

# UCCSN Board of Regents' Meeting Minutes January 21-22, 1994

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Pages 54-71

BOARD OF REGENTS

UNIVERSITY AND COMMUNITY COLLEGE SYSTEM OF NEVADA

January 21, 1994

The Board of Regents met on January 21, 1994 in the Computing Center Video rooms on the University of Nevada, Reno Campus, and the University of Nevada, Las Vegas Campus.

Members present:

Reno : Dr. James Eardley, Chairman

Dr. Jill Derby

Mrs. Dorothy S. Gallagher

Mr. Daniel J. Klaich

Las Vegas : Mrs. Shelley Berkley

Mr. Joseph Foley

Mr. Madison Graves, II

Dr. Lonnie Hammargren

Mrs. Carolyn Sparks

Mrs. June Whitley

Alabama : Mrs. Nancy Price

(telephone)

Others present : Interim Chancellor John A. Richardson

President Anthony Calabro, WNCC

President John Gwaltney, TMCC

President James Taranik, DRI

General Counsel Donald Klasic

Interim Vice Chancellor Karen Steinberg

Secretary Mary Lou Moser

Chairman Eardley called the special meeting to order at 4:05 P.M.

Friday, January 21, 1994, for the purpose of discussing the Chancellor's search.

#### 1. Discussion on Chancellor's Search

Chairman Eardley stated that candidates for the Chancellor's position had been notified by registered mail that an Attorney General's ruling has decreed that all applicant names

must be made public at the beginning of the search rather than waiting until finalists had been selected, but if applicants were not aware the search must be open, they could be so notified. Letters were sent stating that applicants had until January 21, 1994, if they wished to withdraw from the search; otherwise, the files would be open to the public. He related the Committee had worked diligently and the Board was now at the point of deciding whether to continue or discontinue the search. He asked that all Board members express their thoughts on the subject and reminded them that the ultimate goal was to choose an outstanding leader for higher education for the State of Nevada.

Mr. Graves, Chairman of the Committee, read the following statement:

Mr. Chairman, it gives me great pleasure to be here today. Mr. Chairman, as you recall, some three months ago you appointed a five-member committee with myself as Chairman, with Regents Berkley, Derby, Sparks and Gallagher to conduct the search for a new Chancellor for the University and Community College System of Nevada. It was an honor to accept the role as Chairman for this most important task.

In my brief tenure as a member of the Board it is evident to me, the most important task before this Board in order to influence the direction that higher education takes in the State of Nevada, is our ability to select and appoint the Chancellor of the System and the individual Presidents of the member institutions. It is this charge that I take most seriously.

Upon the close of the search for applications our Committee received a total of 73 applicants and nominations. With the revelation upon being challenged by the "Las Vegas Sun" and subsequent opinion from the Attorney General's office that all applicants were to be made public, this Committee, to date, has received 20 letters of withdrawal. This equates to 27% of the original 73 applicants that said they would not consent to their names being released to the public unless they were being considered as finalists. This tells me, and I believe should tell this Board of Regents, that something is seriously wrong with the process. It is also common-sense reasoning that those declining to have their names released in the earliest stages of the search would have the most to lose, such

as job security, future promotions, etc.

This Committee has recently been charged with allegations that this search would be conducted in secret with no input from the public, when in fact it has always been the intent of the Committee and the Board to select at least five finalists for this position.

At that time the names would be released to the public, the remaining candidates would be invited to each and every Campus, to be introduced to and interviewed by the advisory committee on that Campus, comprised of Presidents, Faculty Senate Chairmen and Student Body Presidents. The recommendation of the advisory committee would be taken seriously by this Committee, whereupon at the conclusion this Committee would make a final recommendation to the full Board of Regents for their consideration. Having gone through this process I would have hoped against all hope that all members of the press and the public at large could see that this is an open and fair process and equitable to our constituents, the System, the institutions and, please, let's not forget, the applicants.

