REPORT OF
SPECIAL INVESTIGATION
CONDUCTED AT
AUBURN UNIVERSITY
FOR
THE SOUTHERN ASSOCIATION OF
COLLEGES AND SCHOOLS, INC

DECEMBER 13, 2002

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# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Criterion 6.1.2</td>
<td>4</td>
</tr>
<tr>
<td>Example 1</td>
<td>5</td>
</tr>
<tr>
<td>Example 2</td>
<td>7</td>
</tr>
<tr>
<td>Example 3</td>
<td>9</td>
</tr>
<tr>
<td>Example 4</td>
<td>17</td>
</tr>
<tr>
<td>Example 5</td>
<td>22</td>
</tr>
<tr>
<td>Merger of the Journalism Department &amp; Communications Department</td>
<td>24</td>
</tr>
<tr>
<td>Elimination of the Economics Option in the Interdepartmental PhD Program in Applied Economics</td>
<td>26</td>
</tr>
<tr>
<td>Summary of Conclusions with Respect to Criteria 6.1.2 and 5.5.2 Concerning Board and Administrative Authority</td>
<td>29</td>
</tr>
<tr>
<td>Criterion 1.4 (Condition of Eligibility 3)</td>
<td>30</td>
</tr>
<tr>
<td>Example 7</td>
<td>30</td>
</tr>
<tr>
<td>Example 9</td>
<td>35</td>
</tr>
<tr>
<td>Criterion 1.4 (Condition of Eligibility 3)</td>
<td>37</td>
</tr>
<tr>
<td>Example 8</td>
<td>37</td>
</tr>
<tr>
<td>Allegations Outside the Scope of Investigation</td>
<td>40</td>
</tr>
<tr>
<td>Editorial Comment</td>
<td>42</td>
</tr>
</tbody>
</table>
INTRODUCTION

This special investigation at Auburn University for The Southern Association of Colleges and Schools, Inc. (SACS) commenced September 18, 2002 and was completed November 15, 2002. In addition to document review, the investigation included 52 interviews of persons including current and former trustees, faculty members and staff, coaches, administrators, alumni and students. All persons interviewed were cooperative and the office of the President of the University and the Secretary of the Board of Trustees assisted tremendously in expediting the process.

The roots of the recent conflict between Auburn University’s Board of Trustees and certain of its faculty, student body, and alumni go back a number of years. The evolution of this problem has been described by a long-time faculty member/administrator, as follows:

"Until the early 1980's the Board of Trustees was a rubber stamp. The Board was virtually invisible. Under the administration of President Funderburk and President Martin the Board became more pro-active. Beginning with the Curran affair there were conflicts between Board decisions and the faculty. This continued with the handling of the policy on admissions standards. The Board had the prerogative to set the policy but the problem was the way in which it was handled. The present Board has made dramatic changes. The by-laws have been redone, lines of communication have been opened, the Board has adopted a visitation program where Board members visit with faculty and
other constituents. There is a definite shift in the Board’s sensitivity. However, some faculty members will not be satisfied unless certain trustees resign.”

The criticism of the Board of Trustees reached its peak in 2001 with a series of nine “no-confidence” votes adopted by various constituents of Auburn University and then with censure by the University Senate over the method of appointing the current President. In order to address the crisis a Joint Assessment Committee (JAC), sponsored by the University Senate was formed in March 2001. The JAC is composed of the Chair of the Senate, a past Chair of the Senate, a representative of the Alumni Association, a Trustee, the Chair of the Auburn Staff Council, a representative of Administration and the President of the Student Government Association. The JAC concluded that an objective, independent assessment of the Board’s performance by an outside source was needed. Hence SACS was asked to evaluate governance at Auburn and on April 24, 2001, the JAC Complaint was initiated. Shortly after the SACS investigation was commenced, Auburn brought suit against SACS in the United States District Court for the Northern District of Georgia, alleging that certain aspects of the investigation were flawed. The matter remained in the Court until August 30, 2002, when the parties reached a consent agreement which provided that the Court would appoint its own special investigator to consider the issues raised by the JAC complaint.

While the lawsuit was pending, Auburn’s Board of Trustees made a number of improvements in its procedures and processes. Although it was suggested that certain
trustees should resign in order to restore trust and confidence in the Board, the trustees responded by adding non-voting faculty members to each Board committee and named the Chair of the Senate as an ex officio, non-voting member of the Board. All committee meetings, as well as the Board meetings, are open to the public and minutes are maintained for all committee meetings including the Athletic Committee. All parties agree that these steps are not quick fixes of the credibility problems which exist but are long-term solutions to the restoration of trust and confidence in the Board of Trustees. The faculty has adopted a wait and see attitude in order to determine if these changes have substance.

The scope of this investigation is delineated by the Consent Order of August 30, 2002, entered by Judge J. Owen Forrester. The SACS Criteria governing the investigation are Criteria 6.1 and 5.5, concerning board and administrative responsibility; Criterion 1.4 (Condition of Eligibility 3), concerning majority control of Auburn’s governing board; and Criterion 1.4 (Condition of Eligibility 3), concerning business dealings among members of Auburn’s Board of Trustees and Auburn.

The JAC complaint alleges a number of Examples in which Auburn’s Board of Trustees and Administration have not complied with these Criteria. Several of the Examples go back a number of years and involve boards which had a different make-up than the current Board. However, it should be noted that many of the allegations refer to two long-standing Trustees, Robert E. Lowder and, to a lesser extent, Lowell Barron.
During the course of this investigation, the Chairman of JAC has stated that it had voted to drop Examples 6, 9 and 10.

Consequently the investigation encompasses a three-part analysis: (1) whether the Board failed to meet the Criteria in the past; (2) whether the Criteria was being met when the JAC Complaint was filed; and, (3) whether Auburn was in compliance with the Criteria at the time of the investigation. The format of this report will begin with each Criteria specified in the Court’s Order, followed by the Examples alleged in the JAC Complaint and contentions raised during the investigation of situations in which Auburn’s Board of Trustees has failed to comply with such Criteria. The response of Auburn to each such Example and the pertinent facts determined in the course of this investigation will follow. Finally, the conclusions reached regarding each Criteria will be set out. However, appropriate recommendations, if any, will be left to the educators and academicians on the SACS Committee.

