

SPECIAL MEETING - VIDEOCONFERENCE

**BOARD OF REGENTS
NEVADA SYSTEM OF HIGHER EDUCATION**
Conference Room, System Administration
2601 Enterprise Road, Reno
5550 W. Flamingo, Suite C-1, Las Vegas
Berg Hall, Great Basin College, Elko
Friday, January 6, 2006

Members Present: Mr. Bret Whipple, Chair *{Reno site}*

Dr. Stavros S. Anthony *{Reno site}*

Dr. Jill Derby *{Reno site}*

Mrs. Thalia M. Dondero *{Reno site}*

Mrs. Dorothy S. Gallagher *{Reno site}*

Mr. Douglas Roman Hill *{Reno site}*

Mrs. Linda C. Howard *{Las Vegas site}*

Mr. James Dean Leavitt *{Reno site}*

Mr. Howard Rosenberg *{Reno site}*

Dr. Jack Lund Schofield *{Las Vegas site}*

Mr. Steve Sisolak *{Las Vegas site}*

Mr. Michael B. Wixom *{Reno site}*

Members Absent: Mr. Mark Alden

Others Present: Executive Vice Chancellor Daniel Klaich

Deputy Chief Counsel Bart Patterson

Director of Human Resources, Carla Henson

Ms. Debra Lopez, System Administration

Secretary to the Board, Fini Dobyns

Chair Bret Whipple called the meeting to order at 8:35 a.m. with all members present except Regents Alden, Derby, Schofield, and Sisolak.

Regent Rosenberg led the group in the Pledge of Allegiance. Regent Wixom provided the invocation.

1. Approved-Change of 2006 Board Meeting Locations - The Board approved changing the locations for three of the 2006 Board of Regents' meetings, as follows:

- · January 26-27 – CCSN- *from the Cheyenne Campus to the West Charleston Campus*
- · June 8-9 – *from GBC to TMCC*
- · August 17-18 – *from TMCC to GBC*

Board Secretary Dobyns explained that the West Charleston campus had been substituted because the Cheyenne campus did not have a large enough venue available in January to accommodate the Board meeting. In June, Elko will be hosting a miner's convention. Due to the anticipated lack of hotel rooms, Presidents Killpatrick and Ringle graciously agreed to swap meeting locations to accommodate this occurrence.

1. Approved-Change of 2006 Board Meeting Locations – *(Cont'd.)*

Regent Rosenberg moved approval of changing the locations for three of the 2006 Board of Regents' meetings. Regent Dondero seconded. Motion carried. Regents Alden, Derby, Schofield, and Sisolak were absent.

2. Denied-UNR Presidential Search (number of finalists) - The Board denied a motion requiring the UNR President Search Committee to bring forward a slate of three finalists for Board approval.

a. Information Only-Code Amendment, (*Title 2, Chapter 1, Section 1.5.4(a)*), to increase the membership of the President Search Committee from five to six members. This constituted the first reading of a proposed amendment to the Board of Regents' Code, Title 2, with final action to be taken at a future Board of Regents' Meeting (*Ref. A on file in the Board office*) .

Chair Whipple said he would entertain discussion regarding whether or not the Regents' Committee for the UNR President Search should be increased from five members to six.

Regent Dondero noted that allowing six members created the possibility for a tie vote. Regent Rosenberg observed that seven members could not be appointed to the committee because that would comprise a Board quorum. He did not oppose increasing the committee size.

Regent Anthony observed that this change would affect all future searches and questioned the rationale for increasing the membership to six Regents. He noted the policy for employing five Regents had been in place for some time and had not been a problem. He did not want to change the number arbitrarily.

Executive Vice Chancellor Klaich stated that the committee size was a Board decision. The suggestion came partially in consideration for allowing the Board more membership if it desires. The number was previously set at five Regents when there was an 11-person Board. With the Board size increasing to thirteen, the potential exists for greater member participation. He acknowledged the potential for a tie vote when increasing the membership to six. Regent Anthony asked about the outcome if the Regents' committee experienced a tie vote. Executive Vice Chancellor Klaich replied that the same answer applied as to the process for a presidential search; whatever the search committee decides to do. He suspected that if there were a tie vote that both names would be submitted to the full Board for consideration. Regent Dondero observed that the search committee already had that alternative. Executive Vice Chancellor Klaich agreed it was a search committee decision. The charge of a search committee is to sit through a pool of candidates and bring a candidate or candidates to the Board for approval. The search committee will establish its own rules at the first meeting. Board policies on this matter are very broad.

Regent Hill noted a point of order, observing that the Board currently had a quorum present, but not a sufficient quorum for a bylaw change, since it requires a super majority.

2. Denied-UNR Presidential Search (number of finalists) – (*Cont'd.*)

Executive Vice Chancellor Klaich said the change would require two readings and a simple majority to pass. Regent Hill asked what action required a super majority. Executive Vice Chancellor Klaich believed that rescinding a previous Board decision would require a super majority. Regent Hill believed differently. Chair Whipple stated they would verify the matter with the *Board of Regents Handbook*. Regent Hill did not object to making the change to see how it works, however, he was not interested in making a permanent change. He was more interested in making a one-time change for this particular search (*UNR President Search*) with a sunset provision included.

Regent Derby entered the meeting.

Regent Hill moved approval of increasing the search committee size for one-time only for the UNR President Search, with a sunset provision at the conclusion of the UNR search unless revisited by the Board. Regent Leavitt seconded.

