

**Report and Recommendations**

**on**

**The Relationship between**

**The University of Texas at Austin School of Law**

**and**

**The University of Texas Law School Foundation**

**October 15, 2012**

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## I. INTRODUCTION AND EXECUTIVE SUMMARY

In early December of 2011, it came to light<sup>1</sup> that then Dean of The University of Texas at Austin School of Law (the “Law School”), Lawrence Sager, had received a \$500,000 forgivable personal loan from The University of Texas Law School Foundation (the “Foundation”). Shortly thereafter, The University of Texas at Austin President William Powers, Jr. asked Dean Sager to step down as Dean effective immediately.<sup>2</sup> This revelation also prompted questions about the relationship between The University of Texas at Austin (“U. T. Austin”) and the Foundation, and how such forgivable personal loans are structured with employees of U. T. Austin. To better understand the situation, The University of Texas System Board of Regents (the “Board of Regents”) asked the Vice Chancellor and General Counsel of The University of Texas System (“U. T. System”) to review the relevant facts, develop a report outlining the relationship between U. T. Austin and the Foundation, and to make recommendations, if appropriate, regarding restructuring the relationship between U. T. Austin and the Foundation, and any other matters necessary to improve the transparency and accountability of compensation for Law School faculty involving the Foundation. The result is this report.<sup>3</sup>

In reading this report, it is important to understand its scope and the inquiries it attempts to make and answer. This report is not the result of an investigation of the Foundation or its inter-workings, although to fully understand the relationship between the Law School and the Foundation one must necessarily understand something about the history and structure of the Foundation. This report and recommendations focuses on U. T. Austin and how it interacts with the Foundation and internally manages the relationship with particular emphasis of the forgivable personal loan program and overall faculty compensation at the Law School. There might be larger inquiries that could be made about other aspects of a university’s interaction with a supporting foundation but such inquiries are beyond the scope of this report and recommendations. In reviewing the facts and circumstances relating to the public disclosure of the \$500,000 forgivable personal loan to Dean Sager, this report focuses principally on the following areas of inquiry:

- The role and history of the Foundation in supporting the Law School and the Foundation’s alignment with the goals and mission of the Law School;
- The structure, scope, and sufficiency of the Memorandum of Understanding (“MOU”) between the Law School and the Foundation;

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<sup>1</sup> “Came to light” should not be misinterpreted. There exists no evidence that anyone at the Foundation or the Law School attempted to or did conceal the forgivable personal loan program which is the primary focus of this report. The forgivable personal loan program was simply not known or understood outside the immediate Law School community.

<sup>2</sup> *Austin American-Statesman* articles dated December 8, 2011 and December 9, 2011.

<sup>3</sup> This report was written by Vice Chancellor and General Counsel Barry Burgdorf of the U. T. System Office of General Counsel (OGC). OGC attorneys, Alan Marks and Karen Lundquist, made significant contributions to the report. Patricia Ohlendorf, Vice President for Legal Affairs at U. T. Austin, also contributed by assisting with the gathering of documents and arranging interviews of U. T. Austin employees. A near final draft of this report was reviewed and commented on by outside counsel, Kenneth M. Breen of Paul Hastings, LLP; although Mr. Breen took no part in the gathering of evidence or witness interviews.



- The issue of compensation of faculty at top tier law schools and particularly the Foundation’s role in supporting the compensation plan of the Law School;
- The structure and specifically the transparency and accountability of the forgivable personal loan program undertaken by the Foundation at the request and direction of the Law School, including the specific facts and circumstances surrounding Dean Sager’s \$500,000 forgivable personal loan; and
- The overall internal information sharing and approval process for faculty compensation between the Law School and U. T. Austin central administration.

In making these inquiries, the author of this report was provided with unfettered access to documents and witnesses both at U. T. Austin and the Foundation. The Foundation, a standalone non-profit charitable organization devoted to the support of the Law School, opened its doors and provided documents and witnesses promptly and without question. The following personnel were interviewed on the following days:

- Robert C. Grable, immediate past-President of the Foundation – January 4, 2012
- Jon Newton, President of the Foundation – January 10, 2012
- Kimberly Biar, Assistant Dean for Financial Affairs, U. T. Austin School of Law – January 10, 2012
- William Powers, Jr., President, U. T. Austin – February 13, 2012
- Former Dean Lawrence Sager, U. T. Austin School of Law – March 7, 2012
- Patricia Ohlendorf, Vice President for Legal Affairs, U. T. Austin – at various times from February-May, 2012
- Members of the Foundation Executive Committee – February 10, 2012, and May 11, 2012
- Steven W. Leslie, Ph.D., Executive Vice President and Provost, U. T. Austin – May 23, 2012
- Mark Yudof, President of the University of California System, former Dean, U. T. Austin School of Law; former Executive Vice President and Provost, U. T. Austin; and former Chancellor, U. T. System – May 24, 2012

As this review was launched, Jon Newton, current President of the Foundation, formed an internal committee (the “Long Committee”)<sup>4</sup> to study and recommend structural and operating

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<sup>4</sup> Named after Foundation Trustee Joe Long, Chairman of the ad hoc committee. The Long Committee submitted its report to the Foundation Board of Trustees on May 11, 2012, and as detailed in Section IV of this report, all recommendations of the Long Committee were discussed, voted on, and accepted by the Foundation Board of Trustees.

improvements for the Foundation and its relationship with U. T. Austin. As discussed later in this report, the recommendations of the Long Committee and this report parallel each other in some respects. Finally, at the request of the report's author, the Foundation agreed to place a moratorium on further grants of forgivable personal loans during the pendency of this review. That moratorium remains in effect.

The principal conclusions of the review are as follows:

**1. The Foundation has a long 60-year history of supporting the Law School in a variety of substantial ways through a number of programs that were known to top administrators at both U. T. Austin and U. T. System, and have been vital to the success attained by the Law School.**

**2. The relationship between the Law School and the Foundation is governed by an MOU; however, the current MOU needs some revision and updating to comprehensively address modern standards of transparency and accountability for a public university.**

**3. Competitive, market-based compensation is key to the recruitment and retention of highly sought after law school faculty, and the Foundation has played a significant role in the development of a world-class faculty at the Law School.**

**4. The process by which U. T. Austin accepted Foundation support of faculty compensation through the now-inactive forgivable personal loan program (including, and especially, the \$500,000 forgivable personal loan to Dean Sager) did not ensure appropriate approval and transparency, and overall, despite best intentions to meet market conditions attendant to the recruitment and retention of top tier law school faculty (which efforts were successful), is not adequate for a public institution.**

**5. The process by which the Law School interacts with central administration at U. T. Austin on issues of faculty compensation as carried out in practice is insufficient to ensure that central administration had adequate, timely information to understand and manage any issues that may arise with regard to Law School faculty compensation.**

In its concluding section, this report contains specific recommendations addressing each of these principal conclusions.

## II. THE UNIVERSITY OF TEXAS LAW SCHOOL FOUNDATION

### A. History and Structure<sup>5</sup>

The decision to form the Foundation was made at a November 10, 1951, meeting of the Board of Directors of The University of Texas Law School Association (the “Board of the Law School Association”) (a predecessor of the current Alumni Association).<sup>6</sup> Minutes from the meeting show that the Dean of the Law School at that time, Page Keeton, stressed the importance of obtaining more funds for the Law School to pay Law School professors.<sup>7</sup> Dean Keeton noted that financial support was needed most in the area of faculty salaries to enable the Law School to compete with the premier law schools in the country.<sup>8</sup> Dean Keeton also argued for additional funds to support many other projects and programs, such as research and scholarships that would benefit the Law School and the legal community in general.<sup>9</sup>

The Board of the Law School Association agreed and also recognized the critical need for private support in order for the Law School to achieve its full potential.<sup>10</sup> It was the desire of the Board of the Law School Association that a foundation be created to further legal education, legal research, financial assistance to deserving students, and the overall mission of the Law School.<sup>11</sup> Specifically, the Board of the Law School Association suggested that a foundation be set up to “carry out research programs, institutes, and promote the improvement of the administration of justice in Texas.”<sup>12</sup>

In June 1952, the Foundation was established as a private, non-profit educational corporation.<sup>13</sup> In accordance with the expressed desires of Dean Keeton and the Board of the Law School Association, the mission of the Foundation was and is the development, management, and enhancement of financial and administrative resources that support the Law School. The original charter of the Foundation provided in part that the purpose of the Foundation, “. . . is to support an educational undertaking as authorized by subdivision 2 of Article 1302 of Texas Revised Civil Statutes of 1925 by furtherance in the School of Law of The University of Texas of legal education, legal research, financial assistance to deserving students, and the progress of the law, to solicit donations for particular objectives to accomplish such purpose, including such objectives as that of establishing or assisting in establishing professorships and scholarships in the School of Law of The University of Texas . . .”<sup>14</sup>

There were seven initial trustees of the corporation.<sup>15</sup> The founders were named “Members for Life” and had the authority to elect other “Life Members.”<sup>16</sup> There were no other members.

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<sup>5</sup> This section of the report draws heavily from *The University of Texas Law School Foundation Trustees Handbook*, provided by Robert C. Grable, immediate past-President of the Foundation.

<sup>6</sup> See *Exhibit 1*, attached hereto.

<sup>7</sup> *Id.*

<sup>8</sup> See *Exhibit 2*, attached hereto.

<sup>9</sup> See *Exhibit 1*, attached hereto.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See *Exhibit 3*, attached hereto.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

Life Members had the authority to amend the Bylaws and Articles of Incorporation. *Id.* Life Members identified themselves as Trustees and also elected other Trustees and the officers of the Corporation. Therefore, they were sometimes erroneously called Life Trustees. Trustees who composed the Executive Committee were the Trustees who were also the Life Members. Traditionally, the Life Members elected others from their ranks as President and Vice President. Currently, there are 37 Trustees. Of the 37 Trustees, seven are Life Member Trustees.<sup>17</sup>

1. *John Charles Townes Foundation (JCT Foundation)*

It is important to understand the structure and history of a related group of endowments. In 1942, prior to the formation of the Foundation, the Board of Regents created the John Charles Townes Foundation (the “JCT Foundation”).<sup>18</sup> The JCT Foundation was created to receive gifts dedicated to the Law School. However, the JCT Foundation, which is sometimes referred to as an internal foundation, is not a foundation at all. It is simply the name used to identify a group of endowments benefiting the Law School and held by U. T. Austin. The endowment funds that comprise the JCT Foundation are managed by U. T. Austin through The University of Texas Management Company (“UTIMCO”). The 1942 Resolution of the Board provided for a committee of the Texas State Bar to advise the Dean of the Law School regarding the expenditure of the funds of the JCT Foundation.<sup>19</sup> The Resolution creating the JCT Foundation was amended in 1983, and, among other things, substituted the Foundation as the advisor to the Dean of the Law School on expenditures from the JCT Foundation.<sup>20</sup> Thus today, by dictate from the Board of Regents, the Foundation acts as advisor on spending earnings from the JCT Foundation. This role, created by the Board of Regents, has sometimes created confusion about the separate nature of the Foundation.

2. *Texas Attorney General Opinion MW-373 dated October 5, 1981*

In 1981, prior to executing the MOU, U. T. System sought a legal opinion from the Texas Office of the Attorney General concerning various issues related to the interplay between U. T. Austin, the Law School, and the Foundation. The Attorney General determined, among other things, that the Board of Regents has authority under Sec. 65.31 of the Texas Education Code to permit the Law School to provide the Foundation with a reasonable amount of resources to enable it to support the educational function of the Law School.<sup>21</sup>

The Attorney General opined that Article 3, Sec. 51 of the Texas Constitution mandates that a grant by U. T. Austin to the Foundation must serve a public purpose appropriate to the function of U. T. Austin and that adequate consideration must flow to the public.<sup>22</sup> Further, the Attorney General stated that for the grant to pass constitutional muster U. T. Austin must maintain a certain level of control over the Foundation’s activities to ensure that the public

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<sup>16</sup> *Id.*

<sup>17</sup> Today, the seven Life Member Trustees are E. William Barnett, David J. Beck, Joseph D. Jamail, Jr., Harry M. Reasoner, C. Kenneth Roberts, Morris Atlas, and J. Mark McLaughlin.

<sup>18</sup> See *Exhibit 4*, attached hereto.

<sup>19</sup> *Id.*

<sup>20</sup> See *Exhibit 5*, attached hereto.

<sup>21</sup> See *Exhibit 6*, attached hereto.

<sup>22</sup> *Id.*

purpose is actually achieved.<sup>23</sup> This three-part analysis concerning a public institution's support of a related but independent private entity – mission, consideration, adequate control –remains the analytical framework for assessing these types of relationships across state government in Texas. As to the Law School's support of the Foundation under this analysis, the Attorney General found that the relationship was constitutional. Today, as detailed in the following section of the report, the Law School provides the Foundation with office space, the Foundation and the Law School share some employees, and the Dean of the Law School participates with and advises the Foundation in various material ways.

In sum, throughout its history, the Foundation has been structured as a separate but related supporting entity. Its separateness and the role the Foundation plays with the Law School have been acknowledged by third parties, including the Board of Regents, the Attorney General, and at times courts.<sup>24</sup> That separateness discussed in detail in Section II.C of this report has been protected to allow flexible, multi-faceted, significant support of the Law School.

B. Organizational and Governing Documents, Policies and Procedures of The University of Texas Law School Foundation

The MOU, executed on April 30, 1982, in the wake of the Attorney General's opinion in 1981, was the first formal agreement between U. T. Austin and the Foundation.<sup>25</sup> It was structured to meet the three-part test enumerated by the Attorney General. The MOU restates and elaborates the Foundation's purpose, as expressed in its charter, which is to support legal education by soliciting and expending donations for that purpose (mission – part one).<sup>26</sup> The MOU details numerous specific purposes directed at serving the Law School's educational enterprise: the provision of administrative services, financial aid for students, and funds and services directed at faculty recruitment.<sup>27</sup> In addition, the Foundation works closely with Law School alumni groups and has participated and continues to participate in the Law School continuing legal education programs.

In the MOU, U. T. Austin agrees to furnish the Foundation offices and provide certain equipment, and to provide U. T. Austin employees to operate the Foundation.<sup>28</sup> In return, the Foundation agrees to reimburse U. T. Austin a reasonable amount each year for the services of U. T. Austin employees (consideration – part two).<sup>29</sup> A supplemental agreement is signed each year covering the payment for that year.<sup>30</sup> There is no definition of a reasonable sum, nor is there an identification of the factors to be considered in determining what is reasonable.

In prior years, the percentage of time spent on Foundation matters was identified and that percentage was applied against U. T. Austin's total cost of those employees. However, in recent

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<sup>23</sup> *Id.*

<sup>24</sup> For example, when the Law School and the Foundation have been sued in the same lawsuit, courts have recognized them as separate entities with separate potential liability. *See, e.g.*, Final Judgment filed November 17, 2006 in *Loftus C. Carson, II v. University of Texas at Austin, et al.*, USDC Civil Action No. A-05-CA-437-DEW.

<sup>25</sup> Attached hereto as *Exhibit 7*.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Attached hereto as *Exhibit 8*.

years, the Foundation reimburses U. T. Austin solely for the incremental cost of employees performing work for the Foundation. For example, assume an employee spends about half of her time on Foundation matters. However, if there were no Foundation, the employee would have to perform many of those duties for the Law School. Therefore, U. T. Austin is reimbursed only for the time spent on Foundation matters that otherwise would not be performed at all. Using this incremental test to determine what is reasonable, instead of the prior formula, enables the Foundation to direct more funds for support of Law School programs.

By practice and structure, the Dean of the Law School devotes a certain percentage of his or her time to Foundation matters.<sup>31</sup> There are currently two Law School employees in the Financial Affairs Department who also devote time to the Foundation, Kimberly Biar, the Assistant Dean for Financial Affairs, and Glenn Woelfel.<sup>32</sup> In fact, Mr. Woelfel actually devotes 100% of his time to the Foundation.<sup>33</sup> There are also fifteen employees from the Development and Alumni Relations Department at the Law School who may devote a certain percentage of their time to the Foundation depending on the gifts donated in any given year.<sup>34</sup> This includes Carla Cooper, the Assistant Dean for Development and Alumni Relations, who is also the Secretary of the Foundation.<sup>35</sup>

There is a Foundation Standard of Conduct Policy that all employees of the Law School are required to comply with when engaging in work on behalf of the Foundation.<sup>36</sup> Employees of the Law School are also required to comply with all University policies and procedures at all times, including while working for the Foundation (control – part three).

The MOU has been amended and supplemented; and, as mentioned, annual agreements between the Law School and the Foundation memorialize annual payments from the Foundation to the Law School.<sup>37</sup> The Board of Regents approved the MOU when it was first executed in the early 1980s.<sup>38</sup> The MOU has changed little since it was first executed in 1982 as described above – essentially meeting the mandate of the Attorney General opinion and little more. As set forth in the recommendations section of this report, the MOU should now be amended.

A proposed First Amended MOU is attached as *Exhibit 11*. The First Amended MOU will further facilitate a productive relationship between U. T. Austin, the Law School, and the Foundation, and reflect best practices for documentation of a relationship between a supporting foundation and a public university. New provisions specifically address U. T. Austin and Foundation accountability, as well as the Foundation's administrative structure and how it is financed; thus, creating greater transparency. The proposed First Amended MOU provides a brief overview on how funds are transferred between the Foundation and the Law School, and the applicable rules and laws governing such transfers. In addition, the disposition of the Foundation's assets upon dissolution, and the use of U. T. Austin and the Law School's name,

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<sup>31</sup> See *Exhibit 9*, attached hereto.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Attached hereto as *Exhibit 10*.

<sup>37</sup> See *Exhibit 8*, attached hereto.

<sup>38</sup> Attached hereto as *Exhibit 7*.

symbols, and trademarks are now addressed. Thus, the revised document as proposed demonstrates that a formal set of understandings exist between U. T. Austin, the Law School, and the Foundation, and all material matters concerning the relationship are set forth in the proposed amended MOU.

1. *The University of Texas Law School Foundation Amended Bylaws and Second Amended Articles of Incorporation*

In 2001, the Life Members decided that the two-tiered organization was no longer appropriate and made major changes in the Articles of Incorporation and Bylaws.<sup>39</sup> Under the new and current organization, all of the authority of the Life Members in the prior organization is vested in the Foundation Board of Trustees. In other words, the full Board of Trustees of the Foundation now has control of the Bylaws and Articles of Incorporation and elects Trustees and officers.<sup>40</sup> The reorganized Foundation is no longer a member organization.

One vestige of the old system remains. Those individuals who were previously Life Members were grandfathered as “Life Member Trustees.”<sup>41</sup> However, the Life Member Trustees have no other special status. All Trustees have the same rights and responsibilities in governing the Foundation.<sup>42</sup> Furthermore, under the current Bylaws there will be no more Life Member Trustees added. The Life Member Trustees can, at any time, elect to become Senior Trustees, a category of former Trustees. Senior Trustees are invited to attend the Foundation Board meetings, but they cannot vote and do not have the responsibilities of a Trustee.<sup>43</sup>

Another significant change made in 2001 was the term of the Trustees. In the past, Trustees were elected for one-year terms, but could be reelected indefinitely. Now, Trustees (except for Life Member Trustees) are elected for three-year terms and can be reelected for one additional three-year term.<sup>44</sup> After two consecutive terms, a Trustee may not be considered for further service on the Board until a minimum of one year has elapsed.<sup>45</sup>

In 2002, the Foundation Board of Trustees created the following committees pursuant to Section I, Article IV of the Amended Bylaws: Budget Committee, Development Committee, Audit Committee, and Investment Committee. The roles and duties for each of these Committees are set forth in *Exhibit 14*.

2. *Budgets and Sources of Income*

The Foundation has a detailed and specific operating and budget structure. The Foundation has four basic budgets, the Endowed Budget<sup>46</sup>, the Special Purpose Gifts Budget, the Operating (unrestricted) Budget, and the Dean’s Budget. All budgets are prepared by the staff working with the Dean of the Law School and are reviewed by the Foundation’s Budget

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<sup>39</sup> Attached hereto as *Exhibits 12 and 13, respectively*.

<sup>40</sup> *See id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *See Exhibit 13, attached hereto.*

<sup>45</sup> *Id.*

<sup>46</sup> Please refer to Section II.B.3 below for a detailed discussion concerning Foundation Endowments.

Committee pursuant to the policies set forth in the Foundation Approval Manual.<sup>47</sup> The Budget Committee then presents the budgets to the Foundation’s Board of Trustees for approval.<sup>48</sup>

The Special Purpose Gifts Budget is limited to funds from gifts for which the donors have written or explicit oral instructions regarding the use of those funds.<sup>49</sup> A report containing non-endowed special purpose gifts is presented to and reviewed by the Foundation’s Board of Trustees at each Board meeting.<sup>50</sup> The report lists the special purpose gifts (including anticipated special purpose gifts), the balance shown at the last meeting, the expenditures since the last report, and the remaining balance which becomes the final budget unless the Foundation’s Board approves a lesser amount.<sup>51</sup>

The policy of the Foundation’s Board of Trustees dictates that a small percent of the endowments is collected each year as a management fee.<sup>52</sup> The amount is determined each year by estimating the cost of servicing the endowments.<sup>53</sup> These funds are unrestricted and along with unrestricted gifts make up the funds for the Operating Budget and the Dean’s Budget. The Operating Budget covers expenses for operating the Foundation and certain other Law School expenses.

After the Operating Budget is prepared, a significant amount of unrestricted funds received during the fiscal year typically remains. Traditionally, a portion of these funds is made available for the Dean’s Budget, and another portion is set aside as unrestricted reserves. The Dean’s Budget covers special projects or activities of the Law School that the Dean identifies as deserving.

### 3. *Foundation Endowments*

An endowment is a permanent, substantial gift to the Law School. Funds generated from investment of the endowment are used for the purpose designated by the donor (many times Trustees themselves), such as financial aid, merit awards for students, supplemental salary support for faculty, and research. Endowments can be established for any lawful purpose for the benefit of the Law School. However, for endowments held by U. T. Austin, U. T. Austin must approve the purpose and form of the endowment, and for endowments held by the Foundation, the Foundation must approve the purpose and form of the endowment.<sup>54</sup> Gifts or bequests from any such external organization must be accepted and approved under gift acceptance policies.”<sup>55</sup>

Funds donated for an endowment are permanently restricted by donor intent as expressed in written agreements. That is, those funds are the corpus of the endowment and can never be

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<sup>47</sup> Attached hereto as *Exhibit 15*.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> See *Exhibit 16*, attached hereto.

<sup>53</sup> *Id.*

<sup>54</sup> See, U. T. System Regents’ *Rules and Regulations*, Rule 60305, External Nonprofit Corporations, which provides that foundations “are administered by boards of directors independent from the control and supervision of the Board of Regents.”

<sup>55</sup> See, also, U. T. System Administration Policy UTS138, Gift Acceptance Procedures.



spent. Under accounting rules, only donors can add to the permanently restricted funds. However, the Foundation could, if it chose to do so, set aside income from the endowment or other funds into a special fund and treat the special fund as if it were a part of the corpus. In turn, the Foundation could at any time revoke such action and spend the special fund.

Historically, only income (rentals, royalties, dividends, etc.) could be spent from an endowment. However, during the 1990s, when there were large increases in the market value of endowments, the Texas legislature enacted a statute<sup>56</sup> that authorized educational institutions and foundations created to support those institutions to spend the appreciated value of endowments if the endowment agreement did not prohibit such action. The statute limited such expenditures to the market value in excess of the original gift. As market values dropped, the market value of some endowments was less than the original gift. In those cases, the income (rentals, royalties, dividends, etc.) could be spent, but of course, there was not any appreciation available to spend and funds available to the Foundation for expenditure therefore declined.

A complete accounting of endowment funds, including the investment income, is provided at the Board of Trustees meetings. The UT System Board of Regents has established the types of endowments and minimum funding levels UT components may accept. These criteria ensure a broad and comprehensive private support base. A list of various endowments which have been established since the creation of the Foundation, which are established pursuant to the Regents' *Rules and Regulations*, can be found in *Exhibit 17*.

As of August 31, 2011, the Foundation's endowments comprised approximately 375 individual funds.<sup>57</sup> The total endowment for the Foundation is currently approximately \$111,000,000.

#### 4. *Other Forms of Gifts*

Other than endowments, gifts are divided into two categories: temporarily restricted and unrestricted. Temporarily restricted gifts are special purpose gifts that are not endowed. That is, the donor specifies the purpose for which the gift is to be spent and the entire gift is spent for that purpose. The gifts are usually intended to be spent in the fiscal year in which the gift is made or soon thereafter. Lists are provided to the Foundation's Board of Trustees at each Board meeting and the Board approves the expenditure. Unrestricted funds of the Foundation are divided into three different accounts: Emergency Reserves, Available Reserves, and Current Funds.<sup>58</sup> Emergency Reserves are required to be set aside for nonrecurring unusual needs of the Foundation and are not available for disbursement without a specific finding by the Board that an unusual need does exist.<sup>59</sup> Available Reserves are available to be spent in accordance with the normal budgeting process.<sup>60</sup> Current Funds are received or anticipated during the fiscal year.

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<sup>56</sup> Texas Property Code, Sec. 163.005.

<sup>57</sup> See *Exhibit 18*, attached hereto.

<sup>58</sup> See *Exhibit 19*, attached hereto.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

These funds include any unspent funds from the prior year's budget and any over realized income from the prior year's budget.<sup>61</sup>

The Annual Fund is an example of Current Funds.<sup>62</sup> The Annual Fund is the name historically used to refer to monies raised each year from certain programs. Development programs that fall under the Annual Fund include the following: Keeton Fellows, Charles Alan Wright Society, Sunflower Society, Dean's Roundtable, 100% Giving Program, Commemorative Bricks, the Phonathon, and Dean's Mailings. For additional information regarding each of these programs, see *Exhibit 20*.

#### 5. *Investments and Expenditures*

Historically, the Foundation employed money managers and financial advisors, but provided some general direction on the ratio of stocks to fixed income and other parameters. In recent years, the Foundation has also held small investments in specialized funds. In 2006, the Foundation Board of Trustees signed a contract with UTIMCO under which UTIMCO acts as the Foundation's money manager.<sup>63</sup> Pursuant to U. T. System policy and mandated structure for UTIMCO's investment management of funds under contract with foundations that wholly support U. T. System institutions, the Foundation is limited in its ability to instruct UTIMCO on how to invest its money, but the Foundation retains control of its payout policy. Thus, in the case of endowments held by the Foundation, its Board has final control. Whereas, with the JCT Foundation, the Foundation advises the Dean of the Law School on expenditures, but the Dean is not required to accept that advice. The Foundation can also cancel the arrangement with UTIMCO at any time and take back its funds. A history of the management of the Foundation funds is described in detail in *Exhibit 22*.

#### 6. *Financial Statements and Audits*

The Foundation's outside Auditors are Bowman, Dunagan, and Jack, a small accounting firm located in Austin, Texas. The Audit Committee recommended, and the Law School Board of Trustees approved, the employment of that firm to replace Arthur Andersen after Andersen's demise.

The Foundation's fiscal year begins September 1. The audit and advisory letter prepared by the auditors is distributed to the Foundation Board at each November Board meeting. The staff prepares a 6-month unaudited statement for distribution at the spring Board meeting. The most recent Foundation Financial Statements and Independent Auditors' Report is attached as *Exhibit 18*. Kimberly Biar oversees and manages all of the Foundation's financial and audit activities and is highly engaged in the financial management of Foundation resources.

Based on all of the above-described budgetary and operating procedures, evidence of Trustee oversight at regular meetings, and the work of the Foundation's outside auditors and Kimberly Biar, it appears the Foundation's finances, budget, and investments are well-monitored and maintained.

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<sup>61</sup> *Id.*

<sup>62</sup> See *Exhibit 20*, attached hereto.

<sup>63</sup> Attached hereto as *Exhibit 21*.

### C. The University of Texas Law School Foundation as an Independent Legal Entity

This section analyzes the legal relationship between the Foundation, U. T. Austin, and the Law School. The determination regarding whether the Foundation is an independent legal entity or a part of the Law School can have various legal consequences for the Foundation. Although numerous different courts nationwide have analyzed this issue, the final rulings from the courts are conflicting. One reason for the conflicting court decisions is that the courts' opinions hinge not only on the facts in each case, but also on the applicable state law at issue. For example, how each particular state law defines "public agency" or "public body" is crucial to the analysis.

For the reasons set forth below, it is reasonable to conclude that the Foundation is an independent legal entity, although this report includes certain recommendations that should be followed to make it even more clearly independent.

#### 1. *Legal Independence Factors, Laws, and Legal Implications*

The manner in which a university and its supporting foundation's relationships are defined in the agreement between the entities and the measure of control that is attributed to each entity are very important to the analysis concerning whether a foundation is an independent legal entity.<sup>64</sup> The key issues or factors that courts typically consider when assessing a foundation's independence are as follows: (1) whether the foundation has an independent board of directors; (2) whether the foundation receives public funds; (3) whether the university or the foundation pays for the foundation's office space and employees; and (4) how the language in the agreement between the university and the foundation delineates the relationship between the two, including with regard to oversight or control of the university's and foundation's separate expenditures.<sup>65</sup>

There are several potential legal repercussions that follow from the determination of whether or not the Foundation is an independent legal entity. For example, if the Foundation is deemed to be part of the Law School, the auditing arm of the State government will be entitled to audit the Foundation's records. The Foundation, and similar entities that support state agencies, might in certain circumstances and under particular facts be subject to the Texas Public Information Act ("TPIA")<sup>66</sup>, and in some instances might even be required to comply with Open Meeting Act requirements.

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<sup>64</sup> Rebecca Cady, *Public University and Affiliated Foundation Relationships: Balancing Control and Autonomy*, Education Law and Policy Forum, Volume 1, The University of Georgia Institute of Higher Education (Fall 2005).

<sup>65</sup> Thomas Arden Roha, *State University-Related Foundations and the Issues of Independence*, Association of Governing Boards of Universities and Colleges: Occasional Paper No. 39 (2000); *see also* Salin G. Geevarghese, *Looking Behind the Foundation Veil: University Foundations and Open Records*, 25 Journal of Law & Education 219 (1996).

<sup>66</sup> In the past, on at least two occasions, the Foundation has asserted it is not subject to the Texas Public Information Act, and the Attorney General has agreed under the then-applicable facts as most recently evidenced on March 26, 2012. *See* Tex. Att'y Gen. Open Records Decision No. OR2012-04428, dated March 26, 2012. As a private entity, the Foundation is not generally subject to the TPIA. However, Section 552.003 of the TPIA defines a "governmental body" to include "the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds." Therefore, under Section 552.003, information that is produced, collected, or maintained by the Foundation with Law School resources—or by public employees—could be public information.

## 2. *Case Law Concerning Relationship between Foundations and Universities*

All of the cases discussed below involve non-profit foundations whose primary purpose is to support their universities. The issue of foundation independence is raised most frequently in case law involving media requests for documents. As a result, all of the relevant cases discussed below also involve requests for the disclosure of documents and information pursuant to a public or open records provision. The specific language in each state's public or open records law is a primary factor in the courts' decisions. Nonetheless, each court addressed factors important in assessing the independence of the foundations.

### a. Foundation Board Independence

Whether the foundation's board is sufficiently independent from the university's board is a primary factor that courts assess in determining whether the foundation itself is an independent legal entity. One court found that the Kentucky State University Foundation was not independent from Kentucky State University because the foundation's board was required by its by-laws to be composed of all the same members as the board of the university.<sup>67</sup> In cases involving only partially overlapping boards, the courts have split on the issue of independence. The court considering the independence of the Iowa State University Foundation ruled that the foundation was not independent, in part, because its board included the President of Iowa State University ("ISU") and two other members affiliated with ISU and its board.<sup>68</sup> The court assessing the Indiana University Foundation's independence reached the opposite conclusion, ruling that the foundation was independent despite the fact that the board of the foundation and Indiana University had overlapping members.<sup>69</sup>

### b. Receipt of Public Funds

Courts also consider the manner and degree to which foundations receive public funds in assessing a foundation's independence. In one case, a court found that the West Virginia University Foundation was independent, in part, because all of the foundation's funding came from private sources.<sup>70</sup> Courts have not, however, required foundations, to be entirely supported with private funds to satisfy this criterion. A court considering the independence of the Nicholls College Foundation found it to be independent even though it had received some public funds, because the limited public funds that were received were maintained separately from the balance of the foundation's other funds.<sup>71</sup> Similarly, the court assessing the Indiana University Foundation deemed it independent even though it had received a fee from Indiana University for managing the university's endowment fund.<sup>72</sup> The court reasoned that this fee was a "fee for services rendered" and not a subsidy from a public agency.<sup>73</sup>

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<sup>67</sup> *Frankfort Publishing Co. v. Kentucky State Univ. Found.*, 834 S.W.2d 681, 683 (Ky. 1992) (Lambert, J., concurring).

<sup>68</sup> *Gannon v. Board of Regents*, 692 N.W.2d 31, 35, 195 Ed. Law Rep. 305 (Iowa Feb 04, 2005).

<sup>69</sup> *State Board of Accounts v. Indiana University Foundation*, 647 N.E.2d 342, 348-49 (Indiana 1995).

<sup>70</sup> *4-H Rd. Community Ass'n v. West Virginia Univ. Found.*, 388 S.E.2d 308, 310-12 (W. Va. 1989).

<sup>71</sup> *State of Louisiana, ex. Rel. Guste v. Nicholls. College Found.*, 592 So.2d 419, 420-21 (La. Ct. App. 1 Cir. 1991).

<sup>72</sup> *State Board of Account*, 647 N.E.2d at 354-55.

<sup>73</sup> *State Board of Accounts*, 647 N.E.2d at 353-354.

On the other hand, a court ruled that the University of Louisville Foundation was not an independent legal entity, in part, because it received significant funds from the State through a statutory program, which it then passed on to the university.<sup>74</sup>

c. Use of Public Operational Support

Courts also consider, in assessing a foundation's independence, whether the foundation uses public operational support, such as public university office space and personnel. The court that found the West Virginia Foundation to be independent noted in its ruling that there was no evidence that the foundation used public property or employees in its operations.<sup>75</sup> On the other hand, in the case involving the Kentucky State University Foundation, the court based its ruling that the foundation was not independent, in part, on the fact that the foundation maintained its offices on the university campus and used the services of university personnel at no cost to the foundation.<sup>76</sup> In another case, a court similarly found that the University of Toledo Foundation was not independent, in part, because the university provided the foundation with free office space and paid the wages and benefits of the foundation's employees.<sup>77</sup>

d. Terms of the Agreement Between the University and Foundation

The terms of the agreement between a university and a foundation are also a key factor in assessing the independence of the foundation. The courts have consistently denied independent legal entity status to foundations that are structured in a manner that requires them to perform the public functions of a public university, such as fundraising and management of finances. For example, in evaluating the Iowa State University Foundation, the court found that the foundation was not independent, in part, based on its conclusion that the university "contracted away" its ability to raise money and manage its finances to the foundation, which the court ruled were public functions.<sup>78</sup> Similarly, another court held that the Toledo Foundation was not independent because it performed public functions by serving as a major gift-receiving and soliciting entity for a public university.<sup>79</sup> In so finding, the court stated that "when a private entity performs the duties of a public office, the public office is able to oversee the private entity[.]"<sup>80</sup>

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<sup>74</sup> *University of Louisville Foundation, Inc. v. Cape Publications, Inc.*, 2003 WL 22748265, at \*1, 6-7 (Ky. App. Nov. 21, 2003).

<sup>75</sup> *4-H Rd.*, 388 S.E.2d at 310-12.

<sup>76</sup> *Frankfort Publishing Co. v. Kentucky State Univ. Found.*, 834 S.W.2d 681, 683 (Ky. 1992) (Lambert, J., concurring). Justice Lambert went on to state, "While these facts are sufficient to render it an agency of the university, not every university foundation should be so regarded." *Id.*

<sup>77</sup> *Toledo Blade Co. v. University of Toledo Foundation*, 602 N.E.2d 1159, 1162 (Ohio 1992) (holding the University of Toledo Foundation was a public entity where it was supported by public funds for one year before it was entirely supported by private donations.)

<sup>78</sup> *Id.* at 42.

<sup>79</sup> *Toledo Blade Co.*, 602 N.E.2d at 1162-63; *see also State Board of Accounts*, 647 N.E.2d at 353-354 (considering the fact that Indiana University did not have a separate fundraising arm beyond the IU Foundation, but ultimately concluding that the foundation was independent).

<sup>80</sup> *Id.* at 1163.

3. *Analysis of The University of Texas Law School Foundation's Structure and Relationship with The University of Texas at Austin School of Law*

a. The Foundation Has an Independent Board

The Foundation is administered by a Board of Directors independent from the control and supervision of the U. T. System Board of Regents.<sup>81</sup> The Foundation is not and has never been controlled by U. T. Austin faculty or administration, which demonstrates independence. The governing body of the Foundation, the Board of Trustees, does not and has never had any members that were employed by U. T. Austin while serving the Foundation. Currently, Carla Cooper, the Assistant Dean for Development and Alumni Relations, is also the Secretary of the Foundation.<sup>82</sup> However, the Secretary of the Foundation is neither a Trustee nor a member of the Executive Committee of the Foundation.

b. The Foundation Does Not Receive Public Funds

The Foundation does not currently receive public funds or tax support, which is another factor supporting the conclusion that it is independent. The Foundation is entirely funded by private donations. Although, in prior years (1982, 1983, 1985, 1986, and 1995), there existed an arrangement in which the Board of Regents match gifts to the Foundation, this practice is no longer in existence. In any event, this arrangement was permissible because the matching funds were never given to or transferred to the Foundation but instead the Law School received the matching funds directly.<sup>83</sup> As a result of this prior practice, there are some endowments in which both U. T. Austin and the Foundation hold separate funds.

c. The Foundation Does Not Receive Public Operational Support

(i) The Foundation Pays for Its Use of Law School Office Space

The Foundation pays for its use of Law School office space, which is an additional factor supporting the Foundation's independence.<sup>84</sup> Under the MOU, U. T. Austin agrees to furnish the

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<sup>81</sup> The University of Texas System Regents' *Rules and Regulations*, Rule 60305.

<sup>82</sup> Even though the Secretary of the Foundation shall perform all of his/her duties "subject to the control of the Board of Trustees", it would still be in the Foundation's best interest if it no longer selects U. T. Austin employees to serve as officers of the Foundation. This would help maintain the Foundation's status as a separate entity from U. T. Austin.

<sup>83</sup> Alan Marks' conference with Kimberly Biar on February 4, 2012.

<sup>84</sup> Pursuant to Texas Government Code § 2255.001, The University of Texas System Regents' *Rules and Regulations* require that "[t]he use of equipment, facilities, or services of employees of the U. T. System or any of the institutions by an external nonprofit corporation or external entity that has as its primary objective the provision of funds or services for the furtherance of the purposes and duties of the U. T. System shall be permitted only in accordance with a negotiated agreement that provides for the payment of adequate compensation for such equipment, facilities or services." The University of Texas System Regents' *Rules and Regulations*, Rule 60306.

