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# College and University Governance: The University of Virginia Governing Board's Attempt to Remove the President<sup>1</sup>

(MARCH 2013)

## I. Introduction

On January 11, 2010, the Board of Visitors of the University of Virginia, the university's governing body, announced the appointment of Dr. Teresa A. Sullivan as the university's president, the first woman to hold that position. She succeeded Dr. John T. Casteen III, who had served in that office for twenty years. The appointment was made after a five-month search conducted by a search committee that included board members, faculty members, administrators, and students, assisted by an executive search firm. One of the board members serving on the search committee, Ms. Helen E. Dragas, was later to be elected by the board as rector—the chair of the board and of its executive committee. She figures prominently in the events reported below. Dr. Sullivan was extolled by the then rector and chair of the search committee, Mr. John O. Wynne, for the depth and breadth of her experience in higher education.

On June 8, 2012, after nearly two years in her office, President Sullivan met with Rector Dragas and Vice Rector Mark J. Kington at their request. They asked President Sullivan to resign. She agreed. The acceptance of her resignation, to be effective August 15, was announced on June 10. Instead of what the rector shortly thereafter stated she thought would be a one-day event, the announcement provoked an uproar among the faculty and administration, students and staff members, and alumni and donors, unprecedented in the institution's living memory, including a vote of "no confidence" in the board of visitors by the faculty senate. The protest continued for a fortnight, and it eventually involved the governor of Virginia. On June 26, 2012, the board of visitors voted unanimously to continue Dr. Sullivan in her presidential office.

This episode resonated well beyond the confines of the University of Virginia. It triggered intense national press coverage and drew the prompt attention of the regional accrediting agency. The AAUP expressed interest almost from the start. The Association's annual meeting issued a resolution in support of the senate on June 16, and on June 21, in a letter addressed to the members of the board of visitors, the Association's president stated that the AAUP had "been following with intense interest reported developments over the past few days in the matter of President Teresa Sullivan and has authorized an investigation of the case." The letter, which

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1. The text of this report was written in the first instance by the members of the investigating committee. In accordance with Association practice, the text was edited by the Association's staff, and with the concurrence of the investigating committee was submitted to the Committee on College and University Governance. With that committee's approval, the report was then sent to the chair of the university's governing board, to the university's president and other administrative officers, to the chair of the faculty senate, and to other persons concerned. In light of the responses received, this final report has been prepared for publication.

was accompanied by a copy of the June 16 resolution, concluded, “We earnestly hope, consistent with what appear to be the wishes of the vast majority of the University of Virginia faculty, academic staff, and student body, that the board will now rescind its previous decision and that President Sullivan will agree to remain in office.” After President Sullivan assented to her continuance, the national AAUP staff informed all concerned that, even though the matter had what it termed “a happy ending” for the president and her supporters, the investigation would proceed inasmuch as the events posed larger “vital issues” of concern to the university and to the broader academic community.

The undersigned were constituted as the Association’s committee of inquiry. We visited the university on November 26 and 27, 2012, were cordially received, and were able to meet for full and frank conversations with President Sullivan; Provost John D. Simon; Senate Chair George M. Cohen; several deans, department chairs, and faculty members; and former president Casteen and other former administrators. The board of visitors declined to meet with the committee, but Rector Dragas offered to respond to questions if they were set forth in writing.<sup>2</sup> During our investigation we asked several of the principals what questions they would put to her. On the basis of their responses, we formulated a brief set of questions that the committee chair transmitted to Rector Dragas on December 3, 2012. The committee wishes to express its appreciation to all those who met with us and shared their accounts and thoughts so candidly and to thank Professor Walter Heinecke, president of the UVA AAUP chapter, for making the necessary arrangements for our visit.

In what follows we will briefly describe the institutional setting and then set out the sequence of events in greater detail. We will next discuss where those events leave the University of Virginia going forward. At the close we will take up the larger “vital issues” that this episode has raised for the academic community and the broader public.

## II. Institutional Setting

The University of Virginia, founded by Thomas Jefferson in 1819, is one of the nation’s foremost comprehensive research institutions. Located in Charlottesville, seventy miles from Richmond and

120 miles from Washington, DC, the university is accredited by the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) to award bachelor’s and advanced degrees in a large number of undergraduate, graduate, and professional programs. As of fall 2011, UVA enrolled 14,591 undergraduate and 6,515 graduate students. It is home to approximately 2,700 full-time faculty members, nearly a thousand of whom are in the medical school. Although UVA is a state university, the state’s contribution to the institution’s budget in fiscal year 2011–12 was less than 6 percent, down from 24 percent only twenty years earlier.

The corporate powers of the university are placed by law in the hands of a board of visitors. Until this past year the board consisted of sixteen members. A seventeenth member was added in 2012. Board members are appointed by the governor and must be confirmed in office by both houses of the state legislature.<sup>3</sup> They serve for staggered four-year terms, renewable for one term. Virginia law requires that at least twelve be alumni of the university, at least twelve be appointed from the commonwealth at large, and at least one be a physician with experience in academic medicine; the latter requirement was added in 2012 as part of the board’s expansion. A nonvoting student member also serves on the board. The board has no faculty membership.

The law makes provision for the university’s alumni association to nominate candidates for vacancies on the board, but the governor is not required to appoint from its list. The investigating committee was given to understand that, at least in recent years, governors have not been persuaded to select from that list. An ad hoc committee appointed by the governor advises on the qualification of nominees and applicants (for applicants there are), but the committee’s role is opaque. Few seemed to know that such a body existed, let alone who was consulted, and questions have been raised whether it has functioned at all in recent years. According to everyone with whom the investigating committee spoke, the critical factor leading to appointment to what is a much sought-after post, considered to be among the most prestigious the governor can make, at least until last summer, has been the amount of financial contribution

2. See the addendum below, which includes the chair’s letter to Rector Dragas and her response to the staff.

3. The law of 1818 created a board of thirteen visitors to be appointed by the president and directors of the Literary Fund for terms of seven years. J. W. Randolph, *Early History of the University of Virginia* (Richmond: C. H. Wynne, 1856), 427–32.

the appointee has made to the governor's electoral campaign. The governor's July 2012 appointments included a former university president and three who have served on the governing boards of other universities.

Rector Dragas, a UVA alumna with a bachelor's degree in economics and foreign affairs awarded in 1984 and an MBA from the Darden School received in 1988, is a successful real-estate developer from Virginia Beach, Virginia. Most of the other members of the board also come from business backgrounds, several, like Ms. Dragas, from successful medium-sized enterprises; few have had experience with large, complex business organizations or the administration of institutions of higher education.

The law requires the visitors to meet at least once a year. They elect a rector and a vice rector who presides in the absence of the rector. The vice rector automatically succeeds the rector at the expiration of the latter's term. A special meeting of the board may be called by the rector or any three visitors. In addition, the board is to appoint an executive committee of not fewer than three nor more than six members. The board's *Manual*, essentially its bylaws, provides for a six-member executive committee. At the time of these events, a quorum of the executive committee was one-third of its membership, that is, two members. Thus the rector and the vice rector, acting together, were a lawful quorum authorized to act for the board.

On November 11, 2011, the board of visitors adopted a policy for an annual presidential evaluation. It provides that the rector, the vice rector, and the most recently retired former rector be constituted as an assessment committee. The president is to submit a self-evaluation and each member of the board is asked for his or her observations on the president's performance, to be submitted to the assessment committee. That committee is to meet with the president and report back to the board. The policy makes no provision for consultation with the faculty.

Because of the turnover in board membership—up to a quarter of the board being newly appointed each year—there is an obvious need to educate the new members about the university, about its mission and manner of administration, and, critically, about their role as visitors. This function has been partially performed through a voluntary one-day program administered by the State Council of Higher Education for Virginia (SCHEV). The orientation program for the incoming board members who would fill out the board in 2011–12 involved the participation of the

American Council of Trustees and Alumni (ACTA), a group that identifies itself as promoting “engaged trusteeship.”<sup>4</sup>

With respect to UVA's administrative structure and its chief officers, President Sullivan holds a PhD in sociology from the University of Chicago. Her expertise lies in social demography, especially economic and labor-force marginality. From 1982 to 2006, she served on the faculty of the University of Texas at Austin and in its administration, rising to the post of executive vice chancellor for academic affairs (2002–06). She went on to become provost and executive vice president for academic affairs at the University of Michigan before relocating to UVA. At Michigan, she oversaw the implementation of a new budgetary system similar to what Virginia was undertaking, experience that made her attractive to the search committee. At the time of her appointment at UVA, President Sullivan was explicitly instructed not to carry out a strategic plan for the university's academic program. As she stated in a report requested by Rector Dragas and Vice Rector Kington in early May 2012, “The University had already conducted a series of strategic plans, and the faculty were said to be fatigued and discouraged by the lack of follow-through on those plans.”

The penultimate level of administration at UVA is filled out by a set of vice presidents. Relevant for our purposes here are two—the chief operating officer (COO) and the executive vice president and provost. Both administrative officers report to the president, but the COO could also deal with the board directly, and sometimes did. Under President Casteen, the position of provost was generally considered to be weak. It lacked significant authority for the allocation of funds and was held by a series of administrators over the course of his presidency. For the duration of that twenty-year period the chief operating officer was Mr. Leonard Sandridge, whose long career had been one of service to the university, commencing in the position of auditor. According to all accounts, during President Casteen's term of office, sometimes turbulent regarding his relationship to the visitors,

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4. SCHEV's executive director informed the Association's staff that Anne D. Neal, the president of ACTA, was suggested as a speaker by a member of SCHEV's board. The executive director added that the state's secretary of education also recommended that she be given a speaking role in the orientation for new visitors. Ms. Neal's PowerPoint presentation can be found at <http://www.schev.edu/bov/2011/NatlIssuesinHE-Neal.pdf>.

