

**REPORT OF THE SENIOR ADVISERS
ON UNIVERSITY GOVERNANCE**

SUBMITTED TO

**GOVERNOR'S BLUE RIBBON COMMISSION ON THE
FINANCIAL MANAGEMENT OF THE
UNIVERSITY OF MINNESOTA**

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October 1988

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Letter of Transmittal

October 13, 1988

Edson Spencer
Chairman
Governor's Blue Ribbon Commission
On the Financial Management of
The University of Minnesota
c/o Honeywell, Inc.
Honeywell Plaza
Minneapolis, MN 55408

Dear Mr. Spencer:

At the outset, the three senior advisers privileged to be a part of your deliberation process reaffirm their long time admiration for the University of Minnesota. We were working colleagues of its presidents beginning with the distinguished President J. Lewis Morrill. Few public universities in the land possess the rich and deep tradition of academic excellence and the proud heritage of public service as does the University of Minnesota.

In our judgment, the current episode in the life of the University should be viewed in the context of an ever-changing and constantly self-renewing institution moving toward a goal of yet greater excellence in teaching and research and in splendid service to its supporting constituency. The University of Minnesota is a truly great academic enterprise. It is international in its impact yet its goodness is felt in every county of the commonwealth.

While the current difficulties are real, the people of Minnesota need to understand that other vital and dynamic universities in the United States have experienced similar disruptions in communications and in relationships with constituents. The task, then, is to view the situation as honestly and openly as possible, determine corrective changes and healing procedures, and get about the task of implementation.

There is clearly no need for us to recite once again the succession of events over these last months, all of which have been reported and commented upon to the emotional exploitation of most concerned citizens. It is to the everlasting credit of these same citizens that their great love for the University has not abated; it has grown deeper. It must also be said that the legislative restraint manifested over these months is an accurate reflection of that public affection. The demonstrated discipline of the legislative branch is worthy of high commendation.

What we have learned from studying many documents and hearing much personal testimony is that insofar as governing and administrative processes are concerned, a real question of trust has existed. Failure of communication, violation of policy-making roles, interference in the management process--these and other violations of good practice are serious and must not be repeated. The great need is to reestablish and to recapture the sense of family within and among the components of the University. Its strength derives from its unity as a team effort.

Plainly, the University of Minnesota has suffered a loss of credibility. That credibility is, we believe, slowly being regained, thanks to the strong and capable leadership of Interim President Sauer working hand in hand with Chairman Lebedoff and the Board. As we reviewed our role in providing advice to the Commission, we asked ourselves two questions.

First, beyond the immediate causes for the loss of credibility, were there deeper causes at work?

Second, what might we recommend as ways in which credibility might be restored and similar losses of credibility avoided in the future? Our report, reflecting what we have heard and seen, attempts to answer these two questions. We hope that our report will be helpful not only to the Commission but to all who care about the welfare, integrity, and reputation of the University of Minnesota.

Sincerely yours,



Harold Enarson
President Emeritus
The Ohio State University



William Friday
Chancellor Emeritus
University of North Carolina



Arthur Hansen
President Emeritus
Purdue University; Texas A & M

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INTRODUCTION

Put simply, the University of Minnesota lost credibility as a direct consequence of two disclosures: substantial cost overruns on the Eastcliff facility and the size and probable abuses of the reserve fund. The rush of events, under the blinding glare of publicity, led to charges and counter-charges.

Amid turmoil, the Regents, individually and as a body, struggled with an emergency without precedent in their experience.

Amid turmoil, President Kenneth Keller resigned, with consequences no one even in calm retrospect can fully and fairly assess. There has been speculation enough, recrimination enough, and more than enough search for villains.

For some, the good reputations of a lifetime were tarnished. The reality, as many now see, is that there were no villains. Good and decent men and women in positions of power and influence lost sight of the fundamental principles and practices that make for a healthy and productive relationship between the President and the Board of Regents. The "Minnesota Tragedy" was that the key actors in the drama loved the University but failed in final analysis to serve it well.

The initial thrust of the Governor's Blue Ribbon Commission on the Financial Management of the University of Minnesota Commission was to delve deeply into the financial management at the University. To this end, Coopers and Lybrand was commissioned to do an in-depth analysis of all aspects of financial management. As the Commission heard testimony, and reviewed information from a variety of sources, however, it became clear that there were problems other than financial management that needed examination. It is the examination of such non-financial matters that led us inexorably to address the governance of the University.

It seems clear that many of the problems that arose to discredit the University stemmed from a failure of the Board of Regents and the University administration to work together effectively. On Eastcliff and the reserves the question arose: What did members of the Board, individually and collectively, know and when did they know it? Conversely, what did the President and the administration share, and when and in what form did they share it? The answers are elusive, but this is clear: whatever the limitations of the financial system, these do not explain the Eastcliff matter nor do these explain some questionable uses of the reserve fund.

The failure of the Board of Regents and the administration to work together reflects more than a clash of personalities, although that played a part. The apparent stress derives from the lack of a clear understanding of the role and responsibility

of the Board and individual board members, particularly and especially distinguishing policy-making functions from administrative responsibilities, and the clear and specific prescription of administrative responsibilities to the Board that the President must fulfill.

At present, from all appearances the Board and Interim President Sauer are reestablishing lines of communication and trust. It is imperative that this healing process continue. The University of Minnesota deserves, and must recruit, the best possible person to serve as its next President. It is also imperative that the University continue to move ahead on the new major thrust--A Commitment to Focus. The ambitious goals set forth in this singular strategy can be achieved if three conditions are met. One, there is a need to restore the financial credibility of the University with the Governor, the Legislature, and the taxpayers of Minnesota. Two, the Regents must select, and aggressively recruit, a truly outstanding individual to serve as its next president. Three, There must be a new beginning in Board-President relationships. In all candor, we must point out that first-rate candidates will be repelled if they believe that there are serious obstacles to a healthy relationship between the President and the Board. Clearly, the Board and the new administration must learn to work together in a harmonious and trusting fashion.

