

CORPORATE GOVERNANCE

(MAN 385 #06120, MAN 385 #06125, MKT 372 #06345, MKT 382 #06575, LAW 384G #29090, PA 388L #60930)

Spring 2024

Faculty

William H. Cunningham

James L. Bayless Chair for Free Enterprise

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Office Hours: Please email Professor Cunningham to make an appointment. Office appointments may be done in person or by Zoom.

Teaching Assistant

Blake Cleary: brcleary@utexas.edu (no office hours)

Class Schedule

The class will meet on Thursdays at 3:30 p.m. in RRH 4.416.

Learning Outcomes

Eleven of the key learning outcomes that we will focus on in class are listed below.

1. The role of corporate boards in a capitalistic economy.
2. The duties of corporate directors.
3. The relationship between the corporation and the board.
4. Effective structure of corporate boards.
5. The importance of legal constraints on director's actions.
6. The design of an impact of constructive corporate culture.
7. Identification of the macro environmental factors.
8. The creation of the succession process for management and the board.
9. Management of corporate crises.
10. The structure and compensation program for executives and directors.
11. The role of activist investors.

Leadership and Career Focus

The course is directed primarily at graduate business students, law students, LBJ students, and select undergraduate honors students (Plan II and Business Honors) who expect to serve either as advisors to Boards of Directors or on Boards of Directors of businesses for profit and non-profit organizations. While the course will focus on established public companies, much of the course content will be useful to those individuals who are primarily interested in entrepreneurial organizations, family corporations, or public sector non-profit entities.

Course Format

This course will have two distinct instructional formats. First, Professor Cunningham will lecture to the class to help provide all of the students with a fundamental knowledge of how boards of directors function in both for-profit and not-for-profit organizations. He will also focus on the different roles the boards play in both large and small organizations.

The second format of the class will be to have guest speakers address the class on a wide variety of real world corporate governance issues. The individuals invited to class will include a mix of entrepreneurs, senior executives from major corporations, directors of public and private entities, politicians, leaders of non-profit entities, corporate lawyers and partners of major accounting firms.

Informal Meeting

Professor Cunningham will host two informal lunches for the students. Attendance is not required and a student's grade will not be impacted by their participation. These lunches are designed to give the students an opportunity to have informal discussions with Professor Cunningham on governance issues or any other topic they would like to discuss.

Sharing of Course Materials is Prohibited

No materials used in this class, including, but not limited to, lecture hand-outs, class Zoom recordings, videos, assessments (quizzes, exams, papers, projects) may be shared on-line or with anyone outside of the class unless you have Professor Cunningham's explicit, written permission. Unauthorized sharing of materials promotes cheating. It is a violation of The University's Student Honor Code and an act of academic dishonesty. Professor Cunningham is well aware of the sites used for sharing materials, and any materials found on-line that are associated with you, or any suspected unauthorized sharing of materials, will be reported to Student Conduct and Academic Integrity in the Office of the Dean of Students. These reports can result in sanctions, including failure in the course.

Classroom Professionalism Policy

The highest professional standards are expected of all members of the campus community. Faculty are expected to be professional and prepared to deliver value for each and every class session. Students are expected to be professional in all respects. The classroom experience is enhanced when the following occurs:

1. Students arrive on time. On time arrival ensures that classes are able to start and finish at the scheduled time and enhances learning by reducing avoidable distractions.
2. Students display their name cards. This permits fellow students and faculty to learn names.
3. Students are fully prepared for each class. Much of the learning takes place during classroom discussions. When students are not prepared they cannot contribute to the overall learning process. This affects not only the individual, but their peers who count on them, as well.
4. Students respect the views and opinions of their colleagues. Disagreement and debate are encouraged. Intolerance for the views of others is unacceptable.
5. Phones and wireless devices are turned off. Please be sure to turn off your phones and wireless devices before class begins.

About the Faculty

William H. Cunningham served as Dean of the College and Graduate School of Business (1983-85), President of The University of Texas at Austin (1985-1992), and Chancellor of The University of Texas System (1992-2000). Dr. Cunningham is Lead Director of the Board of Lincoln National Corporation and Chairman of Nuclein's Board. He is also Lead Director on the Southwest Airlines Board and is a member of the John Hancock Mutual Funds Board.

