

UCCSN Board of Regents' Meeting Minutes December 26-27, 1991

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BOARD OF REGENTS

UNIVERSITY AND COMMUNITY COLLEGE SYSTEM OF NEVADA

December 26, 1991

The Board of Regents met on the above date in the System

Administration building, 1621 E. Flamingo Road, Suite 15-A,

Las Vegas and the System Administration building, 2601 Enter-

prise Road, Reno, in a special teleconference meeting.

Members present:

Las Vegas : Mrs. Carolyn M. Sparks, Chairman

Mrs. Shelley Berkley

Mr. Joseph M. Foley

Dr. Lonnie Hammargren

Mrs. June F. Whitley

Reno : Dr. James Eardley

Mrs. Dorothy S. Gallagher

Mr. Daniel J. Klaich

Gardnerville : Dr. Jill Derby

Others present : Chancellor Mark H Dawson, Reno

President Anthony Calabro, WNCC, Reno

President Joseph Crowley, UNR, Reno

President Robert Maxson, UNLV, Las Vegas

Vice President John Irsfeld, UNLV, Las Vegas

Mr. Donald Klasic, General Counsel, Las Vegas

Mr. Bradley Booke, Assistant General Counsel,

Las Vegas

Mr. Ron Sparks, Vice Chancellor, Reno

Mrs. Karen Steinberg, Acting Vice Chancellor,

Reno

Ms. Mary Lou Moser, Secretary, Reno

Chairman Carolyn Sparks called the meeting to order at 10:00 A.M.

She stated that the U. S. District Court has ordered the NCAA to

name the System as a party in the case of NCAA vs. Miller, et al

by no later than December 24, 1991. The court also ordered that

the System would have 10 days after service of the NCAA's notice

to the System that it was a party in the law suit to decide whether the System wished to be in the case as either a plaintiff or a defendant. She stated the purpose of this meeting was to discuss that order and determine how the System should proceed.

General Counsel Klasic stated this was an unusual meeting in that a lawyer/client conference normally is done in private, but because of the Nevada Open Meeting Law, the discussion is to take place in open session. Mr. Klasic acknowledged the presence of other counsel representing parties in the litigation which was also unusual, and that they may wish to lobby the Board during the meeting.

Mr. Klasic related that the 1991 Nevada State Legislature had enacted Chapter 55, Statutes of Nevada 1991, which compels the NCAA to enter into due process procedures before it can impose sanctions upon institutions or require institutions to impose sanctions upon employees. On or about November 12, 1991, the NCAA filed a law suit challenging the validity of that law.

They made four claims:

- 1) That Chapter 55 constituted a burden on interstate commerce by attempting to control the activities of a national organization through a Nevada statute.

- 2) A violation of the First Amendment, interfering with the NCAA's members to clearly associate under their own rules.

- 3) A violation of the Fourteenth Amendment by forcing the NCAA to be subjected to liability under a vague and over broad statute.

- 4) A violation of the U. S. Constitution prohibition, the impairment of contract, in this case the obligations of the NCAA membership to abide by their own rules and regulations.

Particularly, they are claiming that the NCAA membership have agreed to uniformly apply the rules to everyone and if this law is upheld, and the laws of other states are also upheld, in point of fact this would deny a level playing field to the NCAA membership because there would be in essence, anywhere from 1 to 50 different sets of rules.

(Dr. Hammargren entered the meeting.)

Mr. Klasic continued that at the present that there is due process legislation in Illinois, Nebraska, Florida, as well as here in Nevada. California, Kansas and Minnesota are all considering such legislation and the procedures are a little different in each such case. The NCAA is seeking a declaration that Chapter 55 is invalid, or an injunction against the defendants preventing them from enforcing or using this law.

Mr. Klasic stated there are a number of defendants, one of which was Governor Miller, because of the Eleventh Amendment to the Constitution which provides that a state or state agency may not be sued in Federal Court either at law or in equity. There is a case from the U. S. Supreme Court which indicates that State Officials can be sued in their official capacity for prospective injunction relief, and that is why Governor Miller has been named in this particular case. In addition, Mr. Klasic stated they had also named former, or past, employees of UNLV: Jerry Tarkanian, Tim Grgurich, Ron Ganulin and Shelley Fisher. Mr. Ganulin is no longer with UNLV.

