



SENATE FINANCE COMMITTEE
ROUNDTABLE DISCUSSION - MARCH 3, 2006

BEST PRACTICES IN UNIVERSITY GOVERNANCE

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As we have witnessed all too often, the full promise of lay boards has not materialized. However, we believe that the promise of lay boards can be realized. The Institute for Effective Governance (IEG) exists to assist trustees in bringing the promise of effective lay governance to practice. In doing so, we provide advice and guidance to trustees nationally on best practices in higher education governance. To assist the committee in its work, I would like to share some of the relevant best practices with you. It is my hope that these comments will aid the committee in its work and help inform the committee's responses to the governance issues raised by recent events at American University.

Board assessment

Boards should assess their performance regularly. While not practical to do a comprehensive assessment annually, boards should make time annually to discuss their performance. Boards should take the time to discuss what went well during the year and what needs to be improved.

At least every four years, boards should conduct a comprehensive self-assessment. Typically, boards will undergo a comprehensive self-assessment prior to development of a strategic plan, prior to commencing a search for a new president, and/or following a significant crisis or board blunder. The self-assessment helps to shed light on areas that the board itself needs to improve. Most boards conduct this self-assessment in a retreat setting using a facilitator and/or consultant. They will typically use an assessment instrument whereby survey results are tallied and analyzed. The results are used to shape an improvement plan and can result in the revision of board bylaws, policies, and/or procedures, the implementation of new policies, and other actions required to correct deficiencies in board operations and structure (e.g. improved financial controls).

When boards engage in self-assessment, they should assess how well they have met their responsibilities. The assessment would include how well they:

- engage in strategic planning;
- meet their strategic goals and objectives and remain true to their stated mission;
- monitor the effectiveness of various programs;

- provide fiscal oversight and ensure fiscal integrity;
- recruit and orient new trustees and develop existing trustees;
- prepare for succession in board leadership;
- assess the president;
- ensure academic integrity and student learning; and,
- enhance the university's public image and standing.

Experience tells us that rarely do boards engage in a full self-assessment. Board assessments are important because they help reinvigorate boards making them less likely to become stagnant and accept the status quo. They allow members to engage in thoughtful conversation about their perspectives on what is working well and what needs to change. In almost all cases, board self-assessments result in some operational change and often result in changes to board structure, composition, and board policies and/or procedures.

Size and composition of the board

- ♦ **Size.** There is no magic formula for size of a board. In our experience, larger boards tend to be less effective. Too large a board typically results in poor attendance (with the sense that one person's absence has little impact) and can be difficult to manage as a board of such size rarely leads to cohesiveness among the board members. Too small a board likely means members will be on multiple committees and may in fact be required to put in more time than is realistically possible. This, over a period, can cause trustee burnout. Optimal membership size varies depending upon the board; however, membership size of about 15 trustees is usually optimal to ensure an even distribution of duties and an effective working relationship among trustees.
- ♦ **Board composition.** The board composition should ensure a balance of talents and expertise. The Governance Committee should recruit members that will add value to the board, fill any voids in expertise that exist on the current board, and have a genuine interest in the mission and success of the university. The committee should also prepare for succession especially in board leadership positions.
- ♦ **Participation.** Board members must attend meetings. The Governance Committee should establish attendance requirements and may want to include them in the bylaws. Attendance should be monitored by the Governance Committee and should be taken into account when considering reappointment. A board cannot be effective if trustees are not present to discuss and vote on issues. Boards may even consider including in the bylaws a consequence when attendance requirements are not met, such as removal from the board.
- ♦ **Preparation.** Board members have a duty to come prepared to meetings. They should read thoroughly all board materials even if they do not pertain to their committees (ultimately they will vote on all issues and therefore should be informed and knowledgeable about all issues before the board). Knowledgeable,

prepared, and informed trustees are a key ingredient to effective trusteeship.

