

TO: ABA Board of Directors

FROM: ABA Governance Committee

January 22, 2004

GOVERNANCE COMMITTEE REPORT FOR FISCAL YEAR 2003

This letter provides a report from the ABA Governance Committee covering fiscal year 2003. The report has three sections:

1. Committee objectives and methodology
2. Committee findings
3. Resulting recommendations

Given that the Governance Committee has now been in existence for some while this report provides somewhat less background than in prior years, and focuses primarily on the committee's findings and recommendations. Please note that this report will only become final after the Chair has completed two outstanding items noted below as pending – speaking with the Auditor and reviewing the Auditor's opinion letter. If there is no further correspondence from the committee prior to the February Board meeting the Board may assume that the above activities have taken place and have not changed any of the following report.

COMMITTEE OBJECTIVES AND METHODOLOGY

The Governance Committee is constituted based on the relevant section of Article VII.1 of the *ABA Bylaws*, which reads:

“The Board shall appoint a Governance Committee constituted of Bookstore Members, none of whom is a member of the Board, but one of whom is a previous Officer, to review annually the Association, Board, and Officers' practices in accordance with policies and procedures adopted by the Board. The Governance Committee's term is one year.”

The members of this year's committee are Chuck Robinson (Chair), Mary Gay Shipley, and Tom Campbell. The committee's function is described in substantial detail in the ABA's *Policy Manual*, but briefly it serves as an outside review body on the three issues summarized below where the Board and management may not have arm's length perspectives:

1. Ensuring that the relationship between the Board and senior management is functioning according to the ABA's organizational design as laid out in the Bylaws and the *Policy Manual* and that both bodies are otherwise observing their obligations as outlined in these documents
2. Supervising resolution of any issues where the Board or staff has a conflict of interest

3. Providing oversight if there is material question of whether the Board is maintaining fiduciary responsibility

It may be useful to note that it is **not** the committee's responsibility to evaluate the Board's decisions and strategic direction, or management's execution of the Board's directives.

In keeping with the decision made in 2002 to streamline alternate year committee proceedings, the committee's used full-blown in-person interviews this year since last year the committee did not meet in person and most interviews were conducted by mail, phone, or by a single committee member. Specifically, this year the committee undertook the following:

1. Structured confidential interviews based on the ABA Policy Manual and Bylaws with two current Board members, four staff members, and two BAC members:

- Ann Christophersen, President
- Mitchell Kaplan, Vice President and Secretary
- Avin Domnitz, Chief Executive Officer
- Oren Teicher, Chief Operating Officer
- Ellie Chang, Chief Financial Officer
- Len Vlahos, Director of Booksense.com
- Barb Wieser, BAC member
- Linda Ramsdale, BAC member

1. Structured mail interviews with two other board members:

- Karl Pohrt
- Carla Jimenez

2. Discussions with the ABA's lead Auditor, Charlene Laniewski, KPMG (pending)

3. The financial Auditor's opinion letter for fiscal year 2003 (pending)

A copy of the structured interview guide, along with a summary of the interview results, is attached as Appendix A.

COMMITTEE FINDINGS

Upon review of the above sources the committee found that the several year trend of steady improvements continues, with the result that the ABA's governance mechanisms appear to be working very well. The committee noted that in general, satisfaction with the current arrangements continued high among both the Board and staff, and that the few issues that arose appeared to be regarded as matters of modest concern.

In fact, several elements of ABA's larger governance scheme seem to have achieved new highs in effectiveness over the past year. These include the following:

- Several respondents remarked on how much the effectiveness of the Board, and its relationship with staff, have grown in recent years as the new governance model has settled into place
- For the first time the committee asked respondents to rate the two-year trend for each item. There were no “down” trend ratings reported: in other words every respondent felt that performance on the matters in question were flat or improving, and most of those that were flat were already rated at very high levels of performance
- Substantial progress was noted by virtually all respondents on four of the five items recommended in last year's committee report (including Board members at BAC meetings, improving communications between the BAC and Board, improving Board effectiveness in long-range environmental planning, and monitoring the progress of booksense.com). The fifth item (refining the nomination process) was generally described as improving but still partially in development
- No conflict of interest or issues of materiality were cited, and Board preparation and discipline were reported to be high

With that said, the committee noted several areas where issues were raised. Each finding is described in more detail below.

