

## **MINUTES OF THE JULY 1, 2008, GOVERNANCE AND NOMINATING COMMITTEE MEETING**

The Governance and Nominating Committee (“the Committee”) of the Board of Regents of the Smithsonian Institution held a meeting on July 1, 2008, beginning at 2:00 p.m. in the Smithsonian Castle in Washington, D.C. In attendance were Committee Chair Shirley Ann Jackson, members Diana Aviv, Christopher Dodd, Doris Matsui, and Patricia Q. Stonesifer, all participating by teleconference, and Roger W. Sant, who participated in person *ex officio* as Chair of the Board. Also present by invitation of the Committee were Secretary G. Wayne Clough; Chief of Staff to the Regents John K. Lapiana; General Counsel John E. Huerta; Assistant General Counsel Craig Blackwell; Assistant General Counsel Elaine Johnston; Inspector General A. Sprightley Ryan; Director of External Affairs Virginia B. Clark; Office of Policy and Analysis Director Carole Neves; Office of the Regents Program Officer Grace Jaeger; and Assistant to Senator Dodd Colin McGinnis. Assistant to Congresswoman Matsui Alexis Marks participated by teleconference. Ms. Aviv left the meeting following the discussion of the Governance and Nominating Committee charter.

Dr. Jackson called the meeting to order. She noted that Senator Dodd had recently been appointed to the Committee and welcomed him to his first meeting. Dr. Jackson also noted that Robert P. Kogod had rotated off the Committee and expressed the Committee’s appreciation for Mr. Kogod’s efforts on the Committee. Dr. Jackson welcomed Dr. Clough to his first meeting of the Committee and congratulated him on his first day in office as the Smithsonian’s 12th Secretary. The following matters were discussed:

### **Approval of Minutes**

The Committee approved the minutes of its April 14 and May 5, 2008, meetings.

### **Report of the Chair**

Dr. Jackson advised the Committee that John Huerta will retire as general counsel in September 2008 after 13 years of Smithsonian service. She thanked Mr. Huerta for his hard work, especially over the last year as the Regents developed and implemented their governance reform agenda. A search committee has been formed to advise on the selection of a new general counsel.

Dr. Jackson noted that the Government Accountability Office (GAO) issued its report on Smithsonian governance reform on May 15, 2008. The report contains four recommendations, all of which were embraced by the Board. According to the Smithsonian’s Office of Government Relations, the report was well-received in Congress. Dr. Jackson reported that the House Interior Appropriations Committee has proposed in its appropriations bill mark-up that the Secretary reconstitute the Independent Review Committee to review progress on the governance reform recommendations for the Institution and report its findings to the Regents, the Secretary, and the Congress by February 15, 2009. Smithsonian staff is in discussions with Senate and House members and staff regarding the appropriate mechanism and timing of an independent review of Smithsonian governance reform implementation.

Dr. Jackson reminded the Committee that the first annual public meeting of the Board of Regents is scheduled on November 17, 2008. The agenda and format will be designed to support the

strategic planning effort. BoardSource will meet with Secretary Clough in August to solicit his ideas on how to structure an effective public meeting.

The board assessment instrument previously approved by the Committee will be distributed later in the month. Survey results and proposed follow-up steps will be considered by the Committee at the next meeting.

The Chair noted that a draft matrix entitled “Governance Website Content for Selected Peer Organizations” had been distributed to the Committee. The matrix compares Smithsonian transparency efforts with other similar organizations. Staff welcomes any comments and suggestions. A final version of this document will be circulated for the Committee’s next meeting.

### **Approval of Committee Charters**

The Committee considered proposed revisions to its charter. The Committee agreed to revisions of Section V: *Responsibilities and Duties of the Governance and Nominating Committee* to provide that the Committee will regularly receive reports on decisions and actions taken by the Executive Committee between Board meetings and that the Committee will recruit and nominate a Regent to serve as Vice Chair of the Board as well as the Chancellor and Chair of the Board.

It was pointed out that the proposed charter continues to provide that non-Regents may serve on the Committee even though it was the consensus of the Committee that this Committee should be limited to Regent members. Ms. Aviv remains a current non-Regent member of the Committee, however, and she has been asked to remain on the Committee through the implementation of the governance reform recommendations. It was suggested that retaining the flexibility to have non-Regent members could be useful if the Board or Committee should decide in the future that the appointment of a non-Regent member would provide needed expertise. The Committee agreed that the charter should continue to provide for the possibility of non-Regent members and that this provision will be reconsidered after Ms. Aviv transitions off the Committee.

