

Kentucky State University

Board of Regents Meeting

Board of Regents' Retreat

January 8, 2014

Regent Karen Bearden, Chairperson

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Dr. Mary Evans Sias, President

Governance Best Practices

Kentucky State University

January 8, 2014

Ellen Chaffee, Ph.D.

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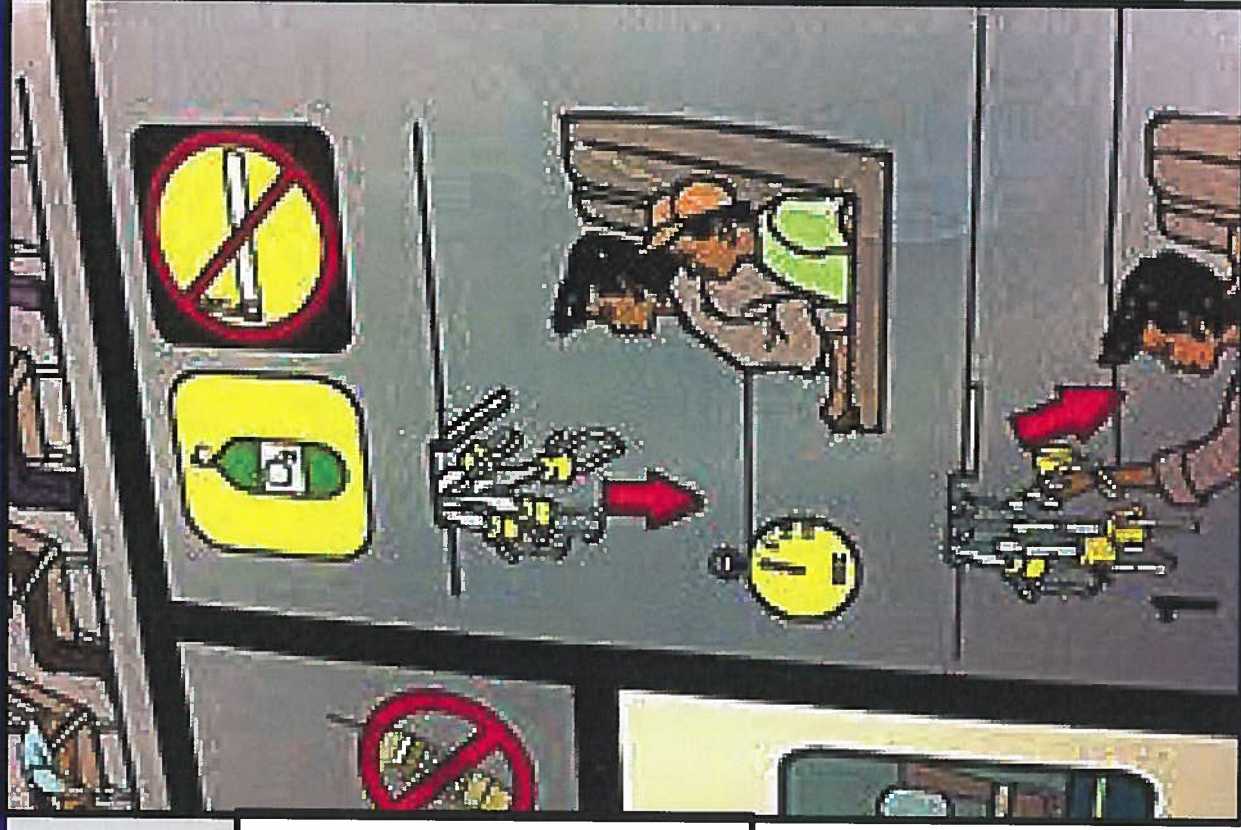
You are Responsible for TWO Organizations

- Kentucky State University
- The Board itself

FOCUS FOR THIS MORNING



Should the Board
“Put its own oxygen
mask on first?”
Why (not)?



Responsibilities of the Board

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Responsibilities of the Board:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

Responsibilities of the Board: ByLaws

1. Appointments: president, faculty, administrative staff
2. Budget, financial management, expenditures over \$50K
3. Approve administrative structure and organizational plan
4. Approve faculty, staff, and student bylaws
5. Grant diplomas, confer degrees
6. Make/approve policy statements on governance and operation
7. Evaluate university progress and hold accountable
8. Define mission, approve long-range plans
9. Assess board and president performance periodically

What is “fiduciary duty?”

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Fiduciary Duty



Duty of CARE

- Decide and act in good faith
- Prudent person level of care



Duty of LOYALTY

- Decide and act in the best interest of the organization, protect and support



Duty of OBEDIENCE

- Faithful to founding documents
- Obey the law

Long-Term Perspective

Fundamental Board Responsibilities

1. Current mission aligned with public purposes
2. Select, support, assess, compensate **CEO**
3. Charge CEO to lead **strategic plan**, participate, approve, and monitor the plan
4. Ensure
 1. fiscal integrity, asset protection; give/get
 2. educational program/service quality
 3. organizational autonomy, academic freedom, public purposes
5. Meet with **constituencies in concert with administrators**
6. Demonstrate **exemplary governance**

AGB, *Effective Governing Boards: A Guide for Members of Governing Boards of Public Colleges, Universities, and Systems*. 2010

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Board Duties: Deliver and Sustain the Mission

Ensure
organization
fulfills its
mission

- **Deliver:** Are we doing what we are supposed to do?

Ensure long-
term
viability

- **SUSTAIN:** Will we exist and succeed “forever?”

Responsibilities of a Board Member

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Board Responsibilities

What is Board members' one overriding and all-encompassing responsibility?

1. Board meeting preparation and participation
2. Ensure good management of the organization
3. The best interests of Kentucky State U
4. Choosing the logo

Responsibilities of Board Members:

ByLaws

1. Entrust internal administration to the president
2. Devote time to learning how the university functions
3. Learn, commit, abide by bylaws and state law
4. Accept academic freedom and shared governance
5. Respect policy that only the chairperson speaks for the board
6. Do not speak, act, or commit on behalf of the board
7. Work with and through the president
8. Questions/concerns to president, board chair or vice chair
9. Do not influence a university employee
10. Attend special events/activities as feasible.

As a KSU Regent, I will...

1. Sustain and advance the institution's **mission**, traditions, values, and reputation
2. Demonstrate functional understanding of the difference between oversight and management—that is, between the **roles of the board and the administration**
3. **Learn** how the institution functions—its uniqueness, strengths, needs, finances, educational programs, and its place in higher education
4. Regularly **attend** meetings of the board, well informed and **prepared** in advance

As a KSU Regent, I will...

4. Regularly **attend** meetings of board committees as assigned, well informed and **prepared** in advance
5. Provide philanthropic **support** through personal contributions and the identification and solicitation of potential contributors to the institution
6. In keeping with the board's policy on **conflict of interest**, disclose promptly and fully any potential or actual conflicts of interest, and personally maintain exemplary **ethical standards**

As a KSU Regent, I will...

7. Recognize that the president and the administration are responsible to the **board as a whole** and not to individual trustees
8. Be committed to serving the **institution as a whole** rather than any part of it or any personal or political cause
9. Support the **consensus** of the board after fully exercising the responsibility to **debate** and disagree
10. Maintain **confidentiality** as required or appropriate
11. Serve as a public **advocate and ambassador** for the institution. Advocate the institution's interests, but speak for the board or the institution only when authorized to do so by the board or the chair

Relationships with Others

What to Do?

