THE UNIVERSITY OF NORTH CAROLINA SYSTEM

SPECIAL MEETING OF THE BOARD OF GOVERNORS

February 7, 2020 at 10:00 a.m.
UNC System Office
Center for School Leadership Development, Room 128
Chapel Hill, North Carolina

AGENDA

1. Roll Call..... Ms. Steadman
2. Report of the Committee on University Governance .....Mr. Powers
3. Adjourn

The next regularly scheduled meeting of the Board of Governors is Friday, February 21, 2020, at the Center for School Leadership Development (CSLD) in Chapel Hill.

THE UNIVERSITY OF NORTH CAROLINA SYSTEM

OFFICE OF LEGAL AFFAIRS
The University of North Carolina System
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To: Members of the UNC Board of Governors

From: David M. Powers, Chair, Committee on University Governance

Date: February 5, 2020

Subject: Governance Committee Report to the UNC Board of Governors

Board of Governors Policy 200.7 (Duties, Responsibilities, and Expectations of Board Members) establishes the standards for ethical conduct, fiduciary duty, and duties and responsibilities for members of both the Board of Governors and the boards of trustees of the constituent institutions. It states, "Board members shall adhere to the standards of conduct and fulfill duties and expectations set forth in this policy." Failure to do so is grounds for disciplinary action, including removal from the board. The Board of Governors is responsible for enforcing the requirements of policy 200.7 in accordance with the policy's due process requirements, which require the Committee on University Governance to review allegations of misconduct and make recommendations to the Board of Governors for final disposition of complaints. Any recommended sanction requires the approval of two-thirds or the voting membership of the Board of Governors: 16 votes.

The Committee on University Governance received three complaints from members of the East Carolina University Board of Trustees, each seeking the removal of members of that board. Vern Davenport, Fielding Miller, and Vince Smith filed a complaint seeking the removal of Robert Moore and Phil Lewis. Robert Moore filed one complaint seeking the removal of Vern Davenport, and another seeking the removal of Fielding Miller.

After allowing the complainants to file supplemental complaints and allowing each respondent the opportunity to respond, the committee met on February 5, 2020, to consider the submitted documentation and to question the parties as necessary. The committee first considered the complaint filed by Mr. Davenport requesting the removal of Mr. Moore and Mr. Lewis. After reviewing the documentation and questioning the parties, the committee voted unanimously to take no action and refer the complaint to the full Board for consideration.

Following the vote on the complaint filed by Mr. Davenport, Mr. Moore requested that he be allowed to withdraw his complaints against Mr. Davenport and Mr. Miller. Because there is no clear procedure allowing the withdrawal of a request for removal, the committee instead voted unanimously to take no action and refer the complaints to the full Board for consideration, with the understanding that his request to withdraw the complaints would be communicated to the full Board.

THE UNIVERSITY OF NORTH CAROLINA SYSTEM

MEETING OF THE BOARD OF GOVERNORS
Committee on University Governance

February 5, 2020 at 1:00 p.m.
University of North Carolina System Office
Center for School Leadership Development, Room 128
Chapel Hill, North Carolina

AGENDA

OPEN SESSION

A-1. Roll Call ..... David Powers

A-2. East Carolina University Board of Trustees Members Complaints ..... David Powers
   a. Case One (Vern Davenport, Fielding Miller, and Vince Smith v. Phil Lewis and Robert Moore)
   b. Case Two (Robert Moore v. Vern Davenport and Fielding Miller)

A-3. Adjourn

Chapter 200 Board of Governors Affairs

200.7 Duties, Responsibilities, and Expectations of Board Members

I. Applicability and Purpose.This policy sets forth the duties, responsibilities, expectations, and standards of conduct for members of the Board of Governors of the University of North Carolina, the boards of trustees of the constituent institutions, and the boards of University-affiliated organizations where membership includes individuals appointed by the Board of Governors.

II. Definitions.For purposes of this policy:
   A. "Board" means the Board of Governors, a board of trustees of a constituent institution of the University of North Carolina, or a board of a University-affiliated organization with members appointed by the Board of Governors.
   B. "Board member" means any member of the Board of Governors, a board of trustees of a constituent institution of the University of North Carolina, or the board of a University-affiliated organization.
   C. "Institution" means the University of North Carolina or a constituent institution of the University of North Carolina.
   D. "University-affiliated organization" means an institution or organization that the Board of Governors is authorized to establish or to which it is authorized to appoint board members pursuant to statute, but does not include Associated Entities covered by Section 600.2.5.2[R] of the UNC Policy Manual or Centers or Institutes covered by Section 400.5[R] of the UNC Policy Manual.

III. Duties and Responsibilities.Board members are responsible for performing essential functions that are central to the governance of the University, as described in Chapter 116 of the North Carolina General Statutes, *The Code* of the University of North Carolina, the Policy Manual of the University, and the policies and by-laws of the constituent institutions.Board members shall adhere to the standards of conduct and fulfill duties and expectations set forth in this policy.
   A. Attendance.Board members shall attend board meetings.If a member of the Board of Governors is, for any reason other than ill health or service in the interest of the State or nation, absent for four (4) successive regular meetings of the Board, his or her place as a board member shall be deemed vacant.[1]If a member of a board of trustees of a constituent institution is, for any reason other than ill health or service in the interest of the State or nation, absent for three (3) successive regular meetings of a board of trustees, his or her place as a board member shall be deemed vacant.[2]
   B. Participation in Policy and Oversight Functions.Board members are expected to prepare for meetings; actively contribute to the work of the board; and act in accordance with the governance, oversight, and advisory functions allocated to the board by:
      1. Reviewing and inquiring about materials that involve the institution or University-affiliated organization, such as board minutes and annual reports;
      2. Understanding and participating appropriately in the oversight function allocated to the board with respect to the finances and effectiveness of the institution or University-affiliated organization;
      3. Seeking information from and consulting appropriately with the chief executive officer of the institution or University-affiliated organization to gain additional context, make well-informed policy decisions, and carry out responsibilities for board-level oversight and monitoring of the affairs of the institution or University-affiliated organization;
      4. Participating as requested in the preparation and revision of long-range plans for the institution or University-affiliated organization;
      5. Serving on and contributing to the work of assigned committees;
      6. Listening to and considering differing opinions, and otherwise making reasonable efforts to conduct oneself in accordance with the practices and customs of formality and decorum articulated in Robert's Rules of Order;[3]
      7. Referring matters of administration and management to the chief executive officer of the institution or University-affiliated organization for handling;
      8. Respecting and following executive leadership, management, and reporting lines when communicating with the University and the constituent institutions, and refraining from directing matters of administration or executive action except through the chief executive officer of the institution or University-affiliated organization; and
      9. Recognizing that board members' authority is collective, not individual, and only arises from their participation with other members of the board when it is officially convened.
   C. Ethical Conduct.Board members shall adhere to high standards of ethical conduct by complying with laws, regulations, and University policies applicable to their service as board members and public officials, which include the obligations to:
      1. Exercise authority honestly and fairly, free from impropriety, threats, favoritism, and undue influence, as required by the State Ethics Act.[4]
      2. Keep confidential all information and records that are required by law to be kept confidential, including, but not limited to, personnel records and information, student records and information, attorney-client communications, and closed session deliberations and information;
      3. Comply with North Carolina open meetings and public records laws;
      4. Bring matters of concern, potential or real conflicts of interest, and reports of unlawful and/or noncompliant activity to the attention of the appropriate institutional or organizational officer, such as the president, chancellor, board chair, or committee chair;
      5. Avoid any personal or business interest that may conflict with the member s responsibilities to the institution or University-affiliated organization;

6. Avoid even the appearance of impropriety when conducting the institution's or University-affiliated organization's business; and
7. Recuse oneself from consideration of matters during meetings when required.

D. Support for the Institution.Board members shall discharge their duties to the institution with care, skill, prudence, and diligence by:
1. Exercising the degree of diligence, care, and skill that a prudent individual familiar with such matters would use under similar circumstances in a like position;
2. Acting in good faith with the best interest of the institution or University-affiliated organization in mind;
3. Conducting oneself, at all times, in furtherance of the institution's or University-affiliated organization's goals and not the member's personal or business interests;
4. Providing oversight to ensure that the institution's or University-affiliated organization's resources are dedicated to the fulfillment of its mission; and
5. Becoming knowledgeable about issues that affect the University and seeking to understand the educational needs and desires of all the State s citizens, and their economic, geographic, political, racial, gender, and ethnic diversity.[5]

IV. Removal.A board member may be removed, or recommended for removal, for specified cause by affirmative vote of two-thirds (2/3) of the voting membership of the Board of Governors then in office.

A. Removal of a Member of a Board of Trustees or University-affiliated Organization.The Board of Governors may remove from the board of trustees of a constituent institution or from the board of a University-affiliated organization a board member who was elected by the Board of Governors.With respect to a member of a board of trustees who was appointed by the Governor, the Board of Governors may vote to recommend to the Governor that the member be removed.

B. Removal of a Member of the Board of Governors.The Board of Governors may recommend to the State House of Representatives or State Senate, whichever chamber elected the member, that a member of the Board of Governors be removed.

C. Procedure for Removal; Specification of Cause; Notice and Opportunity to Respond
1. The chair of the Committee on University Governance shall send the board member a written specification of reasons to consider the board member's removal.In the event that the chair of the Committee on University Governance is the subject of the board's consideration of a recommendation of removal, the vice chair of the Committee on University Governance will temporarily serve in the chair's role. The notice shall state that the board member may submit a written response to the chair of the Committee on University Governance within five (5) business days of receipt of the written notice.
2. The Committee on University Governance shall consider the written response of the board member and recommend to the Board of Governors action that the committee deems appropriate.If the board member submits no written response to the chair of the Committee on University Governance within the specified timeframe, the Committee on University Governance may continue with its consideration of removal of the board member, or a recommendation that the appropriate appointing or electing authority remove the board member.
3. In its consideration of each matter, the Committee on University Governance may review any documents or establish any procedures it considers necessary based on the particular circumstances involved.

V. Other Matters

A. Effective Date.The requirements of this policy shall be effective on the date of adoption by the Board of Governors.

B. Relation to State Laws.The foregoing policies as adopted by the Board of Governors are meant to supplement, and do not purport to supplant or modify, those statutory enactments which may govern the activities of public officials.

C. Regulations and Guidelines.These policies shall be implemented and applied in accordance with such regulations and guidelines as may be adopted from time to time by the president.

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[1] N.C.G.S. § 116-7(c).

[2] N.C.G.S. § 116-31(j).

[3] Section 202C(4) of *The Code* of the University of North Carolina.

[4] N.C.G.S. § 138A-2.

[5] N.C.G.S. § 116-7.

200.7: Adopted 04/10/15

ECU

Board of Trustees
202 Spilman Building | East Carolina University | Greenville, NC 27858-4353
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January 18, 2020

David Powers, Chair
Committee on University Governance
UNC Board of Governors
P.O. Box 2688
Chapel Hill, NC 27514

Dear Governor Powers:

We write to notify you that we have become aware of actions by two members of the East Carolina University Board of Trustees, Phil Lewis and Robert Moore, that appear to materially violate numerous provisions of Article III(B)-(D) of UNC Policy 200.7, Duties, Responsibilities, and Expectations of Board Members, and, possibly, the North Carolina State Government Ethics Act. This formally requests that the Committee on University Governance and the Board of Governors thoroughly review this matter, and take action as deemed appropriate by the Committee and the Board, up to and including removing and requesting the removal of, respectively, Phil Lewis and Robert Moore from the ECU Board of Trustees. We base this request on the following:

1. On or around Sunday, January 12, 2020, Trustees Lewis requested a meeting with an ECU student (with whom Lewis or Moore had no previous professional or personal relationship) using Facebook messaging and phone calls for the purpose of soliciting the student to run for the position of ECU's Student Body President. As you are aware, the ECU Student Body President is a voting member of the ECU Board of Trustees.

2. The student met with Trustees Lewis and Moore at a known location on or around Monday, January 13, 2020. We are fully informed of the substance of their discussion at that meeting.

3. It is clear from the discussion during that meeting that Trustees Lewis and Moore intended that the student, if elected, would join them and other Trustees in what they described as a "seven" member majority vote for the purpose of advancing their objectives, including, but not limited to, electing a new Chair of the ECU Board of Trustees. Specifically, Trustee Lewis expressed his belief that Trustee Moore should serve as the new Board Chair. Trustees Lewis and Moore repeatedly conveyed to the student their wishes that their discussion with the student, including their promises of substantial support for the student's campaign for Student Body President, be kept confidential from other Trustees and the public at large.

4. During the meeting Trustees Lewis and Moore conveyed the following offers of support to the student for the student's campaign to be student body president:

    4.1. Financial contributions to the campaign so long as the student was not required to disclose the source of said contributions;

4.2. Soliciting and allegedly obtaining the support of a campaign manager with ties to "many" political campaigns in North Carolina;

4.2.1. We note that Trustees Lewis and Moore later confirmed with the student that they had spoken with the campaign manager and that the individual was excited to support the student's campaign;

4.3. Assisting with the student's campaign signage (Trustee Lewis indicated to the Student that Trustee Moore "is in the billboard business");

4.4. Offering the student the support of Trustee Angela Moss, who herself is a former ECU Student Body President;

4.4.1. We note that Lewis stated to the student that Moss was aware that Lewis and Moore were having the conversation with the student about running for Student Body President and, separately, that "Moss could help you put together something really slick";

4.5. Obtaining student information from Dr. Virginia Hardy, ECU's Vice Chancellor for Student Affairs, that Trustees Lewis and Moore would then provide to the student for the benefit of the student's campaign;

4.5.1. We note such action could be in possible violation of the University's confidentiality obligations under the Federal Educational Rights and Privacy Act (FERPA);

4.6. Support against an alleged proposed increase in student fees in the new fiscal year;

4.6.1. Specifically, Trustee Lewis stated to the student, "If you would run and win we'll give you the seven votes and they won't be able to raise it.";

5. During the meeting Trustees Lewis and Moore made comments that appear to demonstrate that they are advancing their personal political agenda ahead of the best interests of the University. This is especially evident with regard to Trustees Lewis' and Moore's statements regarding raising student fees to support the Athletics Program and their displeasure with the current Student Body President ("SBP") because the SBP did not vote last year for Trustee Angela Moss to be Board Chair.

5.1. As you are aware, it was necessary for ECU to raise student fees this year to support the serious needs of the Athletics Program and Trustees Lewis and Moore voted in favor of this increase. Regarding their vote, however, Trustee Lewis stated to the student, "students are paying over a million dollars more . . . that they didn't have to pay if he [the SBP] had just . . . cause at that point, when he said something to us about going up on the fees, to be honest with you, we didn't give a damn 'cause he voted against us and we didn't care and … you know . . . just to punish him if nothing else." Based on comments made during the meeting we believe their reference to the SBP "voting against us" refers to the fact that the SBP voted for the current Chair to serve as Board Chair and not Trustee Moss. Later in the discussion Trustees Lewis and Moore both

state they would have voted with the SBP against the student fee increase, but, in the words of Trustee Lewis, "I wasn't going to support him . . . you know, you've got to work together." Lewis further stated, "we have our six pretty strong . . . we could have won seven – six but I would have been giving [the SBP] a victory and what the hell do I want to do that for?" Moore responded to Lewis, "He didn't give me one."

6. During the meeting with the student Trustees Lewis and Moore discussed information with the student that they likely could have only obtained by virtue of their position as Trustees. While we cannot speak to the accuracy of all of these statements, we believe it highly inappropriate for Trustees to engage in discussions of Board business and ECU operations with a student without coordinating the same with the Board and ECU's Senior Administration.

7. We note that this is not the first instance in recent memory where Trustees Lewis and Moore have engaged in conduct that may have violated UNC Policy 200.7. We view this new information to demonstrate a pattern of non-compliance that we believe needs to be timely addressed by the Governors.

We will be happy to answer any questions and provide additional information concerning our request to the Committee and the Board of Governors.

Thank you for your assistance with this important matter.

Yours,

Vern Davenport, Chair

Vince Smith, Secretary and Chair of the
Audit, Risk Management, Compliance and Ethics Committee

Fielding Miller, Vice Chair

cc: Randy Ramsey, Chair

From:	vern.davenport@gmail.com
To:	David Powers; Thomas C. Shanahan; "Phil Lewis"; "Robbie Moore"; Randy Ramsey; Wendy Murphy
Cc:	Fielding.Miller@captrustadvisors.com; "Vince Smith"; "Vern Davenport"
Subject:	[External] Davenport-Miller-Smith, Supplemental response
Date:	Thursday, January 30, 2020 4:10:34 PM
Attachments:	BOG Supplemental Response 1 30 20.pdf

All,

Please find the Supplemental Response enclosed.

Board of Trustees
202 Spilman Building | East Carolina University | Greenville, NC 27858-4353
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January 30, 2020

David Powers, Chair
Committee on University Governance
UNC Board of Governors
P.O. Box 2688
Chapel Hill, NC 27515

Dear Governor Powers:

This acknowledges receipt of, and formally responds to, your letter dated January 22, 2020. I note that the deadline for submission of this supplemental information has been extended by you from Friday, January 24, 2020 until Wednesday, January 29, 2020, then again extended to Thursday, January 30, 2020.

With a majority of board support, we hereby submit, as requested, supplemental information setting forth each specific provision of UNC Policy 200.7, Duties, Responsibilities, and Expectations of Board Members (the "Policy), that appear to have been violated by ECU Trustees Robert Moore ("Moore") and Phil Lewis ("Lewis") and the manner in which they appear to have been violated. While we believe that the apparent violations of the Policy will be self-evident to the members of the Committee on University Governance, it is our hope that this supplemental information will assist the Committee in making a timely recommendation for appropriate action to the Board of Governors.

We based our request to the Committee on University Governance dated January 18, 2020 upon examination of the following:

1. UNC Policy 200.7, Duties, Responsibilities, and Expectations of Board Members;
2. An audio recording made on or around Monday, January 13, 2020 that appears to document a meeting between Moore and Lewis and a student (the "Recording");
3. A text message sent subsequent to the date of the recording provided by the student that appears to document further communication from Moore and Lewis to the student about a matter discussed on the recording (the "Text Message"); and
4. The Investigative Report dated October 28, 2019, that was prepared by legal counsel at Womble Bond Dickinson following that firm's investigation into matters relating to former Interim ECU Chancellor Dan Gerlach (the "Investigative Report);

We note that apparent violations of the Policy by Moore and Lewis are related to two discreet sets of circumstances. The first set of circumstances relates to interactions that Moore and Lewis had with an

ECU undergraduate student in January 2020 for the purpose of soliciting that student to run in the Spring 2020 election for the position of ECU Student Body President. During that meeting Moore and Lewis appear to have promised the student significant material support for that student's campaign as well as a specific promise that they would have enough votes to block a proposed student athletic fee increase. In exchange, the student would be expected to vote for a new Chair of the ECU Board of Trustees, and, presumptively, support other Board action supported by Moore, Lewis, and other Trustees. The second set of circumstances where Moore and Lewis appear to have engaged in activities in violation of the Policy relate to their unsanctioned investigation into circumstances surrounding allegations against former interim Chancellor Dan Gerlach, including, but not limited to their interviewing witnesses and apparent willful refusal to cooperate with the Board of Governor's investigation into the matter, including their refusal to provide records relating to that investigation. We will describe these two sets of circumstances and the apparent associated violations of the Policy by Moore and Lewis in turn.

I. The Student Meeting

In our letter to you dated January 18, 2020, enclosed for your reference, we identified seven areas of concern, six of which relate to Moore and Lewis's meeting with the student. While we believe it unnecessary to restate those concerns here verbatim, we will describe our understanding, generally, of what occurred relating to the meeting between the student and Lewis and Moore:

1. We understand that Lewis and/or Moore reviewed the student's Facebook page and then contacted the student on or around Sunday, January 12, 2020, using a Facebook messaging application and subsequent phone calls. We understand that the student had no personal or professional connection to Lewis and Moore and that their lunch meeting on or around Monday, January 13, 2020, was the first time that the three individuals had met. On the recording Lewis and Moore made statements during the meeting that indicate that they had reviewed the student's Facebook page in some detail (including a comment made by Lewis concerning a t-shirt the student was wearing in a photograph). We note that both Lewis and Moore are significantly older than the student and, as Moore states on the recording, "so many people think the Trustees have a lot of control over the University." In other words, we believe that most students and employees at ECU would believe that the Trustees have significant authority over the University. To leave no doubt, we believe it is highly inappropriate for two ECU Trustees to review an undergraduate's Facebook page, identify themselves as Trustees to that student, and request and participate in a secret meeting with that student for the purpose of obtaining information from that student and securing that student's political support on the Board in exchange for material promises of support for the student's campaign to be Student Body President and a promise of "giving" the student "seven votes" against an increase in the student athletic fee when the student serves as student body president.

2. From the recording we understand that Lewis's and Moore's purpose for meeting with the student was to attempt to secure the student's commitment to run for Student Body President in the Spring 2020 election. We note that the Student Body President is a voting member of the ECU Board of Trustees and that the Board is comprised of thirteen (13) members. We understand the Student

Body President to be the ECU student body's representation on the Board and that the Student Body President serves a vital role in the University's system of shared governance.

It is clear that by election of the student to the position of student body president Lewis and Moore sought to secure a majority vote of the Board and they intended to use that majority to elect a new Chair of the ECU Board of Trustees. We further note that Lewis stated that former Board of Governor member Harry Smith stated, "I'll go back. If you get control, I'll go back." We note that the current Chair was elected by a vote of seven (7) votes to six (6) in the Board officer election that occurred on July 12, 2019.

3. As they state on the recording, Lewis and Moore made significant offers of support for the student's campaign to be Student Body President and a promise to give the student seven votes against a proposed student athletic fee increase. Specifically, this support included:

    a. Financial donations to the student's campaign so long as the student would not be required to disclose the source of those contributions. Specifically, Lewis stated, "And confidentially, as long as you don't have to show where you get the money -I mean we have no problem-I don't have any problems supporting you. Moore responded to this statement, "Yeah."

    b. Moore, "who is in the billboard business, so he is in the sign business", assisting the student with campaign signage;

    c. Obtaining a commitment from an experienced campaign manager who has worked and/or managed a variety of political campaigns in North Carolina for various offices. This was confirmed in a text message sent to the student by Moore that read, in part:

        > Hope you had a great week. Phil and I have spoken with [redacted] and [redacted] is excited to help you with your SGA campaign. [redacted] has worked many political campaigns and [redacted] can help you become the next SGA President at ECU.

        We note that Lewis and Moore indicated that they wanted the student to meet certain state politicians who were known to them and connected to this campaign manager.

    d. Offering the support of Trustee Angela Moss ("Moss"), who, Moore and Lewis stated, "could help you put something together really slick." We note that Moss, who is a former Student Body President at ECU, was allegedly aware of the meeting between Moore and Lewis and the student according to Lewis;

    e. Offering to obtain ECU student information from the Vice Chancellor for Student Affairs, Virginia Hardy ("Hardy"), for the benefit of the student's campaign. Moore and Lewis further implied that Vice Chancellor Hardy would be supportive of the student's campaign if

they spoke with her and let her know that the student they supported was running for Student Body President; and

f. Guaranteeing the student a majority of votes by Trustees on the Board against a future student athletic fee increase. This included a discussion of support from another Trustee, Jim Segrave ("Segrave"), who Lewis stated is "not that involved, but you would probably get his vote. With regard to Segrave's support, Lewis stated, "You would have to do some stuff for him." We are unaware as to what "stuff" Lewis was referring, but we find this comment of concern. We further note that, at this time, we have no information to indicate that Segrave was acting in concert with Lewis and Moore.

g. We note that Lewis and Moore discussed the fact that the Student Body President is invited to the Chancellor's Box to watch football games and was allowed to bring "friends." This appears to be the offer of an additional incentive for the student to run for the position.

4. On the recording, Lewis and Moore clearly state that they voted in favor of a proposed student fee increase to punish Student Body President Colin Johnson for not voting for Angela Moss to be Chair of the ECU Board of Trustees. We note they took this action despite their acknowledgement that they would vote against a future increase because, as Lewis stated, "We don't want to put it on the backs of the students." Evidently this was not their concern when they voted in favor of an athletic fee increase that they state require the students to pay "over a million dollars." Furthermore, it appears that Lewis and Moore don't believe that a million dollars is significant to ECU's budget, in spite of well-known financial concerns at the University that are being addressed by the University's leadership. As stated by Lewis in regard to opposing the future student athletic fee increase, "for a million dollars we don't give a shit. We don't care." As stated by Moore in response, "It's a billion-dollar budget."

5. On the recording, Lewis and Moore describe in detail matters of University administration about which they would have knowledge, or appear to the student to have knowledge, by virtue of their position as Trustees. This includes an incorrect statement by Moore that the ECU Director of Athletics is planning to cut three ECU team sports. It is obvious that such an issue is of significant concern for the ECU community, including ECU's student athletes and coaching staff, and statements of this nature should not be made lightly and without an understanding of the facts. Moreover, communication on such a topic should be made to appropriate parties in close coordination with ECU's administration, including the Chancellor and the Director of Athletics. There are numerous other administrative and Board matters discussed on the recording that we believe are inappropriate for a Trustee to discuss with a complete stranger and, much less, with an undergraduate student.

A. Violations of UNC Policy 200.7 - Duties, Responsibilities and Expectations of Board Members

We believe that the information on the Recording and Text Message indicate that Moore and Lewis apparently violated the following sections of the Policy:

1. UNC Policy 200.7 (III) (B). Participation in Policy and Oversight Functions. Board Members are expected to prepare for meetings; actively contribute to the work of the Board; and act in accordance with the governance, oversight, and advisory functions allocated to the Board by:

1. Reviewing and inquiring about materials that involve the institution or University-affiliated organization, such as board minutes and annual reports;
2. Understanding and participating appropriately in the oversight function allocated to the board with respect to the finances and effectiveness of the institution or University-affiliated organization;
3. Seeking information from and consulting appropriately with the chief executive officer of the institution or University-affiliated organization to gain additional context, make well-informed policy decisions, and carry out responsibilities for board-level oversight and monitoring of the affairs of the institution or University-affiliated organization; . . .
7. Referring matters of administration and management to the chief executive officer of the institution or University-affiliated organization for handling;
8. Respecting and following executive leadership, management, and reporting lines when communicating with the University and the constituent institutions, and refraining from directing matters of administration or executive action except through the chief executive officer of the institution or University-affiliated organization; and
9. Recognizing that board members' authority is collective, not individual, and only arises from their participation with other members of the board when it is officially convened.

2. UNC Policy 200.7 (III)(C). Ethical Conduct. Board members shall adhere to high standards of ethical conduct by complying with laws, regulations, and University policies applicable to their service as board members and public officials, which include the obligations to:

1. Exercise authority honestly and fairly, free from impropriety, threats, favoritism, and undue influence, as required by the State Ethics Act.
2. Keep confidential all information and records that are required by law to be kept confidential, including, but not limited to, personnel records and information, student records and information, attorney-client communications, and closed session deliberations and information; . . .
4. Bring matters of concern, potential or real conflicts of interest, and reports of unlawful and/or noncompliant activity to the attention of the appropriate institutional or organizational officer, such as the president, chancellor, board chair, or committee chair;
5. Avoid any personal or business interest that may conflict with the member's responsibilities to the institution or University-affiliated organization;
6. Avoid even the appearance of impropriety when conducting the institution's or University-affiliated organization's business; and
7. Recuse oneself from consideration of matters during meetings when required.

3. UNC Policy 200.7 (III)(D) Support for the Institution. Board members shall discharge their duties to the institution with care, skill, prudence, and diligence by:

1. Exercising the degree of diligence, care, and skill that a prudent individual familiar with such matters would use under similar circumstances in a like position;
2. Acting in good faith with the best interest of the institution or University-affiliated organization in mind;
3. Conducting oneself, at all times, in furtherance of the institution's or University-affiliated organization's goals and not the member's personal or business interests;
4. Providing oversight to ensure that the institution's or University-affiliated organization's resources are dedicated to the fulfillment of its mission; and

Becoming knowledgeable about issues that affect the University and seeking to understand the educational needs and desires of all the State's citizens, and their economic, geographic, political, racial, gender, and ethnic diversity.