Nevada's law requires that all members of the Board are

elected and not appointed; therefore, if our constituents feel the Board is not representative of their beliefs, they have the ability to remove us from office. In other words, the public has input as to who their representatives are in selecting the finalists. Is it better that members of the Board, elected by the public, select the finalists, or is it better for the press to select them for us? I believe that this is the question before us today.

Having 27% of the applicants withdraw, tells me something is wrong. I believe that these applicants have the right to privacy without jeopardizing their current positions until they are at least the finalists in the process. I would like to stress that our Committee is in no way implying that the remaining 53 applicants are not qualified for this position, but we do imply that in all probability we have lost some very qualified candidates who in all likelihood would have been finalists. This Committee's mandate was to bring forth to you, the full Board of Regents, the best qualified candidates possible. Under the current circumstances our ability has been severely handicapped.

It is because of this belief that to properly guide the quality and direction of higher education in the State of Nevada that we, as Board and Committee members, must have the ability to seek and select the most qualified individuals for the respective positions. The law under which this Committee must now operate ties our hands behind our backs and makes it impossible to do the jobs that we were elected to do. I am being candid when I tell you that I feel that our Search Committee has been compromised, and I implore you as Board members to make a stand for what is in the best interests of our System.

Our Committee requested and was given a budget of \$45,000 to conduct this search. We have spent to date a total of \$6,345: \$5,500 in advertising in the "Chronicle of Higher Education", \$495 in postage, and \$350 in office supplies. This is a small price to pay to insure that we have the ability in the future to do the job that we have been elected to do. It is my opinion, and that's shared by a majority of the Search Committee, that we terminate this Chancellor's search. I believe we need pause to explore, to reevaluate the situation, before going forward. If we don't terminate

this search today, the 53 remaining applications become public this coming Monday morning, at which time I feel we would be forced to proceed.

Mr. Chairman, that concludes my report.

Mrs. Berkley stated this meeting to her was an irony in that she has been and continues to be in favor of open government and a great advocate of our Open Meeting Law. She continued that she was in an interesting position at this time, that this search has been compromised by making it open at this point in the deliberations. At the last meeting she stated the Board should thank the Attorney General for her opinion and put it in the drawer and proceed.

Mrs. Berkley continued that what the Board had at that time was a request from a reporter asking to have the names. At that meeting the Board had a choice of going forward with the search, which she had recommended, or, taking the advice of Mr. Klaich and going ahead, waiting three weeks, notifying all of the applicants that their names would be public, and giving them an opportunity to withdraw their names. If the search had continued without making the names public,



the press, if it wished, could have sued and the controversy could have been determined by the courts.

At that time, Mrs. Berkley stated she was told the Board's opinion that this search should not be subject to the Open Meeting Law at this early stage would be given better strength and validity if it had some evidence to back up the fact that this search might be compromised if it were opened. The results are now that 27% of the applicants have been lost, some of which are highly qualified and competent applicants. She felt that losing even one applicant who was qualified was a disaster because that might be the best applicant to lead this System forward into the next century.

She related that she was also told at that time that if there were a number of applicants to withdraw their names it would give further credence to the fact that this had an obstructive effect on the search and this could be made known to the Attorney General and perhaps the opinion would be reconsidered on the basis of this information.

Mrs. Berkley stated that Mr. Klaich, who at that time argued for waiting to see whether there would be withdrawals to the search, has written a lengthy letter to the Board stating that as long as there are any qualified applicants left, the

search should continue. She stated she agreed with Mr. Graves that the Board should obtain the most qualified candidate possible to lead the System, and if a number of good, qualified candidates are lost, then there is a problem.

She continued that the Board is elected, representing constituents, and there must be a trust factor in allowing the elected officials to review applications and make decisions on the first and second cuts until a number of finalists is determined to be presented to the Board for consideration.

She stated that she takes this job very seriously. She had asked the staff for information on searches from other states and related that one of the worst cases occurred at the University of Florida in a Presidential search.