It is common for boards to be inundated with information. Often boards are given agenda/briefing books that are hundreds of pages and nearly impossible to review thoroughly in the short amount of time given between distribution and the meeting. José Cabranes, Judge, United States Court of Appeals and former Yale University trustee says one sign of a weak board is “the ten-pound briefing book. One major purpose of the ten-pound binder is to provide cover for administrators who later can claim that some crucial item – buried in the interstices of a ten-pound package – was indeed presented to the trustees but that, lo and behold, no one had expressed any interest, much less disagreement, at the time.”¹ Trustees can avoid this phenomenon by communicating to staff the way in which they would like to receive information so that action and substantive issues are highlighted.

- ♦ **Board orientation and training.** All new board members should be oriented in their new role. However, training should not cease after orientation. The Governance Committee should incorporate annual training on issues pertinent to the board. Ongoing professional development is another key ingredient to successful trusteeship.
- ♦ **Committees.** The board should establish in its bylaws the provision for establishing various standing and ad hoc committees. Some boards include the authority for and the powers and duties of each standing committee in their bylaws while others just provide for their creation. The board should define the role and responsibilities of the committees, their purpose and clearly state them in the board’s policy manual. For college and university governing boards, the standing committees typically include:
 - **Academic Affairs Committee** is responsible for ensuring the academic integrity of the university including the assessment of student learning, program approval, program and faculty productivity, and development and implementation of pre- and post- tenure review policies
 - **Finance Committee** is responsible for ensuring adequate financial controls and monitoring all financial aspects of the university including capital construction (unless another committee is established for that purpose)
 - **Audit Committee** is responsible for assessing university risk, developing an audit plan, and monitoring university activities vs. board policies
 - **Governance Committee** is responsible for assessing the board’s needs in terms of trustees, identifying and recruiting trustees, the orientation of

¹ Cabranes, José. For Trustees Only, *University Trusteeship in the Enron Era*, Remarks to the National Association of College and University Attorneys at the Annual Meeting, June 26, 2002.

new trustees, and ongoing training of existing trustees. This committee is also responsible for the regular assessment of the board.

- **Executive Committee** is responsible for developing meeting agendas with input from all members of the board, acting on emergency issues when the board cannot convene a meeting (there should be explicit limitations on authority with regard to the executive committee's ability to act alone), board planning activities, and monitoring committee's work. It is important that neither the executive committee, nor any other committee of the board, represent a quorum of the board.

The board should also make provisions for the establishment of ad hoc committees that would typically include presidential selection and presidential assessment committees and task forces as needed.

- **Action by the board.** Neither one member nor a committee should have authority to act on behalf of the board. If the board chooses to delegate a particular issue to a committee, it should require a report of the action taken and ratify the actions by a full board vote. Too often board members claim they were unaware of a board action. This occurs when a board delegates authority to a particular committee and/or member and fails to follow-up on such action. Any such delegations should not involve major issues or core responsibilities of the board. For example, the board should not delegate budget approvals, financial decisions of material size, contract approval, employment contracts, etc.

Each committee member should delve into the issues pertaining to the particular committee assignment(s). Committee members should ask questions and fully examine the issues before them, focusing on those issues that are substantive and meaningful. The committee should bring its action items to the full board for consideration and approval. It is also a good idea for committee chairs to make a report to the full board on discussion items and staff directives. This allows for board follow-up on those directives and the committee's work will be reflected in the minutes the record.

- **Committee assignments.** The Board chair or designee should make assignments matching both board interest with special skills and abilities. For example, a majority of trustees appointed to the finance committee, should have a background or certain level of expertise in finance. Similarly, the majority of trustees assigned to the academic affairs committee should have an interest in and understanding of academic issues on campus and an understanding of academic culture. That said, bringing various perspectives to the committee is also useful because these trustees typically bring a fresh outlook on the issues debated.

