The Regents of the University of California

SPECIAL COMMITTEE ON REGENTS' PROCEDURES
May 19, 2004

The Special Committee on Regents' Procedures met on the above date at UCSF-Laurel Heights, San Francisco.

Members present: Regents Bodine, Dynes, Kozberg, Lansing, Marcus, Moores, Pattiz, and Preuss

In attendance: Regents Blum, Connerly, Hopkinson, Johnson, Lee, Montoya, Murray, Sayles, and Seigler, Regents-designate Anderson, Novack, and Ornellas, Faculty Representatives Blumenthal and Pitts, Secretary Trivette, General Counsel Holst, Treasurer Russ, Provost Greenwood, Senior Vice Presidents Darling and Mullinix, Vice President Broome, Chancellors Bishop, Cicerone, Córdova, Tomlinson-Keasey, Vanderhoef, and Yang, Acting Chancellor Chemers, Vice Chancellor Woods representing Acting Chancellor Chandler, and Recording Secretary Nietfeld

The meeting convened at 12:05 p.m. with Special Committee Chair Marcus presiding.

1. **APPROVAL OF MINUTE OF PREVIOUS MEETING**

Upon motion duly made and seconded, the minutes of the meeting of January 14, 2004 were approved.

2. **AMENDMENT OF THE POLICY ON SELECTION OF STUDENT REGENT - APPOINTMENT DATE ADJUSTMENT**

Regents Connerly and Murray recommended that the Policy on Appointment of Student Regent be amended, as shown below, to move the appointment date of the student Regent-designate from the September to the July meeting of the Board.

Addition shown by underscore, deletion by strikeout

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(3) For each campus, the student government, or other student body association having recognized membership on the Board of Directors of the University of California Student Association, shall appoint two students, an undergraduate and a graduate, as members of the student Regent nominating commission. There shall be one such nominating commission for the Berkeley, Davis, San Francisco and Santa Cruz campuses and one such nominating commission for the Irvine, Los Angeles, Riverside, San Diego and Santa Barbara campuses. The nominating commissions shall screen candidates and applicants and shall recommend five students from the

southern campuses and four students from the northern campuses. The nine students so recommended shall be interviewed by the Board of Directors of the University of California Student Association which shall nominate three as a panel of names for submission to The Regents. The submission of the panel of names shall be at such time that the Special Committee may complete its deliberations and submit its recommendations to the Board of Regents no later than the July ~~October~~ meeting of the Board.

Regent Murray observed that appointing the student Regent-designate in July rather than September would accomplish the following objectives:

- Allow the new student Regent-designate to get situated and settled over the summer instead of at the beginning (for Berkeley students) or right before the beginning (for all others) of a new school year. The change would have no adverse impact on either the student Regent selection process or on the selected student's study time. Currently, the Special Committee to Select the Student Regent makes its selection in May, leaving the selected student in limbo for four months before officially being recommended to the Board for appointment in September. Appointing the student Regent-designate in July would shorten that long, and rather awkward, period and allow the student Regent-designate to take care of necessary logistical matters, such as setting up an office, getting on Regents' mailing lists, and having an orientation by the Office of the President, before a new school year begins. The student would still have the full flexibility to take summer school or work over the summer if he or she wished.

- Align the appointment schedule of the student Regent with that of the Alumni Regents, who currently commence their Regent-designate roles at the July Regents meeting and serve a full year as Regent-designate rather than the 10 months currently served by the student Regent-designate. The position of Faculty Representative is also filled for a two-year period. By bringing the student Regent position in line with the alumni and faculty positions in terms of the length of service, the Board would make a positive statement about the respect and fair treatment it expects of the student Regent.

- Enable the administration to provide a more efficient introduction and orientation process at the same time instead of separately. With the recent recommendation from the Eligibility and Admissions Study Group that all incoming Regents receive in-depth orientations on the University's admissions procedures, providing an organized process for those orientations for the members of the Board who rotate each year will be particularly important.

The length of the student Regent-designate position was extended in 1999 to help provide the prospective student Regent enough time and experience with the workings of the Board. Aligning the appointment date of the student Regent-designate with that of the Alumni

Regents-designate is a logical and reasonable change. Current and former student Regents and Regents-designate believe the transition into the Regent-designate role would have been smoother had the appointment been made in July rather than September, and the situation will be similar for other students in the future if the Regents do not make this change.

In response to a question from Regent Moores, President Dynes indicated that some additional costs would result from travel and administrative support; Secretary Trivette estimated that the amount would total less than $2,000.

Regent-designate Anderson commented that some concerns had been raised about placing additional hardships on students who need to work during the summer. She did not agree that this would pose a problem for the incoming student Regent-designate if the appointment date were moved to July. She believed it would assist the student to increase his or her knowledge about the complexity of the University and the work of the Board.

Upon motion duly made and seconded, the Special Committee approved the recommendation and voted to present it to the Board, Regent Moores voting "no."

3. **PROCESS FOR ENSURING COMPLIANCE WITH STATE AND FEDERAL LAWS, AND DISCLOSURE OF PERTINENT INFORMATION TO THE REGENTS**

Regent Moores recommended that the President and the General Counsel develop for consideration by The Regents at the July meeting procedures for communicating pertinent information to The Regents concerning issues of significant legal exposure, including non-compliance with Regents policies.

Corporate governance is enhanced when public corporations are open about public aspects of their business and when there is full and open communication between management and the corporate board. Because the primary responsibility of The Regents is to set policy for the University and because the size and scope of the University's activities are extraordinarily complex, the Regents must depend on senior University officials to inform them in a timely manner about pertinent matters so that the Board may fulfill its governance responsibilities.