Discussion

UNC Policy 200.7 (III)(B)(1) and (III)(B)(3). With regard to Provisions III(B)(1) and III(B)(3) of the Policy, Moore and Lewis have a responsibility to review and inquire about materials that involve East Carolina University. Further, they have a similar obligation to seek information from and consult appropriately with the ECU Chancellor to gain additional context, make well-informed policy decisions, and carry out responsibilities for board-level oversight and monitoring of the affairs of the institution.

We believe these obligations extend to reviewing and soliciting information about the Student Body President elections, the Student Government Association and other student organizations, and related matters. In their role as Trustees, Moore and Lewis could have easily inquired about, and been provided with, university materials and records relating to the Student Body President and student elections. This would include the Student Government Associations Bylaws that specify the rules for the student elections. Furthermore, under the Policy, Lewis and Moore were required to seek information about these matters from, and consult appropriately with, the ECU Chancellor or, as delegated by the Chancellor, to the Vice Chancellor for Student Affairs (who has administrative oversight over student government matters at ECU), so that they could gain additional context, make well-informed policy decisions, and carry out responsibilities for board-level oversight and monitoring of the affairs of East Carolina University.

Instead of complying with the Policy, Moore and Lewis are believed to have initiated contact with, and directed their questions to, an undergraduate-aged student who was, in essence, a stranger to them (except for what they apparently learned by carefully reviewing the student's Facebook page in advance of their contacting the student via a Facebook message and phone calls). In fact, as reflected on the recording, much of the almost hour-long meeting involved Lewis and Moore questioning the student about matters relating to the Student Body President election, including possible candidates for the position, the support of various student organizations for those candidates, and the rules for the election, such as finance rules. It is without question that ECU's students should be able to expect to be able to engage in appropriate interactions with members of the ECU Board of Trustees and students, should not be put in positions by Trustees whereby the Trustees apparently seek to exploit students for their personal political agendas. We demand better for ECU's students and their parents, faculty and staff, and alumni.

UNC Policy 200.7 (III)(B)(2). As ECU Trustees, Moore and Lewis have a duty to understand and appropriately participate in the oversight function allocated to the Board with respect to finances and effectiveness of the institution. There is little room for doubt that Lewis' and Moore's multiple admissions that they voted in favor of a student athletic fee increase (that they represent resulted in a million dollar fee increase for students) to "punish" Trustee and Student Body President Colin Johnson because he did not vote for Trustee Angela Moss for Board Chair is a gross and egregious violation of this provision. Moreover, we believe that the requirement of Section (III)(B)(2) extends to appropriate interactions with, and respect for, students who seek to, or do serve as, ECU's Student Body President. This is especially evident in light of the Student Body President's role in shared governance not only at ECU, but at the other UNC System constituent institutions. The Student Body President is a voting member of the Board of Trustees and is elected to serve as the student's representative and voice on the Board. Perverting the Student Body President's role in University governance for personal political goals does not demonstrate an understanding of or appropriate participation in the Board's oversight function. Moreover, if the types of interactions that are believed to have occurred between Moore and Lewis and the student were permitted under UNC or ECU policy, it would undermine the fundamental independence of the Student Body President to represent the students as a voting member of the Board, frustrate the Board's role in oversight of the University, and, inevitably, expose any future Student Body President and candidate for that position to gross exploitation by

any Trustee or Trustees who sought to build a political coalition on the Board by vote trading and providing secret material donations of support to the Student Body President or student candidates. We note that the Student Body President is an undergraduate student who is being educated at East Carolina University to better his future; the Student Body President is not, and should not, be treated by other members of the Board of Trustees as an elected official working on Jones Street who would otherwise be subject to bare knuckle politics as usual.

UNC Policy 200.7 (III)(B)(7)-(8). As ECU Trustees, Lewis and Moore have a responsibility to refer matters of administration and management to the Chancellor for handling. Further, they must respect and follow executive leadership, management, and reporting lines when communicating with ECU and refraining from directing matters of administration or executive action except through the ECU Chancellor. As reflected on the recording, Lewis and Moore were apparently concerned about numerous matters of administration, including, but not limited to, student government and the student body president elections, enrollment declines, athletic finances, Greek organizations, the number of interim administrators currently working on campus, and the Board's compliance with the North Carolina Open Meetings law. As opposed to discussing these issues with a student and seeking to provide secret financial and other support to have that student elected as Student Body President to advance their personal political agenda, Lewis and Moore should have formally addressed these issues with the ECU Chancellor and the University Administration. While Trustee Moore may not like the fact that the Board does not "have a lot of control of the operation of the University", pursuant to applicable North Carolina law, the Code of the University of North Carolina (including the delegation of authority to the Boards of Trustees from the Board of Governors), and the policies and regulations of the University of North Carolina and East Carolina University, the "Executive Council" (which we note is led by the ECU Chancellor and composed of the University's senior leadership), "Vice Chancellors, Provost, Chancellor" are, in fact, charged with the leadership of the University and oversee ECU operations on a day-to-day basis. Having a secret discussion of matters of administration and management with a member of ECU who is an undergraduate student shows an apparent gross disrespect for the University's Administration and a clear failure to follow executive leadership, management, and reporting lines when communicating with a member of the University community. Moreover, the recording suggests that Lewis and Moore may have intended to directly engage in matters of administration and management including after they secured a majority of votes on the Board and elected a new Board chair. Afterall, Lewis wanted to "stop the madness."

B. Duties, Responsibilities and Expectations of Board Members- UNC Policy 200.7(III)(C)- Ethical Conduct.

We also believe that the information on the Recording and Text Message indicate that Moore and Lewis apparently violated the following sections of the Policy:

UNC Policy 200.7 (III)(C). Ethical Conduct. Board members shall adhere to high standards of ethical conduct by complying with laws, regulations, and University policies applicable to their service as board members and public officials, which include the obligations to:

1. Exercise authority honestly and fairly, free from impropriety, threats, favoritism, and undue influence, as required by the State Ethics Act.
2. Keep confidential all information and records that are required by law to be kept confidential, including, but not limited to, personnel records and information, student records and information, attorney-client communications, and closed session deliberations and information; . . .

4. Bring matters of concern, potential or real conflicts of interest, and reports of unlawful and/or noncompliant activity to the attention of the appropriate institutional or organizational officer, such as the president, chancellor, board chair, or committee chair;
5. Avoid any personal or business interest that may conflict with the member's responsibilities to the institution or University-affiliated organization;
6. Avoid even the appearance of impropriety when conducting the institution's or University-affiliated organization's business; and
7. Recuse oneself from consideration of matters during meetings when required.

Discussion

UNC Policy 200.7 (III)(C)(1) and UNC Policy (III)(C)(6). We strongly believe that Trustees should "exercise authority honestly and fairly, free from impropriety, threats, favoritism, and undue influence." Moreover, ECU Trustees must avoid even the appearance of impropriety when conducting ECU's business. The interactions between Lewis and Moore and the undergraduate student and actions as members of the Board with regard to their vote in favor of the student athletic fee increase do not reflect that they were exercising their authority honestly and fairly, free from impropriety . . . favoritism, and undue influence", nor that they avoided even the appearance of impropriety" when conducting ECU's business. To the contrary, Lewis and Moore appear to have exercised their authority as members of the Board of Trustees to advance their personal political agenda both in seeking to support the student to be elected Student Body President to get "seven votes" to elect a new Board Chair and to "punish" the current Student Body President for voting not voting for Trustee Angela Moss to be elected as Board Chair. Clearly, Lewis and Moore's efforts to keep secret their meeting with the student and their promises of support for the student's campaign for Student Body President and votes against a future student athletic fee increase suggest impropriety. Otherwise, why would the secrecy of their actions and promises be so important to them?

UNC Policy 200.7 (III)(C)(2). We strongly believe that confidentiality is a critical component of ethical board conduct. As ECU Trustees, Lewis and Moore have access to confidential information from all areas of the institution. Because of that access, they also have a responsibility to keep confidential all information and records that are required by law to be kept confidential, in this instance, student records. As apparent in the recording, Lewis and Moore offered to get names and contact information for presidents of Greek organizations on campus in order to assemble a support base for the student's campaign for Student Body President. Specifically, Moore said, "We can do that. We can do that." Lewis followed with, "I mean, we could get that through Virginia" (Virginia Hardy, Vice Chancellor for Student Affairs). This information, if provided to Lewis and Moore, would be protected student record information under The Family Educational rights and Privacy Act ("FERPA"). While basic directory information of students is not protected, such as name and enrollment status, any other student records, including educational records and contact information, is protected under FERPA. Lewis and Moore providing student contact information to this specific student in order to garner support for her campaign would be a direct violation of not only UNC Policy 200.7 (III)(C)(2), but also FERPA. Further, soliciting this information from a senior administrator on campus demonstrates a disregard for the administrators position at this institution and compromises senior leadership.

UNC Policy 200.7 (III)(C)(5). As ECU Trustees, Lewis and Moore have a responsibility to avoid any personal or business interest that may conflict with the member's Responsibilities to the institution or University-affiliated organization. We believe that the personal interest against Student Body President Colin Johnson conflicted with the responsibility of Lewis and Moore to the institution. On the recording, Lewis and Moore clearly state that they voted in favor of a proposed student fee increase to punish Colin Johnson for not voting for Angela Moss to be Chair of the ECU Board of Trustees. We again note they took this action despite their knowledge that they would vote against a future increase because, as Lewis stated, "We don't want to put it on the backs of the students." Lewis also stated, "Colin knew it. We pretty much told

him, 'Look Colin. If you vote with us, we won't do it.'" Later in the recording, Lewis continues, "At that point, when he said something to us about going up on fees, to be honest with you, we didn't give a damn." In addition, he said, "Because he – he voted against us; we didn't care." And further, he said, "You know, just to punish him if nothing else." As a result of Johnson not voting for Moss, Lewis and Moore voted in favor of an athletic fee increase that they state require the students to pay "over a million dollars." As stated by Lewis in regard to opposing the future student athletic fee increase, "for a million dollars we don't give a shit. We don't care." We believe that even though Lewis and Moore were fundamentally against an athletic fee increase, they voted to approve the fee as a form of "punishment" for Johnson.

C. Duties, Responsibilities and Expectations of Board Members- UNC Policy 200.7(III)(D)- Support for the Institution

We also believe that the information on the Recording and Text Message indicate that Moore and Lewis apparently violated the following sections of the Policy:

UNC Policy 200.7 (III)(D) Support for the Institution. Board members shall discharge their duties to the institution with care, skill, prudence, and diligence by:

1. Exercising the degree of diligence, care, and skill that a prudent individual familiar with such matters would use under similar circumstances in a like position;

2. Acting in good faith with the best interest of the institution or University-affiliated organization in mind;

3. Conducting oneself, at all times, in furtherance of the institution's or University-affiliated organization's goals and not the member's personal or business interests;

4. Providing oversight to ensure that the institution's or University-affiliated organization's resources are dedicated to the fulfillment of its mission; and

5. Becoming knowledgeable about issues that affect the University and seeking to understand the educational needs and desires of all the State's citizens, and their economic, geographic, political, racial, gender, and ethnic diversity.

Discussion

UNC Policy 200.7 (III)(D)(1)-(5).

II. <u>Lewis and Moore's Unsanctioned Investigation of Allegations Regarding Former Interim Chancellor Dan Gerlach</u>

The Investigative Report indicates that Lewis and Moore engaged in an unsanctioned investigation of allegations against former Interim ECU Chancellor Dan Gerlach ("Gerlach"). The Investigative Report states, in relevant part, "We have not found any information indicating that Lewis and Moore either sought or received approval from Dr. Roper or the Board of Governors to confer with Gerlach or to conduct their own investigation of a University matter." The Investigative Report further suggests:

1. Lewis and Moore conducted interviews of material fact witnesses, including former Interim Chancellor Dan Gerlach, employees at Club 519 and

   and possibly Olivia Ruth Roberson (who reported that on or before Saturday, September 28, 2019 two "investigators" interviewed her to determine if she was the woman pictured in the photographs of Gerlach);

2. Lewis and Moore communicated information, including via e-mail, concerning the investigation of Dan Gerlach to Governor Harry Smith as opposed to President Roper, Chair Davenport, or Acting Chancellor Mitchelson;

3. Lewis and Moore failed to fully cooperate with the investigation conducted by Womble Bond Dickenson attorneys under the auspices of the UNC System Office by "refusing to provide their phones for imaging, stating they had lots of personal information on them" and "not providing text messages from their phones."

4. Lewis and Moore communicated their intent not to cooperate with the UNCSO Investigation, respectively, in both a text sent to, and a voicemail left for, the Chair of the UNC Board of Governors, Mr. Randy Ramsey on October 12, 2019;

We note that Trustees Davenport and Miller met with Lewis and Moore in November 2019 at a Board meeting regarding this matter. At that meeting Lewis and Moore were made aware that they had apparently violated the Policy and were provided an opportunity to respond to the Investigative Report. During that meeting Lewis and Moore represented that they would conduct their activities as Board members in compliance with the Policy. During that same meeting Lewis and Moore participated in ethics training provided to the Board by representatives of the Board of Governors and the UNC System Office. We have no doubt that Lewis and Moore are aware, and have been aware, in fact, of the existence and requirements of the Policy.

A. Duties, Responsibilities and Expectations of Board Members- UNC Policy 200.7(III)(B)-(D)

We believe that the Investigative Report indicates that Lewis and Moore apparently violated the following sections of the Policy:

UNC Policy 200.7 (III)(B). Participation in Policy and Oversight Functions. Board Members are expected to prepare for meetings; actively contribute to the work of the Board; and act in accordance with the governance, oversight, and advisory functions allocated to the Board by:

2. Understanding and participating appropriately in the oversight function allocated to the board with respect to the finances and effectiveness of the institution or University-affiliated organization;
3. Seeking information from and consulting appropriately with the chief executive officer of the institution or University-affiliated organization to gain additional context, make well-informed policy decisions, and carry out responsibilities for board-level oversight and monitoring of the affairs of the institution or University-affiliated organization; . . .
7. Referring matters of administration and management to the chief executive officer of the institution or University-affiliated organization for handling;

8. Respecting and following executive leadership, management, and reporting lines when communicating with the University and the constituent institutions, and refraining from directing matters of administration or executive action except through the chief executive officer of the institution or University-affiliated organization; and
9. Recognizing that board members' authority is collective, not individual, and only arises from their participation with other members of the board when it is officially convened.

UNC Policy 200.7 (III)(C) Ethical Conduct. Board members shall adhere to high standards of ethical conduct by complying with laws, regulations, and University policies applicable to their service as board members and public officials, which include the obligations to:

1. Exercise authority honestly and fairly, free from impropriety, threats, favoritism, and undue influence, as required by the State Ethics Act.
2. Keep confidential all information and records that are required by law to be kept confidential, including, but not limited to, personnel records and information, student records and information, attorney-client communications, and closed session deliberations and information;
3. Comply with North Carolina open meetings and public records laws;
4. Bring matters of concern, potential or real conflicts of interest, and reports of unlawful and/or noncompliant activity to the attention of the appropriate institutional or organizational officer, such as the president, chancellor, board chair, or committee chair;
5. Avoid any personal or business interest that may conflict with the member's responsibilities to the institution or University-affiliated organization;
6. Avoid even the appearance of impropriety when conducting the institution's or University-affiliated organization's business; and
7. Recuse oneself from consideration of matters during meetings when required.

UNC Policy 200.7 (III)(D) Support for the Institution. Board members shall discharge their duties to the institution with care, skill, prudence, and diligence by:

1. Exercising the degree of diligence, care, and skill that a prudent individual familiar with such matters would use under similar circumstances in a like position;
2. Acting in good faith with the best interest of the institution or University-affiliated organization in mind;
3. Conducting oneself, at all times, in furtherance of the institution's or University-affiliated organization's goals and not the member's personal or business interests;
4. Providing oversight to ensure that the institution's or University-affiliated organization's resources are dedicated to the fulfillment of its mission; and
5. Becoming knowledgeable about issues that affect the University and seeking to understand the educational needs and desires of all the State's citizens, and their economic, geographic, political, racial, gender, and ethnic diversity.

Discussion

UNC Policy 200.7 (III)(B)(2)-(3),(7)-(9). As ECU Trustees, Lewis and Moore had a duty to follow the executive leadership and management reporting lines to share and alter University leadership of the allegations and information they obtained related to former Interim Chancellor Gerlach. Information presented in the Investigative Report indicates that Lewis and Moore acted independently to gather information and conduct their own investigation into the matter, without adherence to the reporting lines and executive leadership of ECU and the University system. Their actions were independent conduct done

outside the collective authority of the board. Board members should not act as individuals without the collective authority of the board and should respect the University's executive leadership such that it is the board members duty to refrain from directing matters of administration except through the Chancellor or the proper reporting lines and leadership.

UNC Policy 200.7 (III)(C)(1)-(7). With regard to the expectations of ethical conduct for ECU Trustees, Lewis and Moore appear to have exercised their authority as members of the Board of Trustees to advance their personal political agenda in exercising an independent and unauthorized investigation into the allegations related to Dan Gerlach, by failing and refusing to cooperate with the authorized investigation, by refusing to provide evidence or information to the investigators, and by communicating about the matter outside the established reporting lines and independent of the collective authority of the board. We believe that the conduct of Lewis and Moore as demonstrated by the Investigative Report do not reflect that actions to exercise their authority "honestly and fairly, free from impropriety . . . favoritism, and undue influence", nor that they avoided "even the appearance of impropriety" when conducting ECU's business. Lewis and Moore appear to have exercised their authority as members of the Board of Trustees to advance their personal political agenda and failed to adhere to the high standards of ethical conduct required of Board Members.

UNC Policy 200.7 (III)(D)(1)-(5). As members of the Board of Trustees, we believe that support for the institution is paramount and a fundamental responsibility of Trustees. The information contained in the Investigative Reports demonstrates conduct by Lewis in Moore that is in direct conflict with the principles and expectations articulated in UNC Policy 200.7 (III)(D) (1)-(5), including the expectation that Trustees act "in good faith with the best interests of the institution... in mind"; and the expectation that a Trustee "conduct[] oneself, at all times, in furtherance of the institution's...goals and not the member's personal or business interests." As such, the failure to cooperate with the university investigation into the allegations surrounding Dan Gerlach, including the failure to share evidence and refusal to cooperate with the investigator, is contrary to the expectations of the Policy. The actions related to the independent investigation by Moore and Lewis demonstrate action that may be in furtherance of personal interests and not University goals, and a failure to act in good faith with the best interest of the University in mind.

Conclusion

UNC Policy 200.7 very deliberately articulates the duties, responsibilities, expectations and standards of conduct for members of the boards of trustees of the constituent institutions of the UNC System. Every member of the ECU Board of Trustees has been provided a copy of this policy, and collectively received specific training on this policy at the July 2019 orientation meeting of the Board. Additionally, you will recall being present with this Board when they reviewed the policy at the meeting in November 2019. Every member of the ECU Board of Trustees is familiar with the document and the expectations contained within.

This supplemental information has been provided to outline what appears to be clear violations of UNC Policy 200.7 by Trustees Moore and Lewis. We ask that the Committee on University Governance and the Board of Governors conduct a thorough review of this matter and take the necessary action, up to and including removing and requesting the removal of, respectively, Phil Lewis and Robert Moore from the ECU Board of Trustees.

East Carolina University is in a unique position. Having gone through several years of leadership and governance issues, we are in the middle of a search for a new chancellor, someone who hopefully will lead this institution for the better part of the next decade. As a part of the search, the committee has held listening sessions with many different constituent groups. One theme that continues to emerge from every session - whether we're talking with students, faculty, alumni – all have consistently expressed frustration with governance issues and the impact they have on campus and how it affects the university. Even amongst all the noise, ECU continues to do the its business – educating students, providing health care and resources to rural Eastern North Carolina, and fundamentally transforming this region. ECU is much too important to the state of North Carolina to allow this type of behavior to continue, and frankly, ECU deserves better.

Yours,

Vern Davenport
Chair

Fielding Miller
Vice Chair

Vince Smith
Secretary and Chair of the Audit, Risk Management,
Compliance and Ethics Committee

cc: Phil Lewis
Robert Moore
Randy Ramsey
Tom Shanahan
Karin Szypszak

MEETING OF

UNKNOWN STUDENT

BY PHIL LEWIS AND ROBBIE MOORE

Date of Recording: January 13, 2020

GREENVILLE, NORTH CAROLINA;

MEETING

PHIL LEWIS: So, are you back in school now?

STUDENT: [redacted]

PHIL LEWIS: [redacted] That's good.

STUDENT: [redacted]

PHIL LEWIS: Okay.

STUDENT: [redacted]

PHIL LEWIS: [redacted]

STUDENT: [redacted]

PHIL LEWIS: You'll be - okay.

STUDENT: [redacted]

PHIL LEWIS: [redacted]

STUDENT: [redacted]

PHIL LEWIS: [redacted]

STUDENT: [redacted]

PHIL LEWIS: Yea, I was telling Robbie, I told you about the, you know, the Colin deal. If he was as smart as he thinks he is, we'd be okay.

STUDENT: [redacted]

PHIL LEWIS: Oh, he's a nice guy. Oh, we get along with him, but it's just he threw us a bunch of curve balls and he very much - one thing that we are trying to do is trying to change what's going on at East Carolina where the students are - everything's been - I mean, our - right the fee increase last year for athletics was $75. They knew it was going to be $75 this year. Colin knew it. We pretty much told him, "Look, Colin. If you vote with us, we won't do it." It costs the students 1.3 million.

STUDENT: [redacted]

PHIL LEWIS: No, listen, he's on athletics, 12 million dollars.

ROBBIE MOORE: Twelve million dollars this year.

PHIL LEWIS: And you know, they why other - just

like Clemson didn't sell out the last four years - football and we're out there putting 60 mil- we didn't, but the current people that are still there ---

STUDENT: [redacted]

PHIL LEWIS: --- between you and me are responsible for that 60 million dollar increase over there for that ---

ROBBIE MOORE: South Side Expansion

PHIL LEWIS: Which is nice ---

ROBBIE MOORE: The students never get to use it.

PHIL LEWIS: --- but you use it six times a year and we're losing 12 million dollars.

STUDENT: [redacted]

ROBBIE MOORE: (inaudible)

STUDENT: [redacted]

PHIL LEWIS: Still use -- [redacted]

STUDENT: [redacted]

PHIL LEWIS: Okay.

(speaking to waitress)

PHIL LEWIS: [redacted]

STUDENT: [redacted]

PHIL LEWIS: Okay.

STUDENT: [redacted]

PHIL LEWIS: Okay.

STUDENT: [redacted]

PHIL LEWIS: [redacted]

STUDENT: [redacted]

PHIL LEWIS: [redacted]

STUDENT: [redacted].

PHIL LEWIS: I sat beside [redacted] at the basketball game. [redacted]

ROBBIE MOORE: Uh-huh.

PHIL LEWIS: I sat beside [redacted] at the basketball game the other night. I was going to say something, but I said, "Naw, I think I'll wait and talk to [redacted] before."

STUDENT: [redacted]

PHIL LEWIS: [redacted] a good guy.

STUDENT: [redacted]

PHIL LEWIS: [redacted] smart. [redacted] a smart [redacted]

ROBBIE MOORE: So, what do you think helped Colin win last year?

STUDENT: [redacted]

[redacted]

PHIL LEWIS: Right.

STUDENT: [redacted]

ROBBIE MOORE: He loves - he just loves that stuff.

STUDENT: [redacted]

PHIL LEWIS: I asked him probably two months ago was anybody there to take his place and he pretty much made it sound like to me that there was nobody that could take his place, number one, and he just - he didn't know anybody that was going to take it.

ROBBIE MOORE: Yeah, we went and met with him over at the SGA office, that's when he told us that.

PHIL LEWIS: Yeah.

STUDENT: [redacted]

PHIL LEWIS: Tell me about [redacted].

STUDENT: [redacted]

[redacted]

PHIL LEWIS: Yeah.

STUDENT: [redacted]

ROBBIE MOORE: That's one of the problems ---

STUDENT: [redacted]

ROBBIE MOORE: --- that's one of the problems at East Carolina, there's nobody that - if they want to be Greek life, it's not a real reason to come to East Carolina.

STUDENT: [redacted]

PHIL LEWIS: Is [redacted] going to be a [redacted] this year?

STUDENT: [redacted]

PHIL LEWIS: Did [redacted] ask you if you were going to run?

STUDENT: [redacted]

PHIL LEWIS: Do you think [redacted] tied to Colin at all?

STUDENT: [redacted]

[redacted]

PHIL LEWIS: I'm just ---

STUDENT: [redacted]

PHIL LEWIS: --- we're just trying to figure out where the groundwork is and maybe - you know, you mentioned Max. We both like Max. Max called him last night, we just don't want to jump Max on what we're doing because he's voting on the other side because he's one of those - he's been there for seven years, he's the one who voted to spend the 60 million dollars.

STUDENT: [redacted]

PHIL LEWIS: And all we're trying to do is - I mean, enrollment is going down. It's not going up.

STUDENT: [redacted]

PHIL LEWIS: I mean, one thing they don't tell is that we're down a thousand students from two and a half years ago in credit hours.

STUDENT: [redacted]

PHIL LEWIS: And that's - that right there ---

ROBBIE MOORE: We're going to be down again this spring semester.

PHIL LEWIS: I think we're going to lose 24 million this year.

STUDENT: [redacted]

[redacted]

[redacted].

PHIL LEWIS: Yeah.

STUDENT: [redacted]

PHIL LEWIS: Yeah.

STUDENT: [redacted]

PHIL LEWIS: Wilmington is doing a good job. App State is doing a good job.

STUDENT: [redacted]

PHIL LEWIS: State, Elon is doing a good job. They're all - and High Point is doing a great job (inaudible)

ROBBIE MOORE: We're able to spend a lot more money to get students now it's just not (inaudible)

STUDENT: [redacted]

ROBBIE MOORE: (inaudible) there's 29 areas that are like East Carolina's "catch me" zone.

STUDENT: [redacted]

PHIL LEWIS: Really?

STUDENT: [redacted]

PHIL LEWIS: Clayton is not that big.

STUDENT: [redacted]

PHIL LEWIS: Oh, really?

STUDENT: [redacted].

PHIL LEWIS: That's where my sisters live. So, what do you think the chances are that you'd run, and would you even want to (inaudible)

STUDENT: [redacted]

PHIL LEWIS: Right.

STUDENT: [redacted]

ROBBIE MOORE: Yeah.

STUDENT: [redacted]

PHIL LEWIS: Okay.

STUDENT: [redacted]

PHIL LEWIS: Do you think [redacted] has already got a VP in mind?

STUDENT: [redacted]

[redacted]

PHIL LEWIS: (inaudible)

ROBBIE MOORE: Like February 21st.

STUDENT: [redacted]

PHIL LEWIS: It was earlier this year, I think, than last year.

STUDENT: [redacted]

PHIL LEWIS: He knew what he wanted (inaudible)

STUDENT: [redacted]

PHIL LEWIS: You can't spend but a thousand dollars, though, right?

STUDENT: [redacted]

PHIL LEWIS: If he knew all of what - what not to

do and what to do, I wonder why he - why he did some of the things he did?

STUDENT: [redacted]

PHIL LEWIS: [redacted].

STUDENT: [redacted]

PHIL LEWIS: [redacted]

STUDENT: [redacted]

PHIL LEWIS: [redacted]

STUDENT: [redacted].

PHIL LEWIS: Oh.

STUDENT: [redacted]

PHIL LEWIS: We're just trying to understand, and you don't have a lot of time to make up your mind.

STUDENT: [redacted]

PHIL LEWIS: [redacted]

STUDENT: [redacted]

PHIL LEWIS: [redacted]

STUDENT: [redacted]

PHIL LEWIS: Uh-huh.

STUDENT: [redacted]

PHIL LEWIS: Well, do you think that this [redacted] would be tough to beat?

STUDENT: [redacted]

PHIL LEWIS: He acts like he's a little older than he is.

STUDENT: [redacted]

PHIL LEWIS: Right.

STUDENT: [redacted]

ROBBIE MOORE: Did you know the guy before [redacted]

STUDENT: [redacted]

PHIL LEWIS: Well, but I - but [redacted] was kind of in Colin's camp, wasn't he?

