

Meeting No. 1,133

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

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Austin, Texas

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WEDNESDAY, APRIL 8, 2015.--The members of the Board of Regents of The University of Texas System convened in a special called meeting via telephone conference call at 3:02 p.m. on Wednesday, April 8, 2015, in the Chairman's Office, Ninth Floor, Ashbel Smith Hall, 201 West Seventh Street, Austin, Texas, with the following participation:

ATTENDANCE.--

Present

Chairman Foster
Vice Chairman Hicks
Regent Aliseda
Regent Beck
Regent Cranberg
Regent Hall (in person)
Regent Hildebrand
Regent Pejovich
Regent Tucker
Regent Richards, Student Regent, nonvoting

In accordance with a notice being duly posted with the Secretary of State and there being a quorum present, Chairman Foster called the meeting to order in open session.

U. T. System Board of Regents: Discussion and appropriate action regarding a) pending Regental request for information pursuant to Regents' *Rules and Regulations*, Rule 10801 (Policy on Transparency, Accountability, and Access to Information), Section 5.4, and b) pending Regental request for meeting with external investigators to make further inquiries

On March 6, 2015, Regent Wallace L. Hall, Jr., requested an opportunity to visit with Mr. Bill Nugent of Kroll Associates to make further inquiries related to the Kroll report on admissions issues at The University of Texas at Austin, dated February 2015.

On March 9, 2015, Regent Hall asked to review "any and all information, confidential and otherwise, that is related to the Kroll investigation that was originally slated for destruction but is now held as part of any Texas Public Information Act (TPIA) request"

Following discussion with Regent Hall on March 10, 2015, Chairman Paul Foster and Chancellor William H. McRaven advised that their concerns about these requests remain unresolved. Accordingly, Chairman Foster directed that the request for information be placed on the agenda for discussion by the Board of Regents as required by Regents' *Rules and Regulations*, Rule 10801, Policy on Transparency, Accountability, and Access to Information, Section 5.4 (Requests by Members of the Board of Regents and Chancellor).

At the time of this meeting, Subsection 5.4.5 provided that “For the purpose of a Board vote on this issue, the vote of any two or more Regents in support of the request is sufficient to direct that the request will be filled without delay.”

Chairman Foster also asked that Regent Hall’s request to meet with Kroll Associates be the subject of discussion by the full Board. The process for Board discussion of a request for information under Regents’ Rule 10801 was new and had not been previously utilized. It was unclear if the Rule was intended to cover a Regent’s request for a meeting or further inquiry in situations where the request was not supported by the Chairman and the Chancellor. However, the request for a meeting appeared to be best processed under the Rule 10801 requirement for Board discussion and vote under these circumstances.

Chairman Foster provided the following remarks.

Remarks by Chairman Foster

As outlined in the agenda item, Regent Hall made two requests in early March: a request to meet with the Kroll investigators to make further inquiries and a request for documents compiled by Kroll in the investigation of the U. T. Austin admissions process. Chancellor McRaven and I reviewed the requests and had concerns that we discussed with Regent Hall. Among the concerns was the lack of specific information from Regent Hall concerning his need for the documents requested. Our concerns remained after the discussion with Regent Hall. Regents’ Rules require that a Board meeting be convened to consider this matter. The Rules also provide that, for the purposes of a Board vote on such a matter, the vote of any two Regents in support of the request is sufficient to direct that the request be filled without delay.

The process for addressing the request to speak with the Kroll investigators presents a matter of first impression that I do not believe is clearly handled under our Rules and seems to be best resolved by trying to understand why Regent Hall wishes to speak to them. If Regent Hall has concerns about operations, accountability, compliance, or the need for a further investigation, our Rules require that he bring those concerns to the Chancellor, Chairman, the Board, or an appropriate Committee of the Board. If Regent Hall is seeking the identity of individuals mentioned in the Kroll report, I do not understand what the Regental purpose would be of that request.

Vice Chancellor and General Counsel Sharphorn advises that the contract with Kroll has ended, and he recommends an additional contract would be needed to grant Regent Hall’s request. Entering into a new contract with Kroll at this point is, in my view, a decision to be made with the involvement of the full Board.

Also, in contrast to the request for data, the request to have access to the Kroll investigators does not fall under Regents’ Rule 10801, and so in my view would require a majority vote of the Board.

Before I call on Regent Hall, let me ask Chancellor McRaven if he has comments.

Secretary's Note: The following is an unofficial transcription of the lengthy discussion held, essentially as delivered, with minor grammatical edits made. The complete discussion is available on the live webcast at <https://www.utsystem.edu/offices/board-regents/regents-meetings>.

Remarks by Chancellor McRaven

Thank you, Mr. Chairman. Again as we have discussed before and as we have discussed with Regent Hall, I am just interested in understanding what the need is in terms of the information from the Kroll report. If the need is a further inquiry into the results of the Kroll report, then I do have some concern about that.

