DEEP ASSOCIATIONS AND SHIFTING RELATIONSHIPS BETWEEN UNIVERSITIES AND MUSEUMS IN THE UNITED STATES

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April 2015

The Center on Philanthropy & Public Policy
UNIVERSITY OF SOUTHERN CALIFORNIA

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In Beyond the Turnstile: Making the Case for Museums and Sustainable Values, Selma Holo noted that museums were increasingly adopting sophisticated business practices because of the "stunning awareness that if museums did not want to be taken over for the long term by corporate managers or university administrators, they needed to gain management and leadership skills for themselves."[1] Five years later, we are witnessing an increasing number of university-museum mergers,[2] in large part because the financial situation for many smaller independent museums, even if they adopt good business practices, is

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[*] President-elect of Cornell University, formerly Provost and Senior Vice President for Academic Affairs of the University of Southern California. This paper was originally given as a keynote address at the Second Triennial Oaxaca Museum Encuentro, *ReMapping/ReCalculating/ReAligning Museums Today for Tomorrow*, held March 18 & 19 in Oaxaca. I thank the cosponsors of that conference, The USC International Museum Institute, The UNAM MUAC Museum de Arte Contemporaneo, and the Alfredo Harp Helú Foundation, for the opportunity to participate. The views expressed in this keynote are my own and concern several discussions of mergers between USC and free-standing non-profit cultural and research institutions. In one instance, the Pasadena-based Pacific Asia Museum, the talks culminated in the merger of the museum into USC. I appreciate the comments of Robert Cooper, Selma Holo and Robin Romans and research assistance by Rowley Rice. I am grateful the support of an excellent team at USC during the negotiations to affiliate with PAM and the transition, including Carol Mauch Amir, Robert Cooper, Brian Harper, Selma Holo, Michael Quick, Robin Romans, Dan Stimmler and Maria Watson.

[1] Selma Holo, *A Crisis is a Terrible Thing to Waste*, in Beyond the Turnstile: Making the Case for Museums and Sustainable Values xiii, xiv (2009, S. Holo & M Alvarez eds.).

[2] Perhaps the highest profile affiliation is the recent decision of the Corcoran Gallery of Art to become part of George Washington University, after first considering a deal with the University of Maryland. This transaction spawned a lawsuit challenging whether the deal was necessitated by a sufficiently serious financial situation and whether, under those circumstances, reflected as nearly as possible William Wilson Corcoran's intent. The D.C. court ruled that the GWU deal was acceptable, given that the alternative was the likely dissolution of the Corcoran; GWU and the National Gallery (which will receive some of the Corcoran's art collection) had both committed to preserving the Corcoran's name, mission, and gallery; and the proposal had been endorsed by Attorney General of the District of Columbia's Office and the relevant professional museum organizations. *Trustees of the Corcoran Gallery of Art v. District of Columbia*, 2014 D.C. Super. LEXIS 17 (D.C. Super. Ct. 2014). In 2011, GWU had developed a partnership with the Textile Museum, which moved to its campus and became part of the GWU museums. Other deals include the Judah L. Magnes Museum, focused on Jewish Life, associating with UC-Berkeley in 2010; a management agreement between the University of Tulsa and the Gilcrease Museum in 2008; and the merger of Fort Lauderdale's Museum of Art with Nova Southeastern University in 2008.

precarious. While alliances with for-profit corporate managers would indeed threaten the identity of museums, deep associations with universities bring value to museums beyond enhanced financial security. These institutions have a similar commitment to the public good; they are "natural allies."[3] Universities can provide a new audience for a museum's collections and programs, including undergraduate and graduate students who contrast with the traditionally older patrons of the arts. Many museums embrace an educational component to their missions, an aspect that fits comfortably in the environment of a university. And the faculty and students of a great university can help museums fulfill a related mission: they can help us better understand the "multiple interpretations [of museum collections] over a long period"[4] and engage, through interdisciplinary study and teaching, in the creative mission of museums as "they adapt to changing times and context."[5] The natural affinity between these two institutions is strong – both are "foundational institutions of a democratic society, … indisputably relevant amenit[ies] that contribute[] to a richer quality of civic life."[6]

Even though deep associations between universities and museums often make sense and enhance the missions of both institutions, they are often difficult to achieve. As provost of the University of Southern California (USC), I led the USC negotiating group in a successful acquisition of a Pasadena-based museum, the Pacific Asia Museum (PAM). I was also involved in preliminary, and ultimately unsuccessful, discussions with another museum and with an independent scientific research institute. This experience allows me to offer some advice to others considering similar associations, counsel that first focuses on aspects of the negotiation stage of the deal and then on the transition to a fully merged organization. The relevance of this advice reflects a change in the museum landscape that is occurring not just in the United States, but around the world as

[3] Ian Wylie, *University Museums Enjoy Increased Attention Globally*, Inside Higher Education, Feb. 13, 2015, https://www.insidehighered.com/news/2015/02/13/university-museums-enjoy-increased-attention-globally (noting that "some claim that the oldest museum in the world was a university museum – the University of Oxford's Ashmolean").
[4] Jon L. Seydl, *It's All About the Permanent Collection*, in <u>Beyond the Turnstile</u>, supra note 1, at 22, 23.
[5] *Introduction to Chapter 6*, in <u>Beyond the Turnstile</u>, supra note 1, at 99.
[6] *Introduction to Chapter 3*, in <u>Beyond the Turnstiles</u>, supra note 1, at 36.

cultural organizations increasingly consider deep alignments with universities and as the university museum takes a more visible role in the academic environment and more broadly.[7]

In the end, the success of these mergers depends on trust – no relationship can be fully negotiated *a priori*, and it is impossible to completely anticipate all the possible future developments that can shape the affiliation. In the best relationships, the merger documents are rarely consulted as the years pass because the two parties develop productive methods of interaction shaped by a shared purpose. Unless both sides trust that such a relationship will develop, however, they will seek to craft a detailed agreement that protects their interests in as many contingencies as possible and provides an exit strategy if the relationship sours. This type of arrangement seldom allows the stronger partner to invest substantially in the financially distressed party, thereby undermining the deal from its inception. Perhaps, this challenge explains why many such mergers occur between parties that have had some sort of interaction in the past, allowing deeper relationships to "bubble up" having first built trust.[8] Unfortunately, not all organizations have the luxury of finding a merger partner among their past collaborators at the time they need to move forward to avert financial calamity.

I will first discuss key issues relevant to the negotiation of these relationships: issues of control and governance; culture and identity; and finances, including expectations around philanthropy. I will then turn to the period of transition after the affiliation has been achieved and the two institutions are moving forward in the new relationship. Transition issues include financial and organizational challenges, and the need to develop integration practices that allow both partners to achieve the benefits of the relationship over the long-term.

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[7] See, e.g., Wylie, supra note 3 (stating that "university museums and galleries around the world are in the spotlight again" and noting examples in Europe and Japan); James S. Russell, *On Elite Campuses, an Arts Race*, N.Y. Times Arts Section, Nov. 16, 2014, at 1 (discussing new investments in university museums by leading American research universities such as Harvard, Princeton, and University of Chicago).

[8] Katie Smith Milway, Maria Orozco, & Cristina Botero, *Why Nonprofit Mergers Continue to Lag*, Stanford Social Innovation Review, Spring 2014. See also James M. Ferris & Elizabeth A. Graddy, *Why do Nonprofits Merge?*, The Center for Philanthropy & Public Policy Research Paper 28, May 2007, at 5.

