

**University of Tennessee Board of Trustees
Performance Audit
February 2005**

Arthur A. Hayes, Jr., CPA, JD, CFE
Director

Deborah V. Loveless, CPA
Assistant Director

Dena Wunningham, CGFM
Audit Manager

Lisa Williams, CGFM
In-Charge Auditor

Amy Brack
Editor

Comptroller of the Treasury, Division of State Audit
1500 James K. Polk Building, Nashville, TN 37243-0264
(615) 401-7897

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STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY

State Capitol
Nashville, Tennessee 37243-0260
(615) 741-2501

John G. Morgan
Comptroller

February 22, 2005

The Honorable John S. Wilder
Speaker of the Senate
The Honorable Jimmy Naifeh
Speaker of the House of Representatives
The Honorable Thelma M. Harper, Chair
Senate Committee on Government Operations
The Honorable Mike Kernell, Chair
House Committee on Government Operations
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the performance audit of the University of Tennessee Board of Trustees. This audit was conducted pursuant to the requirements of Section 4-29-111, *Tennessee Code Annotated*, the Tennessee Governmental Entity Review Law.

This report is intended to aid the Joint Government Operations Committee in its review to determine whether the Board of Trustees should be continued, restructured, or terminated.

Sincerely,

John G. Morgan
Comptroller of the Treasury

JGM/dww
04-112

State of Tennessee

Audit Highlights

Comptroller of the Treasury

Division of State Audit

Performance Audit
University of Tennessee Board of Trustees
February 2005

AUDIT OBJECTIVES

The objectives of the audit were to follow up on the findings of the 2000 performance audit; to determine whether board membership and meetings meet statutory requirements and best practices; to determine what measures have been taken by the board to enhance board and administrative responsibility and accountability; to determine what the relationship is between the board and the various University of Tennessee foundations; and to follow up on issues and recommendations involving the board in the August 2003 internal audit report and the October 2003 State Audit Special Report.

OBSERVATIONS AND COMMENTS

The audit had no findings but had the following observations:

Minority Recruitment

The 2000 performance audit of the Board of Trustees found that the UT system needed to continue minority recruitment efforts because it had not attained all the goals agreed to in the 1984 *Geier* lawsuit settlement for minority enrollment and hiring. Since then, a new *Geier* agreement has been reached with different requirements. An October 2004 status report filed by the court monitor showed satisfaction with UT's actions to comply

with the decree. The only weakness mentioned in the report concerned the lack of increases in UT's (and the Board of Regents') recruitment and retention of African-American faculty (page 6).

Board Oversight

The board has taken action to address the weaknesses identified by the university's internal auditor in the August 2003 special review of the UT president's office and has taken action to address most of the weaknesses identified by the Division of State Audit in its 2003 Special Report on issues related to the presidency of Dr. John

Shumaker. However, the board has neither addressed nor formally discussed the finding concerning oversight of the UT Foundation (page 7).

Presidential Searches

The issue of the presidential search process became of interest with the selection of John Shumaker as president of the University of Tennessee and the subsequent scandal resulting in his resignation a year and a half later. The process by which university presidents are chosen has recently been a topic of discussion not just in Tennessee but in higher education as a whole. More and more states are allowing their public

colleges to mount presidential searches without disclosing the identities of the candidates. There appears to be no easy answer to how open university and college presidential searches should be. Academic studies suggest a balanced approach that ensures confidentiality in the *search* for presidents and openness in the *selection* of presidents. Only through continued discussion and awareness of the pros and cons of both public and private searches will a balance be reached that meets the needs of candidates, schools, governing bodies, and the public (page 13).

Performance Audit

University of Tennessee Board of Trustees

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Performance Audit

University of Tennessee Board of Trustees

INTRODUCTION

PURPOSE AND AUTHORITY FOR THE AUDIT

This performance audit of the University of Tennessee Board of Trustees was conducted pursuant to the Tennessee Governmental Entity Review Law, *Tennessee Code Annotated*, Title 4, Chapter 29. Under Section 4-29-226, the Board of Trustees is scheduled to terminate June 30, 2005. The Comptroller of the Treasury is authorized under Section 4-29-111 to conduct a limited program review audit of the agency and to report to the Joint Government Operations Committee of the General Assembly. The audit is intended to aid the committee in determining whether the University of Tennessee Board of Trustees should be continued, restructured, or terminated.

OBJECTIVES OF THE AUDIT

The objectives of the audit were

- to follow up on the finding of the July 2000 performance audit;
- to determine whether board membership and meetings meet statutory requirements and best practices;
- to determine what measures have been taken by the board to enhance board and administrative responsibility and accountability;
- to determine the relationship between the board and the various UT foundations; and
- to follow up on issues and recommendations involving the board in the August 2003 internal audit report and the October 2003 State Audit Special Report.

SCOPE AND METHODOLOGY OF THE AUDIT

The activities of the Board of Trustees were reviewed for the period January 2000 through June 2004. The audit was conducted in accordance with the standards applicable to performance audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States and included

1. review of applicable legislation and policies and procedures;
2. examination of the board's records, reports, and information summaries; and
3. interviews with trustees and university staff.

ORGANIZATION AND STATUTORY RESPONSIBILITIES

Title 49, Chapter 9, *Tennessee Code Annotated*, sets forth statutory requirements for the University of Tennessee (UT) system. UT carries out its three principal missions—instruction, research, and public service—through four primary campuses (Knoxville, Chattanooga, Martin, and the Health Science Center in Memphis), three institutes (the Space Institute, the Institute of Agriculture, and the Institute for Public Service), and agricultural and service operations across the state.

The University of Tennessee is governed by the University of Tennessee Board of Trustees. The board meets composition requirements. It is composed of 19 Governor-appointed members and five *ex officio* members (the Governor, the Commissioners of the Departments of Agriculture and Education, the Executive Director of the Tennessee Higher Education Commission, and the President of the University of Tennessee). The Governor-appointed members consist of the following:

- one person from each of the nine congressional districts;
- two members from Knox County;
- two members from Shelby County;
- one member from Weakley County;
- one member from Hamilton County;
- one member from Davidson County;
- one member from Anderson, Bedford, Coffee, Franklin, Lincoln, Moore, or Warren County;
- one past president of the faculty senate (rotates annually among UT institutions); and
- one student (rotates annually among UT institutions).

The board has the power to select (and remove) a president, and such professors, tutors, and other officers as they judge necessary; fix and regulate the salaries of those individuals; make bylaws, rules, and regulations for the government of the university and the promotion of education; and confer degrees, in conjunction with the president and professors of the university.

