

In the Matter of:
Investigative Hearing

KATHRYN ANNE MITCHELL

February 15, 2019



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

3 IN RE:

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

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Deposition of: KATHRYN ANNE MITCHELL
Date Taken: February 15, 2019
Time: 10:40 a.m. - 12:39 p.m.
Location: UCF Communications & Marketing
 12443 Research Parkway
 Suite 301
 Orlando, Florida 32826
Reported By: Emily W. Andersen, RMR CRR FPR
 Stenograph Shorthand Reporter
 and Notary Public, State of
 Florida at Large

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2

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

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

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

3 THE WITNESS: (The witness complies.)

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

8 THE WITNESS: I do.

9 KATHRYN ANNE MITCHELL,
10 having first been duly sworn, testified under oath as
11 follows:

12 DIRECT EXAMINATION

13 BY MS. MITZ:

14 Q. All right. Good morning, Ms. Mitchell.

15 A. Hi.

16 Q. Have you ever given a deposition before?

17 A. No, I have not.

18 Q. Okay. So let me --

19 A. Please call me Kathy.

20 Q. Okay. Okay, great, Kathy. Thank you.

21 I'm just going to explain what you can expect,
22 and I'm going to lay some ground rules down so that
23 we're on the same page, and then we'll get into the
24 questions.

25 A. Thank you.

1 Q. So the reason that you and a number of
2 employees have been subpoenaed for deposition is for Don
3 and I to better understand what's happened at UCF.

4 A. Uh-huh.

5 Q. As you know, we didn't get to sit in on the
6 interviews conducted by Bryan Cave, so we've only been
7 reviewing paperwork, and it's now time to ask questions
8 that the paperwork didn't answer.

9 A. Okay.

10 Q. So we're just trying to better understand what
11 happened. There will be no trick questions. There are
12 no right or wrong questions. We just want some
13 information.

14 A. Of course.

15 Q. You were just placed under oath, so of course
16 we want you to be honest.

17 A. Of course.

18 Q. If you don't know something, "I don't know" is
19 a perfectly fine answer, and I would rather you say "I
20 don't know" than guess at something.

21 A. Okay.

22 MR. RUBOTTOM: And Kathy, would you speak a
23 little louder so the camera always knows you're
24 talking and so that she can hear you?

25 THE WITNESS: Okay. I'll try. Remind me if

1 I'm not loud enough. I'm sorry.

2 BY MS. MITZ:

3 Q. And that's part of the ground rules. I'll get
4 to that in a second.

5 If you don't understand something, you need it
6 rephrased or you need a question just restated, feel
7 free to ask us to do that, and we will.

8 A. Okay.

9 Q. If you know something because someone else told
10 you, please make that clear in your response.

11 A. Okay.

12 Q. If we are asking you for information and you're
13 estimating or approximating, please let us know that you
14 are doing that as well.

15 As you know, Madam Court Reporter is typing
16 down everything that all of us are saying, so we need to
17 be loud enough to where she can hear it. We can't talk
18 over each other because she can't type down two people
19 at once, and the responses need to be words that she can
20 type.

21 So the example I like to give is that a lot of
22 people when they are answering a yes or no question,
23 they will either nod their head or they will say uh-huh,
24 huh-uh. Well, Madam Court Reporter can't really type
25 those things down. So just try to make it a point, if

1 you're going to answer that way, to actually say yes or
2 no.

3 And that's it. Do you understand?

4 A. I do. Thank you.

5 Q. Okay. So let's get started.

6 Can you please state your full name for the
7 record?

8 A. Kathryn Anne Mitchell.

9 Q. Great. Have you discussed this deposition with
10 anyone?

11 A. I spoke with our general counsel, and the
12 deputy general counsel, just to ask how the process
13 worked.

14 Q. And when was that?

15 A. The day that the House announced that they had
16 the ten people that were going to be interviewed here,
17 and the other people that would be interviewed in
18 Tallahassee.

19 Q. Okay.

20 A. Just to --

21 Q. You --

22 A. -- just -- sorry, just to say --

23 Q. What is it?

24 A. -- yeah. What is it, how does it work. I
25 mean, I didn't -- never been deposed before.

1 Q. Okay. Have you discussed anything or had any
2 communications with Scott Cole this morning?

3 A. We just ran into each other in the parking lot.

4 Q. Okay. Did you guys talk about his depo or your
5 depo?

6 A. No.

7 Q. Okay.

8 A. I mean, that he had come from his and I was
9 going to mine --

10 Q. Right.

11 A. -- but not anything about -- you know.

12 Q. Very good. Okay.

13 Have you had an opportunity to review the notes
14 that were taken of your interview conducted by Bryan
15 Cave?

16 A. No.

17 Q. Okay. Have you reviewed anyone else's notes?

18 A. No, I have not seen any of the notes from Bryan
19 Cave.

20 Q. Okay. Have you reviewed anything else in
21 preparation for this deposition?

22 A. Yes.

23 Q. Okay.

24 A. I've reviewed some of the documents that I
25 prepared.

1 Q. Okay.

2 A. And I have a timeline for myself.

3 Q. Okay. Very good. How many times were you
4 interviewed by Mr. Burby?

5 A. I think it was three.

6 Q. Okay.

7 A. Two, I am sure of.

8 Q. Okay. All right. So two to three we'll say.
9 And you were not placed under oath for that
10 interview; is that correct?

11 A. I don't -- I think that's correct.

12 Q. Okay. Despite that, did you tell him --
13 everything that you told him was true?

14 A. Absolutely.

15 Q. Okay, great.

16 A. I was his first interview, so he talked to me
17 first because I had been in audit for 20-plus years, and
18 so I laid the groundwork for him, you know, to the best
19 of my knowledge, of what had happened and who the
20 players were that were involved in the decisions and,
21 you know, where to go to find more information.

22 Q. Okay. Very good. Has anybody within UCF
23 interviewed you or asked you questions about the
24 Colbourn Hall, Trevor Colbourn Hall matter, including
25 anybody from the general counsel's office, anybody from

1 the president's office, as well as your immediate
2 supervisor?

3 A. Well, yes. On multiple occasions we've talked
4 about what happened and why things might have happened
5 and, you know, how could we avoid that happening in the
6 future. I mean, that was part of the decision to split
7 Bill Merck's position was so that it couldn't happen
8 again.

9 Q. I guess my question is more were you
10 interviewed like on a one-on-one about your involvement
11 or your knowledge about anything that happened?

12 A. Oh, no.

13 Q. Okay. When did you join the UCF?

14 A. I -- well, I started as an external auditor in
15 June of 1996, and I worked for the auditor general,
16 primarily auditing operationally and financially and
17 federally at UCF for three years.

18 Q. Okay.

19 A. So then in June of '99, I came internal, and so
20 I've been an internal auditor in various capacities
21 since then.

22 Q. Okay. And what is your position today?

23 A. Well, I'm still the associate director in
24 university audit, and I supervise all of the audits.

25 I'm also in charge of the management advisory

1 services, and then since September I've also been the
2 interim CFO.

3 **Q. So who do you report to in those two roles?**

4 A. As the associate director of university audit,
5 I would report to the chief audit executive; that's
6 Robert Taft. And then as the -- well, since Robert,
7 Lieutenant General Caslen has been at UCF, I now report
8 to him as special counsel to the president.

9 **Q. Okay. Do you know why you were selected to be**
10 **interim CFO?**

11 A. Well, I hope that it was because I have
12 knowledge of the university and its processes, and
13 integrity and accountability in addition to being a CPA.
14 I'm also certified in compliance and ethics. So I hope
15 for those reasons.

16 **Q. Okay. All right. And now are you working**
17 **closely with anyone in your capacity as interim CFO that**
18 **you have not previously worked closely with, such as the**
19 **president or the general counsel?**

20 A. Well, okay. Misty Shepherd, who is the vice
21 president for administration and finance, she and I work
22 very closely together as we try and navigate -- because
23 she's interim in her position as well. And so, you
24 know, we work together to try to figure out how our
25 division is working and what it should be doing. Yes, I

1 have worked very closely with her since September.

2 Prior to this, we've had -- I've done audits at
3 the foundation where she came from, so I know her, but
4 we hadn't worked that closely together.

5 And then I've had more meetings with the
6 president and the other vice presidents since September,
7 but I had worked fairly closely with them throughout my
8 career.

9 **Q. Any more involvement with the general counsel's**
10 **office since September?**

11 A. Probably. Scott and I have worked, I think,
12 well together throughout my career. I mean, as issues
13 would come up and we try to sort out what's the best
14 compliance thing versus -- or in addition to what's the
15 best legal path. So I would say he and I have a close
16 and a good working relationship, and have.

17 **Q. Okay. Great. How long have you been a**
18 **certified public accountant?**

19 A. Let's see. This is an estimate.

20 **Q. Okay.**

21 A. About 1997.

22 **Q. Okay. Do you have any other special training,**
23 **licensing, certifications that are pertinent to your**
24 **position?**

25 A. As I mentioned, I'm also certified in

1 compliance and ethics, and I did some graduate -- I took
2 a sabbatical in 2013-'14, to pick up a graduate
3 certificate in theoretical and applied ethics.

4 **Q. Okay. When did you first learn about the**
5 **auditor general's audit of the Trevor Colbourn project?**

6 A. Okay. So, let's see. That would be -- I went
7 to the entry conference, because I go to all of the
8 auditor general's entry conferences.

9 **Q. When was that?**

10 A. Okay. I'll tell you. April 2nd of 2018.

11 **Q. Okay.**

12 A. And then at that time, they tell us, in
13 general, what they are going to look at, and they said
14 to determine whether payments were made in accordance
15 with contract terms and conditions, university policies
16 and procedures, and laws and rules were followed, the
17 university selected design professionals and
18 construction managers, and adequately monitored the
19 construction manager's selection of subcontractors, and
20 that design professionals provided evidence of required
21 insurance.

22 **Q. Okay. So does that involve Trevor Colbourn**
23 **Hall, the Research I?**

24 A. Well, at that time, I didn't know what
25 buildings.

1 Q. Okay.

2 A. In my -- in my experience with the auditor
3 general, they've never looked at the source of funds for
4 buildings. So my anticipation at that point was that
5 they would, again, be looking at the use of funds for
6 construction, you know, did we get the building we paid
7 for.

8 Q. Okay.

9 A. But then on April 19th, that was the first time
10 that the state auditor asked Lee Kernek for
11 documentation that allows E&G funds to be used for
12 Trevor Colbourn Hall and Research I.

13 And then our process is that if the state
14 auditors are just asking for information, they don't
15 have to copy my -- me. But if they are asking for
16 something that's going to lead to something that will
17 appear in their report, or at whatever point they
18 determine that will happen, they send -- they copy me on
19 the e-mail.

20 So that's the first time I became aware of
21 that.

22 Q. Okay. And so what did you do when you realized
23 that they were asking those questions?

24 A. Just made sure we gave them an answer.

25 Q. Okay.

1 A. At that point, I didn't know we used E&G funds.
2 I went, wow.

3 Q. Okay. And do you have any idea when President
4 Whittaker was made aware that they were honing in on the
5 source of funds for Trevor Colbourn Hall?

6 A. I don't know for sure.

7 Q. Okay.

8 A. I do know that the exit conference was
9 August 7th of 2018, and at that point, you know, they
10 clearly laid out that that was the finding and would
11 appear in the report.

12 Q. Did President Whittaker attend that conference?

13 A. I don't -- hang on. I don't think he did.

14 Q. Okay.

15 A. I can tell you who was there, but --

16 Q. All right. Yeah. Why don't you tell me who
17 was there?

18 A. I thought I could. I don't have that, I'm
19 sorry. I just have my notes of the findings that would
20 appear. Sorry.

21 Q. That's fine. That's fine.

22 A. I could probably go back to the meeting agenda
23 or the -- if you need to know, I can look at my calendar
24 and see who was invited to meeting.

25 Q. That's okay.

1 A. Okay. I know Bill Merck was there that day.

2 Q. Right.

3 A. That's when he took responsibility and -- yeah.

4 Q. So at any time -- and let's focus first on the
5 time period from April of 2018 until September when the
6 Bryan Cave firm was retained.

7 A. Okay.

8 Q. Did you question anybody or conduct interviews
9 of anybody to get a better understanding of the use of
10 the E&G funds?

11 A. Yes.

12 Q. Okay.

13 A. That was -- well, okay, between April -- I
14 would say more between September when I was hired and
15 then it became my responsibility to know.

16 Q. Okay.

17 A. But I mean, until then I was just sort of
18 following the discussion.

19 Q. Okay. So who did you interview or question in
20 September?

21 A. I met with Christy Tant, who was the
22 controller, and Tracy Clark, who was the -- well, she
23 had two titles, associate vice president and associate
24 provost. And, you know, we talked at that point about
25 it.

1 **Q. Okay. Did you ever talk to Lee Kernek or**
2 **Mr. Pittman?**

3 A. John came to me in -- shortly after I was
4 hired, to let me know that there were more people that
5 were aware of what was happening with the building than
6 just Bill Merck.