I. Negotiations

The negotiation stage in a merger or acquisition of a museum by a university has several distinct phases. First, there are preliminary, relatively informal discussions exploring some sort of deep relationship. If the two entities have collaborated before, these discussions often occur naturally. In the case of USC's deal with the Pacific Asia Museum, the initial contact occurred at a social event between the USC President and the spouse of a board leader of PAM, with immediate follow-up by academic leaders at the university and the board leader. If these discussions are promising, the parties begin to focus on drafting a letter of intent (LOI). The LOI is a key document in this process, laying out the parties' understanding of the likely resolution of the crucial terms of the deal, usually in a non-binding fashion, and sets up a timeline for due diligence. The exploratory and LOI discussions are better done out of the public spotlight among parties who have the authority to deliver the ultimate deal and shepherd it through various approval processes. Although constituencies, or the press in high profile mergers, sometimes begin to suspect that discussions are underway, it is important for the key negotiators to keep the details of their discussions secret until they have a sense of the contours of the deal and its likelihood of going forward. They must brief the key members of both boards of directors whose assent to the deal is necessary, and they should have general discussions with broader audiences about the situation that necessitates a new organizational structure, so that the foundation is laid for the more public aspects of negotiations. I will not discuss here those later, necessarily more visible stages of negotiation: due diligence and the negotiation of the formal documents that establish the affiliation.

Leadership by influential members of the museum board, as well as commitment by key executives of both organizations, is vital for success. Any deal that will result in a change of control over the museum – whether an acquisition or a merger or an affiliation with shared governance – will require that the board agree to reduce its control over the museum substantially and sometimes entirely. In some cases, many or all of the museum board members will leave the fiduciary board and engage with the new entity through advisory committees or other structures. As MAP for Nonprofits observes: "Key stakeholder involvement begins with an **executive staff champion** committed to the merger's success. Research indicates **board commitment**, possibly through a joint merger committee, is important and lack of board involvement can be detrimental to the process."[9]

In the USC PAM situation, a leading board member, Dr. Elizabeth Short, had already led a process to educate board members about the museum's weak financial situation and the need to develop a strategic solution. She and her colleagues had laid the groundwork for a possible merger long before they identified a partner, and she and several other board members could quickly form a small negotiating committee and credibly promise to keep the preliminary discussions confidential. Because the museum had faced staff challenges, there was essentially no staff leadership to persuade; a key board member was acting as the museum's interim director. In most circumstances, top administrators also have to be part of the negotiating team, and they must strongly support a transformative change. Indeed, in most discussions I am familiar with, the decision to approach the university was made by administrators who understood that the organization could not survive on its own. Broad staff support for a merger or acquisition can be difficult to achieve within the key administrators because many fear they will lose their jobs (and some will in order to realize cost efficiencies), or find their autonomy reduced, post-merger.

These early discussions must occur at just the right time for the museum. For many, perhaps all, such situations, the primary concern that drives the willingness to consider radical changes in organization is financial – can the museum continue to thrive, perhaps even to survive, without a partner that can bring additional resources to the partnership? Without some urgency around the financial situation, it is unlikely that staff leaders and board members will be open to a substantial change in their power to control the future of the museum. However, the financial

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[9] MAP for Nonprofits and Amherst H. Wilder Foundation, What Do We Know About Nonprofit Mergers?, 6 (Mar. 2011) (emphasis in original).

crisis cannot be so dire that the museum is an unattractive partner that cannot bring sufficient value to the deal. As the authors of a study of 41 nonprofit mergers observed generally: "[T]here is a point that may be reached in an organization's financial status where things have become so distressed that the organization can no longer be seen as a viable merger partner by any other organization. This suggests that it is important for an organization to consider the potential role of merger during early points of financial difficulty or even during times of financial strength."[10] My own sense is that the latter situation – consideration of a merger during times of financial strength – is unlikely unless the museum strongly believes that leaner times are certain in the relatively near future. Without some sense of a financial imperative, boards and administrators will not be willing to accept the loss of control that the acquiring entity will likely demand in order to make a significant investment. Other collaborations are more likely in these cases.

Museums must be especially aware of the need to time merger discussions strategically. Under professional norms governing the operation of museums, the main asset of a museum, the collection, should not be sold to shore up the finances of the museum but only to enhance the collection.[11] However, if a museum is very deep financial distress, perhaps with substantial liabilities as well as anemic revenues and a lack of donors for future sustainability, there is a greater chance that the acquiring entity either plans to monetize some significant portion of the collection for operating costs, or will have no choice but to do so.[12] The USC PAM

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[10] MAP for Nonprofits and the Amherst H. Wilder Foundation, Success Factors in Nonprofit Mergers 12 (July 2012).

[11] *AAMD Policy on Deaccessioning*, Association of Art Museum Directors § 1(B) (June 9, 2010), https://aamd.org/sites/default/files/document/AAMD%20Policy%20on%20Deaccessioning%20website.pdf ("Funds received from the disposal of a deaccessioned work shall not be used for operations or capital expenses."); *Code of Ethics for Museums*, American Alliance of Museums (adopted 1991, amended 2000), http://www.aam-us.org/resources/ethics-standards-and-best-practices/code-of-ethics ("[D]isposal of collections through sale, trade or research activities is solely for the advancement of the museum's mission. Proceeds from the sale of nonliving collections are to be used consistent with the established standards of the museum's discipline, but in no event shall they be used for anything other than acquisition or direct care of collections.").

[12] The most controversial example is the 2009 decision by Brandeis University's trustees to close the University's Rose Museum and sell off the collection as a way to strengthen the University's endowment, which had been damaged in the financial crisis. Randy Kennedy, *Lawsuit Seeks to Save Art Museum at Brandeis*, N.Y. Times (July 27, 2009) http://www.nytimes.com/2009/07/28/arts/design/28arts-LAWSUITSEEKS_BRF.html?ref=design.

deal was timed perfectly: the museum was not running deficits and had no liabilities; it owned the property on which the museum and parking lot were located (with only a requirement that all be used as a museum or to benefit it); it keenly understood that its near-term financial future was bleak as the donor base was aging and the museum lacked an endowment; the historic building needed significant investment for renovation and to protect the collection; it was not able to attract excellent staff leaders because there were no discretionary resources to improve the collection or maximize the museum's prominence and influence; and its cost-cutting efforts had eliminated any development staff, so that major philanthropy was infrequent and fortuitous (often through bequests that surprised and relieved the leadership).

Entering into these discussions when the museum has not reached the nadir of a financial crisis is also important so that the deal can be accurately framed in a way that inspires its stakeholders to support it. People are not inspired by a deal that is solely seen as a financial rescue; indeed, such a transaction can cause resentment on the part of those "rescued" that festers and sours the relationship. People want to be part of a collaboration that promises to allow both institutions to thrive and accomplish more together than they could have separately. They want a vision that excites them, and so do supporters and donors.

Because the aspirational case for a merger is at least as important as any financial imperative, I advise that both parties prepare vision or mission statements during the preliminary discussions to articulate how the transaction will enhance their longstanding missions and describe the value that will be created for their institutions. This document can be helpful at later stages in the negotiations as the parties make the case for the deal to various stakeholder groups. It also allows deeply held values to shape any future decisions so that neither party discovers that

The museum settled the case and did not deaccession art for that purpose. Interestingly, in the Corcoran-GWU merger, the D.C. Superior Court argued the merger would reduce the chance of the Corcoran violating AAMD guidelines through deacession. See *Trustees of the Corcoran Gallery of Art v. District of Columbia*, 2014 D.C. Super. LEXIS 17 at 20 ("Violation of the AAM's Code of Ethics might result in loss of AAM accreditation, which would have a negative impact on the Corcoran's ability to hire and retain qualified staff as well as its eligibility for grants and federal funding.").

it has sacrificed a fundamental principle in the search for financial stability or greater influence.

