

## SPECIAL COMMITTEE ON UNIVERSITY GOVERNANCE

### Improving the Governance of Penn State, Revising the Structure of its Board of Trustees, and Furthering the Academic Mission of the University: Report and Recommendations of the Special Committee on University Governance

#### **Executive Summary**

In the aftermath of the events of November 2011, the Chair of the University Faculty Senate appointed the Special Committee on University Governance to study the structure and practices of the Board of Trustees and to make recommendations for improving governance and communication at Penn State. To achieve its charge, the Special Committee consulted extensively with experts, reviewed the literature on best practices in higher education, benchmarked Penn State with other institutions, interviewed a wide variety of constituent groups, and conferred frequently with the Board leadership and other interested parties.

The Special Committee concludes that there is significant opportunity for the Board of Trustees, like most higher education governing boards nationally, to gain a better understanding of the academic mission and the unique structure of the university it governs. Most Board members bring a wealth of business and government experience but do not have a commensurate level of experience in higher education or understanding of how universities advance knowledge for the benefit of society. It is important to note that there is little dispute among higher education associations and experts that this is a national problem. The key question for the Committee is how it should be remedied at Penn State.

The Special Committee also concludes that this problem cannot be easily resolved with the current structure, means of representation, and composition of the Board. The Committee believes that the existing formula of representation by which constituent groups select a certain quota of Board members is anachronistic and the Board membership should come from a greater diversity of sectors and interests reflecting the modern mission of the University. At the same time, greater emphasis should be placed on selecting Board members based on their qualifications to perform critical governance functions rather than on what groups they might represent. Further, the Board should establish minimum qualifications for membership and a transparent and widely participatory nomination or vetting process to ensure the selection of qualified Trustees.

One of the best means of ensuring that the Board understands the mission, values, unique structures and operating systems of the complex academic institution that it governs is to select members who have academic expertise and professional experience in higher education. Those members, in the opinion of the Special Committee, should include at least two current Penn State faculty members. Including internal professional trustees on governing boards of other non-profit institutions is widely considered a best practice and ensures that those boards are more fully informed and have the necessary expertise to make the best possible decisions on highly-specialized matters. Faculty representatives on governing boards, while not widespread today, are becoming increasingly common at public universities.

The Special Committee respectfully disagrees with some recent proposals that would, for example, further restrict internal academic representation on the Board, bolster a top-down, corporate style governance structure, and increase political control of the University. Such proposals are based on a misunderstanding of the time-tested concept of a university and often are at odds with the norms of higher education. There is no question that Penn State must be accountable for the state appropriations that it receives and to the public it serves, but greater political control and legislation to enact these proposals would have long-term negative consequences for the academic well-being of Penn State. In other words, while change in the governance of Penn State is needed, no change is preferable to bad change.

While it is certainly true that numerous breakdowns in communication prior to, during, and after the events of November 2011 contributed to the problems at Penn State, they were not the root cause. Similarly, while effective communication is a necessary condition of effective University governance and to restoring confidence in the leadership of the Board, it cannot be a substitute for enlightened actions. As such, the Special Committee offers numerous recommendations for improving communication that, if adopted in tandem with appropriate organizational and policy changes, may assist Penn State in responding to the recent problems. Among those recommendations are to break down governance silos and integrate internal and external stakeholders in the governance of the University and to establish multiple and alternative flows of information among the Board, faculty, students, staff, administration, alumni, and other constituencies.

The Special Committee understands that public media campaigns might improve Penn State's public image but feels that a greater emphasis should be placed on rebuilding a shared understanding within the University community. A core principle of effective communication is that the true character of an organization is expressed by its people and that the strongest opinions about an organization are shaped by the words and deeds of its people. The Penn State faculty and staff have countless external contacts every day; therefore, how they and the rest of the University community view the institution overall, how they interpret the sad events of the past several months, and whether they understand and support the strategy for recovery and accountability will largely drive their effectiveness as ambassadors of Penn State.

Finally, effective communication can only take place in an environment of trust. Therefore, a high priority should be to rebuild trust and a shared understanding within the University community. Achieving that will be difficult – if not impossible – without developing a culture of collaboration and civility among the Board and other stakeholders dedicated to the well-being of Penn State and its important work.

Special Committee on University Governance: Lori J. Bechtel-Wherry, Dawn Blasko, Michael Dooris, David Han, Peter Idowu, A. Christine Long, Peter Moran, John S. Nichols (chair), Richard Robinett, and John Zang.

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#### **Final Report**

#### **Introduction**

In the aftermath of the events of November 2011, the University Faculty Senate had extensive discussions about the role of the Board of Trustees in those events and many expressed concerns about insufficient communication between the Board and various University constituencies. In response, then Senate Chair Dan Hagen appointed the Special Committee on University Governance, a diverse group of faculty, students, administrators, staff, alumni, and resource members, to study the Board's structure, functions, practices, and responsibilities as they relate to the Board's interactions with the University community and to make recommendations for improving communication. The specific charge and membership of the Special Committee are in Appendix A.

To this end, the Special Committee assessed how the Board of Trustees previously interacted with constituencies within the University community and how the Board's current structures and practices affect those interactions. The purpose was not to rehash the past but rather to gain a better understanding of the key issues related to the Board, share those findings with the University community, and make constructive and forward-looking recommendations for improving the flow of information and governance of Penn State.

#### How the Assessment was Conducted

The Special Committee consulted extensively with the Board leadership and a wide range of constituencies in the University community. The full Committee and/or individual members met several times with the Chair and Vice Chair of the Board of Trustees, the Chair and many members of the Board's Governance and Long-Range Planning Committee, other current and former Trustees, the Director of the Board Office, and the Blue and White Vision Council. The Chair of the Special Committee also has been in frequent contact with the leadership of the University Faculty Senate, met with the Senate Council, Officers and Chairs, and solicited and received input from the Senate committees.

Two-member teams of the Special Committee consulted with numerous constituent groups. In addition, the University community was invited to send relevant information or suggestions directly to the Special Committee, and numerous comments were received. Although it makes no claim to have systematically polled the opinions of the University community, the Special Committee does believe that, because of the breadth of its consultations and the institutional knowledge with which it interpreted the feedback, its assessment of problems and portents of Penn State's governance structure better reflects the sense of the University community than the other recent reports.

Since the Special Committee was charged, the following reports and other documents have been released:

- Report of the Special Investigative Counsel Regarding the Actions of The Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky (Freeh Sporkin & Sullivan, July 12, 2012)
- Binding Consent Decree Imposed by the National Collegiate Athletic Association and Accepted by The Pennsylvania State University (Binding Consent Decree Imposed by the National Collegiate Athletic Association and Accepted by The Pennsylvania State University, July 23, 2012)
- Athletic Integrity Agreement Between the National Collegiate Athletic Association and The Big Ten Conference, and The Pennsylvania State University (August 28, 2012)
- Statement by a Group of Past Chairs of The Pennsylvania State University Faculty Senate Regarding the Freeh Report, the NCAA Consent Decree, and their Academic Implications (August 28, 2012)
- Penn Staters for Responsible Stewardship Review of the Freeh Report (September 13, 2012)
- Letter to The Honorable Joseph B. Scarnati, III, (President Pro Tempore of the Pennsylvania Senate) et al. from Anne D. Neal, President, American Council of Trustees and Alumni (September 21, 2012)
- Commonwealth of Pennsylvania v. Graham B. Spanier (2012)
- Recommendations for Governance Reform at The Pennsylvania State University After the Child Sex Abuse Scandal, Pennsylvania Auditor General (November 2012)
- Report to the Faculty, Administration, Trustees, and Students of The Pennsylvania State University by a Team Representing the Middle States Commission on Higher Education (November 15, 2012)
- First Quarterly Report of the Independent Athletics Integrity Monitor Pursuant to the Athletic Integrity Agreement Among the National Collegiate Athletic Association, the Big Ten Conference, and The Pennsylvania State University (November 30, 2012)
- Commonwealth of Pennsylvania, Thomas W. Corbett, Jr., Governor, v. National Collegiate Athletic Association (2013)
- Critique of the Freeh Report: The Rush to Injustice Regarding Joe Paterno (King & Spalding, 2013).

Along with voluminous media coverage, each of these documents added new information or analysis and, therefore, presented a moving target in the Special Committee's effort to understand the unfolding situation at Penn State and to make meaningful recommendations. The Special Committee studied all of these documents in detail as they relate to the governance of the University and used them as important context for this report.

The Chair and/or members of the Special Committee met with representatives of the Freeh Group, Senator George Mitchell (NCAA independent athletics integrity monitor) and his team, and the accrediting team of the Middle States Commission on Higher Education, among others.

None of its members have a scholarly background in higher education policy and governance; therefore the Special Committee consulted extensively with many experts in the field, including four former university presidents and several leading scholars. With the able assistance of resource person Peter Moran, JD, Interim Assistant Dean for Policy and Planning, Penn State Altoona, the Special Committee reviewed the professional and academic literature on higher education governance, which is briefly summarized below. Further, the demographics, composition, and methods of selection of the Board were benchmarked with national data collected by the Association of Governing Boards of Universities and Colleges (AGB). The quantitative benchmarking data was supplemented with qualitative case studies of other universities or non-profit institutions.

The Special Committee met approximately 20 times to discuss its findings and to prepare its recommendations and this report.

### Cautions and Limitations

- The Special Committee is a lay group of faculty, administrators, students, staff, and alumni. Although all of its members have had leadership experience at Penn State, none has a scholarly background or claims to be an expert in higher education governance. Most members have a long-time association with Penn State and first-hand knowledge of many of the governance structures being studied here. All are truly dedicated to the University's long-term best interests. Consequently, the members of the Special Committee clearly have the perspective – some may say, bias – of loyal Penn State insiders and hereby acknowledge it. At the same time, it is hoped that the perspective evident in this report will complement as well as contrast that of outside agencies, consultants, and investigators who have recently passed judgment on Penn State based on a limited – and sometimes flawed – understanding of the institution.
- The charge of the Special Committee is to engage in a classic self-assessment – specifically to study governance issues as they pertain to the academic mission, offer its best thinking about what changes should be made, and – in the process – educate the University community and provoke discussions leading to meaningful and enlightened change at Penn State. It is important to note that the Special Committee does not speak for the Senate and has no legislative or decision making authority. Consequently, the Special Committee took a “blue sky” approach to its charge. It has sought to highlight big-picture issues and make recommendations that set the bar high for the Board of Trustees and others in considering changes in the governance of Penn State. While the Special Committee believes that its recommendations make good real-world sense, it also recognizes that some may not be viable in the current political environment and that such changes may have to be adapted to accommodate the existing circumstances.
- There is no implication herein that any of the Special Committee's recommendations would have prevented the horrible crimes committed on campus or their aftermath. In considering its possible recommendations, the Special Committee asked whether such proposed changes would have made sense and benefited the University if the events of November 2011 had never occurred.

- The highest priority of the Special Committee is to not do further harm. There has been enough damage to Penn State recently, and the Special Committee does not wish to add to it. The purpose of this report is not to assign blame or to rehash the past. However, to have credibility with the University community and to meaningfully contribute to the dialogue about how best to improve Penn State, the conclusions and recommendations in this report must be forthright and candid.
- In this regard, the Special Committee strongly recommends caution in making changes in Penn State's governance structure, especially those proposed by external entities, without careful consideration. It is common for organizations that find themselves in serious trouble to act precipitously and end up compounding the problems. Some of the arguably worst legislation coming out of the federal government in Washington historically has been in immediate response to a crisis. Often times such legislation not only doesn't fix the problem but actually makes it worse. In other words, while change in the governance of Penn State is needed, no change is preferable to bad change.
- The Special Committee is concerned that, to the extent that changes in the governance structure must be enacted by the General Assembly, the door is open to political machinations and the results might be counterproductive to the academic mission of Penn State and thus dilute the quality of its teaching, research and service to the public. Therefore, the Special Committee cautions against a political remedy to these problems.
- Further, it would be ill-advised to change the structure, composition, and functions of the Board simply because some do not agree with recent decisions made by the Board and want to use such restructuring as a backdoor method of replacing the members who made those decisions. Long after the Board members in question have departed, Penn State would have to live with the potentially negative consequences of those structural changes.
- There are few bright-line answers to the many complicated questions about University governance. As a result, some may not agree with the analysis and recommendations of the Special Committee and prefer the solutions proposed in previous reports from external entities. But in contrast to other reports, the Special Committee's report and recommendations are based on the literature of higher education governance, extensive consultations with experts in the field, and an in-depth understanding of Penn State.
- The task presented to the Special Committee is voluminous, complicated, and often-changing as the result of unfolding events. The Committee's report is based on an admittedly-incomplete understanding of some aspects of University governance and, therefore, should be considered a snap-shot of process of further assessment and recommended changes.

### Current Situation in Context

The Special Committee on University Governance realizes that Penn State is at a pivotal moment in its history and recognizes the need for constructive and forward-looking change. However, Committee members also want to place the current situation in context. To be clear, this report

is not offered in the spirit of some who have suggested that Penn State was an organizational accident waiting to happen. The Committee views as simplistic the idea that by its very design, Penn State's governance is fundamentally flawed. To the contrary, over the past few decades, with many of the governance processes and structures that are currently in place, Penn State has achieved one of higher education's most remarkable success stories. There is no question that horrible crimes were committed by a prominent member of the University community, the institutional response was seriously problematic, and Penn State must now make amends. But that does not necessarily mean that Penn State as an institution was or is broken. The facts indicate otherwise:

- Over the past 40 years – from 1972 to 2012 – Penn State has grown from an enrollment of about 48,000 students to over 96,000 students.
- It rose from around 30<sup>th</sup> in annual funded research rankings during the 1970s and early 1980s – Penn State was 33<sup>rd</sup> in 1972 – to being well established among the top dozen or so research universities in the United States. Data for the two most recent years available from the National Science Foundation ranked Penn State 9<sup>th</sup> for fiscal year 2009 and 14<sup>th</sup> for fiscal year 2010.
- When Bryce Jordan became President in 1983, Penn State had essentially no tradition of fundraising, and a predecessor told President Jordan that he doubted that Penn State's development program could rise to the level of even one million dollars per year. By his retirement in 1990, Dr. Jordan had led a fundraising campaign that raised \$352 million. The University's current campaign is closing in on its goal of two billion dollars.
- In 1972, Penn State had three faculty members who were fellows of the American Association for the Advancement of Science (AAAS represents 261 leading scientific scholarly societies and, among other activities, publishes the peer-reviewed journal *Science*). By 2012, that number had grown to 70.
- Between 1972 and 2012, Penn State added the Pennsylvania College of Technology (in 1989); entered the Committee on Institutional Cooperation/Big Ten (in 1990); opened the 118-acre Innovation Park (in 1994); and added the Dickinson School of Law (in 2000).
- From 1972 through 2012, Penn State's Commonwealth campuses advanced considerably from their historic role as small, two-year feeder campuses. Today, many students complete the first two years of nearly all of the University's 160-plus baccalaureate majors at any undergraduate campus. All 19 of the Commonwealth campuses also offer baccalaureate degrees; Behrend and Great Valley offer masters degrees; and Harrisburg offers masters and doctoral degrees. In 2012, the Commonwealth campuses provide students with a smaller-college experience along with the quality, programmatic options, and highly regarded faculty characteristic of a world-class public research university.
- When Penn State created the World Campus in 1998, it became one of the first major accredited universities to provide online education. By 2012, the World Campus had grown to over 12,000 unique enrollments and garnered three Sloan Consortium awards for the excellence of Penn State's online educational programming.
- Penn State has come a long way from what was, 40 years ago, a largely *ad hoc* approach to issues of diversity and educational equity. In 1990, Penn State established the Office of the Vice Provost for Educational Equity and in 1998, implemented the University-wide *Framework to Foster Diversity* strategic planning process, which continues to promote inclusivity, educational access, advocacy, and a positive climate for faculty, staff, and

students. One indication of the success of this commitment is that *The Education Trust* in recent years has repeatedly recognized Penn State as one of the nation's "top gainer" colleges or universities for both Hispanic and African-American students. For example, in its 2012 rankings, *The Education Trust* ranked Penn State 18<sup>th</sup> among public colleges and universities for simultaneously maintaining or increasing enrollments of Black students while also closing the Black-White graduation rate gap.