Foundation with office space and provide certain equipment.<sup>85</sup> The Foundation in turn pays a fee to U. T. Austin to reimburse it for the cost of its use of equipment and facilities.<sup>86</sup>

(ii) The Foundation Pays for Its Use of Law School Employees

The Foundation pays for its use of Law School employees, which also supports the conclusion that the Foundation is independent. The MOU provides that U. T. Austin agrees to provide U. T. Austin employees to operate the Foundation.<sup>87</sup> In return, the Foundation reimburses U. T. Austin a reasonable amount each year to cover the cost of the employees.<sup>88</sup> As appropriate, the Foundation reimburses U. T. Austin solely for the incremental cost of employees performing work for the Foundation. One Law School employee,<sup>89</sup> Glen Woelfel, who is in the Financial Affairs Department, devotes 100 percent of his time to the Foundation.<sup>90</sup>

d. The MOU Language Supports the Independence of the Foundation

The MOU language generally supports the conclusion that the Foundation is an independent legal entity that is separate from U. T. Austin. The MOU, executed on April 30, 1982, was structured with the goal in mind of meeting the three-part test enumerated by the Attorney General. The MOU restates and elaborates the Foundation's purpose, to support legal education by soliciting and expending donations for that purpose, and details numerous specific purposes directed at serving the Law School's educational enterprise: namely, the provision of

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<sup>85</sup> *Id.* The MOU does not indicate that the Foundation will reimburse or pay U. T. Austin a reasonable, specific amount for the office space or equipment. Although Texas Attorney General Opinion MW 373 provides that the joint purpose of the Law School and Foundation may possibly be accomplished in a more cost effective way if U. T. Austin provides the Foundation a reasonable amount of resources, such as equipment and office space, there are concerns that the Foundation will likely be considered to be a beneficiary of public resources by occupying the office space provided by the Law School it supports.

<sup>86</sup> Section 552.003 of the Texas Open Records Act defines "governmental body" to include the portion of every corporation which is supported in whole or in part by public funds. Thus, based on the case law discussed above, the Texas Open Records Act and The University of Texas System Regents' *Rules and Regulations*, it would be prudent for the Foundation and U. T. Austin to agree on a specific amount to be paid to U. T. Austin for the office space and equipment used by the Foundation. The proposed First Amended MOU addresses this issue and, as discussed in Section IV, the Long Committee Report recommends that the Foundation explore renting its own office space and moving its operations out of the Law School.

<sup>87</sup> See *Exhibit 6*, attached hereto - Op. Tex. Att'y Gen. No. MW-373 (1981).

<sup>88</sup> See *Exhibit 8*, attached hereto - Supplemental Agreements between The University of Texas Law School Foundation and the University of Texas for FY2011 and FY2012. The agreement does not include a definition of a reasonable sum, nor is there an identification of the factors to be considered in determining what is reasonable.

<sup>89</sup> See *Exhibit 9*, attached hereto - Foundation and Alumni Relations Staff Introduction and Attached Organizational Charts.

<sup>90</sup> A court may question why Mr. Woelfel is not a full time employee of the Foundation. In addition, as stated above another Law School employee, Carla Cooper, the Assistant Dean for Development and Alumni Relations, is also the Secretary of the Foundation. Dean Cooper devotes time to the Foundation in both of her different capacities and should be compensated for both assuming the Foundation continues to keep a University employee as an officer of the Foundation. Thus, these issues, including the lack of specificity regarding the payment of employees who work a certain percentage of time for the Foundation, should be addressed by the Foundation and the Law School, and the MOU revised accordingly.

administrative services, financial aid for students, and funds and services directed at faculty recruitment.<sup>91</sup>

(i) The Foundation Does Not Manage the Law School's Expenditures

The Foundation does not manage the Law School's expenditures, which is a factor that supports its independence. As stated above, the Board of Trustees of the Foundation must first approve the four budgets presented to them by the Foundation Budget Committee. The Foundation Board of Trustees then sets a payout policy which is the rate at which the endowment will be used in any given year. The Board of Trustees then provides the Foundation Endowment Budget to UTIMCO and requests that UTIMCO transfer the budgeted amount of funds to the Foundation. The Foundation then makes payments to the Law School in accordance with the Foundation Endowment Budget.

The disbursement of the funds by the Foundation to the Law School is made in accordance with to University policies and procedures, and the payments that are made to supplement professors' salaries are then paid through the U. T. Austin payroll department. This process is acceptable, does not raise any legal issues for the Foundation or U. T. Austin, and it should be the model for faculty compensation support by the Foundation in the future, as revised in other respects pursuant to the recommendations contained herein. That is, all Foundation monies should be delivered as gifts to the Law School and the Law School should then pay its faculty through its normal and customary payroll procedures with no money flow or contractual relationship directly between the Foundation and U. T. Austin employees.

The process whereby the Foundation entered into promissory notes and deferred compensation agreements with Law School employees is the subject of more detailed analysis in Sections III.B and III.C of this report.

(ii) Law School Employees Have Some Fiscal Authority Related to the Foundation

Certain employees of the Law School, such as the Dean, have fiscal responsibilities related to the Foundation, such as involvement in the preparation of budgets, the authority to approve invoices on behalf of the Foundation, and the authority to sign checks on behalf of the Foundation. This is a factor that cuts against the conclusion that the Foundation is an independent legal entity, but not fatally.

The Foundation's four basic budgets (the Endowed Budget, the Special Purpose Gifts Budget, the Operating (unrestricted) Budget, and the Dean's Budget) are prepared by the Assistant Dean for Financial Affairs and the Dean of the Law School. The budgets are then reviewed by the Foundation's Budget Committee pursuant to the policies set forth in the

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<sup>91</sup> However, while the terms of the MOU speak to the independent nature of the Foundation, a more comprehensive MOU is necessary to put the Foundation in an even stronger position.



Foundation Approval Manual.<sup>92</sup> The Foundation's Budget Committee presents the budgets to the Foundation's Board of Trustees for approval.<sup>93</sup>

In addition, three employees of the Law School, including the Assistant Dean for Financial Affairs, the Assistant Dean for Development and Alumni Relations, and the Dean of the Law School, have the authority to approve invoices and sign checks on behalf of the Foundation.<sup>94</sup> For example, the Dean of the Law School may authorize and sign invoices for \$5,000 or more if he obtains the additional signature of either Assistant Dean for Financial Affairs or the Assistant Dean for Development and Alumni Relations.<sup>95</sup> There are other actions that the Dean of the Law School, the Assistant Dean for Financial Affairs, and the Assistant Dean for Development and Alumni Relations may take on behalf of the Foundation depending on certain circumstances set forth in the Approval Manual.<sup>96</sup> These actions include: approval of petty cash advances for expenses; approval of reimbursement for expenses including accounting for advances and personal credit cards; approval of Foundation credit card charges; and reimbursement of expenses from funds transferred to the Law School.<sup>97</sup>

All three of the individuals identified above are authorized to enter into contracts under \$15,000 on behalf of the Foundation.<sup>98</sup> The Dean of the Law School may also enter into contracts up to \$99,999 on behalf of the Foundation.<sup>99</sup>

e. Summary of Analysis

In sum, in the case of the Foundation, a fair application of the balancing test indicates that the Foundation is an independent legal entity that is separate from the Law School, as it has always intended to be:

- (1) The Foundation has an independent board.
- (2) The Foundation does not receive public support; it is entirely funded by private donations.
- (3) The Foundation uses Law School office space and employees but, it reimburses the Law School for the costs.
- (4) The MOU supports the independent nature of the foundation. The Foundation does not manage the Law School's expenditures even though some Law School personnel have fiscal authority related to the Foundation.

The Foundation generally satisfies all four criteria for independence. If the recommendations in the latter portion of this report and the Long Committee Report<sup>100</sup> are

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<sup>92</sup> See Exhibit 14, attached hereto - The University of Texas Law School Foundation Approval Manual.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

followed, the Foundation will be in an even stronger position to support its continued status of independence.

### **III. THE UNIVERSITY OF TEXAS LAW SCHOOL – FACULTY COMPENSATION AND INTERACTION WITH THE UNIVERSITY OF TEXAS AT AUSTIN CENTRAL ADMINISTRATION**

#### **A. The Drive for World Class Faculty**

As noted earlier in this report, Dean Keeton emphasized the importance of recruiting and retaining world-class faculty as a necessary precedent to the creation and maintenance of a top tier law school. Based on that goal, the Foundation was formed.<sup>101</sup> From Dean Keeton’s time in the 1950s through a succession of deans up to and including Dean Sager, the job of recruiting and retaining outstanding faculty has remained at the forefront of the mission. As Dean Sager stated in his undated letter to the faculty upon his resignation as Dean, “For me, the highest single priority of the dean of UT Law was that of building and maintaining our faculty.”<sup>102</sup>

The link between quality of faculty and quality and reputation of a law school is well understood and accepted. All major law school ranking reports, including U.S. News & World Report and the Gourman Report, recognize quality of faculty as a key component of their rankings and, accordingly, weight it heavily. Students and legal employers look to these rankings when choosing a law school to attend and from which to hire, respectively. Throughout the last 20+ years, the Law School has hovered around No. 15, placing in the upper tier of U.S. law schools with immediate peers such as Northwestern, Duke, Georgetown, Cornell, UCLA, Vanderbilt, and USC.<sup>103</sup> Notably, most of the Law School’s direct competitors are private schools.

As Dean Sager began his deanship, the Law School was, for a variety of reasons, experiencing the rapid departure of faculty to law schools ranked in the Top 20 nationally. At the same time President Powers left the Law School faculty to assume the presidency of U. T. Austin, Doug Laycock left for Michigan where his wife was named Provost, Mark Gegen left for Berkeley; Brian Leiter left for Chicago; Ernie Young went to Duke; and a trio of professors set up shop at Columbia – Sarah Cleveland, Philip Bobbitt, and Ronald Mann. Other top law schools were circling the Law School’s remaining faculty.

The wave of departures at the onset of Dean Sager’s tenure as dean sparked a hiring frenzy resulting in 16 new tenure and tenure-track faculty being hired between 2006 and 2011. In making these hires, Dean Sager states that he “tried to meet the market.” In doing so, Dean Sager accurately notes that forgivable personal loans “were in existence” at the Law School<sup>104</sup>

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<sup>100</sup> The Long Committee Report discussed below in Section IV is the report of a special committee of the Foundation headed by Trustee Joe Long and formed to address any concerns arising from the disclosure of the \$500,000 forgivable personal loan to Dean Sager.

<sup>101</sup> Indeed, the forgivable personal loans discussed in this report were, as directed by the Dean of the Law School, structured as loans directly from the Foundation to faculty members. The structure of the forgivable personal loans and the approval process is discussed in detail in Section III.B below.

<sup>102</sup> Attached hereto as *Exhibit 23*.

<sup>103</sup> See, e.g., <http://www.top-law-schools.com/rankings.html>.

<sup>104</sup> Interview of Dean Lawrence Sager, U. T. Austin School of Law, March 7, 2012.

and were “common to the compensation packages offered by other schools to the candidates that we have undertaken to recruit.”<sup>105</sup> In addition, competitive law schools were also able to offer, among other things, higher annual salaries, housing assistance, college tuition benefits – all items of compensation unavailable at the Law School.<sup>106</sup> Thus, the forgivable personal loan became the primary and preferred method of “meeting the market.”

Without speaking to issues of the use of forgivable personal loans by a public university for the moment, the vehicle of a forgivable personal loan is a highly effective and sensible recruiting and retention tool. It quite simply combines the best of both worlds – (1) it provides an upfront slug of cash like a signing bonus without the immediate tax consequence to the recipient; and (2) it provides the same retention (i.e., golden handcuffs) of deferred compensation. It is, therefore, not surprising that forgivable personal loans became a favored tool of the Law School in its drive to recruit and keep world class faculty.

B. Forgivable Personal Loans from The University of Texas Law School Foundation to Faculty – The Program and Structure

Excluding interims, the deanship at the Law School has been held as follows:

Mark Yudof	1984 – 1994 <sup>107</sup>
Mike Sharlot	1995 – 2000
William C. Powers, Jr.	2000 - 2006 <sup>108</sup>
Larry Sager	2006 – 2011

During Dean Yudof’s tenure, no forgivable personal loans<sup>109</sup> were granted by the Foundation to Law School faculty.<sup>110</sup> Mr. Yudof believes that the forgivable personal loan program as it currently exists began under President Powers’ deanship.<sup>111</sup> This belief would appear to be correct because: (1) of the 24 existing forgivable personal loans to Law School faculty members, the first originates on December 7, 2003 during the middle of President Powers’ deanship<sup>112</sup>; and (2) it is not contradicted by President Powers.<sup>113</sup> Mr. Yudof’s memory is that the Foundation provided salary supplements to faculty during his deanship.<sup>114</sup> Mr. Yudof recalls that the salary supplements were given as a gift to the Law School and that “he used the Provost’s office as a point of contact with the main campus for approval of the salary

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<sup>105</sup> Undated letter from Dean Lawrence Sager to the Law School faculty at the time of his resignation.

<sup>106</sup> *Id.*

<sup>107</sup> Mark Yudof was also Provost at U. T. Austin from 1994 – 1997 and Chancellor of U. T. System from 2002 – 2008.

<sup>108</sup> William C. Powers, Jr. left the deanship to assume the presidency of U. T. Austin where he presides today.

<sup>109</sup> The predecessor to the forgivable personal loan program was a second mortgage loan program for faculty. This program was in existence during Dean Yudof’s tenure, but it fell into disuse as low mortgage rates rendered its financial benefits to faculty less meaningful.

<sup>110</sup> Interview of Mark Yudof, former dean U. T. Austin School of Law, May 24, 2012.

<sup>111</sup> *Id.*

<sup>112</sup> See Faculty Loan Summary, attached hereto as *Exhibit 24*.

<sup>113</sup> Interview of William Powers, February 13, 2012.

<sup>114</sup> Interview of Mark Yudof, May 24, 2012.

supplements.”<sup>115</sup> He recalls that the same procedure was followed when he was Provost in the late 1990s.<sup>116</sup> *Id.*

When he was dean of the Law School, President Powers received a deferred compensation agreement from the Foundation, dated May 16, 2001.<sup>117</sup> No forgivable personal loan accompanied this deferred compensation agreement. The arrangement was approved by then-President Larry Faulkner and then Provost Sheldon Ekland-Olson.<sup>118</sup> It was also sent to U. T. System Executive Vice Chancellor for Academic Affairs.<sup>119</sup> On February 9, 2006, the Board of Regents approved as part of President Powers’ employment agreement a one-time lump sum payment from the Foundation to President Powers to satisfy the Foundation’s deferred compensation commitment for Fiscal Year 2006.<sup>120</sup>

Beginning with a \$100,000 forgivable personal loan to a Law School faculty member in December 2003, the Foundation entered into promissory notes and deferred compensation agreements with Law School faculty members.<sup>121</sup> Briefly, a promissory note is a written, signed, unconditional promise to pay a certain amount of money on demand at a specified time and is used as a means to borrow funds or take out a loan. A deferred compensation agreement is a contractual agreement in which an employee agrees to be paid in a future year for services rendered.<sup>122</sup>

The Foundation executed unsecured promissory notes with professors under which the Foundation loaned to the professor a specific amount of money at a fixed rate of interest for a term certain. Principal and interest are payable annually. Simultaneously, the Foundation executed a deferred compensation agreement with the same professor that recited that the Foundation wishes to encourage the professor, through the use of deferred compensation, to remain at the Law School and to devote the professor’s best efforts to teaching, writing, research, and enhancement of the Law School’s reputation and prestige.

The value of the deferred compensation agreement is the same amount as the promissory note and it accrues interest at the same rate as the promissory note. For example, for a five-year loan, the professor receives one-fifth of the loan amount plus interest from the deferred compensation agreement on the day the annual payment is due under the promissory note so long as the professor remains employed by the Law School and retains status as a professor. If the

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<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> Attached hereto as *Exhibit 25*.

<sup>118</sup> Barry Burgdorf’s conversations with Patricia Ohlendorf.

<sup>119</sup> *Id.*

<sup>120</sup> Attached hereto as *Exhibit 26*.

<sup>121</sup> Attached hereto as *Exhibit 27*, Form of Promissory Note and Deferred Compensation Agreement.

<sup>122</sup> The law firm of Vinson & Elkins LLP did the legal work for the Foundation to structure the forgivable personal loan program as described. The author of this report was formerly a partner at Vinson & Elkins LLP (resigned partnership in February 2005 to take the job of Vice Chancellor and General Counsel of U. T. System). I receive no continuing financial benefit from my former partnership at Vinson & Elkins LLP. Moreover, the legal work Vinson & Elkins LLP did in its employee benefits section for the Foundation related to the forgivable personal loan program was not reviewed as a part of this report and, of course, I played no part in the work at the time it was done and was not even aware it was done. Vinson & Elkins LLP, like other major law firms in Texas, is an active supporter and friend to the Foundation and U. T. Austin generally.

professor's employment is terminated or the professor loses status as a professor, the deferred compensation agreement terminates automatically, any payment due therefrom is prorated through the full month preceding termination or loss of status as a professor, and any payments for future years cease. Thus, taken together, the promissory note and deferred compensation agreement operate as a forgivable personal loan by the Foundation to the extent that the professor remains employed by the Law School and retains status as a professor.

Both the promissory note and deferred compensation agreement are by and between the faculty member and the Foundation albeit the Foundation is not the faculty member's employer. The Foundation annually issues the faculty member receiving a forgivable personal loan an IRS Form 1099. Form 1099 is used to report a variety of unique income payments to the IRS, including dividends, interest, and as is probably applicable here – cancellation of debt.<sup>123</sup>

### C. Forgivable Personal Loan to Dean Sager Specifically

The forgivable personal loan program began as a vehicle to recruit and retain faculty in late 2003 when President Powers was Dean, but he himself did not receive a forgivable personal loan. The program started slowly but expanded both in size of forgivable personal loans granted and the number of faculty receiving forgivable personal loans.<sup>124</sup> The expansion began under Dean Sager and, as discussed earlier, was his attempt to stabilize the Law School faculty after several notable departures. He succeeded in that, but the granting of forgivable personal loans to Law School faculty by an independent support foundation is not appropriate at a public university.

As was the case with the granting of all individual forgivable personal loans under Dean Sager's tenure, the idea of Dean Sager's \$500,000 forgivable personal loan was his. According to his normal practice, he approached then Foundation President Robert Grable and proposed that \$500,000 amount for himself. Mr. Grable recalls that Dean Sager proposed the \$500,000 forgivable personal loan at dinner one night.<sup>125</sup> Mr. Grable took it to the Executive Committee of the Foundation.<sup>126</sup>

As to knowledge within U. T. Austin, four relevant witnesses were interviewed. Dean Sager states that President Powers should have known but does not recall specifically telling President Powers himself.<sup>127</sup> He further states that he "is quite certain that Robert Grable consulted with Bill Powers."<sup>128</sup> However, Mr. Grable does not recall a specific conversation with President Powers, but, rather, always assumed Dean Sager handled whatever internal communications that needed to take place.<sup>129</sup> President Powers stated that he does not remember

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<sup>123</sup> All documentation necessary to effectuate the forgivable personal loan and accompanying deferred compensation arrangement was prepared and approved by the Foundation's outside counsel for employee benefits, Vinson & Elkins LLP.

<sup>124</sup> Currently, 24 Law School faculty have forgivable personal loans from the Foundation.

<sup>125</sup> Interview with Robert C. Grable, January 4, 2012.

<sup>126</sup> *Id.*

<sup>127</sup> Interview with former Dean Lawrence Sager, March 7, 2012.

<sup>128</sup> *Id.*

<sup>129</sup> Interview with Robert C. Grable, January 4, 2012.

either Mr. Grable or Dean Sager discussing the matter with him and that he was surprised when the news of the \$500,000 arrangement was publicly disclosed.<sup>130</sup>

U. T. Austin is required to annually report to U. T. System the Top 10 compensated employees on its campus.<sup>131</sup> In 2009, Dean Sager appeared on the list. The list was compiled by Mary Knight, Associate Vice President, U. T. Austin Budget Office. The process by which it is compiled is less than systematic. Ms. Knight simply calls around to the schools and colleges and inquires as to that department's top earners. When Dean Sager appeared on the list, his regular Law School salary was listed in one column and \$100,000 was listed in a separate column as deferred compensation. No mention is made of a forgivable personal loan. The \$100,000 listed as deferred compensation was that year's loan forgiveness. Thus, while President Powers may have had constructive notice of that amount of deferred compensation, the Top 10 report did not itself give him or his office any notice of the \$500,000 forgivable personal loan Dean Sager had obtained.

The final witness relevant to knowledge of Dean Sager's \$500,000 forgivable personal loan is Provost Steven Leslie. The Provost is the campus' chief academic officer and among his many duties is budget and compensation for faculty. Annually and regularly, the Provost meets with all of the deans and discusses and approves budgets and salary plans. According to Provost Leslie, "Nothing related to compensation should be invisible to the Provost's office."<sup>132</sup> Provost Leslie states that Dean Sager talked to him about a salary increase for himself, and Provost Leslie denied that request citing lean budget times.<sup>133</sup> Indeed, in 2009, the campus was under a direction from the President's office to hold the line on raises.

After being denied a salary increase by Provost Leslie, Dean Sager approached Robert Grable about his \$500,000 forgivable personal loan. Provost Leslie stated that he was completely blind to that process and that he was "stunned" when the news of Dean Sager's \$500,000 forgivable personal loan reached his office in late 2011.<sup>134</sup>

In sum and in contrast to the case when President Powers' own deferred compensation arrangement was executed, there was no approval up the chain for Dean Sager's \$500,000 forgivable personal loan. Obviously, this lack of transparency and accountability is unacceptable and, at a minimum, it creates an impression of self-dealing that cannot be condoned.

#### D. Relevant Law and Policies for the Forgivable Personal Loan Program

There are significant legal and policy impediments to the Law School or U. T. Austin granting a loan of any nature to its employees. State entities in Texas are constitutionally limited from extending credit to citizens or private entities and certainly it is without known precedent that a state university in Texas lends to its employees.<sup>135</sup> Thus, a forgivable personal loan given

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<sup>130</sup> Interview with President William C. Powers, Jr., February 13, 2102.

<sup>131</sup> Regents' *Rules and Regulations*, Rule 20501.

<sup>132</sup> Interview with Steven W. Leslie, Ph.D., May 23, 2012.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> Tex. Const. Art. III, §49 and §51. *See, also, Brazoria County v. Perry*, 537 S.W.2d 89 (1976); *State v. City of Austin*, 331 S.W.2d 737, 742 (Tex. 1960); *Barrington v. Cokinos*, 338 S.W.2d 133 (Tex. 1960); and *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 740 (Tex. 1995) (in context of a county).

directly from the Foundation prevents the Law School from running afoul of Texas law. However, this structure creates other issues to consider under Texas law.

### 1. *Texas Honorarium Law*

The Texas honorarium law prohibits a public servant from accepting an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant's official position or duties.<sup>136</sup> U. T. Austin's honorarium policy reiterates this prohibition.<sup>137</sup>

The first question is whether payments to the law professor as described above constitute "honoraria." Although the term "honorarium" may commonly be understood to be a payment for giving a speech, making an appearance, participating on a panel, or authoring an article, Texas law is much broader. The Texas Ethics Commission, which has express jurisdiction to interpret this law, has determined that compensation received for teaching at a state college or university is included in the term "honorarium."<sup>138</sup> The Ethics Commission has also determined that the prohibition encompasses either the payment of contractual consideration or payment in appreciation for services.<sup>139</sup> An honorarium given because of a public servant's expertise is not prohibited as long as the public servant's official status was not a deciding factor in the decision to request the public servant to perform the services at issue.<sup>140</sup>

Concerning a request for services, the Ethics Commission has stated that the prohibition applies regardless of whether the person offering the honorarium is also the person requesting the services.<sup>141</sup>

In the usual context, the law applies to the payment of honoraria by outside sources, and in fact, the Ethics Commission has stated that the purpose of the honorarium law was to prevent a public servant from reaping profit from outside sources for performing services in his official capacity.<sup>142</sup> Thus, for example, in the case of a wealthy individual independently offering to pay money to a professor in exchange for the professor's commitment to stay at the university and teach for a specified time, it would be easy to conclude that such a payment would be a prohibited honorarium.

Therefore, if a law professor accepts an honorarium from the Foundation, such as a forgivable personal loan with deferred compensation, in consideration for employment services at a public entity, there may be a violation of Texas honorarium law. In theory, the violation

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<sup>136</sup> See, §36.07, Penal Code.

<sup>137</sup> See, Section 4.A.4, U. T. Austin Handbook of Operating Procedures.

<sup>138</sup> Ethics Advisory Opinion Nos. 294 (1995), 148 (1993).

<sup>139</sup> Ethics Advisory Opinion No. 97 (1992).

<sup>140</sup> Ethics Advisory Opinion No. 305 (1996).

<sup>141</sup> Ethics Advisory Opinion No. 425 (2000) (considering whether a law firm could make a severance payment or payment for relocation services to a lawyer who it currently employed but who accepted an offer of future employment with a state agency, and holding that any such payment would constitute a prohibited honorarium if it were made in consideration of former law firm employee's performance of services as a state employee).

<sup>142</sup> Ethics Advisory Opinion No. 97 (1992).

would occur only if the Foundation is considered an unrelated third party that was acting without the acknowledgement and direction of the Law School.<sup>143</sup>

It is clear for the limited purpose of the forgivable personal loan program, the Foundation was acting as the agent of the Law School. Consistent with the records of the Foundation, whenever the Foundation granted a forgivable personal loan to a member of the Law School faculty, the process always started with a recommendation from the Dean.<sup>144</sup> The Dean working on a recruitment or retention would develop a proposal including amount and terms. The Dean would then arrange a meeting with the President of the Foundation. In every case reviewed, the Foundation approved the forgivable personal loan exactly as structured and proposed by the Dean. The offeree was then directed by the Dean to complete paperwork with the Foundation. In each case, both the Foundation and the new faculty member completed the transaction exactly as directed by the Dean including in the case of the forgivable personal loan to Dean Sager. The Foundation is not likely to be considered an unrelated third party in this circumstance.

## 2. *Regents' Rules and Regulations for Compensation from the Foundation*

The Regents' *Rules and Regulations* recognize that support organizations might provide compensation to the Chancellor and Presidents.<sup>145</sup> According to Rules 20202 and 20203, all elements of compensation for those officers are subject to approval of the Board of Regents.

It should be noted, however, that the Regents' *Rules and Regulations* prohibit institutional officers and employees from accepting remuneration from a support organization unless authorized by the Chancellor.<sup>146</sup>

## 3. *Flaws Within the Internal Process for the Forgivable Personal Loan Program*

Although the forgivable personal loan program as structured did not: (1) cause the Law School to run afoul of the constitutional prohibition on extending credit to employees; and (2) violate either the spirit or letter of the Texas honorarium law, it still suffers infirmities that make it inappropriate for a public university in Texas.

The Law School's internal process for approving forgivable personal loans to faculty members by the Foundation was flawed and resulted in a lack of transparency and accountability with regard to Law School faculty compensation. Too much power and discretion were vested in the Dean and there was no mechanism in place that required or ensured that the portion of a faculty member's compensation related to the forgivable personal loan and accompanying deferred compensation agreement was reported and included in a uniform record keeping system on faculty compensation. In other words, the salary paid by the Law School and the

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<sup>143</sup> This would be, however, inconsistent with the legislative intent of the honorarium law.

<sup>144</sup> Interview with former Foundation President Robert C. Grable, January 4, 2012; Interview with former Dean Lawrence Sager, March 7, 2012.

<sup>145</sup> See Regents' *Rules and Regulations*, Rule 20202, Sec. 4.

<sup>146</sup> Regents' *Rules and Regulations*, Rule 60306, Sec. 1. Section 2255.001, Government Code, requires state agencies to adopt rules defining the relationship between its employees and a private organization designed to further the purposes and duties of the agency, including rules relating to the monetary enrichment of an agency officer or employee by the donor.



supplemental compensation paid by the Foundation in form of forgivable personal loans were never married and thus total Law School faculty salaries were not accurately reported publicly or internally at U. T. Austin.

For the Foundation's part, the Foundation rightfully assumed that all processes and approvals internally necessary or advisable at U. T. Austin had occurred.<sup>147</sup> However, the heavy balance of the evidence indicates Dean Sager essentially acted alone and never consulted or sought input from U. T. Austin Central Administration and never reported this element of faculty compensation to anyone internally or externally.

There are several potentially problematic manifestations of the flawed program.

First, to the extent that the Foundation acts as agent for the Law School, it creates a significant factor that tilts against the Foundation's desire to be an independent legal entity that is separate from the Law School. There should be separation of duties and, as referenced earlier, substantial cross-delegations between the Law School and the Foundation should be avoided.

Second, the direct grant of a forgivable personal loan and deferred compensation to a state employee by an outside foundation, even under the direction of a law school, can create an appearance that those State employees are beholden to influences outside their employer.

Third, the tri-party arrangement can create and, in this case, did result in a lack of transparency related to public employee compensation when total compensation of state employees should be and is public information.<sup>148</sup>

Going forward, all Foundation support of faculty compensation should be in the form of gifts to the Law School and payments for salary supplements, not loans, should be channeled through the Law School's normal and customary payroll practices and procedures.

#### **IV. SUMMARY CONCLUSION AND RECOMMENDATIONS**

During the pendency of the review resulting in this report, Foundation President Jon Newton appointed the Long Committee. On May 11, 2012, the Long Committee issued its report to the Foundation's Board of Trustees. The principal recommendations of the Long Committee Report, all of which were adopted by the Board of Trustees, are:

- Designate Kimberly Biar as the Foundation's Chief of Finance and Accounting, and give her even greater visibility and control over Foundation finances;
- Recruit Carla Cooper's replacement as the Foundation's Chief of Development and Administration;

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<sup>147</sup> These payments from the Foundation to employees were also not made in accordance with The University of Texas System Regents' *Rules and Regulations*, Rule 60101, which concerns the acceptance and administration of gifts to U. T. Austin. Specifically, Sec. 3 of Rule 60101 requires certain gifts or other actions to be reviewed by "the Vice Chancellor for External Relations to the Board of Regents after review by appropriate offices of the terms of the gifts, the nature of donated assets, and/or the requested action."

<sup>148</sup> Texas Public Information Act, Tex. Gov't Code § 552.022(a)(2).

- Change the Foundation’s Bylaws to require that the Foundation’s Secretary be a Trustee and that the Secretary be added to the Executive Committee of the Foundation;
- Have the Secretary record minutes of all meetings, thus improving Foundation record keeping;
- Ask the Foundation to study the possibility of moving its offices out of the Law School and hiring its own staff instead of sharing with the Law School, thus potentially further affirming separateness;
- Amend the Approval Manual to state, “The Chief of Finance and Accounting shall not release any funds for the compensation of the Dean without written documentation that the payment has been authorized by the full Board and the U. T. Austin Administration.”

The author of this report agrees with and endorses the implementation of all of these changes.

In addition, this report concludes with the following recommendations:

- The Law School should maintain the policies, procedures and practices described herein that support the conclusion that the Foundation is an independent legal entity separate from the Law School.<sup>149</sup>
- The MOU should be revised and enhanced as indicated in the proposed First Amended MOU.<sup>150</sup>
- Despite its recruiting and retention advantages, the forgivable personal loan program should be permanently ended. All existing forgivable personal loans to Law School faculty should be allowed to expire according to their terms without variance.<sup>151</sup>

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<sup>149</sup> This report recommends confirmation of the separate nature of the Foundation because: (1) as discussed in detail in Section II.C, under the law and in practice the Foundation is a separate entity; (2) conversations with current leadership at the Foundation and the Law School indicate it is the desire of both entities to remain separate; and (3) control of that decision is within the power of the Foundation. Consideration could be given to a different route – i.e. – consolidation, if that is within the strategic aims of the U. T. System Board of Regents given goals for overall relationships with foundations generally. Steps towards consolidation would require the consent of the Foundation and would entail a process to ensure an orderly transition within a structure to neutralize any tax consequences and minimize costs. In sum, any move to consolidation would necessarily be preceded by a strategic plan setting forth a goal of consolidation and, with the consent of the Foundation, a detailed plan to achieve such.

<sup>150</sup> See *Exhibit 11*, attached hereto.

<sup>151</sup> As discussed in Section III, there exists no legal necessity to “unwind” existing forgivable personal loans to faculty. No new forgivable personal loans are being issued – the last was November 30, 2010 – and all remaining existing forgivable personal loans to faculty will terminate according to existing terms within three years. For the reasons listed on page 26 of this report, the forgivable personal loan program is at an end. Therefore, the only reason to “unwind” existing forgivable personal loans would be to remedy any lingering perceptions and put the matter to rest more quickly. As discussed in this report, the contractual relationship is between the individual faculty member and the Foundation. Therefore, it would take the acquiescence of these two parties to terminate the relationship early. Also,

- No form of compensation or other payment should flow directly from the Foundation to the Law School faculty. All faculty salary support from the Foundation should be in the form of restricted gifts to the Law School accepted by the Law School in accordance with U. T. System's gift acceptance procedures.
- The arrangements regarding sharing of employees and office space and equipment between the Foundation and the Law School should be reviewed and amended as necessary to protect and preserve the Foundation's independence. The Long Committee's idea of securing separate office space is a good one.
- The Law School must work with the U. T. Austin Provost's office to quickly put in place a documented process to ensure all components of faculty salary are appropriately approved and reported internally and externally as required for a public university in Texas. Complete transparency for salaries of public university employees must be ensured.

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such early termination could have unintended tax consequences for the faculty member and perhaps even the Foundation. Accordingly, if that route is desired: (a) tax and compensation experts should be called upon to evaluate any proposed course of action; (b) because U. T. Austin is not a contractual party to the forgivable personal loan transactions, U. T. Austin would need to call upon its relationship with the faculty members as employees to prompt any change.

## Exhibit List

- Exhibit 1 Foundation History Introduction and Minutes and Documents of the School of Law, The University of Texas, 1951-1952, from The University of Texas Law School Foundation Trustee Handbook
- Exhibit 2 Excerpts from W. Page Keeton: An Oral Interview (1992), from The University of Texas Law School Foundation Trustee Handbook
- Exhibit 3 The University of Texas Law School Foundation Charter Dated June 13, 1952 and By-Laws, from The University of Texas Law School Foundation Trustee Handbook
- Exhibit 4 Resolution of the U. T. System Board of Regents establishing the John Charles Townes Foundation dated June 27, 1942, from The University of Texas Law School Foundation Trustee Handbook
- Exhibit 5 October 13-14, 1983 U. T. System Board of Regents Proposed Agenda Item – Amendments to the Resolution Establishing John Charles Townes Foundation, from The University of Texas Law School Foundation Trustee Handbook
- Exhibit 6 Texas Attorney General Opinion No. MW-373 (1981)
- Exhibit 7 Memorandum of Understanding – Approved by the U. T. System Board of Regents of the on April 30, 1982
- Exhibit 8 Supplemental Agreements between The University of Texas Law School Foundation and The University of Texas at Austin for FY2011 and FY2012.
- Exhibit 9 Foundation and Alumni Relations Staff Introduction and Attached Organizational Charts, from The University of Texas Law School Foundation Trustee Handbook
- Exhibit 10 The University of Texas Law School Foundation Standards of Conduct Policy, from The University of Texas Law School Foundation Trustee Handbook
- Exhibit 11 Proposed First Amended Memorandum of Understanding
- Exhibit 12 The University of Texas Law School Foundation Second Amended Articles of Incorporation filed on November 12, 2001, from The University of Texas Law School Foundation Trustee Handbook
- Exhibit 13 The University of Texas Law School Foundation Amended Bylaws adopted November 9, 2001, from The University of Texas Law School Foundation Trustee Handbook

- Exhibit 14 The University of Texas Law School Foundation Committees, from The University of Texas Law School Foundation Trustee Handbook
- Exhibit 15 The University of Texas Law School Foundation Approval Manual, from The University of Texas Law School Foundation Trustee Handbook
- Exhibit 16 The University of Texas Law School Foundation Management Fee Policy, from The University of Texas Law School Foundation Trustee Handbook
- Exhibit 17 The University of Texas Law School Foundation Endowments, from The University of Texas Law School Foundation Trustee Handbook
- Exhibit 18 The University of Texas Law School Foundation Financial Statements and Independent Auditors' Report August 31, 2011 and 2010
- Exhibit 19 Policy for Management of Unrestricted Funds of The University of Texas Law School Foundation, from The University of Texas Law School Foundation Trustee Handbook
- Exhibit 20 The University of Texas Law School Annual Fund, from The University of Texas Law School Foundation Trustee Handbook
- Exhibit 21 Investment Management Agreement between UTIMCO and The University of Texas Law School Foundation, dated May 23, 2006
- Exhibit 22 The University of Texas Law School Foundation History of Investments, from The University of Texas Law School Foundation Trustee Handbook
- Exhibit 23 Letter from Dean Lawrence Sager to the Law School Faculty at the time of his resignation
- Exhibit 24 Faculty Loan Summary
- Exhibit 25 Deferred Compensation Agreement between The University of Texas Law School Foundation and William C. Powers, Jr., dated May 26, 2001
- Exhibit 26 Board of Regents Docket Item, dated February 9, 2006, approving Employment Agreement of William C. Powers, Jr. as President of U. T. Austin
- Exhibit 27 Form of Promissory Note and Deferred Compensation Agreement between The University of Texas Law School Foundation and Law School Faculty

# FOUNDATION HISTORY

## Introduction

At a November 10, 1951 meeting of the Board of the University of Texas Law School Association (a predecessor of the current Alumni Association), a decision was made to form a Foundation. A copy of the minutes of that meeting is under Tab A.

A copy of the original Charter is under Tab B. A list of the Presidents of the Foundation is under Tab C. Under Tab D is an excerpt of an interview of Dean W. Page Keeton, describing the origin of the Foundation. Among other things, he discusses the objection of the Board of Regents to the Foundation. As discussed in Section VI (*UT Agreements*), there already existed an internal Foundation (the John Charles Townes Foundation) controlled by the Regents, who did not want to lose control of donations.

The staff has compiled a number of additional historical documents relating to the Foundation, much of which is very interesting; however, because of the volume, all of it cannot be included here. These additional historical documents have been included in a notebook entitled *The University of Texas Law School Foundation: Supplemental Historical Material*. A copy is available upon request.

The Foundation was originally organized as a membership organization—one of the forms of a Not-for-Profit Organization. The founders were named as “Members for Life” and had the authority to elect other “Life Members.” There were no other members.

The Life Members could amend the Bylaws and Articles of Incorporation. Life Members named themselves as Trustees, as well as electing other Trustees and the officers. Therefore, they were sometimes erroneously called Life Trustees. Trustees who composed the Executive Committee were the Trustees who were also the Life Members. Traditionally, the Life Members elected others from their ranks as President and Vice President.

In 2001, the Life Members decided that the two-tiered organization was no longer appropriate and made major changes in the Articles and Bylaws. The first Board meeting under the new organization was in May 2002.

Under the new organization, all of the authority of the Life Members in the prior organization was vested in the Board of Trustees. In other words, the full Board now has control of the Bylaws and Articles and elects Trustees and officers. The reorganized Foundation is no longer a member organization. There are no members of any kind.

One vestige of the old system remains. Those individuals who were previously Life Members were grandfathered as “Life Member Trustees.” This was done in the belief that this would help with continuity as the Foundation adjusted to its new system.

However, the Life Member Trustees have no other special status; all Trustees have the same rights and responsibilities in governing the Foundation. Furthermore, there will be no more Life Member Trustees added, and that category will eventually disappear.

The Life Member Trustees can at any time elect to become Senior Trustees, a category of former Trustees. Senior Trustees are invited to attend Foundation Board meetings. However, they do not have the status of Trustees; they cannot vote and do not have the responsibilities of Trustees.

The creation of Life Member Trustees is contained in Section VI of the Articles of Incorporation. Section 14 of Article III of the Bylaws covers the category of Senior Trustees.