Mr. Sandridge performed the invaluable role of informal intermediary between members of the board (and a succession of rectors) and the president—as a channel of communication, anticipating problems, and, when they arose, quietly effecting resolutions behind the scenes. When Mr. Sandridge retired, on July 1, 2011, life-sized cardboard cutouts of him were affectionately set about the campus; one is displayed still in President Sullivan’s office.

Following the Sandridge retirement, President Sullivan appointed Michael Strine to the post of chief operating officer. He will figure in the events under investigation, but only in the shadows. He resigned on August 7, 2012.

President Sullivan filled out her “senior team,” as she termed it, with the appointment of John Simon as provost. Professor Simon received a PhD in chemistry from Harvard University and held professorships at the University of California, Los Angeles, and Duke University, serving as vice provost for academic affairs at Duke from 2005 until his appointment at Virginia in 2011. He too will figure in the events under investigation. He remains in office and appears to enjoy widespread confidence among both administrators and faculty members.

The University of Virginia makes provision for a faculty senate. The senate’s constitution sets out its purpose as follows:

The Faculty Senate represents all faculties of the University with respect to all academic functions such as the establishment and termination of degree programs, major modifications of requirements for existing degrees, and action affecting all faculties, or more than one faculty, of the University. *Additionally, the Senate shall advise the President and the Rector and Board of Visitors concerning educational and related matters affecting the welfare of the University.* [Emphasis added.]

The emphasized clause is as much as the constitution says of the senate’s role in the removal of an incumbent president or, for that matter, any other matter not specifically respecting an “academic function.”

According to both administrators and faculty members who met with the investigating committee, the system of faculty governance at UVA has been relatively weak. Selection of senators is on occasion, and out of necessity, carried out by appointment by department chairs or deans in lieu of election, because faculty members in some academic units do

not consider it a valued service. Faculty governance at the school and department level is even more undeveloped. President Sullivan and Provost Simon stated to the investigating committee, however, that they are committed to strengthening the faculty’s role in institutional governance. Both have stated that change requires the active participation and support of the faculty. This demands participation by faculty bodies that are authorized to represent the faculty and, when agreement is reached, have the confidence of the faculty that such assent is meaningful. Professor George Cohen of the School of Law is the chair of the senate. He was elected to that position shortly before the events under investigation.

### III. The Removal and Reinstatement of President Sullivan

The events that occasioned this report are as follows.

#### A. A Fortnight of Action and Reaction

The reasons for Rector Dragas’s dissatisfaction with President Sullivan’s performance have yet to be fully explained. As much as has been stated publicly will be recounted in the pages that follow; but it appears that her dissatisfaction was shared by Vice Rector Kington. Over the course of several weeks before June 8, 2012, Ms. Dragas spoke to each member of the board individually to enlist support in demanding President Sullivan’s resignation. It was reported to the investigating committee that only one member of the board disagreed outright. The other members acquiesced, some, perhaps most, on the ground that Ms. Dragas had closer contact with the institution and simply knew more. None of them took cognizance of the board’s guidelines on presidential evaluation adopted only a few months before. None sought a face-to-face meeting of the board. And none contacted the president directly.

On June 2, Ms. Dragas and Mr. Kington drafted a press release announcing President Sullivan’s resignation. Four days later they informed the governor, Robert McDonnell. The next day, June 7, they asked to meet with President Sullivan the following day. As she had a meeting scheduled away from campus for the time they proposed, it was set for a later hour.

On June 8, the rector and the vice rector met with the president. They informed her that they had the votes of a majority of the board to unseat her, that she had no support within the faculty, and that it would be better that she resign than face a board meeting and the ensuing public controversy. President Sullivan told

the investigating committee that the demand came as a total surprise, that no hint had been breathed of what was afoot. Nor did she believe that she lacked the support of the faculty. Nevertheless, she was persuaded at that moment that the turmoil necessarily resulting from a refusal to resign would harm the university. (She also observed that, with hindsight, the idea that harmful publicity could be avoided by her resignation was a misjudgment.) The rector and vice rector requested an answer within twenty-four hours.

On the morning of June 10, a Sunday, the executive committee of the board of visitors, consisting of Rector Dragas, Vice Rector Kington, and member Hunter Craig, met, went into executive session, and then announced that it had accepted the resignation of the president effective August 15. The rector and vice rector sent out an e-mail message to the university community announcing the resignation, expressing appreciation to President Sullivan for her “effective stewardship.” It quoted her as saying that she had “a philosophical difference of opinion” with the board. (President Sullivan told the investigating committee that she had no idea what that “philosophical difference” referred to and that she and the rector had agreed to use the term “because some reason was needed for the press release.”) The message went on:

For the past year, the Board has had ongoing discussions about the importance of developing, articulating, and acting on a clear and concrete strategic vision. The Board believes that in the rapidly changing and highly pressurized external environment in both health care and in academia, the University needs to remain at the forefront of change.

We assure you that the Board of Visitors will move expeditiously to name an interim president and to begin a search for a new leader. We hope you will assist us as we move through this time of change and strive for a smooth and productive transition.

On the same day, Governor McDonnell issued a statement thanking President Sullivan and expressing confidence in the board’s conduct of a “thorough and diligent search for the next President.” And on that day, Peter Kiernan, chair of the board of trustees of the Darden School Foundation—the Darden School is the university’s graduate school of business—sent an e-mail message to his fellow trustees. “The decision of the Board of Visitors to move in another direction,” he wrote, “stems from their concern that the governance

of the University was not sufficiently tuned to the dramatic changes we all face: funding, internet, technology advances, the new economic model. These are matters for strategic dynamism rather than strategic planning.” “Trust me,” he advised, “Helen [Dragas] has things well in hand.” A press account shortly thereafter revealed that Mr. Kiernan and two fellow Darden Foundation trustees had been contacted earlier by Rector Dragas for their support.

Although the press account also stated that Mr. Kiernan had been approached earlier about a search process, many of those with whom the investigating committee met were greatly disturbed that, from what appeared, the rector and vice rector had given rather little thought to the question of succession. Some speculated that, surely, they would have had someone in mind, if not already in the wings; but none emerged in the immediate wake of the announcement.

Also on June 10, Rector Dragas spoke in person and by telephone to a hastily assembled group of vice presidents and deans. She articulated themes that were later expanded upon as driving the decision:

[T]he Board feels strongly and overwhelmingly that we need bold and proactive leadership on tackling the difficult issues that we face. The pace of change in higher education and in health care has accelerated greatly in the last two years. We have called internally for resolution of tough financial issues that require hard decisions on resource allocation. The compensation of our valued faculty and staff has continued to decline in real terms, and we acknowledge the tremendous task ahead of making star hires to fill the many spots that will be vacated over the next few years as our eminent faculty members retire in great numbers. These challenges are truly an existential threat to the greatness of UVA.

We see no bright lights on the financial horizon as we face limits on tuition increases, an environment of declining federal support, state support that will be flat at best, and pressures on health care payers. This means that as an institution, we have to be able to prioritize and reallocate the resources we do have, and that our best avenue for increasing resources will be through passionate articulation of a vision and effective development efforts to support it. We also believe that higher education is on the brink of a transformation now that online delivery has been legitimized by some of the elite institutions.

To achieve these aspirations, the board feels the need for a bold leader who can help develop, articulate, and implement a concrete achievable strategic plan to re-elevate the University to its highest potential. We need a leader with great willingness to adapt the way we deliver our teaching, research, and patient care to the realities of the external environment. We need a leader who is able to passionately convey a vision to our community, and effectively obtain gifts and buy-in towards our collective goals.

The Board believes this environment calls for a much faster pace of change in administrative structure, in governance, in financial resource development and in resource prioritization and allocation. We do not believe we can even maintain our current standard under a model of incremental, marginal change. The world is simply moving too fast.

In sum, the rector's stated reasons can be clustered under five heads: (1) that the University of Virginia was facing an "existential threat" posed by "tough financial issues" requiring hard decisions over resource allocation, (2) that faculty compensation needed to be improved and funds raised, (3) that the university had to face the challenge of online instruction, (4) that the university required a "strategic plan," and (5) that the university needed "bold" leadership in contradistinction to "incremental, marginal change." We will return to these claims below.

As noted above, June 10 was a Sunday. Senate Chair Cohen was in California attending a wedding when he received the e-mail announcement, and the social media became alive with comment. He contacted the other members of the senate's executive council, empowered in an emergency to act for the full body, and, as a result, on June 11, the senate issued a statement expressing its "shock and dismay" over the news. "We were blindsided by this decision," the statement declared. The senate demanded a "full and candid explanation" and expressed an interest in meeting with the board. The board acknowledged the senate's protest the following day.

On June 12, more than thirty department chairs and program directors wrote to the board endorsing the senate executive council's position. The next day, in a written statement addressed to the faculty, Ms. Dragas acknowledged the widespread complaints that the board's "deliberation on this matter was not inclusive of the faculty or transparent to the University

community," but she declined to offer more explicit reasons for the board's decision, justifying that refusal by mention of confidentiality in matters relating to the evaluation of employees. "Nevertheless," her statement read, "the Board can assure you that there was ongoing dialogue with the president over an extended period of time, regarding matters for which we are responsible. These include ensuring the long-term health and well-being of the University through development of a credible statement of strategic direction and a long-term resource plan." The investigating committee was told that this statement was drafted by a public-relations firm retained by the rector.