- The Penn State Dance Marathon (THON) is a particular point of pride, and a wonderful reflection of some of what's best about the University's students. In the first THON, in 1973, 78 students danced for 30 hours in the HUB ballroom, raising more than \$2,000 for the Butler County Association for Retarded Children. 2012 marked THON's 40th Anniversary, as the Bryce Jordan Center hit capacity several times, to support the children and families of the Four Diamonds Fund and the 708 dancers. THON 2012 raised \$10,686,924.83 for the fight against childhood cancer.
- In the most recent (2010) Academic Ranking of World Universities (ARWU), Penn State was identified as one of the top 50 universities in the world. The ARWU ranking (sometimes called the "Shanghai Ranking") is accorded considerable credibility in academe because of its reliance on objective metrics such as per capita research funding, publications, and citations.

In short, Penn State has been one of American higher education's most notable success stories. It has been on an upward trajectory for decades and, despite the recent problems that have led to the appointment and the work of the Special Committee, remains one of the very best public research universities in the world with a stellar faculty, staff, and student body.

### **Board of Trustees: Structure, Functions, Practices, and Responsibilities**

Penn State was chartered as the Farmers' High School on February 22, 1855, by an act of the General Assembly (24 Pa. Stat. Ann. 2531 (West Law) 1855 Pa. Laws 46, 2011). The college was founded as "an institution for the education of youth in the various branches of science, learning, and practical agriculture." The enabling legislation placed the institution under the management and government of the Board of Trustees. The charter enumerates specific powers and duties of the Board, including the selection of a president, the determination of educational policy, and "the power to pass all such by-laws, ordinances and rules as the good government of the institution shall require." Through subsequent acts in the legislature and decrees of the Court of Common Pleas of Centre County, the charter has undergone a number of changes, including amendments to increase board membership and change the name of the institution (Bezilla, 1985).

The composition of Penn State's Board of Trustees features significant representation from the agricultural sector. The explanation for this sector's substantial role on the board lies with Penn State's origins. The Pennsylvania State Agricultural Society played an instrumental role in the founding of Penn State. Upon its inception in 1851, the principal objective of the society was to establish a school that taught practical, scientific agricultural methods. In pursuit of its goal, the society secured Penn State's charter from the General Assembly, outlined the basic structure of the institution, and selected the title of the "Farmers' High School." During Penn State's early years, members from the society also appeared numerous times before the legislature to lobby



for additional funding for the institution. Based on their involvement in the college’s founding, Penn State’s Board of Trustees would naturally include considerable representation from the state and county agricultural societies. In fact, the original charter included roughly 60 representatives from state and county agricultural societies.

Membership of the Board

The number of Trustees is fixed at 32. The term of Trustees appointed and elected is three years. Each year, the Governor appoints two Trustees, the alumni elect three Trustees, the agricultural societies elect two Trustees, and the board elects two members representing business and industry. The Board annually chooses the officers of the Board of Trustees – President, Vice President, Secretary, and Treasurer – to serve a term of one year (Penn State Board of Trustees).

**Table A: Board Composition**

Type	Total Number	Number Elected Each Year	Description
Ex-Officio	5	N/A	Governor, Secretary of Education, Secretary of Agriculture, Secretary of Environmental Resources, President of Penn State
Members Appointed by Governor	6	2	At Governor’s discretion and subject to approval of the Senate
Members Elected by the Alumni	9	3	Elected by active members of Penn State Alumni Association or any other alumni who make a request in writing for a ballot
Agricultural Members	6	2	Elected by delegates representing county agricultural societies
Members Elected Representing Business and Industry	6	2	Members representing business and industry endeavors elected by Board of Trustees

Powers and Duties of Trustees

The enabling legislation granted the Board of Trustees the authority to locate and establish the Farmers’ High School, select a principal, choose the curriculum, determine the labor duties of students, pass all by-laws, ordinances, and rules necessary for the good government of the institution, “and generally to do and perform all such administrative acts as are usually performed by and within the appropriate duty of a board of trustees.” Standing Order IX of the Board of Trustees enumerates policies for university governance. The order states that the Board “is the corporate body established by the charter with complete responsibility for the government and welfare of the university and all the interests pertaining thereto including

students, faculty, staff, and alumni.” The standing orders specify the duties of the Board that cannot be delegated:

- The selection, support, compensation, and evaluation of the President
- The determinations of the major goals of the university and approval of policies in pursuit of those goals
- The review and approval of the capital budget of Penn State
- Other responsibilities required by law or custom related to the financial management of the institution (e.g., transfer of assets and securities, ensure independent audit of the university’s finances, etc.)

In addition, Standing Order IX states that the board has the responsibility to inform the citizens of the Commonwealth of the institution’s performance in educating Pennsylvania’s youth, and to assist the President in developing effective relationships with governmental agencies. Lastly, the Board of Trustees “is the final repository of all legal responsibility and authority to govern the University, under the Corporation Code of Pennsylvania.”

#### Delegation of Authority

Although charged with complete responsibility for the governance of the university, the Board delegates authority for internal governance of the institution to the President, President’s administration, faculty, and students. Standing Order IX specifically delegates the “authority for the day-to-day management and control of the University, and the establishment of policies and procedures for the educational program and other operations of the university,” to the president and through delegation to or consultation with the faculty and student body.

#### Penn State’s Quasi-Public Status

What governance structures and procedures are most appropriate for Penn State and what should be its financial and legal relationships with the Commonwealth depend, in significant part, on the not-easily-answered question: Is Penn State a public or private university?

The technical answer is that Penn State is a “state-related” university that was incorporated in 1855 as a private entity but serves an important public purpose. In 1863, Penn State was designated the sole land-grant institution in the Commonwealth thereby expanding its public mission (Penn State Board of Trustees). And, since that time, Penn State officials have consistently argued – supported by various legal interpretations -- that it is a public institution. In contrast, while the Governor and other state officeholders were ex officio members of the Penn State Board since its founding, the state government vacillated on the public-private question and the legislature only occasionally appropriated funds to support the University during its early years.

Lee Stout, Librarian Emeritus, wrote in his excellent series on the history of Penn State governance:

When trustee Andrew Carnegie offered funds to build a campus library, he set the condition that the legislature must put a line item into the college budget for books. The legislature refused even this modest request.

In fact, from the 1860s to the 1960s, legislators, and sometimes even governors, questioned whether or not Penn State was a public institution and what the state's responsibility was to fund it (Stout, 2012).

In other words, the legal status and history of the relationship between University and the Commonwealth are at odds with the recent assertion of the Auditor General that "The Pennsylvania State University is a public university; of that there is no question (Wagner, November 2012, p. 2)." The Auditor General's claim was a predicate for his recommendations that would result in greater political control over the governance of the University.

### **Literature on Governing Board Performance**

Institutions of higher education today are facing numerous and complex challenges, including pressure to expand access and control costs while facing reductions in state support and heightened competition for external funding, increased government intrusion and regulation, to name a few. In order to meet these challenges, universities must have effective governance structures, particularly including high-performing boards. However, multiple constituents have denounced boards for not responding quickly enough to crises as well as "overstepping their authority and threatening shared governance, engaging in conflicts of interest, focusing on micro-management, making partisan decisions, engaging in divisive politics and infighting, acting as a rubber-stamp for institutional ambitions, and driving away able presidents through their meddling (Kezar, 2006, p. 969)."

Consequently, universities must periodically assess the performance of its board of trustees and explore ways to improve its governance structures and procedures. To assist in its efforts to develop recommendations for improving governance at Penn State, the Special Committee on University Governance reviewed literature on governance in higher education, particularly focusing on research related to governing board effectiveness (Duderstadt, 2001; Chait, Holland, & Taylor, 1996; Kerr & Glade, 1989; Tierney, 2004)). Although the breadth of that review will not be reported here, a substantial bibliography is included in this report and key findings that informed the Special Committee's conclusions and recommendations are briefly summarized below.

Scholars of higher education governance generally accept the premise that board members influence institutional performance. Of particular interest to the Special Committee was research indicating that governing board performance is closely related to having a rigorous selection process to ensure that board members have the necessary qualifications to effectively serve (Minor, 2008). Further, the Center for Higher Education and Policy Analysis (2004) suggests seven qualifications or attributes that trustees on public boards should possess: 1) dedication to public education, 2) a history of public or community service, 3) an understanding of complex

organizations and academic enterprises, 4) leadership skills, 5) a willingness and ability for meaningful engagement, 6) devotion to open-minded, nonpartisan decision-making, and 7) demonstrated values of integrity and civic virtue.

The literature tends to emphasize process-oriented definitions of governing board performance rather than results-based definitions because the objectives of higher education are difficult to measure and vary among institutions. Kezar presents a process-oriented summary of the characteristics of high performing public higher education boards. Based partially on research in private higher education and the corporate world, the summary also accounts for the unique context of public higher education, and serves as a possible model for improving governance at institutions like Penn State. Kezar’s model is based on interviews with 132 experts on board performance and identifies six elements of effective boards: 1) leadership, 2) culture, 3) education, 4) external relations, 5) relationships, and 6) structure. The subcategories further explain the elements of high-performing boards, which are interactive and listed in order of importance. The model considers the particularities of the public higher education context, namely governmental and other external relations. Below is an adapted table that summarizes the elements and subcategories of Kezar’s findings:

**Table B: Kezar’s Elements of High-Performing Boards**

Leadership	Culture	Education	External Relations	Relationships	Structure
Develop common vision	President/Board Chair should nurture/model desired qualities of board members	Board orientation	Consult with governor and legislatures and coordinate with their respective strategic plans	Strong relationship between president and board chair	Define and clarify role of board
Develop multiyear agenda through inclusive process		Continuing education of board	Joint goal setting	Regular communication between president and each board member	Develop ad hoc committees to address board’s agenda
Ask difficult questions and interrogate typical assumptions	Create culture that fosters these qualities as group norms	External education opportunities for board members	Develop strong communication processes with various layers of governance	Board member must communicate effectively with university constituents	Plan for board chair rotation
Strong leadership		Provision of data and information by board staff	Expand access to governor and other key state officials “governor’s ear”		Implement board evaluation committee and continuously evaluate board’s efforts
		Assessment of educational process	Maintain agenda through government turnover	Board meetings must include social events that build camaraderie	Provide structures that allow board to lead as collective-do not allow executive committee to lead board

The higher education literature also suggests that external influences on board members negatively impact board performance. An examination of the power structure of governing boards at land-grant universities (based on a survey of 635 trustees at 50 institutions) concluded that the governing boards at private institutions contain more connections with corporations than the boards at public land-grant institutions. However, the trustees at land-grant universities have substantial political connections. For example, 75 percent of land-grant university trustees have contributed to political campaigns, parties, and office-holders. This study echoes the concerns of others that university trustees are unduly influenced by the political process (Woodward, 2009; Anderton, 1997).

The capacity and willingness of trustees to exercise independent judgment is vital to effective board governance; however, trustee independence currently faces a number of threats. Trustee independence may be compromised by financial conflicts of interests or political loyalties that could undermine the obligation to protect the public interest. There also have been a number of recent cases in which dominant individuals or factions of like-minded trustees have threatened the stability of governing boards and disrupted the governance of their universities.

Bastedo (2009) describes the process by which trustees gradually prioritize external interests over the interests of the institution as *moral seduction*. During the process of moral seduction, individual trustees, as a result of cognitive biases, privilege their own judgments, experiences, and thought processes over others and tend to seek out and value information that supports their predetermined conclusions. Through a survey of 59 presidents of American public universities, Bastedo found that presidents' worries about trustee independence could be divided into five categories: 1) political loyalty; 2) business and financial conflicts of interest; 3) domination by individuals claiming expert credentials, especially in management, finance, and law; 4) the emergence of cliques that seek to control decision-making; and 5) trustees motivated by personal agendas that supersede the interests of the university. Behind each of these concerns, Bastedo identifies the external interest seeking to influence the board and the type of biased reasoning used to justify the trustees' decision-making. The study is important in understanding the potential influences and moral seductions that make claims on a university's board, and it furthers an understanding of the complex external networks that impact the university and its trustees. Trustees can become agents of these interests and corresponding external organizations, and they may often clash with the best interests of the institution. Additionally, "as universities become wealthier, more powerful, and increasingly essential to social and economic development, potential benefits for external interests increase accordingly (p. 380)." Therefore, it is important to identify policy responses and governance mechanisms that can mitigate these influences.

## **Benchmarking**

In benchmarking the structure and composition of the Penn State Board with peers in American higher education, the Special Committee relied primarily on Policies, Practices, and Composition of Governing Boards of Public Colleges, Universities, and Systems (Association of Governing Boards of Universities and Colleges, 2010a) and Policies, Practices, and Composition of Governing Boards of Independent Colleges and Universities (Association of Governing Boards

of Universities and Colleges, 2010b). A detailed comparison of Penn State to the data collected from those recent AGB surveys appears at Appendix B, and highlights follow:

- The Penn State Board is much larger than the mean for public doctoral universities but somewhat smaller than private doctoral universities.
- The President is a voting member of the Penn State Board. In comparison, presidents were board members (either voting or non-voting) at about one-quarter of public universities and three-quarters of private universities.
- The Governor is a voting member of the Board. In contrast, governors serve on only a small minority of boards at public universities.
- A Penn State student is a voting member of the Board as is the case for about half of public universities.
- No Penn State faculty members serve on the Board in either a voting or non-voting capacity. Faculty also do not serve on most other public university boards.
- No Penn State staff members serve on the Board in any capacity. Staff also do not serve on most other public university boards.
- The combination of methods for selecting Board members at Penn State is unusual – if not unique – among public universities.
- Board membership at Penn State is less diverse by gender, race and ethnicity than for the average public university.
- Board members at Penn State are on average significantly older than those for other public universities.
- The largest portion of Penn State Board members is/was employed in business. The same is true for most other public universities.
- A much larger portion of Penn State Board members is/was employed in agriculture or ranching than at other public universities.

Benchmarking the Board with peer institutions was a major part of the charge to the Special Committee and was a useful exercise in better understanding the current situation at Penn State. However, there are questions about which groupings of universities (public, private, Big Ten, Pennsylvania state-related, land-grants, etc.) are most appropriate for comparison. Regardless of the answer, the Special Committee cautions against relying too heavily on benchmark data in recommending changes in the governance of the University. Just because Penn State deviates from the national average on a certain criterion does not necessarily mean that is better or worse and that changes should be made to bring it in line with the average. Changes in the governance at Penn State – like other universities -- should be based on its unique set of circumstances. Indeed, it is the understanding of the Special Committee from this extensive review that the state of higher education governance nationally is not very good and the benchmarking averages do not necessarily provide anything to emulate.

