

MINUTES OF THE REGULAR MEETING

of the

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

Madison, Wisconsin

Held in Room 1820 Van Hise Hall

Friday, November 6, 1998

9:00 a.m.

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- President Orr presiding -

PRESENT: Regents Barry, Benson, Boyle, Brandes, DeBraska, DeSimone,
Gottschalk, Hempel, James, MacNeil, Marcovich, Mohs, Olivieri, Orr,
Randall, Smith, and Staszak

ABSENT: None

APPROVAL OF MINUTES

The minutes of the meeting of the Board of Regents held on October 9, 1998,
were approved as distributed.

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REPORT OF THE PRESIDENT OF THE BOARD

**Report on the October 23, 1998, meeting of the Higher Educational Aids
Board**

A written report of the October 23rd meeting of the Higher Educational Aids
Board was provided. Regent Randall, the Regent Representative to HEAB, was pleased
to note that government funding had not been reduced.

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Report on the November 5, 1998, meeting of the Hospital Authority Board

A written report of the November 5th Authority Board meeting was provided. Regent James noted, beginning in February, the Authority Board will meet on the Wednesday afternoon preceding Regent meetings, rather than Thursday morning.

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Resolution of Commendation: Charles J. Stathas

The following resolution was presented by Regent Marcovich and adopted by acclamation. A plaque containing the resolution was presented to Mr. Stathas.

Resolution of Commendation: Charles J. Stathas

Resolution 7796

WHEREAS, Charles J. Stathas has served the citizens of Wisconsin with distinguished service and leadership during his 37 years as a valued member of the University community; and

WHEREAS, by conviction and action, Chuck Stathas has handled the dynamic legal challenges of a major public university system with wisdom, courage, integrity, and a steadfast commitment to always act and advise, mindful of the best interests of the University; and

WHEREAS, through the years in his role as General Counsel, Chuck continually has been recognized for his excellent work as an advocate and representative of the University, as well as for his direct, honest, and fair approach in his dealings with Regents, System Presidents, Chancellors, and countless other individuals and constituencies with whom he has interacted; and

WHEREAS, UW System institutions statewide have greatly benefited by Chuck's preventive approach to the law, as well as by his commitment to meet pressing institutional concerns in a timely and effective manner; and

WHEREAS, in his own quiet and unassuming manner, Chuck Stathas has performed an extremely challenging job in a highly professional manner, with an uncompromised devotion to the highest standards of legal practice.

THEREFORE, be it resolved that on behalf of the people of Wisconsin, the Board of Regents of the University of Wisconsin System highly commends Charles J. Stathas for his extraordinary service and steadfast commitment to this great State and University System, extending sincere best wishes to Chuck and his wife, Shirley, as he concludes his meritorious career with the UW System.

When he first joined the UW, Mr. Stathas recalled, the Board of Regents met in Bascom Hall in a much smaller room than the current meeting room in Van Hise Hall. At that time, there were 10 Regents, nine of whom served nine-year terms, and the tenth being the Superintendent of Public Instruction. Referring to former Regent Secretary Clarke Smith, Mr. Stathas recalled Mr. Smith's admonition to new Board members to always "wear their Regent hats" when sitting at the Board table. Noting that Mr. Smith's advice remained sound, he emphasized that the best thing the Board can do is to protect and enhance "this great institution, which is truly one of the state's great assets." In closing, he expressed gratitude for being allowed to serve the Board and the UW System.

Expressing the Board's appreciation for Mr. Stathas' service, Regent President Orr noted particularly that courage and integrity have been hallmarks of Mr. Stathas' career.

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REPORT OF THE PRESIDENT OF THE SYSTEM

Thanks to Charles Stathas

President Lyall expressed gratitude for all that Mr. Stathas had done for the UW System and for her as President.

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Death of Regent Emeritus Weinstein

President Lyall noted the passing of Regent Emeritus Laurence Weinstein, who had served on the Board from 1984-1991 and as Regent President from 1986-88. As a

Regent and Board President, she said, Regent Weinstein was “one of our toughest critics and one of our best advocates. He never forgot the importance of higher education to his family, immigrants to this country, and he fought hard to keep educational opportunity alive for the next generation of students. We have lost a good friend of higher education in the UW System this week.” Laurence and Fran Weinstein also had endowed a chair in Jewish Studies at UW-Madison and established the Weinstein Scholars program for students of color throughout the UW System.

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Board of Regents Sesquicentennial

Noting that this fall marks the 150th anniversary of the first official meeting of the UW Board of Regents, President Lyall said the first meeting of the Board was on October 7, 1848. Agenda highlights included the appointment of a committee to negotiate the purchase of what is now Bascom Hill and the election of the first chancellor, John Lathrop, at a salary of \$2,000. The first preparatory classes were not held until four months later in a borrowed building located at a downtown site. The Board thus predates everything else about the UW System: the faculty, the physical plant, the administration, and the students. It is a reminder, she remarked, of the crucial role played in American higher education by citizen boards – an important link in the partnership between the state and its university.

