

Meeting No. 959

THE MINUTES OF THE BOARD OF REGENTS  
OF  
THE UNIVERSITY OF TEXAS SYSTEM

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December 13, 2002

Austin, Texas

MEETING NO. 959

FRIDAY, DECEMBER 13, 2002.--The members of the Board of Regents of The University of Texas System convened at 9:12 a.m. on Friday, December 13, 2002, on the Ninth Floor, Ashbel Smith Hall, 201 West Seventh Street, Austin, Texas, with the following in attendance:

ATTENDANCE.--

Present

Chairman Miller, presiding  
Vice-Chairman Clements  
Vice-Chairman Hunt  
Vice-Chairman Riter  
Regent Estrada  
Regent Krier

Absent

Regent Craven  
Regent Oxford  
Regent Sanchez

Counsel and Secretary Frederick

In accordance with a notice being duly posted with the Secretary of State and there being a quorum present, Chairman Miller called the meeting to order. He announced that the purpose of this special called meeting was to consider matters of sufficient urgency to require immediate consideration by the Board prior to the next regularly scheduled meeting on February 12-13, 2003.

WELCOME TO NEW OFFICIALS OF THE UNIVERSITY OF TEXAS SYSTEM.-- Chairman Miller welcomed Michael D. McKinney, M.D., Vice Chancellor for Health Affairs, to The University of Texas System. He also introduced Mr. E. Ashley Smith who has been appointed Vice Chancellor for Governmental Relations and Policy for the U. T. System effective January 6, 2003.

Chairman Miller recognized the hard work, time commitment, and collaboration exhibited by all those involved to prepare for this special meeting and thanked everyone in advance.

RECESS TO EXECUTIVE SESSION.--At 9:15 a.m., Chairman Miller announced that the Board would recess to convene in Executive Session pursuant to Texas Government Code Section 551.071 to consider the following matter listed on the Executive Session agenda. He said that no action would be taken in Executive Session.

U. T. System and U. T. Austin: Discussion of Pending Litigation (Justice for All v. Faulkner, et al.)

There was no action taken related to pending litigation filed by *Justice for All v. Faulkner, et al.* [Note: Dr. Larry R. Faulkner is the President at The University of Texas at Austin.]

RECONVENE.--At 9:45 a.m., the Board reconvened in open session.

SPECIAL ITEM

U. T. Board of Regents - Regents' Rules and Regulations, Part One: Amendments to Chapter VI (Student Services and Activities and Regulations on Facilities Use)

Earlier in 2002, President Faulkner appointed a Task Force on Assembly and Expression at The University of Texas at Austin to review current procedures applicable to students, faculty, staff, students' associations, and registered student, faculty, and staff organizations. The Task Force came forth with a comprehensive report including recommendations for revisions to U. T. Austin's Institutional Rules on Student Services and Activities and amendments to U. T. Austin's Handbook of Operating Procedures. To implement some of the recommendations, the Task Force proposed amendments to certain Regents' Rules and Regulations. The proposed changes, along with a copy of the Task Force's Report, were sent to the presidents and police chiefs of other University of Texas System component institutions and to the leadership of the U. T. System Employee, Faculty, and Student Advisory Councils for consideration and comment. The following amendments to the Regents' Rules are substantially consistent with the Task Force recommendations and incorporate comments from those reviewing the recommendations.

As before the Board on yellow paper and upon motion by Vice-Chairman Clements, duly seconded, the Board unanimously approved the following amendments to the Regents' Rules and Regulations, Part One, Chapter VI, regarding student services and activities and regulations on facilities use:

- a. Section 4, Subsection 4.8, relating to student organizations, was amended to read as follows:

4.8 Limit on Registration

Any component institution may require student organizations or groups to sign an agreement to comply with institutional rules and may refuse to register any organization that refuses to sign such an agreement.