The Committee questioned a new provision in the proposed charter that requires members to be free of any conflict of interest with respect to matters before the Committee. It was noted that a prohibition of potential conflicts was an inappropriate standard. Potential conflicts should be managed through disclosures and recusals, if appropriate. The General Counsel will propose revised language to address conflicts of interest.

The Committee voted to approve the proposed revisions to its charter, subject to further consideration of the provision on conflicts of interest, and recommend its adoption by the Board of Regents.

The Committee next considered charter revisions proposed for the Compensation and Human Resources Committee, Facilities Committee, and Executive Committee, as well as proposed charters for the new Advancement Committee and Strategic Planning and Programs Committee. All of the proposed committee charters follow the previously approved template. Only the Compensation and Human Resources Committee has approved its proposed revised charter. The other committees have the draft charters under consideration. The Committee voted to endorse the Compensation and Human Resources charter and recommend its adoption by the Board of Regents, and to endorse the framework of the other committee charters under review.

## **Report of the Inspector General**

Dr. Jackson asked the Inspector General to give a brief overview of two reports her office has issued on travel and expenses of former Secretary Lawrence Small and former head of Smithsonian Business Ventures Gary Beer. The Audit and Review Committee will review the reports at its next meeting. Members of the Committee suggested that clarification of when it is appropriate for the Secretary's spouse to travel with him at the Smithsonian's expense would be beneficial and may require further action by management.

## **Indemnification and Freedom of Information Policies Update**

Mr. Huerta provided an update on the status of revisions to the Smithsonian's Freedom of Information Act (FOIA) policy and to the Board of Regents' policy on indemnification. Mr. Huerta reported that he and his staff have had productive meetings concerning the FOIA policy with outside interest groups that have been facilitated by Senator Leahy's staff. Mr. Huerta believes that the draft revised policy, which is modeled on the policy of the Government Accountability Office, accommodates the Smithsonian's interests and addresses the concerns of the interest groups. The revised draft has been shared with the outside groups but no comments have yet been received from them. Mr. Huerta recommended that the Institution move forward to adopt this policy revision.

Mr. Huerta gave a brief summary of the draft indemnification policy his office has proposed and compared it with other existing standards. He has not yet received a response from Assistant to the Chief Justice Jeffrey P. Minear concerning whether the proposed policy addresses the concerns previously expressed by Mr. Minear. Mr. Huerta will report back to the Committee after he has received Mr. Minear's comments.

## **Office of General Counsel Resources**

The Governance Committee report recommended that this Committee review whether the resources available to the Office of General Counsel were adequate to provide for its effective functioning, particularly in view of the General Counsel's role as a "gatekeeper" for the Board of Regents. Mr. Huerta briefly discussed the report he provided to the Committee on resources available to his office. He noted that salary savings resulting from his retirement and other upcoming retirements will allow hiring of one additional lawyer. Mr. Huerta recommended that a complete review of the functions and resources of the office should be deferred until his successor is in place. Secretary Clough will work with Mr. Huerta on addressing immediate needs of the office.

## **Report of the Task Force on Smithsonian Advisory Boards**

Ms. Clark gave a brief overview of the work of the staff task force on Smithsonian advisory boards. She noted that this group was created in response to recommendation number 13 of the Governance Committee report. The most significant recommendations of the task force include 1) initiating an orientation program for new advisory board chairs; 2) providing reports to advisory board chairs on major Regent actions and issues; 3) considering the creation of an annual planning retreat to include Regents, board chairs, the Secretary, and senior staff; 4) expanding the practice of appointing advisory board members to Regents' committees; and 5) assigning each Regent on a rotating basis to a program area (art, history, or science) for deeper

engagement with units. Ms. Clark noted that the task force concentrated on issues relating to improving communications between the Regents and advisory boards and did not address broader issues, such as the appointment process for advisory board members, the appropriate functions of advisory boards, or advisory board bylaws.

