

Minutes of the
NIU Board of Trustees
Of Northern Illinois University
Ad Hoc Committee on Governance
January 15, 2015

CALL TO ORDER AND ROLL CALL

The meeting was called to order at 1:05 p.m. by Chair John Butler in the Board of Trustees Room, 315 Altgeld Hall. Recording Secretary Liz Wright conducted a roll call of Trustees. Members present were Trustees Robert Boey, Robert Marshall, and Marc Strauss, Student Trustee Paul Julion, and Board and Committee Chair John Butler. Also present were President Douglas Baker, Provost Lisa Freeman, General Counsel and Committee Liaison Jerry Blakemore, Greg Brady, Board Liaison Mike Mann, and UAC Representative William Pitney. With a quorum present, the meeting proceeded.

VERIFICATION OF QUORUM AND APPROPRIATE NOTICE OF PUBLIC MEETING

Mr. Blakemore indicated that appropriate notification of the meeting had been provided pursuant to the Illinois Open Meetings Act.

APPROVAL OF PROPOSED MEETING AGENDA

Trustee Boey made the motion to approve the agenda and Trustee Strauss seconded. The motion was approved.

REVIEW AND APPROVAL OF MINUTES OF 11/17/14

Trustee Strauss made the motion to approve the minutes of 11/17/14 and Trustee Boey seconded. The motion was approved.

Chair Butler noted that these minutes are slightly different than what has been seen in the past. The reason they're so extensive is because it is actually more efficient from a time standpoint to provide more of a verbatim transcript of the meeting. This allows us to do some clean up and issue the minutes as quickly as possible. In our case, the minutes needed to be prepared in advance of the Board's regular meeting so that there could be a first reading of the items we continue to discuss today.

CHAIR'S COMMENTS/ANNOUNCEMENTS

Chair Butler recognized the University Advisory Council representative Bill Pitney and asked if he had any statement at this time. He did not but did however want to have an opportunity to clarify a question if the need arises. Chair Butler said absolutely, if at any point anyone wants to voice a view or perspective please let him know.

PUBLIC COMMENT

Mr. Blakemore noted that no timely requests had been made to address this Ad Hoc Meeting.

DISCUSSION ITEMS

Information Item 7 – Review of Proposed Bylaw Reforms – Category A

John Butler then turned the floor over to Mr. Blakemore who had a presentation for the committee.

Jerry Blakemore thanked the Chair and members of the Board and indicated he wished to walk through the bylaws recommendations. We focused first on Category A bylaws and there have been some amendments made based on the various meetings that have occurred, as well as conversations with the chair and others. I would like to introduce Greg Brady who is the Deputy General Counsel, Eric Borneman and Ken Cloyd our interns. Eric has been the person who did the research on the bylaws. There are basically three categories for discussion today. The first category is the category where we would recommend that this particular bylaw be presented at a full meeting of the Board for a second reading. This is the recommendation of the General Counsel's office because we believe that all of the issues that were raised in the original discussion of this issue have been resolved and therefore, we want to start putting together the list of second reading bylaws. One that fits that category is the issue of presidential housing. As you recall in the first meeting of this committee, there was considerable discussion. The bottom line on this particular one is that we need to have as part of the Board's bylaws explicit mandate for the president to live in the president's house. There's significant tax implications for that. What we have done in the bylaw is said that the Board can review that on a regular basis, not less than three years. If there are changes from the president's perspective or the Board's in terms of that mandate, we could make those changes. It's a relatively simple bylaw. The one other part of that bylaw calls for the president to devote full time and loyalty to the university, etc. That's a typical provision. So, unless there are additional questions, we're going to recommend that you have this at least be a second reading for the Board. Then, we can go through the other issues where based on our conversations, there have been amendments. Greg and I will walk through what those amendments are. The last category, if we get there, is the further discussion where the proposal that was presented remains intact and we will await further direction before we propose any amendments.

Regarding **presidential housing**, the actual language of the proposal is included in your packet. This meets the legal requirement that for tax purposes it be a mandate. The board can always reconsider this in conjunction with the president, and we establish at least a three year review.

Marc Strauss suggested, with regard to the first paragraph, that we add some language that clarifies that, in the event that the Board does not review this within the three year period of time, the policy then in effect is not invalidated. The purpose for providing this provision is to make sure that the tax benefit is attainable and I wouldn't want there to be an inference that it wasn't for failure to review. He then asked whether, in the second paragraph, we have any definition for what unrelated to presidential duties and responsibilities might mean.

Jerry Blakemore replied to the first question, that, although it would not be necessary to do this, I think we can go forward with that minor revision. It will be even clearer that this is the policy in place. The purpose of the three years was not to set a sunset, but to basically say to the Board part of your responsibilities is a timely review of this. We will be explicit that failure to provide the timely review does not change the current status.

Robert Boey indicated that he believes what Trustee Strauss is concerned about is already there. I thought that language was clear to me Marc.

Marc Strauss noted, we want to avoid any argument that, if we fail to review within three years, somehow we have not done what we're supposed to do. Then there may not be a requirement for residency anymore. I don't want to change the policy, I'm happy to review it. I think it's good to retain flexibility. We may have a president who doesn't want the tax benefit and we should have the ability to do something about it. I just want to make sure that, in the event that we have somebody who wants to live there, and we assume that we're going to do this, and somebody misses the tickler date, that we still get the tax benefit that we intend.

Jerry Blakemore recommended that we add to that first paragraph will be "failure to review the current policy shall not constitute a change in such policy."

Marc Strauss was agreeable.

Jerry Blakemore asked Trustee Strauss to repeat his second concern.

Marc Strauss asked how we sort out what service on a board or commission is related to the presidential duties and responsibilities, and what service is not.

Robert Marshall noted, on the last line where it says, approved by the Board of Trustees, I'd like to make it "pre-approved," so there's no hassle at a later date.

John Butler indicated, I think that might be implied.

Marc Strauss noted, I'm not sure whether or not it's implied, but I do know that we only meet four times a year and I think the president probably will need guidance, and may need it more frequently than four times a year. I'm not saying that I have the only correct approach to this. We'd be better if we understood what the difference was between what was related and what wasn't, and then the president would know if he or she was free to go ahead and do whatever was appropriate. My interest in this is not to try to limit the president but to be able to provide clarification. We haven't had a real challenge in the past with the president taking on so many responsibilities that the president wasn't able to perform the duties, but if we're going to the trouble at this point to review this particular bylaw provision, I think it makes sense to provide as much clarity as we could.

Robert Boey asked, do we have a list of president duties?

Jerry Blakemore replied, the presidential duties are included in the presidential contract with the Board.

Robert Boey noted that these are very general by nature, and asked, any that address this what we are concerned about?

John Butler requested we do this through an example. What would be unrelated to presidential duties? What about the humane society?

Jerry Blakemore suggested that the determination of what is and what's not related is a determination within the exclusive purview of the Board. Make the determination on a case by case basis. Given the broad perimeters and responsibilities of a president, it is hard to think of circumstances where, if the president were called upon to serve on a board, that there is not some relationship to the university, particularly its mission, whether it's community service or research.

Marc Strauss asked, can we approach this in a different way? I agree that there can certainly be a wide variety of things that wouldn't be appropriate, so could we have a requirement instead that the Board be notified when these assignments are taken on and then, if there was a problem, we could raise it at one of our meetings? At least we'd know what has happened and then the president could exercise his or her own discretion about which boards to join.

Robert Boey noted that he had very mixed feelings over this whole thing because I think that we're trying to define something that, to begin with, is very broad. How do you start to address general items, and do we expect the president to come to us every time he or she isn't sure?

Marc Strauss noted, the language says service on boards and commissions. That's what we're talking about and I'm suggesting another approach to this is give us notice if you're going to serve on a board or commission. Do it quarterly.

Douglas Baker offered to discuss four boards he is on, just so we get a map of the playing field. I'm the vice-chair of the University Research Association, the board that oversees the Fermi Lab. I'm the vice-president on that board, and would argue that we have faculty and it facilitates our research record. That's clearly within the purview of the institution. I chair the board for the Illinois Science and

Technology Coalition (ISTC), and that deals with entrepreneurship and developing the economy of the state of Illinois. I think that links because we're about human capital and we're into property development. I'm on the board for Econ Illinois, which does economic education in high schools around the state, pipeline issues for us. I'm on the DeKalb County Economic Development Council. I sit on that executive board. That's economic development here in the community. So I'd argue all those are within the purview of what a president's supposed to be doing.

Robert Boey agreed.