Regent Leavitt felt that being more inclusive was better and that it provided another set of eyes and ears. Having six members participate would not create any concerns regarding a quorum of the Board. He agreed that including a sunset provision ensured the ruling would not need to persist. He suggested that the possibility for a tie vote was a good problem to have and that if the vote were so evenly split the committee would need to

recommend more than one candidate. He did not see a downside.

Regent Sisolak entered the meeting.

The motion was re-read to clarify the matter for those Regents just entering the meeting.

Regent Hill moved approval of increasing the search committee size for one-time only for the UNR President Search, with a sunset provision at the conclusion of the UNR search unless revisited by the Board. Regent Leavitt seconded.

Regent Howard requested clarification regarding Regent Hill's question about the necessity for a super majority prior to voting. She indicated she was leaning against a change because she did not see justification for increasing the committee size. She did not think it should be done solely because someone was unhappy about not being included on the search committee.

Regent Derby recalled one occurrence with an even-numbered search committee that led to a disastrous outcome due to a tie vote. The Board had no clear direction from the committee. The committee originally began with five members and one was removed. She felt that it was such a serious challenge that a potential tie scenario should be avoided, which was the reason the Board preferred appointing committees comprised of odd numbered memberships. She recalled that the previous UNR President Search also had a split vote despite having an odd numbered membership, though the majority

2. Denied-UNR Presidential Search (number of finalists) – (Cont'd.)

prevailed and a recommendation was forwarded. She said it was not uncommon for such a split to occur and suggested that having an odd number was Board practice for a clear reason; to avoid a tie vote situation. She felt such votes led to a very difficult situation. She said that the act of imposing a "one-time" change reflected the fact that it was not a good practice. While she agreed it was great to be inclusive, in the end, the process is inclusive because the committee makes a recommendation and the entire Board is involved in meeting candidates and in the vote that is sent to the full Board. She related the Board employs a committee structure for a reason. A search committee is closely involved in every step of the process and makes a recommendation based upon that kind of close involvement. She felt it was up to the Board to trust the committee recommendation because the committee had followed the issue closely. She did not feel there was justification for a "one-time only" exception to a rule based on sound reasoning and logic *(to avoid a split vote)* .

Executive Vice Chancellor Klaich reported that Regent Hill's recollection for a bylaw change requiring a super majority was correct and acknowledged his previous response to Regent Hill regarding a bylaw change had been incorrect. This proposal is a Code change, which does not require a super majority. He explained that both bylaw and Code changes require two readings. Bylaw changes require a super majority (*9 votes*) , while Code changes require a simple majority (*7 votes*) .

Regent Howard requested clarification between the three types of majority votes mentioned (*regular, simple, and super majority*) . Executive Vice Chancellor Klaich explained that a "*simple majority*" requires 7 votes and a "*super majority*" requires 9 votes. He clarified that he used the term "*regular majority*" in error.

Regent Leavitt said that he did not view a 3-2 vote as a majority decision for such an important decision. He observed there would be an extraordinary amount of scrutiny regarding this issue. He viewed the distinction as almost immaterial. Even though this is the Board's practice, he did not view it as a compelling reason to not increase the size of the committee.

Regent Gallagher agreed with Regent Derby that odd numbered committees had been tried before and had been a disaster. She did not object to the committee submitting more than one name to the Board.

Regent Schofield entered the meeting.

Regent Gallagher felt it would be incumbent upon every Board member to sit in on everything related to the

search process. By not doing so they would not be qualified to vote. She felt the change would open many different avenues and should be carefully considered.

Chair Whipple requested the motion be re-read. Board Secretary Dobyms clarified that Executive Vice Chancellor Klaich had established that the proposal represented a Code change, requiring two appearances before the Board. This represented the item's first appearance, thus no action could be taken at this meeting.

2. Denied-UNR Presidential Search (number of finalists) – (Cont'd.)

Regent Hill asked whether there was a rule or law preventing seven Regents from serving on a committee. He observed that all notices pursuant to the Open Meeting Law would be provided. Executive Vice Chancellor Klaich replied that such a prohibition exists. He noted that the first page of the agenda provided notice of a special meeting of the "Board of Regents". The agenda for later in the day indicated the "UNR President Search Committee" would be meeting. When a majority of the Board attends and participates in a committee meeting, the full Board is potentially deliberating. It is the Attorney General's opinion that when a majority of the Board sits on a committee when a hearing of the committee is noticed, in fact, there is a meeting of the full Board and not a meeting of the committee and the meeting has, therefore, been improperly noticed. Regent Hill observed that the meeting could be noticed so as to provide sufficient notice of the participants.

Regent Sisolak noted a point of order, observing that the agenda made no mention of a discussion regarding seven participants on a committee. Regent Hill felt it was a possibility once the matter was under discussion and that the Board could amend it to any number. Executive Vice Chancellor Klaich agreed that Regent Sisolak's point was well taken. The agenda item was very specifically worded. He said there might be discussion during the UNR President Search Committee relative to this item because of the unique makeup of the committee. He felt that Regent Sisolak's objection was in order. Regent Hill asked Executive Vice Chancellor Klaich to clarify the matter for him. He said the Board had considered Code and bylaw changes on many prior occasions and the Board specifically modified the proposed changes on many occasions in many different ways. He recalled that Executive Vice Chancellor Klaich's ruling at those times had been that the matter was before the Board and could be modified. He asked whether they were locked into numbers and not other language. He thought the discussion was not out of order.