On the following day, June 14, a public statement signed by COO Michael Strine and Provost Simon, authored primarily by the former and written at the direct prompting of Rector Dragas, termed the board's action "resolute and authoritative." They offered assurances that the board would follow "a deliberate, principled, and thoughtful search process for our next president" after appointing an interim leader the following week, and they urged the institution to move on. On the same day, Peter Kiernan announced his resignation from the Darden Foundation's board. The faculty of arts and sciences recorded a lack of confidence in the board of visitors the next day.

Meanwhile, the senate's executive council hastily arranged an emergency meeting of the full senate for Sunday, June 17—Father's Day. Provost Simon was the sole invited speaker. Addressing a packed auditorium in the business school with some five hundred faculty members seated before him and hundreds more in overflow rooms, he spoke about wanting to make his sons proud and about the need to "do what was right" and stand up for the core values "of one of America's greatest universities." "I now find myself," he concluded,

at a defining moment, confronting and questioning whether honor, integrity, and trust are truly the foundational pillars of life at the University of Virginia. I find myself at a moment when the future of the University is at risk and what our political leadership values in the University is no longer clear. Much has appeared in the press over the last week, and the reputational consequences will be with us for many years to come. But I am now wondering whether my own beliefs about the values of higher education are consistent with our Board.

The Board actions over the next few days will inform me as to whether the University of Virginia

remains the type of institution I am willing to dedicate my efforts to help lead.

According to Professor Cohen, the provost's remarks galvanized the senate, which overwhelmingly passed a resolution of "no confidence" in the board. That resolution remains in effect as of this writing.

The senate's executive council scheduled a meeting with the rector and the vice rector for the morning of June 18. On the evening before, the council met and framed a set of requests without, however, being sanguine about a positive response: (1) that the board suspend the naming of an interim president, (2) that President Sullivan be continued in office, (3) that the board recommend representation of UVA faculty on the board as voting members, and (4) that the current rector and vice rector resign, in the best interests of the university. The board received these requests but took no action on them.

The board of visitors was scheduled to hold a closed meeting the afternoon of June 18. The senate's executive council, along with a group calling itself Students, Family, and Friends United to Reinstate President Sullivan, announced a silent "Rally for a Transparent UVA" at the steps of the Rotunda in which the board would meet.<sup>5</sup> Although the university was not in session, an estimated two thousand people—faculty members, students, staff members, and alumni—participated in the rally.

President Sullivan attended the board meeting and defended her record. In a fourteen-page statement, released as she met in private with board members, she began by noting that she had played no role in the encouragement of support for her and in calls for her continuance. But she did deal with the elements of criticism in the statements Rector Dragas had made. "I have been described as an incrementalist," she declared. "It is true. Sweeping action may be satisfying and may create the aura of strong leadership, but its unintended consequences may lead to costs that are too high to bear. . . . Corporate-style, top-down leadership does not work in a great university. Sustained change with buy-in does work." She pointed to the strengths of the faculty and the need to reward and retain its members. She emphasized the effort to refashion the financial model and to take a strategic approach to budgetary allocations to reduce the possibility of reductions in academic areas, pointing to a

list of academic and health-care initiatives undertaken by her administration. She urged transparency, communication, and trust.

A dramatic top-down reallocation in our general fund, simply to show that we are "changing," or that we are not "incremental," seems to me fiscally imprudent, highly alarming to faculty, and unfair to students who expect to get a broadly inclusive education here. I have chosen a lower-risk and more conservative strategy, because I am accountable to the taxpayers and the tuition payers.

If we were to embark on a course of deep top-down cuts, there would also be difficult questions regarding what to cut. A university that does not teach the full range of arts and sciences will no longer be a university. Certainly it will no longer be respected as such by its former peers.

She exited the board meeting through a cheering throng. At some time past 2:00 a.m., on what was then June 19, the board's executive session ended with the announcement of the appointment of Dr. Carl P. Zeithaml, long-serving dean of the McIntire School of Commerce, the undergraduate business school, as interim president.<sup>6</sup> Vice Rector Mark Kington resigned from the board later that day. Following his resignation, senate chair George Cohen issued a statement describing Mr. Kington's decision as "the right thing to do in the best interests of the University," while renewing the senate's call for Rector Dragas "to follow the vice rector's lead and resign immediately."

The next day, June 20, the senate's executive council called for a continuance of the silent vigil that afternoon. About six hundred attended.

On June 21, Rector Dragas issued a statement expanding on what she had said to the board on June 18. "The days of incremental decision-making in higher education are over." She listed ten "challenges" facing the university that called for a more than merely incremental approach:

1. The decline in state and federal funding in the face of which the university had no long-range plan.
2. The changing role of technology, including the "coming tsunami" of online learning for which the university lacked a "centralized approach."

5. The Rotunda is the university's most distinctive building, designed by Thomas Jefferson.

6. Dean Zeithaml informed the investigating committee that Rector Dragas had contacted him on the previous Sunday, while he was on return from a trip to China, to inquire of his interest in the presidency, not an interim appointment, which he declined.

3. The rapidly changing health-care environment for which a “well-articulated plan” was undertaken in 2011, but which awaits “very ambitious interim steps” for implementation.
4. The heightened need to prioritize scarce resources for which the university “has no articulated long-range plan.”
5. The increased stress of faculty workload.
6. The increased stress of inadequate faculty compensation.
7. An approach to securing gifts and grants that seemed to be adrift, lacking a “specific vision and plan.”
8. The decline in research funding.
9. The lack of accountability for faculty productivity and academic quality. She agreed that curricular programming is the faculty’s responsibility. And she disclaimed that the board would suggest specific curricular changes. But, she wrote, “It is the Board’s responsibility . . . to ask for evidence that the current curriculum is meeting its stated goals and also to ask how well any particular curriculum or program actually prepares UVA graduates for the increasingly complex, international world in which they will live and compete. There is no long-term program in place for assessment, reporting, and improvement in many disciplines.”
10. Better, more proactive communication.

Rector Dragas concluded by pointing to the lack of an “updated strategic plan”: “[W]ithout micro-managing details such as calling for the elimination of specific programs or mandating distance learning, the Board did insist, and still insists, that the University leadership move in a timely, thoughtful, and organized fashion to address these and similar issues.” She summed up the situation thus: “In my view, we did the right thing, the wrong way.”

On the same day, the deans of the colleges called for President Sullivan’s continuance. “[I]t is clear,” they wrote, “after nearly two weeks of outrage, indignation, upset, threats of withdrawal of support and loyalty, that the people of the University of Virginia, and their ideas, which together comprise the University much more than buildings or landscapes, regard the decision as a mistake made in the absence of open discourse and courtesy.”

On June 22, as calls for reinstatement grew louder and more widespread, interim president-designate

Zeithaml announced his suspension of negotiations with the board over his assumption of the presidency. Also on that day, Governor McDonnell issued a statement urging the board to eliminate immediately any further uncertainty about the future of President Sullivan. He declared that he expected “final action” from the board of visitors at a special meeting it had called for Tuesday, June 26. “If you fail to do so,” the governor wrote, “I will ask for the resignation of the entire board on Wednesday.” He gave no specific direction as to what the board should do, asking only that the result be a “clear, detailed, and unified statement on the future of the university.”

On June 23, the Council of Foundations of the University of Virginia (each school or college has its own fundraising entity deemed a foundation) called for President Sullivan’s reinstatement. On June 24, another rally, this one dubbed a “Rally for Honor” that was organized by a graduate student through Facebook, drew upwards of two thousand participants, including students, faculty and staff members, and alumni. As was true throughout these demonstrations, their behavior was reported as having been a model of decorum.

All the while the press and opinion coverage in Virginia and in the Washington, DC, area, notably in the *Washington Post*, was substantial and unceasing, little or none of it in support of the board of visitors. (At one point, Rector Dragas e-mailed a prominent UVA faculty member urging him to write an op-ed piece in support of the board, and she also contacted the student member of the board urging her to do the same, offering her the services of a public-relations firm. Neither acceded to the rector’s request.) The university’s intensely loyal alumni spoke out in large, perhaps unprecedented numbers, often in communications directed to their legislators. The investigating committee was informed that the Alumni Association received more than six thousand e-mail messages, few of them in support of the board, and that some donors had either withdrawn support or threatened to do so.<sup>7</sup>

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7. Criticisms of the board have not been limited to the UVA community or to faculty circles. The heads of leading higher education associations also weighed in with surprisingly harsh comments. Hunter Rawlings, president of the Association of American Universities, observed that “[t]his is the most egregious case I have ever seen of mismanagement by a governing board.” The president of the Association of Governing Boards of Universities and Colleges, Richard Legon, observed: “This was a perfect example of failed governance. Boards have the legal responsibility to make tough calls and tough decisions, but they need to be aware that they act in the environment where there’s a larger community.” And

The board of visitors met on the afternoon of June 26. It announced that it was reinstating President Sullivan. For her part, the president pledged to set aside any differences and “to work hand-in-hand with Rector Dragas and all members of the Board of Visitors.” The rector also expressed the desire to move forward. According to the minutes, “Ms. Dragas said that for the good of the University, the board has found a middle path, and she looks forward to working with President Sullivan, students, faculty, staff, alumni, and donors to rebuild a sense of mutual trust and redouble efforts to keep the University on the forefront of higher education now and well in the future. She gave her support for the resolution on the table to reinstate President Sullivan and urged others on the Board to do so as well.”

