ONE OF THE GREAT death-defying feats for which the famous Flying Wallendas family is known is the tightrope walk, usually with no net and often over precarious landscapes, such as Niagara Falls and the Grand Canyon. It requires foresight and careful planning, adaptation to circumstances, precise execution, and great balance. And if that act doesn’t amaze the audience enough, they step it up a notch: by adding a second tightrope walker. The tandem tightrope walk requires the additional skills of collaboration, careful communication, independence and interdependence—and even better balance.

In August of 2016, AGB released the “AGB Board of Directors’ Statement on Institution-Foundation Partnerships.” This statement provides guidance for institutional governing boards; senior administrators of public colleges, universities, and systems; and the boards and staff of affiliated foundations on ways they can mitigate potential risks stemming from foundation activities, enhance the alignment of foundation activities with institutional priorities, and fulfill governing boards’ fiduciary responsibility for oversight of affiliated entities. The statement makes a compelling case for the growing importance of...
foundations as philanthropic and entrepreneurial partners of their host colleges and universities.

What does “partnership” mean in this context for institutions and foundations? As with the tandem tightrope walkers, it can be a high-wire act with significant risk but also the possibility of great reward. It means balancing foundation independence with institutional leadership to achieve shared priorities and earn institutional support. It also means commitment to collaborative leadership and joint planning.

The aerialists here are typically the institution president and the foundation chief executive officer, but it can get a lot more crowded than that. The foundation board of directors and the institutional governing board or state oversight board may be on the rope, too. And in systems with multiple foundations, there may be many tightrope walks going on at the same time.

With a true institution-foundation partnership, the inherent risks of this mutual effort can be effectively managed, and all walkers can reach the other side with goals realized and the audience delighted.

THE FOUNDATION LANDSCAPE
In assessing the balancing act of institution-foundation partnerships, it is useful to have a feel for the foundation landscape and to appreciate the variety of configurations these relationships might take.

Institutionally related foundations (IRFs) usually fall into three common types or structures: individual institution foundations, system foundations, and multiple foundations. Some institutions have multiple foundations affiliated with specific campuses or units. According to an AGB Press book, *Policies, Practices, and Composition of Governing and Foundation Boards 2016*, 31 percent of foundations reported having multiple foundations affiliated with the primary institution (the average number is 3.7). About 46 percent of the wealthiest foundations (greater than $1 billion) reported that the university or system was supported by other affiliated foundations.

IRFs have staffs ranging from no full-time staff to hundreds of employees. Operations may include gift repository/asset manager, oversight of comprehensive development programs, support or operation of alumni associations, and entrepreneurial ventures. IRFs may be independently staffed, self-financed, and operate with a high degree of autonomy, or they may be wholly dependent on institutional funding and personnel, or somewhere in between. The IRF chief executive often also serves as chief advancement officer for the institution. Development functions may be distributed across the foundation, units of the institution, and other affiliates.

With regard to governing board composition, it is common to have some overlap between the leadership and boards of the institution and the foundation; ex-officio relationships are the norm to accomplish much of this. Based on AGB survey data, at 89 percent of IRFs, the institution CEO (president) is an ex officio director. About 46 percent of IRFs include an institutional governing board member on the foundation board, and 63 percent have an alumni association representative.

The relationship between IRFs and their institutions lies on a spectrum from dependent to independent. These characterizations are in common use in describing higher education foundations:

- **Dependent**: The foundation effectively functions as a unit of the primary institution, which provides office space,
staff, and other support.

- **Interdependent**: The foundation receives some free in-kind benefits, such as office space or the services of university employees.

- **Independent**: The foundation operates with a high level of autonomy and reimburses the institution for the use of any institutional resources.

Based on AGB data, approximately 45 percent of foundations characterize themselves as interdependent, about 20 percent as dependent, and about 34 percent as independent. Not surprisingly, foundations with larger endowments are far more likely to operate independently of their affiliated college or university.

**BALANCING INDEPENDENCE AND SUPPORT**

One of the issues most frequently debated by public institutions and their related foundations is this: How independent does the foundation need to be? This is a challenging question to answer because of the competing interests and objectives involved. And the reply will vary from institution to institution.

A core value of having a private, non-profit, institutionally related foundation lies in the flexibility attained through the foundation’s freedom from state oversight and intervention in operations that would otherwise apply to the public institution. This may include freedom from open meetings law requirements, open records law, state audits, state procurement law, state confiscation of funds, and clarity regarding tax treatment of gifts. This independence also affords a critical protection of donor data and desired anonymity.

