

Meeting No. 899

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

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February 5-6, 1997

Austin, Texas

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 OF
 THE UNIVERSITY OF TEXAS SYSTEM
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MEETING NO. 899

WEDNESDAY, FEBRUARY 5, 1997.--The members of the Board of Regents of The University of Texas System convened at 3:15 p.m. on Wednesday, February 5, 1997, in the Fourth Floor Conference Room of O.Henry Hall at 601 Colorado Street in Austin, Texas, with the following in attendance:

ATTENDANCE.--

Present

Chairman Rapoport, presiding
Vice-Chairman Hicks
Vice-Chairman Smiley
Regent Clements
Regent Evans
Regent Holmes
Regent Lebermann
Regent Loeffler
Regent Temple

Absent

Executive Secretary Dilly

Chancellor Cunningham
Executive Vice Chancellor Duncan
Executive Vice Chancellor Mullins

Chairman Rapoport announced a quorum present and called the meeting to order.

RECESS TO EXECUTIVE SESSION.--At 3:17 p.m., Chairman Rapoport announced that the Board would recess to convene an Executive Session pursuant to Texas Government Code, Chapter 551, Sections 551.071, 551.072, and 551.074 to consider those matters listed on the Executive Session agenda.

RECONVENE.--At 5:40 p.m., the Board reconvened in open session to consider action on the items that were discussed in Executive Session.

EXECUTIVE SESSION OF THE BOARD OF REGENTS

Chairman Rapoport reported that the Board had met in Executive Session to discuss matters in accordance with Texas Government Code, Chapter 551, Sections 551.071, 551.072, and 551.074. In response to Chairman Rapoport's inquiry regarding the wishes of the Board, the following actions were taken:

1. U. T. Health Science Center - Houston and U. T. Health Science Center - San Antonio: Settlements of Medical Liability Litigation/Claim.--Regent Loeffler reported that the Board heard presentations from The University of Texas System Administration officials concerning the two medical liability matters listed in the agenda.

Based on these presentations, Regent Loeffler moved that the Chancellor and the Office of General Counsel be authorized to settle the following medical liability matters in accordance with the individual proposals presented in Executive Session:

- a. On behalf of The University of Texas Health Science Center at Houston the medical liability litigation brought by Dorothy B. Stephens
- b. Arising out of The University of Texas Health Science Center at San Antonio the medical liability claim brought by Bobby Bibbs II.

The motion was duly seconded and carried without objection.

2. U. T. Dallas: Authorization to Purchase Phase V of the Waterview Park Apartments in Richardson, Collin, and Dallas Counties, Texas; Authorization to Submit the Transaction to the Coordinating Board; and Approval for the Executive Vice Chancellor for Business Affairs to Execute All Documents Related Thereto.--Upon motion of Vice-Chairman Hicks, duly seconded, the Board:
 - a. Authorized The University of Texas System Real Estate Office to complete negotiations to purchase Phase V of the Waterview Park Apartments in Richardson, Collin, and Dallas Counties, Texas, on The University of Texas at Dallas campus according to the parameters outlined in Executive Session
 - b. Authorized submission of the purchase to the Texas Higher Education Coordinating Board for approval
 - c. Authorized the Executive Vice Chancellor for Business Affairs or his delegate to take all steps required to complete the transaction following approval by the Executive Vice Chancellor for Academic Affairs and the Office of General Counsel.

3. U. T. Permian Basin: Rejection of Recommendations of Hearing Tribunal Regarding Tenured Faculty Member and Termination of Employment of Dr. Waylon Griffin Effective Immediately.--Following Executive Session consideration, Regent Temple moved that the U. T. Board of Regents reject the hearing tribunal recommendations and that Dr. Waylon Griffin, a tenured faculty member, be terminated, effective immediately, from his employment at The University of Texas of the Permian Basin.

The motion was duly seconded and prevailed by unanimous vote.

RECESS.--At 5:45 p.m., the Board recessed to reconvene in open session at 8:30 a.m. on Thursday, February 6, 1997, in the Second Floor Conference Room of Ashbel Smith Hall at 201 West Seventh Street in Austin.

* * * * *

THURSDAY, February 6, 1997.--The members of the Board of Regents of The University of Texas System reconvened in regular session at 8:35 a.m. on Thursday, February 6, 1997, in the Second Floor Conference Room of Ashbel Smith Hall at 201 West Seventh Street in Austin, Texas, with the following in attendance:

ATTENDANCE.--

Present

Chairman Rapoport, presiding
Vice-Chairman Hicks
Vice-Chairman Smiley
Regent Clements
Regent Evans
Regent Holmes
Regent Lebermann
Regent Loeffler
Regent Temple

Absent

Executive Secretary Dilly

Chancellor Cunningham
Executive Vice Chancellor Duncan
Executive Vice Chancellor Mullins

Chairman Rapoport announced a quorum present and reconvened the meeting of the Board. He welcomed Mrs. Rita Crocker Clements, Dallas, Texas, as a new member of the Board to complete the unexpired term of Mrs. Linnet F. Deily who resigned to accept an out-of-state job offer. Mr. Rapoport noted that Mrs. Clements had joined in a telephone Board meeting but this was her first public open meeting.

Chairman Rapoport also welcomed as guests to this meeting Governor Bush's new nominees to the Board:

Mr. Patrick C. Oxford, Houston, Texas
Mr. A. W. "Dub" Riter, Jr., Tyler, Texas
Mr. A. R. (Tony) Sanchez, Jr., Laredo, Texas

U. T. BOARD OF REGENTS: APPROVAL OF MINUTES OF REGULAR MEETING HELD ON NOVEMBER 13-14, 1996, AND SPECIAL MEETING HELD ON DECEMBER 20, 1996.--Upon motion of Regent Temple, seconded by Regent Evans, the Minutes of the regular meeting of the Board of Regents of The University of Texas System held on November 13-14, 1996, in Dallas, Texas, were approved as distributed by the Executive Secretary. The official copy of these Minutes is recorded in the Permanent Minutes, Volume XLIV, Pages 5 - 613.

Upon motion of Regent Loeffler, seconded by Vice-Chairman Smiley, the Minutes of the special meeting of the Board of Regents of The University of Texas System held on December 20, 1996, in Austin, Texas, were approved as distributed by the Executive Secretary. The official copy of these Minutes is recorded in the Permanent Minutes, Volume XLIV, Pages 614 - 615.

SPECIAL ITEMS

1. U. T. Board of Regents - Regents' Rules and Regulations, Part One: Amendments to Chapter I, Section 8, Subsection 8.5, Subdivisions 8.52 and 8.54 (Communications by and to the Board).--Approval was given to amend the Regents' Rules and Regulations, Part One, Chapter I, Section 8, Subsection 8.5, Subdivisions 8.52 and 8.54, regarding communications by and to the Board, to read as set forth below:

Sec. 8. Procedure.

. . .

8.5 Communications by and to the Board.

. . .

8.52 Except upon invitation of the Board, the Chairman of the Board, the Chancellor, or the appropriate Executive Vice Chancellor, no person shall appear before the Board or any committee thereof unless that person files with the Executive Secretary to the Board a written request explaining the purpose of such appearance

at least six days before the date of such appearance and unless the Chairman of the Board, or a majority of the whole Board, shall approve the request. It is understood, however, that the chief administrative officer or his or her delegate and/or the president or chair of the student or faculty governance organization(s) or his or her delegate may appear without prior notice or request before the Board or any committee whenever the matter under consideration directly affects the component institution represented by such person. Persons requesting to appear must identify the subject of their remarks, which must be directly related to a matter on the Agenda for consideration by the Board. Whenever time and other circumstances permit, the person making the request shall first consult with the chief administrative officer, or his or her delegate, of such institution regarding the purpose of the appearance prior to the meeting of the Board or committee. Insofar as possible, any person who appears before the Board shall provide a written statement of the substance of such person's presentation to the Board, and such written statement shall be delivered to the Executive Secretary to the Board in sufficient time for copies to be distributed to the Regents prior to the meeting. Any person appearing before the Board or a committee shall be subject to restrictions on time, place and manner as may be prescribed by the Chairman or a majority of the Board or by the Chairman or a majority of a committee. The Chairman or a majority of the Board may prescribe sanctions against any person exceeding established time, place or manner limits; disrupting a meeting of the Board or a committee of the Board; or violating any provision of the Regents' Rules and Regulations.

Sanctions may include the refusal to allow such person to speak again to the Board or committees of the Board for up to one year.

. . .

- 8.54 A docket, to be entitled "Chancellor's Docket No. _____," composed of routine matters arising from System Administration and the component institutions, which are required to be reported to and/or approved by the Board in accordance with established policies of the Board, shall be prepared as directed and approved by the Chancellor, appropriate Executive Vice Chancellor, and Vice Chancellor, as appropriate. All docket items from the component institutions must be received by the System Administration not less than twenty-one days prior to the next regular scheduled meeting for inclusion on the docket for that meeting. The Chancellor's Docket shall be distributed by the Executive Secretary to all members of the Board at least ten days before the Board convenes, together with a memorandum to be returned within seven days thereafter. The memorandum will permit any member of the Board to except any item or items from the Docket. All items not excepted by any Regent will be considered by the Board at its next meeting, without detailed review. Any excepted item listed by any Regent will be deferred and will be processed through the appropriate standing committee for consideration at the first regular meeting of the Board following action of the item by the appropriate standing committee.

.

These amendments to the Regents' Rules and Regulations, Part One, Chapter I, Section 8, Subsection 8.5, Subdivisions 8.52 and 8.54 (1) permit the chair of the component faculty governance organization to appear before the Board without prior notice when the Board is considering matters directly affecting that component and (2) clarify that, procedurally, there is no vote on the items in the Docket except that taken in open session during the Business Affairs and Audit Committee portion of the agenda.

2. U. T. Board of Regents - Regents' Rules and Regulations, Part One: Approval of Amendments to Chapter VII, Section 5, Subsection 5.3 (Internal Corporations).--The Board amended the Regents' Rules and Regulations, Part One, Chapter VII, Section 5, Subsection 5.3, regarding internal corporations, to read as set forth below to reflect the court approved dissolution of the Ima Hogg Foundation, Inc.:

Sec. 5. Internal Corporations.

. . . .

5.3 The following internal corporations are presently authorized:

<u>Internal Corporations</u>	<u>Date Chartered</u>
The Aerospace Heritage Foundation, Inc.	9/7/78
The University of Texas System Medical Foundation, Inc.	10/5/73
The University of Texas at Austin School of Law Continuing Legal Education, Inc.	8/17/81
The University of Texas at Austin School of Law Publications, Inc.	8/17/81

The Ima Hogg Foundation was incorporated on June 26, 1964, as a charitable and educational foundation with the U. T. Board of Regents as Trustees. At the April 1993 meeting, the Trustees of the Foundation authorized its dissolution and the dissolution was approved by subsequent judicial action on December 27, 1994. The revision to the Regents' Rules and Regulations, Part One, Chapter VII, Section 5, Subsection 5.3 is an editorial change to reflect that the Ima Hogg Foundation, Inc. is no longer an internal corporation of the U. T. System. The income from the Ima Hogg Endowment will be used in conformance with purposes set forth in the original Articles of Incorporation of the Foundation as interpreted by the August 3, 1974, codicil to Miss Hogg's Will to benefit active mental health programs in the Houston, Texas, area.

3. U. T. System: Report of Summary of Gift Acceptance and Related Administrative Actions Conforming to Board Policy for September 1, 1996 Through November 30, 1996.--Vice Chancellor for Development and External Relations Perry reviewed the Summary of Gift Acceptance and Related Administrative Actions Conforming to Board Policy for The University of Texas System for the period September 1, 1996 through November 30, 1996, as set forth on Pages 11 - 15.

Vice Chancellor Perry reported that during this period 89 items conforming to Board policy were approved including the acceptance of \$13,416,014 in gifts. Other matching contributions from previously accepted Board-held matching funds totaled \$1,275,000 and the transfer of a previously reported unrestricted gift totaled \$300,000.

Mrs. Perry noted that this report includes only those funds which relate to endowments, estates, and other such funds which are managed by the U. T. System Office of Development and External Relations.

Vice Chancellor Perry distributed to the members of the Board a comprehensive and comparative report outlining private sector support for current programs and capital projects at the fifteen U. T. System component institutions for the Fiscal Years 1987 through 1996. She reported that for the Fiscal Year ending August 31, 1996,

the total of private gifts and grants to the U. T. System was \$283,593,739.

A copy of the report on The University of Texas System Private Gifts and Grants is set forth on Pages 16 - 19.

At the conclusion of Mrs. Perry's report, Chairman Rapoport encouraged the members of the Board to become involved in the private fund development area of each component institution and urged the Board to review the report in depth. He pointed out that the excellent fund-raising progress over a ten-year period is in keeping with a commitment to be a System of first class institutions.

ACCEPTANCE OF **GIFTS** HELD BY **BOARD**

# ALL ITEMS	COMPONENT INSTITUTION	ASSET TYPES						MATCHING FUNDS	TOTAL VALUE
		CASH	SECURITIES	REAL ESTATE	PLEDGES	OTHER	TRANSFERS		
1	U. T. Arlington	\$ -	\$	\$	\$	\$ -	\$	\$ -	\$
39	U. T. Austin	\$ 1,675,290	\$ 213,895	\$	\$ 1,097,500	\$ 29,000	\$ 204,914	\$ 25,000	\$ 3,220,599
14	U. T. El Paso	\$ 1,351,703	\$ 756,979	\$	\$ -	\$ 7,000	\$	\$	\$ 2,115,682
1	U. T. Pan American	\$ 150,000	\$	\$	\$	\$	\$	\$	\$ 150,000
1	U. T. San Antonio	\$ 25,000	\$	\$	\$	\$ -	\$ -	\$ -	\$ 25,000
1	U. T. Tyler	\$ 10,000	\$	\$	\$ 15,000	\$	\$	\$	\$ 25,000
10	U. T. SWMC-Dallas	\$ 2,907,068	\$	\$	\$ 400,000	\$	\$ 800,000	\$ 1,250,000	\$ 5,357,068
10	U. T. M.B.-Galveston	\$ 302,725	\$	\$	\$	\$ -	\$ 1,630,869	\$	\$ 1,933,594
5	UTHSC-Houston	\$ 346,547	\$ 25,451	\$	\$ 40,349	\$	\$ 353,567	\$	\$ 765,914
4	UTHSC-San Antonio	\$	\$	\$ -	\$ -	\$ -	\$ 25,000	\$	\$ 631,753
3	UTMDACC	\$ 272,866	\$	\$	\$ 125,000	\$	\$ 343,538	\$	\$ 741,404
89	TOTAL	\$ 7,647,952	\$ 996,325	\$	\$ 1,677,849	\$ 36,000	\$ 3,357,888	\$ 1,275,000	\$ 13,416,014

* Not included in total: U. T. Austin - \$25,000 of Board-held matching funds; U. T. SWMC-Dallas - \$1,250,000 of Board-held matching funds;
UTHSC-Houston - \$300,000 transfer of previously reported unrestricted gift.

NOTE: Compiled by Office of Development and External Relations

CLASSIFICATION OF **GIFTS** AND OTHER ACTIONS

<u>COMPONENT INSTITUTION</u>	<u>ENDOWMENTS</u>	<u>CHARITABLE REMAINDER TRUSTS</u>	<u>POOLED INCOME FUND</u>	<u>REMAINDER INTERESTS</u>	<u>HELD IN TRUST BY OTHERS</u>	<u>CURRENT PURPOSE</u>	<u>OTHER</u>
U. T. Arlington	1			---	---	---	---
U. T. Austin	37	1	---		---	1	---
U. T. El Paso	12	---			---	2	---
U. T. Pm American	1	---		---		---	---
U. T. San Antonio	1		---		---	---	---
U. T. Tykr	1	---	---		---		---
U. T. SWMC-Dallas	8	---		---	1	1	---
U. T. M.B.-Galveston	10			---		---	---
UTHSC-Houston	5		---		---	---	---
UTHSC-San Antonio	4				---		
UTMDACC	2			---	---	1	---
TOTAL	82	1			1	5	---

PURPOSES OF GIFTS HELD BY BOARD AND OTHERS

<u>COMPONENT</u> <u>INSTITUTION</u>	ENDOWMENT								<u>CURRENT</u> <u>PURPOSE</u>	<u>OTHER</u> <u>PURPOSE</u>
	<u>MST.</u> <u>CHAIR</u>	<u>CHAIR</u>	<u>MST.</u> <u>PROF'SHIP</u>	<u>PROF'SHIP</u>	<u>FACULTY</u> <u>FELLOWSHIP</u>	<u>GRADUATE</u> <u>FELLOWSHIP</u>	<u>SCHOLARSHIP</u>	<u>OTHER</u>		
U. T. Arlington						---		---	---	---
U. T. Austin	---	2		---	---	2	19	9	1	---
U. T. El Paso	---	2	---	4			4	2	2	---
U. T. Pan American	---	---	---				1	---	---	
U. T. San Antonio		---			---		1	---	---	---
U. T. Tyler	---	---	---	---	---		1	---	---	---
U. T. SWMC-Dallas	1	1		---			2	3	1	1
U. T. M.B.-Galveston	2	1	1	---			1	2	---	---
UTHSC-Houston		---	2	2	---		---	---	---	---
UTHSC-San Antonio	---	1		---			1	2	---	---
UTMDACC	---	1	---	---	---	---	---	1	1	---
TOTAL	3	8	3	6		2	30	19	5	1

Total purposes may not equal total number of items for each component, due to the fact that some items pertain to multiple purposes.

OTHER ADMINISTRATIVE ACTIONS

COMPONENT INSTITUTION	ESTABLISH ENDOWMENT	REDESIGNATE ENDOWMENT LEVEL	OTHER REDESIGNATION	DISSOLVE ENDOWMENT	APPROVE/ALLOCATE MATCHING	ACCEPT TRUSTEESHIP	OTHER
U. T. Arlington	---		1	---	---		
U. T. Austin	32	1	4		2	---	2
U. T. El Paso	12	---	---	---	---	---	---
U. T. Pan American	1			---	---	---	---
U. T. San Antonio	1				---	---	---
U. T. Tyler	1				---	---	
U. T. SWMC-Dallas	8	1	---	---	2	---	---
U. T. M.B.-Galveston	5	5			1	---	
UTHSC-Houston	4		1		3		---
UTHSC-San Antonio	3	1	---	---	2	---	---
UTMDACC	2	---			1	---	---
TOTAL	69	8	6	---	11	---	2

COMPARATIVE SUMMARY OF **GIFTS** ACCEPTED VIA THE OFFICIAL ADMINISTRATIVE PROCESS

COMPONENT INSTITUTION	FY 1995 FULL YEAR	FISCAL YEAR 1997			FULL YEAR
		9/1/96 - 11/30/96	12/1/96 - 2/28/97	3/1/97 - 5/31/97	
U. T. System	\$ 40,000	\$ ---			
U. T. Arlington	\$ 157,630	\$ ---			
U. T. Austin	\$ 11,922,027	\$ 3,220,599			
U. T. Brownsville					
U. T. Dallas	\$ 770,000	\$ ---			
U. T. El Paso	\$ 627,444	\$ 2,115,682			
U. T. Pan American	\$ ---	\$ 150,000			
U. T. Permian Basin	\$ 362,077	\$ ---			
U. T. San Antonio	\$ 645,959	\$ 25,000			
U. T. Tyler	\$ 886,046	\$ 25,000			
U. T. SWMC-Dallas	\$ 13,409,431	\$ 4,107,068			
U. T. M.B.-Galveston	\$ 7,392,043	\$ 1,933,594			
UTHSC-Houston	\$ 2,872,941	\$ 465,914			
UTHSC-San Antonio	\$ 1,525,008	\$ 631,753			
UTMDACC	\$ 3,267,099	\$ 741,404			
U. T. HC-Tyler	\$ 1,064,117	\$ ---			
UTEP and UTMB	\$ 1,028,125	\$ ---			
TOTAL	\$ 45,969,947	\$ 13,416,014			

THE UNIVERSITY OF TEXAS SYSTEM

PRIVATE GIFTS AND GRANTS

1995-96

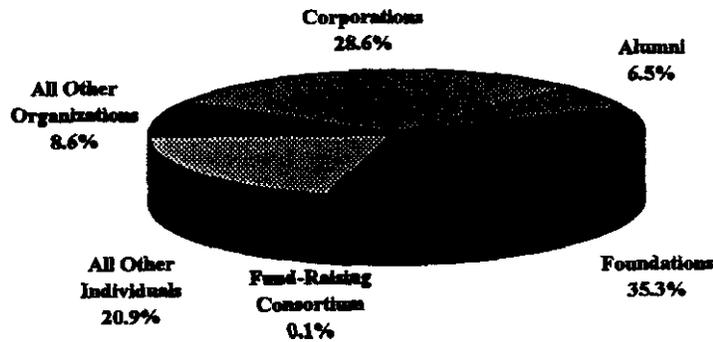
THE UNIVERSITY OF TEXAS SYSTEM
PRIVATE GIFTS AND GRANTS
1995-96

COMPONENT	CURRENT USE	CAPITAL USE*	FY 95-96 TOTAL
UT Arlington	\$1,605,291	\$441,696	\$2,046,987
UT Austin	\$39,320,160	\$41,819,093	\$81,139,253
UT Brownsville	\$243,283	\$62,200	\$305,483
UT Dallas	\$2,605,797	\$835,118	\$3,440,915
UT El Paso	\$5,181,883	\$4,242,493	\$9,424,376
UT Pan American	\$1,339,368	\$1,819,574	\$3,158,942
UT Permian Basin	\$487,884	\$410,989	\$958,853
UT San Antonio/ITC	\$2,298,788	\$768,819	\$3,057,607
UT Tyler	\$996,312	\$1,017,717	\$2,013,029
Academic Sub-Total	\$54,077,746	\$51,467,699	\$105,545,445
UTSMC-Dallas	\$33,460,695	\$28,904,486	\$62,365,181
UTMB-Galveston	\$8,434,751	\$18,401,092	\$26,835,843
UTHSC-Houston	\$13,729,719	\$1,792,473	\$15,522,192
UTHSC-San Antonio	\$10,265,811	\$3,593,323	\$13,859,134
UT-MD Anderson Cancer Center	\$54,631,970	\$2,961,751	\$57,593,721
UTHC-Tyler	\$481,213	\$633,946	\$1,115,159
Health Sub-Total	\$121,004,159	\$56,287,071	\$177,291,230
Component Sub-Total	\$175,081,905	\$107,754,770	\$282,836,675
UT System Administration	\$451,914	\$305,160	\$757,064
TOTALS	\$175,533,819	\$108,059,920	\$283,593,739

NOTE: The U. T. System uses the uniform gift reporting guidelines as outlined by the Council for Aid to Education (CAE), a national non-profit organization with headquarters in New York. These uniform guidelines permit appropriate comparisons of private support for institutions across the nation.

* Includes endowments, non-cash gifts, and gifts-in-kind

**The University of Texas System
Combined Gift Summary
Fiscal Year 1996**



TOTAL GIFTS \$283,593,739

	Current Operations	Capital Purposes	Total	Percentage of Total
Alumni	\$ 9,698,027	\$ 8,692,617	\$ 18,390,644	6.5%
All Other Individuals	24,059,940	35,353,620	59,413,560	20.9%
Foundations	60,268,726	39,709,677	99,978,403	35.3%
Corporation	64,098,896	16,949,726	81,048,622	28.6%
Fund-Raising Consortiums	414,005	17,800	431,805	0.1%
All Other Organizations	16,994,225	7,336,480	24,330,705	8.6%
Total	\$ 175,533,819	\$ 108,059,920	\$ 283,593,739	100.0%

THE UNIVERSITY OF TEXAS SYSTEM
Private Gifts and Grants
1988-87 Through 1995-96

<i>Academic Year</i>	<i>Support for Current Operations</i>	<i>Support for Capital Purposes</i>	<i>Total Support</i>	<i>Total Number of Gifts</i>	<i>Annual % Change in Support</i>
1986-1987	\$76,547,974	\$60,216,379	\$136,764,353	*74,428	-51.77%
1987-1988	\$85,229,606	\$82,070,961	\$167,300,567	*87,850	22.33%
1988-1989	\$90,929,043	\$53,892,775	\$144,821,818	*103,541	-13.44%
1989-1990	\$92,919,296	\$119,263,981	\$212,183,277	*123,439	46.51%
1990-1991	\$134,411,175	\$79,496,969	\$213,908,144	*116,580	0.81%
1991-1992	\$119,097,822	\$146,767,875	\$265,865,697	*128,829	24.29%
1992-1993	\$129,374,956	\$110,312,085	\$239,687,041	● 146,895	-9.85%
1993-1994	\$155,160,874	\$87,407,318	\$242,568,192	166,872	1.20%
1994-1995	\$174,144,229	\$84,423,277	\$258,567,506	174,371	6.60%
1995-1998	\$175,533,819	\$108,059,920	\$283,593,739	178,384	9.68%

* All components did not report total number of gifts in these years.

4. U. T. System: Approval to Recommend to Board of Trustees of Winedale Stagecoach Inn Fund to Dissolve the Fund and Authorize Alternative Management of Assets as Winedale Stagecoach Inn Fund Endowment and Authorization for Executive Officers and Appropriate U. T. Austin Officials to Take the Necessary Actions to Accomplish This Change.--
Without objection, the Board:

- a. Approved a recommendation to the Board of Trustees of the Winedale Stagecoach Inn Fund (a Texas public charitable trust subject to the Texas Trust Code) that Trustees dissolve the Trust and, upon dissolution and court approval, authorize the various Trust assets to be held as the Winedale Stagecoach Inn Fund Endowment to be invested in the Long Term Fund for purposes in conformance with the donor's expressed wishes as identified in documents originally establishing the Trust with administration of the disbursed income through The University of Texas at Austin
- b. Authorized U. T. System Executive Officers and appropriate U. T. Austin officials to implement the investment, accounting, disbursement, legal, auditing, and reporting procedures necessary to accomplish this change.

The Winedale Stagecoach Inn Fund ("Fund"), classified as a trust, was created by Miss Ima Hogg through a trust agreement dated March 25, 1965, which names the members of the U. T. Board of Regents as Trustees. This Trust was initially funded with two properties known as the "Winedale Stagecoach Inn" and the "Varner Acreage." Miss Hogg subsequently conveyed additional properties to the Fund.

The purposes of the Fund are "the maintenance, support and operation of the Winedale Property as a public historical museum and as a center for the teaching and study of subjects of educational interest including architectural history, the fine arts, literature, language, social studies, and the intellectual-social history of Texas."

On August 10, 1971, Miss Hogg made an additional gift to benefit the Winedale Stagecoach Inn through a Supplemental Trust Indenture between the Varner-Bayou Bend Heritage Fund (another trust created by Miss Hogg) and the Trustees of the Fund. Separate accounting is required for these assets of the Winedale Stagecoach Inn Fund by the instrument due to a reversionary clause. This portion of the Fund is referred to as the "Winedale Varner-Bayou Bend Heritage Fund." The income from the Heritage Fund is to be used "primarily for payment of costs and expenses of programs and workshop activities and costs and expenses of the Winedale Festival conducted on the Winedale Property . . . and for payment of costs and expenses of acquiring and renovating appropriate pieces of furniture and furnishings and equipment and other objects for display or use on the Winedale Property and renovation or maintenance of the grounds and of historical buildings and improvements situated . . . on the Winedale Property."

In 1992, the Offices of General Counsel, Academic Affairs, and the former Office of Asset Management identified the need to review, clarify, and update the operational structure and administration of the Winedale Stagecoach Inn Fund to match current practices and requirements. The Business Affairs and Audit Committee of the U. T. Board of Regents then asked the Executive Vice Chancellor for Academic Affairs and the Executive Vice Chancellor for Business Affairs to study and make appropriate recommendations on the management issues identified.

That study included extensive review of historical documents and past actions of the U. T. Board of Regents related to the Winedale Stagecoach Inn Fund as well as numerous discussions with U. T. Austin officials and other U. T. System Executive Officers. The above actions provide needed additional clarification on the status of the Winedale Stagecoach Inn Fund and streamline its reporting and administrative structure consistent with this clarification.

The multi-tiered administrative structure for the Winedale Stagecoach Inn Fund has become cumbersome and unnecessary over time and does not reflect the

current operating structure of the U. T. Board of Regents or U. T. System Administration.

Dissolution of the Trust is preferable to amendment of the Bylaws and continued operation under the trustee structure as the U. T. Board of Regents effectively manages numerous other substantial "charitable trusts" as endowments without need for a separate trust structure. Also, upon dissolution, the Trust would no longer be required to file annual tax returns to the Internal Revenue Service.

Upon dissolution in accordance with court approval, assets will be formally transferred to be held as an endowment to be invested through The University of Texas Investment Management Company in the Long Term Fund with income to be distributed to U. T. Austin for purposes consistent with the donor's expressed wishes.

When approved by the U. T. Board of Regents and the Winedale Stagecoach Inn Fund Board of Trustees, U. T. System and U. T. Austin officials would be authorized to pursue approval of proposed actions in a legal proceeding before a district court of Travis County and to take necessary administrative actions to implement the endowment recommendations.

See Foundation Matter on Page 23.