1. Criterion 6.1.2

Concerning board and administrative responsibility, the pertinent provisions of 6.1.2 are as follows:

"The Governing Board is the legal body responsible for

the institution and for policy-making..."
"Except under clearly defined circumstances, board action must result from a decision of the whole and no individual member or committee can take official action for the board unless authorized to do so. . .

"There must be a clear distinction between the policy-making functions of the governing board and the responsibility of the administration and faculty to administer and implement policy. . .

"General institutional policies should originate within the board or should be approved by the board upon recommendation of the administration."

**Example 1.** The Complaint contends that in February, 1988, the Board of Trustees approved new minimum standards for admission, retention and graduation that were developed by a Board committee rather than those developed earlier by the University Senate and subsequently approved by the President. Auburn responds that this instance occurred more than 13 years ago and that Auburn has undergone SACS reviews for reaffirmation since and this issue was not raised in those reviews. Auburn
further contends that the Board acted in its policy-making role in modifying these standards which had been submitted to it for approval.

**Facts Determined By Investigation.** In 1986 the faculty had been asked to draft new standards for admission, retention and graduation. The faculty proposals were far more specific than Auburn's previous standards. When presented to the Board the standards were referred to the Academic Affairs Committee of the Board of Trustees. During a meeting of that committee the main focus was on the effect the proposed standards would have on student athletes. Later in the process Trustee Lowder requested that the matter be referred to the Planning and Priorities Committee of the Board, of which Mr. Lowder was chairman. The faculty recommendations were altered by the Planning and Priorities Committee and in February of 1989, ultimately approved as altered by the Board of Trustees.\(^1\) The Board of Trustees by-laws show that the appropriate committee for consideration of the issue was the Planning and Priorities Committee. There is no disagreement among faculty, administration, or trustees over the fact that the standards for admission, retention and graduation are matters of policy and appropriately within the purview of the Board of Trustees. However, the primary disagreement relates to the manner in which the revision of the standards was handled. Most constituents agree that if the matter were presented today, the current Board would work more effectively with the faculty and administration, who are trained educators, in

\(^1\)Dennis Rygiel, Miller Solomon
finalizing such standards.²

**Conclusion.** Based upon the foregoing facts, it is concluded that the Board of Trustees was in compliance with Criterion 6.1.2 in modifying the proposed standards for admission, retention and graduation at Auburn University.

**Example 2. Rescinding of tenure offer made to Professor Charles Curran.** The Complaint alleges that during the academic year 1990–1991, the Board involved itself in an academic decision by pressuring then President Martin into rescinding a tenure offer to Professor Father Curran. Auburn responds by pointing out that the Curran Affair occurred more than 10 years ago and has been the subject of a SACS Reaffirmation Committee Report in 1993. Auburn shows that the Board and the Administration deny that President Martin was pressured about the Curran hiring and tenure decision. Moreover, Auburn responds by saying that the Board of Trustees has revised its Faculty Handbook to provide that the final decisions with respect to tenure matters rest with the President.

**Facts Determined By Investigation.** There is no evidence of official Board action in the form of a resolution regarding the hiring or tenure of Father Curran. A former trustee recalls having been present at a Board retreat in Guntersville where

²Barbara Struempler
pressure was exerted by certain trustees on President Martin regarding the hiring of
Father Curran. A current trustee recalls that another former trustee raised questions
with President Martin about Father Curran’s reputation in the Mobile Diocese.

President Martin has denied that he was pressured by Trustees into rescinding tenure for
Father Curran. Current trustees who were on the Board at the time of the Curran Affair
deny that trustees pressured President Martin into revoking his offer of tenure to Father
Curran. There is no evidence or knowledge of any trustee involvement in promotion or
tenure of faculty after the Curran Affair.

**Conclusion.** There is no evidence of official Board action involving the hiring or
tenure of Father Curran and thus no violation of the Board’s policy-making
responsibilities. However, the involvement of individual trustees to the extent that
President Martin was pressured into denying tenure would have constituted a lack of
compliance with the requirement of that of 6.1.2 in that “board action must result from a
decision of the whole, and no individual member or committee can take official action
for the board unless authorized to do so.” In the face of the denial by President Martin
that his decision was based upon pressure from trustees, it can not be concluded that

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3 John V. Denson
4 Robert E. Lowder
5 Barry R. Burkhart
6 Robert E. Lowder, Jimmy Samford
7 Barbara Struempler, John F. Pritchett
6.1.2 was violated. Moreover, because there is no evidence of trustee involvement in hiring and tenure decisions after the Curran Affair, it is concluded that at the time of the submission of the Complaint, as well as at the present time, Auburn University is in compliance with 6.1.2 with regard to such intrusion into personnel decisions.

Example 3. Lack of institutional control over athletics and cases where Board action reflected decisions by an individual Board member or committee rather than by the whole Board. The Complaint asserts that a transcript of an interview of President William V. Muse on March 15, 2001 describes the extraordinary control over athletics exerted by Board member Robert E. Lowder and the Athletics Committee of the Board.

Auburn responds that in his interview President Muse maintained that there was, in fact, institutional control over intercollegiate athletics at Auburn although he expressed concern over involvement of an individual trustee and the Athletic Committee, which functioned in a managerial rather than an oversight capacity. Auburn shows that when Dr. Muse was hired the Board of Trustees reaffirmed his control over athletics and, for the first time, vested responsibility for selection of the Athletic Director and Head Coaches with the President. Auburn contends that the governance documents at Auburn clearly give the President the responsibility to manage and direct the Athletic Department and that in actual practice the Athletic Director runs the day-to-day activities of the
Athletic Department. Auburn acknowledges that the practice of the Athletic Director is to solicit input from members of the Athletic Committee as well as other Board members. Finally, Auburn points to the findings of the NCAA Peer Review Team in 1997, which stated that the President of Auburn was in charge of the Athletics program.

