

Attached is a report prepared by Tom Williams, an outside investigator engaged by the University to investigate two complaints--one filed by a retired employee and a second by the VP of Human Resources. In most instances the University does not voluntarily release reports of this nature, but in this case information related to the complaints and related investigation has been shared with the media, and the University deems it important to provide the full story.

Mr. Williams' comprehensive investigation concluded that the complaints have no merit, and neither the University nor Provost Willihnganz acted in an improper or retaliatory manner.



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## MEMORANDUM

**TO:** President James Ramsey  
**CC:** Dana Bynum Mayton, Esq.  
**FROM:** Thomas M. Williams, Esq.  
**DATE:** December 17, 2014  
**RE:** Investigation Report: Sam Connally

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**Background.** The undersigned was engaged to investigate two matters: (1) allegations made by Malinda Durbin, EEO—Employee Relations Specialist, Sr., on September 28, 2014, and (2) a subsequent complaint made by Sam Connally, Senior Vice President of Human Resources, on October 2, 2014.

On September 28<sup>th</sup>, Durbin issued a retirement letter stating, “I am retiring after over 18 years of service in Human Resources as a result of undue stress and bullying behavior I have been continually subjected to by my immediate supervisor, Mary Elizabeth Miles, during her tenure of almost 4 years, and enabled by Sam Connally.” (“Retirement Letter”). Durbin reported to Mary Elizabeth Miles, Director of Staff Development and Employee Relations, who reported to Sam Connally, the Vice President of Human Resources, who reported to the Provost, Shirley Willihnganz. A copy of the Investigation Report from the Durbin Complaint is attached as Exhibit A.

**Assignment.** This report is made in connection with the Connally complaint. As a result of the Retirement Letter, the Provost called for an “internal review” of the allegations of bullying made by Durbin. In response to this written communication, Connally made a written complaint on October 2<sup>nd</sup> against Willihnganz (the “Complaint”). Connally purported to also bring the Complaint on behalf of Mary Elizabeth Miles, his direct report. The investigator was engaged on October 3, 2014. The investigation was then delayed because of the unavailability, and subsequent refusal of Connally, to participate. The investigation ended with the aborted interview of Connally.

An oral report of my findings was given to you on November 25, 2014.

**Witnesses.** All relevant witnesses have been interviewed and are listed as follows:

- Mary Elizabeth Miles, Director of Staff Development and Employee Relations (interviewed on October 17, 2014);

- Malinda Durbin, retired, EEO—Employee Relations Specialist, Sr. (interviewed with legal counsel present on October 21, 2014);
- Shirley Willihnganz, the Provost (interviewed with her legal counsel present on October 30, 2014).
- Sam Connally, Senior Vice President of Human Resources (an interview was scheduled for November 21, 2014, but never completed). Connally indicated he declined to be interviewed unless, as a condition, he had an advisor present. The investigator agreed to permit an advisor and agreed not to identify the advisor in this report. The interview ended when Connally would not reveal the identity of the advisor, even to the investigator.

**Documents.** In addition to e-mails and other written information provided, the personnel files of Durbin, Miles and Connally were reviewed. EEOC files were reviewed and not copied. The Provost provided additional documentation to support her response to the Complaint. Some of the key documents that were reviewed and considered are as follows:

- The Non-Retaliation/Non-Retribution Policy. Policy #ICO-001. (Exhibit B).
- The Job Description for the Senior Vice President of Human Resources. (Exhibit C).
- E-mails associated with the Retirement Letter, the Complaint and the Counter-complaint made by Connally against Durbin. (Exhibit D).
- The Complaint. (Exhibit E).
- Disciplinary e-mails and communications from the Provost to Connally. (Exhibit F).
- The 360 review of Connally. (Exhibit G).
- Selected e-mails between Connally and the undersigned investigator. (Exhibit H).
- An e-mail concerning an August 19, 2014 allegation of bullying against Connally. (Exhibit I).

**Findings.** The assignment was to undertake an independent investigation of the facts and to draw conclusions and to issue findings as a result of the investigation. The Findings are a summary and evaluation of the facts after weighing all of the evidence and making credibility determinations. They are as follows:

1. Most, if not all, of the underlying positions were presented by Connally in writing. Those written communications will be evaluated below.

