

GEORGE MASON UNIVERSITY
Department of Public and International Affairs
Nonprofit Management Studies

Nonprofit Law, Governance and Ethics

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| September 1, 2005 – December 15, 2005 | wfreema1@gmu.edu |

Course Description:

Discussion and analysis of the unique opportunities and challenges facing 21st century nonprofit organizations. Course will present the baseline requirements of the law and expand to an understanding and fluency in ethical decision making. Course will investigate the essential role of governance (board of directors and senior executive staff) in designing high performance, mission-driven organizations to achieve breakthrough, outcomes.

Situational Context:

Nonprofit organizations are currently experiencing one of the most challenging chapters in their long history of service to America. Scandals over the past ten years, such as those associated with the United Way of America, American Red Cross, Episcopal Church, NAACP, and New Era Philanthropy, have negatively and significantly impacted public perception of all nonprofits. In a 2002 survey, 13 percent of respondents had a great deal of confidence in nonprofits, 47 percent said they have a fair amount, 26 percent said they had little, and 11 percent said they had none at all. Simply put, roughly a third of the respondents were negative.

A Leadership Failure: A root cause of this impact is a failure of leadership – both at the board of directors and executive levels. Whether through willful neglect or unintended incompetence, many nonprofit organizations are experiencing challenges that threaten their very existence.

Management consultants (for-profit and nonprofit) are in consensus that the hierarchical model of the senior executive (e.g., executive director, chief executive officer, president) at the top of an organizational pyramid is no longer functional for the workplace of this new century. It has become apparent that this traditional model of unilateral decision-making, and mandates from the board of directors and senior leadership just won't work anymore.

Ineffective Stewardship: The results of a 2002 Independent Sector survey regarding stewardship are alarming: 60 percent of Americans said that nonprofits waste a great deal

or a fair amount of money, while 46 percent said nonprofit leaders were paid too much, compared with just 8 percent who said they were paid too little. Bluntly put, Americans are not questioning what nonprofits do, but how they do it.

The Sarbanes-Oxley Act of 2002 has become law as a way to hold executives of publicly traded companies personally responsible for the truthfulness and accuracy of their financial reporting. California passed the Nonprofit Integrity Act of 2004 imposing many of the features of Sarbanes-Oxley on nonprofits with budgets in excess of \$2 million operating in that state. The IRS is currently circulating a staff discussion paper outlining proposed requirements for nonprofits. Clearly, significant changes are pending for nonprofits.

Lack of Measurable Performance: No longer is it enough to “count” how many units of service are being provided. Funders are now demanding performance measures to demonstrate the impact that services are having on the intended recipient base. Federal and foundation grantmakers are no longer rewarding efforts that provide rote services without explicit impact measures. Individual donors are demanding similar metrics. Such sentiment is illustrated by comments of Robert Egger, founder of the D.C. Central Kitchen,

We need to seek out and reward organizations that exemplify leadership, unity, responsibility, and accountability – and let go of those that can’t or won’t. The recent downturn in public support for nonprofits isn’t about the economy or 9/11. It’s about skepticism. The public has had enough with pity and platitudes. Americans want a plan.

Nonprofits of the 21st Century will either adapt to these new realities by becoming strategic, entrepreneurial, and passionate about producing value for their stakeholders **or** they will go out of business.

Course Overview:

The objective of this course is to begin the development within the student of both the knowledge and skill-sets required of a nonprofit leader, with a focus of balancing theory and application. The course is practitioner-based with a three-part emphasis on nonprofits as distinct legal entities, governance and leadership (board and executive director), and the role of ethics in individual and corporate decision making. The desired outcome of this course is to provide students with tools to achieve breakthrough organizational performance.

Legal issues for nonprofits: We will examine the legal structure of tax-exempt, 501(c) (3) organizations in the U.S. This will include issues related to incorporation, role of the board of directors, taxation, and reporting requirements.

Ethics: We will investigate the critical role of ethics in day-to-day decision making at both the individual and organizational level. This will not only include “right v wrong” but “right v right” actions. We will discuss three decision paradigms to assist in making

ethical choices. This will include the development of an ethical decision making process. We will use scenario analysis and case studies to understand the complexities of ethical decision making.