Mr. Klasic continued that a motion for preliminary injunction was filed by the NCAA and hearing was set for December 19, 1991. Either at or prior to that meeting the Attorney General moved to have Governor Miller removed from the law suit. An employee of

UNLV, Mr. Mike Alsup, moved to intervene into the lawsuit. And at least one person, either in a motion or in a brief, brought up whether UNLV was an indispensable party. At the hearing, the judge asked a number of questions and the NCAA attorney answered that the NCAA does not act directly against individual employees of the College or University involved with the NCAA. Instead, it makes the demand or request for the institution to so act. On that basis the judge concluded that UNR and UNLV were indispensable parties under Rule 19 of the Federal Rules of Civil Procedure.

Continuing, Mr. Klasic related that the judge then took a number of actions which are found in the minutes of the court which were filed on December 20, 1991. The judge granted Mr. Alsup's motion to intervene; he did not decide whether the Governor should be removed, but will set a briefing schedule and decide that later.

The judge then stated:

"The court finds that all regulations of the NCAA, which applied to members are directed towards the respective institutions and pursuant to Rule 19, Federal Rules of Civil Procedure, that the University of Nevada is an indispensable party to this litigation. It is ordered that the University of Nevada (Board of Regents) be joined as a party

defendant, that defendant shall be served with a copy of this order and the original complaint within five days of this date. The University of Nevada (Board of Regents) has ten days thereafter in which to indicate to the plaintiff whether they wish to be joined as a party plaintiff or party defendant. The plaintiff is then granted a leave of court to file and serve an amended complaint properly naming this party."

Mr. Klasic stated the court stated it found no immediate harm in order to issue an injunctive relief, and indicated the matter could be raised at the hearing on the merits, set up a briefing or discovery schedule, and finally ordered that the matter would be set for a hearing on the merits for trial Friday, February 28, 1992 before the court in Las Vegas, Nevada.

Mr. Klasic stated that on December 24, 1991 he was served with Notice of Order Requiring Joinder of Necessary Parties, sent by the attorneys for the NCAA. The ten days begin that day and a decision must be made by January 3, 1992.

Mr. Foley stated he would propose a motion for the Board to abide by the court's order, to leave their true identity in this case without necessarily enmeshing the Board in every side issue that

may be between plaintiffs and defendants at this time.

Mr. Foley moved that the Regents enter their appearance in this action as intervenors, and that they do so within the time allotted; and to request an extension of time until about January 10, 1992 to file any motions or pleading. Mr. Klaich seconded.

Mr. Foley stated that the intervention is covered by the Federal Rules of Civil Procedure 24. He read a portion of the rule he felt was pertinent:

Rule 24, part c, "...when the constitutionality of a act of Congress affecting the public interest is drawn in question in any action in which the United States or an officer or agency or employee thereof is not a party, the court shall notify the Attorney General of the United States as provided in Title 28 USC, Section 2403. When the constitutionality of any statute of the state affecting the public interest is drawn in question in any action in which the state or agency, officer or employee thereof, is not a party, the court shall notify the Attorney General of the State of Nevada as provided in 28 USC, Section 2403. A party challenging the constitutionality of legislation should follow the attention of the court to its conse-

quential duty, but failure to do so is not a waiver of the constitutional right otherwise timely asserted."

Mr. Foley stated this fits the Board's position in that last Summer the NCAA promulgated a set of substantive and procedural due process rules. These rules are to be addressed by the NCAA at their meeting in early January, which is the reason Mr. Foley asked for an extension of time. If adopted, Mr. Foley suggested the rules could then be compared with Nevada rules and see what, if any, differences there are. He stated he felt this motion would give the Board the greatest latitude possible at this time.

Dr. Derby asked what would happen after the intervenor status and what the position of the Board would be at that time? Mr. Foley stated the Regents would be individually named along with the System, so they would be the clients and have counsel. Counsel will advise the Board on the process, if the court approves them to be an intervenor, and the Board would have an opportunity to review the brief before it was filed.