1. After several years of successful modifications that have increased BAC input to the Board, several respondents raised the question of how to close the loop and provide Board feedback to the BAC. The feedback would follow up on the BAC's prior suggestions and would allow the Board to request the BAC to consider new issues when appropriate
2. After three years of very low scores, the Board's efforts to monitor future trends and to initiate policy rather than react to staff initiatives fared considerably better than in the past. Respondents also noted that ratings of both issues have trended upward. At the same time, several respondents expressed interest in approaches that would continue the upward trend, noting that there is still room for improvement
3. Last year's recommendations that the Board provide more specific input to the nominating committee resulted in a self-assessment by Board members of their collective strengths and weaknesses. With that as background, several respondents noted that the question of how the committee uses that information is yet to be determined, and that the bylaws may limit the committee's inclination to seek substantial Board input on what mix of skills is most needed to enhance the current Board's effectiveness
4. The question was raised of whether it is possible and desirable to keep interested Board members up to date on current issues between Board meetings. One idea was

that the current regularly-scheduled calls between the CEO and the Board President could result in occasional brief emails from the President to fellow Board members providing a short overview of current issues

5. Finally, the Governance Committee found that meeting with several BAC members was extremely helpful given the importance of the BAC in the governance process, and would like to suggest that it do so again next year to follow up on this year's findings and recommendations

RESULTING RECOMMENDATIONS

Based on these findings, the committee would like to submit the following recommendations for Board discussion and review:

1. Consider asking the President and/or Vice President to act as a formal liaison between the BAC and the Board: Have each BAC meeting close with a request by the President or Vice President for a list of topics that the BAC would like presented to the Board; and have each BAC meeting begin with a report by the President or Vice President of responses from the Board, any requests from the Board to consider specific issues, and a request that the BAC members keep track of issues that they would like the Board to consider so that the BAC can create a collective list at the end of the meeting

Accepted. The President and the CEO will refine and suggest a procedure to the Board for implementation at the BEA meeting of the Bookseller Advisory Council.

2. Continue scenario planning efforts at Board meetings by examining important topics at each meeting. Emphasize issues where policy creation is desirable given a possibility of long-term change. If the sessions continue to be successful consider building internal staff capability to undertake the preparation work needed for the Board's deliberations, and alter the relevant sections of the *Policy Manual* to reflect these changes

Accepted in principle with the proviso that budget considerations and the demands upon staff ultimately will determine what is possible at a given point in time.

3. Monitor the effectiveness of this year's Nominating Committee process, and if appropriate consider changes to the By Laws that would explicitly encourage the committee to use Board input to ensure that the Board maintain continuous representation of needed technical skills (e.g., finance) as well as continuous representation of various membership categories

The Board will certainly monitor the effectiveness of this year's Nominating Committee process, but feels that the way to ensure and maintain the use of Board input for the various purposes mentioned is by a small modification of the ABA nominations and Election Guidelines specifically mentioning that the committee shall

seek appropriate input from the Board of Directors. The modification would be made to the second paragraph of the first section of the Guidelines.

4. Consider making regularly-scheduled (e.g., weekly or bi-weekly) contact between the President and the CEO a normal activity, and request that the President keep other Board members briefly updated on current topics (for example, with brief emails)

Accepted with the qualification that the e-mails could come from either the President, CEO, or COO at any particular time.

5. Consider formalizing the previously experimental alterations to the process used by the Governance Committee by changing the *Policy Manual* to reflect the following:
 - a. Appoint members to a two-year (rather than one-year) term
 - b. Formalize the process of conducting limited reviews in odd-numbered years
 - c. When a new chairperson is named in the second year of their term, extend their term by one year (for a total of three years) so that they overlap with the new chairperson in the next year to provide continuity

Accepted. The revised section of the policy Manual will be in place in time for the next Governance Review Committee process.

* * *

In closing, the committee would like to note the cooperation of all involved as well as numerous comments that the ABA's commitment to putting such a procedure in place is testimony to its continued commitment to transparency and good governance. Please feel free to contact any committee member if questions arise.

APPENDIX A - ABA GOVERNANCE SURVEY RESULTS

FY 2003

Please respond to the following questions regarding governance issues during ABA’s fiscal year 2003 (11/02-10/03) and either discuss your responses in an in-person interview in Miami or return your completed questionnaire by email or surface mail to the address listed at the end of the survey.

Many of the questions ask you to rate a statement on a 7 point scale where 7 is high. The questions also ask you to describe the trend over the past two years with regard to the question’s subject using U (up); D (down); or F (flat). If you do not have an opinion on any question, please enter “NA”. Feel free to add comments at the end of this survey. Thank you in advance for your help.