FOUNDATION MATTER

Winedale Stagecoach Inn Fund: Authorization to Dissolve the Winedale Stagecoach Inn Fund and to Hold the Various Corporate Assets as the Winedale Stagecoach Inn Fund Endowment and Approval for the President of the Fund to Take Action to Implement Dissolution.--The U. T. Board of Regents recessed its meeting to meet independently in its capacity as the Board of Trustees for the Winedale Stagecoach Inn Fund. The Trustees of the Fund took the following actions:

- a. Authorized dissolution of the Winedale Stagecoach Inn Fund as soon as reasonably practical and, upon dissolution and court approval, authorized the U. T. Board of Regents to hold the various corporate assets as the Winedale Stagecoach Inn Fund Endowment to be invested in the Long Term Fund for purposes in conformance with the donor's expressed wishes
- b. Authorized the President of the Winedale Stagecoach Inn Fund to take action as necessary to implement dissolution, working with The University of Texas System Executive Officers and The University of Texas at Austin Administration.

The purpose of this Fund is to support the Winedale Historical Center located at Round Top, Texas, which was created by Miss Ima Hogg under the name of Winedale Stagecoach Inn and offered to the U. T. Board of Regents in March 1965.

The above actions provide additional clarification on the status of the Fund and streamline its reporting and administrative structure. The multi-tiered administrative structure for the Fund has become cumbersome and unnecessary over time and does not reflect the current operating structure of the U. T. Board of Regents or U. T. System Administration. The termination of the Fund will eliminate federal tax and other accounting issues.

See related item on Page 20.

MATTERS RELATED TO THE UNIVERSITY OF TEXAS
INVESTMENT MANAGEMENT COMPANY (UTIMCO)

1. U. T. System: Report on Investments for the Fiscal Quarter Ended November 30, 1996.--On behalf of The University of Texas Investment Management Company (UTIMCO), Regent Hicks, Chairman of the UTIMCO Board, summarized the Report on Investments for The University of Texas System for the fiscal quarter ending November 30, 1996, for the Permanent University Fund, Long Term Fund, Short/Intermediate Term Fund, and Separately Invested Assets.

Report by Regent Hicks on Behalf of UTIMCO

Mr. Chairman and members of the Board, I am pleased to summarize on behalf of UTIMCO the investments for The University of Texas System for the fiscal quarter ending November 30, 1996.

Item a on Page 27 presents the summary report for Permanent University Fund (PUF) investments. The PUF began the year with a market value of \$5.292 billion. During the quarter, income from the production of minerals on PUF Lands added \$23.9 million of new contributions to the Fund versus \$16.4 million for the first quarter of the preceding year. In addition, total investment return was \$509.9 million of which \$68.9 million was income return and \$441.0 million was price return. Income return of \$68.9 million was distributed to the Available University Fund (AUF) resulting in a quarter-end market value of \$5.757 billion.

During the period, \$23.9 million of new cash was allocated to international equities. In addition, \$25.2 million of bond runoff was reallocated to small cap value equities. The allocation to bonds continues to be reduced gradually. At period-end, the allocation to fixed income securities was 42.5% versus 44% at year-end and the Fund's long-term policy target of 30%. Period-end allocation to equities was 52% with 41% in U. S. large and mid cap stocks, 5% in U. S. small cap stocks and 6% in non-U. S. equities. The balance of 5.5% was allocated to alternative assets such as venture capital and private equities.

Income distributions to the AUF of \$68.9 million for the quarter increased by a nominal rate of 6.8% and by an inflation adjusted rate of 6.0%. Interest income from fixed income securities, which represents approximately 75% of total income generated, increased by 2.7% to \$50.2 million from \$48.9 million. Dividend income continued to grow increasing by 19.7% to \$16.4 million from \$13.7 million, the majority of which was attributable to dividend increases. Finally, income from alternative assets increased by 31% to \$2.1 million from \$1.6 million during the period.

Total investment return for the quarter was 9.5% unannualized. Fixed income as an asset class continued to perform poorly versus equities with the Salomon Broad Bond Index generating a total return of 5.7%. The Fund's fixed income portfolio at 7.1% outperformed the index due to the longer average maturity of the portfolio versus the index. Equities, as an asset class, continued to generate higher relative returns with the S&P 500 Index posting a 16.7% return. The PUF's equity (including international) portfolios under performed this index generating a 12.1% return due to diversification into lower return mid and small cap equities. Finally, alternative assets produced a 5.4% return for the quarter, below its benchmark return of 18.0%.

Item b on Page 28 reports summary activity for the Long Term Fund (LTF). During the quarter, net contributions totaled \$24.7 million. Net investment return was \$160.8 million of which \$19.5 million was paid to the 4,300 endowment and other funds underlying the LTF. The Fund's market value closed the quarter at \$1.877 billion versus \$1.712 billion for the preceding quarter-end. On a per unit basis, each endowment's ownership in the LTF increased from \$3.90 per share to \$4.21 a share.

Asset allocation at quarter-end was 28% fixed income, 67% equities (of which 56% was U. S. domestic equities and 11% was international equities) and 5% alternative assets. Total unannualized investment return for the Fund was 9.4% and net 7.4% after expenses of 0.06%, inflation of 0.8% and spending of 1.09%.

Item c on Page 29 presents quarterly activity for the Short/Intermediate Term Fund. During the quarter, the

Fund received net contributions of \$40.9 million. It earned \$52.9 million in total return, incurred expenses of \$0.1 million and distributed \$20.2 million to U. T. System component institutions. Total return on the Fund was 3.9% for the quarter versus the Fund's performance benchmark of 2.8%.

Item d on Page 30 presents book and market value of cash, fixed income, equity and other securities held in funds outside of internally managed investment pools. Total cash and equivalents consisting primarily of component operating funds held in the money market fund decreased from \$602 million to \$524 million at quarter-end. Asset values for the remaining asset types were fixed income securities: \$68.9 million; equities: \$22.5 million; and other assets of \$5.0 million.

a. PERMANENT UNIVERSITY FUND

Summary Investment Report at November 30, 1996.--

PERMANENT UNIVERSITY FUND (1)
INVESTMENT SUMMARY REPORT
(\$ millions)

	<u>FY95-96</u>	<u>FY96-97</u>
	Full Year	1st Qtr
Beginning Market Value	4,958.5	5,292.1
PUF Lands Receipts(z)	65.7	23.9
Investment Income	253.6	68.9
Investment Income Distributed	(253.6)	(68.9)
Realized Gains (Losses)	196.8	45.4
Change in Unrealized Gains (Losses)	71.1	395.6
Ending Market Value	<u>5,292.1</u>	<u>5,757.0</u>
 AUF Income		
Investment Income	253.6	68.9
Surface Income	4.8	1.1
Total	<u>258.4</u>	<u>70.0</u>

Report prepared in accordance with Sec. 51.0032 of the Texas Education Code.

(1) Excludes PUF Lands mineral and surface interests with estimated 6/30/96 values of \$410.1 million and \$158.7 million, respectively.

(2) As of October 31, 1996: 817,158 acres under lease; 515,672 producing acres; 2,709 active leases; and 2,034 producing leases.

b. LONG TERM FUND

Summary Investment Report at November 30, 1996.--

LONG TERM **FUND**
SUMMARY REPORT
(\$ millions)

	<u>FY95-96</u>	<u>FY96-97</u>
	Full Year	1st Qtr
Beginning Net Assets	1,558.8	1,712.1
Net Contributions	54.1	24.7
Investment Return	182.3	160.8
Expenses	(3.7)	(1.1)
Distributions (Payout)	(76.4)	(19.5)
Distribution of Gain on Participant Withdrawals	(3.0)	(0.1)
Ending Net Assets	<u>1,712.1</u>	<u>1,876.9</u>
Net Asset Value per Unit	3.097	4.211
No. of Units (End of Period)	439,352,911	445,668,754
Distribution Rate per Unit	0.175	0.04375

Report prepared in accordance with Sec. 51.0032 of the Texas Education Code.

c. SHORT/INTERMEDIATE TERM FUND

Summary Investment Report at November 30, 1996.

**SHORT/INTERMEDIATE TERM FUND
SUMMARY REPORT
(\$ millions)**

	<u>FY95-96</u> <u>Full Year</u>	<u>FY96-97</u> <u>1st Qtr</u>
Beginning Net Assets	1,129.5	1,332.1
Net Contributions	216.7	40.9
Investment Return	58.2	52.9
Expenses	(0.2)	(0.1)
Distributions of Income	<u>(72.1)</u>	<u>(20.2)</u>
Ending Net Assets	1,332.1	1,405.6

Report prepared in accordance with Sec. 51.0032 of the Texas Education Code.

d. SEPARATELY INVESTED ASSETS

Summary Investment Report at November 30, 1996.--

SEPARATELY INVESTED ASSETS
SUMMARY REPORT
(S thousands)

ASSET TYPES	FUND TYPE													
	CURRENT PURPOSE				ENDOWMENT &		ANNUITY & LIFE		AGENCY FUNDS		OPERATING FUNDS		TOTAL	
	DESIGNATED		RESTRICTED		SIMILAR FUNDS		INCOME FUNDS							
	BOOK	MARKET	BOOK	MARKET	BOOK	MARKET	BOOK	MARKET	BOOK	MARKET	BOOK	MARKET	BOOK	MARKET
Cash & Equivalents:														
Beginning value 9/1/96	2,672	2,672	2,637	2,637	35,259	35,259	396	396	20	20	561,432	561,432	602,416	602,416
Increase/(Decrease)	(740)	(740)	(1,377)	(1,377)	(5,941)	(5,941)	(48)	(48)	(17)	(17)	(69,717)	(69,717)	(77,840)	(77,840)
Ending value 11/30/96	1,932	1,932	1,260	1,260	29,318	29,318	348	348	3	3	491,715	491,715	524,576	524,576
Debt Securities:														
Beginning value 9/1/96	10,591	10,545	7	4	34,878	34,660	7,844	7,912	-	-	29,118	29,094	82,438	82,215
Increase/(Decrease)	(7)	48	-	-	7,041	7,976	(15)	246	-	-	(21,737)	(21,613)	(14,718)	(13,343)
Ending value 11/30/96	10,584	10,593	7	4	41,919	42,636	7,829	8,158	-	-	7,381	7,481	67,720	68,872
Equity Securities:														
Beginning value 9/1/96	52	988	638	653	13,924	17,910	1,151	1,336	-	-	-	-	15,765	20,887
Increase/(Decrease)	-	125	(426)	(445)	526	1,786	(9)	99	-	-	-	-	91	1,565
Ending value 11/30/96	52	1,113	212	208	14,450	19,696	1,142	1,435	-	-	-	-	15,856	22,452
Other:														
Beginning value 9/1/96	-	-	485	485	(423)	(423)	5,087	5,087	(1)	(1)	-	-	5,148	5,148
Increase/(Decrease)	-	-	139	139	(201)	(201)	(111)	(111)	1	1	-	-	(172)	(172)
Ending value 11/30/96	-	-	624	624	(624)	(624)	4,976	4,976	-	-	-	-	4,976	4,976

Report prepared in accordance with Sec. 51.0032 of the Texas Education Code
Details of individual assets by account furnished upon request.

2. U. T. Board of Regents: Approval to Rescind Investment Policy Statements for the Permanent University Fund, Long Term Fund, Short/Intermediate Term Fund, Operating Funds, and Private Placements and Adoption of New Investment Policy Statements for the Permanent University Fund, Long Term Fund, Short/Intermediate Term Fund, Short Term Fund, and Separately Invested Endowment, Trust, and Other Accounts.--Upon recommendation of the Board of Directors of The University of Texas Investment Management Company (UTIMCO), the U. T. Board of Regents (1) rescinded the Permanent University Fund, Long Term Fund, Short/Intermediate Term Fund, Operating Funds, and Private Placements Investment Policy Statements approved February 8, 1996, and (2) adopted the following new Investment Policy Statements:
- a. Permanent University Fund Investment Policy Statement as set out on Pages 37 - 47
 - b. Long Term Fund Investment Policy Statement as set out on Pages 48 - 58
 - c. Short/Intermediate Term Fund Investment Policy Statement as set out on Pages 59 - 65
 - d. Short Term Fund Investment Policy Statement as set out on Pages 66 - 71
 - e. Separately Invested Endowment, Trust, and Other Accounts Investment Policy Statement as set out on Pages 72 - 76.

Section 3(a) of the Investment Management Services Agreement dated March 1, 1996, between the Board of Regents of The University of Texas System and The University of Texas Investment Management Company provides that UTIMCO shall review the investment policies of the assets under its management and recommend any amendments to such policies for approval by the U. T. Board of Regents. On October 11 and December 20, 1996, the UTIMCO Board adopted resolutions approving new Investment Policy Statements and recommending to the U. T. Board of Regents the approval of these new Policy Statements.

The Policy Statements contain guidelines for investments in approved asset classes. The rescission of the existing investment policy statements is necessary in order to unify all policy elements regarding approved asset classes into a standard fund investment policy statement. The standardization of the statements will increase consistency of policy across funds and improve the monitoring of compliance with each fund's investment policy.

The Policy Statements provide that the primary investment objective of the Permanent University Fund (PUF) and the Long Term Fund (LTF) is to preserve the purchasing power of Fund assets and annual distributions by earning an average annual total return after inflation of 5.5% over rolling ten-year periods or longer. Secondary fund objectives are to generate a Fund return in excess of (a) the Policy Portfolio benchmarks and (b) in the case of the LTF, the average median return of the universe of college and university endowments as reported annually by Cambridge Associates and NACUBO over rolling five-year periods or longer. The Policy Portfolio benchmarks are established by UTIMCO and are comprised of a blend of asset class indices weighted to reflect Fund asset allocation targets.

The Policy Statements recognize that asset allocation is the primary determinant of investment performance. Fund assets may be allocated among cash and cash equivalents, fixed income investments, and broadly defined equities (including alternative assets) in order to achieve the Fund's primary investment objective. The Policy Statements also recognize that the Fund's 5.5% real return objective for long-term funds imply a high allocation to broadly defined equities as high as 85%. Fixed income investments are limited to 50% and 25% for the PUF and LTF, respectively.

The Policy Statements for the Short/Intermediate Term Fund (S/ITF) and Short Term Fund restrict asset allocation to fixed income investments only and attempt to control risk through restrictions on maturities and credit quality. The Policy Statements for Separately Invested Endowment, Trust, and Other Accounts govern those funds where the donative instrument has restricted the investment of funds.

Each Policy Statement delegates authority to UTIMCO to establish specific asset allocation targets, ranges and performance objectives for each asset class within the broad asset allocation or other guidelines established by the U. T. Board of Regents. The UTIMCO Board of Directors has adopted the specific asset allocation policies for the PUF, LTF, and S/ITF as set forth on Pages 34 - 36.

PERMANENT UNIVERSITY FUND

SPECIFIC ASSET ALLOCATION TARGETS, RANGES, AND PERFORMANCE OBJECTIVES

	<u>Target</u>	<u>Range</u>	<u>Performance Objective</u>
Cash and Equivalents	0%	0.0%-5.0%	91 day T-Bill Ave. Yield
Equities			
U. S. Common Stocks:			
Med/Large Capitalization Stocks	30%	25%-35%	S&P 500 Index
Small Capitalization Stocks	<u>10%</u>	<u>5%-15%</u>	Russell 2000 Index
sub-total	40%	30%-50%	
International Common Stocks:			
Established Markets	12%	5%-20%	FT Actuaries World (ex-U.S.)
Emerging Markets	<u>3%</u>	<u>0%-10%</u>	MSCI-Emerging Mkts. Free
sub-total	<u>15%</u>	<u>5%-30%</u>	
Total Common Stocks	55%	35%-80%	
Alternative Assets:			
Liquid	5%	0% - 5%	C.P.I. + 8%
Illiquid	15%	10%-20%	S&P500 Index + 5%
Inflation Hedging	<u>5%</u>	<u>0%-5%</u>	C.P.I. + 5%
Total Alternative Assets	25%	10%-30%	
TOTAL EQUITIES	80%	50%-85%	
Fixed Income			
U. S. (Domestic)	15%	15%-50%	Lehman Govt. Long Index
International	5%	0%-5%	JPM Global Govt.
Bond (ex-U.S.)			
TOTAL FIXED INCOME	<u>20%</u>	<u>15%-50%</u>	
TOTAL ASSETS	100%		

Achievement of these performance objectives is most appropriately evaluated over a full market cycle of roughly five years. The rebalancing of Fund assets to achieve the target allocations shall be subject to the objective of replicating prior year's income.

LONG TERM FUND

SPECIFIC ASSET ALLOCATION TARGETS, RANGES, AND PERFORMANCE OBJECTIVES

	<u>Target</u>	<u>Range</u>	<u>Performance Objective</u>
Cash and Equivalents	0%	0.0%-5.0%	91 day T-Bill Ave. Yield
Equities			
U. S. Common Stocks:			
Med/Large Capitalization Stocks	30%	25%-35%	S&P 500 Index
Small Capitalization Stocks	<u>10%</u>	<u>5%-15%</u>	Russell 2000 Index
sub-total	40%	30%-50%	
International Common Stocks:			
Established Markets	12%	5%-20%	FT Actuaries World (ex-U.S.)
Emerging Markets	<u>3%</u>	<u>0%-10%</u>	MSCI-Emerging Mkts. Free
sub-total	<u>15%</u>	<u>5%-30%</u>	
Total Common Stocks	55%	35%-80%	
Alternative Assets:			
Liquid	5%	0% - 5%	C.P.I. + 8%
Illiquid	15%	10%-20%	S&P500 Index + 5%
Inflation Hedging	<u>5%</u>	<u>0%-5%</u>	C.P.I. + 5%
Total Alternative Assets	25%	10%-30%	
TOTAL EQUITIES	80%	75%-85%	
Fixed Income			
U. S. (Domestic)	15%	15%-25%	Lehman Govt. Long Index
International	5%	0%-5%	JPM Global Govt.
Bond (ex-U.S.)			
TOTAL FIXED INCOME	<u>20%</u>	<u>15%-25%</u>	
TOTAL ASSETS	100%		

Achievement of these performance objectives is most appropriately evaluated over a full market cycle of roughly five years. The rebalancing of Fund assets to achieve the target allocations shall be subject to the funding of alternative assets.

SHORT/INTERMEDIATE TERM FUND

SPECIFIC ASSET ALLOCATION TARGETS, RANGES, AND PERFORMANCE OBJECTIVES

	<u>Target</u>	<u>Range</u>	<u>Performance Objective</u>
U.S. Treasuries	60%	0%-100%	(1)
U.S. Government Agencies	40%	0%-80%	(2)
Mortgage Backed Securities	0%	0%-60%	
STIF	0%	0%-40%	
Corporate Cash Equivalents	0%	0%-40%	
Repurchase Agreements	0%	0%-33%	
TOTAL ASSETS	100%		

(1) .1 x M.L. 91-day U.S. Treasury Bill Index + .1 x M.L. 6 mo. U.S. Treasury Bill Index + .3 x M.L. 1-3 yr. U.S. Treasury Index + .1 x M.L. 3-5 yr. U.S. Treasury Index

(2) .3 x M.L. 1-3 yr. U.S. Federal Agencies Index + .1 x M.L. 3-5 yr. U.S. Federal Agencies Index

Achievement of these performance objectives is most appropriately evaluated over a full market cycle of roughly five years.

The specific asset allocation targets adopted by the UTIMCO Board of Directors for the PUF and LTF continues the process initiated by the U. T. Board of Regents in 1995 to diversify the Fund by reducing exposure to fixed income and U. S. domestic equities and increasing the exposure to international and alternative asset classes.

**THE UNIVERSITY OF TEXAS SYSTEM
PERMANENT UNIVERSITY FUND
INVESTMENT POLICY STATEMENT**

Purpose

The Permanent University Fund (the “Fund”) is a public endowment contributing to the support of institutions of The University of Texas System (other than The University of Texas-Pan American and The University of Texas at Brownsville) and institutions of The Texas A&M University System (other than Texas A&M University--Corpus Christi, Texas A&M International University, Texas A&M University--Kingsville, West Texas A&M University, Texas A&M University--Commerce and Texas A&M University--Texarkana).

Fund Organization

The Permanent University Fund was established in the Texas Constitution of 1876 through the appropriation of land grants previously given to The University of Texas at Austin plus one million acres. The land grants to the Permanent University Fund were completed in 1883 with the contribution of an additional one million acres of land. Today, the Permanent University Fund contains 2,109,190 acres of land (the “PUF Lands”) located in 24 counties primarily in West Texas.

The 2.1 million acres comprising the PUF Lands produce two streams of income: a) mineral income, primarily in the form of oil and gas royalties and b) surface income, in the form of surface leases and easements. Under the Texas Constitution, mineral income, as a non-renewable source of income, remains a non-distributable part of PUF corpus, and is invested in securities. Surface income, as a renewable source of income, is distributed to the Available University Fund, (the “AUF”) as received.

The Constitution prohibits the distribution and expenditure of mineral income contributed to the Fund and the realized and unrealized gains earned from Fund investments. The Constitution also requires the distribution of all PUF investment income to the AUF to be expended for certain authorized purposes.

The expenditure of PUF income distributed to the AUF is subject to a prescribed order of priority:

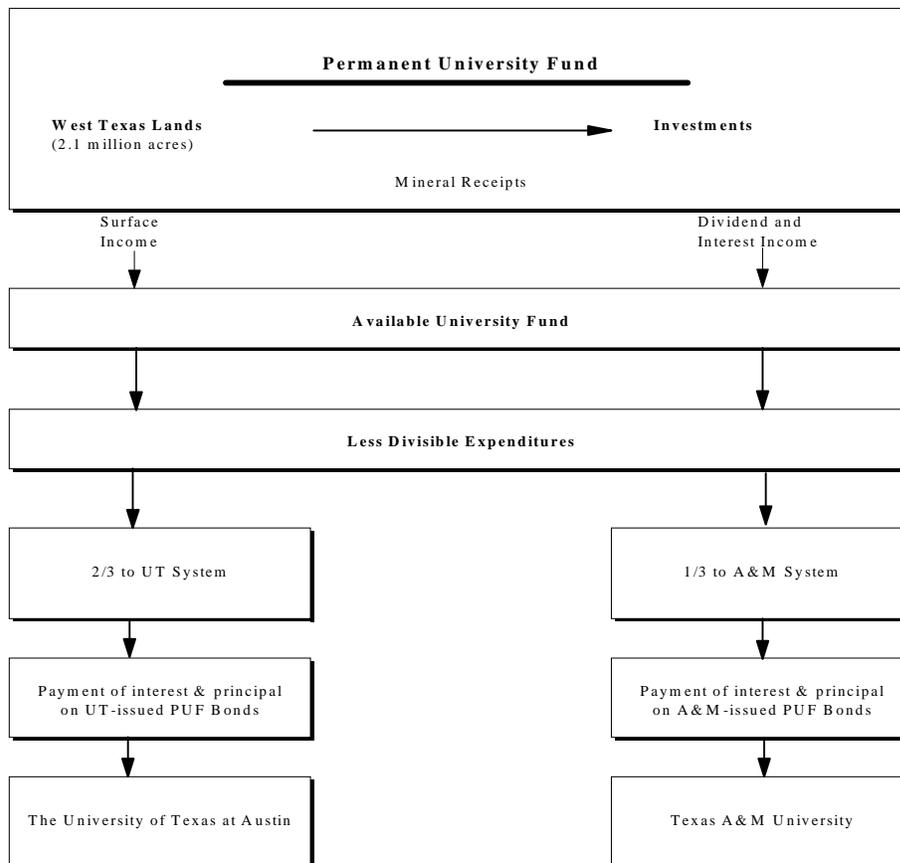
First, expenses incurred in the administration of PUF Lands and Investments. Resolutions adopted by the U. T. Board of Regents (the “U. T. Board”) require that administrative expenses of the PUF be restricted to a minimum consistent with prudent business judgment. Second, following a 2/3rds and 1/3rd allocation of distributed PUF income (net of administrative expenses) to the U. T. System and Texas A&M University System, respectively, expenditures for debt service on PUF bonds. Article VII of the Texas

Constitution authorizes the U. T. Board and the Texas A&M University System (the “TAMUS Board”) to issue bonds payable from their respective interests in distributed PUF income to finance permanent improvements and to refinance outstanding PUF obligations. The Constitution limits the amount of bonds and notes secured by each System’s interest in divisible PUF income to 20% and 10% of the book value of PUF investment securities, respectively. Bond resolutions adopted by both Boards also prohibit the issuance of additional PUF parity obligations unless the projected interest in PUF net income for each System covers projected debt service at least 1.5 times.

Third, expenditures to fund a) excellence programs specifically at U. T. Austin and Texas A&M University and b) the administration of the university systems.

The distribution of income and expenditures from the PUF to the AUF is depicted below in Exhibit 1:

Exhibit 1



Fund Management

Article VII of the Texas Constitution assigns fiduciary responsibility for managing and investing the Fund to the U. T. Board. Article VII authorizes the U. T. Board, subject to procedures and restrictions it establishes, to invest the Fund in any kind of investments and in amounts it considers appropriate, provided that it adheres to the prudent person investment standard. This standard requires that the U. T. Board, in making investments, shall exercise the judgment and care under the circumstances then prevailing which persons of ordinary prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital.

Ultimate fiduciary responsibility for the Fund rests with the Board. Section 66.08 of the Texas Education Code authorizes the U. T. Board to delegate to its committees, officers or employees of the U. T. System and other agents the authority to act for the U. T. Board in investment of the PUF. The Fund shall be managed through The University of Texas Investment Management Company ("UTIMCO") which shall a) recommend investment policy for the Fund, b) determine specific asset allocation targets, ranges and performance benchmarks consistent with Fund objectives, and c) monitor Fund performance against Fund objectives. UTIMCO shall invest the Fund's assets in conformity with investment policy.

Unaffiliated investment managers may be hired by UTIMCO to improve the Fund's return and risk characteristics. Such managers shall have complete investment discretion unless restricted by the terms of their management contracts. Managers shall be monitored for performance and adherence to investment disciplines.

Fund Administration

UTIMCO shall employ an administrative staff to ensure that all transaction and accounting records are complete and prepared on a timely basis. Internal controls shall be emphasized so as to provide for responsible separation of duties and adequacy of an audit trail. Custody of Fund assets shall comply with applicable law and be structured so as to provide essential safekeeping and trading efficiency.

Fund Investment Objectives

The primary investment objective shall be to preserve the purchasing power of Fund assets and annual distributions by earning an average annual total return after inflation of 5.5% over rolling ten-year periods or longer. The Fund's success in meeting its objectives depends upon its ability to generate high returns in periods of low inflation that will offset lower returns generated in years when the capital markets underperform the rate of inflation.

The secondary fund objective is to generate a fund return in excess of the Policy Portfolio benchmark over rolling five-year periods or longer. The Policy Portfolio benchmark will be established by UTIMCO and will be comprised of a blend of asset class indices weighted to reflect Fund asset allocation policy targets.

The U. T. Board recognizes that achievement of Fund investment objectives is substantially hindered by the inability to make distributions on a total return basis and current distribution rates in excess of long-term equilibrium levels.

Asset Allocation

Asset allocation is the primary determinant of investment performance and subject to the asset allocation ranges specified herein is the responsibility of UTIMCO. Specific asset allocation targets may be changed from time to time based on the economic and investment outlook.

Fund assets shall be allocated among the following broad asset classes based upon their individual return/risk characteristics and relationships to other asset classes:

1. Cash Equivalents - are highly reliable in protecting the purchasing power of current income streams but historically have not provided a reliable return in excess of inflation. Cash equivalents provide good liquidity under both deflation and inflation conditions.
2. Fixed Income Investments - offer the best protection for hedging against the threat of deflation by providing a dependable and predictable source of Fund. Such bonds should be high quality, and intermediate to long-term maturity with reasonable call protection in order to ensure the generation of current income and preservation of nominal capital even during periods of severe economic contraction.
3. Equities - provide both current income and growth of income, but their principal purpose is to provide appreciation of the Fund. Historically, returns for equities have been higher than for bonds over all extended periods. As such, equities represent the best chance of preserving the purchasing power of the Fund.
4. Alternative Assets - generally consist of alternative liquid investments, alternative illiquid investments, and inflation hedging assets. Alternative asset investments shall be considered to be equities and expected to earn superior equity type returns over extended periods. The advantages of alternative investments is that they enhance long-term returns through investment in inefficient, complex markets. They offer reduced volatility of Fund assets through their low correlation characteristics. The disadvantages of this asset class are that they are illiquid, require higher and more complex fees, and are dependent on the quality of external managers. In addition, they possess a limited return history versus traditional stocks and bonds. The risk of alternative investments shall be controlled with extensive due diligence and diversification of investments.

Alternative Marketable Investments -

These investments are broadly defined to include hedge funds, arbitrage and special situation funds, high yield bonds, distressed obligations and other non-traditional investment strategies whose underlying securities are traded on public exchanges or are otherwise readily marketable. As such, they offer faster drawdown of committed capital and earlier realization potential than alternative "illiquid" investments. Alternative marketable investments may be made through partnerships, but they will generally provide investors with liquidity at least annually.

Alternative Illiquid Investments -

These investments are generally held through limited partnership interests. They include private equity, buyout, mezzanine debt, and venture capital investments that are privately held and which are not registered for sale on public exchanges. In general, these investments require a commitment of capital for extended periods of time with no liquidity.