2. By way of relevant background, on August 19, 2014, an e-mail documented an allegation of bullying against Connally. (U of L/Connally 82). The incident reported showed an escalation of previous incidents for which Connally had been counseled.
3. On Monday, September 29, 2014, at 12:37 a.m., the Retirement Letter was e-mailed by Malinda Durbin alleging bullying that was "enabled" by Connally. (Exhibit A). There was only one specific allegation of misconduct by Connally in the Retirement Letter. Durbin admitted she had little contact with Connally.
4. On September 29, at 10:36 a.m., Willihnganz responded to Connally: "These are serious allegations. I'll simply acknowledge to Melinda (sic) that we have her letter, but we will need to internally review further." (U of L/Connally 12). This e-mail was sent to Dana Mayton, the Interim University Counsel and Tracy Eells, who, according to the Provost, provides human resources support for the Provost.
5. On Monday, September 29, at 10:45 a.m., Connally writes a long e-mail to Malinda Durbin arguing, in essence, (1) that Durbin's letter was written late at night and that it might not be thoughtful or considered, (2) that he appropriately "enables" directors to lead, (3) that the written warning Durbin received was not "bullying" as she contends, and (4) that employees within human resources have resources and an ability to grieve with the Ombuds and other avenues. (U of L/Connally 8, 9). Connally copies President Ramsey and his direct report, Mary Elizabeth Miles, on this e-mail. Connally states in this e-mail, "I will not accept your retirement notice, as submitted, and will ask that you affirm it or withdraw it by Tuesday morning."
6. Connally counsels Durbin to take time and make a considered decision concerning her retirement, and then he e-mails an Allegation of False and Frivolous Complaint against Malinda Durbin less than three hours later at 1:30 p.m. on September 29. (U of L/Connally 11). In his previous communication, Connally gave Durbin until Tuesday, September 30, to retract her retirement. Now, if she returns to work, she would face a Counter-complaint by Connally for submitting the Retirement Letter.
7. In his Allegation of False and Frivolous Complaint ("Counter-complaint") against Durbin, Connally copies the President and Mary Elizabeth Miles, among others.
8. Connally starts this e-mail with this sentence, "Malinda Durbin's complaints would be serious allegations if they were true, but they are not." At this point, it is clear that Connally knows that the Provost has called for an internal review of the Retirement Letter. Connally is essentially maintaining that the Provost is required to take his word that the allegations are untrue.

9. The second paragraph of the Counter-complaint calls Durbin's underlying allegations false, frivolous and malicious. Durbin was copied on the e-mail that contained the Counter-complaint. She took this to be an attempt at intimidation by Connally. (U of L/Connally 13).
10. Connally further states in the Counter-complaint that Durbin declined his offer to reconsider her resignation. But this statement is belied by his earlier e-mail that offered her until the following day to respond.
11. Connally accuses Durbin, in writing, of trying to "tee up" a constructive discharge complaint when there is no evidence that she was doing anything other than stating her concerns while she was giving notice of her retirement. (U of L/Connally 11).
12. Connally demands an outside investigation in the Counter-complaint. (U of L/Connally 11). The Provost had only called for an internal investigation. Later Connally would dispute that an investigation was proper because of his position that the Retirement Letter was not a complaint.
13. On September 29, at 3:58 p.m., Dana Mayton, Interim University Counsel, e-mails Connally to see if he intended to copy Durbin on the Counter-complaint. (U of L/Connally 10). Connally admitted that he intended to copy Durbin "to meet her on the field of facts and data and to respond to her allegations in the light of day, but that I will not engage in a cloaked, veiled, and undercover process."
14. Connally's job description indicates that he is charged with the creation of programs that enhance the University's culture and make the University an employer of choice. The job description states that Connally must serve as a member of central administration and work well with others in this role in the University. (U of L/Connally 3).
15. On October 2, 2014, Connally filed the 20-page single-spaced Complaint entitled "Retaliation Complaint and Claim for Whistleblower Protection." The Complaint was filed against Shirley Willihnganz. (Exhibit E).
16. Between the Retirement Letter of September 28<sup>th</sup> and the Complaint on October 2<sup>nd</sup>, the only communication by the Provost was her short e-mail indicating the matter raised in the Retirement Letter was serious and required an internal review. There was no other communication between Connally and the Provost during this timeframe.
17. Connally indicates that he was filing the Complaint on his own behalf, "and on behalf of Mary Elizabeth Miles, as Director of Staff Development and Employee Relations—to protect both her and me..." (U of L/Connally 16, 17).

