

Approved May 31, 2005

TO: ABA Board of Directors

FROM: ABA Governance Committee

March 6, 2005

GOVERNANCE COMMITTEE REPORT FOR FISCAL YEAR 2004

This letter provides a report from the ABA Governance Committee covering fiscal year 2004. 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 a committee member 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 May 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 Mary Gay Shipley (chair) and John Bennett. 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 conducted limited interviews this year, conducted by the John Bennett. Specifically, this year the committee undertook the following:

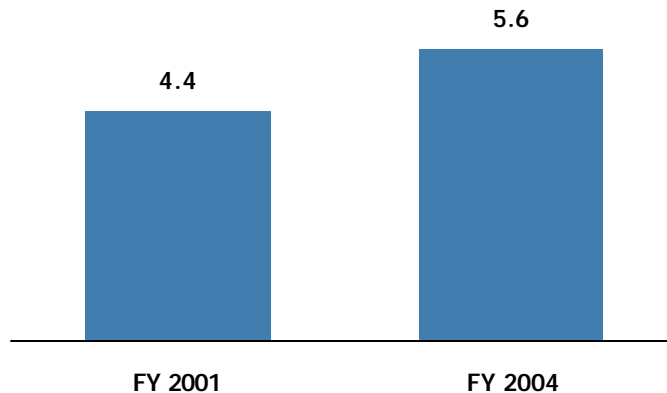
1. Structured confidential interviews based on the ABA Policy Manual and Bylaws with two current Board members, three staff members, and two Regional representatives:
 - Mitchell Kaplan, President
 - Suzanne Staubach, Vice President and Secretary
 - Avin Domnitz, Chief Executive Officer
 - Oren Teicher, Chief Operating Officer
 - Ellie Chang, Chief Financial Officer
 - Valerie Koehler, President, Mid-South
 - Lisa Knudsen, Executive Director, Mountains and Plains
2. Discussions with the ABA's lead Auditor at KPMG (pending)
3. The financial Auditor's opinion letter for fiscal year 2004 (pending)

As noted below, the committee found that the two regional representatives were not able to respond to the specific questions on the interview guide, though they made some overall observations. Consequently, a copy of the structured interview guide, along with a summary of the interview results for the other five interviewees, is attached as Appendix A.

COMMITTEE FINDINGS

This year 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 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. The trend of continued improvement is demonstrated in the analysis below, which shows increases in the average results for the past four years on questions one and two, which have traditionally had the least positive scores of any questions. This trend is reflected in the specific scores of almost every item in the survey.

**Avg score for questions 1a and 1b
(7 is high)**



Only one respondent raised a concern about a potentially material decision, wondering if the endowment investment policy rises to that level. In any event, they deemed the Board's actions with respect to the endowment investment to have been suitably prudent.

Booksense.com, which had been raised as a potentially material issue in past years, was not mentioned by any respondent this year.

With that said, the committee noted several areas where minor issues were raised.

1. After years of accounting for the lowest scores on the survey, the Board's efforts to monitor future trends and to initiate policy rather than react to staff initiatives continued the trend shown in last year's improved scoring. Respondents also noted that ratings of both issues have trended upward. At the same time, respondents expressed continued interest in approaches that would continue the upward trend, noting that there is still room for improvement. In an interesting comment, one respondent said, "Because of the nature of our Board [comprised of professional booksellers with major professional commitments outside of the Board] we may never get above a 5 or 6 on these issues, but we should continue to try to get to 7"
2. Discussion of the procedures used to manage potential conflicts of interest resulted in a sense that some refinements may be warranted. At the same time there was no indication of any specific current practical issues in this area
3. As noted above, the interviews with regional representatives were not a source of much input to the governance process
4. Finally, given continued improvements in the association's performance against governance standards, there may be potential to streamline the process without losing effectiveness

RESULTING RECOMMENDATIONS

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

1. Continue scenario planning efforts at Board meetings by examining important topics at each meeting. Emphasize issues where there is possibility of improving the position of booksellers over the long-term change. Consider diverse approaches to this planning, including use of speakers, brainstorming, and various consultants if the Board thinks additional tools might improve their ability to understand and address long-term issues

Agreed and Accepted. Both the staff and the Board of Directors are committed to the striving for constant improvement in the difficult area

2. Institute somewhat more formal conflict of interest procedures that meet widely-accepted standards by implementing one or both of the following two actions:
 - Formalize the procedure of annually sharing the Board and CEO (and by extension the staff) conflict of interest declarations with the entire Board and require that the topic be on the Board's agenda for discussion at least once each year. This would be because there is no provision in Sections 5 and 8 of the Policy Manual for review of potential conflicts of the President or the CEO. (If a Board member requests an independent review for reasons of confidentiality that request would be declared in lieu of general sharing of their conflict of interest declaration)

Agreed and accepted. This item will appear annually on the summer Board meeting agenda.