Douglas Baker continued. Now for me, I'm busy enough that if I wanted to go sit on the board of Cargill, which would be a heavily time consuming kind of job, I'm probably not going to do that because I see that as a more distant link. It's not dealing with policy statewide or county policy issues, it's a corporate board. So I would clearly want to tell you I was going to do that because it would take a lot of time away from the presidency.

John Butler noted, in that instance, because this is what it is intended to cover, what we're talking about is the most reasonable way for us to learn about interest in serving on a board, and do we think, in that instance, it would be appropriate for the president simply to notify us on a quarterly basis, and, if we had an issue, we could raise it at that time?

Douglas Baker indicated I'd be fine with that. I think Lisa and I, for example, do the same thing with conflict of commitment with faculty, or if they want to go do something and it's going to conflict with their commitment with the institution. If a decision has to be made whether that's okay or not, you would have to do that for me if you think I'm going to spend a month, a year, on this board, that's probably a month away from the university that you'd have a hard time agreeing to. I think you'll see, in conflict of commitment standards, it would be inappropriate for the president. So, I don't know how you want to word it.

Robert Boey indicated, it falls under just a matter of trust in your judgment. I'm comfortable either way.

John Butler responded, the status quo language, I think, works against the position Trustee Boey is taking. This would require the president to seek approval if there was a belief that it was unrelated to presidential duties. I think we can agree we want to soften that language a little.

Robert Boey indicated that the president should bring the subject to us, but let's soften the language.

Douglas Baker asked whether quarterly reporting is sufficient? Are you comfortable with that?

Marc Strauss responded that he is.

John Butler asked, would that be the case for "unrelated service," or in all service?

Marc Strauss responded, I think it would probably be easier to say "all service," and then we don't have to define "related" and "unrelated."

Jerry Blakemore indicated that we will make that change. I think that's a great change to make. I think there is the oversight responsibility in having that report quarterly. It makes you aware of it, but again it's really more of an issue with commitment. This is modeled after what is required of faculty and staff now. If you're going to serve on a board, a supervisor is going to have to approve that. I will work on that language, something to the effect that the president may serve on boards and commissions and shall report on a quarterly basis.

John Butler asked, can that language indicate we wish to see changes and new commitments, so if it's already been reported it doesn't need to be reported again?

Jerry Blakemore indicated that OGC will work on that. The next item is **presidential succession**. The original proposal to the board basically provided the board a couple options after the executive vice president. One of those options was doing it on the basis of seniority. The other option, as I recall, was designating an individual from the university community; and then the third option is not going further than the executive vice president and provost. So you can basically say your succession is going to be limited to the executive VP or you could add another officer to the line of succession. The policy is also very specific about two significant issues. One, any removal of the president requires two-thirds vote of the board, not a majority vote of a quorum. It is such a significant move on the part of a board that we want it to be clear. And then two, it provides for the board to have the authority to change an interim in the event the board made that determination. And again, we point out that, in that circumstance, it would take a majority vote of the board. Again, we wanted to avoid situations where you could have a meeting, it could be four people, a quorum is established, but you could have three of what is an eight member board making certain significant personnel decisions, and so it is written from that perspective.

John Butler indicated, on that issue specifically, is there a way to indicate that it would be a majority or two-thirds of all voting members of the board? I'm thinking about an instance in which we wouldn't have a full board seated for whatever reason. Because we have automatic termination of appointments that have not been acted on by the Senate within a particular period of time, there's the possibility that we may find ourselves with fewer than eight trustees.

Robert Boey asked, how about throwing a minimum number in there?

John Butler responded, that wouldn't help us necessarily, if we were seeking two-thirds or a majority. There's a possibility that, in this environment, particularly where we have a Republican governor and a super majority of the other party in the general assembly, where there might be some disagreements about appointments, and a failure to act on the appointments. Then we find ourselves with less than eight trustees. This is what I'm concerned about. So if we could say two-thirds of all eligible voting members of the board?...

Greg Brady noted that, we could even go further to say, not merely a quorum of the board, if you really wanted to push it to clarification.

John Butler indicated, I think we should be as clear as possible. Take the next round of appointments, where there are four trustee seats up for either appointment or reappointment. The governor might appoint four, but then the Senate acts only on two. At some point those temporary appointments will expire, if I'm understanding the law correctly.

Jerry Blakemore responded, that is correct. The last General Assembly said that, if the governor or the General Assembly has not acted, then those terms expire. Prior to that time, they served until someone was appointed or reappointed.

Robert Boey indicated, usually the process starts sometime before their terms expire.

Marc Strauss added, there is no guarantee the process is going to finish. I would agree with you that the process may start, the challenge is, regardless of when it started, it often wasn't concluded before a term expired. You were held over until your successor had been appointed and was qualified to serve. That's no longer the case. The sitting board members terms will expire without any action by the governor and the Senate.

Robert Boey clarified, that's the change that we're talking about.

Marc Strauss responded, that's correct. So John's observation I think is a good one, that you could wind up without a full complement of trustees and his suggestion makes sense to me. I think the only other thing I would ask here is whether we're going to have consistency with the contract that we have with the president. I don't know whether there's a provision in the contract about the basis on which the

contract can be terminated.

Jerry Blakemore added, the appointment of the members of the board is irrelevant with respect to the contractual obligation of the board.

Marc Strauss asked, of the required vote?

Jerry Blakemore responded, there's nothing in the presidential contract regarding...

Marc Strauss added, a vote for termination?

Jerry Blakemore noted, I'd have to double check it, but I think no.

Marc Strauss added, that would be fine, unless there was a two-thirds of the entire board requirement in the contract. As long as they are consistent.

Jerry Blakemore responded, there's no requirement in the presidential contract regarding the number of votes. We do talk about the nature of that vote, that action as opposed to vote.

John Butler asked, so then are we okay with making this change whereby we indicate it's two-thirds or a majority and the other locations where we're qualifying the number?

Robert Boey asked, so, what's the worst case? We say that the worst case is that we have only four voting members?

John Butler responded, yes, in which case you would need three votes.

Robert Boey noted, I have trouble with that. For such an important issue to be in the hands of only four voting members when the full board is eight.

John Butler indicated, that hypothetical situation would constitute a governance crisis. Let's hope that never happens. He further indicated, if we take the second paragraph of the proposal, under "temporary succession," we've got this concept called "temporary succession," when, for whatever reason, the president designates authority to the executive vice president and provost. I don't have a problem with that, since it is for no more than 30 days. I would just simply say that the president should notify each member of the board rather than the executive committee, since it's only a board of eight.

Jerry Blakemore acknowledged, alright.

John Butler continued, and then under the next section, it says "In the event that the president is unable to discharge the duties and responsibilities of the office of president." It seems to me there should be a comma and an "or," followed by the number of situations in which the executive vice president and provost would assume the role of acting president.

Marc Strauss added, I think the last one would be comma, or be absent for more than thirty days, right?

John Butler offered, or "the anticipated absence will last more than thirty days." So, let me just read it as I would like it to read. "In the event that the president is unable to discharge the duties and responsibilities of the office of president, or to designate executive vice president and provost for temporary succession, or the anticipated absence will last more than thirty days, the executive vice president and provost shall assume the role of acting president."

Jerry Blakemore asked, can I ask you to read it one more time?

John Butler responded, "In the event that the president is unable to discharge the duties and

responsibilities of the office of president, or to designate the executive vice president and provost for temporary succession, or the anticipated absence will last more than thirty days, ..." Does that make sense?

Jerry Blakemore responded, yes, let me indicate the purpose for which at least the original writing was done. The original writing was not done for the paragraph that is the initial paragraph, to lay out the time and circumstances; it was done to lead into the four areas where the cover paragraph would come into play. What you have done, which is fine, is basically indicated there are three specific areas where automatically the executive vice president takes on the role of acting president, in addition to the four areas that are under this paragraph. The reason for the four areas is that we wanted to make sure there was an objective basis for making this type of determination. I don't see any major issue with the revisions that have been put forth. I would, however, urge the board, in the event this issue ever comes up, that you really look to the best practices which are specific definitions of incapacity, abandonment, extended or prolonged absences. So we can go with this language. I'd like a little time to think it through a little bit more.

Robert Boey noted, the previous paragraph does cover, does imply, the temporary succession as well, but what happens if Doug goes to China for a month? Does this happen automatically?

John Butler responded, on Doug's request, it would happen.

Robert Boey responded, exactly, I would assume it would be an automatic step that you would take.

Douglas Baker added, I would think.

Lisa Freeman added, yes

Marc Strauss added, for no more than thirty days.

Lisa Freeman advised, don't say a month, because months are thirty and thirty-one.