A good part of our report is devoted to practices that promise better governance. Some of our observations may seem

commonplace to students of governance, but they are directly relevant in this situation.

We devote the first section of the report to a discussion of the role of the Board of Regents along with recommendations that we believe will strengthen the Board's role as a full partner with the University's administration in realizing the great potential of the University.

In the second section we have observations and recommendations about the role of the President as partner of the Board in leading the University forward.

In the third section we emphasize the critical importance of the Board and the President working as a team.

In the fourth section we comment on the role of individual members of governing boards, each affecting greatly the performance of the board. We trust that our general observations will be helpful to present and future members of the Board.

The fifth section deals with the selection of board members. We are pleased with the creation of the new Regent Candidate Advisory Council. Our observations and recommendations underscore the need for a strengthened selection process which will attract the very best men and women. Service on the Board of Regents may well be the most important volunteer assignment in the state.

The sixth section deals with the critical issue of administrative structure. As the Commission has heard, there is a strong belief on the part of some people, including

legislators, that the University should be restructured in such a manner that a new position be created, that of a chief executive officer to oversee the entire multi-campus system including the Twin Cities campus, which would have its own CEO. Accordingly, we have discussed multi-campus governance systems and have proposed courses of action that we feel will resolve many of the concerns about the present structure that have been raised.

The seventh section deals with concerns raised about the University's important constitutional autonomy, one of its great strengths as a public university.

Some summary comments conclude the report.

We would hope that this report, along with the collective wisdom of the Commission and other contributors, will set the stage for the emergence of a revitalized University of Minnesota with new strengths and an enhanced reputation.

1. THE BOARD OF REGENTS OF THE UNIVERSITY

The Board of Regents should undertake promptly a systematic evaluation of its obligations and its performance with the goal of achieving needed changes in attitudes as well as processes.

It becomes necessary in time of crisis to re-examine what a governing board must do--and must not do.

The lay board of trustees provides for accountability to the public interest without domination by government. Boards are, in Clark Kerr's words, "guardians," promoting the welfare of the

institution they oversee, protecting the integrity of the enterprise against bureaucratic or political intrusion, and assuring wise use of resources. It is a very special kind of institution--the colleges and the universities--which trustees hold "in trust," as prescribed in statutes and in unwritten tradition.

The responsibilities of the Board of Regents of the University of Minnesota are huge and becoming ever more complex. A multi-campus university, a "flagship university," a "research university," a "land-grant university"--the university is all of these and more. The Board deals necessarily with complex public policy issues, which often invite controversy. Virtually every matter before the Board touches on the vital interests of affected groups--tuition and student assistance, admission standards, pricing policies in the hospitals, contracts and leases, policies affecting tenure and promotion, patents, use of university facilities, and investments. And yes, intercollegiate athletics. The search for the public interest, however elusive, is the solemn obligation of these "guardians."

As the Board reviews its institutional mission, allocates scarce resources, prioritizes capital construction, sets personnel policies, reviews enrollment plans, it must keep its eyes focused on the future, on the "big picture." Amid constant distractions, this is the most important challenge and the most difficult.

How can an uncompensated, part-time lay Board oversee the myriad activities that make up the University of Minnesota? The answer lies in broad delegation to the President, its chief executive officer. The choice of the right person to serve as the next President of the University is crucial. No other decision has such far-reaching consequences, holds so much promise and so much risk. Following upon that choice, the Board' continuing responsibility lies in advising, supporting, and evaluating the President and the top administrators.

A lay board brings to the higher education enterprise a rich variety of experience and concerns. It "teams" itself with its chief executive officer, and much depends on the health of that relationship. Kenneth N. Dayton, in his essay entitled "Governance is Governance" says that, "As trustees we are there, it seems to me, to support, encourage, challenge, stimulate, and help that professional whom we pick to lead our endeavor."²

The Board of Regents must constantly battle the temptation to move beyond policy into administration. This is difficult because of the sometimes blurred distinctions between "policy" and "administration."

The Board of Regents is constantly challenged to understand and to honor both the extent and the limitations of its power. Self-discipline of a high order is required, especially now, to reaffirm the role and function of the Board.

² Governance is Governance, An occasional paper. The Independent Sector, 1828 L Street, Washington, D.C. 20036, p. 8.

In our view the recent legislation "requesting" the Board of Regents to employ independent professional staff to prepare financial data for the Board is a bad proposal and should never be put into effect. It signals that the Board lacks confidence in the President and the President's staff. It also leads university personnel to conclude that there are two chains of command to whom they must answer. For any board to give to subordinate administrative officers independent access to it or to seek information except through the chief executive officer is a sure way to undermine administrative authority and, ultimately, the board's confidence in the CEO. Few things are more destructive than evidence or rumor that the board relies more confidently upon someone else than it relies upon the chief executive officer.

The Board of Regents should understand that to build its own separate professional staff would so weaken the presidency as to make it unattractive to a first-rate leader. We recommend that the Board take its stand on this matter, which speaks directly to the integrity of decision-making.

It is imperative that every element in the governance of the University be known and be widely available to any interested party. Accordingly, we recommend that the University prepare, codify, and publish a code of the University which would set forth all relevant constitutional and statutory provisions relating to the University, specific chapters on the powers, duties and responsibilities of the Board of Regents, the Office

of the President, the stated policy statements and by-laws heretofore promulgated. Provision should be made for amending and updating this code and providing copies to every Regent, institutional adviser, faculty member and student body president.

We further recommend that the Board of Regents establish promptly the policy that only the Chairperson of the Board of Regents shall be authorized to speak for the Board on official and policy matters, unless otherwise agreed upon. Some of the current stress has been generated by a lack of self-discipline that has proved to be harmful to the University and to the Board.

Once the new President is chosen, the Board of Regents must constantly and enthusiastically support that person and his or her policies as the leader of the University. Debate on policy issues and administrative practices is essential and expected in the proper forums of the University. Once policies are established, however, the President must have the full support of each Regent in the execution of the policies and in the exercise of administrative judgment in University matters. It is critically important that this relationship be made manifest promptly and no "end-runs" tolerated henceforth.