Governance and leadership: The goal of all leadership, whether commercial or nonprofit, is enhanced performance. With this as our sole perspective, we will examine and discuss the unique role of the board of directors in a nonprofit. This will entail a “real world” analysis of functional and dysfunction boards. Based on field research, we will discuss those factors found in high-impact boards and examine how those factors can be replicated. We will discuss the oversight role of the board commonly understood to be “governance.” And we will take that understanding and expand it to include organizational leadership.

Executive Director: We will look at the role of the senior staff person (e.g., executive director, CEO, president) and the unique responsibilities of that position. We will examine this relationship to the board and specifically to the board chair.

Breakthrough performance: The nonprofit and cause-related organizations of the 21st century face a world where superior performance – performance that matters to constituents – will become the sole criteria for existence. We will investigate the role of leadership in high-end performance and the mindset shift needed for optimum performance.

Overarching Course Goal:

“Leadership is not the private reserve of a few charismatic men and women. It is a process ordinary people use when they are bringing forth the best from themselves and others. What we’ve discovered is that people make extraordinary things happen by liberating the leader within everyone.”

The Leadership Challenge,
by James Kouzes and Barry Posner

The overall goal of the course is for students to develop critical thinking skills in order to assess organizational performance, identify road blocks, and marshal personal and organization resources to foster breakthrough performance in nonprofit organizations. The entire course flows from this overarching goal.

Personal Course Outcomes:

- The development of a personal leadership model for use in a nonprofit setting.
- The ability to analyze an ethical dilemma and arrive at a course of action based on an ethical decision-making model.

Professional Course Outcomes:

- Demonstrate an understanding of the legal environment, obligations, and constraints of 501(c) (3) organizations.

- Demonstrate an understanding of the Sarbanes-Oxley Act of 2002 and its pending implications for nonprofit organizations.
- Understand of the role of ethics in day-to-day decision making.
- Demonstrate an understanding of the board of directors' role as fiduciary, strategic, and generative nonprofit leaders.
- Demonstrate an understanding of the unique role of the executive director as the agent of the board of directors and principal staff leader.
- Identify an organizational structure to maximize the leadership potential of all staff.
- Demonstrate an understanding of organizational development including assessment, goal setting, planning, and feedback.
- Demonstrate an understanding of the factors needed for breakthrough organizational performance.

Class Format:

The class format will be participatory, case study-driven calling upon leading-edge theorists and real-world models. Students will be encouraged to develop personal methodologies to apply to specific management challenges.

Required Course Textbooks:

- Breakthrough Thinking for Nonprofit Organizations: Creative Strategies for Extraordinary Results by Bernard Ross, Clare Segal. Jossey-Bass; 1st Edition: 2002. ISBN: 0 7879 5569 8
- Governance as Leadership: Reframing the Work of Nonprofit Boards, by Richard P. Chait, William P. Ryan, Barbara E. Taylor. John Wiley & Sons: 2004. ISBN: 0 471 68420 1
- How Good People Make Tough Choices: Resolving the Dilemmas of Ethical Living, by Rushworth M. Kidder. Harper Paperbacks, 2003. ISBN: 0688175902
- ManagingNonprofits.org: Dynamic Management for the Digital Age, by Ben Hecht, Rey Ramsey, Bennett L. Hecht, Ray Ramsey. Wiley: 2001. ISBN: 0 471 39527 7
- The Nonprofit Legal Landscape by Thomas K. Hyatt, Editor. BoardSource. ISBN: 1 58686 044 5
- Extraordinary Board Leadership: Seven Keys to High-Impact Governance by Doug Eadie. Jones and Bartlett Publishers, 2002. ISBN: 0834 217 953

Assignments :

Course assignments and grade percentages will be based on the following:

- 50% Development of a student leadership portfolio. Students will produce a journal of thoughts, insights, and reflections based on materials and discussions throughout the course. Instructor will review and comment on journals mid-point during the course. Journals will be turned into

instructor on December 8th for assessment. Journals will be returned to students on December 15th. (Individual grade)

- 25% Critical ethical analysis of a nonprofit case study – Midterm (take home)
- 25% Class participation (Individual grade)

Class Attendance Note:

As 25% of the student's total grade is based on active class participation, weekly attendance is essential. Anticipated absences are to be discussed with instructor. For unexpected (and rare) absences, students are expected to email the instructor in advance.

