



The Board of Trustees
Report on 2011 Reviews
August 10, 2011

Overview

In May 2011, the Board of Trustees directed the administration to initiate a review process to examine the implications of information that had surfaced during the University's production of public records. The Board deemed this review necessary to protect and reinforce the integrity of the institution by requiring that this situation be assessed and understood and that, in view of the findings, recommendations for appropriate policy and management approaches be developed. The review, which had three components, covered whether (1) the acceptance of a specified dissertation occurred in a manner consistent with the customary standards and procedures of the Graduate College; (2) travel and business-related expenditures for President Daniel Fogel, his wife (Rachel Kahn-Fogel), and others were properly incurred and documented in view of University requirements; and (3) personnel actions were taken with respect to University events planning and Development Office staff in a manner consistent with legal and policy requirements. The review processes and their outcomes are described below.

I. The Dissertation

Over the period May 16 - May 27, 2011, the University's Office of the Provost conducted a review of the facts relating to the doctoral dissertation of Michael Schultz¹. The purpose of the review was to ensure that institutional policies and procedures had been followed with respect to the Graduate College's acceptance of his dissertation. In addition, the review looked at whether, in view of a personal relationship that had come to light between Mr. Schultz and Mrs. Kahn-Fogel, she had made any attempts to influence the outcome. In this regard, the title of the dissertation was *Elucidating the Role of the University CEO's Spouse in Development, Alumni Relations, and Fundraising*.

The review examined the Graduate College file relating to Mr. Schultz, and also involved interviewing each member of the dissertation committee as well as the responsible administrators in the Graduate College. The review found that the academic records were in order and that the documents in the file were customary. In addition, all members of the dissertation committee stated to their interviewer that the dissertation process was rigorous, the dissertation proposal addressed a good question, the methodology was sound, the research was original, and the dissertation was of high quality and stood on its own merits. All of the interviewees said that they had no knowledge of any attempts by any third party to seek to influence the outcome of the dissertation process, nor were they cognizant of a personal relationship between Mr. Schultz and

¹ At the time he submitted his dissertation, Mr. Schultz served as an Associate Vice President in the University Office of Development.

Mrs. Kahn-Fogel. The review also found that Mrs. Kahn-Fogel was not in fact a subject of the research, nor was she interviewed in the course of the research.

In sum, the review concluded that the acceptance of the dissertation conformed to applicable policies and procedures and that no third party had attempted to influence the outcome of the process.

II. Travel and Business-Related Expenditures

The University, through its Office of Audit Services (OAS), reviewed selected travel and business meal and amenity expenses for President Fogel, Mrs. Kahn-Fogel, Mr. Schultz, and Ms. Leslie Logan². The review sought to determine whether the expenses were reasonable and had a University business-related purpose. In conducting the review, OAS obtained program and accounting information for the period July 1, 2009, to May 31, 2011. This information included PeopleSoft-generated expense report line-item detail data, general ledger expense data, purchasing card level III data, Development Office contact and events data, and supporting documentation.

To determine the review population, OAS filtered the travel expense and general ledger data by individual name and Journal ID for President Fogel, Mr. Schultz, and Ms. Logan, the latter of whom accompanied the President and Mrs. Kahn-Fogel on several Development and UVM athletics-related trips. OAS also searched the expense data for key words. From these criteria, OAS identified expenses totaling \$84,800, allocated as follows: President Fogel - \$67,026; Mrs. Kahn-Fogel - \$2,609, and Mr. Schultz - \$15,165. OAS determined that certain expenses for Mrs. Kahn-Fogel were commingled with the expenses of UVM employees; for example, several meals charged to the President's purchasing card also included the meal costs for Mrs. Kahn-Fogel and Ms. Logan. OAS also found occasions where Mr. Schultz or Ms. Logan purchased refreshments for groups of individuals that included Mrs. Kahn-Fogel. Because the data available did not allow for disaggregation of these combined charges, OAS included the total amount of the expense both in the UVM employee's total and the total for Mrs. Kahn-Fogel.

OAS also reviewed all electronic expense data such as vendor name and dollar amount for reasonableness. OAS then obtained from management expense documentation totaling \$53,312 or 63% of the total population, a significant sample, for more detailed review. OAS also filtered electronic Development and alumni events data and identified those activities attended by both Mr. Schultz and Mrs. Kahn-Fogel and compared the dates of the event to the purchasing history of Mr. Schultz for possible non-business purchases on those same dates.

