96:7 97:14 99:16 105:14 129:19 130:24 148:24</p> <p><b>uh-uh</b> 5:1</p> <p><b>ultimately</b> 22:16</p>	<p><b>unable</b> 21:13,20</p> <p><b>uncommon</b> 173:20 174:6</p> <p><b>underground</b> 47:17</p> <p><b>understand</b> 9:20 16:22 17:17 35:19 38:16 45:25 46:2 50:17 54:6,7 73:17 75:7 84:2 88:5 91:22 99:2,20,25 101:12, 21 108:9,11 109:17 111:22 112:19 113:1,16 120:20 121:16 126:11 127:5,7 128:3 133:13 135:22 141:8,14,16 144:18 146:24 147:2 151:13 171:18</p> <p><b>understanding</b> 21:1 31:23 32:2,9,10 35:10 36:13 40:1 55:19,21 80:1 87:3 92:14,15 93:20 95:8 100:4,13 131:21 169:9,14 170:2 172:1,6 174:15</p> <p><b>understood</b> 87:10 110:1 150:15,17 172:1 179:11</p> <p><b>undertake</b> 17:18 19:14 20:2</p> <p><b>undertaken</b> 17:15 165:21</p> <p><b>undertook</b> 19:14 80:21</p> <p><b>undetermined</b> 45:14</p> <p><b>unhappy</b> 115:13</p> <p><b>uniformity</b> 127:22</p> <p><b>universities</b> 36:15 46:10 53:16 76:7,10, 14,17 127:20 133:19 175:8</p> <p><b>university</b> 6:10 22:10 23:21 30:7,8, 13,14 31:19,23 33:13 34:20,23 42:25 43:23 50:13,</p>	<p>14 54:7 63:22 64:1 68:16 69:20 72:19 73:5 84:8 86:14 89:25 91:15,24 92:19 106:22 110:19 120:2,13,21 121:9, 10 133:15,18 141:1, 17 165:23 169:19,20 171:11,12 180:22 181:17,19 183:19</p> <p><b>university's</b> 68:10 118:1,7</p> <p><b>Unlike</b> 153:19</p> <p><b>upcoming</b> 167:25</p> <p><b>update</b> 119:8 134:25</p> <p><b>upfront</b> 96:5</p> <p><b>upset</b> 58:7</p> <p><b>utilities</b> 7:15 36:4,5 47:25 141:11</p> <hr/> <p style="text-align: center;"><b>V</b></p> <hr/> <p><b>Valencia</b> 92:25</p> <p><b>valuable</b> 60:24</p> <p><b>Vanessa</b> 93:6</p> <p><b>vendors</b> 117:11 139:3</p> <p><b>venue</b> 40:24 41:1,12</p> <p><b>verbal</b> 70:17,19 76:21</p> <p><b>verbatim</b> 65:17</p> <p><b>verified</b> 46:9,12</p> <p><b>verify</b> 142:11</p> <p><b>version</b> 120:3,7,17, 18,20</p> <p><b>versus</b> 123:10 145:1</p> <p><b>vice</b> 7:1,22 24:23,24 32:21 46:14 57:21 76:12,13 82:22 105:2 116:15,22 118:14,15 162:17 169:5</p> <p><b>violated</b> 159:11</p> <p><b>violating</b> 172:16</p>	<p><b>violation</b> 170:18</p> <p><b>vitae</b> 63:22,25</p> <p><b>volunteer</b> 92:23</p> <p><b>vote</b> 18:17,18 19:4</p> <p><b>voted</b> 18:20 90:21,22 129:17</p> <p><b>voting</b> 15:4 31:14 32:15,16</p> <p><b>VP/PRESIDENT</b> 116:7</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>wait</b> 86:10 136:3</p> <p><b>waited</b> 59:3,5,7</p> <p><b>Waldrop</b> 29:19 91:16 114:2 121:14</p> <p><b>walked</b> 