



May 12, 2006

To: American University Board of Trustees

From: Special Committee on Governance

Report and Recommendations of the Special Committee on Governance

The report and recommendations of the Special Committee on Governance follow:

Scope of Report

In this report, the Special Committee on Governance identifies its review of Board governance practice and policies, interactions with University constituents and others, consideration of data on and analyses of other universities' board practices, consultation of experts, and recommendations proposed for discussion and adoption by the Board at the May 18-19 meeting. The Committee anticipates that implementative revisions of the Bylaws, and Board Policies, that reflect adopted recommendations would be presented for adoption at a special meeting of the Board in June. The Committee's recommendations address such matters as expectations for performance of University trustees; orientation of new trustees; assessment of trustee performance; Board composition; interaction between Board leadership and the President; the President's role in relation to the Board and the Executive Committee; policy on the President's employment contract and compensation; the role of University administrators in Board work; Board staffing; the array of Board committees; Board committee functions; the Executive Committee's composition, functions, and role; the Board Chair's role; terms of office for the Board Chair, other Board officers, and trustees; Board size; Board diversity; the frequency of Board meetings; Board interactions with University constituents; trustee conflict of interest policy; and University policy on whistleblower complaints.

Other Steps Taken

The Committee notes that a number of steps have been taken at the University in recent months to strengthen Board governance and accountability. These include, for example, the extensive and ongoing work of the Trusteeship Committee to identify, review the qualifications of, and recruit to the Board highly

qualified, diverse new trustees, including trustees with a professional background in the higher education field. Persons throughout the University community were encouraged to submit to the Trusteeship Committee recommendations for potential new trustees. Some 85 individuals were recommended. We understand that seven new trustees will be proposed for election at the May meeting. Other steps taken include Board adoption in February of a policy on President contracts and compensation; adoption of a policy under which expenses of the President and senior officers, on a monthly basis, are submitted to the Board Audit Committee for review; advancement of a comprehensive program of review of University financial practices, in keeping with "Sarbanes-Oxley" principles; advancement of an up-to-date charter for the Audit Committee; outreach to invite various University constituents to serve on various Board committees; deferral of the search for a permanent President pending the completion of the Board's governance review; and inclusion of extensive and updated website information, available to the A.U. community and beyond, on activities of the Board and of this Committee. The website -- <http://www.american.edu/president/bot/> -- which is regularly monitored by the University secretary, enables A.U. community members to communicate efficiently to the Board.

Our Committee's recommendations are consistent with those steps and the approach to institutional governance that those steps reflect. In particular, we emphasize, and we believe that our recommendations carry forward, the principle that an outstanding Board must consist of trustees whose individual performance is exceptional and consistent with clear, well understood expectations for trustee performance. The structural changes we recommend are intended to undergird that principle.

Context and Committee Process

Painful events, related in a range of ways to American University's former President and the Board of Trustees' performance, preceded formation of the Board Special Committee on Governance. That a soul-searching review of Board policies and practices was called for became the view not only of the Board, but also of students, faculty, deans, staff, alumni, and others in and outside the University. The Committee, which the Board authorized on October 10, 2005, undertook not merely to conduct a self-critical review, but also to identify recommendations that would exemplify fiduciary best practices for A.U. trustees individually and the Board as a

whole, and adoption of which would in the Committee's judgment foster the University's mission and best characteristics.

The Committee met formally 18 times from December through May, in person and by conference call (the latter being necessitated by the fact that Committee members reside not only in the Washington, DC area, but also in California and New York, and have active travel schedules). Those meetings, however, were a fraction of our work, which also included, among other activities, dozens of meetings and other communications with a broad array of University constituents; extensive review of pertinent literature and data on university board governance at institutions throughout the country; and consultation over the past several months of two nationally-regarded experts in that field, Martin Michaelson of the Hogan & Hartson law firm, and Richard ("Tom") Ingram, until recently the long-serving President of the Association of Governing Boards of Universities and Colleges.^{1/}

A review of this kind entails both perception and reality. Sometimes the two cannot readily be distinguished. At the outset, we acknowledge the significance of a widely-held perception by thoughtful University constituents that the Board in past years has been insufficiently attuned to the University's values as an academic institution. Those values are epitomized in, for example, the Report of the Faculty Senate Ad Hoc Committee on Governance ("Faculty Senate Committee"). We also acknowledge the reality that this University is blessed with extraordinarily devoted and gifted faculty, students, academic officers, administrative officers and staff, and alumni. Their energy and creativity have contributed much to our Committee's understanding of the problems the Committee addressed, and to our effort to find solutions. We salute those who gave so generously their time and thoughts that deepened our analysis.

The Committee reviewed the Act of Incorporation and Bylaws of the University, the Board Policies, and the Board's experience with them. The Committee also reviewed detailed information on such subjects as practices of other university boards (including a range of salient benchmarking data) and analyses of university board governance from the Association of Governing Boards of Universities and Colleges and various other sources. Materials reviewed covered, for example, demographics of university boards, the institutional governance framework,

^{1/} The Committee considered proposals from several other well-regarded consulting firms before engaging Messrs. Michaelson and Ingram.

board structure, operations of the executive committee and of other board committees, the array of board committees, membership on board committees, representation of university constituents on boards and on board committees, methods of selection of executive committee membership, characteristics and qualifications of trustees, trustee performance (including standards, institutional expectations, and evaluation of trustees), and board policies on such matters as conflicts of interest and confidential complaint mechanisms. Extensive material was collected and tabulated on the bylaws, policies, procedures, and general governance practices of numerous other universities, including leading independent universities located throughout the United States. (Although the Committee considered practices of public as well as independent university boards, it focused primarily on independent universities.) In a number of instances, after the Committee reviewed and discussed the materials, additional work was done to collect further data on specific questions of interest to the Committee. While the Committee by no means felt bound to follow the practice of any other university or any preordained idea of best practices, the Committee benefited greatly from review of these sources. The Committee notes that in a number of the areas it examined, there is no consensus among well-governed universities as to what the best practice is.