Further, from time to time, the Board and the President should evaluate his or her performance in office. The Board must always see to it that the President is properly compensated, that support staff is fully adequate, and that there is opportunity for physical, intellectual, and spiritual renewal each year.

2. THE OFFICE OF THE PRESIDENT

The President must be understood to be the chief executive of the University. Functioning under the Board of Regents, the President is the spokesperson of the University and the line of communication must be from the Board of Regents through the President to the institutions and in reverse from the campuses through the President to the Board of Regents. No other procedure is acceptable and should not be tolerated by the President or chairperson of the Regents.

The President must manage the University effectively. He or she must be the inspired leader of the entire institution instilling confidence, enthusiasm, cordiality, and trust through a first-rate performance in the implementation of the mission (here called the Commitment to Focus) which the President and the Board of Regents have charted for the future.

This kind and quality of performance and leadership must be demonstrated by the next President. After listening and studying, we offer the following specific suggestions to help renew the credibility of the President's office:

- a. The President should have a senior administrative council composed of the top central staff and the Chancellors, meeting monthly with the President to discuss the work of the University, the forthcoming agenda for the Board of Regents' meeting, and all other relevant policy and

administrative matters. The objective is involvement, participation, the elimination of surprise, and informed communication.

- b. Specific consultation should be formally scheduled for the preparation of the budget request going to the Legislature, and there should be discussions of institutional allocations once the Legislature has authorized funding for the next year. Chancellors of the coordinate campuses should accompany the President to legislative hearings on the budget request.
- c. The President should make presentations of budget proposals before the appropriate committee of the Board of Regents and the full Board, prior to submission to the legislative process. These presentations should include all budgets and all sources of funding so that the Board is fully informed.
- d. The new President should "take the University to the state." Within the first year in office, the President should convene campus external relations officials along with the several Chancellors to plan and establish regional meetings. These meetings should be hosted by the alumni of each constituent institution. The hosts should invite editors, school superintendents, college and

university presidents, mayors, legislators, business executives, and other opinion leaders to hear the President state the relevance of the University to their area, and how essential it is as the servant of the state and of the nation. A mailing should soon be developed going to state and county leadership on a regular basis to keep these initial contacts alive.

- e. The new President must establish direct and open communication with the Board of Regents on all important matters affecting the University and not just agenda items requiring immediate attention and decisions. There are times when general discussions of the state of the University are important.

The president must be seen to be fully in charge and fully accountable, assembling all relevant information from associates and sharing this with the Board and the Legislature.

3. THE BOARD OF REGENTS AND THE PRESIDENT WORKING PARTNERS OR ARMS-LENGTH ASSOCIATES?

The performance of a president depends on the conduct of the board above almost all else except for the personality and character of the president himself or herself; and the performance of a board almost equally depends on the conduct of the president. Clark Kerr, The Guardians, a forthcoming study for the Association of Governing Boards.

The best interests of the University must never again be sacrificed to an arms-length, even adversarial, relationship between the Regents and the President.

On critical matters the Board and the past President appear to have operated at arms length. Poor communication may have compounded the problem of lack of trust, and lack of trust may have led to escalating lack of communication: a classic downward spiral.

It is now imperative that the Board of Regents and its President function as a team enjoying mutual trust and confidence. Without trust and faithful sharing of information and concern, the system is on a slippery slope. An indifferent or disorganized board invites the president to exercise more power than is healthy. On the other hand, weak leadership on the part of the president invites strong board members to arrogate direct, hands-on management to the board itself. As Kenneth Dayton noted,

I have been utterly amazed over the years to observe how boards always tend to fill management voids. If management is weak in any aspect of its operation, a strong board or board member will move in and take over. The trick for management is to leave no voids, and the trick for the board is to see to it that management has a plan to fill any voids that occur, rather than to leap in and fill them itself.²

² Dayton, Ibid, p. 3.

It is essential that the Board discuss and agree on the role of an incoming chairperson. That individual should command the respect and confidence of colleagues on the Board and should work closely with the President, counseling the President on concerns of other board members and working with the President to shape board agenda. The careful crafting of the agenda is extremely important. Failing that, discussion becomes desultory and the board will not focus on the "big picture"; board members who become frustrated are likely to vent their frustration by meddling. (A good chairperson eases life for the president; a bad chairperson generates distraction and confusion and can make life unbearable for the president.)

Board members need the opportunity to discuss sensitive issues in confidence with the President and one another. The open meeting law is a significant barrier to such discussions. Ordinarily we would emphasize the value of retreats, especially at this time. Yet a retreat open to the media is a contradiction in terms. There are no easy answers here. Harlan Cleveland, examined sunshine laws in a recent publication.³ In it he defines the "trilemma" composed of 1. the public's right to know, 2. the individuals, right to privacy and 3. the public institutions mandate to serve the public interest. All three elements are important, and each must be reconciled with the others. Ethics, he writes, is the art of combining them.

³ Harlan Cleveland, The Costs and Benefits of Openness: Sunshine Laws and Higher Education, Association of Governing Boards, (Washington, D.C., 1985.)

It is an analysis that we commend to the Commission and to the political leadership of the state.

The attitudes board members bring to the assignment affects greatly whether they will "grow" to become good board members. Prior successful experience as corporate directors, in business, as community leaders do not automatically equip one to be a good board member. Habits learned in other environments may not be easily transferable. The financial management practices of higher education, including methods of accounting and reporting, differ greatly from private business. New board members need to take the time and effort to learn the complexities and unique operating procedures of a university.

A decent respect for the opinions of one's colleagues is required for the board to avoid acrimony and poor interpersonal relations. In private as well as in public, board members owe it to their high office and the public which they serve, to exercise restraint in their criticisms, whether of colleagues or officers of the university. The proper place for critical evaluation of the performance of the president and other officers of the university is in executive session, never in the newspapers or on television.