Inflation Hedging Assets -

This category includes oil and gas interests, real estate, commodities, and other assets whose current incomes and principal values generally increase as inflation accelerates. These investments may be made through marketable securities or illiquid investments.

Asset Allocation Policy

The asset allocation policy and ranges herein recognize that the Fund's return/risk profile can be enhanced by diversifying the Fund's investments across different types of assets whose returns are not closely correlated. The targets and ranges seek to protect the Fund against both routine illiquidity in normal markets and extraordinary illiquidity during a period of extended deflation.

The long-term asset allocation policy targets for the Fund recognizes that the 5.5% real return objective implies a high allocation to broadly defined equities, including domestic, international stocks, and alternative asset investments of 50% to 90%. The allocation to Fixed Income should not exceed 50% of the Fund.

The Board delegates authority to UTIMCO to establish specific asset allocation targets and ranges within the broad policy guidelines described above. UTIMCO may establish specific asset allocation targets and ranges for large and small capitalization U. S. stocks, established and emerging market international stocks, marketable and illiquid alternative asset investments, and other asset classes as well as the specific performance objectives for each asset class. Specific asset allocation policies shall be decided by UTIMCO and reported to the Board.

Performance Measurement

The investment performance of the Fund will be measured by an unaffiliated organization, with recognized expertise in this field and reporting responsibility to the UTIMCO Board, and compared against the stated investment objectives of the Fund. Such measurement will occur at least annually, and evaluate the results of the total Fund, major classes of investment assets, and individual portfolios.

Investment Guidelines

The Fund must be invested at all times in strict compliance with applicable law. The primary and constant standard for making investment decisions is the "Prudent Person Rule."

Investment guidelines include the following:

General

- All investments will be U. S. dollar denominated assets unless held by an internal or external portfolio manager with discretion to invest in foreign currency denominated securities.
- Investment policies of any unaffiliated liquid investment fund must be reviewed and approved by the chief investment officer prior to investment of Fund assets in such liquid investment fund.
- No securities may be purchased or held which would jeopardize the Fund's tax-exempt status.
- No investment strategy or program may purchase securities on margin or use leverage unless specifically authorized by the UTIMCO Board.
- No investment strategy or program employing short sales may be made unless specifically authorized by the UTIMCO Board.
- The Fund may utilize Derivative Securities to simulate the purchase or sale of an underlying market index while retaining a cash balance for fund management purposes, to facilitate trading, to reduce transaction costs, or to seek higher investment returns when a Derivative Security is priced more attractively than the underlying security or index or to hedge risks associated with Fund investments. Such Derivative Securities shall be defined to be those instruments whose value is derived, in whole or part, from the value of any one or more underlying assets, or index of assets (such as stocks, bonds, commodities, interest rates, and currencies) and evidenced by forward, futures, swap, cap, floor, option, and other applicable contracts. The Fund may enter into Derivative Security contracts provided that no more than 5% of Fund assets are required as a margin deposit for such contracts. Additionally, the Fund's investments in warrants shall not exceed more than 5% of the Fund's net assets or 2% with respect to warrants not listed on the New York or American Stock Exchanges. Under no circumstances may Derivative Securities be used for speculative purposes, to leverage the Fund's net assets or to otherwise increase the risk of the Fund above the level appropriate for the Fund if Derivative Securities were not being utilized.

UTIMCO shall attempt to minimize the risk of an imperfect correlation between the change in market value of the securities held by the Fund and the prices of Derivative Security investments by investing in only those contracts whose behavior is expected to resemble that of the Fund's underlying securities. UTIMCO also shall attempt to minimize the risk of an illiquid secondary market for a Derivative Security contract and the resulting inability to close a position prior to its maturity date by entering into such transactions on an exchange with an active and liquid secondary market. Derivative Securities purchased or sold over the counter may not represent more than 15% of the net assets of the Fund.

In the event that there are no Derivative Securities traded on a particular market index such as MSCI EAFE, the Fund may utilize a composite of other Derivative Security contracts to simulate the performance of such index. UTIMCO shall attempt to reduce any tracking error from the low correlation of the selected Derivative Securities with its index by investing in contracts whose behavior is expected to resemble that of the underlying securities.

UTIMCO shall minimize the risk that a party will default on its payment obligation under a Derivative Security agreement by entering into agreements that mark to market no less frequently than monthly and where the counterparty is an investment grade credit. UTIMCO also shall attempt to mitigate the risk that the Fund will not be able to meet its obligation to the counterparty by investing the Fund in the specific asset for which it is obligated to pay a return or by holding adequate short-term investments.

The Fund may be invested in foreign currency forward and foreign currency futures contracts in order to maintain the same currency exposure as its respective index or to protect against anticipated adverse changes in exchange rates between foreign currencies and the U. S. dollar.

Cash and Cash Equivalents

Holdings of cash and cash equivalents may include internal short term pooled investment funds managed by UTIMCO.

- Unaffiliated liquid investment funds must be approved by the chief investment officer.
- Deposits of the Texas State Treasury.
- Commercial paper must be rated in the two highest quality classes by Moody's Investors Service, Inc. (P1 or P2) or Standard & Poor's Corporation (A1 or A2).
- Negotiable certificates of deposit must be with a bank that is associated with a holding company meeting the commercial paper rating criteria specified above or that has a certificate of deposit rating of 1 or better by Duff & Phelps.
- Bankers' Acceptances must be guaranteed by an accepting bank with a minimum certificate of deposit rating of 1 by Duff & Phelps.

- Repurchase Agreements and Reverse Repurchase Agreements must be with a domestic dealer selected by the Federal Reserve as a primary dealer in U. S. Treasury securities; or a bank that is associated with a holding company meeting the commercial paper rating criteria specified above or that has a certificate of deposit rating of 1 or better by Duff & Phelps.

Fixed Income

Holdings of domestic fixed income securities shall be limited to those securities a) issued by or fully guaranteed by the U. S. Treasury, U. S. Government-Sponsored Enterprises, or U. S. Government Agencies and b) issued by corporations and municipalities . Within this overall limitation :

- Not less than 50 % of the market value of domestic fixed income securities shall be invested in securities issued by or fully guaranteed by the U. S. Treasury, U. S. Government-Sponsored Enterprises, or U. S. Government Agencies.
- Not more than 50% of the market value of domestic fixed income securities may be invested in corporate and municipal bonds of a single issuer provided that such bonds, at the time of purchase are a) rated, not less than Baa or BBB, or the equivalent, by any two nationally-recognized rating services, such as Moody's Investors Service, Standard & Poor's Corporation, Fitch Investors Service; or b) in the event that a corporate bond is not rated, it is determined by UTIMCO's investment staff to be at least equal in credit quality and liquidity to the above mentioned ratings.
- The weighted average maturity of the domestic fixed income portfolio shall be not less than ten years unless approved in advance by the UTIMCO Board.
- Not more than 25% of the Fund's fixed income portfolio may be invested in non-U. S. dollar bonds. International currency exposure may be hedged or unhedged at UTIMCO's discretion. Not more than 15% of the Fund's fixed income portfolio may be invested in bonds denominated in any one of the following currencies: Japanese Yen, German Mark, British Pound. Not more than 5% may be invested in bonds denominated in any other currency. Non-dollar bond investments shall be restricted to bonds rated Aa or better.

These guidelines shall not require the sale of any fixed income investments prior to their scheduled maturities unless the credit quality of the fixed income portfolio shall decline below Aa2.

Equities

- The Fund shall:
 - hold no more than 25% of its equity securities in any one industry or industries (as defined by the standard industry classification code and supplemented by other reliable data sources) at market
 - hold no more than 5% of its equity securities in the securities of one corporation at market unless authorized by the chief investment officer.

Alternative Assets

Investments in alternative assets may be made through management contracts with unaffiliated organizations (including but not limited to limited partnerships, trusts, and joint ventures) so long as such organizations:

- possess specialized investment skills
- possess full investment discretion subject to the management agreement
- are managed by principals with a demonstrated record of accomplishment and performance in the investment strategy being undertaken
- align the interests of the investor group with the management as closely as possible
- charge fees and performance compensation which do not exceed prevailing industry norms at the time the terms are negotiated.

Investments in alternative assets also may be made directly by UTIMCO in co-investment transactions sponsored by and invested in by a management firm or partnership in which the Fund has invested prior to the co-investment or in transactions sponsored by investment firms well-known to UTIMCO management, provided that such direct investments shall not exceed 25% of the market value of the alternative assets portfolio at the time of the direct investment.

Members of UTIMCO management, with the approval of the UTIMCO Board, may serve as directors of companies in which UTIMCO has directly invested Fund assets. In such event, any and all compensation paid to UTIMCO management for their services as directors shall be endorsed over to UTIMCO and applied against UTIMCO management fees. Furthermore, UTIMCO Board approval of UTIMCO management's service as a director of an investee company shall be conditioned upon the extension of UTIMCO's Directors and Officers Insurance Policy coverage to UTIMCO management's service as a director of an investee company.

Fund Distributions

The Fund shall balance the needs and interests of present beneficiaries with those of the future. Fund spending policy objectives shall be to:

- a) provide a predictable, stable stream of distributions over time
- b) ensure that the inflation adjusted value of distributions is maintained over the long-term
- c) ensure that the inflation adjusted value of Fund assets after distributions is maintained over the long-term.

The goal is for the Fund's average spending rate over time not to exceed the Fund's average annual investment return after inflation in order to preserve the purchasing power of Fund distributions and underlying assets.

The Texas Constitution requires that all dividends, interest and other income earned from Fund investments be distributed to the AUF. At the same time, the Constitution prohibits the distribution of mineral income contributed to the Fund and any realized and unrealized gains earned on such contributions.

UTIMCO shall be responsible for the establishment of the Fund's asset allocation so as to produce an annual income distribution that balances the needs of current beneficiaries with those of future beneficiaries. The Board explicitly recognizes that the generation of income under the Constitutional provisions governing the Fund is highly dependent upon the level of interest rates over which the UTIMCO Board has no control. It also recognizes that the distribution rate as a percentage of the Fund's assets is above average and that the maintenance of current levels of distributed income reduces the UTIMCO Board's ability to grow income over time.

Fund Accounting

The fiscal year of the Fund shall begin on September 1st and end on August 31st. Market value of the Fund shall be maintained on an accrual basis in compliance with Financial Accounting Standards Board Statements, Government Accounting Standards Board Statements, industry guidelines, and state statutes, whichever is applicable. Significant asset write-offs or write-downs shall be approved by the chief investment officer and reported to the UTIMCO Board.

Valuation of Assets

As of the close of business on the last business day of each month, UTIMCO shall determine the fair market value of all Fund net assets. Such valuation of Fund assets shall be based on the bank trust custody agreement in effect at the date of valuation. Valuation of alternative assets shall be determined in accordance with the UTIMCO Valuation Criteria for Alternative Assets.

The fair market value of the Fund's net assets shall include all related receivables and payables of the Fund on the valuation. Such valuation shall be final and conclusive.

Securities Lending

The Fund may participate in a securities lending contract with a bank or nonbank security lending agent for either short-term or long-term purposes of realizing additional income. Loans of securities by the Fund shall be collateralized by cash, letters of credit or securities issued or guaranteed by the U. S. Government or its agencies. The collateral will equal at least 100% of the current market value of the loaned securities. The contract shall state acceptable collateral for securities loaned, duties of the borrower, delivery of loaned securities and collateral, acceptable investment of collateral and indemnification provisions. The contract may include other provisions as appropriate. The securities lending program will be evaluated from time to time as deemed necessary by the UTIMCO Board. Monthly reports issued by the agent shall be reviewed by UTIMCO to insure compliance with contract provisions.

Investor Responsibility

As a shareholder, the Fund has the right to a voice in corporate affairs consistent with those of any shareholder. These include the right and obligation to vote proxies in a manner consistent with the unique role and mission of higher education as well as for the economic benefit of the Fund. Notwithstanding the above, the UTIMCO Board shall discharge its fiduciary duties with respect to the Fund solely in the interest of Fund unitholders and shall not invest the Fund so as to achieve temporal benefits for any purpose including use of its economic power to advance social or political purposes.

Amendment of Policy Statement

The Board of Regents reserves the right to amend the Investment Policy Statement as it deems necessary or advisable.

Effective Date

The effective date of this policy shall be February 6, 1997.

**THE UNIVERSITY OF TEXAS SYSTEM
LONG TERM FUND
INVESTMENT POLICY STATEMENT**

Purpose

The Long Term Fund (the "Fund"), succeeded the Common Trust Fund in February, 1995, and was established by the Board of Regents of The University of Texas System (the "Board") as a pooled fund for the collective investment of private endowments and other long-term funds supporting various programs of The University of Texas System. The Fund provides for greater diversification of investments than what might be possible if each account were managed separately.

Fund Organization

The Fund is organized as a mutual fund in which each eligible account purchases and redeems Fund units as provided herein. The ownership of Fund assets shall at all times be vested in the Board. Such assets shall be deemed to be held by the Board, as a fiduciary, regardless of the name in which the assets may be registered.

Fund Management

Ultimate fiduciary responsibility for the Fund rests with the Board. Section 163 of the Property Code authorizes the U. T. Board to delegate to its committees, officers or employees of the U. T. System and other agents the authority to act for the U. T. Board in the investment of the Fund. The Fund shall be governed through The University of Texas Investment Management Company ("UTIMCO") which shall a) recommend investment policy for the Fund, b) determine specific asset allocation targets, ranges, and performance benchmarks consistent with Fund objectives, and c) monitor Fund performance against Fund objectives. UTIMCO shall invest the Fund assets in conformity with investment policy.

Unaffiliated investment managers may be hired by UTIMCO to improve the Fund's return and risk characteristics. Such managers shall have complete investment discretion unless restricted by the terms of their management contracts. Managers shall be monitored for performance and adherence to investment disciplines.

Fund Administration

UTIMCO shall employ an administrative staff to ensure that all transaction and accounting records are complete and prepared on a timely basis. Internal controls shall be emphasized so as to provide for responsible separation of duties and adequacy of an audit trail. Custody of Fund assets shall comply with applicable law and be structured so as to provide essential safekeeping and trading efficiency.

Funds Eligible to Purchase Fund Units

No fund shall be eligible to purchase units of the Fund unless it is under the sole control, with full discretion as to investments, by the Board and/or UTIMCO.

Any fund whose governing instrument contains provisions which conflict with this Policy Statement, whether initially or as a result of amendments to either document, shall not be eligible to purchase or hold units of the Fund.

The funds of a foundation which is structured as a supporting organization described in Section 509(a) of the Internal Revenue Code of 1986, which supports the activities of the U. T. System and its component institutions, may purchase units in the Fund provided that:

- A. the purchase of Fund units by foundation funds is approved by the chief investment officer
- B. all members of the foundation's governing board are also members of the Board
- C. the foundation has the same fiscal year as the Fund
- D. a contract between the Board and the foundation has been executed authorizing investment of foundation funds in the Fund
- E. no officer of such foundation, other than members of the Board, the Chancellor, the chief investment officer or his or her delegate shall have any control over the management of the Fund other than to request purchase and redemption of Fund units.

Fund Investment Objectives

The primary investment objective shall be to preserve the purchasing power of Fund assets and annual distributions by earning an average annual total return after inflation of 5.5% over rolling ten year periods or longer. The Fund's success in meeting its objectives depends upon its ability to generate high returns in periods of low inflation that will offset lower returns generated in years when the capital markets underperform the rate of inflation.

The secondary fund objectives are to generate a fund return in excess of the Policy Portfolio benchmark and the average median return of the universe of the college and university endowments as reported annually by Cambridge Associates and NACUBO over rolling five-year periods or longer. The Policy Portfolio benchmark will be established by UTIMCO and will be comprised of a blend of asset class indices weighted to reflect Fund's asset allocation policy targets.

Asset Allocation

Asset allocation is the primary determinant of investment performance and, subject to the asset allocation ranges specified herein, is the responsibility of UTIMCO. Specific asset allocation targets may be changed from time to time based on the economic and investment outlook.

Fund assets shall be allocated among the following broad asset classes based upon their individual return/risk characteristics and relationships to other asset classes:

1. Cash Equivalents - are highly reliable in protecting the purchasing power of current income streams but historically have not provided a reliable return in excess of inflation. Cash equivalents provide good liquidity under both deflation and inflation conditions.
2. Fixed Income Investments - offer the best protection for hedging against the threat of deflation by providing a dependable and predictable source of Fund income. Such bonds should be high quality, and intermediate to long-term duration with reasonable call protection in order to ensure the generation of current income and preservation of nominal capital even during periods of severe economic contraction.
3. Equities - provide both current income and growth of income, but their principal purpose is to provide appreciation of the Fund. Historically, returns for equities have been higher than for bonds over all extended periods. Therefore, equities represent the best chance of preserving the purchasing power of the Fund.
4. Alternative Assets - generally consist of alternative liquid investments, alternative illiquid investments, and inflation hedging assets. Alternative asset investments shall be considered to be equities and expected to earn superior equity type returns over extended periods. The advantages of alternative investments is that they enhance long-term returns through investment in inefficient, complex markets. They offer reduced volatility of Fund asset values through their low correlation characteristics. The disadvantages of this asset class are that they are illiquid, require higher and more complex fees, and are dependent on the quality of external managers. In addition, they possess a limited return history versus traditional stocks and bonds. The risk of alternative investments shall be controlled with extensive due diligence and diversification of investments.

Alternative Marketable Investments -

These investments are broadly defined to include hedge funds, arbitrage and special situation funds, high yield bonds, distressed obligations and other non-traditional investment strategies whose underlying securities are traded on public exchanges or are otherwise readily marketable. As such, they offer faster drawdown of committed capital and earlier realization potential than alternative "illiquid" investments. Alternative marketable investments may be made through partnerships, but they will generally provide investors with liquidity at least annually.

Alternative Illiquid Investments -

These investments are generally held through limited partnership interests. They include private equity, buyout, mezzanine debt, and venture capital investments that are privately held and which are not registered for sale on public exchanges. In general, these investments require a commitment of capital for extended periods of time with no liquidity.

Inflation Hedging Assets -

This category includes oil and gas interests, real estate, commodities, and other assets whose current incomes and principal values generally increase as inflation accelerates. These investments may be made through marketable securities or illiquid investments.

Asset Allocation Policy

The asset allocation policy and ranges herein recognize that the Fund's return/risk profile can be enhanced by diversifying the Fund's investments across different types of assets whose returns are not closely correlated. The targets and ranges seek to protect the Fund against both routine illiquidity in normal markets and extraordinary illiquidity during a period of extended deflation.

The long-term asset allocation policy targets for the Fund recognize that the 5.5% real return objective implies a high allocation to broadly defined equities, including domestic, international stocks, and alternative asset investments, of 70% to 90%. The allocation to Fixed Income should not exceed 30% of the Fund.

The Board delegates authority to UTIMCO to establish specific asset allocation targets and ranges within the broad policy guidelines described above. UTIMCO may establish specific asset allocation targets and ranges for large and small capitalization U. S. stocks, established and emerging market international stocks, marketable and illiquid alternative asset investments, and other asset classes as well as the specific performance objectives for each asset class. Specific asset allocation policies shall be decided by UTIMCO and reported to the Board.

Performance Measurement

The investment performance of the Fund will be measured by an unaffiliated organization, with recognized expertise in this field and reporting responsibility to the UTIMCO Board, and compared against the stated investment objectives of the Fund. Such measurement will occur at least annually, and evaluate the results of the total Fund, major classes of investment assets, and individual portfolios.

Investment Guidelines

The Fund must be invested at all times in strict compliance with applicable law. The primary and constant standard for making investment decisions is the "Prudent Person Rule."

Investment guidelines include the following:

General

- All investments will be U. S. dollar denominated assets unless held by an internal or external portfolio manager with discretion to invest in foreign currency denominated securities.
- Investment policies of any unaffiliated liquid investment fund must be reviewed and approved by the chief investment officer prior to investment of Fund assets in such liquid investment fund.
- No securities may be purchased or held which would jeopardize the Fund's tax-exempt status.
- No investment strategy or program may purchase securities on margin or use leverage unless specifically authorized by the UTIMCO Board.
- No investment strategy or program employing short sales may be made unless specifically authorized by the UTIMCO Board.
- The Fund may utilize Derivative Securities to simulate the purchase or sale of an underlying market index while retaining a cash balance for fund management purposes, to facilitate trading, to reduce transaction costs, or to seek higher investment returns when a Derivative Security is priced more attractively than the underlying security or index or to hedge risks associated with Fund investments. Such Derivative Securities shall be defined to be those instruments whose value is derived, in whole or part, from the value of any one or more underlying assets, or index of assets (such as stocks, bonds, commodities, interest rates, and currencies) and evidenced by forward, futures, swap, cap, floor, option, and other applicable contracts. The Fund may enter into Derivative Security contracts provided that no more than 5% of Fund assets are required as a margin deposit for such contracts. Additionally, the Fund's investments in warrants shall not exceed more than 5% of the Fund's net assets or 2% with respect to warrants not listed on the New York or American Stock Exchanges. Under no circumstances may Derivative Securities be used for speculative purposes, to leverage the Fund's net assets or to otherwise increase the risk of the Fund above the level appropriate for the Fund if Derivative Securities were not being utilized.

UTIMCO shall attempt to minimize the risk of an imperfect correlation between the change in market value of the securities held by the Fund and the prices of Derivative Security investments by investing in only those contracts whose behavior is expected to resemble that of the Fund's underlying securities. UTIMCO also shall attempt to

minimize the risk of an illiquid secondary market for a Derivative Security contract and the resulting inability to close a position prior to its maturity date by entering into such transactions on an exchange with an active and liquid secondary market. Derivative Securities purchased or sold over the counter may not represent more than 15% of the net assets of the Fund.

In the event that there are no Derivative Securities traded on a particular market index such as MSCI EAFE, the Fund may utilize a composite of other Derivative Security contracts to simulate the performance of such index. UTIMCO shall attempt to reduce any tracking error from the low correlation of the selected Derivative Securities with its index by investing in contracts whose behavior is expected to resemble that of the underlying securities.

UTIMCO shall minimize the risk that a party will default on its payment obligation under a Derivative Security agreement by entering into agreements that mark to market no less frequently than monthly and where the counterparty is an investment grade credit. UTIMCO also shall attempt to mitigate the risk that the Fund will not be able to meet its obligation to the counterparty by investing the Fund in the specific asset for which it is obligated to pay a return or by holding adequate short-term investments.

The Fund may be invested in foreign currency forward and foreign currency futures contracts in order to maintain the same currency exposure as its respective index or to protect against anticipated adverse changes in exchange rates between foreign currencies and the U. S. dollar.

Cash and Cash Equivalents

Holdings of cash and cash equivalents may include internal short term pooled investment funds managed by UTIMCO.

- Unaffiliated liquid investment funds must be approved by the chief investment officer.
- Commercial paper must be rated in the two highest quality classes by Moody's Investors Service, Inc. (P1 or P2) or Standard & Poor's Corporation (A1 or A2).
- Negotiable certificates of deposit must be with a bank that is associated with a holding company meeting the commercial paper rating criteria specified above or that has a certificate of deposit rating of 1 or better by Duff & Phelps.
- Bankers' Acceptances must be guaranteed by an accepting bank with a minimum certificate of deposit rating of 1 by Duff & Phelps.
- Repurchase Agreements and Reverse Repurchase Agreements must be with a domestic dealer selected by the Federal Reserve as a primary dealer in U. S. Treasury securities; or a bank that is associated with a holding company meeting the commercial paper rating criteria specified above or that has a certificate of deposit rating of 1 or better by Duff & Phelps.

Fixed Income

Holdings of domestic fixed income securities shall be limited to those securities a) issued by or fully guaranteed by the U. S. Treasury, U. S. Government-Sponsored Enterprises, or U. S. Government Agencies, and b) issued by corporations and municipalities. Within this overall limitation:

- Not less than 85% of the market value of domestic fixed income securities shall be invested in direct obligations of the U. S. Treasury.
- Not more than 5% of the market value of domestic fixed income securities may be invested in corporate and municipal bonds of a single issuer provided that such bonds, at the time of purchase, are a) rated, not less than Baa or BBB, or the equivalent, by any two nationally-recognized rating services, such as Moody's Investors Service, Standard & Poor's Corporation, Fitch Investors Service; or b) in the event that a corporate bond is not rated, it is determined by UTIMCO's investment staff to be at least equal in credit quality and liquidity to the above mentioned ratings.
- The duration of the domestic fixed income portfolio shall be not less than four years unless approved in advance by the UTIMCO Board.
- Not more than 25% of the Fund's fixed income portfolio may be invested in non- U. S. dollar bonds. International currency exposure may be hedged or unhedged at UTIMCO's discretion. Not more than 15% of the Fund's fixed income portfolio may be invested in bonds denominated in any one of the following currencies: Japanese Yen, German Mark, British Pound. Not more than 5% may be invested in bonds denominated in any other currency. Non-dollar bond investments shall be restricted to bonds rated Aa or better.

Equities

- I. The Fund shall:
 - A. hold no more than 25% of its equity securities in any one industry or industries (as defined by the standard industry classification code and supplemented by other reliable data sources) at market
 - B. hold no more than 5% of its equity securities in the securities of one corporation at market unless authorized by the chief investment officer.

Alternative Assets

Investments in alternative assets may be made through management contracts with unaffiliated organizations (including but not limited to limited partnerships, trusts, and joint ventures) so long as such organizations:

- II. possess specialized investment skills
- III. possess full investment discretion subject to the management agreement
- IV. are managed by principals with a demonstrated record of accomplishment and performance in the investment strategy being undertaken
- V. align the interests of the investor group with the management as closely as possible
- VI. charge fees and performance compensation which do not exceed prevailing industry norms at the time the terms are negotiated.

Investments in alternative assets also may be made directly by UTIMCO in co-investment transactions sponsored by and invested in by a management firm or partnership in which the Fund has invested prior to the co-investment or in transactions sponsored by investment firms well known to UTIMCO management, provided that such direct investments shall not exceed 25% of the market value of the alternative assets portfolio at the time of the direct investment.

Members of UTIMCO management, with the approval of the UTIMCO Board, may serve as directors of companies in which UTIMCO has directly invested Fund assets. In such event, any and all compensation paid to UTIMCO management for their services as directors shall be endorsed over to UTIMCO and applied against UTIMCO management fees. Furthermore, UTIMCO Board approval of UTIMCO management's service as a director of an investee company shall be conditioned upon the extension of UTIMCO's Directors and Officers Insurance Policy coverage to UTIMCO management's service as a director of an investee company.

Fund Distributions

The Fund shall balance the needs and interests of present beneficiaries with those of the future. Fund spending policy objectives shall be to:

- a) provide a predictable, stable stream of distributions over time
- b) ensure that the inflation adjusted value of distributions is maintained over the long-term
- c) ensure that the inflation adjusted value of Fund assets after distributions is maintained over the long-term.

The goal is for the Fund's average spending rate over time not to exceed the Fund's average annual investment return after inflation in order to preserve the purchasing power of Fund distributions and underlying assets.

Pursuant to the Uniform Management of Institutional Funds Act, a governing board may distribute, for the uses and purposes for which the fund is established, the net realized appreciation in the fair market value of the assets of an endowment fund over the historic dollar value of the fund to the extent prudent under the standard provided by the Act. In addition, income may be distributed for the purposes associated with the endowments/foundations.

UTIMCO shall be responsible for establishing the Fund's distribution percentage and determining the equivalent per unit rate for any given year. Unless otherwise established by UTIMCO and approved by the Board or prohibited by the Act, fund distributions shall be based on the following criteria:

- **Step 1**

The annual unit distribution amount (currently \$0.175 per unit) shall remain constant until this per unit amount is less than or equal to a distribution percentage of 4.5% calculated as follows:

- a) Using the most recent August 31st year-end, determine an average unit market value using the trailing 12 quarters including the year-end selected
- b) Using the most recent August 31st year-end, determine an average per unit distribution amount using the trailing 12 quarters including the year end selected
- c) Divide step b) by step a) to determine the distribution percentage. If this result is less than or equal to 4.5%, the distribution amount per unit for the next fiscal year shall be established as provided in step 2.

- **Step 2**

- A. Increase the prior year's per unit distribution amount by the average inflation rate (C.P.I.) for the past three years. This is the per unit distribution amount for the next fiscal year beginning with the fiscal year immediately following the date of the distribution recommendation by the UTIMCO Board.
- B. If the inflationary increase in Step 2 results in a distribution rate below 3.5%, the UTIMCO Board, at its sole discretion, may grant an increase in the distribution amount as long as such increase does not result in a distribution rate of more than 4.5%.
- C. If the distribution rate exceeds 5.5%, the UTIMCO Board at its sole discretion, may reduce the per unit distribution amount.

Distributions from the Fund to the unitholders shall be made quarterly as soon as practicable on or after the last day of November, February, May, and August of each fiscal year.

Fund Accounting

The fiscal year of the Fund shall begin on September 1st and end on August 31st. Market value of the Fund shall be maintained on an accrual basis in compliance with Financial Accounting Standards Board Statements, Government Accounting Standards Board Statements, or industry guidelines, whichever is applicable. Significant asset write-offs or write-downs shall be approved by the chief investment officer and reported to the UTIMCO Board.