In the final analysis, the structure and composition of the Board of Trustees and the governance of the University in general are, in the opinion of the Special Committee, similar to the way Winston Churchill described democracy:

Many forms of Government have been tried, and will be tried in this world of sin and woe. No one pretends that democracy is perfect or all-wise. Indeed, it has been said that

democracy is the worst form of government except all those other forms that have been tried from time to time.

In other words, there is plenty of room for improvement at Penn State, but in comparison to peer institutions, there also is much in its governance structure and procedures to commend and perpetuate.

The report of the Auditor General, which strongly criticized many of the University’s policies and governance structures, relied significantly on benchmarking in making key recommendations for changes. Considerable data comparing Penn State’s Board with those at Big Ten universities, the largest universities by enrollment, land-grant universities, and Pennsylvania’s state-related universities appear in the appendices of his report and will not be duplicated here (Wagner, November 2012). However, the Auditor General’s benchmarking is not complete regarding certain of his criticisms and recommendations, and the following table supplements his appendices to include comparisons with peer state-related universities in Pennsylvania.

**Table C: Auditor General’s Concerns about Penn State Board – Comparison with Other State-Related Universities**

	<b>Penn State</b>	<b>Pitt</b>	<b>Temple</b>
Board too large # of voting members	32	36	36
President is voting member of Board	yes	yes	yes
Board not sufficiently engaged # of meetings per year	6	3	5
Composition of Board % selected by state government	31	33	33
Nonvoting members of Board	0	4	3
Governor is voting member	yes	no	no
Number of emeritus trustees	15	27	9
# required for a quorum	13	12	12

Useful benchmarking data also appears in “Breaking Down the Board” in The Penn Stater (Shontz, 2012).

### Case Studies

In order to flesh out the benchmarking data, the Special Committee conducted informal case studies of four non-profit institutions that exhibited informative differences from and similarities to Penn State’s governance structure. They are the University of Minnesota, University of Wisconsin – Madison, Cornell University, and the Mayo Clinic.

**Minnesota.** The University of Minnesota was cited as an example of a very successful “revisioning” of the relationship among the Faculty Senate (especially its Faculty Consultative

Committee or FCC), the administration, and the Board of Regents. In the mid 1990s, the Board put forward proposals to drastically change the structure of tenure at the University, an action which led, in turn, to a contentious debate (covered extensively by the national media) about possible unionization of the faculty at large, a period which has been described as the “tenure wars (Engstrand G. , 1998).”

One of the most successful aspects of the governance structure that evolved in the aftermath of the dispute was the initiation of what are called ‘three-by-three-by-three’ (3x3x3) meetings among the three groups. The meetings are held every semester between (1) the Board Chair, Vice-Chair, and Executive Director, (2) the FCC Chair, Vice-Chair, and Secretary to the Faculty, and (3) the President, Provost, and President’s Chief of Staff. Any of the three groups can initiate agenda items, and they provide a regular flow of information in all directions. In addition, the FCC Chair makes a formal report to the Board every three months, and Senate committee chairs whose committees overlap with Board committees sit as non-voting members on those committees, save Litigation, acting as valued resource members. Finally, the entire FCC and Board memberships dine together once a year, as a mostly social event, but this is seen as a very useful occasion to share ideas in an informal setting. These examples of the regular flow of information in multiple directions are considered as a best practice by those contacted at the University of Minnesota.

**Wisconsin.** More recently, changes have been proposed to the structure of the Board of Regents at another large public university, The University of Wisconsin – Madison, where there has been substantial conflict between the elected officials at the state level and the University. Those changes, proposed by the Governor in his 2011-2013 budget request, would include features such as:

- A 21 member board, with three year terms, with the possibility of one renewal (but implied term limits)
- Two faculty members, to be selected by the faculty
- One non-faculty employee member, to be chosen by non-faculty employees
- One student member (selected by the students) and two members each from the Wisconsin Alumni Association and from two foundations associated with the University. The proposal requires that the six members appointed in these last categories must “...have a demonstrated commitment to the welfare of the university and shall have management experience or possess expertise in the aspects of the university’s mission, such as undergraduate, graduate, and professional education, research, intellectual property, support of existing industries, new business startups, and public service.”

The fact that faculty, student, and staff members were included on the Board, as well as the explicit statement of qualifications for some Board members were both considered noteworthy features.

**Cornell.** Cornell University, a private institution and the land-grant university in New York, has a historical mission similar in many ways to Penn State. Its charter notes that it was founded to “teach such branches of learning as are related to agriculture and the mechanic arts, including military tactics, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions of life.” The Board of Trustees has a large membership, with



64 voting members, including two faculty, two students, and one staff member. In addition to board-elected trustees, Cornell students, employees, faculty, and alumni elect individuals to serve on the board with full voting privileges. Four ex-officio members -- the president of the university, the governor of the state of New York, the speaker of the state assembly, and the president of the state senate -- also have voting privileges.

The Dean of the University Faculty is the chief administrative officer of the University. He or she is elected by the faculty for a term of up to five years. The Dean of Faculty represents and advocates the interests of the faculty to the President, the Trustees, and the University community. The Dean of Faculty may attend any meeting of the Board with no vote. The faculty trustees and the Dean of Faculty have a private meeting with the Chair of the Board and the committee leaders of the Board once per year.

**Mayo Clinic.** The structure and composition of the Board of Trustees at the Mayo Clinic is illustrative of a hybrid governance structure effectively used by a private, non-profit entity with a public purpose, and the Mayo model was the basis for some of the Special Committee's recommendations. The Mayo Clinic is a multi-campus group practice of about 3,700 physicians and scientists and more than 56,000 staff with the mission of patient care, research, education and outreach. It consistently appears near the top of the "U.S. News & World Report List of Best Hospitals" and "Fortune's 100 Best Companies to Work For."

Mayo's Board of Trustees has 31 members, of which 17 are Public Trustees and 14 are Medical/Professional Trustees (also known as Internal Trustees). At least one-third of the total board membership must be physicians who are Internal Trustees. The Public Trustees include a who's who from government service, major corporations, academe, and associations and are self-perpetuating. The Internal Trustees include Mayo's CEO, chief non-medical administrative officers, and a voting majority of physicians and scientists at large. The Internal Trustees also are selected by the full board in a self-perpetuating fashion in consultation with the medical staff at large.

While there are obvious differences between medical centers and universities, there also are sufficient similarities to demonstrate that it is a good governance practice to include some of the professionals who comprise an institution on the governing board. To do so ensures that the board is fully informed and has sufficient expertise to make the best possible decisions about highly-specialized matters. And to do otherwise, at least in a medical context, intuitively would not seem to be responsible. By extension, it seems reasonable to suggest that an extremely complex, multi-campus university could benefit from a board structure that includes both external Public Trustees and internal Academic Trustees. Adopting such a hybrid model of university governance would greatly improve the prospects of finding a proper balance between ensuring that the institution is accountable to the public that it serves and bringing academic expertise to institutional decision making and thereby improving academic performance.

### **Overarching Findings**

- Higher education boards in general and the Penn State Board of Trustees in specific are not fully conversant regarding the academic mission and the unique structure of the

universities they govern. Board members often bring a wealth of business and government experience, and that outside, real-world perspective is healthy for keeping universities focused on their social mission and in constantly fine-tuning their approach to achieving that mission under rapidly changing social conditions. However, boards often do not have a commensurate level of understanding of the codes and pathways of higher education and the means by which universities advance knowledge for the benefit of society. It is important to note that this is not a radical conclusion. There is little dispute among higher education associations and experts in the field on this point. The key question is how this problem should be remedied.

- The top-down governance structure in place at Penn State is not entirely compatible with the principle of shared governance under which Penn State theoretically operates and does not maximize the scholarly potential of the University.
- The Board is working hard to tackle the problems currently facing Penn State, appears to be committed to improving its policies and procedures, and is more open to working with the faculty and key University constituencies. The opportunity for real, substantial, and constructive change in the governance of Penn State has never been greater, and the Board and the University community must seize this opportunity. However, despite recent events and a sincere desire for positive change, the Board could revert from embracing this change and, according to some interpretations, is already doing so.
- Recovery from the recent crisis will be difficult – if not impossible – without a greater level of collaboration and communication among the Board, administration, faculty, and constituent groups, and such interactions must be conducted with the highest level of civility by all parties. This does not imply that there must be agreement on all matters, but rather that any disagreements must be resolved in an agreeable manner.
- Positive change in the governance of Penn State should be considered an on-going process of meaningful interaction with the faculty and other key academic constituencies, self-examination, and reassessment. Once-and-done change in the midst of a crisis is risky and should be avoided.

### **Committee Recommendations and Analysis**

The specific recommendations in this report are rooted in the following broad objectives for improving the governance and communication at Penn State:

- Break down governance silos and integrate internal and external stakeholders in the governance of the University.
- Emphasize academic expertise, experience in higher education, and understanding of the complex mission of universities as important selection criteria for Board membership.
- Establish a transparent nomination or vetting process for candidates to serve on the Board.
- Reduce the emphasis on the representational approach in the selection of Board members by which various external groups (e.g., agricultural societies, business/industry) determine a certain quota of members. A greater emphasis in selecting members should be on the qualifications they have to perform certain critical governance functions rather than on whom or what they might represent.

- Reduce direct political control by decreasing the number of government officeholders on the Board.
- Maintain the diversity of means by which board members are elected or appointed (i.e., direct election by the alumni, indirect election by agricultural societies, appointed by the governor, self-perpetuating, and ex officio) as checks and balances in University governance.
- Encourage diversity in demographics, qualifications, and perspectives in Board membership.
- Improve and increase self-governance mechanisms of the University. Such self-governance should include faculty membership on the Board and other forms of more meaningful faculty participation in University-wide decision making.
- Balance institutional autonomy needed to further the academic mission with appropriate mechanisms of accountability to ensure that the University serves its public purpose.
- Increase the checks and balances in the governance of what now is a top-down administrative structure of the University, specifically including more faculty checks on central administrative authority and more internal academic checks on the externally-dominated authority of the Board.
- Better align the structures and functions of the Board, administration, and the University Faculty Senate.

### Structure and Composition of the Board

There is a close relationship between the effectiveness with which a university is governed and the structure and composition of its governing board. In testament to the sociological axiom “where you stand depends on where you sit,” how a governing board understands the academic mission of its university and interacts with the faculty and constituent groups are significantly affected by the professional background of its members and how – and by whom -- they are elected or appointed. And, in turn, the nature of those interactions is a strong indicator of the health of the institution and its ability to carry out its important educational responsibilities. According to the AGB, “How boards, presidents, and faculty contribute to and engage one another in institutional governance speaks to the health of a particular college or university as well as to the broader principles of autonomy, self-regulation, and accountability of higher education (Schwartz, Skinner, & Bowen, December 2009, p. 2).”

Penn State’s Board of Trustees is no exception. Its size, composition, means of selection are important determinants of the way it leads the institution and interacts with the University community.

**Size of the Board.** Several external groups, including the Auditor General, have called for a significant reduction in the size of the Board. While not convinced that such a reduction would be a panacea (as it is sometimes portrayed), the Special Committee does see some significant advantages to a smaller size Board.

- One of the key characteristics of high-performing boards is that its individual members are in direct and frequent communication with the president. Therefore, having a smaller board could facilitate communication necessary for effective governance.

- Members of smaller boards tend to assume a greater sense of individual responsibility for the governance of the university.
- Larger boards tend to have more hierarchical structures that often result in differential power among their members. An executive committee or an informal inner group of such boards often hold greater power and add a layer of governance that could inhibit internal and external communication and impede integrated decision making.
- Smaller boards tend to focus on the overall governance of their universities, while larger boards can take on management functions for which they are not well-equipped. The relatively-large Penn State Board recently restructured to create additional standing committees, and with the pressure from the Auditor General and others to be more directly engaged in the affairs of the University, there is concern that the pendulum will swing from a hands-off governing board to micromanagers. As Frank H. T. Rhodes, former president of Cornell University, wrote in Trusteeship, “The responsibility of the board is to govern, not to manage. ‘Noses in, fingers out’ remains sound and tested advice to board members (When Governance Goes Awry: What are the Takeaways?, 2012).”

Conversely, larger governing boards tend to have more diverse representation and allow for committee structures that facilitate more specific and rigorous oversight of their universities.

**Recommendation 1: The size of the Board of Trustees should be reduced.**

The optimal size of higher education governing boards varies widely depending on many variables, and there is no magic number for Penn State. But the Special Committee considers the Auditor General’s recommendation of a 22-member Board to be reasonable and bases some of its proposals for changes in the Board’s composition on that number.

**Representation by Sector.** Selection to serve on the Board of Trustees should be based less on whom a member represents and more on what qualifications he or she has to help govern a complex academic institution. There is no question that Penn State should be accountable and responsive to the public it serves, and one historical method intended to achieve that goal is to have a governing board selected from various constituent groups, such as agricultural societies, business and industry, and alumni. However, as a practical matter, this representational approach is not entirely workable because it is predicated on the no-win debate over who owns the University; what percentage stake does each sector hold; and what is the commensurate share of votes on the governing board.

Even if it were possible to make such a complicated allocation at one point in time, when the University and the public it serves inevitably change, there is no easy mechanism to update the proportional representation on the Board. In the early days of Penn State when it was primarily an agricultural and engineering college, the representational emphasis and the allocation of Board seats by sector made some sense. Of course, it makes less sense today. For example, the large proportional representation of trustees elected by the agricultural societies is not aligned with Penn State’s modern mission or the demographics of the Commonwealth from which it draws most of its students.

Consistent with the national trend among peer universities, the Penn State Board is dominated by members from business and industry. The plurality (44 percent) of Board members is or was previously employed in business (not counting the additional 19 percent who are or were employed in agriculture, including agro-businesses). And, also consistent with national trends, the members from business tend to dominate the formal and informal power structures of the Board (Kiley, 2012; Keep, 2012; Marcus, 2012; Franz, 2012). Consequently, there is a natural tendency for the Board to view the governance of the University through a business lens. One of the principles in the AGB Statement on Institutional Governance emphasizes the differences between business and non-profit universities and the important balance that trustees must strike in the governance of their institutions:

Colleges and universities have many of the characteristics of business enterprises. Consequently, boards should ensure that, as corporations, their institutions' fiscal and managerial affairs are administered with appropriate attention to commonly accepted business standards. At the same time, nonprofit colleges and universities differ from business in many respects. They do not operate with a profit motive, and the "bottom lines" of colleges and universities are far more difficult to measure. They also differ from business in the sense that the process of teaching, learning, and research often are at least as important as "the product," as measured by the conferring of degrees or the publication of research results. And by virtue of their special mission and purpose in a pluralistic society, they have a tradition of participation in institutional governance that is less common in and less appropriate for business (Association of Governing Boards of Universities and Colleges, 1999, p. 4).

Although the Board's current allocation of seats representing two specific economic sectors is anachronistic and does not reflect the modern mission of a global university, to significantly change that allocation would be very difficult – if not impossible – due to entrenched interests and the political realities of the times. Further, the Special Committee believes that there is still some value in the representational model as a means to hold the University accountable and responsive to the public and should be retained in a modified form. However, if change in the composition of the Board is possible, the Special Committee recommends that the number and proportion of seats reserved for agriculture and business and industry be reduced and that they be supplemented by members from a greater diversity of sectors (such additions could include, for example, science, arts, humanities, and non-profits) that better reflect the current breadth of the University's teaching, research, and service.