Prof. Smith takes Regent Jones aside at a Board-faculty social to ask him to support Issue X. Regent Jones should:

1. Ask her for a full briefing
2. Keep it short and explain that he will decide based on what comes to the board meeting
3. Talk with her superior to assess internal support
4. Refer her to the appropriate board committee chair
5. Other

What To Do?

A reporter called Regent Jones about her dissenting vote on a Board decision to approve funding for a major renovation.

Regent Jones should:

1. Explain her dissenting vote
2. State that she supports the Board's decision and is confident that the renovation will be worthwhile
3. Bring Regent Taylor, who also dissented, into the conversation
4. Decline to comment

What to Do?

The ~~Staff~~ **Faculty** Senate is adamantly and vociferously opposed to one major part of a multi-part budget reduction proposal. Regent Jones is a ~~staff~~ **faculty** member. What should Regent Jones do?

1. Talk with the Senate Chair to learn more about the concerns
2. Study the proposal and make sure all of Jones' questions are answered by or through the President
3. Oppose the proposal – send it back for revision

What to Do?

The student senate threatens to oust student body president/student Regent Miller unless s/he votes “no” on a proposed tuition increase. What should Regent Miller do?

1. Miller believes that the tuition increase is not in the university’s best interest. Miller votes “no.”
2. Miller has not yet decided how to vote. This makes it easy – Miller votes “no.”
3. Miller believes the increase is essential, disregards the student senate, and votes “yes.”

What to Do?

Other difficult situations?

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Who Decides What?

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Strategic Role of the Board



AC

erved.

Governance or Management

1. Is it big?
2. Is it about the future?
3. Is it core to the mission?
4. Is a high-level policy decision needed to resolve a situation?
5. Is a red flag flying?
6. Is a watchdog watching?
7. Does the CEO want and need the board's support?

Barry Bader, "Distinguishing Governance from Management," Great Boards, Fall 2008

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President and Board Involvement in Decision-Making

High	GOOD GOVERNANCE -Elect new board chair -Structure board committees	STRATEGIC LEADERSHIP -Visioning process -Strategy -Major decisions
BOARD INVOLVEMENT		
Low	PRESIDENTIAL DELEGATION - Construction - Program change - Technology change	PRESIDENTIAL MANAGEMENT -Hire senior staff -Organizational chart
	Low	High

Adapted from Terrence MacTaggart, Leading Change, AGB, 2011

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Governance or Management?

- Organizational mission
- New program approval
- Strategic plan
- Floor plan of new building
- Vendor selection
- Selection of new vice president
- Annual budget
- Awarding promotions

With which (one or more) of the following should you share remarks that are not or may not seem supportive of the university or the president?

1. Governor
2. Board Chair
3. President
4. Board Committee Chair
5. Fellow Regent
6. University administrator
7. Spouse
8. Legislator
9. Reporter

The Board's Strategic Role

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Strategic Governance

Which of these Board-member question(s) are strategic?

1. How's the search for a new VP going?
2. Why do you recommend changing this year's budget mid-stream?
3. What are the long-term implications of this proposal?
4. How much time do you spend on external relations?
5. What are our critical success factors?
6. How do we know Harper delivers excellent student learning outcomes?

The Board's Roles in Strategy

1. Approve the mission statement
2. Approve other major, enduring organizational statements
3. Launch a major strategic planning/strategy statement process and committee
4. Maintain sufficient contact with the strategy development process to be informed of progress and major issues/recommendations
5. Approve the strategic plan/strategy statement
6. Regularly review progress and assess/support revisions

Board Action Plan

How will you follow up on what you've learned?

- 1.
- 2.
- 3.
- 4.

Thank you!!

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A Lesson from Corporate Boardrooms:

Practice Good Governance or Face External

BY T. GRANT CALLERY



TAKEAWAYS

- 1 Higher education governance can expect to feel the same external pressure to be more accountable that was felt in the corporate world after recent scandals.
- 2 College and university governing board members, like members of corporate boards, are bound by two fundamental duties: the duty of care and the duty of loyalty. Many nonprofits are also governed by a third obligation, the duty of obedience.
- 3 To remain ahead of the curve and not become subject to increased public scrutiny and government regulation, boards should move in the direction of “gold standard” governance, reviewing and updating their processes, educating board members, and ensuring that they are acting in good faith consistent with their fiduciary duties.

OVER THE PAST FEW DECADES—AND ESPECIALLY IN THE past three or four years—governance practices at colleges and universities have often fallen short of the mark. During the same time period, the governance structure of the corporate world has been significantly strengthened. A key distinction between the two areas of board behavior is the existence of various external forcing mechanisms in the corporate arena that are not found in higher education. Yet with increasing public scrutiny of higher education governance and demands for greater accountability, colleges and universities can reasonably expect that similar external forces will eventually pressure them to “get with the program” of 21st-century governance norms.



Forces

As featured in the September/October 2013 issue of Trusteeship magazine
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AEG

On numerous occasions, governance-related issues have damaged the reputations of otherwise respected colleges and universities. Adelphi University, part of the New York State University system, was tainted in the mid-1990s by allegations of excessive presidential compensation and misappropriation of university funds. Following a review, the New York State Board of Regents found instances of self-dealing on the part of the Adelphi board and removed a number of its members.

Spring forward 10 years, and a similar set of circumstances involving executive compensation arose at American University in Washington, D.C. The board terminated the president after an investigation revealed his alleged lavish spending habits. Moreover, because the university held a congressionally approved charter, the events also resulted in congressional hearings.

In the past two years, other attention-grabbing instances of governance problems at major universities have occurred. One at Penn State involved the oversight of potentially criminal activities among the university's football coaching staff; another at the University of Virginia concerned a botched attempt to dismiss the president. As AGB President Rick Legon noted in *Trusteeship* (September/October 2012), members of the UVA board, "who care passionately about the institution, lost sight of that larger playing field, allowing governance to misfire and putting the university's reputation at risk. The governance failures at UVA attracted national attention and raised a number of questions, not the least of which was whether the historic governance model of our colleges and universities merited support." In the case of Penn State, an investigative report by former FBI director Louis Freeh concluded that the Penn State board's "overconfidence

... and its failure to conduct oversight and responsible inquiry... hindered the board's ability to deal properly with the most profound crisis ever confronted by the university."

These are just the most widely reported instances of governance failures in the college and university setting; there are certainly others. But they amply demonstrate the serious risk to a higher education institution if care and attention are not paid to ensuring good governance.

Defining Fiduciary Obligations

What then are a board member's obligations to an institution? During our orientation processes, all of us who serve on boards are (or should be) imbued with the understanding that, as members of the board, we become fiduciaries to the institution. But as stated in an oft-quoted U.S. Supreme Court decision by Justice Felix Frankfurter, "To say that a man is a fiduciary only begins analysis; it gives direction to further inquiry. To whom is he a fiduciary? What obligations does he owe as a fiduciary? In what respect has he failed to discharge these obligations? And what are the consequences of his deviation from duty?"

In American corporate law, state statutes and judicial interpretation of those statutes generally determine the obligations of directors. State legislatures have followed two basic models in enacting laws governing corporations. The first is the unitary model followed by Delaware, the chosen state of incorporation for a large number of American for-profit corporations. The Delaware statute does not distinguish between for-profit and nonprofit corporations, but rather between their structure as stock or non-stock corporations. Under that model, all corporations have either shareholders or

members (who, to a large degree, have status similar to shareholders with respect to their rights under the law).

The second model distinguishes between for-profit and nonprofit corporations and allows the nonprofits to operate without either shareholders or members and to be governed by self-perpetuating boards. Those states, such as New York, set out differing obligations and, perhaps more important, oversight models for the two types of corporations. It is under the nonprofit portions of the statutes that most private colleges and universities are incorporated.