Required Reading Assignments

Required books: *Board Games* by John T. Montford and Joseph Daniel McCool, published by Praeger, 2016 and *Corporate Director's Guidebook/Committee on Corporate Laws*, Seventh Edition, 2020, published by the American Bar Association Section, Business Law section, which is available electronically on Bloomberg Law at no cost to all law students.

Students should stay current with news regarding Corporate Governance issues and are expected to read the *Wall Street Journal* daily. Students may sign up for the WSJ at a reduced educational rate through the WSJ web site at www.wsjstudent.com. This can be purchased for a quarter, semester, or a year.

Optional Reading Material

The following books present an interesting and somewhat contradictory perspective on corporate governance. Each of these books is available in the Perry Castaneda Library.

1. Corporate Director's Handbook, Thomson Reuters
2. Blair, Margaret M., Ownership and Control: *Rethinking Corporate Governance for the Twenty-first Century*.
3. Leighton, David S.R. and Donald H. Thain, *Making Boards Work*.
4. Roe, Mark J., *Strong Managers, Weak Owners: The Political Roots of American Corporate Finance*.

5. Useem, Michael, *Executive Defense: Shareholder Power and Corporate Reorganization*.
6. Ward, Ralph D., *21st Century Corporate Board*.
7. Welsch, Jack and Welsch, Susan, *Winning*.
8. Effross, Walter A., *Corporate Governance: Principles and Practices*, Second Edition.
9. William Fisher, *Corporate Governance*.
10. *The Handbook of Board Governance* by Richard Leblanc.

Attendance

A significant portion of the content of the material delivered in class will come from lectures and in-class discussion. Therefore, it is critical that every student who enrolls in the class make a commitment to attend all of the classes. Any student who has two unexcused class absences will have his or her end of semester grade reduced by one quarter (for example, an A would become an A-). Each additional unexcused absence will result in the student's grade being reduced by an additional one-quarter grade. Professor Cunningham will provide an opportunity to write a paper on a corporate governance topic for those students who miss two classes and who do not want to have their class grade reduced by one quarter. Excused absences do not include obligations to other classes, interviews for jobs, otherwise worthy university or professional activities, or ill-defined "family issues."

Excused absences must be approved by Professor Cunningham. If you are sick or having symptoms that you may be sick, please stay home. We want you to get better and we do not want you to infect other individuals at The University. Absences associated with illness will be excused. However, to ensure our records are accurate, students must communicate by e-mail to Professor Cunningham and Blake Cleary if they miss a class for a reason.

Course Requirements and Grading

Students will be evaluated on the basis of a written project (35%), an examination (30%), and class participation (35%). Professor Cunningham will be pleased to answer questions on any aspect of how students will be evaluated.

Written Project. While students are encouraged to form study groups of two to four people to write a paper or they can also write a paper individually.

The students will select a company that has recently been dealing with governance issues. Students should investigate the governance issues and make suggestions as to how the company's board should have dealt with the issues. A few examples are listed below. However, students are encouraged to review the *Wall Street Journal*. There are many examples of governance issues that are regularly reported in the *Wall Street Journal*.

1. An Oklahoma judge orders Johnson and Johnson to pay \$572 million to the State of Oklahoma for contributing to Oklahoma's opioid addiction crisis.
2. Boeing grounding of the MAX 737.
3. Government support of American Airlines, United, Delta and Southwest as a result of Covid.
4. Tyson Foods and Pilgrim's Pride price-fixing settlement.
5. VW, General Motors, Ford and Mercedes implementation of their electric car strategies.
6. Office Depot rejection of an unsolicited takeover offer from Staples.
7. J.P. Morgan's requirement that its employees return back to work during the Covid crisis.
8. George Floyd's death forces many companies to rethink their diversity and inclusion efforts.
9. BlackRock holds companies to higher standards on climate risk.
10. Former UAW President charged with conspiring to embezzle union funds.
11. Bayer pays more than \$10 billion in roundup settlement
12. McDonald's sues to recover severance from fired CEO.
13. J.P. Morgan continues to make campaign donations.
14. Tyson Foods requires all employees to be vaccinated.
15. Silicon Valley start-up - Theranos.
16. Trump's SPAC.
17. Elon Musk's effort to purchase Twitter.