The Committee wishes to acknowledge the many members of the A.U. community who made themselves available, sometimes on short notice, to consult with us. To an admirable extent, individuals and groups in the University community contributed to the Committee's work and these recommendations. We note particularly the extensive contributions of the Faculty Senate Committee, the Faculty Senate, and other faculty members; Interim President Kerwin and his staff; Interim Provost Broder; the deans; the vice presidents; members of the student body, notably including the leaders of the undergraduate Student Government, the Washington College of Law Student Bar Association, and the Graduate Leadership Council; the Staff Council; and the Alumni Association. We appreciate the candor and insight of the analyses supplied to us. The Committee carefully considered the reports, other submissions, and orally-conveyed comments over the past months from the constituent groups. Additionally, in an effort to foster improved communication, Committee members served as liaisons to the respective constituent groups in the course of our work.

At least one of our principal consultants attended all Committee meetings. Various Committee members and Mr. Michaelson consulted a number of present and former trustees, alumni, the deans, present and past University administrators, past

and present Faculty Senate and University Senate chairs, Staff Council, the Faculty Senate Committee, student representatives, and other persons having pertinent information.

The Committee organized the issues it addressed into a series of "work streams," comprising such topics as committee structure, connectivity with campus constituencies, conflict of interest and whistleblower policies, expectations for trustees, trustee orientation and assessment, and groupings of other topics identified in this report. During its meetings the Committee discussed and debated the issues and ultimately reached consensus or unanimity on each of the issues. In some instances, where the Committee believes doing so may be particularly valuable to the Board, this report identifies points of view that the Committee considered in addition to the view the Committee ultimately decided to recommend to the Board. Nonetheless, the Committee acknowledges that no set of recommendations as extensive as those that follow is likely to garner universal assent. This report expresses our best judgment.

Fiduciary Balance

Throughout its work, the Committee as fiduciaries sought to strike a sound balance between that which is constructive from the past and that which can be improved through updating and change. The Committee did not subscribe to the view that change should be made merely for the sake of change or that suggestions should be adopted merely to placate their source -- however politically expedient that might have seemed in the short-term. Neither did the Committee hold the idea that there should be a presumption in favor of past practices and procedures, or that any suggestion should be rejected out of hand. Rather, the Committee sought to examine each issue on its merits, recommending retention of current approaches where that is warranted and adoption of new ones where the Committee concluded that to do so best serves the University. Committee members became well acquainted with the Board's fiduciary performance and goals, from various perspectives, and brought those perspectives to bear in analysis, dialogue, review, revision, judgment, and recommendations. The result is set out in this report. The recommendations are numbered for ease of reference.

The Committee was guided in its work not only by general principles of good governance and practical considerations, but also by the University's mission and the values it embraces and strives to project to the world. The Committee agrees with the Faculty Senate Committee view regarding the centrality in the university's history,

and mission, of scholarship and teaching, inclusiveness (a value also particularly emphasized by Staff Council), and service.

Trusteeship

1. What Should be the Expectations for Individual Trustees?

It is vital that trustees understand clearly what is expected of them. The Committee agrees with the deans' recommendation that the Board should adopt and apply a statement of values that defines the principles trustees commit to uphold. Trustees should be expected to subscribe wholeheartedly to the statement. The Committee recommends that the Board adopt as part of the Board Policies and apply the following statement on expectations for each American University trustee:

"STATEMENT OF COMMITMENT AND RESPONSIBILITIES OF TRUSTEES OF AMERICAN UNIVERSITY

To serve on a university governing board is a rare privilege in our society. With this honor come considerable responsibilities, obligations, and expectations. The trustees of American University have chosen to clarify what we expect of one another and to remind ourselves of our ongoing individual responsibilities. This statement is intended to help those who are asked to consider joining the Board of Trustees to understand more fully what is expected, and is also intended to guide the Trusteeship Committee in its review of the overall contributions of each incumbent trustee who is considered for re-nomination to a new term. Together with results of written self-assessments completed by trustees prior to consideration for re-nomination, the Trusteeship Committee will reference the criteria in this statement, among other pertinent factors consistent with the Board Policies, in exercising its best judgment on behalf of American University.

Since its founding in 1893, American University has benefited greatly from the devotion, service, intellectual contributions, ethical behavior, and philanthropy of many thousands of faculty, staff, students, alumni, and friends. In a very real sense, they also are "trustees" of the institution by virtue of their dedication, affection, and generosity that help to ensure that the University will faithfully serve this and future generations. Those of us who have been chosen to serve as fiduciary trustees for a period of time -- to safeguard the University's assets and to foster its capacity to serve others -- enthusiastically and without reservation accept the following additional responsibilities as evidence of the commitment of each trustee. Trustees of American University will:

1. Contribute to the Board's efforts to sustain and advance the University's mission, integrity, traditions, values, reputation as an institution extraordinarily committed to service to others, civility in human relationships, and devotion to the pursuit of knowledge and truth. Each of us as a trustee will advance initiatives that promote the University, and will influence others to be part of its work and help it to realize its goals. This principle extends to such areas as student recruitment, relationships with alumni, relationships with donors and prospective donors, interaction with civic leaders, and our personal philanthropy.
2. Energetically and consistently participate in Board and Board committee meetings by preparing and participating effectively and with civility and mutual respect. Our ability and willingness to ask good and timely questions is at the heart of good trusteeship.
3. Provide donations in line with our financial capacity and each year as is expected for all trustees.
4. Call to the attention of the President or chief advancement officer the names of individuals, corporations or foundations that may be willing to invest in the University.
5. Conscientiously participate when feasible in campus activities and events as an engaged member of the campus community. This is easier for some of us than for others, but is a worthy goal for all University trustees. Participation in graduation ceremonies is especially important.
6. Conduct ourselves in word and action -- whether we are a voting or a non-voting trustee -- from the perspective that we serve, individually and collectively, the whole institution rather than any one part of it, or any individual or group within it or outside of it, or any partisan or political cause. Close personal friendships with faculty, students or staff can be a reward of trustee service, but trustees should use great care in such relationships lest they affect our objectivity and independent judgment.

