

Minutes of the Joint Meeting of the Board of Trustees and Athletics Association Board of Directors of the University of Kentucky, Saturday, January 28, 1989.

The Board of Trustees and the Athletics Association Board of Directors of the University of Kentucky met in the Board Room on the 18th floor of the Patterson Office Tower at 8:30 a.m. Lexington time on Saturday, January 28, 1989. The meeting had been requested by the Board of Trustees and issued by the Acting Chairman, Mrs. Edythe Jones Hayes.

A. Meeting Opened and Rolls Called

Mrs. Edythe Jones Hayes, Acting Chairperson of the Board of Trustees called the joint meeting to order at 8:30 a.m. and the invocation was pronounced by Mr. William B. Sturgill.

Board of Trustees

The following members of the Board of Trustees answered the call of the roll: Mrs. Edythe Jones Hayes (Acting Chairperson), Mr. Ted B. Bates, Professor Raymond F. Betts, Mr. William E. Burnett, Jr., Governor Albert B. Chandler, Professor Mary Sue Coleman, Professor David R. Driscoll, Jr., Mr. Lawrence E. Forgy Jr., Senator Walter D. Huddleston, Mr. Foster Ockerman, Sr., Dr. Nicholas J. Pisacano, Mr. James A. Rose (James), Mr. James L. Rose, (Jim), Judge Robert F. Stephens, Mr. Jerome A. Stricker, Mr. William B. Sturgill, Judge Julia K. Tackett, Mr. Billy B. Wilcoxson, and Judge Henry R. Wilhoit, Jr. Absent from the meeting was Mr. Tracy Farmer. The University administration was represented by President David P. Roselle; Mr. Edward A. Carter, Vice President for Administration; Chancellor Peter P. Bosomworth; Dr. Wimberly C. Royster, Vice President for Research and Graduate Studies; Mr. Eugene R. Williams, Vice President for Information Systems; and Mr. John C. Darsie, General Counsel.

Athletics Association Board of Directors

The following members of the Athletics Association Board of Directors answered the call of the roll: President David P. Roselle, Dr. Jack C. Blanton, Governor Albert B. Chandler, Dr. Charles W. Ellinger, Mr. Lawrence E. Forgy, Jr., Dr. Art Gallaher, Mr. Phil Greer, Dr. James Kuder, Mr. Robert Lawson, Dean Peggy Meszaros, Miss Leah McCain, Dr. Ernest J. Middleton, Dr. Nicholas J. Pisacano, Mr. Bruce Rector, Professor Daniel R. Reedy, Mr. S. T. Roach, Mr. Jerome A. Stricker, Mr. William B. Sturgill, Dr. J. R. van Nagell, Jr., and Dr. Charles T. Wethington. Absent from the meeting was Mr. L. D. Gorman.

B. Minutes of the Board of Trustees Approved

On motion made by Governor Chandler, seconded by Mr. Wilcoxson and passed, the Minutes of the January 24, 1989 meeting of the Board of Trustees were approved as written.

C. President's Recommendation on Presiding Chairperson

With the permission of the Athletics Association Board of Directors, President Roselle ceded his chairmanship for the joint meeting to Mrs. Hayes. Mrs. Hayes stated that it would be for presiding purposes only and that the separate Boards may have to act as individual boards on certain matters.

D. Update by Mr. Darsie on the Courts and Appeals

President Roselle called on Mr. Darsie to provide an update on the legal status of the various court actions and appeals.

Mr. Darsie distributed copies of the ruling of the Kentucky Supreme Court with respect to whether or not the Board can, if it wishes, go into Executive Session and the Temporary Restraining Order issued by the Federal Court in Pikeville on Friday, January 27, 1989.

Mr. Darsie began with the temporary Restraining Order issued by the Federal Court. He explained that the order would restrain the employees, agents and attorneys of the University from divulging specific things (i.e. test scores, high school grades, ACT scores, University courses taken, etc.) relating to Mr. Eric Manual, to anyone, including the Board, press, public or NCAA. He pointed out that the court's order is applicable irrespective of whether there is a closed or open meeting.

Mr. Darsie continued with the second ruling from the Supreme Court of Kentucky and stated that it is self-explanatory to a large extent. The ruling states that if the Board should wish to adopt a motion going into Executive Session to discuss matters which may lead to the discipline or dismissal of employees or students, it may do so. Mr. Darsie stated that it would require, in his opinion, a separate motion to be made and voted on by the Athletics Association Board of Directors and by the Board of Trustees of the University. He then asked for any questions.