18. Miles denied that she authorized Connally to bring the Complaint on her behalf.
19. Miles had little, or no, direct contact with the Provost and had no reason to make any complaint against the Provost.
20. Connally begins the Complaint by stating, "In early 2013, you taught me to be afraid for the first time in my life---a lesson my mother appears to have overlooked in my upbringing." (Emphasis in the original) (U of L/Connally 14). This fear purportedly comes from a fear of losing his employment.
21. In the Complaint, Connally contends that the Provost threatened to terminate his employment without a rational basis. (U of L/Connally 14).
22. The record indicates as early as July 14, 2011, the Provost was having serious discussions with Connally concerning how he interacted with others. An e-mail from Connally to the Provost admitted issues with his relationships within the University. The issues were so common that the Provost developed code words like "pace check," "collaboration check" and "outcome check" with Connally. Connally indicated he would not find these messages from the Provost as being "intrusive, offensive, abrupt, or messages that 'undercut' my role as VPHR." (U of L/Connally 34).
23. In a September 25, 2012 e-mail from the Provost to Connally, she was blunt about issues related to an incident with an employee. She stated, "[w]e need to talk about this. These are notes that should not have been sent. They serve no purpose but to punish [the employee], let us know that while you are not disciplining her you are punishing her, and make sure that we feel guilty for our part in it. All not helpful moves for someone in a top leadership position at this university. That they come on top of our conversation about bullying behavior on Friday, and my observation that despite your comments to the contrary you were "not over this" also concerns me, since this note could have resulted from my conversation with you, which could look like retaliation." (U of L/Connally 36).
24. The record shows that in January 2013, the issues with Connally were not resolved and a 360 degree review of Connally was undertaken. (U of L/Connally 59-64).
25. In the Complaint, Connally admits that there was a 360 evaluation of him, but contends that "99.95%" of the feedback of the reviewers was positive in that evaluation. (U of L/Connally 14). A 360 degree review is where an employer solicits feedback from multiple perspectives. This review was by multiple people at multiple levels within the University.
26. While there were positive aspects to his employment, the 360 review indicated that there were serious issues with important aspects of Connally performance.

The 360 review indicated issues with Connally's judgment. "There have been situations in which Sam's judgment has been questionable. Some feel he is impulsive. He acts before he has all the information requiring backtracking." The quotes include, "[h]e has a sense of impulsivity. Reflection would do him well..." "He fires off notes that he has to redo later and take back...He writes long 'episodes' usually at 1 or 2 in the morning." (U of L/Connally 62).

27. One section of the 360 review discussed "control" issues. "Sam likes to control situations and likes to be right...There is a perception that Sam manages/manipulates people, situations and information to prove that he is right." (U of L/Connally 63).
28. The 360 review contained a whole section entitled "Intimidating and Disrespectful Style." Some quotes include: "He has been described as intimidating. Only one member of the HR team shared constructive feedback and later expressed serious concern that the feedback remain confidential in fear of Sam's reaction." Some other quotes include: "People definitely fear him and some are terrified. People are afraid to criticize him on any level." "He tends to be a bully over lower paid people and he is dismissive with them." "He has the ability to squash people and good professional people who made contributions to the university have left because of him...He targets people. I have seen it several times with several different people." (U of L/Connally 63, 64).
29. As a result of the 360 review, the Provost engaged a coach for Connally to help him improve in this area.
30. In the second page of the Complaint, Connally criticizes the decision to undertake an "internal review" calling the Durbin Retirement Letter a "middle-of-the-night diatribe." (U of L/Connally 15). He accused the Provost of trying to publically ridicule him by copying Tracey Eells, who, according to the Provost, is responsible for providing the Provost with human resources support.
31. On page three of the Complaint, Connally alleges fear was invoked in Miles' "heart" because of the Provost's request to undertake an investigation. (U of L/Connally 16). As stated, Miles denied any involvement with the Complaint. Miles had little to no contact with the Provost and no fears of the Provost.
32. The Complaint then alleges that two events are the basis for the alleged "hostility" that the Provost showed toward Connally.
33. The first event was "[t]he non-selection of Humana Insurance Corporation as our health plan vendor in 2012" which was allegedly related to the solicitation of a gift by David Jones, Sr. and the loss of health plan savings with another vendor. (U of L/Connally 16).

34. Connally does not explain why he waits over two years to make his Humana allegations. University policy requires Connally to promptly report any concerns about the bidding processes. (U of L/Connally 1, 2).
35. The investigation revealed that there were multiple individuals and a full process involved in the selection of a health care provider. Humana did not even receive the bid at issue.
36. The second Connally allegation concerns "the issuance of five separate findings of race discrimination in the Office of Financial Aid in 2013." (U of L/Connally 16).
37. The evidence showed the Provost had limited involvement with these claims. But, even if she had been involved, the claims were all resolved with negotiated agreements with the EEOC. There were no remaining issues open. The investigator reviewed the EEOC files and there was no indication of any inappropriate involvement by the Provost. These matters were primarily handled by inside and outside legal counsel. Again, Connally does not explain why he waited over a year to make these allegations.
38. It is apparent from the record that Connally makes his allegations against the Provost when he knows his job is in jeopardy.
39. Connally never submitted to an interview by the investigator concerning the Retirement Letter. More importantly, Connolly never subjected himself to questioning concerning the serious allegations he made in the Complaint.