7. Be thoughtful in how we represent the University through our actions and words. We know that as individual trustees our actions and conversations can carry great weight. We also know that the President or Board Chair, depending on the matter at hand, can speak for the institution or the Board. Press calls ordinarily should be referred to one of them. Should an apparent grievance or complaint that may have merit come to a trustee's attention, ordinarily the President and/or Board Chair, as appropriate to the matter, should be promptly informed.
8. Avoid bringing even the appearance of a conflict of interest to our trusteeship activity. Each of us is expected to comply with the Board's conflict of interest policy, including the disclosure requirements. Should we be uncertain whether a particular circumstance entails an actual or potential conflict, disclosure should be made in accordance with the conflict of interest policy.
9. Refrain from asking the President or other University executive and academic officers or staff for special favors on behalf of ourselves, family or friends.
10. Strictly maintain the confidentiality of the Board's executive sessions, especially but not only with respect to sensitive personnel matters. Safeguarding our institution's reputation and integrity and the right of individuals to appropriate privacy are among our responsibilities as individual trustees.
11. Assist the Board and the President to set the strategic direction of the University. Each of us has a duty to help the Board steer away from management functions and toward its governance responsibilities, by helping the Board to engage properly the institution's major issues and opportunities. Trustees of the University should give advice and share particular expertise freely, but should also be willing to accept the fact that not all such views will necessarily be adopted.

12. Participate, as requested by the Trusteeship Committee, in a self-assessment survey designed to help the Committee review our trusteeship service.

The Board's leaders and the University's President shall strive to ensure that the Board and its members are substantively engaged in strategic and other fiduciary matters that bear on the University. In return for each University trustee's best efforts to adhere to the expectations set out in this statement, our Board's leaders will exert their best efforts to help us, in turn, to use well our time as University trustees and to find the intellectual stimulation and personal satisfaction that we expect from our trusteeships. By doing our best to understand and to be informed about the unique institution we hold in trust for posterity, and by committing ourselves to the enterprise, we will leave our Board and American University stronger, more vital, and even more consequential than they were when we entered their service."

The foregoing statement should be provided to each new trustee as part of the orientation program described below, and to each incumbent trustee upon Board adoption of the statement. The statement should routinely be made publicly available, and should be included in the Board Policies.

2. Should There Be New Trustee-orientation Steps?

The Committee agrees with the Faculty Senate Committee that orienting new trustees to the University and to the work of the Board is an important function of the Board. The Board anticipates the election of a number of new trustees at the May 2006 meeting and is committed to increasing further in size. To help make these new trustees and future trustees be as effective as they can be, the Committee recommends that the Trusteeship Committee be charged with developing in 2006 an orientation program primarily aimed at new trustees but which would also be open to incumbent trustees. The program should address what is expected of trustees as well as how the Board is expected to work. The Committee believes that such a program is unlikely to have substantial benefit unless the Board, particularly through the Trusteeship Committee and the Board officers, takes a leadership role in overseeing it. The Committee further recommends that the Secretary of the University be charged with administration of this program, with oversight by the Trusteeship Committee and Board.

3. How Should Trustee Performance Be Assessed?

The Committee agrees with the Faculty Senate Committee, Staff Council, and others that the trustee assessment process should be strengthened. The Committee recommends that the following process be implemented and harmonized with existing Board policy: Approximately one year before the end of their term, trustees wishing to be considered for renewal should be required to submit to the Trusteeship Committee a self-evaluation on a form to be provided by the Trusteeship Committee. The Trusteeship Committee should assess the trustee's performance based on the self-evaluation and other factors including the foregoing statement of expectations for trustees, using such inputs as the Trusteeship Committee may request from the University Secretary. The Committee considered the Faculty Senate Committee's recommendation that outside consultants be engaged to appraise trustee performance. While our Committee does not oppose a role for consultants, we believe that ultimately the Trusteeship Committee and full Board must be responsible in this area and that the responsibility is not delegable.

The Committee further recommends that the Trusteeship Committee continue to work to align constructively the trustee nomination, election, and renewal processes with the approval and oversight procedure of the General Board of Higher Education and Ministry of the United Methodist Church. In this regard, the Committee recommends that the ex-officio trustee who serves from the General Board of Higher Education and Ministry of the United Methodist Church also serve on the Trusteeship Committee, further to facilitate the relationship between the processes of the Board and the Church in identifying, selecting, and nominating appropriate trustee candidates.

4. Should There be Emeritus Trustees?

The Committee reviewed the current process for designating emeritus trustees and recommends no change in the process. In the Committee's judgment, emeritus trusteeship should continue to be reserved as a rare and special honor given to those few trustees who have served with extraordinary distinction. The Committee recommends that the Board take steps to renew its relationship with its emeritus trustees, whom the Committee views as a substantial and relatively underutilized resource for the Board and University, and recommends that the Trusteeship Committee and Board leadership consider

sponsoring events at which emeritus and active trustees may interact, as well as other ways to engage the emeritus trustees in the Board's work.

Board Connectivity With the Administration and the University

A central theme of the Committee has been how best to involve University constituents in the Board's work. This report addresses a number of steps to that end, such as the involvement of University constituents in the work of various Board committees; participation by trustees in University events, such as Commencement; and regularly scheduled meetings that convene members of the University community, trustees, and the President, to discuss issues of concern in the University community. Further steps are addressed below.

5. Composition of Board by Prescribed Category

The Committee addressed very extensively the issue of designation of seats on the Board for University constituents. The Committee is aware that some experienced observers of university board governance do not consider inclusion of faculty or students from the institution on the board to be a best practice. Considerable discussion by the Committee centered on balancing issues of conflict of interest, fiduciary performance, and Board fiduciary independence with inclusion of University constituents on the Board. The Committee was aware that, according to a 2004 study by the Association of Governing Boards of Universities and Colleges, fewer than 15 percent of independent universities and colleges in the United States appear to have on their boards faculty or students from the institution. The Committee believes that the proper fiduciary role of a university board is quite different than the role of a parliament or other representative body.

In the Committee's judgment, however, after painstaking consideration, members of the faculty and student body should be on the American University Board as non-voting trustees. The Committee believes that the addition of faculty and student perspectives in Board deliberation can enrich analysis of issues and bring useful insights on the University's condition into the Boardroom. If, as some contend, such participation proves adverse to sound fiduciary functioning, the Board, in the light of some years experience with it, can reconsider the question.