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Fall 1998 Enrollments

It was reported by President Lyall that fall 1998 enrollments systemwide were on target, with a total enrollment of 128,184 full time students. This is a 2.2 percent increase over last fall and 0.3 percent over target systemwide. Every UW institution grew this fall except UW-Whitewater, which already was above its target. New freshmen increase 4.4 percent. The freshman class is exceptionally well qualified academically, with 81.9 percent coming from the top half of their high school classes and about 48 percent coming from the top quartile. Undergraduates this fall were registered for slightly higher credit loads, which may indicate a desire to finish their programs earlier. Graduate enrollments declined 1.9 percent this fall, and graduate students also appear to be taking slightly higher credit loads.

While an upward trend in enrollments continues, President Lyall remarked, UW institutions are accommodating these increases without additional enrollment funding from the State. At the current rate, the fall 2000 target will be met a year early; and the enrollment management plan calls for the UW System to hold at the year 2000 level. The

President had begun discussion with the chancellors about enrollment policy beyond the year 2000 and plans to bring to the Board preliminary thoughts and ideas next spring. Indicating that a key challenge will be how to serve nontraditional markets and new needs across the state after the year 2000, she felt it is already clear that in order to serve the adult/returning student markets, the UW will need all the management flexibility it has, as well as the additional flexibility requested in the 1999-01 budget request.

President Lyall reported that the number of applications being received electronically through the Student Information System has doubled, with about 20 percent of applications now being received electronically. It is clear, she noted, that the ease and popularity of electronic applications is filling a need for students and parents, as well as streamlining the admissions process

Finally, she noted that UW institutions continue to serve students from across the income spectrum. Of this fall's freshman class, 34 percent came from families with incomes below \$40,000; 46 percent came from families with incomes between \$41,600 and \$75,000; and 20 percent came from families with incomes above \$75,000. Those percentages are roughly representative of the income distribution in the state as a whole.

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Good News Items

President Lyall reported that UW-Superior has received a \$900,000 federal grant to establish a new Transportation and Logistics degree program which will prepare people for management positions in aviation, trucking, and shipping. This program will give UW-Superior new visibility in the northern part of Wisconsin and on the national educational map.

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UW-Milwaukee has been awarded a \$1 million gift from the Rath Foundation for scholarships to the Business School for students graduating from a Wisconsin high school. The scholarships are named for V. Duane Rath, who previously had pledged to finance five years of college tuition, room and board for every child of every one of his company's employees.

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Noting that eight American Indian graduates of the UW-Eau Claire nursing program are now working in their communities after completing their studies through the Eau Claire partnership with the Lac Courte Oreilles Ojibwa Community College in Hayward, President Lyall said, the Indian Health Service has supported the joint program with \$1.3 million in federal funding to continue and expand the five year old program. This is a wonderful example, she said, of the growing linkages between UW institutions and the Wisconsin Tribal colleges.

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President Lyall congratulated Chancellor Greenhill and UW-Whitewater on completion of its \$10 million Capital Campaign which exceeded its goal and raised \$12 million for scholarships, endowed professorships, cultural and academic programs, and facilities needs on the campus. The success of that Campaign for Excellence, she remarked, is attributable to large measure to the personal leadership of Chancellor Greenhill who will leave an extraordinary legacy for his successor when he retires next June.

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President’s Annual Report

Referring to the 1998 President’s Report, which had been distributed to the Board that morning, President Lyall noted that this year’s report was developed around the theme, “Your Investment Works”. It includes a time line across the bottom of each page pointing out some of the key developments in the history of the UW System.

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REPORT OF THE PHYSICAL PLANNING AND FUNDING COMMITTEE

The Committee’s report was presented by Regent Barry, Chair, who moved adoption of Resolutions 7797-7800 as consent agenda items. The motion was seconded by Regent Mohs and carried unanimously.

UW Fond du Lac: Conceptual Approval to Construct and Fund an Addition and Campus Renovation

Resolution 7797: That, upon the recommendation of the UW Colleges Chancellor and the President of the University of Wisconsin System, conceptual approval be granted for the plan of Fond du Lac County to construct and fund an Addition and Campus Renovation project at the University of Wisconsin-Fond du Lac campus, at an estimated total cost of \$12.9 million. Associated equipment is estimated at \$2.5 million over three biennia.

UW-Madison: Authority to Convey a Parcel of Land

Resolution 7798: That, upon the recommendation of the UW-Madison Chancellor and the President of the University of Wisconsin System, authority be granted to: (1) convey a .27-acre parcel of land to the City of Madison that is located at the intersection of Mineral Point and Junction Roads for \$3,000; and (2) allow the UW-Madison West Madison Agricultural Research Station to retain the proceeds as provided for in Section 36.33(4), Wis. Stats.

UW Rock County: Authority to Seek State Funding To Provide Remainder of Movable and Special Equipment for a Science Laboratories Renovation and Addition Project

Resolution 7799: That, upon the recommendation of the UW-Colleges and the President of the University of Wisconsin System, authority be granted to seek State funding of \$410,000 to provide the remainder of Movable and Special Equipment for a Science Laboratories Renovation and Addition project that is being funded by Rock County at a cost of \$3,175,000.