Questions on the Board/Management Relationship and Obligations

As you know, the ABA’s Policy Manual outlines Governance Process Policies in section two. The following questions relate to those expectations.

1. On a seven point scale (7 is high), how well is the Board currently accomplishing the following [1st box]? What best describes the trend over the past two years: up (U), down (D), or flat (F) [2nd box]? :

	Current	2-year trend	U	F	D	N/A
a. Initiating policy rather than reacting to staff initiatives?	5	<input type="checkbox"/>	5	4	0	1
b. Monitoring future trends?	5.8	<input type="checkbox"/>	9	0	0	1
c. Defining desired long-term outcomes rather than programmatic means of attaining those outcomes?	5.8	<input type="checkbox"/>	6	2	0	2
d. Maintaining internal discipline on matters such as attendance, preparation, and communications?	6.3	<input type="checkbox"/>	5	2	0	3
e. Self-monitoring by discussing board process and performance relative to the expectations in the Bylaws and <i>Policy Manual</i> ?	5.9	<input type="checkbox"/>	7	0	0	3
f. Producing written policies on what programs, services, and products should be made available, to whom, and at what cost?	5.5	<input type="checkbox"/>	2	5	0	3
g. Establishing prudent ethical guidelines for the ABA and constraints on executive authority?	6.9	<input type="checkbox"/>	4	4	0	2
h. Assuring that the performance of the Executive Director is consistent with the Board’s desires and expectations?	6.4	<input type="checkbox"/>	6	1	0	3

- | | | | | | | | | |
|----|--|------------|--------------------------|--|---|---|---|---|
| i. | Revising as appropriate the ABA's end policies and strategic plan within the last year? | 6.8 | <input type="checkbox"/> | <table border="1" style="display: inline-table;"><tr><td>4</td><td>3</td><td>0</td><td>3</td></tr></table> | 4 | 3 | 0 | 3 |
| 4 | 3 | 0 | 3 | | | | | |
| j. | Reviewing the Executive Director's performance as outlined in the <i>Policy Manual</i> during the month of July? | 6.7 | <input type="checkbox"/> | <table border="1" style="display: inline-table;"><tr><td>4</td><td>2</td><td>0</td><td>4</td></tr></table> | 4 | 2 | 0 | 4 |
| 4 | 2 | 0 | 4 | | | | | |
| k. | Deliberating in a manner that is fair, open, and thorough, but also timely, orderly, and to the point? | 6.4 | <input type="checkbox"/> | <table border="1" style="display: inline-table;"><tr><td>7</td><td>2</td><td>0</td><td>1</td></tr></table> | 7 | 2 | 0 | 1 |
| 7 | 2 | 0 | 1 | | | | | |
| l. | Using the chairperson as a two-way communication conduit with the Executive Director? | 5.9 | <input type="checkbox"/> | <table border="1" style="display: inline-table;"><tr><td>2</td><td>4</td><td>0</td><td>4</td></tr></table> | 2 | 4 | 0 | 4 |
| 2 | 4 | 0 | 4 | | | | | |
| m. | Avoiding exercise of individual authority except when explicitly board-authorized? | 6.8 | <input type="checkbox"/> | <table border="1" style="display: inline-table;"><tr><td>4</td><td>4</td><td>0</td><td>2</td></tr></table> | 4 | 4 | 0 | 2 |
| 4 | 4 | 0 | 2 | | | | | |
| n. | Directing only the CEO regarding operational achievement and conduct, rather than any other members of management? | 7 | <input type="checkbox"/> | <table border="1" style="display: inline-table;"><tr><td>2</td><td>6</td><td>0</td><td>2</td></tr></table> | 2 | 6 | 0 | 2 |
| 2 | 6 | 0 | 2 | | | | | |
2. On a seven point scale (7 is high), how well is the CEO accomplishing the following [1st box]? What best describes the trend over the past two years: up (U), down (D), or flat (F) [2nd box]? Feel free to add comments as well:
- | | Current | 2-year trend | | | | | |
|---|----------------|--------------------------|--|---|---|---|---|
| a. Making available to the Board sufficient information and staff work to support their obligation to make strategy and policy? | 6.5 | <input type="checkbox"/> | <table border="1" style="display: inline-table;"><tr><td>6</td><td>2</td><td>0</td><td>2</td></tr></table> | 6 | 2 | 0 | 2 |
| 6 | 2 | 0 | 2 | | | | |
| b. Working effectively with the Board as an interface between the Board and the ABA's staff? | 6.5 | <input type="checkbox"/> | <table border="1" style="display: inline-table;"><tr><td>3</td><td>4</td><td>0</td><td>3</td></tr></table> | 3 | 4 | 0 | 3 |
| 3 | 4 | 0 | 3 | | | | |
| c. Causing the staff to effectively respond to issues of importance to the Board and the membership? | 6.9 | <input type="checkbox"/> | <table border="1" style="display: inline-table;"><tr><td>5</td><td>4</td><td>0</td><td>1</td></tr></table> | 5 | 4 | 0 | 1 |
| 5 | 4 | 0 | 1 | | | | |
| d. Working within the boundaries of any <i>executive limitations policies</i> (as defined in the <i>Policy Manual</i>) established by the Board? | 6.7 | <input type="checkbox"/> | <table border="1" style="display: inline-table;"><tr><td>4</td><td>3</td><td>0</td><td>3</td></tr></table> | 4 | 3 | 0 | 3 |
| 4 | 3 | 0 | 3 | | | | |