In our case, the USC negotiating team, particularly Executive Vice Provost Michael Quick, drafted a document during the first weeks of our discussions entitled "Academic Benefits of Creating the USC Pacific Asia Museum," and we referred to that document throughout the process. It closely tied this proposed relationship to the pillars of the University's Strategic Vision,[13] a faculty-drafted, trustee-approved statement that drives all major decisions. The document noted USC's long history of deep connections in the Pacific Rim, the large number of international students enrolled at the university, particularly from Asia, and the strength of USC's six arts schools, "the best collection of arts schools at any research university." In addition, the research and teaching of many academic disciplines and institutes would benefit from collaboration with USC PAM, and the University expected this transaction to catalyze plans to renew the interdisciplinary museums studies and curatorial training program. Educational programs at all levels were described that would benefit from the merger, particularly the undergraduate curriculum that is characterized by "the arts signature that is a major part of a USC experience" and the newly created International Artists program, an elite graduate experience open only to students from the Pacific Rim and Asia. The document also identified significant benefits to USC's Fisher Museum of Art and the USC Libraries. The document mentioned, but did not emphasize, benefits less directly related to core academic activities, such as ties with alumni involved in Asia or the Asian-American community; a physical presence in Pasadena, where many active alumni and supporters live; and a greater ability to connect our academic community to K-12 education in our neighborhoods by combining USC's strong programs with PAM's successful outreach. I do not think that PAM shared a similar document, although they received a copy of ours, perhaps because their earlier strategic planning exercise that laid the foundation for our transaction served that purpose and, as I will discuss later, the volunteer board members soon found themselves

[13] See USC, USC Strategic Vision: Matching Deeds to Ambitions (2011), http://strategic.usc.edu/.

overwhelmed with the due diligence and negotiations that inevitably accompany a transaction with serious legal and other consequences.

Although board involvement is a necessary element of a successful merger, members who approach these deals as they would a merger of two for-profit entities present challenges for the academic and museum negotiators. Often a board will include business leaders who passionately support the museum's public mission, and they can bring expertise and sophistication to the merger discussions – but they also tend to think about the deal in for-profit terms. For example, in one set of discussions I initially led, the lead board negotiator was an expert in for-profit mergers and acquisitions. His view was that if the university was going to "acquire" the independent non-profit, then the right "price" was the value of the assets, and that "price" should be paid in either a lump-sum or a series of cash payments.[14] That is not a realistic approach to non-profit mergers, where even the financially strong partner does not have unrestricted assets or operating income sufficient to "purchase" the museum or other entity. Certainly, the acquiring entity – here the university – must commit to ensuring the financial viability of the museum, first through subsidies and then through robust fundraising and other revenue-generating possibilities consistent with the museum's mission. Once the museum is part of the university, the university stands as guarantor of the museum's success, which may be a more costly venture than either party expected at the outset.

The better way to protect the museum in these deals is to agree on a series of covenants assuring that the museum will continue to have an identity that allows it visibility and success, within the framework of the university. So, for example, the parties can agree that the museum will focus on a particular kind of collection or set of activities for a long period; that its organization within the university has particular characteristics that differentiate it from other entities; and that a certain level of funding, which is realistic given the university's broad range of activities and

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[14] See, e.g., Philip Kennicott, *The Corcoran and the University of Maryland: What has Happened and What has to Happen*, Wash. Post (Apr. 12, 2013) http://www.washingtonpost.com/entertainment/museums/the-corcoran-and-the-university-of-maryland-what-has-happened-and-what-has-to-happen/2013/04/11/737e714a-a1ef-11e2-82bc-511538ae90a4_story.html (quoting a philanthropist businessman who opposed the transaction: "They have given away all the assets.").

limited access to unrestricted funding, be provided either through subsidies or fundraising. In the end, the museum partner has to trust the university – believe that the two institutions share enough fundamental values to protect the mission of the museum – and use covenants and other mechanisms to highlight to the university what aspects of the mission are most important.

Similarly, the lawyer whom the museum board hires to represent it in negotiations should understand the difference between for-profit and non-profit mergers and the need to take account of the volunteer nature of the museum's board when determining how lengthy or detailed any process should be. One struggle in these negotiations is that the museum board is comprised of people with full-time jobs and only a limited amount of time that they can devote to shaping the transaction. They can find the language lawyers insist on off-putting and alarming. Although board members must fully understand the deal to which they are agreeing, lawyers need to understand their clients and approach these deals as collaborations that will maximize value to both parties, not as adversarial proceedings. For example, I found in many discussions that while the other party understood we were discussing an "acquisition" or "merger," constant use of these terms merely underscored what they were giving up and their fears about the loss of culture and identity. Once we were confident that everyone understood the nature of the deal, we tended to use different nouns to describe the transaction: "partnership," "deep affiliation," and the like.[15]

The LOI is a key stage in the negotiation process because these discussions will determine whether a deal is possible or whether there are issues that simply cannot be resolved to the satisfaction of both parties. While the LOI should not be long or terribly detailed (most of the LOIs on which I worked were 10-15 pages), the parties

[15] See Milway, et al, supra note 8, at 13 (quoting a foundation leader who advises on transactions as saying "We rarely ever use the merger word. It scares people away," but also observing that mergers are often not the "right answer to the question."). See also David Montgomery, *Corcoran, University of Maryland Agree to Explore Partnership*, Wash. Post (Apr. 3, 2013) http://www.washingtonpost.com/entertainment/museums/corcoran-university-of-maryland-agree-to-explore-partnership/2013/04/03/b2fb57d6-9c6b-11e2-9bda-edd1a7fb557d_story.html (quoting a member of the Corcoran trustee negotiating committee as saying: "It's not a merger, nor is it a takeover.").

must effectively resolve the potential deal breakers in this document because the next stages in the process – due diligence and drafting legal documents – are costly both in terms of expense and time.[16] This execution of the LOI typically also begins a "no shop" period during which the museum cannot negotiate with other entities about similar transactions. Moreover, although the parties will attempt to maintain confidentiality during the diligence period, more staff must be involved and so the possibility of some fundamental change will become relatively broadly known. So if the deal is going to be derailed by disagreement over a crucial term, it is better to discover that during these early negotiations; otherwise, both parties will spend significant resources, may miss other, more promising opportunities, and will unsettle any remaining stability of the smaller institution.

Reaching agreement on these terms can be difficult because they are the most challenging aspects of the deal to construct; thus, it is tempting to postpone further discussions until the due diligence process when the final legal terms are being negotiated. It is important not to give into this temptation; if issues are irresolvable, it is better to walk away at this stage, perhaps agreeing to a different sort of productive collaboration. In my experience, there are three critical issues in every deal: control and governance; culture and identity; and funding, including expectations about philanthropy. These issues must be aired early with each party honestly providing their "non-negotiables" and they must be essentially resolved in the LOI.

A. Control and Governance

Resolving the issue of governance lays bare one of the major tensions in these deals. The financially vulnerable museum wants assurances of significant resources,

[16] LOIs are typically nonbinding because the parties may discover something in due diligence that would undermine the agreements reached as a preliminary matter. However, I advise parties to develop enough information about such issues during these early stages that both sides are fairly confident the agreement they reach will not be brought into question when additional information is revealed. If that isn't possible, then the parties should understand what kind of information might unsettle the preliminary agreement, or what assumptions are driving the decisions reached in the LOI.

and its management would prefer little change in authority or organizational structure, a sentiment often shared by leading board members. They know that position is unreasonable – and in some cases it is not even rational – as the university can provide expertise and cost savings with some level of administrative consolidation, and board members might enjoy their volunteer service more if they could focus on the mission of the museum and not wholly on difficult financial issues. But in several discussions of such affiliations, I have discovered no outside nonprofit eager to give up substantial autonomy,[17] with the possible exception of PAM, which had few remaining non-board administrators and whose board leaders had set the stage for fundamental changes and were ready to move into a different relationship with the museum.[18]

Universities require substantial control before they invest in the museum for several reasons. If the organization requires immediate support from the university – which will come from unrestricted funds representing tuition income and unrestricted philanthropy – the university must reallocate that money from other priorities more closely tied to its educational mission. It thus must be convinced that the money is being deployed wisely and that the museum is working as efficiently as possible, as well as aligned closely to the educational mission. In many cases, the hope is that most funding for exhibitions and collections, building renovations and expansion, and programming will come in the near future from philanthropy made possible by the university. I will return to this topic soon, but it also relates to the need for control. If the university is going to tap its own donors for support, it wants influence over how that support is used. If the university is in a fundraising campaign, as we typically are, there must be a close affiliation between the two entities so that the money raised can be "counted" in the campaign totals.