In addition to the pertinent provisions of 6.1.2 this Example invokes Criterion 5.5.2 which provides:

“The administration must control the Athletics program... with appropriate oversight by the Governing Board. Ultimate responsibility for that control must rest with the Chief Executive Officer. It is essential that the responsibilities for the conduct of the Athletics program and for its oversight be explicitly defined and clearly understood by those involved.”

Facts Determined By Investigation. Intercollegiate athletics, especially football and basketball at a school like Auburn, command a great deal of interest and attention from all of its constituents. It would be completely unrealistic to expect that trustees and other alumni should have no communication with coaches or with the Athletic Director about major sports. At Auburn those conversations have existed in the past, take place today and likely will continue in the future. However, the coaches, the Athletic Director and the President insist that they and not the trustees run the Athletics Department.8

8Thomas H: Tuberville; R. Clifford Ellis; David Housel; William F. Walker

- 10 -
The March 2001 recorded interview between the Committee on Intercollegiate Athletics (CIA) and Dr. Muse resulted from a proposed University Senate resolution to ask the NCAA to investigate whether or not there was institutional control over athletics at Auburn. The chairman of the CIA suggested that rather than calling in the NCAA, the committee should meet with Dr. Muse and conduct its own inquiry. Based upon the interview with Dr. Muse, the CIA reported that there was in fact institutional control over athletics at Auburn although there was more trustee involvement than should exist.\footnote{David Wilson} Dr. Muse acknowledges that when he was hired, the Board of Trustees changed its policy to provide that the Chief Executive Officer would be responsible for hiring and firing of major coaches.\footnote{William V. Muse} At the time Dr. Muse arrived at Auburn, there was a major NCAA investigation of the football program under way. When in the course of that investigation it became apparent to him that Coach Dye should resign, Dr. Muse discussed the matter with Trustee Lowder. Dr. Muse informed Mr. Lowder that because of the NCAA investigation and Coach Dye’s health problems, the best thing for Auburn would be for Coach Dye to resign.\footnote{William V. Muse; Robert E. Lowder} Mr. Lowder then met with Coach Dye and after a lengthy, emotional discussion, Coach Dye realized that his resignation would be in the
best interest of Auburn and agreed.\footnote{Robert E. Lowder, Newspaper report of interview with Coach Dye} Dr. Muse was informed by the Secretary of the Board of Trustees that Coach Dye had decided to leave and Dr. Muse arranged a meeting with Coach Dye in Birmingham and negotiated the terms of his resignation. Dr. Muse was aware of Mr. Lowder's prior conversation with Coach Dye and raised no objection since it made Dr. Muse's job easier.\footnote{William V. Muse}

In order to find a new head coach Dr. Muse formed a Search Committee. Because Terry Bowden had been an assistant coach at Akron when Dr. Muse was there, he asked that Coach Bowden be included on the list of prospects. Mr. Lowder wanted an Auburn Assistant, Wayne Hall, to be included in the list but when Dr. Muse refused, Mr. Lowder supported Terry Bowden. The Search Committee voted unanimously to hire Terry Bowden, who had excelled in his interview. Both Athletic Director Lude and Dr. Muse agreed with the selection.\footnote{William V. Muse} Mr. Lowder denies that he helped prepare Terry Bowden for his interview with the Search Committee.\footnote{Robert E. Lowder} When Coach Bowden later resigned from the head coaching position at Auburn his main motivation was the fact that he had lost the support of Mr. Lowder and other Auburn alumni.\footnote{David House}
states that Coach Dye was primarily interested in coaching; therefore, Mr. Lowder functioned as Athletic Director with respect to many issues.\textsuperscript{17} Although Mr. Lowder was not made chairman of the Athletic Committee until 1999,\textsuperscript{18} Dr. Muse has stated that he and the Athletic Director, David Housel, were given instructions by Mr. Lowder and the Athletic Committee with regard to athletic decisions and they were expected to comply. However, on one occasion, although he had been instructed by Mr. Lowder to fire head basketball coach, Tommy Eagles, Dr. Muse rejected the instruction and instead he extended Coach Eagles's contract. On the occasion when Coach Eagles was finally terminated, Mr. Lowder wanted to replace him with Coach Sanderson but Dr. Muse would not agree. The current Athletic Director was selected by Dr. Muse and confirmed by a Search Committee. The current head football coach was hired by the President and Athletic Director.\textsuperscript{19} Thus, even though Mr. Lowder and the Athletic Committee exercised substantial influence over intercollegiate athletics, there were occasions when Dr. Muse drew the line and controlled the important Athletic Department decisions.

A trustee contends that the reason the Athletics Committee may have taken on management responsibilities was because Dr. Muse was not discharging those

\textsuperscript{17}William V. Muse

\textsuperscript{18}Robert E. Lowder

\textsuperscript{19}William V. Muse
responsibilities promptly and effectively. During the tenure of Dr. Muse, the Athletic Committee was involved in management to the extent it should not have been; however, Dr. Muse encouraged communication between trustees and administrators and this included the Athletic Director.

There have been two other recent inquiries into intercollegiate athletics at Auburn. The Athletic Director points to the fact that Auburn’s NCAA Division I Athletics Certification Interim Report of June 2002 states that the President is in control of the athletics program. However, it should be noted that a May 6, 2002 Southeastern Conference Compliance Review found that the athletics (committee’s) active involvement and propensity to micro-manage athletics is certainly an issue for concern and “that the athletic (committee) must work with the President regarding athletic matters and (that) individual Board members shall not seek to work outside Auburn’s governance structure to exert their will or influence over athletic department matters.”

With regard to the basketball program, a March 1999 memorandum to Mr. Lowder from Coach Ellis reports on discussions between the Coach and the Athletic Director primarily concerning financial matters. Coach Ellis and Mr. Lowder have known each other for over 20 years and Coach Ellis has had a business relationship with

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20 Jimmy Samford

21 William F. Walker

22 David Housej
Mr. Lowder since 1980, first as a member of the Board of Directors of the Colonial Bank in Mobile and then as a consultant for The Colonial Bancorp, Inc.\textsuperscript{23} When Coach Ellis was hired, Mr. Lowder had suggested him to Dr. Muse and Dr. Muse agreed.\textsuperscript{24} The Ellis memorandum certainly demonstrates that Coach Ellis expected Mr. Lowder to be informed and involved in the basketball program.