Regent Anthony did not like the fact that the Board was making a change after the search committee had been appointed and met. He did not feel the Board should change the process once it had begun.

Chair Whipple ruled the motion out of order. No action was taken.

b. Denied -The Board denied a motion requiring the UNR President Search Committee to bring forward a slate of three finalists for Board approval. The Board discussed whether more than one finalist should be brought forward for the Board's consideration for appointment to the position of University of Nevada, Reno President or whether a slate of two-three finalists should be recommended by the President Search Committee to the Board. The discussion and possible action included whether the Board as a whole should interview the finalists recommended by the Presidential Search Committee.

2. Denied-UNR Presidential Search (number of finalists) – (Cont'd.)

Regent Derby stated that, during her tenure on the Board, search committees have always brought forward one recommendation. Everyone on the search committee has participated from the very first step in the process. It is a very careful and important process. Only people who have been involved in every step along the way should be voting in the end. She felt it was the search committee's duty to recommend one candidate. If more than one name was forwarded, all Board members would need to attend every search committee meeting and be part of the process from the beginning so they are equally informed about the candidates and all of the factors considered in the search committee's recommendation.

Regent Anthony asked whether the search committee could bring forward more than one candidate to the full Board. Executive Vice Chancellor Klaich replied that they could. Regent Anthony questioned why the Board

would want to require a specific number of candidates to be forwarded since the search committee already has the authority to recommend more than one name. He did not see justification for the change.

Executive Vice Chancellor Klaich clarified that the issue before the Board was: How many Board members see how many candidates, and at what time? He noted that Regent Anthony had correctly identified the powers of the search committee. He related that, in past searches, the process outlined by Regents Derby and Gallagher has been exactly the process that has been followed. Search committees have typically narrowed candidate searches down to one individual. After that individual has been selected, it has been the practice of the Board in the past to arrange informal social meetings with that candidate and those Board members not participating on the search committee. Executive Vice Chancellor Klaich related that this should not be done because there is a real opportunity to be accused of being in violation of the Open Meeting Law. He acknowledged that prior counsel had ruled differently on this question. He said he would not agree with that ruling when asked the same question.

Chair Whipple asked whether this issue had ever been challenged. Executive Vice Chancellor Klaich was not aware of any challenge. A long time ago, a question was raised regarding the circumstances of the hiring of another president where, because of informal meetings, the Board was subjected to an Open Meeting Law complaint. The circumstances behind those meetings were likely particular and original and may not apply to all situations. He noted that the Board had given him the specific charge of ensuring they go the extra mile with respect to the Open Meeting Law. He takes that charge very seriously. He related that he and Special Counsel Brooke Nielsen had entertained this exact discussion with Sr. Deputy Attorney General Neil Rombardo and he was relaying the essence of those discussions to the Board.

Regent Derby related that the Board's practice with search committees had always been to narrow the pool to a group of finalists. The finalists then meet with all of the constituencies and stakeholders in the process. Once a group of finalists is identified by the search committee, different meetings are held for faculty, administrators, students, alumni, foundation, and community members to meet, as well as other Regents not serving on the committee. Everyone provides input to those on the committee. All Regents are provided the opportunity to meet the group of finalists, to make their own

2. Denied-UNR Presidential Search (number of finalists) – (Cont'd.)

assessment, and to comment to those Regents on the search committee about their sense of who would be the most appropriate leader. She was not anticipating they would do anything differently. She wanted to ensure that Executive Vice Chancellor Klaich was not indicating that they could not do that. Executive Vice Chancellor Klaich replied that he was absolutely indicating that could **not** be done. Regent Derby observed that the other constituencies could all meet the finalists, but Regents could not. Often a finalist will appear on campus. She was assuming that Regents could attend such a function. She hoped that Executive Vice Chancellor Klaich meant that the finalist candidates could not meet with three or four Regents, but that Regents could meet the other candidates in such informal forums. Chair Whipple wanted to ensure the Board was staying on point with the discussion heading towards discussion of the Open Meeting Law.

Regent Howard reminded Chair Whipple that attendees from the Las Vegas site wanted to speak. Chair Whipple encouraged attendees to jump into the discussion as it was difficult to ascertain who wanted to speak.

In response to the propriety of the current discussion, Executive Vice Chancellor Klaich said he felt that the discussion was absolutely appropriate. The issues are: 1) When does the Board meet a presidential search candidate? 2) Do all of the members of the Board get to meet that person? 3) How and under what circumstances? He related that because the Open Meeting Law is implicated in that decision the discussion was appropriate. In response to Regent Derby's comment about the informal meetings, he agreed they occur at the finalist level. His advice was the same. He was aware that multiple finalists would be brought to campus meetings to meet with various stakeholders from the campus and the community. He said he would not support non-noticed meetings with members of the Board, who could in those meetings, deliberate toward a decision regarding who they select as the president, whether or not a quorum is present at that particular meeting. He felt it presented the issue of a "walking quorum".

Regent Schofield said that he considers a presidential search one of the most important events in which he will participate as a Regent. He wants to know about the people under consideration and to witness the process from the beginning. Though not assigned to the search committee, he wants to ensure that people know he is aware of the search process from the beginning to the end as a Regent. He has never been a proponent for violating the Open Meeting Law. He felt there should be no closed meetings. So long as it was considered proper, he was planning to attend the search committee meetings so he would know what is going on with the candidates. He felt the next UNR president was vital to the entire System.