[17] See also Milway, et al., supra note 8, at 5 (quoting president of Lodestar Foundation: "it seems to me that individuals (whether board or staff) fail to focus on the overall goal of increasing mission impact and get stuck on safeguarding their own personal or institutional status.").
[18] Other constituencies, like long-time supporters or civic leaders, can believe they have an "ownership" stake in the museum and can oppose change that might dilute that influence. Although they are not usually involved in early negotiations or in drafting the LOI, their reactions to any deal will be important and must be managed to ensure continued success. This is an issue for the transition – which for important supporters may start with meetings before the public announcement of a final deal.

One major goal of a partnership is to create an endowment for the museum that can assure its self-sufficiency; again, that requires significant legal control so that the museum's endowment can be invested in the university's long-term investments, thereby giving the museum access to a much broader array of investment opportunities and the chance for better investment returns. The bottom line is that no university is going to invest substantial funds if the museum can choose to walk away, benefitting from the investment and perhaps taking with it an endowment raised largely by the university.[19]

The struggle for museum leadership is whether they can trust the university to protect the values they deem important over a long period of time, a period during which a change in university leadership will occur. So not only must they trust people they know, but also leaders they do not know. Covenants can provide some protection, but the museum board members may worry about enforcing those covenants if they have given up control completely. While they can petition the state attorney general for assistance, such intervention into the internal affairs of nonprofits is likely only in egregious cases, and any lawsuit would require disgruntled board members or others to spend considerable personal resources. Figuring out creative solutions to this issue of control can be the most challenging part of negotiations, but once reached can pave the way for the deal.

The university is likely to propose either a merger into the university – so that the museum becomes like an institute or school, wholly integrated into the larger organization – or a wholly-owned nonprofit subsidiary. In some cases legal issues will drive the choice of form; for example, leases or other ancillary documents might require significant alteration through lengthy processes unless the separate nonprofit structure is maintained, or the parties might want to try to keep some liabilities in a separate entity for a period of time. Primarily, however, the decision to maintain separate 501(c)(3) status for the museum is driven by the desire of

[19] Perhaps a provision requiring payback if the deal falls through might provide some assurance to the university, but that presumes the other organization would have the liquid assets to meet such a requirement. And both organizations would be disadvantaged if money raised for the museum's endowment could not be invested with the more diversified and professionally-managed university endowment fund.

museum leaders to maintain a sense of autonomy and erect hurdles that make it less likely the university will deviate from the original agreement in the future.

In a merger, the museum's fiduciary board votes to dissolve itself and it negotiates for some level of participation in the future. For example, people who were members of the board might be guaranteed some involvement in searches for key administrative leaders for the first five years or so after the merger; certainly, many, if not all, will join the new advisory board that will focus on the future programming for the museum. Some, perhaps many board members, will welcome this change as it allows them to focus on the aspects of the museum that initially awakened their passion without shouldering responsibility for a financially fragile institution, but others may resist the reduction in authority.

When the two entities remain legally separate, with the university as "sole corporate member" or in some position of ultimate authority, governance turns on the composition of the board of the museum nonprofit, the powers reserved to the university, and those decisions that can be made by the board with either a majority or supermajority vote. Negotiations are crucial here. The easiest approach for the university is to insist on a new smaller fiduciary board, all appointed by the university, and with a majority affiliated closely with the university. A larger, nonfiduciary advisory committee can be simultaneously formed with many of the former museum board members who will be involved in the programming and activities of the museum and lead in fundraising efforts. Although this is probably the appropriate structure at some point in the future, museum leaders may find it difficult to accept at the outset. They tend to want some period where they have the power to at least block some changes or continue a larger involvement in the management of the museum until they are confident that the two parties will work productively together.

Each situation will be different as the parties work to constitute a board with enough people from each "side" – and perhaps "independent" expert board members selected by both who hold some amount of veto power. It is often wise to name the initial board members in the final agreement, and even to provide a sense of likely candidates during the LOI discussions. For some time after the merger, putting key leaders on the board, like the provost or a top administrator in her office or a key university board member, may signal to the museum negotiators the importance of this transaction. However, it is also better to allow change over time so that any such promises should be effective only for five years or so and then subject to revision.

The LOI should also specify what essential powers are delegated to the board, perhaps with ultimate authority in a university official, and may adopt voting rules to ensure that major decisions need the support of at least some trustees representing both parties for some period of time. Key issues often include approval of a budget, adoption of a strategic vision, and a decision to fundamentally restructure or change the museum's focus, size or physical presence. Often, museum negotiators will seek to have the board oversee and appoint the director of the museum, but I strongly believe that the leader of the museum must report to the appropriate university official: the same leader that either deans or institute directors report to, depending on the right analog. The board can play some significant role in the search and in advising the university about appointments and providing input about performance.

I also would not suggest agreeing to put a representative of the museum on the university's board unless there is a tradition of board members serving in representative capacities and the museum is a large enough part of the university's budget to justify that role. Of course, if a donor to the new university museum supports it at the level that often triggers board consideration in a private university, he or she may well be approached for this broader service. But guaranteeing this outcome when it unsettles university board practice sets a dangerous precedent.

In the early years of the affiliation the museum board size might be somewhat larger than optimal to allow sufficient representation for both parties while providing the university a sense of control. When a board is structured in a way that makes decision making unwieldy or that identifies certain members as university representatives or museum representatives, this structure should be temporary so that it is replaced by a smaller fiduciary board with members who reflect the new organization – a museum tightly associated with a university – within a reasonable time frame. When these transactions work, there soon cease to be two parties, but only supporters of one integrated, stronger organization. Similarly, if any procedure is put into place to arbitrate claims of breach of the affiliation agreement, it should not be a permanent feature of the relationship and it should require a high level of dissatisfaction to trigger.

The governance structure that is ultimately selected is important, but the university needs to remember how difficult this is for the smaller institution, which fears a loss of culture and identity, topics we turn to next. In the end, as long as the university, as sole corporate member of the nonprofit or in some similar role, can replace all the trustees at any time and reappoint them, albeit through some process that may involve nominations, the university has the power to protect its interests. The transaction costs of doing so may be high and the decision unpleasant to implement, but this is the protection that the museum leaders rely on to avoid abrupt change and to develop trust. My sense is that issues surrounding control are the hardest to negotiate. They require flexibility and creativity to solve, but become irrelevant when a good deal moves forward and both institutions see the partnership's value.

B. Culture and Identity

The smaller partner in a transaction is deeply concerned about losing its unique identity or compromising its values; the greater the differences between the two institutions in terms of sizes, missions, and other characteristics, the greater the concern. Indeed, the museum – the smaller institution in these deals – may worry that in a few years it will have disappeared into the larger university and no longer possess a distinct culture. If one could separate out the various motivations driving the discussions of control – so that personal considerations of prestige and influence were removed from other factors – I believe that the control issue comes down to a desire to protect what is special and unique about the museum. This may explain the empirical findings that parties in these negotiations spend a great deal of time over board composition and governance, but few provide a plan to "integrate the cultures of the merging organizations."[20] In my experience, the independent nonprofit is very aware of the importance of culture and the threats that a deep affiliation with a larger entity brings, and the governance structure becomes the primary protection for the museum's separate identity because it can be more specifically defined than capturing the nuances of a culture.