7 **Q. Okay.**

8 A. He didn't volunteer any names. He didn't want
9 to say any more than that, but he just wanted me to know
10 that it wasn't -- since Bill had taken full
11 responsibility, he said, you just need to know that
12 there are more people than that that knew what was
13 happening.

14 **Q. Okay.**

15 A. Okay.

16 **Q. And did you have occasion to talk to Lee Kernek**
17 **at any time and ask her questions?**

18 A. We met with her many times as we tried to go
19 past Trevor Colbourn Hall and, you know, what else was
20 spent from or -- you know, from the E&G funds that
21 shouldn't have.

22 **Q. Who is "we"?**

23 A. I'm sorry. So it would be me, Lee Kernek,
24 Leshanda Brown-Neal, who is her financial person, Tracy
25 Clark, Christy Tant, yeah.

1 Q. So were you guys all like gathered together and
2 discussing it?

3 A. Yeah.

4 Q. All right. And so when you got whatever
5 information it was that they provided to you, did you
6 take that information to someone else?

7 Did you wait for Mr. Burby to get involved and
8 tell him or did you just sit on the information? What
9 did you do?

10 A. Well, it was an evolving set of information
11 between the beginning of September when I was hired.
12 And by September 18th, I felt like we had a pretty good
13 handle on what else had been misspent.

14 And so on September 18th, I sent an e-mail to
15 the president, just to let him know, you know, okay,
16 here's what I know now; so give him the total picture.
17 And that was in advance of the September 20th board of
18 trustees meeting that I wanted to present the additional
19 13.8, I think, million, that had been misspent.

20 Q. Okay. So when was the board told about the
21 additional money that had been, quote/unquote,
22 programmed but not spent?

23 A. They probably didn't learn about that until --
24 well, but they read it in the state auditor's report.
25 It was in there.

1 And then I explained what that was. I think it
2 was our December 12th meeting because we needed to
3 explain the changes in our carryforward, and that total
4 of 85 million almost going back in -- I mean, jumped
5 right out as something odd in our carryforward report,
6 and I wanted to be sure they understood that.

7 **Q. Do you have any idea why the board wasn't just**
8 **explicitly told about that additional money previously?**

9 A. As I understood it, on -- let's see -- the --
10 September 20th, the question I was trying to answer was
11 what other funds were misspent. And so 13.8 had been
12 misspent.

13 I didn't think they were asking about what did
14 we also plan to misspend, because as soon as I learned
15 there were other projects, I had immediately reversed
16 the funding so that they could spend no more. So that
17 was just my interpretation of what they were asking.

18 I mean, in contrast to, say, the board of
19 governors' question later on when they were asking a
20 similar but slightly different question about, you know,
21 looking back ten years, what buildings that were more
22 than 10,000 square feet or \$2 million, I think. And so
23 it was a slightly different question, but again, I was
24 trying to answer the question that was asked.

25 **Q. Okay. Let's go back to the e-mail that you**

1 sent to President Whittaker notifying him about these
2 monies.

3 A. Sure.

4 Q. Did he reply to your e-mail?

5 A. No.

6 Q. Did you have any discussions with him regarding
7 the e-mail?

8 A. I did, because in the e-mail -- I hadn't gotten
9 accurate information from the facilities folks. So when
10 I reported to him that there was 14.3 million that had
11 been misspent, then I had to go back and correct that
12 because there was another half million or so that
13 actually hadn't been spent; facilities just had given me
14 inaccurate information. So I did go back and tell him
15 it was only 13.8.

16 Q. Okay. Did he have any questions about the
17 content of your e-mail or that discussion?

18 A. I don't -- I don't recall that he did.

19 Q. Okay. Do you have any understanding why
20 President Whittaker didn't tell the board about the
21 additional money?

22 A. You know, I can't speak for him. I would
23 assume it's along the lines of it wasn't the question
24 that was being asked. But again, I probably shouldn't
25 speak for somebody else.

1 Q. Yeah. I mean, when I asked if you have an
2 understanding, I probably should have said, were there
3 any discussions --

4 A. Oh, no.

5 Q. -- that you were privy to?

6 A. No, not that, no.

7 Q. Okay. That's okay.

8 A. And the information that was presented to the
9 board was mine. I prepared that spreadsheet, and so I
10 showed it -- everything goes -- gets approved through
11 the president's office, but that was my data.

12 (Telephonic interruption.)

13 THE WITNESS: I'm going to turn this off. I'm
14 sorry.

15 MR. RUBOTTOM: Same thing happened to Scott.

16 MS. MITZ: Yes, that's true.

17 THE WITNESS: Sorry.

18 BY MS. MITZ:

19 Q. So I want to transition over to university
20 audit.

21 A. Okay.

22 Q. In general, what does university audit do?

23 A. We look at what are the risks that exist at the
24 university that might impede management from achieving
25 its goals. So management has a strategic plan, they

1 have, you know, outlines of what they want to do, what
2 they want to accomplish, and we try and figure out,
3 well, what might get in the way of that? And audit to
4 those risks.

5 **Q. Okay.**

6 **A.** So we do audits that I supervise.

7 We provide advisory services, the difference
8 there being that this is somebody coming to us and
9 asking a question. And so I keep detailed records of
10 all those requests.

11 And then we also do investigations. Anybody
12 alleges any, you know, misconduct, that we would look
13 into that, so. And Tina Maier is the associate director
14 that does investigations, and I do audits and advisory
15 services.

16 **Q. Okay. Do you know if university audit has ever**
17 **audited spending against a previously board-approved**
18 **budget?**

19 **A.** I -- I don't -- not that I am aware of.

20 **Q. Okay. If the president or the audit committee**
21 **asked university audit to audit a particular office or**
22 **unit, would you be able to do that?**

23 **A.** Absolutely. I mean, that's part of the risk
24 assessment is we talk to them about, you know, What
25 keeps you up at night? What are you concerned about?

1 **Q. Have you ever audited an ongoing construction**
2 **project, you or anybody else in the university?**

3 A. Yes. Valerie Morton is -- is the one who has
4 been tasked with looking at the Roth Athletic Center.
5 And so she's following the president's directive that
6 we'll do real-time audits of construction. That's the
7 first project that's come up, so she's doing that.

8 Prior to that, I think the last -- we tend to
9 look at historical information, because similar to what
10 I expected from the state auditors, we would look at --
11 like with the classroom building, did we get what we
12 paid for? You know, were the rules for making a safe
13 building and structurally sound requirements, were those
14 followed? So we tend to look at a completed closed
15 building.

16 **Q. Okay.**

17 A. Were the pay applications supported? Was the
18 bidding done, you know, to get the best price and
19 fairly?

20 **Q. I'm following. Okay.**

21 How about the accounts that hold the E&G
22 dollars, has university audit, to your knowledge, ever
23 audited those accounts or those funds?

24 A. We've looked at the spending of E&G dollars.
25 For example, we routinely audit colleges as a

1 stand-alone entity; for example, College of Engineering.
2 And as part of that, we would look at the expenditures
3 of that college, and the first thing we do is sort of do
4 an analysis of where did they spend their money.

5 And so, you know, in every college, the highest
6 expense is salaries and payroll. But then we'll look at
7 other expenditures and determine, you know, on a risk
8 basis what should we be looking at.

9 Q. Okay. So let me get more specific.

10 A. Okay.

11 Q. Do you have know if university audit has ever
12 audited the E&G monies that are, for instance, given to
13 the facilities department?

14 A. I'm not aware that we've ever looked at it that
15 way.

16 Q. Do you know whether that's going to change now?

17 A. I suspect that it will.

18 Q. That's probably a good idea.

19 A. I know.

20 Q. Okay.

21 A. Yeah, hindsight is 20/20.

22 Q. It is, it is, yeah.

23 All right. Let me ask you for your thoughts or
24 your -- your understanding or definition of certain
25 terms.

1 A. Sure.

2 **Q. Because we learned through our investigation**
3 **that people often refer to certain terms very**
4 **differently.**

5 A. Okay.

6 **Q. So, how would you define deferred maintenance?**

7 A. In two ways. I hear it used as just the
8 routine maintenance. You know, if you have a building,
9 you should know over the life of that building, I'm
10 going to need to replace the carpet every so often, the
11 HVAC. You know, I'm going to have to do a refresh of
12 the painting and the electrical. So there's going to be
13 a schedule of what should happen for each building, in a
14 perfect world.

15 And so to the extent that you haven't done that
16 by the time that you thought it should have been done,
17 then it becomes deferred.

18 **Q. Okay. How about capital renewal, how would you**
19 **define that?**

20 A. I would think of capital, then, as something
21 that, okay, either extends the useful life, changes the
22 use of the building, or adds square footage to the
23 building. So those are the things that I think of when
24 I hear capital.

25 I've heard other people say, you know, sort of

1 a blend in-between deferred maintenance and capital.
2 Well, adding a new roof -- I mean, you've got a building
3 that you think is going to last for 60 years, but you
4 know that every 15 years you're going to have to replace
5 the roof.

6 So that can be capital because it's expensive,
7 but it's not extending the life of the building, you
8 know. So it doesn't meet the strict definition of
9 capital, but people will refer to that as capital
10 renewal.

11 **Q. Okay. How would you define the term**
12 **encumbrance?**

13 A. Well, that there is a purchase order in our
14 system, so that in our commitment control ledger in
15 PeopleSoft financials, there is a purchase order. So
16 when we report encumbrances on our fund balance report,
17 that ties to a report out of our financial system from
18 commitment control that says these purchase orders are
19 active.

20 **Q. Okay. And then how about an expenditure?**

21 A. Again, right out of our expenditure system,
22 these are the expenditures. It just comes -- it's been
23 approved, it's been paid. There's been a requisition
24 and a voucher, and it's been approved and payment's been
25 issued or transferred, wired, yeah.

1 Q. Okay. And what do you think of when you hear
2 the term carryforward?

3 A. I think -- I think of E&G funds that were not
4 spent in the prior -- the year of appropriation that
5 have been carried forward into future fiscal years to be
6 spent. So I only think of that in terms of E&G funding.

7 Q. Okay. All right. To your knowledge, has
8 anyone come to university audit at any time and asked
9 for advice on the proper uses of E&G funds?

10 A. On a very regular basis.

11 Q. Did any of those questions rise to the level
12 of: Can we use E&G to construct a new building?

13 A. I can say with certainty it did not, because as
14 part of the advisory services that I supervise, I have
15 my auditors record any question, any -- you know,
16 request for information or advice. We have a log of
17 every one of those requests for information.

18 And so if they sent an e-mail, I have them
19 attach the e-mail to the log so that I can come back and
20 check the -- A, the accuracy of the information; and B,
21 the tone of how they responded so I can use it as a
22 training process for the auditors.

23 So that was one of the first things, you know,
24 when we heard about, you know, at the exit conference,
25 that funds had been misspent was, oh my God, did they

1 ask us that question ever? Because Bill Merck would
2 come down frequently and float ideas; hey, I'm thinking
3 about this, what do you think? And we record all of
4 those.

5 And, you know, every one of us searched just to
6 make sure that there was -- we had never asked or been
7 asked or answered that question, and they might have
8 misconstrued something we wrote or said. So no.

9 **Q. Okay. You similarly maintain a log or a record**
10 **of the complaints that are made to your office?**

11 A. That would be Tina with investigations. Is
12 that what you are asking?

13 Investigative -- allegations of misuse? Yeah,
14 that would be Tina's side of house.

15 **Q. And do you know whether she maintains a log**
16 **of --**

17 A. Oh, yeah.

18 **Q. -- each?**

19 A. Yeah.

20 **Q. So when did you learn about the restrictions on**
21 **the use of E&G? Was it as a result of this instance or**
22 **did you know that before?**

23 A. I've always known that colors of money had
24 restrictions.

25 **Q. Okay. And were you familiar with the fact that**

1 you can't build buildings with E&G monies?

2 A. Absolutely. I don't think it was specifically
3 stated that way in the regulation, but that would always
4 have been my interpretation.

5 You know, PECO funds we get for buildings,
6 donated funds we get for buildings, not E&G funds.

7 Q. Right. So when -- okay. Let me just step back
8 a second.

9 So this BOG regulation, 9.007, as you know, was
10 amended in 2013 to clarify what the E&G funds could be
11 used for.

12 A. Right.

13 Q. When something like that happens, when there's
14 an announcement that a BOG reg is going to be amended or
15 you learn that a statute is going to be amended, some
16 form of law that applied to people in the university,
17 how is that information disseminated?

18 Does it just fall upon individual employees to
19 stay on top of that or is there an office at the
20 university that distributes that information?

21 A. We get notifications when the board of
22 governors' regulations or university policies or
23 university regulations are -- are -- proposed changes or
24 proposed new regulations. And that's something we have
25 to affirmatively sign up for.

1 But as we go out and audit, you know, we
2 recommend that all of the units that need to know that
3 kind of information sign up for those notifications.

4 **Q. Are those notifications from UCF or from the**
5 **BOG?**

6 A. Well, from the board of governors. Well, the
7 board of governors regulations would come from the BOG,
8 and our policies and regs would come from us.