UW-Stout: Approval of the Design Report and authority to Construct the Communications Center Replacement Project

Resolution 7800: That, upon the recommendation of the UW-Stout Chancellor and the President of the University of Wisconsin System, the Design report be approved and authority be granted to construct the Communications Center Replacement project, at an estimated total project cost of \$7,532,000, using General Fund Supported Borrowing.

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Report of the Vice President/Assistant Vice President

Building Commission Actions

Assistant Vice President Nancy Ives reported on nine UW System projects totaling \$23,329,000 that were approved at the September State Building Commission.

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REPORT OF THE BUSINESS AND FINANCE COMMITTEE

Regent Hempel presented the committee's report.

UW-System: 1999-01 Unclassified Pay Plan Recommendation

Resolution 7801: That upon the recommendation of the UW System President, and pursuant to s. 230.12(3)(e) Wis. Stats., the Board of Regents directs the UW System President to notify the Governor and the Legislature that the UW System requests an average salary increase of 5.2% in each year of the 1999-01 biennium for faculty, academic staff, and university senior executives in order to obtain competitive market salaries by the end of the biennium. The Board further directs the UW System President to transmit to the Department of Employment Relations Secretary, currently available information on unclassified salaries for UW System peer institutions and related economic indices on which this request is based.

Further, that the UW System President requests that pursuant to s. 20.865(1)(c) Wis. Stats. the State fund the cost of any difference between the pay plan authorized for UW employees and the pay plan provided by the federal government for UW-Extension employees funded by the Smith Lever Act, up to a maximum of 3%.

Further, that the Department of Employment Relations Secretary be asked to recommend to the Joint Committee on Employment Relations, that academic staff salary ranges be increased by the full amount of the pay plan each year of the biennium.

Further, that the Department of Employment Relations Secretary be asked to recommend to the Joint Committee on Employment Relations, that university senior executive salary ranges be adjusted to reflect the Board of Regents executive salary structure which establishes a midpoint of the salary range at 95% of the peer median and sets the salary range at 90% and 110% of that midpoint.

Finally, that the Board of Regents requests that faculty, academic staff, and university senior executives participate fully in any staff benefit improvements made available to other state employees during the 1999-01 biennium.

UW-System: Paid Annual Leave Options for Unclassified Staff

Resolution 7802: That, upon the recommendation of the President of the University of Wisconsin System, Regent Policy 94-6 regarding annual leave reserve accounts for unclassified staff is amended to delete "to a maximum of twenty-two days"; in addition to the annual leave reserve option available to unclassified staff after 10 years of service, up to 40 hours of annual leave per year at the employee's base salary rate is available as a cash payment option to those unclassified staff who have completed 25 years of service; and, university senior executives covered by s. 20.923(4g) Wis. Stats., who were employed on or before June 17, 1998 shall be allowed a non-revocable election to have annual leave and personal holiday benefits restored to the levels available previously to all university senior executives.

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Comparison of Expenditures by Activity with Peer Institutions

The Committee heard a report from Associate Vice President Durcan which compared expenditures by the UW System with peer institutions. The report showed that the UW spends more for research, although that is funded mostly by external grants and contracts; and that in instructional-related expenditures, the UW System spends about the same percentage of the total as peer institutions. The most dramatic difference is that the UW spends much less on administration – 5.8 percent, compared to 10.5 percent for the peer group. Regent Hempel commented that this is a strong indicator of the progress made by the Board and the System as a whole over the recent years to do more with less in terms of overhead. In the future, staff will supply data on student support services, which is an area of relatively heavy expenditures in the UW System.

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Personal Holidays for Unclassified Staff

The Business and Finance Committee considered a proposal for three additional personal holidays for unclassified staff in the UW System. These additional days would provide parity with paid leave days for all other state employees, as well as making the leave of UW employees more comparable with that offered by other universities.

Upon motion by Regent Hempel, seconded by Regent Marcovich, Resolution 7803 was adopted by the Board, with Regent Olivieri voting in opposition.

UW-System: Personal Holiday Leave For Unclassified Staff

Resolution 7803: That, upon the recommendation of the President of the University of Wisconsin System, Regent Policy 96-2 be amended to grant an additional three days of paid leave each fiscal year as non-cumulative personal holidays.

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Quarterly Gifts, Grants and Contract Report

Vice President Bromberg reported to the Business and Finance Committee that gifts, grants and contracts for the first quarter of 1998-99 totaled \$239 million. Federal awards increased by \$36 million, while non-federal awards decreased by \$18 million, reflecting completion of the Kohl Center which had brought significant streams of gift revenue into the system in recent years.