Professor Cunningham encourages students to meet with him to discuss their written project. This can be done after class, by Zoom, or in his office. The written projects must be submitted electronically to Professor Cunningham at whc@po.utexas.edu by November 17 at 8:00 a.m.

Examination: A comprehensive case examination will be administered during the last class day on December 1. It will be drawn from reading assignments as well as material presented in class by Professor Cunningham and from the guest lecturers.

Class Participation. Students will be evaluated based on the quality and quantity of their class participation. If any student is uncomfortable asking questions and participating in class, Professor Cunningham will be pleased to meet with the individuals to discuss how they can improve their class participation skills. It will be difficult for a student to receive an “A” in this class if they fail to participate.

Electronic Devices

Students are not permitted to use computers, telephones, or other forms of electronic communication devices in class.

Name Identification

You are required to bring with you to class a large name card, place it in front of you, and sit in the same seat each class.

Course Web Site

The course will utilize a Web site, available through Canvas. To access the site, go to <http://canvas.utexas.edu>. You will be asked to enter your UT EID to access the site.

Students with Disabilities

Upon request, the University of Texas at Austin provides appropriate academic accommodations for qualified students with disabilities. Students with disabilities may request appropriate academic accommodations from the Division of Diversity and Community Engagement (DDCE), Services for Students with Disabilities (SSD) at <http://ddce.utexas.edu/disability>. It is the student’s responsibility to notify Professor Cunningham in writing indicating what type of accommodations they will need for the class. Professor Cunningham will respond in writing.

Religious Holy Days

By UT Austin policy, you must notify me of your pending absence at least fourteen days prior to the date of observance of a religious holy day. If you must miss a class, an examination, a work assignment, or a project in order to observe a religious holy day, you will be given an opportunity to complete the missed work within a reasonable time after the absence.

Building Evacuation

Occupants of buildings on The University of Texas at Austin campus are required to evacuate buildings when a fire alarm is activated. Alarm activation or announcement requires exiting and assembling outside. Familiarize yourself with all exit doors of each classroom and building you may occupy. Remember that the nearest exit door may not be the one you used when entering the building.

Diversity and Inclusion

It is my intent that students from all diverse backgrounds and perspectives be well served by this course, that students’ learning needs be addressed and that the diversity that students bring to this class can be comfortably expressed and be viewed as a resource, strength and benefit to all students.

Academic Dishonesty

I have no tolerance for acts of academic dishonesty. Such acts damage the reputation of the school and the degree and demean the honest efforts of the majority of students. The minimum penalty for an act of academic dishonesty will be a zero for that assignment or exam.

The responsibilities of both students and faculty with regard to the Honor System are described in the Dean of Students website: www.deanofstudents.utexas.edu. As a student, you agree to observe all of the student responsibilities of the

Honor Code. If the application of the Honor System to this class and its assignments is unclear in any way, it is your responsibility to ask Professor Cunningham for clarification.

Course Assignments (WORK IN PROGRESS)

This course syllabus is work in progress. One or more speakers may develop conflicts that forces changes in the syllabus. In addition, there are too many new events, regulatory body rulings, and court decisions that impact the governance of corporations to make this course a static event. Therefore, students are responsible for reviewing the course Web site on the Wednesday prior to class to determine if there have been any changes in course assignments. You should expect that additional course reading materials will be assigned during the semester.

Speakers' biographies will be posted to the Web site prior to class.