Fiscal controls and audit

- ♦ **No-bid contracts.** The board should have in place policies and procedures for procurement that ensure fairness in bidding and selection of contracts. Such policies shall be enforced by the board. Conflict of interest should be avoided at all times. If a member is unsure of a potential conflict, the trustee should seek legal counsel's advice and act accordingly. When in doubt, a board member should recuse himself/herself from any discussion and decision that may give the appearance of a conflict of interest.
- ♦ **Expenditures.** Boards must put in place policies, financial controls and checks and balances to ensure fiscal responsibility and integrity. Boards must develop and approve annual budgets that align with the university's strategic plan priorities. Boards often approve the budget and rarely come back to monitor it throughout the year. Boards should insist on regular budget vs. actual reports. That said, it is still important for boards to examine expenditures within and outside the context of the budget. Typically, board members are told that a particular expenditure was made within the Board's approved budget. That may in fact be true; however, that does not necessarily mean the board approved the particular use of funds. Budgets are usually developed at high levels of expenditure and boards usually do not know all the details that make up the expenditure category. In order to get a better handle on significant expenditures, some boards set thresholds for expenditures. For example, a board may require that any expenditure in excess of \$100,000 be brought to the board for approval (the threshold will vary by institution). This type of requirement ensures that any large expenditure receive extra scrutiny and oversight by the board prior to being bid, incurred or obligated.

Finance committees have the responsibility for understanding the budget and monitoring it; however, the full board should be kept abreast of the university budget and financial status of the university. All members of the board should receive an orientation and ongoing training with regard to the financial aspects of the board. Board work sessions, held in advance of budget adoption, provide a good mechanism for board members to engage in discussion regarding budget priorities.

- ♦ **Regular internal audit.** The board should retain an internal auditor that reports directly to the board's audit committee. The role of the internal auditor is to examine university actions relative to policies and procedures. These examinations should include not only financial activities, but also academic policies, operational activities, among others. With the audit committee's involvement, the internal auditor, should conduct a risk assessment that results in the development of an audit plan. The board should adopt the audit plan and receive a regular report from the internal auditor.

Conflict of interest

The board must have a conflict of interest policy and enforce it. In selection of board members, the board's governance committee must ensure conflicts of interest are avoided. To the extent conflicts develop after a board member's appointment, the board's conflict of interest policy should provide guidance on processes to follow to avoid the conflict of interest.

Bylaws

Too often boards tend to accept the bylaws they inherit. There is no excitement in reviewing bylaws. However, these legal documents set the parameters for the board's work. Boards should include in their bylaws a requirement for periodic review. This typically coincides with the board's self-assessment; however, it should be an explicit requirement of the board, and should happen no less often than every five years. This review typically falls under the purview of the Governance Committee.

As a rule, bylaws describe the board's authority, role, and responsibility. They describe the terms of membership of the trustees, terms and responsibilities of the officers including the chair and vice-chair. The bylaws also set out the authority and responsibilities of the university president and his senior staff. They typically set out the frequency at which the board must meet, define a quorum for board action, and describe what constitutes board action. Bylaws, to varying degrees, also describe composition of committees, their roles, and responsibilities.

The process for amending bylaws is also included in the bylaws and usually requires at least two readings. Boards should take seriously their role in understanding the bylaws, ensuring they are meeting the requirements as set out by the bylaws, and reviewing them periodically to ensure they meet the current needs of the board.

Transparency

Transparency is an important issue in board governance. Transparency of a board is determined by how well the outside can see how the board operates. It allows outsiders to see how decisions are made and how resources are used. It is a vital element in determining trust and building relationships. Various efforts of the board can help with improving transparency. These efforts include that the board:

- ♦ ***Make minutes available.*** Minutes of board and committee meetings should be made publicly available and accessible shortly after each meeting. Minutes provide the university community and board members with written documentation of the items discussed and actions taken. Minutes also provide the board with a vehicle for follow-up on action items and directives.
- ♦ ***Provide notice of meetings.*** Because of open meeting laws, public colleges and universities are required to provide advance notice of trustee meetings and make meeting minutes available. While not required of private colleges and universities, providing advance notices of board meetings and the posting the

meeting agenda publicly lets the various university constituencies know what the board is doing and sends a message that you want to keep them informed.