Following several financial scandals at public companies, the U.S. Congress enacted the Sarbanes-Oxley Act in 2002. It requires that the CEO and CFO of public corporations certify annual reports stating that the financial reports have been reviewed and, based on the officers' knowledge, contain no untrue statements or omission of material fact and fairly present the company's financial condition, results of operation, and cash flows.

The Sarbanes-Oxley Act does not apply to not-for-profit corporations such as the University of California. Nonetheless, in keeping with good financial practices, for many years the University's President, the Senior Vice President for Business and Finance, and the Vice President for Financial Management have signed representation letters to The Regents'

external auditors attesting that, to the best of their knowledge, the University financial statements present fairly, in all material respects, the University's financial position and operating results, in conformity with accounting principles generally accepted in the United States.

Effective in fiscal year 2003-04, the University will adopt the additional step of having each chancellor sign a campus management letter representing that, to the best of his or her knowledge and belief, the campus financial information used in the University's financial statements present fairly, in all material respects, the campus financial position, operating results, and cash flows, in conformity with accounting principles generally accepted in the United States.

Management representation letters are currently signed by each campus' vice chancellor of administration and controller. Such letters contain representations of management to The Regents' external auditors regarding the financial condition and operations of the campus. In order to strengthen accountability for the financial reporting process, campus management will require representations, in addition to the chancellor's representation, from senior campus officials with responsibility for key financial areas, such as grants and contracts, philanthropy, and financial aid.

This approach was adopted after discussion about financial statement accountability in The Regents' Audit Committee with Regents, representatives of the University administration, The Regents' external audit firm, and an advisory firm specializing in financial disclosure matters. The University and the Regents also will benefit from disclosure and full discussion of pertinent information about non-financial matters.

Regent Moores suggested that the performance of The Regents would be improved if it received better information from the University's administration. It was his belief that a culture exists which involves withholding information from the members of the Board. For example, the Master Plan for Higher Education states that the University shall admit the top 12.5 percent of public high school graduates. As the California Postsecondary Commission's eligibility study shows, the University currently admits 14.4 percent from that pool. He recalled that on many occasions there had been discussions with the Regents concerning issues pertaining to eligibility and admissions, particularly as they relate to the predicted Tidal Wave II. During those discussions, the Regents were not informed that the University was admitting more than the top 12.5 percent. As a result of this information's having been withheld, the news media have criticized the University for breaching the Master Plan. Regent Moores expressed concern about the University's admissions standards, which he believes have led to the admission of students who are not qualified. In particular, his research has found that a student with a weighted 3.0 grade point average will be admitted even with a below-average SAT score. Regent Moores expressed concern that various studies that had been performed with respect to these issues had not been disclosed to the Regents. He is requesting that the President and the General Counsel develop for consideration by The Regents at the July meeting procedures for communicating

pertinent information to The Regents concerning issues of significant legal exposure, including non-compliance with Regental policies.

In response to a question from Committee Chair Marcus regarding the feasibility of Regent Moores' request, President Dynes stated his commitment to correcting any breakdowns in communication between the administration and the Regents which may have occurred. It was his intention to work with General Counsel Holst and a small number of Regents in responding to the request. Regent Moores noted that colleagues from peer institutions may have additional information on responding to Sarbanes-Oxley.

Regent Hopkinson suggested that The Regents' committee structure may contribute to the inability to spend time on meaningful issues; she hoped this issue would be considered by the President in developing his recommendation. President Dynes agreed that the process could be expanded to include the committee structure. Regent Hopkinson added that, in addition to Regents' participating, staff in the Office of the President could provide valuable assistance in understanding how information is disseminated.

Regent Connerly suggested that some Regents may view the Board's activities as irrelevant. He believed that there was a need to revisit the delegations of authority that were given to the President in the 1990s in order to enable the Board to spend more time on policy issues. As a result, the Regents are removed from the transactions that occur at the University. He also requested that the recommendation brought forward by the President not contain any references to the Sarbanes-Oxley Act, in order to avoid any legal exposure to a law that does not apply to the University.

Regent Preuss recognized that Sarbanes-Oxley does not apply to public institutions, but he commented that it reflects the mood of the country. It is incumbent upon boards of directors to obtain information relevant to their institutions' operations. He felt that he should have known that the University was admitting more than the top 12.5 percent of public high school graduates.

Regent Blum pointed out that it would be important to define the type of information the Regents should receive. For example, he would be interested in data on key personnel as well as presentations on different programs on the campuses.

Regent Kozberg believed that there may be some misunderstanding of what the Regents need to know in order to make informed decisions. She agreed with Regent Hopkinson that there was a need to reexamine the committee structure.

Regent Hopkinson observed that, as a result of the committee structure, some committee chairs are more informed about certain issues than other Regents may be. She suggested that the review of Regents' procedures to be undertaken would need to evaluate what the Regents are prepared to delegate. President Dynes agreed with this observation, and he reiterated the need for Regents to participate in the discussion.

Regent Marcus believed that the term "legal exposure" should be changed to "quality exposure," presuming that the Regents should be alerted each time the University's quality, access, or mission is affected adversely. He reported that any request for information that he had made to University personnel had been willingly acted upon. He believed that, given the size of the institution, it would be difficult for the Regents to become more involved in its operations. He found it impossible to believe that the Board had not been informed of any important legal issues. Regent Marcus stressed the need for Regents to become more involved and to devote more time to the institution while acknowledging that the Regents have different issues and concerns. He believed that the implementation of Regent Moores' request would be through an incremental process.

The meeting adjourned at 12:35 p.m.

Attest:

Secretary