#### **Conclusions.**

- The context and background of the allegations are critical to determining the credibility of the claims
- Given the clear record in this matter, the Provost's actions in requesting an investigation of the Retirement Letter were taken for legitimate business reasons. There was no showing of a causal connection between the 2012 and 2013 incidents and the September 2014 decision to investigate the Retirement Letter. There was no evidence to indicate that the Provost had any connection to the issuance of the Retirement letter by Durbin.
- Connally had a history of allegations of inappropriate conduct with others within and outside of the University. These issues had been acknowledged by him and directly addressed by the Provost.



- As the senior vice president of Human Resources, he should be expected to be a model of appropriate behavior with others and in response to allegations against him.
- The Complaint is only brought when Connally is under investigation himself and only when he is concerned he will lose his job.
- The Durbin Retirement Letter makes serious allegations against him and a member of his staff.
- Connally's quick response and direct arguments against Durbin could have interfered with a subsequent investigation.
- It was inappropriate for Connally to argue his case before the direction and scope of the internal investigation was determined. It was likewise inappropriate for Connally to copy his direct report, Miles, since it contaminated the laboratory conditions needed for a proper investigation and could send an intimidating message to Miles.
- It was further inappropriate for Connally to include his direct report, Miles, in his Complaint without her permission. To do so, among other things, puts her in a difficult position with her supervisor and creates potential legal claims for her against the University.
- The first page of the Complaint alleges that the Provost showed an irrational concern for Connally's performance. This was refuted by the evidence. There was ample evidence that Connally engaged in misconduct and that the Provost was acting legitimately in calling for an investigation of those concerns.
- Notably, in spite of the multiple allegations and history, the Provost simply called for an investigation. She did not draw any conclusions, but simply called to look into the facts. Again, this decision was entirely appropriate under the circumstances.
- Willihnganz was prepared and open during her interview. She presented herself and the situation in a fair and even-handed way giving appropriate credit to Connally for his strengths while trying to hold him accountable for his misconduct. She was clear that a senior human resources professional was expected to model appropriate behavior in order to be a leader of the positive culture the University was trying to create. Willihnganz provided documentation to support her position. Her version of the facts was plausible and her demeanor supported her credibility.
- Connally did not appropriately participate either in the claims made against him or the claims he made against the Provost. Where Miles was open, respectful, and


prepared to discuss the allegations against her, her cooperative approach to the investigation was juxtaposed to the approach taken by Connally.

- Connally did not cooperate with the investigation. The lack of cooperation is documented and culminated when Connally brought an unidentified male with him to the interview scheduled for Friday, November 21, 2014. Connally indicated he would not go forward with the interview if the investigator insisted on knowing the identity of his "advisor" during the meeting. As a senior human resources professional, Connally should understand the importance of cooperating with a University investigation.
- The 360 review reflected that Connally would show poor judgment and use an intimidating and disrespectful style. This pattern was repeated here. Connally's decision to respond by e-mail to the Retirement Letter and then pre-empt his own message with the Counter-complaint showed poor judgment and was received by Durbin as an attempt at intimidation. There are other examples of the pattern of poor behavior being repeated in this process.
- Based upon the foregoing and the interview with the Provost and a review of multiple records, the investigator sees no evidence that the Provost engaged in any inappropriate behavior concerning the 2012 and 2013 incidents. Her explanations were credible and the claims against her were not.
- The Humana allegation was inherently suspect because of the timing and the nature of the Complaint. Even so, if you look at the face of the Humana allegation, you will see that there were multiple individuals and a full process involved in the selection of the health care provider. Humana did not even receive the bid at issue. Around this time in 2012, there was a public dispute between Humana and the University. The Provost was acting in the University's best interests in trying to normalize relations with Humana. There were many interests involved in a bid process like this and no indication of wrongdoing by the Provost.
- Likewise, there was no credible evidence to support any claims of interference by the Provost of the EEOC claims and their processing. The Provost had limited involvement and the claims were all resolved with negotiated agreements with the EEOC. There were no remaining issues open and the issues were handled by inside and outside attorneys.
- In the end, it appears that Connally filed a frivolous and improper Counter-complaint against Durbin after she raised concerns similar to those that others had raised about Connally. This Counter-complaint can be called frivolous and improper because Connally should know the importance of maintaining the proper conditions for an investigation. Connally had little contact with Durbin

and he should have known that she has every right to state her concerns and that even though he was a senior vice president of human resources, he was still not above being investigated and accountable for his actions. Connally then filed a Complaint against the Provost that was purported to be brought for self-protection as a whistleblower and not to fulfill his fiduciary duties to the University.

- For all of these reasons, it is the opinion of the investigator that the Complaint has no credible basis.
- The investigator was not asked, and did not provide, any opinions on what, if any, steps to take concerning Connally's employment as a result of these findings and conclusions.
- The Curriculum Vitae of the investigator is attached as Exhibit J.

Submitted by:

 12-17-14  

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Thomas M. Williams