- b. Section 6, Subsection 6.6, Subdivision 6.61, relating to use of university facilities, was amended to read as set forth below:

6.61 No solicitation shall be conducted on any property, street, or sidewalk, or in any building, structure, or facility owned or controlled by any component institution or the U. T. System unless permitted by the Regents' Rules and Regulations. The following activities shall not be deemed solicitations prohibited by this Subsection when conducted in accordance with the approved rules and regulations of the U. T. System or the component institution. Such activities must be conducted in a manner that does not disturb or interfere with the academic programs or administrative activities of the U. T. System or the component institution or any program or activity that is conducted by or is authorized by the U. T. System or component institution; does not interfere with entry to or exit from a building, structure, or facility; does not interfere with the flow of pedestrians or vehicular traffic on sidewalks or streets or at places of ingress and egress to and from property, buildings, or facilities; does not harass or intimidate the person or persons being solicited; and does not violate applicable State, federal, or local laws or regulations:

...

- (f) The collection of contributions or the sale of merchandise, publications, food, or nonalcoholic beverages by the students' association or by a registered student, faculty, or staff organization. A students' association or a registered student, faculty, or staff organization may not conduct such solicitation activities on behalf of or for the benefit of any individual, association, organization, corporation, or group of individuals that is not registered as a student, faculty, or staff organization or that is not otherwise qualified under the criteria of Item (i) of Subdivision 6.61 of this Chapter to conduct solicitation. In the case of specific drives for disaster relief, the chief student affairs officer of the institution may approve a drive that complies with all other requirements of Subsection 6.6 of this Chapter. Texas law allows a registered student organization to be relieved from State sales tax liability in certain circumstances detailed in the Texas Tax Code. All proposed sales events are subject to applicable provisions of these Rules and to other institutional policies concerning the time, place, and manner of solicitation. The sales must be for the benefit of the registered organization and may not involve another entity not authorized to solicit under these Rules. The items offered for sale may not be items that the organization has obtained on consignment.

...

- (r) Subject to the component institution's reasonable and nondiscriminatory rules concerning the time, place, and manner of distribution, sale, or display of material, the distribution, sale, or display by a students' association or a registered student, faculty, or staff organization of printed material (including any newspaper, magazine, or other publication, and any leaflet, flyer, or other informal matter), or the distribution or display of such material, at no cost, by individual students, faculty, or staff. Such a publication may contain paid advertising, but only if the publication is devoted to promoting the views of a not-for-profit organization or to other bona fide editorial content distinct from the advertising. This rule does not authorize distribution, sale, or display of any publication operated for profit. A publication is operated for profit if any part of the net earnings of the publication, or of its distribution, inures to the benefit of any private shareholder or individual.
- c. New Item (x) was added to Section 6, Subsection 6.6, Subdivision 6.61, relating to use of university facilities, as follows:
  - (x) Subject to the component institution's reasonable and nondiscriminatory rules concerning time, place, and manner of posting, students, faculty, and staff may post advertisements for roommates, subleases, and sales of used goods that the seller has personally owned and used.
- d. Section 6, Subsection 6.7, Subdivision 6.72, relating to use of university facilities, was amended to read as set forth below:
  - 6.72 In compliance with reasonable and nondiscriminatory regulations of the U. T. System and component institution, students, faculty, or staff, a students' association, or a registered student, faculty, or staff organization, may petition, post signs, distribute literature, set up tables and exhibits, or peacefully demonstrate on property owned or controlled by the U. T. System or component institution, provided that the posting of signs and the setting up of tables and exhibits may require prior authorization.
- e. Section 6, Subsection 6.(10), Subdivision 6.(10)3 was amended to read as follows, Subdivision 6.(10)4 was deleted, and Subdivision 6.(10)5 was renumbered as Subdivision 6.(10)4:
  - 6.(10)3 As a lower priority, the rules and regulations may provide for reservation and use of Special Use Facilities by individuals, groups, associations, or corporations without the necessity of joint

sponsorship by the U. T. System or component institution. Subject to all constitutional and statutory provisions relating to the use of State property or funds for religious or political purposes, Special Use Facilities may be made available for religious and political conferences or conventions. Rates must be charged for the use of the Special Use Facility that, at a minimum, ensure recovery of that part of the operating cost of the facility attributable directly or indirectly to such use. If the user charges those attending an event any admission or registration fee, or accepts donations from those in attendance, the component institution shall require the user to make a complete account of all funds collected and of the actual cost of the event. If the funds collected exceed the actual cost of the event, the user shall be required to remit such excess funds to the component institution as an additional charge for the use of the Special Use Facility.