John Butler indicated, the next section is about a situation where either the president's unable to discharge his or her duties or, for whatever reason, the president is unable to designate the executive vice president and provost for reasons discussed below, or the absence is going to be longer than thirty days. It just lays out those potential possibilities. In those situations the board then will follow its policy, as laid out, in the next few months.

Robert Boey added, and since he's here, I'd like to hear your reaction to that kind of thinking as well. Doug?

Douglas Baker responded, I think it's okay. If I'm going to be gone a significant period of time I would coordinate with Lisa automatically and say, "you're responsible if any decisions need to be made while I'm gone." We would coordinate calendars and do all that stuff where she covers what needs to be covered, etc. I have just one small thing: I'd probably put in "calendar" or "working days," to define it so there isn't a question about that.

Marc Strauss asked, is there a preference? The calendar day?

Lisa Freeman responded, calendar days.

Douglas Baker added, calendar days probably would be fine. Working days is kind of a funny term for us, but I have seen that in court cases there can be a question about the time limits.

Lisa Freeman added, that's a good point; and, in the case of incapacitation, we want everything to be really clean.

Jerry Blakemore indicated, I'm fine with this, but please understand that the board's responsibility is in play whether the president acts, or fails to act, to make a temporary appointment. So, in effect, what you are adding here says, if he or she fails to make a temporary appointment, given the other issues that are in play, you still would have that obligation to make that determination. Just for purposes of clarity, it's there, but it does not excuse the ultimate responsibility of the board if, for example, you determine by two-thirds vote of the board that the president is not capable of carrying out the duties.

Douglas Baker asked Mr. Blakemore, if I was in a car accident in a coma somewhere, would you need a board vote for Lisa to take the helm?

Jerry Blakemore responded, no, this is exactly why we have the four things. There is no vote needed; there is no action on the part of the board. It is as an operation of law -- board of trustee's bylaws have the same effect of law.

Robert Boey asked, who decides incapacitated?

Jerry Blakemore responded, we have a definition right here, and that's what the board would have to determine. And, that's in the situation where you're not in a car accident, but something else.

John Butler clarified, so there's three ways to determine that according to this policy, either the president determines it, and I assume that means the incapacitated president; the board, by a two-thirds vote, determines it, or a medical provider or judicial declaration by a court. So there is three ways, either the president, the board, or some external entity qualified to do so.

Jerry Blakemore responded, an incapacitated president cannot make any type of determination. The board makes that determination. The president can make a temporary designation.

Marc Strauss added, unless the incapacity is the ability to meet the essential elements of the agreement. The draft says incapacitation is determined by the president or by a super majority, so there are circumstances under which there could be an incapacity, the president could recognize it, and the president could certify it.

Lisa Freeman added, if you're having elective surgery and undergoing anesthesia, you know in advance you'll be incapacitated.

Marc Strauss responded, correct.

Jerry Blakemore added, exactly.

Greg Brady advised, incapacity can be a fluid concept, where sometimes you're not capacitated, sometimes you are incapacitated. There are moments where a cognizant president can recognize an incapacitation and try to trigger this portion of the draft. I think, obviously, it would all kick in to probably go to the board, as well, in that moment; and whether we take a vote, or not, is something we'll talk about; but a president can recognize that and trigger this provision.

John Butler indicated, I don't have any issues with the highlighted final vote count. Once we move this section we have the more complex issue of the line of succession and here's what I'm recommending: I believe the president should designate succession order at least annually and report his or her determination to the full board. That permits the president to recognize, among his or her cabinet, who is best prepared to take that responsibility.

Greg Brady suggested, if you're going to do annually, I think you should do a date because when does the annual marker start?

Marc Strauss responded, any date would be adequate and it should be at least annually so, if the president changes his or her mind, they have the ability to substitute in another direction from the one that's been given.

Douglas Baker responded, if you're picking a date, pick July 1st, the fiscal year.

John Butler noted, keep in mind that this is only for succession into the role as "acting president." The board retains, throughout all of this, its ability to convene and appoint an alternative to the automatically placed person. The board is not relinquishing its authority to name the president of the university by doing this. It is able to, at any point in this cycle, make a determination that "person X" should be the "interim president" until a search is conducted.

Lisa Freeman added, I just want to point out the common usage at NIU; the terms "acting" and "interim" are not interchangeable. "Acting" reserves the right of the individual in that role to be a candidate in a search and "interim" rejects that. So you need to be cognizant of using "acting" or "interim."

John Butler responded, I'm only using the terms that are used in the draft. I don't think anyone should relinquish their ability to be a candidate during this process.

Lisa Freeman agreed and noted, so "acting" would be my preference.

John Butler clarified, what we're talking about then is simply replacing "interim" where it appears lower in the document with "acting."

Robert Boey asked, when do we decide whether "acting" or "interim" is used?

John Butler responded, I'm assuming that Provost Freeman has read the documents that govern the university more closely than I have, and is correct that those terms mean something different from one another.

Lisa Freeman noted, within common practice and usage within the university community, the qualifier "interim" is used to designate an individual who will not seek a permanent position, and the term "acting" is used to designate an individual who's not permanent in the position but may seek to participate in the search for that position.

Marc Strauss asked, would it be helpful if we added a paragraph that said, the use of "acting" or "interim" in this bylaw provision is not meant to apply to anything about whether somebody can be a candidate? I'd have no problem doing that. I think there's an effort here to distinguish between what happens for only thirty days, what rights and obligations are associated with succession through that route, as opposed to what happens for something that's going to be for more than thirty days.

Robert Boey asked, you're saying Marc that "acting" implies thirty days?

Marc Strauss responded, I'm saying that the way it's drafted there are two different terms used for each, and if there is confusion or an implication that the words "acting" and "interim" mean something different, then we should add another paragraph that says, for that purpose, "acting" and "interim" don't mean anything. I have no objection to doing that.

John Butler clarified, so then you would want us to retain the term "interim" in the subsequent use. "Interim," as it's used here, is the president that the board appoints outside of the automatic succession scheme.

Greg Brady responded, an "acting" president is something that is automatically done by the policy; if the board chooses another individual, it's the "interim" president.

John Butler asked, is there any distinction between the amount of time that an "acting" versus an "interim" may serve without a search?

Jerry Blakemore responded, no, there is not. The year period, referring to the NIU Constitution, that talks about temporary service, I think, would apply to both. However you titled it, the year is what the year is. Again, I would agree with the provost, I think we can have a definition, add this to our definition section. I think it is ultimately up to the board irrespective of that definition. If you find, after six months, you want to move someone from one designation to another, you certainly have the authority to do that.

Marc Strauss noted, it looks like we use the term "acting" president for both the temporary and the succession by designation of the Board of Trustees, and we use "interim" president later. Should that just be "acting" president instead of "interim" president, and then we're just using acting for all of these?

John Butler indicated, I think we should get rid of "interim."

Robert Boey added, me too.

Marc Strauss asked, just get rid of the word "interim," and say "active?"

John Butler responded, we should just get rid of it.

Marc Strauss asked, that's in the second to last paragraph on the second page, which changes the word "interim" to "acting?"

John Butler responded, well it appears on the last bullet point. It says "the Board of Trustees appoints an interim or new president."

Marc Strauss asked for clarification, so it should say...?

John Butler responded, "The board appoints another or a new acting president."

Jerry Blakemore indicated, ultimately this is the board's decision. I will provide this note of caution. In the event you appoint someone to serve in a temporary basis as president, and then you embark upon a national search for a president, if you have someone who is sitting in the "acting" position versus the "interim" position, you are sending two very separate signals. I'm not saying you shouldn't, but I'm saying be conscious of that. There are a number of circumstances where people will purposely appoint someone in the "interim" position because they want the world to know that this position is open for consideration and there is not an insider track to it.

Marc Strauss asked, does "acting" and "interim" mean the same to everybody in the academic world?

Jerry Blakemore responded, no I don't think that's true. I think it's really clear [at NIU], because we've had this discussion of what "acting" means versus "interim."

Lisa Freeman added, it's not universal from institution to institution; but, at NIU, I think there is that shared understanding of "acting" and "interim" that I brought up previously that I think Mr. Blakemore is now echoing.

Douglas Baker responded, if it's an acting person and you were going to conduct a national search, and you did not want them in the pool, you could say, in the announcement, that Lisa is the acting president but will not be a candidate. So, you could clarify that. Or, if you want Lisa to be a candidate she could. You would just have to indicate this in the job notification.

Marc Strauss added, I think that's an important clarification. Maybe the best way to handle this is make all of these "acting," so, in doing this, we're not using two different terms, and still add the paragraph

that says that we mean nothing by using the term "acting," with respect to whether or not that person will or will not be a candidate. I suggest that we use one word instead of two for this person.