9 **Q. So can an employee at UCF sign up with an**
10 **office at UCF and then that office will notify them of**
11 **changes in the BOG regs and university policy or do you**
12 **have to be signed up to the BOG e-mail and then the UCF?**

13 A. Yeah, you have to sign up separately for those.

14 **Q. Okay. Very good.**

15 A. I do think -- well, like, the ICOFA group, they
16 talk themselves about new regs. So there's that sharing
17 of information.

18 **Q. Now, I have to admit that I am very -- I don't**
19 **know anything about auditing. I don't know anything**
20 **about CPA work. I'm a lawyer. I went to law school to**
21 **avoid numbers, okay.**

22 A. Okay.

23 **Q. So this may be a -- from your perspective, this**
24 **may be a dumb question, but I don't know who else to ask**
25 **it.**

1 A. No dumb questions.

2 Q. What could have been done differently? Is
3 there something that auditors at the university could
4 have done to have uncovered the fact that E&G monies
5 were being moved over to construction accounts?

6 Like what -- with your knowledge and training
7 and experience, what would you recommend an auditor to
8 do to catch something like that, if that's even
9 possible?

10 A. It's absolutely possible. It's like shooting
11 fish in a barrel, if you decide to look for that.
12 There's a specific set of account codes that are used to
13 transfer funds in-between our fund groups. So coming
14 from E&G over to construction, you can find that easily.

15 The internal audit group here -- because we
16 have external auditors that do the financial and federal
17 audits, you know, we just weren't trying to duplicate
18 their work. And so we were relying on them to do the
19 financial auditing, and we mostly focused on compliance
20 and operational audits.

21 So I mean, yes, had we decided to duplicate
22 their work, yes, we could have -- we could have found
23 that. It's there. We don't have that many auditors and
24 it didn't float to the highest risk. It didn't float at
25 all.

1 Q. Okay. I learned somewhere along the way that
2 it's possible that someone from university audit
3 regularly attended the budget directors meeting?

4 A. Oh, that's me.

5 Q. That's you. Okay.

6 Was that just something you did regularly or
7 did you go because there was something being addressed
8 that you were interested in or...

9 A. Well, everybody in the office is assigned
10 different meetings, university-wide meetings that we go
11 to.

12 Q. Okay.

13 A. And, you know, that was one that I went to, one
14 of several. But just -- we would go, we'd take notes of
15 the meeting discussion, and we share them with the
16 office. It's just a way of sharing information about
17 what's happening at the university.

18 Q. Okay. Did you go to like every meeting or
19 would you just go sporadically or --

20 A. Well, they would all be on my calendar. But,
21 you know, I can't tell you that I made every one.

22 Q. Okay.

23 A. I can tell you that I didn't make all of them.

24 Q. Okay.

25 A. But I would try to go to all of them.

1 Q. Okay. And did you ever hear any discussion
2 about the use of E&G funds for construction projects at
3 any meeting that you did attend?

4 A. Not that I recall, other than after Trevor
5 Colbourn Hall came out.

6 Q. Right, right.

7 Okay. Do you recall Lee Kernek coming to your
8 office some years ago about a concern she had over
9 then-provost Whittaker's CV, the copy that he had
10 submitted to Iowa State University in -- in his run for
11 president at that university?

12 A. She has talked about that since I've been CFO.
13 I don't recall her having done that earlier, which is
14 not to say that she didn't, but my only recollection is,
15 you know, recently.

16 Q. Okay. If she had made such a complaint and
17 someone else would have talked to her -- someone else at
18 university audit would have talked to her about it,
19 would there be some evidence that that discussion had
20 happened, like would there be notes or --

21 A. Yes.

22 Q. Okay.

23 A. That -- yeah. If she made an allegation that
24 he's falsified his resume or said something improper,
25 then, yes, that would be on Tina's investigation log.

1 Q. Okay. And if I wanted a copy of that, what
2 would I ask for? Is asking for an ethics complaint
3 filed against Whittaker enough or do I have to be more
4 specific?

5 A. I would just ask for any complaints filed
6 against Whittaker. And that way you get -- because I'm
7 not aware of, actually, any, but that way you would get
8 anything that had been filed.

9 Q. Right, okay. All right.

10 A. And we generally talk in the office, you know,
11 just to keep each other abreast of what we're doing. So
12 Tina would share, you know, important investigations
13 that she's doing, and I would share highlights from
14 audits and advisory services.

15 MS. MITZ: Okay. Don, do you have the exhibit,
16 the composite?

17 MR. RUBOTTOM: Yes, I do.

18 MS. MITZ: Okay.

19 MR. RUBOTTOM: And let me ask one follow-up
20 before we forget about it.

21 Would that kind of a complaint maybe have gone
22 to the compliance office and is there
23 cross- communication between compliance and you on a
24 complaint like that --

25 THE WITNESS: Yes.

1 MR. RUBOTTOM: -- or would that have been an
2 ethics?

3 THE WITNESS: It could easily have gone to the
4 compliance office.

5 There are several ways to make complaints. I
6 mean, we have an integrity line that's been active
7 for, I think, about two years.

8 So people can anonymously, or, you know, with
9 their name attached, make a complaint or they can go
10 in person or on the phone or by e-mail to compliance
11 or to our office or they can slip a note under the
12 door, you know. So yes, they do have complaints
13 like that as well.

14 MR. RUBOTTOM: Who directs compliance and how
15 big of a staff do they have?

16 THE WITNESS: Christina Serra, S-E-R-R-A, is
17 the interim compliance -- chief compliance and
18 ethics officer.

19 MR. RUBOTTOM: When did she start in that
20 role?

21 THE WITNESS: Rhonda's been gone about a year,
22 I think.

23 MR. RUBOTTOM: So what is Rhonda's name in?

24 THE WITNESS: Rhonda Bishop. And she's up at
25 Louisville now.

1 MR. RUBOTTOM: Is that pretty much the
2 compliance department, one person or --

3 THE WITNESS: Then they have Georgiana DeBoer,
4 and they have somebody that's new, I forget her name
5 at this point, but -- and then Margaret Melli is the
6 administrative assistant. So it's a pretty small
7 shop, but they're next to ours.

8 And then the chief compliance officer and the
9 chief audit executive get together about biweekly to
10 share, you know, what's going on, what
11 investigations they have gotten that we haven't
12 gotten.

13 They have joint access to anything that comes
14 in through the integrity line, so they can both see
15 those. But then we kind of share what's come in not
16 through the integrity line.

17 MS. MITZ: Gotcha. Okay. All right. So I
18 think Don just put a document in front of you.

19 THE WITNESS: Sorry.

20 (Exhibit No. 1 was marked for identification.)

21 BY MS. MITZ:

22 Q. No problem.

23 I'd like to direct your attention to what's
24 behind tab one. It's an e-mail dated September 11th.

25 A. Yes, this is one -- yes.

1 Q. Do you recognize that e-mail?

2 A. I do. I looked at it last night.

3 Q. Okay. That's a true and accurate copy of the
4 e-mail that you had sent?

5 A. It looks like it.

6 Q. Okay.

7 MR. RUBOTTOM: Carine, she gave me, I think,
8 subsequent or crossing e-mails on the same subject
9 matter.

10 THE WITNESS: Yeah, they were --

11 MR. RUBOTTOM: I think I would like her to
12 identify them --

13 MS. MITZ: Okay.

14 MR. RUBOTTOM: -- and at least tell you that
15 these are the exhibits that were attached to that
16 September 11th.

17 MS. MITZ: Okay.

18 MR. RUBOTTOM: Because if you'll note, the time
19 stamp is different on that one from these, and if
20 you would just confirm that the attachments there
21 were the same attachments to that September 11th?

22 Carine doesn't have that information.

23 THE WITNESS: Well, you have the time -- that
24 time stamp matches this one.

25 MR. RUBOTTOM: Okay.

1 THE WITNESS: The 4:04.
2 MR. RUBOTTOM: Yeah.
3 THE WITNESS: So that's this one.
4 MR. RUBOTTOM: Okay.
5 THE WITNESS: And then these were attached.
6 You know, these are the attachments that came in --
7 MR. RUBOTTOM: Okay.
8 THE WITNESS: -- with that.
9 MR. RUBOTTOM: So all that, the e-mail --
10 THE WITNESS: All this --
11 MR. RUBOTTOM: -- and the documents were
12 attachments to that?
13 THE WITNESS: Yes. That's what's shown as
14 attachments in the document.
15 MR. RUBOTTOM: Okay. I didn't understand that.
16 Okay. Well, you can hold on to those.
17 THE WITNESS: Okay. Sure. Okay.
18 MS. MITZ: Are you done, Don, or can I
19 continue?
20 MR. RUBOTTOM: I'm sorry.
21 MS. MITZ: No, I just don't know what you're
22 doing.
23 THE WITNESS: Sorry.
24 MR. RUBOTTOM: Okay.
25 MS. MITZ: Did you say "okay" like you're done?

1 MR. RUBOTTOM: Yes, yes, you can --

2 MS. MITZ: Sorry.

3 BY MS. MITZ:

4 Q. So first of all, I'm going to ask: How did
5 this e-mail get to Mr. Burby, because he is the one that
6 provided it to us. So did you provide it to him?

7 A. Boy, I don't know at this point.

8 Q. Okay.

9 A. We provided so many e-mails.

10 Q. Okay.

11 A. I think one of the requests we got was for all
12 e-mails in connection with Trevor Colbourn Hall.

13 So I am not sure we provided it to Mr. Burby
14 for his request, but, you know, maybe it was a house
15 request or a BOG request that he had access to.

16 Q. Okay. Fair enough.

17 A. Yeah.

18 Q. All right. So in this e-mail, you are
19 referring to a meeting that occurred earlier in the day.
20 Do you recall that meeting?

21 A. I do.

22 Q. Okay. Before we get into the meeting, I want
23 to ask whether Ms. Clark or Ms. Tant ever replied to
24 this e-mail in writing?

25 A. I don't think so, but I could double check if

1 you'd like.

2 **Q. Let's hold off there.**

3 A. Okay.

4 **Q. Let's get into the actual content.**

5 A. Sure.

6 **Q. Can you tell me how this meeting came about?**

7 A. Okay. So this is September 11th? Yeah. So I
8 was hired when? September 5th or 6th, something like
9 that. And so immediately started looking into what
10 other projects might have we done the same thing as they
11 had done with Trevor Colbourn Hall.

12 So this was an initial meeting, you know, with
13 Scott, and then Tracy was there. I think Christy joined
14 us late that morning. But just to present information,
15 just an initial set of information; yes, I think we have
16 a larger problem than Trevor Colbourn Hall and we're
17 continuing to look into it.

18 **Q. Where was the meeting? Was it in Mr. Cole's**
19 **office?**

20 A. It was in the conference room in the general
21 counsel's office.

22 **Q. Was he the one that arranged the meeting?**

23 A. I don't recall, but I --

24 **Q. Okay.**

25 A. My -- okay. I don't know for sure. I think

1 that I did, but I don't know for sure.

2 Q. All right. So aside from Christy possibly
3 coming in late, was everybody else there from the
4 beginning of the meeting?

5 A. Yes.

6 Q. Okay. And I'm curious what you were referring
7 to when you say that, "I saw his questions..." I'm
8 assuming Mr. Cole's questions?

9 A. Yes.

10 Q. Okay. So, "I saw his questions about what the
11 president knew and when he knew it were upsetting you."

12 What -- what was transpiring that led to her
13 being upset?

14 A. Scott was asking her directly, since Tracy
15 reported to then-provost Whittaker and then-VP Merck.
16 Since Mr. Merck had said he was aware of what was
17 happening with Trevor Colbourn Hall, was Dale? Was
18 then-provost Whittaker also aware of what was happening
19 with Trevor Colbourn Hall?

20 And she was very uncomfortable answering that
21 question.

22 And so I was trying to explain to her that, you
23 know, we're trying to find out the truth, and that's
24 what Scott is trying to get to. And I know that makes
25 you uncomfortable, but, you know, the attorney doesn't

1 want you to say one thing today and then turn around
2 later and say something else. So today -- at that
3 meeting, he was trying to get at what did Dale know and
4 when did he know it.

5 Q. And what did she ultimately tell you guys?

6 A. That she did not think at that point that he
7 understood that E&G funds were not allowed to be used
8 for construction.

9 Q. And that brought her to tears?

10 A. Yes.

11 Q. Okay. Did she ever -- now, the purpose of the
12 meeting initially was to discuss the other --

13 A. Right.

14 Q. -- the possibility of other projects having
15 been funded with E&G?

16 A. Yes.

17 Q. Did she get into that or did you guys --

18 A. Oh, yes. That was what the bulk of the meeting
19 was about, was to talk through some of the other
20 projects, because we had gotten a preliminary set of
21 information from Lee Kernek.

22 So we just wanted to talk through what our
23 other possible misspending might have been, and that was
24 the bulk of the meeting.

25 And then at end of the meeting he kind of

1 segued into, I need to ask you about this question.

2 Q. Okay. So did any time Tracy Clark, during that
3 meeting, tell you guys that Whittaker was aware of not
4 only Trevor Colbourn Hall being funded with E&G, but
5 that all of the capital projects at issue, he had
6 knowledge of?