With regard to the current athletic situation, the Athletic Director states that a memorandum to all administrators from President Walker has clearly established that all communications with trustees should be through the President’s office or that his office should be informed. The Athletic Director has reinforced this directive by issuing his own memorandum to coaches and staff.\textsuperscript{25} Certain faculty believe that President Walker has been working hard to take control of the Athletic Department.\textsuperscript{26} The current President states that no one has instructed him how to run the Athletic Department and when he became President, the Board was looking for a Chief Executive which would provide leadership.\textsuperscript{27}

As a footnote to the investigation of athletics at Auburn University, it should be noted that several references have been made to the existence of a “Black Book”, which

\textsuperscript{23}R. Clifford Ellis; Robert E. Lowder
\textsuperscript{24}William V. Muse
\textsuperscript{25}David Housel
\textsuperscript{26}Yvonne Koslowski
\textsuperscript{27}William F. Walker
allegedly supported a contention that football players had continued to be paid for a time after the Eric Ramsey matter. Two people claimed to have seen the Black Book and described it as a list of important alumni, although no one contends that the book contained references to money. The President, the Athletic Director and attorneys involved in litigation between Auburn and Coach Oliver have sought unsuccessfully to have the alleged Black Book produced. Terry Bowden has apparently discussed the Black Book with faculty members and alumni on previous occasions. However, when contacted during the course of this investigation on October 7, 2002, Coach Bowden declined to be interviewed. Even if it were established that certain alumni were contributing to illegal payments to athletes in the past, such a conclusion would be beyond the scope of this SACS investigation. However, having been denied the opportunity to interview the only person who has connected the Black Book with this activity, the investigation can give no credibility to such serious allegations.

In today’s environment an athletic program at a major Southeastern Conference University cannot function without the support of its alumni. This means that alumni, including trustees, cannot be shut out of communication with the Athletic Director and with coaches. Hence the Athletic Director and the coaches must walk the slippery slope

28 Owen D. Brown; J. Wayne Flynt
29 David House; William F. Walker; Robert E. Lowder
30 J. Wayne Flynt; Gary R. Mullen; Owen D. Brown; Barry R. Burkhard; James T. Bradley
of encouraging alumni interest and involvement while maintaining the independence necessary to control Athletic Department decisions. The Athletic Director and the coaches at Auburn acknowledge that they communicate regularly with Mr. Lowder and other important alumni but they maintain that none of the alumni control their decisions.

Conclusion. Auburn has a history of involvement by trustees in decision-making regarding major athletics. When this activity has occurred it may have contravened the SACS proscription against individuals acting for the Board. However, no specific instance of a trustee controlling an athletic decision has been proved. A violation of SACS Criteria cannot be established by inference.

While the continued support of alumni is important to the success of the program, the Athletic Director's desire to practice consensus building through regular communication contributes to continued trustee involvement. However, at the present time the President is in control of intercollegiate athletics and Auburn is in compliance with Criteria 6.1.2 and 5.5.2, with regard to intercollegiate athletics.

Example 4. Administrators, coaches and students were encouraged to bypass the President and take concerns or requests directly to Board members, thus undermining the administrative authority of former President William V. Muse. Auburn responds that there are no clearly defined boundaries between policy and administration and the Board of Trustees at Auburn remains the legal body responsible
for the institution. Auburn acknowledges that Board intrusion into administrative
processes of the university have been questioned in a SACS Reaffirmation Committee
Report in 1993 as well as a 1997 Reaffirmation Committee Report for AUM. Auburn
shows that during Dr. Muse's tenure the minutes of the meetings of the full Board reflect
that most of the actions of the Board have consisted of approving recommendations
brought to it by the former president. Auburn shows that the trustees were actively
involved in the Role Commission created in 1998 for the purpose of considering long-
term goals, reorganization and academic structure for Auburn under the severe economic
hardship which existed. Auburn contends that the charge of "micro-management" results
from difficult policy decisions made by the Board during a period of financial crisis.

With regard to communications between trustees and administrators, Auburn contends
that those communications resulted from the failure on the part of former President Muse
to communicate with the trustees. Finally, Auburn states that former President Muse was
fully aware of and ratified these direct communications.

Facts Determined By Investigation. Dr. William V. Muse is very emphatic in
stating that during his administration, official actions taken by the Board of Trustees at
its meetings were all policy-making in nature and were within the constitutional authority
of the Board. The fact that individual trustees would communicate directly with
administrators is acknowledged broadly on all sides. The trustees put the responsibility
on Dr. Muse and Dr. Muse blames a long-standing practice in place at Auburn when he arrived on the job. Dr. Muse states he attempted to function within the system in place at Auburn. According to Dr. Muse, the trustees had the authority to make and made many decisions ordinarily made by the Chief Executive and trustees individually overstepped their roles by interfering with the administration at the University. He states that Mr. Lowder would go around him and deal directly with the Athletic Director and with the Chief Financial Officer and likewise, Mr. Barron would communicate directly with the administrators regarding properties and facilities.\(^{31}\) A source which requests to remain confidential confirms the process of Mr. Lowder and Mr. Barron going around Dr. Muse. Dr. Muse states that his instructions to key administrators were that they should keep him informed of requests made of them by trustees. If Dr. Muse approved of the request the administrators would comply. If not, Dr. Muse would call the trustee who made the request and discuss the matter with them.

