

## The Costs of Closed Searches

*The secret presidency and the campus community.*

By Frank D. LoMonte

In August 2013, with the university's finances in disarray and its accreditation in peril, Norfolk State University trustees took a drastic step: they fired the institution's president, Tony Atwater, just two years into his presidency and with ten months left on his contract.

As the depth of the Virginia university's troubles became apparent, trustees found themselves wondering how they had entrusted the president's office to a person who had left his prior presidency, at Indiana University of Pennsylvania, under a cloud of questions about his spending habits and high-conflict leadership style. The answer: they had never checked. Because Atwater was hired in a closed-door search, his candidacy was not made known to the public. Those who had worked with him at IUP could not come forward to offer information in time for it to make a difference.

Short-lived presidencies attributable to inadequate searches are no rarity. The University of Missouri pushed out former software executive Tim Wolfe three and a half years into his presidency after his clumsy response to racial unrest on campus inflamed tensions. Kennesaw State University parted ways with Sam Olens, a former state attorney general, just thirteen months into his tenure, after a mishandled controversy over cheerleaders kneeling to protest racial injustice.

Increasingly, college and university trustees and their hired headhunters are deciding to trade a thorough and open presidential search process for a confidential one. They insist that, if the names of finalists became public, the strongest candidates would refrain from applying for fear of damaging relations at their current workplaces. The decades-old practice of bringing multiple finalists to campus for town-hall meetings has largely given way to secret trustee meetings that result in a finalist list of one.

Presidential searches, however, are a matter of keen public interest on campus. While governing boards have the legal responsibility for selecting the president, faculty participation in the search process is critical to selecting the best candidate. Concealing the names of candidates also restricts the public's access to information more broadly, preventing whistleblowers from coming forward until after the choice has been made and impeding the ability of journalists to hold public institutions accountable.

Notably, it is standard practice for public universities to fill administrative positions other than the presidency by way of an open search. So, when Jere Morehead was elevated from provost of the University of Georgia into the presidency in 2013 after a closed search, his provost's position was then filled in an open selection process in which four finalists were brought to campus for public town-hall meetings. The finalists included three sitting deans and a sitting vice president from respected public universities, reflecting no shortage of well-credentialed candidates willing to interview in public.

The question consequently becomes whether there is something unique about the presidency that justifies departing from established norms of shared governance and public accountability.

## Risks of Secret Searches

For decades, the AAUP has been a strong and at times lonely voice calling for meaningful campus participation in the selection of college and university presidents. As the AAUP's Committee on College and University Governance has made clear in *Faculty Participation in the Selection, Evaluation, and Retention of Administrators* and other statements, the faculty has a particularly important role in presidential searches. In its 2013 report *Confidentiality and Faculty Representation in Academic Governance*, the governance committee directly addressed the problem of secrecy in presidential searches, declaring that "the names of finalists should be made public to the campus community so that the community at large, faculty committees, or at least selected faculty members have an opportunity to interview the finalists and forward their views to the search committee or to a consulting firm employed by the college or university."

Public colleges and universities have a duty of accountability to the public. The downsides of excluding the public from the search process are—or should be—self-evident.

When an institution like the University of Oklahoma hands the presidency to a well-connected insider—oil executive and former trustee Jim Gallogly, who took office in July 2018—the community is left to wonder whether a diverse and well-qualified field received consideration. The loss of public legitimacy, particularly when the position goes to a favorite-son candidate, is just one of the consequences of secrecy.

Secrecy deprives university search committees of the benefit of information—including disqualifying information—that might be volunteered if finalists' names were publicly known. Tips from whistleblowers averted disaster at Pennsylvania State University, which came within hours of announcing its appointment of David R. Smith as president before learning he was under criminal investigation for illegally padding his salary while serving as president of a medical university in New York. Likewise, a whistleblower saved Central Oregon Community College from appointing to the presidency a candidate who was facing a lawsuit accusing him of sexual assault. The public is dependent on whistleblowers because there is no guarantee that executive-search firms are performing meaningful due diligence; research by George Mason University's James Finkelstein has documented that only about half of all presidential headhunting

contracts promise any background checking beyond calling the candidates' self-provided references.

Experienced candidates rarely arrive baggage-free. The baggage may be something small and easily explicable—or not. In the case of Ithaca College's Shirley M. Collado, it was a seventeen-year-old "no-contest" plea to sexual misconduct involving a client in her care as a therapist. The offense might or might not have been a disqualifier in the eyes of the community—but the community never got to make that decision. After promising an open and transparent search, the Ithaca trustees backpedaled and made the appointment in secret, so when Collado's criminal record belatedly came to light, its concealment struck the campus doubly hard.

When presidents are appointed without campus involvement, it furthers the growing "corporatization" of higher education, with the president viewed as a CEO accountable not to the shareholders but solely to the board that made the appointment. This weakens the president's standing among campus constituents and can be a factor in faculty "no-confidence" votes.