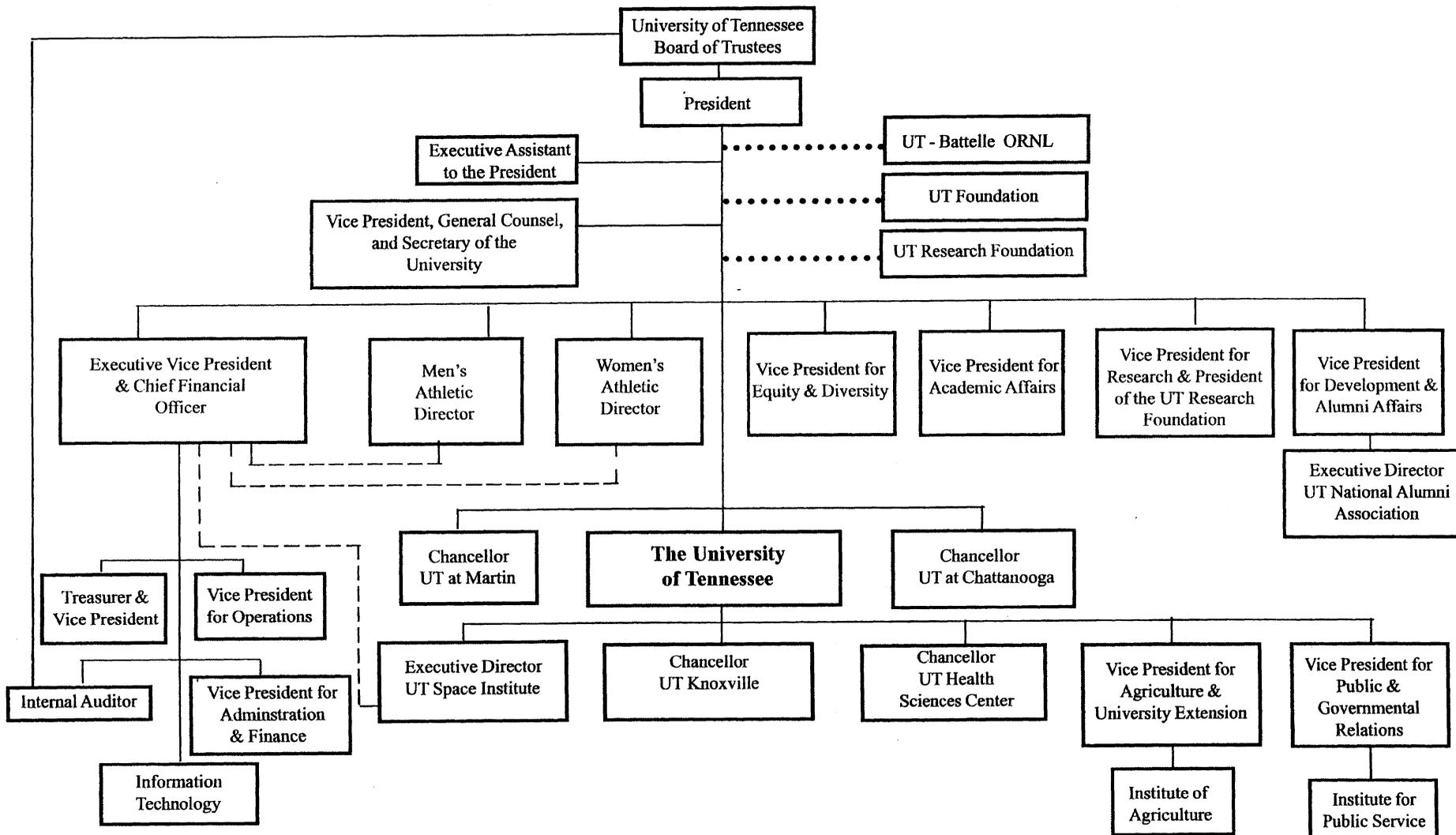
The University of Tennessee-Knoxville serves the state through a broad spectrum of undergraduate, graduate, and professional studies and research. The University of Tennessee-Chattanooga defines itself as a “metropolitan university” dedicated to meeting the general and professional educational needs of area residents, with a wide variety of programs, most focusing on undergraduate education. The University of Tennessee-Martin offers undergraduate degree

programs in more than 80 specialized fields of study, as well as selected graduate programs. The Health Science Center in Memphis includes colleges of medicine, dentistry, pharmacy, nursing, and allied health professions.

As the state's land-grant institution, UT offers specialized agriculture programs through its Institute of Agriculture, which includes the College of Veterinary Medicine, the Agricultural Experiment Station, and the Agricultural Extension Service. The university system also provides graduate study and research in aerospace engineering and related fields at the Space Institute in Tullahoma and assistance to governments, business, and industry through the Institute for Public Service, the Municipal Technical Advisory Service, and the County Technical Assistance Service. The university-wide administration offices, which include the office of the president of the university, as well as the Offices of Business and Finance, Academic Affairs, Alumni Affairs, and Research, are located at the Knoxville campus. (See the organization chart on the following page.)

University of Tennessee

June 2004



REVENUES AND EXPENDITURES

For the fiscal year ending June 30, 2003, the University of Tennessee system had revenues of \$1,338,069,275.17 and expenses of \$1,315,836,732.54. For the fiscal year ending June 30, 2004, revenues and expenses were \$1,434,542,367.23 and \$1,370,679,8914.39, respectively. The fiscal year 2004 budget for the Board of Trustees is as follows:

THE UNIVERSITY OF TENNESSEE BOARD OF TRUSTEES BUDGET FISCAL YEAR 2004		
Personnel		
Professional Salaries	\$	<u>43,850</u>
Total Personnel	\$	<u>43,850</u>
Operating		
Travel	\$	18,900
Motor Vehicle Operation		-
Media Processing		2,000
Communication		3,460
Maintenance Repairs		155
Professional Services Memberships		8,000
Supplies		1,500
Contractual, Special Services		28,599
Rentals & Insurance		90
Insurance & Interest		60
Total Operating	\$	<u>62,764</u>
Grand Total	\$	<u><u>106,614</u></u>

OBSERVATIONS AND COMMENTS

The topics discussed below did not warrant a finding but are included in this report because of their effect on the operations of the University of Tennessee Board of Trustees and on the citizens of Tennessee.

MINORITY RECRUITMENT

The 2000 performance audit of the Board of Trustees found that the University of Tennessee (UT) system needed to continue minority recruitment efforts because it had not attained all the goals agreed to in the 1984 *Geier* lawsuit settlement for minority enrollment and hiring. Since then, a new *Geier* agreement has been reached with different requirements.