- ♦ **Provide a report of board actions.** While not required, some boards post a report of board actions on the university web site or send out a communiqué to the university community. This is a good way to keep the various university constituencies and stakeholders informed about the board's work and actions. It also sends a message to the various university groups that the board is attempting to keep them in the loop on the important work of the board.

- ♦ **Provide a venue for public comment and/or stakeholder input.** Boards are encouraged to seek input from the universities various constituent groups and stakeholders. Any number of methods for stakeholder input can be employed. Some examples include
 - **Formal advisory committees.** Boards can create formal advisory committees to the board to ensure wide representation of a particular group of stakeholders (such advisory committees might be created for faculty, staff, students, and/or alumni). How often they meet and with what committee(s) vary by board.

 - **Public comment.** Boards can invite public comment at board meetings. While on face value this appears to be a good way to seek input, managing the public comment process can be a challenge. A couple of ways to ensure the process is productive is to require comments be submitted in advance of the meeting and limit the speaker's time to address the board.

 - **Hearings or work sessions.** Boards can hold annual or semi-annual hearings or work sessions on a particular issue to obtain feedback from various groups. Many boards choose this approach when developing the university strategic plan or when contemplating a major initiative that has university wide implications.

 - **Email and websites.** With the internet available to boards, it is much easier and cost effective today to keep all constituent groups informed about board activities. Boards should utilize the university website by creating a trustees web page. Boards could then post the minutes, meeting notices, agenda, and various communications to keep interested individuals informed. Board members should also make available contact information including an email address. This will allow the board to receive feedback from various people without being overly intrusive on family or business time.

There are many ways to encourage and seek input and feedback from the various university constituents and stakeholders. What is important for boards to consider is that a vehicle for input be available and that the vehicle be as representative as possible. Too often, boards take one individual's, or

a group of individuals, input as representative of the whole, when, often, this is not the case.

No matter how boards seek and obtain feedback on issues, it is important that the board always maintain control of the issue. The board should consider and discuss the input it receives, but ultimately the board has to act and held accountable for its actions. Boards should never delegate their trustee responsibilities to others. The board should systematically communicate back with the various constituent groups about the decisions it makes and, if appropriate, the rationale for those decisions.

The President

- ♦ ***Search and selection.*** The board chair should appoint a search committee to lead the search of a new president. The search committee should be a majority board of trustee members and, rather than having various constituent groups sitting on the search committee, it is recommended that advisory committees to the board be utilized to seek specific input from constituent groups. Selection of a president is the board's most important function. The board hires the president and holds him/her to account, therefore, control and authority over the entire process must remain a board function.
- ♦ ***Contract negotiation.*** The president's employment contract should include a provision for annual evaluation and assessment. The contract should be developed with legal counsel and protect the university's interests should the president's actions, or lack thereof, necessitate his departure. At no time should any one member or committee commit the university to a contractual obligation without the full approval of the board. The board should work with compensation experts and assess independent information regarding salaries of presidents of peer institutions, including fringe and other benefits.
- ♦ ***Evaluation.*** Evaluation of the president must take place regularly and it is recommended that it take place annually. The annual evaluation need not be elaborate, however, it should be based on how well the president has met the goals and objectives set out by the board for the past year. Presidential evaluation should not be an activity that is conducted only when a problem arises. Next to selecting a president, the evaluation is one of the board's most important governance activities. It is a means for regular communication, as a board, to the president about his strengths and areas for improvements.

A committee of the board should be established to develop a process for evaluation, conduct the evaluation, and analyze the results. A report of the evaluation results should be made to the full board with recommendations for a development plan. It is recommended that at least every four years a more comprehensive evaluation of the president be conducted whereby the board seeks input from various constituencies and stakeholders on the president's performance and longer term performance outcomes, set by the strategic plan, are evaluated.

