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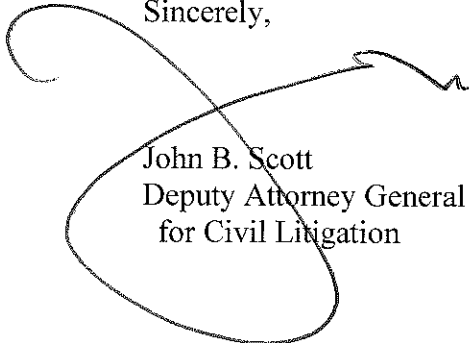
Chairman Paul L. Foster  
U.T. System Board of Regents  
201 West Seventh Street, Suite 820  
Austin, Texas 78701-2901

Chancellor Francisco G. Cigarroa, M.D.  
U.T. System Office of the Chancellor  
601 Colorado Street, Suite 404  
Austin, Texas 78701-2901

Dear Chairman Foster and Chancellor Cigarroa:

In accordance with your request, on behalf of The University of Texas Board of Regents, that the Office of the Attorney General investigate the relationship between the University of Texas School of Law and The University of Texas School of Law Foundation, enclosed please find the Office of the Attorney General's investigation report.

Sincerely,



John B. Scott  
Deputy Attorney General  
for Civil Litigation

JBS/lr



Former United States Supreme Court Justice Louis D. Brandeis said that “sunlight is said to be the best of disinfectants.” The State of Texas has set as policy in its open government laws the ideal that the public should know what its government is doing, especially with regard to money.<sup>1</sup>

Transparency leads to accountability which can be effectuated by the establishment of internal controls and procedures that enable the safeguarding of valuable assets. The University of Texas Law School Foundation (“UTLSF” or “Foundation”) is a valuable asset to the University of Texas Law School (“UTLS” or “Law School”) that was created in order to support the law school. It is clear from this investigation that the Foundation has proceeded under the UTLS Deans’ guidance to expend funds in support of Law School goals. However, the Law School has avoided the disclosure of Foundation payments and disbursements made to Law School employees and this set into motion a lack of transparency that ultimately led to a lack of accountability with regard to compensation at the Law School.

The goal of the forgivable loan program, the second mortgage program, and the housing allowance was to place the law school in a competitive position in the pursuit and retention of law professors. The law school’s successful recruitment and retention of law professors during this time period is without question. The failure to provide the UT System and Regents the full picture of compensation is subject to one of many narratives depending upon the source. Whether this failure was intentional or simply negligence, the Law School’s failure to follow University rules is also without question.<sup>2</sup>

## **I. Brief Background**

The University of Texas System Board of Regents requested the Office of the Attorney General (“OAG”) to conduct an investigation of the issues related to the relationship between the Law School and the Foundation related to compensation and related benefits for employees of the Law School.<sup>3</sup> Specifically, the Regents asked the OAG to investigate the following:

- How the relationship between the Law School and the Foundation functioned in practice;

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<sup>1</sup> Texas Government Code §552.001, §552.022.

<sup>2</sup> ██████████ stated there was no thought to keep the loans from the Board of Regents. He viewed the Board of Regents as proponents of anything that would strengthen UTLS. His main fear was faculty jealousy that might follow any full publication.

<sup>3</sup> Motion Open Session April 11, 2013. (OAGUTLS\_003668) Letter from Foster and Cigarroa to Scott dated June 27, 2014. The OAG has been assured that all relevant documents and witnesses to this investigation that were possessed by any Regent or the System have been produced.

- The processes, procedures and policies for decision-making at the Law School in relation to monies contributed by the Foundation and compliance and oversight with those processes, procedures and policies;
- The flow of Foundation funds to employees of the Law School and the flow of funds to the Law School from the Foundation;
- The use and management by the Law School of funds provided for the support of the Law School by the Foundation; and
- The level of transparency between UT Austin and the Law School leadership regarding the above issues.

As attorneys and not auditors, the OAG did not perform an audit or use audit practices in the course of its investigation. It is our opinion that audits are best left to qualified auditors of the Regents' choosing. The Regents have requested such audits including, requesting that the University of Texas System Audit Office ("UT Audit Office") complete a special review ("UT System Audit Office Report") of the financial management practices of the Law School and the Foundation. Specifically, the UT System Audit Office Review included an audit of:

"... the flow of funds between the Foundation and UT Law to determine whether internal controls related to financial management are sufficient to ensure that donor funds are handled and used to support UT Law in a manner that provides accountability for the use of funds and transparency to the donor and public, and does not circumvent UT Austin, UT System, or State spending rules. The review included all Foundation funds gifted to, reimbursed to, or paid directly on behalf of UT Law between September 2010 and February 2013, which covers Fiscal Years ("FY") 2011, 2012, and half of 2013."

The UT System Audit Office Report was issued on November 5, 2013, and included numerous recommendations for improving transactions between the Foundation and the Law School. Importantly, the Audit Report did not include the Foundation's deferred compensation and forgivable loan programs.<sup>4</sup> Thus, to the best of our knowledge, there has been no audit conducted regarding the Foundation's deferred compensation and forgivable loan programs. The OAG did not conduct any investigation into any potential criminal culpability as that responsibility is best left to the district attorney's office which is vested with the authority to perform that task.

The OAG's investigation consisted of reviewing the Report and Recommendations on The Relationship between the Law School and Foundation,<sup>5</sup> the UT System Audit Office Report dated November 5, 2013 (OAGUTLS\_003670), requesting and reviewing documents from

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<sup>4</sup> Specifically, the Report provided that since the "deferred compensation/forgivable loan arrangements . . . will be further investigated by the Office of the Attorney General of Texas ("OAG"), no additional detailed testing or analysis [will be] performed [by the UT Audit Office] as part of [their Report]. Special Review of Financial Management. (OAGUTLS\_003695)

<sup>5</sup> See Report and Recommendations dated October 15, 2012. (OAGUTLS\_003789)

the Regents, the UT System, the Law School and the Law School Foundation and interviewing a number of individuals involved in the deferred compensation program, forgivable loan program and related payments made directly from the Foundation to Law School employees.<sup>6</sup>

## II. Hiring/Compensation

The UT Law School's process for hiring a new professor is fairly simple. Once a potential hire was identified, the dean would put together terms of an offer. An offer letter setting forth all of the compensation and terms of employment together with acceptance by the prospective professor is forwarded to the University's Provost and Budget office, along with a Prior Approval Request ("PAR") form. This form travels to the Provost and then the terms of compensation and tenure goes to the UT System and to the UT Board of Regents for approval. The process for pay increases for existing professors and deans travels a very similar path depending upon the amount of the increase.<sup>7</sup> Whether a professor was a new hire or was receiving a pay increase, documentation of either should exist in the form of a PAR and should be found in multiple locations.<sup>8</sup>

The amount for any individual forgivable loan was determined by the UTLS dean. Once the amount was determined, the approval of the UTLSF was obtained and the paperwork for the loan prepared and funded. In reviewing the records from UTLSF, 27 forgivable loans were made between December 2003 and November 2010. In only one instance was the complete information relating to the loan/compensation provided to the Provost. The UTLSF provided a complete accounting of all funds to UT. The obligation to report money transfers that constituted compensation to an employee from UTLSF to the UTLS remained with the UTLS Dean and their staff. The UTLSF provided, and we have attached, the listing of all payments made from UTLSF to UT employees and UT-related entities for the years 2004 through 2014.<sup>9</sup>

<sup>6</sup> The persons we spoke to were:



<sup>7</sup> The added step for a "retention" forgivable loan would be to obtain the approval of the Faculty Budget Committee.

<sup>8</sup> All persons involved viewed these forgivable loan transactions as compensation. At no time did anyone believe that the compensation from the loan program related to anything but their school duties.

<sup>9</sup> The Summary of Funding by Year schedule will not have the same totals as the Disbursements to UT Employees and UT Affiliated Organizations as they are not presenting the same information. The Summary of Funding by Year schedule reflects expenditures of the Foundation on an accrual accounting basis and can be tied to the audited financial statements for each year (the management fee must be subtracted from the total here to tie back to the audited financial statements). The schedule of Disbursements to UT Employees and UT Affiliated Organizations reflects disbursements of cash in the year in which they were made and does not reflect the accrual method of accounting. Furthermore, this disbursements schedule only shows payments to UT, UT

### III. How the Relationship Between the Law School and the Law School Foundation Functioned in Practice

#### a. Relevant Foundation History and Structure

The UTLSF is critical to the operation of UTLS, as the Foundation funds up to 20% of the Law School's operational budget. The Foundation is comprised of past graduates of UTLS who support the Foundation with their donated time and monetary gifts.