On the other hand, certain trustees contend that they had no choice other than to communicate with administrators because Dr. Muse would not communicate with them.\(^{32}\) The presiding officer of the Board met with Dr. Muse only once prior to each meeting for the purposes of discussing the agenda.\(^{33}\) Trustees contend they frequently met with

\(^{31}\)William V. Muse

\(^{32}\)Lowell Barron; Robert E. Lowder

\(^{33}\)Jimmy Samford
administrators themselves because Dr. Muse would not get things done. Certain trustees felt that Dr. Muse encouraged communication between them and administrators.\textsuperscript{34}

Apparently Dr. Muse lost the support of the trustees over the years and at the end of his tenure the relations between him and a majority of the Board of Trustees "had gotten pretty tough."\textsuperscript{35} There is only one trustee whose opinion of Dr. Muse has remained positive.\textsuperscript{36}

With regard to "micro-management" a trustee who serves on the Boards of other universities in Alabama states that Dr. Muse's reluctance to make decisions led the Board into making management decisions which it would not have made if Auburn had had a strong Chief Executive. The line of what is policy is often fuzzy and varies on a case by case basis. If the Chief Executive does not assert himself the Boards of Trustees will typically step in and fill the void.\textsuperscript{37} Dr. Muse had a difficult time making decisions and either referred issues to committees for study or would pass the issues to the Board for decision.\textsuperscript{38} Dr. Muse invited micro-management in many ways by going to his Board of Trustees, making recommendations and asking for their approval in areas that he as

\begin{footnotes}
\item[34] Paul Spina
\item[35] Jack Venable
\item[36] Charlie Glover
\item[37] Ed Richardson
\item[38] Lowell Barrop
\end{footnotes}
Chief Executive Officer should have decided without asking for Board input.\textsuperscript{39}

If the trustees' excuse for involving themselves in management issues is correct, they can no longer blame weakness on the part of the present Chief Executive. Faculty, students, administrators and trustees alike commend the job President Walker is doing. Dr. Walker is a strong president and tries to exercise control over all aspects of the University. He is doing a positive job.\textsuperscript{40}

The distinction between policy and management has been described as a moving target. Any decision regarding finances by the Board of Trustees has an effect on University programs and any decision by faculty and administration on program has an effect on finances. Therefore, modern institutional governance is a joint endeavor.\textsuperscript{41} The Board must function in its policy-making role by having cooperation, trust and confidence from the faculty, administration and students.\textsuperscript{42}

\textbf{Conclusion}. Regardless of the cause, it is clear that certain Trustees regularly dealt with key administrators during the administration of Dr. Muse. As Trustee Barron acknowledges, such communication carries substantial weight because of the official position held by trustees. Thus it becomes difficult for administrators to distinguish

\textsuperscript{39}Don Logan

\textsuperscript{40}Barbara Struempler; David Wilson; Jack Miller; David Laband

\textsuperscript{41}William Weary

\textsuperscript{42}Don Logan
between a suggestion and a request. Requests by trustees carry the imprimatur of Board action, which "... must result from a decision of the whole, and no individual member or committee can take official action for the Board unless authorized to do so." Although no specific instances of individual trustees acting for the Board were established during this investigation and cannot be established by inference, the practice followed during the Muse administration certainly provided the opportunity for and created the perception of such action.

Apparently recognizing this to be the case the Board of Trustees adopted a resolution on July 23, 2001, which provides in part that discussions with trustees pertaining to issues which fall within the business responsibility of staff members shall be coordinated with the President’s office so that the President is aware of the discussion and can participate if he desires. During the Walker administration there is no evidence of the same degree of trustee communication with administrators as existed previously. Therefore, it is concluded that Auburn now complies with 6.1.2 with respect to individual trustees acting for the Board.

**Example 5.** The Complaint alleges that during the academic year 1999-2000, the Board demanded that the University adopt a specific type of Grade Forgiveness Policy. Faculty and administration twice recommended against such a policy; however the Board and particularly Trustee Barron demanded that the faculty and administration present it
with a policy.

Auburn responds that whether or not Auburn should adopt a Grade Forgiveness Policy constitutes "general institutional policy" which is within the purview of the Board. Auburn acknowledges that several Board members were angry with the delay and failure to comply with the Board's request for a Grade Forgiveness Policy but that the Board ultimately approved the Grade Forgiveness Policy proposed by a committee of administrators, faculty and students. Auburn contends that in this regard the Board of Trustees acted entirely appropriately.

**Facts Determined By Investigation.** The facts found to be relevant to this example are consistent with the facts alleged in the Complaint. The Student Government Association had come directly to the Board of Trustees with a request for a grade forgiveness policy. At the direction of the Board the administration and faculty were to study the matter and bring back a recommendation. Approximately two years later the trustees inquired about the status of the policy and were presented with a study which showed that such policies were prevalent in similar institutions. According to one trustee every school in the SEC had a grade forgiveness policy except Auburn and even Vanderbilt University had such a policy which, in fact, was similar to the one the students had requested. Trustee Barron lost his composure at the Board meeting and stated that if the faculty did not bring in a grade forgiveness policy, he would recommend that the Board adopt the Vanderbilt policy. When the grade forgiveness policy was
finally recommended by the faculty, administration and students, the Board approved the recommendation without change.\textsuperscript{43} The presiding officer of the Board believes the handling of the grade forgiveness policy was a good example of a governing board allowing faculty and administration to implement the policy which it had set.\textsuperscript{44} The trustees believe that whether or not Auburn University should have a grade forgiveness policy is a policy issue for determination by the Board of Trustees.\textsuperscript{45} There is no evidence to the contrary.

\textbf{Conclusion.} The decision of whether or not Auburn University should have a grade forgiveness policy is clearly a policy matter. Whether it was a good decision from an academic standpoint or whether individual trustees handled the issue in an inappropriate manner does not detract from the fact that the Board was acting within its authority in insisting upon the adoption of such a policy. Therefore, with respect to this example, the Board did not overstep its policy-making role and was in compliance with 6.1.2.

\textbf{Merger of the Journalism Department and Communications Department.}

It has been contended that Auburn was not in compliance with the Board's policy-
making responsibilities under 6.1.2 and that the merger was an example of individual trustee’s acting on behalf of the Board. Although the Complaint contains no such example, the issue was raised during the course of the investigation.

Facts Determined By Investigation. During the tenure of Dr. Muse, the Journalism Department and the Department of Communications were merged. The merger was unpopular with professors in the Journalism Department and was felt by them to be a means of retaliation by certain members of the Board of Trustees for a number of critical articles written by Lee Davidson, formerly a writer for the Auburn Plainsman.\(^{46}\) The merger issue was brought to the Board of Trustees after having been recommended by the Role Commission and an outside academic consultant. Dr. Muse recommended the merger and the Board approved his recommendation. The Dean of the School of Liberal Arts, which had jurisdiction over the Journalism Department, states that no trustee urged him to merge the departments. The Board of Trustees simply approved a recommendation that had come through the faculty Program Review Committee and was supported by the Provost and the President of the University. The Dean further states that the merger did not involve Lee Davidson and that the independence of the Plainsman was not affected by the merger.\(^{47}\) Finally, former President Muse states that the merger of the Journalism Department with the

\(^{46}\)Judith Sheppard, Eddie Lee Spencer

\(^{47}\)John Heilman
Communications Department was appropriate and worked out well.