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Investment Forum

Regent Hempel reported that presenters at the forum included Paul Neuhauser, Professor of Law at the University of Iowa; Ken Boyer, managing Director of Common Fund Group; Lori Mills, Treasury Manager of the UW System; and Rich Gibson, a graduate student at UW-Madison. The speakers addressed issues that included the Board's fiduciary responsibility and one investment firm's approach to investment screens; the establishment of a benchmark for assessing socially responsible investment funds; and a comparison of the performance of the UW trust funds to the performance of various socially responsible investment funds.

Fifteen members of the audience spoke at the forum, stating their concerns about specific investments and the evolution of the socially responsible investment policy. The Regents were urged to consider more progress on espoused socially responsible investment standards and management of the trust fund portfolio.

Regent Hempel expressed appreciation to all those who spoke at the forum and particularly recognized the student speakers who had strong emotional commitments to the issues they espoused in their comments. Emphasizing that Regents were impressed by these comments, she added that the Board also takes its fiduciary responsibility very seriously, including the commitment to make sure that investments are growing at a rate that will support the instructional and research activities that underpin the university. Mr. Gibson's research, she observed, provides new information for use in assessing the relative performance of funds managed in a socially responsible manner. As any evolving process of significant thought, this will take time, she observed, noting that the Board is in a minority in having an investment policy that recognizes social responsibility. In conclusion, Regent Hempel noted that the investment forum as presently structured tends to be more of a listening session for Regents than an opportunity for give and take. Over time, she thought ways would be found to have a more balanced discussion of all sides of the issues.

Regent Boyle added that he also was very impressed with the student presentations, which he felt were well prepared and presented in an emotional and rational way. It is the Board's responsibility, he noted, to follow its policy and make the most prudent decisions possible on these difficult issues.

Noting that many Regents attended the forum, Regent MacNeil said she found it very helpful. While the UW is in the forefront in this type of investment policy, she added, the Board also must consider its responsibility to invest funds as wisely as possible. In addition, she pointed out, the question of what is socially responsible would probably be answered somewhat differently by each group that considered it. The thought process about these issues will need to continue.

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REPORT OF THE EDUCATION COMMITTEE

Regent Brandes, Chair, presented the Committee's report.

Presenting Resolution 7804-7814, which had been approved unanimously by the Committee, Regent Brandes moved their adoption by the Board as consent agenda items. The motion was seconded by Regent Randall and adopted unanimously.

Mr. President, I now move these resolutions.

UW-La Crosse: Authorization to Recruit: Provost and Vice Chancellor for Academic Affairs

Resolution 7804: That, upon recommendation of the Chancellor of the University of Wisconsin-La Crosse and the President of the University of Wisconsin System, the Chancellor be authorized to recruit for a Provost and Vice Chancellor, at a salary that may exceed the Executive Salary Group Six maximum.

UW-Whitewater: Authorization to Recruit: Chancellor

Resolution 7805: That the President of the University of Wisconsin System be authorized to recruit for a Chancellor of the University of Wisconsin-Whitewater, at a salary that may exceed the Executive Salary Group Six maximum.

UW-Eau Claire: Authorization to Recruit: Provost and Vice Chancellor for Academic Affairs

Resolution 7806: That, upon recommendation of the Chancellor of the University of Wisconsin-Eau Claire and the President of the University of Wisconsin System, the Chancellor be authorized to recruit for a Provost and Vice Chancellor, at a salary that may exceed the Executive Salary Group Six maximum.

UW-Eau Claire: Authorization to Recruit: Vice Chancellor for Business and Student Services

Resolution 7807: That, upon recommendation of the Chancellor of the University of Wisconsin-Eau Claire and the President of the University of Wisconsin System, the Chancellor be authorized to recruit for a Vice Chancellor for Business and Student Services.

**UW-Platteville: New Program Authorization (Implementation)
M.S., Project Management**

Resolution 7808: That, upon recommendation of the Chancellor of the University of Wisconsin-Platteville and the President of the University of Wisconsin System, the Chancellor be authorized to implement the M.S. in Project Management.

**UW-Milwaukee: Reappointment Wisconsin Distinguished Professor
College of Engineering and Applied Science**

Resolution 7809: That, upon recommendation of the Chancellor of the University of Wisconsin-Madison and the President of the University of Wisconsin System, Professor Carolyn Aita, College of Engineering and Applied Science, University of Wisconsin-Milwaukee, be reappointed Wisconsin Distinguished Professor, Department of Materials Engineering, for the period July 1, 1998 to June 30, 2003.

**UW-Milwaukee Reappointment: Wisconsin Distinguished Professor
College of Engineering and Applied Science**

Resolution 7810: That, upon recommendation of the Chancellor of the University of Wisconsin-Madison and the President of the University of Wisconsin System, Professor S.H. Chan, College of Engineering and Applied Science, University of Wisconsin-Milwaukee, be reappointed Wisconsin Distinguished Professor, Department of Mechanical Engineering, for the period January 1, 1999 to December 31, 2003.