Governor McDonnell issued a statement of thanks to the board for bringing the issue to a close and congratulating President Sullivan on her reinstatement. He defended Ms. Dragas (“the first woman to serve as Rector”) and termed criticism of her to have been “counterproductive.” The governor also renominated Ms. Dragas in one of several appointments he made to the board. Ms. Dragas issued a statement of thanks to the governor, expressing her willingness to have a constructive relationship with President Sullivan and the faculty. On behalf of the senate executive council, Professor Cohen issued a statement that the senate could work with all of the governor’s nominees, including Ms. Dragas, on the “immediate challenge” of restoring trust. The governor’s nominations to the board require confirmation by the Virginia General Assembly, ordinarily a routine formality. The Dragas confirmation, however, was unsurprisingly not without controversy. Following a favorable 29–9 vote in the state senate and then a 63–33 vote in the house of delegates, her nomination was confirmed on January 29, 2013.

### **B. The Immediate Aftermath**

In the months following President Sullivan’s reinstatement various efforts were made, some more productive than others, to begin to address the problems that had come to the fore over the summer. In the

middle of the fall semester, the board of visitors took two steps that have seemingly moved toward closer cooperation with the faculty and, potentially, better communication with the president. In its meeting on November 8, 2012, the board revised its rules on standing committees to provide for one nonvoting “faculty consulting member” to be appointed to any of the board’s standing committees that lack such faculty representation. According to the new rules, these faculty appointees will be selected by the administration with an eye on their personal competence in the subject matter of the committee’s jurisdiction. The investigating committee will have a bit more to say later about this change in the rules.

Further along these lines, during this same meeting the board amended its rules to require that a quorum for the executive committee be at least three, not two members, and that the removal of a president can be effected only by a two-thirds majority vote at a regular or special meeting of the full board. In addition, the board expanded on the guidelines for presidential evaluation it had adopted the previous year by providing for a quarterly evaluation of the president to be considered in a meeting including the vice rector and three board committee chairs. The guidelines further provide that the university’s strategic plan be a benchmark for that evaluation. Though the frequency of this procedure struck the investigating committee as excessive, we were assured by President Sullivan that, given the relative informality of the process, it could be used positively as a means of better communication with a broader group within the board.

In addition to changes the board made in its own rules, the governor took two steps apparently to soothe remaining asperities, the impact of which, however, is unclear. First, he appointed Leonard Sandridge as a “Senior Advisor to the Board,” whose role, according to the board’s recently revised *Manual*, is “to provide the board with wise counsel on an array of matters and to assist the university in solving strategic and communication challenges.” Mr. Sandridge told the investigating committee that his initial interactions with Ms. Dragas immediately following the action against President Sullivan were cool but that their current relationship is cordial. It is too soon to tell whether he can—or should—recreate the role of behind-the-scenes intermediary he had performed under President Casteen.

Second, the governor appointed a former board member, William Goodwin, as a member of the board, apparently as an additional confidence-building

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Molly Broad, president of the American Council on Education, commented that “[a] serious effort is going to have to be undertaken to repair damaged relationships and restore mutual trust and confidence.” To achieve such an outcome, she added, is “going to require sincere effort, bending over backward to be open, honest, and candid, to trust that words are going to be received in the spirit in which they were intended.”

measure. The efficacy of that decision remains to be seen. On September 13, 2012, the board of visitors held its first regular meeting following President Sullivan's reinstatement. It was addressed by Professor Cohen in his capacity as senate chair, as is customary. (Although Rector Dragas requested that Professor Cohen supply his remarks to her in writing and in advance of the meeting, he declined to do so.) Professor Cohen took the allotted ten minutes to explain why the senate had not rescinded its vote of no confidence in the board. By Professor Cohen's account, "I said that the crisis was not going away, regardless of what the faculty did. I said that the 'reset' view that we could just go back to where we were and ignore what happened was a fantasy because there were obviously important differences between President Sullivan and the board and without knowing what those differences were, we could not determine whether they had been successfully resolved, or whether there had been full reconciliation."

Following Professor Cohen's remarks, Mr. Goodwin took the floor. He replied by use of an analogy to domestic discord between a husband and a wife who agree to dwell no further on the sources of contention for the sake of maintaining the relationship: "So I suggest to you it's time to move on. Whatever happened, and I do not know because I was not there, it happened probably because people were trying to do the best they knew how at the time. It might not have been the right thing, but they were trying. President Sullivan is now with us. She's a good lady. She's trying her darndest to be a good president. I can assure you this board is trying to do a good job. And I would ask you to forget it and move on."

Several administrators and faculty members with whom the investigating committee spoke were incredulous, one recalling Santayana's admonition that "[t]hose who cannot remember the past are condemned to repeat it." The investigating committee shares the senate's belief that there are valuable lessons in this experience both for the University of Virginia and for the larger academic community and that it is important that they be learned.

### **C. Intervention of the Regional Accrediting Agency**

In the meantime, staff of the Southern Association of Colleges and Schools Commission on Colleges had written to the UVA administration on June 25, expressing concern about possible departures from a number of accreditation standards, notably those dealing with institutional integrity (principle 1.1),

the role of the governing board (core requirement 2.2), and the faculty's role in governance (comprehensive standard 3.7.5). It requested an explanation and documentation.

The university responded to the SACSCOC complaint in a letter of September 20, signed by the provost and by the university's liaison with the accrediting body on behalf of the board of visitors. In both substance and tone, it is very much the board's document. On the matter of integrity, the board acknowledged that the process leading up to President Sullivan's removal was flawed (the letter called the process "embarrassing and regrettable") but maintained that its transgressions "were not so egregious" as to constitute a departure from accreditation standards. At the same time, the letter offered assurances that the board was taking steps to rectify deficiencies in its policies and procedures. The letter then turned to core requirement 2.2, which is intended to ensure that a governing board is not controlled by a minority. It asserted that the action to remove the president had been taken with the knowledge and consent of the board's members; it rejected any suggestion that "outside forces exercised undue influence." As to standard 3.7.5, on faculty governance, it pointed to the constitution of the faculty senate and to the faculty's express role in the content of the curriculum and matters of faculty status.

SACSCOC replied in a letter dated October 5, stating that it was satisfied that the university was in compliance with principle 1.1. However, it emphasized that "questions remained" about the other standards and that the matter would be taken up at the SACSCOC meeting in December. "Given that there is a lack of an identified procedure related to the removal of the institution's President, the possibility of integrity issues with governing board authority and actions continues to exist," the letter read. The board of visitors replied on November 10, informing SACSCOC of the amended policy on presidential evaluation. On the matter of faculty governance, the letter opined that (1) the faculty senate's constitutional authority was quite broad enough and (2) that no rule requires the board to notify or consult with the senate on whether it should or will pursue an intent to seek a president's resignation—indeed, as the president of the university serves as titular president of the senate, such a requirement would pose an "apparent conflict of interest"—but that (3) the board had made provisions for nonvoting faculty consultancy on its standing committees.

On December 11, the SACSCOC board of trustees, having reviewed the responses submitted by the university, acted to place UVA “on Warning.” According to a letter to President Sullivan dated January 15, 2013, this status, imposed for one year and subject to oversight, stemmed from the perceived inadequacy of the board’s responses to the commission’s concerns about compliance with core requirement 2.2 (“Governing Board”) and comprehensive standard 3.7.5 (“Faculty role in governance”).<sup>8</sup>

#### IV. The Events in Institutional Context

The investigating committee will address the issue of institutional governance in the matter of presidential selection below in section V. It will then take up the larger issues of the role of a governing board in relation to the faculty and administration in section VI. Before reaching these issues, however, the committee believes it will be useful to deal with the events of June 2012 in the specific context of the University of Virginia.

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8. The pertinent sections of the document read as follows:

##### CR 2.2 (Governing Board)

The institution’s first response to the Commission’s request regarding ongoing compliance with CR 2.2 was too general; therefore, additional information was requested. In its second response, the institution provided a revised policy outlining the removal of a president; however, it did not include a description of the specific procedure for such a removal. In addition, the situation and the institution’s response raised questions about the possibility of control by a minority of the Board of Visitors in other matters. As part of your response to this standard, provide evidence that safeguards are in place that would prevent control by a minority of the board, or by organizations or interests separate from the Board. The intent of the membership in developing and approving this standard was to ensure that members of an institution’s governing board act with authority as a collective entity responsible for holding in trust the well-being of the institution.

##### CS 3.7.5 (Faculty role in governance)

Although the institution’s second response indicated that the Board has taken steps to increase the involvement of faculty in academic and governance matters, the responsibility and authority of faculty in these matters remain unclear. The institution should demonstrate that it publishes policies on the responsibility and authority of faculty in academic and governance matters and that these policies are appropriately approved, implemented, and enforced by the institution.

This standard was designed by the membership for institutions to explicitly delineate the responsibilities and authority of its faculty in academic and governance affairs. The standard does not dictate what those responsibilities should include; however, it does expect an institution to publish and adhere to such policies that clarify the role of faculty in relation to other constituencies regarding the fundamental academic and governance aspects of the institution.