In my role as the CEO and as Chancellor, I looked at the Kroll Report. Kroll took all of that information into consideration. I had the opportunity to adjudicate the Report. I made my decision known to the Board and so, frankly, that information has been reviewed by Kroll, been provided to us in the form of a report, and so as we look at potentially reopening this by looking at the information further, to me then it becomes an inquiry and an inquiry is action and action again becomes a requirement for the majority of the Board to make that decision. Again, but at the end of the day, I am just interested to know what is the need for Regent Hall, and if the need seems appropriate and does not cause us to have to relook the Kroll Report, then I am happy to sit down with Regent Hall, and we can go over to the office and I will show him what we got. Again, as long as the need is identified. Thank you Mr. Chairman.

Chairman Foster then called on Regent Hall to address the Board.

Remarks by Regent Hall

Okay, I appreciate it, thank you all very much for your time. Thank you for calling the meeting. I believe there is more than the one issue I thought we were going to have. It sounds like we have some interpretation of the Regents' Rules to discuss also. But, per the question of need, I prepared a ~~small~~, short statement.

Per the Kroll Report, the Board of Regents has the responsibility to provide the policy direction for each institution under its management and control. In addition, the Board of Regents has the express duty to set campus admission standards. As the Board of Regents has never taken the position or even publically discussed our perspective views on the implications of the Kroll Report, the matter remains, in my mind, an open source of confusion.

It is, I believe, our duty to understand the totality of the problems and the pressures related to (U. T.) Austin admissions and to participate fully in the policy solutions with the goal to restore integrity and trust in these very important operations. It is not enough to depend solely on the coming recommendations of the panel of former (U. T.) Austin or System leadership to do this for us. It is not only appropriate to delve for a deeper understanding of the admission practices, it is an imperative. Our perspective students and their families deserve not only transparency in our admissions practices, but we as a Board need to fully and completely understand

the pressures and headwinds that are preventing us from making real progress on our challenges. I seek to inform myself, ask questions, and gain a more full understanding on these matters, and I believe reviewing the materials requested and a discussion with Kroll is necessary to fulfill my obligations to the people of Texas.

Chairman Foster: Okay, thank you, Regent Hall. Before I move further, let me open it up to questions or comments from other members of the Board. I will open it up to them at this time.

Vice Chairman Hicks: Mr. Chairman, this is Regent Hicks. I think this whole Rule that we are meeting under today should be evaluated further. I find it a little unsettling that if the recommendation of the Chancellor and the Chairman is one way, and it only takes two people on the Board to go a different direction, I think that needs to be thought through further. That is my only comment at this point.

Chairman Foster: Thank you, Vice Chairman.

Regent Aliseda: Mr. Chairman, this is Regent Aliseda. I do have a question because I am looking at the copy of the Rule, and it states that in no event later than 21 days from the date of the receipt of the request, we are supposed to have it extended to the full Board. It says "in no event later." Are we in violation of that Rule just based on that?

General Counsel Frederick: Mr. Chairman, this is Francie Frederick, if I may answer that. The 21st day would have been March the 27th, and we actually were prepared to handle this matter on that day. Regent Hall actually asked or agreed to toll the 21 days until this meeting, so there is no violation.

Regent Aliseda: Thank you, Francie.

Regent Cranberg: This is Alex Cranberg.

Chairman Foster: Alex.

Regent Cranberg: I do not really see this as a particularly close call. I would be very, very reluctant, no matter which Regent was asking for any kind of information, to be blocking any Regent, or for that matter the Chairman or the Chancellor, from obtaining any easily available information, particularly as relevant to decisions that we have ahead of us in our very next Board meeting, in which we are going to be asked to consider a new admissions policy. I was a little disappointed myself that we really did not have an opportunity to ask any questions of Kroll directly ... as opposed to ... because it was in Executive Session having to ask only legal questions of our lawyer. So with that context, it seems to me that it is entirely appropriate and perhaps even should be encouraged for each of us. If we do have questions or concerns about the Kroll Report, about the material that has already been obtained, as opposed to launching off on some new inquiry, about which I would understand that that should have a higher bar. I simply do not understand why there should be any issue with our attempting to understand what has already been learned by Kroll.

Chairman Foster: I appreciate that, Alex. I think one of the issues is just simply kind of a chain of custody issue and the idea that these are confidential documents and it is very important to keep them close. What the Chancellor has offered is that if Regent Hall wants to come view those documents, then he will allow that, and honestly, if Regent Hall would agree to that, we would not even need to take this to a vote because the difference would be, as opposed to providing, making copies of documents and providing those to Regent Hall. If he would agree to go view those documents at the Chancellor's Office, then we could avoid the vote part on this issue at the Board meeting.

Regent Hall: This is Wallace. With apologies, if I had been made that offer, I would have accepted that readily. I mean, I have agreed to come in many times and review materials at the System, and with counsel present, so that would be according to previous practices.

Chairman Foster: Chancellor, did I characterize that correctly, is that the offer that you extended?