Dr. Derby asked whether the Board would have the option to participate. Mr. Foley stated that is why he has asked to be an intervenor because the court has ordered us into the case. Dr. Derby stated she felt it was important to defend the Nevada Gov-

error and Legislature, she felt the NCAA was late in developing due process procedures; and felt the Board should not enter the case on the side of the NCAA at this time.

Mr. Boone stated that the reform package presently before the NCAA will be presented at the convention of the NCAA's membership in January, not to be voted on as an entire package, but is for comments by all of the membership. The package itself will be adopted or not as follows: All of the procedural aspects of the package can be adopted by the Infractions Committee on its own and is the bulk of the package. The substantive changes in the package must be adopted by a vote of the membership and will likely not occur in January, but at some later time, possibly at a special convention or at a later convention of the membership.

Mr. Klasic stated that as many as 8 of the 11 recommendations can be made without a vote of the membership. He related that an NCAA counsel stated that after the NCAA convention had an opportunity to discuss the recommendations, they plan to meet with the Infractions Committee to determine which could be implemented as soon as possible.

Mr. Klasic stated that the Board had several options available to them: 1) file a motion to dismiss on the basis UCCSN is not

truly an indispensable party, 2) Mr. Foley's motion to enter as an intervenor, and 3) file a motion or an extension of time in which to determine which side to enter the case until after NCAA does meet and find out whether the Board is comfortable with that decision. Mr. Foley stated he wished the Board to file now as an intervenor before a brief or plea is filed. In answer to a question from Dr. Derby, Mr. Klasic added that the judge has already made a decision that the UCCSN is already a party defendant, and if no decision is made today, UCCSN will automatically be so considered.

Mrs. Berkley stated that after speaking with Mr. Foley, she did not feel Rule 24 was applicable, that the Board had been ordered by the judge to be either a plaintiff or defendant. She stated she had taken an oath of office to uphold the laws of the State of Nevada, and the Legislature has passed a law and whether the Board agrees with the law, it is the law of the State. Mrs. Berkley stated she felt the Board should enter as a defendant. She added that the NCAA could change their rules at any time. Therefore, she would vote against the motion.

In answer to a question from Mr. Klaich, Mr. Booke stated that Mr. Mike Alsup is an Academic Advisor to the Men's Basketball program. He was informed that the current parties defendant to

this law suit are Mr. Alsup, Governor Miller (and the Attorney General has filed a motion to have him dismissed), Mr. Jerry Tarkanian, Mr. Tim Grgurich, Mr. Ron Ganulin and Ms. Shelley Fischer. Mr. Klaich asked that if the basis of the suit is to declare the State statute unconstitutional, why are the individuals involved? Mr. Boone stated there is not a specific allegation of unconstitutionality as applied, but it was his understanding that the reasoning behind naming of the individual defendants is that those individuals made specific demands that the Nevada due process statute be followed to the exclusion of the NCAA enforcement procedures in the pending UNLV infractions case. Mr. Alsup, not named in the suit, has served to intervene on the same basis.

Mr. Klaich stated he understood Judge Mc Kibben's point that the NCAA requests that member institutions "punish" individuals rather than imposing any sanctions themselves. However, he wondered whether this lawsuit concerned any particular incident or was about an unconstitutional statute? Mr. Boone stated the prayer for relief in the complaint is a declaration of the unconstitutionality of the statute, but to make clear the the mechanism by which the NCAA operates against individuals; if the Infraction Committee finds an individual employee to have committed NCAA violations, then it orders the institution to impose

a penalty against the individual. If the penalty is not imposed, then the Infractions Committee reserves to right to penalize the institution further. He related that was, in fact, the basis upon which this year's Men's Basketball Team is not permitted to participate in post-season competition or to appear on television. The penalty was ordered imposed against the institution in 1977; the penalty was to suspend Coach Tarkanian for two years, but because of legal proceedings the institution was unable to impose that penalty. As a consequence, last October (1990), the Infractions Committee went back and imposed an additional penalty against the institution as a substitute for failing to impose the penalt against Coach Tarkanian.

