

**MINUTES OF THE MEETING OF  
THE REGENTS OF THE UNIVERSITY OF NEW MEXICO**

**May 28, 2008**

**Board of Regents Executive Session Luncheon  
12:00 noon - 1:00 p.m.  
Cherry Silver Room**

**Board of Regents Meeting 1:00 p.m. – 4:00 p.m.  
Student Union Ballroom C**

**Board of Regents Executive Session  
Immediately following the meeting  
Student Union Ballroom C**

**ATTENDANCE:**

Regents present:

James H. Koch  
Jack Fortner, Vice President  
John “Mel” Eaves  
Dahlia Dorman, Student Regent  
Raymond Sanchez  
Don Chalmers

Regents unable to attend:

Carolyn Abeita, Secretary-Treasurer

President present:

David J. Schmidly

Vice Presidents present:

David Harris, Executive Vice President, CFO, COO  
Paul Roth, Executive Vice President, Health Sciences Center  
Viola Florez, Interim Provost and Executive Vice President of Academic Affairs  
Terry Babbit, Vice President, Enrollment Management  
Steve Beffort, Vice President, Institutional Support Services  
Michael Kingan, Vice President of Advancement  
John Stropp, President UNM Foundation  
Helen Gonzales, Vice President of Human Resources  
Ava Lovell, Vice President and Comptroller  
Eliseo Torres, Vice President, Student Affairs  
Stephen McKernan, Vice President, Hospital Operations  
Paul Krebs, Vice President of Athletics

Vice Presidents unable to attend:

Jack McIver, Vice President, Research & Economic Development  
Rita Martinez-Purson, Interim Vice President, Institutional Diversity

University Counsel present:

Sandy Liggett for Patrick V. Apodaca

Regents' Advisors present:

Jacqueline Hood, Faculty Senate  
Loyola Chastain, President, Staff Council  
Ashley Fate, President, ASUNM  
Susan Deese-Roberts, President, UNM Retiree Association  
Lillian Montoya-Rael, President, Alumni Association  
Maria Probasco, President, Parent Association

Regents' Advisors unable to attend:

Thelma Domenici, President, UNM Foundation  
Joseph Garcia, President, GPSA

Others in attendance:

Jill Derby, AGB Facilitator  
Ron Segel, Regents' Attorney, Sutin, Thayer & Browne, P.C.  
Marty Esquibel, NM FOG Attorney  
Matthew Hoyt, *Albuquerque Journal* Attorney  
Leonard DeLayo, Executive Director FOG  
Members of the administration, faculty, staff, the media and others.

Regent Koch presided over the meeting and called the meeting to order at 1:00 p.m.

### **CONFIRMATION OF QUORUM and ADOPTION OF AGENDA, Regent Koch**

**Motion approved** unanimously to adopt today's agenda (1<sup>st</sup> Eaves, 2<sup>nd</sup> Fortner).

### **APPROVAL OF SUMMARIZED MINUTES OF APRIL 30, 2008 UNM BOARD OF REGENTS MEETING**

**Motion approved** unanimously to approve the Summarized Minutes of the April 30, 2008 UNM Board of Regents meeting (1<sup>st</sup> Fortner, 2<sup>nd</sup> Sanchez).

### **PRESIDENT'S EVALUATION COMMENTS**

**Regent Koch** This morning we did the evaluation of President Schmidly and copies of the evaluation will be available for anyone that would like to have it. We asked Jill

Derby to be our facilitator and perhaps you could present your background, etc. so that everyone will know who you are and know why we asked you to be our facilitator.

**Jill Derby, AGB Facilitator** Thank you President Koch, it has been a pleasure to be here. It has been somewhat over year that I have been participating in your process here at the University of New Mexico and I must say it has been a pleasure getting to know you all and your wonderful university as your president began his first year.

I work with the Association of Governing Boards and as some of you may know, that is the national association for regents and trustees across the country. One of the services that the Association of Governing Boards provides is to provide governance consultants to various universities around the country as they work on their own processes. One of the main kinds of consulting that we do has to do with presidential transition, with universities where a president is coming in and helping set up a process that works very effectively. I just want to say that our first workshop with the Board was last August when we worked the Board in the set of goals they had established for the new president. I just want to say that because I have worked all over the country with many universities and many boards that the process that the Board of Regents at the University of New Mexico set up under the leadership of Jamie Koch has been exemplary. It has been one that I have shared with a number of university boards across the country because it's a systematic approach to hiring a president, to set out and lay out a set of goals and expectations for the president and then to evaluate that president within a year on the basis of his performance in meeting those goals that have been laid out by the board of regents. So it really began with a presidential search process and the kind of leadership profile that the Board of Regents established for the University of New Mexico.

Then through the interview process the response that the president had as he was being interviewed, they put together a set of goals that was a basis for a workshop last August. The President had a chance to look over, to respond to, to make suggested timelines around and then coming back to the process this May doing essentially a performance evaluation where the President had the opportunity to report on the progress towards the goals and the accomplishments. What has been passed out to you is 1) the key dashboard indicators of progress towards those goals. One of the things I would applaud in the process is the transparency of it, the opportunity for those goals to be laid out for the entire university community and all its constituencies to see the goals and the progress that is being made and to have the President evaluated on that. One of the things we try to do as governance consultants is share best practices around the country for boards in terms of their leadership and I have to say this is a best practice. This process that has been in place that the Board of Regents instituted is a best practice that I like to share around the country. I think it is that good and that fair. One of the things you probably all know is that the tenure of presidents across the country is somewhere between four and five years. It can be very short lived because it is a very, very tough job at a time where American higher education institutions are really struggling with a great many factors. So it is particularly helpful for a president to have a set of expectations that are clearly laid out because too often presidents come in not clear about what is expected and it can create trouble down the road. So I just want to applaud the Board for its process.

One of the things we tend to expect of our presidents is a God on a good day so its really helpful that the Board laid out a very clear set of goals and expectations that the President has been able to respond to and you'll be able to look at the dashboard indicators and the chart that you have been able to see about the progress that has been made on those goals. I think you'll find that is very, very impressive.

So I just want to say thank you for giving me this opportunity. One of the primary responsibilities of any board of regents is hiring a president and evaluating this president and this board has done an exemplary job in the process that it has undertaken under the leadership of President Koch and the Board of Regents. I applaud the progress that has been made, the process that has been put in a place and it has been an honor and a privilege to be part of that. Thank you President Koch.

**Regent Koch** Thank you Jill for coming, I know you have got to catch a plane and we appreciate your coming and helping us this morning. Last year we did publish all of these goals and listed them out of what we would be expecting our president to do in his first year. That evaluation is available for everyone. It lays out all of the goals, it has a timeline and where we are on each one of those to complete that. We also today came up with setting out what our goals will be for next year. Those will be made public when they are all put together in August at which time, again, we will lay out what we are requesting the President to do in this next year and what we are going to be looking at to measure where he is in regards to completing his presidency. For those who may not remember, when we hired the President, all the five presidential candidates - - when we had the personal interview with each one of them in executive session it was all recorded by Carolyn Thompson. After the president was selected, all of that was made public record, anybody wants to look at that we can give you a copy of that. You will notice that what the regents did in that executive session is when they went to the university community and met with the faculty, the staff, the students, the graduates, the alumni - - to lay out what we were looking for in a president, we put those all into a form that when we had him come for his interview he wasn't aware of what those questions were going to be but we informed each one of those candidates that they would be recorded, recorded what he told us that he would do in executive session, and that started out the presidential search before he went to see all of the people that he saw at the university. That's how we developed those and so what we've done there to keep track of what we said when we originally started the recruiting of the president, what you all had asked for in the recruiting of the president, what people wanted, we wanted to make sure we captured that and then we came up with the number of goals. We had checklists for it so you can see how he has proceeded over all the many things all the way down the line. Again, in his contract, when we wrote the contract with Dr. Schmidly, it is very clear in his contract in May of each year he is to present to us a recap of all of the things that he has done in regards to the obligations and what we have requested as regents and the university community. So every year as long as Dr. Schmidly is here it is - - and you will also notice there is no bonus provisions or anything else like that, none whatsoever, in that. I would encourage you to get copies of that so you can see how we have scored him in regards to the Foundation, students, faculty, staff, all of that to where it is so that it is an open process for everybody to see how we're judging his activity and that everybody has

had an opportunity to see it. So I would hope that you all would get copies of those. If there are not enough copies, which it looks to me there is not enough now, you can go to the - - [Ellen, there are many copies on the back table.] So get those copies, look at it, and then in August again we will set out the same thing and do the same procedure.

Again Jill, thanks for coming, we appreciate it. You didn't tell us that you were Chairman of the Board in Nevada for how many years?

**Jill Derby** Three years as the Chair of the Board, 18 years on the Board.

**Regent Koch** So when we wanted somebody who would be a third party who has been involved in universities and could give us an independent judgment - - we appreciate you coming very much and hope that we will see here by November that you might be the new congressman from Nevada, is that correct?

**Jill Derby** Thank you.

**Motion approved** unanimously to accept the evaluation of President Schmidly, (1<sup>st</sup> Chalmers, 2<sup>nd</sup> Eaves).

## **ADMINISTRATIVE REPORTS**

### **President's Report, David J. Schmidly**

- Comments on his first year at the University of New Mexico. Thank you to everyone. We have had a productive year and have achieved many of the things we set out to do when we began.
- UNM graduation, awarded 2,500 degrees.
- The University received a \$100,000 donation from the Chase Foundation in Artesia to support our Poison Center; and \$50,000 to support student enrollment
- Restructuring of UNM Foundation, introduced newly appointed president, John Stropp; remarks by Mr. Stropp.

## **PROPOSED POLICY REVISIONS (Inspection of Public Records)**

**Regent Koch** First of all, anybody that signed up for public comment is - - under public comment that stuff that is not on the Board of Regents' meeting - - if you're here for the next agenda item you will address us while we are discussing the next agenda item. The rules of the Board of Regents are is that public comment is intended for somebody who wants to comment on stuff that is not on the agenda, is not there on the agenda, they sure have a right to sign up to do so. But I am sure that the majority of the people that signed up are here for the next agenda item so we would want those comments on this particular agenda item which is the Inspection of Public Records. So if you signed this document and it is not for that, fine, when we get towards the end of the meeting and you did not

speak here and there was some other reason for it, you need to raise your hand and say that you had signed this public comment to comment on something else other than the agenda items.

So the way the Board has worked since I have been President of the Board, is that any time a person, advisor, group - -any one of the advisors have a question they can participate. I did send out that the advisors will not be making their advisory reports. Normally the advisors make a report of what they have been doing since the last Board of Regents, that will not be the case today. But all advisors are seated in their chairs and all advisors will participate as they normally do in the regular portion of the committee.

Before we go I wanted to explain a couple of things and then introduce you to some individuals here. First of all, a number of months ago, everybody seems to think this is something we just dreamed up to look at our open records and respond. A number of months ago there was an individual at the University named Marc Saavedra and we had some anonymous emails sent to the *Journal* in regards to Marc Saavedra and one of the things the *Journal* did was submit to the University an special request for copies of his contract stating they wanted copies of the contract so they can review it. Of course the University at that time said no, we're not going to give you copies of the contract, that we feel that's private and not to be available to the public. So as we are wrestling with that issue that was determined that Mr. Saavedra said, "I've had enough of this," and he went and picked up his own files, took them down and sat down Ken Walz of the *Journal* and said, "Here is my application, you can take a look at my application, you see what the application is." Therefore the suit did not go forward in regards to the application.

A number of years ago, a number of years ago, the Regents were choosing a new President. When they were choosing the new President they did not operate under the Open Records Act and at that time the *Journal* took the University to court and it went all the way to the Supreme Court and we lost that decision and it also had to do with applications and procedures. The legislature then at that time - - President Larry Willard who was the President of the Board of Regents went to Governor Johnson and asked Governor Johnson if he would please introduce legislation in the legislature to clearly outline the selection of a president for any of the higher educations what it would be. The legislature said very clearly that of the top five candidates, when you have the five top candidates chosen, all of the information, their application, everything would be public record and that was the case.

Then we had another incident happen right after that was solved, we had again a request that they wanted to see the files of our Audit Committee in regards to the Anderson School of Business in regards to the audit and in regards to the thirty-nine (39) day rule. The University at that time, the Regents decided that we would hire our own attorney who is a specialist in - - Ron Segel, stand up Ron, we hired Ron Segel and we asked Ron to respond that request from the *Journal* in regards to providing that as an open document. At that time what we did, we met - - myself, Ron, President Schmidly and the attorney, Peifer, for the *Journal*, we met and we asked them if they would please give us time to research that out before they take us to court. At that time Regent Eaves had

suggested that as we were looking at the issue in regard to the audits there is a question, is it open or not open, are the work papers open or not. At that time at Regent Eaves' request we asked our attorney, Ron Segel, to contact the attorney to one of the individuals who was involved in that to talk to them about what the problem could be here if the University refused to hand out that document, that we were looking very carefully that there would be a suit back to the University. Obviously that person that might have been part of that suit would have been involved in that but it was felt by the Regents that we weren't going to leave any person out dry there so we asked our attorney to visit with their attorney and determine what way we were going to handle this. How did they want to do this? What is the best way to do that? And what ended up happening was it an agreement that we would release those records to the *Journal*. At that time, however, again the University felt - - Regent Eaves and myself felt it was important that that person have an opportunity to review those records to see what those records were. The thing that we told the *Journal* was that time, which has been a number of months, is that we would resolve this problem.

The legislature introduced a law in regards to open records. Myself and Raymond Sanchez were in the legislature when that was done so the legislature introduced legislation on what the open records standards would be and what they would be. What we said to the *Journal* was that first of all, what we were going to do here at the University is that we are going to hire attorneys to go through every item there is and to determine that if we make sure that everything at the University is conformed with the laws in regards to open records, no more, no less. Knowing that this is a big issue to do so, so we asked Ron Segel and we've got here Esquibel which is with the Foundation of Open Records, we have the attorney representing the *Journal* and what we did is let's sit down the three of us and let's sit down and discuss the language that is in there that is in our Regent's manual and the faculty - - whatever it is, let's just do some research on it and determine what has to be done to make sure that we as the University are conforming with the law that was passed by the legislature, no other than the law that was passed by the legislature, that that is what we do.

We made a commitment that we would do this in May, that we would do this in May, to have this done. Also on April 30<sup>th</sup> at the last Regents' meeting on April 30<sup>th</sup> we passed out for everybody to have, a copy of what we were requesting to do and I said at that time that on the 28<sup>th</sup> of May we would discuss that. Then what we did further, about a week passed and I wanted to make sure that everybody definitely got a copy of what we were requesting so we had underlined copies, I instructed Ellen, our staff, to make sure that it was sent to the University Secretary so that everybody would have an idea of what the underlined - - what are we talking about changing. So I want to make it perfectly clear, as we go through this process is that all we are saying is we want to make sure, we're not the legislature, we want to make sure that we are conformed with the law in regards to open records.

