January 30, 2019

Reclaim MSU
Michigan State University
East Lansing, MI 48825

Ladies and Gentlemen:

Please consider this letter as our response to questions we have received regarding the advisability of a so-called “closed,” “confidential,” or “secret” search process to identify a new president for Michigan State University. Such a search process focuses on the privacy of candidates for the position by not disclosing the names of any candidates, often leading to one final candidate announced to the community as their new leader.

As you are aware, our research for the past two decades has focused on three major aspects of the modern university presidency—their service as directors of publicly-traded corporations, the terms of their employment agreements, and, most recently, the use of executive search firms in their hiring. Our research on this last topic was first presented at the 2016 annual meeting of the American Association of University Professors; it continues to receive widespread attention as the first and only academic research on the topic. We published our findings in a series of articles published by The Chronicle of Higher Education; these are attached.

Last March, we wrote an op-ed for the Detroit Free Press titled, “How not to choose MSU's next president.” We cautioned that the trustees “would be well advised not to believe everything the search consultants say.” So, when the current board chair, Dianne Byrum, says that the search firm recommended a closed search in order to recruit the best candidates, she should have asked for empirical evidence to support that claim. If she had, the search firm would have been hard pressed to produce any such research. To our knowledge, there is no such research, although there are some articles and statements that make this claim—often based on an individual’s perceptions of a particular search that was successful.

Ms. Byrum and the board also should take with a grain of salt the search firm’s claim that, “You’re not going to get a sitting college president to apply” if candidate names are made public or that sitting presidents “are arguably the most qualified kind of applicants you’ll have in your pool. You’re going to take that whole layer of candidates out of your pool if you have an open search.” While MSU may wish to hire a sitting president, the odds are not in their favor. According to the American Council on Education, only about 20-25 percent of sitting presidents report that their previous job was as a university president. In fact, while the stepping-stone to a presidency has been the provost position, we actually are seeing an increasing number of deans moving into the presidential suite.
Also, it is important to consider who benefits from a confidential search. Certainly, this is to the benefit of the search firms. By keeping the names of unsuccessful candidates from becoming public, their names remain "fresh" for future searches. After all, it is only human nature to be skeptical about hiring someone who has been rejected elsewhere.

Candidates also benefit when their names are not made public. Typically, once someone is in the job market it is unlikely that they are applying for only one position. Confidentiality prevents other institutions from learning if they're involved in concurrent searches elsewhere, as well as from finding that they've been rejected at another institution.

As we've stated elsewhere, for every anecdote you will hear about candidates who would never allow themselves to be considered if their names were to become public, there are at least an equal number of stories about presidents who were appointed through a completely confidential process who turned out to be disappointments or even outright failures. But perhaps more importantly, conducting a secret search for a public executive is, in our view, against the public interest.

In the case of the next MSU president, it is quite likely that he or she will be one of the highest paid public executives in the state (if not the highest paid)—excluding football or basketball coaches, whom we think of as being more in the entertainment business. No other public executive is hired through such a process. Given the tragic Nassar controversy as well as those created by the interim president, the board of trustees must make a perfect appointment. That simply isn't possible with a secret search.

As a corollary to Justice Brandeis' statement that "Sunlight is said to be the best of disinfectants," we have found that the faculty grapevine is perhaps the most thorough and effective form of due diligence—often more in-depth and comprehensive than a background check conducted by a search firm. Also, it is worth noting that based on our review of more than 60 search firm agreements (61 in our research study, plus many more that have been sent to us to review and comment upon), their contractual obligations to conduct due diligence are often quite limited. In fact, we found that only half of the search firm contracts stated that references would be checked, and fewer than one-quarter confirmed that candidates held the degrees that they claimed. And, some of those who did such checks, did not warrant (guarantee) their findings.