John Butler asked, so one word plus the clarification?

Lisa Freeman responded, that leaves more freedom in any situation which I think is what the board should want.

Jerry Blakemore concluded, so we're going with "active."

John Butler indicated that Trustee Strauss had some concerns about the presidential contract.

Marc Strauss responded, in the last paragraph on page two, again, I think we might want to clarify that whatever action would be taken under this succession policy, it is not meant to supersede the provisions of the president's employment contract -- whatever contract is in effect at that time.

Greg Brady asked, don't you want it to go the opposite way though? Traditionally employees are, in their contracts, required to abide by all of the policies of the university.

Marc Strauss responded, we might want to do that, but for the fact that we have a contract where there wasn't a policy and now there is a policy. So, I think your point is well taken, but with regard to the existing situation there is a contract. I can't tell you, off hand, how it speaks to this issue, but those rights are already established, and I don't want our action here to be prejudicial to the position that the president currently has. You could maybe address this situation separate from the situation going forward, because I think your observation is a good one, and then when we get to the point where we have future contracts, we'd have these guidelines and we'd incorporate them into a contract. I'd have no problem with that either.

Robert Boey asked, can we just all agree that whatever contract Doug has with us stays in place?

Marc Strauss responded, I think that's fair. Our intension here isn't to alter that.

John Butler asked, but shouldn't we be specific and write, "any contract prior to this policy"?

Marc Strauss responded, that makes sense to me.

Robert Boey responded, I think that would be a good general phrase to use.

Marc Strauss agreed, and added, Mr. Brady may want to think about it, but that makes sense to me.

Jerry Blakemore indicated, we will give some thought to it, but here's basically my view on this. One, the board has entered into a contract with the president; board action subsequent to that is not going to change the obligations of either the board or the president with respect to that president. We can be clearer on that in this provision, but it is really tied to the for-cause and non-cause provisions of the presidential contract that are already in place. And so, again, you're absolutely right, as we further develop these kinds of agreements we may have definitions like "incapacity," etc., but we're in the area of what is good practices in the industry. I don't think that this board would want to, and I don't believe that it would be able to, make a major change on its own with an existing presidential contract.

Robert Boey agreed and added, I cannot imagine that either.

John Butler asked, does anyone else on the committee, or anyone else at the table, have anything else they want to say about presidential succession?

Jerry Blakemore indicated, I'm just needing one point of clarification and I'd just rather have clarification

than some confusion later on. What you've just talked about regards number two, not number one, so there is no change in the succession as it relates to the executive vice president and provost. We're only talking about those circumstances subsequent to that occurrence?

John Butler responded, we discussed calendar days and that some information goes to the board and not the executive committee.

Jerry Blakemore agreed.

John Butler added, otherwise no.

Jerry Blakemore added, I just wanted to go on record.

Jerry Blakemore continued, on **indemnification**, the original proposal dealt specifically with issues regarding criminal convictions, and that drove us to expand the discussion into issues of who has ultimate authority and responsibility for making determinations [regarding indemnification] in that instance and on the non-criminal side of indemnification. With that, I'll turn it over to Greg.

Greg Brady indicated, in your packets, you have a proposed amendment to the existing bylaws for indemnification. You can see the highlighted portions that we're putting forth based upon conversations that we've had since the last meeting. You also have, for historical purposes, the three existing areas where indemnification for employees is discussed: there's a state law; there's a provision in the bylaws for the Board of Trustees; and there's a provision in the regulations for the Board of Trustees. A component for the committee to consider is, for clarity and conciseness, whether one of the two existing board policies should be eliminated when we adopt the amendment. We don't need a duplication of the policy. Our recommendation is to abolish the regulation component on indemnification and that all of the terms be placed into the bylaw proposal.

Marc Strauss asked, to what extent does our policy differ from the statutory entitlement to indemnification?

Greg Brady responded, it is contractually based. It is not statutorily based. The differences lie essentially in the state law, where everything runs through the Attorney General's office. So, their determination of whether you're within the scope of employment, or not, or the extent to which indemnification will be granted, is all produced through the Attorney General's office; and, that law does indicate the types of lawsuits or claims that would warrant indemnification. The contractual regulation is a little bit broader, because the state law only deals with state and federal litigation. The regulations and the bylaws deal with administrative proceedings as well, so there's another distinction. Our previous provisions had no direction on who determines whether you fall within the scope of employment to earn, or to be eligible for, indemnification, and then what the scope of that indemnification will be. Those are some of the things that we wanted to address here, and, as Jerry pointed out, really what drove this is that, originally, our provisions talked in terms of possibly covering criminal activities, and there is state law saying the state cannot pay for criminal convictions.

Marc Strauss asked, so, this proposed indemnification policy is subject to the availability of funds in the first sentence. Is the statute subject to availability of funds?

Greg Brady responded, exactly.

Marc Strauss clarified, it's not going to pay.

Greg Brady agreed.

Marc Strauss asked, does it explicitly have a limitation on the availability of funds?

Greg Brady responded, I don't believe it does. It does say that the funds will be drawn from the state treasury and we found that, practically, there have been arguments about how are we going to pay for stuff if the designated fund in the state treasury isn't fulfilled. How is the state going to pay for stuff?

Jerry Blakemore indicated he wished to answer that question in a different way. We have had real life experience with the Attorney General's office where they admit they are responsible for indemnification and said, point blank, if we don't have it, you're on your own. So practically, it is an obligation that the state has taken on, that they comply with as they have funds available. And this provision is no different than the subject to funds provision that all of us, as employees, work under.

Marc Strauss asked, so, you could find yourself in a position, whether you're a board member, a professor, or other employee of the institution, where you don't have a priority claim on assets in order to see that you're indemnified? You're basically in the line of creditors on a par with everybody else. So, this policy doesn't do anything to advance the priority of anybody who might have a claim.

Greg Brady responded, no, but it does provide more [than the current policy]. It actually establishes that, if we're dealing with a trustee or the president who seeks indemnification, whether they are within the scope of employment and how far that indemnification goes will be up to the executive committee. For all other employees, those determinations are made by the general counsel. Prior to this, we had zero concept of the scope of indemnification and who determines that.

Marc Strauss added, I'm sure we'll have a little conversation about who determines it, and I get that it's important we specify who does that. In terms of the scope of the indemnification, because it says "expenses including without limitation," and some things are listed, and there are things that aren't listed but may be included, if you take another job and you have to take time off from that job to come back and testify, are you entitled to compensation for that under this policy?

Greg Brady responded, we were intending to put more flexibility into the power of the university to determine to what extent that indemnification goes.

Marc Strauss asked, so the term expense is going to be determined by who?

Greg Brady responded, if it's a regular employee the general counsel will work on those limitations, but there's a practical determination to that because law suits and claims are not all the same; so the priority of the type of claim, the availability of resources, all of those things come into play to where it's not necessarily advantageous to define that this person is going to get x, y and z, because it's going to depend upon the circumstances.

Marc Strauss asked, so, we would need something here that shows what constitutes a reimbursable expense is also subject to the determination of whoever, for whatever class of potential claim? I don't read that as being in this draft of the policy. Section (4d) says "expenses include without limitation," but I don't see where there's a mechanism then to further define expense.

Greg Brady indicated, in the end of section one, the new provisions; that's where that -- and maybe this isn't clear enough and we can work on it and get it better -- but that's where those determinations are being made.

Marc Strauss asked, that's the intent of the last paragraph in section one?

Greg Brady responded, right, the last two paragraphs actually in section one, that for trustees and the president, the executive committee determines the scope of indemnification; then, the general counsel for all other employees. I can see your point though, as far as tying the two sections together, and that's where we can work on that language. Maybe put something in section one subject to determinations.

Marc Strauss indicated, that would address my concern.

Jerry Blakemore added, although it's not written here, we're talking one, reasonable expenses, and two, when we say "without limitation," it's not without limitation on what we would cover as "costs." It is without limitation as the specifics of what we would determine to be a reasonably reimbursable or advance expense. For example, we list attorney's fees, costs, judgment, fines, penalties and other liabilities; we didn't want the list limited to those in the event we get into some type of litigation where there are legitimate costs that are not part of this listing. So we don't want to be prescriptive exclusively and we want to have some discretion.

Marc Strauss indicated, I'd like to ask a couple of questions about something a little bit different. So the class of people covered by the indemnification and policy include "agents." Can you give me an example of who might be an agent that is not a trustee, former trustee, officer, employee or student? Who would be included as an agent? I took agency law and I'm not sure that I can tell you who might be an agent that doesn't fall into one of those classifications. And the reason I'm asking is because we've excepted independent contractors, and an independent contractor could be constituted as an agent. So, I'm confused as to what the logic is, but I don't want to create an ambiguity in doing so about who's covered and who is not covered.