Regent Howard recalled two occasions where two names were brought to the full Board by the search committees and were rejected. She was very concerned about the inconsistency. Regent Rosenberg tried to recall the incidences to which Regent Howard referred. Executive Vice Chancellor Klaich cautioned that they could not be discussed. Regent Howard recalled that Regent Rosenberg had participated on both committees.

2. Denied-UNR Presidential Search (number of finalists) – (Cont'd.)

Regent Howard noted a point of order, stating that she considered the laughter in the background while she was speaking to be rude. Chair Whipple assured Regent Howard that no one was laughing. He asked members to recognize that this is a formal meeting and asked Regent Howard to continue.

Regent Howard observed that, ironically, both candidates had been African American. She was concerned about the inconsistency with the manner in which the searches were conducted. She was very concerned about the process, as it seemed the process continually changed with each search. She observed that she had served on three president search committees and all of the processes had been different. She felt the appointments for the current search committee had been very competitive. She was also concerned that Regents attributed more weight to one search committee over another. She felt it was not healthy for Board members to compete for committee appointments. There was so much competition that she had not requested consideration because she felt she would not have a chance for appointment. She felt the Board should not relinquish its constitutional duties in selecting a president. Each Regent is charged with a constitutional duty to select a president. When part of the Board is left out of that process, Board members are not fulfilling their constitutional duty.

Regent Sisolak asked about the meaning of an ex-officio member. Executive Vice Chancellor Klaich replied that, in this particular search, the point was moot because Regent Gallagher had declined to act as an ex-officio member. In response to the question, he related there is no provision in Board policy for an ex-officio member of a Regents' search committee. Regent Sisolak asked whether the Board had previously employed alternates. Executive Vice Chancellor Klaich replied that, to his knowledge, they had not. The process allows the Board Chair on an ad hoc basis to appoint Regents to serve on committees, including search committees, if committee members are absent. This was the first committee/search of which he was aware where specific alternates were appointed in advance. He related that the UNR President Search Committee would be discussing the proper role and limitations for alternate search committee members to ensure compliance with the Open Meeting Law. Regent Sisolak observed there were eight Regents assigned to the committee, which basically excluded five elected Board members (*and their constituents*) from the process. He acknowledged Executive Vice Chancellor Klaich's advice regarding the prohibition of those five Board members from meeting the finalist candidates to ask questions. He said the important questions were never brought forward. He felt it was a clear violation to have a walking quorum. He wondered why the search committee could not bring forward multiple names for the full Board's consideration, thereby allowing Board members to fulfill their constitutional responsibility for selecting the president. He observed that the same Regents participate on the search committees while other individuals are shut out and have no input. He observed that a forum did not exist for non-search committee Board members to participate in the process. He felt it was unfair to the Regents who were excluded on a continual basis.

Chair Whipple acknowledged and understood Executive Vice Chancellor Klaich's comments relative to the Open Meeting Law and his desire to protect the Board. He said it did not mean that everyone agrees with the extra steps. Chair Whipple said he had

2. Denied-UNR Presidential Search (number of finalists) – (Cont'd.)

intended the search process to be as inclusive as possible. He was trying to err on the side of inclusion. Unfortunately, the entire Board cannot be appointed to the committee. He felt the debate was appropriate. He said that Regent Howard's comments about competitiveness had not fallen on deaf ears. He understood that everyone wanted to be involved.

Regent Howard said she was concerned about whether they were violating the Open Meeting Law with the alternate appointments. Executive Vice Chancellor Klaich advised the Board to continue its discussion. He felt the discussion was within the scope of what the Board was considering and the selection of a president. Specific advice will be provided to the search committee regarding the role of alternate members to the committee. He said there was nothing illegal about the appointment of an alternate member and encouraged the Board to continue the discussion. Regent Howard asked about the difference between ex-officio and alternate. Executive Vice Chancellor Klaich replied that, in his opinion, an alternate committee member would act much the same as an alternate jurist. If a voting member dropped off the committee, the alternate member would succeed to that voting member's position. An ex-officio member can show up, but cannot say or do anything, and does not vote.

Regent Sisolak noted a point of clarification, stating that alternate jury members do not know that they are alternates. Chair Whipple explained that one Las Vegas judge follows that practice to ensure that all jury members are paying attention. All other judges designate a first and second alternate and those people know who they are.

Regent Howard said she was confused about an ex-officio member. In her opinion, an ex-officio member could be any Regent because, at any given time, a Regent has the right to attend any committee meeting that they desire. Executive Vice Chancellor Klaich did not disagree. He said he would advise Regent Anthony about the limits of participation for non-search committee members in the search process, whether alternate or ex officio, later that day during the search committee meeting. He believed that such guidance would be outside the scope of this agenda item. He encouraged Board members to continue the discussion. Regent Howard disagreed with Executive Vice Chancellor Klaich's ruling. She felt that as elected officials Regents could attend any committee meeting they want, whether or not they have a vote. Executive Vice Chancellor Klaich agreed with her. He said he would have advice for Regent Anthony as to the manner of participation, but he agreed that elected members of the Board of Regents could attend any noticed meeting of the Board or its committees that they choose. Regent Howard said she was referring to ex-officio as someone that could come in and sit as an observer. She stated the Board is a public body and that it appeared they were trying to create a closed meeting. Executive Vice Chancellor Klaich said that he understood and agreed with her comments.