Another major change in the new organization is the term of the Trustees. In the past, Trustees were elected for one-year terms, but could be reelected indefinitely. Now, Trustees (except for Life Member Trustees) are elected for three-year terms and can be reelected for an additional three-year term. After two consecutive terms, a Trustee may not be considered for further service on the Board until a minimum of one year has elapsed.

The new Articles and Bylaws are under Section V (*Current Articles of Incorporation and Bylaws*).

MINUTES AND DOCUMENTS

of the

SCHOOL OF LAW

THE UNIVERSITY OF TEXAS

1951-1952

(indexed)



November 20, 1951

MEMORANDUM ON MEETING OF BOARD OF DIRECTORS  
OF THE  
UNIVERSITY OF TEXAS LAW SCHOOL ASSOCIATION

The Board of Directors of The University of Texas Law School Association held its first meeting in Austin on November 10, 1951, at the Home Economics Tea Room, with the following officers and directors of the Board present:

Emory B. Camp	Robert Eikel
Dan Moody	W. L. Matthews
Allen Crowley	A. P. Allison
James C. Sewell	Tomas G. Pollard
Arthur P. Duggan, Jr.	A. J. Lockett
Roland Boyd	Allen V. Davis
John G. Stofer	J. E. Wheat
Hardy Moore	Ruel C. Walker
Charles I. Francis	B. D. Orgain
Jack Proctor	Sylvan Lang
V. W. McLeod	

President Charles I. Francis, of Houston, presided over the meeting and introduced Dean Page Keeton of the Law School for remarks concerning the Law School activities, its problems, and what the Law School Association, under its Board of Directors could do to solve some of the School's difficulties. Dean Keeton discussed the progress that had been made toward a new law building and reported that construction will begin around January 1st, 1952 and will be completed approximately 18 months thereafter. The Dean stated that the building offered the best in the way of facilities for law school educational endeavors and that with this building we would be able to compete favorably with any law school in the country as to physical facilities. The Dean further stated that we were attempting to secure private benefactions to make possible the building of a 200 man law school dormitory adjacent to the new law building with necessary eating and recreational facilities to accommodate the law school student body and visiting alumni at the time of conferences, institutes and the like.

Dean Keeton then discussed the progress that had been made in the Annual Small Gifts Program which is being carried on for the benefit of the Law School. This program has received approximately \$8,000 to date in gifts of from \$1.00 to \$100.00, and while this is a relatively small amount when considered from the standpoint of the school having some 5,000 alumni, he stated that the program was progressing and it was his hope that this project would produce eventually something between \$15,000 to \$20,000 in annual small contributions.



In discussing the problems that face the University of Texas Law School, the Dean was emphatic in saying that Legislative appropriations are wholly inadequate to place this law school in a competitive position with the other law schools over the country. This is especially true in the appropriations made for professorial salaries. The present setup at The University of Texas Law School makes provision for four distinguished professors at a salary of \$9,600 per year and a top salary of \$7,600 per year for regular full professors. The Dean brought out statistics that show that the average professorial salary for the University of Texas Law School is some \$5,600 per year, while the average salary for other state supported law schools, such as California, Michigan, Wisconsin, Virginia, Illinois vary from a minimum average of \$7,600 up to an average of \$10,000. The Dean stated that for this Law School to maintain its past standing with other law schools over the country we need a top salary of at least \$10,000 per annum for our professors (to be supplemented by research grants, etc.) and that the average salary should be at least \$2,000 to \$2,500 more than it is at the present time. Dean Keeton further stated that Legislative appropriations cannot be used for research projects, scholarships, and many other projects that are needed to benefit the legal profession, promote legal education, and improve the administration of justice. He stated that if the University of Texas Law School is going to fulfill its responsibilities to the legal profession and the State of Texas, it was imperative that the Law School have help from its alumni in the raising of sufficient funds to satisfy these needs. The Dean also asked that the Board of Directors attempt to impress upon the Legislature the dire need for adequate appropriations to place this law school on a competitive basis with other law schools over the country. How this was to be done was left entirely up to the discretion of the Board and the alumni, but as a modest beginning, an effort to double the distinguished professorships throughout the University was suggested. After the discussion by Dean Keeton, general discussion by members of the Board of Directors followed. The Board felt that there were a great many things that it could, with the help of the alumni body, do to improve conditions here at the Law School and the following suggestions were made and approved:

1. That each director form a committee of from five to nine members in his senatorial district to work within that district to promote projects that will benefit the law school and the legal profession, and to secure adequate legislative support.
2. That a foundation be set up to carry out research programs, institutes, and promote the improvement of the administration of justice in Texas. This foundation would be set up as a trusteeship or corporation and would receive and disburse funds that were contributed to gain these objectives. It was the opinion of the Board that specific projects should be selected and attempts made to secure funds from lawyers, industry, and any other sources that might be interested in the projects decided upon. The suggestion was made that research and study of water law, oil and gas law, constitutional revision, criminal law and procedure, international law with emphasis laid upon Latin American problems, corporate reorganization and finance, and law-science studies, would be worthwhile projects.



3. This foundation as stated above, would be set up in the form of either a trust or an educational corporation with the trustees or directors selected in a manner to be determined by officers of the Law School Association.

The Board asked that they be furnished with information on the John Charles Townes Foundation at the University of Texas and the Southwestern Legal Foundation at Dallas in order that they might obtain basic ideas on the operation of such a project. Enclosed will be found a copy of the Resolution setting up the John Charles Townes Foundation and a brief summary of the purposes and structure of the Southwestern Legal Foundation.

All members of the Board were asked to think seriously about what had been discussed, the manner and means of approaching the problem, a suggestion as to a name for such a foundation, and to submit ideas on what projects should be attempted. It was the opinion of the Board that this board could do a great deal to improve the situation at the University of Texas Law School and at the same time be a tremendous help to the legal profession by forming such a foundation to act in cooperation with the law school in its endeavors. It was thought that most of the problems that faced the Law School could be solved by the operation of the program described above.

All members of the Board were requested to submit their thoughts, ideas, and proposals to Jack Proctor, Secretary, as quickly as possible and they in turn will be delivered to Charles I. Francis, President, for coordination and further consideration.

Jack Proctor,  
Secretary

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# W. PAGE KEETON: AN ORAL HISTORY INTERVIEW

(Excerpts)

(from pages 32-33)

**BB:** Was it objected to at Oklahoma also?

**PK:** Yes. Administrative officials did not want any division of the University of Texas seeking money for that division. They wanted money sought for the University at large, with the Board of Regents in charge of how that money was to be used, and you didn't raise anything that way. Or very little. It was hard to sell the Administration on that notion. Of course, we started it here at the University of Texas, where a division would solicit its alumni, and its friends, and the industry and everything, for support of legal education. Shortly after we got it going, the engineers started doing it. They found great success in doing it. Then the business school, and so on, and so on. Of course it's worked out real well, but the Law School started that.

**BB:** I'd like to come back to this more later on, but I can't help asking this question now. Once the Law School started raising money on its own, did you find that the administration or the regents, whoever allocates the money generally, began to take that into account, saying, "Well, look, the Law School has money of its own?"

**PK:** That was one thing we anticipated. And one thing that the administration objected to, which we did, was to create the University of Texas Law School Foundation. I just didn't run the fund-raising through the office here by appointing somebody. We created a corporation—educational corporation, the University of Texas Law School Foundation, with a powerful Board: Dan Moody, Sylvan Lang from San Antonio, and Charles I. Francis from Houston, Jim Sheppard from Bergrom's—powerful Board, that the administration just couldn't just brush off. And so, the funds were raised by the Board, and appropriated by the Board annually on the basis of my recommendation, through the University for certain support. That way, you see, you retain a good deal of control, and if you begin to see that they're cutting down on your—and they did start to do it from time—I don't think they'd try to do it any more, but they did for a while. And all I would do then was apprise my board of what was happening, and pretty soon it got stopped.

(from pages 41-45)

**BB:** Can you tell me about the founding of the Law School Foundation?

**PK:** Yes. See, when I came back in 1949, one of my first priorities was that of improving the financial support given to the Law School. One of the main reasons this Law School was not as good as it should've been was lack of financial support. Faculty

salaries were far below faculty salaries of the best law schools, like Yale, Harvard, Columbia, and the like, Michigan, California. And so, one of the areas where financial support was most needed was in relation to faculty salaries. There were two roadblocks to getting that kind of support. One was the lack of appropriations, or the inadequate appropriations, of faculty salaries for the Law School from public funds. The other was the fact that we had no gift program at all at the University of Texas Law School, prior to the time I came on as dean. There was very, very little in the way of endowment, almost nothing. And what little there was in the way of endowment was for scholarships—a few scholarships for kids. It didn't amount to anything, because there was just four, five, six, seven of them. And so that didn't help much. I had already at Oklahoma realized that state law schools needed to raise funds just as much as private law schools—not just as much as, just as well as private schools—and the idea prior had nearly always been in most states that the private support for education should go to private schools, not public schools. A public school should depend on the Legislature for its funds.

Anyway, that was one of the first projects that I had. And when I proposed fund raising to the University of Texas authorities, they opposed it. They wanted all funds to be raised by the Ex-Students Association for general purposes, unspecified, so that the regents would have control over where the funds and how the funds were to be utilized. And, of course, my position was that you never will raise much that way, that at least a third and now more—half—of our law students are educated at other schools, at other universities. They're not going to give to the University of Texas at large, but they might very well give to the University of Texas Law School, as well as to A & M, or SMU, or somebody else where they attended undergraduate school. They somewhat vigorously opposed it, but nevertheless they finally consented.

I started the annual drive about Fall 1950, for annual gifts. That led to the notion that we ought to be getting money for endowment, and not just annual gifts. And so, with the help of some of the leaders of the profession, like Charles I. Francis of Houston, and Sylvan Lang of San Antonio, and, oh, Dan Moody, somebody up in Dallas I can't recall, Bob Hardwick of Fort Worth. They're listed in the charter. With the help of some of the leaders of the profession, we conceived of incorporating a Law School foundation. After all, we were being offered a \$400,000 gift from the former general counsel of Gulf—I'm at a loss to remember his name right now, terrible—but who wasn't going to give it to the University of Texas. He said, "I'll have no political Board of Regents dealing with any money I give." He was a conservative, of course, but—"I will have no political Board, whose ideas change from time to time, deciding about my gifts. I'm not going to trust them with that money." So, it was with that in mind that we created the University of Texas Law School Foundation, a separate corporation with a separate Board. And of course, that has worked.

That was opposed by Jim Hart who was on the Supreme Court and who was Chancellor of the University of Texas for two or three years.

**BB:** He opposed the separate Board?



- PK:** He opposed that because, he said, which was true, that you'd have two Boards to deal with, and you'd multiply your problems. But anyway, I said, "Look, it's better to have money and problems than no money. And we need money to work with, and I know that there'll be some problems resulting from the fact that you have two Boards." But the point was that in creating the Law School Foundation, we were going to get more gifts. People would be more of the notion that the money that they gave would not be dissipated somehow by the University by reducing the support that they would otherwise give to the University of Texas, because this Board could see to it that that didn't happen.
- BB:** How did the charter specify that the Board members would be chosen?
- PK:** Well, we had some life members that organized it, that were incorporators, and the incorporators chose the Board members annually.
- BB:** So it wasn't done by the Governor, as the Board of Regents was.
- PK:** Oh, it's a separate corporation, separate educational corporation.
- BB:** So it definitely takes it out of the realm of politics, as much as possible, anyway.
- PK:** Takes it out of the realm of politics as much as possible. You had the politics of the profession, no doubt, but even the profession couldn't select the Board members. The life members selected the Board. In fact, most of the life members were also on the Board, and they selected people who could help us raise money. Select people who would also give, and who would also help to raise money. But you had your control in the hands of this six-member group. And when one of them died, his replacement would be filled by the remaining members. So you had this life board that would control the business board, who made the decisions. And moreover, the Board was not supposed to judge as to the soundness of my recommendations, except insofar as they were to make sure that I was using the money for the purpose for which the donor left it. If he left it to support a professor's teaching a certain course, they were justified in seeing that the person that I nominated was teaching in that area. But they were not to evaluate my recommendation. That was for the Board of Regents. Worked.
- BB:** So, let me get this straight. You were getting the money from the Law School Foundation. But your use of the money was not directly supervised by the Law School Foundation?
- PK:** No. It was not supervised, except insofar as they wanted to know what I was doing. And they wanted to be sure that I was using it for the purpose for which the donor left it. But they were not supposed to make a determination about whether the professor I appointed was one that they approved or not.

**BB:** Well, sounds like they had a good deal of confidence in your judgment.

**PK:** Well, I hope they did. I think they did. And it worked. I made recommendations to the Foundation as to what the money was to be used for and requested an appropriation to the University of Texas to support my salary budget. And in my salary budget that I proposed to the University of Texas, I indicated the professor, what was to come from the budget, and what was to come from the Foundation. So I made a budget composed of public fund recommendations, and private fund recommendation. But the whole payment, like the payments to people now, are made through the University of Texas. For example, all the professors that are appointed around here just get a check from the public fund, and then they get a check from the Foundation. But, the Foundation doesn't issue the check to them, so that no monies are spent by the Foundation, except that which is approved by the Board of Regents. And that's sound. I always agreed with that, that this separate corporation ought not to be allowed to do as it pleased with the money that it gets, contrary to the policies and ideas of the Board of Regents. The Board of Regents is in charge, and they have the right to know how I'm being paid, or how every member of the faculty was being paid, or how the employees were getting paid—how the money is to be spent. Whether it comes from gifts or not, they're entitled to know that, and approve it.

Now we had a few problems along the way, which has proven the value of the Law School Foundation as a separate entity, because there were two or three times in my deanship where there's no question in my mind but that the University was about to withhold support for our salary budget, because of the success we were having in raising money to supplement the salaries of faculty. And I told the Foundation Board about it, and they went to the president of the University about it. And they got it straightened out.

**BB:** I guess it helps to have influential people on the Board.

**PK:** That's right. It pays to have a power structure of your own. (Laughs.)

**BB:** (Laughs.) How long did it take the Foundation to build up an endowment?

**PK:** Took it a while. Right off the bat, we had 10 or 15 percent. But 10 or 15 percent then wasn't over a million or so dollars. (Laughs.) Of course, we got \$400,000 right off the bat. And now it's \$30 million.

**BB:** That's the endowment?

**PK:** \$30 million, now, is the endowment. I looked it up before I went to the Bar meeting. Let's see, I would be remiss if I did not direct your attention to what has happened as a consequence of instituting a program of obtaining annual and endowment gifts to the Law School. This program was first started in 1950, and has culminated in an

endowment of nearly \$30 million. The total endowment for faculty is about \$22 million—from virtually nothing in 1950 to \$22 million. That has an enormous impact on the ability of the Law School to recruit and keep scholars of distinction. There are funds of over a million dollars to support research appointments during each academic year—giving appointments to one or two or several members of the faculty for time off, a whole semester off, to do nothing but research like quick sabbaticals, which the University of Texas could not do.

So it took a while, but I think it's the greatest contribution perhaps I made to the Law School—namely, to get fund raising started, and to get it recognized as an important way to go about getting excellence. Now, look at what happened all over the University. Engineers have been very successful. They followed our lead. The business school followed the engineers. Now, even in the liberal arts area the University is succeeding, pretty well, through some good decisions made by the Board of Regents about matching funds. For example, if somebody gives \$500,000 to the Law School, it'll get matched by the Regents to support a similar professorship in the academic school. So I don't think there's anything that's happened to help the University of Texas at large more than what first happened at the University of Texas Law School. That's bragging, huh?

(from page 52)

**PK:** Yes. Yes. You know, the people on the Foundation that I picked were mostly conservative people, but they were what I would call progressive conservatives. And they were necessarily conservative because they were top lawyers for business. And they were in the money area where you could get the money, but they were sound people. People like Sylvan Lang, and Charlie Francis, and Hines Baker. I should never forget Hines Baker, because he did more than anybody else. He was president of Humble Oil. He always took the position that they should not occupy the position of the Board of Regents, that they should only be concerned with whether I was using the money for the right purposes that the donor was granting it for, and they should be concerned about whether the University was withholding gifts, but their main concern was raising money. His main concern was raising money, and he raised a hell of a lot of money—going to people, and asking them to do what he'd done, by way of getting \$100,000 for a professorship.

But they were people that I could always talk to, get comfort from and help from, when we got issues of this kind. Now Hines would sometimes disagree with my decision, but he wouldn't question my right to make it. And he would support the Law School vigorously, even when in disagreement—and the same thing with the University of Texas in general. Hines was a friend of the whole University.



THE UNIVERSITY OF TEXAS LAW SCHOOL FOUNDATION

Approved and filed in the office of  
The Secretary of State  
This 13<sup>th</sup> day of June, 1952.

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Chief Charter Division  
Charter # 001 11012 - 1

STATE OF TEXAS     |

COUNTY OF TRAVIS   |

Know all men by these presents that we, Charles I. Francis, Sylvan Lang, Angus G. Wynne, Hines Baker, Dan Moody, Robert E. Hardwicke, and Hugh Lamar Stone, all citizens of Texas under and by virtue of the laws of this State, do hereby voluntarily associate ourselves for the purpose of forming a private and educational corporation under such laws upon the following terms and conditions:

1. The name of the corporation shall be The University of Texas Law School Foundation.

2. The purpose for which it is formed is to support an educational undertaking as authorized by subdivision 2 of Article 1302 of Texas Revised Civil Statutes of 1925 by furtherance in the School of Law of The University of Texas of legal education, legal research, financial assistance to deserving students, and the progress of the law, to solicit donations for particular objectives to accomplish such purpose, including such objectives as that of establishing or assisting in establishing professorships and scholarships in the School of Law of The University of Texas, under such directions, limitations, and provisions as may be declared in writing in the donations not inconsistent with the objects and proper management of The University of Texas or its branches; to collect such donations and to expend funds for accomplishing such objectives; and to cooperate at all times with The University of Texas Development Board for the advancement of the general welfare of The University of Texas as a whole.

Neither any donation made to this corporation nor any fund or property arising therefrom, in whatever form it may take, shall be diverted from the purpose set out.

3. The places where the business of the corporation is to be transacted are Austin, in Travis County, Texas, and elsewhere within or without

the State of Texas in accordance with the laws of said State, and its principal place of business is to be in Austin in Travis County, Texas.

4. The term for which it is to exist is fifty years; but by action of its Board of Trustees this term may be extended or renewed as often and for such additional periods as at the time of the action may be lawful.

5. The number of the trustees shall be not less than three, but shall otherwise be fixed by the by-laws of the corporation and until changed by the by-laws shall be seven; and the names and residences of those who are appointees for the first year are as follows:

<u>Name</u>	<u>Residence</u>
Charles I. Francis	Houston
Sylvan Lang	San Antonio
Angus G. Wynne	Dallas and Longview
Hines Baker	Houston
Dan Moody	Austin
Robert E. Hardwicke	Fort Worth
Hugh Lamar Stone	San Angelo

6. This corporation shall have no capital stock and all of its funds shall be received through voluntary gifts. It does not now have any cash, chattels, land, rights or credits. It shall at all times be operated as a non-profit organization. Its funds shall be used only for public purposes. No trustee nor member of the corporation, nor any member of the family of any trustee or member, shall be eligible for benefits, nor shall any such person receive any funds from the corporation or any monetary return from the operation of the corporation. No funds of the corporation shall be paid for the purpose of carrying on propaganda, or otherwise attempting to influence legislation.

7. The members of the corporation shall consist of seven life members to serve for life or until they become incapacitated or unwilling to serve; the original life members shall be Charles I. Francis, Sylvan Lang, Angus G. Wynne, Hines Baker, Dan Moody, Robert E. Hardwicke, and Hugh Lamar Stone; when a vacancy occurs in the life membership it shall be filled by the remaining members of the corporation.

IN WITNESS WHEREOF, the incorporators above named have executed this instrument on this 30th day of April, 1952.

[Signed by: Charles I. Francis  
Hines H. Baker  
Angus G. Wynne

Hugh Lamar Stone  
Sylvan Lang  
Robert E. Hardwicke  
Dan Moody]

THE UNIVERSITY OF TEXAS LAW SCHOOL FOUNDATION BY-LAWS

Article I

Meetings

Section 1. Annual Meeting. The annual meeting of the corporation shall be held at such time and place in May of each year as shall be designated by the Chairman of the Life Member Trustees, after fifteen days' notice; and in the event of his failure to do so by April 20th of any year, at such time as shall be designated by the Secretary of the Foundation. This meeting shall be for the purpose of electing Trustees and of transacting such other business as may be properly brought before the meeting.

Section 2. Special Meetings. Special meetings of the members of the corporation may be held upon call of the Board of Trustees, or of the President, or of a majority of the members at such time as may be fixed in the call and notice.

Section 3. Notice of Meetings. Written notice of the time, place and purpose or purposes of every meeting of the members shall be served upon each member either personally or by mail not less than five days nor more than forty days before the meeting, unless such notice be waived by him.

Section 4. Quorum. At every meeting of the members, four shall constitute a quorum. If, at any meeting, there shall be no quorum, then a majority of those present may adjourn the meeting from time to time without notice other than announcement at the meeting, until such quorum shall have been obtained, when any business may be transacted which might have been transacted at the meeting as first convened had there been a quorum.

Section 5. Voting. At all meetings of the members, all issues shall be resolved by a majority vote of the quorum present.

## Article II

### Board of Trustees

Section 1. Number. The number of the Trustees may be changed at the annual meeting of the members by an amendment to these By-laws. Subject to amendment of these By-laws, the number of the Trustees shall be not less than seven nor more than fifteen.

The Trustees shall be chosen at the annual meeting of the members, or at any adjournment thereof, by a majority of the votes of the members present. Trustees need not be members. Each Trustee shall be elected at such annual meeting for a term of one year beginning September 1 following this election. If, however, the maximum number of Trustees authorized are not chosen at the annual meeting of the members, then additional Trustees to bring this total up to the maximum number may be selected by a majority vote of the members present at a called meeting for this purpose, or by unanimous vote by mail.

Section 2. Meetings of the Board. Meetings of the Board of Trustees shall be held at such places within the State of Texas as may from time to time be specified in the call of any meeting. Regular meetings of the Board of Trustees shall be held at such times as may from time to time be fixed by resolution of the Board. Notice need not be given of the regular meetings of the Board held at fixed times by resolution of the Board. Special meetings of the Board may be held at any time upon the call of the President or any two Trustees by telegraphic or written notice duly served on or sent or mailed to each Trustee



not less than five days before such meeting. Special meetings of the Board may be held without notice, if all of the Trustees are present or if those not present waive notice of the meeting in writing.

Section 3. Annual Meetings of Trustees. An annual meeting of the Board of Trustees shall be held in each year after the adjournment of the annual members' meeting and on the same day. If a quorum be not present on the day appointed for the annual meeting, the meeting shall be adjourned to some convenient day.

Section 4. Quorum. The attendance of a majority of the Board of Trustees shall be necessary to constitute a quorum for the transaction of business.

Section 5. Vacancies. Trustees to fill vacancies on the Board that occur after the annual meeting may be selected by a majority vote of the members at a meeting called for this purpose or by unanimous vote by mail.

Section 6. Resignations. Any Trustee of the corporation may resign at any time by giving written notice to the President or to the Secretary of the corporation. Such resignation shall take effect at the time specified therein; and unless otherwise specified therein the acceptance of such resignation shall not be necessary to make it effective.

Section 7. Organization. At each meeting of the Board of Trustees, the President or, in his absence, the Vice-President shall preside; or in the absence of both, a chairman chosen by a majority of the Trustees present shall preside, and the Secretary of the corporation, or in the absence of the Secretary, a person appointed by the presiding officer of the meeting shall act as Secretary. The Board of Trustees may adopt such rules and regulations as they shall deem

proper, not inconsistent with law or these by-laws, for the conduct of their meetings, and the management of the affairs of the corporation.

Section 8. Powers of the Board. The Board of Trustees shall have power to manage the business of the corporation.

The Board of Trustees may, in its discretion, by resolution appoint committees which shall have and may exercise such powers as shall be conferred or authorized by the resolution appointing them. Any such committee may determine its action and fix the time and place of its meetings, unless the Board of Trustees shall otherwise provide. The Board shall have power at any time to change the membership of any such committee, to fill vacancies, and to discharge any such committee.

Section 9. Trustees Emeritus. Life members at their discretion may elect Trustees Emeritus without limitation as to number, in order to honor outstanding service of life members or other trustees. The names of these trustees shall be listed on official publications of the Foundation. They shall have a life tenure and be privileged to attend all meetings of the Board without the power to vote.

### Article III

#### Officers

Section 1. Officers and Agents. The Board of Trustees shall elect from its members a President and a Vice President of the corporation. The Board of Trustees may also elect a Secretary, a Treasurer, and may appoint such other officers, agents, and employees as it may deem proper. More than one

office may be held by the same person. No officer, except the President and the Vice President, need be a Trustee of the corporation.

Section 2. Term of Office. The term of office of all officers shall be one year or until their respective successors are chosen and qualified; but any officer or agent elected or appointed by the Board of Trustees may be removed, with or without cause, at any time by the affirmative vote of a majority of the members of the Board then in office. The compensation of the officers, agents, and employees shall be fixed by the Trustees, but neither the President nor the Vice President nor any Trustee as such shall be paid any compensation.

Section 3. Powers and Duties. The officers, agents, and employees of the corporation shall each have such powers and duties in the management of the property and the affairs of the corporation, subject to the control of the Board of Trustees, as generally pertain to their respective offices, as well as such powers and duties as from time to time may be prescribed by the Board of Trustees. The Board of Trustees may require any such officer, agent, or employee to give security for the faithful performance of his duties.

#### Article IV

##### Seal

The corporate seal shall have inscribed thereon the name of the corporation and such other appropriate legend as the Board of Trustees may from time to time determine.

#### Article V

The By-laws of the corporation may be amended, added to, rescinded or repealed at any meeting of the members by a vote of the majority of the members, if all are present or if notice of the proposed change was given in the call for the meeting.

Make no 9  
file

*Foundation*

RESOLUTION OF THE BOARD OF REGENTS  
OF THE UNIVERSITY OF TEXAS

Adopted at its meeting  
June 27, 1942

WHEREAS, by order dated July 9, 1941, the Board approved establishment of the John Charles Townes Foundation, and now desires formally to declare the conditions under which it will accept in trust any gifts made to such Foundation,

IT IS NOW RESOLVED, that the Board of Regents of The University of Texas agrees to accept in trust any and all money or property, real or personal, given to or subscribed for The John Charles Townes Foundation (under circumstances acceptable to the Board of Regents) subject to the following provisions:

1. The funds of such Foundation shall be devoted solely to the furtherance in the School of Law of The University of Texas of legal education, legal research, and the progress of the law (in accordance with the specific gift or bequest, where so provided); ~~but shall not be used for the ordinary operating expenses of the School.~~

2. Donations to the Foundation may be given the name of the donor or other designation specified by the donor; e.g., the Richard Roe Fund of the John Charles Townes Foundation.

3. The Board of Regents shall hold, manage, control, sell, exchange, lease, convey, mortgage or otherwise encumber, invest or re-invest, and generally shall have power to dispose of in any manner and for any consideration and on any terms, the said gifts, funds or property in their discretion and shall from time to time pay out of the income, or if the income be insufficient, out of the principal, all expenses of trust and all expenditures incurred in furthering the purposes of the trust.

4. Neither any donation of the John Charles Townes Foundation nor any fund or property arising therefrom in whatever form it may take shall ever be any part of the Permanent University Fund nor shall the Legislature have power or be in anywise authorized to change the purposes thereof or to divert such donation, fund or property from those designated purposes.

5. Expenditures from the funds of the Foundation (other than for expenses for administration) shall be made only pursuant to written proposals by the President to the Board of Regents showing the amounts and purposes of the proposed expenditures. As in the case of all other



University funds, authority for expenditure of all funds from the Foundation shall be vested in the Board of Regents and recommendations for such expenditures shall come to the President from the Faculty and the Dean of the School of Law. The Faculty and Dean of the School of Law, before forwarding such recommendations to the President, shall submit the same to an advisory committee of the Texas State Bar (to be named as hereinafter set out) for their advice and suggestions.

6. The Advisory Committee of the Texas Bar shall consist of three practicing attorneys in Texas, designated from year to year by the President of the Texas Bar as presently constituted, or of such Bar organization or association in Texas as is representative of the Bar of Texas (or in the event of more than one such organization, by the President of the organization which may be designated by the Dean of the School of Law of The University of Texas).

CORRECTED  
9/27/83

Approved: \_\_\_\_\_

PROPOSED AGENDA ITEM

For Board of Regents' Meeting: October 13-14, 1983

Recommended Committee(s): Academic Affairs

U.T. Austin: Recommended Amendments to the Resolution Establishing the John Charles Townes Foundation of the School of Law of The University of Texas at Austin (an Internal Foundation of The University of Texas at Austin Pursuant to Section 4, Chapter VII, Part One, Regents' Rules and Regulations); and Authorization for Editorial Changes to Subsection 4.33, Section 4, Chapter VII, Part One, Regents' Rules and Regulations.--

RECOMMENDATIONS

The Office of the Chancellor concurs in the recommendation of President Flawn that the Resolution formalizing the creation of the John Charles Townes Foundation adopted by the U.T. Board of Regents on June 27, 1942, be amended to read as follows:

RESOLUTION

"WHEREAS, by order dated July 9, 1941, The [the] Board of Regents of The University of Texas System approved establishment of the John Charles Townes Foundation, and now desires formally to declare the conditions under which it will accept in trust any gifts made to such Foundation,

"IT IS NOW RESOLVED, that the Board of Regents of The University of Texas System (U.T. Board of Regents) agrees to accept in trust any and all money or property, real or personal, given to or subscribed for the John Charles Townes Foundation (under circumstances acceptable to the U.T. Board of Regents) subject to the following provisions:

"1. The funds of such Foundation shall be devoted solely to the furtherance in the School of Law of The University of Texas at Austin of excellence in legal education, legal research, and the progress of the law (in accordance with the written provisions of the specific gift or bequest, where so provided); but shall not be used to supplant funds otherwise available for the ordinary operating expenses of the School.

"2. Donations to the Foundation may be given the name of the donor or other designation specified by the donor, e.g., the Richard Roe Fund of the John Charles Townes Foundation.

"3. The U.T. Board of Regents shall hold, manage, control, sell, exchange, lease, convey, mortgage or otherwise encumber, invest or reinvest, and generally shall have power to dispose of in any manner and for any consideration and on any terms, the said gifts, funds or property in their discretion

Copies Supplemental Material  
Office of the Board of Regents (orig. + 1 xc)  
xcs: Chancellor Walker  
      Dr. Duncan  
      Mr. Crowson  
      Mr. Roddy

Date: 9/16/83  
      JLC/jw

and shall from time to time pay out of the income, or if the income be insufficient, out of the principal, if authorized by the instrument creating the fund, all expenses of trust and all expenditures incurred in furthering the purposes of the trust.

"4. Neither any donation of the John Charles Townes Foundation nor any income, fund or property arising therefrom in whatever form it may take shall ever be any part of the Permanent University Fund or of the Available University Fund nor shall the Legislature have power or be in anywise authorized to change the purposes thereof or to divert such donation, income, fund or property from those designated purposes.

"5. Expenditures from the John Charles Townes [funds-of the] Foundation [other-than-for-expenses-for-administration] shall be made pursuant to written budgetary recommendations [proposals] made by the President through regular administrative and budget channels to the U.T. Board of Regents showing the amount and purposes of the proposed expenditures. As in the case of all other University funds, authority for expenditure of all funds from the Foundation shall be vested in the U.T. Board of Regents and recommendations for such expenditures shall come to the President from [the Faculty and] the Dean of the School of Law. The [Faculty and] Dean of the School of Law, before forwarding such recommendations to the President, shall submit the same to an advisory committee [of-the] designated by The University of Texas Law School Foundation [State-Bar] (to be named as hereinafter set out) for their advice and suggestions.

"6. The Advisory Committee designated by The University of [the] Texas Law School Foundation [Bar] shall consist of three Trustees of The University of [practicing attorneys in] Texas Law School Foundation, designated from year to year by the President of The University of [the] Texas Law School Foundation [Bar as presently constituted, or of such Bar organization or association in Texas as is representative of the Bar of Texas (or in the event of more than one such organization, by the President of the organization which may be designated by the Dean of the School of Law of The University of Texas)]."

It is further recommended that, if the amendments to the Resolution are approved, the Executive Secretary, in consultation with the Office of General Counsel, be instructed to make the necessary editorial corrections to the footnotes in Subsection 4.33, Section 4, Chapter VII, Part One, Regents' Rules and Regulations to include these amendments in the history of the John Charles Townes Foundation.

#### BACKGROUND INFORMATION

It is anticipated that during the remainder of the period of celebration of The University of Texas at Austin Centennial (and thereafter if the matching program is continued), the John Charles Townes Foundation will be the appropriate vehicle for the receipt of private donations to the School of Law that are to be matched through The Endowed Teachers and Scholars

Program. Having been adopted in 1942, the Resolution establishing the foundation is antiquated. It appears appropriate to delete the reference to an advisory committee of the Texas State Bar and substitute an advisory committee consisting of Trustees of The University of Texas Law School Foundation.



## Office of the Attorney General State of Texas

October 5, 1981

<p>Mr. E. D. Walker Chancellor The University of Texas System 601 Colorado Street Austin, Texas 78701</p>	<p><b>Opinion No. MW-373</b></p> <p>Re: Agreement between the University of Texas Law School Foundation and the University of Texas School of Law</p>
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Dear Mr. Walker:

You inquire about the relationship between the University of Texas and the University of Texas Law School Foundation. The University of Texas Law School Foundation is a nonprofit corporation with the purpose of supporting the educational undertaking of the School of Law of the University of Texas. It solicits donations and expends funds to benefit the law school, acting as conduit and coordinator of gifts made by other parties. You state that the foundation and school of law wish to formalize their relationship through a Memorandum of Understanding which you have submitted to us. The memorandum states the foundation's intent to continue to make donations to the university, describes the purposes to be served by these donations, and states certain conditions under which the university will accept them.

You ask whether the university's compliance with its representations under the Memorandum of Understanding would constitute a gift or grant of public money to a corporation in violation of article III, section 51 of the constitution, which provides in pertinent part:

The Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever.

The Memorandum of Understanding raises this constitutional question because, in addition to providing for donations flowing from the foundation to the law school, it also states that the law school will provide, for example, office space,

utilities, and some staff assistance to the foundation.

We must first, however, determine whether the university has statutory authority to accept the terms of the five sections of the memorandum. Section 65.31 of the Education Code states some relevant powers of the University of Texas Regents.

(a) The board is authorized and directed to govern, operate, support, and maintain each of the component institutions that are now or may hereafter be included in a part of The University of Texas System.

....

(c) The board has authority to promulgate and enforce such other rules and regulations for the operation, control, and management of the university system and the component institutions thereof as the board may deem either necessary or desirable. . . .

(e) The board is specifically authorized, upon terms and conditions acceptable to it, to accept and administer gifts, grants, or donations of any kind, from any source, for use by the system or any of the component institutions of the system.

Section 65.31(e) of the Education Code gives the regents considerable discretion to accept donations 'of any kind' with conditions attached by the donor. We believe this broad language authorizes the regents to accept gifts of money, other intangibles, real and personal property, and services. See Letter Opinion R-1009 (To Honorable Frank Smith, Jan. 27, 1948). The conditions attached to the grant must be acceptable to the regents.

The board has considerable latitude in exercising powers delegated to it by the legislature, subject to review for abuse of discretion. *Foley v. Benedict*, 55 S.W.2d 805 (Tex. 1932); Letter Advisory No. 6 (1973). However, the board is charged with the governing of the university system, see Education Code Section 65.11, and the exercise of its specific powers must be in furtherance of this duty. A 'university system' is the association of agencies of higher education under a single governing board. Educ. Code s 61.00319. The broad powers granted the regents by section 65.31(a), (c), and (e), i.e., to support and maintain, to promulgate rules and regulations, and to accept gifts, are to be exercised on behalf of the component institutions of the system. The University of Texas at Austin is an 'institution of higher education within The University of Texas System.' Educ. Code s 67.02. Thus the board of regents must exercise its powers of governance for the purpose of higher education as carried out by the component institutions. Grants accepted for the university at Austin must reasonably relate to its purposes as an educational institution. See Attorney General Opinions M-391 (1969); WW-334 (1958); WW-5 (1957).

The Memorandum of Understanding contains a number of statements as to the foundation's goal of serving the educational purposes of the law school and the kind of assistance it has rendered in the past and proposes to render in the future. These statements are found in sections one through three:

1. The Foundation has engaged in development activities for The University of Texas School of Law (The Law School), has assisted in maintaining alumni relations on behalf of The Law School, has participated in the Continuing Legal Education (CLE) program of The Law School, has provided various and substantial support for the development of The Law School, its faculty and staff, and has furnished important administrative and other services to The Law School and The University. The continuation of these activities is essential to the maintenance of a law school of the first class. The University and The Foundation deem it appropriate to, and do hereby, memorialize the nature of the relationship between The Foundation and The University and The Law School, ratify and approve these past activities by The Foundation, and agree mutually for the future regarding the respective roles, rights, and obligations of The University and The Foundation in this relationship.

2. The Foundation is a nonprofit educational corporation chartered in 1952 for the purposes of supporting the educational undertaking of The Law School by furthering legal education, legal research, financial progress of law, and of students, and the progress of law, and of soliciting donations for particular objectives to accomplish such purpose, and of cooperating with the advancement of the general welfare of The University as a whole. The Statement of Development Policy by the Board of Trustees of The Foundation includes the activities of securing, holding in trust, and administering funds for the benefit of The School of Law of The University of Texas at Austin.

3. The Foundation agrees that, during the term of this Memorandum of Understanding, The Foundation: (1) will continue to invest and administer the funds presently on hand for the benefit of The Law School; (2) will continue to conduct a development program for the benefit of The Law School and The University to insure procurement and retention of outstanding law faculty members, to enrich the educational environment of The Law School, and by other reasonable means to enhance the prestige of, and to advance, The Law School, and will utilize its expertise, resources, and personnel for such purposes; (3) will use reasonable efforts to finance and conduct, or work with law school alumni groups interested in financing and conducting, programs and publications designed to maintain good alumni relations on behalf of The Law School; (4) will use on behalf of The Law School, or will lease, loan, or give to The Law School from time to time, to the extent that it is feasible to do so, equipment needed by The Law School or helpful to its operations; (5) will continue to render other assistance to The Law School of the general nature of the assistance that it has rendered in the past, and to render other assistance to The Law School in the future as may mutually appear desirable; and (6) will continue to recognize The School of Law of The University of Texas at Austin as the sole beneficiary of its development policy and its educational support.

These provisions restate and elaborate on the foundation's purpose, as expressed in its charter, which is to support legal education by soliciting and expending donations for that purpose. They express numerous specific purposes directed at serving the law school's educational enterprise: the provision of administrative services, financial aid for students, and funds and services directed at faculty recruitment. In addition, it has participated in the law school Continuing Legal

Education program and has worked with alumni groups. With the possible exception of the latter endeavor, these activities are closely related to the educational function of the university. See Attorney General Opinions M-391 (1969) (provision of financial aid to students); WW-334 (1958) (Texas Tech television channel may accept commercial programs provided directors find reasonable relationship to statutory purposes of college); WW-5 (1957) (Texas Tech may engage in educational television broadcasting); V-1476 (1952) (salary of university comptroller may be supplemented with donated funds); 0-4167 (1941) (University may spend funds for purpose of soliciting gifts from potential donors). Cf. Attorney General Opinion M-223 (1968) (hospital district may spend public funds to pay travel costs of employees who recruit prospective employers). The legislature has in fact recognized that universities may cooperate with alumni associations. See V.T.C.S. art. 1396-2.23A(E)(8). It has, however, prohibited the use of appropriated funds for the support and maintenance of alumni organizations or activities. General Appropriations Act, Acts 1979, 66th Leg., ch. 843, art. IV, s 17, at 2859. Thus, if the regents of the university believe that the support of alumni organizations will benefit the educational purposes of the school, they will have to locate a permissible funding source. The foundation can provide precisely that.