Conclusion. In approving the recommendation of merger of these Departments, the Board of Trustees did not engage in alleged micro-management. Although trustee involvement may have been suspected, there is no evidence of a trustee acting for the Board in this regard. Thus, it is concluded that there was no violation of Criterion 6.1.2.

Elimination of the Economics Option in the Interdepartmental PhD Program in Applied Economics. An alleged example of Board of Trustee "micro-management centers around the business option for the Doctorate in the Economics. Although this example was not contained in the JAC Complaint, a number of persons interviewed saw this as action contrary to 6.1.2.

Facts Determined by Investigation. In 1998 the then Dean of the School of Business informed the head of the Economics Department that he intended to eliminate the business option for the PhD in Economics.48 As a part of a university-wide reprioritization of programs and budgetary process, President Muse had asked the Deans to cut ten percent of their respective budgets and to prioritize their programs.49 Dean Alderman appointed a Priorities and Goals Committee of Business School faculty and

48David N. Laband
49Wayne Alderman; David N. Laband; Yvonne Koslowski; Lowell Barron
asked the committee to rank programs within the Business School in order of priority. According to the Dean, the Doctorate in Economics at the Business School was expensive, graduated 3 to 5 people per year and placement was not good. Consequently his Priorities and Goals Committee voted to recommend elimination of the PhD in Economics. The Dean then sent the recommendation to Dr. Muse who passed it along to the faculty Program Review Committee for the University. The Dean contends that there was no faculty member from the School of Business on the Program Review Committee and it rejected the recommendation from the Business School and voted to save the business option for the Doctorate in Economics.\textsuperscript{50} Dr. Muse accepted the recommendation of the Program Review Committee and recommended to the Board of Trustees that the business option for the Doctorate in Economics be retained.\textsuperscript{51}

Those favoring retention of the program felt that the faculty Program Review Committee was in the best position to know which programs should be retained and, because the Board of Trustees' action was contrary to the faculty recommendation, there must have been some other reason for its action. To them the only reasonable explanation was that some trustees were retaliating against former Trustee John V. Denson, who was an advocate for the doctorate in Economics in the Business School and

\textsuperscript{50}Wayne T. Alderman

\textsuperscript{51}David N. Laband
who had crossed swords with Trustee Lowder on previous occasions.\textsuperscript{52}

When it became apparent that the Program Review Committee had overridden the recommendation of the Dean of the Business School, he objected to President Muse on the grounds that he was being forced to keep a lower ranked program and, would be required to sacrifice a program that was more highly regarded in the Business School. When President Muse did not agree with him, the Dean of the Business School went to Trustee Lowder to plead his case for elimination of the PhD in Economics rather than some more highly ranked program within the Business School.\textsuperscript{53} Trustee Lowder denies having been lobbied by Dean Alderman on the issue.\textsuperscript{54}

When the matter was considered by the Board of Trustees, the Dean of the Business School was asked for his recommendation and the Board voted to do away with the business option for the PhD in Economics. At the meeting the Board refused to recognize the head of the Economics Department or the head of the Graduate School, who would have spoken against the elimination of the program.\textsuperscript{55}

There are differing opinions on the question of whether or not the Board of Trustee action in overriding the recommendation of the President of the University and

\textsuperscript{52}David N. Laband; Yvonne Koslowski

\textsuperscript{53}Wayne T. Alderman

\textsuperscript{54}Robert E. Lowder

\textsuperscript{55}David N. Laband
the decision of the Program Review Committee was policy-making or micro-management.

**Conclusion.** It appears that the Board of Trustees made a decision to support the Dean of the School of Business rather than the faculty Program Review Committee and the President of the University in an academic matter and that in doing so, the Board intruded into the area of management which should have been left to the Chief Executive of the University and the faculty. This is an instance in which the Board overstepped its policy-making role and was not in compliance with 6.1.2. However, based upon the facts determined in this investigation and the attitudes and opinions of faculty and trustees alike, it is concluded that such intrusion into management is not likely to occur with the present leadership at Auburn University.

**SUMMARY OF CONCLUSIONS WITH RESPECT TO CRITERIA 6.1.2 AND 5.5.2 CONCERNING BOARD AND ADMINISTRATIVE AUTHORITY**

Two basic concerns have been raised regarding these Criteria: First, that the Board oversteps its policy-making role and engages in management activities which should be left to faculty and administration; and Second, that certain trustees have undertaken to act for the Board.

With regard to the former charge, this investigation concludes that in 1999, this Board was guilty of “micro-management” in substituting its judgment for that of the
trained educators in eliminating the Business Option for the PhD in Economics.

However, in none of the other instances raised during this investigation and in no case which existed at the time of the filing of the Complaint or exists at the present time has Auburn University been found not in compliance with Criteria 6.1.2 and 5.5.2 concerning Board and Administrative authority.

2. CRITERION 1.4
(CONDITION OF ELIGIBILITY 3)

Concerning majority control of Auburn's governing board, the pertinent provision of Criterion 1.4 is as follows:

"The Board must not be controlled by a minority of Board members..."

Example 7. Business relationships among Board members may compromise the independence of the Board and allow the Board to be controlled by a minority or by a single member. The Complaint alleges that several business alliances between Trustee Lowder and a majority of other Board members have been reported many times in the media and, although Mr. Lowder and other Board members have publicly claimed that these relationships in no way affect Board policies or voting, the wide-spread perception is contrary to these claims.
Auburn responds that this allegation is based upon perception as opposed to reality and that the business relationships between Mr. Lowder and certain members of the Board do not involve a majority of the Board of Trustees. Auburn denies that its Board of Trustees is controlled by a minority or by a single member.