Now the way we're going to handle this, I'm going to ask Ron Segel to give us a presentation and then I am going to ask Marty Esquibel, the Foundation of Open Governance and then we'll ask Matt to give their opinion. Then, then what we'll do after

that is if a regent wants to make a comment, that's fine, but then what we will do is we'll sit here and you can just - - we expect to have input from you, is come up, ask your question, ask whatever your question is, have a panel of our three attorneys here to answer any question that comes up that somebody wants to bring up at that time and we'll sit here and we'll try to answer those questions. It is very interesting, every time you get involved in doing something like this is, myself and Raymond understand this, I am the one that sponsored the Open Meeting Act in the legislature, I was also a sponsor of the Open Records Act and I understand, I understand how things get out of proportion on what we're really doing like are we going to give out your Social Security card, no. Are we going - - there are hundreds of exceptions and when I talked with Ron Segel, I guess it was last week or I guess it was on Monday, I asked Ron, I said Ron - - it'll take about 100 pages to list all the exceptions that are not covered by what we are doing. So I can clearly understand what everybody is here about. What I would that we would do is we want to listen to your comments, we want to listen to what it is. We are going to answer as many of those questions as we possibly can today and then we'll move on the direction of what the direction will be once the Regents have finished with that, then we'll move in that direction.

So, again, Ron if you would please outline what you did and how you went about it and then Marty after that is done, with the Foundation is what you have been doing to follow that and the Foundation of Open Government, the reason I went to them is that they are the - - they sort of watch us and police that we are doing what is right like on the Open Meetings. For example I made a mistake about two or three years ago, we had an executive session at which time I brought up the New Mexico Bowl. We shouldn't have brought up the New Mexico Bowl because that was in executive session and immediately the open records people got after it and I was wrong, I apologized for that. So what we did is we go the Foundation of Open Government, have them look at what we're doing, we asked them very clearly, don't stretch anything. We asked the *Journal* to do that, so this has been going on for about three or four months so the information we have here now, if you would, Ron, explain what you did, how you went about it and we'll go the others and any other questions in regards to - - I think Leonard DeLayo is here, is Leonard here still? Leonard if you would to make a report you're Executive Director, do that. Then we'll go to you all or those people that have some concerns about what is in here and we will sit here and we'll answer those questions and then we'll move from there, so Ron.

**Ron Segel** Thank you Mr. President. Members of the Board and President Schmidly, what we were asked to do several months ago, as President Koch indicated, was to take a look at university, written university policies and procedures and take a look at bringing them into compliance or perhaps more clearly into compliance if they were not, with the New Mexico Inspection of Public Records Act.

So we ended up looking at three different sets of policies to try and identify any of them that implicated the subject of open records and public disclosure of records under the Inspection of Public Records Act. What we ended up looking at were policies in the Board of Regents Policy Manual, the Universities Business Policies and Procedures

Manual and in fact one additional policy that appears in the Faculty Handbook. The objective was really pretty simple, the execution is a little more difficult but the objective was simple, which was to make certain that University policies that deal with this subject follow New Mexico law. Which means, that the things that the New Mexico law says are public records and are open for public inspection would indeed be open for public inspection and it also means that things that New Mexico law says are exempt from the right of public inspection would remain exempt and upon the making of a request by a citizen for inspection of certain records, the University would still have the right to determine whether the particular records fall into the category of public records and whether they are exempt so that all of them or portions of them if they were exempt could still be withheld or redacted if that's what the statute provided.

The Inspection of Public Records Act very broadly defines what constitutes public records and then it makes the general statement in effect that public records are open for public inspection. The statute identifies 12 different categories of exceptions to the right of public inspection and the 12<sup>th</sup> category is the catch all category, it says "as otherwise provided by law" and that's the 100 pages comes from.

The New Mexico Attorney General has for a number of years published and updated a document called The Inspection of Public Records Act, a Compliance Guide for New Mexico public officials and citizens. This is on the Attorney General's website and the current version was last updated by Attorney General King in January of 2004. In the Compliance Guide is a list, which they say is not necessarily exhaustive, of what kinds of things fall within the catch all exemptions of "as otherwise provided by law." In the Compliance Guide are listed about 50 different laws and regulations, state laws, federal laws, rules of evidence promulgated by the New Mexico Supreme Court that specify that certain kinds of information is confidential, is not to be disclosed, is privileged and that sort of thing. So if you take the 11 enumerated exemptions in the Inspection of Public Records Act, several of which include multiple things within them, and these 50 or so exemptions that are listed in the Attorney General's Compliance Guide under the heading of "as otherwise provided by law" you end up with a pretty complicated list of the kinds of things that are not subject to public inspection but the New Mexico Courts have made it clear that those are indeed the exceptions and that the rule is openness and the rule is that public records of public bodies are open to public inspection.

If I can add just very briefly to that, my impression is that the feedback that the Regents have gotten over the last month or so about these proposed revised policies sort of clusters in two or three or four areas and I'd like to mention those just very briefly. One of those concerns has to do with preliminary drafts of documents that are not yet final. That subject came up explicitly in connection with the internal audit of the Anderson Business School. There is nothing in our New Mexico Statute that addresses that subject. The Foundation for Open Government takes the position that because there is no specific exemption for drafts that drafts are indeed open to public inspection and that if drafts were not open to public inspection then public bodies could play games, in effect, to prevent documents from ever becoming final and from becoming subject to inspection. Different states treat this subject differently because basically every state has an open

records act or a freedom of information act, or whatever they call it. A number of those state statutes specifically address the subject of preliminary drafts. Our statute does not and so the approach that we have taken in these revised policies is that drafts are subject to public inspection until and unless the legislature declares otherwise by further amending the statute.

Another concern that has been raised is what about the privacy rights of individual faculty members with respect to their research notes, with respect to their preliminary data that they have gathered in their research with respect to unpublished manuscripts or not yet published manuscripts and whether those would be open to public inspection. The answer to that question is those probably would not be open to public inspection because one of the exceptions in the Inspection of Public Records Act covers trade secrets and there is certainly some authority, some legal authority, that says those kinds of matters that are preliminary matters that give the institution a competitive advantage would constitute trade secrets and would not necessarily be open to public inspection.

Another concern that has been raised has to do with identities of job candidates because as the proposed revisions have been written, identities of candidates, and this is excluding candidate for President of the University because that position is covered in a separate statute, that identities of those candidates would be open for public inspection regardless of whether the information about those candidates is in the possession of the University or in the possession of some independent contractor working on behalf of the University because the statute defines public records as the records held or maintained by the public body or by anyone else on behalf of the public body. That's a concern that has been voiced a number of times and that is again perhaps an issue for the legislature to address but until the legislature choose to address that issue, there is nothing in the Inspection of Public Records Act that would exempt that kind of information from public disclosure.

And then I think the last category of concerns that has been raised by a number of individuals has to do with personal information of University employees or other people connected with the University, things like Social Security numbers, financial data, that sort of things. Social Security numbers are specifically identified in the Attorney General's Compliance Guide as essentially exempt from public disclosure as a matter of federal law so they fall within that category of "as otherwise provided by law." Other kinds of personal information becomes a little less clear. For example, one person said, "Well, what the University needs to do is to protect personal information so as to protect individuals from stalking and from spamming." Now those very well may be legitimate concerns but those are not concerns that the legislature has addressed in the Inspection of Public Records Act and so unless a specific statute or regulation, either federal or state, exists that protects a particular kind of personal information, again, the general rule is that the information is public and is open to disclosure. One of the things that makes this difficult in a way and puts the University on the hot seat is a penalty provision that is found in the Inspection of Public Records Act because that penalty provision is very broad and very comprehensive and fairly stern. The enforcement provision says that if a person makes a request to inspect public records and the request is denied, the person can bring a lawsuit in court and as the court to require the public body to make those records

available for inspection and then the penalty provision says the court “shall award damages and costs and reasonable attorneys fees to any person whose written request ahs been denied and is successful in a court action to enforce the provisions of the Inspection of Public Records Act. So the precarious position that the University or any public body is in, is that there is no exception in here for decisions made in good faith and there are a lot of gray areas and sometimes the public body has to make an educated guess as to whether a particular request should be honored or not honored or partially honored and if the public body happens to guess wrong in the judgment of a court, and an action is filed in court to enforce the requestors rights, then this mandatory penalty provision comes into play that says the court shall award damages and costs and attorneys fees to the person whose request was denied by the public body and then is later upheld in court.

Is there anything else that you would like me to address Mr. President?

**Regent Koch** That’s fine.

**Ron Segel** Thank you.

**Regent Koch** Matt?

**Matthew Hoyt** Mr. President, would mind if Mr. Esquibel went before me?

**Regent Koch** Okay, yea. I said Matt, I didn’t mean Matt, excuse me. Marty knew who I meant.

**Marty Esquibel** Mr. President, Members of the Board - -

**Regent Koch** Identify who you are and your background, some of us know, so they know where you’re coming from and your experience in regards to, I think, some of this in the past.

**Marty Esquibel** Certainly, Mr. President, Members of the Board, Dr. Schmidly, my name is Marty Esquibel, I am an attorney practicing in private practice here for the Narvez Law Firm here in Albuquerque. My practice over the last 15 years has been concentrated on several specific areas but more importantly the areas of open access to government. Ranging from access to courtrooms, access to public records and interpreting the Open Meetings Act on behalf of several media clients as well as the organization I represent today which is the Foundation for Open Government.

Now you had, Mr. President, made reference to the Foundation for Open Government, or FOG as we are known, to be kind of a watch dog organization and that is certainly the reputation we have developed over the years but we also take pride in an effort to educate and work collaboratively with public entities to let them know about the various aspects of the Inspection of Public Records Act and the Open Meeting Act so our intent here is to work collaboratively with you, with the University of New Mexico.

First of all, I would like to commend the University and the administration and the Board of Regents for proposing changes to what has been a problematic approach to open records on behalf of the University of New Mexico. This new policy we feel, on behalf of FOG, makes a clear statement, a very clear statement, that the University does intend to adhere to the Inspection of Public Records Act. Now I would like to talk to you about three points that Mr. Segel has covered but before I do that I would like to make some reference to, Mr. President something you had mentioned earlier, is litigation that the University has been involved in the past with regard to presidential searches. Actually, there has been two lawsuits, one in 1990 and one in 1999 regarding FOG being involved in stopping and halting presidential searches because the University did not adhere to the Open Meetings Act and the Inspection of Public Records Act. In the first case in 1990 that case went to trial and mid-way through trial the University determined that it did have a major problem and entered into a consent decree with regard to future searches. In 1999 we had a full blow trial and Chuck Peifer and I handled on behalf of FOG and the *Albuquerque Journal* in which the University took the position that presidential applicants were not subject to - - their records or applications or resumes were not subject to inspection under the IPRA. It was a position that did not articulate the Inspection of Public Records Act an exception, the University took that position. We went for a one or two day trial in state district court and the district court ended up issuing a restraining order halting that search because of the position the University had taken. Now you are correct in that the University did go to the legislature, asked for a particular exception to university presidential searches, which the legislature granted that particular exception.

I think it's noteworthy for this point, because of that legislation, because of that particular legislation, your latest search didn't end up in a lawsuit and in fact served as a model for other public entities who have recently undergone searches for its leaders, namely CNM and Albuquerque Public School Board, which I serve on. Your search, the way you conducted your last search, really served as a model of openness because I think we worked collaboratively and we followed the law. So I think in crafting this policy, I think we're going down that right road, that proper road of following the law of the Inspection of Public Records Act and the Open Meetings Act.

Now, specifically, I would like to recognize three points. First of all, the policy recognizes already the many exceptions there are to the Inspection of Public Records Act carved out by state and federal law and that ranges from Social Security numbers to medical information to trade secrets, trade secrets which are addressed in a particular state statute. The policy that you are proposing does affect any of those exceptions so in correspondence I have seen going back and forth between lawyers and faculty, there seems to be this sense that there is going to be some problem. I am here to tell you that there is no need to say the sky is falling. The law is still the law and the exceptions are still the exceptions.

Secondly, we have helped provide information addressing concerns over records such as faculty research. As Mr. Segel said, if the research is private, it is not covered under IPRA. If it is University sponsored and funded it would then be analyzed under the trade

secrets exception. Automatically it does not mean it is going to be public record but the analysis would go forward to determine whether it is a public record or not.

Finally, and I think this is one of the most important parts of this new proposed policy. The policy wisely rejects this idea of suggesting the use of a counter veiling public policy as an exception to deny records. All too often we have seen that exception as a catch all, end all of rejecting a public record, counter veiling public policy. It's an excuse, it's a reason not to produce records that are some times embarrassing but nevertheless are public records. While the doctrine of the counter veiling public policy would still be available and still exist under case law, we feel that the University has used that excuse in the past not to produce public records. It has been an invitation to try and creatively come up with a public policy reason to deny access to records. Your policy doesn't do away with it but it doesn't suggest to use it in a nefarious manner.

In conclusion, on behalf of FOG and the many lawyers and members of our organization, we feel like we work collegiately with the University Counsel, Mr. Segel. We have taken a measured approach to this, we welcome the opportunity to work with the Board of Regents. Mr. Peifer in correspondence has provided a more detailed analysis and I am glad to refer you to that. In closing, we think this is a very positive step forward and again the searches that you have conducted recently has served as a model. I feel that this policy will also serve as a model to other public entities and we commend you for that. Thank you.

**Regent Koch** Okay Matt.

**Matthew Hoyt** Mr. President, members of the Board, I asked that Mr. Esquibel go first because I am here today to represent the *Albuquerque Journal* as the Foundation for Open Government and the *Journal* fully concurs with the position of FOG with regard to the policy changes proposed by this Board. The *Journal* strongly supports the proposed policy changes. The *Journal* believes that these changes are important. I think as we have explained in correspondence with you Mr. President and members of the Board that we believe these changes are important because it brings these policies into compliance with the Inspection of Public Records Act. Furthermore, those changes would signal to the New Mexicans and to members of the University community and the community at large, that this University is committed to open and transparent operations which we believe is a critical foundation of a public university.

Let me just point briefly to the litigation risk that we have heard Mr. Segel and Mr. Esquibel address previously. It has been the experience of the *Journal* that a lack of a clear policy by a public body creates a litigation risk in and of itself. We have seen in the past with other public bodies that this encourages abuse within that public body and that leads to litigation where the public body is forced to explain in open court why their policies, their own procedures, their own practices, fail to comport with the Inspection of Public Records Act. And that is of course beyond the expenses that would be incurred by public body in having to both defend that litigation and then if they are unsuccessful in defending their denial of the Inspection of Public Records Act request, to pay both their

own lawyers and the fees and expenses of the lawyers on the other side. Now again because the *Journal* fully concurs with Mr. Esquibel's comments, I have really nothing further to say. I am available of course for any individual questions and the issues and concerns that come up before this Board today and will be available to answer those questions.

**Regent Koch** Leonard DeLayo, could you - -

END OF TAPE – TAPE ONE, SIDE ONE

**Mr. DeLayo** - - the Executive Director of the Foundation of Open Government and have been in that position since November. I am also an attorney licensed to practice law and have been practicing law, I was just figuring back 36 years and I did spend 20 years on the Albuquerque Board of Education and served five times as president. In fact, one of the ironies of today is that Mr. Esquibel took my seat on that board and he is not speaking to me anymore but I certainly appreciate his service.

Members of the Board, this is an important moment not only for this university, my alma mater, but I think for the State of New Mexico. This first came about when President Koch contacted me on Mr. Saavedra's issue and we had a discussion about what was appropriate, what was exempt and what was not. Subsequent to that, Mr. Koch contacted me to determine whether or not FOG would be interested in working with the public body rather than just suing a public body to insure compliance. And I assured him at that time and stand before you today that our foundation would much rather work with people, educate people and help public entities comply with the law rather than be as Mr. Esquibel said, a watch dog group. We're here to help and this is a big step for this state and this university. In fact, when Mr. Koch contacted me I contacted our board of directors who were very encouraged that the University was taking this leadership position and hope that it would work out and we would work cooperatively. Then as the council said, use this as a model for the rest of the state. I have already contacted two other universities and suggested they do the same thing. This is a leadership opportunity for a New Mexico flagship university and I think it is a good step to be taking. Thank you.