The *Geier* Lawsuit

On May 21, 1968, the *Geier* case was filed by private plaintiffs to enjoin the proposed construction of the University of Tennessee-Nashville Center (UT-Nashville). The original plaintiffs argued that construction of the predominantly white UT-Nashville would perpetuate the racial identifiability of Tennessee State University (TSU), also located in Nashville, as a segregated black institution, thereby maintaining Tennessee's long-established dual system of public higher education. On July 22, 1968, the U.S. Department of Justice, Civil Rights Division, Educational Opportunities Section, intervened. A new UT-Nashville campus was ultimately constructed in downtown Nashville. However, on February 28, 1977, the district court ordered the merger of TSU and UT-Nashville. The court subsequently entered a Stipulation of Settlement between the state, the original plaintiffs, and the private plaintiff-intervenors on September 25, 1984.

According to the terms of the settlement, UT and the Board of Regents were required to establish enrollment, employment, and other desegregation goals at all state universities and colleges. Several stipulations required merely a good-faith effort by the university systems, while others required a specific percentage of African-American students and faculty before compliance with the consent decree could be achieved. The court ordered Tennessee State University in Nashville to increase its white enrollment to 50 percent; minority enrollment and hiring goals were set later for the state's other universities by a special Desegregation Monitoring Committee. The committee, which was composed of representatives from UT, the Board of Regents, and the Tennessee Higher Education Commission, was identified as the entity responsible for reporting to the court. The state assured the plaintiffs that the implementation of the settlement would not decrease access to public higher education in Tennessee by qualified

African-American students, nor would the state decrease the African-American presence in administrative and faculty positions within the two statewide systems.

In late 1999, the parties voluntarily retained a professional mediator to attempt to resolve outstanding issues in the case. After a year of negotiations, the parties reached a new settlement that, if fully implemented, is expected to desegregate Tennessee's system of public higher education. The new consent decree was entered by the court on January 4, 2001. While the desegregation monitoring committee was disbanded and specific numerical racial goals were dropped, UT was required

- to establish a statewide committee on faculty and administrative hiring that would propose ways to utilize institutional resources to enhance and further the recruitment and retention of African-American faculty and administrators;
- to agree that employment decisions within the UT system would be open, fair, and competitive;
- to study currently implemented strategies for the recruitment of other-race high school students and other-race community college students and to propose enhancements to recruitment practices;
- to employ one full-time recruiter in Nashville and another in Memphis who will devote significant effort to recruiting African-American students;
- to increase the availability of financial aid for other-race students attending UT schools;
- to assess its current retention practices and programs and propose changes to those practices that would close the "persistence gap" between black and white students; and
- to assess expansion of cooperative extension and agricultural research collaboration with TSU.

An October 14, 2004, status report filed with the court by the court monitor on the Geier Consent Decree shows satisfaction with UT's actions to comply with the decree. The only weakness mentioned involved the lack of increases in UT's and the Board of Regents' recruitment and retention of African-American faculty, which has not grown appreciably.

See the Appendix for additional university and minority statistics.

BOARD OVERSIGHT

An August 2003 special review of the UT president's office by the university's internal auditor had 12 findings with recommendations. Most of the review's recommendations were

addressed to the university administration, but three recommendations were addressed to the board.

- The board should establish guidelines for approval of exceptions to university policies for the president. At a minimum, the report recommended that any exceptions be documented in writing and that significant exceptions be reported to the Finance Committee of the board at its regular meetings.
- In light of substantial questions about international proposals, the chairman of the Finance Committee of the board should review current proposals and determine if any should be explored further.
- The board should consider requiring periodic internal audits of all accounts in the president's office, with the results to be reported to the Finance Committee at its regular meetings.

A June 2004 follow-up was conducted by the university's internal auditor and transmitted to the university president and state comptroller that determined appropriate actions had been or were being taken by the university and Board of Trustees to address the internal control weaknesses identified in the audit.

At the August 21, 2003, meeting of the Board of Trustees, a Governance Task Force was created to review issues of corporate governance presented by the presidential audit report.

Recommendations From the Division of State Audit

On October 9, 2003, the Division of State Audit released its investigative review of issues related to the presidency of Dr. John Shumaker. This investigation made comments and recommendations directly concerning the board. The investigation found or recommended the following:

- While the board members do not appear to have had any knowledge of Dr. Shumaker's questionable activities or to have condoned his activities, several members of the university's upper management appear to have known about some of Dr. Shumaker's questionable activities but failed to take effective action, including notifying the Board of Trustees.
- The presence of an audit committee would provide upper management a means to report questionable activities. Such a presence would encourage the reporting of issues by upper management and should serve as another control over the president's discretion.
- In future presidential searches, current financial and compliance audits prepared by internal or external auditors should be obtained from the candidates' universities. The

UT Board of Trustees should review these audit reports, and any issues should be addressed with the candidates.

- The UT Board of Trustees should take advantage of Korn-Ferry International’s pledge that the search firm will redo the search for no additional fees if the elected candidate leaves the position in less than two years.
- The UT Board of Trustees should consider requesting a level two or level one background check from the Tennessee Bureau of Investigation on the final candidates.
- The UT Board of Trustees should reconsider the use of the dual-track search process. The process should be structured to remove even the appearance of preferential treatment between candidates. Perhaps the board should consider selecting the administrators of future searches. Regardless of who is responsible for selecting future search administrators, there should be a clear prohibition against those administrators being eligible for future appointments by the new president, at least for a reasonable period.
- The UT Board of Trustees should establish a formal orientation program for new board members that includes an emphasis on the need for an active board with regard to the oversight of the university’s officers, staff, and operations.
- The UT Board of Trustees should review the continuing necessity for the university foundation, as well as its activities, structure, mission, purpose, and the results of its operations to date. This review should be in the context of the need for improved accountability by the university and its staff and officials and the need for greater, not less, transparency in its actions and transactions and its use of all assets provided to it from whatever source as a state entity.
- The UT Board of Trustees should avoid the temptation to utilize the foundation or a similar entity for the purposes of providing supplemental compensation to the president. The foundation, or a similar entity, should not be used to afford a way for the university to circumvent the laws and policies in place to safeguard public assets from waste and abuse. The board should recognize its responsibility and that of the university to safeguard all assets held by the university as a public institution and not endeavor to make technical distinctions between various types of funds the university holds just to facilitate “flexibility” in the use of university funds.
- The UT Board of Trustees should consider the wisdom and legality of permitting and enabling another body, even one composed of some of the members of the board, to sit in a position in which that body has control over assets of the university, which are supposed to be the responsibility of the Board of Trustees of the university.