These freedoms are generally protected by state law, and under the majority trend in recent case law, affording those protections usually depends on the answers to two questions: Is the foundation a public body? Or is the foundation performing a governmental function? If the answer to either question is yes, then it is likely that these freedoms will be abridged, at least in part, particularly as to the application of state open records and open meetings laws.

In general, the following factors are considered in determining whether an IRF qualifies as a public body:

- Board overlap with institution
- Authority of institution president over foundation
- Authority of institution board over foundation
- Degree of financial and in-kind support from institution
- Who employs foundation staff
- Who is the foundation’s lawyer

- Terms of MOU to provide a governmental function on behalf of institution
- Degree of separation
- External messaging

However, as valuable as it is to achieve independence from the host institution for purposes of attaining these freedoms from state oversight and intervention, that independence should not cause the foundation to lose sight of its prime directive: to support the institution.

From a governance perspective, independence is achieved most effectively by separating the foundation board from the leadership of the institution and its governing board so that control is not vested in the institution, either in actuality or appearance. But this should not come at the price of impeding the institution-foundation partnership to further the mission of the institution.

An effective governance link is for the institution president and a limited number of institutional leaders to serve as members of the foundation board. This might include, for example, the president serving as a voting or non-voting member, and the chief academic officer, the institutional treasurer, and a member of the institution’s governing board serving as non-voting members. Under this arrangement, there is much less support for an attorney general or
court finding that the foundation is a public body or is carrying out a governmental function. And by including top-level leaders, it is more likely that the institution and foundation will more effectively communicate with each other.

Also, as the AGB statement points out, board participation is not the only nexus for communication between the organizations. Appropriate institutional administrators who do not serve as members of the foundation board—such as the general counsel, academic officers, business officers, and institutional planners—may also be engaged in foundation board meetings and committee work as resources and thought leaders.

Oftentimes, there will be friction between the parties as they find their optimal balance point. In real-life examples, a university president may expect the foundation to provide financial resources for identified projects upon request, without discussion or debate. Or an institutional president may ignore the boundaries between organizations by committing foundation resources or using foundation credit cards and foundation staff, while ignoring the foundation's budget and spending and travel policies in the process.

On the flip side, foundations can take up the mantra of independence to the point that the primary mission to support the institution gets blurred. As the statement identifies, a clear red flag is when foundation boards wield inappropriate influence over institutional strategic direction or personnel decisions by withholding requested funds or raising funds for purposes at odds with institutional priorities. In the worst case, again in an actual example, foundation directors may ignore their fiduciary duties of care and loyalty by taking personal stakes in foundation investments and advancing those projects to the detriment of institutional priorities.

This blurring of institutional and foundation roles can ultimately lead to crisis. In a December 2016 report, a state auditor examined the governance of a private, nonprofit foundation and its relationship to its host public university. The audit was made necessary when issues were brought to the state auditor’s attention related to governance practices and concerns about limited accountability and transparency in the foundation’s operations. The auditor concluded that administrative operations of the university and its foundation were at times indistinguishable, leading to ineffective governance, with management having too much influence and no appropriate checks and balances. The auditor also found that conflict among members of the university board and administration created an environment of distrust, resulting in a dysfunctional governing climate.

In another instance, a state office of the inspector general investigated the relationship among a large public university system’s colleges and their affiliated foundations. The review was of potential conflicts of interest, as well as administrative and financial oversight and controls and best practices with respect to all of the foundations, alumni associations, and affiliated entities. The inspector general’s preliminary investigation, as described in a November 2016 report, identified systemic concerns largely attributable to a lack of oversight and the failure of the system administration to institute effective centralized management policies.

The keys to achieving mutual understanding and balance here are for institutional leadership and the foundation board to acknowledge, accept, and respect each other’s roles, duties, and obligations, both in practice and in the governance documents and agreements that bind them. This happens through effective board orientation, communication at board and committee meetings, director interaction at both formal and informal events, the inclusion of the foundation CEO in the institutional president’s cabinet, and a mutual respect and appreciation by the institutional president and the foundation CEO, forged through many a shared fundraising trip or event.