Greg Brady responded, I can see your point on that. I think that's why we put agent in there. It's kind of like the catch-all of whoever doesn't fall into these categories who we're supposed to be indemnifying. I like your distinction though, of the independent contractors, because by the contract typically indemnification is negotiated. So that's something that – that's a carve out I certainly would want to interject into this as far as if indemnification is contractually dealt with on an independent contractor basis, that's not going to fall here because I don't want an individual contractor arguing that they fall into our policy.

Marc Strauss added, maybe you could take a look and see whether this is really accomplishing what you intend. I'm not arguing that I want to cut somebody out. We want to encourage people to feel comfortable taking employment at the university or performing tasks for us. I don't want to cut somebody out or create a situation where we can't figure out whether somebody is covered either.

Jerry Blakemore noted, if I were balancing between a broader net versus some clarity on who is covered, there are very few circumstances where someone is an agent and not an independent contractor. So, I wouldn't have a problem with deleting "agent" and we'll give some thought to it. What we were looking to do is have pretty broad categories because of the nature of who we obviously expect to perform certain duties on behalf of the university and who we contract with.

Robert Marshall asked, what of the alumni or the foundation; would they fall in any specific category if we ran into a problem?

Jerry Blakemore responded, it would not be the purpose of this indemnification provision to provide them indemnification. We're not looking to broaden it to university related organizations. Now, having said that, you have vice presidents who serve, and who are obviously involved with, the alumni and foundation, but I'm not looking to indemnify the foundation.

John Butler asked, would someone like Dennis Barsema, who's chairing a search committee for the Vice President of Advancement, be indemnified with this agreement?

Jerry Blakemore responded, we include volunteers as part of who we actually include in this indemnification.

John Butler added, would that include Dana Stover, if she was volunteering in some capacity? What's a "duly authorized volunteer"?

Jerry Blakemore responded, a volunteer who has basically executed a document. We do this with the

athletic department every other day, with the "spouse of," and the like, who volunteer, whether it's bowl games or whatever. So we actually ask people to execute that voluntary agreement. That invokes the state indemnification act that Greg made reference to at the very beginning.

Douglas Baker asked, would you have to be specific? Dana attends lots of donor events. Does she have to do one for every event?

Jerry Blakemore responded, no, I think, in the case of the president's spouse, she is going to be covered in the same manner in which the president is. We can make certain that that is the case, but that is certainly the practice.

Marc Strauss added, I think we want to do that.

Jerry Blakemore responded, you wouldn't have to do every event.

John Butler asked, would we run into any legal hurdles if we were to duly authorize someone after the fact? So Dennis for example, let's say there's a law suit coming out of the search and Dennis is a target, let's say that he hasn't filled anything out and that suit comes along and we say, "well yes, we deem you to be indemnified but you need to sign this form saying you were..."

Jerry Blakemore responded, they don't have to sign the form; if the board determines that they should be indemnified, then they're going to be indemnified.

John Butler added, maybe that's a way we might invoke some of this, if we said "others deemed by the board to be functioning in an official capacity." We get into layers of ambiguity as we do that, but, if the board's the instrument, if the board can deem somebody eligible for indemnification, shouldn't we say that somewhere?

Greg Brady responded, there's a clarification I want to make here as far as this volunteer component. Under the state law, volunteers can be indemnified by the state if the volunteer capacity is reduced to writing. Normally how we do that is through the volunteer agreement that Jerry was talking about. We haven't gone as far as having to reduce it to writing. And this is, like I talked about in the beginning, a separate contractually, quasi-contractual obligation versus the state's statutory obligation. So that's just the one clarification I wanted to make right now, but as far as if you do want to, you could go further with this language about who is a duly authorized volunteer? Do they have to go through a certain process; do they have to fill out a certain form? Again, that's within the board's prerogative.

Douglas Baker noted, I think that would be operationally difficult. If you've got students or alumni going out to recruit in high school, I don't think we want to send thousands of signature forms out.

Lisa Freeman added, we use the volunteer agreement on campus a lot for things like retired faculty with active federal grants where we need to track their effort and make sure they're subject to state indemnification and in that context it's not difficult because it's part of the on-boarding of a researcher who is no longer attached to the university as a formal employee; but, I think we'd want to keep it more flexible.

Greg Brady added, as far as the use of this, I just wanted to point out that it does say "reduced to writing;" it doesn't say you have to have a volunteer agreement. Again, traditionally we have a volunteer agreement to capture that, and reduce it into writing; but, if we have other things that are reducing the relationship into writing, I would argue that we have complied with the statutory component. You have to have the written to trigger the protections from the state law. That's what I want to clarify.

Robert Boey asked Mr. Blakemore, who indemnifies the Board of Trustees?

Jerry Blakemore responded, your bylaws currently now say that the board provides indemnification for

the board. What you don't have is clarity on issues like scope of indemnification and the like.

John Butler noted, we want a broad policy. We don't want to limit ourselves. My question was mainly whether there was any reason why one could not be deemed to be a duly authorized volunteer after the fact.

Greg Brady responded, I think it chips away at the credibility of the designation, but I don't think it's an end-all-be-all.

Jerry Blakemore responded, I think the board already has that authority now and I would caution against, particularly specific language. This is a costly provision and we are expanding indemnification at a very critical time. I want to make certain that people who are entitled to it understand that they're only entitled if they're operating within the scope. Those determinations are pretty important. I understand Mr. Chair your point that we don't fail to provide it when it should be provided, but I think you've got that authority.

Greg Brady added, the duly authorized volunteer and agent language was already existing in the bylaws and regulations. The reason why it was highlighted is because it was in the regulation, and again that was the only thing that was different from the regulation of the bylaws; we just pulled it over. The board has been operating since '96 with this language.

Robert Boey noted his concern that volunteer who are like Dennis Barsema, would be too many people to indemnify.

John Butler noted, we do make some judgments currently.

Jerry Blakemore added, we do and what we're trying to do in the policy is to be explicit as to who has that ultimate responsibility for determining who is indemnified. In the case of the Board of Trustees, including current and former members, and the president, it is the board through the executive committee; and with respect to all other employees, it would be the general counsel. We also call for some types of guidelines to be developed by the general counsel in this regard too, so we wouldn't be doing it blindly. If the board determined that it wanted to have that responsibility for everybody, I certainly would develop guidelines for you, but that's the prerogative of the board.

John Butler asked Mr. Blakemore, you, in this policy, are authorized to offer indemnification in the case of criminal investigations; what about civil?

Jerry Blakemore responded, it's not limited to criminal at all.

John Butler asked, where does the general counsel have the power to offer indemnification in a civil, administrative, or other non-criminal matter?

Jerry Blakemore responded, section one is the operable section.

John Butler asked, but there are instances in which you would not approve the payment or reimbursement of expenses of an employee in a civil manner that is related to his or her employment, aren't there? Let's say the office of the inspector general is upset with an employee for doing something wrong, not following policy of some kind, and the employee wanted counsel to go with them to their interview. They're the target of an investigation and they call you up and say I want you to indemnify me, I want you to pay for my attorney.

Greg Brady responded, the right and the scope of that indemnification is in the fourth paragraph, determined by the general counsel for an employee. For a trustee or a president, that's the executive committee. The general counsel determines whether we're going to indemnify an employee accused of a criminal offense, and that determination is based on the circumstances and what we believe will be the

final outcome. If it looks like it's going to be a criminal conviction, we can't indemnify; therefore, we can't promise indemnification. But, if we think there's going to be exoneration, that's where the general counsel has some discretion in this draft to say, "we will defend this even though it's a criminal action."

Marc Strauss noted, we've so far resisted sending anything to the executive committee. I don't know if I have a strong feeling one way or the other about the use of the executive committee for this purpose, but I don't want it to be lost in the shuffle and I'm interested in what my colleagues think.

John Butler responded that the paragraph is there because we want to make sure that, in the instance that a trustee or the president is seeking indemnification and there is any disagreement, the board would have an opportunity, as a whole or the executive committee, to make its own determination. This would only occur if there was disagreement, where it wouldn't naturally happen that the board was extending indemnification to one of its own or the president. This policy assumes you have this privilege, you have indemnification.

Greg Brady indicated, that's not how this is drafted.

John Butler responded, so, would this, as it's drafted, require the executive committee to convene in any instance in which there was an indemnification request?