Regent Sisolak noted a point of clarification, observing that people attending the meeting in Reno were either on the committee, ex-officio, alternates, or the Chair of the Board. Everyone else was attending from southern Nevada.

2. Denied-UNR Presidential Search (number of finalists) – (Cont'd.)

Regent Dondero asked whether the Board could act as a committee of the whole. Executive Vice Chancellor Klaich replied that they could. The matter under discussion is how to properly prepare the agenda. They were not discussing skirting the Open Meeting Law. The Board wants to do its business fully, fairly and collaboratively, with everyone involved. He said that when they do that, the Board will provide direction regarding what it wants to do and he will advise them how it is done correctly. One alternative is having the Board meet as a committee of the whole.

Regent Schofield noted a point of clarification, stating that he too would have attended the meeting in Reno had he not had a wedding in Las Vegas to attend.

Chair Whipple stated that he and Vice Chair Gallagher sent a letter to the full Board encouraging as many members as possible to attend the UNR President Search Committee meetings either in Reno or via teleconference from Las Vegas. He noted that all members believe this is a very important process and that they wanted all who want to be involved to be present.

Regent Derby said the discussion about the search committee applies to the Board's committee structure in general. The same concerns raised about a search committee having only five Board members also apply to every Board committee. In order for the Board to function, it employs a committee structure to address areas of business efficiently. All committee recommendations are brought before the full Board, providing the opportunity for the full Board to ask questions and debate. She suggested that the Board could not function effectively without a committee structure and that the same principle applies to a president search committee. Any Board member is invited to come and listen to the process, which is different from having every Board member participate on every committee (*a much lengthier process*). There is a reason and logic to employ a committee structure; to enable the Board to operate efficiently and effectively. She suggested the same principle and logic applies to having a president search committee. Other Board members can sit in, follow the process, and be more informed at the end of the search. She felt that employing a committee of the whole was not an effective or efficient methodology. She clarified that any Board member could sit in on any committee meeting and is always welcome to do so. She asked Executive Vice Chancellor Klaich to clarify his statement regarding Regents not being able to meet in small groups with finalist candidates. She assumed that Board members could still come to the various forums and events that are part of the search process when reaching a finalist pool. Receptions are held, finalists are invited to campus to make a presentation and to have a dialog with members of the campus community. She assumed that Board members could listen in and participate in such events. Executive Vice Chancellor Klaich replied that Regent Derby's understanding was correct.

Regent Sisolak noted a point of clarification, asking whether "participate" meant "sit in/listen in" or whether an exchange could occur between the Regents and the candidate. Executive Vice Chancellor Klaich stated that the issue was the term "deliberate". He related that Regents could show up and listen, but they could not participate (*by asking questions*). He said they were discussing whether the Board wants to look at the finalists and be able to interview all of them. The current definition of "deliberate" means having

2. Denied-UNR Presidential Search (number of finalists) – (Cont'd.)

discussions that could lead to a decision of the Board. Executive Vice Chancellor Klaich did not want to be in a position of having to silence a non-committee member trying to ask questions. If the entire Board wants to interview all of the finalists, the agenda needs to be noticed appropriately. Regent Sisolak understood and was in total agreement that it should be done in public as opposed to not providing a means for participation.

Regent Derby felt that alternate members should attend every search committee meeting so they will be fully informed.

Regent Gallagher objected to changing the process in the middle of the search. She felt that changes to the search process should be carefully considered outside of an ongoing search process. Executive Vice Chancellor Klaich said that, if this search proceeds as others searches have in the past and the final chapters are intended to proceed as they have in the past, it would be his opinion that it is a very dangerous course of action for the Board to take and he would advise them not to do so. He understood that he was reversing the advice of prior counsel and was providing advance notice of the decision to reverse traditions and practices of the Board.

Regent Hill agreed with Regents Sisolak, Howard, and Schofield. His understanding of Executive Vice Chancellor Klaich's previous statement was that if notice was provided that the entire Board would be present, even for a committee meeting, then other Board members would have the right to attend, participate, and discuss. He felt that should be done for all future meetings and that sufficient notice should be provided to allow every person to have the same constitutional right of freedom of speech. He recommended that a Board meeting be held the same day that the committee makes its recommendation.

Chair Whipple confirmed that only the same five Regents would vote on the search committee. Executive Vice Chancellor Klaich agreed.

Regent Rosenberg observed that much of the item under discussion hinged upon the words "should" and "could". At this point, the committee *could* bring forward more than one finalists, as has been done in the past. The search committee *could* recommend more than one finalist, unranked. He observed that

everyone *could* attend these open meetings. The candidate is interviewed by the committee but everyone present can see and hear. He asked whether a Regent could ask a question as a member of the general public. Executive Vice Chancellor Klaich replied that Regents are never just a general person. When they participate in an official process of the Board they are acting as a Regent. He observed that Regent Hill had identified the solution to that question if the Board chose to take advantage of it. Regent Rosenberg asked whether it would be noticed as an open meeting of the Board. Executive Vice Chancellor Klaich replied that the notice could include full Board and committee notice. The Board could decide whether or not the Board votes. The Board could decide whether or not Board members speak. A structure could be devised for the process described for those last meetings with the finalists with the committee, campus and community asking questions so that other Regents could ask questions within the bounds of the Open Meeting Law.