7 A. I don't think we went into -- I don't think
8 Scott asked about those other projects. I think he was
9 just asking about Trevor Colbourn Hall.

10 Q. And it's your testimony that she said that she
11 did not think that Whittaker knew that E&G had been used
12 on the project?

13 A. That's what I recall, because I -- yeah, I
14 can't speak for Tracy. But, yes, that was the
15 difficulty for her.

16 Q. Well, but that's odd, because President
17 Whittaker has come out and said that he was aware.

18 A. I think he said that he was aware that E&G
19 funds were being used.

20 Q. Right.

21 A. Right. But not that the use of E&G funds for
22 that purpose was not allowed.

23 Q. Okay. So I feel like I need to clarify what we
24 just talked about.

25 A. Okay.

1 Q. So let's go back to the meeting. The meeting
2 with Mr. Cole, yourself, Tracy, and Christy.

3 A. Right.

4 Q. Tracy is asked what exactly?

5 A. To the best of my recollection, she's asked,
6 you know, what did Dale know about Trevor Colbourn Hall?
7 And, you know, did he know it as it was happening or is
8 he just learning about it now?

9 Q. Okay.

10 A. Was he aware at the time the decisions were
11 being made as to how to fund it, that E&G funds were
12 being used and that the use of those funds was improper?

13 Q. Okay. So let's start with the first question.

14 What was Tracy Clark's response to the first
15 question of whether Dale Whittaker knew that the project
16 was being funded with E&G?

17 A. I don't know that she clearly answered that
18 question. I do recall that she clearly said that he was
19 not aware that what was done was improper.

20 Q. And that was in relation to only Trevor
21 Colbourn Hall?

22 A. That's all I recall.

23 Q. Okay.

24 A. Because at that point, we just didn't know
25 enough about these other projects, and the rules as to

1 whether or not they could have spent the E&G funds on
2 those -- it wasn't whole buildings. It was just pieces
3 and parts, you know, the furniture in one building or a
4 little piece of another building.

5 Q. So -- but the whole point of this meeting was
6 to talk about the other projects?

7 A. Yes. That was my point of the meeting.

8 Q. So did you guys walk away not knowing which
9 other projects had been funded with E&G?

10 A. Oh, completely, yeah. It wasn't for another
11 week or so. We met daily going over and over and over
12 records of what was spent on what building and for what
13 purpose and from what sort of funds to tease that all
14 out.

15 Q. Okay, okay. So back to your e-mail. Another
16 thing I want to ask you about is the statement that
17 says, "Bill's decision was widely known among university
18 administration."

19 Who would you consider university
20 administration? Who are you referring to?

21 A. Bill's direct reports.

22 Q. So that would be who?

23 A. So that would be Tracy Clark and John Pittman,
24 Lee Kernek, those three.

25 Q. Okay. So those three comprise -- they make up

1 **university administration?**

2 A. For Bill's area. That's to whom I was
3 referring.

4 Q. Okay. I mean, you can see how someone who is
5 not aware of that might think that means --

6 A. Oh, above Bill. I'm sorry. Yeah, yeah.

7 Q. -- the administration.

8 **But that's not what you are conveying there?**

9 A. That's not what I meant.

10 MS. MITZ: Okay. Don, do you have some
11 questions you want to ask?

12 MR. RUBOTTOM: Yeah, let me just --

13 DIRECT EXAMINATION

14 BY MR. RUBOTTOM:

15 Q. Did Scott or you ask follow-up questions to
16 Tracy as to why Dale didn't know that it was
17 impermissible to use E&G for construction?

18 A. We asked did she tell him, because she clearly
19 knew. I mean, she knew that it was improper. And yes,
20 she said that Bill Merck, her supervisor, had told her
21 it was okay. And that he had cleared it with then
22 President Hitt, and that John Hitt and Lee Kernek and
23 Bill Merck had decided that was an acceptable path.

24 Q. But that doesn't answer the question about --

25 A. Why.

1 Q. -- about why Dale didn't know it was
2 impermissible?

3 A. She didn't report to him for financial reasons.
4 She reported to him for academic affairs, because she
5 was split.

6 So she reported to Bill for financial reasons,
7 and then to the provost for academic and budget --
8 academic budget reasons. But I'm not sure that that's a
9 conversation that they would have had.

10 I mean, I can't answer that for sure, but --

11 Q. So Scott was at that meeting --

12 A. Uh-huh.

13 Q. -- when it started?

14 A. Oh, yeah.

15 Q. And he was at that meeting when it ended?

16 A. Yes.

17 Q. I want to ask you about the attachments, then,
18 that you provided with respect to the -- those e-mails.

19 Were those the documents that were within that
20 e-mail chain?

21 A. Yeah, yeah.

22 Q. Was that the starting place for what E&G funds
23 have gone to construction?

24 A. Yeah. I had started asking facilities for
25 their list, because I thought they would have the most

1 accurate list since they maintain the construction
2 records. So I started with them.

3 That turned out not to be the case. It turned
4 out to be -- so this -- that was not good information.

5 I subsequently went to finance and accounting
6 and pulled the records, because you should be able to
7 see, either side of the journal entry, transfers to and
8 then received from, both sides should have the same
9 records.

10 But because construction on this side also has
11 Project Tracker and e-Builder that they were keeping
12 their construction records in, and they had switched
13 from one to the other, there's just not good information
14 there, so.

15 **Q. In the audit office -- if you weren't the first**
16 **week interim CFO asking that question in the audit**
17 **office, where would you have gone to answer that**
18 **question, what E&G funds have been transferred to**
19 **facilities for what projects?**

20 A. I would have run a query that says look for
21 transfers from E&G to construction.

22 **Q. And that's what you did after you got this**
23 **information?**

24 A. Yes, yes. Yes. So we ended up comparing the
25 incomplete information we got from Lee to our own

1 queries, to a separate list that is maintained of all
2 new buildings that come online, so just to make sure we
3 had a complete -- very complete set.

4 Q. Let me reassemble that packet. We're going to
5 put this entire group you are looking at as an exhibit,
6 but hold on to that.

7 But for right now, I want to just put this as a
8 second exhibit.

9 A. Sure.

10 Q. You made me six copies of everything. So this
11 is a second exhibit.

12 A. Okay.

13 Q. And for the record, Exhibit 2 -- and again, I
14 didn't staple it. I'm sorry. But the Exhibit 2 relates
15 to the documents behind tab one that is in Exhibit 1.

16 A. Okay.

17 Q. Okay.

18 (Discussion off the record.)

19 (Exhibit No. 2 was marked for identification.)

20 BY MR. RUBOTTOM:

21 Q. Between September 6th and General Caslen coming
22 on, who did you report to as interim CFO?

23 A. The president.

24 Q. Who recommended Misty for her interim role?

25 A. I am not really sure. I mean -- I don't know.

1 Q. Do you know if the trustees were involved in
2 that choice?

3 A. I have no idea. The first I heard was that
4 Misty came in and said that the president called her
5 from, I think, the board of governors meeting that day
6 and asked her to serve as VP.

7 Q. Does Scott Cole or others in the general
8 counsel's office routinely raise issues with audit or
9 would they ordinarily wait to be consulted by audit if a
10 question is arising in just general operations?

11 A. They have come down before.

12 Q. Okay.

13 A. It's probably more often that we ask them, you
14 know, for advice.

15 Q. Okay. Is it your testimony that prior to this
16 blowup, prior to this audit, in the previous six years,
17 if you had heard about E&G funds being used for
18 construction of a new building, that that would have
19 raised red flags for you?

20 A. Absolutely.

21 Q. And who would you have gone to with those red
22 flags?

23 A. Well, first, I probably would go to Bill Merck
24 being as the responsible VP and saying, What are you
25 doing?

1 Q. And if his answer was, I know it could be an
2 audit hit, but I'm willing to take it, where would you
3 have gone --

4 A. That's not acceptable.

5 Q. Where would you have gone for that information?

6 A. I would have gone up the chain of command. Go
7 to the president.

8 Q. And what if the president said, We understand
9 but --

10 A. You go to the audit and compliance committee of
11 the board. Or you file -- I mean, six years ago, we
12 didn't have an integrity line, but if it had happened in
13 the last two years, then you can go to an integrity line
14 and complain.

15 Q. Okay. This group discussion on the 11th or
16 whatever, or 10th or 11th --

17 A. Yeah.

18 Q. -- was that in preparation for the presentation
19 that was made on the 20th --

20 A. Yes.

21 Q. -- about other projects?

22 A. Well, at that point it was just to say it's a
23 larger problem than just Trevor Colbourn Hall.

24 Q. You were investigating, okay.

25 A. Yeah. I had told Scott, you know, shortly

1 after I was hired that I would be looking into were
2 there any other problems. And so this was just sort of
3 a follow-up meeting to say, yep.

4 **Q. Okay. Do you routinely go to board -- or did**
5 **you in your role in the last five years routinely go to**
6 **board of trustees meetings?**

7 A. Hit or miss. I've gone to more in the last
8 couple of years. But before that, it was hit or miss.

9 **Q. Would you go to all the audit and compliance**
10 **meetings?**

11 A. Not even, uh-uh.

12 **Q. Do you recall going to finance and facilities**
13 **committee meetings before 2017?**

14 A. I'm sure that I've been to one or two, but not
15 routinely. That's the chief audit executive. I would
16 say in the last year or two, though, that I have
17 routinely gone to the full day of meetings.

18 **Q. Who was the chief audit executive in 2014,**
19 **April, May, June; 2015, April, May, June; and 2016,**
20 **April, May, June?**

21 A. So Robert Taft has been here about five years.
22 So that goes back to 2015, right, with my math.

23 Before Robert it was Amy Voelker, and she had
24 been the chief audit executive since about 2005. And we
25 had an interim, for a couple of months, between Amy and

1 Robert, but -- Donna Dubuque (phonetic).

2 Q. Is Donna still with the university?

3 A. She is.

4 Q. Is Amy still with the university?

5 A. She is not.

6 Q. Where is she?

7 A. She -- her family was killed by a drunk driver,
8 so she retired, resigned, you know, just left the
9 university.

10 Q. When was that?

11 A. About five and a half, six years ago, maybe.

12 Q. Okay. If you were in Mr. Taft's shoes and you
13 were at a finance and facilities committee meeting and
14 Merck was telling the committee that they were going to
15 build a building with carryforward funds, would that
16 have caused you concern, if you were in that position?

17 A. If I was chief audit executive and heard that,
18 absolutely.

19 Q. Who would you take that concern to?

20 A. Well, like I said, first to Bill Merck because
21 he would have -- I mean, as I know now -- I was on
22 sabbatical in 2013-'14.

23 Q. Good time to be on sabbatical.

24 A. Well, it's when my grandchildren were born.

25 Q. I hear you. I'm having three this year.

1 A. I have three; six, five and two. So much
2 easier than children.

3 So the chief audit executive should go first --
4 I mean, directly to the person that has the most
5 knowledge of the situation and say, What's happening?
6 And then follow the same chain of command.

7 I mean, Robert was coming from outside. So
8 when he first got here, he may or may not have
9 understood the colors of money.

10 I wasn't here.

11 **Q. If it was you, would you have gone to the**
12 **president if Merck just said, I've got this under**
13 **control?**

14 A. Oh, yeah.

15 **Q. And if the president said, we've got this under**
16 **control --**

17 A. You go to the audit committee.

18 **Q. Would you have gone to the audit committee**
19 **chair?**

20 A. Absolutely, yes.

21 **Q. You wouldn't have gone to the finance and**
22 **facilities committee chair if they just voted on that?**

23 A. Because this chief audit executive reports to
24 the audit committee, I believe I would have gone there
25 first.

1 Q. Okay. Thank you.

2 Where did you study for your grant
3 certification?

4 A. Compliance -- I'm going to get it right --
5 theoretical and applied ethics.

6 Q. No, no. What university?

7 A. Here.

8 Q. Okay. Have you consulted those professors
9 since this opened up?

10 A. No.

11 Q. And who certifies -- you said you have a
12 certification in compliance and ethics?

13 A. I do.

14 Q. Who issues those certifications?

15 A. The Society for Corporate Compliance and
16 Ethics.

17 I got that certification when I was on
18 sabbatical, right after I came back from sabbatical.

19 Q. Okay. Now, I want you to go to tab two there.
20 It's a 9/18 e-mail to Dr. Whittaker from you.

21 A. Oh, yeah.

22 Q. And copying Tracy Clark, Grant Heston and Scott
23 Cole. And you remember that e-mail, you recognize that?

24 A. Yeah, I do. Yeah.

25 Q. Do you know how that ended up in Joey Burby's

1 hands?

2 A. No, not exactly.

3 Q. Did any of the parties to that e-mail reply in
4 writing?

5 A. No.

6 Q. Were there any discussions about that e-mail
7 after you sent it, between then and the September 20th
8 board meeting?