Section four of the memorandum states in part the terms and conditions on which the university is willing to accept donations from the foundation:

4. The University agrees that, during the term of this Memorandum of Understanding, The University: (1) will provide reasonable space in or near The Law School building, as approved by The University President and The Law School Dean, to The Foundation for the purpose of carrying out its obligations hereunder and for its general operations on behalf of The Law School; (2) will provide the utilities and telephone service reasonably needed by The Foundation in carrying out its activities under this Memorandum of Understanding; and (3) will permit reasonable use of University equipment and personnel as needed to coordinate the activities of The Foundation with the educational operations of The Law School, and hereby expressly recognizes that the Dean, Associate Deans, and members of The Law School faculty may reasonably assist from time to time in development programs as may be needed or helpful in coordinating those Foundation activities with the operations of The Law School.

In our opinion, the university has statutory authority to provide the foundation with the items enumerated in section 4 as 'terms and conditions' attached to donations. See Educ. Code s 65.31(e). University property is stated property, see *Walsh v. University of Texas*, 169 S.W.2d 993 (Tex. Civ. App.--El Paso 1942, writ ref'd), but the regents have power to determine the use of campus buildings. *Splawn v. Woodard*, 287 S.W. 677 (Tex. Civ. App.-- Austin 1926, no writ). Compare V.T.C.S. art. 601b, s 4.01 (Purchasing and General Services Commission's control of public building does not extend to higher education buildings).

Counties have been permitted to provide a private entity with space in a public building where convenient or necessary to carry out a county purpose. See *Sullivan v. Andrews County*, 517 S.W. 2d 410 (Tex. Civ. App.--El Paso 1974,



writ ref'd n.r.e.) (county leased clinic to physicians); *Dodson v. Marshall*, 118 S.W. 2d 621 (Tex. Civ. App.--Waco 1938, writ dismissed) (space in courthouse leased to individual for concession stand); Attorney General Opinions [MW-200](#) (1980) (county provided rent free space in courthouse to employees credit union); H-912 (1976) (contract with physician to practice in county medical clinic). Counties have only those powers expressly or impliedly granted by the constitution and statutes. *Canales v. Laughlin*, 214 S.W.2d 451 (Tex. 1948); *Anderson v. Wood*, 152 S.W. 2d 1084 (Tex. 1941). The regents of the University of Texas have far broader powers to operate and manage component institutions within the system pursuant to regulations they deem necessary and desirable. Educ. Code s 65.31(c). In our opinion, the board of regents has statutory authority over the provision of space to private entities at least as great as, and in all probability greater than, that of the commissioners court. The provision of utilities may be regarded as incidental to the provision of space in the law school in view of the difficulty of the foundation making separate provision for them.

Section 65.31(e) of the Education Code permits the university to 'accept and administer' grants. This language implicitly acknowledges that the university will have to devote some of its resources to administering grants it accepts, in particular the services of personnel. The regents have statutory authority to decide whether or not to accept a grant which involves particular administrative costs for the university.

There is little or no precedent for a governmental body providing telephone services and the use of equipment to a private entity which uses space provided by the governmental body. See Attorney General Opinion [MW-200](#) (1980) (county may provide media free space in courthouse, but may not provide free telephone service). However, we believe the regents may regard the provision of this assistance as incidental to the provision of office space in the law school to the foundation. The foundation exists to serve the educational purposes of the law school by making various types of donations. The joint purposes of the law school and foundation may possibly be accomplished in a more cost effective way if the board of regents provides the foundation with a telephone and some equipment, rather than requiring it to use foundation resources to pay its telephone bills and buy its own copy machine. We conclude that the board of regents has authority under section 65.31 of the Education Code which permits the law school to provide to the foundation in reasonable amount the resources enumerated in section four of the memorandum.

Section five of the agreement states as follows:

5. It is expressly mutually agreed that: (1) staff personnel working for or serving The Foundation may be paid as University employees, but the salaries and The University's portion of retirement benefits for such personnel will be reimbursed to The University by The Foundation, and other usual benefits for such personnel will be provided by The University; however, all such personnel are subject to all of the rules, regulations, and personnel policies of The University; (2) funds raised by the development activities of The Foundation may be subject to a reasonable management or operations charge or fee by The Foundation, but

all such charges or fees in regard to endowed funds shall come from income and not from corpus; all funds, whether endowed, restricted, or unrestricted, raised by the development activities of The Foundation shall be held, invested, managed, and disbursed by The Foundation for the sole benefit of The Law School, subject to any restrictions placed thereon by particular donors.

We understand section five, subsection (1) to provide that foundation employees are permitted to be on the university payroll and to be eligible for retirement and other benefits provided by the university to its own employees. The statutes and appropriations act forbid this arrangement. The appropriations act provides funds for departmental operating expense and staff benefits. Acts 1979, 66th Leg., ch. 843, art. IV, at 2787. See V.T.C.S. art. 6813. In our opinion, these funds are appropriated for university employees, and may not be specifically allocated for salaries or fringe benefits for the employees of a private corporation which is under contract with the university. See Acts 1979, 66 Leg., ch. 843, art. V, s 1 (p), at 2895. Nothing in the university's budget request to the sixty-sixth legislature indicates that any of the law school's departmental operating expense was to be allocated to foundation employees. State of Texas Request for Legislative Appropriations, Fiscal Years Ending August 31, 1980 and 1981, the University of Texas at Austin, at 74, 87.

Where authorized by law, state agencies may employ an independent contractor, but he does not occupy an office or position under the state nor is he an agent of the state. Attorney General Opinion V-345 (1947). See also Attorney General Opinion [H-1304](#) (1978). In addition, the appropriations act may authorize an expenditure for a consultant. Attorney General Opinion S-13 (1953). However, where the appropriations act indicates that work is to be done by employees under the direct control of the agency, it may not expend its appropriation to contract for the performance of those services by an independent contractor. Attorney General Opinion S-80 (1953). In our opinion, employees of the Texas Law School Foundation are not entitled to be paid by the university. Nor are they entitled to receive vacation and sick leave benefits which the appropriations act provides state employees. Acts 1979, 66th Leg., ch. 843, art. V, s 7(a), (b), (c), at 2901.

Employees of the Law School Foundation may not become members in the Teacher Retirement System. Section 3.03(b) of the Education Code provides as follows:

Every employee in any public school or other branch or unit of the public school system of this State is a member of the retirement system as a condition of his employment.

'Employee' is defined in part as 'any person employed to render service on a full-time, regular salary basis . . . by the board of regents of any college or university.' Educ. Code s 3.02(a)(3). In Attorney General Opinion O-3399 (1941), it was determined that public school teachers who were employed and paid by the federal government and whose services were controlled by a federal agency could not participate in the teacher retirement system. These persons were not teachers as that term is defined in the retirement statute because they

were not employed by any state educational agency but were employed directly and exclusively by the federal government. See also Attorney General Opinion O-3409 (1941). Since employees of the Law School Foundation are not university employees, they are not eligible for retirement benefits under the teacher's retirement system.

Nor are employees of the foundation entitled to participate in the group insurance plan which the university provides its employees. Article 3.50-3 of the Insurance Code, the Texas State College and University Employees Uniform Insurance Benefits Act, provides group coverage for all employees of Texas state colleges and universities. 'Employee' is defined as any person employed by a governing board of a state university, senior or community/junior college, or any other agency of higher education. Ins. Code art. 3.50-3, s 3(a)(4)(A). Employees of the Texas Law School Foundation do not fit this definition and consequently are not eligible for insurance benefits under article 3.50-3 of the Insurance Code. See also V.T.C.S. art. 5221b-6(b)(2) (unemployment compensation for state employees); art. 6252-19 (Tort Claims Act makes state liable for torts of persons in paid service of state); art. 8309g (workmen's compensation for state employees).

Having examined the memorandum from the perspective of the university's statutory authority to agree to it, we turn to your question: whether the university would violate article III, section 51 by complying with its representations under the memorandum. Article III, section 51 of the constitution provides in pertinent part:

The Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever

This provision prevents the legislature from giving away public funds or enacting a statute which authorizes a state agency or political subdivision to do so. See *Texas Pharmaceutical Ass'n v. Dooley*, 90 S.W. 2d 328 (Tex. Civ. App.--Austin 1936, no writ). Thus, the legislature may not authorize the University of Texas to grant public funds to an individual or corporation.

Although article III, section 51 on its face prohibits only grants of money, it has been liberally construed to prohibit the grant of state property and contract rights as well as money. *Rhoads Drilling Co. v. Allred*, 70 S.W. 2d 576, 582 (Tex. 1934) (dicta); Attorney General Opinions WW-790 (1960); WW-153 (1957).

We note that provisions one through three of the memorandum do not raise the constitutional issue which concerns you. These provisions describe the foundation's donative purposes, and do not refer to benefits flowing from the university to the foundation. Section five does not raise the article III, section 51 issue, because various statutes prevent the university from providing foundation employees with the described benefits.

Section four of the memorandum does, however, raise the constitutional issue. It states that the university will provide the foundation with office space, telephone

service, utilities, assistance from university staff and the use of university equipment. We have determined that the regents have statutory authority to provide this assistance to the foundation; we must next consider whether statutes granting such authority are constitutional as applied to the situation you present.

Article III, section 51 of the constitution requires that a grant by the university to the foundation must serve a public purpose, appropriate to the function of a university, and that adequate consideration must flow to the public. Attorney General Opinions [MW-89](#) (1979); [H-1260](#) (1978); H-520 (1975); H-403 (1974). In addition, the university must maintain some controls over the foundation's activities, to ensure that the public purpose is actually achieved. Attorney General Opinions [MW-89](#) (1979); [H-1309](#) (1978); H-912 (1976). If these conditions are met, the grant by the public entity is not unconstitutional.

As made clear by sections one through three of the memorandum, and by its charter, the foundation exists to serve the educational function of the law school. Public education is an essential governmental function. *Rainey v. Malone*, 141 S.W. 2d 713 (Tex. Civ. App.--Austin 1940, no writ). The assistance provide by the foundation to the university helps it accomplish a public purpose entrusted to it.

The foundation's charter requires it to devote its resources to benefitting the law school; therefore, the law school would still receive donations from the foundation even if it did not provide office space and other in kind assistance. See *Boyd v. Frost National Bank*, 196 S.W. 2d 497 (Tex. 1946).

Nonetheless, a public purpose may be served by providing the foundation with rent-free space in the law school. This determination is to be made by the university in the first instance, and if challenged, ultimately by a court. Attorney General Opinion H-403 (1974); see also *Dodson v. Marshall*, *supra*, at 624. Although we lack sufficient information to state with certainty how the foundation's presence in the law school serves the public purpose of higher education, we can at least raise some possibilities for consideration by the regents.

For example, if law students and faculty members have easy access to the foundation office, they may learn about and benefit from the scholarship and research grants it offers. The foundation's presence in the law school may help achieve full and efficient use of its resources by prospective recipients. It will also serve the convenience of persons in the law school who can contact the foundation with a minimal expenditure of time. See Attorney General Opinion [MW-200](#) (1980).

Law school administrators work with the foundation to coordinate foundation activities with those of the law school. Their convenience will be served if the foundation is easily available for consultations. If the foundation also provides administrative services, these can be utilized easiest on the law school premises.

Another factor to consider is whether the provision of office space and other assistance to the foundation enhances the cost effectiveness of operating the

foundation. The regents might consider the value of the office space, telephone, utilities, equipment, and staff assistance the law school will provide as compared to equivalent items purchased on the market. Rental paid for an office would probably include a landlord's profit. Since the foundation's resources are to be used to benefit the university, savings on overhead costs should go to the law school. Providing the foundation with an office might free some resources worth more than the office from use for overhead so they could be devoted to law school education.

In addition to serving a public purpose, the provision of office space and related assistance to the foundation must be subject to controls, contractual or otherwise, to insure that the public purpose is met. The Memorandum of Understanding is not a contract, since the representations made by the foundation either relate to its past activities or express generalized intentions as to future help. The promises appear too vague to be enforceable as a contract, and the foundation's compliance with its legal duties under the charter does not constitute consideration. See *Teague v. Edwards*, 315 S.W. 2d 950 (Tex. 1958).

However, other controls exist to assure that the provision of university office space and other benefits to the foundation serves and will continue to serve a public purpose, whether it is the convenience of the law school or increasing the value of the foundation's contributions to public education. The board of regents has sufficient rule-making power to establish controls over this transaction. See Educ. Code s 65.31. In particular, it has authority to control the use of university property. *Splawn v. Woodard*, supra. The memorandum recognizes this in noting that the university president and law school dean will control the allocation of space to the foundation subject to a test of reasonableness. Other office-related assistance going to the foundation is provided subject to a test of reasonableness. Memorandum, section 4. Law school administrators can see that the office space and other items provided actually serve the law school's purposes.

With respect to gifts for professorships and scholarships, section 65.36 of the Education Code provides detailed controls as to conditions which may be attached to these donations. Moreover, the convenient location of the foundation may enable law school administrators to shape foundation activities to some extent toward fulfilling the current needs of the law school. If the foundation's presence on university property ceases to serve a public purpose, it may be removed at any time, since it has no lease. The university has control of its premises and may require the foundation to vacate the office it uses. Cf. *Morris v. Nowotny*, 323 S.W. 2d 301 (Tex. Civ. App.--Austin 1959, writ ref. n.r.e.), cert. denied, 361 U.S. 889 (1959).

Additional controls over the allocation of university space to the foundation are found outside of the university. The state auditor is required to audit the use of public funds by the university and report to the Legislative Audit Committee. V.T.C.S. art. 4413a-13(1),(2). Thus, university expenditures on behalf of the foundation will be subject to examination by the auditor and legislature.

In addition, the Open Records Act defines 'governmental body' to include the portion of every corporation 'which is supported in whole or in part by public

funds. . . ' V.T.C.S. art. 6252-17a, s 2(F). Since the foundation receives support from the university that is financed by public funds, its records relating to the activities supported by public funds will be subject to public scrutiny. See Open Records Decision No. 228 (1979).

Despite the absence of contractual controls designed to ensure that the presence of the foundation in the law school will serve a public purpose, we believe the regents can exercise sufficient control over this transaction pursuant to statutory authority. Furthermore, additional limitations on the foundation derive from other statutes as discussed above. Consequently, the university may comply with its representation under section four of the memorandum.

## SUMMARY

The University of Texas may provide the Law School Foundation with office space and other assistance where a public purpose will thereby be served. The regents have authority to decide in the first instance whether a public purpose is served. Sufficient statutory controls exist to ensure that the public purpose will be achieved. Thus, the university may provide the foundation with the stated benefits without violating article III, section 51 of the constitution.

The university lacks authority to place foundation employees on its payroll and give them fringe benefits reversed for state employees.

Very truly yours,



Mark White  
Attorney General of Texas

John W. Fainter, Jr.  
First Assistant Attorney General

Richard E. Gray III  
Executive Assistant Attorney General

Prepared by Susan Garrison  
Assistant Attorney General

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UCI 9 1981

7. U. T. Austin: Approval of Memorandum of Understanding with The University of Texas Law School Foundation. --The Memorandum of Understanding set out on Pages 15-18 by and between The University of Texas at Austin and The University of Texas Law School Foundation was approved without objection and President Flawn was authorized to execute same:

MEMORANDUM OF UNDERSTANDING

By this Memorandum of Understanding, The University of Texas at Austin (The University) and The University of Texas Law School Foundation (The Foundation) agree:

1. The Foundation has engaged in development activities for The University of Texas School of Law (The Law School), has assisted in maintaining alumni relations on behalf of The Law School, has participated in the Continuing Legal Education (CLE) program of The Law School, has provided various and substantial support for the development of The Law School, its faculty and staff, and has furnished important administrative and other services to The Law School and The University. The continuation



of these activities is essential to the maintenance of a law school of the first class. The University and The Foundation deem it appropriate to, and do hereby, memorialize the nature of the relationship between The Foundation and The University and The Law School, ratify and approve these past activities by The Foundation, and agree mutually for the future regarding the respective roles, rights, and obligations of The University and The Foundation in this relationship.

2. The Foundation is a nonprofit educational corporation chartered in 1952 for the purposes of supporting the educational undertaking of The Law School by furthering legal education, legal research, financial assistance to deserving students, and the progress of law, and of soliciting donations for particular objectives to accomplish such purpose, and of cooperating with the advancement of the general welfare of The University as a whole. The Statement of Development Policy by the Board of Trustees of the Foundation includes the activities of securing, holding in trust, and administering funds for the benefit of The School of Law of The University of Texas at Austin.

3. The Foundation agrees that, during the term of this Memorandum of Understanding, The Foundation: (1) will continue to invest and administer the funds presently on hand for the benefit of The Law School; (2) will continue to conduct a development program for the benefit of The Law School and The University to insure procurement and retention of outstanding law faculty members, to enrich the educational environment of The Law School, and by other reasonable means to enhance the prestige of, and to advance, The Law School, and will utilize its expertise, resources, and personnel for such purposes; (3) will use reasonable efforts to finance and conduct, or work with law school alumni groups interested in financing and conducting, programs and publications designed to maintain good alumni relations on behalf of The Law School; (4) will use on behalf of the Law School, or will lease, loan, or give to The Law School from time to time, to the extent that it is feasible to do so, equipment needed by The Law School or helpful to its operations; (5) will continue to render other assistance to The Law School of the general nature of the assistance that it has

rendered in the past, and to render other assistance to The Law School in the future as may mutually appear desirable; and (6) will continue to recognize The School of Law of The University of Texas at Austin as the sole beneficiary of its development policy and its educational support.

4. The University agrees that, during the term of this Memorandum of Understanding, The University: (1) will provide reasonable space in or near The Law School building, as approved by The University President and The Law School Dean, to The Foundation for the purpose of carrying out its obligations hereunder and for its general operations on behalf of The Law School; (2) will provide the utilities and telephone services reasonably needed by The Foundation in carrying out its activities under this Memorandum of Understanding; and (3) will permit reasonable use of University equipment and personnel as needed to coordinate the activities of The Foundation with the educational operations of The Law School, and hereby expressly recognizes that the Dean, Associate Deans, and members of The Law School faculty may reasonably assist from time to time in development programs as may be needed or helpful in coordinating those Foundation activities with the operations of The Law School.

5. It is expressly mutually agreed that funds raised by the development activities of The Foundation may be subject to a reasonable management or operations charge or fee by The Foundation, but all such charges or fees in regard to endowed funds shall come from income and not from corpus; all funds, whether endowed, restricted, or unrestricted, raised by the development activities of The Foundation shall be held, invested, managed, and disbursed by The Foundation for the sole benefit of The Law School, subject to any restrictions placed thereon by particular donors.

THIS AGREEMENT is effective immediately upon execution by the Parties and approval by the Board of Regents of The University of Texas System, and the Agreement shall remain in effect from year to year unless modified in writing by mutual agreement of The Foundation and The

University, or terminated by either The Foundation or The University upon giving notice twelve (12) months prior to the end of a fiscal year of The University.

APPROVED by The Foundation on this the \_\_\_\_\_ day of \_\_\_\_\_,  
A.D., \_\_\_\_\_.

THE UNIVERSITY OF TEXAS LAW  
SCHOOL FOUNDATION

By \_\_\_\_\_  
KRAFT EIDMAN  
President

THE UNIVERSITY OF TEXAS AT AUSTIN

By \_\_\_\_\_  
PETER T. FLAWN  
President

Agreement  
2010-11

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Pursuant to Paragraph 4.(4) of the Memorandum of Understanding between The University of Texas at Austin ("The University") and The University of Texas Law School Foundation ("Foundation"), as approved by the Board of Regents of The University of Texas system on April 8, 1982, The University will provide direct personnel support for the operation of the Foundation as contemplated in Paragraph 4.(4) of the aforementioned Memorandum of Understanding.

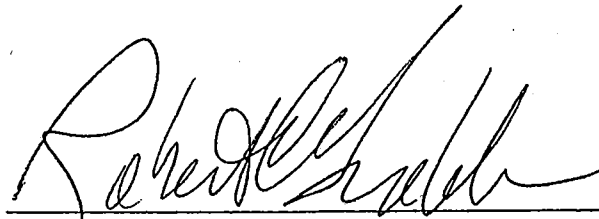
The University and the Foundation agree that a reasonable sum to be paid by the Foundation to The University as provided in paragraph 4.(4) for the current fiscal year is \$315,000.

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Kevin P. Hegarty,  
Vice President and Chief Financial Officer  
The University of Texas at Austin

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Date



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Robert C. Grable  
The University of Texas Law School Foundation

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Date

30 Sept 10

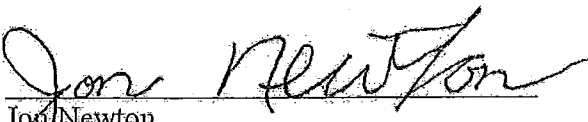
Agreement  
2011-12

Pursuant to Paragraph 4.(4) of the Memorandum of Understanding between The University of Texas at Austin ("The University") and The University of Texas Law School Foundation ("Foundation"), as approved by the Board of Regents of The University of Texas system on April 8, 1982, The University will provide direct personnel support for the operation of the Foundation as contemplated in Paragraph 4.(4) of the aforementioned Memorandum of Understanding.

The University and the Foundation agree that a reasonable sum to be paid by the Foundation to The University for the personnel support provided by The University pursuant to Paragraph 4.(4) and the items provided by The University pursuant to Paragraph 4.(1)-(3) for the current fiscal year is \$325,000.

  
\_\_\_\_\_  
Kevin Hegarty  
Vice President and Chief Financial Officer  
The University of Texas at Austin

\_\_\_\_\_  
Date 9/21/11

  
\_\_\_\_\_  
Jon Newton  
President  
The University of Texas Law School Foundation

\_\_\_\_\_  
Date 9/1/11

# FOUNDATION AND ALUMNI RELATIONS STAFF

## Introduction

All of the Foundation staff members are employees of The University of Texas. The Foundation pays UT each year a reasonable payment for permitting the UT employees to handle Foundation business (see Section VI *UT Agreements*).

Carla Cooper, however, is an officer (Secretary) of the Foundation.

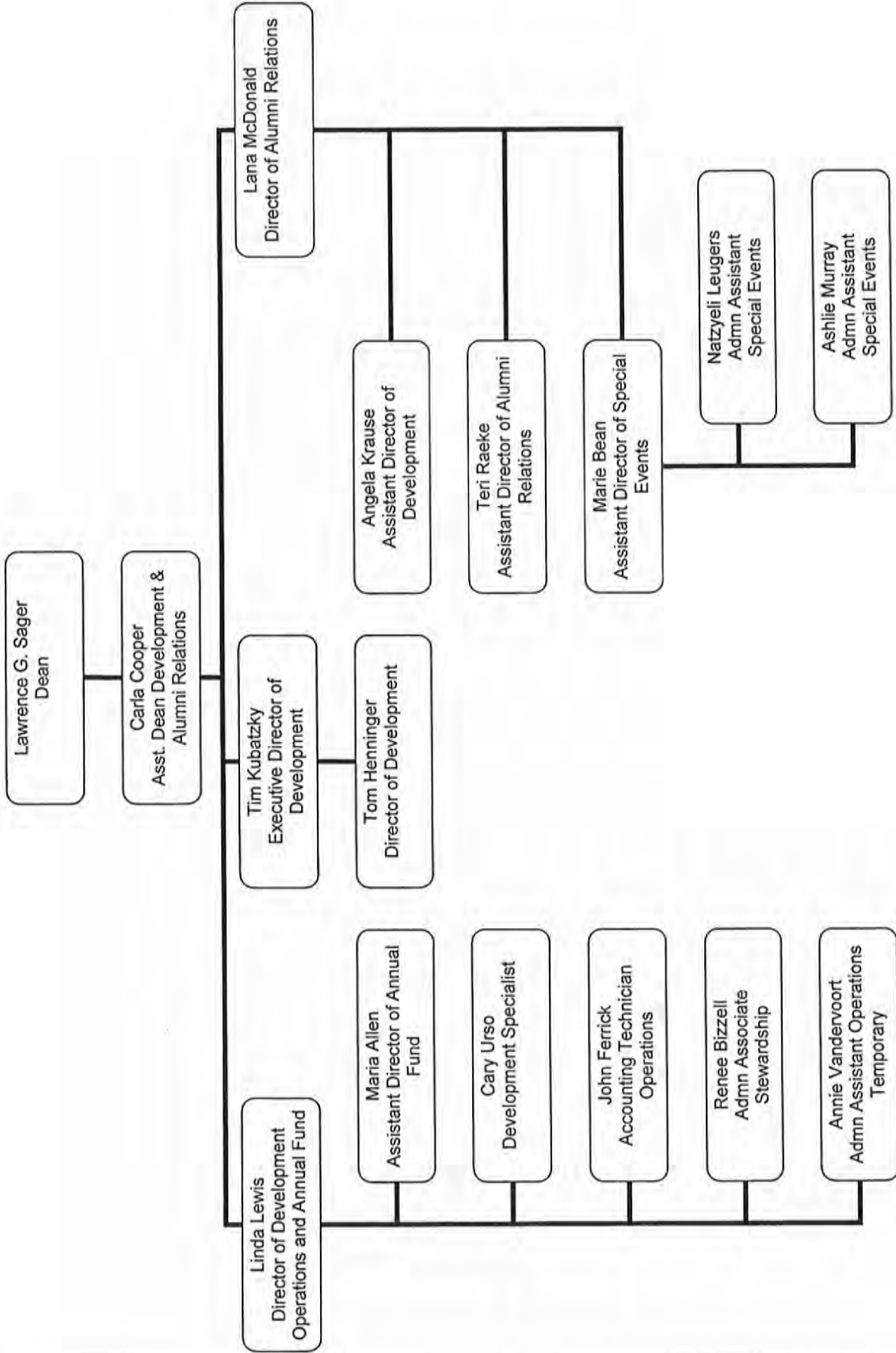
Mailing address, phone numbers, and email addresses are:

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Dean Lawrence Sager  
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512-232-1124 Fax  
[lsager@law.utexas.edu](mailto:lsager@law.utexas.edu)

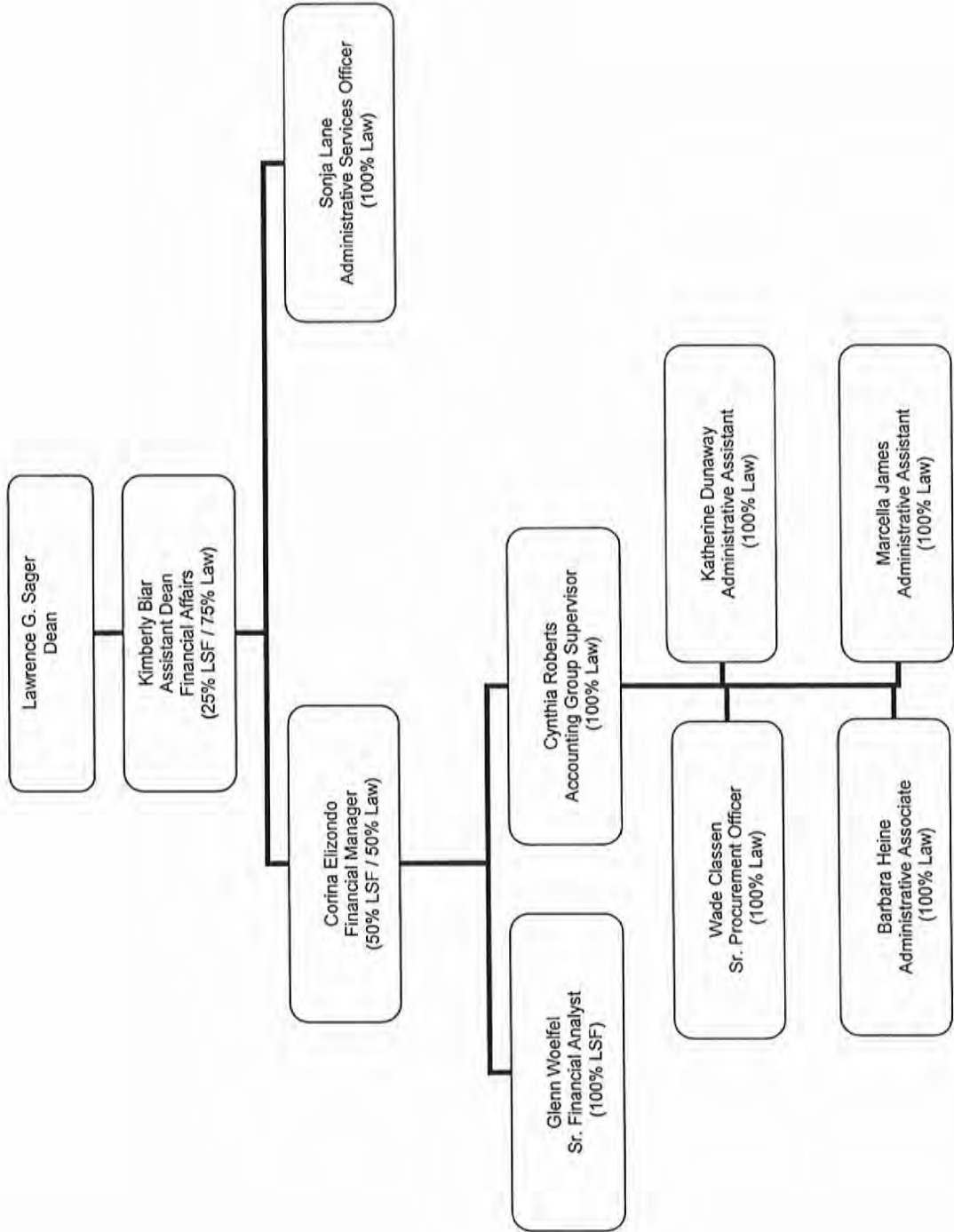
Carla Cooper  
Assistant Dean for Development and Alumni Relations  
512-232-1939 Phone  
512-535-8845 Cell Phone  
512-471-5660 Fax  
[ccooper@law.utexas.edu](mailto:ccooper@law.utexas.edu)

Kimberly Biar  
Assistant Dean for Financial Affairs  
512-232-1111 Phone  
512 589-1950 Cell Phone  
512-471-6987 Fax  
[kbiar@law.utexas.edu](mailto:kbiar@law.utexas.edu)



**THE UNIVERSITY OF TEXAS LAW SCHOOL  
FOUNDATION**

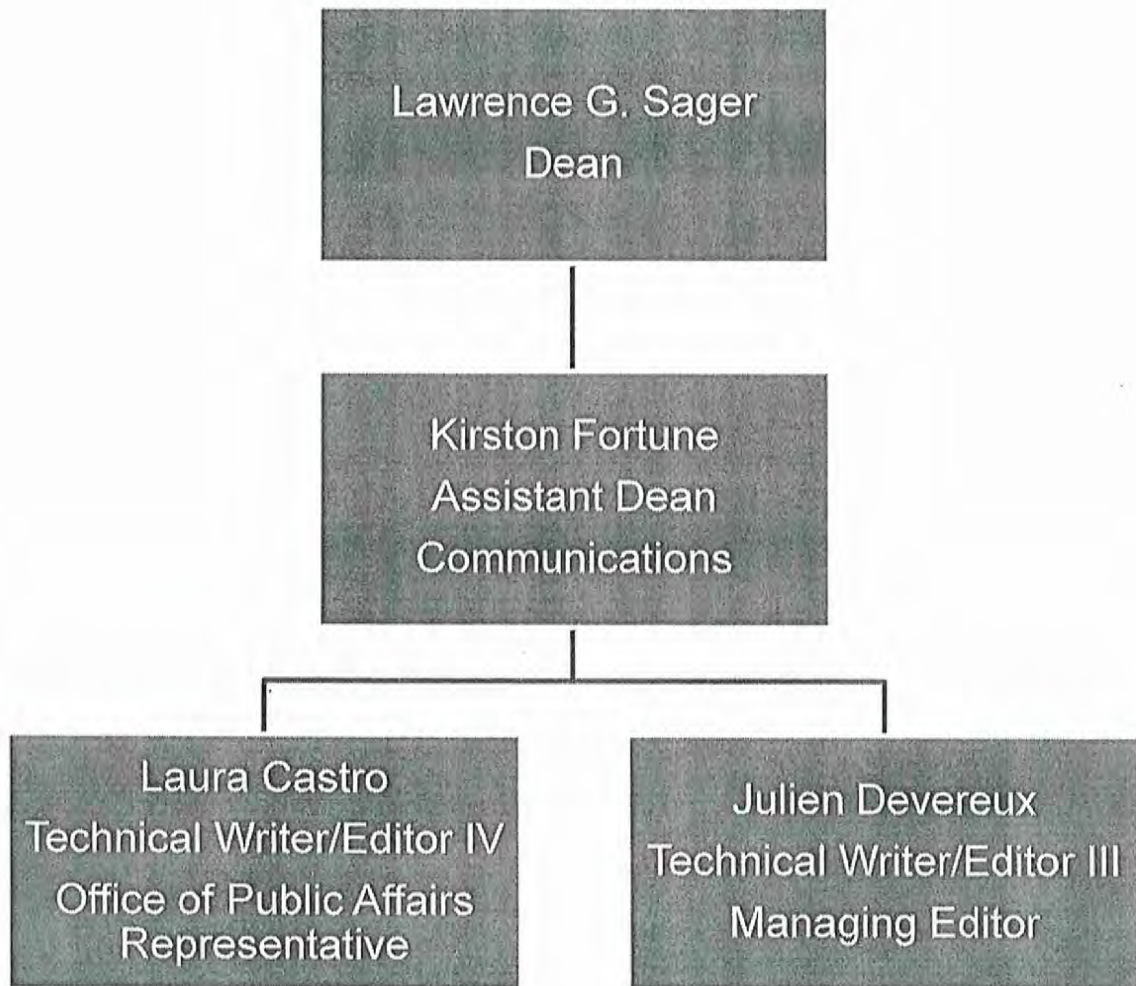
**Financial Affairs**





**THE UNIVERSITY OF TEXAS SCHOOL OF LAW  
FOUNDATION AND ALUMNI RELATIONS**

**Communications**



THE UNIVERSITY OF TEXAS LAW SCHOOL FOUNDATION

STANDARDS OF CONDUCT POLICY

The University of Texas employees engaged in the conduct of Foundation affairs should comply with The University of Texas Employee Compliance guide to the extent applicable.

Without limiting the above requirement, personnel engaged in the conduct of Foundation affairs shall:

Maintain the highest degree of integrity in all activities;

Comply with all applicable laws and regulations;

Make accurate and timely entries on books and records of the Foundation and comply with all applicable accounting rules;

Be open and cooperative with auditors;

Be honest and open in solicitations on behalf of the Foundation;

Respond to questions from donors and prospective donors promptly and honestly;

Insure that the intent of donors of endowments and special purpose gifts are carried out;

To the extent desired by donors, to respect the confidentiality of donor's records to the greatest extent possible; and

Not accept from actual or potential suppliers of goods or services any gifts other than those with a value of fifty dollars or less. This shall not preclude acceptance of business lunches or other meals under appropriate circumstances.

Questions concerning the application of this policy shall be referred to the Dean, the Chair of the Audit Committee or the President or Vice-President.

First Amended MOU between The University of Texas at Austin and The University of Texas  
Law School Foundation

By this First Amended Memorandum of Understanding, The University of Texas at Austin (“The University”) and The University of Texas Law School Foundation (“The Foundation”) agree:

I.  
RECITALS

- A. The purpose of this First Amended Memorandum of Understanding is to guide and direct the parties respecting their affiliation, cooperation and working relationship, inclusive of anticipated future arrangements and agreements in furtherance thereof.
- B. The Foundation is a Texas Nonprofit Corporation qualified under Section 501(c)(3) of the Internal Revenue Code and exists for the purposes of aiding and promoting educational and charitable purposes and lawful activities of The University of Texas at Austin School of Law (“The Law School”).
- C. The Foundation is a separate legal entity from The University and The Law School.
- D. Since The Foundation was established in 1952 as a as a private, non-profit educational corporation, it has engaged in development activities for The Law School, has assisted in maintaining alumni relations on behalf of The Law School, has participated in the Continuing Legal Education (CLE) program of The Law School, has provided various and substantial support for the development of The Law School, its faculty and staff, and has furnished important administrative and other services to The Law School and The University. The continuation of these activities is essential to the maintenance of a law school of the first class.
- E. The University and The Foundation deem it appropriate to, and do hereby, ratify and approve these past activities by The Foundation, and mutually agree to the terms in this, First Amended Memorandum of Understanding, which further details the respective roles, rights, and obligations of The University and The Foundation in this relationship.

II.  
TERMS

In consideration of the mutual commitments herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, The Foundation and The University agree as follows:

A. The Foundation Support of The University

- 1. The Foundation’s sole purpose for existence is to provide support to The Law School. In accordance with The Foundation’s governing documents, that support includes, but is not limited to continuing to:

- (a) Raise, receive, hold in trust, invest, and administer funds solely for the benefit of The Law School;
- (b) Assist The Law School Development and Alumni Relations Office in its fundraising, marketing, public relations and alumni outreach activities and development programs with individuals, corporations, private foundations and other organizations;
- (c) Solicit funds to further legal education, legal research, and financial assistance to deserving students, and to enrich the educational environment and prestige of The Law School;
- (d) Conduct a development program for the benefit of The Law School and The University to insure procurement and retention of outstanding law faculty members;
- (e) Promote the interest and welfare of The University/The Law School; and
- (f) Perform other acts as may be deemed appropriate in furtherance of the mission of The Law School.

B. Use of The Law School Name

1. The Foundation may, in connection with its lawful business and activities, use the name of The Law School and other symbols and marks of The Law School, provided that The Foundation clearly communicates that it is conducting business in its own name for the benefit of The Law School.
2. The Foundation will, however, operate under its own seal and logotype.
3. The Foundation agrees to cease using The Law School's name and symbols in the event:
  - (a) The Foundation dissolves;
  - (b) This Agreement is terminated as provided below; or
  - (c) The Foundation ceases to be a nonprofit corporation or ceases to be recognized by the Internal Revenue Service as described in section 501(c)(3) of the Internal Revenue Code.

C. The Relationship between The Foundation and The University

1. The Foundation is a separately incorporated 501(c)(3) non-profit organization created to raise, manage, distribute, and steward private resources to support the various missions of The Law School.

2. The Foundation agrees to cooperate with the Chancellor of The University of Texas System or his or her designee to allow The University to monitor the relationship between The Foundation and The Law School.
3. The Foundation's Board of Trustees is responsible for the control and management of all assets of the Foundation, including the prudent management of all gifts consistent with donor intent.
4. The Dean of the Law School is responsible for communicating Law School priorities and long-term plans to the Foundation.
5. The Dean of the Law School and will work, in conjunction with The Foundation, to identify, cultivate, and solicit prospects for private gifts.
6. The University recognizes that The Foundation is a private corporation with the authority to keep all records and data confidential consistent with the law.
7. The University agrees to encourage and maintain the independence of The Foundation and, at the same time, foster the cooperative relationship between The Law School and The Foundation.
8. The University shall include The Foundation as an active and prominent participant in the strategic planning for The Law School.