The Foundation was established in 1952 as an educational foundation to support The University of Texas School of Law.<sup>10</sup> The Foundation is a non-profit corporation organized under the laws of the State of Texas.<sup>11</sup> Specifically, the Foundation is organized and operated in pertinent part to:

Support an 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 [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 . . .<sup>12</sup>

The Foundation is managed by a Board of Trustees ("Foundation Board") and is governed by Bylaws.<sup>13</sup> On November 9, 2001, the Foundation Board adopted official Bylaws. In accordance with the Bylaws, the Officers of the Foundation shall consist of a President, a Vice President, a Secretary and 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. The Board of Trustees' President shall have general executive charge, management, and control of the properties, business, and operations of the Foundation as may be reasonably incident to such responsibilities.<sup>14</sup> The UTLSF President has authority to agree upon and execute all leases, contracts, evidences of indebtedness, and

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employees and UT affiliated organizations so does not include all disbursements made in support of The University of Texas School of Law such as those made to outside vendors. (See **Appendix A.**)

<sup>10</sup> This investigation will focus on aspects of the Foundation's history and governance between the years 2000-2014 that help explain the relationship between the Law School and Foundation. A general overview of the Foundation's history and background can be found in "*Special Review of Financial Management The University of Texas at Austin School of Law Use of Law School Foundation Funds September 2010 through February 2013.*" (OAGUTLS\_003672)

<sup>11</sup> Amended and Restated Bylaws of The University of Texas School of Law Foundation, adopted November 9, 2001, page 1. (OAGUTLS\_000743)

<sup>12</sup> Second Amended and Restated Articles of Incorporation. (OAGUTLS\_000842)

<sup>13</sup> It has been our observation that the Foundation Bylaws have not always been kept up to date. This may have caused issues with a documented approval process at the Foundation.

<sup>14</sup> Amended and Restated Bylaws of The University of Texas School of Law Foundation, adopted November 9, 2001, page 5. (OAGUTLS\_000743)

other obligations in the name of the Corporation [Foundation] subject to the approval of the Board of Trustees.<sup>15</sup>

In addition, according to the Bylaws, the Executive Committee shall be composed of the Board's President, Vice President, who will be its Vice-Chair, the Secretary, the main Committee Chairs, former President and two at-large Trustees. The Executive Committee is entitled to exercise all of the powers and authority of the Board; however, such powers and authority shall be exercised only with regard to matters requiring attention under circumstances which make it impracticable 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 meeting minutes.

The Executive Committee "shall not have authority to act for the Board with regard" to certain issues including, for example, "taking any action prohibited by the Board, . . . selling, leasing, or exchanging all or substantially all of the assets of the Corporation [Foundation], . . . electing or removing Trustees or officers of the Corporation."<sup>16</sup>

**b. Memorandum of Understanding Between the Foundation and UT Law School Regarding Administrative Functions, Including MOU Funding**

The Foundation also operates under a document called the Foundation Approval Manual. This manual outlines for the Foundation the levels of approval required for certain Foundation financial transactions including selling or disposing of property, approving budgets, invoices, signing checks, advances and credit card charges.<sup>17</sup>

In accordance with the Memorandum of Understanding ("MOU") agreement between the Foundation and the University, originally executed in April 1982, the University provides to the Foundation "reasonable space," utilities and telephone service, "[Law School] equipment and personnel."<sup>18</sup> The MOU further provides that the Foundation and Law School will execute an annual written agreement ("Agreement") "specifying the use of University personnel to directly assist in the operation of The Foundation and setting forth a reasonable sum to be paid by the Foundation to the [Law School] for the assistance rendering by such personnel." Thus, under each Agreement, the Foundation is to pay the Law School a reasonable amount in order to reimburse the Law School for providing personnel to support the Foundation.<sup>19</sup>

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<sup>15</sup> Amended and Restated Bylaws of The University of Texas School of Law Foundation, adopted November 9, 2001, page 5. (OAGUTLS\_000743)

<sup>16</sup> Amended and Restated Bylaws of The University of Texas School of Law Foundation, adopted November 9, 2001, page 4. (OAGUTLS\_000743)

<sup>17</sup> Foundation Approval Manual (OAGUTLS\_001202)

<sup>18</sup> Texas Attorney General Opinion MW-373 (1981).

<sup>19</sup> The OAG has been unable to establish that an MOU has been executed annually. According to UT Austin, Foundation Law School Staff and the Foundation, the required annual Agreement was not executed in fiscal years 2009-10 or 2013-14 and has not been executed for the current school year. The OAG has been told that a new annual agreement is in the process of being negotiated. (OAGUTLS\_001236).

Personnel support included one or more Law School employees working full or part-time on Foundation related business (the "Foundation Law School Staff"). The Foundation Law School Staff often included the Dean of the Law School, the Assistant Dean for Financial Affairs and the Assistant Dean for Development and Alumni Affairs. The employees of the Law School were required to comply with Law School and University policies and procedures even while working on Foundation business.<sup>20</sup>

Prior to March of 2014, the Foundation did not have its own administrative staff to handle Foundation related business. After March 2014, the Foundation employed its own administrative staff and no longer uses the Law School personnel for administrative functions.

Prior to March 2014, the Foundation relied on Foundation Law School Staff to perform key Foundation administrative functions including, but not limited to:

- Accounting and financial management for the Foundation;
- Fundraising, including preparation of Foundation related alumni information, newsletters and materials;
- Preparing, managing and retaining Foundation records and reports;
- Event planning;
- Preparing all materials for Foundation Board of Trustees meetings, specifically, preparing the Foundation's annual Budget for adoption by the Board of Trustees;
- Monitoring the Foundation's adopted Budget and recommending changes;
- Preparing and approving all Foundation disbursements and ensuring disbursements were made in accordance with the Foundation Bylaws and Approval Manuals;
- Determining whether UT Law salaries, invoices received, and other transactions should be paid for with Law School or Foundation Funds or a combination of funding sources; and
- Recommending changes to the Foundation's Approval Manual.

While the Law School Staff were performing all administrative functions on behalf of the Foundation, there was ongoing communication between the Board of Trustees, especially the Board's Executive Leadership Team, and Foundation Law School Staff. For example:

- (1) Prior to the Board of Trustees bi-annual Board of Trustee Meetings ("Board Meetings"), Law School staff would prepare the Board of Trustees "Board Books," include all Board of Trustees Budgets and Budget modification documents; and
- (2) Foundation Law School Staff often discussed and sought approval from the Board of Trustees, regarding disbursements of Foundation funds.

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<sup>20</sup> Report and Recommendations on The Relationship between the Law School and Foundation dated October 15, 2012, page 7.

Over the years, some Foundation Trustees were in contact with the Dean of the Law School, University of Texas at Austin President or President's Office and individual employees of the University of Texas at Austin.

Prior to 2004, the Foundation appears to have been paying the costs associated with the salaries and benefits for most of the Dean's staff. After analyzing the situation, the Foundation determined that instead of the Foundation paying for the majority of the Dean's staff, it would reimburse the Law School "for the reasonable cost of services provided to the Foundation," by Foundation Law School staff only.<sup>21</sup>

Prior to 2007, the agreement between the Law School and the Foundation provided that on a periodic basis throughout the year, the Foundation would pay the Law School an amount for use of Foundation Law School Staff based on relevant employees' university salaries and benefits. Thus, amounts the Law School charged to the Foundation might vary depending on the number and type of staff involved in Foundation business. After 2007, the Foundation and Law School decided to stop having the Foundation reimburse the Law School on a periodic basis. Instead, the Foundation and Law School would negotiate and sign an annual Agreement where the Foundation would agree to pay the Law School one annual lump-sum amount. According to Foundation Law School Staff, this change was made to ease monthly record keeping for multiple staff.

In fiscal year 2006-07, under the Agreement the lump-sum amount the Foundation paid to the Law School was \$250,000. Foundation Law School Staff provided no documentation to substantiate the validity of the \$250,000 amount. Put differently, there was no documentation indicating that the cost of the services provided by the Law School to the Foundation totaled \$250,000.. However, during interviews with this office, ██████████ ██████████ asserted that the \$250,000 amount was based on the salaries of staff at that time.

From 2006-07 to 2012-13, the lump sum amount paid by the Foundation to the Law School under their annual Agreements increased from \$250,000 to \$330,000 (see table below). The Foundation Law School Staff provided no documents supporting the increased amounts. However, during interviews with this office, ██████████ ██████████ asserted that the increases were based on relevant salaries and benefits and that the annual contract was negotiated to ensure the Law School was fully reimbursed.<sup>22</sup>

Fiscal Year	Amount of Agreement or MOU
2014-15	No agreement has been executed. Foundation personnel indicate an Agreement is being negotiated between the Regents, Law School and Foundation.