Irrespective of the corporate model under which an institution is incorporated, the basic obligations of corporate board members and nonprofit trustees like those at colleges and universities are similar. (As will be discussed later in this article, however, the manner of incorporation can significantly impact the remedies that might be available to interested parties who may feel aggrieved by the actions of the institution and its board.)

The discussion of board obligations in this article is derived from the corporate law applicable to for-profit corporations, and therefore is most directly applicable to private colleges and universities. The same standards, however, also appear to be generally applied in the public university context, either by the charter creating the institution, by statute, or by regulation. As an example, in its "Statement on the Governance Role of a Trustee or Board Member," the New York State Board of Regents applies the same basic obligations of public university trustees as state corporate law imposes. The Freeh Report cited previously also articulated such duties and made clear that Pennsylvania law governing nonprofit boards imposes similar requirements.

One of the most basic premises of American corporate law is that the business of an incorporated entity is to be managed by, or under the direction of, its board of directors. That does not mean that directors are to be engaged in the everyday management of the institution, but rather that they bear ultimate responsibility for ensuring proper management. In carrying out this responsibility,



two fundamental duties are imposed on all corporate directors: **the duty of care** and **the duty of loyalty**.

In general, **the duty of care** requires a director to act in a reasonable and diligent manner in carrying out his or her functions as a board member.

The duty of loyalty requires that directors act in the best interests of the corporation and not be tainted by any personal motive when carrying out their board responsibilities. Some courts, in interpreting and articulating directors' obligations, particularly in the context of nonprofits, also impose what is known as **the duty of obedience**, which means that a director must act in a manner that is faithful to the purposes and mission of the corporation. Many courts consider the duty of obedience to be subsumed within the duty of loyalty.

These duties have been developed and shaped through judicial interpretations of the various state corporation statutes. (See box on page 29 for specific examples of what board members should do to satisfy these basic fiduciary duties.) And, broadly speaking, boards of nonprofits, such as colleges and universities, are expected to meet the same fiduciary obligations as their corporate counterparts.

No External Forcing Mechanisms ... Yet

How, then, do higher education boards differ from corporate boards in ways that make them more likely to experience governance failures? I would submit that one of the principal distinctions is the lack of what can be considered "forcing mechanisms," such as those that exist in the for-profit world. Without those mechanisms, boards of colleges and universities, as entities incorporated without either shareholders or members, can become lax in following state-of-the-art governance practices.



Shareholder-based corporations have always had to deal with such forcing mechanisms, including various forms of litigation. Publicly traded companies also risk incurring enforcement action by the U.S. Securities and Exchange Commission (SEC) or other regulatory authorities having juris-

diction over them. Beyond those traditional remedies, when matters have gone significantly awry—such as the corporate scandals of the early 2000s, including those involving Enron, WorldCom, and Arthur Andersen—external forces such as congressional intervention have also been brought to bear.

Those scandals led to the Sarbanes-Oxley legislation, which imposed significant requirements on all public companies and, to a lesser degree, on nonpublic companies. Similarly, after the financial crisis of 2008, the Dodd-Frank legislation, passed in 2010, greatly increased regulations on corporations in the financial sector. Some would argue that Sarbanes-Oxley and Dodd-Frank, like many legislative solutions, went too far, and their "fixes" imposed costs and burdens on corporate America that could have been better addressed with less drastic measures. But once the egregious behavior of corporations like Enron made headlines, the outcome and the extreme nature of the remedies proposed were largely predetermined, and no chance for modest reforms truly existed.

Until now, the nonprofit world has not traditionally had remedies such as litigation or regulatory intervention available, and there has been no crisis generating a legislative response along the lines of Sarbanes-Oxley. The traditional enforcement mechanisms for nonprofit

corporations have been in the hands of the state attorneys general who typically have enforcement rights under nonprofit statutes. To some degree, the Internal Revenue Service (IRS) and, in certain instances, state licensure authorities also have oversight responsibilities.

The remedies available in the arsenals of those overseers generally are draconian in nature and include revocation of the nonprofit charter, cancellation or suspension of a license to conduct a certain type of business (e.g. to provide educational services), or withdrawal of an organization's tax-exempt status. But based on a dearth of resources in the states, a lack of focus by the IRS, and the extreme nature of the remedies available, such remedies have thus far been used sparingly.

Until now, the nonprofit world has not traditionally had remedies such as litigation or regulatory intervention available, and there has been no crisis generating a legislative response along the lines of Sarbanes-Oxley.

Coming Soon: More Regulation and Litigation?

Winds of change, however, may be blowing. A number of state attorneys general are becoming more aggressive—and publicity-seeking—by bringing actions in areas such as privacy breaches and securities-law violations where they had traditionally been relatively inactive. Should the highly visible instances of failed governance that I related at the beginning of this article continue, they could generate interest on the part of state attorneys general, either individually or collectively.

In addition, the IRS has evidenced an increased interest in tax-exempt organizations and their governance, as reflected in statements it has made and its adoption of the new Form 990 in 2008. On its Web site in the section dealing with 501(c)(3) organizations, the IRS says: "Good governance is important to increase the likelihood that organizations will comply with the tax law, protect their charitable assets and, thereby, best serve their charitable beneficiaries. Accordingly, charities

should consider governance practices and related topics to assure sound operations and compliance with the tax law.”

Those of us serving on private college and university boards who have reviewed our institution's Form 990 have seen that the form is now more of a public disclosure document than a traditional tax return. Significant portions of it require subjective and narrative descriptions of the operations of the institution, much like the periodic disclosure documents required of public companies. With the advent of public, Web-based portals such as Guidestar, the transparency of the operations of the tax-exempt sector has been enhanced. And the greater availability of such information will make it even easier for people to compare the practices of various entities.

In a “post-Madoff” world of whistleblowers, state authorities will very likely be brought into on a more frequent basis what might be characterized as governance issues—such as the investigation

bring a legal action against an institution or its board for the alleged breach of one or more fiduciary duties. The traditional view has been that, under the state nonprofit statutes where authority has been delegated to attorneys general, those remedies are generally viewed as exclusive; potentially aggrieved parties must rely on those authorities for redress of any grievances against the institution. However, a number of academic articles over the past decade or so have suggested that a combination of factors, including the lack of resources in state attorneys general offices and a general reluctance of those offices to enforce laws against respected institutions, militate toward at least a limited right of action to an appropriate subset of interested parties. In the context of higher education institutions, those could include students, donors, or alumni.

Generally, such an action, if allowed, would take the form of what is known as “derivative” or “relator” litigation, where the beneficiary of the suit, if successful,

would be the corporation itself. Or, in the case of a relator suit, the plaintiffs would act on behalf of the attorney general to enforce obligations as the attorney general would. In this type of litigation, if applied to colleges, the beneficiary would be the institution and the remedy would help it rather than the party bringing suit. Moreover, the remedy would generally be governance reform, rather than money damages. The advantage of such litigation to the institution is that the plaintiffs generally receive no “pot of gold” at a successful conclusion, which tends to act as a disincentive to non-meritorious suits. (Legal fees are a different issue.)