- f. Section 7, Subsection 7.1, relating to speech and assembly, was before the Board on yellow paper and was amended to read as follows:

7.1 Regulations

The freedoms of speech and assembly are basic and essential to intellectual development. However, these activities are subject to the well-established right of colleges and universities to regulate time, place, and manner so that the activities do not intrude upon or interfere with the academic programs and administrative processes of the System or the component institutions. Each component institution may designate one or more appropriate areas on the campus where students, faculty, and staff may engage in rallies, group demonstrations, or public oratory without prior administrative approval. All rallies, group demonstrations, and public oratory must be conducted in accordance with the provisions of this Chapter and the reasonable and nondiscriminatory rules and regulations of the component institution.

- g. Section 14, concerning negotiations related to disruptive activities, was also before the Board on yellow paper and was amended to read as follows:

Sec. 14. Negotiations Related to Disruptive Activities Prohibited

Neither the Chancellor of the U. T. System or the president of a component institution nor any officer in the System Administration, nor any representative of either of them when dealing with disruptive activities, shall negotiate or attempt to negotiate with any person or persons engaged in any disruptive activity on the campus of any component institution of the System. When such a situation arises, the Chancellor of the U. T. System or the president of a

component institution or any officer in the System Administration, or any representative of either of them, shall take immediate action to utilize all lawful measures to halt and eliminate any and all such disruptive activities that come to their attention provided, however, the Chief of Police of the U. T. System or any component institution and those people designated by any such Chief of Police are authorized to use their sound discretion under the attendant circumstances in addressing any such disruptive behavior.

Chairman Miller asked Vice Chancellor and General Counsel Godfrey to thank the Task Force for their fine work.

### CHANCELLOR'S SPECIAL AGENDA

Chairman Miller stated that, due to the dynamic nature of the agenda, this would be a less formal, less structured meeting than usual. He then called on Chancellor Yudof who introduced the discussion topics on his special agenda and the speakers as follows.

1. Public and Legislative Positioning of the U. T. System and Components

Chancellor Yudof emphasized that the draft legislative statement paper entitled "Reaching for the Shared Dream: The New Handshake for Texas," which was before the Board, was a draft discussion document that contains ideas he wanted to introduce for The University of Texas System. He said the ideas are subject to change following consultation with Chancellors of other university systems in Texas, as well as with the U. T. System component presidents. Chancellor Yudof explained the two parts of the report, which was drafted by Executive Vice Chancellor Sullivan, as follows:

- a. How do we explain ourselves to the people of Texas, why should they care about higher education, what is it that we do, where do we need to improve, and how should we talk about higher education, specifically about the U. T. System and why taxpayers should trust us?
- b. How should the U. T. System evolve to maximize the academic and health institutions to make the whole greater than the sum of its parts?

Chancellor Yudof stated the report would be brought back to the Board and that whatever is done should make good public policy sense, which is the role of the Board of Regents.

Chancellor Yudof commented that the issues to be discussed would only make sense to the Board, to the Legislature, to the Governor, and to the people of Texas if accompanied by a thorough, transparent, and effective accountability system. He indicated that many of these issues would be familiar to the members of the Board, as this is a reinvention or synthesis of ideas that have been percolating in this Board for a long time.

With the aid of a PowerPoint presentation, Executive Vice Chancellor Sullivan reviewed the “Dream” document. She spoke of the dream that Texans share a common desire for their children to live healthy lives, to have the opportunity to pursue fulfilling work, and to have a college education. She spoke of the strengthening needed at the U. T. System campuses, the stakeholders, funding and accountability issues, about the handshake or partnerships, and about maintaining and keeping the dream accessible and affordable.