**Facts Determined By Investigation.** There are four trustees who have business relationships with Mr. Lowder. Mr. Samford’s law firm has represented Mr. Lowder’s interests in lobbying matters in the past, although it is not presently doing so. Mr. Rane has been a member of the Board of Directors of The Colonial BancGroup, Inc., since 1997. Mr. Spina is an Advisory Director of the Birmingham Area Branch of Colonial Bank. Mr. Miller has been a Director of The Colonial BancGroup, Inc., since 1981 and his law firm has acted as legal counsel for Mr. Lowder’s interests for many years. Mr. Samford, Mr. Rane, Mr. Spina and Mr. Miller each deny vehemently that their independence is compromised by their relationship with Mr. Lowder. However, experience shows that publicly opposing an important client or Chairman of the Board on which they serve would present a difficult problem for them. Whether such difficulty results in control by Mr. Lowder has not been demonstrated by the evidence; nor could it

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56 Jimmy Samford

57 Jimmy Rane

58 Paul Spina

59 Jack Miller
be established short of an admission to that effect.

In addition to the foregoing business relationships, a number of other Trustees have banking relationships with the subsidiary bank owned by The Colonial BancGroup, Inc. Mr. Barron and Mr. Blackwell own a number of commercial real estate projects which were financed by Colonial Bank, including several developed for Colonial Bank. Mr. McWhorter has developed a number of Lowe's Centers financed under fully secured and completely arms-length loans from Colonial Bank. Mr. Spina banks with Colonial Bank in connection with his real estate development business. Mr. Venable has an account with a bank in Tallassee, Alabama, which is now owned by Colonial Bank. Mr. Samford does business with most of the larger banks in Alabama, including Colonial Bank. Mr. Franklin and his wife have a bank account with Colonial Bank. Although Mr. Rane is a Director of The Colonial BancGroup, Inc., he has terminated his banking relationship with Colonial Bank in view of the media criticism of banking relationships between trustees and Colonial Bank.

60Lowell Barron; John Blackwell
61Earlon McWhorter
62Paul Spina
63Jack Venable
64Jimmy Samford
65Byron Franklin
66Jimmy Rane
There is no evidence to suggest that these banking relationships are anything but arm's length and, as such, would not by virtue of their existence, compromise the independence of these trustees.

When questioned about whether the Board is controlled by a minority of trustees, most trustees state that it is not. There are two exceptions among the trustees who prefer that their opinions remain confidential. Trustees contend there are differences of opinions and disagreements among them.67 With one exception, trustees state that Mr. Lowder has never asked them to vote for or against anything.68 The only exception occurred when Mr. Lowder pressured a trustee to vote against the elimination of the business option for the doctorate in Economics.69

Mr. Lowder is described as a successful businessman who is used to making decisions and moving forward. Thus, he has a great deal of influence among trustees.70 Mr. Lowder is characterized by a trustee as an intelligent, good businessman, who “makes a lot of good decisions, and therefore you won’t find me disagreeing with those decisions often.”71 He is described as entrepreneurial, competitive, generous, impatient

67Lowell Barron; Byron Franklin
68Bryon Franklin; Jimmy Samford; Jack Venable; Golda McDaniel; Earlon McWhorter; Ed Richardson
69Charles Glover
70Ed Richardson
71Earlon McWhorter
and intelligent.\textsuperscript{72}

It appears that Mr. Lowder has indeed been the most influential Trustee on the Board. As it the case with most governing boards, some members are looking for someone to lead and there are a few members, who because of their persona, experience, preparation, intelligence and persuasiveness, tend to control most decisions of the boards.\textsuperscript{73}

**Conclusion:** The evidence determined by this investigation does not reveal that Mr. Lowder's influence or control results from the use of power or intimidation. So long as this is the case, the influence or control exercised by Mr. Lowder does not constitute a violation of Criterion 1.4 (Condition of Eligibility 3).

However, the close relationships between him and certain Trustees and even the numerous banking relations between his bank holding company and Trustees have indeed contributed to the "perception" that improper control exists. The newly created Trustee Selection Committee is presented with a timely opportunity to add Trustees to the Board who will be clearly independent and thus help dispel the appearance of minority control.

\textsuperscript{72}Jack Miller

\textsuperscript{73}Jack Miller; Bill Weary; William F. Walker; Jack Allen
Example 9. Dismissal of former President William V. Muse. The unceremonious dismissal of President Muse in February 2001 and the installation of interim President William F. Walker appeared not to be the action of the Board as a whole, even though the Board's vote on this action was unanimous. The Complaint contends that it later became public that all Board members had not seen the resolution that led to this action before being asked to vote on it. It is contended that the perception of many is that this action was an example of Board decisions being orchestrated, if not directly controlled, by a minority of Board members.

Auburn responds that this Example, like several others, is based upon perceptions. Auburn points out that before the decision was made to remove President Muse, he had accepted an offer to become Chancellor of East Carolina University. Auburn shows that even earlier, there had been discussions with Dr. Muse concerning the negotiation of a separation agreement between him and Auburn. When it was learned that Dr. Muse had accepted another position, Auburn contends that its Board was at a critical point which required new leadership rather than a lame duck president. Eight out of twelve Board members attended the meeting at which the resolution was passed.

Finally, Auburn contends that regardless of the handling of the matter, the hiring and retention of the President of the University are clearly within the province of the Board of Trustees.
Facts Determined By Investigation. It appears that in fact eight of the members of the Board of Trustees attended the meeting at which the decision to remove Dr. Muse was made.\textsuperscript{74} One of the Trustees who regrets voting in favor of the termination of President Muse states that he was under the assumption that President Muse would remain in office until his term was completed but blames himself for not pursuing the issue as far as he should have before voting.\textsuperscript{75} Prior to the date on which Dr. Muse was replaced, negotiations had begun regarding the termination of his presidency. When the Board became aware that Dr. Muse had accepted employment as Chancellor at East Carolina University, the decision to replace him was made in view of the fiscal crisis facing Auburn University.\textsuperscript{76}

Conclusion. The decision to terminate President Muse was undeniably within the authority of the Board of Trustees. The investigation reveals that Mr. Lowder and Dr. Muse had not been on good terms for several years; however, no evidence was disclosed to indicate that this decision was improperly controlled by a minority of the trustees.