In one document I negotiated, we charged the fiduciary board with protecting the culture of the smaller institution that would have become part of the university, noting in the preamble several of the unique aspects of the nonprofit that had attracted the university to consider a deep relationship. I emphasize to the other party in these negotiations that the university is pursuing this deal precisely because we believe the culture of the other institution is special and provides benefits we cannot create within our own institution without this sort of transaction. We would reduce the value of the deal if we then did not nurture the characteristics that we admire, and perhaps hope to replicate in other parts of the university. With regard to the affiliation with museums, for example, the university may well hope to enhance its own brand as an institution committed to the arts as an essential component of a liberal arts education.[21]

Although the issues of culture and identity are hard to define and therefore hard to protect clearly in a LOI or later agreement, the parties must be conscious of this issue and work to show sensitivity. Ferris and Graddy observe that most nonprofit mergers are unsuccessful in navigating concerns about "loss of autonomy or identity, the substantial transaction costs associated with merging, and the serious difficulties associated with trying to integrate different organizational cultures – employees, managers, and boards. The ability to manage culture and mission conflicts, in particular, may be decisive in determining whether a merger is

[20] MAP for Nonprofits, Success Factors in Nonprofit Mergers, supra note 10, at 7 (93% of mergers studied had a governance plan, but only 17% had a plan relating to culture).
[21] See Wylie, supra note 3 (quoting Andrew Simpson, researcher of university museums: "Some universities see the importance of museums as a way of projecting a distinctive institutional identity.").

successful."[22] The preliminary vision statements that each party has prepared setting out the case for the affiliation can help both sides remember how integrating the new culture into the university environment benefits both parties, and what values the museum described as particularly vital to its identity. Referring back to these documents throughout negotiations and transition, and incorporating some ideas from them into the later legal documents and communications materials, can be helpful.

Some issues of culture and identity are susceptible to clear articulation and discussion. For example, many museums are worried that a university will not follow the professional guidelines under which they operate and which include restrictions on how a museum may use the proceeds from deacquisition of any part of its collection.[23] This apprehension is not entirely unfounded as some universities have sold or considered selling parts of their museum collections to address financial exigencies.[24] Some museum leaders do not understand that a university's deep and resolute commitment to academic freedom would strongly protect a museum's decision to exhibit controversial art that might offend some segments of the community so they worry about pressure from a university's trustees to sanitize or change exhibitions. These concerns can be dealt with in the LOI through covenants committing the organization to certain widely recognized professional norms and through discussions that reveal the similarities in the fundamental values of both institutions. The LOI discussions, and subsequent negotiations, provide a forum for educating each other and reducing anxiety about the future.

The loss of identity is emphasized when the LOI or subsequent agreement requires the smaller institution to take on the "look" of the university. Most large universities now invest significant resources in establishing and protecting a "brand," and they have detailed and mandatory guidelines about the look of websites, colors for communications, and other aspects of a visual identity. Museums, perhaps more than other institutions that come within the orbit of a

[22] Ferris & Graddy, supra note 8, at 4 (citations omitted).
[23] See e.g. *AAMD Policy on Deaccessioning*, supra note 11, at §1(B); *AAM Code of Ethics for Museums*, supra note 11.
[24] See Wylie, supra note 3 (giving example of Randolph College and Brandeis University).

university, have their own distinct look that they have developed and grown to love over time.[25] As one study accurately and succinctly observes: "[B]rand can be a lightning rod during a merger."[26] Although I did not always have this flexibility in negotiations, given my university's strong commitment to its own brand, I would advise dividing this kind of identity question into two parts. The first, and most important, is the name – both because it will reflect the reality of deep integration and because the university needs clear acknowledgment of its role in order to raise funds from its own donors. Thus, agreement should be reached at the outset about the name – in the case of the transaction we successfully completed, the Pacific Asia Museum or PAM became the USC Pacific Asia Museum or USC PAM. Whenever parts of its collection are exhibited around campus or elsewhere in the world, they are identified as part of the USC Pacific Asia Museum collection, maintaining the cohesion of this collection while also celebrating the involvement of USC.

Second, with regard to the physical "look" of the museum's communications and external materials, I would be willing to be more flexible here than the university might be with regard to a school or department. While the university and its brand should be obvious in all communications and at any event, I have not been convinced it is detrimental to allow some deviation from the strict branding guidelines to allow a museum – known for its own visual footprint – a somewhat distinctive look, at least for the first few years of an affiliation. That tends not to be a view shared by university communications staff, who are often deeply committed to a particular look that is uniformly enforced, so I would often find myself in internal negotiations on this issue. In the end, with PAM, we have a website and look that is compatible with the university's overall communications strategy, but that has a distinct appearance.[27] We did not retain the unique chop that had been the museum's long-time visual identity, which was a major concession by the board members.

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[25] Museums are not alone in resisting the now-ubiquitous university branding efforts; arts schools also tend to have different ideas of the appropriate look, especially those in the visual arts (architecture, fine arts).
[26] Milway, supra note 8, at 10.
[27] See http://www.pacificasiamuseum.org/.

C. Financial Considerations and Philanthropy

A final issue to clarify during the LOI stage is the financial commitment expected from the university, which likely includes some discussion of expectations about fundraising and acknowledgment of cost savings for the museum after integration. Although due diligence may reveal information that will cause slight changes to the financial commitment, both parties must agree in principle to this aspect of the deal and be certain they can sell the financial proposal to those who will make the decision about the transaction in each institution before embarking on the next, more costly stages of negotiation. There are at least three aspects to financial support of a museum in these transactions (more if the museum also includes a degree program, as was the case in the affiliation between the Corcoran Gallery of Art and George Washington University): operating budget support, fundraising for an endowment, and financial resources for renovating the existing buildings or constructing new galleries and space.

Discussing the needed support for the operating budget can be difficult before there has been extensive due diligence so the key is obtaining a general sense of the magnitude of any shortfall and the possibilities for both cost reductions after the merger and development of new revenue streams. The size of the museum matters, as does the current state of its budget. In the case of USC and PAM, PAM was a relatively small institution financially, with a budget of less than $2 million, and it was in a break-even position with no liabilities. So the university could be relatively confident that it could support the museum for several years, shoring up any shortfall in the budget, as administrators work to establish robust philanthropy, identify new revenue streams, and put in place cost savings. Of course, integration also resulted in some cost increases for PAM; for example, the university's benefits were much more generous than the museum could afford on its own and the fringe rate correspondingly higher. And some sources of revenue may decrease during the transition: some long-time donors may oppose the transaction or believe that the museum no longer needs their support now that it has a financially strong partner, or the museum may be closed for some time in order to renovate the building with new funds. The USC team benefited from the involvement of Robert Cooper, the Vice Provost for Academic Operations and Strategy, who produced a series of *pro forma* budgets that assured us we could manage any annual shortfall in operating revenues and that USC PAM could balance its own budget within a few years after merger.

In cases of larger institutions or more financially distressed entities, we have negotiated set amounts of annual subsidy, some earmarked to particular joint activities, with the understanding that the entity would have to implement cost savings or other steps to balance its budget within those parameters. In the end, however, the university bears the risk that the subsidy will be insufficient and more resources will be required to ensure success. That promise is the important "safety net" a university can provide an independent nonprofit, but this reality also requires the university to deeply understand the other institution and be confident its budget can be managed without compromising other aspects of the university's teaching and research missions.

A primary reason that museums approach universities to explore deep affiliations is the belief that universities can expand the fundraising activities of the museum, providing a stable and ongoing source of revenue for operations, exhibits and the expansion of the collection. In this era of large university fundraising campaigns, the university may find appealing the prospect of a new target for philanthropy that could bring a new set of donors into its ambit.[28] In many cases, the independent nonprofit has either eliminated or significantly reduced its fundraising staff as part of its cost cutting efforts, a decision with very negative long-run ramifications and one that is hard to reverse. Increasing the staff for development requires some unrestricted money in the budget, but without development, very little such funding is generated.

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[28] The merger itself may provide an immediate boost to the campaign's success because the university acquires an asset of value – the building and collection. Universities have long reported as gifts donations of art; deals like this are just a different package of such donations.