The Committee recommends that there be two non-voting trustees from the faculty, who should be nominated by the Trusteeship Committee from two

or more candidates submitted to it by the Chair of the Faculty Senate.* The Committee agrees with the Faculty Senate Committee's view that faculty members who serve on the Board should not vote, because of conflict of interest considerations. The Committee further recommends that there be one non-voting University student trustee, who should be nominated by the Trusteeship Committee from one or more candidates submitted to it by the leadership of the three principal student government organizations.* As noted, the Committee agrees with the student government leaders that having student participation on the Board can strengthen the Board.

The Committee is aware that the conventional term-length for University trustee service, three years, may not conform to the faculty's and student body's best judgment as to appropriate term lengths for faculty and student trustees. Possibly, the faculty's and student body's judgments on appropriate term-lengths for faculty and student trustees will differ and will change in the light of experience with faculty and student trusteeship on the Board. Taking those and related considerations into account, the Committee recommends that the term-length for faculty and student trustee service be whatever period, not to exceed three years, that the Chair of the Faculty Senate (with respect to faculty trustees) and the three principal student government organizations (with respect to student trustees) respectively propose to the Trusteeship Committee at the time of nomination.* Board vacancies created by expiration of faculty and student terms, or by the inability or unwillingness of incumbent faculty or student trustees to serve, or by the departure of faculty or student trustees from the University faculty or enrolled University student status, shall be filled in accordance with the process identified in the previous paragraph.*

The Committee recommends that the Board's overarching policy be to include all trustees, voting and non-voting, in Board deliberations unless there is a manifestly sound reason not to do so.

The Board's policies on confidentiality of matters addressed by the Board and conflicts of interest shall apply to all trustees, including the President and faculty and student trustees. This recommendation is consistent with those of the Faculty Senate Committee and student government groups. In addition, the

* Asterisks indicate those recommendations implementation of which may require amendment of the University Bylaws, which the Committee proposes to offer for adoption at a special meeting of the Board in June.

Board should over time develop working principles to guide decisions on recusal of the President, faculty, and student trustees from deliberations. The Committee recommends that the recusal decision be left in the first instance to the judgment of the President, faculty or student trustee, as the case may be, who should, if there is controversy about it, consult the Board Chair or Vice-Chair, and that if not thereby resolved to their mutual satisfaction, the matter should be decided by vote of the Board.

In the Committee's judgment, it is preferable to address in the light of experience the exact circumstances in which non-voting trustees should recuse themselves from Board deliberations. The Committee offers three illustrative principles to guide such judgments: Recusal is highly likely indicated where the non-voting trustee, as a University constituent, stands to be affected financially by a Board decision; where the matter under consideration entails considerations of personal privacy of a member of the University community such that involvement by the non-voting trustee would potentially be inappropriate; and where attorney-client privileged matters are addressed to the Board (among other reasons, because the coverage of the privilege may be contended not to extend to non-voting trustees). The affected trustee and the Board should weigh such considerations prudently and need not invariably wholly exclude the trustee from such deliberations. For instance, whereas discussion of particular compensation to be paid the President is not, in the Committee's view, a proper matter for deliberation by faculty or student trustees, the process by which the Board makes such compensation decisions is likely to be. Thus, for instance, non-voting trustees should be informed of the identity of consultants engaged to advise on the President's compensation and on the process by which compensation recommendations are reviewed by the Board.

The Committee recommends that at each Board meeting, a period of time should be set aside for the otherwise-non-AU-affiliated trustees -- *i.e.*, trustees not the University President, a University faculty member or an A.U. student -- to meet in closed session. The purpose of such sessions would be to permit the outside trustees to discuss matters as to which otherwise A.U.-affiliated trustees would be required or would choose to recuse themselves. Such sessions would be in addition to executive sessions of the Board as now conducted, which executive sessions the President and faculty and student trustees would attend. The Committee believes the recommended practice to be consistent with a contemporary corporate governance trend, in the "Sarbanes-Oxley era," that

emphasizes the governance role of independent directors and provides opportunities for such directors to meet outside of the presence of management or other constituents. Meetings of the otherwise-non-A.U.-affiliated trustees would permit, for instance, that type of oversight discussion regarding the President in which it would not be appropriate for these trustees to participate.

The Committee further agrees with the Faculty Senate Committee that the current practice should continue of allowing anyone from the University community to propose trustees for nomination by the Trusteeship Committee.

The Committee notes that members of the campus community are currently represented on various Board committees. Effective January 2006, participation by University constituents in Board committee work was expanded relative to the Academic Affairs, Audit, Development, Campus Life, Finance and Investment, and Trusteeship committees, as well as the ad hoc Athletics and International Affairs committees. The Committee believes that the current practice of participation of persons from specific constituencies on these Board committees should be maintained, subject to adjustment if warranted in the light of experience.

6. Should the Board Chair and Vice-Chair Meet with the President at Specific Intervals?

The Committee considered whether the Board Chair and Vice-Chair should meet regularly with the President other than at Executive Committee meetings and Board meetings. In the Committee's judgment, more frequent such meetings could be beneficial, although they should not be mandatory. The Committee recommends that the Board Chair and Vice-Chair and the Interim President discuss whether there should be a presumption of a weekly or bi-weekly meeting, with the understanding that the meeting could be cancelled if no participant proposes an agenda item. This issue should be taken up again after the Board appoints a permanent President.

7. Should the President be on the Board?

The Committee recommends that the President be a non-voting ex officio member of the Board.* This is consistent with the recommendation of the deans and the Faculty Senate Committee. The President, to be a dynamic, effective leader of the University, must perform a vital, indeed indispensable,

role in the work of the Board. The Board and President must work closely together on virtually every issue of major importance to the University. On balance, however, the Committee believes the President should not be a voting member of the Board. In the Committee's judgment, non-voting status is desirable for a number of reasons, including delineating clear separation of responsibilities and authority between the Board and the Administration, and that only outside trustees, *i.e.*, those who are neither employed by nor a student at the University, be voting Board members.

8. Should the President Attend Executive Committee Meetings?

As addressed elsewhere in this Report, in the Committee's judgment the President should generally attend Executive Committee meetings, but there should ordinarily be a session of each such meeting attended only by the voting trustee members and the University Secretary. One aim of so proceeding is to allay concerns that the President is being unnecessarily excluded from Executive Committee deliberations; the practice of conducting some part of each meeting without the President is intended to foster realistic and proper expectations concerning the relationship between the Executive Committee and the President.