<sup>21</sup> Board Meeting Minutes, November 5, 2004. (OAGUTLS\_001072)

<sup>22</sup> As part of this investigation the OAG did not attempt to recalculate amounts.



2013-14	No agreement was executed this fiscal year.
2012-13	\$330,000
2011-12	\$315,000
2010-11	\$315,000
2009-10	No agreement was located this fiscal year.
2008-09	\$300,000
2007-08	\$275,000
2006-07	\$250,000

By agreement with the University, the Foundation's office is located in the Law School.<sup>23</sup> In addition to the personnel related reimbursements covered by the MOU, the Law School would also charge the Foundation directly for any overhead, including amounts for the Foundation's use of Law School telephones and utilities. Conversations with the [REDACTED] indicate that the Law School has never charged the Foundation an amount of "rent" for office space utilized by Foundation Law School Staff.

**c. Foundation Board of Trustees Meetings and Law School Participation**

In accordance with the Bylaws, the Foundation can have regular Board meetings and special meetings.<sup>24</sup> In practice, the Foundation Board of Trustees met twice per year - once in May and once in November. A quorum of the Board of Trustees is required for consideration of any matters pertaining to the Foundation's purposes.<sup>25</sup> Minutes are taken at each Board of Trustees meeting.

The following individuals, including Law School employees, attend Board of Trustees bi-annual Board meetings and events held in conjunction with those meetings:

- (1) Trustees and Senior Trustees;
- (2) The Law School Dean;
- (3) Associate or Assistant Law School Deans; and
- (4) Foundation Law School Staff.<sup>26</sup>

<sup>23</sup> Amended and Restated Bylaws of The University of Texas School of Law Foundation, adopted November 9, 2001, page 1.

<sup>24</sup> Amended and Restated Bylaws of The University of Texas School of Law Foundation, adopted November 9, 2001, page 2.

<sup>25</sup> Amended and Restated Bylaws of The University of Texas School of Law Foundation, adopted November 9, 2001, page 3. (OAGUTLS\_000749)

<sup>26</sup> The Foundation pays a management fee to the employees for their time. (OAGUTLS\_003677)

At meetings of the Board of Trustees, matters pertaining to the Foundation were considered, with the president presiding.<sup>27</sup>

Generally, Board Meetings are called to order by the President of the Foundation, and, as discussed below, there is a report to the Foundation Board of Trustees by the Dean of the Law School. The Board of Trustees will also hear a report from each of the Board of Trustees' Standing Committees, including the Foundation's Budget, Audit, and Investment Committees, and from other "ad hoc" committees.<sup>28</sup>

In addition, the Board will generally hold an "Executive Session." During the Executive Session, Foundation Law School Staff are generally asked to leave the meeting.

A review of the Board's meeting minutes indicate that the Dean of the Law School typically provided a "Dean's Report" to the Foundation Board of Trustees that included:

- 1) The Law School's efforts regarding faculty recruitment and retention;
- 2) Efforts on behalf of the Law School to meet the Dean's Long-Range Planning goals;<sup>29</sup>
- 3) Number of Law School student applications and student body composition, including efforts to recruit minority students;
- 4) The rank of the Law School;
- 5) Efforts to improve student recruitment or student life, including student employment;
- 6) Tuition amounts charged to in-state and out-of-state students;
- 7) The University or Law School's legislative agenda;
- 8) Amount of public funds received to support the Law School; and
- 9) The Dean's priorities, including for example, ensuring that the University of Texas be among the top law schools in the nation, or increasing the Law School's office space.

During the Dean's Report, Board members, at times, made suggestions to the Dean regarding Law School policy including suggestions regarding tuition increases, and reducing the size of the law school.<sup>30</sup> A review of early minutes (2000-2001) reflect that Board of Trustees

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<sup>27</sup> Amended and Restated Bylaws of The University of Texas School of Law Foundation, adopted November 9, 2001, page 3.

<sup>28</sup> The Bylaws allow for the creation of Standing Committees; the Standing Committees include: Budget Committee, Development Committee, Audit Committee, and Investment Committee. Amended and Restated Bylaws of The University of Texas School of Law Foundation, adopted November 9, 2001, (OAGUTLS\_000750)

<sup>29</sup> Board Meeting Minutes, November 5, 2004. (OAGUTLS\_001064)

<sup>30</sup> At the April 14, 2000, Board of Trustees' Meeting one Trustee suggested to the Dean of the Law School that that the school could increase [in-state] resident [tuition] substantially and still provide a bargain for a superior legal education. A State Senator and Foundation Trustee indicated he would be happy to work with the law school on that. Another Trustee said that "he would like this to be a high priority for the next legislative session." (OAGUTLS\_001200) On May 12, 2001, Dean Powers thanked the Senators, Representative and Foundation Board Members for their work on the tuition increase bill which had been passed by both houses of the Legislature. During the May 2001 Board of Trustees meeting, a Trustee stated that the two main roles of the Foundation Board are (1) effective fundraising, and (2) assisting the Law School politically before the legislature and within the University. (OAGUTLS\_001183)

members were working with the Legislature to pass the Law School's agenda. Board of Trustees members also advocated for the Dean with the Administration of the University.<sup>31</sup>

**d. Foundation Budget Process, Including Flow of Funds to the Law School From the Foundation**

The Foundation's budget process is important to understanding the relationship between the Law School and the Foundation.<sup>32</sup> The Board adopts an annual budget during the Board of Trustee's meeting. UT System has stated that the Foundation does not receive funding from any public funds.<sup>33</sup>

Unlike some other types of compensation provided by the Foundation, the forgivable loan compensation was disbursed directly from the Foundation to the faculty being provided the loan, and therefore, would not have been included in the Law School's accounting system.

**IV. The Processes, Procedures and Policies for Decision-Making at the Law School in Relation to Monies Contributed by the Foundation and Compliance and Oversight With Those Processes, Procedures and Policies**

**a. Dean William C. Powers, Jr.'s Deferred Compensation Agreement**

William C. Powers, Jr. became Dean of the Law School in 2000. Dean Powers attended Foundation meetings in his capacity as Dean of the Law School. At the Foundation's meeting on May 12, 2001, Dean Powers identified for the Foundation a potential need for deferred compensation packages and other financial incentives in order to attract high-quality law school faculty.<sup>34</sup> The approval policies are summarized below.<sup>35</sup>

In late 2000 or early 2001, the Foundation President, David Beck appears to have sent or emailed a "proposal" to UT-Austin<sup>36</sup> suggesting that Dean Powers receive a deferred compensation ("Powers' First Agreement").<sup>37</sup> Although, the OAG requested all documents regarding Powers' First Agreement, copies of the "proposal" that was provided to then-President Larry Faulkner by Mr. Beck were not produced by any entity in response to this investigation. Documents provided by the Foundation show that during the Foundation

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<sup>31</sup> Foundation Board members called Powers on Sager's behalf when Powers was contemplating non-renewal of Sager as Dean of the Law School. (OAGUTLS\_726, 727, 729 -742.)

<sup>32</sup> The OAG asked the Foundation to prepare the attached **Appendix B** to explain that process.

<sup>33</sup> Report and Recommendations on The Relationship between the Law School and Foundation dated October 15, 2012 (OAGUTLS\_003809).

<sup>34</sup> ██████████ stated during an OAG interview that the idea of deferred compensation was not unique to the School of Law and may have been used in other situations at UT Austin prior to its implementation at the Law School.

<sup>35</sup> **Appendix C** is a spreadsheet prepared by the OAG listing forgivable loans.

<sup>36</sup> Letter from Patti Ohlendorf to Dr. Sheldon Ekland-Olson, Executive Vice President and Provost dated January 31, 2001. (OAGUTLS\_003784)

<sup>37</sup> Emails indicate documents were reviewed by Ohlendorf. Precise documents at issue were requested by the OAG but were not available or given to the OAG.