In 1999, Professor Harvey Goldschmid of Columbia Law School, who has since served both as a commissioner and as general counsel at the SEC, wrote an article in the *Journal of Corporation Law* where he posited what he characterized as several paradoxes relating to nonprofit governance. Among those was the fact that, while nonprofit boards operate under the same legal standards as their for-profit peers, “the law plays little role, other than aspirational, in assuring the accountability of the nonprofit sector.” In his article, Goldschmid proposed a number of reforms, including that “room should cautiously be opened for donor, member, and beneficiary derivative actions.” In conclusion, he asked, “Can we continue to justify or afford—and will the public continue to tolerate—the relative ineffectiveness of nonprofit corporate governance and the virtual absence of accountability constraints?”

Other legal commentators have since raised the same question in different ways in, among other journals, the *American University Law Review* (following that institution's compensation scandal and suggesting standing for students) and the *Vanderbilt Law Review*. Although such theories have not taken hold in any significant way, court precedent has recognized standing under what is known as the “special interest doctrine” for groups such as former patients seeking redress of governance issues at a nonprofit hospital in the District of Columbia.

If a groundswell of discontent with the accountability of the board members

In many if not most institutions, governance principles have not kept pace with the growing complexity of issues confronting college and university governing boards.

conducted in 2012 by the Attorney General of New Hampshire relating to alleged mismanagement of the Dartmouth College endowment. Authorities also are going to be increasingly less likely to dismiss, out of hand, complaints purported to be from whistleblowers, given the public thrashing that certain regulators have recently taken for missing “red flags” that were before them.

In addition, some classes of interested parties may seek to augment the authority of the state attorneys general through privately initiated litigation. The issue here generally relates to the concept of standing which, simply stated, involves which class or classes of parties have the ability to



of higher education institutions were to develop—along with a concern relating to the lack of resources in the offices of state attorneys general—those theories could gain traction and lead to inroads for either derivative or relator rights of action by the proper class of interested parties. Once that process began, it would be difficult to prognosticate whether courts could impose proper limitations or whether the door would then be open to vexatious litigation that would cost educational institutions scarce funds even if they ultimately prove successful in their defenses.

“Gold-Standard Governance” Required

The world of higher education institutions is changing. In many if not most institutions, governance principles have not kept pace with the growing complexity of issues confronting college and university governing boards. Moreover, the number of governance failures appears to have escalated in the past few years, and news-media coverage of those failures and increased transparency in the operations of educational and other nonprofit institutions have increased public awareness of those failures. Such developments put boards at risk that new and nontraditional forces will be brought to bear on governance processes—through some or all of the means I’ve discussed in this article—if it appears that boards are ignoring their responsibilities.

How, then, should a board wanting to be ahead of the curve ensure that its processes are able to withstand public scrutiny? The following suggestions are reasonable starting points:

- Undertake a review of your institution’s charter documents and bylaws to ensure that they are up-to-date and comport with the manner in which it is currently functioning;
- Review and update, where necessary, the financial controls that your board has in place, including those relating to presidential and other executive compensation and expenses. Every college or university need not implement Sarbanes-Oxley-type controls, but they should be consistent with the financial complexity of your institution;

The Duty of Care, the Duty of Loyalty: What Are a Board Member’s Obligations?

Examples of approaches a director must take to satisfy **the duty of care** include:

- A reasonable, diligent, and informed manner of performing his or her duties;
- Exercise of the reasonable inquiry, skill, and diligence of an ordinarily prudent person in a similar position;
- Diligence in preparation for and participation in board deliberations;
- Care in seeking appropriate information to make informed decisions; and
- In exercising these duties, reasonable reliance on management for information absent indications that such reliance might be misplaced.

Similarly, the following are components of a director’s adherence to his or her **duty of loyalty**:

- Actions in good faith and in the best interests of the corporation;
- Absence of personal interest in the decisions made;
- Actions in the best interests of the entity as a whole and not of any constituent group of which he or she might be a member;
- Avoidance of taking advantage of business opportunities based on knowledge gained from board service; and
- A duty of confidentiality.

- Review the committee structure of the board and put in place one that effectively addresses the major components of your institution’s operations;
- Ensure that board members are given proper education and training about the operations of the institution and sufficient information upon which to make informed and reasonable decisions so as to properly exercise the board’s duty of care; and
- Implement appropriate conflict-of-interest policies and other procedures to properly document that board members are acting in good faith consistent with their duty of loyalty.

Each college or university must craft its program to fit the needs and complexities of its own operations. And there is no guarantee that some unforeseen disaster will not result in overreactions by attorneys general, the courts, or legislatures. Yet a visible move in the direction of “gold standard” governance will certainly help all of us who serve as board members to be masters of our own fates—rather than be

subjected to external mandates that may not fit our institutions at all and may carry a far higher cost than necessary. ■

AUTHOR: T. Grant Callery is a member of the Investor Advisory Group of the Public Company Accounting Oversight Board and a former executive vice president and general counsel at the Financial Industry Regulatory Authority. He serves on the board of Marietta College and the AGB Council of Board Chairs.

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T’SHIP LINKS: “Fiduciary Behavior: What’s the Responsible Trustee to Do (and Not Do)?” March/April 2013. Robert M. O’Neil, “Updating Board Bylaws—and Beyond.” March/April 2013. “When Governance Goes Awry: What Are the Takeaways?” September/October 2012. Richard Novak, “State Policies and Practices to Improve Board Governance.” September/October 2012.

OTHER RESOURCES: “AGB Board of Directors’ Statement on Conflict of Interest with Guidelines on Compelling Benefit” (2013). “AGB Statement on Board Responsibility for Institutional Governance” (2010). “AGB Statement on Board Accountability” (2007).

Fiduciary Behavior: What's the Responsible Trustee to Do (and Not Do)?



TAKEAWAYS

- 1** While the law is specific about fiduciary duties in some instances, their application typically depends upon the sound judgment of board members, as guided by integrity, observation, experience, insight, and institutional policy.
- 2** It is not enough to protect the institution's endowment. Trustees must look to the future and execute their duties with loyalty, faith, and trust; they must ensure fidelity to mission, integrity of operations, and conservation of core values; and they must safeguard the institution's moral compass.
- 3** Board members should be substantively educated on the institution's mission, programs, finances, and challenges. They should be open-minded, reflective, and not parochial. They should address the underlying issues, and they should not micromanage.

GOVERNING BOARD MEMBERS BEAR MAJOR AND ultimate responsibilities as fiduciaries of the college or university they serve. Calls for increased accountability and developments such as financial volatility, transformational technology, internationalization, and increased regulation of governance have led to mounting attention to the quality of fiduciary stewardship. What do some of the most distinguished trustees consider to be basic good practice for boards and board members with respect to fiduciary behavior?

selecting the president
Duty of Care
making sense
best fiduciary practices
experience
fidelity
make sure boards are educated
sound judgment
Reputation
Loyalty, faith, trust
integrity
mission
protect the institution's future health
Consequential work
quality of fiduciary stewardship
insight
meaningful role
moral compass
inquirer, not a prosecutor
students
Fiduciary Behavior
crucial relationship with the president
wealth, wisdom, wit
general policy matters
faculty
institution's reputation
no conflicts of interest
decision making
university's culture
support and review the president
concern about the future
Framing the questions?
conservation of core values
Philanthropic trustees
access to the president
to hold in trust or in faith
well-informed?
proper boundaries



Martin Michaelson

Partner in the higher education law practice of Hogan Lovells; advisor to more than 100 colleges and universities on governance, regulatory, litigation, and transactional matters; former in-house counsel at Harvard University

Traditionally, state law has addressed, often in case-specific state court rulings, what is expected of fiduciaries. More recently, federal law, too, has infiltrated some fiduciary duties, such as IRS requirements applicable to the conflict-of-interest practices of tax-exempt organizations.