9. President Employment Contract and Compensation Policy

The Committee addressed intensively matters related to the presidential employment contract and compensation. Some of the Committee's views in that regard are reflected in the new Policy on Presidential Compensation and Contracts, which the Board adopted at its February 2006 meeting. Certain other aspects pertinent to presidential compensation are addressed below.

10. How is the President's Performance to be Assessed?

Assessment of presidential performance is a core responsibility of the Board. The full Board should be informed about, thoroughly review, and have approval authority over the appointment, re-appointment, and compensation of the President. The President's compensation should be linked to the President's assessed performance. Committee-level responsibility for Presidential performance assessment should reside in the Executive Committee, subject to Board review of its findings. As addressed elsewhere in this Report, the Committee recommends that the Compensation Committee be re-designated as a subcommittee of the Executive Committee.* The Compensation

Subcommittee should be charged with directly overseeing particularized assessment and compensation of two officers -- the President and the Secretary - - and with reviewing University policy for compensation and assessment of the other University officers, subject to such review as the Executive Committee, Audit Committee, and full Board deem appropriate. The Compensation Subcommittee should develop specific policy and procedures for assessment of the President, which policy and procedures should be submitted to the Executive Committee for further comment and development as needed, and then to the full Board. The Committee agrees with the deans and the Faculty Senate Committee that the President's performance should be assessed comprehensively, ordinarily every three years. Interim reviews should be conducted annually or with such other frequency as is specified in the President's contract. The Committee agrees with the deans' recommendation that the comprehensive assessments of the President's performance should include structured input from University senior management (including the vice-presidents and deans), faculty, staff, alumni, and students. Input from trustees should also be sought in these assessments.

11. Should Administrators Attend Executive Committee Meetings?

The Committee recommends that University officers and other administrators be available to attend Executive Committee meetings at the invitation of the Board Chair, to serve as important resources.

12. When Should Administrators and Other Constituent Non-Trustees Attend Board and Board Committee Meetings?

The Committee recommends, consistent with a recommendation of the deans and others, that representatives of campus constituencies should continue to be invited to be observers at Board meetings unless the Board is in executive session; the President, University faculty trustees, and University student trustees should have such further rights of attendance as this report recommends. The Committee does not believe that the addition of faculty and student trustees to the Board should alter the inclusion of campus representatives in Board committees or Board meetings. University administrators should be present at those parts of Board meetings to which they are invited by the Board Chair. As the deans further recommend, such presence of members of the University community at Board meetings should not be allowed to prevent the Board from conducting its business.

The Committee recommends that ordinarily University administrators who may provide pertinent information or advice should attend Board committee meetings, as should, in accordance with arrangements already implemented regarding various Board committees, designated representatives of campus constituencies. Each committee charter should designate the persons other than trustees who are members of the committee or are expected ordinarily to attend committee meetings.

13. Should the President be the Primary Link Between the Board and (a) Administration, and (b) Constituent Groups? How Should the Board Interact with Constituents?

The Committee recommends that the President be the primary link between the Board and Administration as well as other constituent groups. This does not mean, in the Committee's judgment, that the President should be the sole link to these groups. It is vital that the Board become aware of and sensitive to the concerns of constituent groups and that these groups see the Board as accountable and engaged, albeit not as an executive authority. To that end, in addition to student and faculty participation on the Board, participation by various University constituencies on Board committees, and other recommended and current forms of interaction between the Board and the Administration and other constituent groups, the Committee also recommends, consistent with overall recommendations of the student government groups, that the office of the President organize at least two discussion forums per year at which the President, trustees, and members of the general University community can interact and discuss issues of concern.

The Committee also endorses and includes among its recommendations these points, which are generally consistent with recommendations offered by the deans: Small, informal gatherings of Board members and campus representatives, including the deans and faculty leaders, would help build personal relationships between the Board and key campus constituencies. However, expanded communication between the Board and the campus community may lead some on campus to regard the Board as a court of appeals where they can bring previously decided issues in hopes of overturning decisions of University administrators. That tendency should be discouraged. It is vital that the Board, in seeking a closer and better understanding of the University, not inadvertently undermine the authority and effectiveness of the President or

other officers. Respect for faculty governance, adherence to established administrative processes, embrace of academic freedom, and regard for conscientious management decisions of those entrusted to make them are objectives that the Board should value highly.

14. Board Staffing

The Committee recommends that the Secretary of the University be the primary administrative staff member to the Board. The Secretary should, among other necessary functions, be an administrative conduit through which concerns of members of the University community can be conveyed to appropriate organs of the Board. The Committee agrees with the Faculty Senate Committee that the Board should be responsible for appointing the Secretary, and that the Secretary should serve at the pleasure of the Board.* Should the Secretary have additional University duties beyond the Secretary role, there should be at least one full-time staff member in the Office of the Secretary whose sole responsibility is to provide administrative support to the Board.

15. Identification of Bylaws-Prescribed Functions of President, VP and Treasurer, and Secretary

The Committee recommends that Bylaws Article IX be amended to omit prescription of functions of University officers other than the President and the University Secretary.* In the Committee's view, the Board's independence from the University Administration will be strengthened if one University officer reports directly to the Board. The Committee recognizes the importance of having a constructive and mutually respectful relationship between the President and the University Secretary, and therefore recommends that the President be consulted on selection of the Secretary. Accordingly, the Committee recommends that the Bylaws be amended to state that the Secretary of the University shall be appointed by the Board in consultation with the President, and shall serve at the pleasure of the Board.*

Board Committees and Board Officers

16. Array of Board Committees, and Committee Functions

In addressing the role of Board committees, our Committee held the view that a key objective is to foster the substantial, committed engagement of all trustees in the ongoing work of the Board. Board committee service can contribute to that in important ways. At the same time, our Committee believes that a dispersal of authority among trustees tends to contribute to individual trustees' sense of engagement, and that the role of Board committees must be subordinated to the role of the full Board, not vice versa.