Because search committees now routinely hold interviews at faraway airport hotels or other off-campus locations to evade journalists who might identify coming-and-going candidates, it is possible to be appointed to the presidency of a college or university without ever having visited the institution. This "mail-order bride" courtship appears calculated to maximize the risk of a personality mismatch.

Trustees and search firms maintain that all of the salutary benefits of open, transparent searches are offset by a single reality: a confidential search produces a stronger field.

## **The Legal Landscape**

At a public university, the default assumption under state law is that every business record gathered, used, and maintained by the institution is open for public inspection. Using public-records laws, journalists and citizen watchdogs have been able to uncover mismanagement and corruption throughout government, including in higher education.

But state legislators regularly create exemptions that override the default assumption, putting select categories of records beyond the public's reach. In state after state, college trustees have persuaded lawmakers to exempt presidential searches from open-records and open-meetings statutes, as Wisconsin did in 2015 and Nebraska did in 2016. There are now only a handful of states, including Florida and Ohio, where the public unambiguously has a legal right to obtain records documenting who received consideration for a college presidency. Even in those states, university decision makers find ways to delay or obstruct the public's access, as they did in Kent State University's 2014 search, where university lawyers stalled in fulfilling journalists' requests for the search committee's records until the search could be completed—and all the documents shredded.

Lawsuits challenging the secrecy of searches have produced mixed results. In Michigan, where state universities occupy a uniquely autonomous status as nearly a fourth branch of government, courts have declined to compel university trustees to conduct business in the open. In a 1999 ruling, the Michigan Supreme Court held that Michigan State University did not violate state law by appointing a president after a secret process and that the public is entitled to nothing beyond the ability to attend the board meeting where the final choice is ratified.

At Louisiana State University, journalists successfully sued for release of the names of the four candidates who received in-person interviews with the board of supervisors in 2013. Judges saw through the university's artifice of running the search through LSU's independently incorporated foundation and decided that the records belonged to the public—but only after F. King Alexander had already been on the job for more than twenty-one months.

More recently, open-government advocates sued the University of Washington after a bizarre 2015 selection, during which members of the board of regents "voted" at a perfunctory public meeting by reading from a prepared script in which the name of the appointee—in-house candidate Ana Mari Cauce—was preprinted. The suit ended in a settlement under which the regents admitted that they had not considered any other candidate and agreed to amend their bylaws to give the public better notice of future selections.

In 2017, a newspaper reporter sued Ohio University for refusing to honor a public-records request for the names of presidential finalists. The case went to mediation and resulted in the production of five finalists' résumés—just days before trustees named their choice.

But judicial victories can be short-lived. In Arizona, even after the state supreme court ordered the university to comply with the public-records act, the university defied the ruling and refused to honor journalists' requests for the names of interviewees in its subsequent 2017 search. The candidates were interviewed at a resort hotel one hundred miles from the Tucson campus, and the ultimate choice, Robert C. Robbins, was not brought to visit the university until after the board of regents decided to appoint him.

## A Closer Look at Closed Searches

It is impossible to reliably categorize a presidency as successful or unsuccessful based on measurable criteria, such as longevity in office. Lou Anna Simon led Michigan State University for thirteen years, double the average presidential tenure, before she was forced to resign—and later criminally charged—for her role in covering for a serial sexual predator on the medical faculty. At the University of Central Florida, financial mismanagement began coming to light after John Hitt ended his twenty-six-year presidency, resulting in the dismissal of four holdover administrators. A relatively short-lived presidency could also be an indicator of success, as a successful president will be an appealing candidate for other positions.

To test the hypothesis that closed searches produce stronger candidates, I and other researchers from the University of Florida's Brechner Center for Freedom of Information looked at the most recent presidential appointments at each of the four-year public colleges in a state that conducted searches secretly, Georgia, and two neighboring states that disclosed the identities of finalists, Florida and Tennessee. If the contention of headhunting firms was accurate, Georgia should have better-credentialed presidents who came from sitting presidencies.

Based on the recent experience of the three states, we found that a closed search was slightly, but not dramatically, more likely to result in the appointment of a sitting president from another institution. (We looked only at presidents who relocated from other states, not presidents who moved laterally within the same state system, since there would be no reason to fear that trustees would retaliate against a candidate who sought to transfer to a sister institution that answers to the same governing board.)

Of the twenty-four four-year Georgia colleges that conducted a closed search and seated a president—one conducted an open search—three are led by presidents who left other presidencies, two came from four-year colleges (the University of Rio Grande and Mount Mercy University), and one came from a community college. None of the currently sitting chief executives in Florida or Tennessee left a sitting presidency.

While there appears to be a modestly greater likelihood of hiring away a sitting president if the search takes place in secret, the Georgia experience shows a far greater correlation between holding a closed search and promoting a candidate from within the university system. More than half of the sitting presidents of public four-year colleges in Georgia—fourteen of twenty-four (leaving aside campuses with current vacancies)—were in-house candidates or were administrators at sister Georgia institutions. One-third of all Georgia presidents—eight of twenty-four—were insiders appointed by the state's chancellor to interim presidencies and then kept on permanently. By contrast, of the twenty-one sitting presidents in Florida and Tennessee, four were in-house promotions and two had moved laterally within the state system.