Chancellor McRaven: You did, Mr. Chairman. However, I would like to address something that Regent Cranberg raised because I think frankly it is a bigger issue here. I mean I need to understand what my role is as the CEO. The Kroll investigation came from the Chancellor's Office, Kroll investigated the admissions process, we received a report from Kroll. I acted on that report under my full authority to do so, and to my way of thinking, that is closed.

I am establishing a Blue Ribbon panel, or I have established a Blue Ribbon panel. They are going to provide me some additional insights and recommendations, which I will in fact bring to the Board, so we can make sure that the admissions process across the U. T. System is fair and transparent and consistent with what the Board wants. But if the expectation is that every time I make a decision as the CEO and the Chancellor, that a single Regent or a Regent or two can trump that decision, then frankly I need to rethink this relationship with the Board because that is not consistent with my understanding as my role as the CEO. Now having said that, again, I am more than happy to have Regent Hall come over and look at the material. That is a standing offer and I would be happy to have him do that. But, Regent Cranberg has raised a bigger issue, and frankly, that issue concerns me.

Regent Cranberg: Let us be clear about what issue I have raised. I certainly am not interested in making a decision. What I felt is that we should be able to have the knowledge to be able to ask questions of the investigator because we are being asked to read, review, understand, and respond to recommendations that we expect you to make at our next Board meeting about admissions, and we wish to be able to vote on those recommendations in an informed and intelligent fashion as possible. I am not suggesting that we should be getting into the business of making recommendations, but ultimately you are going to be asking us for our votes.

Chancellor McRaven: But Regent Cranberg, these are Kroll-specific requests, which is reopening the Kroll investigation. Any way you look at it, this is delving back into the information that was available to Kroll, that was provided to me as the Chancellor, and therefore, to me it appears as if we are reopening an inquiry that based on my recommendation to the Board of Regents, we closed. I understand the need to provide the

Regents information in order for them to make the most informed decision as we go forward in the admissions process, and we can certainly do that. But any relook into Kroll, to me, is reopening the investigation.

Regent Hall: This is Wallace. May I offer a specific that might be helpful? You know as we all know, the pressures on U. T. Austin admissions are going to continue to go up. This is a trend that has been in place for many years, and it is one of my concerns. The bottlenecks that exist in our admissions, with the specific pressure on the holistic component due to the increase in population of the state, due to the Top 10 Percent rule, and other issues. It is something that this Board is going to have to struggle with, as are you.

Chancellor McRaven: I agree.

Regent Hall: One example of a question I have, and I guess I am afforded one of two options, either of which I fear would be characterized as starting my own investigation when really it is research and education ... for me is the need. But you know, the Kroll Report focused basically on three of the holds that were utilized by U. T. Austin that represented thousands of applicants over the years reviewed. What I did not know, and I reread the report, is that there are a number of holds in addition to those three. I am very curious, I mean, what percentage of the incoming full-time freshman class at U. T. Austin that is non-automatic admit, in-state student is actually represented by those holds; by the totality of those holds. So, I can either make a request to your office that U. T. Austin go gather this information or I can ask Kroll, and look at the documents and see what is there. I mean that seems to be the shortest way to the answer. But that is not an investigation, I mean these are important facts that I feel like I need before I can ask good questions and get hopefully good advice when participating in a conversation. So I do not see it as a reopening of the Kroll Report at all. I am not critical of the Kroll Report. I mean, I am just trying to understand more about the issues.

Chairman Foster: I think it is important to clarify that we have two separate issues here. One is your access to all of the data provided by Kroll. It is accumulated and assimilated by Kroll that is in the possession of U. T. System, and I think we have worked out a way for you to do that. We can vote on it if you want, but I do not think it is necessary. The other, though, would be to reengage Kroll because they are no longer our agent, they no longer work for us, and so that is something that the entire Board would need to vote on and it would have to set aside money to pay for that, and I think that is a different discussion than having access to all this data. What you have articulated is data that, you are right, is available, but I do not think it requires us reengaging Kroll and giving you access to the Kroll investigators in order to find those answers.

Regent Cranberg: Could I ask the Chairman, are you suggesting that we would need a contract simply to ask clarifying questions of Kroll or about their report and questions that we were not able to ask in Executive Session because of the limitations on Executive Session?

Chairman Foster: I believe we would. I do not know if Dan you want to weigh in or Francie?

Vice Chancellor and General Counsel Sharphorn: Well there may be some questions that I am able to answer related to the report, and I would be happy to do that. But to the extent that it would require an interview or sitting down and having a discussion with them in a fairly extensive or even a moderate number of questions, I think we would have to reengage them; we are no longer in a contract with them.

Regent Cranberg: And were we under contract when we facilitated Senator Taylor's questions?

Vice Chancellor and General Counsel Sharphorn: No, we were not. That was an unusual situation as you probably know. It occurred three or four days after the contract had expired. My understanding, there was some urgent need for Senator Taylor to speak with Kroll about a handful of questions that he had related to a nominating committee meeting that was being held literally hours later. The discussion with Kroll lasted less than 10 minutes, maybe only about five minutes. He had signed and agreed to a nondisclosure agreement, he and his staff, and like I said he asked about four or five questions, which were in my judgement, reasonably related to his role on the nominating committee.