Valuation of Assets

As of the close of business on the last business day of each month, UTIMCO shall determine the fair market value of all Fund net assets and the net asset value per unit of the Fund. Such valuation of Fund assets shall be based on the bank trust custody agreement in effect at the date of valuation. Valuation of alternative assets shall be determined in accordance with the UTIMCO Valuation Criteria for Alternative Assets.

The fair market value of the Fund's net assets shall include all related receivables and payables of the Fund on the valuation date and the value of each unit thereof shall be its proportionate part of such net value. Such valuation shall be final and conclusive.

Purchase of Fund Units

Purchase of Fund units may be made on any quarterly purchase date (September 1, December 1, March 1, and June 1 of each fiscal year or the first business day subsequent thereto) upon payment of cash to the Fund or contribution of assets approved by the chief investment officer, at the net asset value per unit of the Fund as of the most recent quarterly valuation date.

In order to permit complete investment of funds and to avoid fractional units, any purchase amount will be assigned a whole number of units in the Fund based on the appropriate per unit value of the Fund. Any fractional amount of purchase funds which exceeds the market value of the units assigned will be transferred to the Fund but no units shall be issued. Each fund whose monies are invested in the Fund shall own an undivided interest in the Fund in the proportion that the number of units invested therein bears to the total number of all units comprising the Fund.

Redemption of Fund Units

Redemption of Units shall be paid in cash as soon as practicable after the quarterly valuation date of the Fund. If the withdrawal is greater than \$10 million, advance notice of 30 business days shall be required prior to the quarterly valuation date. If the withdrawal is for less than \$10 million, advance notice of five business days shall be required prior to the quarterly valuation date. If the aggregate amount of redemptions requested on any redemption date is

equal to or greater than 10% of the Fund's net asset value, the Board may redeem the requested units in installments and on a pro-rata basis over a reasonable period of time that takes into consideration the best interests of all Fund unitholders. Withdrawals from the Fund shall be at the market value price per unit determined for the period of the withdrawal except as follows: withdrawals to correct administrative errors shall be calculated at the per unit value at the time the error occurred. To be considered an administrative error, the contribution shall have been invested in the Fund for a period less than or equal to one year determined from the date of the contribution to the Fund. This provision does not apply to transfer of units between endowment unitholders.

Securities Lending

The Fund may participate in a securities lending contract with a bank or nonbank security lending agent for either short-term or long-term purposes of realizing additional income. Loans of securities by the Fund shall be collateralized by cash, letters of credit, or securities issued or guaranteed by the U. S. Government or its agencies. The collateral will equal at least 100% of the current market value of the loaned securities. The contract shall state acceptable collateral for securities loaned, duties of the borrower, delivery of loaned securities and collateral, acceptable investment of collateral and indemnification provisions. The contract may include other provisions as appropriate. The securities lending program will be evaluated from time-to-time as deemed necessary by the UTIMCO Board. Monthly reports issued by the agent shall be reviewed by UTIMCO to insure compliance with contract provisions.

Investor Responsibility

As a shareholder, the Fund has the right to a voice in corporate affairs consistent with those of any shareholder. These include the right and obligation to vote proxies in a manner consistent with the unique role and mission of higher education as well as for the economic benefit of the Fund. Notwithstanding the above, the UTIMCO Board shall discharge its fiduciary duties with respect to the Fund solely in the interest of Fund unitholders and shall not invest the Fund so as to achieve temporal benefits for any purpose including use of its economic power to advance social or political purposes.

Amendment of Policy Statement

The Board of Regents reserves the right to amend the Investment Policy Statement as it deems necessary or advisable.

Effective Date

The effective date of this policy shall be February 6, 1997.

**THE UNIVERSITY OF TEXAS SYSTEM
SHORT/INTERMEDIATE TERM FUND
INVESTMENT POLICY STATEMENT**

Purpose

The Short/Intermediate Term Fund (the "Fund"), was established by the Board of Regents of The University of Texas System (the "U. T. Board") as a pooled fund for the collective investment of operating funds and other short and intermediate term funds held by U. T. System component institutions and System Administration with an investment horizon greater than one year.

Fund Organization

The Fund is organized as a mutual fund in which each eligible account purchases and redeems Fund units as provided herein. The ownership of Fund assets shall at all times be vested in the Board. Such assets shall be deemed to be held by the Board, as a fiduciary, regardless of the name in which the assets may be registered.

Fund Management

Ultimate fiduciary responsibility for the Fund rests with the Board. Section 163 of the Property Code authorizes the U. T. Board to delegate to its committees, officers or employees of the U. T. System and other agents the authority to act for the U. T. Board in the investment of the Fund. The Fund shall be governed through The University of Texas Investment Management Company ("UTIMCO") which shall a) recommend investment policy for the Fund, b) determine specific asset allocation targets, ranges and performance benchmarks consistent with Fund objectives, and c) monitor Fund performance against Fund objectives. UTIMCO shall invest the Fund assets in conformity with investment policy.

Unaffiliated investment managers may be hired by UTIMCO to improve the Fund's return and risk characteristics. Such managers shall have complete investment discretion unless restricted by the terms of their management contracts. Managers shall be monitored for performance and adherence to investment disciplines.

Fund Administration

UTIMCO or its agent shall employ an administrative staff to ensure that all transaction and accounting records are complete and prepared on a timely basis. Internal controls shall be emphasized so as to provide for responsible separation of duties and adequacy of an audit trail. Custody of Fund assets shall comply with applicable law and be structured so as to provide essential safekeeping and trading efficiency.

Funds Eligible to Purchase Fund Units

No fund shall be eligible to purchase units of the Fund unless it is under the sole control, with full discretion as to investments, by the Board and/or UTIMCO.

Any fund whose governing instrument contains provisions which conflict with this Policy Statement, whether initially or as a result of amendments to either document, shall not be eligible to purchase or hold units of the Fund.

The funds of a foundation which is structured as a supporting organization described in Section 509(a) of the Internal Revenue Code of 1986 which supports the activities of the U. T. System and its component institutions, may purchase units in the Fund provided that:

- A. the purchase of Fund units by foundation funds is approved by the chief investment officer
- B. all members of the foundation's governing board are also members of the Board
- C. the foundation has the same fiscal year as the Fund
- D. a contract between the Board and the foundation has been executed authorizing investment of foundation funds in the Fund
- E. no officer of such foundation, other than members of the Board, the Chancellor, the chief investment officer or his or her delegate shall have any control over the management of the Fund other than to request purchase and redemption of Fund units.

Fund Investment Objectives

The primary investment objective shall be to provide both income through investment in high grade fixed income obligations and capital appreciation when consistent with income generation, reasonable preservation of capital and maintenance of adequate Fund liquidity. In seeking to achieve its objectives, the Fund shall attempt to minimize the probability of a negative total return over a one-year period. Within the exposure limits contained herein, investments shall be diversified among authorized asset classes and issuers (excluding the U. S. Government) in order to minimize portfolio risk for a given level of expected return.

Achievement of this objective shall be defined by a fund return in excess of the Policy Portfolio benchmark and the average return of the median manager of the MorningStar universe of government bond funds restricted to an average maturity of less than or equal to three years. The Policy Portfolio benchmark will be established by UTIMCO and will be comprised of a blend of asset class indices weighted to reflect Fund asset allocation policy targets.

Asset Allocation

Asset allocation is the primary determinant of investment performance and subject to the asset allocation ranges specified herein is the responsibility of UTIMCO. Specific asset allocation targets may be changed from time to time based on the economic and investment outlook.

Fund assets shall be allocated among the following broad asset classes based upon their individual return/risk characteristics and relationships to other asset classes:

1. Cash and Cash Equivalents - are highly reliable in protecting the purchasing power of current income streams but historically have not provided a reliable return in excess of inflation. Cash equivalents provide the best combination of income and liquidity under both deflation and inflation conditions.
2. Fixed Income Investments - offer predictable income streams without the remarketing risk often associated with cash and cash equivalents.

Asset Allocation Policy

The asset allocation policy and ranges herein seek to protect the Fund against illiquidity in both normal and extraordinary markets.

The Board delegates authority to UTIMCO to establish specific asset allocation targets and ranges within the broad policy guidelines described above. UTIMCO may establish specific asset allocation targets and ranges for or within the asset classes listed above as well as the specific performance objectives for each asset class. Specific asset allocation policies shall be decided by UTIMCO and reported to the Board.

Performance Measurement

The investment performance of the Fund will be measured by an unaffiliated organization, with recognized expertise in this field and reporting responsibility to the UTIMCO Board, and compared against the stated investment objectives of the Fund. Such measurement will occur at least annually, and evaluate the results of the total Fund, major classes of investment assets, and individual portfolios.

Investment Guidelines

The Fund must be invested at all times in strict compliance with applicable law. The primary and constant standard for making investment decisions is the "Prudent Person Rule."

Investment guidelines include the following:

General

- All investments will be U. S. dollar denominated assets unless held by an internal or external portfolio manager with discretion to invest in foreign currency denominated securities.
- Investment policies of any unaffiliated liquid investment fund must be reviewed and approved by the chief investment officer prior to investment of Fund assets in such liquid investment fund.
- No securities may be purchased or held which would jeopardize the Fund's tax-exempt status.
- No investment strategy or program may purchase securities on margin or use leverage unless specifically authorized by the UTIMCO Board.
- No investment strategy or program employing short sales may be made unless specifically authorized by the UTIMCO Board.
- The Fund may utilize Derivative Securities to simulate the purchase or sale of an underlying market index while retaining a cash balance for fund management purposes, to facilitate trading, to reduce transaction costs, or to seek higher investment returns when a Derivative Security is priced more attractively than the underlying security or index or to hedge risks associated with Fund investments. Such Derivative Securities shall be defined to be those instruments whose value is derived, in whole or part, from the value of any one or more underlying assets, or index of assets (such as stocks, bonds, commodities, interest rates, and currencies) and evidenced by forward, futures, swap, cap, floor, option, and other applicable contracts. The Fund may enter into Derivative Security contracts provided that no more than 5% of Fund assets are required as a margin deposit for such contracts. Under no circumstances may Derivative Securities be used for speculative purposes, to leverage the Fund's net assets or to otherwise increase the risk of the Fund above the level appropriate for the Fund if Derivative Securities were not being utilized.

UTIMCO shall attempt to minimize the risk of an imperfect correlation between the change in market value of the securities held by the Fund and the prices of Derivative Security investments by investing in only those contracts whose behavior is expected to resemble that of the Fund's underlying securities. UTIMCO also shall attempt to minimize the risk of an illiquid secondary market for a Derivative Security contract and the resulting inability to close a position prior to its maturity date by entering into such transactions on an exchange with an active and liquid secondary market. Derivative Securities purchased or sold over the counter may not represent more than 15% of the net assets of the Fund.

In the event that there are no Derivative Securities traded on a particular market index, the Fund may utilize a composite of other Derivative Security contracts to simulate the performance of such index. UTIMCO shall attempt to reduce any tracking error from the low correlation of the selected Derivative Securities with its index by investing in contracts whose behavior is expected to resemble that of the underlying securities.

UTIMCO shall minimize the risk that a party will default on its payment obligation under a Derivative Security agreement by entering into agreements that mark to market no less frequently than monthly and where the counterparty is an investment grade credit. UTIMCO also shall attempt to mitigate the risk that the Fund will not be able to meet its obligation to the counterparty by investing the Fund in the specific asset for which it is obligated to pay a return or by holding adequate short-term investments.

- The duration of the portfolio shall be not less than one and not more than four years unless approved in advance by the UTIMCO Board.

Cash and Cash Equivalents

Holdings of cash and cash equivalents may include internal short term pooled investment funds managed by UTIMCO.

- Unaffiliated liquid investment funds must be approved by the chief investment officer.
- Commercial paper must be rated in the two highest quality classes by Moody's Investors Service, Inc. (P1 or P2) or Standard & Poor's Corporation (A1 or A2).
- Negotiable certificates of deposit must be with a bank that is associated with a holding company meeting the commercial paper rating criteria specified above or that has a certificate of deposit rating of 1 or better by Duff & Phelps.
- Bankers' Acceptances must be guaranteed by an accepting bank with a minimum certificate of deposit rating of 1 by Duff & Phelps.
- Repurchase Agreements and Reverse Repurchase Agreements must be with a domestic dealer selected by the Federal Reserve as a primary dealer in U. S. Treasury securities; or a bank that is associated with a holding company meeting the commercial paper rating criteria specified above or that has a certificate of deposit rating of 1 or better by Duff & Phelps.

Fixed Income

Holdings of domestic fixed income securities shall be limited to those securities issued by or fully guaranteed by the U. S. Treasury, U. S. Government-Sponsored Enterprises, or U. S. Government Agencies.

Fund Distributions

Distributions of income from the Fund to the unitholders shall be made as soon as practicable on or after the last day of each month.

Fund Accounting

The fiscal year of the Fund shall begin on September 1st and end on August 31st. Market value of the Fund shall be maintained on an accrual basis in compliance with Financial Accounting Standards Board Statements, Government Accounting Standards Board Statements, or industry guidelines, whichever is applicable. Significant asset write-offs or write-downs shall be approved by the chief investment officer and reported to the UTIMCO Board.

Valuation of Assets

UTIMCO shall determine the fair market value of all Fund net assets and the net asset value per unit of the Fund no less than once a week and on the last business day of each month. Such valuation of Fund assets shall be based on the bank trust custody agreement in effect at the date of valuation.

The fair market value of the Fund's net assets shall include all related receivables and payables of the Fund on the valuation date and the value of each unit thereof shall be its proportionate part of such net value. Such valuation shall be final and conclusive.

Purchase of Fund Units

Purchase of Fund units may be made no less than once a week and on the last business day of each month upon payment of cash to the Fund or contribution of assets approved by the chief investment officer, at the net asset value per unit of the Fund as of the most recent weekly or end of month valuation date.

Each fund whose monies are invested in the Fund shall own an undivided interest in the Fund in the proportion that the number of units invested therein bears to the total number of all units comprising the Fund.

Redemption of Fund Units

Redemption of Units shall be paid in cash as soon as practicable after the most recent weekly or end of month valuation date of the Fund.

Securities Lending

The Fund may not participate in a securities lending contract with a bank or nonbank security lending agent.

Investor Responsibility

The UTIMCO Board shall discharge its fiduciary duties with respect to the Fund solely in the interest of Fund unitholders and shall not invest the Fund so as to achieve temporal benefits for any purpose including use of its economic power to advance social or political purposes.

Amendment of Policy Statement

The Board of Regents reserves the right to amend the Investment Policy Statement as it deems necessary or advisable.

Effective Date

The effective date of this policy shall be February 6, 1997.

**THE UNIVERSITY OF TEXAS SYSTEM
SHORT TERM FUND
INVESTMENT POLICY STATEMENT**

Purpose

The Short Term Fund (the "Fund") was established by the Board of Regents of The University of Texas System (the "U. T. Board") as a pooled fund for the collective investment of operating funds and other short and intermediate term funds held by U. T. System component institutions and System Administration with an investment horizon less than one year.

Fund Organization

The Fund is organized as a mutual fund in which each eligible account purchases and redeems Fund units as provided herein. The ownership of Fund assets shall at all times be vested in the Board. Such assets shall be deemed to be held by the Board, as a fiduciary, regardless of the name in which the assets may be registered.

Fund Management

Ultimate fiduciary responsibility for the Fund rests with the Board. Section 163 of the Property Code authorizes the U. T. Board to delegate to its committees, officers or employees of the U. T. System and other agents the authority to act for the U. T. Board in the investment of the Fund. The Fund shall be governed through The University of Texas Investment Management Company ("UTIMCO") which shall a) recommend investment policy for the Fund, b) determine specific asset allocation targets, ranges and performance benchmarks consistent with Fund objectives, and c) monitor Fund performance against Fund objectives. UTIMCO shall invest the Fund assets in conformity with investment policy.

Unaffiliated investment managers may be hired by UTIMCO to improve the Fund's return and risk characteristics. Such managers shall have complete investment discretion unless restricted by the terms of their management contracts. Managers shall be monitored for performance and adherence to investment disciplines.

Fund Administration

UTIMCO or its agent shall employ an administrative staff to ensure that all transaction and accounting records are complete and prepared on a timely basis. Internal controls shall be emphasized so as to provide for responsible separation of duties and adequacy of an audit trail. Custody of Fund assets shall comply with applicable law and be structured so as to provide essential safekeeping and trading efficiency.

Funds Eligible to Purchase Fund Units

No fund shall be eligible to purchase units of the Fund unless it is under the sole control, with full discretion as to investments, by the Board and/or UTIMCO.

Any fund whose governing instrument contains provisions which conflict with this Policy Statement, whether initially or as a result of amendments to either document, shall not be eligible to purchase or hold units of the Fund.

The funds of a foundation which is structured as a supporting organization described in Section 509(a) of the Internal Revenue Code of 1986 which supports the activities of the U. T. System and its component institutions, may purchase units in the Fund provided that:

- A. the purchase of Fund units by foundation funds is approved by the chief investment officer
- B. all members of the foundation's governing board are also members of the Board
- C. the foundation has the same fiscal year as the Fund
- D. a contract between the Board and the foundation has been executed authorizing investment of foundation funds in the Fund
- E. no officer of such foundation, other than members of the Board, the Chancellor, the chief investment officer or his or her delegate shall have any control over the management of the Fund other than to request purchase and redemption of Fund units.

Fund Investment Objectives

The primary investment objective shall be to maximize current income consistent with the absolute preservation of capital and maintenance of adequate Fund liquidity. The Fund shall seek to maintain a net asset value of \$1.00.

Achievement of this objective shall be defined as a fund return in excess of the average gross return of the median manager of the Donoghue's universe of institutional only money market funds.

Asset Allocation

Asset allocation is the primary determinant of investment performance and subject to the asset allocation ranges specified herein is the responsibility of UTIMCO. Specific asset allocation targets may be changed from time to time based on the economic and investment outlook.

Fund assets shall be allocated among the following broad asset class:

Cash and Cash Equivalents - are highly reliable in protecting the purchasing power of current income streams but historically have not provided a reliable return in excess of inflation. Cash equivalents provide the best combination of income and liquidity under both deflation and inflation conditions.

Performance Measurement

The investment performance of the Fund will be measured by an unaffiliated organization, with recognized expertise in this field and reporting responsibility to the UTIMCO Board, and compared against the stated investment objectives of the Fund. Such measurement will occur at least annually, and evaluate the results of the total Fund, major classes of investment assets, and individual portfolios.

Investment Guidelines

The Fund must be invested at all times in strict compliance with applicable law. The primary and constant standard for making investment decisions is the "Prudent Person Rule."

Investment guidelines include the following:

General

- All investments will be U. S. dollar denominated assets.
- Investment policies of any unaffiliated liquid investment fund must be reviewed and approved by the chief investment officer prior to investment of Fund assets in such liquid investment fund.
- No securities may be purchased or held which would jeopardize the Fund's tax-exempt status.
- No investment strategy or program may purchase securities on margin or use leverage unless specifically authorized by the UTIMCO Board.
- No investment strategy or program employing short sales may be made unless specifically authorized by the UTIMCO Board.
- The Fund may utilize Derivative Securities to simulate the purchase or sale of an underlying market index while retaining a cash balance for fund management purposes, to facilitate trading, to reduce transaction costs, or to seek higher investment returns when a Derivative Security is priced more attractively than the underlying security or index or to hedge risks associated with Fund investments. Such Derivative Securities shall be defined to be those instruments whose value is derived, in whole or part, from the value of any one or more underlying assets, or index of assets (such as stocks, bonds, commodities, interest rates, and currencies) and evidenced by forward, futures, swap, cap, floor, option, and other applicable contracts. The Fund may enter into Derivative Security contracts provided that no more than 5% of Fund assets are required as a margin deposit for such contracts. Under no circumstances may Derivative Securities be used for speculative purposes, to leverage the Fund's net assets or to otherwise increase the risk of the Fund above the level appropriate for the Fund if Derivative Securities were not being utilized.

UTIMCO shall attempt to minimize the risk of an imperfect correlation between the change in market value of the securities held by the Fund and the prices of Derivative Security investments by investing in only those contracts whose behavior is expected to resemble that of the Fund's underlying securities. UTIMCO also shall attempt to minimize the risk of an illiquid secondary market for a Derivative Security contract and the resulting inability to close a position prior to its maturity date by entering into such transactions on an exchange with an active and liquid secondary market. Derivative Securities purchased or sold over the counter may not represent more than 15% of the net assets of the Fund.

In the event that there are no Derivative Securities traded on a particular market index, the Fund may utilize a composite of other Derivative Security contracts to simulate the performance of such index. UTIMCO shall attempt to reduce any tracking error from the low correlation of the selected Derivative Securities with its index by investing in contracts whose behavior is expected to resemble that of the underlying securities.

- UTIMCO shall minimize the risk that a party will default on its payment obligation under a Derivative Security agreement by entering into agreements that mark to market no less frequently than monthly and where the counterparty is an investment grade credit. UTIMCO also shall attempt to mitigate the risk that the Fund will not be able to meet its obligation to the counterparty by investing the Fund in the specific asset for which it is obligated to pay a return or by holding adequate short-term investments.
- The weighted average maturity of the portfolio shall be not be more than 90 days. Individual securities shall have a remaining maturity not longer than 397 days.

Cash and Cash Equivalents

- Unaffiliated liquid investment funds must be approved by the chief investment officer.
- Commercial paper must be rated in the two highest quality classes by Moody's Investors Service, Inc. (P1 or P2) or Standard & Poor's Corporation (A1 or A2).
- Negotiable certificates of deposit must be with a bank that is associated with a holding company meeting the commercial paper rating criteria specified above or that has a certificate of deposit rating of 1 or better by Duff & Phelps.
- Bankers' Acceptances must be guaranteed by an accepting bank with a minimum certificate of deposit rating of 1 by Duff & Phelps.
- Repurchase Agreements and Reverse Repurchase Agreements must be with a domestic dealer selected by the Federal Reserve as a primary dealer in U. S. Treasury securities; or a bank that is associated with a holding company meeting the commercial paper rating criteria specified above or that has a certificate of deposit rating of 1 or better by Duff & Phelps.

- The weighted average maturity of the portfolio shall be not be more than 90 days. Individual securities shall have a remaining maturity not longer than 397 days. The maturity of a portfolio security shall be deemed to be the period remaining (calculated from the trade date or such other date on which the Fund's interest in the security is subject to market action) until the date noted on the face of the security as the date on which the principal amount must be paid, or in the case of a security called for redemption, the date on which the redemption payment must be made, except that a) a variable rate security, the principal amount of which is scheduled on the face of the security to be paid in 397 days or less, shall be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate; b) a variable rate security that is subject to a demand feature shall be deemed to have a maturity equal to the longer of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand; c) a floating rate security that is subject to a demand feature shall be deemed to have a maturity equal to the period remaining until the principal amount can be recovered through demand; d) a repurchase agreement shall be deemed to have a maturity equal to the period remaining until the date on which the repurchase of the underlying securities is scheduled to occur, or, where no date is specified, but the agreement is subject to a demand, the notice period applicable to a demand for the repurchase of the securities. A demand feature shall mean a put that entitles the holder to receive the principal amount of the underlying security or securities and that may be exercised either at any time on no more than 30 days notice or at specified intervals not exceeding 397 days and upon no more than 30 days notice.

Fund Distributions

Distributions of income from the Fund to the unitholders shall be made as soon as practicable on or after the last day of each month.

Fund Accounting

The fiscal year of the Fund shall begin on September 1st and end on August 31st. Market value of the Fund shall be maintained on an accrual basis in compliance with Financial Accounting Standards Board Statements, Government Accounting Standards Board Statements, or industry guidelines, whichever is applicable. Significant asset write-offs or write-downs shall be approved by the chief investment officer and reported to the UTIMCO Board.

Valuation of Assets

As of the close of business on each business day, UTIMCO shall determine the fair market value of all Fund net assets. Such valuation of Fund assets shall be based on the bank trust custody agreement in effect at the date of valuation.

The fair market value of the Fund's net assets shall include all related receivables and payables of the Fund on the valuation date and the value of each unit thereof shall be its proportionate part of such net value. Such valuation shall be final and conclusive.

Purchase of Fund Units

Purchase of Fund units may be made on each business day upon payment of cash to the Fund or contribution of assets approved by the chief investment officer, at \$1.00 per unit of the Fund as of the most recent valuation date.

Each fund whose monies are invested in the Fund shall own an undivided interest in the Fund in the proportion that the number of units invested therein bears to the total number of all units comprising the Fund.

Redemption of Fund Units

Redemption of Units may be made on each business day at \$1.00 per unit.

Securities Lending

The Fund may not participate in a securities lending contract with a bank or nonbank security lending agent.

Investor Responsibility

The UTIMCO Board shall discharge its fiduciary duties with respect to the Fund solely in the interest of Fund unitholders and shall not invest the Fund so as to achieve temporal benefits for any purpose, including use of its economic power to advance social or political purposes.

Amendment of Policy Statement

The Board of Regents reserves the right to amend the Investment Policy Statement as it deems necessary or advisable.

Effective Date

The effective date of this policy shall be February 6, 1997.

**THE UNIVERSITY OF TEXAS SYSTEM
SEPARATELY INVESTED ENDOWMENT, TRUST, AND OTHER ACCOUNTS
INVESTMENT POLICY STATEMENT**

Purpose

The Separately Invested Endowment, Trust, and Other Accounts are Accounts established in the name of the Board of Regents of The University of Texas System (the "Board") as trustee, and are Accounts which are not invested in one of the pooled investment vehicles. These Accounts are not invested in the pooled investment vehicle because a) they are charitable trusts; b) of investment restrictions incorporated into the endowment document; c) of inability to sell the gifted investment asset; or d) they are assets being migrated upon liquidation into a pooled investment vehicle.

Investment Management

Ultimate fiduciary responsibility for the assets of the Accounts rests with the Board. Section 163 of the Property Code authorizes the U. T. Board to delegate to its committees, officers or employees of the U. T. System and other agents the authority to act for the U. T. Board in the investment of the institutional assets for the Account (endowment and operating accounts). The applicable trust instrument will apply to the management of trust investments. The assets for the Account shall be governed through The University of Texas Investment Management Company ("UTIMCO") which shall a) recommend investment policy for the Accounts, b) determine specific asset allocation targets, ranges and performance benchmarks consistent with the Account objectives, and if appropriate c) monitor the Account's performance against Account objectives. UTIMCO shall invest the Account's assets in conformity with investment policy.

Unaffiliated investment managers may be hired by UTIMCO to improve the Account's return and risk characteristics. Such managers shall have complete investment discretion unless restricted by the terms of their management contracts. Managers shall be monitored for performance and adherence to investment disciplines.

Account Administration

UTIMCO shall employ an administrative staff to ensure that all transaction and Accounting records are complete and prepared on a timely basis. Internal controls shall be emphasized so as to provide for responsible separation of duties and adequacy of an audit trail. Custody of assets in the Account shall comply with applicable law and be structured so as to provide essential safekeeping and trading efficiency.

Investment Objectives

Endowment Accounts-The primary investment objective shall be to invest the Account in assets that comply with the terms of the applicable endowment agreement, taking into consideration the investment time horizon of the Account.

Trust Accounts-Trust Accounts are defined as either Foundation Accounts or Charitable Trusts (Charitable Remainder Unitrusts (CRUT), Charitable Remainder Annuity Trusts (CRAT), Pooled Income Funds (PIF), Charitable Trusts (CT), or Charitable Lead Trusts (CLT)). The Board recognizes that the investment objective of a trust is dependent on the terms and conditions as defined in the trust document of each trust. The conditions that will affect the investment strategy are a) the trust payout provisions; b) the ages of the income beneficiaries; c) the ability to sell the gifted assets that were contributed to the trust; d) and consideration to investment preferences of the income beneficiaries. Taking these conditions into consideration, the fundamental investment objectives of the trust will be to generate a low to moderate growth in trust principal and to provide adequate liquidity in order to meet the payout provisions of the trust.

Operating Accounts- These are separately invested securities of component institutions' operating funds that were purchased prior to the creation of the S/ITF. These securities are guaranteed by the government or federally sponsored agencies. Once these securities mature, the component institutions have the option to invest them in one of the pooled investment fund vehicles.

Asset Allocation

Asset allocation is the primary determinant of investment performance and subject to the asset allocation ranges specified by UTIMCO. Specific asset allocation targets may be changed from time to time based on the economic and investment outlook.

If appropriate, the Account's assets shall be allocated among the following broad asset classes based upon their individual return/risk characteristics and relationships to other asset classes:

1. Cash Equivalents - are highly reliable in protecting the purchasing power of current income streams but historically have not provided a reliable return in excess of inflation. Cash equivalents provide good liquidity under both deflation and inflation conditions.
2. Fixed Income Investments - offer the best protection for hedging against the threat of deflation by providing a dependable and predictable source of income for the Account. Such bonds should be high quality, with reasonable call protection in order to ensure the generation of current income and preservation of nominal capital even

during periods of severe economic contraction. This classification shall include fixed income mutual funds.

3. Equities - provide both current income and growth of income, but their principal purpose is to provide appreciation for the Account. Historically, returns for equities have been higher than for bonds over all extended periods. Therefore, equities represent the best chance of preserving the purchasing power of the Account. This classification shall include equity mutual funds.