**Regent Fortner** As a regent, two of the most important things we do, first is we hire a president and we've done a good job at that. The second thing is to set policy. This is an important policy decision we make as regents. Before I was on the - - got appointed to the Board of Regents, I believe in '98, and I was not on the Regents when the '99 suit got filed, that was when it was ending I think. But I was on the County Commission on San Juan County and was on there for eight years. Even coming onto the County Commission, you think of government as being secretive and that there is something to hide and really there is such distrust among the public, amongst elected officials and policy makers that this Open Meetings Act is really important. I endorse this. One of the problems that we are having in San Juan County right now is the City of Farmington wanted to hire a city manager and they wanted to keep that closed. They wanted to keep that process closed. In fact, enough that they were stubborn enough, and

I think stubborn is probably the proper word to describe their actions because the *Daily Times* there, the local newspaper, filed a lawsuit to keep it open and they objected, they lost in District Court and they are now on appeal. They then had another search and had it open which does not seem consistent with earlier policy. I look at some of the concerns that have been voiced back and forth and letters from lawyers, some of the simple concerns about personal information, I agree. The Social Security numbers and financial information are protected under certain other federal statutes but it is interesting, your voter registration is open to the public and that has public information from your home address, date of birth and other things that are just simply open if you're registered to vote. The counter veiling public policy is to be the exception rather than the rule and I agree with that. Generally, it has seemed like the counter veiling of public policy exception has been used to prevent embarrassment and that's not how it is supposed to be used. It is supposed to be used whenever there is a great public policy reason to keep records private. There is the issue of the identity of job candidates and that, of course, is written material. Not that you want to go around it but often times interviews are done orally and there is never an application that is sent. As I look at it and listen to all three lawyers discussions, I can't see anything that I disagree with and I support this.

**Regent Koch** What I would like to do now is first go to the advisors and any advisors have a comment? Jackie do you have a comment? Jackie if it is all right while you make the comment if you would like one of our three attorneys to respond to you, they will be more than happy to respond.

**Jackie Hood** Actually, would it be okay if we had Tim Lowrey come up here. I know he has been in correspondence with you?

**Regent Koch** Sure, is Time here? Hey Tim, how are you doing? Tim you and I have become great friends haven't we? I want to first of all, Tim it's nice to meet you. You know Tim you sent me - - I am pretty good at keeping records and as probably found - -

**Tim Lowrey** I have become better.

**Regent Koch** What I really appreciate is you sent to me an item on the 19<sup>th</sup> and I responded to you in eight hours. I took all of your questions that you have, I gave them to our attorney, I gave them to the attorney at the *Journal*, I had them all write you lengthy answers to all the questions you had and as you know our last conversation, it was a nice conversation, but I just wanted to make sure and I wanted to meet you and I thank you for taking the time and as you well know I am pretty insistent on each other getting back to one another. I just want to thank you, I appreciate the information you did, I think it was a real service for us, the Regents, for the lengthy letter you sent us before with all of your concerns and objections and I think it was important that we answered those as quickly as we possibly can so you have details so I want to thank you in advance and look forward to hearing your remarks.

**Tim Lowrey** Thank you very much and I appreciate your prompt response and interaction and frank discussions over the phone as well.

**Regent Koch** We've already got it solved, right?

**Tim Lowrey** Not quite. So, I am Tim Lowrey and I am here as the Chair of the Academic Freedom and Tenure Committee and I have a few remarks pertaining to this issue. First, I am here as the representative, I am the Chair but I am the representative of the UNM Academic Freedom and Tenure Committee, and as I have said before in presentations to the Board of Regents that we are an elected body of the UNM faculty and are charged with discharging the functions assigned to the committee by the UNM Faculty Handbook. From time to time we review policies of Section B and parts of Section C in the handbook and recommend appropriate revisions and we recommend these generally to the Faculty Senate and then assuming they are passed they go for final approval by the Board of Regents.

The policy changes proposed by the Board of Regents, these changes that we have just heard about, directly involved Faculty Handbook policies under the purview of the AF&T Committee. The Faculty Handbook is a legal contract between the University and the faculty, therefore, we have to have a seat at the table when policy changes are proposed that impact the Faculty Handbook. The proposed policy changes certainly meet this criteria. But before I address these issues particularly I have been directed by the Committee to state, absolutely, that the Committee fully supports the rule of law and furthermore is not above the law. Just as everyone in this room, university, state and country are not above the law. No matter what newspaper editorials imply or what opinions are expressed by anybody outside the Committee. In fact, the Committee members are all faculty at UNM and we are committed to the pursuit of truth including the rule of law and communicating that truth in law to the students in our classrooms and laboratories as well as to society in general. If we considered ourselves to be above the law we would be bad educators and bad researchers. The fact that they are responsible for educating the lawyers, judges, journalist, including reporters for the *Albuquerque Journal*, and I have had discussions with Martin Salazar.

**Regent Koch** You might add salesman too, we've got a couple of salesman up here.

**Tim Lowrey** Well actually I had included executives but I wasn't going to go on and on. I did include police, historians and scientists. Based upon what I see before me, we seem to have done a good job in this regard in the past and from what I saw at the University commencement ceremony a week ago, we are continuing to do a fine job. Furthermore, the AF&T Committee is not an advocate of secrecy and I take this opportunity restate the Committee's stance on the issue as communicated in a recent letter to the Regents to you. I quote, "We also want to comment on the difference between confidentiality and secrecy. We believe there is confusion between these two worlds. Records and documents should be designated confidential when the disclosure of their contents, for example, private financial information leading to the possibility of identity theft or inaccurate information leading to losses of reputations, would be significantly damaged and are not relevant (and this is taken from the statute) to pursuance of law in connection with a transaction of public business. Secrecy on the

other hand, generally involves concealment and may have a very negative connotation as we have heard. It is necessary to maintain the need for confidentiality of relevant records and documents without concealing information that the public has the right to know or is being kept hidden for nefarious reasons. The AF&T Committee vigorously supports the former, maintaining confidentiality, and strenuously condemns the latter.”

Now to the proposed policy changes. First of all, there are no perfect laws and no perfect policies. As my father was a state legislature in California for 22 years once told me, there are reasonable laws and policies and there are bad laws and policies. From time to time, there is need to change reasonable policies to improve them based on many reasons. In fact, AF&T Committee is charged by the Faculty Handbook which is approved by the UNM Regents with initiating changes in particular policies when needed.

There are two major issues that I have attempted to communicate to you over the phone in written form about the proposed policy changes. They concern the process involved in policy changes and the other involves the specific changes themselves. Today in the interest of time and in fact I am not a lawyer, I am the first one who is not a lawyer here, I am going to speak to the process of instituting changes to the handbook either directly or indirectly via changes to regents or business policies. My committee is convinced and we do have a member of the law school as well as our own counsel, convinced that the proper policy has not been followed. For example, there are changes proposed to policy C70 in the Faculty Handbook. As you know, policy C70 pertains to the confidentiality of faculty records. As stated in the Faculty Handbook pertaining to policy C70 and I quote, “Future policy changes must be approved by the Faculty Senate as recommended by the Academic Freedom & Tenure Committee and by the Regents.” To this day my Committee has not recommended any changes to policy C70. If we were asked by the Board of Regents we would consider them. If we agree, we would forward them to the Faculty Senate for approval. After their approval they would be forwarded to you, the Regents, for final approval. This process has not even been started. Therefore, any changes made to policy C70 by any other process would violate the Handbook.

It has become very clear, and I am almost done, over the past few days that it is in everyone’s best interest to not rush these proposed changes in any of the policies. My Committee, including me, has only been aware of the policy change proposals for about two weeks. The AF&T is a stand alone committee in the faculty governance structure of UNM and we do not exchange information with any other body because of our need to maintain “legal” confidentiality of personnel issues. We were not provided copies of the proposed policies. You had told me in a recent conversation that you had been working on these policy modifications for four months at least. There is simply not enough time for the necessary parties not originally involved to properly examine them and give in put in the near future. By that, I mean today’s meeting. As we discussed, there are complex legal issues involved that need thorough discussion and I think we have heard a good review. The AF&T counsel is currently on vacation in Italy and communication on issues like this are not really possible although he did respond to me telling me he couldn’t open any of the documents I had sent to him emailed to him in Sienna, Italy, and I wish I was there with him. There is no possible way this process could be done until

Fall 2008. I suggest the representatives and their counsel, and that means all counsel, AF&T, Faculty Senate, UNM Administration as determined by the President, the Board of Regents, FOG, lawyers from the media, form a committee to thoroughly review the policy changes during the summer, if possible. Also you could invite public comment on this during this period after you have presented the Regent's rationale for the proposed changes at the May 28<sup>th</sup> meeting which you have done. I know you would like to move quickly on the changes but the AF&T Committee is convinced that we, meaning the University, would be better served if we all had more time to confer and consult about these policies in order to achieve the best possible result for UNM. In fact, I think everyone agrees that is why we are here.

**Regent Koch** You are specifically identifying the confidential faculty records, right? C70?

**Tim Lowrey** Well that's what we are directly involved in but also as I have been advised before my counsel left, is that changes in the policies would affect C70 anyway and perhaps other policies in the Faculty Handbook. These are complex issues as we just heard about. I do have one question, however, if I could address this to Mr. Segel, I was on the phone with the Attorney General's Office this morning and I had a question in particular about the retroactivity of Policy 2.17. I think it is in the first paragraph where it said change in the policy would be retroactive. The Attorney General's Office expressed incredulity saying that in fact as you had stated there would be penalties. So if it were retroactive and the University was found not to be in compliance for IPRA inquiries that we would be subject to attorneys fees and a \$100 a day penalties. She wanted me to ask if that was in the best interest of the University to make this retroactive and she said that she had never heard of a situation like this that they were made retroactive. That is my only question.

**Ron Segel** Retroactivity is always a very difficult issue and the appellate courts of New Mexico have struggled for years and years and years in different cases where they have changed the rules as to how to implement their change of New Mexico law, rather to make it retroactive, whether to make it not retroactive, whether to give it what they call modified retroactivity. The retroactivity language is in there I think for one simple reason which is that if in fact the University's procedures have not been in compliance with the law, then they should be made to be in compliance with the law even retroactively. Retroactivity has always difficult as I say but if they were wrong then and they are wrong now they should be made right now as well as well as right then.

**Regent Koch** Okay, now who else wanted to address us?

**Jackie Hood** Yes, I still have comments to make. First of all, I want to say that I agree with everything Tim has said, obviously, but I also want to say to the lawyers here that if you didn't hear Tim say this I think you're not looking at this exactly correctly. No one here is saying we should not comply with the law. No one here is saying that there should be secrecy in terms of what goes on in a public institution. As a matter of fact, it should be open. No one is disagreeing with that but it's a balance between the public's

right to know and individual rights to privacy. That has always been the issue. If you go back to 9-11 that has been an issue at the national level for a number of years now. What is the right for the public to know in terms of national security in that case verses an individual's rights. Our constitution is based upon individual rights, you know that. The other thing I am concerned about is the very sort of narrow view of what job you are given here rather than to look at it a bit more broadly. Again, you are to comply with the law but is that the only consideration. Are there not other stake holders involved in this compliance with the law who should have been considered in your re-writes of these policies? For example, the people that work here. I was quite concerned to hear about people's concerns about stalking and you say, oh well if that happens, gee that's too bad. But do you want to be responsible for this? Is this some lawsuit that you want to live with in the future? Personally, I would rather have the *Albuquerque Journal* sue us for that information than have some woman come up and say that she was stalked or harmed because of a decision we made. So that is keeping people safe. I think keeping people safe should have been a consideration as well in your deliberations here.

But really what I want to talk about is transparency, openness, shared governance, and decision making processes because that really is what we are talking about here. Just to clarify, I was in the room when that policy was brought up at the Regents' meeting a month ago. That was, other than when you mentioned it Regent Koch in a meeting with us that you were going to do this a couple weeks maybe a month before that, that was the only time I had heard of it. I received the red-lined versions on May 14<sup>th</sup> which is two weeks ago today from Ellen Wenzel. I then forwarded those to Tim Lowrey of the AF&T and the Operations Committee. So my comments are reflective of the Operations Committee of the Faculty Senate. Certainly you do believe in openness and transparency and that's indeed what the policies are about but that goes beyond just saying these are the policies that we are going to do. It goes into actually talking with people. I appreciate that you talked with FOG, that is an interesting acronym, and that you talked with an outside attorney. But I also want to know what do our attorneys think, I am going to ask that in a minute. I also want to know what the faculty and staff think. You have to consider these other stake holders before you move forward with policies like this that we don't know the implications of. I think that is the key. We don't know all of the possible implications or maybe you all do and maybe the lawyers do but we don't and that is why people are here today.

C70 - Of course, as Faculty Senate President I have to reflect on that. It is very clear in the Handbook how that policy gets changed and how the approval goes. Anyone can recommend a change to a policy but it has to go through the AF&T to the Faculty Senate, then to the Regents. It is interesting, again, Mr. Segel, that that was very clearly spelled out in that policy and that was not considered when you rewrote the policy nor was it brought up until we brought it up as far as I can tell. So that again is a concern, a narrow vision of what your job was verses a broader sort of take.

The other thing I wanted to bring up, being a business professor which I often bring up, is the fact that there has been a lot of research on employee rights to privacy and the impacts of people feeling that there are specifically HR policies, they talk about HR

policies a lot and the invasion of privacy, whether it be drug testing, giving them the Meyers Briggs before you give them the job and/or spying on the person afterward. Those kinds of things go on in some corporations and what they found in fact is, again, it's a balance. That if you do that kind of thing, if people feel that they are unfairly treated or that their privacy has been exposed, that in fact productivity can go down, employee moral goes in the tank, people leave and absenteeism goes up. So again, you have to consider these factors before you move forward. What are we really doing? Have we informed people enough to move forward with this change to make it effective and to make sure there is no negative consequences.

So I agree with Tim, I think we are moving a little too quickly. It would be great if we had a few months of discussion, people understood the implications. I don't know if anything would change or not but we could follow the processes as they are laid out for both the Faculty Handbook and for Big Red, the Business Policies and Procedures Manual and I think it would be a much better outcome in the long run so I would like to advocate for that. Having more discussions before we move on with this, see what comes out of it. If it stays the same, wonderful, but change is wonderful but we'll probably end up with a better decision in the long run and more people on board and the lack of those negative consequences.

**Regent Koch** Okay, who else? Just come up and identify yourself.

**Loyola Chastain** Thank you, I am Loyola Chastain, I am the new Staff Council President. It's a tough act to follow with Jackie but I have some prepared remarks and then I have some comments we received from staff. We at Staff Council believe this whole discussion bears some careful consideration because the issue is not black and white. In fact, it appears to be very gray. The goal of these policies is to make UNM more open and transparent to the public. As individuals, we value our privacy. We don't particularly want our private information given out to the public without measures in place to protect that which should remain private. We are aware of nefarious activities such as identify theft, stalking and burglary which could take advantage of our openness to our own personal detriment. From that perspective it is important to us that there be processes and procedures in place to safeguard our data. Among the things that we believe should be kept private are home addresses, telephone numbers and other directory information of employees and references listed on applications. Social Security numbers and other personally identifiable numbers and codes, medical records and personal information listed on applications and resumes that is not relevant to the job or duties being performed.