Board's executive session on November 10, 2000, the Foundation approved the concept of deferred compensation for Dean Powers.<sup>38</sup>

The OAG was provided a document that shows that on January 31, 2001, Patricia Ohlendorf, then University of Texas Vice President for Institutional Relations and Legal Affairs, wrote a letter to Dr. Sheldon Ekland-Olson, Executive Vice-President and Provost, regarding Powers' First Agreement.<sup>39</sup> She copied Dr. Faulkner on this letter. Ohlendorf specifically noted that her positive recommendation of the agreement was based on the following facts:

- The August 31, 2005 initial vesting period "seems reasonable," and does not "tie" the law school's hands;
- That "David Beck's letter indicates that such agreements are subject to our [University of Texas at Austin's] approval" and she "believes that is sufficient procedurally from our perspective";
- That while she originally recommended the University of Texas at Austin be a party to the Agreement, she had "re-thought" this position and it is "preferable" the agreement be between "the Law School Foundation and Bill Powers [the Dean]" only;
- She determined that the Agreement did not require "formal approval by the Board of Regents," but that certain Regents with "close ties to the Law School should know of its existence."<sup>40</sup>

On February 7, 2001, Dr. Ekland-Olson sent a letter to Dr. Faulkner stating that Patti Ohlendorf and he had looked over the proposed Powers deferred compensation agreement and believed the agreement was "acceptable."<sup>41</sup> Dr. Olson further stated in this letter that close friends of the Law School on the Board of Regents should be informed of the existence since it "does not seem that the agreement requires regental approval."

On February 16, 2001, Dr. Faulkner sent a letter about the proposed Powers deferred compensation agreement to Dr. Edwin R. Sharpe, Executive Vice Chancellor for Academic Affairs at UT System, in order to "inform [UT] System of its existence."<sup>42</sup> Dr. Faulkner indicated he also wanted to "inform any Board [of Regents] members who are friends of the School of Law . . . [and] could speak to Chairman Loeffler and Regent Oxford."

On May 10, 2001, Dr. Faulkner sent a letter to Mr. David J. Beck, Foundation President indicating that both the University of Texas at Austin and The University of Texas System "support[ed] The University of Texas Law School Foundation's plan to enter into a deferred compensation agreement with William C. Powers, Jr."<sup>43</sup>

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<sup>38</sup> Minutes of Foundation, May 10, 2002. (OAGUTLS\_001149)

<sup>39</sup> Letter from Patti Ohlendorf to Dr. Sheldon Ekland-Olson, Executive Vice President and Provost dated January 31, 2001. (OAGUTLS\_003784)

<sup>40</sup> There is no mention of the Chancellor's approval. (R.D. Burck is Chancellor from June 1, 2000 until June 21, 2002).

<sup>41</sup> Letter from Dr. Sheldon Ekland-Olson to President Larry Faulkner and Patti Ohlendorf dated February 7, 2001. (OAGUTLS\_003785)

<sup>42</sup> Letter from Dr. Larry Faulkner to Dr. Edwin R. Sharpe dated February 16, 2001. (OAGUTLS\_003098)

<sup>43</sup> Letter from Dr. Larry Faulkner to Mr. David J. Beck dated May 10, 2001. (OAGUTLS\_003786)

On May 16, 2001, the Foundation executed a deferred compensation agreement with Dean Powers.<sup>44</sup> This agreement is not a forgivable loan, but was a deferred compensation agreement. The agreement provided in part the following:

- The Foundation would contribute \$65,000 to Dean Powers' "Deferral Account" on February 1, 2001, September 1, 2001, September 1, 2002, September 1, 2003 and September 1, 2004;
- Earnings on Dean Powers' "Deferral Fund" were to be credited to the Deferral Account; and
- Dean Powers was not entitled to a distribution of his Deferral Account until his Retirement Date.<sup>45</sup>

The rationale included in Powers' First Agreement for the deferred compensation was that Dean Powers was currently employed as Dean of the Law School and his services would continue to be of substantial value to the Law School. Thus, the Foundation desired to encourage him to "remain as Dean of the Law School and to devote his best efforts to its affairs through the use of deferred compensation."<sup>46</sup>

Dean Powers was provided a lump sum payment of \$141,292 on September 14, 2005, that he was entitled to under the First Agreement in order "to alleviate the burden of having to shoulder a tax liability for undistributed vested amounts."<sup>47</sup> The First Agreement addressed his eligibility for payment of a lump sum for tax liability incurred as a result of vesting in his deferral account.<sup>48</sup>

On November 11, 2005, the Foundation Board of Trustees held their annual fall meeting. The Board meeting minutes do not reflect a vote of the Board regarding Dean Powers' compensation agreement that terminates as of the date the Foundation no longer has any liability to pay benefits.<sup>49</sup>

This office's investigation did locate a draft First Amendment to Dean Powers' Deferred Compensation Agreement with an effective date of July 29, 2005, but this draft First Amendment was not executed.<sup>50</sup> Despite no new agreement or amendment to the original agreement being executed, on December 14, 2005, Kenneth Roberts authorized Kimberly Biar to pay an additional \$115,000 to Dean Powers. (OAGUTLS\_002975) Roberts states that the Foundation Board, Chancellor Mark Yudof and President Larry Faulkner "have

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<sup>44</sup> May 16, 2001, Powers and Foundation executed Deferred Compensation Agreement. (OAGUTLS\_001501)

<sup>45</sup> Defined by the Deferred Compensation Agreement as sixty-fifth birthday. (OAGUTLS\_001503)

<sup>46</sup> OAGUTLS\_001501.

<sup>47</sup> E-mail from Robin C. Gibbs to Randy Wallace dated March 20, 2014. (OAGUTLS\_002971)

<sup>48</sup> Powers' Deferred Compensation Agreement executed May 16, 2001, page 3, Section 4(d). (OAGUTLS\_001503)

<sup>49</sup> Powers' Deferred Compensation Agreement executed May 16, 2001, page 5, Section 11. (OAGUTLS\_001505)

<sup>50</sup> Draft First Amendment to Dean Powers' Deferred Compensation Agreement. (OAGUTLS\_002976)

approved.”<sup>51</sup> The Board meeting minutes do not reflect a vote of the Board to increase or supplement Dean Powers’ compensation by \$115,000. While [REDACTED] does not recall such approval, a letter executed [REDACTED] does give System approval for the payment. The \$115,000 was paid directly from the Foundation’s accounts to Dean Powers.<sup>52</sup> The funds did not run through the Law School or University accounts although the payment was later ratified by the University’s Board of Regents.<sup>53</sup>

Dean Powers remained Dean of the Law School until 2006 when he became President-Designate for January 2006 and then President on February 1, 2006. A December 5, 2005 letter from Chancellor Yudof to Dean Powers<sup>54</sup> includes the following statement:

“It is further understood that The University of Texas Law School Foundation will make a one-time lump sum payment to you to satisfy its deferred compensation commitment to you for FY 2006.”

On February 9, 2006, there is an entry in the Regent’s docket that approves a payment to President Powers for a “one-time” lump sum payment for fiscal year 2006.<sup>55</sup>

On December 10, 2008, the Foundation and President Powers executed a Second Amendment to the original deferred compensation agreement.<sup>56</sup> This amendment was technically the first amendment since the first amendment was never executed. The Foundation believes the numbering of the amendment to be an error by the Foundation’s attorney, who was not informed that the first amendment was never executed. The amendment reflects changes in tax laws and entitles Powers to the balance in the Deferral Fund in a single payment as of the first day of the calendar month following his retirement date.

## **b. Faculty Loan Programs 2000 to Present - A Timeline of Key Events**

### **i. 2000-2001 Powers’ Faculty Recruitment and Retention Plans**

On November 10, 2000, during his first “Dean’s Report” as the new Dean of the Law School to the Foundation Board of Trustees, Dean Powers indicated that the Law School will “decide where it wants to be in five years.” Powers expressed that he wanted to implement more strategic planning for faculty and noted the importance of doing well in the law school

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<sup>51</sup> Ultimately this payment was treated as part of President Powers compensation package. The decision to increase Dean Powers “deferred salary” was made in the Law School Foundation Board’s Executive Committee although no documentation was noted in the meeting minutes of the November 11, 2005 meeting or the next Board of Trustees meeting. In fact [REDACTED] recollection was that there was no legal obligation to make this payment. The approval of the payment was premised upon it being a payment for deferred compensation. That basis was clearly what Powers and others believed at the time. [REDACTED] recollection and the lack of supporting documentation do not support this belief today.

<sup>52</sup> Check dated 12/15/2005, Foundation to Powers. (OAGUTLS\_002353)

<sup>53</sup> OAGUTLS\_003988.

<sup>54</sup> OAGUTLS\_003787.

<sup>55</sup> OAGUTLS\_003626.