**Recommendation 2: Reduce the number and proportion of Board seats allocated to the agricultural societies and business and industry and, without increasing the proportion of Trustees representing all sectors, add seats representing a greater breadth of sectors and interests.**

**Academic Expertise and Faculty Members on the Board.** A seemingly obvious requisite for effective governance of a complex institution of higher education is that its governing board is highly qualified to ensure the academic and financial wellbeing of the institution. Perhaps the single most important qualification for individual members serving on governing boards is a deep understanding of the academic mission, values, and unique structures and operating systems

of universities, and one of the best routes to that understanding is having a professional background in higher education. However, most trustees on most governing boards for both public and private universities come from the business and professional realm, and only a small minority of trustees is currently or was previously employed in higher education. The Association of Governing Boards of Universities and Colleges (AGB) reports that, in sharp contrast to corporate boards that are primarily made up of experts in their respective industries, the average number of members with higher education experience serving on public university boards was one, and three on the typically-larger private university boards. The AGB concludes that, as a result, “including higher education expertise on (university boards) is highly desirable (Schwartz, Skinner, & Bowen, December 2009, p. 9).”

Although there is a consensus about the need for more higher education experience on governing boards, there also are differences of opinion about how it should be achieved. AGB does not recommend that faculty members serve on the governing boards of their own universities but suggests the following alternative:

An infusion of higher education expertise on the board can be achieved while upholding the principle that the board should represent the long-term interest of the whole institution rather than constituent interests by seeking outside experts. The addition of a former president, faculty member, or CFO from another college or university can be invaluable to the board as well as to the president and faculty, and can avoid the conflict of interest inherent in including as a board member faculty from the same institution (Schwartz, Skinner, & Bowen, December 2009, p. 9).

However, other higher education organizations and experts endorse the concept of faculty members serving on the governing board of their own institutions. For example, a variety of higher education leaders writing in the AGB’s own publication Trusteeship recently urged the addition of faculty to boards. A sample follows:

Hunter Rawlings (president of the Association of American Universities and former president of Cornell University and the University of Iowa):

... boards of public research universities should have at least one or two members from the research university community – from outside or inside the institution. Private university boards generally have such members, whose knowledge and experience with these complex institutions enhance governance.

Cary Nelson (professor at the University of Illinois and former president of the American Association of University Professors):

All boards need elected faculty representatives. Otherwise, the president and his or her staff alone are burdened with teaching the board about educational issues... Worse still ...is the nearly irresistible administrative temptation to misrepresent and scapegoat faculty opinion and intent when faculty members are not in the room and at the table. All it takes is two or three – certainly not only one – elected faculty members as non-voting board members and member of all board committees to maintain a continuing dialogue that can prevent all these problems from getting steadily more serious (When Governance Goes Awry: What are the Takeaways?, 2012).

Charles R. Middleton (president of Roosevelt University, which has five faculty trustees on its board and is often considered a national model of faculty engagement in governance):

... faculty trustees, with their unique stake in board discussions and deliberations, add credibility and effectiveness to the board, providing a broader perspective... Shared governance is one of the many distinguishing characteristics of quality in American higher education. It is based on the premise that all of us know more than a subset of us, and that you get better results when you consult broadly, especially with those who have a stake in the outcome of the discussion (Middleton, 2010).

Also see Faculty Trusteeship in Higher Education, a detailed study by Roosevelt University (Perlman, 1971).

The percent of members of the Penn State Board of Trustees with current or past higher education experience has long been far below the already-low national mean. Currently, only one Trustee -- the President -- is employed in some capacity in higher education. Two others had past experience in higher education or a related field.

The Special Committee believes that resolving this shortcoming should be a high priority and that adding current Penn State faculty members to the Board would significantly strengthen it. Until recently, the Board was too reliant on the President as its primary source of information about the functioning of the University and had only limited direct and meaningful contact with the faculty regarding important academic policy matters about which the faculty have specific, first-hand knowledge. This limitation is due, in part, to the Board's Standing Order IX (4) (c), which states: "Official faculty communication to the Board of Trustees shall be made through the president." Having current faculty on the Board would add alternative lines of communication and bring a wider range of perspectives to its decision making (Ehrenberg, 2012).

AGB benchmarking data (Appendix B) indicate the number of governing boards with faculty trustees has been increasing. As of 2010, 13.3 percent of public universities had faculty members as voting member of their governing board and an additional 9.7 percent as non-voting members. The percentages were somewhat higher for private universities

Further, the composition of the Board of Directors of the Penn State Hershey Medical Center provides a precedent for and underscores the importance of having internal professional voices on a governing board. The Bylaws of the Hershey Board mandate that the CEO of the medical center serves as an ex officio voting member and a chair of a clinical department (recommended by the other clinical department chairs) serves a 3-year term as a voting member. Although not ex officio, a third physician currently on the 15-member Board is an alumnus of the medical school.

**Recommendation 3: Two tenured, full-time Penn State faculty members should be elected Academic Trustees at Large to the Board with the same rights, responsibilities, and term of office as Public Trustees.**

The Special Committee prefers the title Academic Trustee (instead of Faculty Trustee) because it underlines the academic expertise and institutional perspective that such members would bring to Board deliberations and decisions rather than mere representation of faculty interests. Like all other Board members, Academic Trustees would be expected to privilege the overall interests of the University over the specific interests of the constituency from which they were selected. Moreover, to the extent that some conflicts of interest might emerge by having faculty members on the Board, they presumably could be fairly resolved as has been the case for numerous other non-profits and corporations with internal trustees on their boards.

Article 2 (2 and 3) of the Board Bylaws prohibits any person who has been employed by the University “in any capacity” from serving on the Board for three years after such employment, and the Auditor General has proposed toughening that restriction to five years. In direct contrast, the Special Committee would endorse an amendment to the Bylaws that would allow sitting faculty to become Board members. (The rationale for the Auditor General’s recommendation on this matter is critiqued in more detail below.)

On the question of whether a faculty member should have full voting rights on the Board, most of the experts and constituent groups consulted indicated that having a seat at the table and voice were more important than a formal vote (especially when most Board decisions are by consensus). However, for Academic Trustees not to have formal voting status would seemingly relegate them to second-class citizenship and thereby dilute the credibility and effectiveness of their voice. Therefore, having voting status for faculty is far preferable.

**Recommendation 3.1: Academic Trustees at Large should be elected by the University Faculty Senate.**

There are other viable means to selecting the Academic Trustees. For example, the Special Committee considered election by the Board upon nomination by its nominating committee or direct election by the full faculty from a slate nominated by the University Faculty Senate or the Board nominating committee. The latter method, while cumbersome, might result in greater faculty engagement in self-governance of the University. The Special Committee did not recommend that Senate officers should serve ex officio as Academic Trustees because the officers typically are very busy with many other University responsibilities and turn over too frequently to ensure continuity and to be fully informed on the issues. However, it is assumed here that the Senate officers would continue to be invited representatives to Board meetings. And, to further facilitate communication, Academic Trustees similarly would be invited representatives to Senate Officers and Chairs, Senate Council, and/or other appropriate Senate bodies.

**Recommendation 3.2: One Academic Trustee should have an academic home at University Park, and the other at a campus location.**

This recommendation is based on functionality – not representation – and reflects the complex, multi-campus structure of Penn State. Having Trustees from both University Park and a campus location would bring different perspectives and alternate flows of information to the Board’s deliberations and decision making. It is suggested that preliminarily this recommendation be



implemented by common understanding rather than codification, thus giving the Board and the Senate the flexibility to fine-tune the process of selection.

**President of the University.** In his recent recommendations for reforming Penn State governance, the Auditor General proposed, in part, that the President of the University should be removed as an ex officio voting member and officer of the Board of Trustees and be prohibited from serving on any Board committee. The Auditor General argued that “Penn State has concentrated too much power in its president, who is also a voting board member, the board’s secretary, and a member of almost every board committee.” Therefore, the Auditor General concludes, the “necessary and healthy boundaries between the president as an employee and the board as employer are indistinguishable” and legislative action to remove the President from the Board of Trustees is justified.

To bolster his recommendation, the Auditor General notes that the president is not a voting trustee at any other Big Ten university or at any of the 20 largest public universities and, therefore, Penn State is at odds with “best practices” in higher education governance for public universities. In this context, the Auditor General asserts that Penn State is “a public university; of that there is no question.” However, as discussed above, Penn State is neither purely public nor private; it’s a state-related or quasi-public university. In building his argument that the President should be removed from the Board, the Auditor General benchmarks Penn State with data from the Association of Governing Boards indicating that 27.5 percent of chief executives at public institutions were voting or non-voting members of their governing boards. The Auditor General neglects to note that, according to AGB data, 76.4 percent of chief executives of private institutions were either voting or non-voting members of their boards. Therefore, acknowledging Penn State’s quasi-public status is important in benchmarking it with other universities and determining whether it is out of step for the president to be a board member.

The Special Committee believes that removing the President as a voting member of the Board is largely a cosmetic change for the wrong reasons and probably would have little practical effect on the governance of the University. The President currently is only one of 32 members of a Board that rarely takes public, roll-call votes on matters of dispute. Traditionally, the Board has reached important decisions informally and takes voice votes of acclamation on those decisions at its public meeting. The opening of the Board’s committees to non-voting faculty representatives (and others) has changed that dynamic somewhat, but until the full Board routinely holds roll-call votes on controversial and important matters in its public meeting, the question of whether the President has a formal vote does not seem especially significant. Furthermore, Penn State has a long history of both strong and not-so-strong presidents under the exact same governance structure and voting formula, and there are numerous examples of strong and effective presidents at benchmark universities who are voting members of their governing boards and who are not.

The explicit intent of the Auditor General’s proposal is to reduce the power of the President. If that is accomplished by this or other means, who will fill the power deficit and how? Even if it were desirable for the Board of Trustees to become more deeply immersed in the management of the University (and the Special Committee does not believe that is desirable), the Board is not equipped to do so. The Board is composed of members with limited knowledge about the

complex nature of institutions of higher education and who have other day-to-day responsibilities limiting the time they can devote to the task of managing the University. Similarly, the faculty governance structure at Penn State -- like most universities -- is not sufficiently robust to carry out most management functions.

Maintaining a strong president who has the authority to match the huge responsibility of managing an exceeding complex, multi-billion-dollar academic institution should be, in the opinion of the Special Committee, a high priority. And, if there has been demonstrated abuse of that authority, the best antidote is not to weaken the presidency (as the Auditor General recommends) but rather to improve and enhance the checks and balances in the governance structure by strengthening Board oversight and shared governance with the faculty. The means of achieving this (discussed in more detail below) include establishing more alternative flows of information among the Board, President, faculty and the larger University community, and one of the best ways to achieve that is to have as many of the key participants -- not fewer -- at the same table when decisions are made.

**Recommendation 4: The President of the University should continue to serve on the Board as an ex officio voting member.**

However, if the President is to be removed as a voting member of the Board, this more strongly emphasizes the need for the addition of Academic Trustees to ensure the presence of board members with experience and expertise in higher education.

**Student Trustee.** The Bylaws do not require that a current Penn State student has a seat as a voting member of the Board. However, in 1971, the Governor began the custom of naming a student to one of the six seats allocated to gubernatorial appointments and the practice has continued since. The Student Trustee is appointed by the Governor from a slate of candidates nominated by the Penn State administration after an application and vetting process. It is probably the most rigorous nomination and vetting process of the various routes to Board membership, and perhaps as a result, Student Trustees typically have been comparatively-well qualified and effective beyond their years of academic experience (Hughes, 2012). While the AGB does not recommend as a best practice that students should serve as voting members of governing boards, it also does not recommend ending such a practice if students are already serving. Therefore, the Special Committee suggests that the position of Student Trustee be formalized as part of a larger reorganization of the Board but cautions that such a change should not upset the checks and balances in Board composition and selection methods described elsewhere in this report.

**Recommendation 5: A full-time student in good standing at Penn State should be selected to serve as an ex officio Student Trustee.**

The Special Committee considered the pros and cons of possible procedures for selecting an ex officio Student Trustee but makes no specific recommendation in this regard. However, whatever selection method that might eventually be adopted should maintain the healthy nomination and vetting process that is currently in place and should not result in a shift in balance toward a greater proportion of gubernatorial appointees.

**Recommendation 5.1: The Student Trustee should be selected in accordance with an appropriate internal process rather than by gubernatorial appointment. The existing process of nomination and vetting of candidates should be maintained.**

**Recommendation 5.2: The number of gubernatorial appointments to the Board (of which a student Trustee has traditionally been one) should be reduced by one as the Student Trustee moves to an ex officio position.**

**Staff.** Professional staff are the fastest growing group in higher education nationally, and many of them perform important academic functions (Engstrand G. , 2005). At Penn State, there are approximately 18,000 staff members and an increasing number of them are directly engaged in teaching, research and service. Yet, the staff have no formal or informal representation to the Board and, therefore, no direct line of communications. Professional staff frequently serve as resource members of key Senate committees, but there is no formal liaison between the professional staff and the Senate. The growth in size and importance of the staff in delivering the academic mission justifies, in the opinion of the Special Committee, a staff representative having a non-voting seat on the Board. A similar relationship with the Senate should also be considered. This would substantially improve communication flow to the Board regarding the delivery of the academic mission, but in order for the staff at large to best take advantage of a reverse flow of information, the University's staff organizations should improve communication among themselves.

**Recommendation 6: A full-time exempt or non-exempt staff member of the University who is directly engaged with activities related to the university's mission of teaching, research and service should serve a multiple-year term as a non-voting representative to the Board.**

**Governor, Cabinet Secretaries, and Gubernatorial Appointees.** Political officeholders and gubernatorial appointees hold the plurality of seats on the Board. The Governor, Secretary of Agriculture, Secretary of Conservation and Natural Resources, and Secretary of Education are ex officio voting members. The three cabinet secretaries are appointed to their offices by and serve at the pleasure of the Governor. In addition to those four, six of the 32-member Board are appointed by the Governor. Penn State is the only state-related university in Pennsylvania for which the Governor and Secretaries of the Commonwealth are ex officio voting board members, and only 11.2 percent of public university boards include the governor as an ex officio voting member and 5.9 percent as a non-voting member according to AGB benchmarking data (Association of Governing Boards of Universities and Colleges, 2010a).

The Auditor General concluded in his report that the Governor's dual role as a voting member of the Penn State Board raised conflict-of-interest questions and, consequently, recommended that the Governor should continue on the Board only as a non-voting member. The Special Committee agrees with the Auditor General's concern about the conflict of interest that the Governor's voting status presents but does not believe that the Auditor General's recommendation goes far enough in resolving it. The Governor's voice on the Board is probably far more important than his/her formal vote. The Governor obviously has substantial influence over a significant portion of Penn State's funding and legislation affecting the University. As long as the Governor retains a seat on the Board and brings the authority of his/her office directly

to bear on the deliberations of the Board, whether he/she has one of 32 formal votes seems secondary at best. The Special Committee also is concerned that the three Secretaries have similar conflicts of interest in their voting membership on the Board, yet the Auditor General does not propose that they be changed to non-voting status let alone removed from the Board.