Consider this, identify thieves obtaining a person's past work history could cause extensive damage by posing as that individual, applying for a job and having the past employers on the resume confirm work history. The person then gets the job, they buy a car in your name, rent an apartment in your name, establish credit card accounts in your name and so on. As a state and as an institution we value openness and transparency. We believe that openness and participation in decision making leads to better decisions. In order to participate in those decisions it is important that the institution make public

certain information including finances, expenditures, qualifications of those providing leadership as well as those in lower positions and rationale for the strategic decisions that are being made. In order to do this it requires access to salary books, compensation studies, budget data, resumes, etc. by staff, the public and the press. Recent inquiries by the *Journal* and other media as well as resulting institutional responses to those investigations underscore the value of openness and transparency. While painful at times, public input is helping us to make better decisions. It is for these reasons that the Staff Council Office has been allowed to own its own copy of the salary book for five years. According to this policy, the salary book would only be available in Zimmerman Library. As employees of a public institution it is our legal and ethical responsibility to make sure this information stays public. Therefore, these policy changes should make it more accessible, thus allowing the Staff Council Office to continue to receive the salary book on the monthly basis.

What will be done to insure that individuals requesting the information are not in violation of court ordered harassment restraining orders or other orders of protection? When a request is submitted for information, will it just be turned over? Will the employee also be notified? Will our information be turned over at will? Will anyone who requests to look at a resume or employment application be able to do so as often as he or she chooses without the employees knowledge? The resolved policies call for a custodian, one person for the entire university. The questions that come to mind are what kind of office and budget will this person have? If funded, where is the money coming from? How many support staff will the office custodian have to process requests? Will it be a dedicated office or something an already overburdened staff person has to pick up? We do not see that the policies give leeway for more than one and if this is the case it is likely that this one person will become bogged down pretty quickly.

I was sent an article today from *USA Today* entitled “Employment Records Prove Ripe Source for Identify Theft” which I will not read but wish you to be aware of this one statement. The top cause of identify fraud is now theft of records from employers or other business that have records on many individuals. That beats all other sources including stolen credit cards, mail theft and stolen purses or wallets.

I have some comments from constituents. I won't read them all, I got close to 50 but I will just read a few of them for you so you can know how the staff is feeling about the policy changes.

*1) Making available all applicant data as described for public inspection would deter some qualified applications who are current UNM employees from applying for promotional opportunities at UNM. If an employee knew that their manager could research any positions for which they had applied, many employees would not feel free to pursue new opportunities at other departments within UNM. This would have a negative impact on professional development for UNM staff. Would external, non-UNM applicants be subject to the same policy revisions since at the time they applied for a position they would not yet be UNM employees? If external applicants would not be subject to application of the same policy, then the hiring process would not be consistent*

*among all applicants. In cases where an applicant is a victim of domestic violence or stalking or in a contentious divorce situation, the private information contained on the person's application could allow the perpetrator to gain knowledge of the person's whereabouts, information about where the applicant might be working or residing or other information that could jeopardize the applicant's safety.*

*2) When applying for any position a candidate assumes that his or her personal information will be kept in strict confidence. Some of us may have abusive ex-spouses, harassing neighbors or someone else who would use this, our personal information, to our detriment. We have all heard of jealous boyfriends, ex-husbands, etc. going to someone's workplace and murdering their estranged beloved as nearby coworkers. Is this the type of risk that UNM wants to incur? I think not. Further, with a dramatic rise in identity theft, making such detailed information about our employment history a matter of public record increases the likelihood of our identities being stolen. Not only is this a profound and costly inconvenience to the employee, it detracts from the employee's ability to focus on work if he or she is able to show up at all. This negatively impacts the University's productivity, therefore costing our organization in moral and in finances. Further, no employee to my knowledge ever signed a statement indicating that he or she agreed to have personal information exposed. Providing such information without permission is a breach of the highest degree and could possibly result in a class action suit against the University. This too would decrease the morale of our organization and cost us financially.*

*3) We are required to provide large amounts of personal information when we seek employment or enrollment here at UNM. That information is provided, at least by me, only because it is required to secure employment, education or necessary financial transactions and with more than a reasonable expectation of confidentiality of that information. I never provide personal information other than in those settings. I don't even have a credit card because I won't give out personal information and I bitterly resent any considerations by those with whom I have trusted my personal information to disseminate it further.*

*4) With one family member already having been a victim of identify theft, complete with being arrested at his place of employment and returned six hours later after having to prove he had not been in Tucumcarri getting traffic tickets, I am just sickened to even think that the Board of Regents is considering making any more personal information available than one can currently get on line. I am appalled that especially in an educational medical setting committed to preserving the privacy of the students and patients we serve that any individual intelligent enough to be making the decisions for this entity would even consider such an action.*

*5) The statement "no person who is employed by does business with or has a contractual relationship with the University has a legitimate expectation of privacy or confidentiality with regard to public records concerning that person, except as specifically provided by IPRA in the proposed document is an absolutely incredible piece of rubbish. Any person employed by this University has every expectation of privacy with*

*their personal information on their applications are concerned. We are not allowed access to other employees applications with their personal information, at least as best as I know, by University possible. I guess by making such documents public records we can just wait for the public access designation and bypass personnel regulations. I am sure we have enough inquiring minds here at the University that someone will be able to access the public records under the Freedom of Information Act.*

*6) Anyone who thinks that not providing the Social Security number is protection against identity theft is naïve at best. In this day of extensive public record and online information services, a full name can be all it takes to begin the search. Anything further is just an invitation into your employees lives that is too horrifying to contemplate. Unless you plan to also eliminate the full name, address, phone number and any and all personally identifying items from the information available to the public, I cannot imagine why the Board would want to have any part of such a proposal. I urge the Board of Regents to move in the direction of their employees and the legitimate public's best interest. Until compelled by law to do so specifically, do not aide and abet in the dissemination of your employee's personal information. The federal government is moving slowly into limiting the information made available without permission to the general public and the Board of Regents should also move slowly, following all established protocols into expanding personal information obtained, especially when it was originally obtained from the individual providing it with an expectation of privacy.*

*7) I am very concerned about UNM sharing my application information. It contains my home address and phone number plus past work history. I have been stalked in the past and I do not want this information made public. My personal safety depends on it.*

*8) I would certainly not allow Social Security numbers to be released to the public under any circumstances. There must be a federal law prohibiting such. Any other information could be matched with Social Security numbers to facilitate identity theft. There have always been UNM policies prescribing the release of certain personal information about employees, e.g. home addresses and telephone numbers, and those should prescribe release of such information here. UNM administration should be reminded of the potential chilling effect this may have on potential job applications and the hostile working environment this may produce for present employees.*

*9) My two cents on this is that by allowing anyone, Albuquerque Journal, etc., to view candidates applications for positions, we will be opening the door to having the Albuquerque Journal and their readership determining whether or not we had chosen the right candidate for a position. As anyone who has participated in a higher search can affirm, the resume, CV application only tell a part of the story. The actual job requirements, the interview process itself and checking references need to be considered with a resume. If we allow these changes to go through we will then have to open up the rest of the recruiting process to public scrutiny. I think this is a bad move. Not having read the IPRA, I have a hard time understanding the level the University seems willing to*

go with this. Surely the IPRA does not specify the items that these proposed policies have suggested.

I could go on and but they are all the same. They all have the same type of theme here that people are afraid of identity theft and stalking, etc. One thing I do want to bring to the attention of the attorneys is this one that I got.

*10) I have one additional concern regarding the proposed policy changes to comply with IPRA. I am concerned about the statement in Regents' Policy 6.8 that says, "The University will generally endeavor to withhold from inspection under IPRA employees personal information including Social Security numbers." This appears to come from Section C70 of the Faculty Handbook where it was part of the original text and not revised. I'd prefer both sections read the same as Section 2.2 of Big Red Policy 3710 which as amended reads, "Although Social Security numbers are not subject to public disclosure, the University may use that information as permitted by law." For example, in communicating with the Internal Revenue Service or with insurers who require that information. 3710 gives me, as an employee, a clearer idea of what circumstances will release my Social Security number. The former statement sounds, though probably unintentionally so, that UNM will not take responsibility in the event employees Social Security numbers are accidentally disclosed to someone who shouldn't have them.*

So, how can you assure us that you are protecting us? What is the University's liability if an identity theft case is brought on by improper release of employee information? Rest assured the Staff Council supports openness and transparency. The tricky thing is going to be finding the proper balance of what to disclose and how to disclose it without creating a huge bureaucracy that slows legitimate requests to the point where getting information becomes impossible. As Staff Council we have clear interest in all of these apparent conflicting goals.

**Regent Koch** Marty, would you respond to some of that then Matt please?

**Regent Eaves** Mr. President, may I ask a question? Is there a name that goes with those comments or were they purposely kept confidential?

**Unidentified Speaker** I'll take them.

**Regent Eaves** I'm sorry?

**Marcus White** I'll take all of them. My name is Marcus White.

**Regent Eaves** I don't understand what you are saying? I asked her a question.

**Marcus White** You're looking for a name to assign to those comments.

**Regent Eaves** Yes, I am asking is there a name that goes with those comments? Is there a name that goes with each of those comments?

**Loyola Chastain** Yes, we sent out an e-mail to the staff and staff responded, yes.

**Regent Eaves** Maybe you could give Ellen Wenzel copies.

**Loyola Chastain** We are keeping their names confidential.

**Regent Eaves** Copies of what you just read?

**Loyola Chastain** We are keeping their names confidential. [applause]

**Regent Eaves** I'm sorry I didn't hear you, could you give copies?

**Loyola Chastain** We are keeping their names confidential.

**Regent Eaves** Oh, you're keeping them confidential?

**Loyola Chastain** Yes, we told them we would keep them confidential.

**Regent Eaves** Okay.

**Regent Koch** That's fine.

**Regent Eaves** I just wanted to clarify it.

**Regent Koch** Just a second please, Matt?

**Marty Esquibel** I'll just very briefly, the notion that privacy rights are being stripped away by this policy is that type of sky is falling argument that I referenced earlier. It's simply, these policies are in line with existing state statutes and the Inspection of Public Records Act. Protections articulated by these folks are already in existence in the law to protect against these issues that were raised. When I hear these types of arguments I usually say can you name me one instance, in one of our 50 states, in the last 50 years, in which an open record has contributed to the types of issues that these folks have raised. Interestingly enough, it was a point raised earlier, issues about your address, I mean it's a pretty clearly established law if you're a public employee that your address and information is not protected information. But nevertheless, during this presentation I could have easily gone down to the city/county building and gotten voter information on anyone. So the expectation of privacy with regard to the concerns being articulated here are not really in line with the narrow legal issues that we are dealing with. So that would be my two cents.

**Regent Koch** Let me just express, I see hands going up, everybody's going to get an opportunity to come up here. So if we all just relax, I wanted to get a response so you can hear the response. Jackie still has the table. When Jackie gets through with the table, I've got a list of 12 people here. If they're not here they still can come up. I am not going to go out and recognize hands, you all can write your notes down. When I say next one we'll just sort of line up here and we'll let everybody have an opportunity to say - - if we sit here with respect for one another and listen, let everybody have an opportunity to say what they fell and that is what we're going to do. So go ahead Matt.

**Matthew Hoyt** Thank you Mr. President. I just wanted to point out, just hearing the overarching concern of information regarding or I should say, employee information; specifically things like names and addresses of the public university employees - - New Mexico courts have already spoken to this issue and have uniformly decided that the names and addresses of New Mexico public employees are public record. Indeed as far back as 1969 the Attorney General issued an opinion to that effect. This also appears in the current version, Attorney General King's version of the IPRA Compliance Guide, on page 26 of that manual, in which Attorney General King specifically addresses that the names, address and salaries of public employees are public record and cannot be withheld under the Inspection of Public Records Act. So some of this issue has already been resolved in the law and it has been resolved in favor of such documents being public record.

**Regent Koch** Okay Jackie, you still have the table.

**Jackie Hood** The only question that I had is I know we're hearing from a lot of external lawyer people but I wondered, I know Patrick isn't here but is our University Counsel here?

**Regent Koch** They are sitting right there.

**Jackie Hood** Do you guys have a - -

**Regent Koch** Sure, go ahead, you can make any opinion you want.

**Sandy Liggett** The Office of University Counsel submitted written comments on these proposed policy changes to Dr. Schmidly.

**Regent Koch** Yea, I noticed that but we didn't get copies of it. I'm sorry. If we had gotten copies of that we would have been able to do that so we never did receive - you didn't send them to us, which we would have appreciated because we didn't have that opportunity to respond to it. The only reason I got a copy is Dr. Schmidly sent it to me. If you would have sent it to us like everybody else would have done, we would have been more than happy to have the attorneys take a look at it and I would have appreciated that. So, we have - - I just briefly got it I think a day or so ago, so go ahead.

**Sandy Liggett** Well and our reason for sending it to Dr. Schmidly is that it has been rather unusual, the role of this office in this process. It was our understanding with the Regents having it's own counsel on this, that we weren't serving as counsel to the Board of Regents and that remains what our understanding is. But we did make comments. They are extensive, they are not comprehensive. There was simply not enough time.

As you know the Office of University Counsel has throughout the existence of this law, been charged to give advice to the Custodian of Public Records about how to handle the many, many varieties of requests that come in. I'm sorry that I don't have for you the volume but there is an enormous volume of requests that come in. Most of which are just very straight, clear, unequivocal requests that the institution responds to openly and turns over documents despite people's preference not to. I mean that is a fairly normal part of the business operations here. Over the last couple of years, there has been a growth in the request for public records, not just from the public media but from others and the extensiveness of those requests have caused our office to have to delve deeper than the court opinions and the laws that this point address and to try and identify, particularly in the area of employee privacy rights, what is it that is confidential under the law. Our goal has always been to give advice that is clear, that is consistent that regardless of anybody's agenda or politics or end result goals, that the law is the driving force in the analysis. We very much welcome getting other input into how to better improve these policies because it has been a very difficult job and it has put OUC often in the cross fire between people with different agendas and issues and that's not unusual. But I think the level of the concerns about this have really warranted the kind of review that is going on. We absolutely agree with the statement that was made by one of the attorneys here that the best way to approach public records is to have a clear policy that articulates what is open, that articulates what is closed so requestors, employees, the person that has got to handle these requests, all have the same rule book. And that has not been the case and it's not the case now.

Unfortunately, I don't think that this policy accomplishes that goal. There are some issues that are better written and more clear but where I think the gray zone and where the real discomfort for employees in particular has to do with the employee information. We do know, the guidance that is clear, has already been addressed in the existing policy manual; your name, your address, there is information that is public. But there is an awful lot of other information that the law has not yet caught up with to analyze. That's, I think, where a lot of the debate goes on here and where people's discomfort is quite extreme.

The examples that we gave in our letter to Dr. Schmidly are real examples of requests we have had. We have had requests for things like salary information, withholding information on employees. We have had requests for information about their personnel records, about their past salaries, the curious world does use a public institution to get information they would otherwise have to sue to get and it would have to be the subject of the lawsuit. There are just a lot of requestors that are thinking this is a freebie into otherwise protected information.

New Mexico law does not articulate how you deal with compensation issues, issues of withholding. Is somebody's union membership, is that public information? There are very big gaps on that and that is what I think we would look to this Board of Regents to set the policy on and I think setting policy in the gray zone is hard. It's going to be making some hard decisions. But I don't think this policy gets us there yet. It make some improvements, I think some of the procedural issues that we raised about retroactivity is a very substantial issue and I think this policy is unwise to go forward with retroactivity still attached to it. There are other very implementing type issues that people on the front line, like our Custodian of Public Records, should really be advising this Board of Regents on. These are complex, difficult issues and I will again repeat that there is no office that would be happier to have these issues clarified than the Office of University Counsel.