Mr. Klaich asked who was paying for the attorneys for all these defendants? Mr. Klasic stated that under NRS Chapter 41, UCCSN is obligated to give a defense to any employee who is sued as a result of activities arising out of his official duties. In this case, these particular employees are claiming that they are defending themselves as a result of duties they took as basketball coaches, etc., and they are now suffering from the NCAA's official inquiry, and the NCAA has now gone one step forward and is suing them for standing up for their due process rights under the Nevada Statute. Normally, UCCSN would provide a defense with its own attorneys, but the law does provide that

in the event there is any possibility of a conflict, we can hire an outside attorney or attorneys to handle the matter for them and to pay their bill.

Mr. Klasic stated that in this particular instance, two of the defendants have made what appears to be a timely request for defense. By law, the individual has 15 days in which to make a request. Mr. Ganulin was within the time, and Mr. Grgurich made a request although his expiration time occurred during a holiday so he has a good argument for having been timely. Mr. Tarkanian and Ms. Fischer did not make their requests within the allotted time. UCCSN is not obligated to provide defense for Mr. Alsup as he has entered the suit as an intervenor. Nonetheless, Mr. Klasic stated that because UCCSN will have to provide a defense for Mr. Ganulin and Mr. Grgurich, and in order to show goodwill and good faith in this matter, UCCSN is prepared to offer a defense to the others as well. He reminded the Board that UCCSN is encountering a very major budget problem -- perhaps a 12% cut in funds, or a \$23 million cut for FY 92 and a \$24 million cut for FY 93. In the official inquiry, there is a separate matter in which an obligation has been made to pay these attorneys, and UNLV has paid out about \$450,000 to defend these particular individuals. In that regard, Mr. Klasic stated he was offended by some comments made by some of the attorneys in

this matter about how the University is not defending these people.

Mr. Klaich asked whether we would be prepared to use UCCSN attorneys. Mr. Klasic stated UCCSN would hire one attorney to represent all the employees in the suit. He related that it would be the most economical and fair method of proceeding, and that the interests of all the parties are exactly the same; is the law constitutional or not? He added that he had received some resistance, and did not know whether they would be willing to do that or not; however, he felt UCCSN is obligated to provide a defense in the case of Mr. Ganulin and Mr. Grgurich, and they are prepared to offer a defense with respect to the other individuals, but with one attorney representing them all.

Mr. Klaich then asked why the individual members of the Board of Regents are parties to this action. Mr. Klasic stated it had to do with the Eleventh Amendment. The State of Nevada, or a state agency, cannot be named a party defendant in a Federal action, either in law or in equity. The U. S. Supreme Court has ruled that, in point of fact, if it is only applicable to injunctive relief and not to money damages, an appropriate applicable State Official must be named as the party.

Mrs. Berkley stated that, notwithstanding the budget crunch, nowhere in the law suit does it refer to whether funds are available. Mr. Klasic stated that UCCSN could not provide the defense because there may be a conflict down the road between UCCSN and these four individuals. He added that he could find no conflict between the individuals themselves, and he stated that under normal circumstances only one attorney from his office would have represented them anyway. However, not being able to do that because of a possible conflict later on, UCCSN would provide one attorney and pay the fees for that one attorney, rather than five.

Mr. Klaich stated he had serious reservations about whether the court order is correct or incorrect; however, his opinion is irrelevant. He added that it appears that the judgment is incorrect in saying UCCSN is indispensable parties because it is a declaratory relief action, and, it does not involve any specific request to issue any sanctions against any specific party and therefore he has a serious question as to why UNR and UNLV are indispensable parties. These Universities are not requested to take any specific action and therefore, he stated he believed, it was in error, which is irrelevant. He stated the concept of due process is extremely important to all as a fundamental part of the legal system that should be carefully

protected. He stated he did not necessarily agree with Regent Berkley that because he took an oath as a Regent, that he has a "blind" obligation to defend any statute enacted by the Legislature because, obviously, one of the elements of the independent judiciary is that statutes may be constitutional or unconstitutional. He stated he felt regardless of the manner in which the Board entered this proceeding that one of the positions the Board would have to analyze and be prepared to argue is the fact that this particular statute may be unconstitutional for the reasons presented by Mr. Klasic with respect to the NCAA, or it may be an unconstitutional invasion of the administrative prerogatives of the Board of Regents.