65:9</p> <p><b>walking</b> 125:19 141:5</p> <p><b>Walsh</b> 20:20,21,24 21:7,15 22:5,16,20, 23 66:4 67:8</p> <p><b>wanted</b> 46:16 53:16 62:15 71:10,19 80:3, 5,7,11,12 90:13,18, 25 127:3 136:21,23 141:3 160:22,24</p> <p><b>wanting</b> 81:19</p> <p><b>warehouse</b> 41:24,25</p> <p><b>watch</b> 23:11,13</p> <p><b>water</b> 122:22 123:9</p> <p><b>ways</b> 29:15 101:16, 19 122:17,18</p> <p><b>week</b> 36:10 59:15 76:1 105:24 107:5</p> <p><b>weekly</b> 30:2 119:16, 17</p> <p><b>weeks</b> 82:11</p> <p><b>weigh</b> 183:24</p> <p><b>whichever</b> 122:3</p> <p><b>whispered</b> 19:18</p>	<p><b>Whittaker</b> 9:17 11:7,14,16 12:2 15:16 21:18 22:7 29:23 30:21 32:13 33:4,6 45:15 51:5 63:7 65:2 67:4 72:11 73:2,4,22 74:1,13,19 91:16 92:4 102:4 103:6 109:6 114:3 117:25 118:15,17 119:14 120:22 121:9 123:18 124:1 125:15 136:5,13 145:11 150:15 151:10,16 153:14 161:2,7,10, 16,22 164:20 165:4, 12,19 166:21 177:18 178:17 179:22 182:8,20 183:6,20</p> <p><b>Whittaker's</b> 67:18 109:6 166:14 177:12,21</p> <p><b>wind</b> 173:10</p> <p><b>withdraw</b> 69:4</p> <p><b>withdrew</b> 69:11,12</p> <p><b>word</b> 134:6</p> <p><b>words</b> 62:25 133:13, 20 134:1,3,7 135:10</p> <p><b>work</b> 7:25 8:2 9:5,7, 15 10:8 11:8,9 19:21 46:18,21,24 47:1,4 59:23 65:18,21 67:22 138:18 139:20 143:14 158:14 181:17,25 182:1</p> <p><b>worked</b> 6:10 8:1,4 9:8,16,20 10:9,12 11:9,13 22:8 23:17, 23 39:7 74:3 107:14 112:5 127:10 179:3</p> <p><b>working</b> 12:18,20 18:22 21:19 24:3 33:2 51:2 67:21 74:21 77:11 79:8,9 81:13,16 107:7,16 112:14 127:11 144:22,23 147:13 149:22,24 153:22 154:8 179:5,6</p> <p><b>works</b> 106:8 132:8 153:9</p>
--	---	---	---	---

**workshop** 92:3  
148:10

**workspaces** 47:6

**wrap** 154:2 177:10

**write** 135:25

**writing** 39:3 54:15

**written** 36:17 70:17  
106:6 154:10 157:15  
175:18,23

**wrong** 72:4 117:17,  
18 124:17 155:1,16,  
20,24 170:5,14,23  
180:20,21

**wronged** 8:21,23

**wrongful** 182:24

**wrongfully** 181:13

**wrote** 57:18,23  
62:19 74:19 77:23,  
24

---

**Y**

---

**y'all** 81:25 126:6  
170:5,9 171:23,25

**ya'** 136:2 155:7

**year** 6:11 25:10 29:1  
35:8 42:22 52:17  
83:23,24 85:25  
87:14,19,23 89:15  
90:4,24 94:10 96:22  
102:5,11 104:9,16,  
24 112:23 113:8  
116:1 126:3 135:16  
138:15 141:20  
143:21,22 149:9,10,  
11,12

**year's** 99:23

**years** 11:1 25:13  
26:21 36:7 51:15  
80:1 81:24,25 96:14  
99:18 109:22 138:1  
144:12 149:24  
152:13,15 173:8,12

**you-all** 99:2 111:7  
131:13 133:25

**you-all's** 129:2