**UW-Stevens Point Reappointment: Wisconsin Distinguished Professor
College of Natural Resources**

Resolution 7811: That, upon recommendation of the Chancellor of the University of Wisconsin-Stevens Point and the President of the University of Wisconsin System, Professor Mark S. Boyce, College of Natural Resources, University of Wisconsin-Stevens Point, be reappointed Wisconsin Distinguished Professor for the period January 1, 1999 to December 31, 2003.

**UW-Madison: Appointment: Wisconsin Distinguished Professor
College of Engineering**

Resolution 7812: That, upon recommendation of the Chancellor of the University of Wisconsin-Stevens Point and the President of the University of Wisconsin System, Professor Roderic S. Lakes, College of Engineering, University of Wisconsin-Madison, be appointed Wisconsin Distinguished Professor for the period January 1, 1999 to December 31, 2003.

**UW-Madison: Appointment: Wisconsin Distinguished Professor
College of Business**

Resolution 7813: That, upon recommendation of the Chancellor of the University of Wisconsin-Stevens Point and the President of the University of Wisconsin System, Professor Robert W. Pricer, College of Business, University of Wisconsin-Madison, be appointed Wisconsin Distinguished Professor for the period January 1, 1999 to December 31, 2003.

**UW-Madison: Appointment: Wisconsin Distinguished Professor
College of Engineering**

Resolution 7814: That, upon recommendation of the Chancellor of the University of Wisconsin-Stevens Point and the President of the University of Wisconsin System, Professor Rolf D. Reitz, College of Engineering, University of Wisconsin-Madison, be appointed Wisconsin Distinguished Professor for the period January 1, 1999 to December 31, 2003.

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Report of the Senior Vice President for Academic Affairs

Top 25 Ranking for UW-Madison School of Business

Senior Vice President Ward reported to the committee that *Business Week* magazine ranks the UW-Madison School of Business among the top 25 business schools in the United States.

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Supply and Demand Report

Responding to the report on teacher supply and demand recently released by the Department of Public Instruction, Senior Vice President Ward observed that generalizing from the report's data and methodology leads to several conclusions about employment of teacher education graduates that are not entirely supported by the data. For example, the report does not count individuals in the following categories: (1) those hired in private K-12 schools in Wisconsin; (2) those hired after the third Friday in September in a Wisconsin public school; (3) those taking a job in a K-12 school located out of state; and (4) those working either part-time or as substitute teachers in Wisconsin.

Senior Vice President Ward noted that the UW System worked with DPI to include an appendix in the current report that helps interpret the new hire data and explains what else needs to be taken into account to get a complete picture of job prospects and employment of teacher education graduates. In addition, a project is in development that may lead to a follow-up survey of 1997-98 teacher education graduates to get an accurate benchmark of their employment status after graduation. The goal of these and related efforts is to improve the accuracy of information provided to Wisconsin teacher education students and graduates.

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Presentation on the Status of UW Colleges:

The Education Committee heard a presentation by Chancellor Messner and Professor Rex Heiser, Chair of the UW Colleges Senate Steering Committee, on the status of the UW Colleges. Chancellor Messner noted that the FTE enrollment has increased from 5,983 in 1996 to almost 7,000 in 1998. He reviewed strategies for promoting the colleges, including a new name and a new logo, market research, and expanded and more coordinated advertising. The colleges' goal, he stressed, is to serve students "any time and any place" by functioning as a single integrated institution operating out of 13 primary sites. Methods of achieving this goal include enhanced use of

distance education, improved collaboration with other UW institutions, and collaboration with the Wisconsin Technical College System.

Professor Heiser described the mood of college faculty as generally positive in light of increased enrollments and the increased funding that comes with them. He observed that while faculty support the activities described by Chancellor Messner, it is important to recognize that they take time and institutional resources away from more traditional faculty activities.

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UW System Information Technology Report

Edward Meachen, Associate Vice President for Learning and Information Technology, reviewed the highlights of the 1998 UW System Information Technology Report. Senior Vice President Ward suggested including a program section in the report to demonstrate the outcomes produced as a result of the UW System's investment in information technology.

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B.S. in Computer Engineering, UW-Madison

The Education Committee held an initial review of a proposed B.S. in Computer Engineering at UW-Madison. The program will be considered for approval at the December meeting.

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Plan 2008 Update

Tess Arenas, Assistant to the President for Multicultural Affairs, reviewed the status of the diversity plan: Plan 2008. She reported that the plan has received positive responses from individuals and institutions across the country.

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1998-99 Education Committee Work Agenda

The Education Committee reviewed a proposed 1998-99 work agenda comprised of five major topics: (1) Diversity; (2) Faculty for the 21st Century; (3) Accreditation; (4) K-12 and the UW; and (5) International Education.

ADDITIONAL ITEMS

Letter from United Council on Pay Plan

Regent President Orr noted that a letter from United Council on possible effects of salary increases had been distributed to the Regents.

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Major Breakthrough in Stem Cell Research at UW-Madison

Citing UW-Madison's long tradition of excellence in the biological sciences and history of internationally significant breakthroughs, Regent President Orr noted that UW-Madison has an extraordinary array of highly skilled people in the biological sciences. He called on Chancellor Ward to make some remarks on a major breakthrough just made by one of UW-Madison's most distinguished researchers.