Greg Brady responded, correct. If there is a request for indemnification from a trustee or the president, the committee would convene to determine whether they're eligible or not, and the scope of the indemnification. If you don't want that we can change it.

John Butler added that, it seems a lot to bring the whole board together in an instance like that.

Greg Brady responded, that's the purpose for the executive committee being a smaller sub-set of the board, to make these types of determinations, but that's within your prerogative.

Jerry Blakemore added, on March 6 at 8, 9 or 10 o'clock at night, Greg and I were making indemnification decisions because we had 52 federal and state agencies who had just visited us unannounced. There is no 48 hour notice to convene and post the agenda.

John Butler noted, it does seem to me to make sense for this to be a smaller group. Would you be interested in a report then to the full board of its determination?

Marc Strauss responded, I don't have a strong feeling one way or the other. I was just interested in whether anybody else had a thought. If nobody else is troubled by it, I can live with it.

John Butler concluded, I think it makes sense, but I think the executive committee should report its decision to the full board within 24 hours of its decision. Can we move to the next?

Jerry Blakemore indicated that the next item concerned **record retention**. Currently the Board of Trustees website contains the record retention policy of the Board of Regents. And, in that policy, there is nothing that obligates the board to do anything on the record retention. It's all university-level obligations. What we wanted to do in this area is to make certain, with some limitations, that the board is in compliance with the Record Retention Act for documents that are either "exclusive to the board" or "primarily for the purpose of the board," so that we're in compliance. The other thing that I will add is, whatever action the board takes in this regard has to be approved by the state. Unlike the other areas where you are within your exclusive purview to determine your bylaws and operations, in this case the university will have to get your policy approved in Springfield.

Marc Strauss indicated, I'm trying to understand what a "board of trustee record" is, and the particular question that I have is whether all of the things that I get in e-mails, boxes of stuff that I've got, and my notes, are all "board of trustee records" under some statute?

Greg Brady responded, no. The State Records Act doesn't deal with every single little document that comes across your desk.

Marc Strauss asked, so, is this policy intended only to include things that you have within your possession and control at the university?

Greg Brady responded, right. Remember, every individual is not the board in and of themselves. It is a board of many. That was the question that generated some of the clarifications regarding "official correspondence." If one individual member sends off a memo, is that a board document or not? Those same questions were asked in our last conversation, and we've tried to work on that; but even I'll admit I don't know if we've hit the mark yet on this type of language, where we want to draw those lines; so, your point is well received.

Jerry Blakemore added, I take a minimalist view on what is a board record. There may be public documents and there may be documents that are public, but they may not necessarily be the board's record. Here's a classic example of a board record: The committee just approved minutes of November 17th; that's a board record. The secretary of the board is ultimately responsible for maintaining those records, and, if necessarily, the distribution of those records. All of this is "academic" because ultimately the state's going to tell us whether the proposed policy is going to be acceptable to them.

Marc Strauss noted, the purpose here is for our archival and record destruction purposes, and there are some things the state is interested in preserving. I'm correct in assuming that the things I have in my personal records are not within that definition. If I wanted to destroy any of that stuff, and somebody hadn't already given me an order to preserve it because of litigation or whatever, I would be free to delete an e-mail or destroy whatever it is that I have in my basement.

Jerry Blakemore responded, that is correct, and part of what we want to do is make sure that the secretary of the board is the keeper of the official record of the board, not any individual member of the board. So you can destroy things that the secretary could not.

Marc Strauss responded, Ok, I appreciate that clarification.

Greg Brady indicated, we've had very little discussion on defining "official correspondence," other than to point out the lack of clarity. How are we going to define "official correspondence?" We've tried to borrow some language from other places, but this is open for further defining. That seemed to be one of the more problematic areas in the listing of types of records that we think are covered here. Keeping of the closed session minutes are afforded a special amount of protection by law, by the Open Meetings Act. Those are kept and reviewed, because there is a requirement to do a biannual review of the closed sessions for the board in order to determine whether they need to be protected anymore. These are conversations that we have had since the last meeting. We've tried to start to address those here.

Marc Strauss offered some spelling and grammar comments, and noted, we have a couple of position designations, such as the FOIA officer and the board liaison, that are not defined anywhere. We have board officers that include a recording secretary and so on, but we never defined board liaison, and, in our bylaws, I don't believe we've ever defined FOIA officer. Those positions are referred to in some of the things that we're talking about here, so you may want to take a look at whether we need to address that.

Greg Brady responded, I don't know about the board liaison; but, the FOIA officer was part of the board regulations, and it may not be defined; but, that's where I think the board says the president will designate a FOIA officer.

Marc Strauss added, I think it would make sense to double check that, when we're referring to people by title, that someplace we've been able to identify what that actually is.

Jerry Blakemore noted, it's part of the university's effort to update its policies. One of the best practices that's been recommended is that you designate who the "owner of the policy" is so that they are the ones responsible for maintaining it, keeping it updated, etc. So athletic compliance policies, NCAA, are "owned" by the athletic department.

John Butler indicated, I have some questions about the sealed records. I know that I asked for this but I just want to make sure the committee understands. On page two it says all recordings of closed session meetings will be kept under seal by the Office of the General Counsel. The intention here is to answer the question what happens when we have a request, or there's litigation that requires us, to provide someone or some party the recordings of the closed session meetings. This may happen when there is not a lot of time, similar to the indemnification matter. I recommend it read, "upon the recommendation of the General Counsel, in consultation,..." these records may be unsealed. This is the most intimate, complex and sometimes most sensitive discussions of the board. To what extent does the board want to be involved in the decision to release them versus the executive committee? I think it's complicated for it to be the whole board because these decisions would have to be made rather quickly in response to a subpoena or something of that nature.

Marc Strauss asked, if it goes to the executive committee, does it have to make that decision in an open meeting?

Greg Brady responded, no that's one of the exemptions in the Open Meetings Act. You'll have to meet, you'll have to open, and then you'll go into closed session as an executive committee. One of the exemptions is to review closed sessions in order to determine whether to release them or not.

John Butler adds, the policy says "consultation." It's just simply saying it's mandated that the chair consult with the executive committee, but does that require a meeting?

Greg Brady responds, if you have contemporaneous conversations, yes.

Marc Strauss adds, I'm thinking that actually makes it more cumbersome than if it was just the chair determining. You'd have to convene in open meeting where you're not going to conduct any business in order to make a decision.

Greg Brady adds, that's only if there's contemporaneous conversation amongst all of the executive committee. If the chair reaches out to one member at a time, there's not contemporaneous conversation; that is still a consultation with executive committee members and yet you're not opening it up to an open meeting situation.

Marc Strauss noted, this might be one instance where it makes sense to just have the board chair do it instead of having to go through that.

Robert Boey asked, you mean the board chair instead of the executive committee, is that what you're saying?

Marc Strauss responded, yes.

John Butler added, I think this would have to happen as a result of a recommendation by the general counsel. It starts with a recommendation by the general counsel and then the chair may approve the unsealing of these records, and then we can require notification so these records shall not be unsealed without first notification to the full board. That is, they won't be unsealed until the full board is notified.

Robert Boey agreed.

John Butler added, that would give the full board a chance to say no, I disagree with the general counsel, or, no let's convene a meeting and discuss.

Robert Boey agreed.

John Butler summarized, so, it starts with a recommendation from the general counsel; it goes to the chair; and then the chair notifies the board. Then, presumably, the records are released.

Jerry Blakemore suggested, I would start it a little differently than what's here. I would start it with "consistent with relevant federal and state laws and/or order of a court of competent jurisdiction." That becomes the standard by which these records are released.

John Butler asked, so, we're getting rid of the executive committee; the request starts with the Office of the General Counsel to the chair; there's notification to the board before the release. The recordings won't be unsealed without first notification to the full board.

Greg Brady responded, Okay, we'll take a look to see if there is a reasonable time constraint, but I don't want to box us in unnecessarily.

John Butler added, I just want to make sure the full board is notified that those particular recordings will be released.

John Butler added, I think there is the question again about three years, and in this case it may not seem necessary, but if we come up with language in the prior case, maybe we can use that language here.

Marc Strauss clarified, so, the absence of a review doesn't eliminate the policy, as we discussed before?

Greg Brady agreed to make the change.

John Butler addressed the committee regarding the remaining items: I would prefer that we press on and get through the two remaining items. I don't think they're going to be particularly controversial or difficult. I think we may find ourselves wanting to spend a little more time on the reimbursement policy.

