

REMARKS BY FREDERIC J. FRANSEN

Executive Director
Center for Excellence in Higher Education

Donor Intent and the Future of Higher Education Philanthropy

December 6, 2007

Good morning and welcome!

I'm Fred Fransen, Executive Director of the Center for Excellence in Higher Education. Let me begin by saying how glad I am that all of you have joined us today. The issue of donor intent affects everyone in this country, and the wide range of organizations and interests represented here confirms this. Our concern, of course, is with higher education. Your concern may be somewhat different. Nevertheless, it is in the area of higher education where most of the problems seem to be arising. Perhaps this is because many of our colleges and universities either have too much money – or too little. Either way, we see a pattern where colleges and universities accept gifts for specific purposes and over time either lose sight of that purpose or deliberately ignore it.

CEHE exists to assist higher education donors who want to use philanthropy to promote excellence in teaching and excellence in research. We strongly believe we cannot have either without our colleges and universities also pursuing excellence in their interactions with donors. We are eager to assist donors as they engage in more open and substantive discussions about their gifts, and to help them develop new models of giving that will introduce competition, transparency, and accountability into higher education philanthropy.

We are also hopeful that as we help develop a new relationship between higher education donors and the recipients of their gifts – a relationship built on understanding, respect, and trust – that we will establish new ground rules that can serve as a model for all philanthropists and nonprofits, regardless of their interests.

As a way of getting our discussions started, I wanted to outline a few areas where we believe both donors and the recipients of their generosity can pay closer attention, if they want to take donor intent seriously:

1. Time: Perpetuity is a very long time. Donors and recipients need to be clear about the time horizon of a gift. Where the time horizon is long, *more* attention needs to be paid to the specific intent of the donor, not less. This might involve long and detailed instructions and fallback positions, but it may not. Many – but not all – donors will accept clauses widening the scope of the gift after a certain amount of time. Where recipients intend for this to be the case, they need to make it explicit.

Many philanthropists today, however, are choosing to spend out their foundations during their life, or after a fixed length of time, rather than have them last forever. Warren

Buffett's gift to the Bill and Melinda Gates Foundation is a recent, prominent example of this, but the principle of sunseting is quickly becoming the norm among savvy donors. It is equally important that they or their foundations then also refrain from making endowment gifts, unless specifically directed to do so. Otherwise, they are simply passing the problem on to another institution, entirely outside the control of the donor.

2. Financial Control: Where there are potential concerns about the implementation of a major gift, donors can consider keeping the principal segregated from the recipient institution, and donate only program-specific income. In the case of universities, which have increasingly adopted Scrooge-like policies on endowment payout, donors utilizing this strategy can double or more the amount of funds available for programs.
3. Oversight: Yogi Berra once said that "You can observe a lot by watching." Donors need to demand appropriate reporting on their gifts from the institutions administering them. In some instances, the body receiving the reports can be given standing to intervene if the recipient institution is violating grant agreements.

Much of our discussion today will involve cases in which donors have become disenchanted with the stewardship of universities to whom they entrusted their gifts. The particulars of these cases are fascinating in and of themselves, and I look forward to learning more about them. Without a doubt they will also be precedent-setting, no matter how the courts ultimately resolve them, because they represent a new wave of cases, and the law governing such cases is evolving rapidly.

But I also believe they are indicative of a trend that is coming to dominate the discourse of philanthropy more generally. Donors, I believe, will increasingly direct their philanthropy toward institutions that are responsive to their reasonable requests for accountability. If higher education plans to continue to benefit from their generosity, it will need to change its way of doing things, and it had better do so soon.

Colleges and universities are mistaken if they believe they can circle the wagons and hide beyond mistaken and outdated notions of institutional autonomy when they violate legally binding agreements surrounding the uses of a gift. The ivory tower is neither above, nor outside the law. There may be many things donors would like to do that a college or university does not see as part of its mission. That's fine. As with any other charity, all they need to do is walk away. Indeed, they should walk away. When any non-profit organization enters into an agreement and takes a donor's money, however, it is bound to its terms, and as we will see in the first panel this morning, it should expect that donors will hold them to it, resorting to the legal system, if necessary.

After looking at these three very important cases currently in the courts, we will turn in the second session to a discussion of the implications of such cases, and of these new trends, for philanthropy, and for higher education, more generally.

Finally, we have asked the panelists to restrict the length of their remarks, to allow adequate time for discussion. The stakes in these issues are extremely high, and opinions differ not only as to the facts, in some instances, but also as to the correct principles we should use to interpret and evaluate them. We look forward to a vigorous and civil discussion as we all attempt to discern the best way to accommodate donor intent in the pursuit of excellence in higher education.