<sup>56</sup> Second Amendment to Deferred Compensation Agreement, executed December 10, 2008. (OAGUTLS\_001500)

rankings. He explained that the “faculty job market is a free-agent type of market and other schools can ‘raid’ faculty by making very high-dollar offers.” For these reasons, Powers stated that he was considering “the possibility of offering deferred compensation packages in order to recruit and retain the very best faculty members.”<sup>57</sup> The genesis for attracting and retaining “star talent” through the use of Foundation funds was Dean Page Keeton. The need for a program to attract and retain talented professors is indisputable. Allowing such programs to develop without the formal approval and oversight of the university, system and regents is destined to be a program that opens itself, at best, to criticism. Proper financial controls and compliance with university policies must be starting points for any such program.

Several months later, during the May 12, 2001, Foundation Board meeting, Dean Powers again reiterated to the Foundation Board the importance of having a highly regarded faculty. He reported that top UT Law School faculty members would be visiting other law schools during the coming academic year. It was at this time that the Trustees asked what could be done to attract this type of top-tier faculty. According to the Foundation’s meeting minutes, Dean Powers responded “that the creation of a “war chest” of funds which could be used to “quickly put together deferred compensation packages and other financial incentives” would be extremely important. Dean Powers noted that he had been able to do this on a limited basis for some of the recent faculty additions and that it “proved critical to the Law School’s success.”<sup>58</sup>

Also in early 2001, Dean Powers appointed a Long-Range Planning Committee and charged it with studying the Law School and propose a plan for improvement.<sup>59</sup> The committee consisted of thirteen faculty members, eight alumni, two students and one staff member. The Long-Range Planning Committee determined its strategic goal should be:

“[T]o be ranked among the top ten law schools in the United States on every reasonable measure of academic achievement within ten years.”

The Long Range Planning Committee also identified five areas to focus on: faculty hiring and retention; student life; curriculum; revenue; and alumni affairs.<sup>60</sup>

Regarding faculty hiring and retention, Dean Powers believed that for the law school to “emerge as one of the nation’s top ten law schools” the “most important task may be to build a better faculty” through lateral hire of “stars” from other Law Schools that were “peer or better” than the UT Law School, particularly in the core scholarship areas....<sup>61</sup>

In UT Law Magazine, Dean Powers wrote:

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<sup>57</sup> Minutes of the Foundation, November 10, 2000. (OAGUTLS\_001193)

<sup>58</sup> Minutes of the Foundation, May 11-12, 2001. (OAGUTLS\_001190)

<sup>59</sup> <http://www.utexas.edu/law/wp/wp-content/uploads/magazine/archive/UTLAWspring03.pdf>.

<sup>60</sup> Investigation Exhibits\29 - UT Law Magazine, Opening Doors.pdf. (P. 43)

<sup>61</sup> Investigation Exhibits\29 - UT Law Magazine, Opening Doors.pdf. (P. 43)

One area for improvement is that only a handful of faculty enjoy nearly universal recognition and high regard among legal academics. Others enjoy that high stature within their fields, but not outside their fields. Younger faculty may attain this stature, but that is hard to predict. We must retain these younger scholars as their stars rise. We also need to add more faculty who are clearly of the caliber of our current stars.

Another area for improvement is that our strengths in traditional legal scholarship often do not run to interdisciplinary work, even though such work is increasingly important to the legal academy and is intrinsically valuable. For these reasons, we need to make a concerted effort to develop interdisciplinary scholarship. Michigan, Virginia, and Berkeley—schools with which we compete—all have strong profiles as centers of interdisciplinary scholarship. We especially need to expand our presence in law and economics, business, history, philosophy, and political science.

With these considerations in mind, we recommended that in the next five years we should make at least five lateral appointments of clear stars from peer or better institutions. The scholars needn't be senior, but there must be a near-consensus view, inside and outside the institution, about their quality. Five appointments like this in five years would be transformative. Moreover, we should make Texas a major center of interdisciplinary scholarship in at least two or three areas that would be on a par with our leading areas of strength in traditional scholarship. And we should explore prospects for joint appointments of distinguished scholars with the top twenty academic units at UT, such as economics, business, government, history, Latin American studies, philosophy, psychology, and sociology.<sup>62</sup>

It is important to note that, around the same time the UTLS wanted to build its faculty in certain core areas, other elite law schools were undertaking their own efforts to expand their "star" faculty. Eventually, the limited supply of subjectively "star" faculty in certain areas of law, combined with the intense recruiting efforts of multiple elite law schools, resulted in the need – or at least perceived need – on the part of many law schools to offer relatively expensive faculty compensation packages in order to attract or retain "star" talent. Because many of the elite law schools providing compensation packages are private institutions, data regarding their compensation programs is not publicly available. What is clear is that the University of Texas Law School was clearly competing to recruit and retain star faculty against private law schools.

According to our interviews with Law School Staff and professors, the types of competitive compensation packages might include:

- Significant base salary;
- Tenure;
- Deferred Compensation or Forgivable Loans;
- Housing arrangements,<sup>63</sup>

<sup>62</sup> UT Law Magazine, *Opening Doors*, Spring 2003.

<sup>63</sup> November 5, 2004 Board of Trustees Minutes (OAGUTLS\_001074) In an OAG interview with [REDACTED] he recalled second mortgages and housing arrangements



- Housing allowances;
- Relocation assistance;
- Free college tuition for the faculties children's tuition or tuition matching;
- Summer and other stipends;
- Research support;
- Request to teach only some semesters or number of classes;
- Providing a spouse with an employment opportunity; or
- Other items of value such as football stadium season tickets.

During the November 9, 2001 Law School Foundation Board of Trustees meeting, Dean Powers reported that to make lateral star faculty hires and maintain existing faculty "requires money." He further stated that, "It is critically important to build up faculty excellence funds to recruit and guard against raiding." One Foundation Board of Trustees member suggested seeking law firm support for assisting with faculty recruitment and retention methods. Another Foundation Board of Trustees member suggested that he had "deferred compensation plan administrators who will be willing to work with the Law School to set up deferred packages for faculty at no cost to the Law School."<sup>64</sup> What is clear from our investigation is that these Foundation ideas were pursued.

## ii. Forgivable Loans 2003 to 2005 During the Powers Era

On September 9, 2003, Dean Powers wrote a letter to Law School Foundation Board Chairman David Beck requesting that the Board of Trustees or Executive Committee of the Board of Trustees approve a \$100,000 loan to Mitch Berman.<sup>65</sup> Berman was identified as one of the Law School's "very brightest" faculty who was at risk of leaving the Law School for the University of Chicago. Powers proposed that Mr. Berman receive a \$100,000 "loan" forgivable on an annual pro-rata basis over a seven year period from the Foundation. The purpose of the loan was to alleviate Berman's concerns over housing. Powers notes in the letter that "we have money in unendowed funds, specifically in the Long Fund and the Bracewell & Patterson Fund" and this was the "sort of "war chest" we need to attract and retain faculty."<sup>66</sup>

On September 22, 2003, members of the Board of Trustees voted in favor of the transaction with Mitch Berman.<sup>67</sup> Powers again wrote to David Beck on November 11, 2003, and outlined key terms of the transaction.<sup>68</sup> The legal documents between the Foundation and Berman were executed on December 19, 2003.<sup>69</sup>

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through the Law School existing under his tenure. [REDACTED] does not recall a forgivable loan program from the Foundation as existing under his tenure.

<sup>64</sup> Minutes of the Trustees, November 9, 2001. (OAGUTLS\_001179)

<sup>65</sup> Powers letter to Beck dated September 9, 2003. (OAGUTLS\_001259)

<sup>66</sup> Powers letter to Beck dated September 9, 2003. (OAGUTLS\_001259)

<sup>67</sup> Memo from Atlas to Beck dated September 22, 2003. (OAGUTLS\_001798)

<sup>68</sup> Powers letter to Beck dated November 11, 2003. (OAGUTLS\_001797)

<sup>69</sup> Berman Letter Agreement dated December 19, 2003. (OAGUTLS\_001313)

At least by December 2003, the law firm of Jenkens & Gilchrist and the Foundation were developing deferred compensation, promissory notes or loan arrangements for the Foundation related to Powers' recruiting and retention efforts. The law firm drafted promissory notes and letter agreements. They also performed legal research related to the program.<sup>70</sup> Law School staff indicated that it was determined that these programs should be run through the Foundation-- not the Law School--because it was not clear under University policy or state law that the Law School could enter into loans directly with faculty.<sup>71</sup> In our interviews with [REDACTED] she states she was unaware of the loans and did not approve the program. Neither the Foundation or Law School provided significant records regarding legal or tax analyses related to the program and its resulting tax or legal liability created on behalf of the State or Law School employees.

