TO: The Special Committee on Governance and Engagement:

John E. Nau III, Co-Chair
Timothy B. Robertson, Co-Chair
Frank B. Atkinson
Hunter E. Craig
Marvin W. Gilliam Jr.
John A. Griffin
Victoria D. Harker
Bobbie G. Kilberg
George Keith Martin, Ex Officio

and

The Remaining Members of the Board and Senior Advisor:

Allison Cryor DiNardo
Helen E. Dragas
Kevin J. Fay
Frank E. Genovese
William H. Goodwin Jr.

Margaret N. Gould
Stephen P. Long, M.D.
Edward D. Miller, M.D.
Linwood H. Rose
Leonard W. Sandridge Jr.

FROM: Susan G. Harris

SUBJECT: Minutes of the Special Committee on Governance and Engagement Meeting on June 5, 2014

The Special Committee on Governance and Engagement of the Board of Visitors of the University of Virginia met, in Open Session, at 12:05 p.m., Thursday, June 5, 2014, in the Auditorium of the Albert & Shirley Small Special Collections Library of the Harrison Institute. John E. Nau III and Timothy B. Robertson, Co-Chairs, presided. All Board members were invited to participate in the discussion.

Present were Frank B. Atkinson, Hunter E. Craig, Marvin W. Gilliam Jr., John A. Griffin, Victoria D. Harker, Bobbie G. Kilberg, and George Keith Martin.

Also present were Allison Cryor DiNardo, Helen E. Dragas, Kevin J. Fay, William H. Goodwin Jr., Stephen P. Long, M.D., Edward D. Miller, M.D., Linwood H. Rose, Margaret N. Gould, and Leonard W. Sandridge Jr.
Present as well were Teresa A. Sullivan, Paul J. Forch, Susan G. Harris, Susan A. Carkeek, Donna Price Henry, Patrick D. Hogan, Patricia M. Lampkin, David W. Martel, Marcus L. Martin, M.D., Nancy A. Rivers, Colette Sheehy, John D. Simon, Thomas C. Skalak, Richard P. Chait, Debra D. Rinker and W. Thomas Leback.

Mr. Nau said he hoped the discussion would be open and direct, and that the members would avoid defensiveness. He said he wanted to put one issue to rest: the fiduciary duty of members of the Board is to the University first. He then introduced Mr. Richard Chait, the facilitator for the governance discussion. Mr. Robertson asked Mr. Chait to inform the Board about best practices and how to handle situations where members of the Board do not agree with each other, and the appropriate behavior of members under those circumstances.

Mr. Chait said he would do a 30-minute overview and then open the meeting for discussion. He said the Visitors are good musicians who have produced mediocre music.

Mr. Chait said the interviews of Board members and management brought to light many areas on which members agree with each other and with management, including a widely shared affection and admiration for the University, and a desire for a viable financial model that addresses the tension between affordability and excellence. There is agreement that the Board is diligent, industrious, and hard-working, but their time is not always well-utilized. There is also some agreement about what the Board could do better, including consistently governing at the right altitude with the right time horizon. Many espouse an interest in developing long-term policy and reducing the disproportionate attention to short-term matters. There is a prevalent sentiment to do better.

Mr. Chait asked in the interviews what this Board’s legacy should be, and six members said it should be more effective governance.

Challenges facing the Board include that the Board is not a team, not collegial, and not unified. Administrators view the Board as divided and fractured, down to the fundamental question about what entity the Board serves – the University or the Commonwealth.

Mr. Chait discussed the hypotheticals he gave Visitors and management about who, the Board or management, should decide certain matters. He said there was no majority view within the Board on five hypotheticals and on four hypotheticals management differed from the majority of the Board.

Mr. Chait said the interviews identified an unsettled working relationship between the Board and senior administrators, with each group wanting the other to demonstrate more trust and more respect. He said Board members sought three changes: 1) administrators should communicate more frequently and more openly; 2) administrators should be less defensive and listen more, i.e. be more open to debate; and 3) the
Board and management should collaboratively establish more substantively significant agendas.

From the management perspective, the Board should: 1) operate as a team with a workable code of conduct; 2) exhibit a collegial relationship and tone; and 3) think critically about issues and offer positive reinforcement. He said both groups want more time spent on more important issues. With both groups exhibiting self-criticism, there is a platform for good will. He mentioned there is uncertainty about the proper role of Board members in operational matters.

Some big issues that must be addressed are the Board’s primary fidelity, and the appropriate level of “watch-doggedness”. Both are about basic assumptions. He said the Association of Governing Boards has a commission on the fidelity issue, and they seem to be heading in the direction of concluding that governing boards have a primary fiduciary duty to the institutions they serve, but at the same time they must be mindful of their public purpose. He said this is different from the private sector that governs toward a single objective.

Mr. Chait recommended setting a 12- to 18-month agenda, which requires budgeting time for the important issues and discarding the unimportant ones. Mr. Chait said it is necessary to identify the “whales in the pool”, i.e. focus on the things that are important, and determine the areas where members are in agreement with each other. Self-discipline is important and boards tend to lack it.

There was substantial discussion about how individual members should behave around a decision that has been made by the Board, and who has the authority to address the media on issues before the Board. Mr. Chait said many boards have codes of conduct with standards on this issue. Public institutions tend to have "softer" statements than the private institutions. One member said it is important to allow individual opinions and views and not to suppress those views. Mr. Chait said there is a mantra with boards that higher education should be run more like a business, but board members do not behave like corporate board members when they publicly challenge decisions made by the board; this would not be tolerated in the private sector.

Another member observed that orientation of new members should include a discussion of the differences between public institutions and the private sector. He observed that public institutions are all about process and change happens slowly.

Mr. Chait said orientation should focus on duty of care, culture of the institution, shared governance, and similar matters. An initial orientation should be followed up with another one a year after a new member begins.

President Sullivan observed that she would like the Board to focus on the University of Virginia’s whales rather than others’ whales. She
said on occasion the University has been silent on matters occurring elsewhere, but they may not be our issues.

One member observed that there are fault lines around the substance and direction of higher education; however, there is a fundamental difference between coming to the Board believing the University is doing well and believing the University and higher education are broken.

Substantial discussion ensued about the duties of loyalty and fidelity. Several members expressed the view that this issue required in-depth discussion, however, others said they did not see a conflict—they believe they serve to do what is in the best interests of the University and this is not in conflict with their public mission. Mr. Nau said there would be more discussion of this issue at future meetings.

Mr. Chait said the ingredients are there for improvement because the Board members have shared frustration and shared aspiration for what the Board could be. There are no insurmountable obstacles to be as effective in governing as the University of Virginia is as a public university, and it is one of the best in the country.

Mr. Nau said he plans to have a Governance meeting at the end of July focused on a code of conduct and other issues. He said he appreciated the participation of everyone in the discussion; it indicates that this Board can have an open, public discussion about governance. Mr. Robertson concurred.

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Upon motion, the meeting was adjourned at 2:00 p.m.

SGH:dr
These minutes have been posted to the University of Virginia’s Board of Visitors website: http://www.virginia.edu/bov/specialcommminutes.html