Recommendations From the Governance Task Force

The board's Governance Task Force presented its report to the full board, which adopted the report, on October 10, 2003. The report states that, prior to the task force beginning work, the university's internal auditor was asked to report on the administration's response to the presidential audit. Subsequently, the task force concluded that the administration was effectively addressing the immediate weaknesses identified by the presidential audit. Based on board minutes and university policies on-line, it does appear that the administration and board have taken steps (both before and after the October 10 report) to address policy weaknesses. The task force then proceeded to focus on the broader governance issue raised by the audit—weakness in board oversight.

The board's Governance Task Force found that, historically, governance by the Board of Trustees appears to have been more administration-driven than board-driven, which may have encouraged a culture of passive governance. Passive governance may be adequate as long as proven and trusted presidents are in place—or as long as a structure of proper checks and balances is in place. In the absence of those control factors, however, a culture of passive governance plainly is not adequate to prevent the kinds of problems discovered in the recent presidential audit. The report states that to restore the confidence and trust of stakeholders, the board must embrace a new culture of heightened corporate responsibility and accountability. The board must then ensure that appropriate structures and processes are in place to ensure board and administrative responsibility and accountability. The report identified the following indications of ineffective oversight by the Board of Trustees:

1. The flow of information to the board is insufficient to ensure effective oversight. Specifically:
 - The board has no policy-setting limitations or other parameters on the president's authority to expend funds and no requirement that the board receive reports of expenditures by the president, including expenditures from sources other than accounts assigned to the president's office.
 - The board has no policy-setting limitations or other parameters on the president's authority to commit the university to major contractual obligations.
 - For improvements to university-owned houses and senior administrative offices estimated to be less than \$100,000, the administration is not required to obtain the board's advance approval or even to give the board notice of the proposed improvement. Nor is there any requirement that the board receive a report of actual expenditures incurred.
 - There is no requirement that the board approve policy exceptions made for the president or the president's office and no requirement that these exceptions be reported to the board.

- There is no direct line of communication between the board and a chief financial officer or between the board and the internal auditor.
2. The board's committee structure is inadequate to ensure effective oversight. Specifically:
 - No committee is assigned the specific responsibility of overseeing the integrity of the university's financial reporting process and systems of internal controls.
 - The responsibilities of the Finance and Administration committee are too broad to ensure effective oversight in all areas.
 - The role and effectiveness of the two liaison committees and the two councils is unclear.
 - The Executive Committee is subject to the perception of a "board within the board."
 3. There is no self-evaluation process for the board as a whole or for individual trustees.
 4. The board has no process to ensure adequate orientation and continuing education of trustees by staff and by external governance experts.
 5. The university's organizational structure is confusing, and its effectiveness is unclear. The board's governance responsibilities include ensuring that an effective organizational structure is in place to manage the university.

The task force then recommended:

- The board should establish an Audit Committee as a standing committee of the board. It should be responsible for the integrity of the university's financial reporting process and systems of internal controls regarding finance, accounting, and legal compliance; review of the university's external audit by the Division of State Audit; and oversight and direction of the internal auditing function. The Audit Committee's responsibilities should also include approval of the appointment of the chief internal auditor for the university, and any reassignment/demotion/dismissal of that auditor should be subject to the committee's approval. The committee should ensure that the internal auditor has direct and unrestricted access to the Audit Committee. The committee should also review the management letter issued annually by State Audit and conduct a follow-up review of all audit findings.
- The board should establish the elected position of Chief Financial Officer for the University. The treasurer and all other vice presidents with responsibilities for financial matters should report directly to the CFO.

- The board should establish the appointed position of Chief Internal Auditor for the university. The CIA should report administratively to the CFO, but with respect to all audit activities and findings, the CIA should report directly to the Audit Committee.
- The board should establish a Board Process and Governance Committee as a standing committee of the board. Its purpose should be to stay informed about governance issues, propose implementation of governance best practices, and organize the working processes of the board. The committee should (1) develop and recommend to the board a Statement of Governance setting out the board's role and fundamental principles of governance; (2) periodically review the bylaws and recommend needed amendments; (3) recommend an effective committee structure for the board and ensure charters are developed for each committee and approved by the board; (4) develop and implement an annual self-evaluation process for the board and for individual trustees; (5) develop and implement a process for evaluating the effectiveness of board and committee meetings; (6) ensure an effective orientation and continuing education process for trustees; (7) monitor, oversee, and review compliance with the Code of Ethics for trustees; and (8) develop a set of personal qualifications and core competencies for membership on the board for approval by the board and for recommendation to each sitting Governor.
- In addition to its ongoing responsibilities, the Board Process and Governance Committee should continue the work of the Governance Task Force in the following areas: (1) developing and recommending to the board policies or other means to ensure effective oversight of expenditures by the president, major contractual commitments, and improvements to university-owned housing and senior administrative offices; (2) developing and recommending to the board a policy requiring board approval of policy exceptions for the president or the president's office; (3) determining if other university policies should be elevated to the level of board policy; (4) determining an effective means of codifying existing and new board policies to promote access and compliance; and (5) reviewing the current organizational structure of the university to determine if it ensures effective management and accountability.
- The Executive Committee should be restructured as the Executive and Compensation Committee and should be composed of the chairs of the other standing committees, with the vice chairman of the board as an *ex officio* member. The committee's responsibilities should be to act for the board in the event there is an urgent need for action between meetings, review and recommend to the board the compensation of the president and elected university officers, recommend to the board performance goals for the president, review and evaluate the performance of the president, and establish and review compensation policies and benefit policies.

The board has restructured, creating an Audit Committee and a Board Process and Governance Committee; adopted a Code of Ethics; and made the Chief Internal Auditor report directly to the board as well as the CFO. The board has created the position of Chief Financial

Officer for the university and has approved new and updated university and board policies concerning travel, purchasing, administrator housing, plane usage, and oversight of presidential expenditures. The UT Board of Trustees appears to be taking appropriate actions to rectify weaknesses in administration of the university as well as its own operations.

However, the board has neither addressed nor formally discussed the finding taken by the Division of State Audit in its October 2003 Special Report that “without appropriate oversight, the University of Tennessee Foundation can serve as a technically legal vehicle to divert public funds and circumvent laws providing for accountability and controls over public funds and assets.” The report recommended that “The Board should study the issues presented in this report relative to the foundation and the actions and attitudes that may serve to undercut the necessary commitment to accountability and compliance with applicable laws and policies and take steps to ensure that these mistakes do not recur and that an environment conducive to such errors is not tolerated.”

Vice Chair comment on behalf of the Board of Trustees:

We take very seriously the recommendation that the board should address four recommendations from the October 2003 State Audit Special Report concerning the University of Tennessee Foundation. You have my assurance, as Vice Chair, that the board will begin an examination of the issues concerning the foundation at the March 2005 meeting. Discussion of the role and scope of the foundation has taken place within the University administration over the past year. In addition, before the presidential search was formally initiated in 2003, the Board of Trustees approved a presidential compensation package to be paid entirely from University funds. As a result, President John Petersen receives absolutely no compensation from the foundation.