During 2004 and 2005, there were two other transactions between the Foundation and law school faculty that occurred under Powers' tenure as Dean of the Law School. One was with Professor Bernie Black and the other with Professor Ernie Young. The Law School and the Foundation could not provide documentation of their communication between one another regarding a request for approval for Black's transaction.<sup>72</sup> A letter dated November 9, 2005, from President Powers to Foundation Board Chairman Beck requesting a financial package for Professor Young was produced to this office.<sup>73</sup> In this letter, Powers requested Foundation approval for Young to receive what was described by Powers as a "forgivable loan" and a "housing allowance." He states the source to be the "Susman Godfrey money."<sup>74</sup> The Foundation Board approved the transaction with Young.<sup>75</sup>

At the November 5, 2004, Foundation Board of Trustees meeting, a Trustee asked Dean Powers "if there was any resentment among the faculty to the recruitment of "stars" at higher salaries . . ." which would have included Berman and Black. Powers responded that it was "something he watched closely." Powers noted that Law School tuition increases permitted salary increases for the faculty generally, which helps with morale overall. The Dean said he has received some criticism from the faculty, but that it was a manageable situation.<sup>76</sup>

Interviews of [REDACTED] and [REDACTED] both of whom served on the Faculty Budget Committee during the Powers forgivable loans era, revealed that the Committee was made aware that the stated compensation for Professors Berman, Black, and Young did not reveal their total compensation. The details as to the amount of this "off-the-books" compensation was neither requested by nor provided to the Faculty Budget

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<sup>70</sup> Jenkens & Gilchrist letter to Powers dated December 3, 2003. (OAGUTLS\_002410)

<sup>71</sup> Documentation obtained during the OAG's investigation confirms that the UT System had knowledge of the existence of the Law School's forgivable loan program. In at least one instance, it is clear that the UT System knew the details of one loan. However, the title "loan" may have been a part of the reason that the UT System had difficulty accounting for this unique method of compensation. Whatever the reason, UT-Austin did not fulfill its obligation under university Rules to report "all" of a professor's compensation. The failure of the controls in place also extended to the Provost's Office, the System, and the Regents. Interviews with [REDACTED]

<sup>72</sup> May 14, 2004 Foundation Meeting Minutes reflect that Black had been recruited from Stanford. (OAGUTLS\_001087).

<sup>73</sup> November 9, 2005 letter from Powers to Beck. (OAGUTLS\_001261)

<sup>74</sup> November 9, 2005 letter from Powers to Beck. (OAGUTLS\_001261)

<sup>75</sup> Foundation Board Minutes dated November 11, 2005. (OAGUTLS\_001049)

<sup>76</sup> Foundation Board Minutes dated November 5, 2004. (OAGUTLS\_001080)

Committee. This version of events is consistent with the description provided by [REDACTED]

### iii. Faculty Loans During the Goode Era

Three loans were executed during Dean Steve Goode's interim term as Dean of the Law School. The fact of the existence of a forgivable loan to Derek Jinks was identified in a memorandum dated April 26, 2006 from Dean Goode to then Provost, Sheldon Ekland-Olson.<sup>78</sup> Two other loans were executed during Dean Goode's tenure with both going to Professor Bill Sage.<sup>79</sup> The first of these loans was disclosed to the Provost in accordance with UT policy.<sup>80</sup>

[REDACTED] confirmed that none of the details of any of the three loans were provided to the Faculty Budget Committee.<sup>81</sup> Goode extended the policy of not sharing Foundation-based compensation with the Faculty Budget Committee when he became the Interim Dean.<sup>82</sup>

### iv. Faculty Forgivable Loans 2006 to 2010 During the Sager Era

The greatest expansion of the faculty forgivable loan program occurred during Dean Larry Sager's tenure as Dean after Powers' ascension to President of the University of Texas at Austin in 2006. After Larry Sager became Dean of the Law School in September of 2006, 20 forgivable loan transactions were executed between December of 2006 and August of 2010.<sup>83</sup> Based on our interviews with current and former Law School faculty, these loans did in fact recruit and retain high-quality faculty, as was the stated goal of the program.

[REDACTED] indicated that the loan program was evolving from one where the information about the loans was not reported – to one of more transparency. However, while Dean Goode did send some information to UT System, it was not until the tenure of Dean Lindquist that the details of the forgivable loan program were systematically provided to the Law School Faculty Budget Committee, UT Austin, or UT System in accordance with University policies and procedures. The University's policy provided:

Responsibility for preparing recommendations for salary rates, promotion, tenure, renewal of appointment, or non-renewal of appointment rests with the budget council (or other departmental governing body) and the department chair. Administrative officers at each level shall give full consideration to recommendations from the level below. In the case where a recommendation is modified or disapproved the action should normally be taken only after consultation with the level below. All recommendations shall be forwarded to the President for final evaluation and

<sup>77</sup> [REDACTED] statement.

<sup>78</sup> OAGUTLS-001872.

<sup>79</sup> OAGUTLS-001336-001341 and OAGUTLS-001348-001352.

<sup>80</sup> Letter Goode to Sage dated June 14, 2006. (OAGUTLS\_004813-16)

<sup>81</sup> [REDACTED] did confirm that the Committee was notified that other compensation was being provided to these professors by Powers.

<sup>82</sup> [REDACTED] interview.

<sup>83</sup> A spreadsheet of all of these transactions is attached as Appendix C.

decision. The President's decisions with regard to salary advancement, promotion in rank, the award of tenure, and renewal of appointment are subject to confirmation by the Chancellor of The University of Texas System and the Board of Regents. No commitment regarding salary rates, promotion, tenure, or renewal of appointment may be made without the approval of the President and subsequent confirmation by the Chancellor of the University System and the Board of Regents.<sup>84</sup>

The forgivable loan program possibly became known to the faculty through the Loftus Carson litigation, faculty talking amongst themselves and Dean Sager sharing some information with a select subset of the Law School Faculty Budget Committee towards the end of his tenure.

Further, one must distinguish between general knowledge that a forgivable loan program existed and knowledge of the terms of any of the forgivable loans. Further still, one must distinguish between knowledge of the forgivable loan program and the proper execution of the procedures put in place to foster transparency not just within the University, but with the public as well.

There can be little disagreement that the UT System knew as early as 2006 of the existence of the forgivable loan program at the UTLS.<sup>85</sup> ██████ admitted that the UTLS did not provide information on the amount of the forgivable loans to the Provost or UT-Austin Budget staff. He stated the purpose was to avoid publication and potential faculty problems as a result of the information becoming public. Interestingly, ██████ did not feel there was ever any intent to keep the information either from the UT administration, UT System, or the Regents, as he felt they had knowledge and supported the goals of the program.

██████ stated his belief that all donated funds essentially belonged the UTLS and that some funds were simply managed by the UTLSF, while others were managed by UTIMCO. As dean, Sager made wide use of UTLSF funds to fulfill budgeted needs of the law school. He was given widespread latitude by UTLSF for determining what was a "need" of the UTLS. The CFO for UTLS was also the CFO for the UTLSF. The definition of proper expenditure was in large part left to the discretion of the Dean. This produced predictable control problems and a lack of the transparency owed to the public.

One example of lack of controls is seen in a Sager and Dan Rodriguez interaction. At some point, Mr. Rodriguez experienced an emergency. He reached out to Dean Sager for a resolution. Dean Sager acted unilaterally and approved the direct payment of \$25,000 in lieu of another portion of his compensation (a tuition stipend of up to \$25,000). This payment is not recorded in any University PAR or request to the University System. Nor was this request forwarded to the Foundation or ever approved by the Foundation.<sup>86</sup>

### **c. Dean Larry Sager's Compensation**

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<sup>84</sup> OAGUTLS\_003159.

<sup>85</sup> May 17, 2006 Email from Randy Wallace to Kimberly Biar (OAGUTLS-002337)

<sup>86</sup> MOU between Sager and Rodriguez OAGUTLS\_002568.

Larry Sager came to the Law School as a law professor in 2002. He is the Alice Jane Drysdale Sheffield Regent Chair in Law. He is compensated for that tenured chair position.

At the November 8, 2002 Board Meeting, the Foundation approved in executive session two requests under the faculty mortgage program for Sager and ██████████ Professor Jane Cohen.<sup>87</sup> The Foundation's records indicate that the mortgage related to the loan to Sager was not timely executed and was then personally guaranteed by a Foundation Board Member.<sup>88</sup> ██████████ denies any knowledge of these facts.