Chancellor Yudof emphasized the partnership aspect of the proposal saying that State support of higher education in the past 20 years has been flat and he does not envision that will change. He said there are competing priorities and preserving and enhancing the great universities of the U. T. System will require developing a process to address how to finance the initiatives. He stated that help is needed from philanthropy, students, State and federal government, and research funding agencies. He said the State of Texas covers 25% of the total budget of the U. T. System and a much higher percentage of instructional cost. He said much thought will need to go into what to expect from partnerships to blend efforts together to maintain and enhance all the institutions in the U. T. System. Chancellor Yudof emphasized the need to take advantage of the fact that the U. T. System is comprised of nine academic and six health institutions. He mentioned the advantages offered by the co-location of U. T. academic and health institutions in Dallas, San Antonio, and Tyler, and the existing operating arrangements between U. T. institutions geographically far apart. Part of the strategy, he said, is to leverage assets to make the University more attractive to those who teach, who do the research, and who are critical to the welfare of the students and the economy and quality of our lives.

[Note: [Dr. Sullivan's report](#) is on file in the Office of the Board of Regents.]

## 2. Undergraduate Tuition Study Update

Vice Chancellor Brown discussed a PowerPoint presentation entitled “The University of Texas System: Update on Tuition Project.” She asked members of the Board to keep in mind that the tuition information presented

includes required fees and that while the data presented today (December 13) includes information on The University of Texas at Austin, The University of Texas at Dallas, and The University of Texas - Pan American, data for other campuses is in the process of being collected.

Chancellor Yudof's proposal is to guarantee free tuition to undergraduate students admitted to the U. T. System's nine academic universities whose family incomes is less than \$40,800 a year, the median income for Texas, if the Legislature agrees to let universities set tuition. Under Chancellor Yudof's proposal, the U. T. System academic components would pick up the tab on any tuition and fee payments not covered by federal or State grants. The cost of tuition and fees for qualified students would be covered by federal, State, and private grants as well as with revenue raised by tuition.

In reference to discussion on grants and scholarships, Chairman Miller said that policymakers need to hear that the University is already doing a lot with respect to financial aid and more is planned. He clarified that tuition and fees, as determined legally and statutorily, do not help with the actual amount that students and parents pay for a college education; rather it is a gross number not connected with cost, need, or merit, but arbitrarily determined without analysis.

Chancellor Yudof explained he is not in favor of the deregulation of tuition but is in favor of local control of tuition by the Board of Regents. He used the analogy that "one size does not fit all" as different campuses of the U. T. System have different sets of variables. He wants to look at each campus, focusing on their unique student bodies and needs, to allow each institution to be the best it can be. He said that with a pluralistic system, a more flexible, subtle approach to tuition and financial aid is needed to make it work.

Vice Chancellor Brown said she is amenable to including some of the health institutions in the study and that numerous policy issues, details, and procedures still need to be addressed. Chairman Miller said that although more work is needed to plan and to prepare the proposal, implementation could be next fall. He said some kind of compact, in a general sense, will provide tuition and fees free to some level of Texas families.

[Note: [Vice Chancellor Brown's PowerPoint presentation](#) is on file in the Office of the Board of Regents.]

3. Compact Accountability for the Campuses

Chancellor Yudof introduced the concept of the compact that would be a contract, like an agreement, between the Chancellor and a component institution of the U. T. System. Drafted by the campus, the document, which would be an 18-24 month strategic planning document, would summarize the major goals and priorities of a campus, and a statistical profile would be attached. Benchmarks would measure accomplishments, the compact could be revised, and the document could be used to assess if campus requests to the System are in alignment with the compact. He said the compact process would be integrated with the accountability and performance framework (see Item 4 below) and be a mechanism for accountability. Chancellor Yudof said he will continue to look at the compact process, conceptualize incentives and how the process would work, and implement the process on a trial basis in 2003-2004.

Chairman Miller commended the compact process as a wonderful organizational plan.

4. Conceptual Outline of Accountability and Performance Work Plan

Chancellor Yudof said he would like to have an annual report to the Board of Regents that is comprehensive, consistent from year to year, and establishes a transparent, thorough accountability system. He said it will take years to fully develop the system and then introduced Dr. Geri Malandra, Executive Associate for Accountability and Performance in the Office of the Chancellor, to give an overview of the concept and initiate discussion and feedback.