Variable Annuities- These are insurance contracts purchased on the life or lives of the income beneficiaries and for which the funds underlying the contract are invested in various mutual funds which offer diversification of the Account's assets. These contracts offer some downside market risk protection in case of the income beneficiary's death in the early years of the contract. These investment assets are only appropriate for the charitable remainder trusts.

Asset Allocation Policy

The asset allocation policy and ranges for each trust or endowment herein is dependent on the terms and conditions of the endowment or trust document. If possible, the Account's assets shall be diversified among different types of assets whose returns are not closely correlated in order to enhance the return/risk profile of the Account.

The Board delegates authority to UTIMCO to establish specific asset allocation targets and ranges for each trust or endowment Account.

Performance Measurement

The investment performance of the actively managed Accounts, where cost effective, will be calculated and evaluated annually.

Investment Guidelines

The Accounts must be invested at all times in strict compliance with applicable law. The primary and constant standard for making investment decisions is the "Prudent Person Rule."

Investment guidelines include the following:

General

- All investments will be U. S. dollar denominated assets unless held by an internal or external portfolio manager with discretion to invest in foreign currency denominated securities.
- Investment policies of any unaffiliated liquid investment Fund must be reviewed and approved by the chief investment officer prior to investment of Account's assets in such liquid investment Fund.

- No securities may be purchased or held which would jeopardize, if applicable, the Account's tax-exempt status.
- No investment strategy or program may purchase securities on margin or use leverage unless specifically authorized by the UTIMCO Board.
- No investment strategy or program employing short sales may be made unless specifically authorized by the UTIMCO Board.

Cash and Cash Equivalents

Holdings of cash and cash equivalents may include internal short term pooled investment funds managed by UTIMCO.

- Unaffiliated liquid investment funds must be approved by the chief investment officer.
- Commercial paper must be rated in the two highest quality classes by Moody's Investors Service, Inc. (P1 or P2) or Standard & Poor's Corporation (A1 or A2).
- Negotiable certificates of deposit must be with a bank that is associated with a holding company meeting the commercial paper rating criteria specified above or that has a certificate of deposit rating of 1 or better by Duff & Phelps.
- Bankers' Acceptances must be guaranteed by an accepting bank with a minimum certificate of deposit rating of 1 by Duff & Phelps.
- Repurchase Agreements and Reverse Repurchase Agreements must be with a domestic dealer selected by the Federal Reserve as a primary dealer in U. S. Treasury securities; or a bank that is associated with a holding company meeting the commercial paper rating criteria specified above or that has a certificate of deposit rating of 1 or better by Duff & Phelps.

Fixed Income

Holdings of domestic fixed income securities shall be limited to those securities a) issued by or fully guaranteed by the U. S. Treasury, U. S. Government-Sponsored Enterprises, or U. S. Government Agencies, and b) issued by corporations and municipalities. These securities should be of investment quality at time of purchase.

Distributions

Distributions of income or amounts from the Accounts to the beneficiaries shall be made as soon as practicable, either a) based on the terms of the trust instrument; b) following the fiscal quarter end for endowments; c) on or after the last day of the month for operating Accounts.

Accounting

The fiscal year of the Accounts shall begin on September 1st and end on August 31st. Trusts will also have a tax year end which may be different than August 31st. Market value of the Accounts shall be maintained on an accrual basis in compliance with Financial Accounting

Standards Board Statements, Government Accounting Standards Board Statements, industry guidelines, or federal income tax laws, whichever is applicable. Significant asset write-offs or write-downs shall be approved by the chief investment officer and reported to the UTIMCO Board.

Valuation of Assets

As of the close of business for each month, UTIMCO shall determine the fair market value of all assets in the Accounts. Such valuation of assets shall be based on the bank trust custody agreement in effect or other external source if not held in the bank custody account at the date of valuation.

Securities Lending

The Account may participate in a securities lending contract with a bank or nonbank security lending agent for either short-term or long-term purposes of realizing additional income. Loans of securities by the Accounts shall be collateralized by cash, letters of credit or securities issued or guaranteed by the U. S. Government or its agencies. The collateral will equal at least 100% of the current market value of the loaned securities. The contract shall state acceptable collateral for securities loaned, duties of the borrower, delivery of loaned securities and collateral, acceptable investment of collateral and indemnification provisions. The contract may include other provisions as appropriate. The securities lending program will be evaluated from time to time as deemed necessary by the UTIMCO Board. Monthly reports issued by the agent shall be reviewed by UTIMCO to insure compliance with contract provisions.

Investor Responsibility

As a shareholder, the Account has the right to a voice in corporate affairs consistent with those of any shareholder. These include the right and obligation to vote proxies in a manner consistent with the unique role and mission of higher education as well as for the economic benefit of the Account. Notwithstanding the above, the UTIMCO Board shall discharge its fiduciary duties with respect to the Account solely in the interest of the beneficiaries and shall not invest the Account so as to achieve temporal benefits for any purpose, including use of its economic power to advance social or political purposes.

Amendment of Policy Statement

The Board of Regents reserves the right to amend the Investment Policy Statement as it deems necessary or advisable.

Effective Date

The effective date of this policy shall be February 6, 1997.

RECESS FOR COMMITTEE MEETINGS AND COMMITTEE REPORTS TO THE BOARD.--At 9:00 a.m., the Board recessed for the meetings of the Standing Committees, and Chairman Rapoport announced that at the conclusion of each committee meeting the Board would reconvene to approve the report and recommendations of that committee.

The meetings of the Standing Committees were conducted in open session and the reports and recommendations thereof are set forth on the following pages.

REPORTS AND RECOMMENDATIONS OF STANDING COMMITTEES

REPORT OF EXECUTIVE COMMITTEE (Page 78).--In compliance with Section 7.14 of Chapter I of Part One of the Regents' Rules and Regulations, Chairman Rapoport reported that there were no items referred from the Executive Committee to the Board.

REPORT AND RECOMMENDATIONS OF THE BUSINESS AFFAIRS AND AUDIT COMMITTEE (Pages 79 - 90).--Committee Chairman Smiley reported that the Business Affairs and Audit Committee had met in open session to consider those matters on its agenda and to formulate recommendations for the U. T. Board of Regents. Unless otherwise indicated, the actions set forth in the Minute Orders which follow were recommended by the Business Affairs and Audit Committee and approved in open session and without objection by the U. T. Board of Regents:

1. U. T. System: Approval of Chancellor's Docket No. 88 (Catalog Change).--Upon recommendation of the Business Affairs and Audit Committee, the Board approved Chancellor's Docket No. 88 in the form distributed by the Executive Secretary. It is attached following Page 143 in the official copies of the Minutes and is made a part of the record of this meeting.

It was expressly authorized that any contracts or other documents or instruments approved therein had been or shall be executed by the appropriate officials of the respective institution involved.

It was ordered that any item included in the Docket that normally is published in the institutional catalog be reflected in the next appropriate catalog published by the respective institution.

2. U. T. Board of Regents - Regents' Rules and Regulations, Part Two: Amendments to Chapter I (General), Chapter VIII (Physical Plant Improvements), Chapter IX (Matters Relating to Investments, Trusts, and Lands), and Chapter XI (Contract Administration) Relating to Authority of the Chief Administrative Officers to Accept Certain Gifts, Authority of the Chancellor to Approve Construction Funding, and Authority of the Vice Chancellor and General Counsel to Settle Legal Matters.--The Board, upon recommendation of The University of Texas System Process Review Committee and the Business Affairs and Audit Committee, amended the Regents' Rules and Regulations, Part Two, Chapters I, VIII, IX, and XI as set forth on Pages 80 - 83 in order to clarify (1) the authority of the chief administrative officers to accept certain gifts, including current purpose gifts of \$500,000 or less, (2) the authority of the Chancellor to approve funding for construction costs up to ten percent

above the Total Project Cost approved by the U. T. Board of Regents, and (3) the authority of the Vice Chancellor and General Counsel to settle legal matters.

- a. Part Two, Chapter I (General), Section 1, Subsection 1.3, relating to authority of the chief administrative officers to accept gifts, was amended to read as set forth below:

- 1.3 The Board delegates to the chief administrative officer, or a designee specified in writing, authority to accept gifts that are not processed or administered by the Office of Development and External Relations and that conform to all relevant laws and Board policies, including but not limited to the System Gifts Policy Guidelines and approved institutional policies, provided that such gifts have a value of \$500,000 or less (in cash or in kind). Such gifts that have a value of more than \$500,000 (in cash or in kind) must be submitted to the Board for approval via the docket.

- b. Part Two, Chapter VIII (Physical Plant Improvements), Section 2, Subsection 2.1, Subdivision 2.16, relating to construction funding requirements, was amended to read as follows:

- 2.16 The Chancellor or delegate shall approve the construction contractor's estimates, sign change orders, and provide general supervision of all Major Projects. The Chancellor with the advice of the appropriate Executive Vice Chancellor and chief administrative officer is authorized to increase the approved Total Project Cost not more than ten percent. To provide funding for the increase, the Chancellor may reallocate funding between or among approved projects at a single component if funding for such projects has previously been authorized in accordance with Subdivision 2.13 or approve funding from some other source available to the component.

- c. Part Two, Chapter IX (Matters Relating to Investments, Trusts, and Lands), Section 1, Subsections 1.2 and 1.3, relating to acceptance of certain gifts and bequests, were amended to read as follows:
- 1.2 All assets received by the Board to establish, or that modify, an endowment (other than the Permanent University Fund), a fund functioning as an endowment, or a life income or annuity fund shall be accepted and processed by the Office of Development and External Relations and, after acceptance and processing, shall be delivered to the appropriate office for management.
- 1.3 All assets received by the Board through a bequest, a distribution from an account held in trust by others, or for the establishment or modification of any planned gift shall be accepted and processed by the Office of Development and External Relations and, after acceptance and processing, shall be delivered to the appropriate office for management. This Subsection and Subsection 1.2 shall not apply to additions to an existing endowment, a fund functioning as an endowment, or a life income or annuity fund if the addition does not change or modify the endowment or fund. Such additional gifts shall be accepted and processed by the chief administrative officer, or designee specified in writing.
- d. Part Two, Chapter IX (Matters Relating to Investments, Trusts, and Lands), Section 6, Subsection 6.8, relating to gifts and bequests, was amended to read as set forth below:
- 6.8 Gifts and Bequests.--The Office of Development and External Relations or the chief administrative officer, as appropriate, shall coordinate the acceptance, receipt, and processing of all gifts or bequests of real estate with the System Real Estate Office and upon completion of such processing transfer same to the System Real Estate Office for management.

e. Part Two, Chapter XI (Contract Administration), Section 3, Subsections 3.1 and 3.2, relating to legal matters, were amended to read as follows:

3.1 Contracts for Legal Services.--The Board delegates to the Vice Chancellor and General Counsel authority to execute and deliver on behalf of the Board contracts for legal services and such other services as may be necessary or desirable in connection with the settlement or litigation of a dispute or claim after obtaining approvals as may be required by law.

3.2 Settlement of Disputes.--Except as provided in Subsection 3.3 of this Section, the Board delegates to the Vice Chancellor and General Counsel authority to execute and deliver on behalf of the Board agreements settling any claim, dispute, or litigation subject to approval of System officials as set out below and compliance with all other legal requirements. The Vice Chancellor and General Counsel shall consult with the chief administrative officer and the appropriate Executive Vice Chancellor with regard to all significant settlements that will be paid out of institutional funds. The Vice Chancellor and General Counsel shall consult with the Office of Development and External Relations with respect to settlement of will contests and other matters relating to gifts and bequests administered by that Office.

<u>Amount</u>	<u>Additional Requirements</u>
\$150,000 or less	None
\$150,001 to \$300,000	Concurrence of the Chancellor or the appropriate Executive Vice Chancellor

\$300,001 to \$500,000

Concurrence of the
Chairman of the
Board

More than \$500,000

Concurrence of the
Board of Regents,
the Executive
Committee, or the
appropriate standing
committee of the
Board

The amount of the settlement shall mean the amount claimed by U. T. System but not received pursuant to the settlement or, in the case of a claim against U. T. System, the total settlement amount to be paid by U. T. System.

These amendments further implement actions taken by the U. T. Board of Regents at the May 1996 meeting where it was agreed in principle that the authority to execute a variety of contracts and agreements would be delegated to The University of Texas System Administration or component officials within specific guidelines, conditions, and restrictions. The authority to execute contracts and agreements was broadly implemented initially by actions taken by the U. T. Board of Regents at a special called meeting on August 29, 1996.

This overall initiative provides an efficient method for the U. T. Board of Regents to delegate certain contracting authority as authorized by Section 65.31(g) of the Texas Education Code.

The foregoing amendments contain substantive and editorial corrections as summarized below:

- a. Regents' Rules and Regulations, Part Two, Chapter I (General) -- Clarifies authority of the chief administrative officers to accept any gift in the amount of \$500,000 or less that is not a planned gift or bequest and does not establish or modify an endowment, a fund functioning as an endowment, or a life income or annuity fund.

- b. Regents' Rules and Regulations, Part Two, Chapter VIII (Physical Plant Improvements) -- Clarifies that the Chancellor may, in addition to reallocating funds among approved construction projects, approve other sources of funding for construction costs that exceed the Total Project Cost approved by the Board by up to ten percent.
 - c. Regents' Rules and Regulations, Part Two, Chapter IX (Matters Relating to Investments, Trusts, and Lands) -- Clarifies that additions to planned gifts and gifts of real estate valued at \$500,000 or less that are not given to establish or modify an endowment or other planned gift shall be accepted and processed by the chief administrative officer.
 - d. Regents' Rules and Regulations, Part Two, Chapter XI (Contract Administration) -- Clarifies the authority of the Vice Chancellor and General Counsel to execute contracts for services that are necessary or desirable in connection with the settlement or litigation of claims and disputes.
3. U. T. System: Authorization to Renew the Catastrophic Commercial Property Insurance Coverage for the Comprehensive Property Protection Plan with Arkwright Mutual Insurance Company, Waltham, Massachusetts, Effective November 9, 1996 Through November 9, 1997.--Authorization was given to renew the catastrophic commercial property insurance coverage, which is an integral part of The University of Texas System Comprehensive Property Protection Plan, with Arkwright Mutual Insurance Company, Waltham, Massachusetts, for the period November 9, 1996 through November 9, 1997, with an annual premium of \$1,339,833, based on reported insured values of \$7.4 billion.

Since 1971, the policy of the U. T. System has been to acquire commercial property insurance only for buildings with revenue-producing activities or those buildings the revenues of which are pledged for the retirement of bond indebtedness. Effective November 9, 1995, the U. T. System initiated a Comprehensive Property Protection Plan

that extended insurance coverage to all its buildings and contents.

The Comprehensive Property Protection Plan offers:

- a. A \$100,000 to \$250,000 per loss occurrence component deductible, except for a special wind/flood deductible for The University of Texas Medical Branch at Galveston resulting from a named tropical depression, storm, or hurricane
 - b. A \$5 million (minimum level) loss reserve fund
 - c. Catastrophic all risk property insurance for all losses exceeding the annual \$5 million aggregate to a maximum of \$1 billion per loss occurrence
 - d. Risk assessment and loss control reporting
 - e. Contributions to the loss reserve fund by all components of the U. T. System
 - f. A flexible, stable, and cost effective program not available in the commercial insurance marketplace.
4. U. T. System: Approval of Westdeutsche Landesbank Girozentrale as the Liquidity Provider for the Permanent University Fund Variable Rate Notes, Series A, and Authorization for the Chancellor to Execute All Credit Agreements Between the U. T. Board of Regents and the Liquidity Provider.--The Board, upon recommendation of the Business Affairs and Audit Committee:
- a. Approved the selection of Westdeutsche Landesbank Girozentrale as the Liquidity Provider for the Permanent University Fund Variable Rate Notes, Series A, for The University of Texas System
 - b. Authorized the Chancellor or his delegate to execute all Credit Agreements for the

Permanent University Fund Variable Rate
Notes, Series A, between the U. T. Board
of Regents and Westdeutsche Landesbank
Girozentrale.

The Board has authorized Permanent University Fund Variable Rate Notes, Series A ("Notes"), to be issued in an amount not to exceed \$250,000,000. If no refundings occur prior to August 1998, the aggregate Notes outstanding will be \$195,000,000. A request to the State Comptroller for an increase in the liquidity commitment to an aggregate amount of \$200,000,000, from \$100,000,000 was submitted; however, due to the lengthy budgetary process through the next legislative session which will determine overall State liquidity, a commitment cannot be addressed at this time by the State Comptroller.

On January 22, 1997, four proposals were received for a Liquidity Facility for the Permanent University Fund Variable Rate Notes, Series A, for the U. T. System from Westdeutsche Landesbank Girozentrale, Morgan Guaranty Trust Company of New York, Union Bank of Switzerland, and Credit Suisse First Boston.

The lowest fee was offered by Westdeutsche Landesbank at 8.5 basis points on the portion of the commitment utilized and 5 basis points for the unutilized portion. For the three-year period, the fee is projected to be \$349,000 if the Texas State Comptroller commitment is maintained, and \$388,000 if the Comptroller commitment is replaced with Westdeutsche Landesbank.

Westdeutsche Landesbank is among the top thirty largest banks in the world by asset size and is ranked the third largest bank in Germany. The bank currently provides liquidity for short-term debt of the City of Houston and the San Antonio Water System.

5. U. T. Austin: Approval to Transfer Ownership of Fourteen Lots Located East of Leona Street in the Blackland Area of Austin, Travis County, Texas, to the City of Austin and Authorization for the Executive Vice Chancellor for Business Affairs to Execute All Documents Related Thereto.--In December 1993, the U. T. Board of Regents authorized a property exchange agreement

with the City of Austin whereby the value of easements, street vacations, and other miscellaneous property exchanges are placed on a ledger in lieu of making cash settlements for each such transaction. At the current time, the ledger has a balance of \$159,843.80 in favor of the City of Austin and the property exchange agreement continues in effect by mutual agreement.

The Business Affairs and Audit Committee recommended and the Board:

- a. Authorized The University of Texas at Austin to transfer ownership of fourteen lots valued at \$116,000 and located east of Leona Street in the Blackland area of Austin, Travis County, Texas, to the City of Austin
- b. Authorized the Executive Vice Chancellor for Business Affairs or his delegate to execute all documents, instruments, and other agreements and take all further actions deemed necessary, advisable, or proper to carry out the purpose and intent of this transfer.

These lots have been previously leased by U. T. Austin to the City of Austin for low income housing until February 12, 2021, with a renewal option until February 12, 2051. The amount of \$116,000 represents the 1996 value of the lots which was established by the Travis County Appraisal District.

INFORMATIONAL REPORTS

1. U. T. System: Presentation on the 1996 Cost Savings Report.--Mr. Kerry L. Kennedy, Assistant Vice Chancellor and Controller, presented an overview of the 1996 Cost Savings Report for The University of Texas System.

Mr. Kennedy noted that in order to maintain its competitive edge in the pursuit of excellence, the U. T. System examines opportunities to increase efficiencies and promote effectiveness. As a result, the U. T. System is committed to an ongoing review of the

System's processes and procedures to achieve the optimum in cost savings and increased revenue.

Mr. Kennedy reported that in March 1996, all U. T. System institutions were asked to update the January 1995 cost savings report by quantifying their actual realized savings for Fiscal Years 1994 and 1995 and to identify any new savings measures and to reestimate savings for Fiscal Years 1996 through 1998. As a result of this process, actual savings documented and reported for Fiscal Years 1994 and 1995 were \$137.8 million compared to the January 1995 estimate of \$131.4 million. Total actual and projected net savings for the U. T. System for Fiscal Years 1994 through 1998 are estimated to be \$361 million as compared to the January 1995 estimate of \$422 million.

Assistant Vice Chancellor Kennedy highlighted the following in the 1996 cost savings report:

- Cost savings initiatives totaled \$227 million
- Cost avoidance initiatives totaled \$113 million
- Revenue enhancement totaled \$55.8 million
- Investment, defined as expenditures necessary to implement cost saving measures, totaled \$35.4 million.

A copy of [The University of Texas System Cost Savings Report](#) dated June 1996 is on file in the Office of the Board of Regents.

Chairman Rapoport commended Executive Vice Chancellor Burck and the component chief business officers for their continuing commitment to increase operating efficiencies and to identifying and recommending cost saving and revenue enhancement measures.

2. U. T. System: Report on Employee Health Insurance Program.--Mr. Robert E. Molloy, Director of the Employee Group Insurance Program, presented a report on The University of Texas System Employee Health Insurance Program.

Mr. Molloy noted that over 122,000 employees and retirees of the U. T. System are covered by the U. T. health plan. He reviewed the claims experience for Fiscal Year 1995, the costs for the self-funded medical and dental plans and the health maintenance organizations, and the funding sources for the health plan. He pointed out that the amount of the state-paid contribution for health benefits is set by the Legislature and the amount for the 1998 Fiscal Year will not be known until late May 1997. In closing, Mr. Molloy noted there is a reappearance of cost inflation for medical services particularly in the prescription drug area.

In response to a question from Regent Evans, Mr. Molloy indicated he would provide a report to the Board outlining the several categories of employee costs associated with the range of medical and dental plans available within the U. T. System.

3. U. T. System: Presentation on the Andersen Consulting Final Report on the Information Technology Initiative.--
With the aid of viewgraphs, Dr. Mario J. Gonzalez, Vice Chancellor for Telecommunications and Information Technology, presented a comprehensive overview on the Andersen Consulting final report on The University of Texas System Information Technology Initiative and the present status of that initiative. Vice Chancellor Gonzalez reviewed the following strategic initiatives which are currently underway and have the greatest impact on the U. T. System:

- Enterprise Telecommunications Infrastructure
- Distance Education Leading to a Virtual University
- Knowledge Management Including Digital Library Services
- Telehealth
- Multimedia Educational Information Delivery.

Dr. Gonzalez then focused on the strategic initiatives under consideration:

- Shared Student Information System
- Workgroup Collaboration Tools
- Common Data Warehouse
- System Identification Smart Card.

In closing, Dr. Gonzalez discussed briefly the following pending strategic initiatives:

- Shared Clinical Research and Outcome Information
- Shared Administrative Support Systems.

Following considerable discussion and on behalf of the Board, Chairman Rapoport expressed appreciation to Vice Chancellor Gonzalez for this very informative report.

4. U. T. System: Presentation of the December 1996 Monthly Financial Report.--Mr. Kerry L. Kennedy, Assistant Vice Chancellor and Controller, reviewed the December 1996 Monthly Financial Report for The University of Texas System and emphasized that in this four-month report there were no variances from budget which did not have reasonable explanations.

A copy of [The University of Texas System Monthly Financial Report](#) as of December 1996 is on file in the Office of the Board of Regents.

5. U. T. System: Annual Presentation of the Reporting Package for the Board of Regents.--Assistant Vice Chancellor and Controller Kerry L. Kennedy reviewed the information contained in the updated University of Texas System "Reporting Package for the Board of Regents." Information provided in the report includes financial, investment, and research data for the U. T. System institutions covering a five-year period ending August 31, 1996. The report also includes faculty, employee, and student demographics extending from the

Fall 1992 through the Fall 1996 Semester. He noted that the publication contains a wealth of information about many aspects of the U. T. System's operations and should be regarded as a valuable resource which can help respond to many questions.

A copy of the "[Reporting Package for the Board of Regents](#)" is on file in the Office of the Board of Regents.

REPORT AND RECOMMENDATIONS OF THE ACADEMIC AFFAIRS COMMITTEE (Pages 91 - 120).--Committee Chairman Lebermann reported that the Academic Affairs Committee had met in open session to consider those matters on its agenda and to formulate recommendations for the U. T. Board of Regents. Unless otherwise indicated, the actions set forth in the Minute Orders which follow were recommended by the Academic Affairs Committee and approved in open session and without objection by the U. T. Board of Regents:

1. U. T. Board of Regents - Regents' Rules and Regulations, Part One: Amendments to Chapter III, Section 1, Subsection 1.8, Subdivision 1.87 (Academic Titles).--Upon recommendation of the Academic Affairs and Health Affairs Committees, the Board amended the Regents' Rules and Regulations, Part One, Chapter III, Section 1, Subsection 1.8, Subdivision 1.87, related to academic titles, to read as set forth below:

1.8 Academic Titles.

. . .

- 1.87 Administrative and academic (faculty) titles, duties, and pay rates for individuals who hold both administrative and academic appointments are distinct and severable. Tenured or tenure-track academic appointments and promotions in academic rank for administrators are subject to the same requirements and approval processes as for other faculty and are to include the establishment of an appropriate academic rate (whether or not any pay is to be generated from that rate) at the time of approval of the academic appointment. Departure or removal from an administrative position does not impair the individual's rights and responsibilities as a faculty member. Upon return to faculty service, whether on a part-time or full-time basis, salary for general academic component faculty is to be based on the approved academic rate, and salary for health component faculty is at the rate established pursuant to salary practices for faculty.

This revision to the Regents' Rules and Regulations, Part One, Chapter III, Section 1, Subsection 1.8, Subdivision 1.87 deletes unneeded language concerning long-abandoned faculty titles and includes language detailing current practice and commonly held expectations related to administrators who also hold tenured or tenure-track faculty appointments.

2. U. T. Arlington: Adoption of a Revised Role and Mission Statement and Authorization to Submit Statement to the Coordinating Board for Approval.--The Academic Affairs Committee recommended and the Board adopted the revised Role and Mission Statement for The University of Texas at Arlington as set out on Page 93 and authorized The University of Texas System Administration to submit the statement to the Texas Higher Education Coordinating Board for approval.

The revised mission statement relates to the accreditation process which is underway at U. T. Arlington. The underlying premise for the Southern Association of Colleges and Schools' (SACS) process of institutional accreditation has been an evaluation of whether the institution has accomplished its stated purpose. The purpose statement must be appropriate to collegiate education and also include research and public service, where those are significant institutional responsibilities. The formulation of a statement of purpose is a major educational decision involving the efforts of the institution's faculty and administration.

In commencing the SACS self-study process approximately two years ago, the Mission and Purpose Statement Committee members examined the extant mission statement for U. T. Arlington and determined that it did not adequately proclaim the individuality of the University. Through an extensive two-year process involving many members of the University community, the revised Mission Statement has been developed.

MISSION

The mission of The University of Texas at Arlington is to pursue knowledge, truth and excellence in a student-centered academic community characterized by shared values, unity of purpose, diversity of opinion, mutual respect and social responsibility. The University is committed to lifelong learning through its academic and continuing education programs, to discovering new knowledge through research and to enhancing its position as a comprehensive educational institution with bachelors', masters', doctoral and nondegree continuing education programs.

3. U. T. Brownsville: Approval of Revised Role and Mission Statement and Authorization to Submit Statement to the Coordinating Board for Approval.--The Board, upon recommendation of the Academic Affairs Committee, approved the revised Role and Mission Statement for The University of Texas at Brownsville as set forth on Page 95 and authorized submission of the statement to the Texas Higher Education Coordinating Board for approval.

When U. T. Brownsville was established in 1991 by action of the Texas Legislature, that same legislative action authorized a partnership between U. T. Brownsville (UTB) and Texas Southmost College (TSC). The UTB/TSC Partnership has been in operation since Fall 1992. At that time, U. T. Brownsville and Texas Southmost College operated under separate mission statements. In discussions with the Southern Association of Colleges and Schools and staff of the Texas Higher Education Coordinating Board regarding accreditation of the Partnership, it was determined in December 1995 that the Partnership would be accredited as a consolidated entity and hence would require a single mission statement for the UTB/TSC Partnership.

The Partnership Mission statement, which has been reviewed by the Southmost Union Junior College District Board of Trustees, is similar to the previous statement for U. T. Brownsville except that it changes references from U. T. Brownsville to the UTB/TSC Partnership, adds references to associate degrees and certificates, and excludes the previous Partnership Statement.

MISSION AND PHILOSOPHY OF THE UNIVERSITY OF TEXAS AT
BROWNSVILLE and TEXAS SOUTHMOST COLLEGE PARTNERSHIP

The mission of The University of Texas at Brownsville and Texas Southmost College (UTB/TSC) Partnership is to provide accessible, affordable, postsecondary education of high quality, to conduct research which expands knowledge and to present programs of continuing education, public service, and cultural value to meet the needs of the community. The Partnership combines the strengths of the community college and those of an upper-level university by increasing student access and eliminating interinstitutional barriers while fulfilling the distinctive responsibilities of each type of institution.

The University of Texas at Brownsville and Texas Southmost College Partnership offers Certificate, Associate, Baccalaureate, and Master's degrees in liberal arts and sciences, and in professional programs designed to meet student demand and regional needs. UTB/TSC also supports the delivery of doctoral programs through cooperative agreements with doctoral degree-granting institutions.

UTB/TSC places excellence in learning and teaching at the core of its commitments. It seeks to help students at all levels develop the skills of critical thinking, quantitative analysis and effective communications which will sustain lifelong learning. It seeks to be a community university which respects the dignity of each learner and addresses the needs of the entire community.

UTB/TSC advances economic and social development, enhances the quality of life, fosters respect for the environment, provides for personal enrichment, and expands knowledge through programs of research, service, continuing education and training. It convenes the cultures of its community, fosters an appreciation of the unique heritage of the Lower Rio Grande Valley and encourages the development and application of bilingual abilities in its students. It provides academic leadership to the intellectual, social, and economic life of the binational urban region it serves.