The concept of fiduciary traces to the Latin term *fiduciarius*, meaning to hold in trust or in faith. Basic fiduciary duties include caring for and being loyal to the institution. While the law explicates fiduciary duties in some circumstances, for their application it typically looks to board members' sound judgment guided by integrity, observation, experience, insight, and institutional policy. Although institutions' needs and cultures vary, board members want to know what are generally regarded as best fiduciary practices.

Trusteeship asked **Martin Michaelson**, a partner in the law firm Hogan Lovells and an expert on higher education fiduciary matters, to explore in a roundtable discussion with other top higher education leaders some of the ways board members should engage in

fiduciary behavior. **Gerhard Casper**, president emeritus of Stanford University and a former trustee of Yale University; **Richard Chait**, a Harvard Graduate School of Education emeritus professor whose field is higher education governance; **Yvonne R. Jackson**, trustee of Simmons College, vice chair of AGB's board of directors, and present or former director of several corporate boards; **David W. Miles**, past president and current member of the Iowa Board of Regents; member of AGB's board of directors, and CEO of Miles Capital, Inc.; **Martin D. Payson**, a board member at Carl Marks who has also served on boards of several leading universities, Tulane University and Howard University among them; and **Henry Rosovsky**, a former member of the Harvard Corporation and dean of Harvard's faculty of arts and sciences, shared their views.

Michaelson: *The word "fiduciary" covers a lot of ground, such as fidelity, trust, care, loyalty, and perhaps obedience. You are among the most highly regarded fiduciaries in higher education. What do you consider hallmarks of fiduciary behavior by college and university trustees?*

Casper: Trustees' most important fiduciary obligation is to worry about the future, not merely the present. These are not either/or propositions, of course. Board members are accountable for ensuring that the institution will have the resources it needs 30 or 40 years from now. The present generation at colleges and universities has so many legitimate and urgent demands. We need to remind faculty members and students that the trustees, as fiduciaries, must protect the institution's future health. Trustees also have to worry about the institution's reputation and can be very useful in that. Another basic fiduciary obligation—one trustees often don't meet—is to be extremely well informed about the institution. The president, provost, and other administrators often don't place enough emphasis on that need.

Chait: Fiduciary responsibility is the platform of effective trusteeship, not the summit. The two shouldn't be confused. Three propositions come to mind: fidelity to mission, integrity of operations, and conservation of core values.

Rosovsky: Reputation is certainly important, but I also think of trusteeship in terms of safeguarding the institution's moral compass. Colleges and universities today face all sorts of pressures, assaults, and opportunities. Somewhere in the system there have to be individuals who have a sense of the proper boundaries.

Let me give an example. Years ago I was asked, "If somebody offered you \$2 billion to put a sign on the John Harvard statue that said, 'Things go better with Coke,' would you accept it?" What role should trustees have in a decision of that kind? Donors and commercialism figure in what I call the moral compass.

Justice Felix Frankfurter spoke of the university's four freedoms: To determine for itself on academic grounds who may teach, what may be taught, how it should be taught, and who may be admitted to study. In a sense, protecting that is the ultimate responsibility of trustees.

Casper: I'm in agreement with Henry, with this qualification: The core values—putting issues of morality to the side for the moment—are teaching, learning, and research. In one sense, trustees are least qualified to protect those values because they are often outside their area of expertise.

Payson: I agree with those thoughts. Several key considerations are, first, does the trustee have any unmanageable conflict of interest? Second, does the trustee have a narrow agenda—such as one school or program—or is the trustee open-minded to the whole enterprise? Third, does the trustee work hard in support of the institution? Certainly the board should be a moral compass. The exact markings on the compass may be different at an institution that has billions in endowment, which of course most of the institutions don't, but there should be markings.

Jackson: Fiduciary behavior includes, prominently, holding to the institution's mission and ensuring that the institution is financially and operationally sound and stable. For instance, mission-compliance addresses whether students receive a quality education.

Miles: A trustee must have an actual commitment—a commitment that is a lot more than lip service—to governance and to the institution's long-term success. Among the key hallmarks of fiduciary behavior are that a trustee is expected to work effectively with fellow trustees and institutional executives. Trustees tend to find, I think, that compliance with one's own sound ethical principles correlates with meeting the fiduciary standard, while failure to be true to one's own ethical principles correlates highly with failure to meet the fiduciary standard.

Michaelson: *Is a high standard of fiduciary behavior necessary for effective trusteeship, or is it sufficient?*

Miles: It's necessary, not sufficient. Effective trusteeship requires more than not flunking the legal standard. The legal standard might be met by a trustee whose failure of insight into the institution's real interests makes him too risk-averse, for instance. Yet we know that excessive risk-aversion can really endanger institutions. We know that perceived risk-aversion sometimes actually adds risk. An effective trustee must be able to recognize and navigate the tension between risk-aversion and fiduciary responsibility.

Chait: A lawfully mediocre board might discharge every nominal responsibility yet not address the future, not exemplify the institution's values, and not have a coherent strategy that aligns with the espoused purposes. That board regularly meets, committees convene, resolutions are passed, budgets are balanced, and no one is guilty of gross misconduct. Fiduciary responsibility is a threshold condition not to be mistaken for superb trusteeship.

Michaelson: *Gerhard, do you agree that failure to maintain a sound conception of the institution's future can be consistent with fiduciary behavior?*

Casper: Many trustees focus too much on the endowment. That is insufficient for fiduciaries. They must maintain not only the endowment, but also the physical plant, for instance. We've seen spectacular cases at prominent universities where the board never really considered the physical plant and instead kept the payout low and addressed the endowment only. Those were wrong calls.

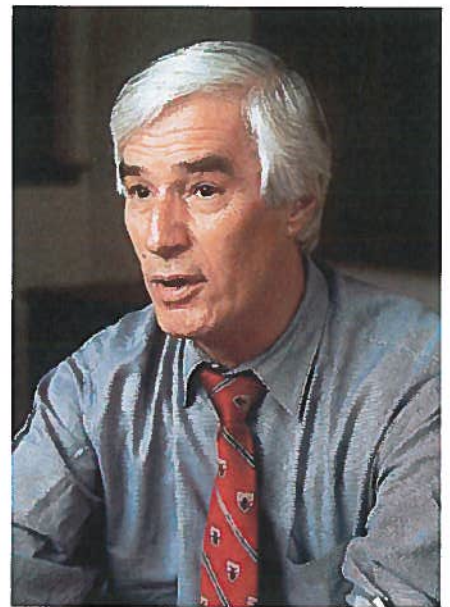
It Starts with Education

Rosovsky: Isn't there a dilemma? You said earlier trustees are unequipped to judge teaching and research. Then you say they should worry about the future. I don't think the future is mainly endowment size or deferred maintenance. It involves intellectual judgments.

We fail to train trustees for that. We don't make a systematic effort to get board members to understand the institution's intellectual activities. How does the president come to understand future needs? Decisions must be made about physics, economics, medicine, and so forth. Trustees can't be experts, but they can be educated to participate in the discussion intelligently.

Michaelson: *It's commonly said that corporate directors know more about the company than college trustees know about the college. Does the shared-governance concept suggest that faculty and deans don't want the board to know more, especially about academic matters?*

Rosovsky: Generalizations on that are difficult because governance differs by the type of institution. We talk about "the American system of higher education," but large research universities and community colleges, for example, don't have much in common.