The implications of the Auditor General's recommendations, therefore, are worrisome. The President -- academic leader of the University, the sole internal Trustee, and the only one with current higher education experience -- would be removed from the Board, and at the same time, the ex officio political officeholders would be retained (with the Governor as a non-voting member). Those changes combined with the Auditor General's formula for reducing the size of the Board would significantly increase the external political control of the University and result in the complete loss of internal academic control. That shift in balance would move Penn State's governance in exactly the opposite direction of the one being recommended by the Special Committee.

### **Recommendation 7: Political officeholders should not serve on the Board.**

#### Further Concerns About the Auditor General's Recommendations

While there is potential merit in some of the Auditor General's recommendations, the Special Committee on University Governance respectfully disagrees with a number of specifics and, more importantly, the underlying philosophy leading to the recommendations and their implications for the academic well-being of the University. Moreover, the Auditor General recommended that such changes in Penn State governance structure should be enacted by the General Assembly through legislation amending Penn State's enabling charter. A local representative to the General Assembly subsequently has announced that he is introducing such legislation, and some media commentary (Centre Daily Times, 2012) has strongly endorsed both the substance and methods of these proposed changes. The Special Committee does not similarly endorse those changes and is especially concerned about the dangers of a political route to reform Penn State.

In addition to removing the President from the Board and changing the Governor to non-voting status, the Auditor General proposed restrictions on what he called "crossovers" in which "staff" (a term that includes faculty and administration) become members of the Board and vice versa. He concludes: "A revolving door for Penn State insiders does not represent good governance; insider influence is unacceptable at a public university that should be striving for transparency and accountability (Wagner, November 2012, p. 46)."

While the Special Committee generally agrees that moving back and forth between the Board and high-level administrative positions within the University could impair "objectivity and independent thinking" and should be limited, the Special Committee does not agree with the breadth of the Auditor General's recommendation and, more important, his underlying philosophy and rationale for the recommendation. If it were enacted as he proposed, the prohibition on faculty members serving on the Board would be further entrenched and the academic expertise and institutional perspective needed to improve communication within and

governance of the University would be replaced entirely by external (and largely political) control.

The Auditor General's recommendations do not align with how the Special Committee believes that universities best operate and tacitly endorses a classic top-down, corporate-style governance structure for Penn State that is at odds with the time-tested concept of a university. In his report, he repeatedly refers to "bosses" and "employees" in describing what he deems is the ideal governance structure for the University. However, the symbolism and perhaps the legal reality of some of the changes he proposes would be to establish the Board (including the Governor as a non-voting member) as an employer and the President (the academic leader of the University) and the faculty as mere employees.

The University Faculty Senate, an essential participant in the shared governance of Penn State and the type of faculty governance body that exists at almost all peer institutions, is not mentioned in the Auditor General's report, and the word "faculty" appears only rarely in the report. The first reference to "faculty" appears on page 53 of his 119-page report, and it is essentially used as a scarlet letter on Trustee Joel Myers, who had served as a Penn State faculty member prior to being elected to the Trustees. The Auditor General argues that, even though Myers was not "an executive-level employee" with policy-making responsibility, he nevertheless was a so-called "crossover employee" raising questions of conflicts of interest by his volunteer, unpaid service on the Board.

The Auditor General's belief that rank-and-file faculty are mere employees without policy-making responsibilities is seriously at odds with generally accepted views of higher education. Faculty at almost all non-profit universities are considered professionals with plenary responsibility for the core academic mission (particularly including admissions, curriculum, instruction, and degree requirements, and on key matters of academic quality, such as assessing research standards and granting tenure and promotion) and have broad authority in self-governance.

The University is not the buildings, books, labs, administrators, Board, or even the students; they all exist because of the University. The faculty, an association of scholars dedicated to the advancement of knowledge through teaching, research and service, are the University. Therefore, in direct contrast to the Auditor General's position, the Special Committee believes that past or present service on the Penn State faculty could be an important qualification – not grounds for disqualification -- for membership on the Board.

The Special Committee does not believe that the Auditor General intended to be inflammatory in his comments or dismissive of the professional stature of faculty and its crucial role in the self-governance of universities. Rather, the Special Committee suspects that he simply misunderstands the concept of a university and how it is best governed. However, some recommendations of the Auditor General and other external groups could have serious negative implications for Penn State. They also demonstrate the potential danger presented by external political agencies with limited understanding of the nature of universities making pronouncements that – not only do not solve any perceived problems – have considerable potential for making the situation worse.

**Recommendation 8: If the University Faculty Senate concludes that legislation regarding Penn State’s governance might undermine the academic mission of the University and its institutional autonomy, the Senate should work in cooperation with Office of Governmental Affairs to make its concerns public.**

Special Committee’s Alternative

While not within its specific charge to make recommendations on the size and composition of the Board of Trustees, the Special Committee agrees that changes in the Board composition would improve and enhance its interactions with University constituencies.

In contrast to the governance structure recommended by the Auditor General, the Special Committee offers an alternative approach that would modernize the composition of the Board, increase academic expertise in its membership by adding Academic Trustees, and retain the means by which the University is held accountable to the public it serves. After considerable discussion, the Special Committee decided not to propose a specific numerical allocation of seats on a 22-member Board recommended by the Auditor General and instead to outline the important changes that are needed to improve the Board regardless of its size. The key elements of the alternative approach follow:

- Diversify the sectors and interests represented on the Board (The Special Committee makes no recommendation as to which sectors should be added but notes that, for example, the sciences, arts, humanities, and non-profits currently are not well represented.)
- Add Board members with experience in higher education and academic expertise, including current Penn State faculty.
- Reduce significantly the number and proportion of the Agriculture and Business and Industry Trustees in order to accommodate broader representation of other sectors and increased academic expertise.
- Reduce the total number and proportion of Trustees from the political arena by eliminating the ex officio positions for state officeholders and compensating for that reduction by slightly increasing the proportion of gubernatorial appointments. (This is in direct contrast to the Auditor General’s proposal, which would increase the proportion of such Trustees.)
- Slightly reduce the proportion of Trustees elected by the Alumni without disrupting the balance of Board members selected by direct election (discussed below).

The Special Committee is under no illusion that its suggestions for the composition of the Board will be adopted, especially if there is political involvement in the complicated process of change. But in furtherance of that process, the Special Committee seeks to illuminate the core governance issues facing Penn State, brainstorm about possible solutions, and thereby contribute to the decision making about what changes should and can be made in the real world. That notwithstanding, the Special Committee firmly believes that its recommendation to enhance academic expertise on the Board by adding two faculty members as Academic Trustees is very much in the real world and should be implemented immediately irrespective of decisions regarding its other recommendations.

## Selection of Board Members

The method by which governing boards are selected has been subject to considerable scrutiny in the wake of the recent problems at the University of Virginia and Penn State as well as other less-publicized cases (Robertson, 2012; Marcus, 2012; Kiley, 2012). However, the issue is not new. In 1966, the Association of University Professors, American Council on Education, and Association of Governing Boards of Universities and Colleges jointly formulated the Statement on Government of Colleges and Universities, which underlines the importance of the selection for trustees:

... when the governing board confronts the problem of succession, serious attention should be given to obtaining properly qualified persons. Where public law calls for election of governing board members, means should be found to ensure the nomination of fully suited persons, and the electorate should be informed of the relevant criteria for board membership (American Association of University Professors, 1966).

The following recommendations were informed by research in higher education governance indicating that members of most high performing public university boards were selected in accordance with specific qualifications and after a transparent process of scrutiny (beyond legislative confirmation) to ensure merit selection (Minor, 2008). These high performing boards usually specified the preferred criteria for board membership, such as professional background and experience, skill sets, and personal attributes, and the list of qualifications was publicly available. No relationship was found between high performing boards and selection of members in accordance with certain restrictions, such as a fixed number from various constituencies, state residency, political party affiliation, geographic representation, occupational status or other demographic characteristics.

The highest performing boards also tended to have the most extensive process of vetting potential trustees to establish that their selection was in accordance with the published qualifications. The lowest performing boards showed no evidence of scrutinizing the appropriateness of candidates for membership.

Despite its title “Qualifications for Membership on the Board of Trustees,” Article 2 of the Bylaws lists only restrictions and no affirmative qualifications for membership on the Penn State Board. The restrictions include:

- a natural person of full age
- no person currently employed by the University (except an ex officio member or a student employed part-time)
- only graduates of the University are eligible to be elected by the Alumni
- no faculty or governing board member of another Pennsylvania college or university may be elected by the Alumni.

**Recommendation 9: The Board of Trustees should establish specific qualifications for membership commensurate with the stated responsibilities and expectations of Trustees.**

**Recommendation 9.1: Preferred qualifications should include, at minimum, experience in and understanding of academic institutions, record of public service, and commitment to higher education.**

It is assumed that no single Trustee candidate must have all the preferred qualifications in order to be selected to the Board. Different Trustees will bring different qualifications to their Board service, but in the aggregate, the Board should have the requisite skills, experience, and background to effectively govern the University. Expertise, diversity, and balance are the goals.

**Recommendation 9.2: A list of preferred qualifications for Board membership should be publicly accessible.**

Members of governing boards at public and private universities are selected in a variety of ways. Among them are:

- **Gubernatorial Appointment.** Slightly more than three-quarters of the boards at public institutions are appointed by the governor, with the vast majority of those appointments requiring confirmation by the legislature.
- **Direct Election.** Only five percent of public boards are selected by election of the statewide electorate. Others are directly elected by constituent groups, such as alumni.
- **Indirect Election.** Delegates from geographic regions or constituent groups elect board members.
- **Self-Perpetuating.** A common practice among private universities and other non-profit organizations, sitting members select new members to their boards.

All of these selection methods have pros and cons. However, those states in which public university board members are selected entirely by either gubernatorial appointment (sometimes without legislative confirmation) or direct popular election do not have high performing boards. In both types, the boards tend to be highly politicized, institutional autonomy is diluted, and the qualifications and motivations of those selected are mixed. Self-perpetuating boards, while common in private universities, typically are not as transparent and accountable to those they serve compared to boards selected using other methods.

Penn State's Board is unusual – if not unique – in that its membership is selected by a combination of these methods (as spelled out above). The Special Committee believes that the complex and somewhat cumbersome mechanism ultimately capitalizes on the strengths of each selection method and minimizes its weaknesses with checks and balances from the others.

**Recommendation 10: The combination of methods for selecting Board members (gubernatorial appointments, direct election, indirect election, self-perpetuating) should be maintained as modified by other recommendations elsewhere in this report.**

The Special Committee does not endorse the recommendation of the Auditor General that the General Assembly should legislate a prohibition on the use of self-perpetuating methods to select



members representing Business and Industry (and presumably other sectors that may be added in the future) to the Board. Such a change would alter the healthy system of checks and balances currently in place and result in no clear improvement to University governance.

Further, consistent with the literature noted above, many higher education associations recommend a transparent process for the merit selection of board members, particularly political appointees (Association of Governing Boards of Universities and Colleges, September 2003).

**Recommendation 11: All four methods of selection to the Board should include a transparent and widely participatory nomination or vetting process.**

**Gubernatorial Appointments.** These Trustees currently are appointed at the discretion of the Governor subject only to the confirmation of the state Senate.

**Recommendation 11.1: A nonpartisan statewide merit selection board should be established to nominate qualified candidates to serve on the Penn State Board (and perhaps boards of other state-related universities) for possible gubernatorial appointment and legislative confirmation.**

The Special Committee is wedded only to the principles of merit selection and transparency and not to any particular method of achieving it. An alternative model would be for the Governor's proposed nominees to be vetted by a statewide nonpartisan panel to assure that they meet the qualifications for selection to the governing board.

**Direct Election by Alumni.** The alumni are an important voice in the governance of the University, and the direct election to the Alumni seats represents an open and transparent route to Board membership. Direct election of a portion of the Board is a healthy check on the other selection methods. Nevertheless, the last election cycle, while clearly unusual in its surrounding circumstances and passions among the alumni base, revealed potential problems that might continue in future elections. With 86 candidates on the ballot, it was very difficult for even the most diligent voters to assess the qualifications of such a large number of candidates and draw reasoned conclusions about who could best govern a complex, multi-billion-dollar academic institution. Platforms focused on specific issues and recent events seemed to outweigh important qualifications, such as expertise in higher education or a demonstrated understanding of the academic mission of the University, in the outcome of the election. Finding a way to protect the considerable value of a highly-participatory direct election of alumni and, at the same time, ensure that qualified candidates are selected presents a significant challenge.

**Recommendation 11.2: Qualifications for alumni elected trustees should also include, at minimum, experience in and understanding of academic institutions, record of public service, and commitment to higher education.**

Of particular importance, the information indicating each candidate's experience in higher education, understanding of, and/or qualifications to govern a complex academic institution should be made clear in the alumni ballot. In this way, the alumni electorate can better assess whether the candidates have, at least, the minimum qualifications to effectively govern the

University. While the current alumni election process is the most transparent of all the methods, the Special Committee did note that obtaining information related to the process was in some instances challenging and encourages ongoing efforts to make clear the structure and process of the alumni election.

**Indirect Election by Agricultural Societies.** Agricultural Trustees are elected by delegates of county agricultural societies in Pennsylvania. Over 300 agricultural organizations currently are registered with the Board office as having an interest in participating in the Agricultural Trustee election process. In order to be registered, they must:

- Have an agricultural interest
- Send a request for registration in writing
- Send a copy of their bylaws
- Be organized at the county level

Registered county-level organizations may each send three delegates to participate in county-level caucuses. Through this caucus process, each county selects three delegates who will participate in the actual election. These caucuses occur at the time (or just prior to) the election; however, the Board office encourages each county to have its caucus prior to the May election.

Although it has a well-delineated structure, this election process also has several opportunities for improvement:

- There are no minimum qualifications for a person to run for election to the Board.
- There are no set criteria that determine eligibility for an organization to register with the Board and no defined process for validation of an organization's eligibility.
- The system allows a variable extent of lobbying, deal-making, and other opaque processes that do not necessarily favor the election of the most qualified candidate.

Despite the need for improvements, this indirect election method is a useful check and balance on the other methods of selecting Trustees and probably should be maintained. Moreover, this method of selection helps to keep Penn State in touch with its deeply-rooted agricultural tradition and the state for which it is the sole land-grant university. The counter argument offered by some is that this approach makes it difficult to elect an Agricultural Trustee, for example, who is the CEO of a global agro-business based outside of Pennsylvania and reinforces the parochial nature of institutional governance. The Special Committee makes specific recommendations regarding the selection of Agricultural Trustees and is concerned about the political implications of any changes requiring an amendment to the Charter. Nevertheless, the Committee suggests that this indirect election process should be subject to further study and that, regardless, the candidates for Agricultural Trustee should be gauged according to the same criteria used to select all other Trustees.

**Self-Perpetuating Business and Industry Trustees.** Consistent with national trends, Trustees representing Business and Industry reportedly have dominated the informal and formal power structure of the Board (Horst, 2011; Franz, 2012). Also, continuing the long tradition exemplified by Andrew Carnegie's service on the Board from 1886 to 1916, the Business and Industry Trustees have been among Penn State's most generous donors.

The Business and Industry Trustees are elected by the full Board from a slate of two candidates nominated by an internal Selection Group. The process by which the Selection Group is appointed and makes its nominations is not codified and publically available, and the extent to which the group considers potential candidates' understanding of complex academic institutions as a criterion for nomination is not clear to the Special Committee.