D. Foundation Responsibilities to The University

1. Fundraising and Stewardship

The Foundation agrees to comply with all standards and eligibility requirements as an external non-profit corporation as set forth in Texas and federal law, and The University of Texas System Board of Regents Rules and Regulations, and The University's policies and procedures.

The Foundation shall create an environment conducive to increasing levels of private support for the mission and priorities of The Law School.

The Foundation, in consultation with the Dean of the Law School, is responsible for planning and executing comprehensive fund-raising and donor-acquisition programs in support of The Law School's mission. These programs include annual giving, major gifts, planned gifts, special projects, and campaigns as appropriate.

The Foundation will establish, adhere to, and periodically assess its gift-management and acceptance policies. It will promptly acknowledge and issue receipts for all gifts on behalf of The Foundation and The University.

The Law School recognizes that The Foundation bears major responsibility for fund-raising. The Law School representatives will coordinate fund-raising initiatives including major gifts solicitations with The Foundation.

The Foundation shall not accept grants from state or federal agencies.

## 2. Asset Management

The Foundation will establish asset-allocation, disbursement, and spending policies that adhere to applicable federal and state laws, including the Uniform Prudent Investor Act (UPIA), the Uniform Management of Institutional Funds Act (UMIFA), The University of Texas System Board of Regents Rules and Regulations, and The University's policies and procedures.

The Foundation will receive, hold, manage, invest, and disperse gifts, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred-gift instruments.

## 3. Fund Administration and Distribution

The Foundation is the primary depository of private gifts and will transfer funds to The Law School in compliance with applicable laws, University policies, and gift agreements.

When distributing gift funds to The Law School, The Foundation will disclose any terms, conditions, or limitations imposed by donor or legal determination on the gift. The Law School will abide by such restrictions and provide appropriate documentation.

Any payments made by The Foundation to an employee of The University, except for approved expense reimbursements, shall be made in accordance with The University of Texas System Regents Rules and Regulations.

The funds raised by the development activities of The Foundation may be subject to a reasonable management or operations charge or fee by The Foundation, but all such charges or fees in regard to endowed funds shall come from income and not from corpus.

The Foundation shall engage an independent accounting firm annually to conduct an audit of The Foundation's financial and operational records and will provide The University with a copy of the annual audited financial statements.

## 4. Other Matters

The Foundation is responsible for the employment, compensation and evaluation of its employees, i.e. those individuals who dedicate 100% of their time to The Foundation. [One Law School employee, Glen Woelfel, who is in the Financial Affairs Department, devotes 100% of his time to the Foundation and should be employed by The Foundation.]

The Foundation shall be responsible for, and custodian of, all donor records and shall establish and enforce policies to protect donor confidentiality and rights.

E. The University Support of and Responsibilities to The Foundation

1. The University shall provide The Foundation with office space including utilities and janitorial services, under such terms and at such locations as are mutually acceptable.
2. The University shall provide support services to The Foundation of the type provided to The University departments on a cost reimbursement basis including, but not limited to, access to The University telephone system, maintenance from the Physical Plant, services of the Printing Department, Computing Services, and University Mail System.
3. The Foundation will reimburse The University for this office space and support services in accordance with normally established rates for The University departments. The parties shall develop a budget annually based on projected services required by The Foundation. The parties will enter into a written agreement (included as Exhibit \_\_) that will encompass the details regarding the office space and services provided and the corresponding amounts owed by The Foundation to The University. The amount of compensation will be negotiated on an annual basis.
4. In a limited number of situations, certain employees from The University also provide services to The Foundation. The Foundation will reimburse The University for the work performed by these employees on behalf of The Foundation. The percentage of time each University employee dedicates to The Foundation will be considered along with other factors outlined in the Supplemental Agreement attached as Exhibit \_. The amount of compensation will be negotiated on an annual basis.

F. Compliance with the laws of the State of Texas, the rules and regulations of The University of Texas System, the rules, policies and regulations of The University and The Law School, and The Foundation Bylaws

Both The University and The Foundation agree to comply with the policies, procedures and regulations of The University of Texas System, The University of Texas at Austin, The University of Texas at Austin School of Law pertaining to the relationship between The University and associated entities, including amendments thereto. The University shall provide The Foundation with proposed amendments to such policies and regulations as soon as possible but in no event less than fifteen (15) days prior to their effective date. The Foundation agrees to provide The University with a copy of its Bylaws and shall provide any proposed amendments as soon as possible but in no event less than fifteen (15) days prior to the meeting of The Foundation at which they are considered for adoption.



G. Effect of Agreement; Modification

This Agreement and its attachments contain all the terms between the parties and may be amended only in writing signed by an authorized representative of both parties.

H. Confidentiality

Neither The Foundation nor The University shall disclose or use any private, confidential, proprietary, or trade secret information provided from one to the other except as required in and by the terms of this Agreement or as required by law. The Foundation recognizes the obligation of The University to comply with Texas Public Records laws.

I. Term and Termination

The initial term of this First Amended Agreement shall be five (5) years and shall be automatically renewed for successive five (5) year terms, unless and until either party gives notice in writing to the other party of its intent not to renew the Agreement at least 30 days prior to the beginning of a new term. Either party shall have the continuing right to terminate this Agreement at any time without cause upon ninety (90) days written notice to the other party. The University may terminate this agreement at any time if the The Foundation fails to abide by the rules, regulations and policies referenced above in Section C which govern the relationship between The Law School and The Foundation.

J. Dissolution

Consistent with provisions appearing in the Foundation's bylaws and its articles of incorporation, should the Foundation cease to exist or cease to be an Internal Revenue Code 501(c)(3) organization, the Foundation will transfer its assets and property to The University, provided that The University is still be a 501(c)(3) organization at the time of dissolution, in accordance with the Foundation's Articles of Incorporation law and donor intent.

K. Other Matters

To ensure effective achievement of the items of this First Amended Memorandum of Understanding, The University and The Foundation representatives shall hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities.

L. Notice

Any notice to either party hereunder must be in writing signed by the party giving it, and shall be deemed given when mailed postage prepaid by U.S. Postal Services first class, certified, or express mail, or other overnight mail service, or hand delivered, when addressed

as follows:

To The University of Texas at Austin:

The University of Texas at Austin  
Attn: William Powers, President  
Campus Mail Code G 3400  
PO Box T  
Austin, TX 78713

To The University of Texas Law School Foundation:

The University of Texas Law School Foundation  
Attn: Jon Newton, President  
727 East Dean Keeton Street  
Austin, Texas, 78705

THIS AGREEMENT is effective immediately upon execution by the Parties and approval by the Board of Regents of The University of Texas System, and the Agreement shall remain in effect from year to year unless modified in writing by mutual agreement of The Foundation and The University, or terminated by either The Foundation or The University upon giving notice twelve (12) months prior to the end of a fiscal year of The University.

APPROVED by the Board of Regents of The University of Texas System on this the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

APPROVED by the Foundation on this the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

THE UNIVERSITY OF TEXAS LAW SCHOOL  
FOUNDATION

By: \_\_\_\_\_  
Jon Newton  
President

THE UNIVERSITY OF TEXAS AT AUSTIN

By: \_\_\_\_\_

William Powers

President



## Office of the Secretary of State

The undersigned, as Secretary of State of Texas, does hereby certify that the attached is a true and correct copy of each document on file in this office as described below:

THE UNIVERSITY OF TEXAS LAW SCHOOL FOUNDATION  
Filing Number: 11101201

Restated Articles of Incorporation

November 12, 2001

In testimony whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in Austin, Texas on January 30, 2002.



A handwritten signature in cursive script that reads "Gwyn Shea".

Gwyn Shea  
Secretary of State

NOV 12 2001

Corporations Section

**SECOND AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF THE UNIVERSITY OF TEXAS  
LAW SCHOOL FOUNDATION**

The name of the corporation is The University of Texas Law School Foundation (the "Corporation"). The Corporation hereby adopts Second Amended and Restated Articles of Incorporation which amend and restate the Corporation's Restated Articles of Incorporation (dated May 14, 1994) in their entirety. Each amendment made by the Second Amended and Restated Articles of Incorporation has been effected in conformity with the provisions of the Texas Non-Profit Corporation Act and such Second Amended and Restated Articles of Incorporation were adopted on November 9, 2001 in the following manner:

The Second Amended and Restated Articles of Incorporation and the amendments made thereby were adopted at a meeting of the members held on November 9, 2001, at which a quorum was present, and the Second Amended and Restated Articles of Incorporation and the amendments made thereby received at least two-thirds of the votes which members present were entitled to cast.

The Corporation's Restated Articles of Incorporation are hereby superseded in their entirety by the following Second Amended and Restated Articles of Incorporation:

**ARTICLE I**

The name of the corporation shall be The University of Texas Law School Foundation (the "Corporation").

**ARTICLE II**

The Corporation is a non-profit corporation.

**ARTICLE III**

The period of the Corporation's duration is perpetual.

**ARTICLE IV**

The Corporation is organized and shall be operated exclusively for the benefit of The University of Texas, an organization described in sections 501(c)(3) or 170(c)(1) and sections 509(a)(1) or 509(a)(2) of the Code (the "Supported Organization"). In furtherance of the foregoing, the purposes for which the Corporation is organized and to be operated include, among other things: to support an educational undertaking by the School of Law of The University of Texas of legal education, legal research, financial assistance to deserving students, and the progress of the law; to solicit donations for particular objectives to accomplish such purpose, including objectives of establishing or assisting in establishing professorships and scholarships in the School of Law of The University of Texas, under such directions, limitations and provisions as may be declared in writing in the donations not inconsistent with the objects

and proper management of the Supported Organization or its branches; to collect such donations and to expend funds for accomplishing such objectives; and to cooperate at all times with The University of Texas Development Board for the advancement of the general welfare of the Supported Organization as a whole. As used herein, the term "Code" refers to the Internal Revenue Code of 1986, as amended, and future corresponding revenue laws of the United States.

The broadest discretion is vested in and conferred upon the Board of Trustees for the accomplishment of the foregoing purposes; provided, however, that no donations made to the Corporation nor any property arising therefrom, in whatever form it may take, shall be diverted from the purposes set forth above.

#### ARTICLE V

The street address of the Corporation's registered office is 727 East Dean Keeton Street, Austin, Texas 78705. The name of the Corporation's registered agent is Juan J. Zabala.

#### ARTICLE VI

The following provisions are inserted for the management of the business and for the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its Board of Trustees:

The number, classification, and terms of the Board of Trustees of the Corporation and the procedures to elect Trustees, to remove Trustees, and to fill vacancies in the Board of Trustees shall be as follows:

(i) The number of Trustees that shall constitute the whole Board of Trustees shall from time to time be fixed exclusively by the Board of Trustees by a resolution adopted by a majority of the whole Board of Trustees serving at the time of that vote. In no event shall the number of Trustees that constitute the whole Board of Trustees be fewer than three (3). No decrease in the number of Trustees shall have the effect of shortening the term of any incumbent Trustee. Trustees of the Corporation need not be elected by written ballot unless the Bylaws of the Corporation otherwise provide.

(ii) The Trustees elected at the annual meeting of the Board of Trustees in 2002 shall be divided into four classes designated Class I, Class II, Class III and Class IV. Classes I, II and III shall be as nearly equal in number as possible. The initial term of office of Trustees of Class I shall expire at the annual meeting of the Board of Trustees in 2003, of Class II shall expire at the annual meeting of the Board of Trustees in 2004, of Class III shall expire at the annual meeting of the Board of Trustees in 2005, or, in respect of Classes I, II and III, as to each Trustee until his or her successor is elected and qualified or until his or her earlier death, resignation or removal. The term of office of each Trustee of Class IV (collectively, the "Life Member Trustees") shall expire upon his death, incapacity or earlier resignation. Upon the death, incapacity or earlier resignation of any Life Member Trustee, no Life Member Trustee shall be elected to succeed such Life Member Trustee and such Life Member Trustee's position in Class IV shall remain vacant. Upon the death or earlier resignation of all of the Life Member Trustees, Class IV of the Board of Trustees shall be eliminated. At each annual meeting of the Board of

Trustees beginning with the annual meeting of the Board of Trustees in 2003, the Board of Trustees shall elect Trustees to succeed the Trustees of Class I, II or III, as applicable, whose terms are then expiring. Each Trustee elected to succeed a Trustee in Class I, II or III, as applicable, whose term is then expiring shall hold office until August 31 in the third year following his or her election and until his or her successor is elected and qualified or until his or her earlier death, resignation or removal. The Trustees chosen to succeed those whose terms then expire shall be identified as being of the same class as the Trustees they succeed. Each Trustee so elected shall begin service as a Trustee on September 1 in the year of his or her election. The Trustees in Classes I, II, and III may serve up to two terms consecutively following their election to office. After serving two terms consecutively, a Trustee may not serve on the Board of Trustees for at least one year, after which time he or she will again become eligible to serve as a member of the Board of Trustees, subject to the foregoing limitation. Notwithstanding the immediately preceding sentence, in the event that a Trustee is serving as President or Vice-President at the expiration of the aforementioned two-term period or is elected President or Vice-President following the expiration of the aforementioned two-term period, such Trustee shall be entitled to remain a Trustee and serve as President or Vice-President to the extent permitted by the Corporation's Bylaws.

(iii) The name and address of the Life Member Trustees are as follows:

<u>Name</u>	<u>Address</u>
Morris Atlas	P. O. Drawer 3725 McAllen, Texas 78502-3725
E. William Barnett	910 Louisiana, Suite 3000 Houston, Texas 77002-4995
David J. Beck	1221 McKinney Street, Suite 4500 Houston, Texas 77010
Joseph D. Jamail, Jr.	500 Dallas Street, Suite 3434 Houston, Texas 77002-4793
J. Mark McLaughlin	2201 Sherwood Way, Suite 201 San Angelo, Texas 76901
Harry M. Reasoner	2300 First City Tower 1001 Fannin Houston, Texas 77002-6760
C. Kenneth Roberts	P.O. Box 131057 Houston, Texas 77219-1057

In connection with the annual meeting of the Board of Trustees in 2002, the Life Member Trustees shall automatically be elected to Class IV and shall elect Trustees to fill Classes



I, II and III of the Board of Trustees, in each case to begin service on the Board of Trustees as of September 1, 2002. The current Trustees comprising the Board of Trustees shall continue to serve until August 31, 2002 or until his or her earlier death, resignation or removal.

(iv) Vacancies in the Board of Trustees (other than those relating to Class IV of the Board of Trustees) resulting from death, resignation, retirement, disqualification, removal from office, or other cause and newly-created Trusteeships resulting from any increase in the authorized number of Trustees may only be filled by no less than a majority vote of the remaining Trustees then in office, though less than a quorum, or by the sole remaining Trustee, and each Trustee so chosen shall receive the classification of the vacant Trusteeship to which he or she has been appointed or, if it is a newly-created Trusteeship, shall receive the classification that at least a majority of the Board of Trustees designates and shall hold office until the first meeting of the Board of Trustees held after his or her election for the purpose of electing Trustees of that classification and until his or her successor is elected and qualified or until his earlier death, resignation, or removal from office.

(v) A Trustee of any class of Trustees (other than Class IV) of the Corporation may be removed before the expiration date of that Trustee's term of office with or without cause, by an affirmative vote at least two-thirds of the Trustees then in office.

#### ARTICLE VII

The Corporation shall have no capital stock and all of its funds shall be received through voluntary gifts. It shall at all times be operated as a non-profit corporation. Its funds shall be used exclusively for the benefit of the Supported Organization.

Notwithstanding any other provisions of these Articles of Incorporation, the Corporation shall not:

- (i) permit any Trustee (or any family member of a Trustee) to be eligible for benefits or receive any funds from the Corporation;
- (ii) permit any part of the net earnings or assets of the Corporation to inure to the benefit of any private individual (except that reasonable compensation may be paid for personal services rendered to or for the Corporation effecting one or more of its purposes);
- (iii) devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise; or
- (iv) participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

#### ARTICLE VIII

The Corporation shall have no members.

## ARTICLE IX

Upon the dissolution of the Corporation, after payment or provision for payment of the Corporation's liabilities has been made, the Corporation's remaining assets shall be distributed to the Supported Organization, provided that such organization shall be at the time described in Sections 501(c)(3) or 170(c)(1) and Section 509(a)(1) or (a)(2) of the Code, and if such organization is not so described, to another organization selected by majority vote of the Board of Trustees, provided that such organization is at the time of such distribution an organization described in Section 501(c)(3) of the Code. The amount of any distribution made under this ARTICLE IX shall be determined by the Board of Trustees.

## ARTICLE X

A Trustee of the Corporation shall not be liable to the Corporation for monetary damages for any act or omission in the Trustee's capacity as a Trustee, except that this ARTICLE X does not eliminate or limit the liability of a Trustee for:

- (i) a breach of a Trustee's duty of loyalty to the Corporation;
- (ii) an act or omission not in good faith or that constitutes a breach of duty of the Trustee to the Corporation or an act or omission that involves intentional misconduct or a knowing violation of the law;
- (iii) a transaction from which a Trustee received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the Trustee's office; or
- (iv) an act or omission for which the liability of a Trustee is expressly provided by an applicable statute.

If the Texas Miscellaneous Corporation Laws Act or the Texas Non-Profit Corporation Act is amended to authorize action further eliminating or limiting the personal liability of Trustees, then the liability of a Trustee of the Corporation shall be eliminated or limited to the fullest extent permitted by such statutes, as so amended. Any repeal or amendment of such statutes or of the foregoing paragraph shall be prospective only and shall not adversely affect any right of protection of a Trustee of the Corporation existing at the time of such repeal or modification.

## ARTICLE XI

With respect to any action (i) which is required by the Act to be taken at a meeting of the Board of Trustees or (ii) which may be taken at a meeting of the Board of Trustees or any committee established by the Board of Trustees, such action may be taken without any such meeting if a written consent setting forth the action to be taken, is signed by a sufficient number of members of the Board of Trustees or committee thereof as would be necessary to take the action at a meeting at which all, and not just a quorum, of the members of the Board of Trustees or members of the committee were present and voted.

## ARTICLE XII

In furtherance and not in limitation of the power conferred by statute, the Bylaws of the Corporation may be altered, amended or repealed and new Bylaws may be adopted by the Board of Trustees in accordance with the Bylaws.

## ARTICLE XIII

Subject to the provisions of these Articles of Incorporation and applicable law, the Corporation reserves the right at any time and from time to time to amend, alter, change or repeal any provision contained in these Articles of Incorporation, and any other provisions authorized by the laws of the State of Texas at the time in force may be added or inserted, in the manner now or hereafter prescribed by law; and, all rights, preferences and privileges of whatsoever nature conferred upon Trustees or any other persons whomsoever by and pursuant to these Articles of Incorporation in its present form or as hereafter amended are granted subject to the rights reserved in this ARTICLE XIII.

Dated this 9th day of November, 2001.

THE UNIVERSITY OF TEXAS  
LAW SCHOOL FOUNDATION



By: Harry M. Reasoner  
Title: President

**AMENDED AND RESTATED  
BYLAWS**

**OF**

**THE UNIVERSITY OF TEXAS  
LAW SCHOOL FOUNDATION**

Adopted: November 9, 2001

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**BYLAWS  
OF  
THE UNIVERSITY OF TEXAS LAW SCHOOL FOUNDATION**

**STRUCTURE, PURPOSES AND MEMBERS**

Structure. The University of Texas Law School Foundation (the "Corporation") is a non-profit corporation organized under the laws of the State of Texas, that has no members within the meaning of the Texas Non-Profit Corporation Act, Tex. Rev. Civ. Stat. Ann. art. 1396 (Vernon 1997) (the "Act"). The Second Amended and Restated Articles of Incorporation of the Corporation (as amended from time to time, the "Articles of Incorporation") were filed in the office of the Secretary of State of the State of Texas on November 12, 2001.

Purposes. The purposes for which the Corporation is organized and to be operated are set forth in the Articles of Incorporation

Members. The Corporation has no members.

**OFFICES**

Principal Place of Business. The principal place of business of the Corporation is located at 727 East Dean Keeton Street, Austin, Texas 78705. The Corporation may have such other offices, either within or without the State of Texas, as the Board of Trustees may determine or as the affairs of the Corporation may require from time to time.

Registered Office and Registered Agent. The Corporation shall have and continuously maintain in the State of Texas a registered office and a registered agent whose office is the Corporation's registered office, as required by the Act. The initial registered office of the Corporation shall be the registered office named in the Articles of Incorporation or such other office as may be designated from time to time by the Board of Trustees in accordance with applicable law.

**BOARD OF TRUSTEES**

Powers. The property, business, and affairs of the Corporation shall be managed and controlled by the Board of Trustees and, subject to the restrictions imposed by law, the Articles of Incorporation and these Bylaws, the Board of Trustees shall exercise all of the powers of the Corporation.



Number. The number of Trustees that shall constitute the whole Board of Trustees shall be determined from time to time by the Board of Trustees; *provided* that no decrease in the number of Trustees which would have the effect of shortening the term of an incumbent Trustee may be made by the Board of Trustees; *provided further* that the number of Trustees shall never be less than three (3) nor more than twenty-five (25) plus the Life Member Trustees.

Appointment and Term. Trustees shall be elected by the affirmative vote of a majority of the Trustees of the Corporation and unless otherwise provided in the Articles of Incorporation, Trustees shall hold office for the term for which such Trustee is elected, and until such Trustee's successor shall have been elected and qualified or until his or her earlier death, resignation or removal.

Removal. Unless otherwise provided in the Articles of Incorporation, any Trustee may be removed from office, with or without cause, by the affirmative vote of two-thirds of the other Trustees of the Corporation.

Meetings of Trustees. The Trustees may hold meetings, maintain an office, and keep the Corporation's books and records at such place or places within or without the State of Texas as the Board of Trustees may from time to time determine; *provided, however*, that in the absence of any such determination, such place shall be the Corporation's principal office in the State of Texas.

Annual Meetings. The annual meeting of the Board of Trustees ("Annual Meeting") shall be held at such time and place of each year as shall be designated by the President, unless the Board has done so, for the purpose of (a) electing Trustees and officers for the ensuing year and (b) transacting such other business as may be properly brought before such Annual Meeting. Notice of Annual Meetings shall be required.

Regular Meetings. Regular meetings of the Board of Trustees ("Regular Meetings") shall be held at such times and places as shall be designated from time to time by the President, unless the Board has done so. Notice of Regular Meetings shall be required.

Special Meetings. Special meetings of the Board of Trustees ("Special Meetings") shall be held at such times and places as shall be designated from time to time by (a) the President or (b) any ten (10) Trustees. Notice of Special Meetings shall be required; *provided* that Special Meetings of the Board of Trustees may be held without notice, if the Trustees not present waive notice of the meeting in writing.

Notice of Meetings. The Secretary shall give notice of the time and place of each Annual Meeting, Regular Meeting or Special Meeting to each Trustee in person, by facsimile transmission, by mail, by email, or by telephone, not less than ten (10) days nor more than sixty (60) days before such meeting in the case of Annual Meetings or Regular Meetings (to the extent required) or not less than five (5) days nor more than sixty (60) days in the case of Special Meetings (to the extent required). Unless otherwise indicated in such notice, any and all matters pertaining to the Corporation's purposes may be considered and acted upon at such meeting. At



any such meeting at which every Trustee shall be present even though without notice, any matter pertaining to the Corporation's purposes may be considered and acted upon.

Quorum. A majority of the then acting Trustees in person shall constitute a quorum for the consideration of any matters pertaining to the Corporation's purposes. If at any meeting of the Board of Trustees there is less than a quorum present, a majority of those present may adjourn the meeting from time to time. The act of a majority of the Trustees present at a meeting at which a quorum is present shall be the act of the Board of Trustees, unless the act of a greater number is required by law, the Articles of Incorporation or these Bylaws.

Voting. A Trustee must vote in person and may not vote by proxy.

Conduct of Business. At meetings of the Board of Trustees, matters pertaining to the Corporation's purposes shall be considered. At all meetings of the Board of Trustees, the President shall preside, and in the absence of the President, the Vice-President shall preside, and in the absence of the Vice-President, a chairman shall be chosen by the Board of Trustees from among the Trustees present. The Secretary of the Corporation shall act as secretary of all meetings of the Board of Trustees, but in the absence of the Secretary, the presiding chairman may appoint any person to act as secretary of the meeting.

Compensation of Trustees. Persons serving as Trustees shall not receive any salary or compensation for their services as Trustees; *provided, however*, that nothing contained herein shall be construed as precluding any Trustee from receiving compensation in a reasonable amount for personal services rendered (other than services rendered as a Trustee) that are reasonable and necessary in carrying out the Corporation's purposes as the Board of Trustees may from time to time determine.

Senior Trustees. Upon the voluntary resignation of any Life Member Trustee, such Life Member Trustee shall concurrently therewith be elected as a Senior Trustee, in order to honor such individual's outstanding commitment and service to the Corporation. The following individuals shall also serve as Senior Trustees: Wales H. Madden, Jr., Tom B. Ramey, Jr. and J. Burleson Smith. In addition, any former, living Trustee on May 9, 2003 who has served for ten (10) or more consecutive years by May 9, 2003 may be designated a Senior Trustee.

The name of each Senior Trustee shall be listed on official publications of the Corporation. Each Senior Trustee shall have life tenure and be privileged to attend all meetings of the Board of Trustees without the power to vote.

Trustees Emeriti. Upon the end of service of any Trustee, such Trustee shall concurrently therewith be designated a Trustee Emeritus, in order to honor such individual's service to the Corporation. The name of each Trustee Emeritus may at the discretion of the Board of Trustees be listed in official publications of the Corporation. The Trustees Emeriti shall not have any privilege to attend meetings of the Board of Trustees or vote on matters affecting the Corporation.

## COMMITTEES

### Section 1. Executive Committee

(a) There is established an Executive Committee that shall, excepted as prohibited by Section (c), be entitled to exercise all of the powers and authority of the Board; provided however, such powers and authority shall be exercised only with regard to matters requiring attention under circumstances which make it impractical for the Board to act on the matter. The President shall report to the Board at the next meeting any action taken by the Executive Committee and those actions shall be recorded in the minutes.

(b) The Executive Committee shall be composed of the Board's President and Vice-President, who will be its Chair and Vice-Chair, the main committee chairs as selected by the President, the former Presidents who are still serving as Trustees, and two at-large Trustees selected by the President.

(c) The Executive Committee shall not have authority to act for the Board with regard to the following:

- (i) Taking any action prohibited by the Board
- (ii) Approving a plan of merger of the corporation
- (iii) Selling, leasing, or exchanging all or substantially all of the assets of the Corporation
- (iv) Initiating a voluntary dissolution of the Corporation or a revocation of a voluntary dissolution of the Corporation
- (v) Electing or removing Trustees or officers of the Corporation
- (vi) Appointing members of the Executive Committee
- (vii) Altering or repealing any resolution of the Board of Trustees that by its terms provides that it shall not be so amended

### Section 2. Other Committees

(a) The Board may create standing or temporary committees and define their duties. Unless the Board designates the Chair and members of a committee it creates, the President shall do so and report to the Board.

(b) The President is authorized to create other committees, define their duties and appoint the Chair and members. The President shall report such actions to the Board.

(c) Committee members do not have to be Trustees except for members of the Executive Committee. The President and Vice President are ex officio members of all committees.

## OFFICERS

Number, Titles, and Term of Office. The officers of the Corporation shall consist of a President, a Vice-President, a Secretary and may consist of one or more Assistant Secretaries, a Treasurer, one or more Assistant Treasurers, and such other officers and assistant officers as the Board of Trustees may from time to time elect or appoint. Such other officers and assistant officers shall have such authority and responsibility as may be assigned to them by the Board of Trustees. Any two (2) or more offices may be held by the same individual, except the offices of President and Secretary. No officer, except the President and the Vice President, need be a Trustee of the Corporation. Officers shall be elected at the Corporation's Annual Meeting and shall take office immediately following the next Regular Meeting of the Board after his or her election. The term of office for each officer shall be one year. In any event, a duly-elected officer shall serve in the office to which he or she is elected until his or her successor has been duly elected and qualified, or until his earlier death, resignation or removal. Notwithstanding the foregoing, no person shall serve more than four (4) years consecutively in the office of President or Vice-President.

Removal. Any officer elected or appointed by the Board of Trustees may be removed, with or without cause, at any time by the affirmative vote of the Board of Trustees, but such removal shall be without prejudice to the contract rights, if any, of the individual so removed. Election or appointment of an officer shall not of itself create contract rights.

Vacancies. Any vacancy occurring in any office of the Corporation may be filled by the Board of Trustees.

Powers and Duties of the President. Subject to the control of the Board of Trustees, the President shall have general executive charge, management, and control of the properties, business, and operations of the Corporation with all such powers as may be reasonably incident to such responsibilities; shall have the authority to agree upon and execute all leases, contracts, evidences of indebtedness, and other obligations in the name of the Corporation subject to the approval of the Board of Trustees; and shall have such other powers and duties as may be designated in these Bylaws and as may be assigned to such officer from time to time by the Board of Trustees.

Powers and Duties of the Vice-President. The Vice-President shall have such powers and duties as may be assigned to such officer by the Board of Trustees including the performance of the duties of the President upon the death, absence, or resignation of the President or upon the President's inability to perform the duties of such office. The Vice President shall automatically succeed to the office of the President when that office becomes vacant. Any action taken by the Vice-President in the performance of the duties of the President



shall be conclusive evidence of the absence or inability to act of the President at the time such action was taken.

Powers and Duties of the Treasurer. The Treasurer shall have custody of all of the Corporation's funds and securities that come into such officer's hands. When necessary or proper, the Treasurer may endorse or cause to be endorsed, when necessary or proper, in the name and on behalf of the Corporation, checks, notes, and other obligations for collection and shall deposit or cause to be deposited the same to the credit of the Corporation in such bank or banks or depositories and in such manner as shall be designated and prescribed by the Board of Trustees; may sign or cause to be signed all receipts and vouchers for payments made to the Corporation either alone or jointly with such other officer as may be designated by the Board of Trustees; whenever required by the Board of Trustees, shall render or cause to be rendered a statement of the cash account; shall enter or cause to be entered regularly in the Corporation's books to be kept by such officer for that purpose full and accurate accounts of all moneys received and paid out on account of the Corporation; shall perform all acts incident to the position of Treasurer subject to the control of the Board of Trustees; and shall, if required by the Board of Trustees, give such bond for the faithful discharge of such officer's duties in such form as the Board of Trustees may require.

Powers and Duties of Assistant Treasurers. Each Assistant Treasurer shall have the usual powers and duties pertaining to his office, together with such other powers and duties as may be assigned to him or her by the President or the Board of Trustees or the Treasurer. An Assistant Treasurer shall exercise the powers of the Treasurer during that officer's absence or inability or refusal to act.

Powers and Duties of the Secretary. The Secretary shall keep the minutes of all meetings of the Board of Trustees in books provided for that purpose; shall attend to the giving and serving of all notices; in furtherance of the Corporation's purposes and subject to the limitations contained in the Articles of Incorporation, may sign with the President in the name and on behalf of the Corporation and/or attest the signatures thereto, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes, and other instruments of the Corporation; shall have charge of the Corporation's books, records, documents, and instruments, except the books of account and financial records and securities of which the Treasurer shall have custody and charge, and such other books and papers as the Board of Trustees may direct, all of which shall be open at reasonable times to the inspection of any Trustee upon application at the Corporation's office during business hours; and shall in general perform all duties incident to the office of Secretary subject to the control of the Board of Trustees.

Powers and Duties of Assistant Secretaries. Each Assistant Secretary shall have the usual powers and duties pertaining to his or her office, together with such other powers and duties as may be assigned to him or her by the President or the Board of Trustees or the Secretary. An Assistant Secretary shall exercise the powers of the Secretary during that officer's absence or inability or refusal to act.

## MISCELLANEOUS PROVISIONS

Fiscal Year. The Corporation's fiscal year end shall be August 31.

Seal. The Corporation's seal, if any, shall be such as may be approved from time to time by the Board of Trustees.

Notice and Waiver of Notice. Whenever any notice is required to be given by mail under the provisions of these Bylaws, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed postpaid wrapper addressed to the person entitled thereto at such person's post office address, as such appears in the records of the Corporation, and such notice shall be deemed to have been given on the date of such mailing. If transmitted by facsimile, such notice shall be deemed to be delivered upon successful transmission of the facsimile. A member of the Board of Trustees may waive notice of any meeting. The attendance of a member of the Board of Trustees at any meeting shall constitute a waiver of notice of such meeting unless such attendance is for the purpose of objecting to the failure of notice. A waiver of notice in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice.

Resignations. Any Trustee, officer or committee member may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or, if no time be specified, at the time of its receipt by the President or Secretary. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

Telephone Meetings. Subject to the requirements of law for notice of meetings, unless otherwise restricted by the Articles of Incorporation or these Bylaws, members of the Board of Trustees, or members of any committee may participate in and hold a meeting of such Board of Trustees, or committee, as the case may be, by means of a conference telephone, or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in such meeting shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened.

## INDEMNIFICATION OF TRUSTEES AND OFFICERS

Indemnification. Each person who is or was a Trustee or officer of the Corporation, or any person who, while a Trustee or officer of the Corporation is or was serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, and the heirs, executors or administrators or estate of such person, shall be indemnified by the corporation to

the fullest extent permitted or authorized by the Texas Non-Profit Corporation Act or any successor provision, as it may from time to time be amended, against any liability, cost or expense incurred by him or her in his or her capacity as a Trustee, or officer, or arising out of his or her status as a Trustee or officer. The rights granted pursuant to this Article VII shall be deemed contract rights, and no repeal or amendment of this Article VII shall have the effect of limiting or denying any such rights with respect to actions taken or proceedings arising prior to any such amendment or repeal.

Advance Payments. The Corporation may, but shall not be obligated to, pay expenses incurred in defending a civil or criminal act, suit or proceeding arising out of a Trustee's or officer's capacity or status as Trustee or officer in advance of the final disposition of such action, suit or proceeding, without any determination as to the person's ultimate entitlement to indemnification; *provided, however*, that the payment of such expenses incurred by any such person in advance of the final disposition of a proceeding shall be made only upon delivery to the Corporation of both a written affirmation by such Trustee or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification under this Article VII and a written undertaking, by or on behalf of such Trustee or officer, to repay all amounts so advanced if it ultimately is determined that the Trustee or officer is not entitled to be indemnified under this Article VII or otherwise.

Appearance as a Witness. Notwithstanding any other provision of this Article VII, the Corporation may, but shall not be obligated to, pay or reimburse expenses incurred by a Trustee or officer in connection with his or her appearance as a witness or other participation in a proceeding at a time when he or she is not a named defendant or respondent in the proceeding.

Indemnification of Employees and Agents. The Corporation, by adoption of a resolution of the Board of Trustees, may, but shall not be obligated to, indemnify and advance expenses to an employee or agent of the Corporation to the same extent and subject to the same conditions under which it may indemnify and advance expenses to Trustees and officers under this Article VII.

Non-Exclusive. The indemnification provided by this Article VII shall not be exclusive of any other rights to which those seeking indemnification may be entitled as a matter of law or under any agreement or otherwise.

Insurance. The Corporation may, but shall not be obligated to, maintain insurance at its expenses, to protect itself, and any person who is or was a Trustee, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a trustee, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against any liability asserted against him or her and any liability, cost or expense incurred by him or her in such capacity or arising out of his or her status as such a person, whether or not the Corporation would have the power to indemnify such person against the liability under this Article VII or the Texas Non-Profit Corporation Act.

## CONFLICTS OF INTEREST POLICY

Purpose. The purpose of the conflicts of interest policy is to protect the Corporation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or Trustee of the Corporation. This policy is intended to supplement but not replace any applicable state laws governing conflicts of interest applicable to nonprofit and charitable corporations.

### Definitions.

Interested Person. Any Trustee, principal officer, or member of a committee with powers delegated by the Board of Trustees who has a direct or indirect financial interest, as defined below, is an interested person.

Financial Interest. A person has a financial interest if the person has, directly or indirectly, through business, investment or family:

an ownership or investment interest in any entity with which the Corporation has a transaction or arrangement,

a compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement, or

a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Corporation is negotiating a transaction or arrangement;

Compensation includes direct and indirect remuneration as well as gifts or favors that are substantial in nature. A financial interest is not necessarily a conflict of interest. A person who has a financial interest may have a conflict of interest only if the Board of Trustees or a committee thereof decides that a conflict of interest exists. Moreover, a passive, minority ownership or investment interest of a Trustee, officer or committee member in an entity with which the Corporation has a transaction or other arrangement shall not result in a financial interest.

### Procedures.

Duty to Disclose. In connection with any actual or possible conflicts of interest, an interested person must disclose the existence of his or her financial interest and must be given the opportunity to disclose all material facts to the Trustees and members of committees with powers delegated by the Board of Trustees considering the proposed transaction or arrangement.

Determining Whether a Conflict of Interest Exists. After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he or she shall leave the Board of Trustees or committee meeting while the determination of a conflict of

interest is discussed and voted upon. The remaining Board of Trustees or committee members shall decide if a conflict of interest exists.

#### Procedures for Addressing the Conflict of Interest.

An interested person may make a presentation at the Board of Trustees or committee meeting, but after such presentation, he or she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement that results in the conflict of interest.

The chairperson of the Board of Trustees or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

After exercising due diligence, the Board of Trustees or committee shall determine whether the Corporation can obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict or interest.

If a more advantageous transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the Board of Trustees or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Corporation's best interest and for its own benefit and whether the transaction is fair and reasonable to the Corporation and shall make its decision as to whether to enter into the transaction or arrangement in conformity with such determination.

#### Violations of the Conflicts of Interest Policy.

If the Board of Trustees or committee has reasonable cause to believe that a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

If, after hearing the response of the member and making such further investigation as may be warranted in the circumstances, the board or committee determines that the member has in fact failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

Records of Proceedings. The minutes of the Board of Trustees and all committees with powers delegated by the Board of Trustees shall contain:

the names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Board of Trustees' or committee's decision as to whether a conflict of interest in fact existed and



the names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection therewith.

Compensation Committees.

A voting member of the Board of Trustees who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation.

A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation.

Annual Statements. Each Trustee, principal officer and member of a committee with powers delegated by the Board of Trustees shall annually sign a statement which affirms that such person:

has received a copy of the conflicts of interest policy,

has read and understands the policy,

has agreed to comply with the policy, and

understands that the Corporation is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

Periodic Reviews. To ensure that the Corporation operates in a manner consistent with its charitable purposes and that it does not engage in activities that could jeopardize its status as an organization exempt from federal income tax, periodic reviews shall be conducted.

Use of Outside Experts. In conducting the periodic reviews provided for in Section 7, the Corporation may, but need not, use outside advisors. If outside experts are used their use shall not relieve the board of its responsibility for ensuring that periodic reviews are conducted.

## AMENDMENTS

These Bylaws may be altered, amended, or repealed by the affirmative vote of a majority of the Board of Trustees at any meeting if notice of the proposed amendment is contained in the notice of such meeting.

**RESOLUTION OF THE BOARD OF TRUSTEES OF  
THE UNIVERSITY OF TEXAS LAW SCHOOL FOUNDATION**

Be it resolved that: Pursuant to Section I of Article IV of the Bylaws, the Standing Committees listed below are created with the duties and responsibilities specified. The President is authorized to determine the number of members of each committee, appoint the members and designate the Chair.