One example we cite frequently is a candidate for a senior academic administrative position who did not disclose an Inspector General's investigation which led to findings of wrong-doing reported to Congress. Nevertheless, when the search committee asked the candidate if there were anything in his background that would be a source of embarrassment, he had simply stated "no." It was only because a faculty member who was not on the search committee heard a vague comment from a colleague at another institution that this was explored and confirmed. It never would come to light in a media search, a Lexis-Nexis or Westlaw search, by Googling the individual, or any other form of due diligence that a search firm typically conducts.
This is not to say that all confidentiality is necessarily bad. We can see merit to keeping the earliest portions of the search confidential; there is no reason to announce the names of all candidates who have applied. However, by the later rounds of the search, the public and the full university community should be aware of the candidates being considered and those candidates should make open visits to campus and meet their various potential constituencies. Indeed, the search for the next president of MSU is perhaps the most important action that the current board of trustees will undertake. They should put the public interest and transparency ahead of the financial interests of the search firm and the privacy of the final candidates.

We hope that this will answer your question; if not, please let us know.

Sincerely,

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How Well Do You Know Your Candidate?

By Judith A. Wilde and James H. Finkelstein
March 12, 2017

The presidential-search season is winding down, and colleges are starting to announce a new crop of leaders.

With some notable exceptions, such as the appointment last fall of the Kennesaw State University president, the process for getting to this point is surprisingly similar across campuses in the United States. As we reported last June at the annual meeting of the American Association of University Professors, this includes the hiring of an executive search firm. In fact, we found that the vast majority of public-university presidential searches performed last year — more than 75 percent — were conducted with the assistance of such firms.

According to research cited by Fortune magazine, nearly 40 percent of newly appointed corporate executives fail within 18 months. While this percentage may be lower in higher education, there have been a number of news reports of failures among university presidents, provosts, and other senior administrators. The Chronicle and other media have reported on many such failures, at least some of which had their origins in information about the candidates that was learned only after they assumed office.

With this in mind, one set of elements we most closely examined in our study were those involving the search firms’ responsibility for conducting what we called "due diligence" — that is, the firms’ research on candidates being considered for the position. We identified 13 due-diligence elements and the number of searches in which the firms were obligated contractually to provide these services. These elements included verification of degree attainment and employment; credit checks; DMV and criminal-background checks;
on- and off-list references; checks for litigation and civil-rights complaints, including sexual harassment; and media reports. We also included LexisNexis and other database reviews as well as formal reports from private investigators and psychological testing as due-diligence elements.

One of our assumptions was that given the fees being charged — over $150,000 in many cases — the firms would have a contractual obligation to conduct thorough background reviews of those candidates actively being considered for the highest-ranking and most important posts at any university. The data proved us wrong.

We looked at due-diligence elements that were included in the base fee as well as those that the firm would undertake for an additional fee. We were surprised to find that on-list reference checks, the most-often-completed element, were included as part of the base fee in only 51 percent of the contracts and were not mentioned as an extra cost in any contract. Contacting off-list references was included in only 46 percent of contracts and again not mentioned as an extra cost in any contract. Verifying educational degrees was listed in 43 percent of the contracts, with about half of the firms charging extra for this service; media checks — including social media — were listed in only 22 percent of the contracts and were typically included as part of the base fee.

Credit reports were listed in 32 percent, and criminal records in 31 percent — and in both instances about two-thirds of the firms charged an extra fee for this work. A simple DMV check was included in only 8 percent of the contracts, with another 16 percent offering the service for an extra fee. Involving a private investigator was mentioned in 26 percent of the contracts, nearly all for an extra fee. Litigation, LexisNexis, and psychological testing were rarely mentioned.

It is important to note that these findings are based solely on a review of documents that were provided by either the institutions or the search firms and which represent written obligations. It is possible that some number or perhaps even the majority of these firms provide these services even if they are not contractually obligated to do so. However, the only services we know must be completed are those that are committed to in writing.