Conclusion

These comments serve to highlight areas where boards are particularly vulnerable and appear to have the greatest difficulty in bringing the promise of trusteeship to reality. Boards must remain diligent in their duties, be committed to their role in governance, and be engaged. The promise of trusteeship can indeed become the reality if board members take seriously their role, remain active, and have a keen eye to assessing how they are performing. With continuous assessment and improvement in mind, boards will provide excellent service to the university and the stakeholders they serve.

About the Institute for Effective Governance

The Institute for Effective Governance (IEG) is a nonpartisan membership and service organization founded by college and university trustees, for trustees. IEG is devoted to enhancing boards' effectiveness and helping trustees fulfill their fiduciary responsibilities fully and effectively. IEG offers services tailored to the specific needs of individual boards. IEG helps trustees focus on critical issues of academic quality, academic freedom, and accountability. The Advisory Board includes current and former trustees from 22 institutions across the country.

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Phyllis Palmiero is currently the Director of the Institute for Effective Governance (IEG), a service organization for college and university trustees nationwide. Prior to her joining IEG, Ms. Palmiero was a consultant in government, public policy, and higher education. Among her accomplishments in this capacity, Ms. Palmiero authored *Governance in the Public Interest, A Case Study of the University of North Carolina System* and successfully wrote several grants including a \$2.0 million Honor State grant proposal to the National Governor's Association for Redesigning the American High School.

Ms. Palmiero is the former Executive Director of the State Council of Higher Education for Virginia (SCHEV) having served in this capacity from August 1999 - September 2003. As Director of SCHEV, Ms. Palmiero, working with the Council, had responsibility for coordination of the 11th largest higher education system in the United States serving more than 400,000 students at 15 public four-year colleges and universities, 23 public community colleges, a public junior college, 43 independent not-for-profit colleges and universities and nearly 60 private for-profit institutions. In this capacity, Ms. Palmiero had responsibility for development and implementation of higher education policy in the areas of academic and student affairs, institutional research, budgeting and finance, capital planning, state financial aid and other college programs, information technology, and human resources. Ms. Palmiero is credited with instituting a system of accountability in Virginia higher education with the creation of the Reports of Institutional Effectiveness and for implementing learning assessments in core academic areas.

Prior to her work at SCHEV, Ms. Palmiero served at the Virginia Department of Planning and Budget (DPB) from January 1991 to August 1999. She rose through the ranks serving three governor's administrations based upon her respected analytical skills, her understanding of elementary, secondary and higher education policy issues, and her advancement of proactive initiatives for change and improvement in Virginia education. At DPB, Ms. Palmiero held many leadership positions, including Deputy Director for Policy; Manager of Elementary, Secondary, and Higher Education; and Senior Education Analyst. She managed a professional staff in the development of education policy and in the execution of more than \$9.6 billion in state funds for elementary and secondary education and higher education.

Before her work in Virginia education policy and finance, Ms. Palmiero was an Associate at Salomon Brothers Inc., a leading investment bank, in New York City. At Salomon Brothers, she was responsible for various financial analyses, including assessment of the firm's product profitability and trading strategies. Earlier in her professional career, Ms. Palmiero worked with New York City's Office of Management and Budget as a Budget Analyst. She also has served at the Savings Banks Trust Company as a financial analyst.

Ms. Palmiero holds a Master of Business Administration degree in Finance and a Bachelor of Arts degree in Economics from Fordham University in New York City.

Ms. Palmiero currently serves as a board member for the Partnership for the Future, is a steering committee member for the University of Virginia Patient and Friends Cancer Research Fund, and was appointed by the Speaker of the Virginia House of Delegates to serve on the Joint Subcommittee Studying Public Funding for Higher Education in Virginia. Ms. Palmiero is the 2002 recipient of the YWCA Outstanding Women Award in Government and Politics.