Mr. Klaich stated that he would not want to waive, in any way, that possible argument. He stated that Regent Foley has proposed a reasonable method for the Board to become a reasonable party to the action. Once the Board is subjected to the jurisdiction of the court, the judge may order whatever he wants. Dr. Derby questioned what was meant by the judge being able to order whatever he wanted. Mr. Klaich explained that once you enter an appearance in a lawsuit, the court has jurisdiction over you, basically for all purposes. You have one opportunity in your first appearance before the court to make whatever objections to the jurisdiction that you might want to make, but once you enter

an appearance, you are there for all purposes. And therefore the first appearance is very important.

Mr. Klasic stated that Regent Klaich had made a very important point: not to tie the hands of your attorneys here in terms of possible actions and defenses. He stated there are about four options for the Board:

- 1) Enter on the side of the plaintiff.
- 2) Enter on the side of the defendant.
- 3) File a motion to get out of the case on the basis of not being an indispensable party.
- 4) Enter in the manner of Regent Foley's suggestion, as intervenor.

Mr. Klaich questioned that the Board was already a party in the case. Mr. Klasic stated that the judge had ordered the Board in as a defendant by reason of being served with the minutes of the court order, served a copy of the amended complaint, and should get a decision within 10 days as to whether the Board would be a defendant or plaintiff, at which time another amended

complaint will be filed naming the Board one or the other, and he presumed that if no decision is made by the Board, it would receive an amended complaint naming them as a party defendant.

Mr. Klaich stated he understands this, but is really offended by it, that his whole concept of the legal system is that if someone has a "beef" about someone, they file a complaint, go off to a judge and find out who is right and who is wrong. He added that he felt the judge has distorted the typical process, and that although he understands the indispensable parties, that someone has to sue someone else, then the judge, if he feels the Board is an indispensable party, could tell the NCAA to sue us, at which time the Board would be a defendant and could do whatever they decide to do. Again, he stated he felt that Regent Foley's suggestion is the most flexible. He explained that joining as either a plaintiff or defendant is fraught with political unknowns; that if the Board joins as a plaintiff it is immediately aligned with the NCAA and whatever action it decides to take, and if joined as a defendant the Board is immediately aligned with the other interests, and he did not think the Board should be put in that position. He stated he felt the Board should be put in the position of getting into the case, seeing what it is about, retaining all alternatives and react accordingly without being branded as being with one or the other by mere fact of

whether it is a plaintiff or defendant.

Mrs. Gallagher stated that she was in support of Regent Foley's motion, that it would buy time to give the Board a chance to see what other facts might come forth. Regent Foley stated that due process is generic, no matter whose process, and he felt the Board and its members is in support of that due process. He added this had been the basis for his decision and he urged the Board not to become embroiled in the controversy of either side, but to embroil itself on the side of due process. Mrs. Whitley stated she agreed. She asked Mr. Booke whether the Board would abide by NCAA due process rules, or whose? Mr. Book stated that is the question of the lawsuit, and that the System is in between, in following the laws of the State of Nevada and the Board policy which states it will follow all NCAA rules. He added that the Board may find it has to amend its policy.

Mrs. Berkley asked Mr. Klasic his legal opinion of the Board being an intervenor. However, she stated that the Board must be aligned with the Governor and Legislature, that the NCAA does not pay the bills or buy buildings for the institutions, but the Legislature does.

Dr. Eardley stated that as a non-lawyer Regent he must depend

upon the Board's Legal Counsel for advice. He related that he was not called upon as a Regent when the law was developed; that someone took advantage of the process and was able to have the bill passed in the Legislature. He related that he understood two things: 1) that the Board policy states it will abide by the NCAA rules, which may have to be changed; and 2) that the NCAA's purpose is to keep an honest collegiate program going, and he would not want to go out against them when they are trying to put some sense throughout the country on the type of sports, their legality and how the programs are conducted at the institutions. He stated he would be willing to intervene and buy some time, but basically he wanted his Legal Counsel to give advice.

Mr. Klasic stated that his recommendation is based solely on legal considerations, not taking political or public relations or any other factors into consideration, and that it is his duty to make such recommendations based on only the legal considerations.