Following a request for Mr. Darsie to repeat the second ruling, he explained that a motion would have to be made if the Board decided to go into Executive Session. The ruling does not require that the Board go into Executive Session but is merely permissive. He presented a suggested motion for a closed session should anyone wish to make the motion.

E. Series of Motions

Mr. Stricker stated that he would like to make such a motion.

Mr. Darsie explained that this would have to be applicable to the Board of Trustees only and that the Athletics Board would have to vote separately.

Mr. Stricker's motion was seconded by Governor Chandler; Mrs. Hayes called for any questions or discussion.

Mr. Darsie explained that Mr. Stricker moves that the Board of Trustees go into Executive Session to discuss (1) matters which may lead to the discipline or dismissal of individual students, (2) matters which might lead to the discipline or dismissal of individual employees, and (3) matters constituting confidential communications between attorney and client.

Mr. Forgy asked for President Roselle's view on the matter.

President Roselle called upon Mr. Darsie to go back to the issue of confidentiality as it surrounds Mr. Eric Manuel's situation and explain what the Board might be doing to replicate that situation in other places.

Mr. Darsie informed both Boards that an allegation was made in the Federal Court in Pikeville Friday, January 27, that members of the Board have leaked information with respect to Mr. Eric Manuel. He pointed out to the court that there was no proof of the allegation offered, and it was merely a charge made by people representing Mr. Manuel. Mr. Darsie then reminded the Board of his speech at the previous closed session and said the situation with respect to maintaining the confidentiality of any material which may be disclosed in closed session certainly is underscored by the Eric Manuel case. The administration is, of course, restrained from giving out any information to the Board or to anybody else with respect to Mr. Manuel. There are, obviously, similar matters relating to other various individuals. He emphasized the seriousness of the consequences of divulging any confidential information which may be shared with the Boards in a closed session, especially in view of the current legal situation in Federal Court.

President Roselle explained that the federal law is very clear on student entitlements, and there is an obligation on everybody, including members of the Board of Trustees, to protect those rights. He then called on Joe Burch to report on the manner in which the investigation has been conducted and how information has been exchanged.

Mr. Burch reported that it would be helpful for the members of both Boards to know that all of the facts contained in the NCAA Report are already known to the NCAA. He stated that a cooperative investigation had been conducted from the very first day that the matters came to the University's attention with the Emery package. Most of the investigation took place with the University's investigators, Judge Park and himself present as well as representatives of the NCAA. He reported that the investigation started in April, 1988 and reminded the members that the administration was in front of the NCAA Infractions Committee the preceding February. They concluded that the administration was not cooperative with the NCAA. He explained that the administration did not agree with that stance. Since that had happened, the investigators did not want to repeat that process in the present NCAA

proceeding. He emphasized that the report is a compilation of those facts that have been gathered jointly and cooperatively. The facts are known and everything that the investigators have done has been known to the NCAA staff. The report then will be our interpretations placed upon those facts and what they deem to be the institution's responsibility to properly gather information about their athletics programs and to properly judge those programs and interpret those facts to the NCAA. It is well known that the NCAA expects its member institutions to cooperate and investigate themselves. He explained that the philosophy of the NCAA, to which the University subscribes, is that institutions of higher learning will police their own programs and will do the proper thing in terms of advising the NCAA. They will then jointly work with the NCAA to set about having a program that is operated in compliance with the rules. Mr. Burch indicated that in light of the federal restraining order, the report may not be submitted on Monday, January 30. He asked Judge James Park to speak about the submission date.

Judge Park stated that he had had a telephone conversation with Mr. David Berst of the NCAA late Friday afternoon to inform him of the issuance of the restraining order by Judge Karl Forester. The restraining order not only affects the information which can be communicated to the Board but also the information which can be communicated to the NCAA. The problem of having to pull out, at this point in time, all of the information that is enclosed and enumerated on the order was discussed. He stated that he informed Mr. Berst that the order had a time limit on it which was until the hearing on February 3 at 3 pm. It was discussed that it would be best not to ship the report piecemeal on Monday. He indicated that he hoped that the completed report could be delivered all at one time.

A question was asked as to whether the report became public once it had been submitted to NCAA and Judge Park deferred the question to the Legal Counsel, John Darsie.

Mr. Darsie stated that there will be litigation by various members of the media seeking to have the report declared a public document. The Fayette Circuit Court will be asked to rule on the question.