STUDENT: [redacted]

[redacted]

PHIL LEWIS: I know that [redacted] and Colin were real close.

STUDENT: [redacted]

PHIL LEWIS: I mean, I like - we like Colin. I mean, I don't really know him. I don't really care. All I know is that the students are paying a million - over a million dollars more than they didn't have to pay if he had just (inaudible). At that point, when he said something to us about going up on fees, to be honest with you, we didn't give a damn.

STUDENT: [redacted]

PHIL LEWIS: Because he - he voted against us; we didn't care.

ROBBIE MOORE: And we didn't.

PHIL LEWIS: You know, just to punish him if nothing else.

STUDENT: [redacted]

PHIL LEWIS: He knew that they were going to - he knew that the $75 was going to be again this year was going to be voted on.

STUDENT: [redacted]

ROBBIE MOORE: It's going to be $50 next year.

PHIL LEWIS: Yeah, they're going to keep going up unless somebody goes in there and says, "Look, stop it. Stop the" - and really, we're just looking kind of to stop the madness. I mean, East Carolina can't keep sitting there and losing enrollment. I mean, I was at the beach this weekend, Table 9 and this lady comes up with her husband and we get to talking and she works at East Carolina and she works in the [redacted]

ROBBIE MOORE: [redacted]

PHIL LEWIS: --- she said - she said, [redacted] and I got a job over there thinking I was really going up in the world." And she said, "It's terrible. They don't know what the hell they're doing."

STUDENT: [redacted]

PHIL LEWIS: Everybody is interim over - everywhere, it's interim this, interim that, and interim, you know.

STUDENT: [redacted]

ROBBIE MOORE: Wow.

STUDENT: [redacted]

PHIL LEWIS: What are you studying?

STUDENT: [redacted]

[redacted]

PHIL LEWIS: I just think it's - you know, we just - we just kind of got brought in to try to get some common sense about it and that's what we've tried to do, but we're having a hard time. Just like the last meeting we had, Trustees meeting we had, we do nothing. I mean, we ---

ROBBIE MOORE: The meeting started at 9:00, we were done - we finished at 10:30.

PHIL LEWIS: And get this, how much - do you know how much we do between the meetings?

STUDENT: [redacted]

ROBBIE MOORE: There's so many people that think that trustees have a lot of control of the operation of the university.

STUDENT: [redacted]

ROBBIE MOORE: I'm in my seventh month now and it's just not - something may change, but it's just not true at this point.

PHIL LEWIS: I was on that Catholic - I'm not Catholic, but I was on that Catholic board. I did way much more on the St. Peters board than I ever thought about here.

STUDENT: [redacted]

PHIL LEWIS: Just nothing. You just do nothing.

I mean, they - they don't want you to do anything.

STUDENT: [redacted]

(speaking to waiter)

ROBBIE MOORE: The Executive Council to the Vice Chancellors, Provost, the Chancellor (inaudible)

STUDENT: [redacted]

ROBBIE MOORE: Without - unless the trustees get involved, they make it without any input.

STUDENT: [redacted]

ROBBIE MOORE: (inaudible)

PHIL LEWIS: So. I mean, I heard so many different stories. I heard about Cecil, some people liked him, some people didn't like him. Then I heard about, then dan, we liked Dan, but Dan was everything Cecil wasn't.

STUDENT: [redacted]

PHIL LEWIS: I mean, they were polar opposites, but it kind of would help if we had somebody who could, I mean, and I don't know how this chancellor search is going to work. I mean, it's ---

STUDENT: [redacted]

PHIL LEWIS: Well, we have an interim.

ROBBIE MOORE: We have the Provost.

STUDENT: [redacted]

PHIL LEWIS: He's 70 years old.

STUDENT: [redacted]

PHIL LEWIS: Yeah, Ron Mitchelson is 70 years old. He's a good guy. He was the Provost. Good guy and it's probably who they should've chose to start with. Just like Dan. The reason why Dan didn't keep his job wasn't because he was down drinking, is they caught him driving.

STUDENT: [redacted]

PHIL LEWIS: That was - that's what got him.

STUDENT: [redacted]

PHIL LEWIS: Yeah, I can see why it would be, you know? Hell, it was confusing to us.

ROBBIE MOORE: Yeah, because we were kept in the dark the entire 30 days when this law firm did an investigation.

STUDENT: [redacted]

PHIL LEWIS: They had some law firm, but BOG is the heavy hand up in Chapel Hill and they hired some law firm out of Raleigh to do an investigation and anybody could - I mean, a 10-year-old could've done better than what they did. All they were trying to do was come up with the answer to what they wanted to come up with.

STUDENT: [redacted]

PHIL LEWIS: So - so, when do you think you'll probably know. I mean, because what - we'd love to talk to you about maybe, I mean, I saw you - I looked on your Facebook and you had a [redacted] t-shirt and we kind of liked that.

STUDENT: [redacted]

PHIL LEWIS: Oh, good.

STUDENT: [redacted]

PHIL LEWIS: Oh, yeah.

STUDENT: [redacted]

PHIL LEWIS: [redacted]

STUDENT: [redacted]

PHIL LEWIS: Where do you go duck hunting?

STUDENT: [redacted]

PHIL LEWIS: Down there close to [redacted], it's low land, and there's people all over that place duck hunting.

STUDENT: [redacted]

[redacted]

PHIL LEWIS: [redacted]

STUDENT: [redacted]

PHIL LEWIS: Yeah.

STUDENT: [redacted]

[redacted]

ROBBIE MOORE: Oh, do you?

STUDENT: [redacted]

PHIL LEWIS: [redacted].

STUDENT: [redacted]

[redacted]

PHIL LEWIS: [redacted]

[redacted]

STUDENT: [redacted].

PHIL LEWIS: Yeah.

STUDENT: [redacted]

[redacted]

PHIL LEWIS: One of the Murphy - the wife of the younger Murphy is on the - she is the vice chair of the Board of Governors in (inaudible)

ROBBIE MOORE: Wendy Murphy.

STUDENT: [redacted].

PHIL LEWIS: Wendy Murphy.

STUDENT: [redacted]

[redacted]

[redacted]

PHIL LEWIS: We had a political fundraiser for some guys, and she showed up with a helicopter you know.

STUDENT: [redacted].

PHIL LEWIS: Yeah, one (inaudible) land in the helicopter.

STUDENT: [redacted]

PHIL LEWIS: They own the golf ---

STUDENT: [redacted].

PHIL LEWIS: --- yeah, they own.

STUDENT: [redacted]

PHIL LEWIS: [redacted]

STUDENT: [redacted]

PHIL LEWIS: It's not for everybody. In fact, it's not - I mean, there's more and more people it's not for because they want to go in debt and do something (inaudible)

STUDENT: [redacted]

[redacted]

(speaking to waiter)

PHIL LEWIS: So, do you think there's a chance if you don't run that this [redacted] will be [redacted] running ---

STUDENT: [redacted]

PHIL LEWIS: --- or do they try to have a ---

STUDENT: [redacted].

PHIL LEWIS: How [redacted] funding [redacted]?

STUDENT: [redacted]

PHIL LEWIS: We could donate. I mean, it's a free world.

STUDENT: [redacted]

[redacted]

PHIL LEWIS: Oh, I thought it was a thousand.

STUDENT: [redacted]

ROBBIE MOORE: Did you get the vote totals last year of what it was?

STUDENT: [redacted]

PHIL LEWIS: [redacted]

[redacted]

STUDENT: [redacted]

PHIL LEWIS: So, they go online and vote online?

STUDENT: [redacted]

ROBBIE MOORE: Yeah.

STUDENT: [redacted]

ROBBIE MOORE: It's the same way this year?

STUDENT: [redacted]

PHIL LEWIS: Do you think that - [redacted] I don't know ---

STUDENT: [redacted].

PHIL LEWIS: [redacted] did?

STUDENT: [redacted] ---

PHIL LEWIS: [redacted]?

STUDENT: [redacted]

ROBBIE MOORE: You have to be an undergraduate?

STUDENT: [redacted]

[redacted]

(speaking to waiter)

PHIL LEWIS: It's a lot to know.

ROBBIE MOORE: It is.

STUDENT: [redacted]

PHIL LEWIS: If you ran this time and [redacted] do you think [redacted] would help you?

STUDENT: [redacted].

PHIL LEWIS: They can get two or three other people.

STUDENT: [redacted]

a thing. A lot of people forget about those.

PHIL LEWIS: [redacted]

STUDENT: [redacted]

[redacted]

[redacted]

lost by like 50 votes, [redacted]

[redacted]

PHIL LEWIS: One of the people that just came on the Board of Trustees, is a girl that, you know, works in finances in Chapel Hill, her name is Angela Moss and she as the SGA president in 1999.

STUDENT: Uh-huh. Yeah, you told me about her on the phone.

PHIL LEWIS: And if you made a decision to run, we'd like to get you with her ---

STUDENT: [redacted].

PHIL LEWIS: --- and ---

STUDENT: She could help out?

PHIL LEWIS: Uh-huh.

STUDENT: [redacted]

PHIL LEWIS: [redacted]

STUDENT: [redacted]

PHIL LEWIS: How big is the [redacted] ---

STUDENT: [redacted]

PHIL LEWIS: Yeah.

STUDENT: [redacted]

PHIL LEWIS: Right.

STUDENT: [redacted]

PHIL LEWIS: Wow.

STUDENT: [redacted]

PHIL LEWIS: [redacted]

[redacted]

STUDENT: [redacted]

PHIL LEWIS: It's hard to believe that K.A. is a top tier.

STUDENT: [redacted]

PHIL LEWIS: So, you think [redacted] going to get some fraternity support?

STUDENT: [redacted]

[redacted] PHIL LEWIS: [redacted]

STUDENT: [redacted]

PHIL LEWIS: Do you think there's a chance that - I mean, do they have many times where they had three or four

people running?

STUDENT: [redacted]

PHIL LEWIS: So, talking about signs and things like that, name recognition is big, right?

STUDENT: [redacted]

PHIL LEWIS: So, what do they - Robbie is in the billboard business, so he's in the sign business so that's why I asked this question. [redacted] - how big could your sign be and [redacted]?

STUDENT: [redacted]

PHIL LEWIS: [redacted]

STUDENT: [redacted]

PHIL LEWIS: Like what?

STUDENT: [redacted]

PHIL LEWIS: Okay.

STUDENT: [redacted]

PHIL LEWIS: Your two thousand.

STUDENT: [redacted]

PHIL LEWIS: Mmmm. Well, it seems like getting out early is a big deal.

STUDENT: [redacted]

PHIL LEWIS: You might want to do it and having some help, you - somebody to help you organize. [redacted]

STUDENT: [redacted]

[redacted]

PHIL LEWIS: Do you have any idea if you did run, do you have anybody in the back of your mind of who ---

STUDENT: [redacted]

PHIL LEWIS: I was going to ask you if you thought that would hurt you.

STUDENT: [redacted]

PHIL LEWIS: Uh-huh.

STUDENT: [redacted]

ROBBIE MOORE: Right.

STUDENT: [redacted]

[redacted] able to get a list of all the presidents so that I could contact them [redacted]

PHIL LEWIS: Uh-huh.

STUDENT: [redacted]

ROBBIE MOORE: We can do that. We can do that.

STUDENT: Yeah, that's - it's pretty easy to get the information.

PHIL LEWIS: I mean, we could get that through Virginia.

STUDENT: Virginia?

PHIL LEWIS: Virginia Hardy.

STUDENT: Dr. Hardy?

PHIL LEWIS: Yeah.

STUDENT: But have you - have you spoken to the lady that ran for us - what's her name? I keep forgetting. That's on the board with you?

PHIL LEWIS: Angela Moss

STUDENT: Yeah, did you speak to her about meeting with me?

PHIL LEWIS: Um hum, um hum.

STUDENT: Okay. Gotcha.

ROBBIE MOORE: She's great. Angela's fantastic.

PHIL LEWIS: Really, she's very smart and she - she's kind of got it - I mean, we kind of want to keep this quiet because like Colin told Angela, "I'm going to vote for you for chair."

STUDENT: [redacted]

PHIL LEWIS: Up until five minutes before the vote and he had - she - I said, "Get your butt over there and talk to that guy."

ROBBIE MOORE: That was the morning of the trustees.

PHIL LEWIS: Morning of the trustees. And this little jerk, he never - he wasn't going to tell her.

ROBBIE MOORE: No.

STUDENT: [redacted]

PHIL LEWIS: Vern Davenport.

ROBBIE MOORE: Current chair now.

STUDENT: [redacted]

PHIL LEWIS: Which Vern is okay. The problem is, all these guys are for Raleigh and they have all these meetings in Raleigh, and they want to keep, you know ---

ROBBIE MOORE: They come into town for the trustee meetings and they're over there writing in their pads, yes, and what time are we going to get out so we can get out and

go back to Raleigh.

PHIL LEWIS: It's all for the show.

ROBBIE MOORE: It's all for show.

STUDENT: [redacted]

[redacted]

ROBBIE MOORE: That's what it is.

STUDENT: [redacted]

PHIL LEWIS: Yeah. We didn't realize it until we got on it. So, that's why we don't want Vern, that's why we don't want Max. I mean, most of these guys don't want - I mean, we got these problems that they don't want to talk about.

STUDENT: [redacted]

PHIL LEWIS: I mean, just like athletics. I mean, we've got all these problems in athletics and the athletic director is like who can I talk to?

ROBBIE MOORE: He just - he wants - he wants help.

PHIL LEWIS: He wants some help.

ROBBIE MOORE: He wants to cut three sports.

STUDENT: [redacted]

[redacted]

ROBBIE MOORE: Yeah, you have to balance them out, so it would probably be ---

PHIL LEWIS: Tennis?

ROBBIE MOORE: Tennis is probably one.

STUDENT: [redacted]

ROBBIE MOORE: I know. I do, too. And tennis and then one of the track and fields because indoor season and outdoor season counts as two separate sports.

STUDENT: [redacted]

ROBBIE MOORE: So - yep, there's been some talk and he's got all the numbers of what it would cost - what it would save us to cut three sports.

STUDENT: [redacted]

PHIL LEWIS: But Colin really likes where he is because he's - he was the game changer.

STUDENT: [redacted]

PHIL LEWIS: And you know, I'm a big boy. Just tell me you're not going to vote for this and we're fine, but don't sit here and lie to us and ---

ROBBIE MOORE: But since then, he really hasn't - he's done nothing. He doesn't speak at any of the trustee meetings.

STUDENT: [redacted]

ROBBIE MOORE: He has really zero input since then.

PHIL LEWIS: Yeah.

ROBBIE MOORE: They kind of used him as a pawn to get the chairmanship.

PHIL LEWIS: The only time I heard him speak was on the student fee.

ROBBIE MOORE: Well, he spoke. He passed out the resolution to - the student fees, and then, he spoke on it. And the chairman was like, "You got anything else?" And he's like, "No." And the vote was passed 12 to 1.

PHIL LEWIS: But we would've voted the other way, it's just that ---

ROBBIE MOORE: Yeah, we would've voted with him for sure.

PHIL LEWIS: I just wasn't going to - I wasn't going to support him. I mean, he - you gotta work together and we just want to see some change.

STUDENT: [redacted]

PHIL LEWIS: I mean, it's just so much. And look, we probably, on the other side, we think Max is probably the better one on the other side.

STUDENT: [redacted]

PHIL LEWIS: And we get along with Max. The problem is - and Max is a mess. Max has probably got three credit hours of all ECU.

STUDENT: [redacted]

PHIL LEWIS: I mean, he never graduated.

STUDENT: [redacted]

PHIL LEWIS: But he ---

ROBBIE MOORE: Oh, yeah. So, we've got three trustees that didn't graduate.

STUDENT: [redacted]

ROBBIE MOORE: From any university.

PHIL LEWIS: Nothing against it, I'm just ---

STUDENT: [redacted]

PHIL LEWIS: --- but he's one - he's supporting - he wants to support the old guard, which, you know, we understand, but we just want some change and whoever wins, the term will start July 1.

STUDENT: [redacted]

(speaking to waiter)

PHIL LEWIS: So, we're just out trying to - we appreciate you meeting with us and I want to make sure you and Robbie got y'all's contact ---

ROBBIE MOORE: Yeah.

PHIL LEWIS: --- you know, y'all get these other contacts and maybe, I guess, in the next 10 days you're going to make a decision.

STUDENT: [redacted]

PHIL LEWIS: I mean, I'm not going to - I would love for you to talk to Angela Moss.

STUDENT: [redacted]

ROBBIE MOORE: We can line that up and you can talk

to her over the phone.

PHIL LEWIS: I can line that up and you can talk to her by phone or she'll come down here. And - and confidentially, as long as you don't have to show where you get the money - I mean, we have no problem - I don't have any problems supporting you.

ROBBIE MOORE: Yeah.

PHIL LEWIS: Robbie can help you with signs and things like that. I mean, we - Robbie is really in with the legislature.

STUDENT: [redacted]

PHIL LEWIS: Like the guy that's probably going to be the next speaker of the house is one of his best friends, John Bell and we'd love to - and you know, if you get run in - I think - I don't - I don't think if I - if we go to Virginia and say, "Okay. We know - [redacted] running. We might have some" - I think she would do what she could. She wants to see us win, too, but she can't say it.

STUDENT: [redacted]

ROBBIE MOORE: She can't - she can't really get involved.

STUDENT: [redacted]

ROBBIE MOORE: But, you know ---

PHIL LEWIS: Her and Max (inaudible)

ROBBIE MOORE: --- she wants some changes bad.

PHIL LEWIS: They hate each other. We just, you know, but we, you know, we just want to make a change. We want to make a change and our - I think Robbie is the one that should be the chair. He's got time - number one, you've got to have the time and he's owns the billboard company, if he - if he goes to work one day fine he doesn't go to work one day, fine he does what he wants to do. Not bad at 48 years old to be able to do that.

ROBBIE MOORE: But just like Vern - Vern works for the man. He's traveling all the time. He doesn't have time to do that. We need someone in Eastern North Carolina to be the chair. We haven't had a chair in Eastern North Carolina in at least a decade.

PHIL LEWIS: Right.

STUDENT: [redacted]

PHIL LEWIS: And I think Angela would be a great one to work with and we got a guy over in Kinston that owns Jim Seagrave that owns (inaudible) Exclusive would probably be an officer. He's not that involved, but you would probably get his vote.

STUDENT: [redacted]

PHIL LEWIS: You would have to do some stuff for him.

ROBBIE MOORE: He's a long-time friend of ours. We helped him get on the trustees, but he's not been involved

just because we don't - we don't really do that much.

PHIL LEWIS: Just to give an example, they don't - they never have - they say open meeting laws, they can't do anything because then you have to tell the paper and do this and do that.

STUDENT: [redacted]

PHIL LEWIS: Even if they have - if we said they were going to have a meeting today of the economic development committee, which I'm on, then they'd have to call the paper and tell them. Now, whether they showed up or not, I don't know.

STUDENT: [redacted]

ROBBIE MOORE: But they're so scared that any of these meetings we have, that the media is going to show up, we don't have any meetings. We run from the media.

STUDENT: [redacted]

ROBBIE MOORE: It's the craziest thing ever. It's not like we're having some secret thing to take over the world.

STUDENT: [redacted]

PHIL LEWIS: We're having meetings about stuff related to East Carolina, it's a public institution that we should have in the public domain, but we don't. We just

don't do anything.

STUDENT: [redacted]

PHIL LEWIS: So, we - we kind of - so, we don't want the other side to know that we're kind of checking in to see if maybe - okay. So what happens, not this coming July but the next July, most of those six go off.

STUDENT: [redacted]

PHIL LEWIS: So, we know we're going to get change, but we don't want to have to wait until July of ---

STUDENT: [redacted]

ROBBIE MOORE: Yeah, July 21.

PHIL LEWIS: 21 to do it. We'd like to have some change now.

STUDENT: [redacted]

PHIL LEWIS: And we - the guy that - you know the BOG, Harry Smith, which I don't (inaudible)

STUDENT: [redacted]

PHIL LEWIS: I mean, he takes his own china shop with him. He's a bull. He takes his china shop with him. But he's a really smart guy and - and we can - it's one of those type things we get along with him. He was chair of the BOG. He could've done so much for us.

STUDENT: [redacted]

PHIL LEWIS: And he's told us, "I'll go back. If

you get control, I'll go back." And whether he will or whether he won't is two different things, but we're actually are going to a thing for him Thursday night at the - in Chapel Hill, but we're, you know, we got a new chancellor search, it will probably be over in ---

ROBBIE MOORE: In May.

PHIL LEWIS: --- May, June, something like that. And we hope that they - it's our - we hope that they pick somebody with some East Carolina ties.

STUDENT: [redacted]

PHIL LEWIS: They're - I mean, now, they're doing this listening tour.

STUDENT: [redacted]

ROBBIE MOORE: So, that's going on. That'll go on until mid- end of February. And then, in March is when they're going to start interviewing candidates.

STUDENT: [redacted]

PHIL LEWIS: And one - we've heard - we've heard this. We don't know if this is true. We know it's being pushed. I don't know if you know Don Edwards, UBE.

STUDENT: [redacted]

PHIL LEWIS: He's pushing this [redacted] named [redacted] who is the head of the [redacted] got a [redacted] named [redacted].

STUDENT: [redacted]

PHIL LEWIS: And [redacted] ---

ROBBIE MOORE: [redacted] from [redacted].

STUDENT: [redacted]

ROBBIE MOORE: I mean, [redacted] been [redacted] [redacted].

PHIL LEWIS: [redacted]

STUDENT: [redacted]

PHIL LEWIS: A big job and Don - I know Don is having his own little tour, go around and meeting with everybody about make sure that we look at him. Not that we - he might not be anybody that we would choose ---

STUDENT: [redacted]

PHIL LEWIS: --- but it's a worth a look. [redacted] from - I think we need to look at, you know, one of the big things and I think I saw something that you liked Cecil.

STUDENT: [redacted]

PHIL LEWIS: Uh-huh. Okay.

STUDENT: [redacted]

PHIL LEWIS: The biggest problem I have ---

ROBBIE MOORE: Did you ever meet Dan?

STUDENT: [redacted]

PHIL LEWIS: So, what would happen is if you were sitting here and Cecil walked right by, he wouldn't speak to you, me or Robbie, but if Dan came by, he would come by, "Y'all want a beer?" That's the - that's the difference.

STUDENT: [redacted]

PHIL LEWIS: Uh-huh.

STUDENT: [redacted]

ROBBIE MOORE: Right.

PHIL LEWIS: Yeah. So, maybe - make sure y'all exchange ---

ROBBIE MOORE: Okay.

STUDENT: [redacted]

PHIL LEWIS: And maybe we can talk - we can easily get Moss to call you before Friday if you wanted her to or if you wanted to wait until after Friday and maybe we could - we'll do whatever you want.

STUDENT: [redacted]

PHIL LEWIS: Okay.

STUDENT: [redacted]

PHIL LEWIS: When do you got to have a - you mean, next - the next Wednesday?

STUDENT: [redacted]

PHIL LEWIS: Okay. Right.

STUDENT: [redacted]

PHIL LEWIS: Well.

ROBBIE MOORE: Yeah.

PHIL LEWIS: [redacted]

STUDENT: [redacted]

PHIL LEWIS: I mean, you know a lot more. You know the do's and the don'ts.

STUDENT: [redacted]

PHIL LEWIS: And I think you just got to find a - --

STUDENT: [redacted]

PHIL LEWIS: Yeah. So, I mean, I think that's (inaudible)

ROBBIE MOORE: I could probably get [redacted]

to help her with that.

PHIL LEWIS: Yeah, tell her about [redacted]

ROBBIE MOORE: [redacted] John Bell is the House Majority Leader. [redacted]

STUDENT: [redacted]

ROBBIE MOORE: [redacted]. So, now [redacted] running - [redacted] running - [redacted] working in three campaigns, but [redacted] running - also running two campaigns ---

STUDENT: [redacted]

ROBBIE MOORE: (inaudible)

PHIL LEWIS: For the State?

ROBBIE MOORE: Yeah.

STUDENT: [redacted]

PHIL LEWIS: Who is [redacted] running the campaign for?

ROBBIE MOORE: [redacted] running [redacted] campaign, and then, [redacted] running this other guy that's running for House over there, and then, [redacted] just ran the mayor's campaign in [redacted]. And then, [redacted] got a couple of other cities [redacted] helping out with. [redacted]

STUDENT: [redacted]

PHIL LEWIS: [redacted] - the Murphys are very tied to John Bell (inaudible) and Senator Jim Perry who we'd like for you to meet and whatever because we think they - they would like - there's no doubt they would like to see change.

STUDENT: [redacted]

PHIL LEWIS: They just - they're kind of like tired of what's going on. Is that a good quote, I mean?

ROBBIE MOORE: Yeah, I mean, just so many people west of us are tired of seeing East Carolina in the newspaper and the media in a bad light.

STUDENT: [redacted]

ROBBIE MOORE: A lot of issues we've brought upon ourself about things we've done.

STUDENT: [redacted]

PHIL LEWIS: Well, we beat SMU, that's a good outcome. You know, do you go to any of the basketball or football games?

STUDENT: [redacted]

PHIL LEWIS: Right.

STUDENT: [redacted]

PHIL LEWIS: One other thing that you - one other - one thing that Colin had that he got this year was he got to go up at the Chan- every - go up and stay at the Chancellor's suite every game.

STUDENT: [redacted]

ROBBIE MOORE: He was there every time.

STUDENT: [redacted]

ROBBIE MOORE: Well, he was there with his friends.

PHIL LEWIS: Yeah, he went with two or three of his friends. So, but if it's okay with you, we'd just like to keep this quiet.

STUDENT: [redacted]

PHIL LEWIS: And to see where it goes and whether you do it or not, we'd love to see you do it. We would do everything we could to work with you, but we've got to - you know, we've got to kind of be quiet about what we do and what we say and whatever. And like I said, we like Max, but ----

ROBBIE MOORE: Yeah, this will be Max's last year.

PHIL LEWIS: Yeah.

ROBBIE MOORE: He's not eligible to be reappointed

after this year.

STUDENT: [redacted]

PHIL LEWIS: So, but we would love to - we would love to see you run, [redacted]

STUDENT: [redacted]

ROBBIE MOORE: Has it been that long?

STUDENT: [redacted]

ROBBIE MOORE: They didn't?

STUDENT: [redacted]

ROBBIE MOORE: What were the big things that he ran on that you think made him win?

STUDENT: [redacted]

PHIL LEWIS: Oh, yeah.

STUDENT: [redacted]

[redacted]

PHIL LEWIS: Well, I will tell you that we - Moss could help you put together something ---

STUDENT: [redacted]

PHIL LEWIS: --- that's really slick, that ---

STUDENT: [redacted]

PHIL LEWIS: [redacted] somebody who - who knew what he was talking about.

STUDENT: [redacted]

PHIL LEWIS: Even though he - I mean, he does. He does his homework.

STUDENT: [redacted]

PHIL LEWIS: Right, right.

STUDENT: [redacted]

PHIL LEWIS: Well, one thing you can say is that

we're spending 1.3 million for athletic fees more this year than you were last year. I would try to do everything I could to keep the last - and look, if you would run and win, we'll help you. We'll give you seven votes to where they won't screw ---

ROBBIE MOORE: Yeah, they won't be able to raise them.

STUDENT: [redacted]

PHIL LEWIS: They won't - they won't (inaudible). Look, for a million dollars, we don't give a shit. We don't care.

ROBBIE LEWIS: It's a billion-dollar budget.

STUDENT: [redacted]

PHIL LEWIS: Yeah, (inaudible)

ROBBIE MOORE: The entire university is (inaudible)

PHIL LEWIS: We don't want to put it on the backs of the students.

STUDENT: [redacted] --

-

ROBBIE MOORE: And if we raise them again this time, we would be the highest in the system, athletic dues of all the schools.

PHIL LEWIS: So, if nothing else, all you've got to do is five different things like that and say ---

STUDENT: [redacted]

PHIL LEWIS: --- why - why didn't Colin do a better job of talking to the - of why we can't raise our fees?

STUDENT: [redacted]

PHIL LEWIS: And you know what, all that matters, you can say maybe by that time you've talk to five or six board of trustee people and say, "I want to go and talk to people about not raising fees." That's the ---

ROBBIE MOORE: See the vote was 12 to 1.