Can I answer, Jackie, anybody else have any other questions for me?

**Regent Koch** No, we appreciate your report.

**Don Chalmers** Could I clarify, this is the University's counsel?

**Sandy Liggett** That is right, Patrick Apodaca.

**Don Chalmers** You would recommend that we take further time to think about, because of several different issues, think about this policy?

**Sandy Liggett** Yes, and I think the concentration on the Inspection of Public Records Act in isolation is important and certainly needs to be looked at. But I am not an Inspection of Public Records specialist although for 15 years I have had to handle these kinds of requests and I am a higher ed lawyer and I know that laws that unusual to higher education. Most of the state agencies that have to deal with these laws don't have the complications that a university has. We've got research issues and very unique relationships contractually with other entities that really confound the analysis. I think the big policy change is a good goal but I think how you do it, the devil is really in the details here. And we've got some very able, bright people around this institution that could bring useful information to this Regents consideration.

**Regent Koch** Well that's why we hired Ron Segel is to look at all of our policies. I saw Patrick wasn't here because [inaudible] asked the question, he told me that he would appreciate that we - - what you said a little earlier, that is what we are hoping to do is lay out clearly what our policies are and that is what we are trying to do where it is. So thank you for your remarks. Jackie?

**Jackie Hood** That's fine, thank you.

**Regent Koch** Okay, come on up please, and if anybody else wants to just stand in line here and we'll just go right down the line and identify who you are we'll just keep moving right along.

**Unidentified Speaker** Sir I'm sorry, I didn't understand, is this a sign in list or are these questions directed to an individual sir?

**Regent Koch** Why don't you until when you come up to the microphone, I've said it about three times now.

**Unidentified Speaker** Sorry I was just asking what the rules were. Were you addressing to people?

**Regent Koch** Just a minute, just a minute - - I said a minute ago, just write down your questions and then you come up here and you're going to ask your questions at that time please so that everybody has an opportunity and if you've got some questions we sure look forward to hearing them. We have a nice young lady now who is going to ask her questions, go ahead.

**Nikki Cadalados** I am Nikki Cadalados, I am from the north campus and I have two questions, one for the Board of Regents and one for the attorneys. The first question to the Regents, is will a potential applicant for a UNM position, other than President, be notified of the Open Records policy, to wit that their CV or the resume will be available to anyone who requests this information? That's to you all.

**Regent Koch** I understand, I'm just looking at our attorney to respond, Ron.

**Ron Segel** I think the answer to that is that would be the fair thing to do.

**Nikki Cadalados** Will you have them sign a release that they are giving permission because my question now to the attorneys is, since the applicant is not as yet an employee of the University, how is it that we have an obligation to open this information to the public?

**Regent Koch** Okay, I think I'm going to let Mark or Matt?

**Matthew Hoyt** The expectation of privacy when one applies for a public position that is paid for by public funds, courts have held, their expectation of privacy is not that somehow that application for a public position is somehow going to be held secret. So it's not what the University needs to inform the applicant, it's what the applicant's reasonable expectation of privacy is. Now, with respect to what the law, the Inspection of Public Records Act has crafted out, is that there is no expectation of privacy for a public position with the exception of the University President position. So, in simply following the law, I don't think that there is a expectation that the public entity has to come back and say your application isn't going to private when specifically the law says the only application that is going to be private is one for University President. If that is a position one wants to take then that's a position one needs to take to the state legislature and say we want you to change the law to reflect that all applications for public positions are going to remain private. Short of a legislative act, I don't think it is incumbent upon the University to take that position.

**Nikki Cadalados** Then could I amend my question just a little bit, do you think that would be public knowledge of most individuals who are applying for the majority of the positions at this University. We heard from our staff council the absolute shock that some people had that their records may be made available. These records are already intact in the University system but with someone who is applying for a position in one of our cafeterias, would they be aware, would they understand the open policy would include their resume that they're putting in an application. I think not. I think that this is something that the public would not understand and unless it is made visible to them, it's going to be a very difficult position and I think we're going to lose a lot of valuable applications.

**Regent Koch** You had a comment Mel?

**Regent Eaves** I wanted to add something to it. Whatever policy we adopt, I am sure will be published and will be on the internet, the same as all of our policies and procedures are right now. They are available. I don't know who reads them and who doesn't, that's the responsibility of the applicant or the employee. But they will be made public so that really is not an issue.

**Nikki Cadalados** Thank you.

**Matthew Hoyt** May I make quick comment. I just want to follow up, what's important I think to keep in mind from our perspective is, under the Inspection of Public Records Act, openness is to be the rule and anything else, including confidentiality or secrecy is to be the exception. There is a public interest we believe that is advanced by allowing members of the public to understand who is applying for positions to this University. It is there University and they should have the ability to keep track of who applies to this University and the qualifications of those applicants and which applicants are accepted and which applicants are denied.

**Regent Fortner** And you think applies to whether it is a cook or a professor?

**Matthew Hoyt** Yes, that is correct because under the IPRA, the only enumerated exception is University President. So that would apply to all positions at the University level, faculty or non-faculty.

**Marty Esquibel** In following up on your point earlier Board Member Fortner, the City of Farmington tried to take that position as it related to a city manager that some how that position, applications for that position should be secret or not disclosed and clearly the court came back in that particular case, as it has in other cases, saying that unless the legislature has crafted out a particular exception to a position such as a university president, then no it is not secret and it should be subject to public inspection.

**Regent Koch** How are you young fella?

END OF TAPE – TAPE ONE, SIDE TWO

**Ed DeSantis** - - I take things a little more temperedly now. When I was sitting over there, it was a lot fire but now I am more relaxed. Mr. Chairman, Dr. Schmidly, members of the board, my name is Ed Desantis. I am with the University Honors Program and former president of the Faculty Senate. I have a couple of questions that precede my brief statement because of items that have just arisen. The position of the Custodian, I take it from what has been said and what has been an expressed concern, that this is not going to be a public library. This is going to be a person who will have a significant amount of professional training to do the job that that person is doing with an eye towards the law and towards ethics and also a bit of a psychologist, be able to try and figure out who it is, who is asking for information.

**Regent Koch** I think we can answer that, I can ask our President right here.

**Ed DeSantis** If you already have a job description.

**President Schmidly** Well previously we had designated this responsibility to Anne Murray who is a lawyer on the legal staff at the University. She has been designated as the person to the Custodian.

**Ed DeSantis** And will there be Dr. Schmidly an effort to find out if this is for good cause, if somebody is coming into ask for some information about a faculty member or a research project? Will it just be given because it is requested?

**Regent Fortner** You know Ed, I don't think the law makes that distinction.

**President Schmidly** Yes, one of these lawyers would be better able to answer that but the way I understand the law, you don't get into that.

**Marty Esquibel** Mr. President, Members of the Board, one of the misnomers about the Inspection of Public Records Act is that you don't need a reason to ask for a public record. It doesn't have to pay the freight. It simply is a public record, you don't have to determine why it is you're asking for it. I think that's based on First Amendment.

**Regent Sanchez** Also, the statute is pretty clear and its bothersome at the same time in that it says every person has a right, which goes back to a couple of comments that were made earlier about stalking, ex-husbands, ex-friends; and that's a statutory provision. That is not policy or regulation, that is what the law says. Every person and it doesn't say for cause or by stating a reason, it just says that every person has the right to inspect public records of the state except for the following 11 reasons, or number of exceptions.

**Ed DeSantis** Well as a follow up to that then, will the Custodian then have a record of who requested what and is there a time limit if they are in there looking at a folder or a

file? I mean how will they be presented the data that they are looking for? Will they have to request it ahead of time or can they walk in?

**Regent Koch** First of all, if you'll read what we have there, is they will set up the procedures for that. The Custodian will set up those procedures and those procedures would be set and how they would be handled. We haven't passed this yet.

**Ed DeSantis** I understand that and that leads to the reason why I want to address this issue of this project. I do agree with it because I think it is valuable. Not only because it's the law, but because it is valuable to the University, part of it's teaching mission also. People have a right to get some information when they are asking for it. However, I think it is imperative that the Faculty Senate be involved in scrutinizing and commenting in a constructive and positive way.

**Regent Koch** You are specifically commenting on C70, Confidential Records of Faculty, is that correct Ed?

**Ed DeSantis** Yes. But I wanted to reemphasize the importance that the Senate represents in discerning and scrutinizing documents. As you know Mr. Chairman, about a year and a half ago, Wittmeyer's committee did a remarkably fine job in modifying and improving the Faculty Handbook with respect to the branch campuses. But that took almost up to two years I think to complete that. Most recently, the matter of faculty employment outside the university and the 39 days and all that, that took a good deal of time to understand and then finally approve. I would like to remind you, Mr. Chairman, of several years ago when the members of the Faculty Senate scrutinized with great care and precision the higher education bill in the legislature and made some very important changes in it which protected the state universities. I think we benefit from that as do other universities in the state so I would ask you to keep in mind the importance of the Senate and though they are not lawyers, but they do see things in a scholarly way and may see some things through their own disciplinary background that sometimes lawyers may miss because they are only human. Thank you.

**Regent Koch** How are you this afternoon?

**Joy Griffin** I'm fine. President Koch, Board of Regents, President Schmidly, my name is Joy Griffin. I am on the Faculty Senate Operations Committee and I am also the Faculty Fellow for Office of Student Affairs and I have sat on the Faculty Senate as Operations Committee Board for two rotations and that is an elected position. I just want to clarify, for myself, some of the things I have heard here today and kind of summarize.

First of all, that the Regents attained their own attorney made me - - it was surprising to me.

**Regent Koch** We have had our own attorney, we had an attorney when we did Dr. Schmidly, we had our attorney in Louis Caldera. Situation sometimes, for your information, is sort of difficult for the University to might have - - their attorneys have a

different opinion than the Regents do. So the legal people we have on the - - so that's not an unusual situation to do so because we could be at different odds with where it is. So this is not something that was just done, we have done it two or three times.

**Joy Griffin** No, and I assume that there is probably a difference of opinion that the Regents got their own attorney and UNM Counsel had a different opinion. UNM Counsel has suggested that they have further comments that the Regents have not been able to review yet that they feel are very important for an academic institution, that present counsel may not be aware of. That the faculty and the staff and UNM Counsel have all said the same thing, that we were aware of this only two weeks ago and we don't feel like we have had the time to be able to really understand all the implications of this and we are requesting more time. That certain processes that are usually followed by the University and are well designated especially with regard to the Faculty Handbook and Big Red have been short changed. This may give the perception to some folks that the Regents want to put something through very, very quickly that has not given the stakeholders enough time to respond to with a two weeks notice. So this may be a certain perception and I am making this public so that we can look at that perception. Also the timing of this particular meeting with many of the faculty being off campus. So if you would just address that perception that some of us may have, that you have already decided as a group what you want to do and all of the stakeholders are saying that we haven't had enough time to review this and to give enough feedback to you.

**Regent Koch** Thank you, who is next?

**Mike Carr** Good afternoon Mr. Chairman, Mr. President, members of the board. My name is Mike Carr. I am the director of Information - -

**Regent Koch** Mike, I want to thank you. I read your letter, I just got it on the 27<sup>th</sup>, I just received it and I appreciate your letter. I am glad you're here. I also appreciate one sentence of your letter, if I could, before you make your point?

**Mike Carr** Especially if it is a good quote.

**Regent Koch** It says, "I would like to recommend that stringent annual training program be developed for both the UNM Custodian as well as UNM faculty and staff to explain the state public records law..." You know you are totally correct. We should have done this when this was passed by the legislature a number of years ago. If we had done that, and I read your letter, as I said I just got it today, if we had done that, you're exactly right. What we should have done at the time the law was passed by the legislature, not by the Board of Regents, in regards to Open Records, if we had used your last sentence here, we may not be here today. If we had taken the time to analyze that, to make sure we were with the Attorney General and everybody else in that last sentence you put is exactly right. In fact, what has to be done as we proceed, we do not want to not do that. Once whatever comes is that your last sentence is what we should do when this is all over with, whenever it is all over with, is that we should do the following; I would like to recommend a stringent, annual training program to develop for both UNM Custodian as

well as UNM faculty and staff and explain the state [inaudible]. I think when we get through with all this process and we do, then we're going to have to do that and you said on an annual basis. And what needs to be done, we need to make sure that people are informed, understand what it is, when we have new deans coming on, new vice presidents coming on. So I was very interested in your letter, so sorry to interrupt you but I used that this morning when I saw that comment which I tell you I totally agree with that last sentence.

**Mike Carr** Well thank you very much. If you want to go ahead and read the rest of it, I'll listen. In addition to Social Security numbers though, I would like to recommend that the policies address tax payer identification numbers which the Federal Privacy Act of 1974 does not explicitly call out. I am the Director of Information Assurance, I am in the office of the Chief Information Officer, I am also a licensed attorney and part of my role and responsibility is to give all of you advice and counsel in terms of information, security and privacy issues. While I understand voter registration records as well as property records filed in the County Records office, there is a move under foot across the country to redact personal non-public information for the very reasons that you have already heard, which is spamming, stalking, identify theft. You have received the note that I wrote so I am not going to go in much further on it but I believe there could be a narrow interpretation of the Inspection Act which would allow us to redact this information. Being the stewards of our employee data that we should be.

**Regent Koch** In fact, I am going to hand this to - - as I said, I am sorry I didn't get it sooner. If I had I would have responded to you within eight hours. I will hand it to Ron and everybody else. I thought your letter was an excellent letter and I appreciate your comments.

**Mike Carr** Thank you very much.

**Regent Koch** All right, we have this young gentleman who has been anxious to get there and you've got your notes all ready there.

**Joy Griffin** I'm sorry sir, every other public meeting I've been to they have called a role, I thought that is what I was signing a list for.

**Regent Koch** No, no, we're glad that - - I know that you are all ready there to you're your remarks and I have been waiting to hear your remarks.

**Marcus White** Okay, great, first of all, my name is Marcus White, I am staff. I absolutely understand that you guys don't write the law, the legislature does that. I absolutely understand that the destructive interference between the different branches of government often leave public officials in an impossible situation. My dad retired as the fiscal agent for the Forrest Service, I understand that really well. My point is we have listened to a lot of lawyers here telling us essentially they don't know. What the lawyers don't know, what chance do we have? I think that there is a useful model here with which to try and manage this problem. If my benefits change at all, they have to send me

an individualized statement. These are the things that changed, this is how it impacts you, Marcus White. Your contribution will go up .27 cents, your deductible will be \$250 instead of \$300, or whatever. I understand that everyone here would give everybody all the time they needed if the legislature hadn't already passed the law. I understand that too but I think the benefit model is a useful model to try and manage this problem. So I am just going to ask flat out to the Regents of the University of New Mexico, is there a motion on the floor to suspend the rules to immediately affirm the right of the staff of the University of New Mexico to an individualized statement of exactly what personal information plans to release in compliance with the Open Records law? If I decide it's just too dangerous to work for the public sector, I am not going to hold that against anybody here, honest. That is a problem with the legislature and I will invoke myself in trying to write a better law. But I think I am entitled to make any informed decision about that. So, again, I ask you, flat out, is there a motion on the floor to suspend the rules to immediately affirm the right of the staff of the University of New Mexico to an individualized statement of what information the University will release in compliance with the Open Records law?