In that instance, the names were made public and the media went on a frenzy and conducted the search instead of the Regents. Every single applicant's Universities or Colleges were contacted, Administrators were interviewed, Deans and faculty were interviewed, and whatever good, bad or ugly about the particular applicant came to light, it was published on the front page of the newspaper. And that was before the Regents ever had an opportunity to discuss and review any of the applicants. She stated that she could not say that the same thing would not happen in Nevada.

And that would abdicate her responsibility to do her job as a Regent if it should happen.

Mrs. Berkley stated that she was confused as to how to continue. She stated she felt it would be a serious conflict of interest to take the matter back to the Attorney General for reconsideration, since the Attorney General is now an applicant. (Note: the Attorney General herself made her candidacy public.) She stated that unless some very persuasive testimony is offered today, she would vote to abort the search, which she would do with a very heavy heart, but the alternatives were more distressing to her.

Mrs. Sparks stated that she has studied both sides of the question before the Board, she has read editorials and articles and clippings, and heard other opinions. She had re-read the duties and obligations of the members of the Board of Regents as elected officials, and has reviewed all the applications which had been received, and was disappointed when some withdrew, but felt that there are many fine candidates left, and those who are left have agreed to a public search. At this time she feels that it is in the best interests of the citizens of the State of Nevada and to the University and Community College System to move

ahead with the search with great dispatch, but with careful consideration, and to do the job of selecting the next Chancellor. In her opinion, the System cannot afford at this time to be without a permanent, strong, qualified leader at the head of the System. Any change in legislation in the future can be done under the leadership of this strong person, and who has been a part of this legislation. She stated she was not happy with the process the Board would have to take, but there are many fine people who are willing to become part of the process and she would support continuing the search.

Dr. Derby also read from a statement:

This is one of the most important issues that we've discussed in a long time, or will be discussing in some time to come. It has to do with the leadership in the future and it has to do with taking a step towards openness or a step away from openness.

I believe there might be a time to abort this search, but I believe it's not today. Excellent candidates remain and this Search Committee has not even met to discuss them. I also want to add that the Search

Committee has also not met to discuss aborting the search. I think it is premature to talk about aborting this search. If we can't achieve a consensus about a candidate after we have been through the candidates as a Search Committee to put out to the Board and to the rest of the higher education community, that's the time to abort the search, not when some highly qualified candidates remain in this search.

I want to describe my process to you. As a member of the Committee we received the folders of the applicants, and our staff, and we have been very well served by our staff, had divided them into three categories of qualified, not qualified and qualified, but questionable. I went through all of the applications and in all cases agreed with our staff recommendations. So, I went to the qualified stack and went through and did my own division as one member of this Committee into the categories of promising, not as promising, and most promising. And, out of that process I came out with lists from which I have deleted names that have called us, or notified us of their wish to be withdrawn from the search. And I have remaining a list of 19 who are in the promising and most promis-

ing classification. Now, that is just one member of the Search Committee and that is what I would be bringing to the Committee for our deliberations.

I would submit that when we still have highly qualified people and qualified candidates it is no time to abort a search. I think the argument that some of our highest quality candidates have withdrawn has some merit, but also has some weakness. I think that anybody that's been through a search knows what you see on paper can tell you very little. The initial cut has to be done, but when you have been through a search you know that it is not until you do the background checkup, you get the references, and that you ultimately meet people, that you really have sense of the quality of a candidate. And, in fact, some of the names that were suggested that were of our highest quality, and I know something of the System and know that the poor performance is what is causing them to leave. So, I would submit that you can assume that I could make, in fact, a pretty strong case that openness, rather than deterring all the good candidates, or most of the good candidates, might to the contrary flush out weak candidates. You know that if you have

a strong job performance where you are, no one wants you to leave. And, I would submit that we have a very good example of that here in UCCSN, rather recently, when there were rumors that a strong President was being courted elsewhere, and we did what we needed to do to keep him here. And, I think if you have strong performance, and are strong where you are, that it's not such a dissuasion to you to participate in an open search.

