

The University of New Mexico
Board of Regents' Meeting
April 29, 2011
Student Union Building Ballroom C
Meeting Minutes

Members present: President Jack L. Fortner, Vice President Don L. Chalmers, Secretary-Treasurer Carolyn J. Abeita, J.E. "Gene" Gallegos, James H. Koch, Jacob P. Wellman (Quorum).

Present via conference phone (10:00 a.m.): Bradley C. Hosmer.

Administration present: President David J. Schmidly, Executive Vice President David Harris, Provost Suzanne Ortega, Chancellor Paul Roth, Vice President Carmen Alvarez Brown (Enrollment Management), Vice President Josephine De Leon (Equity and Inclusion), Vice President Julia Fulghum (R&D), Vice President Helen Gonzales (Human Resources), Vice President Paul Krebs (Athletics), Vice President Ava Lovell (Controller), Vice President Stephen McKernan (HSC Hospital Operations), Vice President Eliseo Torres (Student Affairs), Interim University Counsel Lee Peifer.

Regents' Advisors present: President Richard Wood (Faculty Senate), President Merle Kennedy (Staff Council), Victor Lopez for President Lissa Knudsen (GPSA), President-Elect Waneta Tuttle (Alumni Association), Chair Anne Yegge (UNM Foundation), President Maria Probasco (Parent Association), President Cynthia Stuart (Retiree Association).

I. Confirmation of a Quorum; Adoption of the Agenda, Regent Fortner

Motion passed, with no dissenting votes, to adopt the agenda (1st Chalmers, 2nd Abeita).

II. Approval of Summarized Minutes of the March 14, 2011 BOR Meeting and the March 28, 2011 Budget Summit

Motion passed, with no dissenting votes, to approve the summarized minutes of the March 14, 2011 BOR Meeting and the March 28, 2011 Budget Summit (1st Koch, 2nd Gallegos).

III. Presentation on the History of the Presidential Searches at UNM in the context of Open Records Statutes, Kent Walz and Jim Dines, Albuquerque Journal

Mr. Walz: There were two major legal actions involving Presidential searches at UNM, both brought by the media and the New Mexico Foundation for Open Government. The core issue in both cases was the degree of transparency the process would have and whether the applicable laws and rules were followed in the search process. The state and UNM have come a long way since the 1990s. The BOR has played a key role in adopting transparency policies recently, including one that clearly states, "Application material submitted by candidates for employment at UNM are public records and are subject to inspection in accordance with the Inspection of Public Records Act (IPRA)." University presidential searches are different: New Mexico law makes a specific exception requiring that just five finalists be made public, rather than all applicants. One theme that emerged from the court cases was that UNM's closed searches, in the eyes of many people, lacked credibility and legitimacy. There were lingering concerns that outstanding candidates nobody heard about were passed over for unexplained reasons. Too often the "finalists" who were disclosed failed to include ethnic minorities or women. The stated reason was, "No one in those categories rose to the level required." In the end, advocates argued that "sunshine" was the only way to insure a fair shake. Another myth dispelled was the notion that you cannot attract quality candidates in an open search. Search firms benefit greatly from a secret candidate pool and special interests can more easily advance candidates in a secret process.

Mr. Dines: You had a very successful search a few years ago that brought you President Schmidly. There was nothing that was raised that caused problems. The purpose, today, is to talk about some of the problems that did arise in the past so that, inadvertently, those same problems don't occur.

I started in the area of open searches 1990 in the law suit we call UNM #1. In the first case, initially the board had agreed to present five to twelve candidates as finalists. They then flew fourteen candidates to Dallas, along with the full search committee. They came back and announced publically, without any further discussion, they'd only found two qualified candidates, take it or leave it. At least that was the public perception. I took testimony from several presidents that had been through at least partially open searches, where their names had to be out early in the search. In all those cases, none had a problem entering their name knowing it was going to be made public. The conclusion we arrived at was there has never been any empirical data supplied that you don't get good candidates by openness. The other conclusion was that the beneficiaries of closed searches are head hunters and the candidates themselves: the same names can be submitted for search after search. This case resulted in a consent decree being entered and attorney fees being paid by the university. That consent decree said, basically, if there are two or more search committee members and/or regents in the interview process then, at that stage, that individuals name will become public. We operated under that consent decree until 1998.

In UNM #2, the search committee, in a private meeting, compiled a list of standardized questions to be asked of every candidate. A search committee member taped each of the candidate's responses, came back to the committee and said they could listen to it because there weren't two or more members present at the interviews. Mr. Dines said, "I am not taking the position, at all, that this was done intentionally to avoid the law." The judge believed, at that time, that the consent decree had been violated, that Mr. Dines' clients would prevail at trial and issued an injunction against the university in the search.