The Committee considered in depth whether the present array of Board committees is best suited to serve the Board and concluded that, with adjustments recommended here, it is. The Committee recommends that each Board committee be charged with drafting an updated proposed committee charter that describes the functions and responsibilities of the committee, the number and categories of trustees and campus representatives who are to serve on the committee, and other pertinent information on the functioning of the committee. The committee charters should be submitted by December 31, 2006, via the Board Chair, to the Board for approval. The Committee believes that updated Board committee charters will be useful not only to clarify the scope of each committee's work, but also to assist in orientation of new trustees and evaluation of trustees for renomination to the Board. Our Committee thus recommends that each current Board committee chair review, in consultation with committee members, that committee's existing charter if such presently exists, and develop a charter that appropriately reflects the committee's scope of work and expected activities.

Our Committee further recommends that if and to the extent doing so is likely to invigorate the quality of Board committee work and expose trustees to a range of areas of University life, but is unlikely to compromise continuity and Board expertise unduly, trustee committee assignments should be changed from time to time. The Committee further recommends that each Trustee should be expected to serve on at least one Board committee. The Committee recommends additionally that the Development Committee be re-named the "Committee on Alumni Affairs and Development" to describe more accurately and to emphasize the broader focus of that committee on concerns of alumni, and to reflect appropriately administrative revisions within the University several years ago that similarly emphasized these independent but related activities.* The Committee on Alumni Affairs and

Development should, among its important activities, make special outreach to the Alumni Association and be informed of the Association's interests and objectives. Our Committee recommends, to foster accountability and efficiency, that the Compensation Committee be re-designated a Subcommittee of the Executive Committee and include five trustees.*

The Committee believes that the Board standing committees should continue to be identified in the University Bylaws, but that Bylaws Article VII should be amended to provide the Board flexibility to change the committee structure as the Board may deem useful to the University from time to time.* Further, the Committee recommends that the Board committee descriptions be deleted from the Bylaws and that Board committee charters should serve to describe the committees.* The Committee also recommends that Board committee charters be included in the Board Policies, which should be publicly available and copies of which Board Policies should be supplied to all incumbent and new trustees. The Committee further recommends that the Board revisit from time to time the question whether to change the number of standing committees, to ensure that the committee structure responds to evolving needs.

The Committee recommends that the President not be a member of the Trusteeship Committee. This recommendation, which is consistent with one by the Faculty Senate Committee and the student government groups, does not signify that the Trusteeship Committee should avoid communication and consultation with the President, particularly when the Trusteeship Committee seeks that. Rather, the recommendation signifies that Board independence of the President in matters of Board composition is a key value. The Board must not be controlled or dominated by the President, but must work in close consultation with the President.

Our Committee considered the question of its own lifespan, and recommends that it should continue to function at least through the special Board meeting anticipated to be held in June 2006. Thereafter, continuing attention to Board governance issues should be within the committee-level coverage of the Trusteeship Committee.

17. Relation of Executive Committee to the Full Board of Trustees

The Committee considered this relationship with particular care. The Committee believes that the full Board should perform a more robust and engaged role than in the past in the governance of the University. The Committee further

believes that the Executive Committee should operate under the requirement that the full Board be timely informed of Executive Committee actions. While it is administratively necessary that the Executive Committee be empowered to act for the Board between Board meetings, we have aimed to empower the full Board without hampering the University by undue and unwise constraint. The Committee thus recommends that, except as provided below, the Executive Committee be empowered to take final action (i.e., action that does not require ratification by the full Board) upon a finding by the Executive Committee that (a) action before the next regular Board meeting is needed to protect the University's interests which otherwise would be compromised by delay, or (b) the matter is simply administrative, the action is needed for the efficient functioning of the University, and the action does not compromise any significant interest, or prerogative, of the full Board. The Executive Committee shall communicate to the full Board not later than the next Board meeting such final actions.* The Committee recommends regular, timely, and forthcoming communications between the Executive Committee and full Board, to reduce the risk that the Board will be uninformed or that the Executive Committee would operate in a manner inconsistent with the Board's goals and wishes.

Although our Committee recommends that the Executive Committee continue to be authorized to act for the Board between Board meetings on a wide range of matters, we recommend that these matters should not include: appointing, renewing the appointment of, suspending or dismissing the president or placing the president on leave, approving officers' compensation, creating or eliminating a program, changing the University's mission, amending the Bylaws, and encumbering the institution by major indebtedness.* These limitations on the Executive Committee's powers should be written into the Bylaws, which should describe the limitations as powers reserved to the Board. Actions of the Executive Committee, except as provided above, should be subject to ratification by the Board at its following meeting.

The Committee believes it important that the Board be informed of the activities of the Executive Committee in a timely manner. To that end, we recommend that minutes of Executive Committee meetings should be shared with all Board members within 30 days and that the Board at its next meeting following distribution of the Executive Committee minutes should take up the question of ratification of Executive Committee action. The Committee further recommends that community affairs be identified as within the committee-level coverage of the Executive Committee.

18. Role of Board Chair and President in Relation to Executive Committee

The Committee believes that the Executive Committee should be a dynamic and available sounding board for the Board Chair and the President. Its primary purpose should include being a deliberative body and a planning body. The Board Chair should chair Executive Committee meetings. In the Board Chair's absence, the Board Vice-Chair should chair such meetings. In the absence of both the Board Chair and Vice-Chair, the Executive Committee should not meet.* Further, the Board Chair should be empowered to act for the Board in case of emergency or other urgent need of the University, provided that in no event should the Board Chair take such action that the Executive Committee could not take. The Board Chair should consult frequently with the President.

19. Should There be an Ex-officio Appointment System for Executive Committee Membership, as at Present?

The Committee considered whether to change the system for appointment of the Executive Committee. Currently, the Executive Committee consists of seven trustees: the Board Chair, Board Vice-Chair, the President, Academic Affairs Committee Chair, Finance and Investment Committee Chair, and two at-large trustees. The Committee recommends that the chair of the Audit Committee be added as an ex-officio Executive Committee member, that the President not be a member of the Executive Committee, and that the number of at-large Executive Committee members be two (if the authorized size of the Executive Committee is seven members) or four (if the authorized size of the Executive Committee is nine members).* The Committee is satisfied that at present seven is an appropriate number of members of the Executive Committee, but believes that nine would be an appropriate number of members if Board size reaches or exceeds 30 members.* Because university board audit committees have taken on increased importance following enactment of the Sarbanes-Oxley Act and related developments, the Committee believes that the Audit Committee chair should be part of the clear leadership of the Board.