STATEMENT OF PHILOSOPHY

UTB/TSC is committed to excellence. It is dedicated to stewardship, service, openness, accessibility, efficiency, and citizenship. UTB/TSC is committed to students, participatory governance, liberal education, the expansion of the application of knowledge, human dignity, the convening of cultures and respect for the environment.

INFORMATIONAL REPORT

U. T. System: Review of Effect of the Hopwood v. State of Texas Decision on Financial Aid Programs.--At the conclusion of the Academic Affairs Committee meeting, Committee Chairman Lebermann called on Vice Chancellor and General Counsel Farabee to review for the Board the effect of the Hopwood v. State of Texas decision on the financial aid programs within The University of Texas System.

Vice Chancellor Farabee reported that approximately two weeks ago (January 15, 1997) the University of Houston System requested an Attorney General's opinion on the effect of the Hopwood v. State of Texas decision on various scholarship programs of the University of Houston System.

In response to that request and to bring the Board up-to-date on the Hopwood v. State of Texas case, Vice Chancellor Farabee distributed to the members of the Board and discussed Attorney General Dan Morales' letter opinion dated February 5, 1997, which is set forth on Pages 97 - 120. Mr. Farabee's presentation and the subsequent discussion was recorded and is on file in the Office of the Board of Regents.



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 5, 1997

Mr. William P. Hobby
Chancellor
University of Houston System
1600 Smith, suite 3400
Houston, Texas 77002-7347

Letter Opinion No. 97-00 1

Re: Effect of *Hopwood v. State of Texas* on
various scholarship programs of the University of
Houston (ID# 39347)

Dear Chancellor Hobby:

we have received your opinion request dated January 15, 1997, in which you ask various questions concerning the specific effect of the Fifth Circuit Court of Appeals decision in *Hopwood v. State*, 78 F.3d 932 (5th Cir. 1996). *reh'g en banc denied*, 84 F.3d 720 (5th Cir. 1996), cert. denied, 116 S. Ct. 2581 (1996). You first question the application of *Hopwood* to financial aid programs and its precedential value in light of the 1978 decision of the United States Supreme Court in *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978). You then ask about *Hopwood's* impact on five specific scholarship programs and certain University of Houston data collection activities. Because of the importance of these issues to the higher education community of this state, we have expedited a response to you.

To answer your questions fully, however, it is first necessary to trace the development of the Equal Protection case law involving governmental preferences based on race decided by the United States Supreme Court. We will then examine the *Hopwood* decision itself.

Equal Protection Analysis

The Equal Protection Clause, which is found in section 1 of the Fourteenth Amendment, mandates that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." The Supreme Court has interpreted this to mean that any racial classification made by government is highly suspect and must be reviewed under the most exacting judicial scrutiny. *City*

¹Title 42 of the United States Code, section 2000d, provides: "No person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." We do not discuss the requirements of title VI in this opinion because it proscribes "only those racial classifications that would violate the Equal Protection Clause or the Fifth Amendment." *Bakke*, 438 U.S. at 287 (J. Powell); *United States v. Fordice*, 505 U.S. 717 (1992) ("our cases make clear, and the parties do not disagree, that the reach of title VI's protection extends no further than the Fourteenth Amendment." (citations omitted)). We note, however, that the prohibitions of title VI would apply to any institution, public or private, that receives federal financial assistance.

of *Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989); *Adarand Constructors v. Peña*, — U.S. —, 115 S. Ct. 2097, 2110 (1995). In *Bakke*, Justice Powell explained that:

The guarantee of **equal** protection **cannot mean** one thing when **applied** to one individual and something **else when** applied to **a** person of **another** c&r. **If both** are not accorded the **same protection**, then it **is** not **e q u a l . .** **Racial and ethnic distinctions of any sort are inherently suspect and thus call for the most exacting judicial examination. This perception of racial and ethnic distinctions is rooted in our Nation's constitutional and demographic history.**

438 U.S. at 291.

In *Bakke*, the supreme court **invalidated** a **special** admissions program that reserved sixteen **of the one hundred seats in the first year medical school class to disadvantaged minority students²** at the University of **California at Davis**. The pro&red **justifications** for the **program** were the desire “to **reduc[e]** the historic **deficit** of traditionally disfavored **minorities in** medical school **and** the medical profession,” the need to “**counte[r]** the **effects** of societal **discrimination,**” the need to “**increas[e]** the **number** of physicians who will practice **in communities currently underserved,**” and, to “obtain the educational benefits that flow from an ethnically diverse student body.” *Id* at 306.

Justice Powell, writing for a divided court,³ ruled that the special admissions program violated

²The medical school targeted “Blacks, Chicanos, Asians, and American Indians” for this special treatment. *Id.* at 274.

³Four Justices—Brennan, White, Marshall, and Blackmun—joined in that part of the opinion that recognized the State's substantial interest in a specially devised admissions program that involved the competitive use of race and ethnicity. They interpreted the central meaning of the Court's decision to be that:

Government may take race into account when it acts not to demean or insult any racial group, but to remedy disadvantages cast on minorities by past racial prejudice, at least when appropriate findings have been made by judicial, legislative, or administrative bodies with competence to act in this area.

Bakke, 438 U.S. at 325. They concluded that the school's “articulated purpose of remedying the effects of past societal ~~discrimination~~ is, under our cases, sufficiently important to justify the use of race-conscious ~~admissions~~ programs where there is a sound basis for concluding that minority underrepresentation is substantial and chronic, and that the handicap of past discrimination is impeding access of minorities to the Medical School.” *Id.* at 362. Although these four Justices approved of the use of past societal discrimination as a constitutionally sufficient justification for affirmative action, this was not the view of the Court's opinion, *see, e.g., id.* at 307-11, and has consistently not been the view of the Supreme Court in cases decided since *Bakke*, *see, e.g., Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267 (1986); *Croson*, 488 U.S. 469; *Adarand Constructors*, 115 S. Ct. 2097.

Four of the Justices—Stevens, Chief Justice Burger, Stewart, and Rehnquist—ruled that the program had violated title VI of the Civil Rights Act, which prohibits ~~discrimination~~ on the basis of race, color, and national origin in any program
(continued...)

the Equal Protection Clause of the Fourteenth Amendment because the proffered justifications were constitutionally insufficient to allow the racial preferences of the program. He noted that “[p]referring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake. This the United States Constitution forbids.” *Id* at 307 (citations omitted). However, he also concluded that “the State has a substantial interest that legitimately may be saved by a properly devised admissions program involving the competitive consideration of race and ethnic origin” *Id* at 320. But, “when a State’s distribution of benefits or imposition of burdens hinges on ancestry or the color of a person’s skin, that individual is entitled to a demonstration that the challenged classification is necessary to promote a substantial state interest.” *Id* Justice Powell did not agree with the medical school that it had a compelling interest in countering the effects of past societal discrimination. He explained his disapproval of this justification in the following passage:

We have never approved a classification that aids persons perceived as members of relatively victimized groups at the expense of other innocent individuals in the absence of judicial, legislative, or administrative findings of constitutional or statutory violations. After such findings have been made, the governmental interest in preferring members of the injured groups at the expense of others is substantial, since the legal rights of the victims must be vindicated. In such a case, the extent of the injury and the consequent remedy will have been judicially, legislatively, or administratively defined. Also, the remedial action usually remains subject to continuing oversight to assure that it will work the least harm possible to other innocent persons competing for the benefit. Without such findings of constitutional or statutory violations, it cannot be said that the government has any greater interest in helping one individual than in refraining from harming another. Thus, the government has no compelling justification for inflicting such harm.

Id at 307-09 (citations omitted). Moreover, Justice Powell denied that the University of California had the competence or authority to make these determinations:

³(...continued)

or activity receiving federal financial assistance, because the medical school through the use of the special admissions program had discriminated against Alan Bakke on account of his race. In an opinion authored by Justice Stevens, these four Justices reasoned:

The University through its special admissions policy, excluded Bakke from participation in its program of medical education because of his race. The University also acknowledges that it was, and still is, receiving federal financial assistance. The plain language of the statute therefore requires affirmance of the judgment below. A different result cannot be justified unless that language misstates the actual intent of the Congress that enacted the statute or the statute is not enforceable in a private action. Neither conclusion is warranted.

Bakke, 438 U.S. at 412. Having found a statutory violation, these four Justices saw no need in addressing the Equal Protection issue.

[The University] does not purport to have made, and is in no position to make, such findings. Its broad mission is education, not the formulation of any legislative policy or the adjudication of particular claims of illegality. For reasons similar to those stated in Part III of this opinion, isolated segments of our vast governmental structures are not competent to make those decisions, at least in the absence of legislative mandates and legislatively determined criteria. . . . Before relying upon these sorts of findings in establishing a racial classification, a governmental body must have the authority and capability to establish, in the record, that the classification is responsive to identified discrimination. . . . Lacking this capability, [the University] has not carried its burden of justification on this issue.

Id at 309-10 (citations omitted). The only interest Powell deemed constitutionally sufficient to justify a program that takes race and ethnicity into account was the school's interest in educational diversity, not the ethnic diversity practiced by the medical school "The diversity that furthers a compelling state interest encompasses a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important element. [The University's] special admissions program, focused solely on ethnic diversity, would hinder rather than further attainment of genuine diversity." Id. at 315 (emphasis in original). Although Justice Powell believed a university could use educational diversity as a constitutionally sufficient justification for a special admissions program in which race or ethnicity was a factor, albeit not a determinative factor, the medical school had used race or ethnicity as the determinative factor, which he believed to be constitutionally impermissible.

Unfortunately, there was no clear majority in *Bakke*. Four Justices agreed with that portion of Justice Powell's opinion that invalidated the special admissions program, not because it violated the Equal Protection Clause but rather because it violated title VI.⁴ In addition, four different Justices agreed with that portion of Justice Powell's decision which recognized that a state has a substantial interest that may be served "in a properly devised admissions program involving the competitive consideration of race and ethnic origin," not on educational diversity grounds but on grounds that the state may adopt a race-conscious program if needed to remove the disparate impact its actions otherwise may have and if there is reason to believe that the disparate impact itself is the result of past discrimination, either its own or society's at large.⁵ Id at 369. Moreover, there was

⁴See footnote 3, *supra*.

⁵See footnote 3, *supra*. These four Justices would not apply the strict scrutiny standard of review in equal protection cases involving race preferences by government. Rather, they would apply an intermediate standard of review: governmental race preferences designed to further remedial purposes would be constitutional if they served important governmental objectives and were substantially related to achieving those objectives. *Bakke*, 438 U.S. at 359; see also *Wygant*, 476 U.S. at 302 (Marshall, J., dissenting).

no **Court** majority for the proposition that **governmental** preferences made on the basis of race or **ethnicity** must be **reviewed** under **the** strict **scrutiny standard**.

The Supreme Court next addressed the issue of racial preferences eight years later in *Wygant v. Jackson Board of Education*, 476 U.S. 267 (1986), which involved a school board's policy of **extending** preferential protection against **layoffs** to minority employees because of their race. The school board **justified** its preference program on two **grounds**. **First**, the board argued that it had an **interest** in providing minority role **models** for its minority **students** as an attempt to alleviate the **effects of societal discrimination**. **Second**, the school board argued that it was attempting to remedy prior **discrimination** that it had perpetrated on minorities.

Again **writing** for a **divided Court**, Justice **Powell**, the author of the *Bakke* decision, disposed of the **first justification** quickly:

This Court never has held that societal **discrimination** alone is **sufficient** to **justify** a racial **classification**. Bather, **the** Court has insisted upon some showing of prior **discrimination** by the governmental unit involved before allowing limited use of racial **classifications** in order to remedy such **discrimination**. . . .

. . .

Societal **discrimination**, without more, is too **amorphous** a basis for imposing a **racially classified** remedy. The **role model theory** announced by the District Court and the **resultant** holding **typify** this indefiniteness. There are **numerous** explanations for a **disparity between** the percentage of **minority students and the percentage of minority faculty, many of them** completely unrelated to **discrimination of any kind**. **In fact, there is no** apparent connection between the two groups. . . . No one doubts that there has been serious racial **discrimination** in this country. But as the basis for imposing **discriminatory legal** remedies that work against **innocent** people, **societal discrimination** is **insufficient** and over expansive. In the absence of **particularized findings**, a court could uphold remedies that are ageless in their reach into the past, and timeless in their ability to **affect** the future.

Wygant, 476 U.S. at 275-76 (emphasis in original). **In** reviewing the second **justification**, remedying past **discrimination**, Justice Powell's plurality opinion noted that

a public employer like the Board must ensure that, **before** it embarks on an **affirmative action program**, it **has convincing** evidence that remedial **action is warranted**. **That is, it must have sufficient evidence to justify the** conclusion that there has been prior **discrimination**.

Under strict scrutiny, the means chosen to accomplish the State's asserted purpose must be **specifically** and narrowly **framed** to accomplish that purpose. "**Racial classifications** are simply too pernicious to permit any but the most exact connection between **justification** and **classification.**"

Id at 277,280 (citations omitted). Although Justice Powell's **plurality** opinion recognized that the board had a compelling governmental interest in remedying the present effects of its past discrimination, it nonetheless invalidated the policy because it was not narrowly tailored to accomplish the remedial purpose. Justice Powell reasoned:

Here . . . the means chosen to achieve the Board's asserted purposes is that of laying off nonminority teachers with greater seniority in order to retain minority teachers with less seniority. We have previously expressed concern over the burden that a **preferential-layoffs scheme** imposes on innocent **parties**. In cases involving valid hiring goals, the burden to be borne by innocent individuals is **diffused** to a considerable extent among society generally. Though hiring goals may burden some innocent individuals, **they** simply do not impose the same kind of injury that layoffs impose. Denial **of a** future employment opportunity is not as intrusive as loss of an existing job.

...

While hiring goals impose **a diffuse burden, often** foreclosing only one of several **opportunities**, layoffs impose the entire burden of achieving racial equality **on particular individuals, often resulting in serious disruption** of their lives. That burden is too **intrusive**. We therefore hold **that, as a means of accomplishing purposes that otherwise may be legitimate, the Board's layoff plan is not sufficiently narrowly tailored.** other, less **intrusive means** of accomplishing similar purposes-such as the adoption of hiring goals-are available. For these **reasons**, the Board's selection of **layoffs** as the means to accomplish even a valid purpose **cannot satisfy** the demands of the Equal Protection Clause.

Id at 281-84 (citations omitted) (**emphasis in original**). Only three other Justices joined with Justice Powell in subjecting the **board's racially preferential** layoff policy to strict scrutiny review.

Three years later, in *Crosan*, 488 U.S. 469, a majority of the Justices of the Supreme Court **finally** agreed that the **Equal Protection** Clause of the Fourteenth Amendment requires that racial preferences made by state and local governments be subject to strict **scrutiny review**. *See also Adarand Constructors*, 115 S. Ct. 2997 ("With *Crosan*, the **Court finally** agreed that the Fourteenth Amendment requires strict scrutiny of all race-based action by state and local governments.").

The *Croson* Court, in a decision written by Justice O'Connor, invalidated a set-aside program that "required prime **contractors** to whom the city **awarded construction Contracts** to **subcontract** at least **30%** of the dollar amount of the contract to one or more" minority-owned **businesses.**⁶ **If the** prime contractor was a minority **business**, then it did not have to subcontract **thirty-percent** of the contract to another **minority firm.** *Croson*, 488 U.S. at **477-78.**

The plan was adopted by the Richmond city council after a public hearing in which "[t]here was no direct evidence of race discrimination on the part of the city in letting contracts or any evidence that the city's prime contractors had discriminated against minority-owned subcontractors." *Id.* at 480. Further, the city **council** found that there were present effects of past **discrimination** in the construction industry generally. The city council **justified** the set-aside by declaring that "it was 'remedial' in nature and enacted **'for the purpose of promoting wider participation by minority business enterprises in the construction of public projects.'**" *Id.* at 478. The plan expired at the end of five **years.** *Id.*

The Supreme Court began its review of the set-aside program by **announcing** that strict **scrutiny must be used in Equal Protection cases involving racial preferences made by government:**

As this Court has noted in the past, the "rights created by the first section of the Fourteenth Amendment are, by its terms, guaranteed to the individual. The rights established are personal rights." *Shelley v. Kraemer*, 334 U.S. 1, 22, 68 S. Ct. 836, 846, 92 L. Ed. 1161 (1948). The Richmond Plan denies certain citizens the opportunity to compete for a **fixed** percentage of public contracts based **solely** upon their race. To **whatever** racial groups these citizens belong, their "personal rights" to be treated with equal dignity and respect are implicated by a rigid rule erecting race as the sole criterion in an aspect of public decision making.

Absent searching judicial inquiry into the **justification** for such race-based **measures**, there is simply no way of **determining** what **classifications** are in fact motivated by illegitimate **notions** of racial **inferiority** or simple racial politics. Indeed, the purpose of strict **scrutiny** is to "smoke out" illegitimate uses of race by assuring that the legislative body is pursuing a goal important enough to warrant use of a highly **suspect** tool. The test also ensures **that the means** chosen "fit" this compelling **goal** so closely that there is little or no possibility that the motive for the **classification** was illegitimate racial prejudice or **stereotype.**

Classifications based on race carry a danger of stigmatic harm. Unless they are **strictly reserved** for remedial settings, they may in **fact** promote notions of racial inferiority and lead to a politics of racial **hostility.** *See*

⁶The city defined minorities as "citizens of the United States who are Blacks, Spanish-speaking, Orientals, Indians, Eskimos, or Aleuts." *Croson*, 488 U.S. at 478.

University of California Regents v. Bakke, 438 U.S. at 298.98 S. Ct. at 2752 (opinion of Powell, J.) (“[P]referential programs may only reinforce common stereotypes holding that certain groups are unable to achieve success without **special protection** based on a **factor** having no relation to individual worth.”). We thus **reaffirm** the view expressed by the plurality in *Wygant* that the standard of review under the Equal Protection Clause **is not dependent on the race of those burdened or benefited by a particular classification**.

Id. at 493-94 (citations omitted). After strictly **scrutinizing** the set-aside program, the Supreme Court ruled that the City of Richmond had shown no **compelling governmental** interest in eradicating the present **effects** of past **discrimination**. To begin with, there was no evidence that the city had **discriminated** against the preferred minorities, much less any evidence of the present effects of the city’s **past discrimination** against the preferred minorities. **Indeed**, the Court noted that it would have been impossible for the city to have shown disimination against **Aleuts** and Eskimos, two of the **preferred** groups.⁷ Moreover, the Court noted that the city could have **justified** its program as a way to eradicate the **present effects** of past private **discrimination** in which the city had been a passive participant:

Thus, if the city could show that it had essentially become a “passive participant” in a system of racial exclusion practiced by elements of the local construction industry, we think it dear that the city could take affirmative steps to dismantle such a system. It is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice. C” *Norwood v. Harrison*, 413 U.S. 455, 465, 93 S. Ct. 2804, 2810, 37 L. Ed. 2d 723 (1973) (“Racial discrimination in state-operated schools is barred by the Constitution and [i]t is also axiomatic that a state may not induce, encourage or promote private persons to accomplish what it is constitutionally forbidden to accomplish.”).

⁷The Court said in this regard:

There is absolutely no evidence of past discrimination against Spanish-speaking, Oriental, Indian, Eskimo, or Aleut persons in any aspect of the Richmond construction industry. The District Court took judicial notice of the fact that the vast majority of “minority” persons in Richmond were black. It may well be that Richmond has never had an Aleut or Eskimo citizen. The random inclusion of racial groups that, as a practical matter, may never have suffered from discrimination in the construction industry in Richmond, suggests that perhaps the city’s purpose was not in fact to remedy past discrimination.

Id. at 506 (citation omitted) (emphasis added).

Id at 492-93 (citations omitted). But the **record** was devoid of any evidence of past **discrimination** by the city's prime **contractors** in which the city had been a passive participant. **Rather**, the city justified its **program** on past industry-wide **discrimination**. In **holding** that this justification was **constitutionally insufficient**, the Court reasoned **that**:

Like the "role model" theory employed in *Wygant*, a **generalized** assertion that there has been past **discrimination** in an entire industry provides no guidance for a legislative body to **determine** the precise scope of the **injury** it seeks to remedy. It "has no **logical** stopping point."

. . .

While there is no doubt that the sorry **history of both private** and public discrimination in this country has **contributed to a lack of opportunities** for black entrepreneurs, this **observation, standing alone**, cannot **justify** a rigid racial quota in the awarding of public **contracts in Richmond, Virginia**. Like **the claim that discrimination in primary and secondary schooling justifies a rigid racial preference in medical school admissions**, an amorphous claim that there **has been past discrimination in a particular industry cannot justify the use of an unyielding racial quota**.

It is sheer speculation how many minority **firms** there would be in **Richmond** absent past societal **discrimination**, just as it was sheer speculation how many minority medical **students** would have been admitted to the medical school at Davis absent past **discrimination** in educational opportunities. **Defining** these **sorts** of injuries as "**identified discrimination**" would give local governments license to create a patchwork of racial preferences based on statistical generalizations about any particular field of endeavor.

Id at 498-99 (citations omitted). In addition to **concluding** that Richmond had shown no **compelling governmental interest**, the court also found that the program was not **narrowly** tailored for two **reasons**:

First, there does not appear to have been any consideration of the use of **race-neutral** means to **increase minority** business participation in city contracting.

. . .

Second, the 30% quota cannot be said to be **narrowly** tailored to any goal, except perhaps outright racial balancing. It rests upon the "completely **unrealistic**" **assumption** that minorities **will** choose a particular trade in **lockstep** proportion to their representation in the local population.

Id at 507 (citation omitted). Thus, the Court ruled that the set-aside program violated the Equal Protection Clause and was, therefore, unconstitutional.

In 1993, the Supreme Court once again considered the use of race by state governments, this time in congressional redistricting legislation in which majority-minority districts were drawn pursuant to section 2 of the Voting Rights Act. The Court ruled, in *Shaw v. Reno*, 509 U.S. 630, 649 (1993), that “a plaintiff challenging a reapportionment statute under the Equal Protection Clause may state a claim by alleging that the legislation, though race-neutral on its face, rationally cannot be understood as anything other than an effort to separate voters into different districts on the basis of race, and that the separation lacks sufficient justification.” In so ruling, the Court noted that in previous cases involving racial preferences, they had “held that the Fourteenth Amendment requires state legislation that expressly distinguishes among citizens because of their race to be narrowly tailored to further a compelling governmental interest.” *Id* at 643.

The Court addressed the same issue again two years later, in *Miller v. Johnson*, -U.S.-, 115 S. Ct. 2475 (1995) and in *United States v. Hays*, -U.S.-, 115 S. Ct. 2431 (1995). In *Miller v. Johnson*, the Court explained that

the essence of the equal protection claim recognized in *Shaw* is that the State has used race as a basis for separating voters into districts. Just as the State may not, absent extraordinary justification, segregate citizens on the basis of race in its public parks, buses, golf courses, beaches, and schools, so did we recognize in *Shaw* that it may not separate its citizens into different voting districts on the basis of race. The idea is a simple one: “At the heart of the Constitution’s guarantee of equal protection lies the simple command that the Government must treat citizens ‘as individuals, not “as simply components of a racial, religious, sexual, or national class.”’ When the State assigns voters on the basis of race, it engages in the offensive and demeaning assumption that voters of a particular race, because of their race, “think alike, share the same political interests, and will prefer the same candidates at the polls.” Race-based assignments “embody stereotypes that treat individuals as the product of their race, evaluating their thoughts and efforts--their very worth as citizens--according to a criterion barred to the Government by history and the Constitution.”

Miller. 115 S. Ct. at 2485-86 (citations omitted). And in *Hays*, the Court ruled that “[w]here a plaintiff resides in a racially gerrymandered district, however, the plaintiff has been denied equal treatment because of the legislature’s reliance on racial criteria, and therefore, has standing to challenge the legislature’s action. Voters in such districts may suffer the special representational

harms racial classifications can cause in the voting context.” Hays, 115 S. Ct. at 2436 (citation omitted).’

In 1995, six years after *Croson*, the supreme Court ruled that Equal Protection cases involving the use of racial preference by the federal government had to undergo strict scrutiny in order to assess their constitutionality. *Adarand Constructors*, 115 S. Ct. at 2113 (“[W]e hold today that all racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny. In other words, such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests.”). In reaching this result, Justice O’Connor, writing for the Court, reviewed the Equal Protection case law involving the use of racial preferences by government up through and including *Croson*. She distilled from these cases three general propositions regarding governmental racial classifications:

First, skepticism: “[a]ny preference based on racial or ethnic criteria must necessarily receive a most arching examination.” Second, consistency: “the standard of review under the Equal Protection clause is not dependent on the race of those burdened or benefitted by a particular classification.” And third, congruence: “[e]qual protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment.” Taken together, these three propositions lead to the conclusion that any person, of whatever race, has the right to demand that any governmental actor subject to the Constitution justify any racial classification subjecting that person to unequal treatment under the strictest judicial scrutiny.

Id. at 2111 (citations omitted).

With these cases as prologue, the Fifth Circuit Court of Appeals issued its decision in *Hopwood*.

The Hopwood Decision

The *Hopwood* decision was issued on March 19, 1996. In *Hopwood*, a panel of the Fifth Circuit ruled that the defendants had shown no compelling state interest for an affirmative action program at the University of Texas School of Law that granted preferences to African-American and Mexican-American applicants. Specifically, the *Hopwood* panel ruled that: (1) diversity was not a compelling state interest; and, (2) the defendants had not presented sufficient evidence of a remedial need for the affirmative action program.

*Last term, the Supreme Court struck down our state’s congressional redistricting legislation as unconstitutional on the grounds that it violated the Equal Protection Clause of the Fourteenth Amendment because we had created three majority-minority districts that were not narrowly tailored to reach the state’s compelling interest in complying with section 2 of the Voting Rights Act. *Bush v. Vera*, —U.S.—, 116 S. Ct. 1941 (1996).

As to the diversity **basis** for **affirmative action**, the **Fifth Cii** **concluded**:

In sum, the use of race to achieve a diverse student body, whether as a proxy for permissible characteristics, simply cannot be a state interest compelling enough to meet the steep standard of strict scrutiny. These latter factors may, in fact, turn out to be substantially correlated with race, but the key is that race itself not be taken into account. Thus, that portion of the district court's opinion upholding the diversity rationale is reversibly flawed.

Hopwood, 78 F.3d et 948 (footnotes omitted). The court **ruled**, by a vote of **2-1**,⁹ that Justice Powell's opinion in **Bakke** recognizing a compelling state interest in diversity is not, and has not been, the law. In reaching this conclusion, the panel **reasoned**:

Justice Powell's argument in Bakke garnered only his own vote and has never represented the view of a majority of the Court in Bakke or any other case. Moreover, subsequent Supreme Court decisions regarding education state that non-remedial state interests will never justify racial classifications. Finally, the classification of persons on the basis of race for the purpose of diversity frustrates, rather than facilitates, the goals of equal protection.

Justice **Powell's** view in **Bakke** is not binding **precedent** on the issue. While he announced the judgment, no other Justice joined in that part of the opinion discussing the diversity **rationale**. In **Bakke**, the word "diversity" is mentioned nowhere except in Justice Powell's single-Justice opinion. In fact, the four-Justice opinion, which would **have** upheld the special admissions program under **intermediate** scrutiny, implicitly rejected Justice Powell's position. **See** 438 U.S. at 326 n. 1. 98 S. Ct. at 2766 n. 1 (**Brennan, White, Marshall, and Blackmun JJ.**, concurring in the judgment in part and dissenting) ("We also agree with Mr. Justice POWELL that a plan like the "Harvard" plan. . . is **constitutional** under our **approach, at least** so long **as the** use of race to **achieve** an **integrated student body is necessitated by the lingering effects of past discrimination.**") (emphasis added). Justice Stevens **declined** to discuss the constitutional issue. . . .

⁹Although Judge Weiner did not join the panel's ruling that diversity was not a compelling state interest, he nonetheless ruled that the program was unconstitutional because it was not narrowly tailored to meet that interest since the affirmative action program benefited only African-Americans and Mexican-Americans. *Hopwood*, 78 F.3d at 965-66. He noted that "[b]y singling out only those two ethnic groups, the initial stage of the law school's 1992 admissions process ignored altogether non-Mexican Hispanic Americans, Asian Americans, and Native Americans, to name but a few." *Id.* at 966.

Thus, only one Justice concluded that race could be used solely for the reason of obtaining a **heterogenous** student body.

Id at 544 (emphasis **in** original).

As to the remedial basis for **affirmative** action, the Fii Cii **panel** disagreed with the **district court's conclusion that the state had proven that remedial action was necessary. The district court held that the state's "institutions of higher education are inextricably linked to the primary and secondary schools in the system" and that the history of racially discriminatory practices in the state's primary and secondary schools in the recent past had three present effects on the law school, which it described as**

includ[ing] [1] the Jaw school's lingering reputation in the minority community, particularly with prospective students, as a "white" school; [2] an underrepresentation of minorities in the student body; and [3] some perception that the law school is a hostile environment for minorities.