Next, at the Special Session of the Legislature that Governor Johnson was going to call, there was to be a bill proposed that would limit the amount of information that had to be divulged on behalf of a university search. That led to a discovery that there had been a meeting of the regents. We believed this was a violation of the Open Meetings Act because they had discussed public policy and going to the legislature, going to Governor Johnson to get the bill passed. The bill was passed and that's what we have now: at least five candidates to be disclosed publically and a time limit on when that disclosure is supposed to occur. Since then, we've had President Schmidly's search where there were no problems and we had an excellent pool of candidates. We find the system does work.

NMSU had to stop their search because, as I understand it, they had an Interim President who decided to become a candidate. That was contrary to the rule that had been passed by the board. The regents then announced that she was the first female President of the university. The regents said they had four other candidates who withdrew because they didn't want their names to become public. After he had left the board, the board president said he believed the candidates withdrew because they believed the Interim President had an inside track for the job. So it wasn't the openness that caused those candidates to withdraw. NMSU had to stop their search and begin all over again.

What have we learned and what are common themes? There has been no empirical data that you can't get good candidates in the open.

In Farmington, we took the position that the applications for the city administrator should be open, under the law. The city took the opposite position. The trial judge and the Court of Appeals confirmed that those should be public.

With the governmental agencies that are involved in these searches, the problems have been meetings that were not conducted as open meetings, unintentionally. Because we have many

people serving in these positions that are from private business, they forget they are working for the public. Taxpayer dollars will be paying the individuals hired for these positions.

As people become more educated in this area of openness, they become more comfortable with it. They begin to realize that what they've been hearing are myths, not backed up by empirical data. Besides, "Wouldn't you want to know that your sitting president that you're working with, that is sitting in on these meetings, is on the move?" I think the taxpayers, the regents or commissioners are entitled to that knowledge. At some level, with the openness that's required, at least that does get out. I think that what we see are that these positions are transitory in nature, there are very good excellent people who are qualified to do them, there are many out there, and by continuing to do it openly, like you did a few years ago, I think the University will continue to get better with the candidates that will come down here. I think this is a plum job, this is a wonderful university, and I commend you for the invitation to speak with you like this, not in an adversarial role, but in an educational, informative role coming from one who is very proud to be from this university.

In response to Regent Fortner, Mr. Dines said the time limits are found in paragraph B of the Exceptions area and it says, "...at least 21 days before the date of the meeting of the governing board of a public institution of higher education at which final action is taken on selection of the person for the position of President of the institution, the governing board shall give public notice of the names of the finalists being considered for the position." It goes on to say, "The board shall consider in the final selection process at least five finalists. The required notice shall be given by publication in a newspaper of state-wide circulation and in a newspaper of country-wide [sic] circulation in the county in which the institution is located. Publication shall be made once and shall occur at least 21 days and not more than 30 days before the described meeting."

Regent Chalmers asked what would happen in one of the five finalists withdrew between the notice being given, as required, and the meeting at which action will be taken. Mr. Dines responded, "As I would interpret it, because you have announced the five finalists and the public would know who you drew from, it would seem to me, as I would perceive it, you would have complied with the request and you would have informed the public of who you were nominating as finalists. Because you have no control over someone else. I think where we might get into trouble is if there were some kind of consistent pattern as to the reason for a candidate or candidates withdrawing."

Regent Fortner asked if there was another 30 day time limit. Mr. Dines said it was only the publication notice, which has to be made not more than 30 days before the meeting.

Regent Koch asked if the regents had five candidates, but just before notice was given, for whatever reason, we had fewer than five, would the search have to begin all over again? Mr. Dines said it would just have to continue. Mr. Dines said, "As I interpret it, what is really necessary is the public finding out the profile of those five finalists." Regent Koch asked that if we have four candidates we consider finalists, but none of the other applicants are up to that level, then would we have to find another candidate who would be considered a fifth finalist? Mr. Dines said, "That would be correct. I think what you would find is ... in the size of the pool that you will have you will probably have four, five, six and seven who would be pretty close. But that would be correct. The other part is, in the past ... one of the positions that universities have taken is, 'We've promised confidentiality. We can't go back on our word.' Of course, you can't promise what the law doesn't allow you to promise. Nowadays, when you start this process, everybody can be informed this is the law of New Mexico, you can provide it to them. 'Please understand we will have to comply with this and your name, if you're one of the top five, is going to be announced publically.' People in the pool understand the process better now, too, so they don't expect confidentiality all the way to the end. We end up with the really serious people who are willing to come forward at the end and keep their name in the hat."