20. Should There Be Multiple Board Vice-Chairs?

The Committee considered whether the current system of having one Vice-Chair serves the Board well. The Committee recommends that the current system of having one Vice-Chair be continued at present.

21. What Should be the Terms of Office of Board Officers and Standing Committee Officers and Members?

The Committee recommends that Board officers, who are the Board Chair and Vice-Chair, as well as standing Board committee officers and members, shall, as at present, serve in those offices for two-year terms. In the Committee's judgment, the current Bylaws, which provide for initial two-year terms, are sufficient for officers, chairs, and members to establish a track record before being considered for possible re-election, while at the same time allowing the Board to appraise the performance of the officers, and to vote on whether to re-elect officers with sufficient frequency to exercise an important check on the authority of Board leadership. Therefore, no change to the current Bylaws is recommended in this respect.

22. How Often Should the Executive Committee Meet?

The Committee recommends that the Executive Committee should meet as often as necessary to fulfill its responsibilities, and generally should meet at least three times per year between meetings of the Board, with more frequent meetings if and to the extent the Executive Committee deems necessary or appropriate from year to year. A university board executive committee should function as an active, deliberative body, not a ceremonial one. The Executive Committee exists to support and oversee the President's performance as well as to ensure that the Board and President agree on the course being charted for the University in key policy areas, and that the means being followed are sound. The Executive Committee distinctly shall not, however, function as a second chief executive and shall take considerable care not to undermine, even inadvertently, the President's ability to perform the chief executive role effectively. Executive Committee meetings are particularly important because they present an indispensable forum for a regular, routine working relationship between the Board and the President, and are a vital means by which Board leadership maintains familiarity with and exercises oversight over and support for the President in addressing the most significant issues that arise in the life of the University. The Committee emphasizes the fundamental importance of the Board as a whole exercising ultimate fiduciary responsibility for the University. The activities of Board committees should bolster and not undermine or weaken that essential role.

Composition of the Board

23. Size of Board

Although the Act of Incorporation of the University and University Bylaws permit the Board to include up to 50 members, the Committee recommends that the number of trustees should in practice not exceed 40. The Committee believes that the current initiative to expand the size of the Board is appropriate, and that at this time the optimal size of the Board is not less than 30 or more than 35 trustees.

The Committee is mindful that not all trustees have attended recent Board meetings. Although the Act of Incorporation and Bylaws provide that 11 trustees shall constitute a quorum at Board meetings, a greater number of trustees than that is desirable to ensure the diversity of participation and robust exchange of views that characterize a strong, deliberative, engaged Board. The Committee thus recommends that the Board leadership and University Secretary redouble their efforts to ensure that trustees attend Board meetings. The Committee does not, however, propose a change in the calculation of a quorum.

24. Length of a Trustee Term

The Committee reconsidered the three-year term length for trustees. Some leading universities, including some of the University's comparator institutions, have trustee terms longer than three years. On balance, the Committee believes that the current, potentially renewable three-year term for trustees is an appropriate length, considering the value of a term sufficiently long to permit trustees to become fully engaged in and familiar with the required work, the possibility that a longer term may deter some qualified persons from volunteering for service on the Board, and the demerits of keeping in office for longer than three years a marginally performing trustee. In reaching its recommendation, the Committee took into account that trustees may be re-elected to multiple terms, and that the Board does not have (and, as discussed below, the Committee does not recommend) term limits for trustees.

25. Term Limits and Trustee Renewal

The Committee gave extensive thought to whether trustees should be required to rotate off the board after a fixed number of terms. Thoughtful persons have differing opinions on this point; for example, although the deans recommend

term limits, the Faculty Senate Committee did not. Practices of leading universities vary on term limits for trustee service. Among other considerations, the Committee addressed whether without term limits the Board will be able to renew itself periodically with trustees who bring fresh ideas and energy. However, the Committee believes that this valuable objective may be achieved with implementation of a rigorous trustee assessment and renewal process, as discussed above. The Committee was concerned that term limits may be viewed as an excessively rigid mechanism for renewing the Board, would likely in some cases cut short the service of highly valued trustees, and would likely in practice diminish the role and effectiveness of the rigorous evaluation of trustee performance that this report recommends. The Committee examined the historic length of service of University trustees and concluded that very few trustees were appointed to serve more than three or four terms. The Committee believes that the benefits of term limits can be achieved with a rigorous trustee assessment and renewal process, without introducing the negatives associated with rigid term limits. Accordingly, the Committee recommends that the current practice of no term limit on trustee service be maintained.

26. Should There be a Mandatory Retirement Age for Trustees?

The Committee considered the pros and cons of adoption of a mandatory retirement age for trustees, and determined not to recommend adopting a mandatory retirement age for trustees at this time. Some leading universities, including some of the University's comparator institutions, have a mandatory retirement age for trustees. The Committee believes that a mandatory retirement age may be viewed as arbitrary in that some individuals may remain productive, valuable Board members even at an advanced age, while other individuals may lose productivity earlier in life. No current trustee is approaching any age at which mandatory retirement would ordinarily be set, and the Committee does not perceive that the absence of mandatory retirement has been problematic for the Board in recent memory. The Committee believes that the process of trustees transitioning from active to emeritus trusteeship has been working well.

27. What Kinds of Diversity are Desirable for Trustees, and How Should Diversity of Trustees Be Achieved?

The Committee agrees with the recommendations of the deans, Faculty Senate Committee, student government leaders, Staff Council, and Alumni Association that the Board should energetically seek trustees with diverse

backgrounds and experiences. A robust diversity of backgrounds among the trustees will add significantly to the quality of the Board and its deliberations, in our view. In particular, the Committee recommends that among the qualities sought in nomination of trustees should be diversity along racial, ethnic, gender, socioeconomic, geographic, and professional lines. The Committee also agrees with the Faculty Senate Committee and Staff Council recommendations that trustees be sought out who have a background in the higher education field, and with the deans' further recommendation that background more broadly in the non-profit field be considered. The Committee believes that a higher-education professional background should be one among various apt factors that inform the trustee nomination decision. The Committee was also struck by a comment made at a meeting of former Chairs of the University Senate and Faculty Senate: "Find trustees who loved college." The essential work of this University is the life of the mind. A key consideration in selection of trustees should be to find persons who deeply support, respect, and value highly the life of the mind.