PHIL LEWIS: Yeah.

ROBBIE MOORE: Colin was the only one that voted against the fees.

PHIL LEWIS: But we - hey, but we've got our six pretty strong.

STUDENT: [redacted]

PHIL LEWIS: So, we - we just weren't going to fight over it.

STUDENT: [redacted].

PHIL LEWIS: I mean, we could've won 7 to 6.

ROBBIE MOORE: Yeah.

PHIL LEWIS: But I'd be giving Colin a victory, what in the hell do I want to do that for?

ROBBIE MOORE: He didn't give me one.

STUDENT: [redacted]

PHIL LEWIS: When he walked in that day - when I watched him walk in that day, he was as white as I mean ---

ROBBIE MOORE: I was upstairs in the Student Union and he walked in just minutes before the meetings was to start. He walked in with Virginia and they walked in and went up the elevator to our meeting and he didn't talk to anyone. He wasn't - he didn't have any intention of talking to anyone.

STUDENT: [redacted]

ROBBIE MOORE: Oh, yeah.

STUDENT: [redacted]

PHIL LEWIS: No, look. No, I - it's hard to believe that he is a kid.

ROBBIE MOORE: The thing about is though that on that Mond- so, we met on Thursday. On Monday, he wasn't going to vote for her. On Tuesday, he said, "I'm solid. I'm going to vote for you." So, he let her go Tuesday, Wednesday, up to Thursday morning thinking, hey, I'm with you. She had met with him on multiple occasions. And then, he changed again.

STUDENT: [redacted]

ROBBIE MOORE: Yeah. I mean, he could've sent her a text, email, anything, that he was going to tell her no.

STUDENT: [redacted]

ROBBIE MOORE: That was ---

STUDENT: [redacted]

PHIL LEWIS: Well, we had another one, we had a female on that called up the guy that was running and says, "I can't vote. I can't vote for you Vern so I'm going to vote for the female." But she changed her mind and never called the female and said, I can't vote for you. I'm going to vote for (inaudible)." So, it was all kind of a ---

ROBBIE MOORE: And she's a - well, into her adult years. She's in her 50s.

PHIL LEWIS: Yeah, you almost at some point they were just ---

ROBBIE MOORE: Playing games.

PHIL LEWIS: Yeah, playing games.

STUDENT: [redacted]

PHIL LEWIS: But no, we would love to hear from you and see what you think and I think that no matter what we do, like if you did decide to run, we would like to keep it low key because we think we could help you without letting onto that you would be a candidate that we support because I think we could have - I mean, we know a lot of people that

are at Eastern Carolina. I got a guy that works with me, he's got his MBA. He's got a lot of kids all day. You could - there's a lot of people that could go and help you with your platform and ---

STUDENT: [redacted]

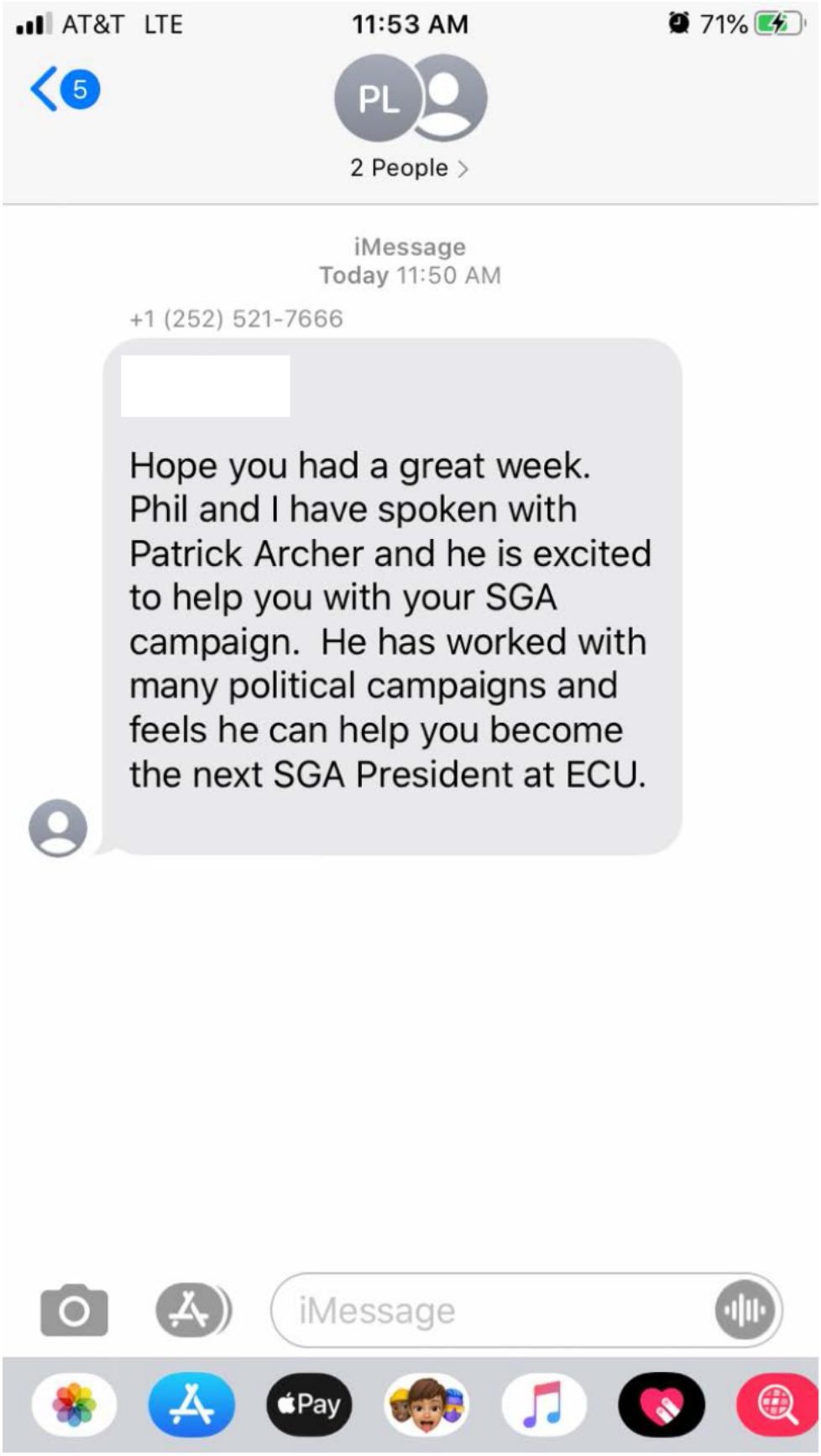
PHIL LEWIS: --- doing the campaign or whatever.

STUDENT: [redacted]

PHIL LEWIS: And I can understand your fear ---

[END OF RECORDING]

[END OF TRANSCRIPT]


AT&T LTE
11:53 AM
71%
5
PL
2 People
iMessage
Today 11:50 AM
+1 (252) 521-7666
Hope you had a great week. Phil and I have spoken with Patrick Archer and he is excited to help you with your SGA campaign. He has worked with many political campaigns and feels he can help you become the next SGA President at ECU.
iMessage
Pay

Beth Tyner Jones
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Direct Fax:
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INVESTIGATIVE REPORT

TO: Thomas C. Shanahan, Senior Vice President and General Counsel

FROM: Womble Bond Dickinson (US) LLP

DATE: October 28, 2019

On Saturday, October 26, 2019, we were asked to finalize and submit this report by October 28, 2019. This reflects information obtained through that date, but as noted some investigatory issues remain outstanding.

Executive Summary

Beginning on Sunday, September 29, 2019 at 9:08 p.m. through 10:04 a.m. on Monday, September 30, 2019, various members of the University of North Carolina System office, including Interim President Dr. William L. Roper, and the East Carolina University ("ECU") Board of Trustees received a series of emails from johnqpublicatecu@gmail.com (the "Emails") regarding allegations about ECU Interim Chancellor Dan Gerlach ("Gerlach"). One email included a narrative and a Dropbox link to photos and videos (the "Images", which are attached as Exhibit A) of Gerlach in at least one bar.[2] This email's accompanying narrative made several allegations about Gerlach's behavior that night, including that Gerlach engaged in sexual conduct in public and made inappropriate remarks. Several media outlets also received emails, which

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[2] As of the morning of October 1, 2019, this Dropbox link had been deactivated and could no longer be accessed. We did not have access to this link when active.

included some or all of the Images. This Firm was contacted around September 30 and subsequently engaged by the Board to conduct an investigation into the events of September 25 (and 26), as well as the other claims about that night, as alleged in the Emails.

This Report concludes that the specific allegations contained in the Emails are largely false. However, Gerlach did go to several bars in downtown Greenville on the evening of Wednesday, September 25, 2019. Based upon the information available to us, he did not engage in any inappropriate sexual conduct while there or make inappropriate remarks as previously recounted in the Emails. Although estimates of how much Gerlach drank that night vary, Gerlach probably consumed between seven and ten drinks over the course of approximately six hours spent at four different locations. He then drove himself home at approximately 2:10 a.m.

Scope of Investigation

The investigation consisted of a review of Interim Chancellor Dan Gerlach's actions on or around the evening of September 25, 2019, including the facts and circumstances under which he was filmed and photographed at one or more bars in Greenville on September 25, and any related observations pertinent to his fitness for the role of Chancellor. This includes a review of how the allegations surrounding these actions became known to the members of the UNC Board of Governors and System Office, the ECU Board of Trustees, and media outlets. This Firm was not asked to make any recommendations regarding personnel actions.[3]

Materials Considered

This Report was based upon interviews with 35 witnesses, who are listed in confidential Exhibit B. These witnesses included the owners of the bars Gerlach visited that night, employees of those bars, and numerous eyewitnesses We interviewed Gerlach on two occasions. We reviewed surveillance footage from Sup Dogs, which was the only business establishment that, to our knowledge, had footage still available from the evening. We obtained data from Gerlach's phone. We have reviewed other videos in the relevant area (we have filed a petition seeking to receive street footage directly from the City of Greenville). We listened to three radio interviews of Gerlach (and others). Finally, we reviewed multiple emails, text messages, news articles and numerous social media posts.

[3] At the time submission of this report was requested, we were advised that Gerlach was resigning as ECU's Interim Chancellor, effective October 26, 2019.

Findings

I. Chronology of Times and Locations

A. Wednesday, September 25, 2019

Gerlach held a number of meetings during the day on Wednesday, September 25, 2019. Here is the approximate timeline of his activities that evening beginning at 5:00 p.m.:

5:00 p.m.: Gerlach gives an interview to Troy Dreyfus on Pirate Radio Live (at the radio station) to discuss the status of ECU.

6:00 p.m.: Gerlach drives to Cypress Glen, a retirement community in Greenville, where he gives a presentation to approximately 125 attendees. He eats a large prime rib dinner served with bread, vegetables, and dessert. No alcohol is served. Dr. Ron Mitchelson ("Mitchelson"), Provost and Vice-Chancellor at ECU, attended this event and confirmed these details.

7:30 p.m.: Gerlach drives to his temporary residence at 1201 East 5th Street in Greenville (about 1.1 miles away from Cypress Glen).

8:00 p.m.: After changing and speaking on the phone with his wife (who was out of town), Gerlach drives from his residence to Christy's Euro Pub, a local restaurant in downtown Greenville (approximately 0.4 miles away from his residence). Gerlach describes his motivation for going out as because he had events to attend on the remaining nights of the week, and his wife, whom he describes as very private and uncomfortable being recognized in public, was out of town. Gerlach states he is committed to being visible in the community, which includes patronizing local businesses. At Christy's, Gerlach has a pint of a Session IPA and sends a photo of his beer to Troy Dreyfus captioned "recuperating." He does not eat any food.

9:15 p.m.: Gerlach drives from Christy's to Sup Dogs, another restaurant in downtown Greenville (approximately 0.4 miles from Christy's). He enters alone at 9:23 p.m. and sits at the bar. At Sup Dogs, Gerlach meets three an off-duty law enforcement officer (the "Officer"), a former Marine (the "Marine"), and the Marine's friend (the "Friend") Gerlach has several drinks. He does not eat any food.

10:40 p.m.: Gerlach, the Officer, the Marine, and the Friend leave Sup Dogs together and walk to Club 519, which is two blocks away. There, Gerlach speaks to a he knew and friend (the Friend"). He also encounters and (the "Photographer") Gerlach has several drinks.

11:00 p.m. -1:00 a.m.: While in Club 519, Gerlach is approached by a woman with tattoos wearing a blue Overton's shirt (the "Blue-Shirted Woman"). The Photographer takes several pictures of the Blue-Shirted Woman interacting with Gerlach.

1:15 a.m.: Gerlach leaves Club 519 and walks with the Officer to 5th Street Distillery and Annex ("5th Street Annex"), which is less than 1 block away. The and the Photographer also go to 5th Street Annex around that time. The owner of 5th Street Annex buys Gerlach a Bud Light. Gerlach is videotaped dancing with two young women.

1:55 a.m. Gerlach leaves 5th Street Annex and gets in a vehicle as a passenger. He reports that, once home, he realized he left his house keys in his vehicle, and walked to return to the vehicle.

2:10 a.m.: Gerlach walks to his car on 5th Street, which is parked near Sup Dogs. He drives 0.5 miles down 5th Street to his residence.

B. Thursday, September 26, 2019

7:45 a.m.: Gerlach attends an ECU Physicians Board meeting at the medical school. This is his first calendar appointment for the day. He maintains a regular business schedule.

12:07 p.m.: The video of Gerlach dancing from the previous night first appears on Instagram.

12:30 p.m.: The Photographer, who works part-time at a local restaurant, shows the photos to a co-worker and, while doing so, is overheard by local attorney and ECU adjunct instructor Matthew Davenport, who is having lunch at the restaurant. Pitt County Superior Court Judge and ECU Board of Visitors member Jeffrey B. Foster joins M. Davenport at the restaurant. Foster has the Photographer transfer the photographs and video in the Photographer's possession to Foster's iPhone.

3:40 p.m.: Jeannine Hutson ("Hutson"), Interim Chief Communications Officer at ECU, receives a concerned text message from one of ECU's Vice Chancellors, who had seen the video posted to social media of Gerlach dancing with two young women.

4:00 p.m.: Hutson has a "good discussion" with Gerlach about the video and tells him that he needs to "tone it down a little." Gerlach also confirmed that this discussion occurred.

C. Saturday, September 28, 2019

That night, ECU Board of Trustees member Robert Moore reports that he interacts with one or two people, including someone who visits his home, who express concern about the photographs of Gerlach. Moore tells ECU Board of Trustees Chairman Vernon Davenport ("Vern Davenport") about this on the afternoon of Sunday, September 29, 2019.

Olivia Ruth Roberson[4] reports that on this day (or possibly earlier), two "investigators" interview her to determine if she was the woman pictured in the photographs taken of Gerlach at Club 519. She tells them she is not the person in the pictures.

D. Sunday, September 29, 2019

12:55 p.m.: Hutson receives a voicemail message from a reporter at WITN, Greenville's local NBC affiliate. The message says that WITN obtained several photos of Gerlach and wants a statement about them.

1:00 p.m.: When the WITN reporter could not reach Hutson, she apparently attempted to reach then-Board of Governors Chairman Harry Smith. Smith receives a text message from that reporter requesting a comment on the photos.

1:22 p.m.: Smith sends a group text message saying that he has "gotten call after call from upset parents, faculty and staff that are very angry" about the story of Gerlach being out at bar. This text message is sent to Dr. Roper, Thomas Shanahan, as well to as several members of the Board of Governors (Randy Ramsey, Wendy Floyd Murphy,

[4] Although Roberson is not affiliated with the System, her name is included here because she is mentioned by name in the Emails.

Temple Sloan, and Anna Spangler Nelson). In a subsequent text, Smith says that two members of the ECU Board of Trustees had also just called him.

2:10 p.m.: Hutson speaks with Dawson, and Dawson agrees to send Hutson the photos. Hutson receives an email from Dawson containing nine photos (no videos). These are photos taken by the Photographer in Club 519. Hutson sends the photographs to Gerlach, ECU Interim Chief of Staff Dr. Christopher Locklear, and UNC System Vice President of Communications Earl Whipple.

2:35 p.m.: Davenport speaks with his friend and fellow attorney, Peter Romary. Their conversation includes discussion of the Images. Romary also speaks with Foster at some point during the day, although Romary is unsure if he discussed the Images with Foster.

4:35 p.m.: After conferring with several members of the ECU and UNC System staff, Hutson publishes a statement regarding the photos as a response to a media inquiry. This statement is attached as Exhibit C. The statement includes a quote from Gerlach. Around this time, Hutson also hears from several other media outlets, including other local Greenville TV stations and the Daily Reflector (Greenville print newspaper). Hutson continues to hear from other news organizations throughout the evening, such as WBTV in Charlotte and the East Carolinian (ECU's student newspaper).

Over the course of the afternoon and evening, Roper informs Gerlach that he will be placed on administrative leave while an investigation is conducted. This information is also conveyed to Hutson. Gerlach speaks with Vern Davenport and ECU Board of Trustees Vice-Chair Fielding Miller.

6:20 p.m.: Troy Dreyfus (the host of Pirate Radio Live) forwards to Smith and ECU Board of Trustees members Phil Lewis and Robert Moore an email from johnqpublicatecu@gmail.com. This email is attached as Exhibit D. The email mentions a "handjob." It is similar to, but different from, the email later sent at 9:08 p.m. to the entire ECU Board of Trustees. The email includes a Dropbox link to the Images.[5]

6:21 p.m.: Smith sends a series of text messages to Wendy Floyd Murphy, Randy Ramsey, Pearl Burris-Floyd, and Dr. Roper. The message includes the email in Exhibit D. Smith said he believes that "someone has been building a case for sometime and

[5] While we have seen the email, we have not been able to review what was in the Dropbox link.

then dropped it." He also noted that the "videos are posted on Instagram under 'old row Ecu'" and that he had been told Gerlach was "back downtown last night" (i.e. the night of September 28).

8:30 p.m.: Roper informs Mitchelson that he will serve as Acting Chancellor while Gerlach is on administrative leave.

9:08 p.m.: Dr. Roper, as well as the entire ECU Board of Trustees, receive an email from johnqpublicatecu@gmail.com (the "First Email," attached as Exhibit E). The First Email alleges that "WITN only published a couple of pictures and a couple of videos that were out of context." The Email then makes several allegations regarding Gerlach's conduct and includes a Dropbox link to a folder containing 10 still images and 3 videos of Gerlach (the Images).

E. Monday, September 30, 2019

7:30 a.m.: Gerlach calls Mitchelson to apologize for his actions. According to Mitchelson, Gerlach is "obviously remorseful."

8:47 a.m.: Henry Hinton, a local radio host and former member of the Board of Governors and the ECU Board of Trustees, receives an email from johnqpublicatecu@gmail.com (the "Second Email," attached as Exhibit F). The Second Email includes an additional narrative about Gerlach's actions at Club 519 and specifically states that the woman in many of the photos with Gerlach is a "known prostitute." Hinton forwards this email to Vern Davenport and Fielding Miller.

10:04 a.m.: Unknown individuals receive another email about Gerlach from johnqpublicatecu@gmail.com (the "Third Email," attached as Exhibit G). The Third Email alleges that the woman in the photos with Gerlach at Club 519 is Olivia Ruth Roberson. The Third Email includes a link to one of Roberson's booking photos, along with selected aspects of her criminal record. The Third Email also alleges that Roberson is a known prostitute. The original recipient list of the Third Email has been deleted on the copy we received. The known recipients to us are Robert Moore and Phil Lewis, members of the ECU Board of Trustees. Mr. Lewis forwarded the email to Harry Smith, who provided the Third Email to System Interim President Roper and General Counsel Tom Shanahan.

4:11 p.m.: Gerlach receives a written memorandum confirming that he will be placed on paid administrative leave for up to 30 days while an investigation into the incident is conducted. This memorandum instructs Gerlach to "… not … be in contact in any way with … other persons involved in the issue (s) described herein …." This is attached as Exhibit H.

F. Tuesday, October 8, 2019

Prior to 1:30 p.m.: Phil Lewis and Robert Moore meet with Gerlach at Lewis' home. When asked about this meeting, Lewis and Moore indicated that they had "conducted their own investigation" into matter.[6] They indicated that they had gone to Club 519 and also to the restaurant where the Photographer works. They had requested that Gerlach meet with them to give him "support and advice."

II. Allegations from the Emails

A. Alleged Sexual Conduct

The First Email asserts that Gerlach arrived at Club 519 with the Blue-Shirted Woman as his "escort" and that, while in the bar, he "engaged [with her] in activities that a married man would only engage in with his wife, in private." More generally, the First Email alleges that Gerlach "acts inappropriately towards women." As described below, the information obtained to date does not support these allegations.

Findings

1. The First Email's accusation appears to be based on a series of photographs of Gerlach with the Blue-Shirted Woman. Gerlach did not engage in inappropriate contact of a sexual nature with a female in Club 519 on September 25. We interviewed twelve witnesses, male and female, who were present in Club 519 during the time period of the interaction between Gerlach and the Blue-Shirted Woman. No eyewitnesses we interviewed stated that Gerlach engaged in any inappropriate sexual conduct. In the course of our investigation, the only allegations that Gerlach engaged in sexual conduct that evening were made by the author of the Emails and Romary.

2. Gerlach arrived at Club 519 at approximately 10:45 p.m. He, the Officer, the Marine, and the Friend were all carded upon entry. They went to the middle of a long bar that runs the length of the restaurant and ordered drinks. Gerlach met and spoke to for about

[6] We have not found any information indicating that Lewis and Moore either sought or received approval from Dr. Roper or the Board of Governors to confer with Gerlach or to conduct their own investigation of a University matter.

10 minutes. He also spoke to and the Photographer. Gerlach was photographed with others at Club 519, including ECU students who seemed excited to see him out.

3. The Blue-Shirted Woman arrived at Club 519 with a female friend around 11:00 p.m., after Gerlach was already there. This detail was confirmed by every eyewitness we interviewed and directly contradicts the allegation in the Emails that Gerlach arrived with the Blue-Shirted Woman as an "escort." Once she entered Club 519, the Blue-Shirted Woman was loud and aggressive.[7] She offered to have sex with the Officer, then took the Officer's phone. The Photographer was able to get the phone back, which angered the Blue-Shirted Woman. The Blue-Shirted Woman called the Photographer a "piece of sh**." She then told the Marine and the Friend that she would have sex with them. The Photographer told her to "go on somewhere," and she responded with something like "Why you gotta be like that?"

4. The Blue-Shirted Woman then went over to Gerlach and grabbed him from behind in a bear hug. She started rubbing herself against him. Gerlach turned and asked if she was OK. The Blue-Shirted Woman continued to press herself against Gerlach as he turned and tried to move away from her, while the Blue-Shirted Woman attempted to maintain an embrace. The Officer, Marine, the Friend, and all described Gerlach as clearly uncomfortable and trying to push the Blue-Shirted Woman away politely. The Marine and remembered Gerlach telling the Blue-Shirted Woman to "calm down" and/or "step back." Around then, the Photographer went over with one of the other guys and asked the Blue-Shirted Woman: "how much for the whole night?" That appeared to anger her, and she started after the Photographer, cursing and flipping him off. Club 519's door security person was escorting the Blue-Shirted Woman out of the bar when she punched the Photographer in the face. After being physically removed from Club 519, the Blue-Shirted Woman briefly stayed outside yelling, cursing, throwing her flip flops at the door, and trying to get back inside, before finally walking away. The Marine and estimated that the entirety of Gerlach's interaction with the Blue-Shirted Woman was two to three minutes. The Photographer took pictures of the interaction to demonstrate how out of control the Blue-Shirted Woman was; other eyewitnesses also reported that she was acting in a seemingly impaired, rude, and obnoxious manner.

5. To our knowledge, the Photographer took all the photos from Club 519.[8] The Photographer stated he took the photos to protect Gerlach's reputation in case something was made

[7] Numerous eyewitnesses recounted the Blue-Shirted Woman's loud, obnoxious conduct, as well as her asking several people for sex, rubbing her bosom against a male patron other than Gerlach, and initiating numerous interactions. She was reported as unsteady on her feet.

[8] From our understanding of what was included in the Dropbox link in the First Email, the Dropbox included the Photographer's nine photos and the video of Gerlach chugging a drink (also filmed by the Photographer). We also believe the link included the video of Gerlach dancing at 5th Street Annex, which had previously been posted online, a screenshot of that video, and a video at Sup Dogs from a different night, for a total of 10 photographs and 3 videos.

of the interaction.[9] The Photographer's was also in Club 519 that night and confirmed this intent. Additionally, every eyewitness supported this general account of the events with the Blue-Shirted Woman. No eyewitness recounted the events in the way described in the First Email.

6. Although the files in the Dropbox link label certain photos "handjob" and "hair grab," none of the witnesses provided any support for the claim that these events occurred. Instead, the interaction between Gerlach and the Blue-Shirted Woman lasted only two to three minutes and was non-sexual in nature, on his part anyway. Gerlach reported that his actions were to disentangle himself from the Blue-Shirted Woman, and all eyewitnesses we spoke to corroborated his description.

7. The First Email contains other allegations regarding Gerlach's conduct at Club 519. It asserts that Gerlach arrived with his "escort," but both eyewitness and video testimony indicate that Gerlach arrived with the three men that he met earlier in the evening at Sup Dogs. The Email states that Gerlach paid for the Blue-Shirted Woman's drinks, but we did not find any indication of him doing so. The First Email also states that the Blue-Shirted Woman was "ejected from the bar because of her conduct towards a bartender."[10] No eyewitness, including the bartender, referenced the Blue-Shirted Woman being removed for conduct toward the bartender. Rather, the Blue-Shirted Woman's actions were primarily targeted toward the patrons, and she was ejected from the bar after punching the Photographer in the face. Finally, the First Email states that Sup Dogs is a "deception"; however, eyewitness testimony and videotape confirm that Gerlach was there, met the Officer, Marine and Friend there, and then joined them when they went to Club 519.

8. The Third Email alleges that the Blue-Shirted Woman is Olivia Ruth Roberson. The information we obtained does not support this allegation. The Blue-Shirted Woman does not bear any significant resemblance to Roberson. Roberson, for example, is White, whereas several witnesses described the Blue-Shirted Woman as African-American or mixed race. We have yet to

[9] On October 10, 2019, Board of Governors member Harry Smith sent an email to Board of Governors members Randy Ramsey, Wendy Murphy and Pearl Burris-Floyd. Mr. Smith's email stated that "according to two of the trustees," the pictures were taken because a "thought it was inappropriate for the chancellor to be there and the actions he was doing were inappropriate." We spoke to Smith on October 12, and he indicated that this information came from Phil Lewis and Robert Moore, both members of the ECU Board of Trustees. We spoke with Lewis and Moore on October 14, 2019 (they called us together). They indicated that they had done "their own investigation" and visited both Club 519 and the local restaurant where the Photographer works part-time. However, they spoke to no eyewitnesses and did not speak to the Photographer. They did not know where they heard that the photographs were taken because the conduct was inappropriate. Our findings are based on interviews with the Photographer and who were present at the time and whose versions of the events were corroborated by all the other eyewitnesses.

[10] She did offer to have sex with the bartender; however, that was not the basis of her removal from the bar.

identify the Blue-Shirted Woman (or her female companion shown in Exhibit A), but it was not Roberson.

9. Since these events became public, there have been allegations that the Blue-Shirted Woman was part of some "set up" of Gerlach to make him look bad by attempting to engage in (or appear to engage in) sexual acts with him in public. The information we obtained does not entirely rule out that possibility, but it does not confirm it either.

10. Although the First Email's allegations about sexual behavior primarily focus on the Blue-Shirted Woman, the Email also alleges that Gerlach generally behaves "inappropriately towards women, especially students." The information gathered does not support this allegation. As stated earlier, no eyewitnesses from September 25 reported any sexual conduct by Gerlach. This includes the two women with whom Gerlach was filmed dancing. These women stated that Gerlach did not touch them inappropriately and did not make them uncomfortable. We are unaware of any complaints against Gerlach regarding inappropriate touching or other sexual behavior toward anyone.