The investigating committee met with person after person, vainly striving for some explanation for the board’s action and the process it had followed that would give direction to what otherwise appears to be nothing more than a crude exercise of naked power: perhaps the board acted to redirect the university along more “corporate” or business-oriented lines, as revealed in prior consultations with and immediate expressions of support for the board coming from members of the Darden School Foundation, or perhaps it acted in response to behind-the-scenes manipulation by the American Council of Trustees and Alumni and its supporters, as revealed by messages of encouragement from ACTA’s President Anne Neal to the board during the controversy.<sup>9</sup> However, despite all the investigative activity by numerous journalists and the disclosure—as the result of a series of successful press-initiated freedom-of-information requests—of a wealth of private e-mail communications, no documentary evidence of some such deep design has emerged. On the former speculation, a faculty member from the Darden School impressed upon the investigating committee that no board of directors of a publicly held corporation would act in such breach of due diligence as the board of visitors had. On the latter speculation, the press reported that Ms. Dragas had questioned the provost months

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9. On June 16, 2012, President Neal sent an e-mail message to the board, terming its action to remove President Sullivan “courageous.” She drew the board’s attention to an ACTA report, *The Diffusion of Light and Education: Meeting the Challenges of Higher Education in Virginia*, that called for “steps to measure student outcomes,” criticized administrative spending at UVA compared with instructional spending, and criticized the curriculum (for having no American history requirement, for example) and the university’s “sticker price.” In her e-mail message Ms. Neal counseled the board in pertinent part:

[A]t the end of the day, please take heart: a board doesn’t need to get community buy-in. A college presidency is not a popularity contest—and shared governance does not mean shared fiduciary responsibility.

Faculty are typically committed to their disciplines; presidents are often focused on institutional growth; the board is the only entity that is charged with addressing competing priorities in the best interests of students and taxpayers. The Board of Visitors is legally responsible for the academic and financial health of the institution; no one else.

If a board determines that the president’s continuing service is no longer in the best interests of the institution, then, you are right, difficult decisions have to be made.

This is about the board’s responsibility to bring courageous, even innovative thinking to higher education when it is faced with many challenges.

before about a course the English department offered that focused on the pop icon Lady Gaga. This episode alone does not support the existence of an underlying blueprint for curricular or programmatic redirection along ideological or any other lines. However, given ACTA's encouragement of the action the board took, we cannot discount the possibility of ACTA's indirect influence on the board's assertion of its unfettered authority.

If Rector Dragas and the other members of the board had some larger plan, it has not been revealed; but they did have a narrow purpose, to remove the president. For that, the rector stated her reasons. Absent more information, these have to be taken at face value.

Rector Dragas criticized President Sullivan's performance on ten grounds that cluster under five heads. First is the institution's overall financial situation, which the rector said posed an "existential threat," one that the president presumably failed either to recognize or to manage.

Undoubtedly, a governing board has a vital interest in ensuring that the institution over which it presides is on a sound financial footing and that the administration is alert to financial concerns. The problem with the rector's characterization is not one of principle but of fact. The investigating committee was assured by everyone knowledgeable about the subject that the University of Virginia is on a sound financial footing. It is true that state support has declined significantly over time. But this decline has been experienced by public institutions of higher education nationwide, and by all accounts the University of Virginia is in a better position than many others to cope with it. Nor did the board advert to any specific problems justifying a need for the president to take immediate, albeit otherwise undefined, action.

In early September 2012, President Sullivan submitted her annual report to the board canvassing the university's financial situation, as well as addressing other concerns cited in the rector's statement. This account provides no basis to explain the action the board took; nor does it appear that Rector Dragas and members of the board possessed any information to the contrary.<sup>10</sup>

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10. The president's report is not a spreadsheet. It is a thirty-three page, single-spaced synopsis of programs and finances, faculty and student concerns, capital expenditures, and philanthropic giving. The investigating committee has failed to find in it any suggestion of the possibility of an exigent need to reallocate resources.

Second, and closely related to the first, is the need to address faculty compensation and workload. The faculty had earlier petitioned the board about the compensation issue in light of the austerity it had experienced in the preceding years. The issue was of high presidential and provostial concern at the time and had not been raised by the board and the rector with the president. Again, the president's report addressed the need for improvement and the institution's capacity to deal with the matter.

Third is the need to address what Rector Dragas has termed the "coming tsunami" of online instruction. A recurring theme in the reported complaints of the rector and other board members had to do with President Sullivan's alleged failure to embrace new technologies and the assertion that the university was not in the forefront of digital experimentation or responding quickly enough to new opportunities in online education. As the rector's colorful metaphor suggests, the role of electronic transmission of credit-course instruction or other educational content by accredited institutions of higher education has become the subject of an intense national debate.<sup>11</sup> Pilot projects have been launched, of which Coursera has lately been the most prominent; private equity funds have spoken about the future of educational technology in almost messianic terms. But it remains to be seen whether higher education is facing a tidal wave that will sweep away the traditional classroom or something else, additive and broadening, perhaps, but scarcely transformative. What that future will or should be remains a subject of both study by faculties and administrations and institutional experimentation.<sup>12</sup> A variety of schools, departments, and programs at UVA have been long and deeply involved in online educational initiatives, including technology-enhanced pedagogy and digital scholarship and education activities going back at least two decades, with various degree and certificate programs. After the events of the past summer, a task force on online education of the UVA faculty senate submitted a thirty-page survey, school by school, of the institution's existing online instructional activities, rich in complexity and depth. The uniform comment the investigating committee had from administrators and faculty members

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11. See, for example, the "College, Reinvented" section of the *Chronicle of Higher Education's* website: <http://chronicle.com/college-reinvented>.

12. See, for example, the University of Illinois at Urbana-Champaign's *Senate Task Force Report on Campus Participation in the Coursera Initiative* (July 5, 2012), <http://www.senate.illinois.edu/120705courserataskforce.pdf>.

alike was that Ms. Dragas spoke in ignorance, without having informed herself about what was actually going on at the university.

Again, a president's inattention to the issue of institutional response to technological change should be of concern to a governing board. But there was no evidence before the board of any lack of such attention; in fact, the board had neither informed itself in the matter nor raised it as a topic of discussion with the president.

Fourth is the president's failure to have prepared a long-range plan. This purported presidential failing was stated by Rector Dragas five times in her June 21 statement; six, if one includes her reference to the 2011 plan in the matter of health care, which Ms. Dragas termed "well-articulated" but as yet unimplemented. When President Sullivan was appointed, however, she was told unequivocally that she was *not* to prepare a long-range or strategic plan. The rector faulted the president for a failure to do what she had been told not to do.

Finally, but perhaps critically, is the allegation of a lack both of "boldness" and of a "much faster pace in effecting transformative change," responsibility for which is laid at the president's feet. However, the rector's statements give no content to what boldness is or what transformation means.

It strikes the investigating committee that there is more at work here than the invocation of empty catchphrases. The rector's rhetoric reflects a mindset of entrepreneurial control common in small and medium-sized business enterprises. The firms that occupy that economic niche must adjust quickly to changed market conditions, consumer tastes, and rapid shifts in financing or in other aspects of the business landscape. Managers of such enterprises may be taken on or let go, on short or no notice, on the basis of a perceived need to change direction, the need for different skill sets, or even a lack of personal compatibility with those in entrepreneurial control. This mindset ill fits the role of trusteeship in the modern university.

A university exists to conserve, transmit, and discover knowledge; to instill in undergraduates the capacity to inquire, to evaluate, and to criticize; to prepare graduate and professional students for career-long change and reeducation in their fields. Universities do and should adapt to altered social circumstances: one need only compare the profile of instruction and research in the contemporary university with the profile of activity a mere generation ago. But the same deliberative processes that faculty members bring to their

disciplines apply to the conduct of university affairs: assembling data and engaging in detailed analyses and reasoned debate on what these data mean, over the direction of change—and, even, of values.

In this environment, the need to secure a faculty's agreement, even if total consensus is unattainable, is a condition of successful change. President Sullivan used the term "buy-in." (Tellingly, the term is taken from the corporate world. It is used by managers of "high-performance" workplaces who have come to recognize that the success of the enterprise requires the active participation and uncoerced assent of all the "stakeholders" in it.) The corporate usage aside, President Sullivan's defense of what the rector referred to pejoratively as mere "incremental change" resonates strongly in the academic world because it draws its strength from the realities of the institutions that populate it, of how they are best advised to function.

The rector and the board made no effort to engage with the president or the faculty on the underlying issues the rector claimed to be at stake. Instead, the president was faulted for a failure of boldness. In this, the board acted in disregard of its fiduciary obligations.

The board's course of action may be understood a little better when placed in the context of its relationship to the administration over the prior twenty years. As one of the individuals who met with the investigating committee put it, the administration's options over that course of time were "to involve the board or manage it." Given the manner of the board's composition and rate of turnover, the latter had been the chosen path, with Mr. Sandridge playing a critical, perhaps indispensable role.

If we take the statements issued on behalf of the board at face value, as we must, the events of last June might be reasonably explained in this way: A headstrong rector, imbued with a belief in "engaged trusteeship," strove to remove a president who failed to conform to her image of bold academic captaincy.<sup>13</sup> She did so with single-minded

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13. Such was Ms. Dragas's position; it echoes the position taken by Anne Neal on behalf of ACTA applauding the board's "courageous" action. (See Ms. Neal's e-mail message in note 9.) Ms. Neal's claim that the board and only the board, "no one else"—not the faculty, not the administration—is responsible for the academic and financial health of the institution is theoretically weak and factually incorrect. On the first, if "responsibility" means having to live with the consequences of one's decisions, it is the faculty and the administration—and students—who have to suffer the consequences of ill-considered financial or academic decisions, not the board. On the second, Ms. Neal's characterization of the faculty's and the administration's supposed tunnel vision is belied by

zeal: without informing herself of the essentials in the underlying matters she claimed to give rise to that drive, even without perceiving the relevance of the evaluation process the board had adopted a mere seven months before.<sup>14</sup> In this, she was abetted, first, by the absence of an experienced intermediary to give her and the board sober counsel and, second, by her board's total neglect of its collective responsibility.<sup>15</sup> If this explanation is correct, what happened is, if no less appalling, at least more understandable.