The burden of creating a working team rests heavily on the president and his associates. There can be no substitute for the president's personal attention to the board and its individual members. It is never enough for a president to have a "vision" of the future, however bright and attractive, unless the "vision"

is clearly understood and enthusiastically supported by the board. It is shared vision that moves a university forward.

A wise president can learn much from board members. The next president of the University of Minnesota must understand that the Board must be a partner and can be a great asset. This is not to overlook the critically important role played by the faculty or of the need for attending to the concerns of the many publics which share in the life of the university. It is to note that board dissatisfaction with a president soon makes a presidency untenable; on the other hand, a harmonious and respectful relationship carries abundant promise.

Individual board members come and go; the authority of the board endures. In private colleges and universities, presidents play a major role in selecting members of their board. The presidents of public colleges and universities usually enjoy no such privilege. Board members are selected through the political process. A president necessarily deals with board members as they are, not as one (sometimes) might wish they were. In any event the president has the obligation to work loyally and in good faith to honor the legitimate authority of the board and to help it in every way to do its work. This is no easy mandate and the temptation of a busy, often beleaguered president, is to maneuver around the board. It is a temptation to be avoided at all costs. Pyrrhic victories may be won by guile or by withholding the truth; manipulative tactics ultimately self-destruct.

The individual board member can be expected to have concerns along with special competence--whether about a community, a geographical area, a profession, or of a special "public." It is the special genius of a lay board that it can provide a broad public perspective not likely to develop in the self-contained world of academe. A good board, with an appropriate mix of persons from different backgrounds, can provide the president with invaluable political counsel.

The President, in short, has a great resource in the Regents. It is an asset that must be put to use.

The orientation and continuing education of the board is the inescapable personal responsibility of a president--daunting as this task may seem at times. It is the task of the president to help the board understand the institution it governs: its past, its choice of priorities, its need for renewal. A wise president attends to the board, is familiar with its concerns, and is responsive to its policy directions. Sharing information--the bad and the good--with the board is the necessary point of departure. A board should never be surprised and embarrassed to learn of an important matter from news reports. In a crisis situation, information must be quickly shared with all members of the board.

Responding promptly and fully to requests for information from the board is always required. In a huge "multi-university" such as the University of Minnesota, it is essential that the Board receive the right kind of information, developed in a

timely fashion to illuminate decisions on policy. As we reviewed some of the earlier financial reports we were reminded of how easy it is for board members to founder on data that provides little relevant information.

Budget and finance and audit need to be "demystified." It is not enough for an administration to report on potentially sensitive financial matters and hope that the information conveyed is received as delivered. In dealings with the board, and for that matter with all elements of the university community, it is essential for the administration to "go the extra mile"--to make certain that the essence of the information was not only heard but understood.

Finally, the board needs help from the president in appreciating and interpreting the constraints under which a major university works: the intensifying competition for public resources (federal and state); the competition between the research enterprise and undergraduate teaching; the changing expectations of students, political leaders, and the business world; and the ever more convoluted processes of decision-making on campus, reflecting in part the fragmentation of the larger society.

We repeat: in the long run, mutual respect will build mutual trust, which will create the necessary teamwork. This is not a Pollyanna plea; it is a description of "what works" in the very best of the nation's universities.

4. THE ROLE OF THE INDIVIDUAL BOARD MEMBER

The Board needs to develop a shared understanding of what individual board members should do--and should not do.

It is the Board of Regents as a collective body which is invested with authority. The majority vote of the Board is the only official basis for action. Every Board member must remember that as individuals, Board members have no legal standing. It is a stern requirement not easily honored.

The Board can be no better than its members, and the requirements for a good member are demanding. A good member should have useful experience and skills and the stature to deal effectively with economic and political power structures; should have experience on boards of profit and/or nonprofit institutions; and should understand the appropriate relationships between a board and its chief executive officer. A good member should have a strong interest in the entire University, not just a part of it; should be committed to processes of consultation and the search for consensus. Most importantly, a good board member helps citizens understand their university, and helps professional educators understand the public's concerns. In controversies on academic freedom and responsibility, board members serve an important "buffering" role.

Individual Board members, generally prominent in their communities and their professions, soon discover that they are blessed with a host of new friends eager to request favors or to

report on atrocities. As a public official, a Board member may appropriately be willing to hear citizen complaints and concerns. However, if a Board member assumes the role of unauthorized ombudsman, the trickle of complaints will become a flood, and it will be increasingly hard to focus on the "big picture" issues.

The rule is absolute: the Board member has the clear obligation to promptly communicate to the President any significant concern or complaint received. To do otherwise is to tangle the lines of authority that enable the Board to hold their President accountable and thereby undermine the power and influence of the President. The rule attains whether the concern is for example, bad morale in the physical plant, dissension in the medical college, in-fighting at a campus, fraud in the award of contracts, favoritism anywhere, or any other like matter.

It is understandable that a physician may have a special concern about the medical school, or a businessman may have a strong interest in the business college. However, individual board members must not become unofficial investigators or champions. A legitimate, worthwhile interest or concern must not slip into one-person influence let alone de facto authority over any element of the university.

Inappropriate conduct by board members is not unknown in the United States. Neither presidents nor former trustees cover the topic in their memoirs. Yet there are lapses in ethical behavior, as any experienced president will testify. Some lapses are plainly wrong on their face, as for example, personal

intercession with the president or subordinates to secure favors in business transactions, or to influence a personnel decision. More frequently the impropriety is less obvious: trying to resolve quarrels in an academic department, or taking potshots at individuals in the press, or the exercise of influence masquerading as "just advice." The effect of these and other intrusive acts is to discourage top management and to create an atmosphere where it becomes accepted practice for each board member to make deals with the administration--deals which often could not stand public scrutiny.

A good rule for a president is never to take an action that would be embarrassing if it surfaced in the news. It is a rule equally applicable to individual board members. It is not naive to set such standards of probity and self-discipline, realizing always that there may be transgressions. What is important is that a board have a code of behavior to which it is committed--and which it will enforce.