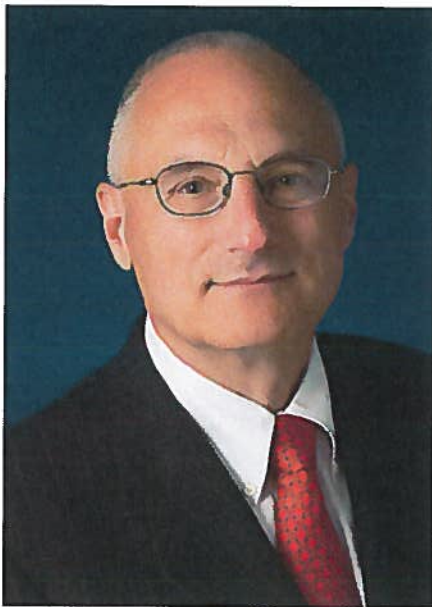
Gerhard Casper

President emeritus of Stanford University; former board member of the Central European University in Budapest, Hungary; former trustee of the American Academy in Berlin and of Yale University

Chait: The differences are trumped by commonalities to which Marty alluded. It's not so much that trustees lack "industry knowledge." No one expects trustees to differentiate credible research from questionable research. Difficulties arise mainly because trustees are unfamiliar with the institution's processes and precepts.

The image I have of a typical trustee is an American who lands in London, rents a car, and then confronts a rotary. It's vaguely familiar, but backward. All of your instincts are incorrect. You look in the wrong direction. Your expectations are constantly upended. The best trustees say, "I'm going to learn to drive like a native." The worst trustees shout, "Why do they insist on driving on the wrong side of the road?" Even allowing for that, board members can make superb contributions, yet we do tend to keep trustees at bay.

I'll step deliberately on a landmine: intercollegiate athletics. Fiduciary duties are not satisfied when boards say, "We have a perfect compliance program and no sanctions." Trustees should ask—and can reasonably discuss unless they're



Richard Chait

Emeritus professor at Harvard Graduate School of Education; consultant to the boards of dozens of colleges, including Dartmouth College, Johns Hopkins University, and Ohio State University; former trustee of three independent colleges

rabid boosters—whether the system is actually salvageable or incorrigibly toxic. College athletics are a kind of business trustees can adeptly understand. The problem is they're in a strange foreign land; the rules of the road are unfamiliar and uncomfortable to learn.

Jackson: My experience is that faculty and deans want the board to understand what they're trying to achieve. Frustrations develop on both sides when trustees don't know how to talk about—and don't take the effort needed to learn about—the work of faculty and deans. Real and sometimes challenging efforts should be made to address this.

Michaelson: *Is there an optimal board size for fiduciary performance?*

Casper: Engaging trustees becomes difficult when you have a 35-, 40- or 50-member board. Board size itself may be a fiduciary issue. Can the administration really engage the board? I served on the Yale board, which has an ideal size: 15. They sit around a smallish table and are really involved in discussions. With many boards that's not remotely possible, which makes it hard for trustees to be fiduciaries.

Payson: A university board is typically larger than a corporate board because they serve different purposes, such as fundraising. Were the university board reduced to 10 to 15 people, some of those purposes would be defeated. Although some board members are much more active than others, all are fiduciaries. In theory, a smaller board would be better, but theory is different than economic reality at most higher education institutions. Also, the institution needs enough trustees to populate board committees.

Michaelson: *Some institutions flourish with large boards. I'm thinking of two strong universities that have a board larger than 50. One is among the most distinguished in the world. The other has had remarkable growth and a very philanthropic board. Much can be said, however, for a board of 25 or fewer.*

Casper: Philanthropic trustees are performing one of their obligations to the institution, but a large board is driven to a governance structure in which the executive committee makes the real decisions. We need to worry about the relationship between the executive committee and the rest of the board, and ensure that both are subject to the same expectations and obligations.

Jackson: Although familiar with a competent board of more than 50 at a higher education institution, I'm somewhat skeptical of very large boards and think they should be rare.

Miles: I have served on a private college's board of about 35 and on a nine-member public higher education board. Both performed well. But my impression is that larger boards tend to impede effective engagement by trustees. I've seen trustees drift away from larger boards.

Caution: Board Members as Big Donors

Michaelson: *Is it problematic, in terms of fiduciary behavior, to expect trustees to be major donors?*

Rosovsky: Is that an expectation at public institutions?

Michaelson: *Not so much, in general. Are there risks to that model, whether as a condition of board membership or a serious expectation?*

Casper: Yes. Risks are that substantial donors will be paid undue attention and have undue influence. On a high-quality board those risks are manageable. I've dealt with mega-donor trustees who weren't treated differently than others. What should a trustee's qualifications be? Remember the famous three W's: wealth, wisdom, wit. Any two will do. It's important that some board members not be big donors. Non-donor trustees frequently bring a needed perspective.

Chait: The expectation that board members be substantial donors, although probably immutable, carries some dangers for governance. Donors' passions may not square with institutional priorities. The larger the trustee's gift, the louder the trustee's voice; trustees don't speak equally.

A useful thought experiment would be for all trustees to register views anonymously on an issue and then have everyone's identity unmasked. I'm quite sure that a different dynamic would result if trustees offered their opinions unmasked in the first place.

At some institutions, large donors can play by different rules. They're not held accountable to the same standards for attendance, preparation, or participation. I think mega-donors can have more influence as independent voices than as members of a collective committed to a process of corporate governance. They can do many things that would be untoward for a trustee but perfectly acceptable for a donor.

Miles: The hazard posed by the major-donor trustee is a potentially dangerous misalignment of interests. For instance, a tension increases between the big-donor trustee's actual skill set and the influence other trustees cede to that trustee. Such ceding of influence—influence unwarranted on the merits—can tend to disempower other trustees and isn't good.

Jackson: The trustee-as-donor issue calls for careful management. No givers should be allowed to have undue weight. "One person, one vote" should be the rule.

Rosovsky: Trusteeship is an art, not a science. I've known mega-donors who are among the most modest people I've ever encountered; the size of their gifts never becomes an issue. Others throw their weight around. I wouldn't want to exclude anyone. You have to select case by case.

Payson: You have worker bees and donor bees on many of the boards. The board sometimes must be prepared to say "No, thank you" to donors, such as if they try to dictate how the institution should conduct itself.

Michaelson: *Is there consensus that from a fiduciary behavior viewpoint there should not be an expectation that trustees will donate a certain amount?*

Rosovsky: I like the concept, commensurate with capacity. But we all have different views of capacity.

Chait: A workable standard some institutions apply is to seek assurance that the institution will be one of your top two or three philanthropic commitments.

Jackson: A general expectation of philanthropy is good, provided the institution doesn't fail to recruit some trustees who can't give much money. The trusteeship committee has to manage the expectation in that context. And we need to keep in mind other very urgent considerations in composing the board, such as diversity of membership.

The President's Place at the Board Table

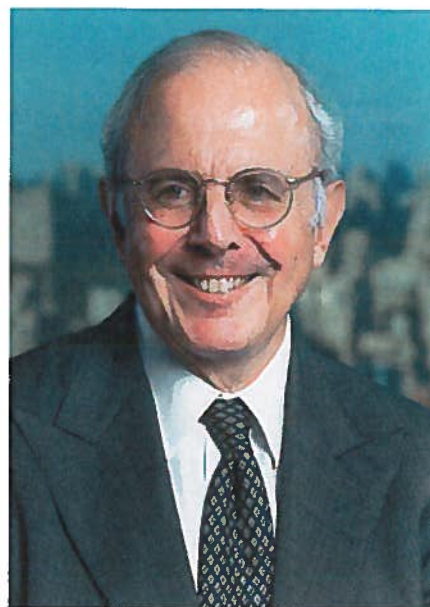
Michaelson: *What are implications for board fiduciary performance when the president is a trustee?*

Rosovsky: I don't have a strong view on the president being a board member, but being board chair is not a good idea. Board agenda setting should not be mainly in the president's hands.