### V. The Faculty Role in Presidential Selection and Removal

From the turn of the twentieth century and on through its first half, as the American university and the professoriate it housed took on its modern form, the relationship of the faculty as a corporate body to the institution's lay governing board became a field of contention and experimentation, including contention over the faculty's role in presidential selection.<sup>16</sup> By midcentury, national representatives of governing boards, administrations, and faculty reached a consensus under which the respective roles of each were apportioned according to principles of shared governance. These principles found expression in the 1966 *Statement on Government of Colleges and Universities*, drafted jointly by the Association of Governing

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the realities of shared governance as it is practiced day in and day out on hundreds of campuses, including those facing genuine conditions of financial distress.

14. According to numerous press accounts, COO Michael Strine had been in private communication with Rector Dragas and Vice Rector Kington in the months preceding President Sullivan's removal from office. The president informed the investigating committee that she was not aware of Mr. Strine's contacts with board members. Mr. Strine resigned on August 7, and the investigating committee thus was not in a position to pursue this line of inquiry.

15. The lack of a confidential intermediary to keep the president apprised of the pulse of the board helps to explain as well President Sullivan's having been in the dark about the apparent dissatisfaction with her performance and the effort to garner support for her removal. With hindsight, President Sullivan might have better informed herself after Mr. Sandridge's departure of the need to maintain direct communication with members of the board.

16. See Richard Hofstadter and C. DeWitt Hardy, *The Development and Scope of Higher Education in the United States* (New York: Columbia University Press, 1952), 131–34. A survey by the AAUP's Committee T on the Place and Function of Faculties in University Government and Administration, carried out in 1939–40, showed that out of 208 institutions responding, 148 provided for no faculty consultation in the selection of a president. *Bulletin of the American Association of University Professors* 27 (1941): 156.

Boards of Universities and Colleges, the American Council on Education, and the American Association of University Professors.<sup>17</sup> As Henry Mason explained shortly after the *Statement's* promulgation, an institution's governing board

is the representative of the outside world in the academic community, the protector of the public interest. It has considerable powers at its disposal to carry out this most crucial of its functions. Yet, no argument or principle comes to mind which would entitle a board of trustees to act as the final or supreme authority in all the important affairs of the university—legal provisions in the board's charter notwithstanding. All the principles, traditions, and longstanding customs of university government point to the delegation of formal board powers to administration and faculty, *and to the cooperation of all the institution's components in deciding on matters of importance to the institution.*<sup>18</sup>

Beginning in 1920, the AAUP's Committee T on the Place and Function of Faculties in University Government and Administration (now the Committee on College and University Governance) had taken the position that the selection of the president was one such matter of institutional importance calling for cooperation. This principle was incorporated in the *Statement on Government* and elaborated on by the AAUP in the derivative 1981 statement on *Faculty Participation in the Selection, Evaluation, and Retention of Administrators*.<sup>19</sup> The rationale for faculty

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17. The AAUP adopted the document as policy, and the other two organizations commended it to the attention of their respective constituents.

18. Henry L. Mason, *College and University Government: A Handbook of Principle and Practice* (The Hague: Martinus Nijhoff, 1972), 26–27. Emphasis added.

19. The 1981 statement, which, like the *Statement on Government*, "rests largely upon the conviction that interdependence, communication, and joint action among the constituents of a college or university enhance the institution's ability to solve educational problems," goes on to assert, "as one facet of this interdependence, . . . the expectation that faculty members will have a significant role in the selection of academic administrators, including the president." The 1981 document continues:

The *Statement on Government* emphasizes the primary role of faculty and board in the search for a president. The search may be initiated either by separate committees of the faculty and board or by a joint committee of the faculty and board or of faculty, board, students, and others; and separate committees may subsequently be joined. In a joint committee, the numbers from each constituency should reflect

consultation in presidential selection applies with equal force to the question of presidential removal.

The policy of the board of visitors, as expressed in its submission to SACSCOC, is that it is not and should not be required to consult the faculty's designated representative in the matter of the termination of an incumbent president. It points to the absence of any such requirement current in Virginia law, in the rules of the board of visitors, and in the constitution of the faculty senate. It also points to "legally required confidentiality" in so sensitive a matter and the need to honor its "moral, contractual, and legal commitments and obligations" in that regard.

However, that neither the bylaws of the board of visitors nor the constitution of the faculty senate currently provides for the faculty to be consulted in the removal of an incumbent president is not an argument that that role should not be afforded in the future. There is no reason why, in the exercise of its authority to remove a president, the board would not wish to be well informed: to have before it the considered judgment of those most intimately involved in the actual conduct of the university's teaching, research, and service missions, especially when the board's stated concerns involve the president's oversight of these very functions. Indeed, had the board consulted the faculty in this instance, it is at least arguable that it would not have acted as it did. In sum, the events that transpired at the University of Virginia between June 10 and June 26, 2012, stand as mute testimony to the manifest wisdom of faculty consultation.<sup>20</sup>

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both the primacy of faculty concern and the range of other groups, including students, that have a legitimate claim to some involvement. Each major group should elect its own members to serve on the committee, and the rules governing the search should be arrived at jointly. A joint committee should determine the size of the majority which will be controlling in making an appointment. When separate committees are used, the board, with which the legal power of appointment rests, should either select a name from among those submitted by the faculty committee or should agree that no person will be chosen over the objections of the faculty committee.

20. The investigating committee would further note that, according to the Association's statement on *Faculty Participation in the Selection, Evaluation, and Retention of Administrators*, "[a]ll decisions on retention and nonretention of administrators should be based on institutionalized and jointly determined procedures which include significant faculty involvement. With respect to the chief administrative officer, the *Statement on Government* specifies that the 'leadership role' of the president 'is supported by delegated authority from the board and faculty.' No decision on retention or nonretention should be made without an assessment of the level of confidence in which he or she is held by the faculty."

We turn, then, to the board's argument about the need to preserve confidentiality, to respect the incumbent's contractual or other legal rights.<sup>21</sup> On the former, the board has not identified what the contractual right is that would be affected. If the board has bound itself to silence should the appointment be terminated, disclosure of that fact would not be a breach of confidentiality; but no such provision has been pointed to. In any event, whether such a provision should be agreed to is a matter of policy on which the faculty should be heard.

This leaves the need to protect an incumbent's interest in reputation and privacy. These are weighty interests. But insofar as the president of the University of Virginia—or any other major university—is, by any measure, a public figure, statements made to the general public, if made with due regard for accuracy, would be legally privileged, as being made in the public interest. Moreover, there should be no doubt whatsoever that an exploration of the board's reasons made to and in discussion with a faculty body with responsibility in the matter would be as privileged as such discussion within the board itself, when the utterance complies with the relevant standard of care.<sup>22</sup> Consequently, the legal cloak cast over the board's refusal to provide for faculty consultation strikes the investigating committee as unpersuasive.

There is yet another matter to be considered, one that is captured in the provision concluding the statement on *Faculty Participation in the Selection, Evaluation, and Retention of Administrators*: "The president and other academic administrators should in any event be protected from arbitrary removal by procedures through which both their rights and the interests of various constituencies are adequately safeguarded."

The board has defended its action as having been taken out of genuine concern for the institution's well-being, after consultation by the rector with every individual board member, on the basis of information they had before them even though the process is conceded to have been "flawed" in an undefined way. But it will not do to say the "right" decision was made

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21. We will not address the argument about a "conflict of interest" by virtue of the president's ex officio presidency of the faculty senate save to observe that the president's role in the senate is titular and that any conflict could be avoided by the obvious expedient of the president's removing herself from any senate deliberations.

22. See Matthew Finkin, "Disclosure of Evaluations and Investigations," chap. 5, sec. 5 in *Privacy in Employment Law*, 3rd ed. (Arlington, VA: Bloomberg BNA, 2009).

the “wrong way” when the error lay in the board’s failure fully to have informed itself in the matter and its failure to have given the president an adequate opportunity to respond. Unaccountably, the board leadership and the rest of the board do not seem to have followed the prescribed standards for presidential evaluation they had adopted the previous fall, nor did they ever conduct the kind of intensive evaluation of President Sullivan’s overall performance one would have expected them to undertake prior to reaching a decision to remove her from office. Furthermore, the board members had never explicitly, or apparently even implicitly, conveyed to the president their concerns about her allegedly unsatisfactory administration of her office or given her an opportunity to respond to and correct any shortcomings they might have noted. Likewise, there appears to be no evidence that they had provided the president, who remained unaware of the erosion of support for her within the board, with any prior warning that her position might be in jeopardy if she failed to correct these perceived deficiencies and if she were simply unresponsive to their admonitions. What is more, the full board never met together as a body to deliberate over the concerns raised by the rector and others, nor did the board ever conduct a formal vote before taking the action that it did. In addition, the board acted without having first solicited the views of the faculty and other campus bodies. As faculty senate chair George Cohen has stated, “The process leading to the decision [to remove President Sullivan] appears to have involved inadequate communication between the board and President Sullivan, inadequate communication among board members, and inadequate consultation with university constituent groups including faculty.” Absent any deep engagement by the board, the rightness or wrongness of the president’s conduct of office cannot have been determined. It is obvious to the investigating committee—as it should be to anyone who has followed these events—that the decision to remove President Sullivan was, taking the reasons given by Rector Dragas at face value, procedurally and substantively arbitrary.