In appearances before executive agencies and legislative bodies, the general rule must be that only members representing the board should speak for the board. It is a rule that should be understood and honored by political leaders as well. At a minimum, a board member owes it to colleagues to share with them conversations on important matters with important persons in state government.

In recent years it has become increasingly difficult to serve on governing boards of major universities. The business of

higher education has become more complex, more prone to controversy. The system of internal governance on campus no longer finally resolves issues such as tenure decisions, program discontinuance, reorganization of academic departments. On occasion, the campus is a sieve linked to the statehouse sieve. Arguments lost on campus may be appealed to higher authority, often beginning with individual board members. In part, the politicization of higher education has its roots on campus.

If service on the Board of Regents is one of the most prestigious assignments for the outstanding citizen, it is also the least appreciated. Over the years the Board of Regents has been well served by outstanding leaders who gave unstintingly of their time and talents. The challenge is to expect all board members to demonstrate the level of excellent service represented by the best members.

Service on the Regents should not be a thankless, as it now is. Public praise is as necessary, when appropriate, as public criticism. In this connection, we recommend that the top civic leadership of the state develop an awards ceremony, an event by which the people of the state can express their appreciation for exceptional service.

5. THE SELECTION OF BOARD MEMBERS

In the long run nothing is as essential to the future of

the University as a fundamental rethinking of the process of selecting Board members.

The quality of board members in Minnesota, as elsewhere, is a function of the selection process. If the selection process is flawed, the results are likely to be flawed. Just as faculty governance depends on the quality, and especially the integrity, of faculty leadership, so the quality of Regent governance depends, in the end, on these same attributes by individual board members. This may seem a truism, but if so it is a truism that needs to be dusted off, burnished, and made a first consideration in the selection of board members.

In public universities, whether selection is through gubernatorial appointment or by popular election, the individuals chosen obviously bring past and present loyalties to the assignment. They come from a particular community; they have interests and concerns arising from a lifetime of work; they enter into the regent role with convictions about higher education and about the university and the state whose interests they will serve. Regents are not politically immune, nor should they be. Nor can their interests ever be fully divorced from their involvement, past or present, in the life of their community and region of the state. But to argue from this that regents should be chosen to represent their political party, or their pressure group, or their ideology, and/or their community is a grievous error. From the moment that regents take the oath of office they are bound by a higher mandate: the overall, long-

term welfare of the university they hold in trust. This may be a difficult transition, but it is essential.

We do not suggest that "politics" can be wholly taken out of appointments. What is urgent and essential in Minnesota is for the Governor and the Legislature to make it clear to all candidates for election and all present appointees that Regents do not serve in a representational role. A "representational" board, where several board members are understood to represent constituencies, tempts the "representatives" to deal directly with subordinates on the campuses on behalf of special interests. The same affliction taints the operation in a politicized board, where board members may view themselves as emissaries of a political party or one or more powerful political leaders. In this situation, the errant member soon fails to share confidential information with colleagues. Sooner or later this will divide the Board, contaminate its decision-making, and destroy the trust so essential to the success of the enterprise.

Reasonable diversity, not representation, is the goal. Board members should be chosen so that the Board as a whole enjoys a diversity of experience and outlook. We are greatly encouraged by the Legislature's creation of the Regent Candidate Advisory Council to assist the Legislature in determining criteria for, and identifying and recruiting qualified candidates for membership on the Board of Regents. The key word is recruit. There will never be a shortage of willing and eager applicants with plausible credentials and a fervent desire for the position.

But the citizens of Minnesota deserve the very best minds--men and women of stature in their diverse communities and their work.

Plainly the new Advisory Council can, if permitted to do so, play a crucial role in screening and recruiting candidates. It is, of course, an aid to the legislative process, not a substitute for legislative decision-making. If the Legislature selects persons on the basis of representation, the Regents will function as a representational body, with all of the disabilities noted earlier.

For this reason we recommend that the Legislature, with the assistance of the Advisory Council, explicitly state as a matter of legislative intent that individual board members represent all of the people of the state, and no particular interest, ideology, or community.

The Legislature was on target in requiring that the Advisory Council develop a description of the responsibilities and duties of a Regent; it was wise in asking that the Advisory Council make use of the experience of current and former Regents and the administration of the University. The trauma of recent months should add both freshness and urgency to this important task.

Boards of regents everywhere stand continually in need of revitalization by input from new members. In this connection, we recommend that the Legislature reassess the basic framework, which has been largely untouched since the beginning of the University.

Specifically, we suggest:

- a. Consideration of moving away from congressional districts, either in whole or in part, as the geographical basis in selection of Board members. Selection on the basis of geographical area invites a representational mode of behavior, which we believe inappropriate and sometimes harmful. Alternatively, the four at-large regents might well be selected by the Governor from candidates submitted by the Regent Candidate Advisory Council.
- b. A fixed limit on the number of years a Regent may serve. Twelve years seems to be the recognized norm in the country.
- c. A thorough orientation process of new Board members including the explanations of duties, responsibilities, and authority of the Board, its members, and the President of the University. Visitations by members of the Board of Regents to a few of the best public universities in the land should be made to study their board structure and operational methods. Other governing boards have made such visitations with great success. Also, much can be gained by participation in the meetings of the Association of Governing Boards.

6. ADMINISTRATIVE STRUCTURE

The issue of the administrative structure of the University has been under consideration for some time. In 1986, Peat

Marwick prepared a full report on the matter of restructuring in conjunction with an on-going University study. To date, the recommendations of that report has not been implemented.