Regent Aliseda: Dan, this is Ernie. Has Kroll been asked whether or not they need an additional contract or if they would require additional money to have a short question and answer session with Wallace?

Vice Chancellor and General Counsel Sharphorn: We have discussed that and they would expect there would be an additional contract.

Regent Hall: So Kroll is unwilling to have a phone conversation with members of the Board without a new contract? I just want to make sure I understand that because in a service business that seems like a reasonable expectation that they would have follow-up with us. I just want to make sure that is their position that they are not going to talk with me.

Vice Chancellor and General Counsel Sharphorn: Well let me be clear sir. It is probably more my position than their position.

Regent Hall: Well then, that is different.

Regent Pejovich: Say that again Dan, I missed that.

Vice Chancellor and General Counsel Sharphorn: It is probably more my position than Kroll's position that I think there ought to be a contract before we impose on them for any additional time.

Regent Cranberg: So this is more a matter of contractual liability than cost?

Vice Chancellor and General Counsel Sharphorn: Yeah, I do not think it will cost much money to engage them for however many extra hours it takes to permit the interview.

Regent Pejovich: I am just trying to put it in context when you say contract. I mean, correct me if I am wrong, but we are talking about not a lot of time here. Is it necessary to go through a formal contractual process for that?

Vice Chancellor and General Counsel Sharphorn: It would be a relatively simple matter in the sense that we would not have to issue a request for bids or anything; we would be simply extending the contract or adding an additional contract. My point is that I think that to do that would require the vote of the full Board, or the Chancellor would have to agree to it.

Chancellor McRaven: But if I can offer on top of that, again. Regent Hall back to your first two points there. If you are looking for information, I have a Vice Chancellor that provides me information on a whole range of issues. So if you want to know the number of students that came in or that did not come in, we can provide you that. By going back to Kroll, to me, we are reopening the inquiry, we are inquiring into an investigation, an inquiry that already occurred. Going back and talking to the Kroll reporters will not necessarily get you the information you are looking for. I can get you that information if there are specifics that are going to inform you to make a better judgment on admissions. But I do not again see a reason or a need, back to the information piece, if you will explain to me the need: the final outcome of the information that we provide you and the purpose of that, then it can help tailor my response to you and what I can provide you.

But for Regent Pejovich and Regent Cranberg, again my concern, the contract aside, I am sure Dan and others could work out the contract, but to me this is an issue of now we are going back to Kroll. We are now going to be in a position to kind of question the initial report that Kroll provided. That is not information necessarily that is going to get back, Regent Hall, to your point, if you just want to know information I can get you information. If you want to know what people said during certain interviews and how that un-folded, well then that is re-opening the inquiry and to me that is action and to me that requires the vote of the majority of the Board.

Regent Aliseda: As it relates to the documents that I guess Regent Hall is asking to review, I mean, is this the situation where after the review of the documents maybe Regent Hall can decide whether or not he actually needs an interview with Kroll?

Chairman Foster: I do not know who you are addressing that question to. In my opinion, where does it end? Frankly, based on experience, I do not think it ends anytime soon. The real question is do we want to reopen discussions with Kroll or do we want to let the Chancellor lead this process the way he has already started, and to me it is very clear. Access to the data, I agree with the Chancellor and with Regent Hall that that can be provided. But reopening the investigation and asking more questions of the investigators, to me, I am not in favor of going there.

Vice Chairman Hicks: One other observation. When the Kroll people did their investigating, I know when they called me, they went through a long litany of how the confidentiality of this interview was going to stay in place. And I am not worried about myself as some other employees that were interviewed in this process and promised confidentiality. So to me it would be just by somebody's interpretation of their comments in writing to be produced

could be problematic. I do think Regent Hall is entitled to all the information that he wants to be able to make whatever decisions he is trying to make. But to reopen or reengage with Kroll to me is not a good idea.

Regent Beck: Again, Sara and I are kind of new to this process but in looking at the Rules, it looks to me like the Rules we are operating under specifically referring to 5.4 sets forth the process where a member of Board of Regents seeks information. But I notice in looking at these Rules, and I am not being hyper-technical here, there are repeated references to requests for information or data. The Rules say nothing about meetings and say nothing about investigations by anybody. If we are going to follow our Rules, it sounds to me like a request by Regent for information or data is consistent with what our Rules provide. But once you start going beyond that, and start getting into meetings with third parties and investigations, you are stepping outside of our Rules, at least as I am interpreting them.