In addition to the quantifiable evidence suggesting that the majority of search-firm contracts do not provide thorough due diligence, there were two other interesting findings. One firm states that it verifies educational degrees by checking "publicly available sources." There is no explanation of what that means. It could mean looking in the Dissertation Abstracts International database as a way of verifying that someone received a doctorate, but that is not the same as obtaining an official transcript from a university. We hope this does not involve checking candidates’ vitae published solely on their own websites.

Perhaps most interesting is that in a number of contracts, we found explicit language stating that the firm would not guarantee the accuracy of its findings with regard to any aspect of due diligence. That was the case even when an extra fee was involved or a third party, such as a private investigator, was hired to conduct the review.

We have personal knowledge of a recent search during which members of the search committee, as well as the faculty, believed that the search firm would fully vet the final candidates; indeed, during a presentation by the firm, a specific person was identified as being responsible for contacting references. Yet to the surprise of everyone, the committee members ended up with the responsibility for all aspects of the due-diligence process — including all reference checks.

Considering these findings and this cautionary tale, what questions should be asked of a search firm about its services? First, make sure that any request for a proposal for a search consultant specifies what services the firm is expected to provide and the form in which it is to report its findings. Will the firm provide only an oral report, as many of the contracts we reviewed stated?
Next, read each proposal carefully and remember that any representations made in a presentation are unlikely to be contractually binding. Finally, ensure that the specific services you expect are part of the written agreement, and that the firm assumes responsibility for the information it provides as well as for any material omissions.

Given the stakes involved — and the substantial fees — no one’s interests are served when we learn after the fact that some disqualifying piece of information was not uncovered during the search process.

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The Role of Confidentiality in Presidential Searches

"The presidential selection process is a classic conflict between the right of individual privacy and the public’s right to know." This observation, from the American Association of University Professors’ "Presidential Search Committee Checklist," is in line with our recent research, which suggests a related conflict between the increasingly confidential nature of searches and the due diligence conducted by search firms and higher-education institutions.

As Jan Greenwood, a longtime search consultant, noted in 2013, "The number of closed searches at public institutions has steadily grown over the past two decades." The anecdotal reasons offered for this trend include presidential candidates’ fear of being
fired should their governing board find they are seeking employment elsewhere and the institutions’ losing a major gift should a donor learn the president may be leaving.

Greenwood suggests that anxiety among candidates fearing that their names will become public has resulted in a substantially increased workload for search committees and consultants attempting to recruit top candidates. To combat this, she said, committees and boards now must find "a way to ensure some level of confidentiality." Our research indicates that they have been quite successful — perhaps more so than is in the interest of faculty, students, staff, alumni, and the public.

In two previous columns for *The Chronicle*, we reported on findings from our study of 61 contracts between public institutions and search firms for presidential and provost positions advertised in the fall of 2015. For this column, we reviewed the solicitation documents, proposals, and agreements between institutions and search firms for the 26 public-university presidential searches among those contracts, to identify and examine references to "confidentiality."

In about two-thirds of the searches, one of two types of confidentiality requirements was formally stated in the solicitation, proposal, and/or final agreement. The first type involves general language, what some would call "boilerplate." This language is not necessarily specific to the search itself but seeks to protect the general interests of either party. We found such terms in nine of the searches, primarily in documents created by the universities.

The second type was specific to the particular search. This language typically involves keeping the names of candidates confidential, if not secret, through some specified point in the search or in time. We found these terms in 10 of the searches. In five of them, specific language was initiated by both the university and the firm.

Almost 60 percent of the searches required committee members or search-firm staff members to sign some form of confidentiality agreement. Nearly equal numbers of the university-initiated documents required those forms from either their own committee members or the search-firm staff; none required the forms from both. Only one of the search-firm documents required the forms from their staff and the institution’s committee; the rest required the forms from committee members only. Of those that required a confidentiality form, half included explicit penalties — being removed from the committee, for example, or facing criminal prosecution — for violating the agreement.