B. Other Alleged Inappropriate Comments

The First and Second Emails allege that, upon entry to Club 519, Gerlach called out, "My wife is out of town so it's on tonight." The First Email also alleges that Gerlach stated, "I'm Chancellor Dan, but you can call me Uncle Tom." We found no information to support either allegation.

Findings

1. No eyewitness heard Gerlach state "My wife is out of town so it's on tonight." The people to reference this quote (other than the First Email itself), are Matt Davenport, who claims the Photographer said Gerlach stated these words, as well Foster and Romary. The Photographer, however, did not remember Gerlach stating that phrase. It is true that Gerlach's wife was out of town. Gerlach confirmed this detail and referenced this as a contributing factor to why he left home on the night of September 25. More specifically, Gerlach explained that his wife is private and does not like to be recognized when they are out in public, so he was more inclined to go out when she was out of town. Thus, although it is accurate that Gerlach's wife was out of town on September 25, the information we obtained does not support the First and Second Emails' specific allegation of Gerlach publicly announcing that fact upon arrival at Club 519.[11]

2. No eyewitness heard Gerlach state, "I'm Chancellor Dan, but you can call me Uncle Tom." There was, however, a reference to "Uncle Dan" during the evening. When the Officer,

[11] During his interview, Gerlach also stated that he has made a point to visit many downtown establishments during his time as Interim Chancellor to be supportive of the greater community. This motivation also impacted his decision to go out on the night of September 25.

the Marine, and the Friend were attempting to convince Gerlach to join them at Club 519, they offered to call him "Uncle Dan," so as to not draw attention to Gerlach's presence. Although the Officer, the Marine, and the Friend all independently confirmed this detail, the information we obtained indicates that "the plan" did not last long. Several recognized Gerlach at Club 519. Thus, although there was talk of "Uncle Dan," no eyewitness heard any remarks about "Uncle Tom" on the night of September 25, 2019. When asked about the alleged Uncle Tom comment, Gerlach denied it categorically and said that was a racist reference.

C. Alleged Purchase of Alcoholic Drinks for Students

The First Email alleged that Gerlach "buys drinks for people without checking their age." Gerlach has bought alcoholic drinks for students, both in the past and on September 25, 2019. However, the information we obtained does not support the First Email's allegation that Gerlach has done so without checking students' ages.

Findings

1. On the night of September 25, 2019, Gerlach purchased alcohol for However, all were over 21, and all were carded. During his interview, Gerlach mentioned buying one drink for each of the at Sup Dogs and another drink for each at Club 519. This account generally conforms to the recollections of the and the although the

2. Gerlach may have purchased alcohol for some other ECU students at Club 519, but all were over 21 and were carded by a door security employee upon entry to the bar. Although Gerlach purchased alcoholic beverages for at least two students on the night in question, we have not obtained any information to support the First Email's allegation that he did so without checking the students' ages. Additionally, all purchases were with his personal funds. Gerlach paid cash throughout the night and did not use a University credit card.

3. During his interview, Gerlach said he has purchased drinks for students on a few other instances, but only when he knows the students are of legal age. He indicated that, on each occasion, the student was carded by wait staff at the time Gerlach purchased the drink. In response to whether he had previously purchased drinks for any individuals he bought drinks for on the night of September 25, Gerlach only recalled purchasing one student a drink before. We do not have any information indicating that Gerlach has deviated from that practice on other occasions.

D. Alleged Public Drunkenness

The First Email alleged that Gerlach "stumbled up" to students on September 25 and, more generally, is "often seen drunk in public." Most of the eyewitnesses indicate that Gerlach did not appear drunk on the night of September 25; however, one eyewitness indicated Gerlach was "impaired" as he walked from Club 519 to 5th Street Annex. Further, street camera footage appears to show Gerlach impaired and staggering as he leaves Club 519 at 1:16 a.m. He also was somewhat unsteady in walking to his vehicle from his home later in the evening when returning to his car later that evening. We have not found any information supporting the allegation that Gerlach regularly appears intoxicated while in public.

Findings

1. All but one of the eyewitnesses interviewed reported that Gerlach was not drunk. This impression was shared by numerous people who encountered Gerlach throughout the entire evening, including those at Sup Dogs, Club 519, and the 5th Street Annex. Additionally, no eyewitness reported inappropriate behavior by Gerlach consistent with intoxication.

2. One eyewitness, the Officer, reported that on the way from Club 519 to 5th Street Annex, the Chancellor had slurred speech, seemed unsteady on his feet while walking, staggered, and stumbled a couple times. This report is also corroborated in part by the street video camera taken from 1:16 a.m. to 1:17 a.m. The Officer says he urged Gerlach to go home at least twice and offered to call him a ride. Gerlach declined. In the Officer's opinion, Gerlach was "definitely impaired."

3. The Officer does not believe he saw Gerlach after Gerlach left 5th Street Annex. Gerlach thinks that he and the Officer may have left together. Gerlach stated he was not intoxicated when he drove home at approximately 2:10a.m.

4. During our first interview, Gerlach stated that he went from Club 519 to 5th Street Annex, where he got a wristband but did not drink. He stated he went to Still Life after 5th Street, where he danced and drank part of a Bud Light that someone purchased for him. During our second interview, Gerlach indicated that the dancing was done at 5th Street. The manager of Still Life had reported to us that Still Life was closed to the public on September 25 after 7:00 p.m. Based on the floor and style of the bar, the video of Gerlach dancing and holding a bottle of beer appears to have been taken at 5th Street Annex. who was at 5th Street Annex around the same time as Gerlach, said that the video of Gerlach dancing was "definitely" taken at 5th Street Annex. Furthermore, in prior conversations held with Jeannine Hutson closer in time to that night, Gerlach stated he went to 5th Street Annex but did not go to Still Life. During a second interview, Gerlach said he might have been confused at our first interview about going to Still Life. Given

the above, we believe that Gerlach confused the locations in our initial interview and did not go to Still Life on September 25. Additionally, when his memory was prompted about getting into an apparent ride-sharing vehicle around 1:55 a.m., which Gerlach did not initially remember, he then pieced together that someone did call a ride-sharing service for him, that he took the ride home, that he then realized he had left his keys in his car, walked back to his vehicle on 5th Street, and then drove home. This seems consistent with street camera footage. Gerlach reports being 90% certain this is what happened. Throughout the process, Gerlach has appeared cooperative. We believe that it is most likely that he was impaired during this timeframe of the evening and did not recall this portion of the evening during his prior interviews. He was, however, able to piece together some of these events when prompted by questions. Gerlach appeared fully cooperative once these questions refreshed his memory.

5. While witnesses, many of whom were drinking at the time, have varying recollections of the drinks Gerlach consumed during the evening, Gerlach had at least several drinks during the night of September 25. He stated during his interview that he had a pint of beer at Christy's, a beer and a "Sup Crush"[12] at Sup Dogs, two beers[13] and a shot at Club 519, and half a beer at Still Life.[14] The total time period was approximately 6 hours (roughly 8:00 p.m. – 2:10 a.m.). An estimate of Gerlach's total alcohol consumption is described in more detail in Exhibit I.

6. In our first interview, Gerlach estimated he arrived home around 1:00 a.m. In our second interview, he said upon reflection he now believed it was around 2:00 a.m. The facts tend to support the 2:10 a.m. estimated time of departure in his car after walking to it from his home. When we interviewed the young women with whom Gerlach was filmed dancing, one of them shared another video of themselves dancing with Gerlach that night. That new video was time-stamped at 1:35 a.m. Additionally, Gerlach thinks he left with the Officer, and the Officer's Uber receipt home reflects a time of 2:05 a.m. Finally, there is traffic camera footage of Gerlach getting into his car at 2:10 a.m.

7. The Officer reports he believed that Gerlach "definitely" appeared "impaired" while moving from Club 519 to the 5th Street Annex. The Marine and the Friend say they left Club 519 about 20 minutes after the incident with the Blue-Shirted Woman and did not see Gerlach the rest of the night. and the Photographer, who met Gerlach at Club 519, also went to 5th Street Annex, but Gerlach "caught up" to them while they were already on their way.

[12] According to the bartender at Sup Dogs, a Sup Crush is served in a 17-ounce glass and contains 1.5 ounces of vodka, as well as orange juice, Triple Sec, and Sierra Mist soda.

[13] The bartender at Club 519 recalled that these beers were 12-ounce pours.

[14] As discussed earlier, we believe this drink was consumed at 5th Street Annex.

8. The Owner of 5th Street Annex saw Gerlach there and said Gerlach was steady on his feet, did not have slurred speech, and did not appear drunk. The Owner said he has "13 years in the bar industry" and "know[s] how to spot a person who has had too much to drink." Additionally, the two young women with whom Gerlach was filmed dancing at 1:35 a.m. said that he did not appear drunk and did not stumble when around them. Gerlach indicated in his interview that he usually gets up around 4:45 a.m. If accurate, then he would have been awake for approximately 22 hours when seen walking to his car at 2:10 a.m. [15]

9. As to the more general allegation in the First Email that Gerlach is "often seen drunk in public," we did not find any information to support that claim. No one interviewed mentioned having seen Gerlach intoxicated on any prior occasion. The Owner of Club 519 said he had never heard of Gerlach being in the bar before; the same is true of the Owner of 5th Street Annex. The Owner of Sup Dogs indicated that Gerlach had come there regularly, but said that he had never seen or heard about Gerlach acting intoxicated. Therefore, we have not found information indicating that Gerlach frequently appears drunk in public, as the First Email claims. At times on the night in question, we believe Gerlach was exhibiting impairment.

E. Other Information Related to Gerlach's Fitness to Remain Chancellor

As part of the investigation, we were asked to report on any other facts or circumstances relevant to Gerlach's fitness to remain in the role of Interim Chancellor. We have identified several additional facts relevant to that request for information.

Findings

1. Although one video appears to show Gerlach chugging a drink
we did not find any information indicating this action was part of a drinking game.

2. All information we obtained indicates that Gerlach eventually drove himself home from 5th Street Annex on the night of September 25, 2019. At the outset, Gerlach admitted that he drove home during his interviews, and traffic camera footage shows him getting into his car at

[15] In the course of the investigation, we learned from Gerlach that he drove home that evening. On October 14, 2019, we submitted a request to the Assistant City Attorney for Greenville, NC, asking to review the traffic camera videos. While this firm is not eligible under the statute to view the videos we do not appear in, the Assistant City Attorney advised that we could file a Petition with the court which would require the scheduling of a hearing. Given the timing of (1) this city attorney being out most of that week, (2) no judges scheduled in Pitt County that week due to a judicial conference, and (3) the City also having ten days to release the footage after any order is obtained, we proceeded to complete our report. At this time, we have received a verbal report of the video from the legal representative of Gerlach, who was permitted to review the footage. The City consented to a Petition filed by Peter Romary purportedly on behalf of the Police Benevolent Association and Fraternal Order of the Police. The City then contacted us to indicate that it would consent to a Petition by us for the same footage. We have filed such a petition and are working through that process. We also have asked the City to preserve other footage related to the events under investigation beyond the footage requested by Mr. Romary.

2:10 a.m. In our interview with him, Gerlach asserted that he was not impaired when he drove home. However, in subsequent interviews he indicated he did not remember the full sequence of events that evening.

3. Gerlach has admitted on multiple occasions that he made a mistake on September 25, 2019. He said as much during both radio interviews. During his interview with us, Gerlach also indicated that he "showed poor judgment" in being out "so late past his bedtime." He expressed regret for the negative attention the incident has brought ECU and the appearance it has given.[16]

4. During the investigation, Gerlach was generally helpful and credible. He allowed us to copy data from his phone and showed us relevant text messages. He provided additional information, such as the fact that his evening started with a drink at the restaurant Christy's, which had not been mentioned in previous media reports and was arguably not in his interest to reveal. He honestly admitted mistakes and facts that were not helpful to him. His testimony about the events of September 25, 2019 were generally consistent with the information we received from other sources, including other eyewitnesses and surveillance cameras.

III. Complaint Receipt and Investigation Developments

A. John Q. Public

Findings

1. The media received an email with approximately 9 photos and 3 videos sometime in the late morning or early afternoon on Sunday, September 29, 2019. Jeannine Hutson found out that WITN had the Images at 12:55 p.m. on Sunday, September 29, when a reporter called her and asked for a comment. The reporter from WITN sent Hutson the photographs at 2:07 p.m., so that Hutson could respond to them on behalf of ECU.

2. Around 4:35 p.m. that day, Hutson published a statement regarding the photos as a response to a media inquiry (Exhibit C). The statement included a quote from Gerlach. By that time, Hutson was getting requests from several other media outlets, including other local Greenville TV stations and the Daily Reflector (Greenville print newspaper).

3. At 9:08 p.m., UNC System Interim President Dr. William Roper, as well as the entire ECU Board of Trustees, received an email from johnqpublicatecu@gmail.com (the First Email, Exhibit E). The First Email alleged that "WITN only published a couple of pictures and a couple of videos that were out of context." The story published by WITN, however, included most, if not all, of the known Images. Additionally, the reported version did not take the Images

[16] His statement about his resignation expresses similar themes.

out of context. Rather, the allegations contained in the First Email are not supported by the information we obtained, as described in more detail in the above sections.

4. This is not the first time that representatives of the System or ECU have received emails from John Q. Public. The writer of these emails attempts to portray himself or herself as an employee and identifies with faculty, staff, and administration. The writer also indicates he or she may have received a degree from ECU. We are aware that John Q. Public has emailed the System on the following previous occasions: (1) March 27, 2019, when John Q. Public emailed Dr. Roper and Mr. Smith regarding concerns about who would be selected to be ECU's Interim Chancellor and specifically expressed concern that Dr. Virginia Hardy, ECU's Vice Chancellor for Student Affairs, might be selected; (2) March 28, 2019, when John Q. Public emailed Dr. Roper and Mr. Smith to express concern with ECU's finances; (3) March 28, 2019, in a second email discussing concerns with several current and former members of the ECU Administration, including Dr. Hardy, former Chancellor Steven Ballard, Former Board of Trustees member Henry Hinton, and Director of Disability Support Services Stephen Gray; and (4) April 3, 2019, when John Q. Public emailed Dr. Roper, Mr. Smith, and an attorney in the UNC System office with additional concerns about Dr. Hardy.

5. Additionally, on August 23, 2019, John Q. Public emailed members of the media regarding the UNC Hospitals receiving a preliminary denial of re-accreditation. That email to the media attached a confidential memorandum that had previously only been distributed to members of the UNC Board of Governors days before.

6. We attempted to use forensic analysis to determine the owner of the johnqpublicatecu@gmail.com, but were not able to identify the owner. We sent emails to the account, but it appears to now have been shut down. We contacted Google and Dropbox, but they declined to provide any information.

B. Interactions with Board Members During the Investigation

Findings

7. On October 2, 2019, Gerlach met with Vern Davenport. Vern Davenport told Gerlach that the Board of Trustees supported him.

8. When we interviewed Gerlach at 1:45 p.m. on October 8, 2019, we learned that Gerlach had a meeting with ECU Trustees Phil Lewis and Robert Moore that same morning. Gerlach reported that Lewis had asked for the meeting via text. Gerlach responded that "investigators talking to me Tues aft." Mr. Lewis responded "Can robbie and me go by your house or mine Tuesday am?" Gerlach responded "Let me come to you." Mr. Lewis then responded with his home address and "…10 am Tuesday …. Very confidential… as I know you know… I am

pulling for you." According to Gerlach, in the meeting they advised him that they were conducting their own investigation into the matter.

9. According to Gerlach, Lewis and Moore offered him "fatherly advice." They said a kid that worked for Lewis knew Club 519 and some folks that worked there. They told him that he should not go out alone and should not be drinking in bars. Gerlach said John Q. Public "came up" during this discussion. Lewis and Moore told Gerlach that someone had organized the attack on him. They indicated that they had been briefed by the Chair and were hoping the matter would be resolved by Thursday, October 10, 2019.

10. On October 12, 2019 Phil Lewis sent a text message to Randy Ramsey complaining that our investigation was a "waste of time and money", asking "what the hell is the scope of this investigation?" and stating "Everyone knows took the pics … he works at [named local restaurant] … ask him if it was a setup … if not they need to stop this crazy mess." Lewis left a message for Beth Jones (Womble Bond Dickinson) calling the investigation "ridiculous" and stating that no one was going to review his phone.

11. On October 12, 2019 Robert Moore left a voicemail for Randy Ramsey complaining about Womble attorney Beth Jones contacting him. He stated: "I don't really have anything to add to her. Unless I'm under investigation, I'm going to let her sit right where she's at. I don't think I am. If Bill Roper is on some witch hunt, he's barking up the wrong tree with me so anyway, I'm going to leave it alone. Let it be what it is and I hope I don't hear or have any more communications with her…" He added: "I don't know who took the photos."

12. On October 14, 2019, Lewis and Moore called Mark Henriques (Womble Bond Dickinson) together. They stated that they had gone to Club 519 and asked around "for about 30 seconds." Someone told them they thought the photographer was who liked Bud Light, and worked at a [named local restaurant]. So they went to that restaurant and asked around. They were told that who worked there did take the photos and it got "bigger than he expected." They never spoke to the Photographer. They don't know his name.

13. Lewis and Moore met with Gerlach on October 8 to make sure he "learned his lesson." During their meeting, Gerlach told them he drove to Sup Dogs, which surprised them because it is only a 6-block walk from Gerlach's house and they have seen Gerlach walking around town at night before.

14. Lewis and Moore refused to provide their phones for imaging, stating they had lots of personal information on them. They have not provided text messages from their phones.

15. On October 12, 2019, we spoke with Harry Smith. We asked to schedule an interview. Smith responded he did not have time for an interview, but would talk on the phone. Smith stated that who worked at the local named restaurant had taken the photos because he felt the Chancellor was acting inappropriately. He said someone clearly complied the photos after the fact and submitted them. He said this information came from Lewis and Moore. He knew that Lewis and Moore had met with Gerlach. Smith stated that Womble's investigation had been "bungled," that we should not be calling on a Saturday, and that he would not meet with us. He declined to provide his phone for imaging, or provide text messages.

C. Release of the Images

Findings

16. The Photographer who works part-time at a local restaurant in Greenville. The next day, Thursday, September 26, the Photographer was working when Davenport came in for lunch. Matt Davenport is a regular at the restaurant. While Matt Davenport was having lunch, the Photographer was telling a co-worker about his interactions with Gerlach the previous night and showing the co-worker the photographs and video he had taken. According to the Photographer, Matt Davenport may have seen the photos and video while the Photographer was showing them to his co-worker.

17. About 20-25 minutes after Matt Davenport started having lunch, Matt Davenport was joined by Foster. The Photographer was unaware of Foster's identity at the time. Matt Davenport had finished his lunch at that point and motioned for the Photographer to come over. The Photographer originally thought that he was being called over to take Foster's order. According to the Photographer, Matt Davenport indicated that Foster was a judge and that the Photographer needed to AirDrop the photographs and video on his phone to Foster. The Photographer complied. The Photographer remembered Foster saying (to the effect of), "This man is trying to become the permanent Chancellor, and we can't let that happen."

18. When interviewed, Matt Davenport confirmed several of these facts. Matt Davenport confirmed that he is a regular at the restaurant and had lunch there on Thursday, September 26. Matt Davenport said that the Photographer was talking about seeing Gerlach out at bars the previous night; Matt Davenport did not believe the Photographer, so the Photographer showed him the photographs on his phone. Shortly afterward, Matt Davenport said he received a text or call from Foster asking to join him for lunch. Matt Davenport reported that Foster had an upcoming meeting with Gerlach and would be interested to see the photos.[17] Matt Davenport called the Photographer over and asked him to show Foster the photos. Specifically, Matt

[17] Gerlach's assistant confirmed that Gerlach was scheduled to meet with Foster on October 1, 2019. This meeting was cancelled after Gerlach was placed on administrative leave.

Davenport thinks he may have said, "Show the judge the photos." However, contrary to the Photographer's statement, Matt Davenport denies that Foster got the photos while Matt Davenport was in the restaurant. Matt Davenport said he and Foster left the restaurant at the same time. Matt Davenport said after he got back to his office he saw a missed call from Foster. According to Matt Davenport, Foster wanted to know the name of the Photographer. Matt Davenport said that, when he called Foster back, Foster indicated he had "figured it out" and had gone back to the restaurant. Matt Davenport thinks Foster may have gone back to the restaurant to obtain the photos, but he does not know that for sure

19. Matt Davenport also discussed these events with Peter Romary. Matt Davenport indicated he and Romary were good friends when Romary lived in Greenville. Matt Davenport said that Romary called him on the morning of Sunday, September 29, 2019, but Matt Davenport was in church. Matt Davenport returned the call at approximately 2:35 p.m. that afternoon. Matt Davenport said he spoke to Romary for about 20 minutes. They discussed Gerlach, including his actions on the night of September 25. Matt Davenport specifically remembered mentioning to Romary that Gerlach had said "My wife is out of town, so it's on." Matt Davenport told Romary about the photos, and reported that Romary said, "Holy Sh**! This is Big!" Between this call with Romary and his interview with us, Matt Davenport had gotten a new cell phone. As a result, he could not provide an image or text messages. He was, however, able to look up call records through his online account, which is how he provided us with the information regarding time call and duration.

20. Judge Foster also confirmed many of these details. Foster indicated that on Thursday, September 26, 2019, he called Matt Davenport and asked about having lunch. Matt Davenport responded that he was at the restaurant and Foster should come over. According to Foster, the topic of conversation turned to Gerlach, and Matt Davenport mentioned that an employee had photographs of Gerlach out drinking. Foster remembered that the employee (the Photographer) then showed him the photographs, as well as the video of Gerlach chugging a drink. Foster said that he did not initially ask for the photos but was "very troubled" by them. Foster reported that, after driving a few blocks away, he changed his mind, turned around, and went back to the restaurant. Foster said he then asked the Photographer to AirDrop the photos and video to him. Foster said he did not recall if he introduced himself as a judge but said he generally does not do so, since it can be intimidating.[18] The Photographer confirmed that the photos and video he AirDropped to Foster are the same photos and video that appeared in the media reports.

[18] We believe that either Matt Davenport or Foster introduced Foster as a judge. The Photographer did not know Foster's name, but he knew he was a judge. The fact that the Photographer had that information, without knowing Foster's name, indicates that he was likely introduced to Foster as a judge. Davenport says that he is not sure if the Photographer is or if Foster knows that he is

21. Foster said that, after reviewing the photos again, he felt he had a duty to notify the ECU Board of Trustees. Foster said he "arranged communication to the Board of Governors and Board of Trustees." Specifically, Foster said he has "a friend who knows the right people to send the photos to." Foster stated that he went to Best Buy, bought a USB drive, and transferred the photos to the drive. Foster said he did not email or AirDrop the images. Foster did not send the photos to the media and stressed he did not want to damage ECU's reputation. He said that he could not recall how he got the files from his phone to the USB drive without emailing them or AirDropping them and could not explain it. Foster gave the USB drive to his friend, but declined to say who that person was. When asked if that person was Romary, Foster took a long pause and said, "I said I'm not going to tell you who I gave the photos to." Foster said he did not speak to anyone on the Board of Visitors or the Board of Governors about the photos. He spoke to a couple members of the ECU Board of Trustees about Gerlach, but he declined to disclose their identities. Foster declined to let us see his cell phone to verify any of these details. During a brief second interview, when provided the opportunity again to say whom he gave the USB drive to, Foster again declined. We also sent an email asking him to identify the person he gave the photos to prior to the completion of this report, but we have not yet received a response.

D. Peter Romary Investigation

Findings

22. We contacted Romary since both Matt Davenport and Foster, the two people known to have knowledge of the Images beyond the Photographer at that time, each indicated that they spoke separately spoke to Romary on Sunday, September 29, the day the Images were released. When we interviewed Romary, he provided us with information about his professional background and training. He indicated that he first learned of the incident with Gerlach on the social media site "Old Row Pirates." Romary said that, on Sunday, September 29, he saw a video of Gerlach talking to a blonde woman in a bar.[19] Romary explained that he was in the United Kingdom that day and that he called Matt Davenport. According to Romary, Matt Davenport said everyone was talking about Gerlach.[20] Romary also stated that he talked to Foster on Sunday, September 29. At first, Romary said that Foster mentioned being disturbed by photos he had seen of Gerlach. Later, however, Romary said he was unsure whether the topic of Gerlach even came up during his

[19] This video was taken at Sup Dogs and is believed to be from a different night. Gerlach appears to be wearing a different shirt than he is in the other videos from the evening of September 25. Additionally, Jeannine Hutson indicated that she knew someone who was there when that video was filmed, and it was on a different night. The video was posted on Instagram on September 25, 2019, at 11:35 a m. (EDT), before the time of the events that are the subject of this investigation.

[20] Matt Davenport confirmed that he teaches a Criminal Justice class at ECU on Mondays, Wednesdays, and Fridays. Matt Davenport said that, on Friday, September 27, many students were talking about Gerlach being out drinking that week.

conversation with Foster on September 29. Romary then explained that, late at night UK time, he saw the story about Gerlach on WITN.

23. Romary stated that he did not believe the Images had been pulled together and provided to the media as part of a "smear effort." Romary said all the Images were already available online when WITN posted the story Sunday morning.[21] Furthermore, Romary specifically stated he had not seen the email that was sent to the media, or materials send to the Board of Governors. Rather, Romary said he had been retained by the Fraternal Order of Police and the Police Benevolent Association to investigate the incident, since, according to Romary, Gerlach had alleged police officers had "set him up."[22]

24. During our interview, Romary stated that Gerlach's conduct was "between he and his wife," language very similar to that used in the First Email. As part of his investigation, Romary said that he had a former "vice officer" review the photos. Romary claimed not to have shared his analysis of the photos with anyone, including his clients, before speaking with us on October 18. However, Romary's assertions to us significantly tracked those of the First Email sent on September 29. During our interview, Romary said that, "if you look at the photos, her hands are right in his groin"; in other words, Romary explained that Gerlach "is getting a handjob through his pants." The First Email said, "You cannot see her hands, they are not on her legs, they are not on the bar, perhaps one of the pictures others were taking or those I have don't leave much to the imagination." The First Email also captioned this photo "handjob." Regarding another photo, Romary said that Gerlach was "holding [the Blue-Shirted Woman] tightly," not trying to get past her. The First Email then states that Gerlach "grabbed [the Blue-Shirted Woman] by the back of her neck and the hair; it was forceful..." Romary said that he had not seen any emails from johnqpublicatecu@gmail.com. Romary declined to identify the vice officer he showed the photos to and who helped produce this analysis as the former vice officer is now his client. Romary also declined to let us examine his cell phone to verify any of these details of his communications.

25. Romary offered that Board of Governors member Thomas Fetzer is publicly known to be a client of his. Romary declined to disclose whether any other member of the Board of Governors are clients. Romary explained that Thomas Fetzer hired him to conduct an investigation

[21] Our investigation does not support these statements. First, the only Images we are aware of being published prior to September 29, 2019 were videos of Gerlach with a woman at Sup Dogs (posted on the morning of September 25 from a prior date), and the video of him dancing at 5th Street Annex. Additionally, to our knowledge, WITN did not publish any photos or videos until the afternoon of Sunday, September 29.

[22] We spoke with an executive of the North Carolina Police Benevolent Association, who advised us that while the PBA has used Romary in the past, they did not employ him to investigate or report on anything in connection with this incident. Romary could have been retained by a local Greenville representative of the Police Benefit Association or the FOP. Romary filed a petition to gain access to street camera footage on behalf of the PBA and FOP on October 25, 2019.

into an applicant for Chancellor of Western Carolina University. Romary said that Thomas Fetzer only provided Romary with the name of the applicant, and he investigated from there.