PRESIDENTIAL SEARCHES

The process by which university presidents are chosen has recently been a topic of discussion not only here in Tennessee but in higher education as a whole. More and more states are allowing their public colleges to mount presidential searches without disclosing the identities of the candidates. However, the question of how open a presidential search should be undertaken continues to be debated. Here in Tennessee, the issue became of interest with the selection of John Shumaker as president of the University of Tennessee and the subsequent scandal resulting in his resignation a year and a half later.

Shumaker Search

[The following is taken from Division of State Audit’s October 2003 Special Report on Issues Related to the Presidency of Dr. John Shumaker.] The search for the 21st president of UT was initiated by former Governor Don Sundquist in the summer of 2001. There were two

parallel searches for the 21st president—one candidate was chosen from a public search and one from a private search. The private search was conducted by the Search Committee, consisting of 11 members of the UT Board of Trustees. In regard to the public search, an Advisory Council made up of 25 representatives from the system constituency that included administration, staff, students, faculty, alumni, citizens, and the various campuses was appointed by the Governor. On August 3, 2001, the Search Committee met and chose the search firm Korn-Ferry, which would be responsible for both the public and private searches.

As part of the public search, the Advisory Council obtained input and candidates through the search website, focus groups, and public hearings. Korn-Ferry prepared advertisements for the private search and sent out approximately 600 personal letters to individuals on a proprietary mailing list.

On February 20, 2002, Dr. Shumaker made a public announcement that he was a candidate for the president's position at the University of Tennessee. As part of the private search, Dr. Shumaker was considered a candidate by the Search Committee as early as December 2001. Under the confidentiality of the private search, Dr. Shumaker did not have to announce his candidacy until just prior to the public interviews of the two final candidates. Without having to commit to remaining in the search, Dr. Shumaker was able to remain a candidate for the president's position and wait for the process to unfold.

UT Board of Trustees leaders spent most of the recruitment period keeping Dr. Shumaker's interest in the position and discussing compensation packages. The Advisory Council announced its final five candidates from the public search on December 19, 2001. In contrast to Dr. Shumaker's treatment, because the public candidates' interest in the UT presidency was known, there was no reason for the ultimate decision-makers, UT Board of Trustees, to continue to recruit them. By late February 2002, through further screening, Dr. Shumaker and Dr. Marlene Strathe were chosen as the final candidates from the private and public searches, respectively.

For many good reasons, sitting presidents and other potential candidates do not wish to make their candidacy for another position public knowledge. For presidential and other searches, this presents a problem of confidentiality. If one concedes that the best pool of candidates should include those individuals from the population of sitting presidents and other prominent employees of other universities, then it would appear that this could only be possible through a private search.

With a dual-track search process that provides different treatment of the candidates and a historically poor success rate for public candidates, it would appear that the process is inherently flawed, at least to the extent that the process is represented to treat public and private search candidates equally. According to Dr. Strathe, she was well aware of her position as the public candidate. Dr. Strathe stated that ultimately, she did not expect to be selected above the private candidate.

The October 2003 Division of State Audit special report recommended that more in-depth background checks be conducted in future presidential searches and that the trustees reconsider use of the dual-track search process that might give the appearance of preferential treatment between candidates.

Petersen Search

Following Dr. Shumaker's resignation on August 8, 2003, the board discussed ways in which a presidential search could be conducted differently and obtained presidential search guides with best practices from the Association of Governing Boards (AGB) of Universities and Colleges. At the September 17, 2003, board meeting, the board adopted the principle of openness in the Governor's Statement of Guiding Principles for the upcoming presidential search. This principle committed that the board would conduct a search in an open, fair, and competitive manner; that minorities and women would be sought for inclusion in the candidate pool; that candidates from inside and outside Tennessee would be sought; and that no special emphasis would be placed on recruiting sitting presidents. The board also committed to a one-track recruitment effort with a single, public pool of candidates, no one of which would be considered by the Search Committee or board unless the candidate had first been evaluated through the public evaluation process. The Statement of Guiding Principles also established the Search Committee (composed of the student trustees, five other trustees, and two faculty members) and Search Advisory Council (composed of a student and faculty member from each of four campuses, alumni, and trustees), how the search would be conducted, and how the final evaluation and selection would occur. All candidates had to go through the Search Advisory Council for screening, evaluation, and interviews before being considered by the Search Committee or full board. The Search Committee was also to recommend a compensation package for the new president before the search formally began and to present three unranked candidates to the full board for consideration.

As of December 12, 2003, the Search Committee had conducted forums across the state and received input from constituents about the qualifications and characteristics necessary for the president of the university. The Search Committee had also chosen Baker-Parker of Atlanta as the search consulting firm best suited to the needs of the present search. The time line for the search had the Search Advisory Council interviewing candidates April 13-15 and recommending four to six for interview with the Search Committee on April 20. At a special meeting of the full board on April 21, the finalists recommended by the Search Committee would be interviewed by the full board. In the end, some 47 candidates applied for the presidency. Twelve were then interviewed in a public meeting by the Search Advisory Council, and their resumes, credit histories, and criminal histories were checked by the Tennessee Bureau of Investigation. Six were presented to the Search Committee to interview. On April 20, the six candidates were narrowed to three following public interviews. At its meeting on April 21, 2004, the UT Board of Trustees interviewed the three finalists and chose John D. Petersen from the University of Connecticut as the next president of the university.

Public vs. Private

UT's search for a new president has been characterized as "the most public presidential search in the history of higher education." However, the process chosen to help avoid the problems of the past was itself criticized for its very openness. Many in higher education believe that top presidential candidates are unwilling to get involved in highly public searches because they risk losing the backing of their board and constituencies at their present institutions. Others cite that there is less frank discussion and meaningful interaction between search committees and candidates.

An April 2004 public policy paper from the Association of Governing Boards of Universities and Colleges presented a study of presidential search processes and the impact of sunshine laws. In "Governing in the Sunshine: Open Meetings, Open Records, and Effective Governance in Public Higher Education," James C. Hearn, Michael K. McLendon, and Leigh Z. Gilchrist recommend that

1. "A search process should be neither totally open nor totally closed . . . a balanced approach, one that ensures confidentiality in the *search* for presidents and openness in the *selection* of presidents."
2. Leaders should consider the timing of the release of information. For example, in some agencies on the federal level, deliberations are shielded from public view for a specified time and then made available.
3. Boards should be allowed to conduct a limited number of closed "retreats" at which substantive discussion is allowed but no decisions are made.
4. Trustees should be permitted to receive closed informational briefings from staff members. Trustees often comment that they lack information and a venue in which to ask "dumb" questions.