Our findings give rise to two fundamental questions: Who are governing boards protecting with these confidentiality requirements? And what is gained or lost in promising confidentiality?

The most common answer to the first question, based on the documents we reviewed — especially proposals from search firms — is that confidentiality is necessary to recruit the best candidates. This is most often cast in terms of a candidate’s right to privacy. As an
It is a simple fact that some of the best candidates refuse to participate in a search if their names are to be made public, especially in the earliest stages. He goes on to say that it is the candidates who "insist upon search processes that protect them and their privacy unless and until they are selected as ‘the’ candidate.”

This so-called right to privacy increasingly has become the norm in presidential searches. However, it is based on a premise for which we can find no empirical support. Rather, we are forced to rely on "evidence" provided by those who stand to benefit most from secrecy — the successful candidate and the search firm that is paid to find the candidates. This degree of confidentiality seems to be at odds with standard practices for hiring other public executives, as well as contrary to the core values of a university.

As for the second question, candidates gain three things from confidentiality. Obviously, they avoid the potential embarrassment of not being selected. Related to this is that unsuccessful candidates need not present themselves in future searches as having failed in a previous search. And confidentiality can provide successful candidates with leverage in contract negotiations, since they can stay where they are with little chance of public disclosure.

Search firms, too, gain from confidentiality. With the ability to "recycle" candidates without disclosing their participation in past searches, the firms decrease their workload. And confidentiality may result in searches’ being completed more quickly, which improves the firm’s bottom line.

These advantages come at a cost to colleges and universities, most notably by potentially compromising the due-diligence process. If candidates for a presidency are subject only to the vetting process that a search firm is contractually obligated to perform, there may be reason for concern. Any language regarding confidentiality that puts the interests of the candidates above those of the institution may have the unintended consequence of preventing relevant information from being considered — information that could keep the college from making a mistake.

In fairness, we must consider the candidates’ rights to privacy. It may be quite understandable that they do not want their names known in the early stages of a search. In fact, it is at those early stages that the search firm may be most helpful to the institution.

Here’s a compromise that would meet the needs of the candidates for some degree of confidentiality as well as the needs of the university for transparency: Maintain a closed search through the initial phases, but announce the names and other pertinent information about the final candidates, who will visit the campus, make presentations, and meet and greet those whom they hope to serve in the future.

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http://www.chronicle.com/article/The-Role-of-Confidentiality-in/239935
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THE CHRONICLE OF HIGHER EDUCATION

Who Wins When a College Presidency Fails?

By Judith A. Wilde and James H. Finkelstein June 12, 2017

The academic year has ended, graduation is over, and now we begin to see the exit of presidents from their universities. Some of these exits are planned retirements. A number are moving on to new positions. Other presidents just determine that the job may not be for them. Finally, there are those who are leaving "to spend more time with the family."

So no one will be surprised if the upcoming 2017 American College President Study finds a continuing decline in the average term of university presidents. The last study by the American Council on Education found that the average presidential term had decreased from 8.5 years in 2006 to seven years in 2011. Why? Retirements are the easiest explanation; the boomer generation is ready to leave the work force. The Association of Governing Boards of Universities and Colleges suggests that another reason for shorter terms is the demands of the position, with presidents now responsible for academics, fund raising, community and government relationships, and institutional policies.

While others speculate about the underlying causes for the increased churn rate, we want to ask a different question: Does anyone benefit from the increased pace of presidential turnover? If so, who?
In our study last year of search-firm contracts, we found that at least 75 percent of presidential searches at public colleges and universities are conducted with the assistance of a "headhunter," a trend confirmed by the ACE studies. As we wrote last November, the worldwide search-firm industry is a nearly $13 billion enterprise, and the nonprofit, government, and higher-education sectors of the industry were expected to grow by 19 percent in 2016. This made us wonder: How much of that growth might be attributed to the increased turnover of university presidents and other senior executives? Or, on the other hand, does the industry actually contribute to the increased turnover?