Chancellor Ward described a major breakthrough in stem cell research made by Professor James Thompson, whose discoveries would open up a number of exciting frontiers in health care. The two most widely celebrated are: (1) The idea of making cellular spare parts for body organs which have been damaged; and (2) more effective testing of drugs at an early stage in cellular development.

A particular challenge with this type of research has been the role of ethical review, which included two prominent UW-Madison ethicists, Dr. Norm Fost, of the Medical School, and Dr. Alta Charo, of the Law School. Because federal funding is not provided for this type of research, it was necessary to create an environment in which the research was funded by a private company, but standards for that research were created by the university, not the private funding source.

Chancellor Ward commented that this is one of probably several breakthroughs that will come from the unusual synergy of the biological sciences at UW-Madison. The intellectual boundaries that used to define these sciences, he explained, have collapsed; and cell biology and molecular biology have recreated an intellectual arena that is truly outstanding and exciting. The \$1.5 million provided for the life sciences in the budget review bill already has been leveraged to \$12 million of additional grants.

Regent President Orr expressed the Board's appreciation to Governor Thompson and to the Legislature for recognizing the potential importance of research in the life sciences and providing funds in a tight budget season. Congratulating Dr. Thompson and other researchers involved in the stem cell discoveries, Regent President Orr also commended Chancellor Ward for his leadership in recognizing and exploiting the enormous strengths that exist at UW-Madison.

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Presentations on Southworth matter

Noting that the Board does much of its work through a committee system, Regent President Orr said that as agenda items are brought before the committees, comments by students and others are welcome. This month, there was an unusual situation involving an agenda item that did lend itself to committee consideration and would be discussed only in closed session of the Board of Regents. Three student representatives had asked to speak to the Board on this matter, and President Orr had authorized them to speak at this time, as it would be their only opportunity.

Eric Bakken, Chair of the Associated Students of Madison, commented that for the past 2 ½ years, since the Southworth suit was filed, the UW had been engaged in legal battles to try to protect the principles of free speech, open inquiry and broad debate. At this point, he emphasized, the Board's decision would be watched by universities across the country.

Associated Students of Madison asked the Board not to appeal the decision of the 7th Circuit Court to the United States Supreme Court, on the basis that they did not believe this case to be the right one to set the law of the land on this issue. First, he said, student voices had been shut out of the courtroom in this case, unlike cases in other states. There had been no opportunity in this case to bring to the court student expertise on how the fee system works and what role it plays in the university. As a result, the decision of the 7th Circuit does not discuss legal precedents which uphold the constitutionality of student fees; instead the court placed fee funded activities outside the educational mission of the university. To take this case to the Supreme Court, he felt, would jeopardize students nationwide by bringing forward a case that is factually flawed.

Instead, he urged the Board to move the fee issue from the court back to the campus by deciding not to appeal and then approving two options drafted by a committee appointed by President Lyall to advise on ways to implement the court's decision. Both options, he felt, are needed because no one method will work on all campuses. If both are approved by the Board, students could select the option best suited to each campus.

Stating that option two is the one that would work best for UW-Madison, he explained that it is designed to conceive of the student fee as a pool of funds which provides an educational forum for students – a forum created by students to bring student ideas into the university education. The forum provides an important mechanism, he commented, for promoting broad and vigorous debate. Option two is designed to let students who object to certain organizations opt out of that forum, as the courts require.

In conclusion, he urged the Board to consider the national context and recognize that this case is not the one that should be decided by the Supreme Court.

The next speaker was Ofelia Delgado, representing the Movimiento Estudiantil Chicano de Aztlan. Noting that MEChA has been on campus for more than 20 years, she said it is the only students of color organization that has set a precedent in receiving

funding from segregated fees. Given the inaccuracies in the segregated fee case, she urged the Board to let the court's decision stand. The university, she commented, has the obligation not only to teach but to give students the opportunity to educate themselves. As an example, she cited MEChA's recent *Semana Chicana*, a week of educational and social events at which 40 percent of the audience represented the dominant culture and had the opportunity to learn from students of another culture. She urged that this important educational forum be preserved.

The third speaker was John Grabel, President of the United Council of UW Students, who began by noting that he would present to Regent President Orr 200 letters from students across the System requesting that the Board pass both options presented by the UW System working committee.

Mr. Grabel commented that the Southworth case is just one case in a nationwide effort to attack student fees and student involvement in governance. Just as the Board's decision on whether to appeal to the Supreme Court has national significance, he indicated, so does the decision on how to implement the 7th Circuit Court's decision should the Board choose not to appeal. Noting that a system wide committee, composed of students and administrators, had worked intensively and presented the Board with two options, Mr. Grabel cautioned that neither of the options are ideal -- the ideal being the system that currently is in place. The committee requested that both options be adopted so that each institution may choose the plan that best suits its campus.