2. Denied-UNR Presidential Search (number of finalists) – (Cont'd.)

Regent Hill left the meeting.

Regent Leavitt asked whether a non-voting member could participate and provide their opinion regarding support or non-support of a particular candidate, but not vote with the committee, if the meetings were dually noticed. Executive Vice Chancellor Klaich believed that the agenda could be prepared to accommodate such a request.

Regent Schofield recommended that everything be noticed properly so the Board cannot be faulted and so that Board members did not feel they were muzzled.

Regent Hill entered the meeting.

Regent Anthony asked why Board members couldn't vote if the meeting were noticed as a committee/Board meeting. He felt it was moving toward a full Board meeting and that there was no reason for a committee. Chair Whipple was concerned that there may be people who do not want to be on the committee or involved and it could result in a situation with only partial Regent participation. He was concerned about the lack of structure with that setting.

Regent Rosenberg left the meeting.

Chair Whipple felt that having five voting members on the committee retained the necessary structure, while still allowing other Regents to participate.

Regent Howard felt the situation was complicated by adding alternates and ex-officio members. The whole Board is participating except four people were excluded, which was not an inclusive process. She was concerned that an agenda had to be specially prepared in order to allow non-committee members to participate. She observed that Regents often attend committee meetings for which they are not members. She felt that her concern about the consistency with the process had not been addressed. She said there are inconsistencies with the search committee process and asked whether anyone else was concerned. Regent Sisolak agreed with her.

Regent Schofield left the meeting.

Regent Rosenberg entered the meeting.

Regent Leavitt felt that every Board member has a strong appetite to participate as fully as possible.

Regent Derby left the meeting.

Regent Leavitt said they were all present because they wanted to be involved. He felt they shared Regent Howard's concerns.

Regent Sisolak felt the Board was treating the UNR search differently, and agreed with Regent Howard that it was a concern. He felt it might be leading to a re-evaluation of the Board's entire search process. He objected to what appeared to be an attempt to split hairs so finely. If any of the alternates or ex-officio members are allowed

any more input or

2. Denied-UNR Presidential Search (number of finalists) – (Cont'd.)

contribution than every other member of the general public is allowed, he failed to see how that was not a violation.

Regent Schofield entered the meeting.

Regent Howard left the meeting.

Regent Sisolak could not see how they would avoid a violation. Executive Vice Chancellor Klaich stated that the alternates cannot talk.

Regent Derby entered the meeting.

Executive Vice Chancellor Klaich related that the alternate members may show up and listen, but they may not speak. Regent Sisolak stated that, if every single bit of information provided to committee members is not provided to all Regents, there was clearly a violation that everyone was not being treated equally. Chair Whipple observed that it applied to meetings that were noticed as they had been that day. He was thankful for the discussion and to arrive at a resolution by providing proper notice. If the meeting is properly noticed, any Board member can be present, speak, offer opinions, or ask questions. He reiterated there would be five voting committee members with an assigned first and second alternate. Any and all Board members would be encouraged to attend and participate. Regent Sisolak said he did not understand. He asked how they could participate any more than an average citizen. Executive Vice Chancellor Klaich said he agreed with Regent Sisolak completely. He was trying to focus on this agenda item as opposed to the advice he planned to provide to the search committee that afternoon. Regardless of the name attached, there are voting committee members and then there is the rest of the world. Everyone in the rest of the world will be treated exactly the same. The eight non-committee Board members would have slightly less standing than the general public because they are never considered just citizens. A citizen could speak during Public Comment, while a Regent could not without the proper notice.

Regent Dondero observed there was a large advisory committee that also needed to be involved in the process. She asked how they were working with the Board and whether they would be able to participate. Executive Vice Chancellor Klaich replied that they would. He related that the matter of inclusion was a matter of proper notice. Staff merely requires direction from the Board as to who is in and when. Regent Dondero clarified that the entire Board could participate along with the advisory committee. Executive Vice Chancellor Klaich clarified it would need to be correctly noticed (*which it was not that day*). He explained that the search committee meeting had been noticed in the same manner as had been followed in the past. He related there was no difference in the treatment of an ad hoc president search committee and a standing committee. He encouraged Board members to consider Regents Derby's and Anthony's comments with respect to whether or not it is a committee. Regent Dondero said she was still confused. She asked whether they would need to return to the Board and establish that all Board members were also members of the committee and could participate in the selection of a new president for future meetings. She said they would use the same advisory committee and asked whether the next meeting would be noticed as a Board meeting. Executive Vice Chancellor Klaich replied that was similar to Regent Anthony's question, which he will research. He felt they could have a noticed search committee meeting with action items for the search committee while

2. Denied-UNR Presidential Search (number of finalists) – (Cont'd.)

simultaneously noticing that regular Board members would consider it an information item. This would allow other Board members to discuss the item, but not participate in the committee's action. Regent Dondero said she wanted to reach a point where those people could also vote. Executive Vice Chancellor Klaich said that would address conducting the search as a committee of the whole.

Regent Hill respectfully disagreed with Executive Vice Chancellor Klaich and the Attorney General and their interpretation of the OML that somehow concluded that a human being, who happens to be a Regent, could attend a meeting and not be on the committee and may not speak. He felt that was clearly unconstitutional.