Mr. Lawson, Secretary to the Athletics Association Board of Directors, stated that he thought it might be worthwhile to say a word or two about the Infractions Committee of the NCAA as a follow-up to Mr. Burch's report about the NCAA staff. The group, which will ultimately judge the institution, is made up of six members. Five of the members are faculty like himself -- faculty representatives from other institutions -- and four of them are law professors who are very serious about integrity in college athletics. They do not think that an educational institution ought to view itself in a proceeding like that as a criminal defendant might view itself. Essentially, what they want to see is an educational institution that is interested in finding out whether or not it has problems in its athletics program,

and if it does have problems, do something to straighten them out. He stated that was the real sense of the cooperative spirit and that he was not sure what kind of impact the developments of the last week might have upon that spirit. It did appear that the University would not be able to meet its deadline in filing the response. He stated to his colleagues on the Athletics Association Board that if they wanted to help the institution in this situation, the way to do that would be to have the institution make an effort to find out if it has problems in its athletics program and straighten them up if they are there.

Judge Park indicated that he would like to add one thing to what Joe Burch indicated and it has to do with the nature of a response to an official inquiry by the NCAA. He stated that it was an unusual procedure, and to some extent, he was speaking to the lawyers and judges at the meeting. He explained that the response comes close to an administrative record. You have to put into the response or attach to it all of the information that has come to the NCAA and to the University during the investigatory process. They look at the response to make their decision. The enforcement staff may disagree with the response, but that would require that the University officials, in making the response, discuss information or charges that they don't agree with necessarily and which may be disposed of at the pre-hearing conference with the enforcement staff. The response itself is completely unlike a response in a court case. He stated that everything must be included in the response and reported that it consists of seven notebooks with some 129 interviews, statement summaries, depositions, etc. He remarked that there was a tremendous amount of information in the response that potentially impacts a lot of people.

Mr. Ockerman stated that the theory of the NCAA was evolved at a time when it was not contemplated that everything would be published and asked that if it is determined that the report is to be public, "what's the chance that the NCAA might change the requirements for reporting?"

Judge Park stated that he hoped he did not have to go back and do a whole lot of tinkering with what is in the response. The report has been put together and basically is ready to go. The NCAA is quite concerned because there has never been a situation in their history where it appears that the response is being made public or might be made public before the hearing and before they have had an opportunity to pass on it. Their rules provide that the entire procedure be confidential. He referred to the quotes by David Berst of the NCAA in the morning's Herald-Leader and the Louisville Courier Journal with respect to the fact that they do treat this as a case of first impression. He stated that the NCAA has never had this kind of a situation presented to them before and he does not know that they are going to change their legislation between now and the time the response is submitted. This could not be done legally, and it would really revolutionize their whole procedure. Ultimately, down the line there may be some changes as a result of this case.

Judge Tackett asked if they could give more time for the report while they review their requirements.

Mr. Burch reported that the NCAA convention meets in January every year, and stated that they are not likely to change their legislation until next January. It is not likely to change, as difficult as it might be for them and the University. He stated that they may perhaps delay, but any delay in the matter would be very difficult for the University's athletics program. The delay has been very difficult and no one would want to see it delayed any further. He expressed his concern about not being able to submit the report until after the Federal Court hearing on Thursday. In order to know what to send in the report, the report is going to be delayed until sometime after Thursday with the understanding of the NCAA. He emphasized his concern about the likelihood that if the matters were discussed at the meeting, they would be out before the University submitted the report. He indicated that it would not look good for the institution to have the report discussed publicly in the media before it is sent to the NCAA.

A discussion regarding the release of the report to the public prior to the NCAA being disruptive to the NCAA process followed.

Mr. Darsie added that it not only would not be helpful to the institution to have the business made public, but it probably would not be helpful to some of the participants as well. He explained that the NCAA has altered its procedures by permitting individual coaches and students, against whom allegations are made, to be represented separately and make their own case to the Infractions Committee. He remarked that he did not feel that it would be helpful to those people to have only part of what will occur at the ultimate NCAA hearing out in a public session before the individuals have had the opportunity that the NCAA has afforded them to make whatever defense they care to make.

Mr. Burch reiterated that the University was trying to accomplish a different result from the previous one of being accused of being uncooperative and also in a sense mitigate any damages that might occur to the University and to its athletics program. Efforts to conduct an investigation that the NCAA feels is honest and with integrity is an effort on the University's part to show them that the University wants to run a proper program under the rules. The NCAA Infractions Committee publishes their opinions in a newsletter called THE NCAA NEWS. He stated that he had been following the opinions for the last year and a half, and it is very clear that where universities show the NCAA that they are in charge and in control of their athletics program and are planning to operate them in compliance with the rules, any damages that occur to the universities are mitigated. They have suspended probations, and they have taken various actions that are favorable where the institution shows it is in control. The investigators knew that going in and thought not only was it right, it was in the University's best interest to conduct the investigation that way.