Regent Gallegos clarified that the statute requires at least five finalists. The regents could have ten finalists if they had that many qualified candidates. Regent Gallegos asked, "Does the statute supersede or do we have to be particularly cognizant of the court decisions in addition?" Mr. Dines responded, "The statute has preempted in the area of Presidential searches. The case I referred to, with the City Administrator, clearly the language of that case that is the law of New Mexico at this time, would cover a Presidential search and would have all applications be open. But because of the preemption, if you will, of the legislative act, the Presidential search is not impacted by that decision. We are operating under is the statute and IPRA, itself, and the Open Meetings Act."

Mr. Dines: "The statute does not speak to the process of the search committee, however, in the settlement agreement, in UNM #2 the petitioners ..." (end of tape) "...pertaining to candidates in private. The search committee is covered in that regard. If the search committee is going to be discussing matters of Public Policy, something other than the limited personnel issue of the applicants, that would be a different story. But if they're discussing the pros and cons of the applicants under that agreement, then they can do that in private."

IV. President's Administrative Report, President David J. Schmidly

President Schmidly gave a presentation on the partnerships UNM has forged with diverse educational entities in and out of state. Some of those are: public schools in Albuquerque and each of the communities where UNM's branches are located; the pueblos, tribes and Navajo Nation; community colleges in and out of state; research partnerships with Kirtland Air Force Base, the national labs and federal agencies; and partnerships that connect the public and private sectors to improve job opportunities and recruitment in New Mexico.

We convinced PNM to convert its Chair at UNM to a Chair to look at K through 20 collaborations and we have received a grant from the Coalition of Urban-Serving Universities to look at strategies for creating an educational framework. In Rio Rancho, our university building is right next door to the new CNM building, right next to that is our new teaching hospital and the new high school is about ¼ mile away. The high school is organized into academies, one of which is in the health sciences area. Through that partnership, we could take students in the 9th grade that have an interest in health sciences areas, work with them through the CNM nursing curriculum, into our nursing curriculum, into internships and opportunities at our hospital, and, hopefully, a full time career that will keep those young people in New Mexico.

There is a partnership between the Los Alamos branch and Bernalillo Public Schools. The gateway program between UNM and CNM will work with students that might not be able to meet UNM's higher admission requirements. In the 2+2 program, students do two years at a specific community college (in or out of state) then transfer to UNM and complete two years and, hopefully, get a degree in four years. We have completed transfer agreements that outline exactly what the students should take so there's no loss of credit.

We are offering a four year Bachelor of University Studies degree through our Extended University. We have those agreements in place with many two year colleges in the state and hope to extend it to all.

We have updated our MOUs with all nineteen Pueblos, with the Jicarilla and Mescalero Apache tribes and with the Navajo Nation. The MOU tuition scholarship now extends to Native American graduate students as well as pertaining to our branches. We will be able to work directly with Kirtland Air Force Base and the Department of Homeland Security. We've created New Mexico Match to match UNM graduates with New Mexico employers for those who would like to return to New Mexico to work. Our partnership with Mesa del Sol is picking up again.

President Schmidly assured Regent Gallegos that the MOUs specify the course credits taken at community colleges in the 2+2 program that will transfer to UNM.

Regent Hosmer joined the meeting via conference telephone at this time.

V. Comment from Regents' Advisors

Faculty Senate, Richard Wood, President. The faculty is working on several projects building on UNM's partnerships that Dr. Schmidly presented. There are many outstanding initiatives taking place at UNM. Inviting the gentlemen from the Journal is an outstanding way to begin the Presidential search.

- **The Search Committee for the Interim Provost has selected three finalists and expects to make its recommendation to President Schmidly by the end of next week.**

Staff Council, Merle Kennedy, President. The Staff Council is still working with the administration for some relief to staff. It is also involved in the Provost search.

GPSA, Victor Lopez for Lissa Knudsen, President. Jamie Roybal is the President-Elect of GPSA. More than 2/3 of those voting in the recent GPSA election opposed using student fees for a new rec facility. GPSA believes the new President should be allowed to pick his or her own team to effectively lead the University.

UNM Alumni Association, Waneta Tuttle, President-Elect. The re-opening of Hodgin Hall (the Alumni Center) will be held during Homecoming, which will be held Sept 20-24, 2011. The Mirage will not be published this spring, to save money, but it will be published in the fall.

UNM Foundation, Anne Yegge, Chair. In this report the Foundation has reported on each endowment separately as requested by the BOR. Ms. Yegge presented the video of the Changing Worlds Campaign celebration held on April 14th.