There appears to be no easy answer to how open university and college presidential searches should be. Only through continued discussion and awareness of the pros and cons of both public and private searches will a balance be reached that meets the needs of candidates, schools, governing bodies, and the public.

RECOMMENDATIONS

ADMINISTRATIVE

The University of Tennessee Board of Trustees should address the following recommendations from the October 2003 State Audit Special Report to improve the efficiency and effectiveness of its operations.

1. The UT Board of Trustees should address and formally discuss the finding taken by the Division of State Audit in its October 2003 Special Report that “without appropriate oversight, the University of Tennessee Foundation can serve as a technically legal vehicle to divert public funds and circumvent laws providing for accountability and controls over public funds and assets.” The report recommended that “The Board should study the issues presented in this report relative to the foundation and the actions and attitudes that may serve to undercut the necessary commitment to accountability and compliance with applicable laws and policies and take steps to ensure that these mistakes do not recur and that an environment conducive to such errors is not tolerated.”
2. The UT Board of Trustees should review the continuing necessity for the university foundation, as well as its activities, structure, mission, purpose, and the results of its operations to date. This review should be in the context of the need for improved accountability by the university and its staff and officials and the need for greater, not less, transparency in its actions and transactions and its use of all assets provided to it from whatever source as a state entity.
3. The UT Board of Trustees should avoid the temptation to utilize the foundation or a similar entity for the purposes of providing supplemental compensation to the president. The foundation, or a similar entity, should not be used to afford a way for the university to circumvent the laws and policies in place to safeguard public assets from waste and abuse. The board should recognize its responsibility and that of the university to safeguard all assets held by the university as a public institution and not endeavor to make technical distinctions between various types of funds the university holds just to facilitate “flexibility” in the use of university funds.
4. The UT Board of Trustees should consider the wisdom and legality of permitting and enabling another body, even one composed of some of the members of the board, to sit in a position in which that body has control over assets of the university, which are supposed to be the responsibility of the Board of Trustees of the university.

APPENDIX

The University of Tennessee System Scorecard

A Strategic Agenda for 2010

As of July 12, 2004

Top Priorities					
		2001 Base	FY 2002	FY 2003	2010 Goal
	Total Headcount Enrollment	42,160	42,420	42,220	43,700
	African American Enrollment	9.4%	9.9%	10.6%	13.5%
	Total Degrees Awarded	8,991	9,226	9,172	10,450
	Number of In-State Transfer Students (UG)	3,118	3,172	3,013	5,300
	Six-Year Graduation Rates	47.5%	50.3%	52.2%	57.0%
	Graduates in Critical Fields Who Stay in Tennessee	2,416	2,680	2,655	4,125
	Total Research Expenditures	\$179.7M	\$198.0M	\$225.2M	\$325M
	Science and Engineering Research Expenditures	\$161.9M	\$187.1M	\$215.8M	\$300M
	Business Start-ups Based on Research (cumulative)	1	2	3	25
	Market Value of Endowment Assets	\$616.6M	\$584.8M	\$590.6M	\$1,035M
	Total Private Gifts	\$95.1M	\$94.6M	\$119.7M	\$163M
	African American Faculty	3.6%	3.9%	4.2%	5.8%
	African American Staff	9.3%	9.2%	9.6%	12.2%
	Salary Parity - Faculty	(\$16,406,578)	July '04	(\$13,321,827)	\$0
	Salary Parity - Staff	---	---	(\$50,683,754)	\$0

Source: University of Tennessee website.

UT Scorecard As of June 14, 2004

(Knoxville, Space Institute, Institute of Agriculture, Institute for Public Service, & Health Science Center)

	2000-01 Base	2001-02	2002-03	2010 Goal
Our Students				
Headcount Enrollment	27,971	28,043	27,982	28,500
Average ACT/(SAT) Scores for All Entering Freshmen	24.0 (1090)	23.5 (1070)	24.2 (1096)	27.0 (1210)
National Merit and Achievement Scholars	116	129	129	250
Students Participating in the Honors Program	550	600	640	1,200
Year-to-Year Freshman Retention Rates	75.4%	78.3%	75.5%	85.0%
Six-Year Graduation Rates	55.2%	58.7%	57.8%	65.0%
Number of In-state Transfer Students	1,577	1,622	1,541	3,000
Number of International Students	1,229	1,343	1,416	2,000
Number of UT Students Studying Abroad	325	404	425	1,200
Number of National-level Scholar and Fellowship Program Recipients	7	9	7	25
African-American Undergraduate and Graduate/Professional Enrollment	6.5%	7.0%	7.3%	10.0%
Other Minority Undergraduate and Graduate/Professional Enrollment	6.3%	6.5%	7.0%	10.0%
Private and Institutional Student Scholarships	\$17.4M	\$20.1M	\$22.5M	\$35M
Student Satisfaction Index (1=poor, 2=fair, 3=good, 4=excellent)	2.97	2.93	2.85	3.20
Alumni Satisfaction Index (1=poor, 2=fair, 3=good, 4=excellent)	---	3.21	---	3.35
Total Degrees Awarded	6,399	6,528	6,593	7,500
Doctorates Awarded	417	430	423	520
Our Faculty and Staff				
Number of Endowed Chairs (\$500,000 Min) & Professorships (\$250,000 Min)	111	113	115	130
Named Professorships	146	147	149	250
Postdoctoral Appointees in Science, Engineering, and Health	193	313	197	400
African American Faculty	---	3.3%	3.7%	4.8%
Other Minority Faculty	---	15.0%	10.8%	18.6%
African American Staff (Admin/Exec/Mgr/Professional)	---	9.3%	9.4%	11.0%
Other Minority Staff (Admin/Exec/Mgr/Professional)	---	10.9%	9.4%	12.4%
Salary Parity - Faculty w/o benefits	(\$13,970,578)	Jul-04	(\$10,952,960)	\$0
Salary Parity - Staff w/o benefits	---	---	(\$43,277,598)	\$0
Our Research				
Total Grant and Contract Awards	\$205.1M	\$242.2M	\$253.2M	\$350M
Total Research Expenditures	\$177.3M	\$195.0M	\$217.5M	\$315M
Federal Research Expenditures	\$78.9M	\$98.6M	\$101.7M	\$130M
Science and Engineering Research Expenditures	\$160.3M	\$185.2M	\$210.4M	\$297M
Direct Federal Appropriations and Earmarked Funds	\$8.5M	\$10.7M	\$9.0M	\$50M
New U.S. Patents Based on UT Research (cumulative)	21	54	76	230
New Licenses Based on UT Research (cumulative)	12	23	48	135
Royalties and Associated Income	\$2.1M	\$1.3M	\$0.9M	\$5M
Library Volumes	2.77M	2.82M	2.88M	3.2M
UT-ORNL Joint Research Proposals Funded	---	---	\$10.0M	\$50M
Our Service to Tennessee				
Business Start-ups Based upon UT Research (cumulative)	1	2	3	25