Fundraising takes time, however, and is not a science. And in some cases, philanthropy actually declines in the first years after the affiliation because long-time donors believe the financial security of the museum is now ensured by the university's involvement. It takes time to build a new case for support, one based on the vision made possible only by the combined institutions. So the university should never guarantee any level of fundraising over any particular time, but rather agree to a campaign of a certain size with a target for various priorities: endowment; exhibitions, renovation or construction; chairs for the director, curator and others; and the like. Again, due diligence around the potential donor base and giving opportunities may change these initial targets, but setting out some expectations in the LOI will make clear that fundraising will be a significant part of the financial viability of the museum in the future. The university also brings to the transaction more sophisticated databases and processes that it will share with the museum, and museum leaders will learn to work within the protocols of the university. In addition, the university can help the museum invest in grant-writers who can better position the museum to obtain grants from foundations or governments, and the museum can join university-wide interdisciplinary proposals. The university's experience in annual fund drives can bring additional ideas and resources to the discussions about growing the membership base, and the students, faculty, and staff represent a desirable demographic for membership outreach and programming.

The strategy around fundraising revolves around how the transaction changes "donor preferences," much as a for-profit merger shifts "customer preferences."[29] The main objective after the integration is to discover donors who were unlikely to support the university before the merger but who will support an affiliated museum, or to identify university supporters who will give new money because they are particularly engaged by the new museum and its programs.[30] It is a zero-sum game for the university if it only succeeds in shifting funds that donors were going to provide the university in any event to the museum; indeed, if the money shifts

[29] Ferris & Graddy, supra note 8, at 17.

[30] See Russell, supra note 7, at 20 (quoting director of Princeton's Center for Arts and Cultural Policy Studies: "Arts appeal to certain wealthy alumni who are more likely to give money to this sort of thing than something else.").

from higher priorities for the university, then a transaction has negative consequences. The transaction must generate new incremental dollars to be valuable to the university. Additional support may come from past supporters of the museum who had become hesitant about giving major gifts because of questions surrounding the museum's longevity; the backing of a university eliminates those concerns and potentially paves the way for larger gifts by long-time donors. All of these groups will be motivated to support the newly integrated museum because of a captivating vision of expanded influence, reach and prominence. The museum no longer has to raise money to survive or to close a deficit – neither a particularly exciting target for philanthropy – but can inspire donors. Together, the university and museum will have more ways to recognize donors, such as member levels at the museum, giving societies at the university, tickets to athletic and other arts events, etc.

Because a university cannot responsibly guarantee a certain level of fundraising, but only express the willingness to embark on a campaign and invest resources in its success, the negotiators for the museum again must trust the representations of the other side. This can be difficult, but the trust can be informed by the success of the university in its fundraising campaigns in the past, particularly with initiatives related to the arts. The agreement can also reasonably include expectations about fundraising staff who will be associated with the museum, including the time of central fundraisers. I have found that academics and researchers – more than board members – are skeptical about promises of fundraising and demand guarantees, especially if they have been part of an institution that has not been able to raise philanthropic support in the past. They have trouble understanding how a university changes the dynamics so that the post-merger institution is in a fundamentally different position; I would counter this view by explaining the engines of university fundraising: thousands of devoted alums, an ability to generate school spirit and support, and a professional staff of fundraisers supported by sophisticated infrastructure. However demanding the other side is, the university can never guarantee fundraising results in an LOI or other document without undermining its integrity.

Finally, many museums have deferred maintenance needs and will be interested in expanding gallery space or improving storage space for the existing collection. So they will seek assurances that there will be resources for these capital projects. This discussion often occurs at the LOI stage because necessary capital expenditures can be a considerable cost for the university affecting the viability of the deal. I recommend that preliminary due diligence on the state of the buildings be conducted during the LOI negotiations so that both parties learn of any major surprises with regard to the state of the physical infrastructure early. These costs can dwarf the subsidy required for operating budgets; for example, the Corcoran was running an operating deficit of about $2 million a year with nearly $3 million bank debt when it entered into the deal with GWU, but the estimates of necessary renovations to the galleries exceeded $100 million.[31] Certainly, renovation of the 1924 historic landmark that is PAM's home and upgrades to its storage area will be significantly more costly than any annual budget subsidy, even one that continues for several years.

Raising money for renovations like seismic retrofitting, compliance with regulations, restroom upgrades, and HVAC is very difficult. Some foundations will provide resources to improve storage or otherwise protect the collections, but these needs will generally be met through the use of unrestricted funds or university funds set aside for capital improvements. Philanthropy can assist in defraying the costs of more appealing capital projects like refurbishing galleries or auditoria, enhancing gardens and balconies, and building new wings, but often this money comes in over time, does not fully cover costs, and takes time to raise. While it is better to do all renovation at once, perhaps even closing the museum to expedite the process, the urgency of structural renovations may make it impossible to delay some construction until cash is brought in through development efforts.

In the end, the key is to calibrate expectations of all the parties with regard to financial support and philanthropy. At this early stage, the university needs a

[31] See Carol Vogel, *The Corcoran Gallery of Art May Cede Control of its Collection*, N.Y. Times, Feb. 19, 2014, http://nyti.ms/NbLx1I (estimates of operating deficit and loan); *Trustees of the Corcoran Gallery of Art v. District of Columbia,* 2014 D.C. Super. LEXIS 17 at 13-17 (providing renovation estimates).

relatively good sense of the magnitude of any required investment to be sure it can meet its obligations to be a good caretaker of the museum after the merger. The museum must have a realistic sense of what is possible in the short-term and what priorities may have to wait until robust philanthropic support can be developed. It is much better to gauge the necessary financial commitment at this stage, before weeks of due diligence and legal drafting, although both parties must understand that diligence may provide information that undermines the original assumptions and requires adjustments.

There will be other key issues to discuss and determine with some degree of certainty during the LOI negotiation phase; I have identified only three that are present in every deal. For example, if management has led the search for a partner and is deeply involved in negotiations – usually the case in these deals, where management may instigate the merger discussions – they may well want assurances of future employment, particular reporting lines within the university, and compensation packages. That discussion will be critical to the success of the deal, particularly if management is the chief supporter, but special deals will be seen by rank-and-file employees as overly solicitous of leaders without similar protections for other staff. Each situation is different, so general advice has limited utility. It is my sense that leadership change immediately after a merger in the nonprofit arena is not good for the institution because it undermines stability and is seen as threatening to the mission of the smaller institution. Often, these leaders are not incompetent or guilty of mismanagement; they are leading independent institutions in a very difficult funding climate and they had the wisdom to reach out to a more financially stable partner that shares their values. Frequently, a university is attracted to the transaction because of the culture the leaders have created or protected, and it wants to retain the key people.

This desire for stability can go quite far into the institution. As we will next discuss, transition periods are difficult, and significant turnover exacerbates the challenge. On the other hand, the new organization will likely need to be leaner in some areas, where the university can offer the same or better services at lower cost, and to hire new people in others, like development or programming. So management needs flexibility to reshape the organization in a thoughtful manner. There are various ways to achieve this goal. In the PAM transaction, we guaranteed that no position would be eliminated in the first six months after the merger. Several positions were vacant or people were leaving imminently so we still had flexibility in the budget. Or, for key people who might look for other jobs during the uncertainty, the university can offer bonuses if they stay until particular dates during the transition. Certainly, no long-term commitments should be made until the leaders of the transition process can assess the structure and put into place the organization that allows the museum and the university to most effectively meet their goals.

II. Transition Period

The transition is the most crucial and difficult period of any merger. The parties must plan for the transition during the months of due diligence and final negotiations so that they are ready the day after the celebration. Before I turn to the two transition issues that arise in all of these types of mergers – financial and organizational challenges, and the need to develop integrated practices that allow both partners to achieve the benefits of the relationship – due diligence deserves some attention. Due diligence begins in earnest after the LOI has been signed; the terms of the LOI should first be endorsed by key board members at both institutions (often the executive committees and perhaps the finance committees), signaling agreement with the key terms of the deal.