Regent Hall: Mr. Chairman, there is a liberal use of the word investigation being thrown around here. Any Regent asking questions is not an investigation. The only action can be taken by the Board and that has always been the situation. I have consistently brought any concerns I have had to former OGC (Office of General Counsel) Burgdorf, former Chancellor Cigarroa, Dan Sharphorn, and yourself, and the (former) Chairman. So it is the process by which we learn, is asking questions and doing research. To be asked in advance what I am going to ... what the specifics are of the purpose does not make any sense. I mean I do not know what is there until I read it. I guess I am troubled by the idea that we would, as the governing board, not be allowed the same courtesy as a member of the Legislature when we actually have the duty to oversee the admissions policies. I am troubled by that. I have heard no good reason why I am not allowed to ask questions about Kroll.

Chairman Foster: In my opinion, we made a mistake, or somebody made a mistake, in allowing Senator Taylor to have access to Kroll, and I do not think that sets the standard for opening the floodgates and letting anybody else have access. And in answer to your other comment, I believe it is an investigation. I think a lot of your inquiries amount to an investigation, and honestly kind of an open-ended hunting expedition as opposed to an investigation. I think that is the reason, Regent Hall, that sometimes I push back because I just worry about, I do not know what it is you are trying to accomplish here, and frankly, I do not want to open another can of worms. I do want you to have access to the data, and we are going to make sure that happens. But allowing further investigation take place I do not believe is either covered in the Rules nor is it appropriate.

Regent Hall: It is not an investigation and I would remind you that after Dan Sharphorn's review of admissions. I lobbied you quite strongly that there was obvious need to do more, and my request was rebuffed. I had no ability to do any further investigation. The only reason that the investigation ensued after that was a whistleblower showed up in Chancellor Cigarroa's office. The repeated pushback that I have received for simply wanting to review documents and to ask questions I think is unprecedented. I mean, I think it makes it very difficult for this Board to do its job as required under the law, and I think this is further evidence of that frankly. I do not know what we are afraid of.

Regent Tucker: I think Regent Cranberg said something really important earlier, and I want to make sure that it does not get lost as we are having this conversation on what constitutes as an investigation versus our role to do our due diligence. Is there any reason to believe that the final report does not contain everything that we need to know. And there is a difference I think between clarifying questions on the final report and digging further. And so maybe, since David and I missed kind of the report out and the chance to read the final report formally through our roles as Regents, what I have heard today is actually three things, not the two things that we have talked about.

Number one is what is in the final report, and did Regents have an opportunity to digest the final report and ask clarifying questions. The second is the issue of having specific questions answered, having access to the data. And the third is, as the Chancellor raised, is then our own governance and making sure that we are all clear about what governance is, whether it is the role of the CEO or what Regent Hicks mentioned; the Rule of having two people on this Board being able to overturn the Chancellor and the Chairman together. Maybe if we separate our clarifying questions from digging deeper for additional information we can move the conversation forward.

Chairman Foster: Well, I guess...I will defer that comment to a few minutes later.

Regent Beck: Just to be clear, has Regent Hall and the Chancellor agreed on the information or other data that Regent Hall was requesting?

Chairman Foster: Not to my knowledge, I think it is just kind of everything.

Chancellor McRaven: Mr. Chairman, this kind of gets us back to the point we were talking about. If you are looking for information to better inform you to make decisions on the next process of the admissions, let me know what that information is, and I will provide that to you. If you want to reopen all the information that we got from the Kroll Report and take a look at all of that data, I am not inclined to go there. The report has been issued, and I have again, in my role, adjudicated that. If there is specific information that interests you to again better inform you to make a decision on the next step, which will be the Blue Ribbon panel provided with additional recommendations from the White Paper that will come to the Board of Regents, please let me know.

Regent Hall: Apologies, I am not sure what I was offered. I thought I was offered the opportunity to go review all of the documents associated with Kroll at your office.

Chancellor McRaven: What I would like to know, though, is tell me what you need, what documents do you need, and why you need them? I mean this is an important piece of this.

Regent Hall: I do not know what documents exist; therefore, I can not identify them. That is the challenge.

Chancellor McRaven: But so explain to me what your need is, what is the need Regent Hall? The need for the vast amount of information or the need to understand something. You talked about understanding, you know, how many students came in, which students

were allowed in; if you will, that is what your need is. You want to understand something, tell me what that is. Because if not I can open up a huge vault of information on everything that we are doing at System.

Regent Hall: I cannot be more specific. I mean, I have questions. Very often when you read, as you know, it generates further questions. I am interested to know what was reviewed, and it will prompt further questions or maybe it will not. But it is impossible to say in advance what research I need to understand or any other Regent for that matter. So, if I am not being offered the full file, if you will, then I need to know that. Because what I am asking for is the full file of information that was gathered per my request. If you do not support that, I understand that, I guess that is a part of why we are here.

Regent Hildebrand: I have got two or three points, and then I will get off, but you know, one I think it speaks to a broader issue. The fact that one Regent now, we have got nine Regents on the phone, and it is this two versus seven issue. In my mind, that is a broader issue. It is bad governance, and from my opinion we need to fix that. If the majority of the Board agrees on a particular item, that is face-to-face interviews, in-depth investigations, then I think the majority of the Board should rule. So, I would certainly look to some change in governance structure.