**Regent Koch** We don't have a motion on the floor but we'll probably address it in a little bit.

**Marcus White** Thank you sir.

**Regent Koch** Mr. Lowrey, are you still here? Is Tim still here? Is Tim Lowrey still here?

**Jackie Hood** He had to leave.

**Regent Koch** Oh he had to leave because I saw him put his hand up. Do you know what his question was?

**Jackie Hood** He had a statement from a member of the Committee on Governance.

**Regent Koch** Did you want to read the statement?

**Jackie Hood** I can read it if you'd like, yes.

**Regent Koch** Yes, would you please because I know he had put his hand up and I wanted to make sure he has got a statement it is read to us.

**Jackie Hood** This is from a member on the Committee on Governance.

*I come before you as a member of the Committee on Governance, one of three committees that represent the faculty and UNM shared governance structure, that includes the administration and the Board of Regents. At this present time I ask that the Board of Regents table the pending revisions to the policies in regards to the inspection*

*of public records and adopt the consultative process suggested by the Chair of the AF&T, Tim Lowrey, to review these changes as they pertain to C70 of the Faculty Handbook. Over the course of the years, each time policy that has been adopted that affects C70, AF&T, as part of the shared governance structure, has worked with the Regents, administration and University Counsel. I ask that we return to this model of shared governance in regards to this matter.*

**Regent Koch** Now I still have a list of people who wanted to talk. I want to make sure, is there anybody else out there? Yes, come on up. How are you Amy?

**Amy Wohlert** I am Amy Wohlert, I am the interim Dean of the Anderson School of Management and I am one of those middle managers who is entrusted with enacting policies of the University and also serving the faculty and the staff who work within our colleges. What I would ask you is simply to proceed as we usually do with policy changes. For example, we recently made some changes to our cell phone use policy. You may think that is peripheral but at any rate, it impacted many of our faculty and staff. We got a suggested draft, we talked with the people who would be affected, we sent that draft back, we got changes, we again socialized that change and we arrived at a new policy that we understood and we knew how to implement. At this point, we have a sweeping variety of changes that may be very important ones for the University. But as you can tell, we don't understand completely or at least collectively, exactly how they might affect us and they certainly could have significant effects on how we conduct searches, how we maintain personnel files, how we cooperate with audits and a variety of other things that are really germane to how we do our business in the colleges. So I would ask that we take the time to discuss those implications and come up with a final set of policy changes that we can comprehend and that we can implement.

**Regent Koch** Thank you Amy, is there anybody else out there? Anybody else? Okay, Regents? Mel?

**Regent Eaves** I really appreciate all the comments everyone has made and the level of interest there is in this issue and I don't think there is anything that we have heard today that is really new. We have considered all of this, we have discussed it in great detail. I personally have done quite a bit of reading on it and we've had consultations with our attorneys, some of us have, on these issues. I met with Sandy Liggett, I am aware of her view points on it and Patrick Apodaca's. The troubling thing here that the Regents are faced with is that the statute, obviously, has been passed and the statute is very, very clear. It basically says that every person has the right to inspect public records of this state, subject to certain exceptions. Those exceptions are set forth in the statute. In addition to those exceptions, there are a number of other exceptions under state and federal law. This is not discretionary. It really doesn't make any difference if we amend the Faculty Handbook today or don't amend it today. That statute is binding. It makes no difference if the Faculty Senate has approved a statute or if the Regents have approved the statute, it's binding. Jamie earlier gave you some examples of conversations with the *Albuquerque Journal*. They were prepared to file a lawsuit over a couple of different pieces of information that had not been produced to them. We were able to negotiate that

and come to an amicable resolution of it but the fact is that we are subject to the statute. It doesn't make a bit of difference what the University Business Policy and Procedures Manual says or the Regents Policy Manual or the Faculty Senate has said and the Faculty Handbook. We have to comply with the law and those are the exceptions that we have and the other ones that are provided in state and federal law. So I hear everybody's concerns, everybody is concerned about privacy, stalking, improper uses of information, I mean this is a fact of life in today's world. None of us are comfortable about it. Obviously the statute that we are subject to as a state institution does not make exceptions of the type, in most cases, of those mentioned today. We are Regents, this is a constitutional position we hold. We have a legal obligation to comply with the laws of New Mexico and it doesn't make any difference if our policies are poorly drafted or improperly drafted - - if the laws of the New Mexico say differently, the laws of New Mexico are going to be enforced by the courts. So the Regents don't have a discretion here of doing this or not doing this and I appreciate that in the past there have been policies at this school that really do not accord with the law and that is unfortunate. And I think it is unfortunate that people here at the school have gotten comfortable living with those laws and they have taken some comfort, even the University Counsel's Office has taken some comfort, in trying to carve out exceptions that are not permitted by law. The Regents really don't have that luxury and we have a duty to the State of New Mexico and to the Constitution to do what is legal and that's exactly what we intend to try and do of all cases of issues that come before us. That's not to say we are not sympathetic with what you're saying and it's not to say that perhaps the statute could have been drafted better and perhaps the proper thing to do is approach the legislature and ask them to consider some exceptions. When we went through the process of hiring President Schmidly, the search firm we employed, and there were faculty members on the search committee who participated and they will remember what I am saying is correct. We were told that the present law which requires the disclosure of the names of the five finalists was going to really have a chilling affect on people who would apply for the job. And there are sitting presidents at other institutions who would not apply for the job and we were very fortunate, I think we have got the best candidate that we could have gotten in Dr. Schmidly but it is true that the number of applicants that we received from sitting presidents was probably less than it would have been. But that is something we had to live with. We really didn't have the choice of carving out an exception. When it comes to hiring the Provost or the Athletic Director, there is really not a lot of discretion on what we can make public and we have to interpret the law and do the best we can to comply with it and that is exactly what we are attempting to do today is to consider this issue. So after all this consideration - - Dr. Lowrey's letter of the 19<sup>th</sup>, our counsel responded right away with Jamie and we really think it is good to discuss these issues and talk about them. I think we had a great discussion today. It has been good participation.

But based on what has been said, I am going to make a motion that what we do today, we act on some of the proposed amendments that are in your book, Tab #4 and that today I will move that we make the amendments to the Regents' Policy Manual, 2.17, 6.7, 6.8, 7.2. 2.17 is the public access to university records provision. 6.7 deals with disclosure of information about candidates for employment. 6.8 deals with disclosure of information about employees. 7.2 deals with our internal auditing. Those are the ones that I would

move that we amend today as set forth in the meeting agenda which has been made public for this meeting, the red-lined versions. There is one item that I am going to move to amend also and that is 7.2 contains some language that was not intended, that's the policy on internal auditing, section 8 of that report, they are not numbered consecutively, so it is under the caption "reports" and there is language which says, about mid-way down through the paragraph, "Upon approval of an audit report by the Audit Committee or upon expiration of 90 ninety days from the date an audit report has been submitted to the Audit Committee for approval, whichever occurs first." The reason that we are doing that is because we do not want to release audit reports that have not been approved by the Committee because they would be in draft final and they would not be final. So that language my motion would remove.

The other items in 2.17, 6.7, 6.8, and 7.2 - -

**Regent Koch** What about 3710 and 2210?

**Regent Eaves** I was going to get to that. The other items in those provisions, the Regent Policy Manual, will be amended as shown in your meeting agenda book. I further move that with regard to the other policies and procedures which are contained in your meeting agenda book and those are numbered - - the Uniform Business Policy and Procedures Manual 2300, 3210 and 3710 as well as the Faculty Handbook provision C70, those four provisions I would move not be acted on today. Basically they are tabled, the motion would have them tabled and there will be, under my motion, a period between today and the date of the August 12<sup>th</sup> Regents' meeting, which is 76 days from today, during which faculty, staff, any other interested person or their attorneys may submit written comments to the Regents' office and our assistant, Ellen Wenzel, will process those comments and give them to the Regent and to our legal counsel concerning the other amendments that are proposed in the University Business Policy and Procedure Manual and the Faculty Handbook. We welcome those comments. Under my motion, counsel for the Regents will respond in writing to those comments. That will give the Regents and the President additional time to consider those comments and any further amendments to the UNM policies and procedures that they might deem advisable to comply with the New Mexico IPRA. Then at our August 12<sup>th</sup> meeting my motion would provide that those amendments would be on the agenda as action items for a vote. This comment period of about 76 days will allow the Regents and the President to further consider adoption of any other policies and procedures to insure that the University complies fully with IPRA so that public records pertaining to the University will be available for public inspection to the fullest extent permitted by law and to do so in an orderly manner. That will also give the UNM Academic Freedom & Tenure Committee and the Faculty Senate and Staff Council and whoever wants to, to engage in whatever procedures they think would be advisable to give consideration to those provisions as well. That would be my motion.

**Regent Koch** I have a comment, first of all, a comment on 2300, Inspection of Public Records and I have a comment on 3210, Recruitment and Hiring and to 3710, Personal Information and Disclosure. I still, I understand where you're coming from on C70,

Confidential Faculty Records because the Faculty say that they have a procedure for handling that but I still do not see why we can't go ahead with 2300, 3210 and 3710 because my understanding is what the faculty is concerned about, Timothy is concerned about, is C70. That is what my understanding is, that they say that we haven't followed the procedure for that the way it should be to give the faculty to deal with it. I don't think those other three have to do with the faculty.

**Regent Eaves** I am not sure that there is a second to the motion yet.

**Regent Koch** I know, I know there is not a second to the motion, I didn't ask for one yet. I wanted to clarify those top three.

**Regent Eaves** My response to that would be that there is no question that the Regents have the authority to amend our policy manual and I think that is a very firm, clear statement of the policy of the University and for everybody to consider. As far as the details of amending the other sections, this, as I said earlier, the statute applies to these other sections. The Regents, if they don't take action on these other sections today it doesn't mean the statute doesn't apply to them, it does. And certainly if we were presented with litigation alleging that we violated these statutes by those sections I think we would be faced with a real problem. The law is what it is and we are recognizing it very clearly with the amendments to the Regents Policy Manual. I think this gives additional time for people to discuss these other sections. Procedures seem to be important to the people who have spoken today. This is an attempt to give some consideration to what they have said and at the same time to say very clearly what the policy of the University is. I think it's a balance is what I am trying to propose with this motion.

**Regent Koch** Before I ask for a second, tell me why Inspection of Public Records, Recruitment and Hiring, Personnel Information Disclosure, you don't think we should do that now?

**Regent Eaves** I just think I said that, I don't know how to explain it any better than I just did.

**Regent Koch** So we have a motion, a second?

**Regent Sanchez** Mr. Chairman, for purposes of discussion I will second.

**Regent Koch** We have a second, okay.

**Regent Fortner** You know I think Marty said it pretty clear and I think Mel said - - this part of the Regent policy is simply policy and procedures that are in compliance with the Act. I do have some problem with language Mel in things you might consider. The first thing is, and I think Ron Segel said it, the very first part says, "This policy supercedes the September 12, 1996 version of Board of Regents Policy 2.17." Then it adds the language "and is retroactive." The courts still don't know what that means Mel

and they redefine retroactive and Mr. Segel said they called it modified retroactive or they'll say what can be retroactive and what can't. I would suggest an amendment that says that language is simply stricken so there is no confusion and is retroactive.

**Regent Eaves** I'll accept that as a part of the motion.

**Regent Fortner** And then I would go to 6.8 where it says in the last sentence, "The University will generally endeavor to withhold from inspection under IPRA employees personal information including Social Security numbers." I would also suggest the language rather than say "The University will generally endeavor to withhold," that it says "The University will withhold from inspection that information including Social Security numbers."

**Regent Eaves** I have no problem with that amendment either. I would be glad to incorporate that into the motion.

**Regent Koch** I would like for you to delete from your amendment, I would like to include 2300, it's in our little manual, 3210 and 3710 which is Inspection of Public Records, Recruiting and Hiring, Personal Information, that the only item that we are not going to deal with today would be the C70 Confidential Faculty Records. I think that with Confidential Faculty Records as we heard today, they want time to review those faculty - - the response to the faculty, they don't think we have given them enough time for the faculty committee to come up and change. I think what I heard from Lowrey is that they intend to do that so I would like to include, as I said from our book here which is 2300 Inspection of Public Records, Recruitment and Hiring and 3710. Do you have any problem with that?

**Regent Eaves** I don't have any problem with voting on all of it today and approving it as far as I am concerned. I was trying to be somewhat sensitive to the people had asked for some additional time to consider these other provisions and so I thought the Regents would make a strong statement today by amending the Regents' Policy Manual. I think it is pretty obvious that we intend to make the other amendments as necessary later. But I think, you know, giving a few days for people to give us their thoughts on C70 and on the UBPPM, to me didn't sound unreasonable. So I was trying to strike a balance. I could vote for the whole thing today, I was just trying to strike a balance.

**Regent Koch** The only item that I could hear in regards to the faculty is that they have a procedure for what they want to go through to run through the faculty as far as C70. I heard Lowrey come up and say a while ago that they would proceed to do that correction. That they felt that was the responsibility of the faculty to do that. I could go along with the C70 being determined and after the faculty has had an opportunity to do that, taking the word of what Dr. Lowrey said, that in August they would give to us, at least a couple weeks before the August meeting, with their revisions and comments in regards to that particular item which would allow them to do that. Further what I would suggest we do, is that if we pass this with the C70 being finalized in August, I think that it would be appropriate, this is with the Regents now, that it would be appropriate that we give a time

for the faculty, the staff, to list all the kind of questions that they have, that they have got concerns with, that they would submit into writing to us those concerns, specifically and detailed as they possibly can. Do that and give that to us so that we have that a couple weeks before in August. That we then would answer those concerns in writing so that when we had our August meeting we could have those to make sure that everybody whose has got their concerns and different issues have been answered or responded to. I think that that would go a long way in making sure that there is clarification so what is not public, what is public, but to me the law is the law. I have said it over and over again. I think that I will agree with the faculty in regards to the Faculty Handbook on the procedures that the Faculty Handbook says in regards to change the Faculty Handbook. I think that - - I respect that particular position. So I would hope that our motion would include one, two, three, four, five, six, seven in our book and number eight would be held with the instruction to Dr. Lowrey that the faculty would come back to the Regents with their written report at least two weeks before August Regents' meeting. At that time we would adopt those changes that have been recommended by the faculty.

**Regent Sanchez** Mr. President, may I please?

**Regent Koch** Yes.

**Regent Sanchez** Just a comment relative to what you have said and what Mel has said and what I heard. I have a question I guess first. 2300 relates to policy and procedure as I am reading it, implementing the policy and procedures, how you go about it. Just for example, page two of that down at the bottom down under Procedure for Requesting Public Records, that sets forth the procedure, not necessarily the law. But a procedure for implementing the law. What I see under the Faculty Handbook is where they want to have more say as to what that process would be and what that procedure would look like as it effects the records that are being requested and by whom. I have heard a lot of who is requesting, what is the process for requesting and what is the notice to people whose records are being requested.

The question I have of legal counsel real quick if I may, is there any prohibition in the law against the Custodian notifying the person whose records are being requested? Of the name of the person requesting that information, when it was requested and how often it has been requested?

**Ron Segel** I don't think it addresses that.

**Regent Sanchez** I don't think it is addressed but I can see.

**Ron Segel** You couldn't give a veto to a person but I don't see any reason not to - -

**Regent Sanchez** Is there anything in this procedure that says the person whose records are being requested shall be notified as to who is asking for that information and how often it has been asked for by that same person or others?