In summary, OAS identified certain travel days that the traveler exceeded the University-established travel threshold for reasonableness (\$55 per day) and recommended that management seek reimbursement for the costs:

² Over the period in question, Ms. Logan served as a University and presidential events planner.

	# Days	Actual Meal Cost	Travel Threshold	Difference
President Fogel	4	\$285	\$220	\$65
Mrs. Kahn-Fogel	3	\$208	\$165	\$43
Ms. Logan	3	\$208	\$165	\$43
Total	10	\$701	\$550	\$151

President Fogel has fully reimbursed UVM in the amount of \$151.00.

Other than the meal costs, the review did not identify any transactions for President Fogel, Mrs. Kahn-Fogel, Mr. Schultz or Ms. Logan that appear to be unreasonable or unrelated to a University business purpose. OAS has nonetheless identified opportunities for the University to strengthen its practices related to documenting, reviewing, and approving the reimbursement of employee expenses. OAS will generate more specific recommendations as requested.

III. Personnel Actions

The Board of Trustees retained the law firm of Dinse, Knapp & McAndrew, P.C. (Dinse)³ to conduct a review examining whether President Fogel and/or his wife improperly influenced personnel matters and, if so, whether such conduct violated the law or internal UVM policy. The review took place between May 19, 2011 and July 8, 2011. Dinse examined documents such as UVM internal policies (*e.g.*, Code of Business Conduct, Conflict of Interest and Conflict of Commitment, Equal Employment Opportunity/Affirmative Action Policy Statement, Sexual Harassment: Employees); UVM’s values statement, “Our Common Ground”; UVM’s Parameters for Compensation; UVM position descriptions; past and current UVM employee personnel files; compensation information for UVM employees; and voluminous records produced in response to numerous Public Records Act requests. Dinse also interviewed seventeen witnesses, some witnesses on more than one occasion. Interviewees included current and former administrators and employees of the University who work(ed) in either the Development Office or the Office of the President, the current Chair of the Board, the two immediately preceding Chairs of the Board, and President Fogel.

After reviewing all of the information gathered, Dinse’s principal finding was that a lack of clarity as to the role of the President’s spouse in University events planning and Development activities, sustained throughout the Fogel presidency, caused confusion as to the scope of Mrs. Kahn-Fogel’s authority and discretion. Dinse’s assessment did not include an independent review of performance indicators or make any determination with regard to specific employees’ skills and abilities. However, Dinse found that as a result of the ambiguity surrounding Mrs. Kahn-Fogel’s role, a number of personnel actions related to the staffing of the President and his wife were made based upon the personal preferences of the Kahn-Fogels, such as comfort level with specific individuals, and not upon an objective assessment of the employees’ skills and demonstrated abilities. Employees favored by the Kahn-Fogels were perceived by others to be protected and advanced by them. This environment negatively affected morale in the Development Office and created ongoing distractions from the pursuit of the fundraising objectives of the University.

³ The attorneys engaged in this work were Karen McAndrew, Amy McLaughlin, and David Gurtman.

In the course of its review, Dinse also considered the impact and import, if any, of Mrs. Kahn-Fogel's numerous personal communications to Mr. Schultz, activity in which she engaged for several years. While Dinse found no evidence of a hostile work environment affecting Mr. Schultz as that term is defined under Vermont and federal anti-discrimination laws, it did find that Mrs. Kahn-Fogel's conduct was clearly inappropriate and imprudent. Dinse uncovered no evidence that Mr. Schultz personally engaged in personnel decisions that violated University policy or law in the discharge of his responsibilities as Associate Vice President.

Based upon the foregoing, the Board concludes that the Dinse review did not yield findings that demonstrated that violations of the law or University policy occurred. The findings nonetheless show that the climate created by the actions and perceptions described above ran counter to the University's stated guidelines and values. Specifically, Dinse cited the statement of "Parameters for Compensation at UVM", which provides that compensation should be determined after consideration of four factors, two of which are performance and market competitiveness⁴; secondly, Dinse cited *Our Common Ground*, a statement of community values.⁵ To be effective and meaningful, these values must be modeled throughout the institution, especially by University leadership, beginning and ending with the Board and the President.