I think it could also be argued that you are more likely to get candidates committed to openness and committed to working in an open environment when you participate in an open search. There's good evidence suggesting that effective searches can be done in the open, and I would point most recently to the search that the Legislature did for the search for its Executive Director, which was done entirely in the open to the skepticism of some of the Legislators that participated in that. They had 200 applicants to that position, and in the end, when asked whether or not it had worked, Legislators who were at first skeptical said, "Yeah, an open search works." And, I would suggest to you that there is not that much difference between those who

apply to be Executive Director of a Legislature and

those who apply to be a Chancellor.

I want to say a little bit about interim leadership

because I think it has some drawbacks. I think it

puts this System on hold and in limbo at a time where

we can ill afford it. We are very fortunate to have

an extremely well qualified Interim Chancellor tempo-

rarily at our helm, but interim is interim. And par-

ticularly one who intends to remain on the Chancellor's

staff, and thus one who cannot take risks and make the

kinds of significant changes that are needed in this

System. You cannot expect a person in an interim pos-

ition to make those kinds of significant changes that

are needed. So, I think we are talking about delaying

significant change that is long overdue in this System

for about three years. And let's not kid ourselves

about the length of time we're talking, because if the

goal of this would be to try to get the Legislature

to make an exemption for the Regents, we know that

decision couldn't come about until late next Spring,

probably to be effective the following October, which

means that if we were to start a search then we're

talking about June, 1996 when somebody could come on



board and start getting in swing with UCCSN. So, let's not kid ourselves that we are talking about a short interim period here. We're talking about a long interim period.

And what about other searches that are on the horizon?

What do we do about those? And what do we do about

Academic Affairs which is seriously understaffed? We

are overworking our staff in Academic Affairs, and we

have a terrific staff and they are doing everything

they can, but they are understaffed for what they have

to do. I would remind you that nearly a year ago at

our workshop that we asked that two of our Strategic

Directions, which are the priority of this Board, be

given particular attention, and that has not been able

to be addressed, and little progress has been made

simply because there isn't time with everything else

that has to be done.

I think we have to look at what we are doing here and

what we are really debating here has to do with comply-

ing with the Open Meeting Law, and whether or not, be-

cause we can't do it the way we always have done it,

we will refuse to do it at all. Nevermind that it puts

our System on hold for three years, and nevermind that it's the law. That's what we are debating. The Open Meeting Law is there for a reason, and the track record of this System in relation to that Open Meeting Law is not so good. The last thing this Board needs to improve its public image in this State is one more instance of being above the law and aborting an important and viable search rather than comply with that Open Meeting Law.

When we have many good candidates remaining the case cannot be made that it has destroyed this search. I would agree that we have lost some candidates, and probably some good candidates, but it has not destroyed our search and we remain with many qualified and promising candidates. And the Search Committee has not even met to consider the qualified candidates whose applications we have. It's a disservice to them and to our need to move forward to attempt to avoid compliance with the law by prematurely aborting this search. We may just have to adjust and learn to conduct all our business, including our searches, in the open. If that's the law, let's comply. There is a very strong reform impulse in this nation about open-

ness in government, about accountability for elected officials. Let's not be dragged kicking and screaming into that reform. Let's welcome it and move forward.

You know this has been a difficult issue for me this week as well, because it seems to pit two very important values that I hold, and I believe the Board holds, very dearly. On the one hand is our responsibility to provide good leadership for this System, as Regent Graves said, one of our primary roles. On the other hand is our obligation as elected public officials to conduct our business, which is the public's business, in the open. We are not a private company. We must work in the open. Some may opine that we cannot perform the one value of securing good leadership without violating the other value of working in the open. And, I would say that's not true. And I would suggest to you that my list of promising and most promising candidates is what proves that case that we can do it in the open without compromising our responsibility toward securing good leadership. At least that case has not been made yet. There may be a time when we would decide to abort this search, but I would submit that time is now now. And if the Legislature can conduct its search for an

Executive Director in the open, I'd submit to you so  
can the Board of Regents.