9 A. Yeah. Like I said, that 14.3 million in cash
10 turned out to be not an accurate number. It was 13.8.

11 Q. 13.8.

12 A. Yeah.

13 Q. I know those numbers.

14 A. I know, really.

15 MS. MITZ: You're mouthing it.

16 MR. RUBOTTOM: Can I testify?

17 THE WITNESS: Yeah, seared into your brain.

18 MS. MITZ: Yes, sadly.

19 BY MR. RUBOTTOM:

20 Q. And who would those discussions have been with?

21 A. That was my conversation with Dale.

22 Q. Did you discuss the other funds with Dale, the
23 32.7?

24 A. I don't -- I don't think so.

25 Q. Did he ask about it?

1 A. I don't recall that he did. I mean, we were
2 talking about the -- this correction, because he wanted
3 to be able, you know, to get out in front of our
4 situation and to be able to clearly say we've looked
5 into it and here's the amount. And so, I recall him
6 being not happy that I was changing that number.

7 It was like, well, I'm reducing it and I'm
8 making it accurate.

9 **Q. Did you have any discussions with Scott before**
10 **the board meeting that week?**

11 A. Not that I recall. I mean, possibly, but we
12 were really digging into numbers.

13 **Q. Right. You've talked a lot, though, about duty**
14 **to go up the chain --**

15 A. Oh, yeah.

16 **Q. -- and go to the audit and compliance chair.**

17 A. Uh-huh.

18 **Q. You know about \$32.7 million which had been**
19 **transferred for similar questionable purposes?**

20 A. Yes.

21 **Q. You testified that you only addressed to the**
22 **board the question that you were asked for that meeting**
23 **on the 20th.**

24 A. Uh-huh.

25 **Q. Did you raise the 32.7 with Bev Seay at that**

1 time?

2 A. I don't think that I did.

3 Q. Can you tell me why you didn't or will you tell
4 me why you didn't raise it with her at that time?

5 A. I guess I didn't think that's what they were
6 asking of us. I mean, I just -- it wasn't an attempt to
7 hide.

8 And by the time that we had come to the
9 September 20th BOT meeting, the board of governors had
10 already sent us another request that was asking a
11 slightly different question.

12 Q. I understand. That was the certification
13 request?

14 A. Right. So, I mean, I was focused then towards,
15 okay, change heading, move in this direction and answer
16 that question.

17 So, I mean, it wasn't an attempt to hide. I
18 just --

19 Q. I believe you are speaking about your
20 intentions.

21 A. Yeah.

22 Q. What I want to know is did you discuss that
23 issue with Mr. Heston before that September 20th board
24 meeting?

25 A. He's copied on this e-mail, but -- not that I

1 recall.

2 Q. So nobody advised you not to initiate that
3 information to any board members?

4 A. No, no.

5 Q. So that was your call?

6 A. Yeah.

7 Q. Okay.

8 MS. MITZ: I have one question on that note.

9 THE WITNESS: Sure.

10 MS. MITZ: Had Trustee Walsh not started asking
11 those questions at that December meeting, did you
12 have intentions to really tell the board this amount
13 of money was programmed, but not spent and we have
14 moved it back?

15 THE WITNESS: Absolutely.

16 MS. MITZ: When were you going to do that?

17 THE WITNESS: So, I don't know if you are
18 familiar with that fund balance form. It's, again,
19 seared into my brain.

20 So all we were required to present to the board
21 of governors or to our local board was the
22 information in the green box.

23 MS. MITZ: Green box.

24 THE WITNESS: And that was the committed
25 carryforward.

1 But I thought that for the board to understand
2 that question, they should see how we got to having
3 \$20 million available. And so to do that, I needed
4 to start with, well, the last number you saw was
5 from August, 2018, I guess, and so just roll that
6 forward. And I wanted to break out the big things,
7 you know, that happen.

8 So the big things were the 40 million for
9 scholarships and the 20 million for deferred
10 maintenance, and then a 52 million that was going in
11 the wrong direction, because normally you'd expect
12 expenditures to increase, and this was putting money
13 back into carryforward.

14 So I had separate lines for all of those. And,
15 you know, I wanted to discuss those, but those
16 weren't the purpose of that form.

17 I mean, what we were trying to accomplish that
18 day was the approval of that \$20 million. So while
19 I wanted them to understand how we got there, you
20 know, I hadn't planned to spend a whole lot of time
21 about that, rather than this is how we got there.

22 And then one of the things that we usually do
23 when we're going to have a board of trustees meeting
24 or a committee meeting that we think there's going
25 to be something that they need more information on,

1 is we call them and they have the materials in front
2 of them and we say, what else do you need? What
3 else would you like us -- what questions can we
4 answer, whatever.

5 And so I think three of us had divided up the
6 trustees. We called them all.

7 BY MR. RUBOTTOM:

8 **Q. Which three?**

9 A. Janet Owen and Grant Heston and me. And
10 normally, you know, the finance committee, that would be
11 me calling them all or Misty Shepherd, and we were just
12 running out of time because it was the night before the
13 meeting.

14 So we divided them up and I called my third or
15 so. And several of them asked for more information
16 about that 52 million -- you know, it included the 85
17 million that came back in. I said, not a problem. I
18 will type up information and have it available. I don't
19 have time to post it for you, but I will bring it to the
20 meeting.

21 And so in my notes for that meeting, I have it
22 in there. We were going to go through it, and Dave
23 jumped in ahead of time. But, yes, we discussed it at
24 that meeting.

25 **Q. When did you first ask -- first talk to Bev**

1 **Seay about the other 32.7 million?**

2 A. I couldn't tell you at this point.

3 **Q. Did she call you after the preliminary audit**
4 **finding were published on November 27th?**

5 A. Yes, yes. I do remember that, yes. Because
6 she was asking about that then, uh-huh. She said she
7 had had a conversation with you.

8 **Q. What did she ask?**

9 A. Yeah, what was that 32 million? And so, I
10 mean, I explained that of the buildings that we looked
11 at after TCH, there was eight that we had misspent cash
12 on, 13.8, but it was a total of 11 million --
13 buildings -- 11 buildings that we had planned to spend
14 money. And so the other 32 was the planned, but
15 unspent.

16 **Q. Did she express concern that she didn't know**
17 **about that before that time?**

18 A. Yeah. Absolutely she did. She said, Why
19 didn't you tell us?

20 I didn't think it was the question that you
21 were asking.

22 That was sort of a dance at that point. I was
23 learning what the board wanted.

24 **Q. I understand.**

25 A. And with the certificate forms that they

1 wanted, I was learning what information they wanted on
2 those forms and doing the best I could.

3 Q. Is it your impression that the board has a
4 sufficient understanding of the details of university
5 operations that they know the right questions to ask
6 or --

7 A. No. I mean, now I would say yes. But it would
8 have been better had I presented it at the beginning. I
9 am -- I'm sorry.

10 Q. In the January 24th meeting where this matter
11 was discussed extensively, Walsh asserted that you told
12 him that management was hoping not to have to present
13 that information to the board.

14 A. Yeah.

15 Q. Did you hear him say that?

16 A. I did. I raised my hand immediately.

17 Q. Was that -- was that an accurate statement on
18 his part?

19 A. No, sir, it was not.

20 Q. Okay. And you say you raised your hand
21 immediately?

22 A. We have to wait to be called on.

23 Q. Okay. And what -- what ensued after you raised
24 your hand?

25 A. Eventually -- Mr. Walsh wasn't present, he was

1 on the phone at that meeting. So eventually the chair
2 called on me.

3 And I said that that wasn't accurate; that what
4 he had asked was why wasn't that information more
5 clearly specified. And I said because it wasn't the
6 purpose of the agenda item, but that I would be happy to
7 provide that information to him. And in fact, did.

8 MS. MITZ: Is it your testimony that at that
9 meeting you corrected Trustee Walsh and said, No,
10 that's not accurate?

11 THE WITNESS: That's how I recall it.

12 MS. MITZ: Okay.

13 BY MR. RUBOTTOM:

14 Q. We believe you stated in that January 24th
15 meeting that the matter wasn't intended to be discussed
16 at the December 13th meeting --

17 A. Right.

18 Q. -- because that wasn't the purpose of the
19 meeting.

20 A. Right, right.

21 Q. As of December 12th, when did you intend to
22 fully discuss the 32.7 with the board?

23 A. I hadn't planned. I had made no specific plans
24 to do that.

25 Q. Had Bev made any request or had you talked to

1 **Bev about it by then?**

2 A. Oh, right.

3 **Q. Had you talked to other trustees by then?**

4 A. I don't recall doing so.

5 **Q. Had you talked to Dr. Whittaker about how or**
6 **when to discuss those transfers?**

7 A. No, sir.

8 **Q. Mr. Heston?**

9 A. No.

10 **Q. Scott Cole?**

11 A. Not that I recall.

12 MS. MITZ: So since this kind of blew up at the
13 January 24th meeting, has President Whittaker said
14 anything like, gee, we should have mentioned that
15 earlier or made any comment about how that came out?

16 THE WITNESS: Not to me.

17 MR. RUBOTTOM: Let me see if I've got the rest
18 of my follow-up done.

19 BY MR. RUBOTTOM:

20 **Q. Oh, risk assessment. The first time I ever**
21 **heard of that is when Jaime spoke to our joint committee**
22 **on January 9th. So I love numbers, unlike Carine, but I**
23 **like don't like auditing and accounting.**

24 So that was a new concept to me, I think, and
25 she described that that's a process that the university

1 audit offices do.

2 A. Uh-huh.

3 Q. But I was taking from that that that's just an
4 internal office analysis; hey, what do we think our
5 concerns.

6 So you described where you go to others and say
7 what -- what do you have concerns about? Who -- what
8 would be the reach of that discussion and how often does
9 that occur?

10 A. So the reaching out would be the chief audit
11 executive reaching out to the president and the other
12 vice presidents.

13 The internal process is that he and I and the
14 information technology, you know, audit person, we have
15 our own list of an audit universe of things we could
16 audit, and we have about a dozen items, you know, we
17 sort of score them on. And then we see what floats to
18 the top, and then that's what ends up being on the audit
19 schedule.

20 Q. Does the chief audit executive reach out to
21 trustees in that process?

22 A. I don't know.

23 Q. Well, we'll ask Robert.

24 A. Yeah.

25 Q. Robert Taft is going to be in later.

1 A. And in a similar fashion, when Jaime talks
2 about the auditor generals, they would reach out to the
3 legislators because they are legislative employees. So
4 what do the legislators have concerns about, you know,
5 at the state universities when they are doing an
6 operational audit.

7 **Q. Jaime testified in our committee, not under**
8 **oath, but in a presentation, that Trevor Colbourn Hall**
9 **as a project was just selected by happenstance by the**
10 **audit -- by the audit team.**

11 Do you have any reason to believe that that's
12 not -- that that's not accurate; that anybody at the
13 university or anybody else would have raised any
14 questions?

15 A. I don't -- I have no record of the university
16 raising any questions. I think what happened was they
17 just asked for a list of, you know, what did you build
18 since we've been here in the last two years?

19 And again, it's shooting fish in a barrel to
20 say what buildings have been constructed.

21 **Q. Thank you.**

22 A. Yeah.

23 **Q. You talked about deferred maintenance awhile**
24 **ago. It made a lot of sense to me.**

25 Do you know if facilities budgets that

1 anticipated maintenance, that they have any kind of -- I
2 know they've got multiple data sets out there, but do
3 you know if they have budgeting where those things are
4 like built in when they build a building, that they know
5 life expectancy on roofs, HVAC, other components?

6 A. As Misty and I have talked through the last six
7 months or so, I am fairly certain they do not have good
8 records like that, because that's what she was expecting
9 to see.

10 She came over from -- as CFO of the foundation,
11 and they have several buildings. And so for each of
12 their buildings, they have that. You know, you have the
13 expected maintenance for this year and the next five
14 years. And --

15 Q. But they speak regularly about deferred
16 maintenance backlogs.

17 A. Right.

18 Q. Do you have any idea where they get those
19 numbers?

20 A. Well, they have -- I think Sightlines is the
21 name of the group that comes out.

22 Q. So that's the survey information --

23 A. Yeah.

24 Q. -- that says, oh, you need these things --

25 A. Yeah.

1 Q. -- last year?

2 A. You need 265 million over the next however many
3 years, yes.

4 Q. But if they are saying deferred, they mean it's
5 already past due?

6 A. And 80-some million, I think, of that was --
7 they were considering deferred.

8 Q. Okay. Are you aware that Lee Kernek and others
9 in similar situations regularly consult with the BOG,
10 particularly Chris Kinsley, about which projects can we
11 do with E&G?

12 A. That's what she had said.

13 Q. Did she ever bring -- did anybody ever bring
14 those conversations to you all to double check?

15 A. No. We have no record of that, which is
16 surprising to me, because these routinely -- Lee came to
17 us routinely with other questions. She did not come and
18 ask this one.

19 Q. Well, she's never come to ask an E&G question?

20 A. About construction?

21 Q. Yes.

22 A. Correct.

23 Q. What about plant operation and maintenance?

24 A. Not that I recall. She's asked about
25 contractor selection.

1 Q. Procurement?

2 A. Procurement, right. And are they being -- is
3 there a conflict of interest for selecting or did they
4 do something wrong in the selection process.