Casper: I feel strongly about the president's role as a trustee, because it enables the president to say to those who want something that shouldn't be done, "Look, I'm also a fiduciary of this institution. This is a terrible idea." Other board members' oversight roles aren't affected by the president being a trustee.

Chait: I'm probably the most bearish among us about the president as trustee, for three reasons. First, if a president needs to have a board seat to be effective, the president has a different and more fundamental problem. Second, I can't imagine a president voting with the minority of the board on a course of action.

Third, if the president can be on the board, it's harder to make the case that employed faculty members or other administrators should not be. I would prefer that anyone who draws a paycheck from the institution not serve as a trustee.



Martin D. Payson

Board member of Carl Marks; former vice chairman and board member of Time Warner, Inc.; trustee emeritus of Tulane University and Howard University; former chair of the board of AGB

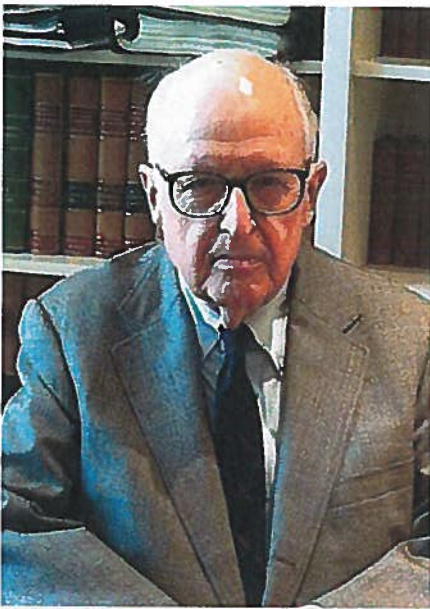
Jackson: I see it differently. The president should have a stake in the game. Board membership is part of that. I believe the concerns Dick Chait identifies in this respect are manageable.

Michaelson: *Many public universities and some private universities have faculty representation on their boards. Is that wise?*

Chait: In Canada it's the norm. Some American institutions also have a trustee from the professional staff and another from the clerical and unionized staff.

Michaelson: *And some have a student trustee.*

Chait: Institutions are well advised to avoid all of those. Employees' capacity to eschew parochialism is limited. Confidential conversations become more porous. Trusteeship requires objectivity and disinterestedness. This approach fails on every count.



Henry Rosovsky

Former dean of the Faculty of Arts and Sciences at Harvard University, acting president of Harvard, and member of the Harvard Corporation; consultant to the World Bank, UNESCO, and the Asian Development Bank

Payson: The verdict on faculty trustees is mixed. I've seen some who have been terrific and as trustworthy as any other board member. And I've seen instances where the faculty trustee was nothing more than a shop steward. My observation of student trustees is similar. On balance I don't favor the practice.

Rosovsky: As we've discussed, trusteeship addresses the future, about which faculty, staff, and student trustees are less likely to worry.

Chait: They, especially students, have a vested interest in the present.

Michaelson: *It's no accident that at public institutions constituency representation by faculty members and students is more common than at private ones; political imperatives call for faculty and staff representation on the board.*

Careful Trusteeship

Michaelson: *What is the "duty of care"? What are basic elements of careful trusteeship?*

Casper: Institutional decisions that require board approval include decisions involving major expense, such as establishment of a branch campus. Part of the duty of care is insistence on thorough cost-benefit analysis of such proposals—really doing the homework and sitting down and considering the problematic issues.

Miles: As I see it, the duty of care connotes a thoughtfulness of purpose. It connotes a trustee who isn't the proverbial potted plant, and who takes real effort to understand the issues. That trustee asks herself or himself, "Have I actually captured sufficient information to exercise solid judgment and make an informed decision?"

Michaelson: *Do you have a rule of thumb for how many hours of preparation a trustee should normally spend before a board meeting or important committee meeting?*

Casper: If the meeting mostly involves routine matters, preparation may be not more than half a day. But if there is a major matter of the kind that I described, a board member may have to spend days preparing—not only reviewing information the institution provides, but also making calls and inquiries, asking how things are done elsewhere, and so on. That is anything but routine.

Rosovsky: A board member with whom I worked called material submitted to the board "untreated sewage." Much has to do with the way information is presented and what is presented. Private corporations are better at that than academic institutions I've seen.

Chait: Two benchmarks for trustees should be disinterestedness and open-mindedness. Some trustees are not disinterested. They become enrapt with their fraternity, a particular program, or athletics. A relentless disposition to ask inconvenient questions and engage in robust discourse and disagreement is vital.

Michaelson: *Dick, you've long studied college and university boards. What grade do you give them for careful trusteeship?*

Chait: Well more than half would earn a respectable grade—a lot of B's and B+'s. Some even merit an A. Others, regrettably, are quite deficient.

Rosovsky: Eternal vigilance is the best motto for boards. Dick has talked in the past about generative governance. Should a board mainly be an informed sounding board that reacts to issues or should it be more activist?

Chait: I would describe a generative board not as activist or intrusive, but as reflective. The generative board asks, "Do we have the right question, framed the right way, before we move to the right solution?" Many boards in recent years have hopped on the bandwagon of globalization and commercialization. Few do the generative work of asking, "What are the implications for the programs that can't produce cash flow? Under what circumstances would we invest in programs that don't make money?"

The same is true for the amenities arms race. Instead of making ad hoc choices, boards should ask, "What's really going on here? Why do we need the largest climbing wall?" not "What's the square footage of the climbing wall, can we fund it, and what's the debt structure?" That's what I mean by generative work: Trustees do "sense making" before "decision making."

Michaelson: *Is that what Henry referred to as boundaries?*

Chait: Yes, you can consider it in those terms. I think of it as framing issues.

Rosovsky: Shouldn't the administration frame the issues and then subject them to questions by the board?

Chait: I'd prefer that truly consequential issues be framed through interplay by the administration and the board. Too often boards confront issues so prepackaged and predetermined as to describe the problem definitively. Then the answer comes from narrow choices. No one suggests, for example, "Instead of this amenity, what if we competed on academic quality or on student services?" If management asked, "How do we respond to competitive pressures that are manifested by amenities? Should we compete on a different axis?" That's a different conversation.

Payson: I once joined a university board that was a very polite board. They came in, met for an hour and a half, and had lunch. I was probably the first New Yorker on it, and I started asking questions, such as—when the financial report showed only one line for the medical center—"Where's the back-up? Don't you have separate financials for it?" There's a duty to be an inquirer—not a prosecutor, however. You have to inquire with the right attitude. Trustees need much more than to attend a passive dog-and-pony show.

Michaelson: *What are your views on fiduciary oversight of the president and administration? Most of you seem comfortable, in slightly varying ways, with the president being a board member. In the context Dick described, how should the board oversee the president and administration?*

Jackson: The board's role is to recruit, hire, and develop the president; annually appraise the president in a constructive way; and hold the president accountable. Accountability of the president includes, for example, accountability for maintaining a healthy institutional culture, such as with shared governance. Where the president doesn't measure up, the board's role is to find a new president.

Casper: I agree with Dick's characterization of how proposals are usually put before boards. These proposals are polished, have been worried through by the administration, and then it is hard for the board to get hold of the big issues. One of the president's duties is to bring to the board major issues in an informal discussion. Consider how most board meetings take place, with many university officials in the board room. That makes trustees shy to ask questions. The executive session in which the president alone, or the president and provost, sit with the board, is valuable for airing issues.