Dr. Malandra discussed a paper that had been sent to the members of the Board in advance of the meeting entitled "The University of Texas System Accountability and Performance Conceptual Framework."

[Note: [Dr. Malandra's report](#) is on file in the Office of the Board of Regents.]

5. Dallas Issues

There was no individual discussion on the Dallas Issues item, which was covered as part of Dr. Sullivan's earlier presentation.

6. Shared Responsibility and Deregulation

Chancellor Yudof clarified that this presentation would provide an update to the presentation on legislative issues for the U. T. System presented by Vice Chancellor Scott at the August 8, 2002 Board of Regents' meeting.

Executive Vice Chancellor Sullivan said a series of statute changes will be proposed to allow the U. T. System to function more efficiently without losing accountability. Vice Chancellor Godfrey mentioned various deregulatory initiatives such as flexible tuition, indirect cost recovery, and elimination of duplicative reporting.

Vice-Chairman Clements requested that the list of legislative issues be prioritized and Chairman Miller asked that tuition and fees be at the top of the list.

In reference to Dr. Sullivan's earlier presentation, Chairman Miller emphasized that the more U. T. can do to optimize its revenue stream and help those research institutions reach a higher level of excellence, the more U. T. can have and do for all U. T. institutions.

[Note: A [draft listing of deregulation items](#) is on file in the Office of the Board of Regents.]

#### ISSUES OF THE UNIVERSITY OF TEXAS INVESTMENT MANAGEMENT COMPANY (UTIMCO)

Mr. Bob Boldt, President, Chief Executive Officer, and Chief Investment Officer of The University of Texas Investment Management Company (UTIMCO), introduced Mr. Bruce Myers of Cambridge Associates LLC, consultant to The University of Texas Investment Management Company (UTIMCO). Following a brief description of the Cambridge firm, Mr. Myers reviewed the goals, objectives, and performance of UTIMCO. He discussed asset allocation and expectations for the future, saying that meeting and maintaining a long-term investment objective of 5.5% real (inflation adjusted) will be a challenge and is the single greatest risk to The University of Texas System. He said that UTIMCO's performance has ranked in the middle in roughly the past three years as funds have been invested in private investments, hedge funds, international securities and other categories, resulting in broader diversification and better returns. At the request of Chairman Miller, Mr. Myers agreed to provide the Board with a complete set of performance information for the last five years or since the establishment of UTIMCO. There was discussion about contracting out versus developing the necessary expertise in-house in UTIMCO. Chairman Miller recommended a close review of UTIMCO staff expertise so that investment decisions will drive the type of expertise UTIMCO needs rather than the expertise of the staff driving the types of investments.

[Note: [Mr. Myers' report](#) is on file in the Office of the Board of Regents.]

RECESS TO EXECUTIVE SESSION.--At 1:45 p.m., Chairman Miller announced that the Board would recess to convene in Executive Session pursuant to Texas Government Code Sections 551.071, 551.073, and 551.074 to consider the following matters listed on the Executive Session agenda. There was no action taken in Executive Session.

1. U. T. System: Consultation with Attorney Regarding Legal Matters or Pending and/or Contemplated Litigation or Settlement Offers

There was no action taken related to consultation with an attorney regarding legal issues of The University of Texas System.

2. U. T. Austin: Deliberation of Negotiated Contract for Prospective Gift

There was no action taken related to a proposed negotiated gift of real property at The University of Texas at Austin.

3. U. T. System: Consideration of Personnel Matters Relating to Appointment, Employment, Evaluation, Assignment and Duties of Officers or Employees

There was no action taken related to general personnel matters of The University of Texas System.

4. U. T. System: Consideration of Personnel Matters Relating to Evaluation of Presidents and U. T. System Executive Officers

There was no action taken related to evaluation of presidents and executive officers of The University of Texas System.

ADJOURNMENT.--Chairman Miller announced that the purpose for which this meeting was called had been completed and the meeting was duly adjourned at 1:50 p.m.

/s/ Francie A. Frederick  
Counsel and Secretary to the Board

January 15, 2003