According to the Council for Higher Education Accreditation, in 2013-14 there were 3,437 degree-granting, accredited, public, and private nonprofit institutions in the United States. Assuming an average presidential term of seven years, there would be approximately 435 searches in a given year, with at least 325 conducted with the assistance of a search firm. With the average search-firm fee of about $100,000, presidential searches alone represent a $32.5-million business opportunity.

Of course, some of this potential windfall for search firms may be mitigated by the terms of the contracts with their clients. For instance, most of the agreements we reviewed contained some sort of guarantee that the successful candidate would stay for at least one year. If not, the majority of the firms agreed to conduct a new search with no additional fee, just reimbursement for expenses. We suspect that no search firm wants to be associated with a high churn rate. But in our review of over 60 search-firm contracts, we did not find a single instance where the firm was required or volunteered to provide any data on the length of service for the presidents they had placed. In fact, the "success" metrics we typically found were merely lists of past clients, sometimes supplemented with a list of institutions at which they had placed candidates from traditionally underrepresented groups.

But it is not only the search-firm industry that stands to benefit from shorter presidential terms. Our study showed that most presidents have substantial financial protections if the governing board terminates their contracts early and without cause (i.e., without citing any specific underlying reason). We found termination clauses that varied from providing several months’ salary and benefits to paying for the remaining months or years of the contract.

Even if terminated early, these presidents often retain their tenure rights or receive additional compensation to buy out those tenure rights. If the presidents remained as tenured faculty members, their future salary was typically predetermined, making them among the most highly paid faculty members in the institution. While we do not know of any instances where a president has deliberately sought to have a contract terminated without cause before the end of the term, our research indicates that when this does occur, the individual can benefit substantially.

A short-term presidency can be problematic for the university, however, with negative publicity and difficulty in recruiting applicants as well as faculty and students — and, of course, the expense of a new search. So, what can be done?

When we looked at the most recent research on the tenure of corporate chief executives, we found that they are staying longer, despite increased scrutiny from investors and the aging of the boomers. For instance, chief executives in S&P 500 companies are staying in their positions for 10 years or longer. Why is there such a difference in length of service between corporate chief executives and college presidents? After all, both lead multimillion-dollar entities that have many constituents, large numbers of employees, and often multiple sites, and that often use search firms to identify upper-level candidates.

And, more to the point, what does all this mean for the university presidency? First, consider the early termination without cause: Do those governing boards talk to the presidents about any issues and try provide training, coaching, or in some other ways try to improve the situation? Governing boards must recognize that in hiring a search firm they are outsourcing one of their most important responsibilities — selecting a president.
While relying on a search firm may save board members valuable time, it may also limit their ability to gain an overall sense of the applicant pool, or even of the finalist(s) for the position. Further, our review of presidential contracts indicates that measurable metrics for presidential performance are rarely identified. Those we did find were generally broadly defined, not measurable, and without consequence. The only contracts we found with true metrics were those for the public universities in Arizona, which have two sets of metrics for presidents: One set is the same for all three presidents, and one is specific to each university.

Together, these two sets of metrics provide short- and long-term goals for the president, each with specifically defined outcomes. If a president misses a metric by even the smallest amount, the associated bonus is not paid. Metrics such as this provide specific criteria so the board and the president have agreed-upon expectations for performance.

We believe that institutions also need to develop new metrics to assess the success of search firms. A list of clients, or minority and female placements, does not tell us much. More informative measures of success might include length of service for previous placements, or the number of repeat engagements with previous clients. Governing boards also need to think carefully about the benefits received by presidents for termination without cause. While we understand that any employee wants as many protections as possible, some of the language agreed to by governing boards provides lucrative benefits not available to any other public employees. By agreeing in advance to "parachutes" that could be worth millions of dollars, are boards fulfilling their fiduciary responsibilities?

We have asked a lot of questions here, and we do not pretend to have all the answers — however, we do hope to continue the discussion.

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