

## **MINUTES OF THE JULY 27, 2009, 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 27, 2009, beginning at 10:10 a.m. in the Smithsonian Castle in Washington, D.C. Participating were Committee Chair Shirley Ann Jackson\* and Committee member Representative Doris Matsui\*. In attendance were Chief of Staff to the Secretary Patricia Bartlett, Assistant General Counsel Craig Blackwell, Assistant to Representative Matsui Julie Eddy,\* Office of the Regents Program Officer Grace Jaeger, Chief of Staff to the Board of Regents John K. Lapiana, General Counsel Judith Leonard, Assistant to Senator Dodd Colin McGinnis\*, and Inspector General Sprightley Ryan.

The Chair called the meeting to order.

### **APPROVAL OF MINUTES**

The Chair asked for comments on the draft minutes of the March 23, 2009, meeting. There were none and the minutes were approved.

### **REPORT OF THE CHAIR**

Dr. Jackson reported that progress had been made on the official appointment of Dr. France Córdova to the Board of Regents. She said that Dr. Córdova had met with members of the House Administration Committee and that her appointment was expected in time for the September 21, 2009, full Board meeting. Dr. Jackson thanked Congresswoman Matsui and her Regent colleagues in the House of Representatives for their work in securing Dr. Córdova’s appointment.

Dr. Jackson said that the Government Accountability Office (GAO) recently conducted a survey of governance practices and the role of inspectors general at a number of designated Federal entities. She said that the final report was released on April 20, 2009, and a Web link to the report would be provided for interested members.

### **CONSENT AGENDA**

The Committee approved the following motions *en bloc*:

**VOTED** that the Committee recommends that the Board of Regents approves the proposed slate of candidates for appointment or reappointment to seven Smithsonian advisory boards.

**VOTED** that the Committee recommends that the Board of Regents approves the appointment of Paul Neely as Chair and Judy S. Huret and Gary B. Moore as Vice Chairs of the Smithsonian National Board for three-year terms effective October 1, 2009.

\* *participated by teleconference*

**VOTED** that the Committee recommends that the Board of Regents reelect Patricia Q. Stonesifer as Chair of the Smithsonian Institution's Board of Regents for a one-year term effective January 21, 2010.

**VOTED** that the Committee recommends that the Board of Regents reelect Alan G. Spoon as Vice Chair of the Smithsonian Institution's Board of Regents for a one-year term effective January 21, 2010.

**VOTED** that the Committee recommends that the Board of Regents appoint George E. Hartman as a non-Regent member to the Facilities Committee.

### **PROPOSED BYLAW REGARDING NON-REGENT COMMITTEE MEMBERS**

Dr. Jackson led a discussion on a proposed bylaw concerning the duties and responsibilities of non-Regent members of Board committees. The proposed bylaw provided in part that non-Regent committee members exercise the same duties and responsibilities as Regent committee members.

Committee members and staff discussed the role of non-Regent committee members and whether the bylaw reflected that role. The Committee noted that non-Regent members are valuable to the work of the committees, but that non-Regent members do not go through the same nomination and appointment process as Regents and do not exercise the statutory authority of Regents. The Committee discussed whether standards of conduct for non-Regent committee members could be established through guidelines rather than a bylaw amendment.

Ms. Leonard and Mr. Blackwell reviewed the ethical and disclosure obligations of Regents under the Board of Regents Ethics Guidelines and the Board of Regents Annual Disclosure Statement. The Committee discussed whether those obligations should apply equally to non-Regent committee members. Mr. Blackwell noted an additional disclosure obligation that applied to the Regents in conjunction with the Institution's IRS Form 990. He noted that that disclosure obligation would likely change as the IRS had recently revised the Form 990.

Mr. Lapiana noted that the GAO had raised the issue of non-Regent duties and responsibilities while preparing its 2008 report on governance at the Smithsonian. Dr. Jackson asked staff to provide information about the GAO's views. Committee members agreed that further research and discussion were needed and tabled the proposed bylaw amendment. Dr. Jackson asked staff to propose standards for disclosure of conflicts and potential conflicts of interest for non-Regent committee members. Dr. Jackson also asked staff to further consider whether such standards should be memorialized in a bylaw, in committee charters, in Regent guidelines, or in some other format.

### **SELF ASSESSMENT TEMPLATE**

Members received proposed Board and committee self-assessment templates in the meeting materials. The full Board assessment was slightly modified from the one used in fiscal year 2008. Members discussed and approved the templates with the following

comments deleted from the full Board assessment:

1. Our Board's size is about right.
2. Any standing committee I serve on completes its tasks in an effective and timely way.
3. The bulk of committee meetings are spent on substantive deliberation of pending decisions and critical issues facing the Smithsonian and its units.

It was noted that the assessments would be included in the September 21, 2009, full Board meeting materials and presented by Dr. Jackson to the Board. The assessments would then be administered in October 2009.

### **BOARD RESPONSES TO REGENT NON-PERFORMANCE**

In its 2008 report on the effectiveness of the Smithsonian's governance reforms, the GAO recommended that the Board should "evaluate" what actions could be taken in the "event of persistent neglect of duties" by a Regent. [Unlike most boards, the Regents do not have the authority to remove a board member. The Congress has sole authority to remove a Regent and exercised that authority only once, in 1863, to remove George E. Badger for giving aid and comfort to the Confederacy.] As part of the governance reforms, the Regents strengthened their oversight regarding board members by clarifying Regents' duties and responsibilities; requiring annual self-assessments; and charging the Governance and Nominating Committee with overall Board assessment.

In response to GAO's recommendation, staff proposed steps that could be taken in the event of "persistent neglect of duties" by a Regent. After discussion by Committee members, the proposal was modified and accepted as follows.

#### **Board Approach to Regent Performance**

Actions to be taken in the event of "persistent neglect of duties" by a Regent:

- 1) initial counseling by the Chair of the Governance and Nominating Committee in conjunction with the Board annual self-assessment, followed, as necessary, by counseling by the Chair of the Board, and
- 2) should these discussions fail to result in improvement, referral to the full Board for appropriate action.

### **ADJOURNMENT**

At 11:05 a.m. the Committee went into executive session, after which the meeting was adjourned at 11:15 a.m.

Respectfully submitted,

Shirley Ann Jackson, Chair