Restructuring has surfaced again during the current review. One reason expressed is the alleged lack of consideration by the main campus administration for the welfare and special problems of the coordinate campuses. It is argued that this is a consequence of the President wearing "two hats"--the operating officer of the main campus and the chief executive of the system that includes the coordinate campuses. The task of running the main campus is envisioned to be of such complexity and requiring so much time on the part of the President that the coordinate campuses are consequently overlooked. To remedy this problem, the suggestion has been made that a true system structure be instituted with a president as chief executive officer and with chief operating officers (chancellors) for each of the campuses including the Twin Cities "flagship." While we understand that this proposal is not under active review at this time by the Board of Regents, we believe that the issue will surface again if the conditions relating to governance of the coordinate campuses are not improved.

The Board of Regents and the President govern a small multi-campus system. That system includes a sizable regional campus (Duluth), the small campuses of the Technical Colleges at Crookston and Waseca, Morris, and the flagship campus--the Minneapolis-St. Paul graduate/research university. Plainly there

are system-wide responsibilities, but these do not in our view justify the drastic step of creating a dual system of governance, with a new and powerful CEO overseeing all five campuses including the Twin Cities campus. In our judgment, there is no sound basis for such radical restructuring. We believe that to create a new layer of authority over the Twin Cities campus would involve costs that would exceed the possible benefits.

In this connection we strongly urge the Board of Regents to put this matter finally to rest before choosing the next President. If the next President is to preside over a system, but have no direct operational role in the Twin Cities campus, this is a much different presidency than at present (and as stated in the recruiting announcements).

Throughout all of our discussions, it has been made clear that strong leadership will be required to restore the credibility of the University and in saying this, the "University" has been virtually synonymous with the main campus. If, at this point, the system is restructured so that a CEO is sought to oversee all campuses, then a chancellor for the main campus will be required. What sort of qualifications would be prescribed for this position? If the chancellor is to have the leadership qualities that are currently being recommended, then the system president must have a wholly different set of qualities. Ultimately, one would suspect that the system president might well stand in the shadow of the main campus chancellor. If, on the other hand, the system president is a

strong leader whose attention would be primarily focused on the main campus, it would be highly probable that competition and conflict between the president and the main campus chancellor would eventually erupt.

The problems of system governance that have been aired can be solved more readily by adopting procedures that directly address the problems rather than by restructuring the system. In addition to the recommendations set forth in the section on the presidency relating to meetings with the chancellors and budget preparation, the following additional recommendations are therefore proposed:

- a. Consideration should be given to increased managerial authority for the coordinate campus chancellors. Issues of personnel and student policies, tenure and appointment procedures, and financial and physical plant planning should be among items reviewed.
- b. The campus chancellors (and other selected main campus officers and agency heads) should normally be present at Board meetings and be asked to give periodic reports of their operations.
- c. Consideration should be given by the Board to the creation of a committee that oversees coordinate campuses and agency needs that are not directly associated with the main campus. Alternatively, a way could be sought to build into current committees formal consideration of special concerns and problems of the coordinate campuses and agencies.

d. When appropriate, special recognition should be given to individual and institutional achievements on all campuses with such recognition being made a part of Board meetings and so recorded. The intent of such action is to continually reinforce the concept of a unified University team.

7. THE CONSTITUTIONAL AUTONOMY OF THE UNIVERSITY OF MINNESOTA

In the firestorm of criticism following disclosures about Eastcliff and the reserves, the constitutional autonomy of the University of Minnesota resurfaced as a critical issue in the Legislature. The anger of legislators found a familiar target in the special protections against legislative intrusions that were defined in the University Charter in 1851 and reaffirmed in the state constitution adopted in 1857. Chapter 3, Territorial Laws, 1851, vested "the government of the university" in a Board of Regents with the power and duty to enact rules for the governance of the University. The Constitution carried forward and incorporated the rights, duties, and privileges set forth in the Charter.

The University of Minnesota has a unique legal status among the public colleges and universities of the state. It is a constitutionally autonomous state corporation. The University has autonomy in the management of its own affairs. To ask what is meant by "autonomy" is to enter over a century of occasional

conflict between the University and the political leadership of the state. The arena is a lawyer's delight, and a layman's despair. Let us try to put the matter in both historical and present day perspective.

In Minnesota, as in other states where the flagship university enjoys constitutional autonomy, the decision to guarantee protected status to the University reflected both populist distrust of the Legislature and an understanding that the University must be "off limits" to political intrusion. In a 1928 landmark case (*State v. Chase*, 175 Minn. 259, 220 NW 951) the Minnesota Supreme Court stated the case for autonomy clearly (and in a way sure to alienate the elected representatives of the people). The objective, said the court, is:

To put the management of the greatest state educational institution beyond the dangers of vacillating policy, ill informed or careless meddling and partisan ambition that would be possible in the case of management by either legislature or executive chosen at frequent intervals and for functions and because of qualities and activities vastly different from those which qualify for the management of an institution of higher education.

It was argued a century ago, in debates that are strikingly contemporary, that the state hospitals and the highway department also deserve to be free of "vacillating policy, ill-informed or careless meddling and partisan ambition." The answer, then as now, is that it is disastrous to the quality of higher education for the state to treat its colleges and universities as if they were simply another state agency.

In 1858, a year after the Minnesota Constitution was adopted, President Henry Tappan of the University of Michigan spoke of concerns about improper intervention in university affairs. In an age when sectarian and political intrusion threatened the integrity of the nation's newly-emerging state universities, Tappan warned of "three mistakes": the introduction of political partisanship and aims; local jealousies and competitions, and sectarian prejudices and demands into the management of the university. Today, the battles between religious sects no longer convulse higher education. With rare exceptions, decisions on faculty are insulated from political intrusion by federal law and tradition. "Local jealousies and competitions" are, of course, very much alive, coloring in significant ways how the state allocates its resources among competing areas and interests. Now controversy swirls about the dangers, real and imagined, of legislative and executive branch intrusion into the daily management of universities.

Tappan wrote, "As president of the University of Michigan, I claim to be an officer of the state...I have been appointed under an express provision of the Constitution. I have been appointed by Regents elected by the people. I am accountable directly to them, and to the people through them."*

* Henry Tappan, "The Idea of the True University," in American Higher Education, Vol. 2, Richard Hofstadter and Wilson Smith, eds., The University of Chicago Press, 1961, page 527.