Jerry Blakemore responded that he and Mr. Brady will cover **travel and reimbursement**. This is a document that the board has actually seen some time ago. This was part of a workshop that the board did. The big issue here is whether, in fact, as we propose, this policy would provide that you may accept reimbursement; it doesn't require members to do it. We're explicit about reimbursement for expenses to attend regular and special meetings of the board. It also has a provision where a member of the board can have professional development opportunity that is paid for by the board in the fiscal year, and additional opportunities that are approved. I think we left such approval up to the executive committee of the board or the chair. It also provides an opportunity to be reimbursed for professional development activities and we're specific about the number of those that for which a board member can be reimbursed. The language is "may," not "must," and if there are additional opportunities -- professional or otherwise -- it's within the purview of the board to increase that number.

Greg Brady added, in addition to the proposal, you have the current board policy. This all stems from the Northern Illinois University law that allows members to receive reimbursement of their expenses.

Marc Strauss asked if the proposed policy is the same as the first reading version the board has seen before?

Greg Brady responded, yes, there's no change.

John Butler noted, the owner of the policy appears to be a position that's no longer with us, the Vice President for University Relations. The board liaison should be the person who is managing the travel and expense reimbursement policy or his or her designee.

Jerry Blakemore recommended "Board Liaison or such person designated by the board to serve this function." That way we don't have to change it in the event there's a change in title; it's a function that really drives this.

John Butler noted, we have a chance here to develop policy that controls the manner in which the student trustee's expenses will be managed. As we know, student trustees are not in their careers and the board chair is often asked to authorize an advance so that the student trustee can pay for their travel, if there's a conference, for example. I would like us to think about whether or not we can give the power to the president, who, at the request of the student trustee, will make arrangements for that to happen. Would that be violating the law?

Greg Brady responded, I'd have to double check here, but I believe the chair does have to do that under the NIU law.

Marc Strauss noted, the statute does say "at the discretion of the chairman of the board," but can the discretion be delegated?

Jerry Blakemore responded, it can be delegated.

John Butler indicated, let's try to work that into this, and again, we don't have to get the specific language right now. I just want to make sure that I'm clear with the committee that I would like to do that, so that the process is more efficient and consistent, and can be relied on by the student trustee. I have trouble with the limitation of one professional development of opportunity and four university events. I can't image that there would be need for more than four university events. I wonder if, rather than creating the formal process of requesting permission for more, if we could just eliminate the one in the case of professional development opportunities?

Marc Strauss added, with regard to university events, later on in the policy there is a provision which is one page three, it's in the paragraph just above "advanced payment of travel and expenses for the student trustee," and says that reimbursement is not available for, among other things, "university related organization events where the member is not an official participant or guest." I am wondering how you read those two provisions together. The example might be something like the Red and Black. Is that a "university event" or is that a "university related organization event"?

Greg Brady responded, it's a university event. So, for example, foundation or alumni association events that are not university events, but the Red and Black is a university event.

Marc Strauss responded, how would somebody know the difference? Let me give you another example: Say the Alumni Association has a reception at a football game; is that a "university event" or is it a "university related organization event"?

Greg Brady responded, I'd have to know the facts about how it is organized. If it's all Alumni Association, and there's no involvement of the university, it's the Alumni Association. But it depends on how it is set up.

Marc Strauss added, my goal is to try to provide clarity. I've never submitted for reimbursement for anything; those are just examples that I could come up with very easily.

Lisa Freeman responded, I think they're good examples. If we consider the research foundation, we could say something that highlighted student and faculty innovation would probably fall into "university related;" but, if there was a pitch competition and venture capitalists were involved, and some of the trustees wanted to go, you wouldn't want to permit reimbursement. I think that clarity is probably important.

Robert Boey added, you would think it's quite clear. As an example, I'm a member of the foundation

board, and sometimes it's easier for me to just cover myself rather than ask for reimbursement. I come back to Trustee Butler's question regarding professional development opportunities. My own feeling is that I'm not for no numbers. I think each of the trustees certainly should be able to decide, determine what is right; but, I would like to have some sort of a maximum number rather than leaving it wide open.

John Butler responded, I'm fine with a maximum number, but I would like it to be two, just to be on the safe side; because, if you move into a leadership position on the board, or you are the chair of a committee, you might have an opportunity, for example, to go to an AGB conference that deals with the finance committee – such as a recent conference that was close by, easy to get to, and relatively inexpensive – and you may also want to go to a national conference as well. This has never been a major issue, as far as I know; in fact, I think we need to do more professional development activities and I'm encouraging it.

Robert Boey agreed, and added, I have enough trust in the trustees to determine what's the right thing to do. On the other hand, I want to put a number with it.

John Butler responded, I'm fine with a maximum number. I think we could say a maximum of two as long as we have a provision of some kind to approve additional professional development opportunities.

Robert Boey agreed.

John Butler asked if a change could be made to read, "shall be reimbursed for a maximum of two professional development opportunities," and keep the number at four for university events? Are we comfortable with "the chair or executive committee" approving exceptions, as written?

Marc Strauss noted, additional reimbursement requests by the chair must be approved by the executive committee.

John Butler questioned whether "chair or the executive committee" might imply that a trustee can go to the chair first, and be rejected, and then go to the executive committee, and have their request accepted?

Marc Strauss asked, is your suggestion that it be to the chair, except for when it is the chair requesting?

John Butler recommended that the approval by the chair in consultation with the executive committee.

Jerry Blakemore responded, that would work. I like "consultation," because then you're not having the committee make a decision which would bring in the Open Meetings Act. It's an obligation on the chair so talk to someone else, but it's not like you have to have a meeting for the chair to make a decision.

John Butler summarized, so, it requires the approval of the chair and consultation with the executive committee. And requests from the chair must be approved by the executive committee. Another question: if circumstances permit the university to pay upfront fees, such as conference fees and so forth, is that prohibited under this policy?

Jerry Blakemore responded, no, it is not.

John Butler asked, is there language anywhere in the university travel policies that relate to conference hotels and distance? If the conference is being held in a resort hotel and they bargain for decent rates, but it may not be the lowest rate in the area, will the conference hotel be permitted?

Lisa Freeman responded, the language, as I understand it, as a user of the act, if there is a designated conference hotel that is the preferred reimbursable unit. If you choose to stay in another hotel, and you can document that the cost is lower than the designated conference hotel, then that's usually an allowable alternative. If there's no designated hotel, it can be challenging to justify the expense, but it's

possible to do so and it's usually based on proximity and lack of transportation costs, and if there are state mandated maximums in the cities.

John Butler responded, yes, concerning this language that calls for the lowest available lodging rate at the time of making reservations, can we replace that with whatever Provost Freeman just said? This would permit the trustee to be reimbursed for the conference hotel if I understand it correctly. What are commuting expenses on page three, the second to the last bullet?

Greg Brady responded, the key phrase is "commuting." I live in Rockford, so my travel from Rockford to DeKalb to get to my job is my commute. I don't get reimbursed for any of that.

John Butler added, but trustees would.

Greg Brady responded, you're different. You file a TA2 to make your home base your physical home and that's okay, but it's dependent upon the filing of that TA2 form. That's not considered your commute then, so that is the key language there.

John Butler indicated, as we get into the student trustee area I'd like a little bit of time to think about how best to amend that so that we can delegate the authority and create some consistency. I want to get rid of the risk management section completely.

Marc Strauss added, there are certainly times where we're all on a bus together, or five of us are on a bus together at a football game.

Lisa Freeman added, the public conveyance is kind of ridiculous; if we're all in DC, and we're taking the Metra, for example.

Marc Strauss added, why would we all incur the expense? Why wouldn't we make an effort to save the cost by traveling together? That's my thought as well.

It was agreed the risk management language would be removed.

Marc Strauss noted that there is another policy that talks about some things in particular like seating at home football games. Does that provision go away if we adopt this policy? I just want there to be clarity and for us to understand. If we have a provision someplace that says that we are entitled to a seat in the box for the home football games, would this new policy, which says nothing about such seating, replace those existing provisions?

Greg Brady responded, we haven't decided that yet, and I'm not familiar with the policy you're using as an example. I do think, though, there should be some talk about, if this is adopted, what happens to the current BOT policy? I see this as a replacement for this BOT policy that you currently have from 1996.

John Butler asked, if that policy discusses the right of the board to accept seats at athletics events, for example, we'd need to have that in the new policy?

Greg Brady responded, right.

Marc Strauss noted, there is a paragraph in the existing policy that addresses that. I don't think we want two separate policies, but we want to be considerate about whatever it is we're doing, so we understand what all the implications are and have clear guidance.

Greg Brady responded, if there are, like that paragraph there, and that is something that you'd want to keep, and bring back over, please let us know.

John Butler indicated, yes, it is.