Regent Rosenberg observed that it had always been the Board's practice to allow any Board member to attend committee meetings and speak to issues. He acknowledged that they would not vote, but had the opportunity to speak. He did not understand the difference with this committee. Executive Vice Chancellor Klaich explained that the question had never been raised before. Since the Board asked the question, he researched the matter and was now conveying the best answer possible.

Regent Wixom observed that one of the advantages of creating a sub-committee/search committee was to allow efficiency and a process in which the whole Board is not devoted to every decision. He was concerned about setting a precedent. The committee structure is employed for efficiency and because it is not humanly possible for every Board member to participate in every decision. He was concerned that allowing full Board participation in this process would risk losing the efficiencies that would otherwise be associated with employing a sub-committee and set a precedent for requiring full Board participation in all future decisions. He understood that he was serving as an alternate in case a committee member dropped off. He was concerned that it sounded like they were doing away with the distinction between a sub-committee and the Board as a whole. Chair Whipple felt that all of the concerns raised could be addressed by simply noticing the agendas differently. Chair Whipple directed Executive Vice Chancellor to notice future meeting agendas differently so that any and all Regents could participate.

Regent Leavitt said that, with this requirement for dual notice, it begged the question of the harm in everyone voting. He observed that not everyone attended committee meetings. He sensed no appetite to abandon the committee structure and questioned whether this decision was so important that they wanted to abandon the practice (*for presidential searches*).

Regent Gallagher questioned whether a Regent offering an opinion about a particular candidate could create a big problem. She felt that voicing opinions could influence the vote. Regent Leavitt said that was exactly his question; whether the Board allows all Board members to participate in every conceivable manner with only one exception (*the vote*). Regent Gallagher asked how to avoid a walking quorum. Executive Vice Chancellor Klaich replied that, with notice, those comments would be in an open, public forum, properly noticed, and where such comments should be made. He felt that would be within the spirit of the OML. He was unsure whether or not such comments ultimately influence the vote of other committee members impacted the spirit of the OML.

2. Denied-UNR Presidential Search (number of finalists) – (*Cont'd.*)

Regent Anthony questioned why a Regent could not vote if it were a noticed meeting. Executive Vice Chancellor Klaich said that it was a possibility. It could be accomplished (*i.e., Regent Dondero's suggestion for a committee of the whole*). He said they could stay with exactly what they currently have, they could move to a committee of the whole, or they could go somewhere in between.

Regent Gallagher felt the Board needed to determine whether or not they were going to have a committee structure and whether or not they were going to employ a committee of the whole. She felt they were setting themselves up for much confusion.

Regent Derby felt there was a precedent at stake. She noted there was a distinction between a committee of the whole and the dual notice provision. She felt the Board employed a committee structure for a reason. The search committees are no different from other Board committees. She understood the new ruling prohibiting non-committee member Regents from participating in a committee meeting unless properly noticed. She felt that employing a committee of the whole was not efficient or productive, and would create an impossible process. She said that Regents would be welcome to listen, but did not recommend changing the process. Chair Whipple clarified that it would not be a committee of the whole, but it would allow other Regents to attend. Only the five committee members would vote. Executive Vice Chancellor Klaich said there had been a significant amount of input and many ideas had been suggested, all of which may not have been discussed with the Attorney General's office. He offered to provide more extensive guidance. Chair Whipple observed that noticing the meeting to allow Regent participation did not imply that all Regents would be allowed to vote. Executive Vice Chancellor Klaich agreed. He felt there were actually two issues: 1) Non-committee Regents attending committee meetings

and being able to ask questions and 2) The ability of non-search committee members to meet with candidates as the search committee completes its process and moves toward the selection of the small pool of candidates to be recommended to the full Board.

Regents Rosenberg and Derby noted a point of clarification. Regent Derby asked whether the proposed dual notice accomplished the same thing as a committee of the whole. Chair Whipple clarified that it would depend upon whether the Board chose to allow it, or they could continue with what they have.

Executive Vice Chancellor Klaich explained that the answer to Regent Derby's question was that it depended upon the manner in which it was noticed. It depended on whether they wanted the other members of the Board showing up and talking or showing up, talking and voting.

Regent Rosenberg observed that the agenda could be prepared to allow action by the committee and information for the Board. Executive Vice Chancellor Klaich agreed that such a differentiation could be made. He felt the Board had raised many serious questions about the process and whether or not these kinds of procedures should exist so that these kinds of questions are not asked for every search.

Regent Sisolak asked whether the alternates acted as such for the whole committee. Chair Whipple replied that the first alternate would fill in for a missing committee member.

2. Denied-UNR Presidential Search (number of finalists) – (Cont'd.)

Regent Sisolak observed an alternate would be a voting member for one meeting, but not for another. He noted the alternates could participate in a deliberative process toward the final outcome and vote. Regent Sisolak asked whether they could accomplish the same thing if the committee brought forward two or three individuals and the full Board decided as a committee of the whole so that everyone felt they had an opportunity to participate in the decision making process. Chair Whipple acknowledged that the Board could do whatever it wanted to. It was one of many ideas proposed that day. Executive Vice Chancellor Klaich agreed. Regent Sisolak observed that certain individuals were frustrated because more than a majority/quorum of the Board was in some way a part of the committee. He felt that certain individuals felt they were not allowed to be part of the process and that changing at the final level with two-three candidates would allow the full Board as a committee of the whole to participate.