No present day president of the University of Michigan or the University of Minnesota would trace presidential authority as a direct line to the Regents and from the Regents to the people. The Governor and the Legislature loom large, indeed huge, in the perspective of the University of Minnesota, as well they should. The University is hardly a self-contained entity, sealed off from the statehouse by the Constitution. The University is dependent on the good will and confidence of the people of the state, as reflected in the actions of the Governor and Legislature. A truth never to be obscured or forgotten: the welfare, financial strength, and the integrity of the University of Minnesota is heavily dependent on the good will and good judgment of the political and civic leadership of the state.

What, then, does "autonomy" mean in 1988?

* It cannot mean the freedom of the University to starve. A public university requires regular, reasonable appropriations from the Legislature to do its work.

* It cannot mean immunity from the police power of the state. The courts have upheld the rightful authority of the state to legislate on a number of health and safety matters directly affecting the University.

* It cannot mean immunity from state audits, from the provision of reports and documents as required by various executive departments and the investigative arms of the Legislature.

The political leadership of the state is necessarily involved in the life of the university.

* It is the Legislature which specifies the budget and appropriation process, creates new campuses, enacts broad policies embracing tuition, student financial aid, admissions, and the like.

* It is the Legislature which chooses to fund special projects by line item--a practice which the University of Minnesota has not protested. Plainly, the state now reaches into the internal affairs of the University in a way that would have been unthinkable a century ago.

Is constitutional autonomy then an anachronism? We believe not, and for several powerful reasons.

One, while the University may choose to acquiesce in legislative actions that might be borderline violations of the constitutional provisions, the University has the right and obligation to challenge intrusions which it believes to be clearly improper. In controversies where passions run high, the University may need to defend itself by appeal to the protections of the Minnesota Constitution. This is a right not lightly discarded.

The "essential core" of the University must be protected at all costs from legislative or executive actions which threaten academic freedom. As the Carnegie Foundation for the Advancement of Teaching said,

If the integrity of higher education is to be preserved, the academy must have full authority over

those essential functions that relate to teaching and research. These include the selection of faculty, the content of courses, the processes of instruction, the establishment of academic standards and the assessment of performance. Academic integrity also requires that the university have control over the conduct of campus-based research and the dissemination of results. These functions, we believe, are the essential core of academic life. It is here that the integrity of the campus must be uncompromisingly defended.⁵

Thus, constitutional autonomy enshrines in the Constitution itself essential guarantees against all forms of political intrusion which threaten the integrity of the intellectual enterprise.

Two, constitutional autonomy is a symbol--a powerful sign that the people understand the special nature of their university. We know of no truly great state universities that have developed in states that indulge in micro-management from the statehouse. On the other hand, we can point to examples of major state universities where elaborate controls over their internal affairs paralyze initiative, handicap the drive for efficiency, and weaken the authority of the governing board. The unintended consequence of such controls is to diminish the university's capacity to be fully accountable for all aspects of its performance.

At the University of California, the University of Michigan, and other great universities, constitutional autonomy is not

⁵ The Carnegie Foundation for the Advancement of Teaching, (Princeton, NJ).

regarded as a license to ignore the state government. Instead, constitutional autonomy is seen as a special trust, a badge of honor. In our view any attempt to strip the University of Minnesota of the protections of the Constitution would be deeply divisive, catapulting the University into a political maelstrom.

Third, any attempt to deny the University protections enshrined in the Minnesota Constitution for over a century would send a chilling message to thoughtful observers around the nation. It would grossly exaggerate the present difficulties and signal, perhaps mistakenly, the prospect of legislative intrusions of unknown predictability and severity. In the intense competition for high-level faculty and staff talent, the University of Minnesota cannot afford the stigma associated with the destruction of its constitutional protections.

As a distinguished past Chairman of the Minnesota Board of Regents commented, "Universities are fragile institutions; they must be carefully nourished and protected." With or without constitutional protections, a university is not simply another state agency and it must never be so regarded.

Of equal importance, however, the University must be fully accountable--not only to the Legislature on a great variety of matters but also to private donors and to federal, state, and private agencies for grants and contracts. The University must nurture a spirit of accountability in every aspect of the enterprise.

All elements of the University community--Regents, the administration, faculty, students, alumni--must understand that the legislature and the governor exercise an oversight role, taking care to see that laws and policies are honored, that there is probity in the financial affairs, and that there is a full accounting for state monies. The mutual trust and respect which should characterize the relationships between the Regents and the President should be paralleled in the state/university relationship.

The best of the state universities around the nation function with substantial management flexibility. Flexibility will always be a matter of degree, as will independence, and autonomy. Stephen Bailey described the issue as part of a "persistent human paradox: the simultaneous need for structure and for anti-structure, for dependence and for autonomy, for involvement and for privacy." Bailey concluded that, "The public interest would not, in my estimation, be served if the academy were to enjoy untroubled immunity. Nor could the public interest be served by the academy's being subjected to an intimate surveillance. Whatever our current discomforts because of a sense that the state is crowding us a bit, the underlying tension is benign."⁶

⁶ Stephen K. Bailey, "Education and the State," in John F. Hughes, ed. Education and the State, (Washington, D.C.: American Council on Education, 1975), p. 1.

We observe that in many states the vitality of state colleges and universities is sapped by state controls which frustrate good management. The examples are legion: arbitrary controls on out-of-state travel; competitive bidding on extremely small accounts; delays in timely delivery because of centralized purchasing; recapture of end of year balances which encourage last minute spending; civil service provisions that fail to reflect specialized labor markets such as nurses at university hospitals; pay schedules that are obsolete; pre-audit of university purchases--guaranteeing costly delay; approval of personnel actions by a state personnel board; detailed line items imposed by legislative fiat; processing paychecks and vendor fees at the statehouse. Such micro-management destroys the accountability it purports to promote. This is a road not to be taken.