He recommended the Board enter the suit on the side of the NCAA because it would do the least damage to the Board legally. He related that if the Board is on the defendant's side and this law is upheld, the system could be hurt very badly by the NCAA, even up to and including expulsion from that organization. He continued that even if this law is struck down, and the System

is on the defendant's side, the NCAA would clearly look upon it with hostility and suspicion, and may even go against the System on pending matters with the NCAA. He stated that if the Board is on the plaintiff's side and the law is upheld, there would be no liability from these defendants, and reminded the Board that in July 1992 the NCAA would still be around, but Mr. Tarkanian will have resigned and Mr. Grgurich has indicated he will be leaving. Mr. Ganulin has already resigned. In addition, he added that if the Board is on the side of the plaintiff and the law is upheld, there is the possibility of attorneys' fees, but normally, defendants are not very successful in obtaining attorney's fees in civil rights cases. He again stated the least harmful action, in point of view of legal liabilities, is to enter the case on the side of the plaintiff. However, he stated that he would cheerfully act as the Board directs in this particular matter.

Mr. Booke added that there are pending matters with the NCAA which could potentially be adversely affected by the position the Board takes. He related that the most significant matter is the pending problem involving the Women's Track and Field program at UNLV. The situation is that they have not met minimum participation requirements and face possible penalties of some of the other programs, not just this one, which could amount to all of

the programs being taken out for 1992-93. The violation is already noted and found and UNLV is now on appeal before the NCAA Council, which will be heard on January 5, 1992. Mr. Klaich questioned whether which side the Board takes could have an effect on the pending matters before the NCAA. Mr. Boone replied that it could, and that possibility should not be ignored. Mrs. Berkley questioned whether that was the kind of organization with which to be aligned, that it was ludicrous to her that the NCAA would destroy a whole athletic program at UNLV. She stated that she happened to be at the State Legislature when the law was voted upon and the Legislators were very angry they were being threatened by this outside arbitrary, capricious bully. Mr. Boone related that as Legal Advisor in responding to Mr. Klaich's question, that if you do x and it is contrary to someone else, they respond, and that it is simply a reality that needs to be addressed.

President Joseph Crowley stated that as indicated by Mr. Boone the matter of the Women's Track Team is before the NCAA Council, and elected body of the NCAA membership, and that he is a member of the Council. He stated that he did not believe the Council has acted, or would act "arbitrarily and capriciously", or in a bully-like fashion, that, in fact, the rule is very clear and could have been applied by the Council in its October meeting,

and instead it found a way to allow UNLV to pursue a waiver of the rule before the Council at its January meeting. He stated the behavior was far from arbitrary and capricious in manner, and something they did not have to do because the rule is clear, but it took that action because it wished to make available to the institution to seek that waiver.

Nevada State Assemblyman Bob Price stated that he had attended a National Conference for State Legislators in August, 1991, and one of the panel sessions was on collegiate athletics. Panel members were an attorney and acting Director of NCAA and a University President who was on the NCAA Executive Board. Mr. Price related there was a great deal of interest in the session from Legislators whose states have similar legislation to that of Nevada, and a number whose states are contemplating such legislation. He stated a number of the Legislators were quite upset with the arrogant attitude of the panel members who held the position that states do not have the constitutional or legal right to have any regulation over the NCAA. Mr. Price pointed out to them that many businesses, such as banking, transportation, etc., doing business nationwide currently deal with many different state regulations. He added that in the State of Kansas, where the NCAA is headquartered, NCAA petitioned to not pay property tax on the basis of being an educational organiza-

tion. Mr. Price pointed out that policy is overwritten by law, law is overwritten by the constitution of the State, and Federal law overrides the State laws, and that he believes the State has the right to establish laws which will affect organizations such as the NCAA. He urged the Board to strongly consider upholding the State laws. He added that if the NCAA continues along the same lines as in the past, he felt the organization would not be allowed to exist much longer.

President Maxson stated he appreciated President Crowley's remarks, and added that UNLV would be judged by 22 members of its peers and felt they would be treated fairly. He added that the Council had leaned over backwards to help UNLV through the matter and felt it would be resolved and would not be a major issue. The President stated he felt it would be a mistake to be a plaintiff in the case, and related that due process must be upheld. However, he said, that they are frustrated, that they need to be spending time on academics. He agreed that Regent Foley's suggestion was the best avenue at this time so that both parties can work together to find a solution to the matter.