**Ron Segel** No, that is not in there as it is currently written.

**Regent Sanchez** Those are some of the things that concern me Mr. President and members of the Board. I think that we need, after listening to all of this, to be more careful about the process and procedure. I think we all agree with you Mr. President that the law is the law, they have the right to access. The question is, how do you get that access and how is that communicated to people who may be affected. If we pass 2300 without looking at the Faculty Handbook in terms of process, then we are going to have to come back at our next meeting and maybe amend that. So why not just adopt ours, leave the rest so that we can have a comment period and see if we can flush out what procedure we are going to allow to take place in order to get that information. You're not going to say you're not going to get it, we're going to give it to everybody, but at least how will we take care of the notification. It is really beginning to bother me. Some how or another, I am getting a feeling deep inside of me, and I know I'll never get the award for open meetings, believe me, historically, that will not be given to me. But the fact of the matter is, there is this gnawing in my conscience that says maybe we ought to be protecting some of our employees rights and maybe there are times where we ought to litigate [applause] an issue that we feel strongly about in terms of what information we are giving out. I don't want to disagree with you Mr. Chairman, I think you're doing the right thing, but I'd like to see the motion as articulated by Regent Eaves voted upon.

**Regent Chalmers** Raymond, I feel very much the same way except I feel that way about all of these things at this point. You know, everybody here has talked about they're for openness of operation and I am the same way. I am also for abiding by the law. We are not passing the law. The law is going to be there whether we do anything today or not. We are trying to craft an wordsmith a policy that has consequences and as I think we have already seen so far today, maybe some unintended consequences, at least from the conscious minds of the Regents.

We also are a university that has embraced shared governance. I think we are stepping around that at this point. I can be all for what is written down here, but the process we are going through right now I think side steps shared governance. I find it interesting our University Counsel, and I certainly respect Mr. Segel and his opinion, but I also respect our own University Counsel as well and we are getting some mixed signals there. I totally disagree that this law is clear. This law is anything but clear. It is clear until you say "except" and then you start listing the exceptions and then when you get to the last exception, it kind of says "Kings X, anything you want to except," you can try to justify that and the only thing that is clear ends up being decided in a court of law. We are trying to do the right thing here but I am very much - - the process Mel that you laid out for a comment period of 76 days, and I certainly don't want to take two years, even though we have lived with this, with IPRA on the books for ten years, I can live with it another 76 days. During that 76 days I would like to hear comments, not just from the faculty because the faculty is not the only group, university employees that have talked against this, it is the staff as well. So we need to listen to comments from faculty, from staff from other lawyers as well. We're going to pass a policy but what the words are in that policy I think we all need to understand. All of us need to understand more than we

understand today. Therefore, I am going to vote against the motion and for one reason and that is because I think it ought to apply, the waiting period ought to apply for all of these. And I think that is the prudent thing to do. I don't know enough - - we're even changing some of the words right up here, saying retroactivity, and what was the other amendment? I'm a car dealer, I'm not a lawyer but I can certainly understand a crummy process and we're going through a crummy process here. I am all for the motives of trying to clarify a policy that complies with the law and I want to be open with all of our operations that we do but I think another 76 days will make it a little bit clearer and that is why I am going to vote the way I am going to vote.

**Regent Eaves** Mr. President, one of the speakers, maybe more than one of the speakers a while ago said that they knew the Regents had already made up their mind and had a motion. That obviously was not very true. I don't think they understand the process the Regents have been going through.

**Regent Koch** The situation, first of all, is people criticize people and say that you do things behind closed doors and you've got everything set, and I really resent those remarks when I hear those remarks. I have not politicized the Board the Regents, I have not gone to them and asked them to do certain things. However, when you get into doing something like this, it is difficult. It is a difficult decision to make. It is uncomfortable to make, I understand that. It was uncomfortable to make when I did it the first time. It was uncomfortable when I helped write the open records. It was uncomfortable when I did the open records because I got beat. Because I got up on the floor of the House after my friend Raymond and the Speaker and the Minority Leader and all of them got up and said Jamie, you're the only one that can amend the Open Meeting Act. You're the only one that can amend it. Nobody else can amend it. And I have heard this same thing on and on again and it's going to be the same in 72 days, it's going to be the same thing. So what did I do? Well this nice 36 year old person got up on the floor of the House and I said, "I move that we strike the legislature from the Open Meetings Act." I lost my election by 40 votes, I should have. It's a difficult decision for us to make, I understand that. It is difficult, it's not fun. People think that being on the Board of Regents is just a hell of a lot of fun, easy. Everything I have heard here is no different than what the law says.

Sandy you made a comment and you said the same thing, "We need to make clear so everybody understands what it is." That's the problem. We have not made it clear. Then I go back to the letter that we got, which was very nice, which I read, from Mr. Carr, which was a very good letter which I will read again. The situation is, this group of Regents had nothing to do with establishing the way the University is going to - - with open records. We didn't have anything to do with that. If the Regents at that time had had the intestinal fortitude and the administration and the legal staff to say we've got a law that was passed, we didn't pass that, we have a law that is passed, we have to conform by the law. What we're doing is nothing other than do that. We can sugar coat this and say we're going to wait another 72 days, we're going to do it and obviously that might be the easy thing for us to do today. I am sure everybody here will clap real well if the vote goes that way. The letter I got from Michael Carr is a very good, interesting

letter. The situation is, I can understand one thing of all of this. I can understand the confidentiality of the faculty, I can understand that. When I say inspection of records, there is a different inspection of records maybe with the staff than with the faculty so I would presume that when the faculty takes a look at their situation there is going to be a different procedure of how that was going to be done. It seems to me that we can go ahead, potentially go ahead and say well, this - - wait another 72 hours but I can assure you if that is the case I would venture that we will have the same input we had today. I would think we'd have the same [inaudible] today. Same people today say is my Social Security number going to get out, we'll have the whole same thing again. We need to put this behind us because when Dr. Schmidly came on and Dr. Schmidly said he has never been at a university, ever, any university that has had so many requests for records. Isn't that correct?

**President Schmidly** Uh-huh.

**Regent Koch** Triple, triple at Texas Tech, trip at Oklahoma State. So we are sitting here, again, I opened up the meeting very clearly. We wouldn't have been here except for we had a disagreement with our legal staff in regard to applications on an individual named Marc Saavedra. We had a different reason in regards to the audit. My feeling is we will do whatever the majority of the Regents does. This Regents are all independent, we're all independent to make our own decisions our own ways. It's a tough decision in a lot of ways. It is not a tough decision for me. It is not a tough decision to say that's what the law says, we need to respect. When we hired Ron Segel we made it perfectly clear, go through this, change it so it's in conformation with the law. That's all we've said. Now if we don't do anything we're still the law but however if for some reason something comes up and somebody wants somebody to do that and they bring a case against us on application, guess what? We loose that, we're going to pay those costs. So we will do what is right. I would say that I can understand the faculty and the Faculty Handbook, I understand that. I appreciate that but I do not think we need to push this off another 72 days. It's not going to change. So we've got a motion and second of amendment and you want to clear up what your motion was?

**Regent Eaves** I think it's already clear.

**Regent Fortner** Can we still have some discussion?

**Regent Koch** You sure can.

**Regent Fortner** Is Amy still here? Amy can I ask you a question? When you were talking about wanting additional time for the faculty to make comments, were you primarily referring to C70 or the whole thing?

**Amy Wohlert** Thank you Regent Fortner. No, I was referring to the whole thing. Again, not as a matter of law but as a matter of procedure because we don't understand how to implement the consequences of the changes that are in that policy. Again, usually

when we review policy we do it with an eye to implementation so we say, what does this wording mean in practice. And we know that then when we ratify the procedures.

**Regent Fortner** And to take it a step further, Regent Eaves' original motion only had 2.17, 6.7, 6.8 and 7.2 - - again, to be even more specific is that part okay if you're having to make choices or you really mean?

**Amy Wohlert** Let me think on my feet here. Of course the Regents' Manual is something aside, however, the personnel policies and faculty policies again in my mind that is not clear how they might be differentiated so it is hard for me to understand how I would implement personnel policies that you might pass here separately from faculty policies and faculty are, after all, personnel.

**Regent Fortner** And then Mr. Chairman, Regent Chalmers if I could follow up on something that you had mentioned. You mentioned that you object to all of this because you believe it violates the idea of shared governance. Do you also think that applies to these four sections that were included in Regent Eaves' motion?

**Regent Chalmers** Shared governance might be the issue in all of them but shared governance certainly in C70. But the reason I would be for all of it, I hear Raymond talk about wouldn't it be reasonable if it is not prohibited. If someone asked about my information, by golly I would like to know who it is. I should be informed and I think that would be a great policy for the Regents if that goes through. But we have not even thought about those sort of consequences. We're crafting a policy not the law. I am for the law but we're crafting a policy that is going to have consequences. We have not thought this all the way through, that is what I am saying. 76 days I think is what Mel said for comments and study of this is not going to cripple this university and we'll come out - - I would predict we will have the same general sort of policies on the table, we'll all be better informed but we're probably going to change it a little bit and it will end up being a better crafted policy. I am talking about every single one of them.

**Regent Fortner** A comment and then a question. My comment is every person needs their own lawyer and I have a very shude lawyer and he's a former car dealer.

**Regent Chalmers** Boy you're in sad shape. You're going to jail buddy.

**Regent Fortner** And then I'd ask Marty, or Matt either one, as we discuss this and there seems to be for some of us an urgency, especially on the part that Regent Eaves is discussing, do you have an opinion on what you've heard and how we're proceeding?

**Marty Esquibel** The only argument that I heard from the faculty is that they wanted to comport the Faculty Handbook with the law. You don't comport the law around the Handbook, you comport the Handbook around the law. If there is a procedure then I would think it makes - - if you wanted to exempt the policy, the Faculty Handbook policy C70, we could probably live with that. The rest of the information, 2300, 3210, 3710, the four areas that have been discussed have all been pretty clear and really are all consistent

with the existing law. So I really see no reason to hold off on making the decision with those. The concerns, the law is the same way it was yesterday, today and tomorrow. It's not going to change. You've gotten very competent legal counsel here who has instructed you how to follow the law. In 15 years of familiarizing myself with the Inspection of Public Records Act and the Open Meetings Act, I can tell you there is nothing here that should cause anyone any concern, any worry. I mean it's the law. All your counsel is doing in instructing you with his knowledge and expertise is to simply follow the law. So on a procedural matter if you wanted to hold off on C70, from your perspective, I can understand that. The rest I think is ready to go from the Foundation of Open Government's perspective.

**Matthew Hoyt** From the *Journal's* perspective I think we generally agree but I guess I have a few concerns. The first would be, it is important to understand that under the *Newsome* case, a promise of confidentiality given by a public body to someone else, whether that be an employee or some other party say in a settlement agreement or to any other entity does not create an exception to the Inspection of Public Records Act. This is very clear in the *Newsome* case. In other words, you cannot contract away a public body's duties under IPRA. That would be my first comment. So while I think I appreciate some of the concerns of the Regents, I think it is important to understand what the law says on that very issue.

On the issue that Regent Sanchez brought up,

END OF TAPE – TAPE TWO, SIDE ONE

**Matthew Hoyt** (continued) ...prompted by the person who is asking for these records, well then ask them why they're asking for these records. And that would be a concern and indeed the *Journal* has seen in past litigation with public bodies that public bodies treat different requestors differently sometimes. That policy is wrong under the Inspection of Public Records Act but they do it none the less. We have seen for example, the *Journal* gets treated differently when it requests a record then say a private individual. That is not how IPRA provides how requests are to be handled. Every person, includes whether or not that person is a corporation, a member of the news media, the news media itself, or an individual. So I would be concerned, I would only want to share that concern that that would not start creating a process or a policy even if it is unwritten where the Custodian would start treating different requestors differently.

With regard to Regent Eaves' amendment to strike provisions about draft audits. As I understood the motion, he would keep part of that but I do want to point out that drafts are not excepted under the Inspection of Public Records Act and because of that, the *Journal* would be concerned about any amendment with proposed changes that would seem to suggest that that is not the case. Although it has not been specifically addressed in New Mexico, it has been addressed in a number of other states. And a number of other states have addressed that and said that unless there is a specific statutory exception for drafts, drafts should not be excepted as public records. They constitute public records.

**Regent Eaves** Let me respond to that because that isn't at all what I said. I didn't say anything about drafts. What I said that we would not release an audit until it was approved, an audit report until it was approved. That doesn't mean the drafts aren't subject to the Act, it just says that the Audit Committee is not going to formally release an audit report until it is approved. If somebody makes a request for it then it's probably a public record.

**Regent Fortner** Mel, in fact, with your amendment the way it reads is "upon approval of an audit report by the Audit Committee, the full text of the report as well as any drafts...will remain public.

**Regent Sanchez** That remains in there, that stays in there

**Matthewe Hoyt** I appreciate that but I should probably point out that the Inspection of Public Records Act has a specific time frame for compliance. What would be the *Journal's* concern would be that if that provision is stricken that a public record could be withheld beyond the deadlines imposed by the Act merely because it is in the policy that that can happen so I would have that concern. I appreciate what Regent Eaves and Regent Sanchez is saying.

**Regent Koch** You have concern because it hadn't been approved is that right and maybe they are going to pigeon hole it? Is that what you're saying?

**Matthew Hoyt** Correct, I mean under the Act - -

**Regent Koch** Everybody talk - - so just say what you think. In other words what you are concerned about is that if there is a draft - -

**Regent Fortner** It will sit in draft form for eight months.

**Regent Koch** What you're concerned on, what you're saying is if the Audit Committee doesn't like what it is they just don't approve it. I understand where you're coming - - that's what you're saying.

**Matthew Hoyt** Correct, because of the three day business rule in which a public body must comply with the Act.

**Regent Koch** What that amendment says, the amendment they have come up with, what the amendment says that when that is proved it's all released, including drafts and everything.

**Regent Eaves** Do you want to go back and redraft the whole thing then?

**Regent Chalmers** Amen.

**Regent Eaves** I am at the point now where I may just vote against all of it.

**Regent Fortner** Hold on, let me ask Matt something. But even the way the Act reads without - - the way it reads there, the proposal, even without his amendment then it is not following what you want, is that right? Because this says “upon approval or upon the expiration of 90 days” so then at least 90 days is going to pass before even a draft would be released?

**Matthew Hoyt** I am sorry Regent Fortner, let me look at that really quick.

**Regent Fortner** What I am saying is what you’re concerned with is not addressed even if you don’t delete the language that Regent Eaves wanted?

**Matthew Hoyt** Well Regent Fortner, I just wanted to point out that concern. I am not necessarily speaking to the specific amendment to the policy. I just wanted to point out the concern.

**Regent Koch** We have got your concern noted, okay. All right, so we have a motion and a second. The motion says that, if I remember correctly, that we adopt 2.17, 670, 6.7, 6.8 and 7.2 with the amendment on 7.2 that the information becomes available when roughly when it is approved. Is that correct? Okay.

**Regent Fortner** And the amendments that I stated.

**Regent Koch** Okay, so we have a motion that - - that’s what we’ve got and we have a second, anybody else? All in favor say aye. (Koch, Eaves, Fortner, Sanchez, Dahlia) All opposed, nay. (Chalmers) So we have voted to adopt to partial of this.

**Regent Fortner** Hold on, now I want to make a motion that we adopt 2300, 3210 and 3710.

**Regent Koch** Is there a second? I guess as Chair I could second, can’t I. I’ll second it.

**Regent Sanchez** I thought we just adopted a motion to eliminate that?

**Regent Chalmers** Actually that was part of the motion.

**Regent Fortner** Actually you didn’t accept it as part of the amendment.

**Regent Sanchez** Yes it was, that was part of the original motion was that those were accepted.

**Regent Koch** Yea, but I am going to rule that --

**Regent Eaves** Specifically.

**Regent Sanchez** Specifically accepted.

**Regent Koch** I am going to rule that we have a motion and a second on those three type items and I am interested to see what the vote comes out. I think I can count pretty good, but. So, Mr. Don Chalmers?