The balance is also achieved in the language of the foundation’s articles of incorporation and bylaws. These governance documents should clearly reflect the mission of the foundation to support the institution while preserving the needed flexibility of the foundation to achieve that mission. The foundation’s bylaws, through establishing board composition, voting rights, committee work, and governance due process, should support the balancing act. Clear and unambiguous language will go a long way.

Also of key importance is the implementation of a memorandum of understanding (MOU) between foundation and institution
that clearly lays out the responsibilities of the foundation in development and endowment management and the responsibilities of the institution to provide financial and in-kind support and to respect the fiduciary duties and governance processes of the foundation's governing board. Ideally, it will also address the process for the institution's request for and discretionary use of unrestricted funds held by the foundation. The memorandum must be followed and should be periodically monitored for compliance. In the state auditor and inspector general investigations cited above, the MOU was either not followed or never existed in the first place. A useful template can be found in AGB's revised "Illustrative Memorandum of Understanding Between a Public Institution or System and an Affiliated Foundation" (2014).

As in any tandem tightrope walk, even by experienced and dedicated professionals, things will get a little shaky at times. For example, when leaders inevitably transition to other institutions or opportunities, the institution-foundation partnerships may have to be reset. While this can be a setback, it can also provide an excellent opportunity to reexamine core practices and structures, to innovate, and to find a better balance.

**COLLABORATIVE LEADERSHIP**

The partnership between the college or university president and the foundation chief executive officer is vitally important. It sets the tone for the work of the institution and foundation boards and largely dictates whether the relationship between boards will be productive, lackadaisical, or contentious.

James H. Moore, an experienced foundation executive with nearly 25 years of experience in public and private higher education, became the president of the University of Illinois Foundation in 2015. He has worked with several institutional presidents and has experienced leadership transition, both of university presidents and his own, and understands well the importance of getting the relationship right. “Working together, the university CEO and the foundation CEO can more effectively engage donors and volunteers in mission-critical issues important to the advancement of the institutions,” says Moore. “A fractured relationship opens the door to distractions that can lead to reputation and productivity issues.” These sentiments are shared by Moore’s front man on the tightrope, University of Illinois System President Tim Killeen. Killeen believes that “be it to secure private support or promote advocacy, our university foundations are more important than ever. Foundation CEOs must be engaged as full partners.”

In a minority of cases, the institution president also holds the job of foundation chief executive officer. This is rarely a recipe for success. Most college and university presidents and foundation chief executives would argue robustly that theirs is a full-time job, and then some. Holding both positions is likely to lead to a failure to fully embrace opportunities and avoid pitfalls in both jobs, most specifically in fundraising.

**JOINT PLANNING**

Another essential element of achieving institution-foundation success is collaboration and joint planning. If the lead tightrope walker is to safely navigate the journey, he or she must know that the acrobat behind is walking in unison and support, counteracting any missteps and restoring their joint balance. This will come through compatible strategic planning efforts and regular and substantive communication between institutional leadership and the foundation board.

The institutional board (or state oversight board) and the foundation board will likely have differing strategic plans and processes, as befits their unique missions and responsibilities. However, each should have a voice in the planning process of the other so that goals and timelines are compatible and conflicts can be avoided.

David Bahlmann is president/CEO emeritus of the Ball State University Foundation, of which he served as president for 26 years. In addressing this challenge, he notes, “One of the surest ways to avoid conflict between a foundation and its partner host institution is to be sure that their respective planning processes are in sync. The foundation should plan to have its process parallel but lag the host institution’s by approximately six months. This will allow the foundation to fully understand the host institution’s projected priorities, goals, and objectives and allow for the incorporation into the foundation’s plan those areas that the host institution will rely upon its partner foundation to support and help accomplish.”

The AGB statement also describes the opportunity for institutional leadership to take advantage of the competencies, commitment, and support of the foundation’s directors and to ensure coordination of effort. It asserts that “by substantively engaging foundation board members in strategic discussions and planning, institutional leaders can enhance the experience and commitment of foundation volunteers and help to ensure that they won’t inadvertently undertake work incongruent with institutional priorities. When institutional and foundation boards collaborate closely in an environment of mutual support, candor, and accountability, the partnership can be a vital driver of institutional progress and excellence.”

As with any balancing act, there will be stumbles and the occasional need to climb off and start all over again. But with shared commitment, effort, communication, and practice, it can be done and done well. Just don’t look down.

**The keys to achieving mutual understanding and balance are for institutional leadership and the foundation board to acknowledge, accept, and respect each other’s roles, duties, and obligations.**

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