AUGUST 25

Nature, Structure, and Development of Corporate Boards

Reading Assignments:

1. Corporate Director's Guidebook, Seventh Edition, Chapters 1, 2, 3, 4, & 5

SEPTEMBER 1

The Role of Disinterested Directors and Changes in Governance Practices as a Result of COVID-19

Guest Speaker: Hassell McClellan, Chairman of the Board, John Hancock Mutual Funds

Reading Assignments:

1. Black Executive Are Sharing Their Experiences of Racism, Many for the First Time, WSJ, June 27-28, 2020
2. SEC Urged to Help Diversify Asset-Management Industry, WSJ, July 16, 2020
3. The New Math of Socially Responsible Investing, WSJ, June 28, 2021
4. Moderna Ousts Finance Chief Jorge Gomez in First Week on the Job, WSJ, May 12, 2022

The Governance of Government

Guest Speaker: Daniel Hodge, Government Consultant and Former Chief of Staff, Governor Abbott. Former First Assistant Attorney General, Office of the Attorney General

Reading Assignments:

1. At Abbott's Side, Hodge Readies for a New Role, The Texas Tribune, November 23, 2014

SEPTEMBER 8

The CEO and the Board of Directors

Guest Speaker: Doug Brooks, Chairman and Former Chief Executive Officer of Brinker International

Reading Assignments:

1. Is Your CEO the Right CEO?, CBM Second Quarter 2021
2. Cancel Culture Confidential, CBM, Third Quarter 2021
3. VW Board Ousts CEO Herbert Diess After Pivot to Electric Vehicles, WSJ, July 22, 2022

The External Auditor and the Audit Committee

Guest Speaker: Darrell McKown, Partner, Ernst & Young

Reading Assignments:

1. Corporate Director's Guidebook, Seventh Edition, Chapter 7
2. Board Games, Chapter 8
3. Big Four Accounting Firms Come Under Regulator's Scrutiny, WSJ, March 15, 2022
4. Accounting Firm EY Grapples With Partner Pay, Bear Market in Breakup, WSJ, June 24, 2022
5. Ernst & Young Fined \$100 Million in Ethics Exam-Cheating Probe, WSJ, June 28, 2022
6. The SEC's Climate Challenge, CBM, Third Quarter 2022

SEPTEMBER 15

Crisis Management

Guest Speaker: Jeff Hunt, Former Partner, PulsePoint Group and Former CEO, GCI Read Poland

Reading Assignments:

1. Board Games, Chapter 4
2. Colonial Pipeline CEO Tells Why He Paid Hackers a \$4.4 Million Ransom, WSJ, May 20, 2021
3. Former GE CEO, Jeff Immelt: 'What I've Learned,' CBM, Third Quarter 2021
4. The Art of Board Leadership in Times of Disruption, CBM, First Quarter 2022
5. ESG Playbook 2023, CBM, Third Quarter 2022
6. Marshall Goldsmith on The Lost Art of Asking for Help, CBM, Third Quarter 2022

The Role of General Counsel in a Public Corporation

Guest Speaker: Charles Matthews, Former General Counsel of Exxon

Reading Assignments:

1. Corporate Director's Guidebook, Seventh Edition, Chapters 6 & 9
2. ISS Issues Guidance on Select Governance Policies, Meridian Client Update, May 27, 2021

SEPTEMBER 22

The Transition from the Practice of Law to General Counsel to Entrepreneur

Guest Speaker: William Banowsky, Founder and Chief Executive Officer of Violet Crown Cinema and Carolina Cinemas

Reading Assignments:

1. Being a Law Firm Partner Was Once A Job for Life. That Culture Is All but Dead, WSJ, August 10-11, 2019
2. 'The Lights Were Off, CBM, First Quarter 2022
3. Movie Theaters Plot Revival as Americans Show Up for Blockbusters, WSJ, August 14, 2022
4. Regal Owner Cineworld Nears Bankruptcy as Theater Comeback Lags, WSJ, August 19, 2022
5. Movie Theaters Brace for a Rough Intermission, WSJ, August 20, 2022

Corporate Compliance and the #MeToo Movement

Guest Speaker: Grace Renbarger, Adjunct Professor, School of Law

Reading Assignments:

1. Newest Class of Corporate Directors Is the Most Diverse Yet, but Gains are Uneven, WSJ, October 20, 2021
2. McDonald's Settles Lawsuit With Former CEO Steve Easterbrook, WSJ, December 16, 2021
3. Star Female Athletes are Fighting for More Financial Control – and Winning, WSJ, May 27, 2022
4. Back to the Title IX Legal Steamroller, WSJ, June 24, 2022
5. Vince McMahon Retires as WWE CEO Amid Sexual Harassment Scandal, WSJ, July 22, 2022
6. WWE Says Probe of Vince McMahon Is 'Substantially Complete', WSJ, August 15, 2022