It is important to note that mortgage loan programs and housing allowances were not new or uncommon programs at the Law School even prior to the beginning of deferred compensation or forgivable loan programs. Finances at the Law School were described as tight.<sup>89</sup>

Sager was made Dean of the Law School on September 1, 2006.<sup>90</sup> He had regular interaction with the Foundation in his role as Dean, but his interaction began in early 2006, as "Dean Designate."<sup>91</sup>

It is clear from Foundation records that Sager wanted to -- and in fact did -- increase the use of forgivable loans to recruit and retain faculty.<sup>92</sup> Dean Sager felt the Law School was not spending enough per student and that it was important to maintain an appropriate student to faculty ratio along with increasing top faculty.<sup>93</sup> Sager was also concerned with space issues at the Law School. "By traditional guidelines, the Law School is in a 40,000 square foot deficit on space. The dean said that if we continue to grow our faculty, the Law School will be 65,000 square feet shy."<sup>94</sup>

In December 2008, Sager and Powers met regarding compensation at the Law School.<sup>95</sup> They met again in January of 2009. During that meeting Powers says he told Sager that salaries were frozen and no raises were to be provided, including any raise for Sager.<sup>96</sup>

On May 1, 2009, the Foundation and Sager executed an agreement whereby Sager received a \$500,000 forgivable loan.<sup>97</sup> Foundation records show the agreement was being negotiated

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<sup>87</sup> Foundation Board Minutes dated November 8, 2002. (OAGUTLS\_001134)

<sup>88</sup> Board Meeting Minutes May 9, 2003. (OAGUTLS\_001117)

<sup>89</sup> ██████████ interviews.

<sup>90</sup> ██████████ noted that he had concerns with Dean Sager's selection within two months because of Dean Sager's appointment of ██████████ Professor Cohen, to the Appointments Committee. Their relationship degraded through the years ██████████

<sup>91</sup> Board Meeting Minutes May 12, 2006. (OAGUTLS\_001026)

<sup>92</sup> Board Meeting Minutes November 3, 2006 (OAGUTLS\_001002) and May 9, 2008 (OAGUTLS\_000942).

<sup>93</sup> Board Meeting Minutes November 3, 2006, May 11, 2007 (OAGUTLS\_000989) and November 9, 2007 (OAGUTLS\_000953).

<sup>94</sup> Board Meeting Minutes May 11, 2007 and November 7, 2008. (OAGUTLS\_000934)

<sup>95</sup> Brazzil email to Sager December 5, 2008. (OAGUTLS\_000451)

<sup>96</sup> Email Sager to Brazzil January 27, 2009. (OAGUTLS\_457)

<sup>97</sup> ██████████ is adamant that President Powers knew of the UTLSF's \$500,000 loan. ██████████ believes that former UTLSF Board Member Bob Grable obtained a verbal approval from President Powers before the loan was approved by the UTLSF. Both ██████████ denied any recollection of such a conversation. ██████████

between attorneys at Vinson and Elkins L.L.P. and Sager as early as of March 2009.<sup>98</sup> A report by the UT System's General Counsel previously found that Sager approached the Foundation president to request the supplemental \$500,000 payment for himself.<sup>99</sup> [REDACTED] denies that the loan was sought after President Powers rejected [REDACTED] for a pay increase.<sup>100</sup> [REDACTED] recollection of the facts are not consistent with the emails and other evidence obtained during the course of this Office's investigation. Former UTLSF Board Member [REDACTED] told this office that he was never informed that President Powers had rejected Dean Sager's request for a pay raise.

[REDACTED] was entitled to the \$500,000 forgivable loan because of his success as a UTLS Dean. He believed that his efforts had yielded a stronger faculty and better reputation for the law school. [REDACTED] noted that he was responsible for raising over \$80 million for the law school. Further, [REDACTED] admitted that the loan was not granted in order to retain him. [REDACTED] believes that both [REDACTED] informed [REDACTED] of the loan at the time it was made. This latter claim was something that neither [REDACTED] independently substantiated or could recall.

It appears that, at this time, there was not clarity regarding whether or not compensation to Sager from the Foundation required approval from the University's Administration.<sup>101</sup> Despite these questions, there is no definitive evidence that Sager's compensation arrangement with the Foundation was formally approved by his employer—the University of Texas at Austin—prior to contract execution. There is also conflicting information as to whether or not it was known by his superiors prior to contract execution on May 1, 2009. Later, on June 27, 2009, President Powers was informed about the existence of a five-year deferred compensation loan for an amount of \$100,000 per year via an email from Associate Vice President and Budget Director Mary Knight. However, [REDACTED]<sup>102</sup>

Tension regarding the level of disclosure by the UTLS is clear by looking in two areas. First, there was an effort by the Regents and UT management to be informed as to the University's highest paid employees. This is commonly referred to as the "Top Ten List." This obligation was in addition to all other policies and procedures and clearly did not replace all other UT requirements. From 2007 to 2010, there is a large amount of documentation regarding an effort by the University to compile a reporting of top ten compensated employees annually by component institutions. There was clearly discussion within the UTLS and Foundation regarding the disclosure and handling of the Foundation loans and deferred compensation

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[REDACTED] a member of the UTLSF Executive Committee at the time of the loan, remembers disagreeing with such a loan absent Powers' approval. There is no documentation that was provided to show that this loan was ever approved by UT administration or the Board of Regents. No PAR documentation was done for this loan.

<sup>98</sup> Email Burke to Biar dated March 2, 2009. (OAGUTLS\_1297) Email Grable to Newton dated March 4, 2009. (OAGUTLS\_1296) ("I am confident that UT will be required to approve this agreement.")

<sup>99</sup> Report and Recommendations on The Relationship between the Law School and Foundation dated October 15, 2012, page 22. (OAGUTLS\_003789)

<sup>100</sup> [REDACTED] interview.

<sup>101</sup> Email from Grable to Newton dated March 4, 2009. (OAGUTLS\_1296)

<sup>102</sup> Email Knight to Powers dated June 27, 2009. Powers replies to the email "Thanks." (OAGUTLS\_203)

agreements as it relates to this list.<sup>103</sup> There is also discussion between President Powers, Ohlendorf and Budget Director Knight about the Foundation providing information related to Foundation payments for this list and an IRS audit request.<sup>104</sup> Second, there were ongoing legal efforts by the Foundation surrounding litigation involving the Foundation, the Law School and a law school professor to limit disclosure of Foundation information related to the loans.<sup>105</sup>

It is clear from the Foundation Board Meeting minutes that Dean Sager knew as early as 2007 that the Foundation's faculty loans and their full disclosure were an issue of concern amongst the law school faculty. Further, the minutes indicate that Dean Sager supported a lack of transparency: "The faculty does not know details of loans, for example, but they do know that loans exist."<sup>106</sup> It is also clear that Knight, Ohlendorf and Powers thought that the University should be informed, and conveyed this demand to UTLS.

According to the Foundation staff and its records, Sager was also provided a Foundation credit card.<sup>107</sup> The Foundation became concerned that Dean Sager was charging items that were not well understood by the Foundation. The Law School Staff who worked for the Foundation, but reported directly to Sager, were responsible for making the disbursements to pay the Foundation's credit card bills.<sup>108</sup> According to [REDACTED] the amount that Sager was charging to the Foundation's credit cards appeared excessive to some Foundation board members and, as a result, the Foundation made changes to its credit card policies that remain in effect to date. The current Dean does not have a Foundation credit card.

Sager and other Law School personnel were also reimbursed by the Foundation for certain expenditures. This office did not audit those expenditures, but expenditures reimbursed by the Foundation included items such as conferences, travel, food, parking, computer equipment, club dues and storage unit fees.<sup>109</sup> Unless done by the Foundation, these reimbursements are supposed to comply with University expenditure rules and regulations, but without a proper audit, it cannot be confirmed that said reimbursements were, in fact, in compliance with University policies and procedures.

#### **d. Mullinex Settlement**

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<sup>103</sup> Email Biar to Newton dated December 4, 2009. (OAGUTLS\_1291)

<sup>104</sup> Chronology- Law School Foundation E-mails from/to Mary Knight. (OAGUTLS\_003732)

<sup>105</sup> Loftus C. Carson, II v. University of Texas at Austin, et al., U.S. District Court, Western District of Texas, Civil Action No. A-05-CA-437-SS. (OAGUTLS\_001308)

<sup>106</sup> Board Meeting Minutes November 9, 2007 and May 8, 2009 (OAGUTLS\_000925).

<sup>107</sup> Interviews with [REDACTED] and records provided by Foundation. Deans prior to and after Sager were not issued a Foundation credit card.

<sup>108</sup> The May 12, 2006, minutes indicate that a Special Committee was formed by the Foundation Board of Trustees to help ensure that the Board of Trustees was properly "discharging its fiduciary duties." The Special Committee was appointed because the Foundation had encountered "problems" related to the "inherent conflict of interest between the staff and Dean, whose primary responsibility is to the Law School, on the one hand, and the Foundation Trustees, whose primary responsibility is the prudent management of the funds interested to the Trustees." (OAGUTLS\_001026)

<sup>109</sup> For the itemized listing see **Appendix A**.