As to oversight of the president, a college or university board should act like a corporate board, except even more rigorously. At least once a year the president should detail his or her goals for the coming year. At the end of the year, the president should talk about accomplishments and failures. Then the board should meet again in executive session, without the president, for uninhibited, robust discussion of performance and policy issues.

Michaelson: *Should that discussion be with the full board or the executive committee?*

Casper: The full board, unless the board is unmanageably large. If fiduciary duty means anything, the board must engage in oversight of the administration.

Michaelson: *Do you agree that the board's most important function is to hire and fire the president?*

Casper: Yes.

Michaelson: *Many of us have seen situations in which some trustees are skeptical of the president's performance, yet there has been little, if any, communication in which these concerns were discussed.*

Rosovsky: Part of the reason for that is the trend of increased bureaucratization at institutions over the last decade or so. Administrators come to board meetings with a retinue—the chief of staff, the



Yvonne R. Jackson

Trustee at Simmons College; past chair of the Spelman College board; vice chair of AGB's board of directors; present or former director of corporate boards including Best Buy, Inc., Winn-Dixie, Inc., and PricewaterhouseCoopers' advisory council

lawyer, and so on. Boards need to create places where it is possible to interact on a simpler, more direct basis. The multiplication of administrators at board meetings is a big problem.

Who Should Communicate with Whom (and When)?

Michaelson: *Where does the board chair fit into this equation? For example, should the board chair be in daily or weekly contact with the president?*

Payson: The board chair represents the board and has the most crucial relationship with the president. Ordinarily, trustees who have issues should raise them with the board chair. Direct contact between the president and individual trustees is to some extent good, but if every trustee raises with the president each issue, it becomes unmanageable. The board chair should be in regular, informal contact with the president.



David W. Miles

Past president and current member of the Iowa Board of Regents; past chair of the Drake University board of trustees; member of AGB's board of directors; CEO of Miles Capital, Inc.

Casper: There should be as much contact between the president and board chair—as well as with committee chairs, and other board members—as they can manage. It shouldn't be regulated, but should be an expectation. Trustees should also feel free to talk to faculty members. I've been associated with some universities where relationships between the board and faculty were tightly controlled. That model is not good. The more contact among board members and faculty, the more information will be generated for the board, and in particular for board members to convey to the president. One of the most valuable functions board chairs performed when I was president was to call me and say, "I think you should know something that was said last night." It has to be informal. There can't be a rule, such as once-a-week meetings.

Chait: Committee chairs will also talk to staff liaisons, but I second the suggestion that committee chairs have open access to the president to ensure that the president and board chair do not become so tightly coupled as to govern without ben-

efit of the board's best thinking. Whatever the formula by which board chairs and presidents communicate with each other, were I to fault both it's that too few of these conversations concern the board's effectiveness. I would encourage much more discussion between board chairs and presidents on how to enhance board performance.

Michaelson: *May I suggest a different slant? I've observed over the years presidents who believe they spend far too much time being pestered by trustees, especially at institutions where board committees have evolved into fiefdoms in such areas as buildings and grounds. The president finds it distracting, excessive, and intrusive. Have you seen that?*

Chait: Yes, all the time. There should be a high threshold before a trustee calls the president where the issue has not first been vetted with the board committee or staff. The average independent college or university board has about 35 members. If every trustee called the president every four months, that's 105 phone calls. That's not good.

Casper: If trustees raise fiduciary matters—general policy matters, not micromanagement—the invisible hand will see to it that the president isn't overwhelmed by phone calls.

Rosovsky: The president needs to make certain things clear—for example, that the president doesn't discuss admissions cases. If you establish that principle, a boundary is set and accepted.

Michaelson: *Before we close, two questions that are related: Is it harder these days than it used to be to get the best people to serve on college and university boards? Also, is it harder than it used to be to be a college or university fiduciary?*

Chait: "Where have all the great trustees gone?" is a nostalgic warp. I'd recast the question: Really talented prospective trustees are harder to attract because they

want to be assured a meaningful role. I don't think it's about the time commitment or the complexity of the institution. People want to put their time to productive use. The refrain I hear more than any other from frustrated trustees is, "Too much of the work we do is inconsequential."

Jackson: The trustee today has to work harder to keep up to date, to read and understand financial reports, to understand various maps of risk. Technology is transforming all of higher education. Change is happening much faster now than in years past. Management and oversight of these institutions are riskier and more complex than they were in even recent years.

Payson: Trustees are more in a fishbowl than they used to be, and that's not necessarily bad. Also, people's lives today, in general, seem busier and harder than before.

Rosovsky: I will refrain from commenting on these two questions, except to say it was always better in my day!

Casper: It was not only better but, of course, it was less complex. Ever since Adam and Eve were driven out of paradise, the world has been becoming more complex with every day, and therefore the trustee's job has, too. ■

T'SHIP LINKS: Richard D. Legon, "Some First Principles." November/December 2011. Stephen G. Pelletier, "High-Performing Committees: What Makes Them Work?" May/June 2012.

OTHER RESOURCES: *Effective Governing Boards: A Guide for Members of Governing Boards of Public Colleges and Universities* (AGB Press, 2010). *Effective Governing Boards: A Guide for Members of Governing Boards of Independent Colleges and Universities* (AGB Press, 2010). AGB "Statement on External Influences on Universities and Colleges" (September, 2012). AGB "Statement on Board Responsibility for Institutional Governance" (March, 2010). "AGB Board of Directors' Statement on Conflict of Interest" (December, 2009). AGB "Statement on Accountability" (January, 2007).

Ellen Chaffee

Senior Fellow, AGB

Ellen Chaffee's distinguished career spans institutional, system, policy, and national professional leadership in both public and private higher education, as well as extensive research and publication. Past president of two universities and two national professional associations, she has led executive, academic affairs, student affairs, research, and equal opportunity functions. She has served on and consulted with more than 50 governing boards as well as national organizations in higher education research, health care, allied health, and foundations. Chaffee is a member of the Board of Trustees of Des Moines University.

Chaffee is a senior fellow at the Association of Governing Boards of Universities and Colleges (AGB). From 2009-2011, she directed a Lumina Foundation project for AGB that helped presidents and governing boards work together to meet key goals by improving academic, strategic, and financial performance in an environment of scarce resources. She co-directs a Teagle Foundation project for AGB to assist boards in defining how they can best oversee educational quality.

Chaffee was president of Valley City State University for 15 years and served nine of those years simultaneously as president of Mayville State University. Her leadership created an award-winning culture of innovation, change, and accountability. She then spent a year as president in residence at Harvard University. Previous positions include academic vice-chancellor for the North Dakota University System and director of organizational studies at the National Center for Higher Education Management Systems (NCHEMS). Chaffee was president of the Association for Institutional Research and the Association for the Study of Higher Education, as well as the public member of the American Council on Pharmaceutical Education (ACPE), the accrediting board for pharmacy. Trustee of a major healthcare system for eight years, Chaffee chaired the board and guided its 50/50 merger that resulted in a \$2 billion healthcare system.

Throughout her career, Chaffee has focused on leadership and organizational effectiveness, strategic thinking, organizational change, turnaround management, innovation, continuous quality improvement, accountability, decision making, and the role of information and technology. Chaffee has published five books and dozens of articles in refereed journals, as well as 750 weekly columns in community newspapers. Chaffee earned both the MA and PhD in higher education administration and policy analysis at Stanford University.