Regent Leavitt echoed Regent Sisolak's concerns. He personally favored creating a system that did not necessarily change the committee system, but did allow for two-three names to be brought forward for the full Board to consider as a committee of the whole.

Regent Leavitt moved approval that the search committee be charged with selecting the top three candidates and turn over a recommendation to a committee of the whole for a decision. Regent Sisolak seconded.

Regent Hill said the real issue was due to the Attorney General's and counsel's interpretation of what can be done in committee and what Regents can come and do if noticed appropriately. He said they were moving to exactly the same process they had engaged in on every search, with every committee meeting, the entire time he had been a Board member. He said they had always had the practice that any Regent could come to any committee meeting and ask questions and participate, but not vote with the committee. They would vote as a member of the full Board. He observed that everyone wanted to participate on this committee and encouraged meetings to be noticed to allow that. He did not support bringing forward a recommendation for two-three candidates to the full Board. He recommended the Advisory Committee vote, the Regents Committee vote, and the full Board vote upon the committee's recommendation.

Regent Schofield felt it provided another option to the Board, noting that this is a very important decision and the president would be the key to the institution's success. He felt it was important for Regents to have some input to the process. He felt it was a wise move and they should continue to keep the OML in tact and their meetings open.

Regent Derby said she did not support the motion and was not in favor of changing the process employed in the

past. She agreed with Regent Hill that the Board's practice had been to allow Regents to ask questions and participate, but not vote. The committee already has the ability to bring forward more than one candidate. She felt that people should participate from the very beginning because the process involved a lot. A lot of information comes forward that everyone should have in order to make that final decision. She understood the spirit of the motion was an attempt for inclusion, but felt that locking

2. Denied-UNR Presidential Search (number of finalists) – (Cont'd.)

the committee in to a specific number of finalists was a mistake. She felt the committee should have the flexibility to decide. Bringing the full Board in at the end of the process would not guarantee they would be involved from the beginning. She felt that Regents should be able to come and participate in the meetings, but not as voting members.

Regent Gallagher said she could not support the motion for the same reasons. She observed that they might not have three possibilities from which to choose. It is never known until it is over. It is a time consuming process.

Regent Anthony said that if the motion passed they would not need a committee and recommended hiring a search firm to pick the three names to be presented to the full Board. He observed that the motion forced the committee to recommend a specific number of candidates and that they might not want or have that many. He felt the Board should trust the committee to bring forward their best recommendation. He too did not support the motion.

Regent Sisolak said he had a real problem with this. He observed that the full Board does not vote on committee recommendations they just accept the report. He noted a policy that every Regent is entitled to all information. If a question is asked, every Regent is entitled to the response. He asked that every Regent be provided all information that relates to this search and all questions asked of the search firm. Regent Anthony said that was achievable.

Upon a role call vote the motion failed. Regents Derby, Gallagher, Hill, Wixom, Whipple, and Anthony voted no. Regents Dondero, Leavitt, Rosenberg, Schofield, and Sisolak voted yes. Regents Alden and Howard were absent.

3. Approved-Emeritus Status, Dr. John M. Lilley and Resolution #06-01 – The Board approved Chancellor James E. Rogers' recommendation that Dr. John M. Lilley be granted emeritus status. Board Policy, (*Title 4, Chapter 3, Section 26.1*), requires five years of service by a president to be eligible for emeritus status. Therefore, approval of this recommendation required suspension of the Board Policy in Title 4, Chapter 3, Section 26.1.

Regent Rosenberg moved approval of suspending Board policy. Regent Hill seconded. Motion carried. Regents Alden and Howard were absent.

Regent Hill moved approval of granting emeritus status to Dr. John M. Lilley (*Resolution #06-01 on file in the Board office*). Regent Leavitt seconded. Motion carried. Regents Alden and Howard were absent.

4. Public Comment – Dr. Jim Richardson, Nevada Faculty Alliance, stated that he and Executive Vice Chancellor Klaich attended a number of legislative meetings relative to the OML. He felt that some of the bills presented by the Attorney General and others would

4. Public Comment – (Cont'd.)

make the situation even more dysfunctional than it currently is. He observed that the Board had agreed to abide by the most restrictive interpretation of the OML that exists in the state, which he felt was problematic. He felt that public bodies need to be able to function. He felt the Board had tied their hands unnecessarily and suggested the Board revisit the agreement with the Attorney General to see if it requires modification to allow the Board to function more efficiently. He felt this would be more and more problematic in the future and encouraged the Board to assert their constitutional autonomy.

5. New Business – Regent Leavitt said he fully supports following Executive Vice Chancellor Klaich's advice

and erring on the side of caution. He asked Executive Vice Chancellor Klaich to identify exactly what non-voting members may or may not do in writing. He asked that the practice be employed with all of the Board's committees. Executive Vice Chancellor Klaich said that he would address each of the questions raised.

Regent Rosenberg said he appreciated what Executive Vice Chancellor Klaich was trying to do, adding that he would comply as much as possible. He asked about the consequences for entertaining comments from a non-committee member. Executive Vice Chancellor Klaich said he would report back with a response.

Regent Dondero clarified that there was no truth to the rumor that she was resigning from the Board.

The meeting adjourned at 11:00 a.m.

Fini S. Dobyms
Secretary to the Board