BUDGET COMMITTEE

The Budget Committee shall:

- Each year, in consultation with the Foundation Staff and the Dean, prepare and present to the Board for review and approval the various budgets of the Foundation.
- Identify for Board review the significant issues regarding each budget.
- Prepare each year for Board review multi-year trends in funds available for budget, significant cost components and other similar data.
- Perform other duties and responsibilities appropriate for a budget committee.

DEVELOPMENT COMMITTEE

The Development Committee shall:

- Prepare and review with the Board programs for fund raising.
- Prepare each year, in consultation with the Foundation Staff, a 12 month Development plan outlining the fund raising activities for the following 12 months. The committee shall review this plan with the Board and at the end of the 12

months the committee shall review the results with the Board.

- Prepare each year for Board review multi-year trends in gifts and promises to give and other similar data.
- Prepare for Board review appropriate donor recognition programs.
- In consultation with the Dean prepare each year for Board review an evaluation of the appropriate level of staffing for fund raising activities and make recommendations for any changes in the level of staffing.
- In consultation with the Dean prepare and present to the Board an annual evaluation of the performance of the members of the Foundation staff engaged in fund raising activities.
- Perform other duties and responsibilities appropriate for a development committee.

#### AUDIT COMMITTEE

The Audit Committee shall:

- Recommend to the Board each year the outside auditor to be employed.
- Arrange for an annual audit by the outside auditor.
- Review with the auditors the annual audit and furnish copies to the board.
- Identify for the Board any significant issues raised by the audit and call to the Board's attention any significant changes from the prior years' financial statement.
- In consultation with the staff and outside auditors prepare a system of controls and review the control system with the Board each year.
- In consultation with the staff and the Dean and the President prepare and submit to the Board for approval an authority manual identifying the authority of various staff members and all officers of the Foundation.

- Inform the Board each year whether any changes are recommended in the control system or authority manual.
- In consultation with the Dean prepare and review with the Board an evaluation of the appropriate level of staffing for accounting and related activities.
- In consultation with the Dean prepare and present to the Board an evaluation of the performance of staff members engaged in accounting and related activities.
- Perform other duties and responsibilities appropriate for an audit committee.

#### INVESTMENT COMMITTEE

The Investment Committee shall:

- Recommend for Board approval an investment manager or managers.
- Recommend for Board approval any conditions or limitations on the authority of managers or other specific instructions to them.
- Review with the Board each year the performance of the Foundation's investment managers.
- Recommend to the Board the employment of any professional assistance desired by the committee.
- Perform other duties and responsibilities appropriate for an investment committee.

Approved May 10, 2002

Juan J. Zabala  
Secretary

## APPROVAL MANUAL

### I. APPROVING INVOICES (INCLUDING ALL CHECK REQUESTS)

1. Invoices of less than \$1000 may be approved by any one of the following: The Assistant Dean for Financial Affairs, The Assistant Dean for Development and Alumni Affairs, Financial Manager , the Dean, or any Trustee.
2. Invoices of \$1000 to \$4999 must be approved by any 2 of the above persons.
3. Invoices of \$5000 or more must be approved by two persons, one of which must be the Dean or a Trustee.
4. No one can approve an invoice in which the individual has a financial interest.
5. All invoice approvals shall include a written certification that budgeted funds are available in the appropriate account and that the expenditure complies with the applicable rules and regulations of the Foundation and The University of Texas (in the case of employee matters such as payroll and overtime payments). The certification may be by any person listed in paragraph 1 above other than a Trustee.
6. Properly approved invoices shall be attached to all requests for signatures on a check.

### II. SIGNING CHECKS

1. Subject to paragraph 2 below the following persons shall have authority to sign checks on the Foundation bank account: The Assistant Dean for Financial Affairs, The Assistant Dean for Development and Alumni Relations, the Dean and any Trustee who has executed a signature card for the bank.
2. Signatures required on
  - Checks of less than \$1000—any one of the above persons who has not approved the invoice
  - Checks of \$1000 to \$4999—any two of the above persons
  - Checks of \$5000 or more—two persons, one of which must be a Trustee
3. The same authority provided in paragraph 2 above shall apply to authority for wire transfers.
4. No one shall sign a check or authority for a wire transfer unless a properly approved invoice or check request is attached.

5. For wire transfers between existing Foundation accounts, the Assistant Dean for Financial Affairs has authority to make such transfers in accordance with Investment Committee instructions. *(Approved by the Executive Committee on Jan. 23, 2007)*

6. No person can sign a check when the funds are payable to that person.

### III. APPROVAL OF PETTY CASH ADVANCES FOR EXPENSES

#### Under \$500

Any one of the following: The Assistant Dean for Financial Affairs, The Assistant Dean for Development and Alumni Relations, The Dean

#### Over \$500

The Dean

### IV. APPROVAL OF REIMBURSEMENT FOR EXPENSES INCLUDING ACCOUNTING FOR ADVANCES AND PERSONAL CREDIT CARDS

#### Under \$1000

The Assistant Dean for Financial Affairs or the Dean

#### Over \$1000 or Any Expenses of Senior Staff Members

The Dean

#### Dean's Expenses

The Assistant Dean for Financial Affairs who must file a detailed report of approvals with the Foundation Audit Committee before each Board meeting

*ALL REQUESTS FOR REIMBURSEMENT OF EXPENSES AND ACCOUNTING FOR ADVANCES MUST BE FILED WITHIN 60 DAYS OF THE EXPENDITURE.*

*ALL APPROVALS MUST HAVE SUPPORTING DOCUMENTATION (INCLUDING A CERTIFICATION THAT THE EXPENSE IS CONSISTENT WITH FOUNDATION POLICIES) AND A DETAILED EXPLANATION ON A FORM APPROVED BY THE FOUNDATION AUDIT COMMITTEE CHAIR*

### V. APPROVAL OF FOUNDATION CREDIT CARD CHARGES

#### For Everyone Except the Dean

The Dean

#### Dean's Expenses

The Assistant Dean for Financial Affairs who must file a detailed report of approvals with the Foundation Audit Committee before each Board Meeting

*ACCOUNTING FOR FOUNDATION CREDIT CARD CHARGES SHALL TO THE EXTENT PRACTICABLE BE SUBMITTED BY THE END OF THE WEEK FOLLOWING THE WEEK IN WHICH THE CHARGES WERE INCURRED. THIS INCLUDES*

*EXPENSE RECEIPTS AND A DETAILED EXPLANATION ON A FORM APPROVED BY THE FOUNDATION AUDIT COMMITTEE CHAIR.*

*ALL APPROVALS MUST HAVE SUPPORTING DOCUMENTATION (INCLUDING A CERTIFICATION THAT THE EXPENSE IS CONSISTENT WITH FOUNDATION POLICIES),*

#### VI. REIMBURSEMENT OF EXPENSES FROM FUNDS TRANSFERRED TO UT

Approvals must be in accordance with UT policies

*For funds transferred from the Foundation to UT the approvals and reimbursement procedures should be controlled by UT policy. Expenses associated with Foundation operations are reimbursed directly by the Foundation and should be controlled by Foundation policies.*

*Transfers of Foundation funds to UT shall comply with the requirements of this manual.*

#### VII. APPROVAL OF ISSUANCE OF FOUNDATION CREDIT CARDS

Preliminary Approval

The Dean

Final Approval

Foundation Audit Committee Chair

#### VIII. APPROVAL FOR DRAWING DOWN LONG-TERM FUNDS FROM UTIMCO INCLUDING APPROVAL OF MANAGEMENT FEES TO UTIMCO

Recommendation

The Dean

Final Approval

Chair of Foundation Investment Committee

#### IX. APPROVAL OF SHORT AND INTERMEDIATE TERM INVESTMENTS (UTIMCO AND FOUNDATION CHECKING ACCOUNT)

Pursuant to Standing Instructions by Foundation Investment Committee

Assistant Dean for Financial Affairs

Other Investments

Chair of Foundation Investment Committee



## X. AUTHORITY TO SELL OR DISPOSE OF FOUNDATION PROPERTY

Up to \$10000

The Dean

Up to \$40000

Foundation President

Over \$40000

The Board

## XI. APPROVING FOUNDATION BUDGETS

Recommendations

The Foundation Budget Committee

Final Approval

Board

## XII. NON-ENDOWED SPECIAL PURPOSE GIFTS BUDGET

*The Special Purpose Gift Budget is limited to funds from gifts for which the donors have written or explicit oral instructions regarding the use of those funds. All other non-endowed gifts shall become unrestricted funds and subject to the non-endowed (unrestricted) budget. The files for special purpose gifts shall contain the written instructions of the donor or a memorandum by the dean or knowledgeable staff member clearly documenting the explicit oral instructions.*

*A Non-endowed Special Purpose Gifts Budget shall be presented to the Board at each Board meeting. The report will list special purpose gifts (including anticipated special purpose gifts), the balance shown at the last report, the expenditures since the last report, and the balance left. That balance shall become the proposed budget unless the Board approves a lesser amount.*

Budget Recommendation

The Dean and Foundation Budget Committee

Final Budget Approval

The Board

Approvals for Special Purpose Gift Funds Received and Spent Between Board Meetings

Under \$10000

The Dean

Over \$10000 and Under \$25000

Recommendation—The Dean

Final Approval--Chair of Foundation Budget Committee

Over \$25000



Recommendation—The Dean  
Final Approval—The President

*Expenditures in compliance with this section will be considered “budgeted” for the purpose of certifying invoices or check requests. All funds received and spent between Board meetings shall be reported to the Board at the next Board meeting.*

### XIII. ENTERING INTO CONTRACTS OR AGREEMENTS ON BEHALF OF THE FOUNDATION CONSISTENT WITH BUDGET

#### Under \$15,000

The Assistant Dean for Financial Affairs, the Assistant Dean for Development and Alumni Relations, or the Dean

#### Over \$15,000

The Dean

#### Over \$100,000

The Dean shall notify the President in advance of making any single commitment requiring expenditures of \$100,000 or more even if the funds are budgeted (*Approved by the Executive Committee on Nov. 13, 2009*)

### XIV. ENTERING INTO CONTRACTS OR AGREEMENTS ON BEHALF OF THE FOUNDATION NOT COVERED BY A BUDGET

#### Up To \$50000 for a Fiscal Year for Each Budget

The President

#### Up to \$15000 for a Fiscal Year Related to Accounting or Auditing Matters

Chair of Foundation Audit Committee

#### Over \$50000

The Board

### XV. APPROVAL FOR INCREASING A FOUNDATION BUDGET

During any one fiscal year, the budget may be increased as follows:

#### Up to 25000 for Each Budget

Recommendation—The Dean

Final Approval--The Chair of the Foundation Budget Committee

#### Up to An Additional 50000 for Each Budget

Recommendation—The Dean

Recommendation—Chair of The Foundation Budget Committee

Final Approval—The President  
Over 75000 in a Fiscal Year  
Recommendation—The Dean  
Recommendation—Chair of The Foundation Budget Committee  
Final Approval—The Board  
Transfers to the budget from the Contingency Fund for Faculty Compensation  
Final approval—The President

#### XVI. APPROVAL FOR TRANSFERRING BUDGETED FUNDS BETWEEN CATEGORIES WITHIN THE UNRESTRICTED BUDGET

Under 25000 in Any Fiscal Year  
Recommendation—The Dean  
Final Approval—The Chair of the Foundation Budget Committee  
An additional 50000 in Any Fiscal Year  
Recommendation—The Dean  
Recommendation—Chair of Foundation Budget Committee  
Final Approval—The President  
Over 75000 in a Fiscal Year  
Recommendation—The Dean  
Recommendation—The Foundation Budget Committee  
Final Approval—The Board

#### XVII. APPROVAL OF 2D LIEN MORTGAGES

Within Policy  
Final approval—The President  
Execution of Implementing Documents  
The Assistant Dean for Financial Affairs  
Not Within Policy  
Recommendation—The Dean  
Final Approval—The Board

These 2d lien mortgages will be classified as an investment of unrestricted funds.  
*(Approved by the Executive Committee on Jan. 23, 2007)*

#### XVIII. PURCHASE OF INSURANCE

Amount of Insurance  
Board Approval  
Negotiation of Terms and Approval of Forms  
Foundation President or Vice President

Execution of Application and Other Documents

Assistant Dean for Financial Affairs or Foundation President or Vice President

*(Approved by the Executive Committee on Jan. 23, 2007)*

XIX. SIGNING DOCUMENTS NOT OTHERWISE COVERED BY THIS MANUAL

Routine documents that do not involve incurring liability or new obligations of the Foundation or committing funds of the Foundation may be signed by the Assistant Dean for Business Affairs, the Secretary of the Foundation, the Director of Development, the Dean, or any Trustee.

XX. GENERAL

1. The Chair of the Foundation Investment Committee shall be the staff's contact for banking matters. The staff shall keep the Chair informed on matters involving relationships with banks and shall consult with the Chair on any non-routine banking matter.
2. Whenever approval authority is in the Chair of a committee and that Chair is not available, the staff should refer the matter to the Vice President or President for approval. If approved by the Vice President or President, the staff should advise the appropriate chair of the approval.
3. When the President is not readily available and prompt action is desirable, the Vice-President can act for the President on any of the matters covered by this manual.
4. All approvals and recommendations required by this manual must be in writing. Approvals or recommendations by Trustees may be by email or fax and included in the documentation. If the Trustee fails to provide a written approval, a memorandum documenting the oral approval shall be made.
5. Any authority previously granted that is inconsistent with this manual is revoked.
6. Any doubt about authority to sign any document or authority regarding any matter should be referred to the President or Vice President or the Chair of the Foundation Audit Committee.

*A revised manual was approved by the Board on November 3, 2006. On January 23, 2007 additional changes were approved by the Executive Committee and are noted within the document.*

## MANAGEMENT FEE POLICY

In recent years the Foundation's endowments have provided that the Foundation can "charge a reasonable fee for the administration of the endowment". In earlier years, however, many endowments contained no provision that expressly provided for the collection of a management fee. The Foundation has received legal advice that it is entitled to charge a reasonable fee for administration of an endowment even if the endowment does not expressly authorize the Foundation to do so. Of course, a provision prohibiting the collection of a management fee must be honored.

The cost of administering the endowments has many components, including costs related to accounting work, processing applications for scholarships, budgeting, paying recipients, office space, office equipment, auditing and investment advice, and a variety of other items. In addition, there is the cost of supervision of personnel, including, to some extent, supervision by the Dean. Many of these costs are paid by The University of Texas in order to minimize expenses of the Foundation and free up Foundation funds for other uses.

Therefore, the policy of the Foundation is to charge a management fee to cover the administration of endowments costs actually paid by the Foundation.

At each annual meeting of the Board, the Budget Committee shall advise the Board whether any adjustment in the management fee is appropriate.

Approved by the Board of Trustees on May 13, 2005.  
Amended by the Board of Trustees on November 9, 2007

Nancy Brazzil  
Secretary

# ENDOWMENTS

An endowment is a permanent, substantial gift to the Law School. The gift is invested by the Foundation and, in certain cases, by UT System, and the funds generated from the endowment are used for the purpose designated by the donor—financial aid, merit awards for students, supplemental salary support for faculty, research and so on. The principal is never expended. (See discussion in Section X *Budgets and Sources of Income.*)

The Law School currently holds more than 500 endowments, more than half of which directly benefit students. A complete accounting of endowment funds, including the investment income, is provided at the Trustees meetings.

The Board of Regents of the University of Texas System has established the types of endowments and minimum funding levels UT components may accept. These criteria ensure a broad and comprehensive private support base.

## FACULTY SUPPORT:

- ◆ **Endowed Chairs** are awarded to deans, department chairs, and superior faculty to enhance their scholarly efforts and research. Minimum funding required to establish an Endowed Chair is \$1,000,000.
- ◆ **Endowed Professorships** are awarded to outstanding faculty members to reward and enhance scholarly efforts. Minimum funding required to establish an Endowed Professorship is \$300,000.
- ◆ **Endowed Faculty Fellowships** support excellent teaching faculty regardless of rank or tenure, including visiting scholars in residence. Minimum funding required to establish an Endowed Faculty Fellowship is \$150,000.

## STUDENT SUPPORT:

- ◆ **Endowed Presidential Fellowships** are merit-based and awarded to students meeting the criteria of the Presidential program and those set by the donor. Minimum funding for an Endowed Presidential Fellowship is \$100,000, and the minimum award to the recipient is \$3500.
- ◆ **Endowed Fellowships** are scholarships for students meeting the criteria set forth by the donor. Minimum funding to create an Endowed Fellowship is \$50,000 and there is no minimum award to the recipient.
- ◆ **Endowed Presidential Scholarships** are merit-based awards for students meeting the criteria of the Endowed Presidential Scholarship Program and those set forth

by the donor. Minimum funding to create an Endowed Presidential Scholarship is \$50,000 and the minimum award to the recipient is \$2500.

- ◆ **Endowed Scholarships** are awarded to students based on criteria set forth by the donor. The minimum funding to create an Endowed Scholarship is \$25,000 and there is no minimum award to the recipient.

#### **PROGRAM AND COLLECTIONS SUPPORT:**

- ◆ **General Excellence Endowments** support specific or general programs in the colleges, schools, and units. Minimum funding required to create a General Excellence Endowment is \$25,000.
- ◆ **Endowed Book Funds** provide much needed support for research library collections. They may fund general library operations or the acquisition of hardback and softback volumes, periodicals, maps, drawings, rare books, electronic resources, and other materials and equipment used within the libraries to support the Law School's academic and research mission. The minimum funding for an Endowed Book Fund is \$10,000.

**The University of Texas  
Law School Foundation**  
Financial Statements and  
Independent Auditors' Report  
August 31, 2011 and 2010

The University of Texas Law School Foundation

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*Certified Public Accountants*

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## INDEPENDENT AUDITORS' REPORT

To the Board of Trustees  
The University of Texas Law School Foundation

We have audited the accompanying statements of financial position of The University of Texas Law School Foundation (a Texas nonprofit corporation) as of August 31, 2011 and 2010, and the related statements of activities and cash flows for the years then ended. These financial statements are the responsibility of the Foundation's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of The University of Texas Law School Foundation as of August 31, 2011 and 2010 and the changes in its net assets and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

*DUNAGAN JACK LLP*

Austin, Texas  
October 28, 2011

**FINANCIAL STATEMENTS**

The University of Texas Law School Foundation

STATEMENTS OF FINANCIAL POSITION

August 31,

	<u>2011</u>	<u>2010</u>
<b>ASSETS</b>		
Cash and cash equivalents	\$ 382,025	\$ 327,656
Investments (Note C)	129,654,509	109,191,512
Prepaid expenses and other assets	45,701	45,701
Contributions receivable (Note D)	11,516,645	13,435,503
Notes receivable	2,600,177	3,055,784
Beneficial interests in charitable remainder trusts (Note E)	<u>8,229,637</u>	<u>7,826,761</u>
Total assets	<u>\$ 152,428,694</u>	<u>\$ 133,882,917</u>
<b>LIABILITIES AND NET ASSETS</b>		
Liabilities		
Accounts payable and accrued expenses	\$ 336,626	\$ 294,984
Contributions payable	<u>705,720</u>	<u>-</u>
Total liabilities	<u>1,042,346</u>	<u>294,984</u>
Net assets		
Unrestricted	8,897,910	6,439,547
Temporarily restricted (Note F)	46,846,366	37,156,940
Permanently restricted (Note G)	<u>95,642,072</u>	<u>89,991,446</u>
Total net assets	<u>151,386,348</u>	<u>133,587,933</u>
Total liabilities and net assets	<u>\$ 152,428,694</u>	<u>\$ 133,882,917</u>

The accompanying notes are an integral part of these financial statements.

The University of Texas Law School Foundation

STATEMENTS OF ACTIVITIES

For the years ended August 31,

	<u>2011</u>	<u>2010</u>
Changes in unrestricted net assets		
Revenues and gains		
Contributions	\$ 1,429,001	\$ 649,267
Return on investments	2,315,910	2,433,789
Other revenues	<u>170,557</u>	<u>156,917</u>
Total unrestricted revenues and gains	3,915,468	3,239,973
Net assets released from restrictions	<u>7,388,331</u>	<u>6,610,505</u>
Total unrestricted revenues, gains, and other support	<u>11,303,799</u>	<u>9,850,478</u>
Expenses		
Program services	7,610,582	7,192,532
General and administrative	576,962	598,907
Fundraising	<u>657,892</u>	<u>841,978</u>
Total expenses	<u>8,845,436</u>	<u>8,633,417</u>
Increase in unrestricted net assets	<u>2,458,363</u>	<u>1,217,061</u>
Changes in temporarily restricted net assets		
Contributions	3,536,235	6,362,330
Return on investments	13,541,522	9,497,899
Net assets released from restrictions	<u>(7,388,331)</u>	<u>(6,610,505)</u>
Increase in temporarily restricted net assets	<u>9,689,426</u>	<u>9,249,724</u>
Changes in permanently restricted net assets		
Contributions	5,247,750	2,276,117
Change in value of charitable remainder trust interest	<u>402,876</u>	<u>414,741</u>
Increase in permanently restricted net assets	<u>5,650,626</u>	<u>2,690,858</u>
Change in net assets	17,798,415	13,157,643
Net assets at beginning of year	<u>133,587,933</u>	<u>120,430,290</u>
Net assets at end of year	<u>\$ 151,386,348</u>	<u>\$ 133,587,933</u>

The accompanying notes are an integral part of these financial statements.

The University of Texas Law School Foundation

STATEMENTS OF CASH FLOWS

For the years ended August 31,

	<u>2011</u>	<u>2010</u>
Cash flows from operating activities:		
Change in net assets	\$ 17,798,415	\$ 13,157,643
Adjustments to reconcile change in net assets to cash provided (used) by operating activities:		
Realized and unrealized (gains) losses on investments	(14,782,827)	(10,951,960)
Change in value of charitable remainder trust interests	(402,876)	(414,741)
Bequest of beneficial interest in trust	-	(1,000,000)
Decrease in contributions receivable	1,918,858	2,902,820
Decrease in notes receivable	455,607	210,346
Increase in accounts payable and accrued expenses	41,642	33,176
Increase in contributions payable	705,720	-
Contributions restricted for endowments	<u>(7,707,695)</u>	<u>(5,616,386)</u>
Net cash used by operating activities	<u>(1,973,156)</u>	<u>(1,679,102)</u>
Cash flows from investing activities:		
Net proceeds from sales of (purchases of) investments	<u>(5,680,170)</u>	<u>(4,712,015)</u>
Net cash used by investing activities	<u>(5,680,170)</u>	<u>(4,712,015)</u>
Cash flows from financing activities:		
Investments in endowments	<u>7,707,695</u>	<u>5,616,386</u>
Net cash provided by financing activities	<u>7,707,695</u>	<u>5,616,386</u>
Increase (decrease) in cash and cash equivalents	54,369	(774,731)
Cash and cash equivalents at beginning of year	<u>327,656</u>	<u>1,102,387</u>
Cash and cash equivalents at end of year	<u>\$ 382,025</u>	<u>\$ 327,656</u>
Amounts paid during the year for:		
Income taxes	<u>\$ -</u>	<u>\$ -</u>
Interest	<u>\$ -</u>	<u>\$ -</u>

The accompanying notes are an integral part of these financial statements.

**NOTES TO FINANCIAL STATEMENTS**

The University of Texas Law School Foundation

NOTES TO FINANCIAL STATEMENTS

August 31, 2011 and 2010

**NOTE A - ACTIVITIES AND SIGNIFICANT ACCOUNTING POLICIES**

1. Organization and Nature of Activities

The University of Texas Law School Foundation (Foundation) was chartered in 1952 for the purpose of providing support to The University of Texas School of Law (Law School), including administrative, faculty and student support. Revenues are provided primarily from investment return and gifts. Gifts are typically donated by Law School alumni and law firms.

2. Basis of Accounting

The accompanying financial statements have been prepared on the accrual basis of accounting and, accordingly, reflect all significant receivables, payables and other liabilities.

3. Basis of Presentation

Financial statement presentation follows the guidance of the Financial Accounting Standards Board Accounting Standards Codification (FASB ASC) 958-205, *Not-for-Profit Entities: Presentation of Financial Statements*. Under these standards, the Foundation is required to report information regarding its financial position and activities according to three classes of net assets: unrestricted net assets, temporarily restricted net assets, and permanently restricted net assets.

4. Cash Equivalents

The Foundation considers checking accounts, savings accounts, money market funds and certificates of deposit purchased with initial maturities of three months or less to be cash equivalents.

5. Investments

The Foundation records investments using the guidance of FASB ASC 958-320, *Not-for-Profit Entities: Investments - Debt and Equity Securities*. Investments are stated at their readily determinable fair values in the statements of financial position. Unrealized gains and losses are included in the change in net assets.

6. Hyder Collection

During the year ended August 31, 2011, the Foundation received a gift of a collection of items which includes, among other things, art, furniture, textiles, artifacts, posters and prints. These items are on display throughout the Law School. The Foundation has not capitalized its collection. Contributed collection items are not reflected in these financial statements.



The University of Texas Law School Foundation

NOTES TO FINANCIAL STATEMENTS – CONTINUED

August 31, 2011 and 2010

**NOTE A - ACTIVITIES AND SIGNIFICANT ACCOUNTING POLICIES - CONTINUED**

7. Contributions

The Foundation records contributions using the guidance of FASB ASC 958-605, *Not-for-Profit Entities: Revenue Recognition*. Contributions received are recorded as unrestricted, temporarily restricted, or permanently restricted support depending on the existence or nature of any donor restrictions. As donor or time restrictions are satisfied, net assets are reclassified to unrestricted net assets. The Foundation's policy is to report restricted support that is satisfied in the year of receipt as restricted and then released in the same year.

8. Endowment Gains and Losses

Unless a donor directs otherwise, any losses on investments that are donor-restricted for an endowment fund first reduce related temporarily restricted net assets. Any remaining losses then reduce unrestricted net assets. Subsequent gains are recorded as increases in unrestricted net assets until the total amount of the gains offsets the amount of the losses previously recorded as decreases in unrestricted net assets. (Effectively, this treatment reinstates unrestricted net assets for losses recorded in that class of net assets.) The Foundation records gains in excess of that amount in accordance with donor restrictions.

9. Functional Allocation of Expenses

Expenses are categorized by function in the statements of activities as either (1) program services, (2) general and administrative, or (3) fundraising expenses. Expenses that are specifically identifiable to a function are allocated entirely to that function. Expenses that are not specifically identifiable to a function are allocated based upon management's estimate of time and resources devoted to each function.

10. Estimates

The preparation of the financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

The University of Texas Law School Foundation

NOTES TO FINANCIAL STATEMENTS – CONTINUED

August 31, 2011 and 2010

**NOTE B - TAX EXEMPT STATUS**

The Foundation is generally exempt from federal income tax under Internal Revenue Code Section 501(a) as an organization described in Section 501(c)(3). Furthermore, the Foundation has been determined not to be a private foundation, but rather a supporting organization described in Sections 509(a)(3) and 170(b)(1)(A)(viii). The Foundation has received a legal opinion that it should be considered a Functionally Integrated Type III supporting organization. Therefore, no provision for income taxes has been included in these financial statements. The tax years 2007 through 2010 remain open to examination by the major taxing jurisdictions in which returns are filed.

**NOTE C - INVESTMENTS**

Investments comprised the following at August 31,

	2011	2010
UTIMCO managed funds	\$ 128,170,409	\$ 107,559,745
Mortgages	1,329,431	1,464,946
Real estate	153,806	153,806
Other	863	13,015
	\$ 129,654,509	\$ 109,191,512

Return on investments comprised the following for the years ended August 31,

	2011	2010
Interest and dividends	\$ 1,074,605	\$ 979,728
Realized and unrealized gains (losses)	14,782,827	10,951,960
	\$ 15,857,432	\$ 11,931,688

Effective May 23, 2006, the Foundation entered into an Investment Management Agreement (Agreement) with the Board of Regents of The University of Texas System. This agreement provides for the investment of Foundation funds with The University of Texas Investment Management Company (UTIMCO). The Agreement allows the Foundation to make quarterly withdrawals of any or all Foundation funds. The Foundation's funds are primarily invested in UTIMCO's Long Term Fund, an internal mutual fund for the pooled investment of over 9,400 privately raised endowments and other long-term funds of the 15 institutions of The University of Texas System. The Foundation's investments are subject to market risks and fluctuations associated with normal market investments.

The University of Texas Law School Foundation  
 NOTES TO FINANCIAL STATEMENTS – CONTINUED

August 31, 2011 and 2010

**NOTE D - CONTRIBUTIONS RECEIVABLE**

The contributions receivable balance comprised the following at August 31,

	2011	2010
Contributions receivable, gross	\$ 12,791,690	\$ 14,920,671
Allowance for uncollectible contributions receivable	(1,220,950)	(1,318,157)
Discounts to present value	(54,095)	(167,011)
Contributions receivable, net	\$ 11,516,645	\$ 13,435,503

Contributions receivable have been discounted to their present values at August 31, 2011 using interest rates that range from .10% to 1.56%. Contributions receivable have been discounted to their present values at August 31, 2010 using interest rates that range from .25% to 1.92%.

At August 31, 2011, collections of contributions receivable were expected as follows:

Less than one year	\$ 6,272,062
One to five years	6,384,628
More than five years	135,000
Contributions receivable, gross	\$ 12,791,690

Certain donors comprised the following percentages of the gross contributions receivable balances at August 31,

	2011	2010
Donor A	31%	40%
Donor B	16%	13%
Donor C	6%	0%
Donor D	6%	0%
Donor E	0%	7%

The University of Texas Law School Foundation

NOTES TO FINANCIAL STATEMENTS – CONTINUED

August 31, 2011 and 2010

**NOTE E - BENEFICIAL INTERESTS IN TRUSTS**

The Foundation has been named as a beneficiary of an irrevocable charitable remainder trust (Trust) that accounts for \$7,229,637 and \$6,826,761 of the total beneficial interests balances at August 31, 2011 and 2010, respectively. This Trust provides for the payment of distributions to designated beneficiaries over the Trust's terms (the designated beneficiaries' lifetimes). The present value attributable to the future interest of the Foundation was treated as a permanently restricted contribution in the period that the Trust was established. In subsequent years, the change in present value attributable to the future interest of the Foundation is recorded as an increase or decrease in permanently restricted net assets. Because the third party Trustee has the discretion to make gifts of net income to charitable, religious and educational organizations and based on the Trustee's history of distributing gifts to such organizations, it has been assumed that the return on investments not distributed by the Trustee approximates the discount rate used by the Foundation to calculate the present value of its remainder interest. Therefore, the present value is assumed to be the current value of the assets in the Trust. There are certain real estate and mineral interests where only book value is provided by the Trustee. Therefore, balances presented are understated by the difference between the fair value and book value of those assets. This remainder interest will establish an endowed chair for the Law School.

**NOTE F - TEMPORARILY RESTRICTED NET ASSETS**

At August 31, 2011 and 2010, temporarily restricted net assets consisted of accumulated investment return related to endowments that must be used in accordance with the respective endowment agreements and contributions that are not endowments, but must be used in accordance with the respective donor's restrictions:

	2011	2010
Chairs	\$ 8,458,771	\$ 6,098,898
Scholarships	8,389,430	5,938,889
Faculty development & excellence	8,308,514	6,711,921
Professorships	4,393,036	3,549,065
Library	2,031,203	1,611,675
Advocacy	1,450,988	1,547,722
Center for Transnational Studies	1,161,606	504,270
Fellowships	975,423	986,070
Research professorships	764,443	500,002
Transactional Law	427,881	445,916
Lectureships	271,796	169,239
Other purposes and periods	10,213,275	9,093,273
	<u>\$ 46,846,366</u>	<u>\$ 37,156,940</u>

The University of Texas Law School Foundation

NOTES TO FINANCIAL STATEMENTS – CONTINUED

August 31, 2011 and 2010

**NOTE G - PERMANENTLY RESTRICTED NET ASSETS**

The Foundation's endowments comprised approximately 375 individual funds. At August 31, 2011 and 2010, permanently restricted net assets consisted of endowments to support the following purposes:

	<u>2011</u>	<u>2010</u>
Chairs	\$ 27,956,543	\$ 27,544,007
Scholarships	23,475,629	22,028,050
Faculty development & excellence	16,094,881	15,917,915
Professorships	5,863,555	5,858,231
Library	3,176,595	3,169,170
Research professorships	2,331,997	2,326,706
Advocacy	1,757,602	1,756,603
Lectureships	974,346	966,091
Fellowships	194,099	194,099
Other purposes	13,816,826	10,230,574
	<u>\$ 95,642,072</u>	<u>\$ 89,991,446</u>

The Foundation has interpreted the Uniform Prudent Management of Institutional Funds Act (UPMIFA) as requiring the preservation of the fair value of the original gift as of the gift date of the donor-restricted endowment funds absent explicit donor stipulations to the contrary. As a result of this interpretation, the Foundation classifies as permanently restricted net assets (a) the original value of gifts donated to the permanent endowment, (b) the original value of subsequent gifts to the permanent endowment, and (c) accumulations to the permanent endowment made in accordance with the direction of the applicable donor gift instrument at the time the accumulation is added to the fund. The remaining portion of the donor-restricted endowment fund that is not classified in permanently restricted net assets is classified as temporarily restricted net assets until those amounts are appropriated for expenditure by the Foundation in a manner consistent with the standard of prudence prescribed by UPMIFA. In accordance with UPMIFA, the Foundation considers the following factors in making a determination to appropriate or accumulate donor-restricted endowment funds:

- The duration and preservation of the fund
- The purposes of the Foundation and the donor-restricted endowment fund
- General economic conditions
- The possible effect of inflation and deflation
- The expected total return from income and the appreciation of investments
- Other resources of the Foundation
- The investment policies of the Foundation.

The University of Texas Law School Foundation

NOTES TO FINANCIAL STATEMENTS – CONTINUED

August 31, 2011 and 2010

**NOTE G - PERMANENTLY RESTRICTED NET ASSETS - CONTINUED**

*Funds with Deficiencies*

From time to time, the fair value of assets associated with individual donor restricted endowment funds may fall below the level that the donor or UPMIFA requires the Foundation to retain as a fund of perpetual duration. In accordance with GAAP, deficiencies of this nature that are reported in unrestricted net assets were \$23,170 and \$651,213 as of August 31, 2011 and 2010, respectively.

*Investment Policies*

The Foundation has adopted investment and spending policies for endowment assets that attempt to provide a predictable stream of funding to programs supported by its endowment while seeking to maintain the purchasing power of the endowment assets. Under this policy, as approved by the Board of Trustees, endowment assets are invested with UTIMCO. The Foundation's assets are primarily invested in UTIMCO's Long Term Fund (LTF), which is 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 primary investment objective of the LTF is to preserve the purchasing power of LTF assets by earning an average annual real return over rolling ten-year periods or longer at least equal to the target distribution rate, plus the annual expected expense. The current target rate is 5.2%. UTIMCO is subject to compliance with investment policies approved by the Board of Regents of The University of Texas System.

*Spending Policy and How the Investment Objectives Relate to Spending Policy*

The Foundation has a policy of appropriating for distribution each year 5% of its endowment funds' average fair value over the 3 years through the fiscal year-end two years preceding the fiscal year in which the distribution is planned. *(For example, distributions during the year ended August 31, 2011 were based on average endowment fair values as of August 31, 2009, 2008 and 2007.)* The Foundation also has a policy that appropriations from an endowment can be made if the fair value of investments related to an endowment is 100% or more of corpus and that, with a donor's expressed permission, the Foundation can appropriate funds if the value falls below 100%. In establishing these policies, the Foundation considered the long-term expected return on its endowment assets and the long-term nature of an endowment. Accordingly, over the long term, the Foundation expects the current spending policy to allow its endowments to grow at an average of approximately 3% annually. This is consistent with the Foundation's objective to maintain the purchasing power of the endowment assets as well as to provide additional real growth through new gifts and investment return.

The University of Texas Law School Foundation

NOTES TO FINANCIAL STATEMENTS – CONTINUED

August 31, 2011 and 2010

**NOTE G - PERMANENTLY RESTRICTED NET ASSETS - CONTINUED**

Changes in the Foundation's endowment funds (which excludes contributions receivable and beneficial interests) were as follows for the years ended August 31, 2011 and 2010:

	Unrestricted	Temporarily Restricted	Permanently Restricted	Total
Endowments funds, August 31, 2009	\$ (2,042,408)	\$ 15,967,354	\$ 69,441,729	\$ 83,366,675
Contributions	-	-	5,616,386	5,616,386
Return on investments	1,391,195	9,205,615	-	10,596,810
Appropriations	-	(4,707,302)	-	(4,707,302)
Endowments funds, August 31, 2010	(651,213)	20,465,667	75,058,115	94,872,569
Contributions	-	-	7,707,695	7,707,695
Return on investments	628,043	13,174,801	-	13,802,844
Appropriations	-	(4,595,698)	-	(4,595,698)
Endowments funds, August 31, 2011	<u>\$ (23,170)</u>	<u>\$ 29,044,770</u>	<u>\$ 82,765,810</u>	<u>\$ 111,787,410</u>

**NOTE H - MANAGEMENT FEE**

Except where specifically prohibited by the terms of the endowment, the Foundation charges each endowment an annual fee for recovery of administrative expenses incurred by the Foundation. The fee is calculated as a percentage of the average of each quarter's beginning market value. The annual fee charged was .50% for each of the years ended August 31, 2011 and 2010. Management fees of \$518,174 and \$442,789 were transferred to unrestricted net assets during the years ended August 31, 2011 and 2010, respectively. These fees are included in satisfactions of restrictions on the statements of activities.

**NOTE I - TRANSFERS FROM (TO) THE UNIVERSITY OF TEXAS AT AUSTIN**

The Foundation periodically receives contributions from external donors which qualify for corporate matching. If a corporation's policy does not allow it to match a contribution to the Foundation because it is an entity independent from the University of Texas at Austin, the Foundation will transfer the gift to the University for the benefit of matching. Also, periodically the University will receive contributions intended for the Foundation, and the University will transfer the gifts to the Foundation.



The University of Texas Law School Foundation

NOTES TO FINANCIAL STATEMENTS – CONTINUED

August 31, 2011 and 2010

**NOTE J - FAIR VALUE MEASUREMENTS**

Certain assets are carried at fair value in these financial statements. Fair value measurements were arrived at using the following inputs at August 31, 2011 and 2010:

Description	2011	Fair Value Measurements at Reporting Date Using		
		Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Money market funds	\$ 306,144	\$ 306,144	\$ -	\$ -
UTIMCO managed funds	128,170,409	-	128,170,409	-
Mortgages	1,329,431	-	1,329,431	-
Other investments	863	-	-	863
Contributions receivable	11,516,645	-	11,516,645	-
Beneficial interests	8,229,637	-	8,229,637	-
	<u>\$ 149,553,129</u>	<u>\$ 306,144</u>	<u>\$ 149,246,122</u>	<u>\$ 863</u>
Description	2010	(Level 1)	(Level 2)	(Level 3)
Money market funds	\$ 44,521	\$ 44,521	\$ -	\$ -
UTIMCO managed funds	107,559,745	-	107,559,745	-
Mortgages	1,464,946	-	1,464,946	-
Other investments	13,015	-	-	13,015
Contributions receivable	13,435,503	-	13,435,503	-
Beneficial interests	7,826,761	-	7,826,761	-
	<u>\$ 130,344,491</u>	<u>\$ 44,521</u>	<u>\$ 130,286,955</u>	<u>\$ 13,015</u>

**NOTE K - SUBSEQUENT EVENTS**

Subsequent events have been evaluated through October 28, 2011, the date the financial statements were available to be issued.