I have one final thought I would like to share. This  
search got distracted around the candidacy of one  
Nevada applicant whose candidacy has been debated in  
the press but never by the Search Committee. I would  
like to remind this group that anybody can apply for  
the position of Chancellor and it is up to the Search  
Committee, comprised entirely in my view, of competent,  
capable, caring and conscientious people to weigh the  
competency and quality of all the applicants that come  
before us, and then recommend a small pool of the best  
in our judgement for the consideration of the higher  
education community. Suggestions that anyone's mind  
has been prematurely made up without the discussion  
and deliberation of the Committee, have offended me  
deeply. Any candidate who applied competes with every  
other on the basis of his merits, his character, his  
experience, his vision, his ability. That process has  
not had a chance to happen yet, and it should. That  
process can take place if we decide to move ahead with  
this search with the qualified candidates that remain  
for Chancellor. There may be a time to abort, but it

isn't today. It is only after the Committee has met and considered the qualified candidates that remain in a thorough way, and then decides that there is no one who meets our needs to head our System. If we can't find such a person, then let's abort our search. Not today merely because we do not like what the law says that we must do. I urge all my colleagues to vote to continue this search and comply with the Open Meeting Law.

Mrs. Gallagher stated that this probably is one of the most difficult meetings this Board has had to face. She stated she felt the people on the Search Committee, although they disagree, are very conscientious in what they have said and what they believe. She continued that she has a concern with the search, not because of the people involved, but because of the process, and when the Board is faced with probably a number of searches very shortly, she felt the process should be re-thought. Mrs. Gallagher stated she was not above the law, and she did not intend to say that she did not think the Board should not follow the Open Meeting Law; however, she felt there have been other groups that have been given this kind of break. She would like to have the matter researched in the hope that a process could

be formed which would be fair, which would encourage high quality candidates and that good candidates would not be shut out because of the process. She stated she would support stopping the search now with the idea that the Board would very diligently research the process and obtain a process which would be fair to those willing to stay in the process, but also be fair to those nominated or who applied with the understanding that the search was confidential.

She stated she is certain those who have spoken believe in their stands, but urged the Board to think about the precedence it was setting for the future.

Mr. Graves clarified that the reason the Search Committee has been unable to meet is that because another part of the Open Meeting Law stated that applicants had to be given a 21 working day notice before they could be discussed in closed session. That notice was given and the first possible meeting that could happen was February 3, 1994.

Mrs. Berkley, in response to Dr. Derby's statements, stated that her position was that she had disagreed with the Attorney General's decision from the start, she did not interpret the Open Meeting Law as did the Attorney General.

She stated that the Attorney General's opinion has not been

determined by a court of law, it is only an opinion, and the Board would be complying with an opinion from one who has an invested interest in the outcome. Therefore, she felt the opinion is doubly suspect.

Mrs. Sparks asked General Counsel Klasic whether the search could be stopped at any time should it be found the process was impeding the decision to make a good selection? General Counsel Klasic responded by first clarifying that this discussion is not about the Open Meeting Law, but the Board is dealing with the Open Records Law, which is an entirely different statute with entirely different procedures and requirements. With respect to the question asked, General Counsel Klasic stated that a search could be closed at any time short of making an offer to a candidate.

Mrs. Berkley stated that General Counsel Klasic had stated that it would be important to be able to go back to the Attorney General armed with evidence that if a large number of applicants dropped out the search had been impeded. General Counsel Klasic stated that no one has asked for alternatives of what could be done as yet, but this is the reason for this meeting: to determine the next steps once these vital facts had been achieved.

Chairman Eardley agreed with General Counsel Klasic, then asked that the other Regents comment.

Mr. Klaich stated that three weeks ago, the Board was discussing the search and all he had said then was basically it was premature to stop the search and why was it being considered? Three weeks later there is some additional evidence, but meantime not only is there additional evidence but everyone is running around spouting opinions and chatting with each other about what to do with the search, and some sort of consensus seemingly formed that this search will be stopped. It occurred to him that he felt this search would be steam-rolled and the search stopped, therefore, he set forth in some detail his opinion on the matter. He said he had not changed his opinion at all.