Second issue is confidentiality as a Board. We have already demonstrated our inability to keep anything confidential. The allowance of one Regent to look at internal documents, internal interviews with particular employees that were reluctant to come forward from the start. I think that data ultimately gets out into press, and I would not allow that.

Three, Mr. Chairman, your comments are right on. You are the CEO of the organization, and you have got my full faith and confidence, and if you make the decision that after the Kroll investigation completion you have created a Blue Ribbon panel to take substantive steps on fixing your particular issues, that is good enough for me. I think if we are going to second guess the Chancellor's decision on every opinion that is made by him, we do need to review our relationship with him and how that looks going forward.

Chairman Foster: Thank you, Regent Hildebrand. One comment I will make also is that the Kroll Report was issued to the Chancellor, not to the Board. And to his point, he adjudicated that report as our CEO. It was not a report to the Board and it was not, Regent Tucker, there really was not a situation where the Board had an opportunity to ask questions and to clarify points of the report but because the report was not to us, and it was not commissioned by us.

Regent Tucker: Oh, thank you. I did not know that.

Chairman Foster: But I think that is one of the frustrations that the Chancellor has is that he feels like that process has taken place and has been done adequately and when the Board, I guess, can decide whether he is doing his job well or not. But if we think he has, then I do not know that there is a further duty to continue to ask questions.

Regent Hall: Mr. Chairman, this is Wallace again. I am prepared to make a motion to get both of my requests fulfilled when ready.

Vice Chairman Hicks: Mr. Chairman, didn't you rule that one of the requests was not applicable to the Rule that called the meeting.

Chairman Foster: That is right. Yeah one of them; the second one will require the majority vote of the Board and that is the proposed access to Kroll; so they would be separate votes.

Regent Hall: Okay, a point of clarification. Francie who is the adjudicator, if you will, of the interpretation of the Rules in this matter?

General Counsel Frederick: The Chairman can state his position; the ultimate decision would be made by the Board.

Regent Hall: And so how do we do ... what is it that ... the two votes makes the decision on that or is it the majority best to rule on that interpretation? We are not posted for that necessarily, so how does that work?

General Counsel Frederick: I think you are posted to consider action on both of your requests and how they will be handled. So I do think that the Chairman could call for a motion from someone on the Board about the appropriate handling of the second request; the request to speak with Kroll.

Regent Hall: I am not sure that I understand, I apologize.

Chairman Foster: So there will be one vote on whether or not to provide the data.

General Counsel Frederick: Correct.

Chairman Foster: There would be one vote on whether or not the request to provide access to Kroll falls under Rule 10801; which means it would only take two Regents to approve it. After the outcome of that vote, you would have a third vote on the motion of whether or not to provide access to Kroll. Does that....?

General Counsel Frederick: That is correct. On that third vote it would either be a two-person majority or a majority of the Board depending on the outcome of the second vote.

Chairman Foster: Right.

Regent Hall: Francie what is your opinion, I mean obviously you put it under that the Kroll piece was appropriate under that spot in Regents' Rules. What is your opinion?

General Counsel Frederick: These are really the Board's Rules and the Board would have to determine the interpretation, but I did think that queuing up that request under the 21 day meeting rule made sense. I did not necessarily think that the two-person vote controlled on the data.

Regent Hall: On the data or on the Kroll?

General Counsel Frederick: On the Kroll request.

Regent Hall: I am prepared to make a motion on the first piece which is the data that I have requested, if you will call on me.

Chairman Foster: Okay.

Regent Cranberg: Could I just ask a question? Chairman Foster, I got the impression that you were supportive of giving a Regent access to the data in the System offices as opposed to access directly to Kroll.

Chairman Foster: I am supportive of providing in the System offices. I am not supportive of making copies and distributing it outside the System.

Regent Cranberg: If that is the case, Regent Hall, is there a need for a data vote or is there adequate consensus here to avoid that?

Regent Hall: Well, as long as the Chancellor is in agreement that I am going to get all of the Kroll data. If not, we will need to have a vote.

Regent Cranberg: I think I am hearing the suggestion that you would get access to the data in the System offices?

Regent Hall: Correct, but if the Chancellor does not want to do that then we will need to have a vote. I think is where we are.

Chancellor McRaven: Mr. Chairman again, my concern is that again what is the end game for the information? Providing the data, the information, to Regent Hall; we can certainly do that. We have the means to do that. My concern is that again, it is about the Kroll Report. It is not about information. I can provide you information on a whole lot of things. It is about information that resides as an aspect of the Kroll Report, and I get back to ... I think Regent Hildebrand outlined it very nicely. My concern as the Chancellor: I have adjudicated the Kroll Report, and I have made my position known on the Kroll Report. So, having you look at more information of the Kroll Report means that you are seeking information about the Kroll Report, not information about admissions at The University of Texas specifically, but about information that was gathered as part of the Kroll Report. So Chairman, I will defer to you, and I am prepared to sit down in my office and provide Regent Hall the information if you think that is the best path to take.