26. Romary said that he had "sort of" received complaints and forwarded them to the Board of Governors. He said that he had a former law partner who knew of an ECU faculty member who had a grievance and he gave it to Romary who conveyed it to the Board. The faculty member did so because the faculty member knew of Romary's relationship with Harry Smith and what he did in connection with the Western Carolina chancellor applicant[23]. He indicated that is the only complaint he has forwarded. Romary said he did not know of the validity of the complaint and proceeded to explain it had to do with issues in OIED[24] and embezzlement. The faculty member was concerned about retaliation so he spoke to Harry Smith about this. Romary thinks that the investigating firm may be Womble Bond Dickinson.[25]

27. Fetzer previously hired Romary to investigate a matter related to the Board. Accordingly, we asked Mr. Fetzer to provide us with any documents or data he has pertaining to UNC System business, to include the events under investigation, from January 1, 2019 through the present. In this investigation Mr. Fetzer provided approximately 15 emails related to ECU. On October 26, we sought to confirm that he does not have any other responsive texts, emails, documents or data but had not heard from him by the time of the submission of this report.

28. Romary offered that he knew many members of the ECU Board of Trustees and the UNC Board of Governors, including Vern Davenport, Fielding Miller, Max Joyner, Phil Lewis, Angela Moss, Leigh Fanning, Philip Byers, Leo Daughtry, James Holmes, Thomas Fetzer, Harry Smith, Thomas Goolsby, David Powers, Michael Williford, Steven Long, and Pearl Burris-Floyd. On his own, Romary added that he has known Smith "for a long time."

29. When we asked Romary if had a written engagement letter with the Police Benevolent Association or Fraternal Order of Police, he became belligerent and stated he would talk to Betsy DeVos about us and this investigation. He thinks our entire investigation is ridiculous, and that Gerlach has maligned law enforcement officers with talk of a "set-up."[26]

On Saturday, October 26, 2019, Gerlach resigned as Interim Chancellor and we were asked to produce a report immediately to reflect the findings to that date.

[23] Romary indicated that this chancellor applicant had committed 7 counts of wire fraud for lying on the application.

[24] OIED is believed to be Office of Innovation and Economic Development.

[25] While Womble Bond Dickinson was retained to investigate a complaint by a faculty member at ECU that was submitted to Harry Smith, this was not the substance of that complaint.

[26] Mr. Gerlach, through legal counsel, confirmed he was not asserting law enforcement was engaged in a "set-up."

AT&T 2:39 PM 13%

Phil Lewis
Messenger

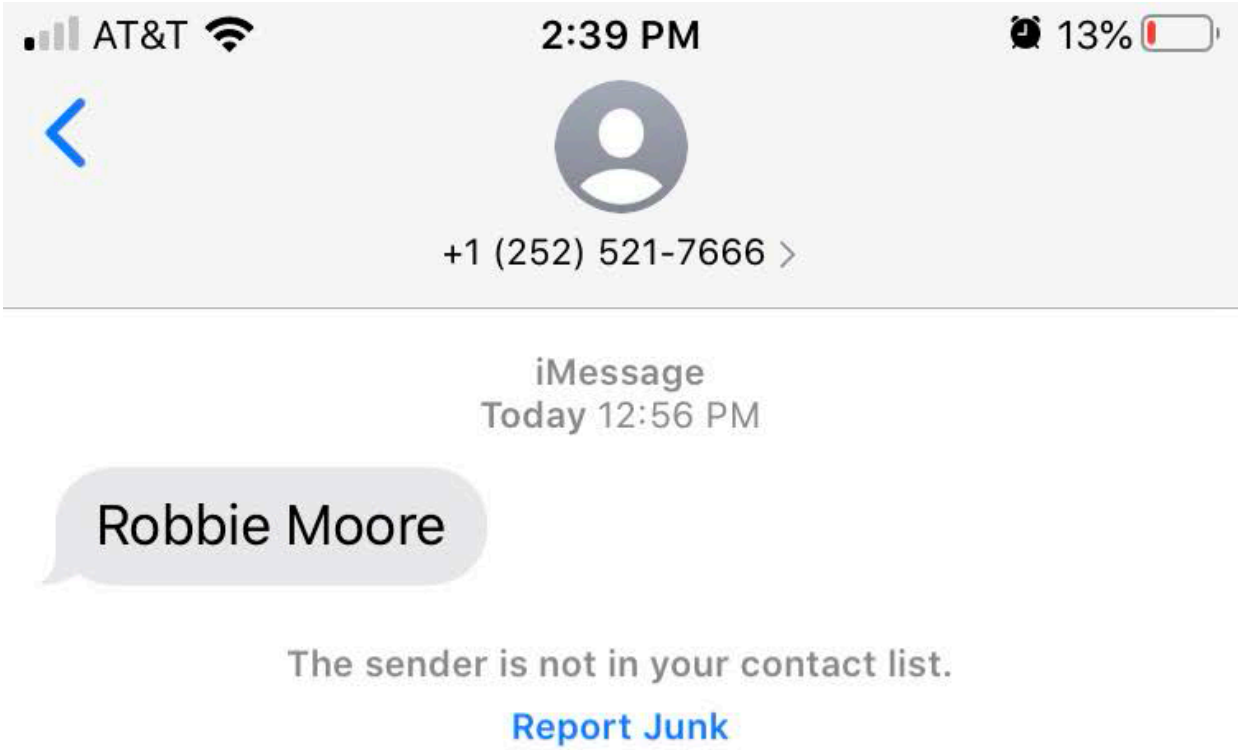
Phil Lewis

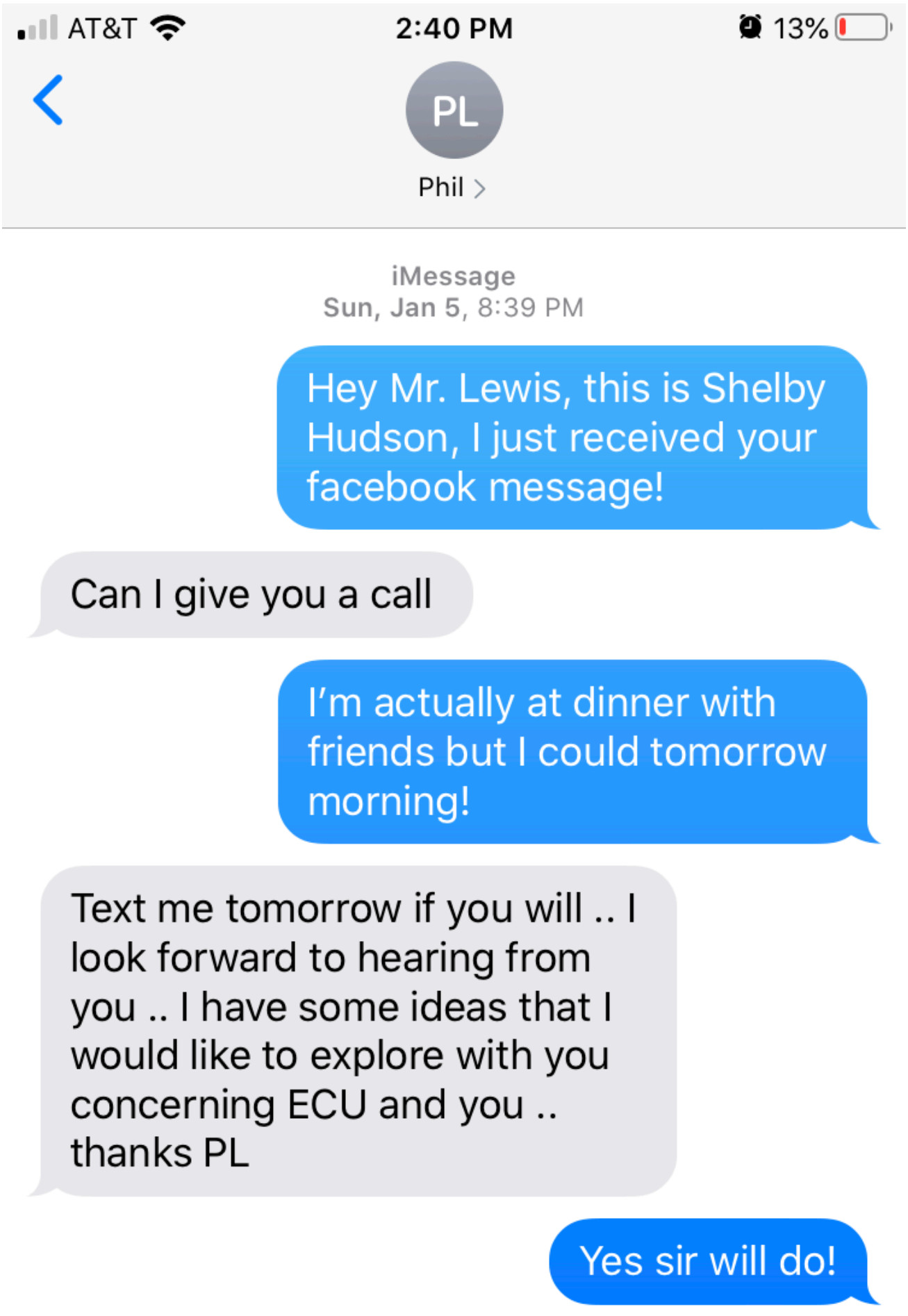
You're friends on Facebook

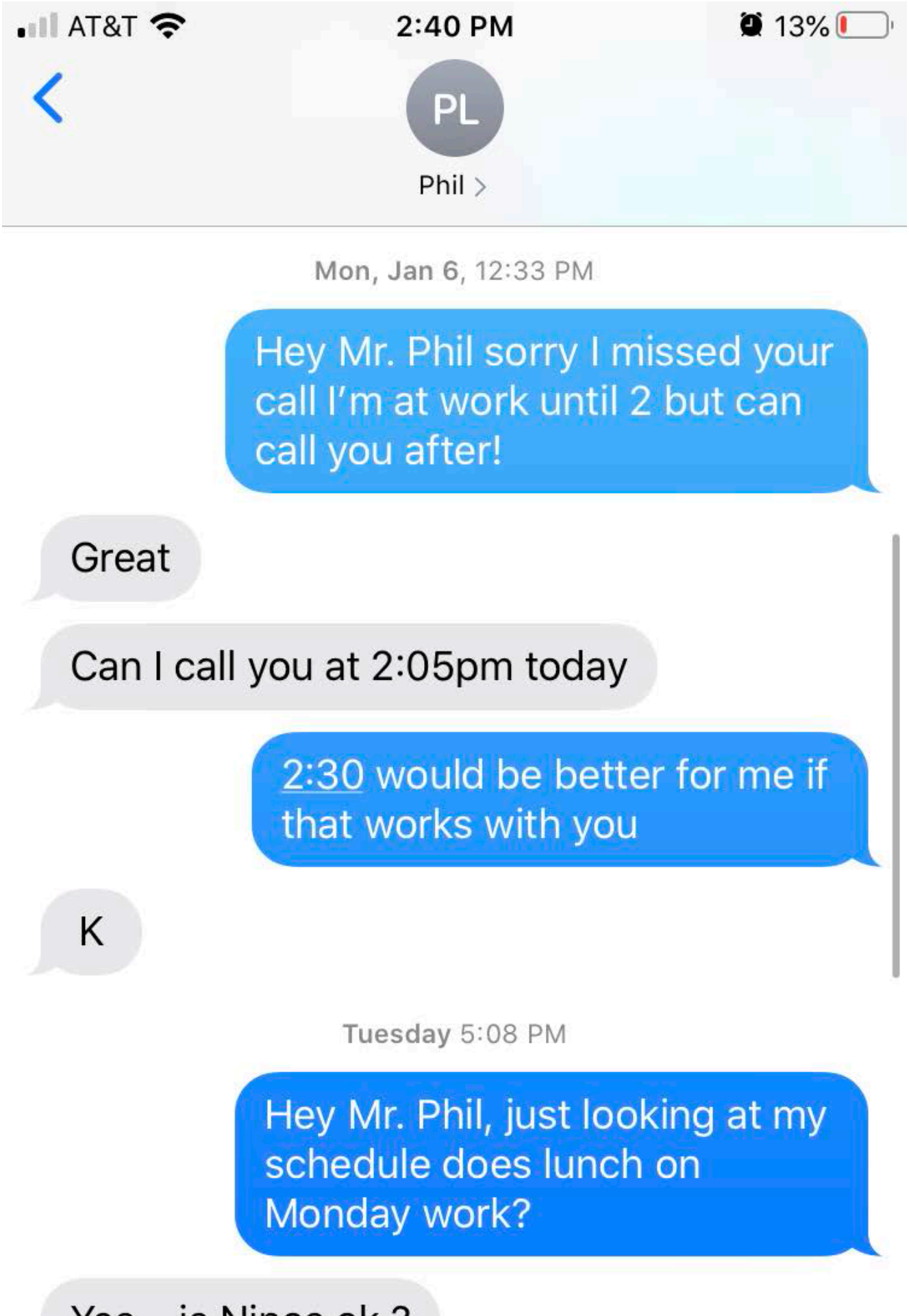
Works at Carolina Benefit Specialists Inc
Lives in Greenville, North Carolina

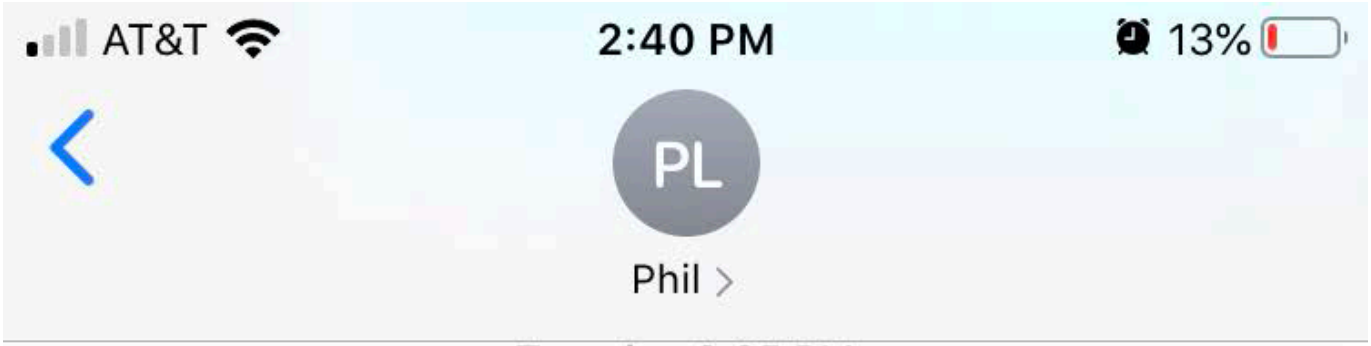
JAN 5, 8:28 PM

Shelby my name is Phil Lewis.. I am currently on the BOT of ECU. I would like to talk with you concerning an ECU issue . My cell number is 252-531-9704... plz text me a time you might be able to talk. Thanks GO PIrates


AT&T
2:39 PM
13%
+1 (252) 521-7666
iMessage
Today 12:56 PM
Robbie Moore
The sender is not in your contact list.
Report Junk


AT&T
2:40 PM
13%
PL
Phil
iMessage
Sun, Jan 5, 8:39 PM
Hey Mr. Lewis, this is Shelby Hudson, I just received your facebook message!
Can I give you a call
I'm actually at dinner with friends but I could tomorrow morning!
Text me tomorrow if you will .. I look forward to hearing from you .. I have some ideas that I would like to explore with you concerning ECU and you .. thanks PL
Yes sir will do!


AT&T
2:40 PM
13%
PL
Phil >
Mon, Jan 6, 12:33 PM
Hey Mr. Phil sorry I missed your call I'm at work until 2 but can call you after!
Great
Can I call you at 2:05pm today
2:30 would be better for me if that works with you
K
Tuesday 5:08 PM
Hey Mr. Phil, just looking at my schedule does lunch on Monday work?



Tuesday 6:25 PM

12?

Yes sir that will work!

K see you then

Thursday 7:37 PM

Ninos not open Monday lunch .. how about The Villedge Hilton 12 noon

Thursday 8:57 PM

That works with me!

Today 11:08 AM

Hey Mr. Phil just checking in to see if we're still on for today?


AT&T
2:41 PM
13%
Recents
Edit
PL
Phil Lewis
message
call
FaceTime
mail
pay
January 6, 2020
2:35 PM Incoming Call
13 minutes
phone RECENT
+1 (252) 531-9704
FaceTime
Notes

Office of the University Registrar
Uptown 207 | 207 East 5th Street | Mail Stop 518
East Carolina University | Greenville, NC 27858-4353
252-328-6524 office | 252-328-4232 fax | regis@ecu.edu | www.ecu.edu/registrar/

February 4, 2020

Student: Shelby McCall Hudson

Due to the many requests to certify academic information, The Office of the Registrar will appreciate your accepting this certification in lieu of having us complete a form which you may have provided.

As of the above certification date, we hereby provide and certify the following academic record information.

School Code: **0002923** Phone Number: **252-328-6077**

Shelby M. Hudson, date of birth 09/16/1999 was enrolled as a full-time student at East Carolina University in Greenville, North Carolina from 08/21/2017 through 12/03/2019. Ms. Hudson's Major is Marketing—intended. The address on file is 302 Gregory Road, Wilmington, NC 28405. Phone number is 910-859-3221. She is not currently enrolled in the Spring, 2020 semester.
This certification is valid only when it bears the imprinted seal of East Carolina University. This certification ends with this line.

Angela R. Anderson

Angela R. Anderson

University Registrar

Seal shaded to show authenticity

East Carolina University
Tomorrow starts here.

Office of the
University Registrar
Uptown 207, East 5th Street
East Carolina University
Greenville, NC 27858-4353

252-328-6524 office
252-328-4232 fax
www.ecu.edu/registrar/
regis@ecu.edu

February 4, 2020

To whom It may concern,

This confirms that Shelby McCall Hudson was registered for classes for the Spring semester 2020 and considered to be an East Carolina University current student in good standing, until January 13, 2020, at 2:33:26 PM, when the courses were dropped by Ms. Hudson within the student information system.

Even though Ms. Hudson had dropped her schedule for Spring semester 2020, she could have re-registered for courses through 5 pm on January 17, 2020, which was the conclusion of the course adjustment period. All students may make schedule adjustments until that time.

For the purposes of responding to a request for directory information, the student would not be considered as an ECU student for Spring semester 2020, due to the dropping of all courses by the student on the first day of classes. Official enrollment data is reported to the National Student Clearinghouse following the conclusion of the course adjustment period.

With kind regards,

Angela R. Anderson
Acting Vice Provost for Academic Success
Assistant Vice Chancellor and University Registrar

February 4, 2020

David Powers, Chair
Committee on University Governance
UNC Board of Governance
PO BOX 2688
Chapel Hill NC, 27515

Dear Governor Powers,

Please let this letter serve as our response to the complaint and supplemental complaint filed with the Board by Vern Davenport, Chair of the ECU Board of Trustees.

First, as you are aware we acknowledged in our January 24, 2020 letter that we regret certain actions and comments involved in the meeting with the former ECU student. We standby all statements and concerns set forth in that letter.

We have reviewed in detail the complaint and supplemental complaint dated Jan 30, 2020 which contain many allegations. We have addressed some of the allegations below. We made the decision that it would not be constructive to address all of the allegations and contentions. However, for those allegations and contentions that we have not addressed, it should not be construed as an admission that the allegations are factually correct or the conclusions of unethical conduct are correct.

In the second paragraph of the first page of the letter, Mr. Davenport, Mr. Miller and Mr. Smith affirmatively state that they are submitting the supplemental information "With a majority of board support." This is a misrepresentation and is an example of their willingness to take unilateral actions to attack board members who have disagreed with their positions and who refused to vote for Davenport as Board chair. At no time did Davenport bring any of these allegations before the board to discuss or any action which should or should not be taken as a result thereof. As we understand it, the Board may not take any action on any matters unless a public meeting has been held and a majority of the board members vote for the action. This was simply not done and represents the continuing dysfunctional nature of the board.

We now will address certain allegations and contentions set forth in Section I. The numbered paragraphs below correspond with the paragraphs of that section.

1. We have previously acknowledged in our January 24 letter that the conversation we had with former the ECU student could be construed as inappropriate and have expressed our regret for those actions. In scheduling the meeting with the former student, our intentions were a good faith attempt to address overriding problems which we now believe the BOG should address. The structure of the ECU Board puts the SGA President in a position of breaking a deadlock on the board which has been recurring for at least the past year. The result has been that current and past

Trustees have engaged in solicitation of students to run for the SGA President position who the members believe will support their particular faction. Additionally, current and past Trustees have held private meetings with the SGA President for the purpose of persuading the president to side with their particular agenda. By way of example, two nights before the vote on who would serve as Board chair, Davenport took the current SGA President to dinner at a local Greenville restaurant. This obviously gave the impression that Davenport was soliciting his vote because he was aware of the significant opposition to his election. Unfortunately, we were following this practice in meeting with the former ECU student, and have expressed our regret for doing so. It is our position that this practice should be prohibited and that specific rules be implemented which expressly prohibit Trustees from soliciting candidates to run for the SGA President and from having private meetings with the elected president. This is particularly true if the SGA President will continue to have the tiebreaking vote.

2. Prior to our meeting with the former student, we were informed by a reliable source that Trustee Max Joyner had secured a candidate for the SGA President to run in the Spring of 2020. Joyner has been a consistent ally of Davenport and Miller. Based on this information, we reached out to the former student because she had previously run for that position in 2019.

As now is universally known, the former student recorded the conversation and the recording was subsequently published to Davenport and others. Of significant importance, we have just learned that the former student was not enrolled at ECU after December 3, 2019. This is confirmed by an official statement dated February 4, 2020 from the university registrar which is attached to this response. Without excusing our actions as set forth in the January 24 letter, it is apparent to us that Davenport, Miller and perhaps others played a role in encouraging or facilitating the former student to meet with us with the ulterior motive to obtain information which they could use to help to publicly embarrass us and support their efforts to have us removed from the Board. This further illustrates the personal animosity and lack of tolerance which is demonstrated by the Davenport/Miller faction with other Trustees who do not support their agenda, including the election of Davenport as board chair.

3b. This allegation charges Trustee Moore with offering to assist the former student who was obviously not eligible to run for SGA President with his “billboard business” and “sign business.” This is a misrepresentation of the statement which was made. SGA Candidates are only allowed to erect one sign for the campaign on campus. No billboards are allowed on campus. Trustee Moore is in the business of leasing billboard space, none of which is located on campus. His business does not print signs for any political campaign.

3c. The allegation of "a commitment from an experienced campaign manager who has worked and managed a variety of political campaigns in the state of North Carolina in various offices" is a gross exaggeration. The "experienced campaign manager" to whom reference was made is a 21-year old student at another university. He has had very limited experience with any campaigns and his experience has been primarily comprised of putting out signs.

3e. The referenced "ECU student information" is public information found online. Again, this allegation takes an innocent statement completely out of context.

3f. A review of the recording will demonstrate that the "you would have to do some stuff for him" is misrepresented. The recording does not say "you."

3g. This is another example of Davenport and others fabricating an improper motive out of a simple comment. The ECU Chancellor and his staff make the decision on who is allowed in the Chancellor's Box during football games.

Gerlach Allegations

Purpose

On November 8, 2019, The Board of Governors of the University North Carolina released a report provided by the Womble Dickson law firm concerning allegedly inappropriate conduct involving former Interim Chancellor Dan Gerlach. In the report, the investigators stated that the two of us told others that we were "doing our own investigation" of the allegations. The report could be read to imply our connection with Mr. Peter Romary's effort to investigate the allegations. Additionally, the report indicated that we had refused to allow the investigators to have copies of communications from our phones relevant to the investigation. All of these allegations are simply false, and we write to point out the specific inaccuracies.

Background

During his short tenure at ECU, Mr. Gerlach had become very popular. Students and faculty welcomed his warmth and humility. He was approachable and respected. We also respected Dan and wanted the best for him. With that being said, when we received troubling reports on September 28th, 2019, we could see that the alleged misconduct was not to be taken lightly. Before advising any definitive action, we strongly felt that our Board needed to have all the facts about the night in question.

Shortly after the publication of the allegations and Dr. Roper's decision to place Dan on leave, the Board faced extraordinary pressure from students, alumni and faculty to advise that he be reinstated despite the investigation still ongoing. As members of the Board, we were most concerned about the possibility that the Board would take significant action without knowing all

the facts. We were also concerned that the University's reputation could be tarnished if our Board acted hastily and unwisely to appease outside influence. At that same time, BlueCross of North Carolina's CEO was dealing with the consequences of a DUI that had been improperly investigated and reported. It was a public relations nightmare, and we knew we could not afford a situation like that on our hands.

Key Points

The goal of the subsequent text is to help illustrate that all of our actions throughout the investigation were in an effort to protect the University. These are the 6 key points we want to emphasize:

1. We never attempted our own investigation, though we did act to assure that University officials were informed of what we were hearing from members of the public and others. Furthermore, we never stated to anyone that we were investigating on any organization's behalf, nor did we act on our own with respect to any matter that should have taken to our Board or appropriate administrators.
2. We do not know who "John Q. Public" is. Media representatives did convey to us messages from this unidentified person, but we did not request this information or seek out further contact.
3. We do not know Mr. Peter Romary, and at no point have communicated with him concerning his fact finding efforts in any capacity.
4. Though we know of Judge Jeff Foster and Mr. Matt Davenport, we have not communicated with either of them concerning any information relevant to these accusations in any capacity.
5. We never refused to provide relevant information from our phones or were uncooperative with Womble Dickson investigators.
6. The report selectively omitted incriminating actions taken by some members of the Board while exaggerating those taken by others.

September 28th

One of us, Mr. Robert Moore, did receive communications and photographs on the evening of September 28, 2019 regarding Mr. Gerlach's misconduct. As the investigative report notes, we relayed the information to the proper officials in a timely manner. We informed both Mr. Harry Smith, who was Chair of the Board of Governors at that time, and Chairman Vern Davenport of the allegations on the afternoon of September 29, 2019. All procedures were properly followed.

October 2nd

At this point the initial shock of the incident had worn off and public support was growing. As students, alumni and faculty pushed for his reinstatement, the majority of the Board was fully behind former Interim Chancellor Gerlach. It was even discussed to let him lead out the Pirate football team on a nationally televised game against Temple. Steve the Pirate, who typically leads the team onto the field, had a surgery and couldn't participate. We were among those who were

against this decision. Luckily we won out and he was not allowed to represent the University in that manner on a national scale.

Our Interactions with Mr. Gerlach

One of us, Mr. Robert Moore, wrote to Chairman Davenport on October 1, 2019 in part to inform him of our intention to meet with Mr. Gerlach. He did not express any concerns to us about meeting with Mr. Gerlach at that time. Mr. Gerlach had contacted the Board soon after the allegations became public, and, as Trustees, we were all interested in his wellbeing. We did meet with Mr. Gerlach on October 8, 2019. The primary reason for the meeting was to see how he was holding up under the pressure created by the publicized reports of misconduct and to see if we could help him with those personal problems.

At the meeting with Mr. Gerlach on October 8, 2019, neither of us indicated that we were doing our own investigation of charges against him and at no point did we interrogate him about his activities on the night in question. Our discussion that morning focused on Mr. Gerlach's personal concerns for himself and his family and personnel questions involving various University administrators. He mentioned having met with Chairman Davenport on October 2nd, which was confirmed in the investigative report. Towards the end of our October 8th discussion, Mr. Gerlach did proffer that he drove downtown early in the evening on September 25, 2019 but he did not elaborate on what happened later that night.

Our goal with the October 8th meeting was to be supportive, not investigative. Again, we did not ask Mr. Gerlach any questions about his activities on the night in question. Mr. Gerlach even described the meeting as "fatherly." [See Finding III (B) (9) at p. 18] Additionally, the meeting was not at all a secret seeing as the intentions to meet with Mr. Gerlach had already been stated to the chairman one week prior. The notion that it was a secretive fact-finding mission with an objective of gathering exclusive information to be kept from other Board members is laughable. It was not an investigation or interrogation, it was two BOT members offering support and "fatherly" advice to the defamed Interim Chancellor.

Davenport also stated that he has had two life coaches. Interestingly enough, very little about the October 2nd meeting between the two made it into the investigative report except that "Vern told Gerlach that the Board of Trustees supported him." [See Finding III (B) (7) at p. 17] Personal criticisms seem an interesting way to "show support." Numerous other meetings between the two were held but were not mentioned in the published report.

Our "Own Investigation"

The investigative report suggests that we "indicated" that we did our "own investigation." [See Finding I(F) at p. 8 and n.6 and n.9] . In our communications with the authorized investigators, we at no time stated that we were doing our own investigation.