We also found no significant difference between open and closed searches in the ability to attract presidents from highly rated institutions. Using membership in the Association of American Universities as a rough proxy for the prestige of the institution, we found that only two of twenty-four Georgia presidents, one of twelve Florida presidents, and none of the nine Tennessee presidents came from that group of leading research universities.

The takeaway from this snapshot of search experiences is that excluding the public from participation in the hiring process appears to accrue primarily to the benefit of “insider” candidates. Secrecy makes it easier for the chancellor and regents to install a hand-picked favorite, as the appointee does not have to measure up to public scrutiny against competitors.

In an ironic footnote to the study, Tennessee's legislature changed the state open-records law in 2018 so that, in future searches, universities will have to release only a "finalist list of one."

## Case Study from the Cowboy State

The 137-day presidency of Robert Sternberg at the University of Wyoming provides an object lesson in what happens when trustees exclude the community from the search process and end up with a cultural mismatch.

Sternberg resigned four months into his term in November 2013, saying he believed he had lost the trustees' support after a string of controversial personnel decisions. Upon arriving in Laramie, he immediately began dismissing senior administrators, leading many to question whether his leadership style was a fit with the campus.

At the time Sternberg left his previous position as provost at Oklahoma State, the university was a management train wreck. Top administrators had been caught covering up a string of sex offenses that they failed to report even to their own campus police. The football program, as detailed in a five-part *Sports Illustrated* series shortly after Sternberg left OSU, was plagued by drug abuse and illicit recruiting practices. It is not clear—because the proceedings took place behind closed doors—whether these subjects were discussed during the Wyoming search process.

When Sternberg was appointed president, Wyoming's open-records law clearly entitled the public to see the names of the candidates. But the trustees defied the law and, when threatened with a public-records lawsuit, fast-tracked the decision so they could finalize the appointment before—grudgingly and belatedly—disclosing the finalists. Even then, Wyoming trustees got the last laugh. They lobbied the legislature for an exemption that now entitles state universities to identify only the successful candidate, validating the process by which Sternberg was selected.

## The #MeToo Era

The sole justification for secrecy—that, without total confidentiality, sitting presidents will not allow their names to be considered, for fear of reprisal from their current employers—makes sense only if we believe that headhunting firms and screening committees do not speak to anyone at the candidate's current campus, even after the search has been narrowed to a handful of finalists. If this supposition is untrue, then there is no justification whatsoever for withholding the names of the finalists, since the current employer already knows them.

But what if the claim *is* true? Shouldn't it worry us more, in an age of #MeToo disclosures, when the pervasiveness of harassment by men in authority is undeniable, that the background check is less rigorous for a college presidency than for an entry-level security-guard job? Assuming that headhunting firms are telling the truth, and that most do no reference checks at the finalists' workplaces, we are left with presidents who

have been hired with neither a thorough background investigation nor so much as a conversation with faculty members, students, and others on their campuses.

The fear that candidates might experience retaliation, while perhaps exaggerated, is not without foundation. In March 2018, Matthew J. Wilson stepped down as president of the University of Akron after his publicly disclosed candidacy for the top job at the University of Central Florida caused Akron trustees to question his loyalty (for a more detailed discussion of searches at Akron, Kent State, and other Ohio universities, see "[Ohio AAUP Chapters Contend with Secretive Searches](#)" by John McNay). Wilson's misfortune is being cited as justification for even further retrenchment on the eroding right of the faculty and other constituencies to an informed role in presidential hiring.

We should be asking whether the inability of trustees to restrain themselves from retaliatory actions is really an argument in favor of giving them unchecked hiring authority. We should also be asking whether "the right to lie" is a right that we value in higher education—that is, the right of an incumbent president to continue assuring donors and trustees that he or she will never leave, right up until the moment the person is announced as the president of another institution. The truth is that Matthew Wilson really was ready to leave Akron—and understandably so—for the presidency of a much larger institution in his former hometown. That a person who leads a small institution would be interested in leading a large one should be treated as unremarkable, not as grounds for punishment.

The culture of secrecy is self-validating, making retaliation plausible. Because trustees have no idea how routinely their presidents entertain other job opportunities, they regard the rare flirtations that become public as betrayals. If secrecy were no longer the default—if a president showing up on a list of nominees became a commonplace occurrence—retaliation would quickly become obsolete.

Rather than roll back statutes that entitle the public to meaningful access to information about presidential hiring, as Tennessee and Wyoming have done in recent years, legislators should instead enact statutory retaliation protection for college administrators. If retaliation were outlawed, the only justification for secrecy would vanish, and presidential searches would once again become inclusive, accountable, and respectful of community values.

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See also John T. McNay's article "[Ohio AAUP Chapters Contend with Secretive Searches](#)," which appears as a sidebar to this article in the print edition and PDF version of the spring 2019 Academe.