But I am concerned about the broader issue here, which is this seeking information. To me, is a further inquiry into the Kroll Report, and I think that is not consistent with my understanding of how the governance worked and what my role was as Chancellor. Because again, I have adjudicated that. If there is specific information Regent Hall wants on general admissions, on how admissions is done; more than happy to provide that. But again, Chairman, back to the earlier point. I will defer to you, and Chairman if you want to have me sit down with Regent Hall, I am happy to do that.

Chairman Foster: I think that is the best compromise, and the reason why is I agree with you that the request is too broad. We do not have to provide all of the data, but it is better than making copies of it and having it get outside the System. So, to me it is a good compromise, and it gives Regent Hall, I believe, what he wants. And it also gives us a little bit of comfort in knowing that we got a close hold on documents. So, Regent Hall if you are in agreement with that, then I think we can forgo the vote on the data.

Regent Hall: Well I am.

Vice Chancellor and General Counsel Sharphorn: Mr. Chairman, I just want to interject if Regent Hall is comfortable with the fact that we would not be letting him see information protected by FERPA.

Regent Hall: I would actually ask to see everything. I do not know what I am going to look at. We are going to be looking at it at System offices. The last time I made a request on the advice of System to look at documents that were in redacted form, that was ultimately used against me as creating all kinds of workload for the System and for U. T. Austin, and I am not trying to increase anybody's workload. This is information that is gathered. I want to review it and that is my request.

Vice Chancellor and General Counsel Sharphorn: Francie, do we have to discuss this in Executive Session?

General Counsel Frederick: Mr. Chairman, on Dan's advice, he thinks that we should recess to Executive Session for discussion.

RECESS TO EXECUTIVE SESSION.--At 3:54 p.m., the Board recessed to convene in Executive Session pursuant to *Texas Government Code* Sections 551.071 and 551.074 to consider the matters listed on the Executive Session agenda.

RECONVENE IN OPEN SESSION.--At 4:07 p.m., the Board reconvened in Open Session. No action was taken on matters discussed in Executive Session.

1. U. T. System: Discussion and appropriate action regarding individual personnel matters relating to appointment, employment, evaluation, compensation, assignment, and duties of presidents (academic and health institutions), U. T. System Administration officers (Executive Vice Chancellors and Vice Chancellors), other officers reporting directly to the Board (Chancellor, General Counsel to the Board, and Chief Audit Executive), and U. T. System and institutional employees

No action was taken on this item.

2. U. T. System Board of Regents: Discussion with Counsel on pending legal issues

No action was taken on this item.

AGENDA ITEM 1, CONTINUED

Chairman Foster: Regent Hall I believe you have a motion?

Regent Hall: I move to pass on the request for the data that was provided by Kroll as part of the report.

Chairman Foster: You move to pass?

Regent Hall to General Counsel Frederick: What would be my motion?

General Counsel Frederick: ...approval...

Regent Hall: ... to seek approval for my request to receive the Kroll data.

Chairman Foster: Okay, and I guess just as a point of clarification, that would include FERPA data?

Regent Hall: Yes.

Chairman Foster: Okay.

Vice Chairman Hicks: By "receive," is it "receive" or "review?"

Regent Hall: I am happy to go and view the materials in the Chancellor's Office or wherever they designate an appropriate spot.

Chairman Foster: Okay, so it "would be review in the Chancellor's Office" would be the wording of the motion. Is there a second?

Regent Cranberg: I second, Cranberg.

Chairman Foster: Okay Francie, could we call for a roll call vote please?

General Counsel Frederick: Yes sir.

Vice Chairman Hicks: Mr. Chairman, I would like to make an amendment to that that we exclude, to protect our students, that we exclude all FERPA information as required by the Department of Education.

Regent Beck: I second the motion, Regent Beck.

Regent Hall: I do not accept the amendment as offered.

Chairman Foster: Okay.

General Counsel Frederick: With that rejection of the amendment, Mr. Chairman, you should call for the vote on the original motion.

Chairman Foster: Okay, so call.

General Counsel Frederick then administered a roll call vote as follows:

Vice Chairman Hicks – no

Regent Aliseda – no

Regent Beck – no

Regent Cranberg – yes

Regent Hall – yes

Regent Hildebrand – no

Regent Pejovich – With the understanding that there are processes and safeguards in place, specifically through the General Counsel's office, that all information released will be deemed appropriate to be released in the manner in which it will be released or should I say reviewed. And with that, I vote yes.

Chairman Foster: I do not believe that is the motion but we will record your vote as yes.

Regent Pejovich: Okay. I am just stating my understanding which is an integral part of the motion. Thank you.

General Counsel Frederick: Regent Tucker?

Regent Tucker: No.

General Counsel Frederick: Thank you. Mr. Chairman, there were three votes in favor of allowing Regent Hall to review the data.

Chairman Foster: Okay, and please record my vote as no.

General Counsel Frederick: Yes sir.

Chairman Foster: So that motion passes. It is my understanding that because the motion includes FERPA data, that nothing will happen immediately. Mr. Sharphorn will review the request and the information and make a determination as whether or not it is legal to provide the information.