**Recommendation 11.3: The Board should establish a nominating committee to develop a slate of qualified candidates for election to Business and Industry seats.**

**Recommendation 11.3.1: At least two faculty members (selected by the University Faculty Senate) should serve on the nominating committee.**

**Recommendation 11.3.2: Candidates representing other sectors potentially added in the future (e.g., Arts/Humanities and Science) should be nominated by this committee and selected in accordance with this self-perpetuating process.**

The selection process for Academic Trustees at Large and Student Trustee are covered in Recommendations 3 and 5 above.

In sum, all four routes to membership on the Board would benefit greatly by clear criteria for selection and a nomination process or other transparent means of vetting potential candidates to ensure merit selection.

### Improving Communication and Interactions

In his charge letter to the Special Committee (Appendix A), then Senate Chair Dan Hagen wrote in part:

... Over the past few months various constituent groups have called for increased openness in the University and by the Board. There has been a heightened awareness of insufficient communication between the Board and the faculty, staff, and students. President Erickson has expressed his intent for the Administration to become more open and transparent, and has taken several initiatives in that regard. Since January, the new Board leadership has held meetings with constituent groups in order to listen and to learn about their concerns. The Board is also taking steps to be more open and make changes in its current committee structure to reflect better the mission of the University and to improve communications.

Hagen specifically charged the Special Committee to: "Identify and recommend ways to improve and enhance interactions, including flow of information, and the interface of the University Faculty Senate, students, staff, and Administration with the Board of Trustees."

While it is certainly true that there were numerous breakdowns in communication prior to, during, and after the events of November 2011, they were a catalyst – not the root cause – of the problems. "What we've got here is failure to communicate" is one of the most recognized quotes in American popular culture. It was ironically spoken in the movie *Cool Hand Luke*, starring Paul Newman, to emphasize the relationship between words and actions. Similarly,

what we have here at Penn State is probably *not* just a failure to communicate -- but a whole lot more. Effective communication is a necessary condition of effective University governance and restoring confidence in the leadership of the Board of Trustees, but it cannot be a substitute for enlightened actions. In other words, it will take far more than improved communication to fix the serious issues facing Penn State.

Nevertheless, just as communication breakdowns were part of the recent problems, effective communication will be an essential part of any solutions. Stanley O. Ikenberry, former president of the American Council on Education and the University of Illinois, summarized in the AGB journal Trusteeship how communication failures can impact university governance:

... a lack of communication is too often the root of governance crises: the failure of presidents to consult with the faculty; breakdowns in board/president communication; the failure to keep a governor and other policy makers informed; the failure to reach out to students, alumni, or the press. Consequential decisions must be reached through candid exchange, a genuine sharing of views, reasoned argument, and the articulation of underlying values – all of which begin to give some sense of context and meaning to tough decisions. Otherwise, not only is the legitimacy of an immediate decision undermined, but the credibility of a president and board to make sound decisions in the future is diminished (When Governance Goes Awry: What are the Takeaways?, 2012).

The teachings of Arthur W. Page, often regarded as the founder of the modern practice of corporate public relations, might be instructive to Penn State in improving its communication strategies. Page was the first person in a public relations position to serve as an officer and director of a major corporation and, in that capacity, was widely known for management according to the Page Principles, his guidelines for ethical and effective communication with the public and for responsible corporate behavior. While emphasizing the significant differences in communicating on behalf of a corporation and a university, some of the Page Principles that may be relevant to Penn State's situation are listed below:

- *Tell the truth.* Let the public know what is happening and provide an accurate picture of the company's character, ideals and practices.
- *Prove it with action.* Public perception of an organization is determined 90 percent by what it does and 10 percent by what it says.
- *Realize a company's true character is expressed by its people.* The strongest opinions—good or bad—about a company are shaped by the words and deeds of its employees. As a result, every employee—active or retired—is involved with public relations. It is the responsibility of corporate communications to support each employee's capability and desire to be an honest, knowledgeable ambassador to customers, friends, shareowners and public officials (Arthur W. Page Center for Integrity in Public Communication, 2011).

(N.B. The Arthur W. Page Center for Integrity in Public Communication is a research center at the Penn State College of Communications dedicated to the study and advancement of ethics and responsibility in corporate communication and other forms of public communication. It was founded through a leadership gift from Lawrence G. Foster, a distinguished Penn State alumnus, former member of the Board of Trustees, and former president of the Alumni Association. While serving as corporate vice president for public relations at Johnson & Johnson, Foster designed and implemented the company's response to the Tylenol poisoning in the 1980s, widely

considered to be the gold standard of socially responsible crisis management. The Chair of the Special Committee was the founding director of the Page Center.)

The Special Committee applauds and endorses the Board's recent effort to improve information flow between it and the University community. Greater openness in Board deliberations, faculty representatives on Board committees, publishing meeting agendas, open mic period at Board meetings, expanded website, consultation with Senate leadership, listening tours with key constituencies, etc. are positive steps (Board of Trustees, 2012). But, in the final analysis, the gains from such efforts will be minimal under the current circumstances.

What is required is true COMMUNICATION, which at its core is a shared understanding. Communication is not merely the production and distribution of a message, such as "move forward." Rather it is sharing a common meaning of that message. An improved flow of information to or from the Board, while helpful, will not overcome the lack of a shared perspective and understanding about what is in the best interest of Penn State and its academic mission.

Elsewhere in this report, the Special Committee identified a large and problematic gulf between the Board and the faculty who have plenary responsibility for furthering the core academic mission of the University. This gulf cannot be easily bridged with the current structure and form of representation of the Board. The implication is a need for more self-governance, especially including a faculty voice and vote on the Board, and more meaningful interaction between those on the opposite sides of this unnecessary divide.

Further, effective communication is reciprocally related to a healthy organizational environment. Recovery from the damage of the past several months will be difficult – if not impossible – without a greater level of collaboration and communication between the Board and constituent groups. However, it is reasonable to conclude from the Special Committee's extensive consultations that there currently is a fair amount of uncertainty, anxiety, and distrust in the University community and that mood is not conducive for productive dialogue and shared understanding of the reasons for and solutions to collective problems. The challenge is to create an upward spiral of effective communication interrelated with positive organizational change and restored confidence in the governance of the University.

The goal, spelled out in the AGB Statement on Institutional Governance, is:

... to create a process for decision making that includes full consultation, clear and explicit criteria, and full communication with stakeholder groups. The board should recognize that institutional consensus is more likely when all parties have agreed on the process and criteria (Association of Governing Boards of Universities and Colleges, 1999, p. 7).

In Faculty, Governing Boards and Institutional Governance (Schwartz, Skinner, & Bowen, December 2009), the Association of Governing Boards of Universities and Colleges (AGB) documented the lack of understanding that trustees and faculty have about each other's role in governance and called for an increase in meaningful interactions between the two. Only 23 percent of university presidents surveyed by AGB reported that trustees understand faculty

contributions to institutional governance either “well” or “very well.” A comparable number – 26 percent -- reported that faculty understand the authority and responsibilities of their governing boards either “well” or “very well.” The AGB report goes on to identify the major “(b)arriers to successful board-faculty interaction”: “insufficient time, lack of mutual understanding and respect, governance policies and practices that are unclear or out-of-date, the complexities of higher education, and general lack of interest.”

The AGB recommended the following strategies for bridging this faculty-trustee divide:

- better orientation and continuing education of trustees and faculty
- opportunities for faculty and trustee service on key committees and work groups
- frequent communication, especially by the president
- greater transparency in decision-making and clarity about respective responsibilities of faculty, administrators, and the governing board
- current and accessible governance policies
- presidential leadership in facilitating institutional governance.

The AGB report also listed the most common ways in which governing boards nationwide interact with faculty. Some of these contacts are superficial, but others involve meaningful interaction on important governance matters. The following comparison of that data indicates that the Penn State Board and faculty interact in all of the typical ways (Schwartz, Skinner, & Bowen, December 2009; Fain, 2010):

**Table D: Comparison of Board-Faculty Interactions – National vs. Penn State**

	ALL %	PSU
Academic ceremonies, athletic contests, and other social events	92	Yes
Faculty membership on presidential search committee	88	Yes
Faculty presentation to the board	87	Yes
Meals, receptions, and social events in conjunction with meetings	86	Yes
Faculty membership on president-established organizations (planning, budget, etc.)	81	Yes
Faculty advice on presidential searches	73	Yes
Faculty and trustee involvement in alumni activities	69	Yes
Faculty and trustee involvement in fund raising	60	Yes
Faculty membership on board committees	56	Non-voting representation only
Trustee classroom, laboratory, or studio visitation	50	Yes

**Orientations.** Important matters unique to universities (e.g., the significance and meaning of academic freedom, tenure and promotion policies and procedures, and the organization and functions of faculty governance) often are not well understood by Board members, who frequently come from business and professions that operate in substantially different ways. Similarly, many rank-and-file faculty are only dimly aware of how their university is governed and what role the governing board plays. Therefore, it is an AGB best practice that both trustees and faculty should participate in orientation programs that assist them in understanding each other’s rights and responsibilities in institutional governance. To ensure that Penn State Board

members more fully grasp the academic complexities of the institution they govern, faculty should be integrally involved in the orientation of new Board members and in periodic refreshers for continuing members. Similarly, faculty would benefit from orientation and continuing education about the role of the Board in governance and, if they better understand the university-wide governance structure within which their teaching and research are conducted, institutional trust can be enhanced and cynicism reduced.

**Recommendation 12: New Board members should receive orientations that foster an understanding of the complexities of the academic institution they govern, and continuing members should receive periodic refreshers.**

**Recommendation 12.1: There should be significant faculty input in such orientations.**

**Recommendations 13: Faculty members should receive orientations that foster an understanding of institutional governance and the responsibilities of the Board.**

**Campus Interactions.** Although the Board holds two meetings per year at a location other than University Park, few Trustees have visited most of the campuses, interacted with their faculty, staff and students, and seen the University through that very different lens. To better understand the diversity and complexity of the University that they govern, the Trustees might consider traveling in small groups to a variety of campuses for in-depth conversations on the issues facing Penn State and regularly report their impressions to the full Board.

**Recommendation 14: The Board should consider expanding its travel to and interactions with campuses other than University Park.**

**Senate Self-Study.** It is particularly important to note that improving governance and communication between the Board and the faculty is a two-way street. In order for there to be greater faculty participation in the University governance at the highest level, the Board must grant it and the faculty must earn it. Governance structures at universities nationwide are known for inefficiencies and dysfunctions (Lawrence & Ott, 2013; Brown, 2001). Some examples of those problems, listed in the AGB's Statement on Institutional Governance, are:

- There is a widespread perception that faculty members, especially in research universities, are divided in their loyalties between their academic disciplines and the welfare of their own institutions ...
- Many governing boards, faculty members, and chief executives believe that internal governance arrangements have become so cumbersome that timely decisions are difficult to make, and small factions often are able to impede the decision-making process.
- Alternatively, in the quest for consensus or efficiency, the governance process sometimes produces a "lowest common denominator" decision, which does not adequately address underlying issues (Association of Governing Boards of Universities and Colleges, 1999, pp. 2-3).

Whether or not these particular criticisms are true at Penn State, it is fair to conclude that the quality of faculty governance is mixed and the University Faculty Senate is far from a perfect institution. Significant improvement in the structure and functioning of the Senate also is required for successful implementation of many of the recommendations herein. While reform of the Senate is not within the charge of the Special Committee, it does wish to applaud Senate Chair Larry Backer for launching a periodic self-study and the Senate Self-Study Committee (under the leadership of Professor Mohamad A. Ansari) for currently undertaking it. The overarching objectives of the Self-Study Committee follow:

Periodic self-study is a vital part of institutional renewal. It is an exercise, which helps maintain an institution's relevance and connection with its members. It provides a chance for reflection on the large issues of governance and the institutionalization of the faculty voice within the context of University shared governance. Self-study also provides the Senate with an opportunity to take a hard and dispassionate view of itself and adjust its organization so it effectively provides voice to issues of greatest concern to faculty, is consistent with the priorities of University strategic planning, and complements the operations of the administration.

Among the specific charges to the Self-Study Committee were to examine the extent to which the Senate committee structure and jurisdiction are consistent with the priorities and administrative operation of the University and how the Senate's connection with the Board of Trustees can be made more effective and open. The Special Committee shares the view that there are unnecessary structural impediments to effective governance at Penn State and believes that one of the desired outcomes of such a self-study would be a realignment of those governance structures resulting in improved communication and collaboration among the Board, Senate, and administration (Backer, April 2, 2012).

**Recommendation 15: Committees of the Board, committees of the Senate, and administrative offices should be better aligned to facilitate collaboration and communication among the three primary stakeholders in the governance of the University.**

**Outside Consultants and "Inside-Out" Communication Strategy.** The Board has hired several outside public relations consultants on multi-million dollar contracts and appears to be heavily reliant on them to craft the University's response to the unfolding events since November 2011. Because the Special Committee did not have access to these external consultants, it had difficulty evaluating their strategies and effectiveness. Yet, from afar, it does not appear that these consultants have a firm understanding of the unique nature of academic institutions, in general, and Penn State, in particular. Most of the consultants' messages seem to be detached from the real world of academe and have not addressed or answered the many lingering questions of the faculty and staff.

In addition to its concerns about the substantial cost and the questionable effectiveness of the public relations campaign, the Special Committee questions the appropriateness of the target audience. Last fall, the leading outside public relations consultant to the Board recommended an "inside-out" communication strategy that would better tell Penn State's story through its students, faculty, staff, and alumni. Karen Peetz, then Board Chair, also briefly discussed the approach with the Special Committee. However, it appears that the "inside-out" strategy is



mostly “outside” and very little “inside.” For example, the high-profile and expensive “Faces of Penn State” campaign, which showcases the accomplishments of members of the University community, is designed by outside consultants and is directed at outside audiences. Further, according to communications experts with whom the Special Committee consulted, it is not particularly effective and may be diluting pre-existing Penn State external communication campaigns with a track record of success.

One of the most important of the aforementioned Page Principles for effective communication is that the true character of an organization is expressed by its people and the strongest opinions about the organization are shaped by the words and deeds of those people. If the “inside-out” strategy were to enlist the faculty and staff as active participants in external communication, the Special Committee would endorse it. But, based on limited information available to the Special Committee, an aggressive application of this Page Principle has not been apparent to date.

Penn State’s most important communication assets are its faculty and staff -- who have countless external contacts every day that, in the aggregate, will affect public perceptions of the University far more than expensive campaigns in the public media. How the faculty and staff view the University overall, how they interpret what went wrong over the past many months, and whether they understand and support the strategy for recovery will largely determine how effectively they will serve as ambassadors of Penn State. While the Special Committee does not claim to have systematically polled opinions of the University community, it sensed from its many consultations a fair amount of confusion, anxiety, mistrust, and displeasure about the current situation and responses to address it. Effective communication can only take place in an environment of trust. Therefore, the first priority should be to rebuild trust and a shared understanding among the faculty and staff about the direction of the University. Once that is accomplished, they would become important voices in extending the message to students, alumni, and other key constituencies.

**Recommendation 16: Penn State’s communication strategy should place greater emphasis on rebuilding a shared understanding within the University community and preparing the faculty and staff to communicate externally.**

The Special Committee recognizes that one is least a prophet in his/her own land, but the wealth of expertise and professional experience of the faculty and staff has been underutilized in responding to the recent events.