Mr. Klaich stated he felt Dr. Derby's comments left little for him to discuss. He had set forth his comments in a letter which he has asked be a permanent part of the record for this meeting (filed with the permanent minutes). He stated that the law is the law and he wanted to focus only on something that had not yet been expressed, and that is the priorities of this Board. If the priorities of the



Board are to haggle with where it is with respect to the law, how to comply, how to challenge or change the law, how to conduct the searches, then the Board should vote on the matter and make it a priority. However, if the priority of the Board is to get back an appropriate share of funding for higher education in the State of Nevada, to get some long overdue raises for the employees, to get some relief for the students who are jammed into classrooms, to try to avoid caps on education, and to do the real job they were elected to do, then work should begin on those priorities, and conduct a search with the many qualified candidates identified by Dr. Derby. He stated that Dr. Derby makes the strongest point possible that there may be a time to abort the search, but it is not now and it is not today.

Mr. Klaich stated that the phrase "abort the search" is an empty phrase because it has no promise of what happens afterwards; no one has given a hint of what to do next, and the reason for that is obvious, no one can tell the Board what to do that makes any sense: challenge it in court and hold the Board up to ridicule? or go to the Legislature and subordinate the Board's key priorities while getting the Open Meeting Law changed? There is no answer, abort and then what? He urged the Board to comply with the law, take

a step forward, and comply with openness in government.

The law is clear.

Mrs. Whitley stated that having chaired both a Chancellor and a Presidential search she realized the importance of having the applicant's names remain confidential. She stated there had been a lot of rhetoric, but felt that when the search was down to the finalists, they should be publicized. The leaders of the System community and community leaders would be able to interview these finalists, it was time enough for them to help the Board select the person to lead the System or one of the Campuses. Continuing, she stated that speaking of John Richardson being an Interim Chancellor, that is only a descriptive word, a title. She stated that Dr. Richardson had acted with full authority from the Board, and is carrying on business as usual and is doing the job very well, and is doing the job of Chancellor. The title is irrelevant. She continued that in her opinion the search should be aborted until a decision is reached to have the applicant files confidential until the process gets to the finalists, at which time they should be made public.

Mr. Foley congratulated the Committee members for their

work, rationale and serious thought on the matter. He offered an alternative suggestion. He felt that those who had withdrawn were perhaps conditional, but that some of the Committee had stated there were a large number of educators who had applied for the position, and he would like to make them public because they would be willing to come to Nevada and join the Board's mission to higher education. However, he felt that to do so would be a breach of confidentiality for the candidates of this and any future search to be conducted and may inhibit the response of candidates. He suggested that the Board could wait the 3 or so years, get legislation and obtain an opinion of the court. He urged the Board to file a friendly suit now and not wait for a change in legislation. Mr. Foley stated he was not defiant of the law, but wanted to make the law work. He added that he did not see how the Attorney General could ignore the recent Arizona decision, 1991, which is so similar to the Nevada situation, but adopt an earlier -- 1981 or 1982 -- Alaskan case which is foreign to the Nevada case in that it was a city position.

Mrs. Berkley stated she agreed with Mr. Foley's views of these two cases, that the Alaska case is foreign to Nevada's case, and the Arizona is the same as ours where confidenti-

ality can be observed up to the finalists.

Mr. Foley recommended that the Board proceed with the search and notify the candidates who had withdrawn that the Board would not keep their names confidential but would continue the search with their names included. Mrs. Berkley stated this was the same thing she had asked of the Board three weeks ago, but now 27% of the candidates have been lost. She questioned whether a second letter to the candidates might not be confusing. Mr. Foley stated that he felt it would be impossible to put officer searches on hold for three years or more. Therefore, he felt that since there are no criminal sanctions for the Open Records Law, the only thing that could happen would be a challenge in the courts which would give the Board an opportunity they might not have for another four years.