Law School Professor Linda Mullenix, through her attorneys, sent a demand letter to Dean Sager at the Law School on July 13, 2010. Mullenix asserted that the Law School was not in compliance with the Equal Pay Act with regard to her compensation.

In contravention of the University's standard procedures governing lawsuit demand letters related to employment matters, Dean Sager did not immediately inform the General Counsel's Office. Instead, Dean Sager approached the Foundation first and sought legal advice from Vinson and Elkins. [REDACTED] UT-Austin General Counsel Patricia Ohlendorf in-house attorneys for the Law School were not informed of the existence of Professor Mullenix's demand letter according to normal practice. [REDACTED] says she first learned of the issues with Mullenix when she was called to Sager's office nearly a month later on August 5, 2010. During this meeting, Ohlendorf was given a copy of the demand letter and typewritten notes regarding the case. [REDACTED] that Sager wished for Vinson and Elkins L.L.P. to represent the University and she processed an outside counsel contract to this effect.<sup>110</sup>

In the analysis of whether to settle this matter, Sager indicated that the matter should be settled, at least in part, because he believed if the full picture of the Law School's compensation package were to become public it would be very damaging to the Law School and the University. Importantly, Dean Sager himself had received a \$500,000 forgivable loan that would have been publically disclosed, although Sager specifically denies this was a concern. The typed written notes state in part the following:

...whether or not she ultimately prevailed, would be very damaging to the Law School and to the University. To the Law School, because of the specter of gender discrimination, the personal attacks that would accompany litigation of this sort and the hostile and extensive revelation of the full picture of faulty compensation, at a time when education is a natural target of popular anger over costs, and at a time when the faculty is just recovering from salary-based unrest...

The settlement with Professor Mullenix included a forgivable loan from the Foundation,<sup>111</sup> a state-funded permanent pay increase and reimbursement of attorney's fees. According to the University of Texas System's then-General Counsel, the settlement was improperly signed by Ohlendorf.<sup>112</sup> Additionally, the settlement did not follow required internal approval processes for settlements.<sup>113</sup> The resulting forgivable loan is distinguishable from the others

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<sup>110</sup> OCC# 2010-721-0241. It appears the invoices for this outside counsel contract, on Ohlendorf's approval, were paid by the Foundation and not the University. The invoices were not all in compliance with the terms of the executed contract.

<sup>111</sup> [REDACTED] recalled his strong opposition to funding a settlement of a purely legal claim. [REDACTED] recalled that the Foundation was willing to fund the settlement if the law school did not have sufficient funding within its budget for a settlement.

<sup>112</sup> Frederick email to Hall dated February 8, 2013. [REDACTED] that UT System General Counsel Barry Burgdorf knew she was working on the settlement agreement. (OAGUTLS\_000124)

<sup>113</sup> Regents Rules and Regulations Number 10501 §2.9. (OAGUTLS\_003130). [REDACTED] advising Barry Burgdorf of the matter and the potential settlement.



in that it is the only Foundation forgivable loan that is a part of a settlement of a legal dispute.<sup>114</sup>

#### **e. Lindquist Evaluation**

During the term of Interim Dean Stephanie Lindquist, all of the applicable compensation from forgivable loans was evaluated by the Faculty Budget Committee. This effort resolved the issue of compensation clarity at the UTLS and allowed for payroll decisions to be made analyzing total compensation of the employee.

### **V. Transparency and Accountability**

All persons interviewed for this investigation considered the forgivable loans to be employee compensation. During this same time period, University rules required that all compensation be reported to the Provost. Critical to the proper decision making process relating to how much of the public's money should be paid to professors is the need to know the professors' entire compensation package. Absent knowledge of the professors' entire compensation package, it is impossible for management to make informed decisions about how to spend the public's money. Transparency is necessary so that the University is accountable for the public money entrusted to it by the Legislature and, ultimately, Texas taxpayers.

It appears that nondisclosure by the UTLS reached its peak during the Sager Administration. Dean Sager denied the full picture of compensation to the Law School Faculty Budget committee. As a result, under Dean Sager's leadership the Law School provided incorrect or incomplete responses to requests for salary information by both University management and the public pursuant to the Texas Public Information Act. To settle a lawsuit, both Foundation and public funds were expended in order to paper over a climate of non-disclosure. Actions related to this settlement created potential legal liabilities for the State. In addition, state funds were utilized, in part, to pay for legal liabilities being generated by the loan programs.

In an interview ██████████ characterized the faculty compensation issues as "circumstances that undermine" the success he has achieved at the law school ██████ says he became a Dean at a time when nontransparency regarding faculty compensation was the norm at UT and other law schools. ██████████ says, "transparency began rolling in" and "the transition between transparency and nontransparency" created problems.<sup>115</sup>

One clear example of the lack of transparency related to the March 2011 anonymous complaint regarding Law School compensation sent to the Chancellor.<sup>116</sup> This letter says it is from "several female faculty members at the school of law." The letter asks that he "investigate two hidden salary systems that our dean has used during the last five years." In the course of internally reviewing this complaint, ██████████ that she met with Dean Sager and was shown, but not provided, what is recalled by her as a list of

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<sup>114</sup> Nothing in the record revealed a basis that this loan was in anyway based upon merit.

<sup>115</sup> Investigation Exhibits\60 - UT Law School Dean Resigns Immediately in Wake of Faculty Division Over Compensation.pdf.

<sup>116</sup> Unsigned letter to Chancellor Cigarroa stamped March 17, 2011. (OAGUTLS\_001)

forgivable loans—but that list did not include Dean Sager’s own personal loan.<sup>117</sup> While this office has been unable to confirm [REDACTED] claim, we did confirm via [REDACTED] that the Law School maintained two forgiveable loan lists—one that contained Dean Sager’s \$500,000 forgivable loan and one that excluded that particular loan.<sup>118</sup> Additionally, the University has acknowledged that Professor Mullenix’s complaint letter was not produced as required in response to Public Information Act requests.<sup>119</sup>

It is also clear to this office that requests for information to the University were not properly responded to due to a lack of proper record keeping. For example, during the course of this investigation, the OAG inquired of [REDACTED] through his attorney, if he had any emails from [REDACTED]. The request was made to [REDACTED] because this the Law School did not possess [REDACTED] emails and therefore could not produce them. [REDACTED] through his attorney, revealed that he had maintained over 71,000 emails that he compiled while [REDACTED]—and explained that those emails were stored in his private email accounts. This office immediately informed the Law School of this fact and its obligation to retrieve any state records for proper retention.<sup>120</sup> Subsequently, this office learned that approximately 35,000 emails from [REDACTED] had been recovered and were in the custody of the UT General Counsel’s Office.

Lastly, the confusion regarding the legal representation related to the deferred compensation and loan programs created confusion and a lack of sound legal advice. At times, the Foundation was unsure who the attorneys they were talking to represented.<sup>121</sup> At other times, there was little or no legal representation of the University by its in-house counsel. The Mullenix legal claim is a prime example of this lack of process to know when to include the UT General Counsel’s Office.

There are several on-going efforts to review and expand documentation on the relationship between the Foundation and the Law School including drafting a new MOU and new policies and procedures.<sup>122</sup> It is important that these steps be completed. In addition, it should be the policy of the Foundation that information regarding compensation or reimbursements to public employees be provided to the University for disclosure as required by Texas law.<sup>123</sup>

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<sup>117</sup> Interview with [REDACTED]

<sup>118</sup> Interviews with [REDACTED]

<sup>119</sup> Email Ohlendort to Sharporn dated May 30, 2013. (OAGUTLS\_000360)

<sup>120</sup> Mattax email to Farnsworth dated October 10, 2014.

<sup>121</sup> Grable to Newton email dated March 4, 2009 (OAGUTLS\_001296); email Sager to Reasoner, Newton and Grable dated September 1, 2010 (OAGUTLS\_001266); and Vinson & Elkins 2010-2011 invoices. (OAGUTLS\_002649)

<sup>122</sup> Provosts Leslie and Monti were charged in August of 2010 with working on Foundation-University policies and procedures to assure transparency per Powers. This office could not confirm progress on these policies.

<sup>123</sup> The investigation included a review of the documents identified in the spreadsheet attached as **Appendix D**. We have provided the entirety of the documents back to the Regents as said documents originate from one of its component universities. We have not redacted any information within said documents but caution the Regents that some of the documents do in fact contain information that is confidential and should be redacted before any disclosure is made.