The Committee, like the deans, student government groups, and others, also recognizes the importance of trustee capital contributions, not only because the University depends on trustees to support the endowment and special projects such as capital and building campaigns, but at least as importantly because, in the Committee's judgment, trustee financial contributions signal a commitment to the University that every trustee should make. Leadership in development activities of the University remains a critical obligation of the Board. Accordingly, the Committee recommends, as a Board policy, that each trustee be expected to contribute annually to the University, commensurate with the trustee's ability to do so and to participate actively in fund-raising activities of the University, again commensurate with the trustee's capacity, commitment, and skill. The Committee emphasizes that this requirement should not be an obstacle to election of a diverse Board and recommends, consistent with Staff Council's recommendation, that there be no rigid minimum contribution amount.

Board Meetings

28. Frequency of Board Meetings

The Board must have a sufficient number of meetings each year to accomplish its business while providing time for the trustees to discuss, debate, deliberate, and get to know each other. Regular meetings should be held with sufficient frequency that the making of important decisions between Board

meetings is the exception, not the rule. At the same time, the Committee is mindful that the Board is a fiduciary oversight body, not a management committee, and that the University's executive business is to be conducted under management of the President and the University officers. The Committee is also mindful that trustees volunteer their time to the Board and that meetings should be conducted efficiently.

Taking the foregoing and related considerations into account, the Committee recommends, consistent with the Faculty Senate Committee's, student government groups', and others' recommendations, that the number of regular annual Board meetings be increased from three to four.* The Committee further recommends that the Spring meeting be scheduled to coincide with Commencement, to foster attendance of trustees at Commencement, which the Committee believes to be significantly desirable.* The Committee also recommends that the Board hold retreats (a part of which may be a Board meeting), generally at least every two years or when special issues arise, to discuss in depth issues pertinent to the Board and to its effectiveness, and for trustees to interact and get to know each other in a setting less formal than Board meetings. Two topics likely to be worthy of periodic examination at such retreats are Board governance and institutional strategic planning. The Board may wish to engage outside consultants to assist it relative to such retreats.

The Committee recommends that special meetings of the Board continue to be authorized on at least ten days' notice to trustees, as at present. In addition, the Committee recommends that should, in the judgment of the Board Chair, the Executive Committee, or any five or more trustees, emergency circumstances arise that make onerous and impractical notice of a special meeting of the Board, an emergency meeting of the Board may be called upon at least 24 hours notice to trustees; provided that the Bylaws shall not be amended at such emergency meeting of the Board.* The Committee believes that provision for such an emergency meeting will enable the Board to respond to the rare situation in which exceptionally fast action is necessary, yet the taking of such action other than by the Board would be inadvisable.

29. Meeting By Telephone

The Bylaws currently permit participation by telephone at Board meetings. While the Committee believes that telephone participation does not conduce to optimal trustee participation in Board deliberation and is sometimes hampered by

technical, equipment-related shortcomings, the Committee also recognizes that some trustees are unable for compelling reasons to attend all meetings in person. Although trustees who live far from Washington should make every effort to attend Board meetings in person, the value of a geographically diverse Board is significant and there will be some occasions when trustees are unable to travel great distances to Washington. On balance, the Committee believes that the benefits of permitting telephone participation somewhat outweigh the disadvantages. However, the Committee recommends that the Board adopt a practice that telephone attendance, while permitted, should be used rarely (examples being the compelling reasons cited above, or a special meeting of the Board scheduled on short notice) and that both the Board (by ensuring use of high quality equipment and appropriate procedures) and trustees who participate by phone share responsibility for ensuring that telephone participation is meaningful and participatory.

Other Issues

30. Trustee Conflict of Interest Policy

The Committee recommends that an updated conflict of interest policy for trustees be presented for adoption by the Board in June 2006. The policy should require trustees to disclose annually in writing, and as they arise, material interests in companies or other entities with which the University has or is considering transactions or other business relationships or that otherwise could give rise to actual, apparent or potential conflicts of interest or be embarrassing or harmful to the University. This recommendation is consistent with that of the deans and the student government groups. Disclosures should ordinarily be made to the University Secretary, who should forward them to the Audit Committee. After review of the disclosure statements and such other facts as it deems pertinent, the Audit Committee should determine whether there is an actual or potential conflict of interest and, if so, recommend what steps should be taken to address it (e.g., recusal from Board meetings, divestment, oversight, etc.). The interested trustees should have an opportunity to respond to questions and to comment on the matter. Any contested issues -- that is, issues not resolved to the mutual satisfaction of the trustee and the Audit Committee, or issues which any trustee believes may not have been resolved appropriately -- should be decided by the full Board.

31. Policy on Whistleblower Complaints

Although it is aware that a number of such policies exist at the University to address various circumstances, and without vitiating those policies, the Committee recommends that a University-wide policy be adopted on addressing allegations of malfeasance or unlawfulness by any University personnel. Under the policy, the Committee recommends that complaints may be sent to the Audit Committee, which should have discretion as to what steps if any are warranted and by whom the matters should be reviewed. The proposed policy should be adopted by the Board in June 2006.

32. Removal of Trustees

The Bylaw provision that authorizes removal of trustees should be clarified to provide that trustees may be removed at a special, as well as a regular, meeting of the Board.*

33. Revision of Board Policies

Except as otherwise recommended in this report, the standing Board Policies should remain in effect. Specifically, these policies should remain in effect: Equal Opportunity, Affirmative Action, and Non-Discrimination; Gifts to the University; Honorary Degrees; Trustees Emeritus; Trustee Records; and Presidential Compensation and Contracts. Board policies on the following subjects should be amended to the extent necessary to achieve correspondence with the recommendations of this report (such amendments are anticipated to be proposed for adoption at a special Board meeting in June): Trustee Conflict of Interest; Trustee Meetings with Campus Representatives; and Governance.

34. Future Review of Board Governance

The Committee recommends that the Board conduct not more than five years hence another comprehensive review of Board governance policies and practices.

The Special Committee on Governance thanks the Board for this opportunity to serve. Following Board consideration of and action on these recommendations at the May 2006 Board meeting, the Committee will submit

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proposed implementative Bylaws and, as identified in this report, Board policies for adoption at a June 2006 special meeting of the Board.

Respectfully submitted,

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