Mrs. Price stated the Board was discussing 27% and she would prefer to look at the 73%, and referred to the Attorney General's opinion and looking at what was a "significant number". Therefore, she would recommend talking about 73% remaining in the pool. Secondly, the idea of going to the Legislature asking for an exception for the Board, in her opinion, is impossible, because of legislative intent since

they had made their own search public. Thirdly, she felt that while there were a number of important matters the Board might challenge in court, this would not be one of them. She reminded the Board that General Counsel Klasic at the last meeting had stated that the trend in the country was not toward closed, but rather toward openness in government. Mrs. Price stated that in her opinion the quality candidate would appreciate that process. Finally, she felt that the Board's greatest challenge is the reputation of the System and the institutions. She related that even though the Committee expenditures are just over \$6000, each of the applicants left has spent time, energy and emotions in thinking about a change in their lives. She felt that if the search is aborted, then have changes made later on, the reputation of the search in the future would be jeopardized. Mrs. Price continued that having an Interim Chancellor is business as usual, and major changes needed in the System would not be done until a new Chancellor is chosen, and a number of changes need to be made now. For her, she stated that anyone pulling their name from the search was not for open government and the System they were going to work in and therefore it should be dealt with now.

Mrs. Whitley responded that John Richardson did not neglect

his duty in evaluating his employees, rather he said that he had only been Chancellor for a short period of time -- six months -- and had combined his evaluation along with former Chancellor Dawson's.

Dr. Hammargren stated he believes in open meetings and open records laws, and he doesn't believe in challenging the law just because each individual might believe himself to be smarter in interpreting it. He related that he felt John Richardson is doing a great job as Chancellor -- and, in fact, he might consider staying if he got used to it while the Board is in the process of debating the issue, with Mrs. Berkley stating she hoped he could last through this debate. Dr. Hammargren stated that he does not like the term "abort", the inflammatory nature and the emotional nature of a lot of the discussions so far, and that the appropriate word is "terminate". He continued that he felt more "pushed" and lobbied on this issue than any other in the five years as a Board member. He did not agree with the comment that the Board has an opportunity for a "delightful" lawsuit; that the Board is too litigious, whether the suits were begun by someone else, and he has heard more discussion of law suits as a member of this Board than at any other time in his dealings. Finally, he stated he would

like to go with the majority of the Committee who has looked at the matter, and that the Board should wait, that there may be alternatives for the Search Committee to explore and could preserve the confidential integrity until the final list is determined.

The Chairman called on General Counsel Klasic to review alternatives this Board may have at this time. General Counsel Klasic stated he had been requested by the Chairman and Chancellor to explore alternatives to the Board for discussion purposes, resulting in five alternatives with Mr. Foley and Dr. Hammargren adding a sixth and seventh.

1. Continue the current search with the remaining members of the applicant pool, which would require release of the names of the individuals in the pool in accordance with the Attorney General's recommended opinion, and in the fact that these people have in essence given their permission for their names to be released. In terms of potential liability that is the least liable problem.
2. Discontinue the search, basically institute the search anew with the theory that because of the evidence de-

veloped as to the harm that the search in the initial stages presents, that the names not be released in the initial stages but that the names on the final lists will always be made public, and just see what happens.

Several things might happen, one is the search might be completed without difficulty, although that is probably unrealistic. A more realistic possibility is the Board probably would be sued.

3. Discontinue the search, start over anew, make the determination that the names would not be released and file a preemptive strike, mainly a declaratory relief action naming perhaps some news media outlet as potential defendants.

4. Discontinue the search, go back to the Attorney General with the evidence collected, request a change of opinion, and act accordingly. If the opinion is changed, the Board would act accordingly, or if the opinion is not changed, the Board could follow that. This could still lead to litigation again by some news media outlet.

5. Discontinue the search, put everything on hold, go to



the Legislature for a law change, and depending on that outcome act accordingly. If the Legislature does not change the law, the Board would probably have to follow the Attorney General's opinion. There probably would be a good deal of pressure from the news media at the Legislature should a change in the law be requested.