Grade Scale:

A = 96-100; A- = 90-95; B+ = 86-89; B = 85-89; C = 70-79; D = 60-69; F = <60

Honor Code:

www.gmu.edu/catalog/9798/honorcod.html#code

Class Schedule:

(Provided as an overview, instructor reserves the option of making schedule adjustments based on class performance and needs).

Sept. 1, 2005 – Thursday (1)

Topic: The Big Picture

- Course topical overview
- Current state of nonprofits in the U.S.
- The five practices of exemplary leadership
 - Model the way
 - Inspire a shared vision
 - Challenge the process
 - Enable others to act
 - Encourage the heart
- Leadership Style Survey (self-assessment)

Read Prior to Class: None

Sept. 8, 2005 – Thursday (2)

Topic: Nonprofit Law (1)

- Organizing a nonprofit
- Directors and Officers
- Lobbying
- Employment law

Read Prior to Class: *The Nonprofit Legal Landscape: Chapters: 1-6*

Sept. 15, 2005 – Thursday (3)

Topic: Nonprofit Law (2)

- Employment law benefits
- Criminal investigations
- Alternative dispute resolutions
- IRS Form 990
- Sarbanes Oxley Act of 2002

Read Prior to Class: *The Nonprofit Legal Landscape: Chapters: 7-11, Appendix 1, 3*

Sept. 22, 2005 – Thursday (4)

Topic: Ethics (1)

- Why ethics?
- A working definition
- Developing an ethical code.
- Case Study

Read Prior to Class: *Kidder: Chapter 1-4*

Sept 29, 2005 – Thursday (5)

Topic: Ethics (2)

- Right versus Wrong
- Right versus Right
- Moral Dilemmas Paradigms
 - Truth versus loyalty
 - Self versus community
 - Short-term versus long-term
 - Justice versus mercy
- Case Study

Read Prior to Class: *Kidder: Chapter 5-9*

Oct. 6, 2005 – Thursday (6)

Topic: Ethics (3)

- Principles for Resolving Dilemmas
 - Ends-based (Utilitarianism)
 - Rule-based (Kantian)
 - Care-based (Religious)
- Ethical decision tree
- Case Studies

Oct 13, 2005 – Thursday (7)

Topic: Organization Structure, Culture, and Change

- Structure: hierarchical, administrative, teaming
- Pyramid versus inverted pyramid
- Organizational culture and climate
- Organizational change
- Case Study

Read Prior to Class: *Hecht: Chapters: 7-9*

Oct 20, 2005 – Thursday (8)

Topic: Board of Directors (1)

- Fiduciary and strategic roles
- Case Study

Read Prior to Class: *Chait: Chapters 1-4*

Oct. 27, 2005 – Thursday (9)

Topic: Board of Directors (2)

- Generative role
- Case Study

Read Prior to Class: *Chait: Chapters 5-8*

Nov. 3, 2005 – Thursday (10)

Topic: Board of Directors (3)

- Building a board by a matrix
- Case Study and Examples

Read Prior to Class: *Eadie: Chapter 4*

Nov. 10, 2005 – Thursday (11)

Topic: Board of Directors and CEO (4)

- The role of the executive director
- The essential relationship: board chair and executive director
- Conflict and cooperation
- Case Study

Read Prior to Class: *Eadie: Chapter 1-3*

Class Handouts:

- “Why Teams”

Nov. 17, 2005 – Thursday (12)

Topic: Creating Breakthrough Performance (1)

- Creating learning organizations
- Teaming
- Planning and goal setting
- Goals: stretch, *kaizen*, *horshin*

Read Prior to Class: *Ross: Chapters 1-3; 5-7*

Dec. 1, 2005 – Thursday (13)

Topic: Creating Breakthrough Performance (2)

- Changing Mindsets:
 - Self-limiting belief
 - Frames of reference
 - Emotional intelligence

Read Prior to Class: *Ross: Chapters 9-11*

Dec. 8, 2005 – Thursday (14)

Topic: Creating Breakthrough Performance (3)

- Innovation and creativity

Read Prior to Class: *Ross: Chapter 4-8; Eadie: Chapter 5-6*

Assignment Due: Personal Leadership Journal

Dec. 15, 2005 – Thursday (15)

Topic: A Look to the Future

- Leadership for the 21st Century
- A blending of missions