5 Q. Did they ever ask a conflict question about
6 spouses of people in the finance and facilities
7 department being employed by a contractor?

8 A. Spouses? No.

9 Q. Other relatives?

10 A. I think a son. I think Lee's son worked there
11 for a short time.

12 Q. Worked where? One of the contractors?

13 A. No, I think he actually worked in facilities.

14 Q. I'm talking about contractors, conflicts.

15 A. No, I don't know.

16 MR. RUBOTTOM: Okay. Okay, Carine, I think you
17 can go to the September 5th.

18 MS. MITZ: Okay.

19 CONTINUED DIRECT EXAMINATION

20 BY MS. MITZ:

21 Q. Ms. Mitchell, if you could turn to the third
22 tab in that packet I gave you.

23 A. Sure.

24 Q. It's another e-mail, so take a moment to
25 familiarize yourself with that, please.

1 A. Okay.

2 Q. Does that appear to be a true and accurate copy
3 of the e-mails back and forth between you and
4 Ms. Voelker?

5 A. It looks like it. I don't specifically
6 remember this one, but it looks like it, yeah.

7 Q. Okay. So after you guys go back and forth
8 about your head shots, you inform Ms. Voelker that the
9 board chair is "all kinds of pissed." What was he angry
10 about?

11 (Mr. Rubottom exits the deposition room.)

12 THE WITNESS: Do you want me to wait?

13 MS. MITZ: What are we waiting for?

14 THE WITNESS: Don just walked out of the room.

15 MS. MITZ: That's fine. You can answer.

16 THE WITNESS: Okay. I'm not entirely sure, but
17 I'm guessing from the timing of this that, you know,
18 this would be when Trevor Colbourn Hall -- let's
19 see. I don't know.

20 (Mr. Rubottom returns to the deposition room.)

21 THE WITNESS: No, I don't know for sure. But
22 that would be -- that's, I think, the day they asked
23 me to be interim CFO, so that would be the day that
24 they announced -- oh, right. That's the board of
25 governors meeting, is that that day?

1 MS. MITZ: Possibly. I know there was one in
2 September.

3 MR. RUBOTTOM: There was one the 6th.

4 THE WITNESS: The 6th.

5 MR. RUBOTTOM: I'm sorry.

6 THE WITNESS: That's all right.

7 MR. RUBOTTOM: I think your board met the 6th.
8 I think the board of governors met the 13th. I
9 don't recall.

10 THE WITNESS: I think at this point, this is
11 probably when our board of trustees chair, Marchena,
12 was learning more about Trevor Colbourn Hall and
13 what had happened.

14 BY MS. MITZ:

15 Q. So is it your recollection that he was upset
16 about that or the line that precedes that in your e-mail
17 was -- what I'm trying to understand is, was he mad at
18 the general blowup about the project or the fact that
19 they were going to have to certify funds?

20 A. Oh, no, no. I don't think the board of
21 trustees chair is unhappy about the certification of
22 funds. He's asking for that. He's happy that we're
23 doing that.

24 I think he's -- I think this is saying that
25 he's angry that he's had to ask for that.

1 Q. Okay. And are you saying you think because you
2 don't remember?

3 A. Yes. Sorry.

4 Q. Okay. This was maybe four months ago, going on
5 five, I guess. It's not that much time, but I know
6 you've had to deal with a lot --

7 A. Yeah.

8 Q. -- in the last several months.
9 So is that why you're having trouble
10 remembering things, just because there's been so much
11 going on?

12 A. Yes.

13 Q. Okay.

14 A. It's been constant.

15 Q. Yeah, I imagine. I imagine.

16 Okay. So how about that line before, you
17 write, "The BOT is requiring that the president and VP
18 certify that funds for any new construction are from an
19 appropriate source. Ouch."

20 What does the "ouch" mean?

21 A. That they had to take that step to ask us to
22 sign that we're presenting truthful and accurate
23 information.

24 Q. Okay.

25 A. That, I think, should be a given from your VPs,

1 and to have to sign that --

2 Q. Okay. And that to Chair Marchena being upset,
3 did you know that because you had a direct conversation
4 with him or is that just information you got from other
5 people?

6 A. Yeah, just from watching. Yeah. I didn't have
7 a conversation with him at all --

8 Q. Okay.

9 A. -- at that point.

10 Q. I want to talk to you a little bit about a
11 concern that Trustee Walsh has addressed, I think, in at
12 least two meetings. And I understand he's addressed it
13 with staff as well, and you may know what I'm talking
14 about.

15 He has raised a concern in both the -- I think
16 it was the December 12th meeting and then the
17 January 25th meeting about a \$6 million prepaid lease
18 involving a DSO. I don't know much more about it than
19 that.

20 Does that ring any bells with you?

21 A. It does.

22 Q. Okay. Can you tell me more about that?

23 A. I can fill in the gaps as best I can.

24 Q. Okay.

25 A. So CDL something -- I forget what the acronym

1 stands for, but distributed -- Center for Distributed
2 Learning, I think. They collect distance learning fees
3 from students.

4 And so from what I've heard from Trustee Walsh
5 is that he was in a meeting or had a conversation with
6 former VP Merck, and Mr. Merck explained to Trustee
7 Walsh that the reason they were trying to spend these
8 funds is because they're E&G carryforward funds and
9 we're trying to get them out of E&G carryforward to
10 protect them.

11 And so I don't -- I don't know that the 6
12 million -- I don't know what the lease prepayment was,
13 but that part of that was inaccurate. And I don't know
14 if that's actually what Bill said, and if so, he was
15 inaccurate or if Trustee Walsh just heard the wrong
16 thing.

17 But distance learning fees are not E&G funds.
18 They are auxiliary fees, and we have confirmed with the
19 board that that's the appropriate placement for them.

20 So that was mixing two different stories or two
21 different, I don't know, thought processes. But I know
22 CDL. They're disbursed across campus right now, some in
23 the research park and some in the library and elsewhere,
24 and they wanted to be together in one place. And so we
25 just didn't have space on campus for them.

1 So they had originally talked about, you know,
2 buying a building and, you know, that just wasn't going
3 to happen. We do not have the capacity internally to
4 buy that.

5 So I think the next conversation was with the
6 UCF Foundation. That is one of our DSOs, and the UCF
7 Foundation agreed to buy the building that CDL could
8 then lease space from. And there are some other folks
9 going in there, too, but the continuing education is
10 going in for part of the space. So that, I think, is
11 the building he's talking about.

12 **Q. Okay. So if I wanted to look for that lease or**
13 **that purchase on an agenda, would I be able to easily**
14 **find it with the same Center for Distributed Learning or**
15 **CDL? What would I look for?**

16 A. I can probably tell you the meetings at which
17 it was discussed and point you in the right direction.

18 **Q. Sure. That will work.**

19 A. Okay. 11/15. So November 15th, BOT meeting,
20 they approved the building loan, the purchase loan. The
21 foundation has to bring that to our board for approval.

22 **Q. Okay. You know what, that's a start for me.**
23 **That will give me -- that's fine.**

24 A. There's, I think, another meeting where they
25 approved the lease on our side of the facility, and I

1 think the original discussions about that lease had
2 involved a prepayment of up to five years.

3 What ultimately gets approved doesn't require
4 that prepayment. So I suppose they could -- I believe
5 that if they prepaid the funds, that the foundation is
6 -- is going to use whatever is prepaid, or if not
7 prepaid, then their own funds, because renovations have
8 to be made to the building to bring it up to code and
9 then to make it useful for them.

10 **Q. Okay. So let me ask you this: Did Walsh ever**
11 **come to you directly with his concerns? How did you**
12 **hear about it?**

13 A. It may be one of the things that Dave has
14 brought to me. He's brought me -- he, for awhile, would
15 call me routinely and talk about issues.

16 **Q. So let's assume that he did contact you about**
17 **this.**

18 A. Uh-huh.

19 **Q. What would you have done? Would you have**
20 **reached out to the general counsel's office to find out**
21 **what was going on or -- like, how would you handle**
22 **something like that?**

23 A. Well, I would first explain to him that the
24 fees that he is talking about aren't E&G fees, and I
25 know we've had that conversation more than once, and

1 it's just not sinking in for him.

2 But then probably reached out to the
3 foundation, that would be Misty, that I work with, and
4 say, you know, are you guys actually going to buy this
5 building? And it turns out they did.

6 And then, you know, what -- do you need a
7 five-year prepayment? And no, they don't. They are, of
8 course, not going to turn down any money that the
9 university wants to prepay. But no, buying the building
10 is not contingent upon prepayment.

11 **Q. All right. I've talked to so many people I**
12 **forget who I've asked certain questions of. So if I've**
13 **asked this question, feel free to tell me we've already**
14 **talked about it.**

15 A. All right.

16 **Q. Do you recall Lee Kernek coming to you maybe 10**
17 **or 11 years ago, expressing a concern that some funds**
18 **had been inappropriately transferred to the athletics**
19 **DSO?**

20 A. Well --

21 **Q. And -- okay, go ahead.**

22 A. -- I don't recall her telling me about it, but
23 there was a loan that we made to athletics that the
24 state auditors have a report about. I mean, that was an
25 improper loan to athletics. We're not allowed to loan

1 money to a DSO.

2 Q. Do you recall Ms. Kernek talking to you about
3 that before the auditor actually made the finding?

4 A. No, I don't. Not to say that she didn't, but I
5 don't recall that.

6 Q. Okay. All right. So I want to talk to you
7 about some of the things I read in the interview notes
8 that were taken during your interview with Mr. Burby.

9 A. Okay.

10 Q. One of the things that it mentions is that four
11 years ago -- you're saying this -- four years ago,
12 Ms. Clark and Provost Whittaker said we need to get our
13 arms around university funding, and as a result they
14 established the university budget committee.

15 A. Right.

16 Q. Do you recall saying that or something to that
17 effect?

18 A. I -- recall it now? No. I think that's an
19 accurate statement. They did -- we had previously had a
20 university budget committee. It had been dormant for
21 several years, and when Dale got here, he reestablished
22 it.

23 Q. It was him that wanted to get his arms around
24 it?

25 A. Yes, I believe so.

1 Q. Okay.

2 A. Because at that point, budget reported to the
3 provost as a stand-alone to the provost, and then he
4 eventually moved that underneath Tracy Clark as finance
5 and accounting, because he just didn't think the budget
6 office that reported to him was doing a good job. They
7 couldn't explain it to him in a way that made sense to
8 him.

9 Q. Okay. All right. Those same notes also
10 indicate that you said something to the effect that you
11 thought Mr. Merck was falling on his sword and accepting
12 responsibility. Do you recall making a statement like
13 that?

14 A. It's entirely possible.

15 Q. So when I hear someone falling on their sword,
16 it almost sounds like they are willing to take the
17 blame --

18 A. Right.

19 Q. -- for maybe others?

20 A. Yes.

21 Q. So is that what you were trying to convey?

22 A. Yes.

23 Q. And who were the others that he would have
24 taken the fall for?

25 A. I had heard from Lee that she and Bill Merck

1 and John Hitt were in meetings where she says they
2 discussed Trevor Colbourn Hall specifically. And so,
3 you know, I don't have direct knowledge that that
4 conversation happened, but that's what I was referring
5 to.

6 Q. Okay. So it would have been President Hitt and
7 Ms. Kernek?

8 A. Yes.

9 Q. All right. Did your office -- did university
10 audit have anything to do with the decision to hire
11 Bryan Cave to conduct this investigation?

12 A. No.

13 Q. Did you guys get involved in any -- hold on
14 just a moment. I'm sorry.

15 A. That's all right.

16 Q. Can you describe Dr. Hitt in his last few years
17 as president? Did you have enough interaction with him
18 to determine how on top of things he was?

19 A. My interaction with him was limited. My
20 impression is that he was disengaged, more so than he
21 had been previously.

22 Q. Do you know how old he was?

23 A. No. I would guess mid to late 70s, but I don't
24 know.

25 Q. Do you think it had to do with his age or just

1 knowing retirement was on the horizon or something else
2 altogether?

3 A. He had had a series of health issues. And, you
4 know, he was on a year-to-year contract at that point,
5 and so I had thought he was going to retire before he
6 did. And then each year he'd renew for another year,
7 and you know, we'd sort of hear from the grapevine he
8 wanted the med school established, and then the first
9 med class, and then the downtown approved.

10 And so there was always another -- usually
11 facilities related -- big issue, or maybe the College of
12 Medicine program, you know, that would keep him focused;
13 I want to be here for that.

14 But as far as day-to-day operations, I saw very
15 little engagement from him.

16 Q. So who was handling the day-to-day operations?

17 A. That would be the provost.

18 Q. Whittaker?

19 A. Yes.

20 Q. Okay.

21 A. That's always -- the president is supposed to
22 be the outward-facing, fund-raising interaction with the
23 board and the constituents, and the provost had
24 day-to-day responsibility.

25 Q. Okay. The notes also say that you made a

1 statement about -- this is in relation to the BOB-2
2 list, and you made a statement that Dan Holsenbeck and
3 Janet Owens were involved in the BOB-2 list which
4 protects projects from governor's line item veto.