UNM Parent Association, Maria Probasco, President. The scholarship committee has received 152 scholarship applications, 125 from undergraduate students. The 3rd annual Appreciation Reception will be held May 20th at Lobo Village.

- **The scholarship committee will be announcing the recipients of the thirty \$1,000 scholarships next week.**

UNM Retiree Association, Cynthia Stuart, President. Ms. Stuart read several changes to the proposed modifications to UNM BPPM Policies #3600 and #3700 which were recommended by the Association Board. The recommendations will be posted to the Campus Comment web site. The Annual Meeting will be held May 19th at Continuing Education. There will be some changes to the by-laws and the number of board members will be increased.

VI. Comments from Regents

Regent Chalmers commended President Schmidly on his leadership of the University over the last four and a half years.

Dr. Schmidly announced that Provost Ortega will be leaving June 30th to become the Vice President for Academic Affairs at the University of North Carolina. Vice President Brown (Enrollment Management) will be leaving July 31st for Cleveland State University. Dean Claiborne (Arts & Sciences) will be leaving July 31st to become Provost and VP for Academic Affairs at Florida Atlantic University.

- **Regent Fortner requested a BOR meeting be scheduled for the 2nd Tuesday in June. If that date is not available, a meeting should be scheduled for the 2nd Tuesday in July.**

VII. Approval of FY2011/2012 UNM Consolidated Budget, AVP Andrew Cullen & VP Ava Lovell

AVP Cullen presented the Main and Branch Campuses Operating and Capital Budget Plans for 2011-2012 (<http://www.unm.edu/~budget/consolidatedbudget/>). UNM is one of the four or five biggest economic engines for the state. Approximately 13.6% of revenue comes from the state, the balance, just shy of \$1.8 billion, is self-generated. Mr. Cullen explained that revenues for Athletics are shown in several categories: RPSPs shown in the state operating appropriation, I&G funds that support maintenance and utilities, student fees, and sales and services (just over 85%).

- **Regent Koch requested that, in the future, when Athletics Expenditures are represented in graphics or reports, that Athletic Revenues be broken out as well, to give a complete picture.**

Mr. Cullen said UNM adopted a three year plan to remove one-time funding from the budget. This budget uses \$9.8 million, down about a third from last year. We will continue that plan for the next two years to completely eliminate one-time funds.

President Schmidly noted the impact of federal reductions will be felt beginning next year.

Dr. Roth said that cuts to Medicaid and Medicare being contemplated could change the UNM Hospitals financial picture substantially. Over the next two years it could mean a reduction of more than \$50 million. That doesn't include what could happen with commercial insurance which often tracks what happens in Medicare and Medicaid. There would not be less work, just less funding for it.

VP Lovell gave the presentation of the Health Sciences Center FY 2012 Budget. Tobacco settlement revenue (\$4.1 million for FY11, \$3 million for FY12) is included in the State Appropriations – RPSPs line item. The amount is going down, possibly because some of the companies that are paying the settlement are challenging in court the states' spending of the settlement dollars. Dr. Roth said they had just been notified of additional cuts of \$150 thousand for FY11 and \$75 thousand for FY12. There wasn't time to build those numbers into this budget presentation.

Ms. Lovell noted that transfers from HSC to Main Campus for services (e.g., fire and police) are shown in Revenue Detail on the Allocations and Transfers line. This number is a net of funds transferred from Main Campus (the HSC share of I&G funding, for example) and what HSC transfers back. HSC pays the Physical Plant department for nearly all of its utilities. The HSC state appropriation for FY2012 was reduced 10.8% from the FY2011 budget. I&G funding was cut 3.4% and the RPSPs were very heavily cut.

Regent Gallegos stated that funding for UNM Libraries and Johnson Gym, as well as the effect of the ERB "swap" on employees, still needs to be addressed.

Regent Koch said the Regents could have raised fees to supply funding needed for libraries, IT and Johnson Gym. Those things will have to be funded, as well as trying to help lower paid employees. He stressed that this budget still includes \$9.8 million in non-recurring money.

- **Regent Gallegos directed the F&F Committee to continue to work to emoliate the ERB "swap," at least for employees paid between \$20 thousand and \$50 thousand annually.**
- **Regent Fortner directed the administration and the F&F Committee to work on the funding for the libraries and Johnson Gym.**

Motion passed, with no dissenting votes, to approve the FY2012 Budget (1st Chalmers, 2nd Gallegos).