## **POLICY FOR MANAGEMENT OF UNRESTRICTED FUNDS OF THE UNIVERSITY OF TEXAS LAW SCHOOL FOUNDATION**

1. Unrestricted funds of the Foundation shall be divided into three accounts: "Emergency Reserves", "Available Reserves" and "Current Funds". Emergency Reserves shall be set aside for nonrecurring unusual needs of the Foundation and shall not be available for expenditure without a specific finding by the Board that a nonrecurring and unusual need exists. Available Reserves shall be available for spending in accordance with the regular budgeting process. Current Funds are The Annual Fund and other unrestricted funds received or anticipated during a fiscal year, including any unspent funds from the prior years' budget and any over realized income from the prior year's budget.
2. The Budget Committee shall identify for the Board the amount of unrestricted funds held by the Foundation as of August 31, 2004 and recommend the division of those funds into Emergency Reserves and Available Reserves.
3. The Budget Committee shall each year during the budgeting process recommend that some portion of the Current Funds be transferred to the Emergency Reserves. The amount the Budget Committee recommends each year for transfer to Emergency Reserves need not be a fixed amount or fixed percentage; the Budget Committee in making its recommendation shall take into account the amount of Current Funds available and other factors. During the budget process, the Budget Committee shall identify for the Board the size of the Emergency Reserve Account and the basis for its recommended transfer to that account. The Budget Committee shall also identify any unusually large unrestricted gifts received or anticipated for that year.
4. When the Board concludes that the size of the Emergency Reserve Account is large enough to provide reasonable protection for nonrecurring unusual needs of the Foundation, no further transfers to that account shall be required until there has been some depletion of the account.
5. The Budget Committee shall consider each year whether it should transfer some part of the Current Funds to Available Reserves (as well as to Emergency Reserves as provided in Paragraph 3 above) in order to build a cushion for future needs. It shall make its recommendation to the Board during the budgeting process.
6. In years in which the Budget Committee recommends using Available Reserves for its proposed budget, it shall identify on the income portion of its proposed budget the funds "Transferred from Available Reserves".
7. The term "Unrestricted Funds" used in this policy shall mean the unrestricted funds available for expenditure by the Foundation even if for accounting purposes some other number is identified on the balance sheet as "Unrestricted Net Assets".

Approved by the Board of Trustees on May 13, 2005.

Nancy Brazzil  
Secretary

The University of Texas Law Alumni Association Executive Committee

**The University of Texas School of Law  
Annual Fund**

**What is the Annual Fund?**

The Annual Fund is the name historically used to refer to monies raised each year from certain programs. The funds received are unrestricted and are available for the non-endowed budget (see section X).

**What development programs fall under the Annual Fund?**

We solicit contributions to the Annual Fund through several marketing strategies:

• **Keeton Fellows**—donor pledges a gift of \$3,000 for five consecutive years. The Fellows are honored annually by the Dean. Keeton Fellows are recognized at the Law School on plaques and they receive special recognition in *UTLAW* magazine.

• **Charles Alan Wright Society**—donor contributes either \$25,000 (Silver Level) or \$50,000 (Gold Level) to the Annual Fund in one fiscal year. The names of the donors to the Charles Alan Wright Society are displayed on a plaque outside the Charles Alan Wright Classroom. The plaque includes the likeness of Professor Wright in bas relief. Donors to the Society are invited to the Trustees' Annual Fall Dinner, and to various events throughout the year as guests of the Dean and the faculty, e.g. UT athletic contests, symposia.

• **Sunflower Society**—graduating students pledge to contribute \$1,900 to the Annual Fund over the first three years following graduation (\$300 the first year out, \$600 the second year out, \$1,000 the third year out). Participants are invited to an annual event hosted by the Dean, and each donor is honored with the placement of a commemorative brick at the Law School.

• **Dean's Roundtable**—chaired by Senator Rodney Ellis. DRT participation is by special invitation. Donor contributes \$2,000 per year, with the option to renew each year. Participants are invited to attend a black-tie dinner, held each year in the Lieutenant Governor's Reception Room in the State Capitol.

• **100% Giving Program**—all law firms and businesses that have 100% of their UT Law Alumni contribute to the Annual Fund during the fiscal year receive recognition by having the firm's or business's name prominently displayed in the Career Services Office at the Law School.

• **Commemorative Bricks**—alumni and friends may purchase commemorative bricks, which are installed along the walkways in the front of the Law School. The bricks are offered at the price of \$150 each.

•**Phonathon**—The University's Central Development Office contracts with a national fundraising firm to solicit contributions from alumni nationwide, including UT Law alumni. Central Development oversees this program with advice from the Law School Foundation.

•**Dean's Mailings**—three letters a year are sent from the Dean to all alumni who are not in active Annual Fund pledges. The first letter is mailed at the beginning of each fiscal year in September. That mailing is followed with another in December and a final mailing in March.

**INVESTMENT MANAGEMENT AGREEMENT WITH  
THE UNIVERSITY OF TEXAS LAW SCHOOL FOUNDATION**

This Investment Management Agreement (this “Agreement”) is entered into as of May 23, 2006 (the “Effective Date”) by and between the Board of Regents (the “UT Board”) of The University of Texas System (the “UT System”) and The University of Texas Law School Foundation (the “Foundation”).

RECITALS

The parties hereto acknowledge that:

The Foundation is organized and shall be operated exclusively for the benefit of The University of Texas. As used in this Agreement, “UT Educational Purposes” means all of those activities stated in Article IV of the Foundation’s Articles of Incorporation, as currently on file with the Office of the Texas Secretary of State; and

The UT Board is the governing board of the UT System and its various institutions, including without limitation The University of Texas School of Law (the “institution”); and

The institution of the UT System supported by the Foundation, and the financial vitality of the foregoing, are integral to the public and educational purposes of the UT System; and The Foundation desires to enter into this Agreement with the UT Board in order to give the UT

Board management and control of certain funds received by the Foundation, as designated by the Foundation from time to time (the “Foundation Funds”), and to authorize the UT Board to provide for the investment of the Foundation Funds as the UT Board may direct, in its sole discretion. The term “management and control” as used in this Agreement means management and control of the investment of the Foundation Funds deposited with UTIMCO pursuant to the terms of this Agreement; and

The UT Board desires to enter into this Agreement with the Foundation and to have management and control and to invest those Foundation Funds which are entrusted to the UT Board and which are subject to the Foundation’s rights of Withdrawal and Termination as specified herein below; and

The Foundation Funds, including without limitation any income therefrom, shall at all times be exclusively dedicated to the UT Educational Purposes; and

Section 66.08 of the *Texas Education Code*, as amended, authorizes the UT Board, subject to certain conditions, to enter into a contract with a nonprofit corporation for the corporation to invest funds under the control and management of the UT Board, as designated by the UT Board; and

The University of Texas Investment Management Company (“UTIMCO”) has been organized under the laws of the State of Texas, including the Texas Non-Profit Corporation Act, Article

1396-1.01 et seq., Vernon's Texas Civil Statutes, for the express purpose of investing funds under the control and management of the UT Board, as designated by the UT Board, in accordance with the laws of the State of Texas; and

The Foundation acknowledges that the UT Board has entered into an Investment Management Services Agreement, dated September 1, 2005, as amended (the "UTIMCO Agreement"), with UTIMCO under which UTIMCO is responsible for investing and managing certain funds under the control and management of, and pursuant to the investment policies of, the UT Board; and

The UT System has found that furtherance of the UT Educational Purposes pursuant to this Agreement is a legitimate public purpose related to the UT System's educational mission, including without limitation the support and maintenance of one or more institutions included in the UT System;

Accordingly, for and in consideration of the premises and the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## AGREEMENT

### **Section 1. Delegation of Investment Authority.**

The Foundation hereby appoints the UT Board as its investment manager with complete authority to act for the Foundation in the investment of the Foundation Funds. The Foundation acknowledges and consents to the UT Board's appointment of UTIMCO, pursuant to the UTIMCO Agreement, to act as the UT Board's investment manager for the Foundation Funds with authority and responsibility to invest the Foundation Funds in accordance with the UT Board's investment policies under the UTIMCO Agreement.

### **Section 2. Investment Management.**

The UT Board, through UTIMCO, agrees to furnish the Foundation with continuous investment management services for the Foundation Funds and shall invest and reinvest the Foundation Funds in such funds and pursuant to such investment policies as the UT Board shall determine in its sole discretion, provided that the UT Board shall endeavor to consult with the Foundation regarding such matters and provide the Foundation with the opportunity to consult with UTIMCO to designate one or more funds as accounts in which the Foundation Funds will be invested. The UT Board, subject to applicable law, will acquire, exchange, sell, supervise, manage or retain any kind of investments that prudent investors, exercising ordinary business care and prudence, would acquire or retain in light of the facts and circumstances prevailing at the time of the action or decision, considering both the long-term and short term needs of the Foundation in carrying out the UT Educational Purposes, the present and anticipated financial requirements of the Foundation, the expected return on the investments of the Foundation Funds, price level trends and general economic conditions. The Foundation recognizes that all investment transactions involve a variety of significant potential risks, including, without limitation, market risk, liquidity risk, credit risk, cash flow risk, operational risk and counterparty risk. The Foundation agrees, to the extent authorized by the Constitution and the laws of the State of Texas, that (i) the UT Board will not be liable for any losses incurred in the Foundation

Funds as a result of investments made pursuant to the applicable investment policies adopted by the UT Board in its sole discretion, and (ii) the UT Board will not be liable for actions of co-fiduciaries, unless such losses are due to gross negligence or willful misconduct of the UT Board.

**Section 3. Custody of Assets.**

The UT Board, through UTIMCO, shall use one or more commercial banks, trust companies, or other entities (“Custodians”) for recordkeeping, accounting, safekeeping, settlement of security purchases, sales, collection of income and other duties associated with the investment of the Foundation Funds. The UT Board, directly or through UTIMCO, shall have full discretion in the selection and termination of each firm acting as Custodian or providing brokerage services and the terms and conditions of any such engagement.

**Section 4. Investment Management Fees.**

The UT Board has authorized UTIMCO to charge certain annual fees (collectively, the “Annual Fee”), which includes all operating expenses associated with the general management and investment services rendered in connection with UTIMCO’s performance under the UTIMCO Agreement. The UT Board has authorized UTIMCO to charge one-fourth of the amount of the Annual Fee on or before the first day of each fiscal quarter in order to pay UTIMCO’s operating expenses for the succeeding fiscal quarter. The Foundation Funds shall be charged fees equal to the pro rata share of the Annual Fee and any other fees charged the UT Board (the Annual Fee and all other fees collectively, the “Fees”) attributable to the Foundation Funds relative to all funds for which the UT Board has responsibility, as of the date on which such Fees are charged, as determined in good faith by the UT Board and UTIMCO. The Foundation hereby agrees that the return on investment on the Foundation Funds is net of the pro rata share of the Fees attributable to the Foundation Funds.

Pursuant to the UTIMCO Agreement, the UT Board has authorized UTIMCO to select and execute transactions through unaffiliated brokerage firms. The Foundation acknowledges and agrees that the pro rata share of the Fees attributable to the Foundation Funds is in addition to any compensation that may be due any such broker or dealer effecting and executing transactions on behalf of UTIMCO in respect of the Foundation Funds.

The Foundation hereby acknowledges and consents to the UT Board’s authority under the UTIMCO Agreement to approve or disapprove the annual budget submitted by UTIMCO without the consent or approval of the Foundation.

**Section 5. Withdrawal of the Foundation Funds.**

The Foundation may withdraw any or all of the Foundation Funds by providing written notice of any such withdrawal no more than quarterly or up to (4) times per year to the UT Board, with a copy to UTIMCO, which notice shall specify the amount and expected date of any such withdrawal, provided that any such withdrawal shall be subject to (i) reasonable allowance for the settlement of pending trades; (ii) allowance for a reasonable period of time in order to divest the Foundation Funds in a prudent and orderly manner, as may be determined by UTIMCO in consultation with UT Board and the Foundation; and (iii) such other conditions provided for in

the UTIMCO Agreement and as outlined in all applicable investment policies. Notwithstanding the foregoing after receipt by the UT Board of proper written notice, there shall not be a delay in allowing the Foundation to withdraw any or all of the Foundation Funds in the case of Foundation Funds deposited in the Long Term Fund, in excess of ninety (90) days; and in the case of Foundation Funds deposited in the Intermediate Term Fund or the Short Term Fund, in excess of thirty (30) days.

**Section 6. Valuation of Account Assets.**

Valuation of the Foundation Funds shall be determined in accordance with the investment policies adopted by the UT Board in its sole discretion, as the same may be amended from time to time, or as otherwise may be provided by the UTIMCO Agreement.

**Section 7. Distributions.**

The UT Board shall set the rate at which monies earned from the investment of institutional funds managed by the UT Board are distributed (the Distribution Rate) as determined by the UT Board at its sole discretion from time to time. The Foundation shall elect whether to receive any such distributions or request of the UT Board that such distributions be reinvested in accordance with the terms of this agreement.

If the UT Board distribution is insufficient to meet the needs of the Foundation, the Foundation will identify those endowments from which additional withdrawals are necessary in accordance with Section 5. The Foundation also will identify its endowments that should be credited with any unspent distributions returned to the UT Board for reinvestment. The Foundation's and UTIMCO's staff will cooperate to assure that the balances in the Foundation's endowments reflected in UTIMCO's records and reports are consistent with the balances reflected in the Foundation's records and reports.

**Section 8. Representations and Warranties.**

The Foundation represents and warrants for the benefit of the UT Board and UTIMCO as follows:

- A. The Foundation is a Texas non-profit corporation, duly organized, validly existing and in good standing under the laws of the State of Texas.
- B. The Foundation has full power and authority to execute, deliver and perform this Agreement. The organizational documents of the Foundation exclusively dedicate the corporation to the purpose of the UT Educational Purposes.
- C. The execution, delivery and performance by the Foundation of this Agreement do not (i) conflict with or violate any provision of the organizational documents of the Foundation, or (ii) contravene, or result in the violation of or constitute a default under, (I) any provision of applicable law or regulation, or any order, rule or regulation of any court, governmental agency or instrumentality or (II) any agreement, resolution or instrument to which the Foundation is a party or by which it is bound.

- D. No authorization, consent, approval, permit, license, or exemption of, or filing or registration with, any court or governmental department, commission, board, bureau, agency or instrumentality that has not been obtained or issued is or will be necessary for the valid execution, delivery or performance by the Foundation of this Agreement.
- E. This Agreement constitutes a valid and binding agreement of the Foundation.
- F. There is no action, suit or proceeding pending or, to the knowledge of the Foundation, threatened against or affecting the Foundation, or relating to this Agreement in any court or before or by any governmental department, agency or instrumentality which, if adversely determined, would materially affect the ability or authority of the Foundation to enter into, and to perform its obligations under, this Agreement, or which in any manner questions the validity or enforceability of this Agreement.
- G. The Foundation is experienced in investing the institutional funds under its control and is able to fend for itself, recognizes that all investment transactions involve a variety of significant potential risks as noted in Section 2, can bear the economic risk of the investment of the Foundation Funds, and has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the investment of the Foundation Funds in the manner contemplated by this Agreement.
- H. The Foundation has been provided with the opportunity to ask questions of, and it has received answers thereto satisfactory to it from, the UT Board and its representatives regarding this Agreement and has obtained all additional information requested by it of the UT Board and its representatives prior to entering into this Agreement.

**Section 9. Dedication to UT Educational Purposes.**

During the effective term of this Agreement, the Foundation and the Foundation Funds shall at all times be exclusively dedicated to the UT Educational Purposes. Without limiting the generality of the foregoing, during the effective term of this Agreement, the Foundation shall not amend, restate, modify or terminate the organizational documents of the Foundation, as amended as of the date of this Agreement, without the prior written consent of the UT Board to the extent such amendment, restatement, modification or termination would alter the exclusive dedication of the Foundation and the Foundation Funds to the UT Educational Purposes. Upon reasonable notice, on reasonable terms and at reasonable times, UT System shall have the right to inspect Foundation records and interview Foundation personnel to verify compliance with this Section 9.

**Section 10. Termination.**

The UT Board and the Foundation may terminate this Agreement at any time by written notice to the other party, effective immediately upon receipt of such notice by the other party, subject to reasonable allowance for the settlement of pending trades. The Foundation may terminate this



Agreement by withdrawing all of the Foundation Funds subject to Section 5 of this Agreement. There shall be no penalty for termination; however, the UT Board shall be entitled to all compensation and benefits earned prior to termination. Termination of this Agreement shall not affect the parties' rights and obligations accrued prior to termination. Sections 8, 12, 15 and 16 shall survive any termination of this Agreement.

**Section 11. Amendments.**

No amendment hereto shall be effective unless executed in the same manner as this Agreement.

**Section 12. Notices.**

All notices or communications hereunder shall be in writing and shall not be effective until hand delivered and receipted to the other party, or sent by overnight delivery, or sent by United States Certified or Registered Mail, postage prepaid, to the addressed party. The following are the designated addresses for such notices or communications and may only be changed by communication in the manner required by this paragraph:

To UT Board:

Board of Regents of The University of Texas System  
Attn: Barry D. Burgdorf, Vice Chancellor and General Counsel  
201 W. 7th St.  
Austin, Texas 78701-2982  
Fax: 512-499-4523

To the Foundation:

President, The University of Texas Law School Foundation  
C/o Dean, The University of Texas School of Law  
727 E. Dean Keeton St.  
Austin, Texas 78705  
Fax: (512) 232-1124; and

Dean, The University of Texas School of Law  
727 E. Dean Keeton St.  
Austin, TX 78705  
Fax: (512) 232-1124.

**Section 13. Non-Assignability.**

No assignment or transfer of this Agreement by the Foundation, whether by contract, merger, consolidation, operation of law or otherwise, shall be made without having obtained the prior written consent of the UT Board nor is the Agreement assignable by the UT Board without prior written consent of the Foundation.

**Section 14. No Waiver of Breach.**

A waiver of a breach of any provision of this Agreement shall not constitute a waiver of any subsequent breach of that provision or a breach of any provision hereof. Failure of either party to enforce at any time or from time to time any provision of this Agreement shall not be construed as a waiver thereof.

**Section 15. Indemnification.**

a) Definitions:

For purposes of this Section 15, the following terms shall have the following meanings:

**“Claims”** means all claims, lawsuits, causes of action and other legal actions and proceedings of whatever nature brought against (whether by way of direct action, counter claim, cross action, or impleader) any Indemnified Party even if groundless, false or fraudulent, so long as the claim, lawsuit, cause of action, other legal action or proceeding, request or demand is alleged or determined, directly or indirectly, to arise out of, result from, relate to or be based upon, in whole or in part, the duties, activities, acts or omissions of any person arising under this Agreement.

**“Indemnified Parties”** means the UT Board and UTIMCO and any of their officers, directors, employees, agents and investment managers.

**“Losses”** means losses, costs, damages, expenses, judgments and liabilities of whatever nature (including, but not limited to, attorneys’, accountants’ and other professionals’ fees, litigation and court costs and expenses, amounts paid in settlement, amounts paid to discharge judgments and amounts payable by an Indemnified Party to any other person under any arrangement providing for indemnification of that person) directly or indirectly resulting from, arising out of or relating to one or more Claims.

b) Agreements to Indemnify:

To the fullest extent authorized by the Constitution and laws of the State of Texas, the Foundation shall indemnify and hold harmless each of the Indemnified Parties for and on account of Losses arising from wrongful acts or omissions of the Foundation, its Trustees, employees, agents, or representatives; provided, however, the Foundation shall not be obligated to indemnify an Indemnified Party against wrongful acts or omissions to the extent such wrongful acts or omissions are caused by (i) an intentional misconduct or a knowing violation of law by the Indemnified Party claiming indemnification, (ii) a transaction from which the Indemnified Party claiming indemnification received an improper benefit, (iii) an act or omission for which the liability of the Indemnified Party claiming indemnification is expressly provided by an applicable statute, or (iv) an act or omission constituting gross negligence by the Indemnified Party claiming indemnification.

c) Notice:

In case any Claim shall be brought or, to the knowledge of any Indemnified Party, threatened against any Indemnified Party in respect of which indemnity may be sought against the Foundation, such Indemnified Party shall promptly notify the Foundation in writing.

d) Defense:

To the extent permitted by applicable law, the Foundation shall have the right to assume the investigation and defense of all Claims, including the employment of counsel and the payment of all expenses. Each Indemnified Party shall have the right to employ separate counsel in any such action and participate in the investigation and defense thereof, but the fees and expenses of such counsel shall be paid by such Indemnified Party unless the employment of such counsel has been specifically authorized by the Foundation, in writing.

e) Cooperation; Settlement:

If the Foundation assumes the defense of a claim, each Indemnified Party shall use reasonable efforts to cooperate with the Foundation in the defense of any action or Claim. The Foundation shall not be liable for any settlement of any action or Claim without its consent but, if any such action or Claim is settled with the consent of the Foundation, the Foundation shall indemnify and hold harmless the Indemnified Parties from and against any Loss by reason of such settlement or judgment as provided in Subsection (a) of this Section.

f) Survival; Right to Enforce:

Notwithstanding any provisions of this Agreement to the contrary, the provisions of this Section shall survive the termination of this Agreement, and the obligations of the Foundation hereunder shall apply to Losses or Claims whether asserted prior to or after the termination of this Agreement. In the event of failure by the Foundation to observe the covenants, conditions and agreements contained in this Section, any Indemnified Party may take any action at law or in equity to collect amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Foundation under this Section.

**Section 16. Open Records.**

The Foundation acknowledges that the UT Board is subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code, as amended, and the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, as amended, and that as a result, this Agreement and the subject matter hereof are or may become public information, and nothing in this Agreement shall be construed to any way limit the UT Board's obligation or ability to publicly disclose any information it or its agents, including without limitation UTIMCO, may be provided under or in connection with this Agreement. However, the UT Board acknowledges that the Foundation is of the opinion that it is not subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code, as amended, or the Texas Open Meetings Act, Chapter 551 of the Texas Government Code as amended, and nothing herein, nor the existence of this Agreement, are intended to make the Foundation subject to the aforementioned statutes.

**Section 17. Entire Agreement; Miscellaneous.**

This Agreement contains the entire agreement between the parties and all representations with respect to the subject matter thereof. Headings in the Agreement are for purposes of reference only and shall not limit or otherwise effect the meaning hereof.

**Section 18. Governing Law.**

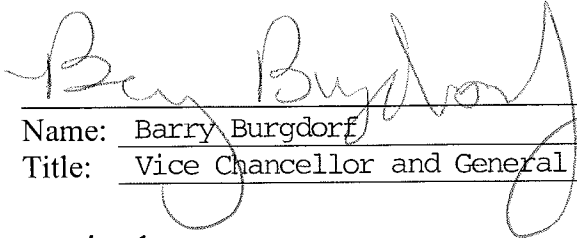
This Agreement and all matters arising under it shall be governed by the laws of the State of Texas. Venue for any action brought by any party hereto concerning the subject matter of this Agreement shall be in Travis County, Texas.

[Execution Pages Follow]

BOARD OF REGENTS OF THE  
UNIVERSITY OF TEXAS SYSTEM

Date: 5/23/2006

By:

  
Name: Barry Burgdorf  
Title: Vice Chancellor and General Counsel

ATTEST:

By: Francie A. Frederick  
Name: Francie A. Frederick  
Title: Counsel and Secretary to the Board

THE FOUNDATION

Date: 5-17-06

By: Kenneth Roberts

Name: \_\_\_\_\_

Title: PRESIDENT

ATTEST:

By: Kimberly Biar

Name: Kimberly O Biar

Title: Assistant Dean

# INVESTMENTS

## History and Background

- Through 1994**
- ◆ Two investment managers.
  - ◆ 30% - 40% common stock.
  - ◆ 10% - 20% cash.
- December 1994**
- ◆ Hired MacKay Shields, an all cap growth equity manager, to manage approximately half of the assets (stocks and bonds). They replaced Eagle.
  - ◆ Maximum equity commitment increased.
- 1995**
- ◆ Adopted “Total Return” philosophy as to the Foundation’s spending policy. Among other things, the adoption permits a more aggressive strategy for investments.
- October 1995**
- ◆ Hired Hotchkis and Wiley, large cap value manager. Replaces remaining original manager, Vaughn Nelson.
  - ◆ Maximum equity commitment increased.
- 1997**
- ◆ Hotchkis and Wiley replaced by INVESCO—Hotchkis and Wiley was bought by Merrill Lynch, staff departed.
- 1998**
- ◆ Maximum equity commitment to 65% (up to 15% can be foreign).
- 1999**
- ◆ Maximum equity commitment increased to 70%.
- 2000**
- ◆ Added Torrey Funds (Hedge Fund)
  - ◆ Added two technology funds (Invesco and Nicholas Applegate) to bring the overall portfolio technology exposure to that of the market.
- 2001**
- ◆ Invesco, because of poor performance, replaced by Nicholas Applegate.
- 2004**
- ◆ The investment assets overseen by the Foundation were completely restructured. Two new investment companies were retained:
    - The Investment Fund for Foundations’ Multi Asset Fund.
    - Vanguard’s STAR Fund.
- 2006**
- ◆ UTIMCO became money manager.

Dear Colleagues,

For any great law school, the project of recruiting and retaining a first-rate faculty is of critical importance. So, too, is the project of making it possible for that faculty to flourish. When I became dean, I had spent my entire professional life seeking good colleagues, benefitting from their ideas and constructive projects, and working to make it possible for students to do likewise. For me, the highest single priority of the dean of UT Law was that of building and maintaining our faculty. That view was, I believe, widely shared.

At the outset, the fate of that project seemed imperiled: Bill Powers ascended to the presidency of the University; Doug Laycock joined Terry at Michigan; Mark Gergen left for Berkeley; Brian Leiter left for Chicago; Ernie Young went to Duke; and Sarah Cleveland, Philip Bobbit, and Ronald Mann set sail for Columbia. And we were at serious risk of more losses still, with schools from Harvard on down showing serious interest in members of our community.

But from that somewhat bleak moment on, we have had remarkable success. In a handful of years, we have hired sixteen tenure and tenure-track faculty. Seven came as entry-level hires. Five of those seven are women, and, in all, seven of our sixteen hires are women. Our nine lateral hires range from early mid-career to senior academics. We have enriched the diversity of our faculty, strengthened our profile in important areas such as law and economics, and added luster and scope to our community of teachers and scholars. Our colleagues -- including those who were at risk -- have turned their backs on other opportunities and made full-blooded commitments to our shared enterprise.

This has been a terrific run, and it has not been easy. The Appointments Committee and the faculty as a whole deserve enormous credit for the hard work, patience, collegial energy, and good judgment that have been required. For my part, I have committed great effort to the cause of recruiting the candidates that we as a faculty have decided to hire, and I have done everything I could to retain those among our colleagues who were most at risk of being drawn away. This has been an intense preoccupation of my deanship. Much more than compensation has been involved on my part in regard to our faculty project; but compensation is very much in the spotlight just now, so I will address that first.

**The Market for Law Professors, and Our Response.** In several of Sandy Levinson's emails, he describes the aggressive and generous compensation practices at Harvard, Yale and NYU. Those practices have become the norm, not the exception, among top twenty law schools. They are the practices with which we have had to contend in the course of our faculty-building. I cannot speak with confidence of Yale's fabled offers in the \$450,000 to \$600,000 range, but in our own experience, candidates whom we have wished to hire have been offered more than \$400,000 a year, along with other substantial emoluments of the sort I will describe below.



In the course of our hiring efforts, we have found ourselves in direct competition with Duke, Michigan, Northwestern, UCLA, UVA, Vanderbilt, Boston University, USC, and Cal Tech. These schools very much wanted to hire or hold on to the attractive candidates that we had set out to recruit. It was neither possible nor reasonable to match all the offers from rival schools, and in several cases we stopped significantly short when the price was too high; in two cases, candidates we had voted to hire accepted offers at other schools that were well beyond not merely what we were willing to pay but also well beyond the compensation package of anyone on our faculty. But, in general, I tried to meet the market. Salary, of course, has been the dominant compensation variable. Our salary commitments have needed to reflect the market in which they were forged.

Common to the compensation packages offered by other schools to the candidates that we have undertaken to recruit have been non-salary commitments with substantial financial entailments. We, too, have frequently included non-salary commitments, in the form of one-time loans. These have been accompanied with a promise on our part to defray the costs of repaying the loan in annual installments of five or seven years, provided that the recipient of the loan remains on our faculty. Typically, these loans are aimed at the purchase of a home, and have helped to settle our new colleagues and their families in Austin. In exchange for these loans, I have asked and received from the recipients a moral commitment to remain members of our community for at least five years.

Many of our lateral hires have received such loans. In some cases, I was responding directly to one-time bonus offers by other schools. In other cases, I was trying to meet generous offers made on other terms by competing schools. These other terms included, in addition to a high annual salary, substantial housing assistance, generous college tuition benefits, massive programmatic funds, and the prospect of university professorships. In one case, we extended a loan to an entry-level candidate. This was in the context of a highly competitive offer from a higher ranked school for a highly desirable candidate who might well have chosen away from us. In all of these cases, the loans aimed not just at recruiting new faculty, but at doing so under circumstances that would conduce to our new colleagues becoming long-term members of our community.

During this same period, some of our own colleagues came to be at immediate risk of departure. Harvard, Columbia, Berkeley, Michigan, Penn and UVA all began to recruit members of our faculty. The circumstances were such that there was good reason to suppose that many of these situations would progress to firm offers, and that our colleagues and their families -- on the scene, with firm offers in hand, housing sampled, and spousal opportunities explored -- would be lured away. The loan arrangements were intended to make it attractive for our colleagues and their partners to back away from the brink, and renew their commitment to remain members of our community.

Two of the loan arrangements were offered under less fraught circumstances. Each of these involved a young member of our faculty who had just received tenure and who was at risk of leaving. One had already visited at a very highly ranked school, and the other had begun to produce high caliber scholarship in an area of considerable importance to us, an area in heavy demand elsewhere. I viewed these two loans as sound law school practice, and would be pleased to persuade our other recently tenured colleagues to make commitments of the requisite sort. As is true of all good law schools, but most especially true at schools which have hired well and provided a nurturing academic environment, our junior colleagues will be at their most vulnerable immediately after tenure, when their files will have been carefully read by outside reviewers at predatory schools. A program that offers these young colleagues housing support would reduce the disparities likely to exist between them and their colleagues who were hired in early mid-career, and settle them more firmly in place.

Efforts of the sort we have undertaken to attract and retain faculty at UT go back at least as far as Mark Yudof's time as Dean. Competitive, off-scale salaries and forgivable loans were not my invention. One or both were employed by at least three of my predecessors here. They were, of course, not UT's invention: They are very prevalent among our peer schools, and, as I have emphasized, they define the market in which we have recruited our recent hires. The funds that have supported our loan arrangements have come from monies that have been raised and expressly endowed for academic excellence. I have raised the bulk of these funds – which total more than \$10 Million -- for exactly the purpose of recruiting and retaining faculty.

**Equity.** All that said, I may have not gotten every case right in the course of our sustained effort to build and hold on to our faculty. Given the importance of the objective, I was surely drawn to the side of generosity. And, whether perfectly calibrated or not, the compensation packages that have resulted from our hiring campaign have raised concerns about disparities in our overall salary structure, disparities which in some cases are attributable to long-standing, systematic judgments of the Budget Committee and former deans.

To some extent, the faculty as a whole have enjoyed the widely distributed benefits of a rising tide driven by our successful fundraising. Most members of the faculty received \$10,000 raises within weeks of my assuming the deanship. And, in a effort to raise the compensation of the faculty in a more targeted and equity-enhancing way, the Budget Committee and I agreed early on to raise the summer research stipends of all chair holders actively engaged in scholarship to 1/3 of their academic rate. This brought a substantial number of unquestionably deserving faculty well up in our salary chart, where they belong. In addition, a broad swath of our faculty who are actively engaged in scholarship have received the combined benefits of our available funds and my commitment to support scholarship. When legitimate scholarship needs have arisen, I have willingly underwritten: unusual and extensive travel; special administrative assistance, including transcription and translation; advanced research assistance, including graduate students and freelance consultants; teaching relief or sequencing;

the hosting of domestic and international conferences; and special library or database materials.

Still, at the end of the day, there is a kind of natural, syncopated cycle of equity to be hoped for, in which market hiring in effect recalibrates our salary scale. We have made progress, but we have been the victims of bad timing. During my deanship, the University as a whole has been on an austerity budget, and we at the Law School have been under tight constraints as to salary adjustments. For the academic year 2008/2009, the University froze all salaries. For the academic year 2009/2010, the University directed us to focus on questions of equity, but with a tight budgetary maximum. This permitted us to focus predominantly -- albeit with limited funds -- on gender equity, and on making other equitable adjustments as well. In the academic year 2010/2011, we were directed to use an overall 2% salary increase pool, but only for one time payments, with not lasting impact on salary. In the present academic year, 2011/2012, our salary recommendations were based on a 2% pool, as directed. This by no means constitutes a complaint about University policy, which has throughout been guided by a measured response to serious budgetary constraints. But it has hobbled our capacity to adjust our salary scale.

Of particular importance in this picture is gender equity. For the past several years, gender equity has been much on my mind and has been an important part of the work of the Budget Committee. Many of our equity-based raises have been directed at women members of our faculty, and we have conferred four chairs on women faculty in these years and offered a chair to a fifth. Beyond issues of compensation, I have placed the support of the Law School fully behind the Center for Women in the Law, underwriting a portion of the Center's expenses when it was not yet financially self-sustaining. And with regard to both hiring and retention, I have both encouraged the faculty to be, and personally have been, as flexible and creative as possible in service of hiring and retaining qualified women as colleagues. We have had notable success in doing so. Still, six months ago, Stefanie Lindquist and I agreed that we would be well served by having a Gender Equity Task Force, and posted our commitment to that venture on our website. In the section on "Going Forward", below, I will describe the composition and launch of our Gender Equity Task Force.

**Faculty Review.** Parallel to these events has been the question of the openness of our compensation commitments to faculty review. When I became Dean, at least three categories of compensation were not available for review by the Budget Committee: summer research stipends; most other salary supplements described in various ways, including "housing supplements"; and the loan arrangements described above. At the outset of my deanship, the Budget Committee urged me to make information about all aspects of our compensation available. I declined to do so. I was accustomed to a law school compensation environment typical of almost every elite American law school -- an environment in which faculty members could and did engage with the Dean about their own compensation packages, but did not know how that package compared to their colleagues' compensation. This is true even in a number of state schools, where

the official, reported compensation excludes key compensation arrangements, arrangements most typically associated with large-ticket housing support.

Over time, however, I came to recognize the importance of sharing full compensation information with the Budget Committee. Two years ago, in the academic year 2009-2010, I agreed to share all compensation information with the Budget Committee, subject only to the proviso that the loan arrangement information be shared with a subcommittee of the Budget Committee rather than the Committee as a whole. I asked for agreement on that proviso because a number of these arrangements involved health, and other sensitive family matters, and the beneficiaries of these arrangements had entered into them with the understanding that they would remain confidential. The Budget Committee agreed to proceed on this basis and, from 2009/2010 on, the Budget Committee has had all salary information and a subcommittee -- consisting of Bob Peroni as Chair, Ernest Smith, and Tom McGarity -- has had access to all information concerning the loan arrangements. The new Chair of the Budget Committee, Lynn Baker, and I had agreed at the beginning of this academic year that the entire Budget Committee this year would receive full compensation information including that concerning loan agreements.

**The Appointments Process.** To state the obvious: A strong faculty is the very heart of a fine law school. We teach, we do scholarship, we seek to move the world in constructive ways. Our ability to hire and hold on to superb colleagues over the last handful of years has had a radiant effect. It is in large part on the strength of that ability that we have been able to recruit wonderful students. The credentials of our students have soared, and this year, when the rate of applications to law schools threatens to drop by nearly 20 per cent, our early returns indicate that our applications will hold steady or rise. The promise of a great law faculty has been at the heart of my fundraising efforts. We are just short of having raised 80 Million dollars so far, and there are a number of promising gifts in the pipeline. Our national reputation is much enhanced by our faculty success, of course, and even the accursed US News rankings have nodded in our direction: Five years ago, we were ranked 17th by U.S.News; this year, we became the first law school in the modern history of the rankings to break into the charmed circle of the "T-14" or top 14 law schools. Our ability to hire superb colleagues is the strongest positive signal we can send to prospective deans and to ourselves. It would be a misfortune to squander our momentum of fine faculty hires by suspending our hiring this year.

We now have a process in place to assure Budget Committee participation in compensation decisions, including those made as we recruit new colleagues. We employed a variation of that process in our last active hiring year, and it worked well. In the 2009/2010 hiring season, the faculty voted to extend offers to two entry-level candidates and one lateral candidate. Before making offers to these candidates, I consulted with the whole Budget Committee and got advice about the compensation packages I should offer. I followed that advice, and returned briefly to the Committee with requests from the candidates. Since the lateral candidate requested a loan arrangement, I consulted with the subcommittee as to that request. I then returned to

the candidates with revised offers that had been approved by the Budget Committee and the subcommittee, and those were accepted. The process worked well: I found it helpful to have the advice of the Budget Committee and the subcommittee; and our final arrangements were entirely consistent with the Committee's advice.

The only change now contemplated involves placing all compensation information, including loan agreement information, in the hands of the Budget Committee as a whole, and consulting the Committee as a whole as to all questions of compensation. I am happy to be bound by the Committee's judgment. This seems a well-formed process to assure faculty oversight of the hiring process, compensation included.

**Going Forward.** This year's Budget Committee consists of Lynn Baker as Chair, joined by Stefanie Lindquist, Sandy Levinson, Tom McGarity, Scot Powe, Ernest Smith, Matt Spitzer, and Wendy Wagner.

Our Gender Equity Task Force will also be Chaired by Lynn Baker, joined by Stefanie Lindquist and Wendy Wagner. The charge of the task force is to examine all tenure and tenure-track faculty compensation information, including loan agreement information, to determine whether our compensation structure raises gender equity concerns, and, if so, to consider the shape and magnitude of the adjustments called for by those concerns.

Lynn Baker has begun the process of assembling in systematic form complete compensation data for the past six years, and the Task Force will begin its work in very short order. If the Task Force is of the view that its work will be facilitated by consulting with anyone in another part of the University, or by adding one or more members from another part of the University, I will support that judgment. Likewise, if the Task Force is of the view that its work will be facilitated by consulting with someone with experience elsewhere in the legal academy, or by adding one or more members from elsewhere in the legal academy, I will support that judgment.

The Task Force will initially report its findings and recommendations to the Budget Committee as a whole, and to me, but its findings and recommendations will ultimately be shared with the entire tenured and tenure-track faculty. For my part, I will do everything possible to see that the Task Force and its recommendations are given a high priority in our compensation decisions. Many of the Task Force's recommendations, of course, will necessarily be addressed to my successor. It is my hope that she or he too will take the Task Force's recommendations to heart.

I will encourage the Budget Committee to supplement its ordinary functions this year with two additional responsibilities: First, I would like the Committee to consider whether there are other structural equity concerns besides gender in our compensation picture, and, if so, to consider the shape and magnitude of the adjustments called for by those concerns. Second, I would like the Committee to consider mechanisms by which these adjustments and any called for by the Gender Equity Task force can be made. I have in mind mechanisms like the temporary freezing of some group of salaries and

using the funds thus made available to begin to make the adjustments called for. As in the case of the Gender Task Force, if the Budget Committee is of the view that its work will be facilitated by consulting with one or more persons in another part of the University or elsewhere in the legal academy, I will support that judgment.