Has the board learned from this experience? It has ensured that it must meet as a body on so consequential a decision, and it has expanded both the frequency of presidential evaluations and the extent of board members’ participation in the process. That much is encouraging. But beyond that, the board’s statement to SACSCOC, defending its practice of acting without faculty consultation as a matter of prerogative,

is not encouraging. Neither is the board’s revision in its guidelines for presidential evaluation insofar as these guidelines do not make provision for faculty consultation.

## VI. In Larger Measure

In 1982, the Carnegie Foundation for the Advancement of Teaching undertook a fresh assessment of college and university governance, reflecting back on the lessons learned from the student unrest of the 1960s, the financial crisis of the 1970s, and the ever-increasing societal demands being made on higher education. Even as governing boards constituted a “keystone in the governance structure,” the foundation concluded that their role in practice remained “ambiguous.”<sup>23</sup> The foundation argued for the need to bolster the board’s role in shaping policy and in ensuring the maintenance of institutional quality; but, as experience had taught, and as extensive papers produced by the Association of Governing Boards over the ensuing three decades recognize, the line between responsible institutional stewardship and an eclipse of administrative or faculty judgment can be transgressed. It is one thing, for example, for the board to decide how much of the return on endowment should be returned to the endowment, but quite another for it to decide whether the president has wisely allocated her discretionary funds—funds that are, by definition, *discretionary*. These are easy examples. Some may be more difficult. Even so, a line is no less a line for being, at points, indistinct; and members of governing boards need to resist an impulse that would lead them to cross it.

The Carnegie Foundation was mindful of the fact that we deal here with a human institution, susceptible to human failings. There is only so much that formal structures or legal rules can do. “In the end,” the foundation concluded, “the authority of boards of trustees will be sustained by the quality of those chosen as members, by the wisdom of their actions.”<sup>24</sup>

Toward that end the foundation made three recommendations. These are so self-evident as to be almost embarrassing to need restatement. But the events recounted here require that they be learned anew:

- (1) Trustees should be appointed or elected because of their appropriate experience and broad perspective, not as a political reward.

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23. *Report on the Governance of Higher Education: The Control of the Campus* (Princeton, NJ: Carnegie Foundation for the Advancement of Teaching, 1982), 72.

24. *Ibid.*, 74.

(2) The period of trustee service should be long enough—at least six years—to ensure continuity of interest and direction.

(3) Above all, trustees should be fully informed about the function and mission of their institutions.<sup>25</sup>

With respect to the situation at UVA, the first two lie in the hands of the legislature and the governor of Virginia. There is every reason to lengthen the terms of service on the board to allow better continuity, education, and experience, even as it would deprive the governor of a more frequent exercise of patronage. And so attention turns to that.

Absent a legislatively mandated system whereby candidates are screened by an apolitical body of integrity, it falls to the governor to ensure that the board is composed of persons with the requisite qualifications of intelligence, experience, and judgment. It would be an act of statesmanship to abjure patronage in favor of advancing the public good; but the academic community has for decades called for no less, and no good reason is presented why this should not be done. Toward that end the existing ad hoc procedure for vetting nominees should be bolstered and made transparent. This much lies in the governor's hands without the need for legislative action.

The task of meeting the third Carnegie Foundation recommendation lies in the hands of the board. A one-day program of orientation for new board members strikes the investigating committee as inadequate. More should be done, both at the outset—availing the board's new members of the assistance of the Association of Governing Boards or other recognized, nonpartisan agencies experienced in the best practices of trusteeship—and on a continuing basis. With regard to the orientation of new board members, it may be of benefit to all parties to invite faculty members to attend and participate in these orientation sessions. Such an arrangement would not only give those professors a basic understanding of the functions of the board but would also give new board members, especially those who come from backgrounds outside of higher education, an opportunity to familiarize themselves with the academic culture, thereby providing an occasion for enhancing mutual understanding. With regard to ongoing board education, the investigating committee was informed by several deans that they had

invited board members to come to their schools to hear faculty members and students present their work in progress, better to inform themselves of innovative approaches to research and teaching and to engage with those actually doing it, but that, more often than not, these invitations had been declined. Similarly, the investigating committee was told that the board as a whole had declined to pursue the suggestion that a part of its regular meetings be devoted to similar presentations and dialogue. If the board believes that the Carnegie Foundation was correct, that the oversight of institutional quality is an important board function, it cannot ignore the foundation's concomitant recommendation that the board fully inform itself.

Toward that end, in addition to building trust between the board and the faculty, the relationship of the board to the faculty as a collective body needs to be addressed. The board's willingness to appoint a consulting member of the faculty to each of its standing committees is a small step in the right direction. Thus far, however, selection of these individuals lies in the hands of the administration. The investigating committee understands the need to select persons competent in the subject matter of the committee's jurisdiction. But it believes that the faculty senate would be fully sympathetic to this requirement and capable of meeting it. The committee believes further that nomination by the senate of candidates for appointment to the board's committees would conduce toward greater confidence in faculty representation without sacrificing competence.

We turn, then, to the larger issue of the faculty's relationship as a faculty to the board. The senate has expressed the need for the participation of a member of the faculty as a nonvoting member of the board. The board has not yet responded to that request. The investigating committee would be eager to hear any reasons the board might have as to why the senate's request should not be granted. Presented is not only the anomaly of having a nonvoting student on the board while the faculty is denied analogous representation; it is also the far more obvious need to establish mutual trust and respect going forward, and the obvious benefit to the board of having the faculty's views before it.

It bears reemphasis that a more involved board is also one more likely to tread closer to or even to transgress the line of academic authority in a system of shared governance. The voice of the faculty aids the board in oversight of its own competence, to

25. *Ibid.*, 73–74.

ensure that a proposed course of action is not in excess of its role.<sup>26</sup>

### VII. Conclusions (as of March 1, 2013)

The breakdown in governance at the University of Virginia documented here was only partly a result of structural failure; indeed, the board ignored its own recently adopted guidelines on presidential evaluation. In much greater measure it was a failure by those charged with institutional oversight to understand the institution over which they presided and to engage with the administration and the faculty in an effort to be well informed. It was a failure of judgment and, alas, of common sense.

Progress toward more responsible board behavior and toward a better relationship between the board and the university's administration and faculty has been made, but more remains to be done. The investigating committee believes that the faculty senate is correct in abstaining at present from lifting its vote of no confidence in the board of visitors. The committee believes equally that SACSCOC is correct in placing the board on warning, pending further review, especially with word now received that on December 31, 2012, ACTA formally complained to the US Department of Education that SACSCOC had "inappropriately become involved in a power struggle between the president, faculty, and the board of trustees." It argued that "[i]f federal accreditors are allowed to substitute their judgment in matters of state law and governance whenever internal constituencies feel aggrieved, they will bring about the sure erosion of institutional autonomy and undermine the ability of governing bodies everywhere to provide needed oversight."

ACTA's complaint should be of concern not only to the AAUP but also to the academic community at large. In anticipation of that engagement, the investigating committee would offer three observations.

First, the committee has found no evidence nor any hint of a "power struggle." No one has denied the authority of the board of visitors to maintain institutional oversight, even to the point of removing

a president. The question is one of the responsible exercise of that authority. Institutional autonomy does not confer immunity from judgments of such behavior.

Second, SACSCOC is not a "federal accreditor." It is not an agency of the state. SACSCOC is a private association of colleges and universities upon whose judgments the federal government relies. It is federal intervention at the behest of an ideologically motivated interest group that would invade the autonomy of accrediting decisions.

Third, it strains credulity to assert that the way the board of visitors acted is of no legitimate concern to an agency constituted by colleges and universities to ensure the institutional integrity of one of their number. ■

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**MATTHEW W. FINKIN** (Law)

University of Illinois at Urbana-Champaign, *chair*

**JOAN WALLACH SCOTT** (History)

Institute for Advanced Study

**LAWRENCE S. POSTON** (English)

University of Illinois at Chicago, *consultant*

#### *Investigating Committee*

The Committee on College and University Governance has by vote authorized publication of this report on the AAUP website and in the *Bulletin of the American Association of University Professors*.

Chair: **LARRY G. GERBER** (History), Auburn University

Members: **CHARLES A. BAKER** (French), College of the Holy Cross; **LENORE A. BEAKY** (English), LaGuardia Community College, City University of New York; **JEFFREY A. BUTTS** (Biology), Appalachian State University; **HANS-JOERG TIEDE** (Computer Science), Illinois Wesleyan University; **GERALD M. TURKEL** (Sociology), University of Delaware; **DAVID D. WITT** (Family and Consumer Services), University of Akron; **RUDY FICHTENBAUM** (Economics), Wright State University, *ex officio*; **PURIFICACIÓN MARTÍNEZ** (Hispanic Studies), East Carolina University, *liaison from the Assembly of State Conferences*; **PAUL DAVIS** (Behavioral and Social Sciences), Cincinnati State Technical and Community College, *liaison from the Collective Bargaining Congress*.

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26. This final note is a reminder of the importance of tenure in protecting academic freedom and encouraging active faculty participation in institutional governance. Professor Cohen has stated publicly that absent tenure it was most unlikely that the faculty would or could have been as outspoken and persistent as they were. It is asking rather much to encourage outspokenness when those spoken to have the power to dismiss the speaker without having to demonstrate cause.