Hopwood, 861 F. Supp. at 572. The Fii **Circuit** panel struck down the **first** and third effects-bad reputation in the minority community as a white school and hostile environment-as being legally **insufficient** to sustain the use of race in the admissions **process. Hopwood**, 78 F.3d at 953. It relied, in doing so, on *Podberesky v. Kirwan*, 38 F.3d 147 (4th Cir. 1994). **cert. denied**, -U.S.-, 115 S. ct. 2001 (1995).

Podberesky involved an equal protection challenge to a race-based scholarship program at the University of **Maryland**. The State of **Maryland** argued **in Podberesky that the challenged** scholarship program was **justified** in order to eradicate the present effects of past **discrimination**. Maryland argued that the separate scholarship program was needed because of the university's "poor reputation within the **African-American** community" and because "the atmosphere on campus [was] perceived as being hostile to **African-American** students." *Podberesky*, 38 F.3d at 152. The *Podberesky* court rejected these justifications. It reasoned that any poor reputation by the school "is tied solely to knowledge of the University's **discrimination** before it admitted **African-American** students." *Id* at 154. Moreover, it **found** that "**mere knowledge** of historical **fact** is not the kind of present effect that **can justify a race-exclusive remedy. If it were otherwise, as long as there are people who have access to history books, there will be programs such as this one.**" *Id*

Utilizing the reasoning of *Podberesky*, the **Fifth** Circuit panel concluded:

We concur in the Fourth Circuit's **observation that knowledge of historical fact** simply cannot justify current racial **classifications. Even if**, as the defendants argue, the law school may have had a bad reputation **in the minority community, "[t]he case against race-based preferences does not rest on the sterile assumption that American society is untouched or unaffected by the tragic oppression of its past.**" *Maryland Troopers Au 'n*

v. *Evans*, 993 F.2d 1072, 1079 (4th Cir. 1993). “Rather, it is the very **enormity of that tragedy that lends resolve to the desire to never repeat it**, and find a legal order in which distinctions based on race shall **have no** place.” *Id* Moreover, we note that the law school’s argument is even weaker than that of the university in *Podberesky*, as *there is no* dispute that the law school has never had an admissions policy that excluded Mexican **Americans** on the basis of race.

The *Podberesky* court rejected the **hostile-environment claims** by observing that the “**effects**”—that is, racial **tensions**—were the **result** of present societal **discrimination**. 38 F.3d at 155. There **was** simply no showing of **action** by the university that **contributed** to any racial tension. Similarly, one cannot conclude that the law **school’s past discrimination** has created any **current** hostile environment for minorities. While the school **once** did practice **de jure discrimination** in denying admission to blacks, the Court in *Sweatt v. Painter*, 339 U.S. 629 (1950), struck down the law school’s program. Any other **discrimination** by the law school ended in the 1960’s. *Hopwood*, 861 F. Supp. at 555.

Hopwood, 78 F.3d at 953 (emphasis in original).

Having disposed of **two of the** state’s three **present-effects arguments**, the Fifth Circuit turned its attention to the remaining effect: underrepresentation. Noting that “the state’s use of remedial racial classifications is limited to the harm caused by a **specific** state actor,” *id* at 950, the panel disagreed with the district court’s conclusion that evidence of “**past discrimination** on the part of the Texas school system (**including** primary and secondary schools), reaching back perhaps as far as the education of the parents of today’s students, justifies the current use of racial classifications.” *Id* at 953-54. It ruled that the State of Texas is not the relevant state actor to scrutinize; the law school is. Thus, to justify the use of affirmative action as a remedy, the evidence must show past discrimination by the law school, not by the state and not by the University of Texas System generally. The *Hopwood* panel noted that

[s]trict scrutiny is meant to ensure that the purpose of a racial preference is remedial. Yet when one state actor begins to justify racial **preferences** based upon the actions of other state agencies, the remedial actor’s competence to determine the existence and scope of the harm—and the appropriate reach of the **remedy**—is called into question. . . .

. . .

Even **if, arguendo**, the state is the proper **government** unit to **scrutinize**, the law school’s admissions program would not withstand our review. For the admissions scheme to pass constitutional **muster**, the State of Texas, through its legislature, would have to **find** that put **segregation** has present

effects; it would have to determine the magnitude of those present **effects**; and it would need to limit **carefully** the “**plus**” given to **applicants** to remedy **that harm**. **A broad program that sweeps in all minorities with a remedy that is in no way related to past harms cannot survive constitutional** scrutiny. Obviously, none of those predicate **has been** satisfied here.

In sum, for purposes of determining whether the law school’s admissions system properly can act as a remedy for the present effects of past discrimination, we must identify the law school as the relevant alleged past **discriminator**. The **fact** that **the** law school ultimately may be subject to the **directives of others, such as the board of regents, the university president, or the legislature**, does not change the fact that the **relevant** putative discriminator in this case is still the **law school**. **In order for any of these entities to direct a racial preference program at the law school, it must be because of past wrongs at that school.**

Id at 95 1-52 (emphasis added). The **district court** found just the opposite, however, stating that “[i]n recent history, there is no evidence of overt **officially** sanctioned **discrimination** at the University of Texas.” *Hopwood*, 861 F. Supp. at 572. Thus, a unanimous Fii Circuit **panel**¹⁰ **concluded** that there was no **remedial justification** for the law school’s **affirmative** action **program**:

[W]e hold that the **University** of Texas School of Law may not use race **as a factor** in deciding which **applicants** to admit in order to achieve a diverse student body, to combat the **perceived effects** of a hostile environment at the law **school**, to **alleviate** the law school’s poor **reputation in the minority community, or to eliminate any present effects** of past discrimination by actors other than the law school.

Hopwood, 78 F.3d at 962.”

¹⁰Judge Weiner disagreed only with the panel’s conclusion that diversity is not a compelling state interest; he agreed with the remainder of the majority’s opinion: “Although I join my colleagues of the panel in their holding that the law school’s 1992 **admissions** process fails to pass strict scrutiny, on the question of diversity I follow the solitary path of narrow tailoring rather than the primrose path of compelling interest to reach our common holding.” *Hopwood*, 78 F.3d at 966 (footnote omitted).

¹¹In 1973, the District Court for the District of Columbia ordered the Office for Civil Rights (“OCR”) of the United States Department of Health, Education and Welfare (“HEW”) (now the “Department of Education” or (“DOE”)) to investigate discrimination in Texas’ system of higher education. See *Adams v. Richardson*, 356 F. Supp. 92 (D.D.C.), *modified and aff’d*, 480 F.2d 1159 (D.C. Cir. 1973), *dism’d sub nom, Women’s Equity Action League v. Cavazos*, 907 F.2d 742 (D.C. Cir. 1990). Following a two-year investigation, OCR found in 1980 that Texas had failed to eliminate the vestiges of its segregated higher education system with regard to African Americans and that the state was in violation of title VI of the Civil Rights Act of 1964, 42 U.S. § 2000d.

As a remedy, Texas agreed to adopt the Texas Equal Education Opportunity Plan for Higher Education (“the Texas
(continued...)

The Fifth Circuit reversed and remanded the case to the district court in order for it to reconsider the issue of damages and injunctive relief. The court stated that:

According to the district court, the school had abandoned the admissions procedure—consisting of the separate minority subcommittee—that was used in 1992, 1993, and 1994. The court reasoned that, as a new procedure was developed for 1995, a prospective injunction against the school was inappropriate. We conclude, however, that, while the district court may have been correct in deciding that the new procedure eliminates the constitutional flaws that the district court identified in the 1992 system, there is no indication that the new system will cure the additional constitutional defects we now have explained.

Hopwood, 78 F.3d at 958. The court went on to conclude that, “[i]n accordance with this opinion, the plaintiffs are entitled to apply under a system of admissions that will not discriminate against anyone on the basis of race.” *Id.* However, the court decided that:

It is not necessary . . . for us to order at this time that the law school be enjoined, as we are confident that the conscientious administration at the school, as well as its attorneys, will heed the directives contained in this opinion. If an injunction should be needed in the future, the district court, in its discretion, can consider its parameters without our assistance.

Id. at 958-59. Moreover, the Fifth Circuit agreed with the district court that punitive damages were not warranted. However, it noted “that if the law school continues to operate a disguised or overt racial classification system in the future, its actors could be subject to actual and punitive damages.” *Id.* at 959 (emphasis added).

The panel’s opinion suggests various race-neutral ways in which the law school could achieve a diverse student body:

¹¹(...continued)

Plan”). OCR required that the Texas Plan include a commitment to “seek to achieve proportions of Blacks and Hispanic Texas graduates from undergraduate institutions in the State who enter graduate study or professional schools in the State at least equal to the proportion of white Texas graduates from undergraduate institutions in the State who enter such programs.”

In 1983, just eight years before the *Hopwood* plaintiffs applied to the law school, Texas agreed, under threat of federal action, to formulate an acceptable plan to desegregate its higher education system, including the law school. In January 1994, the Department of Education notified Governor Richards that OCR was overseeing Texas’ desegregation efforts and would review the Texas system in light of *United States v. Fordice*, 505 U.S. 717 (1992). DOE has yet to determine that Texas’ higher education system has come into compliance with title VI.

Despite this history, the Fifth Circuit Court noted that “to the extent that the OCR has required actions that conflict with the Constitution, the directives cannot stand.” *Hopwood*, 78 F.3d at 954 n.47.

While the use of **race per se** is proscribed, state-supported schools may reasonably consider a host of factors—some of which may have some correlation with race—in making admissions decisions. The federal courts have no warrant to intrude on those executive and legislative judgments unless the distinctions intrude on specific provisions of federal law or the Constitution.

A university may properly favor one applicant over another because of his ability to play the cello, make a downfield tackle, or understand chaos theory. An admissions process may also consider an applicant's home state or relationship to school alumni. Law schools specifically may look at things such as unusual or substantial extracurricular activities in college, which may be atypical factors affecting undergraduate grades. Schools may even consider factors such as whether an applicant's parents attended college or the applicant's economic and social background.

For this reason, race often is not justified in the diversity context, not on its own terms, but as a proxy for other characteristics that institutions of higher education value but that do not raise similar constitutional concerns. Unfortunately, this approach simply replicates the very harm that the Fourteenth Amendment was designed to eliminate.

The assumption is that a certain individual possesses characteristics by virtue of being a member of a certain racial group. This assumption, however, does not withstand scrutiny. "[T]he use of a racial characteristic to establish a presumption that the individual also possesses other, and socially relevant, characteristics, exemplifies, encourages, and legitimizes the mode of thought and behavior that underlies most prejudice and bigotry in modern America." Richard A. Posner, *The DeFunis Case and the Constitutionality of Preferential Treatment of Racial Minorities*, 1974 SUP.CT.REV. 12 (1974).

To believe that a person's race controls his point of view is to stereotype him. The Supreme Court, however, "has remarked a number of times, in slightly different contexts, that it is incorrect and legally inappropriate to impute to women and minorities 'a different attitude about such issues as the federal budget, school prayer, voting, and foreign relations.'" Michael S. Paulsen, *Reverse Discrimination and Law School Faculty Hiring: The Undiscovered Opinion*, 71 TEX.L.REV. 993, 1000 (1993) (quoting *Roberts v. United States Jaycees*, 468 U.S. 609, 627-28, 104 S.Ct. 3244, 3255, 82 L.Ed.2d 462 (1984)). "Social scientists may debate how peoples' thoughts and behavior reflect their background, but the Constitution provides that the government may not allocate benefits or burdens among individuals based on the assumption that race or

ethnicity determines how they act or think.” *Metro Broadcasting*, 497 U.S. at 602. 110 S. Ct. at 3029 (O’Connor, J., dissenting).

Hopwood, 78 F.3d at 946 (footnotes omitted).

In short, *Hopwood* prohibits the use of educational diversity as a constitutionally sufficient justification for affirmative action. Moreover, *Hopwood* recognizes that an affirmative action plan can pass constitutional muster only if it remedies present effects of past acts of discrimination by the specific governmental unit involved, in this case, the University of Texas Law School. Fiiy, the decision suggests that the job of finding past discrimination and its present effects along with the narrowly tailored remedy for those present effects can be made by the legislature. This suggestion is especially compelling given Justice Powell’s view in *Bakke* that the University of California was not capable of establishing that the racial classification it created’s was responsive to identified discrimination. *Bakke*, 438 U.S. 265.

Hopwood As Precedent

On April 4, 1996, the Fii Cii Court of Appeals declined to reconsider the *Hopwood* decision en banc. On June 1.19%, the Supreme Court declined to grant the State’s Petition for Writ of Certiorari. As a result, the *Hopwood* decision is the law of the Fii Cii. Practically speaking that means that educational diversity cannot be used to just@ an affirmative action program because, within the jurisdiction of the Fii Cii Court of Appeals, which includes Texas, Louisiana, and Mississippi, educational diversity is not recognized as a compelling state interest.”

As an initial matter, we need to address the precedential effect of *Hopwood*. Fii it is clear that a lower federal court may not overturn a ruling of the United States Supreme Court. A clear example of this is *Wallace v. Jaffree*, 472 U.S. 38 (1985). In that case, the United States District Court for the Southern District of Alabama upheld an Alabama public school prayer statute on the ground that, while the statute was impermissible under existing Supreme Court authority, “the United States Supreme Court has erred.” *Id.* at 45 n.25. The Eleventh Circuit Court of Appeals reversed, in an opinion cited with approval by the Supreme Court: “Federal district courts and circuit courts are bound to adhere to the controlling decisions of the Supreme Court.” *Id.* at 46 n.26. The appellate court relied upon the authority of *Hutto v. Davis*, 454 U.S. 370,375 (1982). in which then-Justice Rehnquist wrote, “unless we wish anarchy to prevail within the federal judicial system, a precedent of this Court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be.” *Id.* at 375.

¹³“The special admissions program is undeniably a classification based on race and ethnic background.” *Bakke*, 438 U.S. at 289.

¹⁴“Since both Mississippi and Louisiana are under federal court orders requiring them to eradicate the present effects of their past segregative higher education system, these states have not yet felt the effects of *Hopwood*. They will have to conform their actions to *Hopwood* once they effect their remedy and are released from their respective court orders.

The Fifth Circuit decision in *Hopwood*, however, is unlike *Wallace v. Jaffree* in that it does not purport to overturn *Bakke*. It asserts not that *Bakke* was wrongly decided, but that Justice Powell's opinion in the use does not articulate the proposition for which the case had theretofore been thought to stand, or in short, that *Bakke* does not stand for the proposition that maintaining a diverse student body is a compelling state interest that will survive strict scrutiny. Whatever one may think of this interpretation of *Bakke*, the state's chance to overturn it was in the petition for the writ of certiorari, which has been denied."

The fact that the Supreme Court denied the petition for the writ of certiorari has no precedential significance.¹⁵ However, it is well-settled that a panel decision of the Fifth Circuit on an issue of law, barring its reversal by an en banc decision of the Fifth Circuit or by the United States Supreme Court, must be followed by other Fifth Circuit panels. See, e.g., *Fowler v. Pennsylvania Tire Co.*, 326 F.2d 526 (5th Cir. 1964) ("[e]ven if prior decision of [the fifth] circuit court of appeals . . . were not in line with weight of authority elsewhere, it would be binding on [the fifth] circuit court of appeals under doctrine of stare decisis"); *Floors Unlimited v. Fieldcrest Cannon*, 55 F.3d 181 (5th Cir. 1995) ("under the stare decisis rule of [the Fifth] Circuit . . . one panel cannot overturn the decision of a prior panel in the absence of en banc reconsideration or a superseding Supreme Court decision"); *United States v. Parker*, 73 F.3d 48 (5th Cir. 1996) ("One appellate panel may not overrule a decision, right or wrong, of a prior panel, absent en banc reconsideration or a superseding contrary decision of the Supreme Court."). It is also well-settled that federal district courts in the Fifth Circuit are bound by Fifth Circuit precedent. See, e.g., *Cedillo v. Valcar Enter. & Darling Delaware Co.*, 773 F. Supp. 932, 936 (N.D. Tex. 1991) ("As a district court [is] bound by Fifth Circuit precedent, this court first turns to decisions of the circuit court to ascertain whether they command the outcome in this case."); *Jett Racing & Sales v. Transamerica Commercial Fin. Corp.*, 892 F. Supp. 161, 163 (S.D. Tex. 1995) ("the decisions of [the Fifth Circuit Court of Appeals] . . . are binding on this Court"); *Patton v. United Parcel Service*, 910 F. Supp. 1250, 1269 (S.D. Tex. 1995) ("This [federal district] court . . . is bound by Fifth Circuit precedent.").

In sum, other panels of the Fifth Circuit and lower federal courts within the Fifth Circuit are bound by *Hopwood*.

¹⁴The State argued in its petition that "[t]he two-judge majority held that it was unconstitutional for the Law School even to consider the race of individual applicants 'for the purpose of obtaining a diverse student body,' in flat violation of [*Bakke*] . . . [w]hatever the status of *Bakke*, the issue should be decided by this Court, so that the same rule applies across the country." Petition for Writ of Certiorari at 14-15.

¹⁵See *State of Maryland v. Baltimore Radio Show*, 338 U.S. 912, 919 (1950) ("[a denial of a petition for a writ of certiorari] does not remotely imply approval or disapproval of what was said by the Court of Appeals"); *Hughes Tool Co. v. Trans World Airlines*, 409 U.S. 363, 365 n.1 (1973) ("denial of certiorari imparts no implication or inference concerning the Court's view of the merits"); *In re Corrugated Container Antitrust Litig.*, 659 F.2d 1332, 1336 (5th Cir. 1981) (the denial of certiorari [is] without precedential effect") (citing *Hughes Tool Co.*, 409 U.S. 363); *Avco Corp. v. PPG Indus.*, 867 F. Supp. 84, 90 (D. Mass. 1994) ("[t]he fact that the Supreme Court has denied certiorari on this issue is not to be construed as adoption of the views of a circuit court") (citing *Maryland*, 338 U.S. 912).

The Reach of the Constitution: The Requirement of state Action

some of your **questions** involve the use of private money **administered** by the **university** for raw-restricted scholarships. In order to address these questions, we must first review the **requirement** of state action. The **Fourteenth** Amendment proscribes states from taking any action that deprives people of the equal protection of **the** laws. In *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961), the Supreme Court **explained** that:

The Civil Rights Cases. . . ‘embedded in our **constitutional** law’ the principle “that the action inhibited by the **first** section (**Equal** Protection Clause) of the **Fourteenth Amendment is only such action as may fairly be** said to be that of the States. That Amendment **erects no** shield against merely private conduct, however **discriminatory** or **wrongful**.” . . . It is **clear**, as it always has been since the Cii **Rights** Cases . . . that ‘individual invasion of individual rights is not the subject matter of the **amendment**,’ . . . and thst private conduct abridging individual rights does no violence to the **Equal Protection Clause** unless to some significant extent the State in any of its **manifestations** has been found to have become involved in it. [Citations omitted.]

Thus, before strictly scrutinizing a program, the court must determine the **level** of state involvement. This inquiry requires a fact-intensive review. In *Burton*, *the* Supreme Court held that the exclusion of an African-American solely on account of color **from a restaurant** operated by a private owner under lease in a building **financed** by public **funds** and owned by the parking authority that was an **agency of the state of Delaware, was discriminatory** state action in violation of the Equal Protection Clause. In reaching this conclusion **after** an extensive review of the facts, the Supreme Court said “[t]he State has so far insinuated itself into a position of interdependence with [the **restaurant** owner] that it must be recognized ss a joint **participant** in the challenged **activity**, which, on that account, cannot be considered to have been so ‘purely private’ as to **fall** without the scope **of the** Fourteenth Amendment.” *Id.* at 725.

In *Evans v. Newton*, 382 U.S. 2% (1966), the Supreme Court **ruled** that a park that had been donated to the City of Macon, Georgia pursuant to the will of former United States *Senator A.O. Bacon* of Georgia for the use of whites **only** could not be operated on a racially **discriminatory** basis. The court ssid this about the **difference** between private action and state action:

A private **golf** club . restricted to either Negro or white **membership** is one expression of **freedom** of **association**. But a **municipal** golf course that serves only one race is state activity indicating a ~-preference on a matter as to which the State must be neutral. What is ‘private’ action and what is ‘state action’ is not always **easy** to determine. **Conduct that is formally ‘private’ may become so entwined with governmental policies or so impregnated with a governmental character as to become subject to the constitutional limitations placed upon state**

action. The action of a city in serving as trustee of property under a private will serving the segregated cause is an obvious example. . . . Yet generalizations do not decide concrete cases. ‘Only by sifting facts and weighing circumstances can we determine whether the reach of the Fourteenth Amendment extends to a particular case.’

Id at 299 (emphasis added). Moreover, in *Shelley v. Kraemer*, 334 U.S. 1 (1948), the Supreme Court ruled that the Equal Protection Clause of the Fourteenth Amendment prohibited a state from enforcing racially restrictive covenants in a deed. In essence, Shelley teaches that although an individual may engage in such private discrimination, the State cannot aid and abet it. The Court said:

We conclude . . . that the restrictive agreements standing alone cannot be regarded as a violation of any rights guaranteed to petitioners by the Fourteenth Amendment. So long as the purposes of those agreements are effectuated by voluntary adherence to their terms, it would appear clear that there has been no action by the State and the provisions of the Amendment have not been violated But here there was more.

Id at 13. The Court went on to rule “that in granting judicial enforcement of the restrictive agreements . . . the States have denied petitioners the equal protection of the laws and that, therefore, the action of the state courts cannot stand.” *Id at 20*.

More recently, in *Blum v. Yaretsky*, 457 U.S. 991 (1982), the Supreme Court articulated a framework for determining state action:

First . . . [t]he complaining party must show that “there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action . . . may be fairly treated as that of the State itself. . . .

Second, although the factual setting of each case will be significant, our precedents indicate that a State normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State. . . . Third, the required nexus may be present if the private entity has exercised powers that are traditionally the exclusive prerogative of the State. [Citations omitted.]

Id at 1004-05. Since the state action doctrine requires a fact-intensive inquiry, we cannot in this opinion make those determinations. See Attorney General Opinions DM-383 (1996) at 2 (questions of fact are inappropriate for opinion process), DM-98 (1992) at 3 (questions of fact cannot be resolved in opinion process), H-56 (1973) at 3 (improper for attorney general to pass judgment on

matter that would be question for jury determination), M-1 87 (1968) at 3 (attorney general cannot make **factual findings**).

Y o u r

Your **letter** seeks **the answer** to six questions concerning the impact of *Hopwood* on specific financial assistance and data collection programs. Before addressing these questions, we address several statements you make in the second paragraph of your letter.

First, you question the application of *Hopwood* to matters other than the admission of four students to the law school of the University of Texas. *Hopwood* involves the use of racial classifications by a state agency, the University of Texas, in the **admissions process**. As the Equal Protection cases **reviewed** in this opinion make clear, the use of racial **classifications** by **government** in any manner is suspect and is subject to the most stringent judicial scrutiny. See *Bakke*, 438 U.S. at 291 (race-based admissions); *Wygant*, 476 U.S. 267, 277-281 (race-based preferential layoff policy); *Croson*, 488 U.S. 469 (race-based set-aside in **government contracting**); *Shaw*, 509 U.S. at 649 (**race-based redistricting**); *Miller*, 115 S. Ct. 2475 (1995) (**race-based redistricting**); *Hays*, 115 S. Ct. 2431 (**race-based redistricting**); *Adarand Constructors*, 115 S. Ct. 2097, 2110 (**race-based preferences in federal contracting**); *Podberesky*, 38 F.3d 147 (4th Cir. 1994), *cert. denied*, -U.S.-, 115 s. ct. 2001. 131 L.Ed.2d 1003 (1995) (**race-based scholarship**). Thus, strict scrutiny applies whenever governmental **benefits** or burdens are skated on the basis of race or ethnicity.

Second, you question whether a 2-1 panel decision of the Fifth Circuit can be regarded as **overruling** the decision of the Supreme Court of the United States in *Bakke*, which expressly permits the consideration of race in admission to institutions of higher education. As stated previously, the Fifth Circuit's denial of reconsideration en banc and the Supreme Court's denial of the State's petition for writ of certiorari has resulted in the panel's decision being the law in the Fifth Circuit's jurisdiction: Texas, Louisiana, and **Mississippi**.

We turn now to your **specific** questions. You ask about privately donated, gender restricted scholarships. *Hopwood* does not affect the law applicable to privately donated, gender restricted scholarships. *Hopwood* involved a **governmental preference** made on the basis of race or **ethnicity**, not **gender**. Gender **preferences**, although also **implicating** the Equal Protection Clause, are reviewed by the **courts** under a **different**, less stringent constitutional **standard**.¹⁶

¹⁶Gender preference cases are subject to intermediate scrutiny. *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 724, (1982) (party seeking to uphold statute that classifies individuals by gender must show that classification serves "important governmental objectives and that discriminatory means employed [are] substantially related to the achievement of those objectives"); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440-41, (1985) (The intermediate scrutiny test falls between the "rationally related" and "strict scrutiny" tests. "A gender classification fails unless it is substantially related to a sufficiently important governmental interest."); *Craig v. Boren*, 429 U.S. 190, 197 (1976) ("To withstand constitutional challenge, previous cases establish that classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives.").

You next ask whether privately donated, race restricted **scholarships are** impacted by **Hopwood**. **Privately donated, race restricted scholarships** implicate the state action analysis. We have no facts concerning the University of Houston's involvement with the program; moreover, **as** we noted previously, we cannot in an attorney general opinion resolve **factual** questions. **However, we** can say generally that the more involved the university is in **administering** the **program**, such **as** choosing the scholarship recipients or managing the scholarship **fund**, to mention **just** two areas of **involvement**, then the higher the **probability** that **a** court would imbue the **scholarship** program with **the** color of **state action**. "*Conduct that is formally 'private' may become so entwined with governmental policies or so impregnated with a governmental character as to become subject to the governmental limitations placed upon state action.*" *Evans v. Newton*, 382 U.S. at 299. **If** state action exists, then in order to **pass constitutional** muster, the program must be justified by findings **establishing** that: (1) either your institution has **discriminated in the not too distant past against the racial groups benefited by the preference or that your institution has been a passive participant in acts** of private **discrimination** by **specific** private actors **against** the benefited racial groups; (2) there exist present effects of the past **discrimination** that **are** not due to societal **discrimination**; and, (3) the scholarship program is narrowly tailored to remedy those **specifically** identified present effects. Narrow tailoring requires that the program be aimed only at the racial groups that were the targets of the past **discrimination** and that the program last only for as long as **necessary** to eradicate the present effects of the past **discrimination**.

Your third question asks us to consider institutionally funded, **race** restricted scholarships. These scholarships are similar to those struck down by the Fourth **Circuit** in **Podberesky**, and must be **justified** in the manner outlined in response to question 2.

With respect to your **fourth** question **concerning** federally funded, race and gender restricted fellowships, we first note that this office cannot address the validity of **a** federally **funded** program. However, **Adarand** makes it clear that **federally** established **racial classifications**, like **all** others, are subject to strict **scrutiny**. *Adarand Constructors*, 115 S. Ct. at 2113 ("[W]e hold today that **all** racial **classifications, imposed** by whatever federal, **state**, or local **governmental** actor must be analyzed by a reviewing **court** under strict scrutiny. In other words, such classifications are constitutional only if they are narrowly tailored measures that further **compelling** governmental interests."). As we previously noted, gender preferences established by government are subject to a less stringent standard of review **and** remain unaffected by **Hopwood**.

You also ask about an **institutionally designed, race restricted** internship program. The answer to your **fifth** question is the same **as** that for question four. The **federal** government bears the responsibility **of justifying** such **a** racial **preference**.

Finally, Hopwood does not **affect** your institution's **ability** to **collect and** report information **from institutions** regarding minority participation in higher education in **Texas**. **The act of collecting** data does not confer **a benefit** or **a** burden on any one race.

SUMMARY

Hopwood proscribes the use of race or ethnicity, in the absence of a factual showing by an institution or the legislature which establishes: (1) either that the institution has discriminated in the not too distant past against the racial group benefited by the preference or that the institution has been a passive participant in acts of private discrimination by specific private actors against the benefited racial group; (2) that there exist present effects of the past discrimination that are not due to general societal discrimination; and, (3) that the scholarship is narrowly tailored to remedy those present effects. Unless or until these facts can be established, the consideration of race or ethnicity is expressly prohibited. Although, as always, individual conclusions regarding specific programs are dependent upon their particular facts, *Hopwood's* restrictions would generally apply to all internal institutional policies, including admissions, financial aid, scholarships, fellowships, recruitment and retention, among others.

Yours very truly,

A handwritten signature in black ink that reads "Dan Morales". The signature is written in a cursive, slightly slanted style.

Dan Morales
Attorney General of Texas

REPORT AND RECOMMENDATIONS OF THE HEALTH AFFAIRS COMMITTEE (Pages 121 - 122).--Committee Chairman Loeffler reported that the Health Affairs Committee had met in open session to consider the matter on its agenda and to formulate a recommendation for the U. T. Board of Regents. Unless otherwise indicated, the action set forth in the Minute Order which follows was recommended by the Health Affairs Committee and approved in open session and without objection by the U. T. Board of Regents:

U. T. M.D. Anderson Cancer Center: Authorization to Participate with The University of Pennsylvania Medical Center Health System and Stanford Health Services in a National Limited Liability Corporation Known as Qualidx to Provide a Specialized Second Opinion Service for Patients Initially Diagnosed with Cancer.--The Board, upon recommendation of the Health Affairs Committee, authorized The University of Texas M.D. Anderson Cancer Center to participate with The University of Pennsylvania Medical Center Health System and Stanford Health Services in a national limited liability corporation known as Qualidx to provide a specialized second opinion service for patients initially diagnosed with cancer and to commit \$750,000 for the initial investment and up to \$250,000 additional funds, if required, from the Physicians Referral Service (PRS).