In view of its findings, Dinse offered several practical recommendations for the Board's consideration:

- When conducting a Presidential search, the University's due diligence should be expanded to include the candidate's spouse or partner if the spouse or partner may be directly or indirectly involved in University events planning or Development work, or other University activities.
- In addition, with a Presidential hire, the University should discuss with the spouse or partner the extent to which he or she wishes to be involved in University affairs, and develop clear parameters for defining the role of that individual. The University should also consider creating a formal job description for the Presidential spouse or partner reflecting the desired or expected level of involvement. Finally, the University should identify any functions that cannot be assigned to a Presidential spouse or partner.
- If the Presidential spouse or partner will in fact play a role in University events and activities, an appropriate mechanism should be put in place for oversight and periodic formal review of his or her involvement. In addition, if staff will be assigned to the spouse or partner, the University should clearly delineate a reporting structure for such staff.

⁴ The other factors are equity and recognition of the role of collective bargaining for unionized employees. <http://www.uvm.edu/hrs/?Page=unibac/parameters.html>

⁵ http://www.uvm.edu/president/formerpresidentfogel/?Page=antiviolence_initiative.html

- The University should seize the opportunity to articulate expectations about workplace environment best practices.
- Finally, issues of concern should be openly confronted and addressed promptly at an appropriate level of the University, real solutions should be promptly explored, and the situation monitored to ensure that any recommended solution is effectively implemented.

Conclusions and Next Steps

The Board concludes that the reviews provide a sound basis for its core finding that neither the law nor University policy was violated during the course of the events examined. The Board further concludes, however, that the University should be engaged in best practices in all domains of its operations and activities. In this matter, effective management and oversight were lacking, for which the President, and in turn the Board of Trustees, must accept final responsibility. In this regard, although many of the issues and climate concerns related to events planning and Development were known by certain administrators and trustees at the time that they occurred, as a result of this review the magnitude of the situation is for the first time apparent. The Board therefore must enhance its capabilities in terms of continuity of knowledge as its leadership and membership changes over time.

Consequently, the Board directs as follows:

- The Board shall develop and adopt a policy regarding volunteer or other services to be provided by a presidential spouse or partner who may be involved with University programs, activities or operations. These parameters should be reviewed by the Board Chair with the spouse or partner as part of an orientation. The Dinse suggestions furnish a good foundation from which to begin the policy development process.
- The Office of Audit Services shall generate, for review and action by the Audit Committee, recommendations regarding steps that the University might take to strengthen its practices related to documenting, reviewing, and approving the reimbursement of employee and volunteer expenses.
- The administration, led by Interim President Bramley and Provost Jane Knodell, shall draft for the Board's consideration a UVM-community-vetted policy statement regarding workplace climate that incorporates and reinforces new and/or existing requirements and standards. The campus Anti-Violence Initiative⁶, approved by President Fogel some years ago, and the Code of Business Conduct⁷, approved in its most recent version by the President and the Board on October 30, 2010, offer useful models for this work. The policy should require that its content be acknowledged and understood by all employees and volunteers, and that administrators be required to report violations. In addition, appropri-

⁶ http://www.uvm.edu/president/formerpresidentfogel/?Page=antiviolence_initiative.html

⁷ http://www.uvm.edu/policies/general_html/businessconduct.pdf

ate mechanisms should be in place to allow individuals to make such reports without fear of retaliation, even if the situation involves a senior University official.

It is essential that this work be completed promptly. Accordingly, the Board Chair will appoint a Board *ad hoc* committee to work with those charged with responsibility for undertaking the tasks outlined above and to monitor progress. The Board will expect a progress report at its October, 2011 meeting, and all of this work should be completed before December 1, 2011.

The Board is dedicated to encouraging and expecting an environment defined by strong ethical values, responsible behavior, and genuine accountability that applies to all levels of the institution, most certainly including the President and the Board itself. Human error and fallibility will always be with us. However, in an educational community, it is important that we learn from our mistakes and take appropriate corrective action to avoid them in the future, for the benefit of the entire University.

In closing, the Board extends its gratitude to the many individuals who contributed to the completion of these reviews, as well as to those who will work to strengthen our policies and practices. We have learned a great deal that will help to improve this exceptional institution.

Issued by the Board of Trustees, August 10, 2011