Due diligence allows the university to learn as much as it can about the museum so that it can ensure the success of the deal. Each side needs to delegate to one staff member oversight of due diligence, and a dedicated, secure website to share documents will facilitate the process. This is a very time-consuming process and can overwhelm a much smaller organization, like a museum run largely by volunteers. University lawyers, a team that often will include outside counsel on specific issues, will provide an exhaustive list of documents and information they need, running to more than a dozen pages and hundreds of requests. If the other side is relatively unsophisticated, relying on volunteers and one or a few outside lawyers, perhaps providing time *pro bono*, their reaction to this list may be very negative.[32] In fairness, they simply lack the staff to comply with even the most legitimate requests for information, a situation that may be more complicated if only a few staff are fully informed about the possible transaction and so not available to help. My advice for universities contemplating these transactions is to anticipate this likely reaction and the corresponding firmly held view of university lawyers that all the information they are asking for is vital to reduce risk. University leaders will need to work first with their counsel to identify the areas of significant risk and prioritize those diligence requests, letting the information discovered shape necessary follow-up questions. The advantage of smaller, less sophisticated operations is that they pose less complicated risk so that some aspects of due diligence can be abbreviated or even skipped after a few preliminary inquiries. When you give the other side the list of questions, sit with them and help them understand the importance of the requests, the reality that many questions are easily answered, and your willingness to help their staff produce the documents.

During the due diligence process, the parties also work on joint communication strategies and begin to plan for a transition. Communication is vital for the constituencies who may react negatively to news of the affiliation. The university must identify groups who may believe the deal will reduce their resources or compete with them for attention. In the case of PAM, USC did not anticipate any internal negative reaction, only enthusiasm from professors and students in the arts schools and disciplines relating to arts or Asian culture. Selma Holo, the well-respected director of USC's Fisher Museum, was already involved during the due diligence. There were concerns on PAM's part, however, that long-time donors would worry about the loss of the identity of the museum or fear that the university would not value them as deeply as the independent museum had. We also knew that some staff, including volunteer docents, would fear that this change would threaten their jobs at PAM – and in some cases that was a realistic anxiety. As the

[32] If the smaller entity is large enough to have its own counsel, you may well be greeted with the same exasperation but consider that more strategic than real.

public announcement drew closer, I and other USC leaders visited PAM's top donors with PAM board members, particularly Katherine Murray-Morse who was serving as Board Chair. The meetings made these key supporters feel appreciated as they received advance notice of the change in PAM's status, assured them of the deep support from top USC leaders, and ensured that there were several vocal supporters of the transaction when it was announced.

We also set up a structure to oversee the transition that went into effect immediately after the announcement and was expected to last about half a year. With regard to staff, Dr. Holo agreed to lead USC PAM as interim director, and we also hired an excellent interim deputy director with past connections to USC, Susana Bautista, to oversee the day-to-day operations. Our transition team was comprised of four active PAM board members and four USC administrators who represented development, auxiliaries (to advise on parking, the museum store and other opportunities for revenue enhancement), faculty involved in Asian studies, and a top provost office administrator with broad experience in budget and organizations. This latter member of the committee – Robert Cooper – would play the key role in ensuring success throughout the transition by working closely with all members of the USC PAM staff to create a three-year budget, put in place university HR and financial policies, restructure the organization, and begin the analysis of the building so renovation and construction could be planned.

This general structure – a transition committee with able representatives from both institutions, museum leaders with a commitment to the success of the transaction and experience with universities, and a talented university administrator who is essentially "embedded" in the museum until the most difficult parts of the transition are over – is essential. If an organization is more complicated than PAM, I would advise several committees focused on particular issues and perhaps two or three university leaders who will spend several days a week at the new affiliate and work with the team there. In addition, a longer transition period of one or two years might be required for a more complex transaction. The leaders during the transition must be empowered to make decisions and continue the momentum of the museum. For example, our transition committee began to plan the annual gala for the museum, its chief fundraising opportunity in the pre-merger world, both to ensure the involvement of long-time PAM supporters and to provide an opportunity to celebrate the affiliation. The resulting celebration, honoring Dominic Ng, the chairman and CEO of East-West Bank whose office was across the street from the museum and who is now a university trustee, was the most successful in PAM's history, raising more than $600,000, more than double the amount ever raised before,[33] providing another credible signal of the wisdom of the collaboration.

Certainly, all this is costly – the transition period is a cost that is often overlooked – but a smooth transition ensures future success and will reduce expenses in the long run.[34] I prefer to avoid the use of consultants other than as advisers on particular issues (e.g., issues surrounding the physical condition of the building, analysis of collections, searches for key leaders, and the like) because consultants will not have a deep understanding of the culture of either institution. Transitions are as much about harmonizing cultures as they are about integrating organizations and processes; no outsider can mediate between the cultures as effectively as sensitive and talented insiders who are open to the ways that new approaches and attitudes can reshape both institutions.

A. Financial and Organizational Challenges

Because financial stability is usually the primary goal of a merger of a museum with a university, the transition must focus immediately on restructuring the organization to take account for savings made possible by relying on university services and to strengthen it financially. Savings from these economies of scale will vary, but they can be significant. When Drexel University acquired the Academy of Natural Sciences in Philadelphia, they reported cost savings for the museum of

[33] Mike Boehm, *Pacific Asia Museum: Signs of Progress After First Year under USC*, L.A. Times, Jan. 16, 2015, http://www.latimes.com/entertainment/arts/culture/la-et-cm-usc-pacific-asia-museum-christina-yu-yu-20150115-story.html#page=1. The gala raised $641,000, which was well over double any prior year's success.

[34] See Ferris & Graddy, supra note 8, at 16 (noting that although mergers reduced costs in the long run "[m]erging two organizations into one is a costly process").

about 5%.[35] Taking advantage of these cost savings may require some layoffs that are painful but absolutely necessary; if the parties do not take advantage of this transaction to right-size and reorganize at the outset, they are unlikely to do so later. In the USC PAM case, only one position was eliminated because the museum was already very lean, but the savings from relying on the university for audit services, insurance, some facilities services and the like resulted in savings of about 5-6% of the budget.

USC also discovered that we needed to make changes that would increase expenses in the long run, thereby increasing our subsidy in the early years. For example, the pay rates for positions in the reorganized institution were not at levels comparable to similar positions in the university, so they had to be increased and rationalized. We firmly believed that PAM employees should receive university benefits, including tuition remission and generous health and retirement programs, so the fringe rate was increased. We strictly enforced wage regulations so that hourly employees who worked overtime received overtime pay. Thus, employees who were retained had better working conditions than were provided before when the museum operated on its own, but this increased the demands on the budget at the outset.

Part of any transition is moving the new organization to using the human resources, financial, procurement and other systems that larger organizations have in place. Again, there are transaction costs to that move as employees have to learn different systems, but in the long run, these processes provide more transparency, control and efficiencies. There are inevitably glitches, so leaders must be vigilant to ensure, for example, that the move to a new, more sophisticated payroll system does not result in some employees missing paychecks because data was entered incorrectly. These are mundane issues, but they can be very important to the morale of an organization, and the concern that top leaders show with respect to

[35] Kevin Kiley, *A Home for Artifacts*, Inside Higher Education, July 10, 2013, https://www.insidehighered.com/news/2013/07/10/museums-look-university-partners-put-them-viable-financial-path.

these relatively small issues will define how the museum staff and volunteers perceive the university.

As the organizational structure is rationalized, administrators must plan to hire new staff that can bring more revenue into the museum. This includes development staff, both dedicated to the museum and at the central level, as well as employees who can work to generate support for exhibitions, programming, and other priorities through foundation and government grants. Not only will the affiliation make the museum a more attractive target for foundation and other support because of its enhanced financial strength, but it can also now participate with faculty and others at the university in larger, interdisciplinary grants.[36] The museum also likely enhances the ability of the university to compete successfully for such grants because the museum provides new expertise, connections and assets. This is an area of joint benefit that should be pursued from the outset to concretely demonstrate the positive aspects of the deal. The affiliation with the university – which includes a larger community of professionals and brings financial stability – allows the museum to attract better development leaders and other staff than it could on its own. That benefit, which is often overlooked in the original negotiations, affects hiring at all levels, not just fundraisers and people who oversee programs and education, but also financial leaders and curators.