(Knoxville, Space Institute, Institute of Agriculture, Institute for Public Service, & Health Science Center)

	2000-01 Base	2001-02	2002-03	2010 Goal
Businesses Incubated (cumulative)	0	0	1	25
Impact of Institute for Public Service - Manufacturing & Government	\$342,548,329	\$594,211,376	\$330,084,080	\$690M
Agricultural and Veterinary Educational & Research Partnerships	141	145	183	190
Graduates in Critical Fields Who Stay in Tennessee	1,731	1,975	1,943	3,300
Students' Hours of Community Service	59,195	93,586	95,828	120,000
Charitable Contributions by Employees to Community Organizations	\$538,151	\$574,824	\$605,128	\$735,000
Our Private Support				
Number of Donors	46,852	44,303	44,542	60,000
Number of Donors Who Are Alumni	25,401	23,522	21,518	30,000
Percentage of Alumni Who Give	17.4%	15.9%	13.8%	20.0%
Total Private Gifts	\$82.6M	\$78.3M	\$102.0M	\$140M
Market Value of Endowment Assets	\$470.2M	\$444.2M	\$441.6M	\$800M
Annual Capital Additions to Endowments	\$20.8M	\$26.3M	\$18.2M	\$40M
Our Strategic Quality Goals				
Nationally Recognized Academic Programs	10	10	14	25
Establishment of UT Research Foundation			Attained	Attained
New Vision and Mission for UT Space Institute			Attained	Attained
Accredited Tennessee College of Public Health				Attained
National Institutes of Health NCI-Designated Cancer Center				Attained
Tennessee Quality Award				Attained
Malcolm Baldrige Quality Award				Attained

Source: University of Tennessee website.

**UT-Chattanooga Scorecard
As of June 14, 2004**

	2000-01 Base	2001-02	2002-03	2010 Goal
Our Students				
Headcount Enrollment	8,319	8,485	8,524	9,200
Average ACT/(SAT) Scores for All Entering Freshmen	22.0 (1020)	21.6 (998)	21.4 (992)	24.0 (1090)
Students Participating in the Honors Program	135	140	133	200
Year-to-Year Freshman Retention Rates	69.8%	74.0%	72.5%	75.0%
Six-Year Graduation Rates	43.9%	44.4%	44.0%	50.0%
Number of In-State Transfer Students	1,032	1,045	1,002	2,000
Number of International Students	209	240	244	310
Number of UTC Students Studying Abroad	106	65	77	200
African-American Undergraduate and Graduate Enrollment	15.9%	16.2%	18.1%	20.0%
Other Minority Undergraduate and Graduate Enrollment	5.0%	4.5%	4.6%	7.0%
Private and Institutional Student Scholarships	\$6.7M	\$7.8M	\$8.6M	\$10M
Alumni Satisfaction Index (1=poor, 2=fair, 3=good, 4=excellent)	2.98	2.94	2.94	3.20
Total Degrees Awarded	1,690	1,658	1,578	1,850
Our Faculty and Staff				
Number of Endowed Chairs (\$500,000 Min) & Professorships (\$250,000 Min)	10	11	13	15
Named Professorships (includes UC Foundation professors)	46	48	48	64
African American Faculty	4.2%	3.3%	5.0%	10.0%
Other Minority Faculty	3.6%	8.1%	3.1%	8.0%
African American Staff	13.2%	15.2%	14.1%	20.0%
Other Minority Staff	3.5%	5.1%	2.8%	7.0%
Salary Parity - Faculty w/o benefits	(\$1,286,500)	(\$1,177,500)	(\$850,000)	\$0
Salary Parity - Staff w/o benefits	---	---	(\$4,247,591)	\$0
Our Research				
Total Grant and Contract Awards	\$12.1M	\$10.7M	\$12.9M	\$20M
Total Research Expenditures	\$2.5M	\$3.1M	\$7.7M	\$10M
Science and Engineering Research Expenditures	\$1.6M	\$2.0M	\$5.4M	\$3M
Direct Federal Appropriations and Earmarked Funds	\$0	\$0	\$1M	\$4M
Our Service to Tennessee				
Business Startups Based on UTC Research (cumulative)	0	0	0	5
K-12 educators receiving professional development through university partnerships	40	50	200	500
Area residents served through personal and professional development activities	2,121	2,322	2,583	4,000
New partnership agreements with social service (nonprofit) organizations	2	4	4	10
New Partnership agreements with local businesses	4	6	8	12
Graduates in Critical Fields who Stay in Tennessee	324	336	339	400
Students' Hours of Community Service	95,000	100,000	105,000	125,000
Charitable Contributions by Employees to Community Organizations	\$82,365	\$87,662	\$102,827	\$110,000
Our Private Support				
Number of Donors	5,372	5,440	5,325	8,400
Number of Donors Who Are Alumni	2,517	2,431	2,229	4,000
Percentage of Alumni Who Give	9.2%	8.5%	6.9%	16.0%
Total Private Gifts	\$10.7M	\$14.6M	\$16.1M	\$20M
Market Value of Endowment Assets	\$123.9M	\$119.9M	\$128.0M	\$200M

	2000-01 Base	2001-02	2002-03	2010 Goal
Annual Capital Additions to Endowments	---	\$2.3M	\$2.3M	\$5M
Our Strategic Quality Goals				
Establishment of Lupton Urban Studies Institute				Attained
National Prominence of UTSimCenter at Chattanooga				Attained
National Prominence of UTC Chairs of Excellence				Attained

Source: University of Tennessee website.