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**ADDENDUM**

**Questions Sent by Investigating Committee Chair Finkin to Board Rector Dragas and the Rector's Response to the Staff**

December 3, 2012

Dear Rector Dragas:

I write as chair of the ad hoc committee of investigation appointed by the American Association of University Professors to report on the circumstances and consequences of the removal and reappointment of Professor Teresa Sullivan as president of the University of Virginia. I am informed that you have expressed a willingness on behalf of the Board of Visitors to entertain any questions the committee might have were these to be presented to you in written form.

The committee spent two days interviewing leading figures in the current administration, former administrators, faculty representatives, and faculty members at the University of Virginia. Their account of events largely reflects what has been described in the press and, we believe, need not be rehearsed afresh with the Board of Visitors. A major focus of our inquiry is on the future: on what can be learned from this experience and what can be implemented going forward, not for the University of Virginia alone but for public higher education and the academic community as a whole.

We appreciate your offer to respond to the committee's questions. We informed those whom we interviewed of your offer and invited them to tell us what they would wish to ask the Board of Visitors. From our conversations, and in keeping with the focus of our report, we have distilled the questions set out below. Accordingly, we would be most appreciative if you would be so good as to send us your responses to the following at your earliest convenience:

What *specific, concrete* steps is the Board of Visitors taking to restore the confidence of the faculty, as well as administrators, alumni, and the larger community in the board's commitment to:

1. develop a deeper appreciation of the university's mission and the manner of its implementation;
2. educate itself to the distinction between

institutional trusteeship and institutional management;

3. assure itself and the public that it is adhering to that distinction in practice;
4. assure the academic community and the larger public that its decisions are manifestly for the good of the university and not in pursuit of goals or interests external to it?

In responding to the above, it would be especially meaningful if you could address: (1) by what specific means and by use of what external bodies, resources, or agencies the board plans to educate itself and new appointees about best standards and practices of trusteeship; (2) what specific plans the board has made or is considering for greater interaction with and for the greater involvement of accredited representatives of the faculty across the spectrum of issues of institutional concern; and (3) the specific measures the board is or will be considering to ensure transparency and accountability in its processes, including self-evaluation or external periodic assessment.

As you would expect, and as the italics attached to our inquiry evidence, we would not find general assurances of good intentions or the like to be helpful. What we would find informative are those concrete measures the Board is either instituting or has under active consideration, set out in reasonable detail.

This is to thank you in advance for your assistance. If there is more you would wish to learn about the investigation I should be pleased to supply it.

Sincerely,  
Matthew Finkin

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February 8, 2013

Dear Dr. Kreiser,

Thank you for sharing the draft of your investigative committee's report in advance of its impending online publication. Our review of the 40-page draft has led us to this response.

While you invite us to correct the multiple errors of fact and comment on your treatment of issues, to do so would rehash past events and repeat corrections that are part of the public record. For the Board of Visitors' formal statements regarding its collective action last June, I refer you to our submissions to

the Southern Association of Colleges and Schools, enclosed for your convenience. We have been clear and consistent in our commitment to focus instead on the opportunities and challenges facing U.VA. as a highly ranked public university. President Sullivan is a full partner with the Board of Visitors in that commitment.

Our faculty makes U.VA. exceptional, and we have enormous respect for their teaching and scholarship, and for the life-changing influences they have on our students. We also acknowledge the stated role of the AAUP in advancing academic freedom and shared governance. The actions taken by the Board of Visitors in November are illustrative of our determination to be more transparent and more inclusive of faculty in the substantive work of the Board.

The specific questions you posed will be best answered by the actions of the Board in the coming months and years. Our meetings are now live-streamed and, of course, open to the public. Members of our faculty have been appointed to every standing committee and they will begin that valued University

service in our February 20–22 meetings. We have a Special Committee on Governance and Engagement whose role is to examine internal processes and external best practices to assure that we take advantage of every opportunity to enrich effective trusteeship as well as guide sound management. Suggestions offered in your report will be referred to this committee for consideration. All of this will unfold in the public arena.

As a public institution, we know that many eyes are upon us. As a university, we know that points of view are many and varied and often vocal. All that is as it should be. But please be assured that U.VA.'s Board of Visitors understands and deeply values its mandated role in setting policies, enforcing standards, and guiding the strategic direction of the University for the benefit of the members of the academic community as well as the citizens of the Commonwealth.

Sincerely,  
Helen E. Dragas, Rector

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## A May 2013 Update

*Upon the publication of its report three months ago, with its conclusions as of March 1, the investigating committee stated that it would prepare the following update for the Committee on College and University Governance to include in its report on the case to the Association's 2013 annual meeting in June.*

Progress toward closer board-faculty relations was indicated in a February 8 letter from the rector, included in the addendum to our report, stating that members of the faculty have been appointed to serve on the board's various standing committees. In addition, on March 14 the board of visitors issued a statement asserting that the board and the president have worked together in making decisions openly and in engaging faculty, staff, and students with a focus on improving academic quality, ensuring student access and affordability, and achieving sustainable funding. "The critical role our faculty plays in contributing to success in each of these areas," the board wrote, "cannot be overstated." Between these positive expressions, however, events were more mixed.

On January 29, Governor Robert McDonnell's reappointment of Ms. Dragas as rector became official with its confirmation by the Virginia General Assembly. On February 2, Rector Dragas responded

to a November 5 draft from President Sullivan of the president's goals for the 2012–13 academic year by sending her a revision, stating that the revised version would be accepted if the president did not want to refine the goals further by February 8.

The rector's goals were sixty-five in number, most of them addressing details relating to the medical center and to financial matters. The president, replying on February 6, remarked that "other flagship universities typically have a one-page list of six or seven high-level strategic goals to accomplish within a year." She stated that she had never previously seen twenty-two of the goals and that no one had previously discussed them with her. Some of the other goals had been discussed and she had raised objections, she wrote, and they have now been restated without noting her concerns. She characterized the goals as examples of "micromanagement," and as narrowly operational, some of them "in fact tasks,

and not presidential tasks at that.” With all these items added, she stated, the rector’s list had deleted her own “most urgent goal, which is raising compensation, especially for faculty. . . . The retention and hiring of faculty is our greatest challenge, and improving compensation is critical to solving that challenge.”

The president called several of the stated goals impossible to achieve and the sheer number close to unattainable in the few remaining months of the academic year. “I am not averse to stretch goals,” she wrote, “but I also do not care to be set up to fail.”

The UVA faculty senate on March 4 formally responded to the news of the rector’s February actions, stating that “Rector Dragas’s reported conduct does not embody the spirit of reconciliation and cooperation that we expected to follow the reinstatement of President Sullivan. Unfortunately, it raises the very concerns about minority control that led UVA’s accrediting agency to put us on warning last fall and suggests that Rector Dragas has not yet learned the governance lessons from last summer’s crisis. This kind of behavior must end.”

At its meeting the previous week (February 22–24), the board of visitors had approved the faculty salary increases that the rector had deleted from the listed goals and had approved a more realistic set of goals than those the rector had detailed. The senate’s March 4 statement went on to note these board actions, adding that “the Board continues to take steps to improve its internal governance processes. We applaud the Board’s efforts and are eager to continue working with the Board in mutual commitment to the University’s excellence.”

The rector replied the next day to the senate’s statement, taking issue with what she called its one-sided public comments on “a confidential personnel matter” and defending her own role in a complex and sometimes lengthy deliberative process before a consensus on proceeding had been reached. She stated that she, as well as the entire board, fully supported the goal of raising salaries while directing the development of a long-range financial plan which would ensure that expectations on compensation could be met. She said that she echoed the president’s stated commitment to work together in bringing UVA “to greater heights of excellence” and invited the senate to join with them “to build trust and increase collaboration.”

A meeting of the board on April 3 witnessed testimony by a series of administrative officers on the need for more money for increases in salary and improvement in the quality of undergraduate education. Most

board members are reported to have listened quietly while a few questioned the merits of a tuition increase and suggested cuts in academic programs to offset the need for it.

Meeting next on April 18, the board addressed the issue of funding. Rector Dragas reportedly argued that UVA leaders had long used decreased state funding as a “scapegoat” for constant increases in spending, and she and another board member voted against a package of tuition increases. She also threatened to vote against a capital-improvement plan which included a maintenance facility that carried a high estimated price. Nevertheless, the board voted to increase tuition by 3.8 percent for in-state undergraduates and 4.8 percent for out-of-state students. Engineering students were to pay an additional \$2,000 for tuition, and charges were to be increased for on-campus housing and meal plans.

At its May meeting, the board of visitors elected member William M. Goodwin as its new vice rector and approved President Sullivan’s budget for the next fiscal year.

In June, Ms. Dragas’s 2012–13 term as rector ends. She will have served the maximum number of terms as rector allowed under the board’s regulations, which call for the current vice rector, Richmond attorney George Keith Martin, to assume the office upon her leaving it. Were she to remain in office, the investigating committee’s current conclusions on the board’s role in university governance would likely not differ greatly from the conclusions as of March 1. With a new rector, however, and with administrative leaders, the faculty senate, the AAUP chapter, and, it seems, many if not most board members expressing commitment to a cooperative relationship, the committee now concludes with guarded optimism about adherence to the principles of shared governance in the months ahead. We expect the Association’s file on the case to be kept open until it can be said that our optimism was justified. ■