**Recommendation 16.1: There should be a greater reliance on talent within the University in responding to the problem.**

**Recommendation 17: The strategy and value of the external public relations consultants should be evaluated and the results of the assessment should be made public.**

**Recommendation 17.1: The activities of the external public relations consultants should be coordinated with the internal activities of University Relations to ensure that such outside consultants are in tune with the academic mission and truly understand the University.**

**Collegial Discourse.** Collegiality – respect for one another’s commitment to a common purpose -- is at the foundation of effective communication and governance. Yet the Special Committee and many of those with whom it consulted are concerned about the lack of civil discourse among some commentators and participants in the process of repairing Penn State. It certainly does not represent the vast majority and, considering the depth of the tragedy and the hyperbolic rhetoric common today in American politics and media, is not entirely surprising. But Penn State is an academic community that can and should conduct the debate over its future with the highest level of civility. In the difficult give-and-take necessary to finding common solutions to the existing problems, all in the community should find ways to disagree agreeably with those who have different points of view about what is in the best interests of the University.

**Right to Know Law.** The Auditor General recommended that Pennsylvania’s Right to Know Law should be fully applicable to Penn State, and a local legislator has introduced a bill to that effect (Wagner, November 2012, p. 69; Pennsylvania House of Representatives, 2012; Danahy, 2012).

The Special Committee believes that, to the extent that Penn State receives state appropriations, it should be accountable to the citizens of the Commonwealth and transparent regarding the expenditure of those funds. The Committee also believes that, even if Penn State were an entirely private university and received no state funding, it still performs a public function and should be similarly accountable and transparent. Besides, who at a university could possibly oppose the “right to know?”

However, the Special Committee also has concluded that the question of whether Penn State should be fully subject to the Right to Know Law is far more complicated than some politicians and media pundits portray (McLendon & Hearn, 2006). Of particular concern to the Committee are the implications of treating Penn State as a state agency under the law and how that might impact the academic autonomy of the University. The Committee also is concerned about reports that other universities covered by similar laws have experienced cases in which faculty’s intellectual property has been compromised or faculty have been subject to fishing expeditions of their electronic and paper files by groups with a political agenda.

The members of the Special Committee do not have the requisite expertise to make a recommendation regarding whether the law should be applied to Penn State and also do not believe that this complex issue has been sufficiently studied and discussed within the University community.

**Recommendation 18: An internal task force (including legal experts) should be formed to study the academic implications of applying the Right to Know Law to Penn State, and its findings should be the basis of a University-wide discussion that would better inform decision-makers about this complicated issue.**

## Other Board Rules, Policies and Procedures Affecting Communication

**Board Rules.** Two rules are potential impediments to the flow of information to and from the Board and have been the subject of public criticism and seemingly contradictory recommendations for changes. Both relate to the key problem that the Board was too reliant on the President as the primary flow of information about the functioning of the University.

Particularly problematic was the lack of a direct line of communication with the faculty who has plenary responsibility for the implementation of the core academic mission of the University. In accordance with Standing Order IX 4 c (Communication with the Board): “Official faculty communication to the Board of Trustees shall be made through the President.” Although the Board was in informal and superficial contact with faculty, direct and meaningful interaction with the faculty regarding important matters of academic policy was limited. Consequently, the Board routinely made decisions affecting the academic mission of the University without having fully heard the faculty perspective on the issues. The other rule is Standing Order IX (1) f (12) (Expectation of Members), which requires Board members to “Respect established channels to acquire information.” When applied together, these two rules appear to mean that all communication between the Board and the faculty must flow through the President.

The problem is compounded by the fact that the full Board rarely holds roll-call votes or vigorous public debates on complicated or controversial issues. Most important decisions are made informally and agreed to formally by voice votes of acclamation at the public meetings.

The Auditor General recommended that the second rule be replaced with one containing “openness language” but does not similarly recommend that the first rule – restricting faculty communication to Board – be replaced. The Freeh report does not specifically deal with these rules but generally recommended (3.5): “Increased and improved channels of communication between the Board and the University community.” But in the recommendation immediately following (3.5.1), the Freeh report called for new rules restricting Board members’ statements to the public and the press regarding undefined “confidential” University matters. Unfortunately, there is no rationale or explanation to clarify this potentially contradictory recommendation. The Board currently is considering an amendment to its Bylaws that would implement recommendation 3.5.1. In contrast, the Special Committee would encourage the Board to adopt rules that encourage transparency and allow for more direct interactions, particularly with the faculty.

**Recommendations 19: Standing Order IX should be revised to allow multiple lines of communication with the faculty and encourage greater openness in Board deliberations.**

**Faculty Representation on Board Committees.** Since the 1970s, three Senate officers (Chair, Chair-Elect, and Secretary) and three student representatives have been invited by the President to attend Board meetings and have the privilege of the floor. In March 2012, the Board approved changes in its Bylaws and Standing Orders to replace its three standing committees with five new committees. They are Academic Affairs and Student Life; Finance, Business and Capital Planning; Governance and Long-Range Planning; Outreach, Development and Community

Relations; and Audit, Risk, Legal and Compliance. The latter committee subsequently was divided into two committees: Legal and Compliance; Audit and Risk.

Following an inquiry by the Senate leadership, the President invited five additional members of the University community to attend Board meetings and participate at committee meetings. The five additions were the President of the Penn State Alumni Association, Chair and Past Chair of the University Staff Advisory Council, Chair of the Senate's University Planning Committee, and Vice President of the University Park Undergraduate Association. One of the three Senate officers and the chair of the University Planning committee were invited to participate in each of the Board committees, except Legal and Compliance and Audit and Risk. These structural changes appear to have significantly improved the flow of communication to the Board, and both Trustees and Senators report that the participation of faculty and others in Board committees has worked well.

**Recommendation 20: A full-time, tenured faculty member should be elected by the Senate to serve as a non-voting representative on each of the six Board standing committees, including Legal and Compliance and Audit and Risk, for multi-year, staggered terms.**

These representatives should not be ex officio by virtue of being a Senate officer because the officers typically are very busy with many other University responsibilities and turn over too frequently to ensure continuity and to be fully informed on the issues. Adding elected representatives also increases the channels of communication and improves information flow between the Board and the faculty. However, the Senate officers should continue to be non-voting representatives to the Board and attend full Board meetings. Assigning the responsibility for electing these representatives to the Senate could strengthen that body and, thereby, shared governance of the University.

It will be important to establish a mechanism for coordination and communications among and between the faculty representatives to the Board and faculty governance leaders, key Senate committees, and the faculty at large. For example, the President, the two elected Academic Trustees at Large, the Senate officers, and the six non-voting faculty representatives to Board committees (and perhaps the Student Trustee and staff representative) could regularly meet as a formal coordinating body (perhaps in lieu of the Faculty Advisory Committee to the President).

While the AGB does not recommend that faculty, staff or students serve as voting members of governing boards, it cautions that if they do: "... boards should be mindful that the presence of one or more students, faculty, or staff members on the board or its committees neither constitutes nor substitutes for full communication and consultation with these stakeholders (Association of Governing Boards of Universities and Colleges, 1999, p. 6).

**Selection and Evaluation of the President.** The search for and appointment of a new university president is one of the most important responsibilities of a governing board. In order for it to be successful, the process must be an exercise in shared governance and the academic leadership potential of a new president must be fully vetted by knowledgeable faculty. The 1966 joint Statement on Government emphasizes that, in the choosing a new president, "a cooperative

search by the governing board and faculty” is of critical importance to the institution (American Association of University Professors, 1966).

The Standing Order IX (1) (c) 1 of the Penn State Board reads: “In the selection of a President, the Board shall consult with representatives of the faculty and the student body.” The Special Committee interprets that wording literally to mean that faculty and student representatives shall be consulted in the final selection of a president – not merely participating in the screening and interviewing of potential candidates (Poston). Further, the Special Committee believes that, given that it is a widely-used best practice to consult in the selection of the president, it also makes good sense that the academic perspective – through the voice of the faculty – be considered in subsequent evaluation and potential termination of the president. To do so is a recommended practice by the AAUP (1981). Yet, at Penn State, there has been little or no consultation with the faculty in the appointment, assessment, re-appointment, or termination of recent presidents.

The Board’s recent decision to award President Erickson a merit raise is illustrative of the problem. The members of the Special Committee have a high regard for President Erickson, believe that he has performed very well under difficult circumstances, and do not disagree with the Board’s decision. The Committee also suspects that its opinion is widely shared among the Penn State faculty. But the Board did not consult with the faculty prior to its decision. How could the Board fully know President Erickson’s performance as leader of an academic institution without asking those responsible for the day-to-day implementation of the core academic mission? Further, in the absence of faculty participation in the evaluation of the President, the announcement of his raise did not have the weight of the faculty behind it nor the public credibility that it deserved.

**Recommendation 21: The faculty should be consulted in the selection, periodic assessment, contract renewals, and potential termination of the President.**

**Board Self-Assessment.** The Freeh report recommended (3.7) that the Board periodically conduct and publicize self-assessment of its performance. The Board has initiated such an assessment, which it anticipates completing in 2013. Consulting with the faculty and hearing an academic perspective on its performance would be a helpful -- if not essential – part of the assessment process.

**Recommendation 22: The Board should formalize its self-assessment process to include faculty participation and ensure that an academic perspective is considered.**

Further, although the Trustees Office is not an academic unit subject to AD-14 (Academic Administrative Evaluation), it currently is undergoing a similar review to determine if work flow and staff levels should be modified. The Special Committee commends the Board and its staff for this initiative.

**Continuing Assessment of Governance.** Positive change in the governance of Penn State should be considered an on-going process of meaningful interaction with the faculty and other key academic constituencies, self-examination, and reassessment, and the University should

establish a mechanism to facilitate that on-going process (Kezar & Eckel, Meeting Today's Governance Challenges, 2004). One possibility is the creation of a joint committee – with representatives from the Board, faculty, staff, students, and alumni – with the responsibility of assessing on a continuing basis the governance of the University, exploring ways to improve information flow, and enhancing a shared understanding of the core academic mission. The AGB endorses such joint committees to foster communication but reports that they currently are not the norm. Only 14 percent of institutions and 30 percent of systems – which probably have greater needs due to distance and size -- have trustee-faculty-administration committees designed to facilitate the exchange of information and build a common understanding on key issues (Schwartz, Skinner, & Bowen, December 2009, p. 5). The success of the University of Minnesota in utilizing such a joint committee is discussed in the case study section above.

**Recommendation 23: A Standing Joint Committee on University Governance should be established to assess on an ongoing basis the governance of the University, to facilitate communication among institutional stakeholders, and to make recommendations to the appropriate bodies for improving policies and procedures.**

Such a body would be a joint committee – not a consultative committee to the Board or President. It would have deliberative, advisory, and communication functions but not legislative or decision-making authority.

#### **Other Recommendations in the Freeh Report Relevant to the Committee's Work**

Similar to the Auditor General's report (discussed above), the Freeh report makes only passing reference to the faculty, makes no mention of the University Faculty Senate, does not seem to understand the Senate's role in the governance of the University, and suggests no role for the Senate in responding to the numerous recommendations. Yet, oddly, the Freeh Report (recommendation 1.1) does call on the "Special Faculty Committee on University Governance" to participate in improving the institutional culture at Penn State. The Special Committee is an ad hoc study group appointed by the Senate Chair for the limited purpose of its charge and has no jurisdiction in governance matters. Freeh also designates "Penn State's Coalition on Intercollegiate Athletics" to participate in improving the institutional culture; however, the Coalition is a national alliance of faculty senates of which the Penn State Senate is merely a member and has no role in internal governance matters. These and other nonsensical recommendations in the Freeh report demonstrate it is uninformed regarding higher education governance, in general, and Penn State's governance structure (especially faculty governance), in particular, and therefore could prove to be counter-productive to the academic interests of Penn State depending on how they are interpreted and specifically implemented.

More problematic are the NCAA Consent Decree and Academic Integrity Agreement, which require implementation of the Freeh recommendations and overtly negate the established faculty governance process. Commendably and in sharp contrast to the above reports, Senator Mitchell (the NCAA's athletics integrity monitor) has consulted frequently with faculty governance leaders, made several references to the Senate in his first quarterly report, and demonstrated a sensitivity to and understanding of the faculty's role in shared governance.

## Intercollegiate Athletics

Recommendation 1.1 in the Freeh Report mandates the Special Committee to participate in an examination of Penn State's culture, including among other things, the integration of athletics into the broader University community. Although seemingly outside its specific charge from the Senate Chair, the Special Committee did conduct a cursory evaluation of the governance of Penn State's intercollegiate athletics program and benchmarked it with Big Ten universities and other schools competing in the Football Bowl Subdivision. The Special Committee's preliminary findings and suggestions were shared with Senate Council's task force to monitor the Freeh recommendations and the NCAA Consent Decree, the Senate Committee on Intercollegiate Athletics, and Senator Mitchell (NCAA monitor) and, therefore, will not be recounted in detail here.

However, in general, the Special Committee concluded that, within the paradigm of big time college sports, Penn State has a good structure and policies for oversight of athletics that until recently was seen as a national model. But in hindsight, it is clear that the governance structure at Penn State – like virtually all universities participating in big time sports – is seemingly outmatched by the tremendous external pressures on its athletics program, such as the commercial pressure of television and sports-obsessed American culture (Frey, 1994). The potential for further negative consequences to Penn State in the future is large, and the odds of preventing serious problems in intercollegiate athletics with only internal reforms are small. Nevertheless, there are some changes that Penn State should consider – such as restructuring and expanding the oversight responsibilities of the Senate Committee on Intercollegiate Athletics -- that might level the playing field somewhat (Nichols, Corrigan, & Hardin, 2011; Knight Commission on Intercollegiate Athletics, 2007).

The Special Committee does not recommend that the Board have greater direct involvement in intercollegiate athletics. Such governing board involvement has been a frequent source of problems at other universities (Frey, 1987). However, the Board should review its current policies regarding the oversight of intercollegiate athletics to ensure that they are consistent with AGB and AAUP best practices (Association of Governing Boards of Universities and Colleges, 2012; The Faculty Role in the Reform of Intercollegiate Athletics: Principles and Recommended Practices, 2003).

### **Need to Protect Institutional Autonomy**

The American system of higher education is the best in the world, and an important reason is that universities have a significant degree of autonomy. Institutional autonomy is a well-established practice in higher education that grants publicly-funded universities wide authority to govern themselves on the grounds that advancement of knowledge is best achieved with the least external – especially political – control over the academic process. Institutional autonomy has long been a core concept in American higher education, and it is to universities what academic freedom is to individual faculty.

However, institutional autonomy is far from an absolute concept. Government oversight, particularly of public universities that receive state appropriations, is necessary to ensure that

universities are accountable to the public they serve and spend their state funding appropriately. However, in the absence of clear policies, government oversight can lead to political interference and undermine the teaching, research and service missions of universities. Finding the appropriate balance between government oversight and the independence of universities to manage their internal – especially academic – affairs is a matter of constant tension and correction. A swing of the pendulum too far in either direction would be detrimental to the public mission that universities serve (Hutchens, 2007, pp. 24-28).

The Special Committee is concerned that, as Penn State has been weakened by the recent problems, the pendulum currently is swinging too far in the direction of greater political control and that the University could be further hobbled in performing its academic mission. Recently proposed actions by the state government, for example, would toughen the exclusion of faculty from participating at the top level of University governance, remove the President (the only academic) from the Board, and change the composition of the Board to include a greater proportion of political officeholders and gubernatorial appointees. Reasonable people can disagree on the merits of those proposed changes, but the proper venue for making the decisions is not Harrisburg.