General Counsel Frederick: Yes sir.

Regent Cranberg: This is Regent Cranberg with a clarification, understanding that any FERPA data is subject to a review process involving the System offices that any non-FERPA data would be available.

Chairman Foster: I do not believe that is what the motion said. I now call....

Regent Cranberg: Is there a reason why non-FERPA data would be not made available because of a process for approving FERPA data?

Chairman Foster: In my opinion, Regent Cranberg, a motion was made, and it is pretty clear what was requested. A vote took place, and it was approved. But, as was explained in Executive Session ... I have to be careful, Francie, what I can say.

General Counsel Frederick: Yes sir. You really cannot talk about Executive Session.

Chairman Foster: Okay. But so it is my understanding that Mr. Sharphorn will need to rule on whether or not the motion can be carried out.

General Counsel Frederick: On the FERPA data, correct?

Vice Chancellor and General Counsel Sharphorn: Yes.

General Counsel Frederick: On the FERPA data, Mr. Chairman. Any FERPA data that might be in those documents. So I think back to Regent Cranberg's question, if I understood it correctly, there is no bar to any data that is found to be non-FERPA.

Vice Chancellor and General Counsel Sharphorn: That would be my understanding too, Francie.

Regent Hall: Mr. Chairman, I would like to make my second motion if you would call on me.

Chairman Foster: It depends on what you are going to make the motion about. I would entertain a motion for the Board to determine whether or not Rule 10801 applies to Regent Hall's request to have access to Kroll.

Regent Hall: So you are not calling on me for my motion? You are offering a separate motion, just so I understand?

Chairman Foster: Correct.

Regent Hall: Okay, and just so I understand your motion is that the choice is if it does not fall under 10801 then there is no process other than a full Board vote with the majority vote for me to have that phone call, correct?

Chairman Foster: That is correct.

Regent Hall: Okay.

Chairman Foster: So do I hear such a motion?

Regent Tucker: You have made the motion, you are looking for a second?

Chairman Foster: Yes.

Regent Tucker: I will second.

Chairman Foster: Okay.

Vice Chairman Hicks: Can you tell us the motion again? It is a little confusing. You are moving that it not be included or be included?

Chairman Foster: The motion is that ... what the Board is voting on is whether or not Rule 10801 applies to Regent Hall's request to have access to Kroll, meaning that if we vote yes, it applies, then it would only require two votes. If we vote no, it does not apply, then it would require a majority of the Board. Thank you for clarifying that because my motion was not clear.

Regent Beck: So more specifically, the question is whether or not 5.4.5 applies to Regent Hall's request. That is the provision that says that any two or more Regents in support is sufficient.

Chairman Foster: Yes.

Regent Beck: Okay, and so if we vote, again just to be clear how you framed the motion, is a vote "no" means that 5.4.5 does not apply?

Chairman Foster: Right and consequently, that it would require a majority of the vote.

Regent Beck: Okay, thank you.

Chairman Foster: And Regent Tucker, we have modified the motion quite a bit. Does your second still apply?

Regent Tucker: It does.

Chairman Foster: Thank you. Okay Francie, I call for a roll call vote.

Regent Aliseda: Mr. Chairman, I do have a question. Is there an opinion from our counsel as it relates to this particular issue at all?

General Counsel Frederick: It is not a legal issue, but my personal opinion is that 5.4.5 was intended by the Board, and again I do not want to second guess the Board on this, but was intended by the Board to apply to data and information, not the word I have heard others use is action, not action. And to also clarify, Mr. Chairman, if I can restate: a prevailing yes vote on this motion means that the two vote Rule applies and Regent Hall would be able to talk to Kroll. If the motion does not prevail, that means that a majority vote of the Board would be required to allow Regent Hall to talk to Kroll.

Chairman Foster: That is correct. Okay, call for a roll call vote.

General Counsel Frederick then administered a roll call vote as follows:

Vice Chairman Hicks – no
Regent Aliseda – no
Regent Beck – no
Regent Cranberg – no
Regent Hall – yes
Regent Hildebrand – no
Regent Pejovich – no
Regent Tucker – no

Chairman Foster: And please record my vote as “no” as well.

General Counsel Frederick: The motion does not pass.

Chairman Foster: Okay.

Vice Chairman Hicks: Can we move to adjourn, Mr. Chairman?

General Counsel Frederick: I think you need to take one more vote, Mr. Chairman.

Regent Hall: I do not believe there is a need.

General Counsel Frederick: You do not wish to call for a vote?

Regent Hall: I do not believe there is going to be a need at this point.

General Counsel Frederick: Okay.

Chairman Foster: Okay, that concludes the meeting of the Board. We are adjourned. Please stop the recording. It is 4:17 p.m.

ADJOURNMENT.--At 4:17 p.m., there being no further business, the meeting was adjourned.

/s/ Carol A. Felkel
Secretary to the Board of Regents

May 12, 2015