- While not a recommendation, we also raise the possibility that either corporate counsel or an independent committee (could potentially be the governance committee) review the annual Board member and CEO (and by extension the staff) conflict of interest declarations with the ability in exceptional cases to make recommendations to the Board for treatment beyond that dictated in the ByLaws and Policy Manual. We recognize that this would be likely to arise rarely if ever, and only if there are any declared conflicts of interest that pose quite unusual issues. At the same time, we suggest that the degree of independence from a review independent of the Board may be desirable, and in any event that the Board should discuss such an approach

The Board will consider this approach after trying to institutionalize the suggestion above and evaluating its effectiveness

3. Given the lack of direct knowledge of Board and staff governance issues by regional Presidents and Executive Directors, and in view of their annual joint meeting with the ABA Board and staff, consider eliminating the interviews of regional representatives by the Governance Committee

Agreed and accepted

4. Consider formalizing the previously experimental alterations to the process used by the Governance Committee by changing the *ByLaws* and the *Policy Manual* to reflect the following:
 - Appoint members to a two- or three-session (rather than one-year) term as appropriate
 - Formalize the process of conducting limited reviews in odd-numbered sessions
 - Allow the frequency of sessions to range from 12 to 24 months at the discretion of the committee

Accepted in that there is agreement that the process needs to be streamlined, however, the Board feels there is no need to go through a Bylaws change to accomplish the desired end...ie...reappoint each year, formalize the limited review process, and having the Committee Chair, in consultation with the President and the CEO designate the review times. The Board does agree that these sorts of adjustments should be included in the Policy Manual.

* * *

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.

The Board would like to thank the Committee for their help in this valuable function.

APPENDIX A - ABA GOVERNANCE SURVEY RESULTS

FY 2004

Please respond to the following questions regarding governance issues during ABA’s fiscal year 2004 (11/03-10/04) and discuss your responses in an in-person interview in Austin.

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?	5.6	<input type="checkbox"/>	4	1	0	0
b. Monitoring future trends?	5.6	<input type="checkbox"/>	4	1	0	0
c. Defining desired long-term outcomes rather than programmatic means of attaining those outcomes?	5.6	<input type="checkbox"/>	5	0	0	0
d. Maintaining internal discipline on matters such as attendance, preparation, and communications?	6.2	<input type="checkbox"/>	2	3	0	0
e. Self-monitoring by discussing board process and performance relative to the expectations in the Bylaws and <i>Policy Manual</i> ?	6.4	<input type="checkbox"/>	3	2	0	0
f. Producing written policies on what programs, services, and products should be made available, to whom, and at what cost?	6.4	<input type="checkbox"/>	3	2	0	0
g. Establishing prudent ethical guidelines for the ABA and constraints on executive authority?	6.6	<input type="checkbox"/>	2	3	0	0
h. Assuring that the performance of the Executive Director is consistent with the Board’s desires and expectations?	6.5	<input type="checkbox"/>	2	2	0	1

- | | | | |
|---|-----|--------------------------|---------|
| i. Revising as appropriate the ABA's end policies and strategic plan within the last year? | 6.6 | <input type="checkbox"/> | 2 3 0 0 |
| j. Reviewing the Executive Director's performance as outlined in the <i>Policy Manual</i> during the month of July? | 7.0 | <input type="checkbox"/> | 1 3 0 1 |
| k. Deliberating in a manner that is fair, open, and thorough, but also timely, orderly, and to the point? | 6.8 | <input type="checkbox"/> | 3 2 0 0 |
| l. Using the chairperson as a two-way communication conduit with the Executive Director? | 6.2 | <input type="checkbox"/> | 1 4 0 0 |
| m. Avoiding exercise of individual authority except when explicitly board-authorized? | 6.8 | <input type="checkbox"/> | 0 5 0 0 |
| n. Directing only the CEO regarding operational achievement and conduct, rather than any other members of management? | 6.8 | <input type="checkbox"/> | 0 5 0 0 |
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? | 6.8 | <input type="checkbox"/> | 2 3 0 0 |
| b. Working effectively with the Board as an interface between the Board and the ABA's staff? | 6.8 | <input type="checkbox"/> | 1 4 0 0 |
| c. Causing the staff to effectively respond to issues of importance to the Board and the membership? | 6.4 | <input type="checkbox"/> | 1 4 0 0 |
| d. Working within the boundaries of any <i>executive limitations policies</i> (as defined in the <i>Policy Manual</i>) established by the Board? | 7.0 | <input type="checkbox"/> | 1 4 0 0 |

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; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Y</td> <td style="padding: 2px;">N</td> <td style="padding: 2px;">N/A</td> </tr> <tr> <td style="padding: 2px;">0</td> <td style="padding: 2px;">8</td> <td style="padding: 2px;">0</td> </tr> </table> | Y | N | N/A | 0 | 8 | 0 |
| Y | N | N/A | | | | | | |
| 0 | 8 | 0 | | | | | | |

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

0	5	0
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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	5	0
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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	5	0
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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
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- | |
|---|
| Decisions about the endowment investment was mentioned by one interviewee |
|---|
- | | | |
|---|---|---|
| 1 | 4 | 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)

1	0	4
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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?

7

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

6.6

- 3. Improving the Board’s effectiveness in thinking about the potential for unexpected changes in the long-range strategic environment? 5.5

- 4. Refining the Board’s nomination process to include formal screens for technical skills as well as representation of various membership categories? 5.5

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

* * *

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: _____