The investigative power is a historic right of state legislatures. It is a power that must be used with care and caution, as the experience in state government everywhere testifies. Investigative inquiries are useful in illuminating problem areas and in spurring public officials to do what they should have been doing. They also run the risk of overstatement and exaggeration. There is scarcely an activity in large organizations that, placed under microscopic examination, does not show "something wrong." The difficulty, and importance, of putting things in perspective should be obvious.

The reports of the Legislative Auditor appear to be professional in the best sense of the word. However, no amount of probing inquiries by the Legislative Auditor will create accountability. In its best and fullest sense, accountability requires a vigorous, disciplined Board of Regents exercising policy direction and oversight, an administration competent and purposeful as well as visionary, and a faculty dedicated to excellence in teaching, research, and service. This is the challenge before the University of Minnesota and the elected representatives whose understanding and support sustain it.

CONCLUDING COMMENT

As we reflect on the events that led to the creation of the Blue Ribbon Commission on the Financial Management of the University of Minnesota, we believe that what is most needed is the saving grace of perspective.

It is undeniable that the credibility of the University of Minnesota was damaged in the eyes of the Governor, the Legislature, the faculty, the students, and its varied constituencies--alumni, donors, friends everywhere. But in all that most matters in the daily life of this great University--teaching, research, public service--the work of the University has proceeded without interruption.

There has been damage--major damage--to the University's self-image. It matters how the university community feels about

their university; it matters greatly how alumni, donors, friends everywhere feel about their university; and it matters supremely how the people of Minnesota and their elected representatives feel about their flagship university. There has been chagrin, embarrassment, anger--all testifying to the depth of loyalty that Minnesotans feel for their university. But those whose support is essential to the continuing vitality of the University must realize that an episode is just that--an episode in the life of the University.

Any major university would profit from the kind of comprehensive, in-depth analysis of every aspect of the financial and management information system which Coopers and Lybrand has done. Plainly, there is work to be done in overhauling the accounting system, improving the budget process, and tightening audit provisions. Plainly, these tasks require that the Board and the President work closely together, in close touch with the legislature. We believe it equally plain that the University of Minnesota, in the public spotlight, will rally to the task, and indeed has begun to do so.

Interim President Sauer dealt promptly with the laxity that led to Eastcliff and the abuse of reserves. Upon his recommendation, the Board adopted new policies and procedures which deal explicitly with contracts, contract overruns, and the handling of the reserve account. In this connection, Board Chairman David Lebedoff is to be commended for his leadership in preparing a Board rule which clarifies in significant respects

how the Board will operate in the future. In short, the corrective process is well under way. It will be accelerated significantly as the University deals with the recommendations in the Coopers and Lybrand report.

We are greatly heartened by the continuing support given to "A Commitment to Focus" by the Regents and Interim President Sauer. In our view, this impressive effort to rethink academic priorities, involving a commitment to focus resources to preserve and enhance quality, can be the rallying point of a revitalized university. A major challenge for the new president will be to see that the momentum for significant change is not lost.

In appraising the governance of the University we conclude that the structure is basically sound and strongly advise against any effort to strip the University of constitutional autonomy. However, we also conclude that the coordinate campuses, and particularly the Duluth campus, must be full participants as a matter of right in the decision-making processes.

We have made specific recommendations where the problem can be addressed in a tangible way. Examples are the president's role with respect to the coordinate campuses and the selection of board members. But structural changes and new consultative processes do not go to the heart of the matter. As stated earlier, the fundamental principles and practices that make for a healthy and productive relationship between the President and

the Board of Regents had been lost sight of. There are no short cuts to a restored credibility, or to improved communication. It is no good to plead for trust in the abstract; trust grows out of the hard soil of experience. The heart of the matter lies in changing attitudes, in the rediscovery and reaffirmation of "what works" in major universities everywhere.

The Board, individually and collectively, is challenged to rethink its responsibilities. The University cannot afford a passive, rubber-stamp Board nor can it afford an adversarial Board. The University, and the public it serves, deserves an active, energetic, probing Board which exercises critical judgment on policy matters, strengthening and sustaining the President in the process.

The next President is challenged not simply to be the chief executive officer but, as we noted earlier, the inspired leader of the entire institution, instilling confidence, enthusiasm, and trust through a first class performance in the carrying out of the educational plan. The restoration of credibility is the great challenge and the great opportunity for the new President. The President must "take the University to the state"--openly, honestly, directly, remembering always that the University belongs to the people of the state.

The next President and the Board are challenged to work as a team, communicating freely, sharing ideas and concerns, each enhancing the contribution of the other. Attitudes matter profoundly.

The Legislature is challenged, perhaps as never before, to actively recruit outstanding men and women for service on the Board of Regents. Diversity, not representation, is the goal. Only the Legislature can make it pointedly clear that a board member represents all the people of the state, and no political party or ideology or profession or community.

The Interim President is challenged to continue to move ahead in developing consultative processes that provide the coordinate campuses participation, and the fair treatment that they deserve. We are heartened by the measures already taken and those planned.

The Legislature and the Governor, accountable to the people of the state, exercise a critically important oversight role. Regardless of constitutional autonomy, they have great power over the destiny of the University. Again, attitudes matter. There can be a downward spiral of less trust and deterioration in the relationship between the University and the Legislature and the governor or an upward spiral in which shared goals, honesty, and good faith moves the University forward.

Finally, governance matters; the performance of the Board and the President matter; the oversight of political leadership matters. Financial accountability matters, as do management processes that encourage orderly and systematic budgeting, accounting, and auditing. But all these together do not make, can not make, a great university. The wellsprings of strength in the University of Minnesota reside deep within its faculty, in

the loyalty of its many friends, in the excellent academic reputation which it continues to enjoy. Every act by every officer or official at every level on campus and at the state capitol has consequences for the vitality of the academic life of the University. It is against this touchstone that all actions are to be measured.

The University of Minnesota deserves the very best in its new President. We are confident that the choice will be an excellent one and that the University will be launched on a new era of excellence.