Option one creates a definition of what is a political and ideological activity. Based on the definition, student governments would determine which organizations on their campuses are political and ideological. Based on the portion of fees that fund these organizations, an objecting student could opt out of a corresponding portion of segregated fees.

This option, he explained, presents a significant problem for many campuses due to the diverse nature of student organizations and the diverse population of students who may not agree on the definition of political and ideological. Mr. Grabel also was concerned that this option may violate the U.S. Supreme Court's decision in *Rosenberger v. The Rector and Visitors of the University of Virginia*. In that case, the court found that, once a forum of funds is established to fund student organizations, individual organizations cannot be prevented from being eligible for that funding based on the content of their speech.

Option two, he continued, allows objecting students to opt out of that portion of the segregated fees that are used to support student organizations, events and activities. This option contains a "no pay, no play" provision intended to prevent free riders. If the general public is required to pay to attend an event funded by segregated fees, then the student who opted out would also have to pay. In order to protect their rights, students who opt out would not be prevented from contributing to an organization in which they wish to participate.

Mr. Grabel pointed out that the court specifically stated that an individual who objects to funding a particular organization because of its political or ideological activities must be provided with an opportunity to opt out of funding that organization. Therefore, students are not just being given an opportunity to save some money; they must specifically object to an organization or activity. To accurately reflect the court's decision, he urged the Board to recommend that institutions require an objecting student to note their objection and the organization(s) to which they object through an appropriate office on each campus.

In conclusion, he asked the Board, if it chose not to appeal to the Supreme Court, to return students to their appropriate place in the shared governance process by approving both options and letting them choose how best to protect the students at their institutions.

Regent Barry asked what had changed since August, when students urged the Board to appeal to the full 7th Circuit Court.

Mr. Grabel responded that the concerns expressed by Mr. Brakken and other students are reflective of looking at the case in a national context where other segregated fee cases are pending. While not all students agree about whether or not to appeal, students at UW-Madison, as well as others, consider an appeal to the Supreme Court unwise.

Regent Orr asked if many of the UW comprehensive universities would prefer Option one, to which Mr. Grabel replied that some of the larger comprehensives were leaning toward Option two.

Regent Smith noted that students had previously asked the Board to appeal in the name of free speech. Now they were asking the Board not to appeal in the name of free speech. He asked specifically what about this case had changed with respect to protection of free speech.

Noting that not all campuses felt the same on this issue, Mr. Grabel explained that the argument being put forth deals with not having the courts continue to make decisions about student fees, instead of letting those decisions rest with students.

Expressing the view that to appeal the case would be poor legal strategy, Mr. Brakken said the free speech aspect of the matter was related to the fact that, in August, it would have been necessary to implement a new fee structure for the fall semester with almost no time to work on it. The situation had changed since two options had been identified by the working committee which could uphold free speech until another case reaches the Supreme Court and is decided. He did not believe this case, which compares student fees to union and state bar dues, outside the educational context of the university, should be the one used to set precedent for student fee cases across the country. Other circuit courts, he commented, have done more work to bring out the intricacies of the role of student fees within an educational setting.

Regent Smith asked if it was incorrect to ask the Board to appeal in August. Replying in the negative, Mr. Brakken said that appealing in August could only improve the situation for students in the 7th Circuit and allow time for a fee process to be developed to implement the decision if it were negative.

Expressing his disappointment in the students' change of position, Regent Marcovich recalled discussing the issue with students in August. He came away convinced of the importance of free speech issues in the Southworth case and determined to support a petition for review in the 7th Circuit. Stating that he had not changed his mind, he commented that, simply because there was a chance to lose at the Supreme Court, that was not sufficient reason to abandon a commitment to appeal. In fact, he felt that the petition for review in the 7th Circuit Court of Appeals generated one of the best dissenting opinions he had read on the subject and that the Southworth decision has great potential for being reversed by the Supreme Court.

With respect to student input, Regent Marcovich noted that briefs on behalf of students could be filed with the Supreme Court. If the Board did not petition for certiorari, the result would be that all institutions of higher education in the geographic area of the 7th Circuit would be subject to the Southworth decision. Furthermore, he added, the 7th Circuit is the leading circuit in the country and is frequently followed by other circuits, which would give the Southworth case even broader impact. For these reasons, he would strongly urge the Board to file an appeal.

Mr. Brakken noted that there are active cases on the segregated fee issue in Ohio, Minnesota, Oregon, California and New York. Whether or not the Board appealed the Southworth case, he thought there would be a Supreme Court decision on the issue in the next five years. He predicted that decisions in other circuits would be different and would be based on more valid input than was permitted in the Southworth case. In the meantime, the UW has an implementation plan that will work for the next few years. It is stronger strategy, he felt, to wait for more facts to be brought out around the country. When that happens, he believed the Supreme Court would side with the students and the current segregated fee policy could be reinstated.

Regent Staszak asked if United Council had taken a position on whether or not to appeal. Mr. Grabel replied that United Council did not have an official position, primarily because the group was unable to convene a General Assembly before this Board meeting.