Our only other involvement that made us recipients of facts relevant to the investigation was on October 2, 2019. That night, the two of us were walking in the downtown area. One of us, Mr. Phil Lewis, lives on Rock Spring Road which adjoins the campus. Both of us were walking from his home that night for exercise. We walked into Club 519 as indicated in the investigative report. [See Finding III (B) (12) at p. 18] We did not however, "ask around." We found the bar unoccupied except for the bartender. Mr. Moore knew the owner of the bar, and he asked whether the owner was there. The bartender stated that he was not and we asked no further questions of him or anyone else.

That evening we also went to a local restaurant, for a late dinner. We had no intentions of talking to anyone about Mr. Gerlach, just wanted to get some food. Despite this, a waiter who saw that we were wearing ECU apparel started a conversation with us about the biggest news at that time: Mr. Gerlach. He was excited to share us that the person who photographed the Interim Chancellor on September 25, 2019 worked in that restaurant. As indicated in the report, we relayed this information to Harry Smith, Chairman of the Board of Governors at the time, and he apparently reported it to other Board of Governor's members. [See p. 10 at n. 9]

We made no attempt to follow up on any information about the photographer. We do not know his full name, and we did not "ask around" anywhere to find it. On October 4, 2019 we learned through an email from attorney Beth Jones that her firm had been authorized by the Board of Governors to investigate the accusations against Mr. Gerlach.

Allegations of being Uncooperative with the Investigation

It is also necessary for us to address the allegations that we refused to provide authorized investigators with information from our cell phones. Authorized investigators did not ask us to contribute to their investigation until Friday, October 11, 2019. On that date at 12:47 PM, attorney Beth Jones from Womble-Dickinson sent emails to both of us indicating that she would like to speak with us regarding the investigation. She stated then that she wanted to meet "between now and Wednesday, October 16, 2019." Her email further stated that she wanted to "have an IT personnel present during the interview to copy data from your cell phone."

The report indicates that one of us, Mr. Moore, left a voice mail on October 12, 2019 for Mr. Randy Ramsey, chair of the Board of Governors, indicating that he had "nothing to add" and that "I'm going to let her sit right where's she is at." [See Finding III (B) (11) at p. 18] It further indicates that Mr. Lewis left a message for Beth Jones stating that "no one was going to review his phone." [See Finding III (B) (10) at p. 18]

Mr. Moore received a call from Ms. Beth Jones late on Saturday afternoon, October 12, 2019. Mr. Moore was with his family at this time at their vacation home. He tried to return Ms. Jones' call that afternoon but could not reach her. He was frustrated, and in the voice mail to Mr. Ramsey, expressed this frustration. Although annoyed, he never stated that he would not be willing to meet with Ms. Beth Jones.

On October 14, 2019, Mr. Moore was expecting a call from Ms. Beth Jones. When it appeared to Mr. Moore that she did not intend to contact him, he wrote to her an email dated October 14, 2019 and sent it at 4:53 PM. The email, which interestingly enough is not included in the report, stated "I will avail myself by phone this week if you give me times and dates that work for you." In a subsequent email, Ms. Jones stated at 5:38 PM that another attorney in her firm, Mr. Mark Henriques had been working with her and could talk with him that evening.

Later on October 14, 2019, the two of us did speak with Mr. Mark Henriques. In our conversation which was very brief, Mr. Henriques did not ask us for any information from our phones. We cooperated with his questioning and helped the investigation how we could.

Neither of us specifically refused to provide any cell phone information from our phones. While Mr. Lewis did say no one would review his phone, he was reacting to Ms. Jones request to copy the entire content of his phone which he considered overbroad and a violation of his rights to privacy and his right not to disclose information not a part of the public record or not relevant to the investigation. Either of us would have provided text messages, emails, and other information from our phones which related to the investigation. We were not asked to provide only relevant information, and we would have provided such information if asked. Although digging into our interactions was baseless, we'd have fully cooperated with the investigation in a reasonable capacity had we been given the opportunity to do so.

Additional Allegations

The report indicates that emails were sent to us that may not have been sent other members of the Board of Trustees. [See Timeline pp. 6-8 entries labeled Sunday, September 29, 2019 at 6:20 PM, Monday September 30, 2019 at 10:04 PM] We do not know exactly what other Board members received. We can state unequivocally however, that we do not know who "John Q. Public" is nor do we know Mr. Peter Romary. We at no point during the investigative process or thereafter communicated with Mr. Peter Romary, Mr. Matt Davenport, or Judge Jeff Foster. Any claims to the contrary are simply false.

Questions about the Investigative Report

Interestingly enough yet again, the investigative report failed to mention several other Board members who took similar action in the wake of the fallout from the Chancellor's illicit activities. As previously discussed, Chairman Davenport criticized Mr. Gerlach's professionalism and basic hygiene at their October 2nd meeting, but was cited in the report simply as being supportive. Multiple other meetings between the two were conducted but yet were omitted entirely from

the final draft of the report. Vice Chairman Fielding Miller spoke with Mr. Gerlach multiple times during the formal investigation period on a variety of topics, again without any mention in the report. Board member Max Joyner even had a formal meeting with the owners of Club 519 in an attempt to investigate the events that took place on the night in question. At no point was this mentioned in the report. What we were falsely accused of other Board members actually did, but for some reason all of that was conveniently neglected in the draft of the investigative report that was published.

These blatant omissions suggest one of two things: either the members were not completely truthful in their responses to the investigative team at Womble-Dickinson, or the firm showed clear bias towards protecting the reputations of certain board members but not others. It is again interesting that despite meeting with Mr. Gerlach and conducting lines of questioning of their own, all who voted for Vern Davenport conveniently were left out of the section titled, "Interactions with Board Members During the Investigation." [See Finding III (B) (7-15) at p. 17-19]

Questions about Leadership

After the BOT meeting on October 30th, member Max Joyner indicated to Mr. Moore that he knew we both would be cited in the report that was to be published in the near future. Although it was a courteous gesture, it clearly showed he was granted access to the contents of the report prior to other members of the Board. This certainly suggests that Chairman Davenport also had access to the report prior to its publication, and hand-picked members to share the findings with. This is another example of favoritism and begs bigger questions to be asked:

- As Chairman, why would Davenport only share contents of the report prior to its publication with certain members of the Board?
- We have confirmed the contents of the report were not shared prior to its publication with any members of the Board who did not vote to elect him as Chairman. Is the clear favoritism towards his supporters healthy for the whole board or merely his own personal agenda?
- As we have shown, other Board members took similar or even greater action to try to discover the truth about Mr. Gerlach's actions that evening and thereafter. With the knowledge that the report was presented to the Chairman prior to its publication, is it any surprise that it shed a biased negative light on his two biggest dissenters?
- Was the reason for the exclusion in the report of other members' interactions with Mr. Gerlach and relevant members of the community that they voted for the Chairman?
- With all that was left out, how thorough of an investigation was it really?
- Was a portion of the original report redacted prior to publication?
- Has the bias in favor of those who support the Chairman shown up in other Board affairs as well?
- What other important information has been guarded and held exclusively by leadership?

This is not the first time that there has been information unevenly distributed under Vern Davenport's leadership. In January of 2019 while Davenport was serving as a Vice Chairman, Mark

Copeland, a member of the BOT at the time, complained of the lack of information that was provided to its members. It is clear that Chairman Davenport feels he can act with impunity and decide which Board members deserve to have the privilege of the basic information required to do the job well.

Even on September 30th during the discovery phase of this incident, Chairman Davenport elected to have three separate meetings with different members of the Board. We cannot confirm that information was withheld from some groups but not others, however how can we be one unified voice if at every turn our leader is playing favorites and splitting the Board into groups? At no point did we have a group meeting with all Board members present to discuss the fate of the Interim Chancellor. It was always separated into small group discussions allowing the Chairman to have complete control over which members had access and input. It's one of the biggest events in recent memory at East Carolina University and the Board of Trustees was not brought together to collectively review even once?

This lack of communication between the Board as a whole has been a recurring theme. Chairman Davenport avoids Open Meetings at all costs and shies away from any semblance of accountability. Almost no debate or discussion can take place when leadership aims to divide in this manner. It cripples the effectiveness of the Board solely to maximize the Chairman's influence and the progression of his and only his agenda.

It is no secret that we did not vote for Davenport to be Chairman. Since then, it appears that he has sought personal revenge and the both the Board of Trustees he is supposed to be leading and East Carolina University as a whole have gotten caught in the crosshairs. The implications of the investigative report regarding our actions are ridiculous stretches of the actual facts that turn a blind eye to reality. We were singled out in the report despite not violating any bylaws or policies. We hope this document has helped illustrate the corrupt nature of claims to the contrary.

Summary

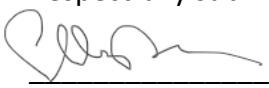
In summary, we never initiated our own investigation of the allegations involving Mr. Gerlach and we never characterized what we did as "our investigation" to the team at Womble-Dickinson. We still do not know who "John Q. Public" is. We do not know Mr. Peter Romary and did not communicate with him or with Mr. Matt Davenport or Judge Jeff Foster about anything at all from September 25, 2019 to the present time. Furthermore, we did not refuse to give relevant information from our phones to authorized investigators and would have provided such information had we been asked.

The actions that we did take after the allegations were publicized were motivated by our desire to help the Board to make informed decisions and to protect the reputation of East Carolina University. We feel confidently that we did the right thing and had no legal or ethical missteps.

Conclusion

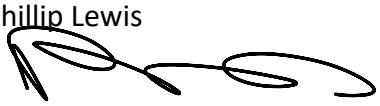
We have chosen not to address many of the allegations and contentions set forth in the supplemental complaint. As stated above, some of our actions which we now regret have been similar to the actions taken by current and former board members. We do not make this statement as an excuse for our actions, but to make the point that policies and rules need to be implemented to prevent the recurrence of conduct which is now being rightfully questioned, to hopefully redirect the focus of the ECU Board of Trustees to the opportunities and issues which will further the University and with the hope that petty infighting will cease between board members.

Respectfully submitted,



_____

Phillip Lewis



_____

Robert Moore

Robert Moore
1968 Cornerstone Drive
Winterville, NC 28590

January 20, 2020 VIA EMAIL

Governor David Powers
910 Raleigh Road
Chapel Hill, NC 27514

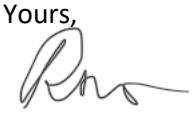
Dear Governor Powers:

I hope this finds you well. After thoughtful consideration and consulting with other East Carolina Board of Trustee Members I would like to ask for the UNC Board of Governors Committee on University Governance to consider a determination of whether a recommendation should be made to the full UNC Board of Governors on the removal of Vern Davenport as an East Carolina Board of Trustee Member. I do not take this decision lightly as Trustee Davenport violated UNC Policy 200.7, Duties, Responsibilities, and Expectations of Board Members in actions he took in regards to Pitt County Resident Superior Court Judge Jeffrey Foster. I as well as other members of East Carolina BOT asked him not to request the removal of Judge Foster but he did not heed these warnings and took action without approval of either the ECU BOT or ECU Executive Committee. I told Trustee Davenport that he should reach out to Judge Foster as he was a very respected member of the legal community in Pitt County as well as being a dedicated Pirate. He did not take my recommendations and worked in concert with Trustee Miller to cause the removal of Judge Foster. Trustee Davenport violated at a minimum the following policies:

1. Ethical Conduct
   Trustee Davenport Violated this by asking the entire ECU BOT via email(attached) not to comply with the NC Open Meetings and public records law by asking the ECU BOT not to discuss with anyone the reason for Judge Foster Resigning.
2. Support for the Institution.
   Trustee Davenport violated this by not acting in good faith with the best interest of the institution or University organization in mind.

It is my opinion that Trustee Davenport may have committed other policy violations in regards to the actions he took with Judge Foster. I as well as other ECU BOT members regret that these actions were necessary, but we believe them to be in the best interest of East Carolina University and the University of North Carolina System as well as the future of East Carolina University.

Yours,



Robert Moore, Member
East Carolina University Board of Trustees

Robert Moore
1968 Cornerstone Drive
Winterville, NC 28590

January 20, 2020 VIA EMAIL

Governor David Powers
910 Raleigh Road
Chapel Hill, NC 27514

Dear Governor Powers:

I hope this finds you well. After thoughtful consideration and consulting with other East Carolina Board of Trustee Members I would like to ask for the UNC Board of Governors Committee on University Governance to consider a determination of whether a recommendation should be made to the NC Senate on the removal of Fielding Miller as an East Carolina Board of Trustee Member. I do not take this decision lightly as Trustee Miller violated UNC Policy 200.7, Duties, Responsibilities, and Expectations of Board Members in actions he took in regards to Pitt County Resident Superior Court Judge Jeffrey Foster. I as well as other members of East Carolina BOT asked him not to request the removal of Judge Foster but he did not heed these warnings and took action without approval of either the ECU BOT or ECU Executive Committee. I have also attached a copy of a text message that Trustee Miller sent to Judge Foster. Furthermore, Trustee Miller put ECU Board of Visitors Chair John Cooper in an untenable position of calling such a passionate Pirate and asking for him to resign. It is the belief of myself and other ECU BOT members that Trustee Miller tactics including bullying as well as taking action without needed support violating the following policies:

1. Ethical Conduct(State Ethics Act)
   Trustee Miller violated this by his threats to have Judge Foster removed.
2. Support for the Institution.
   Trustee Miller violated this by not acting in good faith with the best interest of the institution or University organization in mind.

Although I have attached the single text message that I have I believe that Trustee Miller, John Cooper and Judge Foster may have other communications from Trustee Miller that support the facts and specifics of his violations. I am also of the opinion that Trustee Miller will not dispute the facts that I have put forth in this document.

I regret that these actions were necessary, but I believe them to be in the best interest of East Carolina University and the University of North Carolina System as well as the future of East Carolina University.

Yours,

Robert Moore, Member
East Carolina University Board of Trustees

Text message from Trustee Miller to Judge Jeffrey Foster on November 22, 2019.

"Good Morning Judge Foster, this is Fielding Miller with ECU BOT. I don't think that we have ever met but I am aware of your generous support and passion for all things ECU. Regretabbly, the Womble report described behavior by you that was counter to the best interest of ECU. As such, the BOT is prepared to hold a vote today regarding your continued membership on the BOV. As John Cooper shared with you yesterday, we prefer that you quietly resign from the BOV which would keep this situation out of the public view(the BOT vote has to conducted in open session with media present). I would to discuss this with you this morning if you are available. Please let me know."

From: Robert Moore
To: Vern Davenport; Karin Szypszak; David Powers
Subject: [External] Davenport Supplemental
Date: Thursday, January 30, 2020 4:31:35 PM
Attachments: davenport_letter_Final_BOG_powers.pdf
davenportemail_CONFIDENTIAL ATORNEY-CLIENT COMMUNICATION RE_ BOV.eml

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Please see attached.

--
Robert Moore
Riley Outdoor, LLC
Patriot Outdoor, Inc.
252-521-7666 Cell
252-527-2223 Office
252-379-0614 Fax

January 29, 2020

VIA EMAIL

Mr. David M. Powers, Chair
Committee on University Governance
Board of Governors
University of North Carolina System
Post Office Box 2688
Chapel Hill, NC 27515

RE: Complaint Against East Carolina University Trustee Vern Davenport

Dear Mr. Powers:

Pursuant to your January 24, 2020 letter, I am submitting supplemental information to your Committee in support of the Complaint submitted by me against East Carolina University Board of Trustee Member, Vern Davenport.

Statutes and Code Sections Violated. The actions of Mr. Miller violated Chapter 200.7 III.B. 3, 9.,C., 1, of the Code and Policies of the UNC System.

Statement of Facts. Resident Superior Court Judge has served East Carolina University in his capacity as Board of Visitors Member. He has dedicated his time and energy to ECU while serving as a respected member of the Pitt County legal community and now as a Resident Superior Court Judge. Judge Foster was blindsided on November 21, 2019 by a phone call from Board of Visitors Chair, John Cooper. John called him to inform him that both Trustee Miller and Trustee Davenport were asking for his resignation. Judge Foster subsequently resigned from the BOV after being bullied by Trustee Miller and his tactics. Trustee Davenport worked in concert with Trustee Miller to remove a dedicated Pirate via his unilateral actions.

200.7.B.,3. Trustee Davenport with Trustee Miller made a unilateral decision without consultation of the ECU Board or ECU Executive Leadership. Trustee Davenport worked along with Trustee to bully Judge Foster into the untenable position of resigning. This pattern of behavior is a theme for Trustee Davenport. This is a direct violation of this policy.

200.7,B.,9 Trustee Davenport does not appreciate or respect that his position on the ECU BOT is that of a collective group, not individual. The unilateral decision to work with Trustee Miller to have Judge Foster removed is another example of this behavior. This behavior is another example of him not getting board consensus with matters that are important to ECU.

200.7, C. 3. Trustee Davenport asked all members of ECU Board of Trustees to not comply with NC Open Meetings Law and public records law with his email(read below)
"Also, just to be clear and I am sure it goes without saying —- there is to be no discussion with anyone regarding the reasons for his resignation. If someone inquires, refer it directly to Judge Foster."

This was an attempt by Trustee Davenport to violate and coerce other BOT members not to comply with NC Open Meetings and Public Records Law.

I will be glad to provide any other additional information or answer any questions which the Committee may have.

Sincerely

Robert Moore

From:	Vern Davenport
To:	Zigas, Paul
Cc:	Leigh J. Fanning (leighfanningecu@gmail.com); p furr; Max Joyner (mjoyner@towneinsurance.com); lewisphil54@gmail.com; Miller, Fielding; Robert Moore; AngelaECU@hotmail.com; rplybon@plybon.com; Jason Poole (Jason@trpcpa.com); Jim Segrave (jsegrave@lgm-enterprises-llc.com); Vince; SGAPRESIDENT; Ayers, Megan Kint
Subject:	Re: CONFIDENTIAL ATORNEY-CLIENT COMMUNICATION RE: BOV
Date:	Friday, November 22, 2019 4:19:08 PM

Also, just to be clear and I am sure it goes without saying —- there is to be no discussion with anyone regarding the reasons for his resignation. If someone inquires, refer it directly to Judge Foster.

Any questions, please get to me directly.

Vern Davenport
Cell: 919.802.2448
EM: Vern.Davenport@nqcapital.com

Sent from my iPad

> On Nov 22, 2019, at 3:48 PM, Zigas, Paul <ZIGASP@ecu.edu> wrote:
>
> Dear Members of the Board of Trustees:
>
> Please find attached an image of the letter of resignation tendered by Jeffery Foster earlier today. Mr. Foster's resignation from the Board of Visitors is "effective immediately." Please do not hesitate to contact me if you have any questions. Thank you and have a great week-end.
>
> Yours,
>
> Paul
>
> Paul H. Zigas
> Interim University Counsel and Vice Chancellor for Legal Affairs
> East Carolina University | Office of University Counsel
> 215 Spilman Building | Greenville, NC 27858
> Office: 252.328.6940 | Fax: 252.328.4832 | E-mail: zigasp@ecu.edu |ecu.edu
> [cid:image001.png@01D3173E.30A70620]
>
> <winmail.dat>

From:	Robert Moore
To:	Miller, Fielding; Karin Szypszak; David M Powers
Subject:	[External] Miller Supplemental
Date:	Thursday, January 30, 2020 4:32:23 PM
Attachments:	miller_letter_Final_BOG_powers.pdf

Please see attached.

--
Robert Moore
Riley Outdoor, LLC
Patriot Outdoor, Inc.
252-521-7666 Cell
252-527-2223 Office
252-379-0614 Fax

January 29, 2020

VIA EMAIL

Mr. David M. Powers, Chair
Committee on University Governance
Board of Governors
University of North Carolina System
Post Office Box 2688
Chapel Hill, NC 27515

RE: Complaint Against East Carolina University Trustee Fielding Miller

Dear Mr. Powers:

Pursuant to your January 24, 2020 letter, I am submitting supplemental information to your Committee in support of the Complaint submitted by me against East Carolina University Board of Trustee Member, Fielding Miller.

Statutes and Code Sections Violated. The actions of Mr. Miller violated Chapter 200.7 III.B. 3, 9., C., 1, of the Code and Policies of the UNC System.

Statement of Facts. Resident Superior Court Judge has served East Carolina University in his capacity as Board of Visitors Member. He has dedicated his time and energy to ECU while serving as a respected member of the Pitt County legal community and now as a Resident Superior Court Judge. Judge Foster was blindsided on November 21, 2019 by a phone call from Board of Visitors Chair, John Cooper. John called him to inform him that both Trustee Miller and Trustee Davenport were asking for his resignation. Judge Foster subsequently resigned from the BOV after being bullied by Trustee Miller and his tactics.

200.7.B.,3. Trustee Miller made a unilateral decision without consultation of the ECU Board or ECU Executive Leadership. Trustee Miller made the call to John Cooper to ask for Judge Foster Resignation. This is a direct violation of this policy.

200.7,B.,9 Trustee Miller does not appreciate or respect that his position on the ECU BOT is that of a collective group, not individual. Trustee Miller acted as an individual when he subsequently texted Judge Foster the following:

"Good Morning Judge Foster, this is Fielding Miller with ECU BOT. I don't think that we have ever met but I am aware of your generous support and passion for all things ECU. Regretabbly, the Womble report described behavior by you that was counter to the best interest of ECU. As such, the BOT is prepared to hold a vote today regarding your continued membership on the BOV. As John Cooper shared with you yesterday, we prefer that you quietly resign from the BOV which would keep this situation out of the public view(the BOT vote has to conducted in open session with media present). I would to discuss this with you this morning if you are available. Please let me know."

200.7, C. 1. Again Trustee Miller violated this provision with his threatening text message to Judge Foster essentially telling him to resign or he will be embarrassed in an open meeting. Judge Foster was given less than 2 hours to make this decision as ECU BOT was about to go into open session. It is my understanding that Judge Foster is very upset over the actions of ECU and Trustee Miller.

This is a pattern of behavior for Trustee Miller that he does not respect or believe that the rules apply to him. He was told by multiple members of UNC BOG not to remove Judge Foster and he used his position as Vice Chair to bully such a respected member of the Pitt County legal community.

I will be glad to provide any other additional information or answer any questions which the Committee may have.

Sincerely

Robert Moore

February 4, 2020

Mr. David M. Powers, Chairman
Committee on University Governance
UNC Board of Governors
Post Office Box 2688
Chapel Hill, NC 27515

RE: Response to Notice of Complaint

Dear Chairman Powers:

This correspondence is in response to your letter, dated January 22, 2020, regarding a Notice of Complaint by Robert Moore. You asked Mr. Moore for any supplemental information in support of his Complaint, dated January 20, 2020. A receipt by me of a copy of Mr. Moore's January 29, 2020 "supplemental information" response letter addressed to you is acknowledged.

To be clear, the Complaint and information provided in purported support of the complaint are utterly baseless, have been submitted for ulterior purposes, and should be dismissed. The Complaint centers around my involvement as ECU BOT Chairman in responding to information about the actions by an ECU Board of Visitors (BOV) Member.

I. The Role of the ECU Board of Visitors is as follows:

> The East Carolina University Board of Visitors shall be a service organization of East Carolina University
>
> In this role, the Board of Visitors shall have the following functions

1. To assist the Board of Trustees and the Chancellor in maintaining and improving the excellence and effectiveness of East Carolina University;
2. To advise and assist the Board of Trustees and the Chancellor in conveying to the people of North Carolina the mission, programs, accomplishments, and aspirations of East Carolina University;
3. To assist in informing the Board of Trustees and the Chancellor of the attitudes, beliefs, concerns, and expectations of the people of North Carolina with respect to East Carolina University; and
4. To advise and assist the Board of Trustees and the Chancellor with respect to the development activities of East Carolina University.

II. The Board of Trustees Bylaws related to the ECU BOV:

BOT Authority: Article III (3) – appointment; Article III (7) – removal: ***"Vacancies in membership may be declared by the Board of Trustees for any cause determined by the Board at their discretion."*** https://www.ecu.edu/cs-admin/bov/upload/BOV-Charter.pdf,

III. Actions of BOV Member Foster Provided during Trustee Briefing by Counsel:

Thursday, September 26, 2019. As a result of the briefing we received, concerns were voiced by various members of the ECU BOT and subsequently by ECU BOV Chairman, John Cooper. These concerns focused on (1) the specific interaction that BOV Member Foster had with an ECU student: (2) Member Foster's actions in distributing images BOV Member Foster had acquired from a student. and (3) his failure to cooperate with ECU in its investigation. ;

The major points of concern are/were:

- BOV Member Foster gave images via a USB drive to a "friend," but refused to identify who the friend was.
- BOV Member Foster did not communicate at any relevant time with anyone at the BOV or at the Board of Governors ("BOG") regarding the images.
- BOV Member Foster acknowledged that he spoke to a couple of members of the ECU BOT but declined to disclose the identities of said members.
- BOV Member Foster declined to provide his cell phone, as requested for use in the investigation.
- BOV Member Foster was asked in a second interview to identify to whom he gave the USB drive images but again he declined to answer the question.
- An email request was also sent to BOV Member Foster asking him to identify the person to whom he gave the photos, but no response was provided.

IV. Actions of BOV Chair, John Cooper:

Chairman Cooper had discussions with BOV Member Foster about the information contained in the November 2, 2019 document and specifically the concerns expressed by Fielding Miller and me. Chairman Cooper told Member Foster that he was giving him a professional courtesy call like he hoped he would be given in a similar situation. Chairman Cooper expressed to Member Foster concern regarding the fact his actions were taken while he was a member of the ECU BOV. It is my understanding that Chairman Cooper discussed and suggested to BOV Member Foster that, in the best interest of the University, Member Foster should consider resigning from the BOV. BOV Member Foster said he was going to call Fielding Miller about the matter, and Chairman Cooper believes he gave Member Foster Mr. Miller's cell phone number.

V. Member Foster's Conversation with Vice-Chairman Miller:

I am aware that Vice-Chairman Fielding Miller exchanged text messages with BOV Member Foster, after Foster's conversation with John Cooper. After Miller and Foster communicated, BOV Member Foster sent a letter of resignation. Had Member Foster not resigned, the matter of his actions described above, and the concerns raised by those actions would have been brought to the attention of the ECU BOT for public discussion and possible action at our November 22, 2019 meeting. A resolution regarding the issues and concerns related to BOV Member Foster's conduct had been prepared for the Board's consideration by Interim ECU Counsel, Paul Zigas. That resolution is attached. Given the resignation of

BOV Member Foster prior to the BOT meeting, the issue was not brought to the BOT nor was the resolution brought up, discussed or entered into the record at the meeting.

VI. Resignation Letter:

On November 22, 2019, at 5:48 pm, Paul Zigas, ECU's Counsel sent an email to all ECU Board members attaching BOV Member Foster's letter of resignation, noting that it was "effective immediately." I was informed that Member Foster and Trustee Miller agreed in text messages that the circumstances of his resignation not be discussed or shared by BOT members. In a follow up email, I asked that the Board Members not discuss the reason for the resignation and that all inquiries about it should be referred directly to BOV Member Foster per this agreement. Since the matter had not come before our Board, I saw no benefit or reason for any of us Board Members commenting on or discussing a voluntary act by a BOV Member.

My November 22, 2019 email to my fellow Board Members (a "public record") referenced by Mr. Moore in both his original "complaint" and reiterated in his supplemental submittal, was perfectly appropriate and in no way ever implicated either the North Carolina Open Meetings Laws or North Carolina's Public Records Law. The BOT took no action and held no discussion at any BOT meeting about BOV Member Foster's resignation. Finally, it was Member Foster who did not want the matter further discussed after his resignation.

VII. Advice of Counsel:

During the issues associated with the Dan Gerlach investigation and the ensuing discussion regarding BOV Member Foster, I specifically relied on the advice and counsel of ECU's Interim Counsel, Paul Zigas. There was not a material action taken where the discussion or action was not made in consultation with Counsel. All actions were taken in good faith, in the best intent of the University, and in full compliance with UNC GA Policy, NC Open Meetings and NC's Public Records Law.

Regarding UNC Policy 200.7.B., 3:
Consideration was provided to BOV Member Foster to inform him of the concerns of BOV Leadership and ECU BOT Leadership regarding his actions discovered during the Dan Gerlach investigation. Both the actions of BOV Chair Cooper and ECU Vice-Chair Miller were conducted in consideration of the best interests of the University and BOV Member Foster.