The Committee engaged in a thorough discussion of the issues raised by the task force report, as well as other issues concerning the effectiveness of advisory boards. It was noted that some of the task force recommendations would require significant time commitments and that further consideration would be necessary to determine whether they would be effective mechanisms for enhancing the role of the advisory committees. The newly formed Strategic Planning and Programs Committee expects to consider issues relating to advisory boards and strategies to improve their effectiveness. Advisory board members also should be involved in the strategic planning process and on the new Advancement Committee and its campaign-planning efforts.

It was suggested that the Regents should further consider issues beyond those addressed by the task force. Mr. Sant reported that he has met with most of the board chairs and that their primary concerns include strengthening their role in reviewing and advising on the programs of their units, providing financial literacy through advice on budgets and planning, and having a voice in evaluating the effectiveness of unit directors.

Dr. Jackson noted that the Office of Policy and Analysis (OP&A) had prepared the report *Smithsonian Advisory Boards as an Instrument of Governance*, which was included for information purposes in the Committee materials. The report draws on OP&A's comprehensive review of Smithsonian advisory boards conducted in 2001–02; its survey of Regents, senior staff, and advisory board members conducted in 2007 as part of the Regents' governance reform efforts; and a review of relevant literature and comparable organizations. Dr. Neves provided a brief summary of the report and noted that she has found that Smithsonian advisory board members have a desire to be more engaged in the work of the Smithsonian, but understand that it is not their role to engage in the governance or management of the Institution.

The Committee noted that recommendation number 13 of the Governance Committee report requires the Regents to look at the broader issues that were not addressed by the task force. The Regents should seek ways to engage the advisory boards more effectively to assist the Regents in their primary areas of responsibility, including oversight, securing necessary resources, and program planning. Including advisory board members on the Strategic Planning and Programs Committee, as well as the Advancement Committee, addresses some of these issues and others will be addressed through the strategic planning process. The Committee accepted the spirit of the task force report and requested that the Secretary propose specific recommendations for enhancing the Regents' engagement with advisory boards, which would be considered by the Committee at its next meeting.

### **Nomination for Vice Chair of the Board**

Dr. Jackson reminded the Committee that at a previous meeting it had reached a consensus to nominate Ms. Stonesifer to the new position of Vice Chair of the Board. The Committee concurred in this action and a written ballot to vote on this nomination will be circulated to the Committee following the meeting.

**Approval of Committee Assignments**

The Committee approved the recommendations for new committee assignments that were circulated in advance of the meeting. The proposed assignments will be presented to the Board for review and approval at its September 2008 meeting.

**Approval of Updated Position Descriptions**

The Committee approved the revisions to the position descriptions for Chancellor and Board Chair, which reflect the prior recommendation of the Committee that was approved by the Board of Regents at its May 2008 meeting.

**Nomination and Election of New Chair of the Board**

Dr. Jackson noted that Mr. Sant's term as Chair of the Board expires in January 2009. Mr. Sant suggested that electing his successor at the September meeting of the Board, to be effective following the January 2009 meeting, would aid in the transition to a new Board Chair. The Committee agreed to this suggestion and will recommend it to the Board. The Committee also agreed to nominate Ms. Stonesifer to fill the position of Chair of the Board, effective January 2009. A written ballot to confirm this recommendation and nomination will be circulated to the Committee following the meeting.

**Bylaw Amendments**

Several bylaw amendments were circulated to the Committee for review and approval. The proposed amendments include those necessary to carry out the Committee's recommendations on size, structure, and composition of the Board that were adopted by the Board of Regents at its May 2008 meeting. In addition, revisions to bylaws concerning the General Counsel and the Chief Financial Officer and new bylaws concerning the Inspector General and the Chief of Staff to the Regents were proposed. Due to lack of time for discussion of the bylaw amendments, a written ballot for approval of the amendments that reflect the Committee's previously agreed-upon recommendations will be circulated to the Committee following the meeting.

**Regent Nomination Update**

Dr. Jackson advised the Committee that she and Mr. Sant are working to engage outside assistance from an executive search firm to strengthen the candidate pool for the Regent vacancy, vet the background of potential candidates, and engage potential candidates to determine their interest, as well as to advise the Committee on a recommended process for filling future vacancies.

**Adjournment**

There being no further business, the meeting was adjourned at 4:45 p.m.

Respectfully submitted,

Shirley Ann Jackson, Chair