6. Regent Foley's suggested alternative to stick with the search, take the position of not releasing the names, invite those who have withdrawn their names to continue in the search, and proceed accordingly.

7. Regent Hammargren indicated the potential of discontinuing the search, starting over again, but using a different method -- a headhunter, a special committee, or a Chancellor to do the initial searches, then bring a finalist list to the Board. That has been done in other states; however, General Counsel Klasic stated he would have to do further research because the success of that procedure might actually depend upon the specific language of the Open Record Law in question.

Dr. Hammargren expanded on his suggestion, asking what

would happen if the search was terminated, asking for an Attorney General's opinion on using a "headhunter" approach so that there would be a totally independent agency screening applicants and protecting their confidentiality, and allow a month or so for the opinion. Mrs. Berkley stated that the problem is that one of the applicants is the Attorney General, and her opinion could not be altered at this time without the appearance of impropriety. Dr. Hammargren stated that if there was a conflict that an independent legal analysis could be done in a short period of time.

Mrs. Gallagher stated that some of Dr. Hammargren's suggestions could be used in changing the process, and felt the Board should have a chance to define its process.

Mrs. Price asked whether the Board has a legal responsibility to the applicants having put them through the process to this point? General Counsel stated he did not think so, that the only responsibility at this point is to those who have withdrawn their applications and those should be honored to keep their applications private.

Dr. Derby stated she felt 73% was impressive because she

expected 1/2 to 2/3 of the candidates would withdraw.

She stated she was concerned with the discussion of ways of circumventing the Open Records Law. She added that with some of the suggestions the Regents would lose their opportunity to be very involved in the search, and wondered whether the Board was willing to trade off that involvement with the 27%. She suggested that another search, open at the beginning, would still draw plenty of good applicants. She explained that she had been involved in one other search and a lot goes on in the stage when looking at the larger pool of candidates, a narrowing process is done which has a great deal of involvement. She felt that a Regents' committee is the appropriate place for this process to be done, even though the Board may set parameters and guidelines for someone else to follow. She urged careful thought on this matter.

Chairman Eardley stated that a search can be terminated at any time, and a number have been terminated just before a finalist is named, and candidates will withdraw at any time during a search for any number of reasons. She stated he felt the process has been compromised for this search.

Mrs. Price stated that in Presidential search discussions at Community College meetings she has attended where the

reputation of a school is hampered when there is an "inside" candidate, yet the search process is carried through to the end and good applicants have their names in the hopper. She stated that the Board should have known all the problems they are now facing, they are the Board's problem and not the applicants' problem, and she feels the Board has an obligation to go through the process at this point, based on the law and because there is still an applicant pool and some of these people may not apply in another year or so.

Mrs. Sparks asked for clarification of options 1 and 2, with General Counsel Klasic stating they are essentially the same, with the difference being of who would institute the law suit, either the Board waits to be sued or institutes the suit itself.

Chairman Eardley asked for public comment. There was none.

Mr. Graves stated that he wanted it known that he certainly has every intention of always complying with the law; however, he had a motion for the Board.

Mr. Graves moved to discontinue the search, to direct Legal

Counsel to research and explore the legalities of conducting executive searches through head hunters or Chancellor's staff to narrow the field to 5-7 finalists for presentation to the Committee or the Board, and that the Board ask the Legislature for an exemption from the law in making only the finalists names open. Dr. Hammargren seconded.

Dr. Hammargren commented that he felt the law contains a faulty process. Mrs. Sparks stated that by this motion the Board is assuming there is a faulty process in that it has not had an opportunity to yet work, and cautioned that the vote will be taken based on assumptions with no facts on which to base a "faulty process" assumption.

Upon roll call vote, the motion carried.

Aye: Regents Berkley, Gallagher, Graves, Hammargren,  
Whitley, Eardley

No : Regents Derby, Foley, Klaich, Price, Sparks

The meeting adjourned at 5:40 P.M.

Mary Lou Moser

Secretary of the Board

01-21-1994