Questions on Conflict of Interest

The ABA's Policy Manual defines policies regarding Board conflicts of interest in section 2.VI and in section 5. The following questions reflect those policies.

- | | | | | | | | | |
|--|--------------------------|---|---|---|-----|---|---|---|
| 1. Has there been any self-dealing or any conduct of private business or personal services between any Board member and the ABA except as procedurally controlled? (Y/N) | <input type="checkbox"/> | <table border="1" style="display: inline-table;"><tr><td>Y</td><td>N</td><td>N/A</td></tr><tr><td>0</td><td>8</td><td>2</td></tr></table> | Y | N | N/A | 0 | 8 | 2 |
| Y | N | N/A | | | | | | |
| 0 | 8 | 2 | | | | | | |

2. Have Board members failed to absent themselves as appropriate if any unavoidable conflict of interest arises? (Y/N)

0	7	3
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3. Has any Board member used their position to obtain employment for themselves, family members, or close associates? (Y/N)

0	8	2
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4. Has any Board member failed to annually disclose their involvement with other organizations, with vendors, or any other associations that might produce a conflict of interest? (Y/N)

0	7	3
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5. If the answer to any of the above is yes, please provide details.

Questions on Fiduciary Responsibility

Fiduciary responsibility requires that Board members live up to high standards with regard to their responsibilities to the organization. Examples include avoiding conflicts of interest, applying due care, candor, and confidentiality as appropriate, and applying prudent business judgment, particularly to matters of great materiality. Because the other elements of fiduciary responsibility are covered in earlier questions, this section concentrates on the last of these obligations.

1. Is there any activity or matter that the Board has endorsed that is currently underway or is anticipated that is of great materiality – that is, could threaten the long-term success or existence of the ABA?

Y	N	N/A
---	---	-----
-
- | | | |
|---|---|---|
| 4 | 6 | 0 |
|---|---|---|
2. If the answer to question one is yes, has the Board applied prudent business judgment and otherwise fulfilled their obligations to the membership as Directors under the Bylaws and Policies of the ABA? (Y/N)

4	0	6
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Questions Regarding Recent Board Decisions on Governance Matters

On a seven point scale (seven is high), how successful has the ABA been in implementing the following Board decisions regarding governance processes?

1. Including the Board President, Vice President, and possibly other Board members as observers to BAC discussions?

6.9

2. Broadening and making more timely the communications between the BAC and the Board?

5.1

- 3. Improving the Board's effectiveness in thinking about the potential for unexpected changes in the long-range strategic environment? 6.6

- 4. Refining the Board's nomination process to include formal screens for technical skills as well as representation of various membership categories? 5.8

- 5. Monitoring the progress of booksense.com to ensure that its benefits and financial impact is well understood by Board members? 6.3

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Thank you for your participation. If there are there any topics that you feel that we should have covered that we have not had a chance to speak about, or if you have further comments on any topics covered in the questionnaire, please attach an additional page.

Please provide your name and contact information. All individual responses will be kept confidential within the Governance Committee.

Your name: _____

Your phone number: _____

Your email address: _____

Finally, please return your completed survey to:

IvanBarkhorn@redstonestrategy.com

Or: Ivan Barkhorn
Redstone Strategy Group, LLC
1542 High Street
Boulder, CO 80304

December 29, 2003