In the case of the USC PAM transaction, we immediately faced the need to hire a director, a position that had been held on an interim basis by a board leader and in which there had been some turnover in recent years. Although this led to some amount of instability during the key time of transition, it was actually an advantage for us. We had an interim director, Selma Holo, who had an impeccable reputation in the art world and a track record of leadership. Her long experience at the university combined with her deep knowledge of the museum world helped us make connections between the two institutions that might have taken much longer otherwise. The opportunity to work together – university faculty and leaders and long-time PAM leaders – to search for a new director provided us with a very visible

[36] See Milway, et al., supra note 9, at 8-9 (describing the increased opportunities for support from a merger of nonprofits outside the educational realm).

process to demonstrate the shared values of the institutions and how our partnership would enable the museum to hire a director that it could never have attracted on its own. In addition, the search process, which included several forums with long-time PAM supporters, university constituencies that would be involved with USC PAM, and community leaders, served as a platform to encourage people to envision an exciting future for USC PAM and then invest in creating that future. While the director was appointed by the USC president and would report to the provost (as is the case in any similar appointment at the university), the PAM community was consulted and included in the process, with many avenues to provide input.

The search committee, which advised the provost and had the benefit of a search consultant with experience in the arts, developed an impressive group of finalists, all of whom visited the museum and campus and presented their vision to several constituencies. Within a few months, Christina Yu Yu, the curator of Chinese and Korean Art at LACMA, agreed to serve as USC PAM's first director.[37] Her background at leading museums, as well as a stellar academic record, equips her to lead this unique university museum – the only museum dedicated to the art and culture of the Pacific Rim that is associated with a research university. She is also the first director of PAM to have been born in Asia, and she will help extend the visibility of the museum outside Southern California, as she pursues alliances with museums and universities throughout Asia. The process of introducing her to the many groups of supporters of PAM within only a few months of the transaction was yet another way to connect more deeply with them and assure them they will not be overlooked by a larger organization. Moreover, her faculty appointments at USC in Art History and Fine Arts, as well as her involvement in various university groups focused on the arts, have created new pathways for integration. It is the challenge of deeply integrating two organizations that are located several miles apart in a city known for its traffic to which I turn next.

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[37] Mike Boehm, *LACMA Chinese Art Curator Yu Yu to Lead USC Pacific Asia Museum*, L.A. Times, June 6, 2014, http://www.latimes.com/entertainment/arts/culture/la-et-cm-usc-pacific-asia-museum-director-lacma-chinese-are-curator-christina-yu-yu-20140605-story.html.

B. Long-term Integration to Create Unique Value

The transition structures described above are temporary. We had anticipated a longer process to find a director, but our success in that search meant that our transition committee was winding up at about the time Dr. Yu Yu joined the team nine months after the announcement of the deal. At this point, the focus must turn to establishing structures that will shape the new university museum into the future. Many of those are designed to bring supporters and community members into a close relationship with the new university museum so that they share their wisdom, advice and financial resources to ensure success. The group of people involved in such committees should broaden because of the university's support – not only will long-time museum supporters stay involved, but university supporters who are interested in the arts will join and new constituencies identified. For example, with respect to PAM, the museum had not succeeded in engaging the large Asian-American community living close to Pasadena until the merger. Through the leadership of prominent Asian-American trustees who are also active in the arts – like Ming Hsieh and Dominic Ng – and its charismatic director, PAM is finally beginning to connect with these communities.

I will not spend time describing these committees, although they are vital to the ability of the university and museum to establish a strong tradition of philanthropy and engagement. When the museum has merged into the university, the advantage to those serving on such committees is that they do not have to take on fiduciary responsibilities but can focus on collections, outreach and programming. When the museum is organized as a wholly controlled but legally separate 501(c)(3), any supporter who serves on the fiduciary board will have the assurance of the university's vigilance, expertise and financial strength to decrease the risks associated with such positions in small nonprofits.

My focus instead is on ways to ensure integration of the two institutions, which can often be physically distant. The distances can sometimes be very large, larger than the few miles between USC's downtown campus and PAM's location in historic

Pasadena. For example, in one case USC considered for a possible acquisition, we would have been affiliating with an independent nonprofit with campuses in another California city and on the east coast. Distance can be an advantage to the smaller institution because it provides a level of protection of the culture it has developed and inevitably allows greater autonomy than an institute located at the university might enjoy. But it also threatens to decrease the joint benefits of the collaboration unless the two entities purposefully work to collaborate.

First, the smaller institution must participate in the administrative committee structure of the university just as any similar organization located on campus. In the case of a museum acquisition, often a university already has a museum on campus so that can be used as a model. PAM Director Yu Yu attends all meetings with the arts deans, attends the monthly meetings of deans and museum directors with the provost, and attends faculty events where she has faculty appointments. Similarly, the museum's development personnel work closely with the central staff; her communications team coordinates with the university's communications group; and her budget and HR staff are coordinated within the provost's office. In turn, the provost's office seeks out opportunities to hold events at USC PAM, including hosting receptions related to the arts or global programs in the courtyard. These connections seem self-evident, but distance can provide an excuse for people to go their own way. Thus, it is imperative that cooperative relationships be established from the outset, and the museum leadership is committed to being visible on the university campus.

More importantly, the university and museum must identify areas where collaboration is vital and then put committees and groups together to ensure such interaction occurs. The vision statements that were drafted at the outset of the discussions can help shape these initiatives to ensure integration. For example, USC saw this merger as a way to enhance the educational experience of students with respect to the arts and global concerns. Thus, ensuring a connection between PAM leadership and groups at USC who create such educational experiences is key. This occurs both through classes, that now can include time at the museum or use of the collections, and co-curricular activities in the residential colleges, the university's decade-old arts and humanities program called *Visions and Voices*, and student organizations. In addition, we identified faculty collaborations as an attractive feature of the affiliation. Accordingly, PAM has been putting a faculty advisory committee in place to create new opportunities for such collaboration, including hosting conferences and workshops at the museum, identifying joint proposals for research and creative work, and ensuring that USC faculty understand the breadth and depth of resources PAM brings to our community. The museum also realizes value by engaging students as interns, expanding the community in which it provides programming for K-12 classes, and providing resources for graduate students' research. The Office of the Provost has designated one key staff member, Associate Provost Robin Romans, to coordinate all university-wide arts initiatives, ensuring that PAM succeeds in taking advantage of all the opportunities presented by a comprehensive university with alumni and students from around the world and dozens of faculty with scholarly and creative interests that intersect with the work of the museum.

In short, efforts to ensure a successful integration cannot be short-lived but must be instititutionalized, and both entities must deliberately pursue avenues for collaboration so that the affiliation brings the value to both that prompted the deal in the first place. As Graciela de la Torre concluded in her discussion of the museum's mission to generate and disseminate knowledge: "Given that intellectual capital becomes the institution's most important resource, perhaps the greatest challenge for the director will be the ability to detect individual talent and instigate collaborative networks among interdisciplinary teams within the museum."[38] With respect to a university museum, the challenge for the director is the same but broader because she must identify and create those partnerships both within the museum and with the university community. If she can succeed in doing so – with the help of her colleagues – then the trend we are seeing of independent museums becoming part of great research universities will be a positive development for both institutions and for society. Given the financial realities, it is certainly inevitable so

[38] Graciela de la Torre, *Interdisciplinary Work and Knowledge Management: A Dynamic for the Contemporary Museum*, in Beyond the Turnstile, supra note 1, at 168.

we must move forward in ways that ensure this new reality actually creates new valuable opportunities to learn from our great art collections, to broaden the influence of museums and universities on the lives of people around the country and the world, to begin new conversations about what we value and what inspires us, and to move us forward in our search for truth.

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