Approval of FY2010/2011 Budget Adjustment Request for Submission to the Higher Education Department, AVP Andrew Cullen & VP Ava Lovell

AVP Cullen presented the BAR for Main and Branch Campuses. The purpose of the BAR is to reflect the year-end projections of revenue, transfers and expenditures. It protects the University from exceeding its expenditure authority. For 2010-11 the expenditure authority was the \$2.114 billion budget that the regents approved this time last year. We're increasing that by \$63 million. In general there are four categories these adjustments fall into: changes in revenue projections, the use of balance for one-time funds because of timing at the end of the year, increases in grant and contract expenditures, and miscellaneous. A large adjustment was transferring Safety and Risk to Institutional Support. The largest increase across the board for Main Campus has to do with restricted funding, federal stimulus funding for Pell Grants and student aid, for research and for I&G Utilities.

VP Lovell presented the BAR for the HSC and UNM Hospitals. The HSC is asking for approval of a total net change of \$355 thousand. UNM Hospitals are going to increase their revenues by \$16 million and increase their expenditures by \$12 million, giving them a net change of \$4 million.

Motion passed, with no dissenting votes, to approve the FY2011 Budget Adjustment Request (1st Chalmers, 2nd Gallegos).

VIII. Regent Committee Reports

Audit Committee, Regent Gene Gallegos, Chair

A. Regents' Audit Committee Report, 4/14/11 Meetings

- **Regent Gallegos suggested that the BOR follow an Action Item oriented Agenda in the future to facilitate follow-up on actions or requests for information during BOR meetings.**

Two audits were done by RDW on Hospital items and they were unremarkable.

The third audit was on the Safety and Risk Management Department. The committee returned that initial audit and directed Internal Audit do a full audit, rather than relying on samples. As a result, the financial administration of that department has been moved to EVP Harris' purview. It may be that the functions of this department should be contracted out.

Mr. Harris has set up an implementation plan for each of the 78 to 80 recommendations of the audit. The plans are to be implemented by August 1st. The responsibility for finance in the Safety and Risk Management Department has been transferred to VP Lovell and the Controller's office. No funds were missing but it showed very poor cash management. There are some things that could be out-sourced. This should be considered over the summer. Regent Koch clarified that UNM pays a premium to the state for the various insurance coverages through the State Risk Management Pool. Claims paid out by the pool are covered by higher premiums in ensuing years.

Regent Gallegos noted that if there is water damage to a department, for example, the department has to pay for it. They expect to be repaid from claims filed by Safety and Risk. They can't afford to wait over a year for Safety and Risk to reimburse them.

Dr. Wood urged that the university go slow on privatizing any of the responsibilities of the Safety and Risk department.

EVP Harris noted that, by law, UNM must participate in the State Risk Management Pool. UNM is the largest participant in the state Medical Malpractice Plan. Mr. Harris said UNM cannot self-

insure for Workers' Comp per state law. He pointed out that being a part of a larger pool is advantageous should UNM have very large claims to pay out. The state has balances to cover the losses immediately with UNM paying higher premiums in following years to, in effect, reimburse the state. There are reasonable services available in New Mexico concerning safety and loss control and they should be evaluated.

IX. Public Comment (none)

X. Vote to close the meeting and to proceed into Executive Session

Motion passed, with no dissenting votes, to proceed into Executive Session at 11:55 p.m. (1st Chalmers, 2nd Wellman).

XI. Executive Session

- A. Discussion and determination where appropriate of threatened or pending litigation pursuant to Section 10-15-1.H (7) NMSA (1978).
- B. Discussion and determination where appropriate of limited personnel matters pursuant to Section 10-15-1.H (2) NMSA (1978).

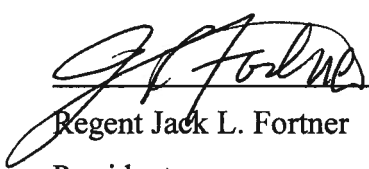
XII. C. Vote to Re-open the meeting.

Motion passed, with no dissenting votes, to return to open session at 12:55 p.m. (1st Chalmers, 2nd Wellman).

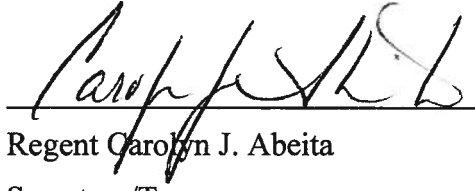
- D. Certification that only the matters described above were discussed in Executive Session.

XIII. Adjournment

Motion passed, with no dissenting votes, to adjourn the meeting. At 12:57 p.m. (1st Chalmers, 2nd Wellman).



 Regent Jack L. Fortner
 President



 Regent Carolyn J. Abeita
 Secretary/Treasurer