In the meantime, I encourage you all to remember how important it is that you do everything possible to support our sense of community and mutual respect. It is very important for the future of the Law School that all of our colleagues feel welcome and supported, and that prospective deans see the underlying good health and robust promise of the University of Texas School of Law.

I will stop here, in the hope that these remarks contribute to a constructive and civil conversation going forward.

Faithfully yours,

Larry Sager

## Faculty Loan Summary

		<u>Original Loan Amount</u>	<u>Remaining Principal Balance</u>
12/7/2003	Berman, Mitch	100,000	-
5/18/2004	Black, Bernie	200,000	-
12/7/2005	Young, Ernie	200,000	-
4/13/2006	Sage, Bill	75,000	-
5/10/2006	Jinks, Derek	125,000	60,433
8/14/2006	Sage, Bill	75,000	-
12/7/2006	Jinks, Derek	175,000	80,119
3/30/2007	Berman, Mitch	100,000	-
5/3/2007	Rodriguez, Dan	200,000	40,000
10/19/2007	Rodriguez, Dan	100,000	36,444
3/3/2008	Dammann, Jens	100,000	48,387
4/29/2008	Lindquist, Stephanie	150,000	30,000
6/25/2008	Torres, Gerald	50,000	24,091
11/25/2008	Stapleton, Jane	250,000	106,008
4/30/2009	Chesney, Robert	300,000	120,000
4/30/2009	Wickelgren, Abraham	300,000	120,000
5/1/2009	Sager, Larry	500,000 <sup>(1)</sup>	200,000
5/18/2009	Adelman, David	250,000	100,000
6/24/2009	Torres, Gerald	200,000	80,000
7/15/2009	Driver, Justin	250,000	100,000
7/16/2009	Avraham, Ronen	300,000	120,000
8/18/2009	Bracha, Oren	250,000	100,000
1/16/2010	Bone, Robert	300,000	210,000
6/22/2010	Spitzer, Matt	350,000	250,000
7/1/2010	Spindler, James	100,000	100,000
8/1/2010	Avraham, Ronen (buyout)	150,000 <sup>(2)</sup>	60,000
11/30/2010	Mullenix, Linda	250,000	225,000
		<u>5,400,000</u>	<u>2,210,481</u>

<sup>(1)</sup> The loan for Larry Sager was actually only \$400,000 due to an immediate vesting of \$100,000 of the \$500,000 deferred compensation agreement.

<sup>(2)</sup> The loan for Ronen Avraham was actually only \$120,000 due to an immediate vesting of \$30,000 of the \$150,000 deferred compensation agreement.

\*There are no outstanding offers or pending agreements as of July 25, 2012.

**DEFERRED COMPENSATION AGREEMENT**

THIS DEFERRED COMPENSATION AGREEMENT ("*Agreement*") is made and entered into this 16th day of May, 2001, by and between THE UNIVERSITY OF TEXAS LAW SCHOOL FOUNDATION, a nonprofit corporation duly organized and existing under the laws of the State of Texas ("*UTLSF*"), and WILLIAM C. POWERS, JR. of Austin, Travis County, Texas ("*Powers*").

**WITNESSETH:**

WHEREAS, UTLSF desires to provide Powers with deferred compensation in consideration of Powers' services as Dean of The University of Texas School of Law ("*Law School*"); and

WHEREAS, Powers is currently employed by The University of Texas ("*UT*") in the capacity of Dean of the Law School, and Powers' services will continue to be of substantial value to the Law School; and

WHEREAS, UTLSF desires to encourage Powers to remain as Dean of the Law School and to devote his best efforts to its affairs through the use of deferred compensation;

NOW, THEREFORE, it is agreed as follows:

1. **Definitions.** Where the following words and phrases appear in this Agreement, they shall have the respective meanings set forth below unless their context clearly indicates to the contrary:

(a) **Board.** The Board of Trustees of UTLSF, acting from time to time.

(b) **Deferral Account.** A record maintained by UTLSF for the sole purpose of accounting for the Deferred Amounts and earnings of the Deferral Fund pursuant to this Agreement. The Deferral Account shall contain appropriate accounting reflecting the Deferred Amount relating to each Deferral Date and the earnings credited to such account (based upon the applicable Earnings Credit Rate).

(c) **Deferral Date.** February 1, 2001, and, thereafter, the first day of September of each Deferral Period.

(d) **Deferral Fund.** A fund maintained by UTLSF for the sole purposes of determining earnings to be credited to the Deferral Account and providing a reserve for UTLSF from which to pay amounts pursuant to this Agreement. The Deferral Fund shall consist of such assets as UTLSF shall determine in its sole discretion. UTLSF shall have full control of the Deferral Fund, including the right to determine custody, to make investment decisions and to make deposits and withdrawals, subject to the terms of this Agreement. The



Deferral Fund shall be subject to the claims of the general creditors of UTLSF and neither Powers nor any person claiming under Powers shall have any preferred claim to, or any beneficial interest in, the Deferral Fund or its assets.

(e) **Deferral Period.** Each twelve-consecutive month period commencing on September 1, 2000, or commencing on anniversaries of such date, and occurring during the Deferral Term .

(f) **Deferral Term.** The period commencing as of the date first above written and ending as of the earlier of (i) the date of termination of Powers' Service Capacity, or (ii) August 31, 2005, or such later date as may be designated in the sole discretion of the Board.

(g) **Deferred Amount.** With respect to each Deferral Date, the amount deposited by UTLSF into the Deferral Fund.

(h) **Earnings Credit Rate.** For each calendar month, the rate determined by UTLSF which equals the earnings rate on the Deferral Fund for such calendar month which shall be equivalent to the earnings rate on investment funds of UTLSF.

(i) **Involuntary Termination.** Any termination of Powers' Service Capacity resulting from (i) a resignation by Powers following a request by UT, (ii) a resignation by Powers following a material diminution in his Service Capacity by UT, (iii) a discharge of Powers by UT, (iv) death, or (v) disability under circumstances entitling Powers to disability benefits under either any Long-Term Disability Plan sponsored by UT or under the Federal Social Security Act; provided, however, the term "Involuntary Termination" shall not include a termination resulting from any voluntary termination by Powers.

(j) **Retirement Date.** The date as of which Powers attains or would attain sixty-five years of age.

(k) **Service Capacity.** Dean of the Law School.

(l) **Vesting Date.** August 31, 2005, as to Deferral Amounts (and earnings thereon) deposited during the first five Deferral Periods. If the Deferral Term is extended (in the sole discretion of the Board) beyond August 31, 2005, as to Deferral Amounts (and earnings thereon) deposited during each of the next subsequent sets of two Deferral Periods, the applicable September 1 immediately following each such set.

2. **Deferred Amounts.** As of each Deferral Date during the period of the Deferral Term preceding the Retirement Date, a Deferred Amount equal to \$65,000 shall be deposited into the Deferral Fund.

3. **Deferral Account.** As of each Deferral Date during the period of the Deferral Term preceding the Retirement Date, the Deferral Account shall be credited with the Deferred Amount for such Deferral Date. As of the first day of each calendar month during the period in which a balance exists in the Deferral Fund, the Deferral Account shall be credited with earnings equal to the Earnings Credit Rate for the immediately preceding calendar month multiplied by the balance in the

Deferral Account as of the first day of the calendar month immediately preceding such first day of the calendar month.

4. **Benefit Payments.** Benefit payments shall be made under this Agreement as follows:

(a) In the event Powers is acting in his Service Capacity as of the Retirement Date, Powers shall be entitled, as of the first day of the calendar month following the Retirement Date, to a single sum payment equal to the balance in the Deferral Fund.

(b) In the event Powers' Service Capacity is terminated due to an Involuntary Termination as a result of death or disability prior to the Retirement Date, Powers (or his estate in the event of his death) shall be entitled, as of the first day of the calendar month following such termination, to a single sum payment equal to the balance in the Deferral Fund.

(c) In the event Powers' Service Capacity is terminated due to an Involuntary Termination other than as a result of death or disability prior to the Retirement Date, Powers shall be entitled to the following payments:

(1) As of the first day of the calendar month following the termination, a single sum payment equal to the sum of (A) the amount of any federal income tax for which Powers will be liable as a result of vesting, due to such termination, in the sum of the Deferred Amounts determined under this Agreement and deposited into the Deferral Fund on or prior to such termination, (B) the amount of any FICA tax for which Powers will be liable as a result of vesting, due to such termination, in the sum of the Deferred Amounts (and earnings thereon) determined under this Agreement and deposited into the Deferral Fund on or prior to such termination, and (C) as a result of the payment of the lump sum amount determined in this Section 4(c)(1); and

(2) As of the first day of the calendar month following the Retirement Date, the balance in the Deferral Fund.

(d) In the event Powers is acting in his Service Capacity as of a Vesting Date, Powers shall be entitled, as of the first day of the calendar month following the Vesting Date, to a single sum payment equal to the sum of (A) the amount of any federal income tax for which Powers will be liable as a result of vesting, due to such Vesting Date, in the sum of the Deferred Amounts determined under this Agreement and deposited into the Deferral Fund on or prior to such Vesting Date, (B) the amount of any FICA tax for which Powers will be liable as a result of vesting, due to such Vesting Date, in the sum of the Deferred Amounts (and earnings thereon) determined under this Agreement and deposited into the Deferral Fund on or prior to such Vesting Date, and (C) as a result of the payment of the lump sum amount determined in this Section 4(d).

(e) In the event Powers' Service Capacity is voluntarily terminated (other than due to an Involuntary Termination) prior to the Retirement Date, Powers shall be entitled,

as of the first day of the calendar month following the Retirement Date, to a single sum payment equal to the portion of the balance in the Deferral Fund as to which a Vesting Date has occurred. Any remaining balance in the Deferral Fund shall be forfeited by Powers to UTLSF.

Notwithstanding the foregoing, the amount of any payment hereunder shall not exceed the balance in the Deferral Fund at the time of such payment.

All payments hereunder shall be made by UTLSF out of its general assets by withdrawals from the Deferral Fund. The Deferral Account shall be debited for all such payments.

5. **Amounts Due Not to be Funded.** UTLSF's liability to pay deferred compensation pursuant to the terms of this Agreement shall constitute an unfunded, unsecured liability of UTLSF to make payments in accordance with the provisions hereof. Neither Powers nor any person claiming under Powers shall have any security or other interest in any assets of UTLSF by virtue of this Agreement. Nothing contained in this Agreement and no action taken pursuant to the provisions of this Agreement shall create or be construed to create a trust of any kind. Any amounts in the Deferral Fund following satisfaction of UTLSF's contractual obligations hereunder shall remain assets of UTLSF.

6. **No Assignment.** The right of Powers or any other person claiming under Powers to payments or other benefits under this Agreement may not be assigned, transferred, pledged, anticipated, commuted or encumbered nor shall said benefits or payments be subject to seizure for payment of any debts or judgment of Powers or any person claiming under Powers or be transferable by operation of law in advance of payment hereunder.

7. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of UTLSF, its successor and assigns and Powers and his heirs, executors, administrators and legal representatives.

8. **Severability.** In the event that any provision of this Agreement shall be held invalid or illegal for any reason, such determination shall not affect the remaining provisions hereof, but instead this Agreement shall be construed and enforced as if such invalid or illegal provision had not been included herein.

9. **Not a Contract of Employment.** This Agreement shall not be deemed to constitute a contract of employment between Powers and UT or between Powers and UTLSF, nor shall any provision hereof restrict the right of UT to sever its employment relationship with or restrict the right of Powers to sever his employment relationship with UT.

10. **Nature of Agreement.** The benefits herein provided for are in addition to, and not in lieu of, any other benefits which UTLSF or UT may have provided Powers, and no such benefits shall affect or be affected by the provisions of this Agreement.

11. **Amendment and Termination.** This Agreement may not be modified or amended except by an instrument in writing consented to by both of the parties hereto. This Agreement shall

automatically terminate as of the date UTLSF no longer has any liability to pay benefits hereunder as determined pursuant to the terms of this Agreement.

12. Governing Law. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS.

IN WITNESS WHEREOF, UTLSF has caused this Agreement to be executed by its duly authorized officer, and Powers hereunto has set his hand, effective as of the date first above written.

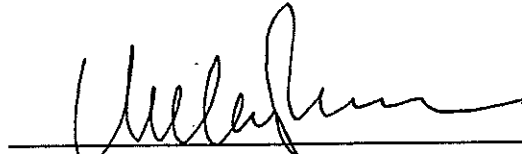
THE UNIVERSITY OF TEXAS LAW SCHOOL  
FOUNDATION

By: 

Name: HARRY H. REASONER

Title: President

"UTLSF"

  
\_\_\_\_\_  
WILLIAM C. POWERS, JR.

"POWERS"



# THE UNIVERSITY OF TEXAS LAW SCHOOL FOUNDATION

Post Office Box 149090 • Austin, Texas 78714-9090 • 512-232-1118 • 512-471-5660 fax

Address of Writer:  
Suite 2800  
1001 Fannin Street  
Houston, Texas 77002-6760  
Telephone: 713-758-2358  
Facsimile: 713-615-5173

#### OFFICERS

Harry M. Reasoner  
*President*  
David J. Beck  
*Vice President*

#### LIFE MEMBER TRUSTEES

Morris Atlas  
McAllen, Texas  
E. William Barnett  
Houston, Texas  
David J. Beck  
Houston, Texas  
Joseph D. Jamail, Jr.  
Houston, Texas  
J. Mark McLaughlin  
San Angelo, Texas  
Harry M. Reasoner  
Houston, Texas  
C. Kenneth Roberts  
Houston, Texas

#### TRUSTEES

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Houston, Texas  
Ruben R. Cardenas  
McAllen, Texas  
John R. Castle, Jr.  
Dallas, Texas  
George C. Chapman  
Dallas, Texas  
James V. Derrick, Jr.  
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J. Chrys Dougherty  
Austin, Texas  
Rodney G. Ellis  
Houston, Texas  
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Kay Bailey Hutchison  
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Fort Worth, Texas  
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Beaumont, Texas  
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Amarillo, Texas  
Tom B. Ramey, Jr.  
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San Antonio, Texas

#### EXECUTIVE DIRECTOR

Juan J. Zabala  
Austin, Texas

May 16, 2001

Dean William C. Powers, Jr.  
The University of Texas at Austin  
School of Law  
727 East Dean Keeton Street  
Austin, Texas 78705

VP for Institutional Relations & Legal Affairs The University of Texas at Austin  
Refer to \_\_\_\_\_ Pending \_\_\_\_\_  
Handle \_\_\_\_\_ FYI & File /Discard \_\_\_\_\_ Comment & Return \_\_\_\_\_  
8179 Received: MAY 18 2001  
Archive  Keep in Active File Discard at End of 1 Fiscal Year  
File: School of Law Dean

Dear Bill:

I have enclosed an executed copy of the Deferred Compensation Agreement between you and the Foundation.

If it is satisfactory, would you please execute it and send the original to Juan Zabala, with copies to Patti Ohlendorf and me.

With best regards, I am

Very truly yours,

*Harry M. Reasoner*  
Harry M. Reasoner

HMR:cb

Enclosure

c: Morris Atlas, Esq.  
Atlas & Hall  
P.O. Drawer 3725  
McAllen, Texas 78502-3725



OFFICE OF THE PRESIDENT  
THE UNIVERSITY OF TEXAS AT AUSTIN

P.O. Box T • Austin, Texas 78713-8920  
(512) 471-1232 • FAX (512) 471-8102

May 10, 2001

Mr. David J. Beck  
Beck, Redden & Secrest  
1221 McKinney Street, Suite 4500  
Houston, Texas 77010-2010

VP for Institutional Relations & Legal Affairs The University of Texas	
Refer to _____	Pending _____
Handle _____	FYI & File / Discard _____
Comment & Return _____	
8140	Received: MAY 15 2001 Re: 7310
Archive _____	Keep in Active File <input checked="" type="checkbox"/>
Discard at End of 1 Fiscal Year _____	
File: School of Law Dean	


Dear David:

This letter confirms that The University of Texas at Austin and The University of Texas System support The University of Texas Law School Foundation's plan to enter into a deferred compensation agreement with William C. Powers, Jr.

*office (w/ related)*

Thank you for providing the plan for our review

Sincerely,

  
Larry R. Faulkner  
President

LRF/mts

cc: Provost Sheldon Ekland-Olson  
Vice President Patricia C. Ohlendorf  
Dean William C. Powers, Jr.



OFFICE OF THE PRESIDENT  
THE UNIVERSITY OF TEXAS AT AUSTIN

P.O. Box T • Austin, Texas 78713-8920  
(512) 471-1232 • FAX (512) 471-8102

*file for 2/20/01  
meeting w/ Powers/Co.  
Shank*

VP for Institutional Relations & Legal Affairs		The University of Texas at Austin	
Refer to _____	_____	Pending _____	_____
Handle _____	FYI & File /Discard _____	Comment & Return _____	_____
7485 Received: FEB 19 2001		_____	
Archive _____	Keep in Active File _____	Discard at End of 1 Fiscal Year _____	
File: _____			

*Also given  
me file  
related  
Shank  
2/20/01*

February 16, 2001


Dr. Edwin R. Sharpe  
Executive Vice Chancellor for  
Academic Affairs  
The University of Texas System  
OHH 3<sup>rd</sup> Floor (P4300)

Dear Ed:

I enclose copies of correspondence related to a proposed deferred compensation agreement between the University of Texas at Austin Law School Foundation and Bill Powers, Dean of the School of Law. Both Provost Ekland-Olson and I support this arrangement. Patti Ohlendorf has reviewed the documents, and it is her view this agreement does not need regental approval. However, she suggested that I inform System of its existence. We also want to inform any Board members who are friends of the School of Law. If you agree, I could speak to Chairman Loeffler and Regent Oxford about it.

Please let me know if you have any questions or if we need to do anything further.

Sincerely,

  
Larry R. Faulkner  
President  
Enclosures

cc: Provost Sheldon Ekland-Olson  
Vice President Patricia C. Ohlendorf ←



EXECUTIVE VICE PRESIDENT AND PROVOST  
THE UNIVERSITY OF TEXAS AT AUSTIN

Main Building 201 • Austin, Texas 78712-1111 • (512) 471-4363 • FAX (512) 471-0577

February 7, 2001

President Larry R. Faulkner  
Office of the President  
MAI 400

Dear Larry:

Patti Ohlendorf and I have both looked over the proposed deferred compensation agreement between The University of Texas at Austin Law School Foundation and Bill Powers. Like Patti, I believe the agreement itself is acceptable and there is good reason to encourage the Foundation and Bill to move forward with it. As she also points out, informing the appropriate parties at System and the close friends of the School on the Board of its existence would be a good idea, since it does not seem that the agreement requires regental approval.

Let me know if you would like to discuss this any further.

Sincerely,

Sheldon Ekland-Olson  
Executive Vice President  
and Provost

SEO:da

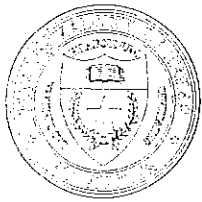
✓ cc: Vice President Patricia C. Ohlendorf

VP for Institutional Relations & Legal Affairs		The University of Texas at Austin	
Refer to _____	Pending _____		
Handle _____	FYI & File /Discard _____	Comment & Return _____	
7407		Received: FEB 08 2001	
Archive _____	<input checked="" type="checkbox"/> Keep in Active File	Discard at End of 1 Fiscal Year _____	
File: <i>School of Law - unrelated</i>			

*made*

*FO*  
*2/9/06*





OFFICE OF THE VICE PRESIDENT FOR INSTITUTIONAL RELATIONS AND LEGAL AFFAIRS  
THE UNIVERSITY OF TEXAS AT AUSTIN

P.O. Box R • Austin, Texas 78713-8918 • (512-471-1241) • FAX (512) 471-1255

January 31, 2001

Dr. Sheldon Ekland-Olson  
Executive Vice President and Provost  
MAI 201  
G1000

Re: 7310

Dear Sheldon:

I have reviewed the proposed deferred compensation agreement between The University of Texas Law School Foundation and William C. Powers that David Beck sent to Larry Faulkner. I recommend that David be told that the agreement is acceptable from the University's perspective. Of course, I believe that you will want to share it with Ed Sharpe before doing so.

The agreement contains appropriate provisions that address the University's control over the appointment status of the School of Law dean. It does not tie our hands. The ending date of August 31, 2005, for the initial vesting period also seems reasonable and reflective of part of the rationale for this agreement being made. I also think that this agreement is in the University's best interest in terms of the stability of the Law School deanship, and our relationship with the Dean and the Law School Foundation.

I had indicated in an earlier e-mail that the University might wish to be a party to the agreement. I have re-thought that issue and think that it is preferable that the agreement be between only the Law School Foundation and Bill Powers.

David Beck's letter indicates that such agreements are subject to our approval and I believe that is sufficient procedurally from our perspective. Since the University will not be a party to this agreement, it does not need formal approval by the Board of Regents. Of course, I think that it would be appropriate that certain members of the Board with close ties to the Law School know of its existence.

Please let me know if we should discuss this agreement or if I can provide additional information or clarification.

With best wishes, I am

Sincerely yours,

Patricia C. Ohlendorf  
Vice President for Institutional Relations  
and Legal Affairs

PCO/fmc  
Enclosure  
cc: Dr. Larry R. Faulkner

## OTHER FISCAL ITEMS

### EMPLOYMENT AGREEMENTS

The following agreement has been awarded, has been approved by the Chancellor, and is recommended for approval by the U. T. System Board of Regents. Such employment under this agreement is subject to the *Rules and Regulations* of the Board of Regents and the policies of The University of Texas at Austin.

1. Item: President  
Funds: \$472,200 annually  
Period: Beginning February 1, 2006  
Description: Agreement for employment of William C. Powers, Jr., as President of The University of Texas at Austin. The President reports to the Chancellor and the Executive Vice Chancellor for Academic Affairs and shall hold office without fixed term subject to the pleasure of the Chancellor. President Powers will receive \$52,800 as a salary supplement in lieu of a housing allowance pursuant to approved policy. During his presidency, he will continue to hold the Hines H. Baker and Thelma Kelley Baker Chair in Law without compensation. He will not be paid a salary as Professor. During his presidency he also will be appointed to the Regents' Chair in Higher Education Leadership and he will have access to the chair income for initiatives on campus. The University of Texas Law School Foundation will make a one-time lump sum payment to President Powers to satisfy its deferred compensation commitment to him for Fiscal Year 2006. Mr. Powers will serve as President-Designate from January 1 through January 31, 2006, at the same salary rate he will receive upon becoming President on February 1, 2006.

## Promissory Note

**THIS PROMISSORY NOTE** (this "Note") is made and entered into this [REDACTED] day of [REDACTED], [REDACTED], by and between The University of Texas Law School Foundation ("Lender"), a nonprofit corporation duly organized and existing under the laws of the state of Texas, and [REDACTED] ("Borrower").

**WHEREAS**, Borrower is employed by The University of Texas ("UT") as [REDACTED] of The University of Texas School of Law; and

**WHEREAS**, Lender has agreed to make a loan to Borrower in accordance with the terms set forth herein, and Borrower has agreed to repay such loan in accordance with the terms set forth herein;

**NOW, THEREFORE**, the parties hereto agree as follows:

**Date of Note:** May 1, 2009.

**Borrower:** [REDACTED].

**Borrower's Mailing Address:** [REDACTED].

**Lender:** The University of Texas Law School Foundation.

**Place for Payment:** The University of Texas Law School Foundation, 727 East Dean Keeton St., Austin, TX 78705.

**Principal Amount:** [REDACTED].

**Annual Interest Rate:** 2.04% per annum (compounded semiannually).

**Maximum Amount of Interest:** Interest on the debt evidenced by this Note will not exceed the maximum rate or amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest in excess of that maximum amount will be credited on the Principal Amount or, if the Principal Amount has been paid, refunded. On any acceleration or required or permitted prepayment, any excess interest will be canceled automatically as of the acceleration or prepayment or, if the excess interest has already been paid, credited on the Principal Amount or, if the Principal Amount has been paid, refunded. This provision overrides any conflicting provisions in this Note and all other instruments concerning the debt.

**Maturity Date:** May 1, 2013.

**Terms of Payment:** Borrower promises to pay to the order of Lender the Principal Amount plus interest at the Annual Interest Rate. This Note is payable at the Place for Payment. One-fourth of the Principal Amount must be paid by Borrower on May 1 of each year, beginning on May 1, 2010, until the entire Principal Amount and all accrued interest are paid in full. Payments of accrued interest on the outstanding Principal Amount must be paid by Borrower at the Annual Interest Rate on May 1 of each year, beginning on May 1, 2010, until the entire Principal Amount and all accrued interest are paid in full. The entire Principal Amount (and all accrued unpaid interest, if any) will be due and owing and must be paid in full on the Maturity Date, except that the entire Principal Amount and all accrued interest will be due and owing and must be paid in full immediately upon the earlier to occur of: (i) the date of Borrower's death or (ii) the date of Borrower's termination of employment with UT. Payments will be applied first to accrued interest and the remainder to reduction of the Principal Amount.

**Default:** If Borrower defaults in the payment of this Note or in the performance of any obligation in any instrument securing or collateral to this Note, Lender may declare the unpaid principal balance, accrued interest, and any other amounts owed on the Note immediately due and owing. **BORROWER AND EACH SURETY, ENDORSER, AND GUARANTOR WAIVE ALL DEMAND FOR PAYMENT, PRESENTATION FOR PAYMENT, NOTICE OF INTENTION TO ACCELERATE MATURITY, NOTICE OF ACCELERATION OF MATURITY, PROTEST, AND NOTICE OF PROTEST, TO THE EXTENT PERMITTED BY LAW.**

**Offset from Compensation for Unpaid Principal and Interest:** Interest will continue to accrue at the Annual Interest Rate on any unpaid balance after the Maturity Date (or any earlier date declared due and owing upon a default or upon Borrower's death or termination of employment with UT). Borrower agrees that any balance of the Principal Amount (and interest) that remains unpaid within 30 days after the Maturity Date (or any earlier date declared due and owing upon a default or upon Borrower's death or termination of employment with UT) will, at the election of UT, be deducted immediately thereafter from the full amount of Borrower's net compensation from UT each pay period (after deductions for contributions to retirement plans, welfare plans, federal tax withholding, and any other required deductions or withholding) and remitted to Lender until the Note is fully paid, and Borrower consents to all such deductions.

**Attorneys' Fees:** Borrower promises to pay attorneys' fees and costs and court and other costs if this Note is placed in the hands of an attorney to collect or enforce the Note. These expenses will bear interest from the date of advance at the Annual Interest Rate. Borrower will pay Lender these expenses and interest on demand at the Place for Payment. These expenses and interest will become part of the debt evidenced by the Note and will be secured by any security for payment.

Executed, this [redacted] day of [redacted].

**The University of Texas Law School  
Foundation ("Lender")**

By: [Signature]  
Name: ROBERT C. GRABLE  
Title: President

[redacted] ("Borrower")  
By: [redacted]

## Deferred Compensation Agreement

**THIS DEFERRED COMPENSATION AGREEMENT** (this "Agreement") is made and entered into this [REDACTED] day of [REDACTED], [REDACTED], by and between The University of Texas Law School Foundation (the "Foundation"), a nonprofit corporation duly organized and existing under the laws of the state of Texas, and [REDACTED] ("[REDACTED]").

**WHEREAS**, [REDACTED] is employed by The University of Texas ("UT") as [REDACTED] of The University of Texas School of Law (the "Law School") and holds the [REDACTED] and the [REDACTED], and [REDACTED]'s expertise, recognition, and presence are of substantial value to the Law School; and

**WHEREAS**, the Foundation wishes to encourage [REDACTED], through the use of deferred compensation, to remain at the Law School and to devote [REDACTED]'s best efforts to teaching, writing, research, recruiting of faculty, and enhancement of the Law School's reputation and prestige;

**NOW, THEREFORE**, effective as of May 1, 2009 (the "Effective Date"), the parties hereto agree as follows:

### I.

#### Definitions and Construction

1.1 **Definitions.** Where the following capitalized words and phrases appear in this Agreement, each has the respective meaning set forth below, unless the context clearly indicates to the contrary.

- (1) **Account(s)**: Incentive Account and/or Earnings Account.
- (2) **Agreement**: This Deferred Compensation Agreement entered into between the Foundation and Sager as reflected in this document and any amendments thereto.
- (3) **Annual Valuation Date**: The last day of each Plan Year.
- (4) **Code**: The Internal Revenue Code of 1986, as amended.
- (5) [REDACTED]: [REDACTED].
- (6) **Earnings Account**: An Account that is credited with earnings based on the balance of the Incentive Account in accordance with Section 2.3.
- (7) **Effective Date**: May 1, 2009.
- (8) **Foundation**: The University of Texas Law School Foundation.
- (9) **Incentive Account**: An Account that is credited with the Incentive Amount allocated on [REDACTED]'s behalf in accordance with Section 2.2.
- (10) **Incentive Amount**: \$ [REDACTED].
- (11) **Law School**: The University of Texas School of Law.
- (12) **Plan Year**: Each 12-consecutive month period beginning each May 1.

- (13) [REDACTED]: [REDACTED].
- (14) **Termination of Employment**: The earlier of:
- (i) The date after which the facts and circumstances indicate, for any reason (including, without limitation, voluntary termination of employment, involuntary termination of employment, termination of employment by reason of disability, and termination of employment by reason of death), that either (a) UT and [REDACTED] reasonably anticipate that no further services will be performed for UT or (b) the level of bona fide services [REDACTED] will perform for UT after such date (whether as an employee or as an independent contractor) will permanently decrease to no more than 20% of the average level of bona fide services performed by [REDACTED] for UT (whether as an employee or as an independent contractor) over the immediately preceding 36-month period; or
  - (ii) The date [REDACTED]'s bona fide leave of absence from UT (paid or unpaid) exceeds six months (29 months if such leave is on account of a medically determinable physical or mental impairment resulting in [REDACTED]'s inability to perform the duties of his position or any substantially similar position where such impairment can be expected either to result in death or to last for a continuous period of not less than six months), unless on such date [REDACTED] has a right by contract or applicable law to return to active employment with UT; provided that, for purposes of this Paragraph (ii), a leave of absence is a "bona fide leave of absence" only if there is a reasonable expectation that [REDACTED] will return to perform services for UT.
- (15) **UT**: The University of Texas and, for purposes of Section 1.1(14), each person or entity that together with UT, would be deemed to be a "single employer" within the meaning of subsection (b) or (c) of section 414 of the Code but determined by substituting a "more than 50%" rather than an "80%" ownership or control test.
- (16) **Vesting Date**: Each of the following dates: April 30, 2009; April 30, 2010; April 30, 2011; April 30, 2012; and April 30, 2013.
- (17) **Vested Interest**: A vested and nonforfeitable interest as determined under Article III.

1.2 **Number**. Wherever appropriate herein, words used in the singular will be considered to include the plural, and words used in the plural will be considered to include the singular.

1.3 **Headings**. The headings of Articles and Sections herein are included solely for convenience, and if there is any conflict between such headings and the text of this Agreement, the text will control. All references to Articles, Sections, and Subsections are to this document unless otherwise stated.

## **II.**

### **Accounts and Credits/Debits**

2.1 **Establishment of Accounts**. As of the Effective Date, the Foundation will establish an Incentive Account and an Earnings Account for [REDACTED] and such Accounts will be credited and debited as provided in the following Sections of this Article II.

2.2 **Incentive Account**. On the Effective Date, the Foundation will credit [REDACTED]'s Incentive Account with the Incentive Amount.

**2.3 Earnings Account.**

2.3.1 Subject to Subsection 2.3.3, on each Annual Valuation Date, the Foundation will credit ██████'s Earnings Account with an amount equal to the balance of the Incentive Account as of such Annual Valuation Date, multiplied by 2.04% (calculated for each Plan Year per annum, compounded semiannually).

2.3.2 On the earlier to occur of (1) ██████'s Termination of Employment or (2) the date ██████ loses status as ██████, the Foundation will credit ██████'s Earnings Account with an amount equal to the balance of the Incentive Account as of such date, multiplied by 2.04% (per annum, compounded semiannually), and multiplied by a fraction, the numerator of which is equal to the number of full months that ██████ was employed by UT as ██████ after the most recent Annual Valuation Date (or, if no Annual Valuation Date has yet occurred, the Effective Date) and before such event, and the denominator of which is 12.

2.3.3 Except as provided in Subsection 2.3.2 with respect to an amount payable on such date, no amount will be credited to ██████'s Earnings Account on or after the first to occur of: (1) ██████'s Termination of Employment, (2) the date ██████ loses status as ██████, or (3) May 1, 2013.

2.4 **Debiting Accounts.** Each Account will be debited for (1) payments from such Account under Article IV and (2) forfeiture of any amounts credited to such Account under Section 3.3.

**III.  
Vesting**

3.1 **Vesting of Incentive Amount.** Assuming, and contingent upon, continued employment with the Law School as ██████ up to and on the applicable Vesting Date, ██████ will earn a Vested Interest in his Incentive Amount in 20% increments ratably over a five-year period on each Vesting Date under the following vesting schedule:

<b>Vesting Date</b>	<b>Vested Interest</b>
April 30, 2009	20%
April 30, 2010	40%
April 30, 2011	60%
April 30, 2012	80%
April 30, 2013	100%

3.2 **Vesting of Earnings Account.** ██████ will, at all times, have a 100% Vested Interest in all amounts credited to his Earnings Account.

3.3 **Forfeiture.** ██████ will forfeit all amounts credited to his Accounts in which he does not have a Vested Interest at his Termination of Employment or, if earlier, loss of status as ██████.

**IV.  
Payment of Accounts**

**4.1 Events Triggering Payment of Credits Allocated to Accounts.**

4.1.1 On the first day of each Plan Year, an amount equal to any undistributed Incentive Account balance in which ██████ has a Vested Interest will be payable to ██████.



4.1.2 Each amount credited to ██████'s Earnings Account under Subsection 2.3.1 will be payable on the first day of the Plan Year immediately following the respective Annual Valuation Date on which such amount was credited.

4.1.3 Each amount credited to ██████'s Earnings Account under Subsection 2.3.2 will be payable on the date on which such amount was credited.

4.2 **Time of Payment.** Each amount paid from any Account under Section 4.1 will be paid on the date on which the amount becomes so payable.

4.3 **Form of Payment.** Each amount paid from any Account under Section 4.1 will be paid in a single lump sum cash payment.

4.4 **Payee of Accounts.** Each amount paid from any Account under Section 4.1 will be paid to ██████, except that, if ██████ dies prior to receipt of any amount due him under Section 4.1, such amount will be paid to ██████'s estate.

## V.

### Claims Procedure

5.1 **Claims Procedure.** The Foundation has established an appropriate procedure to comply with any and all claims procedure requirements set forth in 29 C.F.R. § 2560.503-1 to the extent applicable to this Agreement. Such benefit claims procedure sets forth rules and regulations relating to (1) filing claims for benefits under this Agreement, (2) the processing of claims for benefits under this Agreement, (3) notification to claimants of the disposition of claims for benefits under this Agreement, (4) the procedural requirements for a claimant to obtain an appeal of a denied or modified benefits claim, and (5) the processing of appeals of denied or modified claims for benefits. The benefit claims procedure, as it may be amended from time to time, is hereby incorporated into and made a part of this Agreement.

## VI.

### Miscellaneous Provisions

6.1 **No Guaranty of Employment.** This Agreement will not be deemed to constitute a contract of employment between ██████ and the Foundation, nor will any provision hereof restrict the right of UT to discharge ██████ or restrict the right of ██████ to terminate his employment with UT.

6.2 **No Assignment.** The rights of ██████ or any other person claiming under ██████ to payments or other benefits under this Agreement may not be assigned, transferred, pledged, anticipated, commuted, or encumbered, nor may said benefits or payments be subject to seizure for payment of any debts or judgment of ██████ or any person claiming under ██████ or be transferable by operation of law in advance of payment hereunder.

6.3 **Amendment and Termination.**

6.3.1 This Agreement may be amended or terminated only by written agreement between the parties hereto. The preceding sentence notwithstanding, this Agreement will terminate automatically upon the first to occur of: (1) the date of ██████'s Termination of Employment, (2) the date ██████ loses status as ██████, or (3) May 1, 2013. A termination of this Agreement will not affect the obligation of the Foundation to pay to ██████ an amount equal to ██████'s Vested Interest in the amounts credited to his Accounts as of such termination of this Agreement.



6.3.2 In the event of an amendment to or termination of this Agreement as provided under this Section 6.3, neither [REDACTED] nor any person or entity claiming through [REDACTED] will have any further rights, and the Foundation will have no further obligations, under this Agreement except as provided under the terms of this Agreement as so amended or terminated. In the event of an amendment or a termination of this Agreement, no distribution of any Account will be made prior to the time otherwise provided under this Agreement unless this Agreement is amended to provide for earlier payment in connection with such amendment or termination and either (1) such accelerated distribution is not an acceleration of benefits under section 409A of the Code or (2) such acceleration is covered by an exception to the prohibition of acceleration under section 409A of the Code.

6.4 **Applicable Law.** Except to the extent preempted by federal law, this Agreement will be construed in accordance with, and will be governed by, the laws of the state of Texas (without regard to any conflicts of laws principle that refers jurisdiction to the laws of another state).

6.5 **Unfunded Nature of Agreement.** The Foundation's liability to pay deferred compensation pursuant to the terms of this Agreement constitutes an unfunded, unsecured liability of the Foundation to make payments in accordance with the provisions hereof. Neither [REDACTED] nor any person claiming under [REDACTED] will have any security or other interest in any assets of the Foundation or UT by virtue of this Agreement. Nothing contained in this Agreement and no action taken pursuant to the provisions of this Agreement will create or be construed to create a trust of any kind. Any amounts forfeited by [REDACTED] under this Agreement will remain the assets of the Foundation.

6.6 **Binding Effect.** This Agreement will be binding upon and inure to the benefit of the Foundation (and its successors and assigns) and [REDACTED] (and his heirs, executors, and administrators).

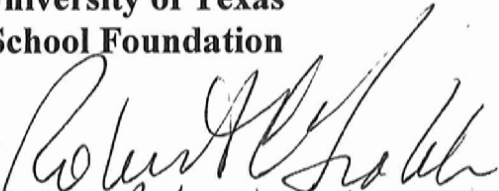
6.7 **Severability.** In the event that any provision of this Agreement is held to be invalid, unenforceable, or illegal for any reason, such determination will not affect the remaining provisions hereof, and this Agreement will be construed and enforced as if such illegal, unenforceable, or invalid provision had not been included herein.



6.8 **Deductions/Withholding.** Notwithstanding any provision of this Agreement to the contrary, all payments under this Agreement will be subject to all tax, withholding, and other deductions required by applicable local, state, or federal law.

6.9 **Compliance with Section 409A of Code.** The Agreement is intended to comply with section 409A of the Code, and all provisions of this Agreement are to be interpreted in accordance with such intent. In the event the Foundation determines in its discretion that any provision of this Agreement, when considered individually or in connection with the terms of any other nonqualified deferred compensation plan covering [REDACTED], violates section 409A of the Code, such violating provision will not be given effect but will instead be interpreted and modified to comply with section 409A of the Code, and any corrections of operation or administration necessary to comply with section 409A of the Code will be implemented.

**Executed** this 1st day of May 2009.

**The University of Texas  
Law School Foundation**

By:   
Printed Name: Robert C. GRABLE  
its president

  
By: 

1033655\_7