Regent Barry inquired about the time frame for acting on the working committee's options, since those could not be considered in closed session.

President Lyall responded that if the Board decided in closed session to appeal to the Supreme Court, there would be no need to implement any changes until the appeal had run its course. If the Board decided not to appeal, it would reconvene in open session and make a decision about which options to implement.

ADDITIONAL BUSINESS

Regent President Orr called attention to a budget fact sheet which could be used in making presentations to legislators and other decision makers.

EXECUTIVE SESSION

At 10:20 a.m. the Board recessed for 10 minutes. The Board reconvened in open session at 10:30 a.m., at which time Regent Smith moved adoption of the following resolution. The motion was adopted on a unanimous roll-call vote, with Regents Barry, Benson, Boyle, Brandes, DeBraska, DeSimone, Gottschalk, James, MacNeil, Marcovich, Mohs, Olivieri, Randall, Smith, Staszak, and Orr (16), voting in the affirmative. There were no dissenting votes and no abstentions.

Resolution 7815	That, the Board of Regents recess into closed session, to consider UW-Madison honorary degree nominations and to consider a student appeal from a UW-Stout decision, as permitted by S.19.85(1)(f), <i>Wis. Stats</i> ; to consider salary adjustments, at UW-Madison and to consider appointment of an Interim Provost and Vice Chancellor at UW-La Crosse at a salary above Executive Salary Group Six, as permitted by S.19.85(s)(c), <i>Wis. Stats</i> ; and to confer with legal counsel, as permitted by S.19.85(s)(g), <i>Wis. Stats</i> .
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The Board arose from Executive Session at 11:40 a.m., having adopted the following resolutions:

UW-Madison: Base Salary Adjustment resulting in a salary above the Executive Salary Group Six Maximum

Resolution 7816	That, upon recommendation of the Chancellor of the University of Wisconsin-Madison and the President of the University of Wisconsin System, the board approves a base salary adjustment, effective December 1, 1998, for Richard E. Peterson, Professor of Pharmacy, resulting in a salary of A\$131,500.
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UW-Madison: Base Salary Adjustment resulting in a salary above the

Executive Salary Group Six maximum

Resolution 7817 That, upon recommendation of the Chancellor of the University of Wisconsin-Madison and the President of the University of Wisconsin System, the board approves a base salary adjustment, effective December 1, 1998, for Daniel H. Rich, Professor of Pharmacy, resulting in a salary of A\$140,000.

UW-La Crosse: Appointment of an Interim Provost and Vice Chancellor at a salary exceeding the Executive Salary Group Six maximum

Resolution 7818 That, upon recommendation of the Chancellor of the University of Wisconsin-La Crosse and the President of the University of Wisconsin System, the Chancellor be authorized to appoint Douglas N. Hastad as Interim Provost and Vice Chancellor for Academic Affairs, at a salary of \$106,064.

Appeal of UW-Stout decision

Resolution 7819 That, upon the recommendation of the Committee on Student Discipline and Other Student Appeals, the Board of Regents adopts the attached Decision and Order in the matter of a student appeal from a UW-Stout decision.

Appeal of Southworth decision

Resolution 7820 That the Board of Regents requests the Attorney General to file a petition for Writ of Certiorari with the United States Supreme Court in Southworth v. Grebe.

The Board of Regents reconvened in open session at 11:40 a.m., with all Regents present.

Announcing the Board's decision to appeal to the Supreme Court, Regent President Orr reported that in closed session the Board was briefed by the Assistant Attorney General in charge of the case. There was extensive discussion, with a variety of opinions expressed, after which the Board voted to appeal

Regent Brandes said her reasons for supporting an appeal to the Supreme Court were the same as for favoring appeal to the full 7th Circuit Court. She felt it was a strong

case then, and nothing had changed since that time. She felt confused by the reversal of opinion by some students, noting that others continued to strongly support an appeal. It is necessary, she pointed out, to consider the matter not only from the perspective of the Madison campus, but from a system-wide basis. Given the strong dissenting opinions issued by 7th Circuit judges, she felt even more strongly that the segregated fee process and statute as they exist are right. Free speech, she commented, would be significantly impaired by giving up that process through lack of appeal. Noting that, as a student, she had been involved in writing the merger language which included the student role in segregated fees, she stated that she is not willing to give up backing the statute and feels strongly that the decision should be appealed.

Regent Mohs commented that he did not consider this a strong free speech issue and was not persuaded by the dissents from the 7th Circuit. While there was some risk of losing the case at the Supreme Court, he noted that if there were no appeal, the Board would adopt the options presented or some modification of them, which is precisely what would happen if the case were lost at the Supreme Court. The only implication had to do with students in other states, which he considered a lower priority than UW students. Trying to make a decision on the basis of what might happen in future cases, he felt, was highly speculative. However he saw no great risk to free speech in appealing or not appealing, since any student organizations could still have free speech without getting a student fee subsidy.

The meeting was adjourned at 11:47 p.m.

Judith A. Temby, Secretary