UT-Martin Scorecard As of June 14, 2004

	2000-01 Base	2001-02	2002-03	2010 Goal
Our Students				
Headcount Enrollment	5,870	5,892	5,714	6,000
Average ACT/(SAT) Scores for All Entering Freshmen	21.1 (983)	21.2 (986)	21.3 (989)	23.0 (1060)
Students Participating in the Honors Program	297	302	279	350
Year-to-Year Freshman Retention Rates	60.1%	65.4%	66.5%	70.0%
Six-Year Graduation Rates	33.7%	36.1%	39.2%	41.0%
Number of In-State Transfer Students	509	505	470	750
Number of International Students	222	223	180	300
Number of UTM Students Studying Abroad	180	98	157	300
African-American Undergraduate and Graduate Enrollment	14.0%	14.8%	15.4%	16.5%
Other Minority Undergraduate and Graduate Enrollment	3.8%	3.9%	3.7%	4.0%
Private and Institutional Student Scholarships	\$3.1M	\$3.2M	\$3.3M	\$5M
Alumni Satisfaction Index (1=poor, 2=fair, 3=good, 4=excellent)	3.18	3.26	3.26	3.30
Total Degrees Awarded	902	1,040	1,001	1,100
Our Faculty and Staff				
Number of Endowed Chairs (\$500,000 Min) & Professorships (\$250,000 Min)	4	4	4	6
Named Professorships	10	12	14	20
African-American Faculty	4.9%	5.1%	6.3%	8.0%
Other Minority Faculty	2.9%	3.2%	4.6%	5.0%
African-American Staff (Admin/Exec/Mgr/Professional)	8.3%	6.5%	6.0%	10.0%
Other Minority Staff (Admin/Exec/Mgr/Professional)	0.0%	0.0%	0.0%	1.0%
Salary Parity - Faculty	(\$1,149,500)	(\$1,145,900)	(\$1,518,867)	\$0
Salary Parity - Staff	---	---	(\$3,158,565)	\$0
Our Research and Gifts				
Total Grant and Contract Awards	\$7.6M	\$8.7M	\$8,897,694	\$16M
Number of Donors	2,622	2,317	2,133	3,000
Number of Donors Who are Alumni	2,158	1,912	1,292	2,350
Percent of Alumni Who Give	10.2%	8.8%	7.8%	14.0%
Total Private Gifts	\$1.8M	\$1.7M	\$1.6M	\$3M
Market Value of Endowment Assets	\$22.5M	\$20.7M	\$21.0M	\$30M
Our Service to Tennessee				
K-12 Educators Receiving Professional Development Through University Partnerships	50	80	265	600
Area Residents Served Through Personal and Professional Development Activities	120	150	480	850
New Partnerships with Businesses, Industry, and Agencies	4	31	44	55
Graduates in Critical Fields who Stay in Tennessee	361	369	373	425
Students' Hours of Community Service	95,971	119,000	121,400	150,000
Charitable Contributions by Employees to Community Organizations	\$153,478	\$159,954	\$182,000	\$224,000
Our Strategic Quality Goals				
Teacher Quality Program	0.0%	100.0%	100.00%	100.0%
Student Headcount Enrollment in E-Learning Programs	117	262	325	900
Students Trained in Leadership Through LEAD Academy	0	135	138	475
National Recognition of Student Organizations	3	8	9	10

Source: University of Tennessee website.

2002-2003 Degrees Awarded by Race

	Caucasian	African-American	Other	Total Conferred
UT	5,551	435	558	6,544
UT-Chattanooga	1,267	193	81	1,541
UT-Martin	827	98	57	982
Total	7,645	726	696	9,067

Source: Appendix L, *University of Tennessee Title VI Implementation Plan, 2004-2005*.

Orders Awarded to UT Minority-, Women-, and Small-Owned Businesses Summary Report July 1,2002-June 30, 2003					
Campus	Class	Bids Solicited	Bids Returned	# Purchase Orders/Change Orders	Total \$
Knoxville, Tullahoma, Memphis	Minority	359	114	37	936,839
	Women	768	285	101	1,039,296
	Small	3,056	1,182	839	31,460,708
Chattanooga	Minority	22	8	4	117,341
	Women	54	19	12	293,748
	Small	290	97	144	2,429,289
Martin	Minority	12	5	6	149,039
	Women	0	0	9	329,802
	Small	14	7	45	961,428
Total Minority		381	122	47	1,203,219
Total Women		822	304	122	1,662,846
Total Small		3,346	1,279	1,028	34,851,425

Source: Appendix M, *University of Tennessee Title VI Implementation Plan 2004-2005*; Jerry Wade, Purchasing Manager.

UT Staffing Data as of October 31, 2003

Campus	Race	Gender	Full-Time EEO Category									Part-Time EEO Category										
			Faculty	Exec/ Mgmt	Prof	Tech/ Para	Clerical	Skilled Craft	Service	Total	Campus Percent	Faculty	Exec/Mgmt	Prof	Tech/Para	Clerical	Skilled Craft	Service	Total	Campus Percent	Grand Total	Campus Percent
UT	White	Male	1,057	250	797	298	177	390	903	3870	41.2	206	16	33	39	46	2	301	643	39.7	4513	41.0
		Female	594	209	811	269	1505	21	234	3643	38.8	156	12	99	79	260	0	162	768	47.8	4411	40.1
	Minority	Male	177	26	233	47	33	53	217	786	8.7	24	0	10	9	8	0	30	81	5.0	867	7.9
		Female	114	27	231	127	376	9	211	1095	11.7	19	0	11	26	50	0	23	129	7.96	1224	11.1
	All	Male	1234	276	1030	343	210	443	1120	4656	49.6	230	16	43	48	54	2	331	724	44.7	5380	48.8
		Female	708	236	1042	396	1881	30	445	4738	50.4	175	12	110	105	310	0	185	897	55.3	5635	51.2
UTC	White	Male	180	49	57	17	8	17	25	353	36.9	126	0	10	13	13	1	36	199	34.3	552	35.9
		Female	148	42	59	12	130	0	15	406	42.9	143	1	12	10	53	0	36	255	43.9	661	43.0
	Minority	Male	19	7	10	1	4	5	36	82	8.6	8	0	1	3	11	0	24	47	8.1	129	8.4
		Female	10	9	16	3	45	0	34	117	12.2	10	0	3	6	35	0	26	80	13.8	197	12.8
	All	Male	199	56	67	18	12	22	61	435	45.4	134	0	11	16	24	1	60	246	42.3	681	44.3
		Female	158	51	75	15	175	0	49	523	54.6	153	1	15	16	88	0	62	335	57.7	858	55.8
UTM	White	Male	130	31	37	15	8	37	49	307	43.7	0	0	2	0	0	0	2	10.0	309	42.9	
		Female	84	25	63	5	128	3	27	335	47.7	0	0	3	13	13	0	1	17	85.0	352	48.8
	Minority	Male	13	1	4	0	0	1	6	25	3.6	0	0	0	1	1	0	0	1	5.0	26	3.6
		Female	13	0	5	0	9	0	8	35	5.0	0	0	0	0	0	0	0	0	0.0	35	4.9
	All	Male	143	32	41	15	8	38	55	332	47.3	0	0	2	1	1	0	0	3	15.0	335	46.4
		Female	97	25	68	5	137	3	35	370	52.7	0	0	3	13	13	0	1	17	85.0	387	53.6

Source: Appendix N, University of Tennessee Title VI Implementation Plan 2004-2005.