Regent Derby stated that with the important decisions facing the Board, the matter needed to be solved quickly, however, she felt that taking this "non-position" will "drag out" the case, which

will dominate the Board's time.

Mr. Foley stated he felt that was a misunderstanding, that the Board is taking a position in support of due process, and that after reading the NCAA proposed rules he feels they will closely follow the Nevada law.

Regent Hammargren stated he felt the Board should follow State law, and should enter the suit as a defendant.

Mr. Alan Burkhalter, attorney for Mr. Jerry Tarkanian, stated he had spent 120 hours studying the State law, and felt that it is constitutional. He related he did not think this suit was a matter of choosing between academics and athletics, but was in supporting fundamental fairness and allowing persecution of Nevada citizens. He reminded the Board that the NCAA had visited the State of Nevada before, and two lower courts had found the NCAA had violated their rules. He stated that two years ago Congress had directed the NCAA Infractions Committee to "clean up its act" but felt the NCAA had not done so. He urged the Board to enter the suit on the side of fairness, which is, in his opinion, as a defendant.

President Crowley spoke in support of Mr. Foley's motion, and

recapped the discussion thus far:

There is a lot we don't know, and can't know for a while.

There have been well-spoken comments on supporting the Legislature and the Governor.

There is also the question of whether the Governor will be excused from this case.

There is the policy of the Board requiring that the institutions abide by the NCAA rules.

The institutions incorporate that policy into contracts for coaches.

There hasn't been much discussion about what the State's law, if any, would be on the way that the two institutions do business.

It is not known what the future of due process in NCAA will be. Counsel has provided an analysis which suggests that the current due process proposed rules are in keeping with the constitutional requirements for administrative due proc-

ess, which will be intensely discussed at the NCAA convention in January and by the Council, as well.

On the question of the continued membership of the two institutions in the NCAA, it is a voluntary organization, established and continuing to exist principally, to regulate intercollegiate athletics. It is an association that is devoted, virtually by unanimous support of its membership, to the concept of a level playing field. It believes there must be a level playing field in regulation and enforcement, since that is primarily why it is in business. That is why it has brought suit in the State of Nevada because if it cannot enforce the same set of requirements across the 50 states, then it has two choices: 1) it can go out of business, or 2) the institutions in states where special protection is required by State law can be removed from the Association.

President Crowley stated that there are some considerable stakes involved and he felt the motion buys some time to review the complex questions facing the System.

After a reading of the motion stated above, and a clarification by Mr. Klasic, which was agreed upon by Mr. Foley and Mr. Klaich,

the motion now reads:

Mr. Foley moved that the Board enters an appearance in this action as intervenors within the time allotted. Mr. Klaich accepted the clarification.

Dr. Hammargren moved to amend the motion that if the Board is not judged as intervenors, that it be judged as a defendant.

Mrs. Berkley seconded.

Upon roll call vote the amendment failed:

Aye: Berkley, Derby, Hammargren, Whitley

Nay: Eardley, Foley, Gallagher, Klaich, Sparks

The original motion carried upon roll call vote:

Aye: Eardley, Foley, Gallagher, Klaich, Whitley, Sparks

Nay: Berkley, Derby, Hammargren

Regent Foley suggested that Board members submit their thoughts to Legal Counsel, that he draw up a position paper for review by the Board. In answer to a question from Regent Derby, Mr. Klasic stated the usual procedure is for the attorney to prepare

a statement and present it to the client. The answer must be forwarded to the court by January 3, 1992. In this matter the Board has until January 24, 1992 to file any other motions it may care to.

Regent Klaich suggested that the Chairman, Chancellor and Counsel police the law suit. The Chairman may wish to appoint other Regents to this group; however, he stated he would not be available. He added that special meetings of the Board to discuss all the "twists and turns" of the lawsuit is an enormous waste of time and is not beneficial. There are a great many other matters for the Board to address, such as a serious budget shortfall in the State.

Chairman Sparks stated the matter is now turned over to Legal Counsel to continue handling the case.

The meeting adjourned to 12:00 noon.

Mary Lou Moser

Secretary to the Board

12-26-1991