The mission of Qualidx is to offer, through this consortium of leading academic pathology departments, a specialized pathology second opinion service to leading health-care payors for their patients. These second opinions will be rendered by nationally recognized pathologists and will focus solely on positive tests.

This service will provide the means to eliminate unnecessary and frequently invasive, painful, and otherwise involved medical procedures. The U. T. M.D. Anderson Cancer Center will benefit from the incremental income but, more importantly, will gain access to a large number of pathology specimens that will aid educational programs and clinical outcomes research.

The cost for this service is initially targeted at \$200 per test. Of that amount, \$100 will go to Qualidx and \$100 will go to the Pathology Department that provides the second

opinion consultation. The pathologist will be provided original slides and diagnosis reports and will render a second opinion report which will be available to the originating pathologist, primary care provider, and/or oncologist. In cases of significant differences of opinion, the slides and reports may be submitted to another member institution for additional review and diagnosis.

This patient service is viable from a fiscal, a medical service, and an educational/research point of view. Additionally, and more importantly, the cancer patients will be better served.

REPORT AND RECOMMENDATIONS OF THE FACILITIES PLANNING AND CONSTRUCTION COMMITTEE (Pages 123 - 135).--Committee Chairman Temple reported that the Facilities Planning and Construction Committee had met in open session to consider those matters on its agenda and to formulate recommendations for the U. T. Board of Regents. Unless otherwise indicated, the actions set forth in the Minute Orders which follow were recommended by the Facilities Planning and Construction Committee and approved in open session and without objection by the U. T. Board of Regents:

1. U. T. Arlington: Approval to Redesignate Engineering Building I as Woolf Hall (Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Naming of Buildings and Other Facilities).--In accordance with the Regents' Rules and Regulations, Part One, Chapter VIII, Section 1 regarding naming of buildings and other facilities and upon recommendation of the Facilities Planning and Construction Committee, approval was given to redesignate Engineering Building I at The University of Texas at Arlington as Woolf Hall to recognize the accomplishments and contributions of Dr. Jack R. Woolf who served U. T. Arlington with distinction for more than 30 years.

Dr. Woolf came to the institution, then known as Arlington State College, in 1957 as dean of the College. On December 1, 1958, upon the death of President E. H. Hereford, Dr. Woolf became acting president and was named president on July 1, 1959, serving in that capacity until August 1968. He continued to serve with distinction as a member of the mechanical engineering department until his retirement in 1989 and continued to teach on modified service through the Spring of 1994.

2. U. T. Austin: Authorization to Amend the FY 1996-2001 Capital Improvement Program (CIP) and the FY 1996-1997 Capital Budget to Include Renovation of Space in the College of Business Administration and Appropriation of Funds Therefor.--In order to improve the level of career placement services provided to students in undergraduate and graduate-level business degree programs at The University of Texas at Austin, the Board, upon recommendation of the Facilities Planning and Construction Committee:

- a. Amended the FY 1996-2001 Capital Improvement Program (CIP) and the FY 1996-1997 Capital Budget to include a project for the Renovation of Space in the College of Business Administration (CBA) at U. T. Austin at a preliminary project cost of \$1,500,000
- b. Appropriated \$1,200,000 from Incidental Fees and \$300,000 from Gifts and Grants for total project funding of \$1,500,000.

This project, which will renovate approximately 21,000 square feet of space in the Graduate School of Business and College of Business Administration buildings, including the Career Center, involves remodeling of the existing media lab, expansion of the career resource library for graduates and undergraduates, and renovations to provide space for corporate interview rooms.

The FY 1996-2001 Capital Improvement Program and the FY 1996-1997 Capital Budget will be amended accordingly to reflect this project.

3. U. T. Austin - Track and Field/Soccer Stadium and Parking Facility (Project No. 102-863): Approval of Preliminary Plans; Appropriation Therefor; and Approval of Use of Revenue Financing System Parity Debt, Receipt of Certificate, and Finding of Fact with Regard to Financial Capacity.--Following opening remarks by President Berdahl, the preliminary plans and specifications for the Track and Field/Soccer Stadium and Parking Facility at The University of Texas at Austin were presented to the Facilities Planning and Construction Committee by Mr. John Chase and Mr. Danny Bankhead, representing the Project Architect, Chase*Moore, Houston, Texas, and Mr. Narendra Gosain, representing Walter Moore Associates, Houston, Texas.

Based on this presentation, the Facilities Planning and Construction Committee recommended and the Board:

- a. Approved preliminary plans for the Track and Field/Soccer Stadium and Parking Facility at U. T. Austin at an estimated total project cost of \$22,200,000
- b. Appropriated \$9,700,000 from Revenue Financing System Bond Proceeds, \$3,000,000 from Auxiliary Enterprise Balances, and \$9,500,000 from Gifts and Grants for total project funding.

In compliance with Section 5 of the Amended and Restated Master Resolution Establishing The University of Texas System Revenue Financing System, adopted by the U. T. Board of Regents on February 14, 1991, and amended on October 8, 1993, and upon delivery of the Certificate of an Authorized Representative as set out on Page 127, the Board resolved that:

- a. Parity Debt shall be issued to pay the project's cost including any project costs paid prior to the issuance of such Parity Debt
- b. Sufficient funds will be available to meet the financial obligations of the U. T. System including sufficient Pledged Revenues as defined in the Master Resolution to satisfy the Annual Debt Service Requirements of the Financing System and to meet all financial obligations of the U. T. Board of Regents relating to the Financing System
- c. U. T. Austin, which is a "Member" as such term is used in the Master Resolution, possesses the financial capacity to satisfy its Direct Obligation as defined in the Master Resolution relating to the issuance by the U. T. Board of Regents of Parity Debt for Track and Field/Soccer Stadium and Parking Facility in the amount of \$9,700,000

- d. This resolution satisfies the official intent requirements set forth in Section 1.150-2 of the U. S. Treasury Regulations.

The FY 1996-2001 Capital Improvement Program (CIP) was adopted by the U. T. Board of Regents in August 1995, and amended in February 1996, to include a project for a Track and Field/Soccer Stadium and Parking Facility at U. T. Austin at an estimated preliminary cost of \$12,400,000.

Preliminary plans for the project comprise two fundamental elements: (1) a track and field/soccer stadium at an estimated cost of \$9,500,000; and (2) a 1,200 vehicle parking facility at an estimated cost of \$12,700,000.

The preliminary plans include provision for a future Field House at an estimated cost of \$2,800,000 at the site of the Track and Field/Soccer Stadium and Parking Facility. The Field House will include locker facilities for the Men's and Women's track and field programs and the Women's soccer program as well as training rooms, meeting rooms, officials' areas, equipment rooms and offices for the coaching staff. These functions will be accommodated in existing facilities until funding is available to construct the Field House.

The track, which will be a state-of-the-art oval, will meet current NCAA standards. The soccer field will be natural turf. The stadium will accommodate 6,000 permanent seats with provision for approximately 14,000 additional spectators as well as associated public rest rooms and concessions. These facilities will be lighted for night games. The new track will replace the existing track at Memorial Stadium, and the existing soccer field will be used for football and soccer practice.

The total cost of the project increased from the preliminary project cost as a result of several factors. The parking facility was increased from the original estimate of 600 vehicles to 1,200 vehicles. Stadium seating was expanded by 14,000 seats from 6,000 to 20,000 to provide sufficient space for events such as state UIL

competitions and the Texas Relays. Expanding the seating capacity of the stadium also requires construction of one parking deck for the exclusive use of the additional seating area. Also adding to the cost increase is the need to comply with U. T. Austin Campus Master Plan requirements which necessitates lowering the finished grade of the field and construction of an architectural wall behind the east side grandstand.

The debt for the parking structure of the project is to be repaid from revenues generated by the Parking and Traffic Division. Borrowing costs are assumed at 5% during the interim construction period and 7% for the long-term period. The project will require an estimated construction duration of fifteen months. During the construction phase, debt service will be paid from Auxiliary Enterprise Reserve Balances. Upon completion of the project, the debt will be converted to fixed rate bonds requiring an annual estimated debt service of \$915,611.

Approval of this item amends the FY 1996-2001 Capital Improvement Program and the FY 1996-1997 Capital Budget as noted above.

PARITY DEBT CERTIFICATE OF U. T. SYSTEM REPRESENTATIVE

I, the undersigned Assistant Vice Chancellor for Finance of The University of Texas System, a U. T. System representative under the Amended and Restated Master Resolution Establishing The University of Texas System Revenue Financing System adopted by the Board on February 14, 1991, and amended on October 8, 1993 (the "Master Resolution"), do hereby execute this certificate for the benefit of the U. T. Board of Regents pursuant to Section 5 (a) (ii) of the Master Resolution in connection with the authorization by the U. T. Board of Regents to issue "Parity Debt" pursuant to the Master Resolution to finance the construction cost of the Track and Field/Soccer Stadium and Parking Facility project at U. T. Austin, and do certify that to the best of my knowledge, the U. T. Board of Regents is in compliance with all covenants contained in the Master Resolution, First Supplemental Resolution Establishing an 'Interim Financing Program, the Second Supplemental Resolution, the Third Supplemental Resolution, the Fourth Supplemental Resolution, and the Fifth Supplemental Resolution and is not in default of any of the terms, provisions, and conditions in said Master Resolution, First Supplemental Resolution, Second Supplemental Resolution, Third Supplemental Resolution, and Fourth Supplemental Resolution, and the Fifth Supplemental Resolution as amended.

EXECUTED this F 15th day' of _____, 1997

John A. Row
Assistant Vice Chancellor for Finance

4. U. T. M.D. Anderson Cancer Center - Clinic Services Facility (Project No. 703-773): Approval to Redesignate as Charles A. LeMaistre Clinic (Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Naming of Buildings and Other Facilities) and Approval of Plaque Inscription.--In the absence of President Mendelsohn who was in Paris, France, to receive the Raymond Bourguine Award for achievements in cancer research, Dr. Fred Becker, Vice President for Research at The University of Texas M.D. Anderson Cancer Center, made a presentation on the proposed naming of the Clinic Services Facility at that institution. He outlined the many accomplishments of Charles A. LeMaistre, M.D., during his presidency of the institution and stressed that the naming had the complete support of the component faculty and staff.

Following that presentation and upon recommendation of the Facilities Planning and Construction Committee, the Board:

- a. Approved redesignation of the Clinic Services Facility at the U. T. M.D. Anderson Cancer Center as Charles A. LeMaistre Clinic to recognize the accomplishments and contributions of Charles A. LeMaistre, M.D., pursuant to the Regents' Rules and Regulations, Part One, Chapter VIII, Section 1 relating to naming of buildings and other facilities
- b. Approved the inscription set out on Page 129 for a dedicatory plaque to be placed on the building.

Charles A. LeMaistre Clinic
1997

BOARD OF REGENTS

Bernard Rapoport Chairman	William H. Cunningham Chancellor, The University of Texas System
Thomas O. Hicks Vice-Chairman	John Mendelsohn President, The University of Texas M.D. Anderson Cancer Center
Martha E. Smiley Vice-Chairman	
Rita Crocker Clements	
Donald L. Evans	
Zan W. Holmes, Jr.	LAN/HKS, A Joint Venture Architect
Lowell H. Lebermann, Jr.	Centex Bateson Construction Company, Inc. Contractor - Phase One
Tom Loeffler	The George Hyman Construction Company Contractor - Phase Two
Ellen Clarke Temple	

Dr. LeMaistre served as the second president of the U. T. M.D. Anderson Cancer Center from 1978 to 1996, a period of eighteen years. During that time, the U. T. M.D. Anderson Cancer Center experienced remarkable expansion not only in facilities but also in the development of new programs and the recruitment of the highest caliber of faculty and staff. Under Dr. LeMaistre's outstanding leadership, the U. T. M.D. Anderson Cancer Center's reputation as one of the world's premier cancer centers was secured and enhanced.

One of the many contributions that Dr. LeMaistre made to the institution was the development of an outstanding cancer prevention program. His passionate interest in cancer prevention and control goes back forty years. For his efforts in promoting the control of smoking, he received the President's Award from the American Lung Association in 1987. He also received the first Gibson D. (Gib) Lewis Award for Excellence in Cancer Control in 1988, the Distinguished Service Award from the American Medical Association in 1995, and, most recently, the 1996 Humanitarian Award from the National Conference of Christians and Jews.

It is most fitting that an outstanding Cancer Prevention Program be housed in a facility to be named after the individual who has been so instrumental in the development of this much-needed program and who has served U. T. M.D. Anderson Cancer Center, The University of Texas System, and the health community at large, so well.

5. U. T. M.D. Anderson Cancer Center: Authorization to Amend the FY 1996-2001 Capital Improvement Program (CIP) and the FY 1996-1997 Capital Budget to Include a Laboratory Project and Appropriation of Funds Therefor.--
The Facilities Planning and Construction Committee recommended and the Board:

- a. Amended the FY 1996-2001 Capital Improvement Program (CIP) and the FY 1996-1997 Capital Budget to include a Laboratory project at The University of Texas M.D. Anderson Cancer Center at an estimated project cost of \$4,100,000
- b. Appropriated \$4,100,000 from Educational and General Funds for total project funding.

A new laboratory which can meet the Food and Drug Administration (FDA) Good Manufacturing Practices (GMP) conditions is critical for the Bone Marrow Transplantation Program at U. T. M.D. Anderson Cancer Center. The present laboratory used for the processing of marrow and blood stem cells is physically inadequate and cannot be renovated to meet the FDA requirements and standards. The clinical aspect of the Bone Marrow Transplantation Program is directed toward optimization of cellular and molecular therapy delivered as autologous or allogeneic blood and marrow transplants. The new laboratory will fill the need for these capabilities and could also produce monoclonal antibody and immunocojugates, perform activation/expansion of immune effector cells and gene transfer in support of many clinical research programs throughout the institution.

Approximately 15,000 square feet of space has been identified on the fourteenth floor of the Lutheran Hospital Pavilion for this facility. Extensive

renovation of the existing space will be required, including special security-controlled access, a system to provide 100% hepafiltered outside air, sterilization of all supplies, floor-to-deck walls, and a separate air-handling system with no direct exhaust within the lab. The FY 1996-2001 Capital Improvement Program and the FY 1996-1997 Capital Budget will be amended accordingly to include this project.

6. U. T. Austin: Amendment of the FY 1996-2001 Capital Improvement Program (CIP) and the FY 1996-1997 Capital Budget to Add a Chilling Station Expansion Project; Appropriation of Funds Therefor; and Approval of Use of Revenue Financing System Parity Debt, Receipt of Certificate, and Finding of Fact with Regard to Financial Capacity.--The Board, upon recommendation of the Facilities Planning and Construction Committee:
- a. Amended the FY 1996-2001 Capital Improvement Program (CIP) and the FY 1996-1997 Capital Budget to include a project for Chilling Station Expansion at The University of Texas at Austin at a preliminary project cost of \$17,900,000
 - b. Appropriated \$17,900,000 in Revenue System Financing Bond Proceeds for total project funding.

In compliance with Section 5 of the Amended and Restated Master Resolution Establishing The University of Texas System Revenue Financing System, adopted by the U. T. Board of Regents on February 14, 1991, and amended on October 8, 1993, and upon delivery of the Certificate of an Authorized Representative as set out on Page 133, the Board resolved that:

- a. Parity Debt shall be issued to pay the project's cost including any project costs paid prior to the issuance of such Parity Debt
- b. Sufficient funds will be available to meet the financial obligations of the U. T. System including sufficient Pledged Revenues as

defined in the Master Resolution to satisfy the Annual Debt Service Requirements of the Financing System and to meet all financial obligations of the U. T. Board of Regents relating to the Financing System

- c. U. T. Austin, which is a "Member" as such term is used in the Master Resolution, possesses the financial capacity to satisfy its Direct Obligation as defined in the Master Resolution relating to the issuance by the U. T. Board of Regents of Parity Debt for the Chilling Station Expansion in the amount of \$17,900,000
- d. This resolution satisfies the official intent requirements set forth in Section 1.150-2 of the U. S. Treasury Regulations.

Additional chilling capacity is required at U. T. Austin as a result of new buildings and facilities under construction including the Louise and James Robert Moffett Molecular Biology Building, Student Services Building, Gregory Gymnasium (which will come back on-line after completion of the current renovation), and several other projects which are included in U. T. Austin's Capital Improvement Program.

The preliminary project cost includes installation of a 5,000-ton chiller in Station 5, which will comprise the first phase, as well as the replacement and upgrade of cooling towers and chillers in Stations 3 and 4.

The debt for the Chilling Station Expansion is to be repaid through the Education and General Budget which includes General Revenue Appropriations, tuition, fees, indirect cost recovery and other sources. To the extent that there may be shortfalls in future utility appropriations, U. T. Austin is committed to using as much of its total Education and General Budget as may be necessary to ensure that all debt service payments are fully funded. Borrowing costs are assumed at 5% during the short-term interim construction period and 7% for the long-term period. The project will require an estimated construction duration of three years. Upon completion of

the project, the debt will be converted to fixed rate bonds requiring an annual estimated debt service of \$1,690,000.

Approval of this item amends the FY 1996-2001 Capital Improvement Program and the FY 1996-1997 Capital Budget as noted above.

PARITY DEBT CERTIFICATE OF U. T. SYSTEM REPRESENTATIVE

I, the undersigned Assistant Vice Chancellor for Finance of The University of Texas **System**, a U. T. **System** representative under the Amended and Restated Master Resolution Establishing The University of Texas System Revenue Financing **System** adopted by the Board on February 14, 1991, and amended on October **8**, 1993 (the '**Master** Resolution'), do hereby execute this certificate for the benefit of the U. T. Board of Regents pursuant to Section 5 (**a**) (**ii**) of the Master Resolution in connection with the authorization **by** the **U. T.** Board of Regents to issue 'Parity Debt' pursuant to the Master **Resolution** to finance the construction cost of the Chilling Station Expansion project at U. T. Austin, and do certify that to the best of my knowledge, the U. T. Board of Regents is in compliance with all covenants contained in the Master Resolution, First Supplemental Resolution Establishing an Interim Financing Program, the Second Supplemental Resolution, the Third Supplemental Resolution, the Fourth Supplemental Resolution, and the Fifth Supplemental Resolution and is not in default of any of the terms, provisions, and conditions in said Master Resolution., **First** Supplemental Resolution, **Second** Supplemental Resolution, **Third** Supplemental Resolution, and **Fourth** Supplemental Resolution, and the **Fifth** Supplemental Resolution as amended.

EXECUTED this 13th day of January, 1997

John A. Roan
Assistant Vice Chancellor for Finance

7. U. T. Austin: Approval to Amend the FY 1996-2001 Capital Improvement Program (CIP) and the FY 1996-1997 Capital Budget to Add a Project for Welch Hall Safety Improvements and Appropriation of Funds Therefor.--Upon recommendation of the Facilities Planning and Construction Committee, the Board:

- a. Amended the FY 1996-2001 Capital Improvement Program (CIP) and the FY 1996-1997 Capital Budget to include a project at The University of Texas at Austin for Welch Hall Safety Improvements at a preliminary project cost of \$24,000,000
- b. Appropriated \$21,500,000 in General Fee Balances and \$2,500,000 in Property Protection Plan Reserves for total project funding.

Approval of this project allows U. T. Austin to move forward immediately with repairs to damage which resulted from a major fire in Welch Hall in October 1996, as well as with necessary life and safety improvements. A U. T. Austin engineering and safety consulting team has developed, in cooperation with the City of Austin Fire Department, a comprehensive package of physical modifications and renovations for Welch Hall, as well as a plan for an expanded laboratory safety program.

The project, which has a preliminary cost of \$24,000,000, will include installation of a complete fire sprinkler system, construction of fire separation compartments, renovation of elevators, modification and possible relocation of chemical storage rooms, installation of an emergency power system, upgrading the building fire alarm system, and creation of additional fire exits from some laboratories.

Approval of this item amends the FY 1996-2001 Capital Improvement Program and the FY 1996-1997 Capital Budget as noted above.

* * * * *

At the conclusion of the Facilities Planning and Construction Committee meeting, Committee Chairman Temple reported that since the last regular meeting the Chancellor had approved six (6) general construction contracts which included a 15.8% participation by Historically Underutilized Businesses, 11.1% by women-owned firms and 4.7% by minority-owned firms. In addition, six (6) architect/engineer contracts have been awarded since the last meeting and these indicate a 59.0% participation by minority-owned firms.

RECONVENE.--At 11:20 a.m., the Board reconvened as a committee of the whole to consider those items remaining on the agenda.

ITEM FOR THE RECORD

U. T. Medical Branch - Galveston: Appointment of Advisory Committee for the Selection of a Chief Administrative Officer (President).--The membership of the Advisory Committee for the Selection of a Chief Administrative Officer (President) for The University of Texas Medical Branch at Galveston is herewith reported for the record. This committee has been constituted pursuant to the Regents' Rules and Regulations, Part One, Chapter II, Section 13.

Advisory Committee for the Selection
of a Chief Administrative Officer
for
The University of Texas Medical Branch at Galveston

System Administration Representatives

Chancellor William H. Cunningham
Executive Vice Chancellor for Health Affairs
Charles B. Mullins, M.D. (Chairman)

Board of Regents

Regent Tom Loeffler
Regent Martha E. Smiley

Chief Administrative Officers

Kern Wildenthal, M.D., President, The University of Texas
Southwestern Medical Center at Dallas
John P. Howe, III, M.D., President, The University of
Texas Health Science Center at San Antonio

Faculty Representatives

Alice T. Hill, RN, Ph.D., School of Nursing
Adrian A. Perachio, Ph.D., School of Medicine
Barbara L. Thompson, M.D., School of Medicine

Dean

Mary V. Fenton, RN, Ph.D., Dean, School of Nursing

Student Representatives

Miss Melissa Phillips, Graduate School of Biomedical
Sciences

Mr. Jim Duong, School of Medicine

President of the Alumni Association

Jim Rohack, M.D., FACC, FACP, President, Alumni
Association, UTMB School of Medicine

Nonfaculty Employees

Mr. Michael R. Shriner, Director, Facilities Planning

Ms. Mary D. Brewer, Chief Clerk Hospital Patient
Financial Services - Admitting

Community/External Representatives

Miss Marie Hall

Mr. Harris L. "Shrub" Kempner, Jr.

Mr. Charles A. Worthen

REPORT OF BOARD FOR LEASE OF UNIVERSITY LANDS

Regents Rapoport and Lebermann, as members of the Board for Lease of University Lands, submitted the following report on behalf of that Board:

Report

The Board for Lease of University Lands met on Tuesday, November 12, 1996, in the Regents' Meeting Room on the ninth floor of Ashbel Smith Hall in Austin, Texas, for a general business meeting and to hold the Regular Oil and Gas Lease Sale No. 90, Special Oil and Gas Lease Sale, and the Frontier Oil and Gas Lease Sale No. 90-A.

Following is a report on the results of the lease sales:

- a. Regular Oil and Gas Lease Sale No. 90 and Special Oil and Gas Lease Sale: 86,550 acres of Permanent University Fund lands were nominated for lease. Bonuses in the amount of \$6,321,008 were paid for leases covering 43,961 acres. No bids were received on 42,589 acres.
- b. Frontier Oil and Gas Lease Sale No. 90-A: All available Frontier acreage (467,926 acres in El Paso, Hudspeth, and Terrell Counties) was offered for lease. A bonus in the amount of \$10,108 was paid for one lease covering 2,739 acres. No other bids were received.
- c. Total bonuses paid were \$6,331,116.

Following is a report on the general business meeting:

- a. Approved the Minutes of the Board for Lease meeting of May 14, 1996
- b. Approved tracts offered in Regular Oil and Gas Lease Sale No. 90, Special Oil and Gas Lease Sale, and Frontier Oil and Gas Lease Sale No. 90-A

- c. Approved lease awards to highest bidders in Regular Oil and Gas Lease Sale No. 90, Special Oil and Gas Lease Sale, and Frontier Oil and Gas Lease Sale No. 90-A
- d. Approved the recommended procedures and terms for Regular Oil and Gas Lease Sale No. 91 to be held on May 13, 1997, and authorized development of a home page on the Internet for the Board for Lease
- e. Adopted a revised gas royalty clause and recommended that the School Land Board adopt it also
- f. Authorized a detailed study of appropriate and desirable changes to the Texas Education Code, Chapter 66, Subchapter D, relating to the functions of the Board for Lease and any necessary changes to the Board's Rules that may be required by any such statutory changes
- g. Forfeited University Lease Nos. 73638, 73639, and 82961, subject to reinstatement of each forfeited lease if lessee submits all documents and pays all amounts then due under such lease on or before thirty (30) days after the declaration of forfeiture
- h. Received report on status of production and development in Shafter Lake Clearfork Unit, Andrews County, Texas
- i. Approved Unit Agreement, M.A.K. (Spraberry) Unit, in Andrews and Martin Counties, Texas
- j. Received a report on the take in-kind crude oil sale held October 14, 1996, approved contracts dated effective December 1, 1996, and approved continuation of the take in-kind crude oil royalty program as currently managed. The take in-kind crude oil program represents approximately 60% of the University royalty oil production. Since the program's inception in 1990, there has been a total net revenue enhancement of

\$5,389,664. Requested staff to undertake a study to determine which lessees are paying posted price and which are paying posted price plus.

- k. Received a report on the take in-kind gas royalty sale held July 15, 1996, and approved contracts dated effective August 1, 1996. Approved continuation of the take in-kind gas royalty program as currently managed. The take in-kind gas royalty program represents approximately 7% of the University royalty gas production.
- l. Received the results of the internal audit of the University Lands Accounting Office performed by the Audit Office of The University of Texas System. The overall opinion was that revenues from 1996 West Texas Operations deposited to the Permanent University Fund are fairly stated in the accounting records. The only recommendation from the Audit Office was that the University Lands Accounting Office complete its reconciliation on a timely basis. Directed staff to prepare for review by the Board for Lease a proposal to be presented to outside auditing firms to perform an audit of oil and gas leasing practices, policies, and procedures.
- m. Received report detailing deposits to the Permanent and Available University Funds for Fiscal Year 1996
- n. Received a memorandum from staff indicating that it is not practicable to alter the current procedure for depositing proceeds from lease sales
- o. Received staff recommendation that no action be taken to implement annual reporting procedures.

OTHER MATTERS

U. T. System: Annual Report on the Activities of the Faculty Advisory Council (Deferred).--Chairman Rapoport announced that the annual report on the activities of The University of Texas System Faculty Advisory Council was deferred until the May 1997 meeting of the Board at the request of Chairman Alan Cline, Professor in the Department of Computer Sciences and David Bruton, Jr., Centennial Professor in Computer Sciences (#2) at The University of Texas at Austin.

SCHEDULED MEETING.--Chairman Rapoport announced that the next scheduled meeting of the U. T. Board of Regents would be held on May 8, 1997, at The University of Texas Health Science Center at San Antonio.

OTHER BUSINESS

U. T. Board of Regents: Commendation to Chairman Bernard Rapoport, Regent Zan W. Holmes, Jr., and Regent Ellen Clarke Temple.--Regent Loeffler was recognized and made the following statement:

Statement by Regent Loeffler

Mr. Chairman, we cannot allow this meeting to adjourn without recognizing publicly that this will be the last meeting of the Board of Regents for three of our members.

Since I am completing my eighth year on this Board and I have had the pleasure and privilege of serving with Ellen, Zan, and "B" for the six years of their terms, I would like the Board and the audience to express their appreciation to these three Regents, whose terms will expire very soon, and who have served The University of Texas System with

distinction and vision. They have been dedicated in their service, and the U. T. System is a more vibrant and respected academic enterprise as a result of their tenure on the Board. Let's stand and express our appreciation and hope that they will conclude this meeting with any personal comments they might care to make.

In recognition of their dedicated service, Regents Holmes, Rapoport, and Temple received a standing ovation.

Chairman Rapoport was recognized and made the following comments:

Comments of Chairman Rapoport

I want to express my appreciation to all the presidents of the various component institutions for the cooperation they have extended to me and the joy I have had working with them individually and collectively. The staff of the U. T. System Administration is just so marvelous.

I would just like to conclude with the way I feel about life, and it is best expressed in a quotation by William Allen White. So as I bang down the gavel, I just want to leave you with my impression of what life should be for us individually and collectively. Thus this quote:

I have never been bored an hour in my life. I get up every morning wondering what new strange, glamorous thing is going to happen and it happens at fairly regular intervals. Lady Luck has been good to me and I fancy she's been good to everyone. Only some people are dower, and when she gives them the come hither with her eyes, they look down or turn away and lift an eyebrow. But me, I give her a wink and away we go.

ADJOURNMENT.--There being no further business, the meeting was adjourned at 11:25 a.m.

/s/ Arthur H. Dilly
Executive Secretary

February 14, 1997