5 What were you talking about there?

6 A. Well, there's, I think, two -- two different
7 lists that we're talking about. And there's a BOB-2
8 list that lists projects that are PECO and -- well, from
9 whatever source of funds, that you're asking for state
10 PO&M, plant operations and maintenance funding for.

11 So back of the bill, meaning they're not on the
12 front of the bill, so there's not a line item that you
13 can say, I want to fund 99 of the buildings on the list
14 but this hundredth one. That's the essence of what I'm
15 saying there.

16 Q. So did Dan Holsenbeck and Janet Owens get
17 involved in that?

18 A. I don't know that Janet Owens -- I mean, she
19 probably does now.

20 But we -- the other related thing to that, and
21 I might have confused it when I said it, is when we put
22 -- when we ask for buildings, new buildings on our PECO
23 list, it would be Dan Holsenbeck and John Hitt and Lee
24 Kernek and Bill Merck getting together to say -- to
25 determine what we should ask for funding for. So on

1 like the PECO section of that list, what building should
2 we put, and then other state funding, what buildings
3 should we put.

4 So I think that's where I think they would --
5 Dan would get involved in that list, and then, you know,
6 anything that we're asking for funding for from the
7 legislature, Dan would help out with.

8 **Q. What is Dan's position?**

9 A. He was, let's see, university relations,
10 government relations?

11 **Q. Okay.**

12 A. He was the former VP for that. He is now a
13 special counsel, something like that, to the president,
14 and Janet Owens is now in his VP position.

15 **Q. Gotcha, okay. All right.**

16 A. So I mean, for example, sometimes they would
17 come to us and say, you know, somebody in the
18 legislature wants you to have this X building. So put
19 it on the list, because you can't have it if it's not on
20 the list. So it's that sort of --

21 **Q. I gotcha, okay. So I want to spend a little**
22 **bit of time talking about the additional projects that**
23 **were funded with E&G that you guys discovered subsequent**
24 **to Trevor Colbourn Hall.**

25 A. Uh-huh.

1 Q. And what I would like to know is if you can
2 tell me if you have discovered yet who directed the
3 transfer of funds for each of the projects.

4 So before I start identifying one by one, do
5 you know today who directed the transfers of these
6 funds?

7 A. We did not look for that information.

8 Q. Okay.

9 A. We were just focused on what was transferred.
10 We didn't go back to all those e-mails to see why or
11 how, but just -- I was looking at the accounting
12 records, the financial records.

13 MS. MITZ: Okay. All right. Don, do you have
14 any more questions?

15 MR. RUBOTTOM: Yes. I've got a couple of
16 follow-ups.

17 THE WITNESS: Sure.

18 CONTINUED DIRECT EXAMINATION

19 BY MR. RUBOTTOM:

20 Q. The athletics -- the athletics loan that was
21 discussed in the two state audits, has internal audit
22 monitored the repayment of that loan?

23 A. I don't think so. It's been refinanced at
24 least once, I remember that.

25 Q. The university has refinanced it?

1 A. Yes. They extended.

2 Q. Well, if it's illegal to make the loan --

3 A. Well, I mean, that was --

4 Q. -- why is it legal to refinance the loan?

5 A. That was, I think, done before it was known
6 what had been happened.

7 Q. Well, all we read is the 2008 and 2010 audit
8 reports on that.

9 A. Yeah.

10 Q. And the 2010 indicated that a repayment
11 schedule was in the works.

12 A. Yeah.

13 Q. And you would not think that that would have
14 been refinanced since then, would you?

15 A. No, no, no, not since 2010.

16 Q. Okay. Have you ever discussed with Scott Cole
17 the opinion -- his opinion that that was a legal loan?

18 A. No.

19 Q. That's in the audit, this legal opinion that
20 that was lawful because the purpose of the DSO is to
21 serve the university.

22 A. Really? No, I haven't had that.

23 Q. You might want to repeat that.

24 A. Wow.

25 Q. Have you had any -- did you have any

1 discussions with Marcos Marchena in September about the
2 misuse of E&G funds?

3 A. Not other than at a board meeting.

4 Q. Okay. And with any other trustee?

5 A. Probably Trustee Seay, we would have been
6 communicating regularly through all of this.

7 Q. Have you been point on that or has Robert been
8 involved in those as well?

9 A. I think she's talked to both of us.

10 Q. Okay.

11 A. She's been quite active.

12 Q. In your auditing role, would you -- if you saw
13 a five-year prepayment on a lease, would you question
14 that? Would you flag that to find out why they are
15 prepaying?

16 I mean, Mr. Walsh was saying that's not a good
17 economic decision.

18 A. Well, if you get a reduced rate on the lease
19 for having done so, then no; I mean, I would think
20 that's a good business decision.

21 Q. What if you saw that the prepayment was
22 actually the principal being used to make the purchase?
23 So in a sense, the lessee was financing the purchase
24 through that?

25 A. But the foundation has said that's not the

1 case.

2 Q. I understand. But I'm just saying, in general,
3 if you saw -- would you ordinarily look at an extensive
4 prepayment? You gave good reasons for why. Would you
5 ask those questions?

6 A. Probably.

7 Q. Okay.

8 A. But I think he did ask and was answered in the
9 loan BOT meeting.

10 Q. I'm not arguing. I'm just trying to understand
11 as an auditor how you would do it.

12 A. Sure.

13 Q. Does the foundation ever just pay cash for real
14 estate or do they always borrow?

15 A. I don't know.

16 Q. Do you know if the board of trustees has to
17 approve every foundation purchase of real estate?

18 A. They do now, yes.

19 Q. They do now. Starting when?

20 A. I know as part of the delegation of authority
21 that they approved in September of 2007 -- no, in the
22 fall, some time of 2017, it says that, I think. I
23 couldn't tell you what the specific rules were before
24 that.

25 Q. Would the audit department have records of what

1 audit staff attended what board of trustee, finance and
2 facilities, and audit and compliance meetings over the
3 last five years?

4 A. Five years? They might. There are -- when we
5 go to certain meetings where university-wide issues that
6 we think are important are discussed, we do take notes,
7 and you know, share them with the office, so.

8 Q. Would those notes be kept in the records of the
9 department?

10 A. They should be.

11 Q. Okay. Onto the BOB-2.

12 A. Yes.

13 Q. Have you ever read the back-of-the-bill
14 language that actually the legislature approves?

15 A. I don't know that I have.

16 Q. Okay. Are you familiar that the heading of
17 that document says, projects to be built with
18 non-appropriated funds with future PO&M liabilities or
19 requests?

20 A. I knew that the gist of the form was that you
21 were asking for PO&M funds for the buildings.

22 Q. Do you think that Dr. Whittaker knew that E&G
23 funds were appropriated funds?

24 A. I think that he probably would have understood
25 that.

1 Q. Are you aware that the legislature approved
2 that building with non-appropriated funds three times in
3 the General Appropriation Act; '15, '17 and '18?

4 A. Are we talking about Trevor Colbourn Hall?

5 Q. Yes, ma'am.

6 A. Okay. Not specifically. I think I've seen
7 that it was on our PECO list to request. Is that what
8 you are saying?

9 Q. Well, BOB-2 is not a PECO list. It's other
10 buildings.

11 I'm not going to quibble with you. There might
12 be a few PECO projects on there. I don't believe -- my
13 understanding is a PECO is an E&G project and that PO&M
14 is probably automatic when we build the building.

15 A. Yeah.

16 Q. But this is other buildings --

17 A. Okay. Right.

18 Q. -- that have donated funds or whatever.

19 A. Yeah.

20 Q. So you weren't --

21 A. That's a little outside my purview.

22 Q. Right. Have you reviewed the Trevor Colbourn
23 project program document that Merck has referred to as
24 saying, see, we said E&G in there?

25 A. I have looked at page 26 or whatever --

1 Q. 25 and 26, right.

2 A. -- that people have showed to me, see, it says
3 E&G.

4 Q. And that cites two BOB-2s; that's what they are
5 doing, they are quoting two BOB-2s.

6 A. Okay.

7 Q. You haven't gone back and looked at those
8 BOB-2s?

9 A. No.

10 Q. Well, I have, and we're surveying the entire
11 system because there's a lot of projects like that.

12 Well, are you aware that Trevor Colbourn Hall
13 was put back on that list this last summer --

14 A. Oh, God.

15 Q. -- and that was submitted to the BOG with the
16 capital improvement plan?

17 A. No. I mean, I don't doubt that that's true,
18 but no, I'm not specific.

19 Q. Are you aware of any refunding preparation -- I
20 may have asked you this earlier -- any refunding
21 preparations that Merck and his team had begun during
22 the audit process last spring and summer?

23 A. What does refunding --

24 Q. For Trevor Colbourn Hall.

25 A. Refunding --

1 Q. Finding -- for example, something like finding
2 auxiliary funds to repay when the audit comes out so
3 that we can say we've already repaid it?

4 A. No. I wasn't aware of any of that because we
5 had to do that afterwards.

6 Q. So there was no list already of sources of
7 funds available?

8 A. Not that I'm aware of, not for that purpose.

9 Q. Okay. The BOB-2 that was approved by the board
10 in July of 2018 lists Trevor Colbourn Hall, and for
11 source of funds it says CF auxiliary.

12 A. CF, is that carryforward?

13 Q. Is that what it would mean to you?

14 A. That's what it would mean to me.

15 Q. Are you conscious of the finance department
16 talking about carryforward auxiliary funds?

17 A. No. That's not finance department, that's
18 facilities. They do that side.

19 Q. They describe the source of funds or just for
20 that document?

21 A. For that document, yeah.

22 Q. Okay.

23 A. I'm sorry.

24 Q. Because there's all these different purposes
25 that these terms are used.

1 A. Right.

2 Q. And the source of funds, you described all
3 these transactions.

4 A. Yeah. So CF, to me, always means E&G.

5 Q. So that might be a combination of E&G and
6 auxiliary?

7 A. To me, that's what that would mean because
8 auxiliary -- we don't ever talk about auxiliary being
9 carried forward, because auxiliary is cash.

10 Q. Mr. Cole described at the September 6th meeting
11 the present circumstances at the end of his discussion.

12 A. Okay.

13 Q. He did a whole history of the thing.

14 A. I remember him reading.

15 Q. And at the end, he said the funds have been
16 repaid and he described investment gains. He said, I
17 think, auxiliary --

18 A. Yes.

19 Q. -- investment gains.

20 A. Right, yeah.

21 Q. Did you help prepare that statement that he
22 presented?

23 A. On September 6th?

24 Q. Yes.

25 A. Probably not.

1 Q. Who would have helped prepare that?

2 A. At that point, it would have been Bill and
3 Tracy. I wasn't involved in that yet.

4 Q. When did you first hear about investment gains
5 being used in that refunding effort?

6 A. That would have been shortly thereafter,
7 because it was September 5th or 6th that I was put in
8 that role.

9 Q. Did you participate in putting the list
10 together for the September 20th meeting that listed this
11 particular class of unrealized gains as part of the
12 refund?

13 A. I didn't develop the list, but I saw it.

14 Q. And who would have developed that?

15 A. Tracy and Christy.

16 Q. Okay.

17 A. And we talked a lot about what those unrealized
18 gains were and whether or not to realize them or, you
19 know, just leave it as unrealized.

20 Q. And why -- who made the decision to leave it as
21 unrealized?

22 A. It was a joint decision. I mean, I was CFO,
23 interim CFO at the time, and from a strictly accounting
24 standpoint, we have a large cash balance on any given
25 day. So that about 30 million that we had as unrealized

1 at that point, we didn't need from a cash flow
2 standpoint.

3 So had we sold our -- well, about 80 to 90
4 million investment portfolio, the Vanguard fund, just to
5 realize those gains, that 30 million, we would have
6 turned around and immediately put that same 80 million
7 or so back into the market.

8 So we wouldn't have the cash sitting there. It
9 would be back in the market or in the investment
10 portfolio.

11 **Q. What about the option of selling sufficient**
12 **securities to pull that amount out?**

13 A. You can't just sell 30 million to pull out a 30
14 million gain. You have to sell --

15 **Q. I understand you're not pulling out a 30**
16 **million gain. But when you're making these book**
17 **assignments --**

18 A. Right.

19 **Q. -- you could make the same assignments if you**
20 **cashied out that value of investments, could you not?**

21 A. We could have.

22 **Q. Okay.**

23 A. We could have. We just didn't have a need for
24 the cash.

25 **Q. Are you familiar with the investment policy of**

1 the university?

2 A. I'm familiar that we have one, yes.

3 Q. Are you familiar with the concept that
4 operating funds should not be invested in long-term
5 equities?

6 A. I wouldn't have characterized it quite that
7 way, but I've heard, you know, from Bev that you have
8 said that, yes.

9 Q. Well, if you read the investment policy, I
10 think you will see those kinds of principles at work.
11 It specifies what funds should be in pool one --

12 A. One, two, and three.

13 Q. -- cash equivalents; what funds should be in
14 pool two, cash equivalents with a little bit of
15 90-day --

16 A. Okay, liquidity, yeah.

17 Q. So it didn't occur to you that what in a sense
18 you were saying was we're going to have 30 million of
19 E&G funds sitting in the long term, the pool four
20 investment pool? That didn't occur to you to be a
21 concern?