Regarding UNC Policy 200.7, B.,9:
There are no facts to support any suggestion of "bullying" BOV Member Foster. There are certainly no facts to support any "pattern of behavior", nor does the Complaint provide one specific instance of a pattern. Member Foster was extended the respect and consideration of being fully informed of the concerns and the pending BOT public consideration of his activity and then he made his own personal decision on resignation.

It is my sincere belief, although I do not think I have ever spoken to Member Foster, that he made the right decision for himself and the University.

Regarding UNC Policy 200.7, B., 9:
The attached resolution, which was prepared for discussion at the ECU BOT meeting completely contradicts this baseless allegation. Indeed, it was precisely the very fact that a discussion was going to be held at the BOT meeting, with all members involved and in a public forum that proves this allegation both ridiculous and false.

Regarding UNC Policy 200.7, C. 3.:
The decision to resign from the BOV was exclusively Member Foster's. It would be inappropriate and counterproductive to the BOV and BOT for any member of either body to comment on his decision. Any public comment on the decision that BOV Member Foster made regarding his resignation from the BOV should be his, not the ECU BOT. Moreover, I understand he requested that BOT members not discuss the matter.

In conclusion, the allegations made in the Complaint are baseless, without any merit and should be dismissed forthwith.

Sincerely,

Roger L. (Vern) Davenport
1300 Glennis Court
Wake Forest, NC 27587

CC:
Robert Moore
Randy Ramsey
Wendy Murphy

Resolution of the Board of Trustees of East Carolina University Regarding Declaration of a Vacancy in Membership of the Board of Visitors

Whereas, the Board of Trustees of East Carolina University (the "Trustees") elect members to the ECU Board of Visitors (the "Members") upon the recommendation of the Chancellor;

Whereas, the Trustees may declare vacancies in membership for any cause determined by the Trustees in their discretion;

Whereas, the Trustees declare that the requirements for participation, ethical conduct, and support for East Carolina University established by the UNC Board of Governors in UNC Policy 200.7 (Duties, Responsibilities, and Expectations of Board Members) to which the Trustees are subject are equally applicable to, and the fundamental standards of conduct for, the members of any ECU Board to which the Trustees make appointments, including the ECU Board of Visitors (the "Fundamental Standards");

Whereas, Jeffrey Foster, Superior Court Judge ("Foster"), was elected by the Trustees for the BOV Class of 2021;

Whereas, the findings of, and information contained in, the October 28, 2019 Investigative Report prepared by Womble Bond Dickinson ("WBD") concerning former Interim Chancellor Dan Gerlach ("Gerlach") (the "Report") demonstrate that Foster:

1. : transfer images of Gerlach to Foster's cell phone on or around September 26, 2019

2. Failed to fully cooperate with the sanctioned WBD investigation by:
    a. Refusing to identify the individual to whom Foster transmitted photos after repeated requests (as referenced in the Report, Foster's "friend");
    b. Refusing to identify members of the Trustees with whom Foster alleged spoke regarding Gerlach;
    c. Refusing to provide Foster's cell phone to WBD investigators so they could collaborate his statements;

Whereas, the Trustees find that Foster failed to appropriately communicate any information concerning Gerlach to the leadership of the Trustees or UNC Board of Governors or East Carolina University or the UNC System Office;

Whereas, the Trustees find that Foster instead chose to communicate with and/or through local attorney Matt Davenport and Hillsborough attorney Peter Romary (who, himself, is believed to have been conducting an unsanctioned investigation of Gerlach at the direction of UNC Board of Governor member Tom Fetzer);

Now, therefore, be it resolved:

1. The seat on the Board of Visitors occupied by Foster is hereby declared vacant effective immediately;
2. Foster is ineligible to serve as a member of the Board of Visitors now or in the future;

3. The Board of Visitors shall adopt a formal ethics policy that appropriately incorporates, as fundamental standards, the requirements for members of the Board of Trustees at UNC Policy 200.7 (III)(B)-(D); and
4. That the ECU Office of University Counsel will consult with the UNC System Office concerning other appropriate action, including notification to regulatory bodies with jurisdiction and authority

vern.davenport@gmail.com

From: Vern Davenport <vern.davenport@gmail.com>
Sent: Friday, November 22, 2019 4:19 PM
To: Zigas, Paul
Cc: Leigh J. Fanning (leighfanningecu@gmail.com); p furr; Max Joyner (mjoyner@towneinsurance.com); lewisphil54@gmail.com; Miller, Fielding; Robert Moore; AngelaECU@hotmail.com; rplybon@plybon.com; Jason Poole (Jason@trpcpa.com); Jim Segrave (jsegrave@lgm-enterprises-llc.com); Vince; SGAPRESIDENT; Ayers, Megan Kint
Subject: Re: CONFIDENTIAL ATORNEY-CLIENT COMMUNICATION RE: BOV

Also, just to be clear and I am sure it goes without saying —- there is to be no discussion with anyone regarding the reasons for his resignation. If someone inquires, refer it directly to Judge Foster.

Any questions, please get to me directly.

Vern Davenport
Cell: 919.802.2448
EM: Vern.Davenport@nqcapital.com

Sent from my iPad

> On Nov 22, 2019, at 3:48 PM, Zigas, Paul <ZIGASP@ecu.edu> wrote:
>
> Dear Members of the Board of Trustees:
>
> Please find attached an image of the letter of resignation tendered by Jeffery Foster earlier today. Mr. Foster's resignation from the Board of Visitors is "effective immediately." Please do not hesitate to contact me if you have any questions. Thank you and have a great week-end.
>
> Yours,
>
> Paul
>
> Paul H. Zigas
> Interim University Counsel and Vice Chancellor for Legal Affairs East
> Carolina University | Office of University Counsel
> 215 Spilman Building | Greenville, NC 27858
> Office: 252.328.6940 | Fax: 252.328.4832 | E-mail: zigasp@ecu.edu
> |ecu.edu [cid:image001.png@01D3173E.30A70620]
>
> <winmail.dat>

vern.davenport@gmail.com

From:	Zigas, Paul <ZIGASP@ecu.edu>
Sent:	Friday, November 22, 2019 3:48 PM
To:	'Davenport, Vern'; 'Leigh J. Fanning'; p furr; 'Max Joyner'; lewisphil54@gmail.com; Miller, Fielding; Robert Moore; AngelaECU@hotmail.com; rplybon@plybon.com; 'Jason Poole'; 'Jim Segrave'; Vince; SGAPRESIDENT
Cc:	Ayers, Megan Kint
Subject:	CONFIDENTIAL ATORNEY-CLIENT COMMUNICATION RE: BOV
Attachments:	image001.png; Foster resignation .jpeg

Dear Members of the Board of Trustees:

Please find attached an image of the letter of resignation tendered by Jeffery Foster earlier today. Mr. Foster's resignation from the Board of Visitors is "effective immediately." Please do not hesitate to contact me if you have any questions. Thank you and have a great week-end.

Yours,

Paul

Paul H. Zigas
Interim University Counsel and Vice Chancellor for Legal Affairs East Carolina University | Office of University Counsel
215 Spilman Building | Greenville, NC 27858
Office: 252.328.6940 | Fax: 252.328.4832 | E-mail: zigasp@ecu.edu |ecu.edu [cid:image001.png@01D3173E.30A70620]

JEFFERY BENTON FOSTER
175 FOXCROFT LANE
WINTERVILLE, NORTH CAROLINA 28590

November 21, 2019

Vern Davenport, Chairman
East Carolina University Board of Trustees
Greenville, North Carolina

RE: Resignation from the East Carolina University Board of Visitors

Vern:

This letter is to notify you that, effective immediately, I hereby tender my resignation as a member of the Board of Visitors of East Carolina University.

I am proud of my record of service to my University. From representing faculty and students in legal entanglements, serving as an Adjunct Professor and on departmental Advisory Boards, as a member of the Alumni Association Board of Directors and as a member of the Board of Visitors, I have sought to do what is best for my University in a manner that put the honor and integrity of the institution always first. I believe I have done so on all counts.

I wish the Board of Trustees much success as you refocus your energy on finding and hiring the very best Chancellor to lead East Carolina University. I will be watching your progress with interest.

With hope for a great future for our University, I am

Respectfully Yours,

Jeffery B. Foster

vern.davenport@gmail.com

From: Miller, Fielding <Fielding.Miller@captrust.com>
Sent: Friday, November 22, 2019 3:52 PM
To: 'Megan Ayers (ayersm@ecu.edu)'
Cc: Vern Davenport - ECU BOT (Vern.Davenport@gmail.com)
Subject: FW: CONFIDENTIAL ATORNEY-CLIENT COMMUNICATION RE: BOV
Attachments: Foster resignation .jpeg

This aint what I had in mind...

Need to communicate that I committed that the BOT wouldn't speak about why he resigned.

J. Fielding Miller
Chief Executive Officer
fielding.miller@captrust.com

CAPTRUST | 4208 Six Forks Road, Suite 1700 | Raleigh, NC 27609
919.870.6822 (ext. 10229) | 919.870.8891 fax | 800.216.0645 toll free | 919.604.2180 mobile
www.captrust.com | www.captrustdirect.com

From: Zigas, Paul <ZIGASP@ecu.edu>
Sent: Friday, November 22, 2019 3:48 PM
To: 'Davenport, Vern' <vern.davenport@gmail.com>; 'Leigh J. Fanning (leighfanningecu@gmail.com)' <leighfanningecu@gmail.com>; p furr <tpfurr@gmail.com>; 'Max Joyner (mjoyner@towneinsurance.com)' <mjoyner@towneinsurance.com>; lewisphil54@gmail.com; Miller, Fielding <Fielding.Miller@captrust.com>; Robert Moore <rileyoutdoor@gmail.com>; AngelaECU@hotmail.com; rplybon@plybon.com; 'Jason Poole (Jason@trpcpa.com)' <Jason@trpcpa.com>; 'Jim Segrave (jsegrave@lgm-enterprises-llc.com)' <jsegrave@lgm-enterprises-llc.com>; Vince <smithv84@hotmail.com>; SGAPRESIDENT <SGAPRESIDENT@ecu.edu>
Cc: Ayers, Megan Kint <AYERSM@ecu.edu>
Subject: CONFIDENTIAL ATORNEY-CLIENT COMMUNICATION RE: BOV

Dear Members of the Board of Trustees:

Please find attached an image of the letter of resignation tendered by Jeffery Foster earlier today. Mr. Foster's resignation from the Board of Visitors is "effective immediately." Please do not hesitate to contact me if you have any questions. Thank you and have a great week-end.

Yours,

Paul

Paul H. Zigas
Interim University Counsel and Vice Chancellor for Legal Affairs
East Carolina University | Office of University Counsel

215 Spilman Building | Greenville, NC 27858
Office: 252.328.6940 | Fax: 252.328.4832 | E-mail: zigasp@ecu.edu | ecu.edu

February 4, 2020

Fielding Miller
1501 Spruce View Lane
Raleigh, NC 27614

Governor David Powers
910 Raleigh Road
Chapel Hill, NC 27514
Dear Governor Powers:

Dear Governor Powers:

At your request, I am responding to the allegations made in a letter dated January 29, 2020 from ECU Trustee Robert Moore suggesting that I have violated UNC Policy 200.7.

Mr. Moore's allegations are baseless and a frivolous attempt to deflect attention away from the egregious behavior by him and ECU Trustee Phil Lewis to bribe an ECU student to run for office in return for the student agreeing to vote according to Moore and Lewis' personal agendas (plus several other violations of their oath to represent the best interests of ECU). It is more than a bit curious that Mr. Moore and Mr. Lewis submitted removal recommendations to the BOG against me, Chairman Davenport and Trustee Max Joyner all at the same time but for different reasons. If these allegations were based in fact, why didn't they complain before now? Furthermore, please know that the behavior of Mr. Moore and Mr. Lewis as described in the Womble report, is further evidence that this is not a single incident, it is part of a pattern of misconduct. Messrs. Moore and Lewis have a disturbing history of acting outside of their sworn obligations to act in the best interests of ECU.

As for Mr. Moore's specific complaint, please consider the following:

As the attached text message will support, I offered Judge Foster the courtesy and opportunity to quietly resign so his behavior would not be brought up in an open board session where the recommendation for his removal from the BOV would be discussed and voted on. The resolution (attached) was drafted by Paul Zigas, ECU Interim Legal Counsel; however, the matter was never presented and there was no discussion of a recommendation for his removal at the BOT after he resigned. There was no reason to discuss this situation in open session and there was no upside for Judge Foster, the BOV or the BOT. My aim was to give Judge Foster, a long-time supporter of ECU, a respectful option to avoid possible damage to his reputation. Make no mistake, however, it was in the best interest of ECU that he resigned.

Furthermore, my text message was a follow up to a conversation Judge Foster had with John Cooper, the President of the BOV, the night before. In that conversation, Mr. Cooper asked Judge Foster to consider resigning and presented him with information from the Womble report that described his behavior which was clearly in violation of the basic responsibilities of BOV membership. Judge Foster declined to resign on the phone call with Mr. Cooper, so my follow up text was an effort to help him avoid an embarrassing public discussion.

I have not had additional communications with Judge Foster.

Mr. Moore has also alleged that I have a history of bullying. This is not true as illustrated by his inability to offer any evidence to support his complaint – nor will he find any. It is, however, indicative of the bogus nature of his complaint.

Attachment 1:

My text message to Judge Foster the morning of the BOT meeting, following Judge Foster's declining John Cooper's advice that he consider stepping down on a phone call the night before:

November 22, 2019 - 8:49 AM

Good Morning Judge Foster, this is Fielding Miller with ECU BOT. I don't think that we have ever met but I am aware of your generous support and passion for all things ECU. Regrettably, the Womble report described behavior by you that was counter to the best interest of ECU. As such, the BOT is prepared to hold a vote today regarding your continued membership on the BOV. As John Cooper shared with you yesterday, we prefer that you quietly resign from the BOV which would keep this situation out of the public view (the BOT vote has to conducted in open session with media present). I would to discuss this with you this morning if you are available. Please let me know.

He resigned before 9:20 AM.

Attachment 2:

The resolution prepared by Paul Zigas to present to the full BOT to discuss Judge Fosters behaviors as set forth in the Womble Report and recommendation that he be removed from the BOV is below:

Resolution of the Board of Trustees of East Carolina University Regarding Declaration of a Vacancy in Membership of the Board of Visitors

Whereas, the Board of Trustees of East Carolina University (the "Trustees") elect members to the ECU Board of Visitors (the "Members") upon the recommendation of the Chancellor;

Whereas, the Trustees may declare vacancies in membership for any cause determined by the Trustees in their discretion;

Whereas, the Trustees declare that the requirements for participation, ethical conduct, and support for East Carolina University established by the UNC Board of Governors in UNC Policy 200.7 (Duties, Responsibilities, and Expectations of Board Members) to which the Trustees are subject are equally applicable to, and the fundamental standards of conduct for, the members of any ECU Board to which the Trustees make appointments, including the ECU Board of Visitors (the "Fundamental Standards");

Whereas, Jeffrey Foster, Superior Court Judge ("Foster"), was elected by the Trustees for the BOV Class of 2021;

Whereas, the findings of, and information contained in, the October 28, 2019 Investigative Report prepared by Womble Bond Dickinson ("WBD") concerning former Interim Chancellor Dan Gerlach ("Gerlach") (the "Report") demonstrate that Foster:

1. transfer images of Gerlach to Foster's cell phone on or around September 26, 2019

2. Failed to fully cooperate with the sanctioned WBD investigation by:
    a. Refusing to identify the individual to whom Foster transmitted photos after repeated requests (as referenced in the Report, Foster's "friend");
    b. Refusing to identify members of the Trustees with whom Foster alleged spoke regarding Gerlach;
    c. Refusing to provide Foster's cell phone to WBD investigators so they could collaborate his statements;

Whereas, the Trustees find that Foster failed to appropriately communicate any information concerning Gerlach to the leadership of the Trustees or UNC Board of Governors or East Carolina University or the UNC System Office;

Whereas, the Trustees find that Foster instead chose to communicate with and/or through local attorney Matt Davenport and Hillsborough attorney Peter Romary (who, himself, is believed to have been conducting an unsanctioned investigation of Gerlach at the direction of UNC Board of Governor member Tom Fetzer);

Now, therefore, be it resolved:

1. The seat on the Board of Visitors occupied by Foster is hereby declared vacant effective immediately;
2. Foster is ineligible to serve as a member of the Board of Visitors now or in the future;
3. The Board of Visitors shall adopt a formal ethics policy that appropriately incorporates, as fundamental standards, the requirements for members of the Board of Trustees at UNC Policy 200.7 (III)(B)-(D); and
4. That the ECU Office of University Counsel will consult with the UNC System Office concerning other appropriate action, including notification to regulatory bodies with jurisdiction and authority

January 24, 2020

VIA EMAIL

Mr. David M. Powers, Chair
Committee on University Governance
Board of Governors
University of North Carolina System
Post Office Box 2688
Chapel Hill, NC 27515

Our File 200098-00001

Dear David:

We are writing in response to recent events at East Carolina University.

When we met with a student concerning student government elections, it was with best intentions of furthering the higher interests of the University. In hindsight and upon further reflection, we now appreciate that the discussions during the meeting may not have been the best approach to governance at ECU. We regret that it has become a subject of controversy and an overall unnecessary distraction for both the ECU Board of Trustees and the Board of Governors.

As duly appointed members of the ECU Board of Trustees (by both the Board of Governors and the legislature), we realize that we have a responsibility to act in the very best interests of the University at all times. We also realize that we have a responsibility to the UNC Board of Governors, as the governing body of the University of North Carolina system, to conduct our affairs in an honorable and transparent manner. It is with sincere regret that we acknowledge our actions could have misrepresented this obligation.

We recognize that there are many exciting opportunities and important issues which will be presented to the Board of Trustees in the near future. The focus of the Board of Trustees should be on these important issues as opposing to petty infighting between Board members. We pledge to you, as the governing body of the best system of public higher education in the country, and to our colleagues on the East Carolina University Board of Trustees that we will move forward as Board Members with the best interests of University at the forefront, working together to help ECU realize its full potential.

Very truly yours,

January 27, 2020

David Powers, Chair
Committee on University Governance
UNC Board of Governors
P.O. Box 2688
Chapel Hill, NC 27514

Dear Mr. Powers,

I am writing today in regard to the request by Vern Davenport, as Chairman of the ECU BOT to remove Robbie Moore and Phil Lewis from the ECU BOT. This request was made by the Chairman without a motion, without a second, without any discussion and without a vote by the full ECU BOT. The members of the ECU BOT did not even receive advance notice of the unilateral action of the Chairman until after the fact. UNC Policy 200.7 says "board members' authority is collective, not individual, and only arises from their participation with other members of the board when it is officially convened".

We do not feel it was appropriate for the chairman to make the request on behalf of the BOT without a motion, an opportunity to have discussion and a vote approving the same. The letter sent to the BOG was written on ECU BOT letterhead. This would suggest the full board approved the action and therefore had authorized the Chairman to proceed as the board spokesperson. The Chairman has not requested or received any such approval. We do not believe the Chairman is authorized to speak on behalf of the BOT per UNC Policy 200.7 without any discussion or approval by the BOT members at an officially convened board meeting. ECU by-laws also do not give this authority to the Chairman.

The university attorney, Paul Zigas indicated over the weekend he was told by Mr. Davenport there was a "consensus of the members" to proceed. Such consensus can only be achieved when the board is officially convened, and we have not had an officially convened meeting to discuss this issue. Mr. Zigas should have advised Mr. Davenport of the language in 200.7 prior to assisting the Chairman with the letter.

For these reasons, we ask that the BOG not accept the unauthorized letter, in violation of UNC Policy 200.7, requesting to remove members Robbie Moore and Phil Lewis from the board. We feel consideration of this request should not be made by the BOG until the full ECU board has voted on this issue and a majority of the board agrees by vote to proceed.

If Mr. Davenport wishes to make a personal request in his individual capacity that potentially would be more appropriate. But as presented we ask that the letter received be rejected by the BOG.

With best regards,

ECU Board of Trustee Member's

Jim Segrave Jason Poole Angela Moss Tom Furr

cc: Randy Ramsey, Chair
UNC Board of Governors

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ECU Board of Trustee Member's

Jim Segrave Jason Poole Angela Moss Tom Furr

cc: Randy Ramsey, Chair
UNC Board of Governors

January 27, 2020

Mr. Paul Zigas
Interim University Counsel
East Carolina University
215 Spilman Building
Greenville, NC 27858

Dear Mr. Zigas,

We are writing today regarding the request by the ECU BOT Chairman to remove two members from the ECU BOT. Our understanding is you assisted the Chairman in writing the letter to the BOG that was put on ECU BOT letterhead. You indicated on one of the calls this past weekend that you were told by the Chairman there was a "consensus of the members" to proceed.

We are concerned with the action taken, as well as the legal advice given and would like clarification. UNC Policy 200.7 indicates the authority of the board is collective, not individual. It further says such authority "only" arises from their members participation with other members of the board when it is "officially" convened. In the case of the letter you wrote for the Chairman and put on ECU BOT letterhead there was neither consensus of the board (only 3 or 4 members even knew about it at all in advance) or an officially convened meeting that would be required to authorize such communication from the Chairman. It is a concern for us that you did not contact any other board members before you wrote the letter. Why did you not advise the Chairman that he did not have the authority to act on behalf of the board?

Are we interpreting this wrong? If so, please clarify for all of us. From our perspective this letter should have never been put on ECU letterhead representing it was a consensus of the board. Considering the content of the tape there is no way the Chairman or Vice Chairman could offer an unbiased review of the recording as the meeting in general was an attack on their leadership. We believe you should have advised them to recuse themselves. Your counsel should have been to send this to the chairman of the ECU BOT audit committee for investigation. I am told UNC System Counsel even recommended this course of action. Why was this recommendation ignored? Fielding, Vern & Max should appropriately all recuse themselves on any discussion about this matter.

It appears, based on actions taken by the ASG board, that a copy of the recording and your legal summary made it into the hands of our SGA President (and also a current member of the BOT) well before any of the rest of the board members were allowed to listen to the recording days later. Have you investigated how this happened? The ASG board he sits on passed a resolution about detailed contents of the tape. Wouldn't the disclosure of this confidential information to his ASG board also be a potential violation of the FERPA you referenced in an email to Jim last week? Have you counselled the SGA President on his responsibility to keep this type

information confidential per UNC 200.7, C, 2 and his possible violation of FERPA? Did he have your approval to release this information to his other board?

Regardless, it was not appropriate for this to be disclosed.

Have you looked into who advised this student to record the lunch meeting? Initial contact was made by the two members, but the actual request to set up the lunch meeting via text came from the student a few days later. Was she advised by a board member or a former board member to record the meeting? It seems fairly clear this was a "set-up". Wouldn't that be an important question to get answered? I am told Kel Norman advised the student. Wouldn't this be important information to confirm before moving forward? Max has recruited students to run for SGA President for 10+ years and proudly speaks of it often. Why has this been allowed? It feels like a double standard which also makes this look more like a political attack on two members who are antagonists of the leadership. If Kel Norman was the person who advised the student there is little question this was nothing more than a set-up you potentially unknowingly helped them execute.

We would appreciate an unbiased review of your summary of the call from a legal perspective. To us it appears you were representing Mr. Davenport's objective more than the BOT and ECU boards. We are not a legal experts, but we do not think the members who went to lunch with the student did anything illegal. They potentially unintentionally violated parts of 200.7, depending on your perspective. But these members firmly want what is best for ECU regardless of if you believe their actions lacked judgement or not. The primary objective of the meeting was to recruit a new member who would help them change leadership they do not believe is effective. Others may or may not agree with that objective of course, but that is why we vote.

We also request that you inform the board of your role in assisting and providing guidance to the Chairman and Vice Chairman in preparing the complaint which has been filed with the BOG to remove the two members. Did you have any communications or involvement with either of them or others, such as former board members about the complaint, and if so, why and what was your involvement? As you know, there is a January 29 deadline for Chairman and Vice Chairman to submit supplemental information to the Governance Committee in support of the complaints. Are you participating in any way or providing any guidance to them, and if so, why and what exactly are you doing in that regard?

We look forward to your response as our legal counsel. We believe you represent all of us as BOT members, not just the Chairman and Vice Chairman. We also believe that as our legal counsel, you should remain neutral and not take sides with one faction or another. None of us have retained outside counsel on this matter (other than the two members in question to defend themselves and their names). If it is helpful, we can request this be added to the agenda of our next meeting. We all would like clarity around these questions. The

responsibility of counsel should be to advise all of us on the legal positions without political or personal bias.

Lastly, we are told that in the last roughly 100 years of the UNC system being in place only ONE person has ever been removed from a BOG/BOT board. And that one person committed fraud. You are our attorney and therefore you more than the rest of us know the actions of these two members did not rise anywhere close to that level. Do you believe the black eye on ECU's face yet again was worth it just to embarrass two members? Rational legal guidance without prejudice might have avoided this issue becoming yet another black eye for ECU. Not to even mention the potential legal jeopardy this might put the school in to defame the two members name in question. Or the potential the student gets tangled up in some protracted legal battle being deposed and in court over the same. If this was a "set-up" orchestrated by the BOT leadership through Kel Norman that will come out in those depositions.

We are obviously concerned we did not get the best legal guidance in this case and look forward to your explanation and clarifications.

With best regards,

ECU Board of Trustee Member's

Jim Segrave Jason Poole Tom Furr

cc: Ron Michelson, Interim Chancellor
East Carolina University

Randy Ramsey, Chair
UNC Board of Governors

David Powers, Chair
UNC Board of Governors Committee on University Governance

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THE UNIVERSITY OF NORTH CAROLINA SYSTEM
BOARD OF GOVERNORS

Post Office Box 2688, Chapel Hill, NC 27515
910 Raleigh Road, Chapel Hill, NC 27514
(919) 962-1000 | dpowers@bog.northcarolina.edu

January 29, 2020

VIA ELECTRONIC MAIL

Jim Segrave
3407 Timberlake Court
Kinston, North Carolina 28504

Dear Mr. Segrave:

Thank you for your letter dated January 27, 2020, regarding the recent complaint filed by Vern Davenport and Fielding Miller requesting the removal of Robert Moore and Phil Lewis from the East Carolina Board of Trustees. While I understand and appreciate the concerns expressed by you and the other signatories to your letter, please be advised that Board of Governors Policy 200.7 does not prevent Mr. Davenport, or any other member of the board of trustees or the public, from filing such a complaint with the Board of Governors. The Committee on University Governance will proceed to consider the complaint as it deems appropriate, given the totality of the circumstances, pursuant to Policy 200.7.

Thank you again for bringing your concerns to our attention. It is my hope that these matters can be resolved in a timely manner, so that your board can continue its important work in the service of ECU.

Sincerely,

/s/ David M. Powers

David M. Powers

cc: Randy Ramsey, Chair, UNC Board of Governors
Jason Poole, ECU Board of Trustees
Tom Furr, ECU Board of Trustees
Angela Moss, ECU Board of Trustees

Faculty Senate
140 Rawl Annex • Greenville, NC 27858-4353
109 Mail Stop • 252-328-6537 office • 252-328-6122 fax
facultysenate@ecu.edu • www.ecu.edu/fsonline

MEMORANDUM

February 4, 2020

We the ECU Faculty Officers are deeply disturbed by the actions of Board of Trustees members Phil Lewis and Robbie Moore on January 13, 2020 as documented in the transcript that has been released to the public. As faculty members, we believe that success in fulfilling ECU's mission requires that those in leadership positions act in the best interests of the University and "exercise authority honestly and fairly, free from impropriety and threats, favoritism, and undue influence" as mandated in Section 200.7 of the UNC Code.

The attempt by Trustees Lewis and Moore to influence a student government election and trade favors for Board votes, in our view, represents a clear violation not only of UNC policy but also of the minimal expected standards for ethical and responsible leadership. We add our voices to those calling for the UNC Board of Governors to recommend that Phil Lewis and Robbie Moore be removed from the ECU Board of Trustees.

Jeff Popke

Crystal Chambers

Amanda Klein

Purificación Martínez