SEPTEMBER 29

Executive Compensation

Guest Speaker: Ben Stradley, Principal, Pay Governance

Reading Assignments:

1. Corporate Directors Guidebook, Seventh Edition, Chapter 8
2. Board Games, Chapter 9
3. Pay Strategies for 2022 and Beyond, CBM, Fourth Quarter 2021
4. CEO Pay Heads for Record as Pandemic Recedes, WSJ, April 3, 2022
5. Pay Packages for CEO's Rise to Record Level, WSJ, May 16, 2022

The Critical Role of the Federal Reserve

Guest Speaker: Richard Fisher, Former President and CEO of the Federal Reserve Bank of Dallas

Reading Assignments:

1. Remarks given by Richard Fisher to Harvard's John F. Kennedy School of Government, February 2009
2. Who Won the U.S.-China Trade War?, WSJ, May 21-22, 2022
3. Labor Shortage is Vexing Challenge for U.S. Economy, WSJ, August 14, 2022
4. Richard Fisher's speech to the Chicago Mercantile Exchange Precious Metals Gala, September 14, 2022

OCTOBER 6

Hershey – Profits and Philanthropy

Guest Speaker: Rob Malcolm, Consultant and Corporate Director

Reading Assignments:

1. Board Games, Chapter 6
2. Prospective Hershey Suitors Face Numerous Unusual Hurdles, WSJ, July 2-3, 2016
3. Hershey Controlling Trust is Besieged at a Pivotal Juncture, WSJ, July 14, 2016
4. Hershey Plans to Spend \$1.2 Billion in Deals for Pretzel Producers, WSJ, November 11, 2021
5. Hershey Seeks Growth, Synergies From Pretzel Deals, WSJ, November 19, 2021

Wealth Management

Guest Speaker: David Booth, Founder, Chairman and Co-CEO, Dimensional Fund Advisors

Reading Assignments:

1. BlackRock Starts to Use Voting Power Aggressively, WSJ, May 1-2, 2021
2. Stock Pickers Are Struggling to Beat the Market, WSJ, December 29, 2021

OCTOBER 13

Director's Fiduciary Responsibility

Guest Speaker: Howard Nirken, Attorney, Dubois, Bryant & Campbell

Reading Assignments:

1. Corporate Director's Guidebook, Seventh Edition, Chapters 10, 11, & 12
2. Board Games, Chapter 5
3. Theranos's Holmes Convicted On Four of 11 Fraud Charges, WSJ, January 4, 2022
4. Jury in Elizabeth Holmes Trial Seized on Two 'Smoking Guns' to Convict Theranos Founder, Juror Says, WSJ, January 6, 2022
5. Google Offers Concessions to Fend Off U.S. Antitrust Lawsuit, WSJ, July 8, 2022
6. Second Top Theranos Leader Convicted in Federal Fraud Case, WSJ, July 8, 2022
7. Wall Street Deal Making Faces Greater Scrutiny, Delays Under FTC's Lina Khan, WSJ, August 15, 2022
8. Roof Strength on Older Ford Trucks Called Into Question by \$1.7 Billion Jury Verdict, WSJ, August 22, 2022
9. SEC Requires Disclosures on Executive Pay Versus Company Performance, WSJ, August 25, 2022

Interface Between Business and Government

Guest Speaker: John Montford, President and Chief Executive Officer of JTM Consulting

Reading Assignments:

1. Board Games, Chapters 7 & 10
2. Some CEO's Fire Rioters, Call for Trump's Removal From Office, WSJ, January 8, 2021
3. Bridging the Digitization & Cybersecurity Divide, CBM, Third Quarter 2021
4. Disney is Whipsawed Over Stance in Florida, WSJ, April 16-17, 2022

OCTOBER 20

Hedge Funds and Alternative Investments

Guest Speaker: Geoffrey Raynor, CEO of Q Investments

Reading Assignments:

1. Activist Likely to Gain Third Seat on Exxon Board, WSJ, June 3, 2021
2. Third Point Has Big Shell State, Urges Energy Giant to Break Up, WSJ, October 28, 2021
3. Barra's Board, CBM, Fourth Quarter 2021
4. Shakeout Threatens SPACs, WSJ, May 28-29, 2022
5. Embattled FedEx Raises Payout, WSJ, June 15, 2022
6. Ackman to Close \$4 Billion SPAC, WSJ, July 13, 2022
7. Earnings Season Shows Private-Equity Firms Bracing for Slower Fundraising, WSJ, August 12, 2022

OCTOBER 27

The Crisis at Enron

Guest Speaker: Sherron Watkins, Former Vice President at Enron and *Time Magazine* Person on the Year in 2002.

Reading Assignments:

1. The Enron Verdict: The Fallout, Verdict on an Era, NYT, May 26, 2006
2. Lay's Legacy: Corporate Change – But Not the Kind He Expected, WSJ, July 6, 2006
3. Bernie Madoff's Legacy: Whistleblower Inc., WSJ, December 8-9, 2018

Risk Management

Guest Speaker: Mary Ellen Weber, Former Vice President for Government Affairs and Policy at UT Southwestern Medical Center and former astronaut.

Reading Assignments:

1. Mars or Bust, WSJ, December 19-20, 2020
2. Jeff Bezos' Blue Origin Targets Bigger Space Goals, WSJ, July 19, 2021
3. 'You Can't Just Hit the Easy Button,' CBM, Second Quarter 2022

NOVEMBER 3

The Chief Executive Officer and the Board of Directors

Guest Speakers: Kenneth Jastrow-Chairman of Forestar Group and Former Chairman of the Board and CEO of Temple-Inland Financial Services, Tom Gilligan, former Dean of the McCombs School of Business at UT Austin and Former Director of the Hoover Institution at Stanford University.

Reading Assignments:

1. Board Games, Chapter 11
2. Elon Musk Seeks to Abandon \$44 Billion Twitter Deal, WSJ, July 9, 2022
3. Twitter Sues Elon Musk to Enforce \$44 Billion Merger, WSJ, July 12, 2022
4. Elon Musk-Twitter Legal Fight Complicated by Whistleblower Complaint, WSJ, August 24, 2022
5. SpaceX and T-Mobile Plan to Link Starlink Satellites to Cellphones, WSJ, August 25, 2022
6. Twitter Ordered to Provide Subset of Elon Musk's 'Absurdly Broad' Request for Data, WSJ, August 25, 2022

NOVEMBER 10

The Chief Financial Officer

Guest Speaker: Tammy Romo, Senior Vice President Finance and Chief Financial Officer

Reading Assignments:

1. Board Games, Chapter 2 & 3
2. AT&T, Verizon Refuse FAA Request to Delay 5G Launch, WSJ, January 3, 2022
3. Passengers Behaving Badly, WSJ, June 23, 2022
4. Travel Boom Stretches Airlines' Capacity, WSJ, June 27, 2022
5. Boeing Wins Big Order for 737 MAX Jets From Delta, WSJ, July 19, 2022

Role of an Independent Director

Guest Speaker: Eric Johnson, President & CEO, Baldwin Richardson Foods Company

Reading Assignments:

1. McDonald's CEO Confronts a Supersized Challenge, WSJ, January 14, 2022
2. Championing Culture, CBM, Third Quarter 2022

NOVEMBER 17**The CEO and the Media**

Guest Speakers: James Moroney, Former Publisher and CEO of the *Dallas Morning News*, and Rudy Bush, Deputy Editorial Page Editor of the *Dallas Morning News*.

Reading Assignments:

1. CNN Won't Pay Chris Cuomo Severance; HarperCollins Pulls Former Anchor's Coming Book, WSJ, December 8, 2021
2. Chris Wallace to Depart Fox News, Join CNN+ Streaming Service, WSJ, December 12, 2021

NOVEMBER 24

THANKSGIVING HOLIDAY – NO CLASS

DECEMBER 1

EXAM IN CLASS

CBM – *Corporate Board Member*

WSJ – *Wall Street Journal*