The Special Committee is not in a position to make any meaningful recommendations in this regard but feels obligated to warn the University community about its concerns.

### **Consultations with Constituent Groups**

The Special Committee consulted extensively with a wide variety of stakeholders and constituent groups within the University community, and the foregoing analysis and recommendations were informed by those consultations. The following is an incomplete list of the groups with which the Special Committee consulted:

- University Faculty Senate
  - Officers and Chairs
  - Council
  - Standing Committees
- University Park Undergraduate Association
- Council of Commonwealth Student Government
- Graduate Student Association
- Blue and White Vision Council
- Campus Advisory Board Chairs
- Alumni Association leadership
- University Staff Advisory Council
- Presidential Commissions (Commission on Lesbian, Gay, Bisexual, and Transgender Equity, Commission on Racial/Ethnic Diversity, Commission for Women)
- staff from selected academic and administrative units (including Education, Engineering, Science, Libraries, Physical Plant, Auxiliary and Business Services, and Information Technology)
- Campus Faculty Governance Leaders
- faculty and staff at the Altoona campus



Further, the Fall 2012 sections of MGMT 471 (Strategic Management) studied the structure and performance of the Board as part of a class project and the assessments of the enrolled students were anonymously shared with the Committee.

### **Disclosure Statement**

In the charged atmosphere that followed the events of November 2011, there was a great deal of talk about the insularity of Penn State and that the close-knit nature of the University community may have contributed to the problems. In that context, the then Chair of the Faculty Senate appointed the Special Committee on University Governance, a diverse group of Penn State faculty, staff, administrators, students, alumni, and resource members to undertake a study of institutional governance and communication within that same community. The members of the Special Committee were all presumably chosen for their extensive experience, across many different fronts, with Penn State, and as such, their task was recognized from the beginning as a self-study, using the expertise of individuals who know Penn State intimately. However, along with an in-depth understanding of the workings of the University, most committee members also have numerous professional, and in some cases, personal relationships with current and past members of the Board of Trustees, current and past administrators and faculty leaders, and many other key players in University governance.

At the outset, the Special Committee considered whether such an internal study (even one which made extensive use of external data, consultations with experts, literature on best practices in higher education, and benchmarking against other institutions) would be viewed as credible and the extent to which its members had real or perceived conflicts of interest. Because of those early concerns, the Special Committee had lengthy discussions in which the members shared any and all connections to the various entities and individuals suggested above and their potential impact on this report. While most committee members are employed by the University, none has a direct financial stake in the outcome of this study, a family relationship with any of the principals being examined, or any other of the standard conflicts of interest.

Consequently, the committee members (with one exception) concluded that, even though they clearly were not disinterested outside observers, they would be able to provide an honest and objective analysis of University governance and communication but also decided to note that such an exhaustive discussion had taken place and disclose the aforementioned relationships. One member, Jonathan Marks, who provided thoughtful reflections on many of these issues, felt that for personal and professional reasons that it was best if he remove himself from the process and so did not participate in the drafting of this report.

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Date: March 15, 2012

From: Dan Hagen, Chair, University Faculty Senate

To: John Nichols, Lori Bechtel-Wherry, Dawn Blasko, David Han, Peter Idowu, A. Christine Long, Richard Robinett, John Zang

Re: Special Committee on University Governance

Events that have unfolded at Penn State since early November have led to questions about the structure and functions of the University Board of Trustees. Although the structure and the authority of the Board are clearly delineated in its Charter, Bylaws, and Standing Rules, it is not clear to many members of the University community how that authority is manifested in the Board's exercise of its fiduciary and oversight functions.

Over the past few months various constituent groups have called for increased openness in the University and by the Board. There has been a heightened awareness of insufficient communication between the Board and the faculty, staff, and students. President Erickson has expressed his intent for the Administration to become more open and transparent, and has taken several initiatives in that regard. Since January, the new Board leadership has held meetings with constituent groups in order to listen and to learn about their concerns. The Board is also taking steps to be more open and make changes in its current committee structure to reflect better the mission of the University and to improve communications.

Extensive discussions by the University Faculty Senate since November 2011 have led to the idea of establishing a committee to examine how the lessons of the recent past, combined with the study of the Board's composition, structure, and function, might inform strategies to improve and enhance the Board's interactions with the University community.

Your knowledge and experience provide the background that will be needed to be an effective member of this Special Senate Committee. Although I recognize that this committee will add to your workload, I appreciate your willingness to serve on this very important committee that will help us overcome the past and move forward in a productive manner. I am confident that you will find it personally rewarding and educational to serve on this committee.

The specific charge for the Committee is to:

- Examine the structure, functions, practices, and responsibilities of the Penn State Board of Trustees vis-à-vis interactions with constituent groups (students, alumni, staff, faculty, and administration);
- Compare and benchmark those attributes with peer institutions;
- Identify and recommend ways to improve and enhance interactions, including flow of information, and the interface of the University Faculty Senate, students, staff, and Administration with the Board of Trustees;
- Prepare and submit a report of findings and recommendations to the Faculty Senate officers by a proposed date of May 31, 2012.

## **Special Committee on University Governance**

### **Committee members:**

John Nichols, Professor Emeritus of Communications and International Affairs, College of Communications  
(Committee Chair)

Lori Bechtel-Wherry, Chancellor, Penn State Altoona

Dawn Blasko, Associate Professor of Psychology, Penn State Erie

David Han, Associate Professor of Surgery and Radiology, Hershey Medical Center/College of Medicine

Peter Idowu, Associate Professor of Electrical Engineering, Penn State Harrisburg

A. Christine Long, Information Technology Manager, Digital Library Technologies, Information Technology  
Services

Richard Robinett, Professor of Physics and Associate Department Head, Eberly College of Science

John Zang, University Park Undergraduate Association Chief of Staff (Liberal Arts); major: international  
politics

### **Resource members:**

Michael Dooris, Executive Director, Office of Planning and Institutional Assessment

Peter Moran, Interim Assistant Dean for Policy and Planning, Planning and Institutional Research, Penn State  
Altoona

**Appendix B**

**2010 COMPARISON OF GOVERNING BOARDS  
PENN STATE - ALL PUBLIC - ALL PRIVATE - PUBLIC AND PRIVATE DOCTORAL AND RESEARCH UNIVERSITIES**

	PSU	ALL PUBLIC n=53	PUBLIC DOCTORAL AND RESEARCH UNIVERSITIES n=195	ALL PRIVATE n=507	PRIVATE DOCTORAL AND RESEARCH UNIVERSITIES n=45
<u>Average Board Size</u> (mean number of voting members)	32	11.8	12.6	29	38
<u>Gender of Board Members</u>					
Men	84.4%	71.6%	73.9%	69.8%	74.2%
Woman	15.6%	28.4%	26.1%	30.2%	25.8%
<u>Race/Ethnicity of Board Members - % Minorities</u>	9.4%	23.1%		12.5%	
<u>Gender of Presidents</u>					
Men	100%	73.4%		81.4%	
Women	0%	26.6%		18.7%	
<u>Race and Ethnicity of Presidents - % Minorities</u>	0.0%	17.2%		9.2%	
<u>Ages of Board Members</u>					
Under 30	3.1%	5.1%		1.0%	
30 to 49	0%	14.3%		16.0%	
50 to 69	59.4%	69.0%		69.0%	
70+	37.5%	11.6%		14.1%	

Blank fields: data not available

Sources:

*2010 Policies, Practices, and Composition of Governing Boards of Public Colleges, Universities, and Systems, AGB Press*

*2010 Policies, Practices, and Composition of Governing Boards of Independent Colleges and Universities, AGB Press*

with additional information from Penn State's Office of the Board of Trustees.

*Office of Planning & Institutional Assessment, April 2012*



## Appendix B

	PSU	ALL PUBLIC n=53	PUBLIC DOCTORAL AND RESEARCH UNIVERSITIES n=195	ALL PRIVATE n=507	PRIVATE DOCTORAL AND RESEARCH UNIVERSITIES n=45
<u>Current and Former Occupation of Board Members</u>					
Employed					
Business	31.3%	50.6%		52.3%	58.3%
Professional Service	9.4%	25.5%		23.1%	15.8%
Education	6.3%	12.6%		12.2%	13.1%
Agriculture/Ranching	15.6%	1.8%		0.6%	0.1%
Other	12.5%	9.5%		11.8%	12.7%
Retired					
Business	12.5%	44.2%		56.5%	67.6%
Professional Service	3.1%	18.3%		16.6%	11.6%
Education	6.3%	27.8%		17.3%	12.0%
Agriculture/Ranching	3.1%	1.2%		0.6%	0.4%
Other	0%	8.6%		9.1%	8.3%
<u>Average Number of Board Members</u>					
<u>Serving on Boards of Other Organizations</u>					
Board members who serve on another college governing board	4	0.6	0.6	2	5
Board members who serve on an institutionally related foundation board	0	1.9	2.5	1	1
Board members who serve on a corporate board	6	2.6	2.7	6	13
Board members who serve on a nonprofit board	6	4.6	5.7	11	25
<u>Chief Executives Serving as Members of <b>PUBLIC</b> Boards</u>					
Yes, with vote	yes	6.3%	7.5%		
Yes, without vote		21.2%	22.6%		
No		72.5%	69.8%		
<u>Governors Serving Ex-Officio as Members of Boards</u>					
Yes, with vote	yes	11.2%	9.4%		
Yes, without vote		5.9%	7.5%		
No		83.0%	83.0%		

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	PSU	ALL PUBLIC n=53	PUBLIC DOCTORAL AND RESEARCH UNIVERSITIES n=195	ALL PRIVATE n=507	PRIVATE DOCTORAL AND RESEARCH UNIVERSITIES n=45
<u>Boards with Student Members</u>					
Voting member	yes *	50.3%	45.3%	8.5%	
Nonvoting member		28.2%	39.6%	12.5%	
Voting and/or nonvoting member		70.8%	75.5%	20.1%	
* PSU: by discretionary gubernatorial appointment					
<u>Boards with Faculty Members</u>					
Voting member	no	13.3%	13.2%	14.9%	
Nonvoting member	no	9.7%	13.2%	14.1%	
Voting and/or nonvoting member	no	22.0%	24.5%	27.8%	
<u>Boards with Staff Serving as Members</u>					
Voting member	no	7.2%	5.7%	19.5%	
Nonvoting member	no	3.6%	1.9%	15.1%	
Voting and/or nonvoting member	no	10.8%	7.5%	33.6%	
<u>Appointment and Selection Process for PUBLIC Board Members</u>					
Gubernatorial (with legislative confirmation)		60%	57%		
Gubernatorial (without legislative confirmation)		17%	17%		
Appointed by legislature		3%	4%		
Popular election		5%	8%		
Other * PSU: 5 ex officio; 9 alumni-elected; 6 gubernatorial; 6 ag; 6 bus/industry	yes *	15%	15%		
<u>Conditions for Eligibility for Service on PUBLIC Boards</u>					
Voting members required to be appointed or elected by jurisdiction	no	27% yes	15% yes		
Residents of other states allowed to serve as voting members of the governing board	yes	37% yes	53% yes		
State employees prohibited from serving as voting members of the board (non ex-officio members)	no	37% yes	37% yes		
Political party affiliation of one or more members of the board					

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mandated by law	no	19% yes	13% yes		
		ALL PUBLIC	PUBLIC DOCTORAL AND	ALL PRIVATE	PRIVATE DOCTORAL AND
	PSU	n=53	RESEARCH UNIVERSITIES	n=507	RESEARCH UNIVERSITIES
			n=195		n=45
<u>Board Members Who Made a Financial Contribution to the Institution in the Last Year</u>					
Percentage of members who contributed annually					
90 to 100	yes	48%	52%	76%	
80 to 89		11%	9%	9%	
70 to 79		7%	9%	3%	
60 to 69		6%	7%	3%	
50 to 59		10%	11%	3%	
Under 50		18%	13%	6%	
<u>Number and Length of Board Meetings</u>					
Number of meetings per year	6	7.3	6.9	4	
Number of full-board meeting days per year	12	8.1	7.3		
Length of typical meeting in hours	7	4.5	4	5	
<u>Executive Sessions at Board Meetings</u>					
Can meet in executive sessions	yes	93%	94%	96%	100%
CEO participates in executive session	yes	96%	100%	88%	98%
Executive session included at each board meeting	no	39%	43%	55%	65%
Executive sessions limited to certain issues	yes	91%	90%	15%	7%
<u>Boards with Their Own Web Sites</u>					
Yes, board has own Web site, restricted to members		18%	18%	43.0%	56.0%
No, but public Web site has board information	yes	66%	65%	14.0%	
No		16%	18%	43.0%	
<u>Average Number of Board Standing Committees</u>					
	6*	5.1	5.5	8	10

\* PSU: includes executive committee

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	PSU	ALL PUBLIC n=53	PUBLIC DOCTORAL AND RESEARCH UNIVERSITIES n=195	ALL PRIVATE n=507	PRIVATE DOCTORAL AND RESEARCH UNIVERSITIES n=45
<u>Top Board Committees</u>					
Finance/budget	yes	88.9%		94.7%	
Audit	no	55.0%		64.6%	
Academic Affairs	yes	52.4%		79.1%	
Executive	no	42.9%		82.0%	
Education	yes	39.7%			
Buildings & Grounds	no	35.4%		51.9%	
Development & Advancement	no	32.8%		88.6%	
Student Affairs/Campus Life	no	27.5%		60.4%	
Trustees/Nominating/Governance	yes	23.8%		83.8%	
Personnel	no	21.7%			
Public/Government/Legislative Relations	no	14.8%			
Investment	yes	13.2%		47.5%	
Compensation	no	7.4%		20.8%	
Enrollment				32.1%	
Education (Academic & Student Affairs Combined)				25.5%	
Religious Mission/Identity				15.6%	
<u>Scheduling of Board Committee Meetings</u> <u>excluding the Executive Committee</u>					
Board committees meet in conjunction with regularly scheduled board meetings	yes	55%	56%	47%	52%
Board committees meet at a different time		21%	23%	20%	17%
Both or it varies		24%	21%	34%	31%

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	PSU	ALL PUBLIC n=53	PUBLIC DOCTORAL AND RESEARCH UNIVERSITIES n=195	ALL PRIVATE n=507	PRIVATE DOCTORAL AND RESEARCH UNIVERSITIES n=45
<u>Presidential Search</u>					
Board conducted a presidential search during past 5 years	no	60% yes	58% yes	47% yes	40% yes
Board hired an interim chief executive during past 5 years	no	34% yes	33% yes	19% yes	5% yes
Board used search consultant to assist with selection of current chief executive	no	67% yes	67% yes	64% yes	73% yes
Board hired own counsel to assist with initial agreement with current chief executive	no	32% yes	30% yes	43% yes	39% yes
Current chief executive reportedly hired own counsel to assist with initial agreement		21% yes	29% yes	23% yes	38% yes
<u>Reasons Boards Conduct Self-Assessments</u>					
Part of strategic- or campaign-planning or similar process	no	23.3%		74.5%	
Board policy	yes	17.5%		35.0%	
Board tradition	no	10.1%		28.0%	
Leadership transition	no	6.9%		26.1%	
To address a board-related performance issue	yes	9.5%		26.1%	
Required by regional accrediting body	no	6.9%		13.4%	
Other * best practice	yes *	4.8%		7.6%	