**Regent Chalmers** Nay.

**Regent Koch** Dahlia? You're voting for either yes or no to include 230, 321 and 3172.

**Student Regent Dorman** Nay.

**Regent Koch** Jack?

**Regent Fortner** Yes.

**Regent Koch** Raymond?

**Regent Sanchez** No.

**Regent Koch** Well that's a good easy vote.

**Regent Fortner** Now we can move on.

**Regent Koch** One other thing before we do this is I would like to hear from all the Regents and just a real quick one. You know you sort of see these things. Okay, we're going to bring this back in August. We're going to bring this back in August and I think I have heard a commitment from this Regents that they are going to adopt it. I think I have heard that except for maybe one, maybe not, still sitting, that we're going to bring this back, this very thing back and we're going to adopt it. And we're going to let 72 days for this information to be provided so we will discuss this issue at our August meeting.

**Regent Chalmers** Mr. Chair, I don't think that you heard a commitment that we're going to pass this very thing in 76 days. We'll take up this subject in 76 days but we - - if we're not going to have an open mind to comment then why would we ever ask for comment. And I believe that is the sentiment of the rest of the Board.

**Regent Eaves** Mr. President, I would say as the drafter of the motion, I think what Don says is correct because I think Raymond - - there have been two or three points raised today on the procedure to do this. I mean no one on the Board of Regents is opposed to complying and we're all very much in favor of complying with the Act but there are some procedural matters on how you do it and what the procedure is and I don't think any of us are going to set still for any procedures that would some how water down or give somebody an excuse not to comply with the Act. There is nothing wrong with clarifying what we're doing so that we do our best to protect employees and that we do our best to make it a clear procedure like Amy was talking about. So I don't know what the final language is going to be. I know I am going to vote to comply with that Act as

the official policy for all parts of the University but there are some details that we do need to think about.

**Regent Koch** Okay, well we have discussed that at quite length.

**Regent Fortner** Mr. Chairman, can we take about 10 minute recess to go to the bathroom?

**Regent Koch** Yea, you can. I have an old trick that I have done a long time is that I never go to the bathroom and when I ran committees because I felt some of the people who probably weren't going to vote with me would get up when I would do a motion. I know Mel needs to go and Raymond needs to go and Don needs to go so the three of you go ahead and then we'll continue our process.

Five minute recess.

Back in session.

### **ARTICLES OF INCORPORATION OF THE NEW MEXICO COMPUTING APPLICATION CENTER, INC.**

**Sandy Liggett** Good afternoon. I know there is a need to move this meeting along. The members of the Board of Regents were delivered documents pertaining to this item just, I believe, yesterday and we apologize for the lateness of the documents. I have extra copies if anyone would like to see it.

This is to approve the creation of the New Mexico Computing Application Center, Inc. This will be a Research Park Act company that is created under the New Mexico University Research Consortium. That entity was created and approved by this Board of Regents in 2006. That is a consortium between New Mexico State, UNM and New Mexico Tech and they have created two other Research Park Act corporations beneath them, this would be the third. This corporation is being proposed to be created by the Governor to help carry out a very high profile, high computing operation and to make it available to the New Mexico public and corporate world. UNM will be a participant in this corporation. There are no financial commitments made here by UNM or the other universities. This is literally to establish it as a corporation so that the articles can be filed and so that exemption can be filed for under 501(c)(3).

If there are any questions, we have members from the Governor's staff here who could go into more detail about what the plans are.

**Regent Eaves** I am just curious why this wasn't provided to us before today.

**Regent Fortner** It was.

**Regent Eaves** It's not in the book.

**Sandy Liggett** The reason it wasn't provided, it was sent yesterday morning - -

**Regent Koch** What had happened, this is the thing they called me late last week on from the Governor's office that we had approve because I guess they were getting ready to - - where is David Harris?

**President Schmidly** I think the issue is they need to operationalize this super computer center and they need this established to be able to operationalize it and they appropriate \$11 million dollars. Is that not the case?

**Regent Koch** Mel, did you hear what he said?

**Regent Eaves** I heard part of it.

**Regent Koch** I guess we have the individuals here.

**President Schmidly** Tom Bowles could maybe address it?

**Sandy Liggett** Tom, do you want to come up?

**Regent Koch** Did you have a lot of fun sitting through our nice little easy discussion? Did you enjoy that?

**Regent Sanchez** This information was e-mailed out yesterday.

**Regent Koch** Go ahead.

**Tom Bowles** We've actually been working with legal staff at the Universities in the state, continuously for the last two months to come to a common set of bylaws and articles of incorporation that everybody was happy with. That only happened Friday evening at 7:30 when we came to final closure on that. As soon as that was done, then we filed the final articles with UNM and asked that it be forwarded to the Regents.

**Regent Eaves** As I recall when this was discussed earlier, that was quite a while ago, and this was emailed yesterday but I was here half the day and then I went up to the Michelle Obama thing and so I haven't even had a chance to read it because I didn't get it until I came in here and obviously we have been busy here. But, tell me about the governance of this. I thought that UNM was going to be the lead entity here in this organization. Is there some provision in here for that?

**Tom Bowles** This is being established under the University Research Consortium so the three universities stand jointly under the existing Joint Powers Agreement as the substantiating agency for this and so all of those capabilities and rights and so on are shared among the three universities.

**Regent Eaves** As I remember, and it's been a while since I have seen this and as I said I didn't have a chance to read this because I didn't receive it ahead of time, but as I remember the contributions that were being made to this money wise, I thought the University was making a larger contribution than the other entities?

**Tom Bowles** The university has made no financial contribution at all to this other than in-kind contributions from staff within the University who have been working to support this. There has been actually no transfer of dollar funding and there is no such request from this. We have partnered - - at this point we have partnered between the State and various groups at UNM, Dr. McCabe can address that on joint proposals to the National Science Foundation in which UNM is the lead institution. In fact, UNM has been with the high performance computing center here, one of the dominant forces in moving this whole activity forward. In fact, this is largely the creation of Dr. Terry Yates.

**Sandy Liggett** Regent Eaves, you may be thinking of the New Mexico Lambda Rail.

**Regent Koch** Excuse me Sandy?

**Sandy Liggett** You may be thinking of the New Mexico Lambda Rail Research Park Corporation - -

**Regent Eaves** Could be.

**Sandy Liggett** In which UNM does carry a substantial - - they have a similar mission.

**Regent Eaves** That's the trouble with getting this stuff at the last minute, we don't have a chance to think about it.

**Motion approved** unanimously to approve the Articles of Incorporation and Bylaws of the New Mexico Computing Application Center, Inc. (1<sup>st</sup> Fortner, 2<sup>nd</sup> Sanchez)

### **APPROVAL OF HARWOOD FOUNDATION APPOINTMENTS**

**Sandy Liggett** Regents, I know you remember that the Harwood Museum Governing Board has a unique relationship with UNM and has been structured very uniquely by the Board of Regents. One of the requirements for the Harwood Governing Board is that their members serving on their Board are approved, recommended to this Board and hopefully approved by this Board. We are at the end of the first year term for the members serving on the Harwood Board and there are three members whose terms expire at the end of this year. This memoranda is from the Chair of the Harwood Governing Board and she is recommending that two additional members be added (Phyllis Nottingham and Daniel Montoya) to the Board and that David Harris' term be extended.

**Motion approved** unanimously to approve Harwood Foundation appointments Phyllis Nottingham and Daniel Montoya (1<sup>st</sup> Chalmers, 2<sup>nd</sup> Fortner).

## **CONSENT AGENDA**

### **Regent Eaves**

- F&F meeting, consent agenda approved, Items A through G.

**Motion approved** unanimously to approve Consent Agenda (1<sup>st</sup> Eaves, 2<sup>nd</sup> Koch).

## **REGENT COMMITTEE REPORTS**

### **Academic/Student Affairs Committee**

No report.

### **Advancement Committee**

No report.

### **Development Committee**

No report.

### **Audit Committee**

No report.

### **Finance & Facilities Committee**

Regent Eaves

- Contract for UNM Center for Microengineered Materials (CMEM).

**Motion approved** unanimously to approve contract for UNM Center for Microengineered Materials (CMEM) (1<sup>st</sup> Eaves, 2<sup>nd</sup> Fortner).

### **Health Sciences**

Regent Fortner

- Permanent appointments for medical staff, starting with Lance Wilson and ending with Susan Miller

**Motion approved** unanimously to approve permanent appointments and reappointments for medical staff (1<sup>st</sup> Fortner, 2<sup>nd</sup> Eaves).

- Permanent reappointments for medical staff, starting with Janet Brierly and ending with Richard Hoffman

**Motion approved** unanimously to approve permanent appointments and reappointments for medical staff (1<sup>st</sup> Fortner, 2<sup>nd</sup> Dorman)

- Permanent reappointments for medical staff, starting with Charlotte Jutila and ending with Steve Jenkusky

**Motion approved** unanimously to approve permanent appointments and reappointments for medical staff (1<sup>st</sup> Fortner, 2<sup>nd</sup> Eaves)

- Expansion of Privileges for Dr. Peggy Beeley to include EKG interpretations, thoracentesis, paracentesis
- Department of Orthopedics requested expansion privileges for Dr. Robert Quinn

**Motion approved** unanimously to approve expansion privileges as stated for medical staff (1<sup>st</sup> Fortner, 2<sup>nd</sup> Eaves)

- May 2, 2008 permanent reappointments for medical staff, starting with Bruce Dorman and ending with Victor Davis

**Motion approved** unanimously to approve permanent appointments and reappointments for medical staff (1<sup>st</sup> Fortner, 2<sup>nd</sup> Koch)

- Permanent reappointments for medical staff, starting with Christopher Arndt and ending with Robert Schenck

**Motion approved** unanimously to approve permanent appointments and reappointments for medical staff (1<sup>st</sup> Fortner, 2<sup>nd</sup> Eaves)

- Permanent reappointments for medical staff, starting with Erika Hernandez and ending with Solon Hughes

**Motion approved** unanimously to approve permanent appointments and reappointments for medical staff (1<sup>st</sup> Fortner, 2<sup>nd</sup> Eaves)

- Expansion of Privileges, Department of OB/GYN for Kathleen Kennedy

**Motion approved** unanimously to approve expansion privileges as stated for medical staff (1<sup>st</sup> Fortner, 2<sup>nd</sup> Dorman)

- **UNMH Dashboard Report and UNMH CEO Report (Tab 16)**

Steve McKernan

- Consistently up, rate of growth is accelerating
- Biggest issue is finding enough nurses
- ER is up 50% over prior year
- Discharges were up 17% for the month of April over the prior year
- Operations up 15%
- Deliveries up 11%

So business at the hospital is booming right now.

**Regent Chalmers** Steve, do we have enough money to make a mortgage payment on the Barbara and Bill Richardson center?

**Steve McKernan** Mr. Chair, Regent Chalmers, we have made that payment each and every month and we have actually, as you can see, greater cash balances than we had when we started the year.

**Regent Chalmers** Congratulations.

**Regent Fortner** Steve, it is interesting every time you give this report that you say we can't hire enough nurses and yet somehow during the legislative session that was the one part of the health sciences that really was left out. So every time you mention that, I am going to mention again so that the Regents will think of that as a priority. Remember the joint meeting we had with the Aggie Regents and we talked about it being a priority but somehow it fell through the cracks.

Thank you Steve, does anyone else have any questions for Mr. McKernan?

**Regent Chalmers** Your comments on nursing, Rio Rancho would be a nice place to put some nurses out there.

**Regent Koch** What's Rio Rancho? If we ever get funding - -

**Regent Fortner** We can't even get enough funding for our own program. Thanks Steve.

**Steve McKernan** On the activity report I was going to bring one thing to your attention which I believe Ellen handed out to you. We will be seeking changes to Regents' Policy 2.13.1, 2, 3 and 4 in the delegation of authority to the hospital board. There is a cover memo. We were going to bring this up at the August meeting but we wanted to make sure it was brought to your attention so you had time to review it. It effectively does three things. The first thing it does is changes the name from Clinical Operation Board to the Board of Trustees because there are clinical operations at the health sciences center which are not part of the main UNM Hospital and it's clinics. We wanted to make sure it was clear what the board's authority is, where it starts and where it stops.

Then we wanted to clarify the delegation of authority and add a couple of things related to HIPAA and compliance that are currently not in that delegation of authority to the hospital board.

The third thing we wanted to make sure clarified how that board reported back up to the Regents.

**Regent Koch** This is the report that came from Paul Roth, right?

**Paul Roth** Mr. Chair, Mr. President, Regents, it would go from me to the President and then the President would ultimately approve what would appear on the Regents' agenda.

**Regent Koch** You gave us the memo, you called me, Board of Regents, Paul Roth recommendations - - is that what we're talking about?

**Paul Roth** That is what we are talking about.

**Regent Koch** You need to explain. This is not to be voted on.

**Paul Roth** It is not to be voted on.

**Regent Koch** Dr. Roth did not get this to us quick enough to have it on an agenda item. So when I said - - is that why I thought you were going to make the report. If I knew he was going to make - - because the memo comes from Paul Roth to tell us about the Governor's recommendation to the clinic. So that's what you're doing, right?

**Steve McKernan** That's what I am doing right now, I apologize.

**Regent Koch** Well I was just confused, it says Dr. Roth was going to do that.

**Paul Roth** Steve and I look alike.

**Regent Fortner** Steve, you started it off by saying it was changes in Regents' Policy, is that what you said?

**Steve McKernan** There are a number of policies, 2.13, 2.13.1, 2, 3 and 4 and they have been included. We are changing them to make clarifications and those three clarifications are the ones I just went over. It would change the name of the board from Clinical - -

**Regent Fortner** The only reason I brought it up, these guys are real touchy about that kind of issue right now.

**Steve McKernan** But we wanted to make sure that the Regents were notified that we are proposing these changes and give sufficient amount of time for the Regents.

**Regent Koch** Yea, you know we've gone through this. People like to have 72 days notice, 60 days notice, something like that.

**Steve McKernan** That's why we're doing this.

**President Schmidly** This is 76 days notice.

**Regent Koch** So we're going to have to change our process on the Regents now, we're going to have to have 70 day notice before we act.

**Regent Fortner** That's the end of my report, thank you.

**Steve McKernan** Thank you Mr. Chair.

**Regent Eaves** I want to make a motion we approve just part of this today.

**Regent Fortner** Then I would like to make a motion after that.

### **PUBLIC COMMENT**

**Regent Koch** What happened to the public?

**Regent Eaves** You wore them out.

**Regent Koch** Well hell, excuse my language, I had a list of all this public wanting to comment, I guess. Is there anybody from public comment that signed this big list of about 30 people that is still here? What we ought to do in the future, when I have one of these hot issues, the best way to do that and this is the way we're going to do it in August, we're going to meet - - the Regents will meet at about 1:00 o'clock, and we'll put that on the agenda about 6:00 p.m. and I'll bet you we can get it resolved pretty quickly.

So, no public comments.

**Motion approved** unanimously to adjourn the meeting at 1:21 p.m. (1<sup>st</sup> Eaves, 2<sup>nd</sup> Chalmers).

### **ADJOURNMENT**

**Executive Session items are included in the summarized minutes.**

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Regent James H. Koch

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Regent Carolyn J. Abeita

President

Secretary Treasurer

Attachments are included on the summarized minutes.

BOR Minutes 5-28-08