\textsuperscript{74}Minutes of Meeting, February 12, 2001; Meeting of Board of Trustees

\textsuperscript{75}Charles Glover

\textsuperscript{76}Jack Miller
3. CRITERION 1.4

(CONDITION OF ELIGIBILITY 3)

Concerning business dealings among members of Auburn’s Board of Trustees and Auburn, the pertinent provision of 1.4, Condition of Eligibility 3, is as follows:

“The presiding officer of the Board must have no contractual, employment, or personal or familial financial interests in the institution. The majority of other voting members of the Board must have no contractual, employment, or personal or familial interests in the institution.”

Example 8. Past and recent contractual interests of some Board members in the University compromise the trust that stakeholders need to have in the Trustees.

The Complaint asserts that Mr. Lowder’s companies once held contracts for an Alumni Credit Card and broadcast rights for Auburn athletics and that board member Lowell Barron recently won a contract to install new windows in university dormitories. The Complaint contends that a majority of the board members do not hold business contracts with the university but asserts that trust would be enhanced if all board members voluntarily avoided even the appearance of conflicts of interests between their business lives and their roles as trustees of the university.

Auburn responds that there is no contention that a majority of the board members
have ever had business contracts with the university and therefore the Complaint urges SACS to apply a more stringent standard to Auburn than is required under Criterion 1.4. Auburn shows that the contract for broadcast rights of Auburn athletics was entered into in 1980 at a time when Mr. Lowder was not a member of the Board of Trustees and that this business relationship terminated in 1986. Auburn contends that the credit card contract between Colonial Bank and the Auburn Alumni Association has been reviewed and approved by the Alabama Ethics Commission. Finally, Auburn responds that the contract for the installation of windows was between a company owned by Trustee Barron’s son and not Trustee Barron. Auburn further shows that the contract for refurbishing dormitories was entered into between Auburn University and a prime contractor. The prime contractor then selected a sub-contractor to provide the window installation and the company owned by Trustee Barron’s son was the lowest bidder. Hence the contract was awarded by the prime contractor and not the University.

**Facts Determined By Investigation.** First, it is uncontroverted that neither the presiding officer of the Board of Trustees, nor any member of his family has a contractual relationship with Auburn University.\(^7\)\(^7\) Except for the business owned by Mr. Barron’s son and a printing company which employs Mr. Blackwell’s son, there are no instances in which trustees or members of their families have any financial interest in Auburn University.

\(^7\)\(^7\)Jimmy Samford
A great deal of information was provided during this investigation regarding the credit card relationship between the Auburn Alumni Association and Colonial Bank, particularly with regard to how the bids were handled between the then Director of the Alumni Association and Mr. Lowder. The circumstances regarding the handling of the bids have been subject of another investigation by the Alabama Ethics Commission which was being conducted during the time of this investigation. Moreover, the credit card agreement between Colonial Bank and the Auburn Alumni Association no longer exists. In 1999 the Alumni Association decided to rebid the credit card contract and Colonial Bank declined to bid.\footnote{Betty DeMent} Regardless of how Colonial Bank was awarded the contract, the bid-handling procedure is beyond the reach of the SACS Criteria. Therefore, it is beyond the scope of this investigation. The SACS Criteria do not, per se, bar business dealings between trustees and their families with the institution. Nor do the criteria establish standards for the way in which contracts are entered into.

Con**clusion**. Therefore, Auburn is found to be in compliance with the pertinent provisions of Criterion 1.4 (Condition of Eligibility 3) regarding prohibited financial interests in the institution.

\footnote{Betty DeMent}
Allegations Outside the Scope of Investigation

Considerable information was provided during the investigation concerning a “proxy fight”, which occurred in connection with the election of officers and directors for the Auburn Alumni Association on Homecoming weekend of October 2000. At that point the leadership of the Auburn Alumni Association had been critical of the Board of Trustees handling of a number of issues. Golda McDaniel, who is now a trustee, had been nominated as in-coming President of the Alumni Association. She became concerned that the Association directors were not supportive of her and when Dr. Muse did not offer any helpful suggestions she went to Mr. Lowder, Mr. Spina, Mr. Samford and Mr. Blackwell to ask for their assistance. She was advised to come up with her own slate of directors and those trustees promised to help her get them elected.\footnote{Golda McDaniel} Certain of those trustees participated in gathering proxies to support a new slate. Whether those trustees were motivated by a desire to get rid of vocal critics on the Alumni Board; a desire to control the new trustee selection process; or a desire to help a deserving woman has been the subject of speculation.

The meeting of the Alumni Association on Homecoming weekend was abruptly adjourned due to the fact that the fax machine in the Alumni office had been blocked by
a continuous incoming fax. Litigation ensued and the controversy was ultimately settled with Ms. McDaniel agreeing to serve President along with the original slate of officers proposed by the Board of the Alumni Association plus one additional director. It is concluded that whether or not certain trustees involved themselves in a proxy fight at the Alumni Association does not fall within the scope of this investigation.

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80 Andy Hornsby, Bill Porter
81 Dennis Bailey
EDITORIAL COMMENT

Auburn University is a remarkable place. As stated by an alumnus: “perhaps Auburn’s greatest strength may be its greatest weakness... Auburn people are loyal to a fault.” Whether or not this is an overstatement, it is clear that Auburn folks are fiercely loyal and love Auburn. Almost without exception the faculty members which were interviewed, some of whom were the most vocal in criticism of the trustees, had all been at Auburn for 25 to 30 years. The last two faculty members interviewed described Auburn as “a great place which will survive these difficulties.” One Auburn Alumnus who has achieved considerable success in the business world attributes the unique feeling of faculty, students and alumni to “a special chemistry” which is present at Auburn.

There is no question that the recent strife concerning the Board of Trustees at Auburn has wrought positive changes in its governance practices. Hopefully, this SACS review of the situation at Auburn will provide further help in resolving these issues so that the University can continue to build on its remarkable history and success.

Respectfully submitted

Richard Y. Bradley
December 13, 2002