Marc Strauss added, to the extent that it's not inconsistent with the gift ban act, or anything else, yes. Maybe you can give some thought to how we work through all of those issues. Nobody wants anything that's going to cause a legal challenge.

Greg Brady agreed, since 1996 there have been a lot of changes as far as what is acceptable and what is not, as far as free things, so we're going to have to really analyze.

Jerry Blakemore recommended we could come back to you with an even broader update based on changes in the law and not just focus on that one, in particular.

Robert Boey agreed, asking for an up-to-date statement.

John Butler responded, I'm fine with that as long as it doesn't leave us in any kind of limbo where we're then operating in a manner in which we could be criticized. Right now it's comforting to have the existing policy. I know it was when I became a trustee. When I read that, I felt much more comfortable about going to athletic events and participating in those activities. Does anyone else have anything to say about the travel and expense reimbursement policy? So this makes no changes in the standard manner in which trustees submit for their mileage their expenses to go to meeting and so forth. None of that has changed?

Greg Brady responded, no, the operational component is dictated in fact by state regulations, so that we can't change. It's more of the what types of events.

Jerry Blakemore added, we wanted to look at the language on the student reimbursement issue. We could actually just say "the chair or designate," and then it gives you the flexibility to ask the president, the financial officer, or whoever. I mean that's easily taken care of with that word. We're going to redraft and get things back to you. And we have help with the statute on the student on the reimbursement side. So it provides the board much discretion.

Robert Boey added, it makes sense for a president to be involved when the chair is away from the campus or whatever the case is. The president can have that designation then. It makes sense.

John Butler noted, I have no trouble, and I enjoy, facilitating that process for the student trustee, but it opens up the potential for inconsistency in the manner in which those rights and privileges are provided.

John Butler recommended the committee discuss the **elections** item.

John Butler noted, Trustee Coleman had some concerns about this when the amendment was introduced for first reading. Philosophically, I don't have a problem with his analysis. What I attempted to do in making an amendment to this provision was to deal with the question of what does it mean to drop the trustees who got the least number of votes. I wanted to codify in the bylaws that it meant dropping the trustees who has zero votes in the first round of voting, so that the second round ballot would display for the trustees anyone who got one or more votes, and the trustees would have a full menu of options that included anyone who received any support. I would not indicate the specific number of votes each trustee received. Trustee Coleman argued that it we was probably better that we forced the board to consider the top highest vote getters. I'm not opposed to that, but I would like to at least retain that first round.

Robert Boey added, I think so too. What's the definition of the highest vote getters? You said two, is it three, is it four?

John Butler responded, the current policy, as it has been interpreted, would consider the highest vote getters to be the two who had the most.

Marc Strauss added, there could be more, there could be four if there were ties.

John Butler added, Trustee Coleman has not asked us to make a change to the amendment; he's just expressed a desire for the existing system; but, if we attempt to accommodate his concern, then we drop the trustees who got zero votes in the first round, and then hold a second round after which we would drop all trustees other than the two who received the highest number of votes.

Marc Strauss added, in that case, it could also involve more than two.

John Butler agreed, if there was a tie. The prospect of a tie is discussed in the proposed amendment. On a practical level, it would mean just lining out that middle series of votes, and we'd only have three rounds then.

Robert Boey asked, you had proposed something a little bit different previously, and I'm trying to remember what that was.

John Butler responded, it was to go another round. It was the attempt to keep some candidacies alive beyond the top two. My previous idea was to have four rounds before we declare an impasse. Five ballots provide an opportunity for some candidates to emerge that the trustees might not be aware are interested, or there's interest in them. Trustee Coleman seemed to strongly believe we needed to force a choice. There's some benefit in having a contest ultimately between two people, I agree.

Robert Boey noted, I'm alright if it goes an extra round. It gives a little bit more air to the whole system that whatever shakes out shakes out.

John Butler asked, well, what's the position of the committee? Can we keep it as proposed, try to pass it; do we amend it or leave it the same?

Robert Boey responded, realistically, I think we're talking about doing this in three rounds or four rounds. And, in some cases, there are going to be four rounds anyway if there is a tie.

John Butler noted, after the third round we'd declare an impasse. Frankly, this is where it becomes a problem for the board. I would like to avoid an impasse, if possible. In the proposed amendment, without the changes I just talked about, we would stop after the fourth round, and the chair would declare an impasse. Then, we would have to wait until the next special or regular meeting.

Robert Boey added, an impasse is highly unlikely it seems to me, but people can change their mind too, and change their votes.

John Butler responded, that's what they might do. They might say, "I had no idea there was interest in Marc Strauss," for example, or, "I had no idea there was interest in Bob Marshall." So the question is three rounds versus four.

Robert Boey asked, how does the student trustee feel?

Paul Julion responded, with the possibility of the fourth round happening?

John Butler clarified, there currently is no fourth round. This policy change creates a fourth round.

Paul Julion responded, Okay.

John Butler added, a disadvantage of this strategy is that there might be a person who, once it's clear that there is a split and things are not turning out as they thought it would, might actually wanted to put their hat in the ring.

Marc Strauss added, I'm fine with either approach. You could still wind up with an impasse after however many rounds. So you have to play it out. And, if the sentiment is, regardless, after four ballots, you take a break, I'm fine with that too. So it doesn't matter to me. I do think there's merit to dropping the zeros the first time through, and that would be a clarification from our current policy.

Robert Boey indicated, it's just a matter of being more inclusive than exclusive; that's all I'm thinking about.

John Butler asked, do you want to declare an impasse after three rounds, that's fine with me too.

Robert Boey added, this is such an important vote, why stop at three? Why not just let it finish up, whatever it is? All you need is probably a fourth round, you probably can shake it out. Rather than leaving and saying come back and do it again, I'm in favor of finishing it up, whatever it takes.

John Butler clarified, so it's three versus four, and it seems like four is winning.

Robert Boey responded, yeah, I wouldn't stop at three. I say finishing up, and chances are four would do it, I would think.

Jerry Blakemore added, I just need clarification on the following: as I understand it, if in your first ballot you don't have a sufficient number of votes, you eliminate the zeros, which, in effect, are the trustees who, for the first round, have said they are not putting their names forward for possible election.

Marc Strauss responded, or nobody else voted for them, whether or not they put their name forward.

Jerry Blakemore added, which would include themselves.

Marc Strauss responded, correct.

Jerry Blakemore added, so when you say zero, in effect you're saying anyone said, I am not putting my name forward for the first round, would be eliminated also in the second round?

John Butler responded, that was the disadvantage that I mentioned earlier.

Robert Boey added, I can see that.

John Butler noted, this whole strategy is to whittle down the choices to a point in which the board is forced to make a decision. It forces the board to make a decision, or it makes clear the board is not ready to make a decision. If you allow the people to come back onto the ballot, then you're not trying to generate a consensus candidate.

Robert Boey added, and I cannot imagine that if we have an impasse even the first time around that we cannot resolve it the second time around. Because how many impasses have we gone through before we say that we can't have any more impasses? Is there a law against that? Is there a ruling against that?

John Butler responded, there's a point in which the law requires the election of officers annually, and an impasse might arguably brake that law at some point. There might be a point in which our general counsel says you are now existing in violation of the law. This is always up to the board. So can we advance this recommended change?

Jerry Blakemore noted, and so we will add this to the list for second reading.

Information Item 9 – Next Steps/Work Plan

John Butler indicated, if we go back to the agenda, our plan was to review the proposed bylaws in

Category B. I think we should postpone that for another meeting. If we schedule another meeting, we may be able to achieve what we were supposed to achieve today, which was also to review, for a first reading, Category B items. Do we want to try to do that?

Marc Strauss agreed, that's fine with me.

The committee determined the next meeting will be held on February 5, 2015, at 2:00pm.

11. NEXT MEETING DATE

Actual date/time: February 5, 2015 – 2:00pm

12. ADJOURNMENT

Chair: John Butler: Thank you everyone. This has been a long meeting but a productive one. I don't see any other way we can do this work other than in this format, so I appreciate this time and commitment to this process, especially since in many cases we got into details and issues that don't necessarily concern everybody in the room. I appreciate it. It's important work. Thank you for coming. So is there a motion to adjourn?

A motion to adjourn was made by Marc Strauss and seconded by Robert Boey. The committee voted to adjourn at 4:30pm.

Respectfully submitted,

Recording Secretary

In compliance with Illinois Open Meetings Act 5 ILCS 120/1, et seq, a verbatim record of all Northern Illinois University Board of Trustees meetings is maintained by the Board Recording Secretary and is available for review upon request. The minutes contained herein represent a true and accurate summary of the Board proceedings.