22 A. No, because we had enough in the upper pools
23 that were more liquid that we could meet our operating
24 expenses. And we have -- half of our funds are in SPIA,
25 roughly half.

1 Q. Right. And I understand that.

2 Are you aware of other times that the finance
3 department has paid a bill or moved money by an
4 assignment of unrealized gains?

5 A. No, we hadn't done that before. That's the
6 first time we ever budgeted unrealized gains.

7 Q. How do you know that? How did you get that
8 information?

9 A. It was before all of this happened. Tracy and
10 Christy and -- now I don't know who else from finance
11 and accounting came over, and they had talked about what
12 they were doing with their realized and unrealized
13 gains, and that they wanted to be able to -- let's
14 see -- the unrealized gains had been running about
15 \$10 million dollars. And so we were just going to leave
16 that at that point. We didn't talk about that at all.

17 But they wanted to be moving forward, to be
18 allocating a prorated share between the investment
19 interest that we earn in SPIA and the investment
20 earnings on gains from the investment pool, and they
21 were going to average that.

22 So that, for example, if we had a 1 percent
23 interest rate in SPIA and, say, a 4 percent gain in the
24 investment pool, that average that together and across
25 all, say, 600 million, there's an average of two and a

1 half percent; that they would then allocate two and a
2 half percent to all of our cash and investment accounts
3 so that everybody would get a benefit of having received
4 some of the investment gains from the pool.

5 So that -- so, yes, I was aware that there were
6 unrealized gains back before any of this happened.

7 Q. Are you aware that one of those lines in that
8 talks about federal -- there's some federal funds that
9 have some share of that investment pool?

10 A. No.

11 Q. The September 20th listing, it shows
12 E&G current, E&G carryforward, federal, and other.

13 A. No, I wasn't aware.

14 Q. And that's how they broke down to make sure
15 they weren't taking restricted investment shares. They
16 divide -- they assigned the gains for May, June, July, a
17 combination to these various groups.

18 A. Oh, they assigned it across everybody, right.

19 Q. But they pro rata assigned the gains.

20 A. Right.

21 Q. But they only claimed to take the gains from
22 this other group to rebuild the E&G balance on the
23 books. And one of the groups was federal, and you don't
24 remember that saying federal?

25 A. So that's -- is that the one where we took out

1 the 17 million?

2 Q. I believe so.

3 A. The 13-point-whatever million? Right. And we
4 were making sure that they had their pro rata share
5 first.

6 Q. Right.

7 A. And then whatever was left over was for the --
8 was available for -- yes, so we were assigning -- yes, I
9 do remember that.

10 Q. And you don't recall a federal line on that?

11 A. Not necessarily.

12 Q. Are you aware of any sales of these -- any
13 liquidation of these investments in the last five years?

14 A. Five years? 2012 and 2013 are the two that I
15 know about.

16 Q. Are you working with Bev doing some of this
17 research?

18 A. Yeah, yeah.

19 Q. You don't know of any other liquidations?

20 A. No, those are the only two I know of.

21 Q. Do federal auditors ever come and say, why have
22 you had federal money in the stock market for five
23 years?

24 A. I don't know that they've ever asked that
25 question.

1 Q. Do you think that's a question that they might
2 ask about if they took note of it?

3 A. Yeah, they probably would.

4 Q. I'm sorry.

5 A. I know.

6 Q. When you stepped in -- and I may have already
7 asked this in a different way, but did you discover any
8 preparation already made to refund the E&G spent on
9 Colbourn Hall?

10 A. No. I worked with them and saw them working
11 pretty diligently afterwards to come up with that money.

12 Q. Did you review -- that December meeting where
13 you made your E&G commitment presentation, the December
14 board meeting this last December?

15 A. Right.

16 Q. There were also master plan amendments on that
17 board agenda. Did you look at those?

18 A. Those were Misty's.

19 Q. Okay.

20 A. So, no.

21 Q. Would it surprise you to know that they amended
22 the 2015, '25 master plan listing for Trevor Colbourn
23 Hall to change the source of funds from E&G to CF
24 auxiliary? Would that surprise you, a building already
25 completed?

1 A. At this point, nothing surprises me.

2 Q. Okay. Thanks.

3 Now, I want to ask you about that commitment
4 list that the BOG obviously had some interesting
5 discussions about on December 31st. You know that list
6 by heart --

7 A. This is December 12th?

8 Q. -- and I'm curious how you could show that
9 \$40 million scholarship fund and the \$20 million
10 deferred maintenance commitment as expenditures and
11 encumbrances by -- given your discussion of the
12 definition of expenditures and encumbrances.

13 A. Because they were transferred out of the E&G
14 fund, E&G fund one, essentially. They were out of that
15 fund. They were no longer in there. They were over in
16 financial aid, so that's how.

17 Q. And if that stayed in financial aid for years
18 and then someone pulled them back into E&G, would that
19 be possible and appropriate?

20 A. It doesn't come back that way.

21 Q. Well, you just put 85 million back that way
22 from construction.

23 A. Well, that was because of our error.

24 Q. But it's lawful. If the money came from E&G,
25 do you see any problem with sending it back?

1 A. Not right at the moment.

2 MR. RUBOTTOM: Okay. I think that's all, so,
3 Carine, do you want to close it up?

4 MS. MITZ: Sure.

5 CONTINUED DIRECT EXAMINATION

6 BY MS. MITZ:

7 Q. So in talking with a lot of witnesses, we have
8 learned that a lot of people have a habit of keeping
9 notes, diaries, journals --

10 A. Everybody does.

11 Q. -- variations of those things at work.

12 A. Yeah.

13 Q. Do you also do that?

14 A. If I have notes prepared for a meeting, like
15 presentation notes, I might have those. Like, I have my
16 kind of a timeline I prepared for this meeting, I might
17 have that.

18 Q. Okay. I'm thinking more like, today, I had
19 this discussion and this happened today, almost like a
20 diary of what's going on.

21 You don't maintain something like that, do you?

22 A. No. I know Lee does, because she always walked
23 around with her notebook. She's infamous for that.

24 Q. You know exactly what I'm talking about.

25 A. Oh, my gosh, yes, her notebooks.

1 Q. Is there anything else that you think would
2 help us in our investigation that we have not asked you
3 or that you haven't already told us?

4 A. I want to come back to that December 12th
5 meeting because we presented, you know, 40 million as
6 having been a presidential decision.

7 And I was in the room with Dale when he talked
8 to Marcos, and they agreed that 40 million was a good
9 number to spend on scholarships, and they had already
10 talked about the 20 million for deferred maintenance.
11 And no, they decided that.

12 MR. RUBOTTOM: That was Marcos and Dale?

13 THE WITNESS: Yes. That was a phone call in
14 President Whittaker's office.

15 So after the board meeting when -- you know,
16 because a lot of questions came up at that board
17 meeting, are you asking us to approve the 40
18 millions?

19 And I answered, no. No, sir, I'm not. I'm
20 asking you to approve what's in the green box. The
21 other stuff has already happened.

22 Then I went back and looked at that, and while
23 the regulations do allow our president to set the
24 budget with approval from the board and then to
25 amend that budget, our specific delegation of

1 authority from the board to the president does not
2 allow him to have made that decision.

3 And so I went back to the general counsel and
4 said, Scott, we have to take this back to the board
5 for specific approval.

6 So at that point, we put it on the February --
7 I think February 20th coming up meeting, because
8 they said both of those items need specific board
9 approval.

10 And just even the conversation with Dale and
11 Marcos, even the board chair saying that's a good
12 idea, that's not what our delegation of authority
13 says.

14 MR. RUBOTTOM: Was that before the BOG meeting?

15 THE WITNESS: Yes. So at that BOG meeting the
16 chancellor asked me, did your board specifically
17 approve 40 million for scholarships?

18 And I said, no, sir, they did not. They were
19 informed about it, we talked about it, but it was
20 presented as a fait accompli. It has been done.

21 MR. RUBOTTOM: What about the 20 million
22 deferred maintenance? Does the same principle apply
23 to that?

24 THE WITNESS: Absolutely.

25 MR. RUBOTTOM: Is that on the February agenda?

1 THE WITNESS: Yes. Well, we've since moved it
2 to March, because they've imposed these "five week
3 in advance of the meeting" deadlines to have all
4 your materials ready, and we couldn't make it.

5 But they are both on the agenda for the
6 March 9th -- March, I forget, March whatever, but
7 the March BOT meeting.

8 MR. RUBOTTOM: Were people in the audit
9 department afraid of Bill Merck?

10 THE WITNESS: Afraid? No, I don't think so.

11 MR. RUBOTTOM: That's all I have a got, Carine.

12 MS. MITZ: Okay. Thank you very much,
13 Ms. Mitchell. You've been very informative and very
14 helpful.

15 THE WITNESS: You're welcome.

16 MS. MITZ: We are asking everybody that has
17 been deposed to not discuss their deposition with
18 anybody; that means please don't discuss the
19 questions asked or the answers that you have given.

20 THE WITNESS: Okay.

21 MS. MITZ: Do you agree do to that?

22 THE WITNESS: Absolutely.

23 MS. MITZ: Great. Thank you so much.

24 THE WITNESS: Can I ask a question?

25 MS. MITZ: Sure.

1 THE WITNESS: Can I get a copy of the
2 transcript just so I -- I want to know what I said?
3 I hadn't asked Joey for transcripts before. I
4 didn't know that there were transcripts.

5 MR. RUBOTTOM: Well, he didn't depose you.
6 She's making an accurate record --

7 THE WITNESS: Okay.

8 MR. RUBOTTOM: -- and you have a right to
9 review that record and give her any impressions that
10 you think it's an inaccurate record.

11 THE WITNESS: Okay. I don't think anything I
12 have said is inaccurate.

13 MR. RUBOTTOM: I would ask -- you can also
14 waive that right. We will certainly make a copy of
15 the transcript available to you as soon as we get
16 it, if you would like that, and I would like any of
17 your corrections.

18 We have an urgent need to have this before our
19 Monday depositions.

20 THE WITNESS: I get that.

21 MR. RUBOTTOM: So they're going to be rushing.

22 THE WITNESS: That's fine.

23 MR. RUBOTTOM: Would you be willing to waive --

24 THE WITNESS: Absolutely.

25 MR. RUBOTTOM: -- so she can get it to us?

1 And we'll get it to you immediately, and if you
2 have anything -- and also, Kathy, our process allows
3 anybody who is spoken about in any of these -- if
4 these depositions are read out in the public meeting
5 or anything, anybody has a right to come to the
6 committee and offer alternative -- particularly if
7 someone is spoken about.

8 So I want you and all of the employees who are
9 addressing us to understand that, and we will make
10 clear the information. It doesn't mean everybody is
11 going to get to come up in front of the committee
12 and say something, but you certainly will have a
13 right to submit in writing anything that you think
14 is misstated about you or by you.

15 So, we want -- we want the facts, and that is
16 what the committee is looking for.

17 THE WITNESS: And I don't -- at this point, I
18 don't think I've -- I think I've said what I needed
19 to say. I would like to read it, yeah.

20 MR. RUBOTTOM: But you'll waive pre-approval
21 before she sends it to us, and we'll send it to you?

22 THE WITNESS: Yeah.

23 MR. RUBOTTOM: Thank you very much. I
24 appreciate that.

25 THE WITNESS: Of course. And then how long do

1 you think until you'll be wrapped up?

2 MR. RUBOTTOM: Can we close out the record?

3 THE REPORTER: Okay. We're off the record.

4 (The deposition was concluded at 12:39 p.m.)

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CERTIFICATE OF OATH

STATE OF FLORIDA:
COUNTY OF ORANGE:

I, Emily W. Andersen, RMR CRR FPR, Stenograph
Shorthand Reporter, certify that KATHRYN ANNE MITCHELL
personally appeared before me on February 15, 2019 and
was duly sworn.

WITNESS my hand and official seal this 15th day of
February, 2019.

Identification:
Produced Identification
Florida Driver's License

Emily W. Andersen

EMILY W. ANDERSEN,
Notary Public State of Florida
Commission No. GG 258112
Expires October 14, 2022

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CERTIFICATE OF REPORTER

STATE OF FLORIDA:
COUNTY OF ORANGE:

I, Emily W. Andersen, RMR CRR FPR, Stenograph Shorthand Reporter, certify that I was authorized to and did stenographically report the foregoing deposition of KATHRYN ANNE MITCHELL; that the review of the transcript was requested; and that the foregoing Pages, 4 through 108, inclusive, are a true and complete record of my stenograph notes.

I further certify that I am not a relative or employee of any of the parties, nor am I a relative or counsel connected with the parties' attorneys or counsel connected with the action, nor am I financially interested in the outcome of the action.

DATED this 15th day of February, 2019.

Emily W. Andersen

Emily W. Andersen, RMR CRR FPR
Stenograph Shorthand Reporter

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