President Roselle returned to his original point that his concern centers on confidentiality. The Supreme Court of Kentucky made clear their concern for confidentiality when they made their ruling at 2:00 a.m. It is important that persons named in the allegations have the opportunity to make their case to the NCAA Infractions Committee without having it discussed in the paper first. The University must protect that right to the best of its ability. He expressed thanks to the Board members who had come to his office to talk about the allegations and the report during the last several days and stated that he hoped that they found the meetings informative. He indicated that he was available to meet with any Board member for that purpose.

Mrs. Hayes asked for any other questions or concerns from members of either Board.

Mr. Ockerman asked, "do you have any feeling as to when the courts will move on whether the report will be public when filed or not?" Mrs. Hayes referred the question to Mr. Darsie and President Roselle asked Mr. Darsie to explain the whole situation.

Mr. Darsie explained that the question is in the process of being remanded from the Court of Appeals back to Judge George Barker in the Fayette Circuit Court. Obviously, one thing a lawyer hesitates to do is make a very firm prediction on how long it is going to take a judge to rule. He continued that Judge Barker has, in this case, been very prompt in making rulings as has the rest of the judiciary. It is evidenced by the fact that the University's legal counsel was able to go from a Circuit Court through the Court of Appeals to the Supreme Court on Friday, January 27. He explained that he could not, however, predict when the courts would decide on whether the report would be public when filed.

Senator Huddleston then inquired about the parliamentary status at the present time and if there was a motion before the Board.

Mrs. Hayes stated that there was a motion with a second that the Board go into Executive Session. She reminded the Boards that the motion was for the Board of Trustees only and the Athletics Association Board would have to deal with the same issue. She stated that if there was no further discussion, the Board was ready to vote on the motion.

Mr. Forge stated that he would like to address a question because it appeared that the Board was caught in an interesting legal situation that requires a lot of thought before they vote. He then stated the question, what is in the best interest of the University? He stated that he thinks the entire Board of Trustees feel that the people of the Commonwealth expect the Board to know the contents of a report of this magnitude. An enormous amount of publicity has attended it, and the Board is caught in the position that the public need for the members to know about this is offset by the problems that

the Board has with regard to pending litigation or potential litigation as it relates to various people that are named in the report. He reminded the members of his remark at the previous meeting which was, "it would not be my intention to support any change in the report that the administration is submitting to the NCAA." He stated that he believes this administration is where the evidence warrants its intent on defending the institution and where it does not is obviously another matter. He further was of the view that the Board can, by creating a continual problem with regard to the confidentiality of this material, jeopardize the institution's legal position in further proceedings. He stated that he felt the Board is confronted with the public's right to know and the Commonwealth's demand on the Board as the final repository of authority in the Commonwealth to know what is going on, and on the other hand, the problem of trying to disseminate that information to the Board without continuing problems. He continued that he wondered if there was not some point between the two points. He stated that, without being inflammatory about it, he was inclined to think that the NCAA is an organization where flexibility ought to extend to the fact that the Board has serious problems in terms of the right to know as opposed to the need for confidentiality. He continued that a court has already ruled in this case that the allegations are a document subject to the reach of the open records law and Mr. Darsie confirmed his statement. Mr. Forgy then asked President Roselle about the possibility of a deferral of the NCAA response and stated (1) that the University could ask for a reasonably quick adjudication of the matter from a court so that the reach of the law could be extended to the documents themselves, (2) that the documents would be, insofar as legally possible, made public at the same time this Board receives them, and (3) that part that may subject the institution to litigation could be left outside because the courts would indicate that it is a matter that should not be released. He asked if there was a possibility that the University could proceed along that line.

President Roselle expressed the opinion that the University should not take a judicial role in determining the public's right to know versus the individual's right to privacy. The University's role is to maintain the privacy of the individuals named in the response while the media's role is to assert the public's right to know. This should be done in the courts of law.

Mr. Forgy asked if there was a possibility that Judge Barker's pending ruling may relieve the University of its responsibility to protect the privacy of the individual's named in the response by ruling that the response is subject to the open records law.

President Roselle indicated that it was possible but there were risks involved.

Judge Park stated that the question of editing the response is not a simple matter because you are dealing basically with an administrative record which has already been created. Judge Park

agreed with President Roselle and stated that he did not believe that the University is in a position to edit the response. This will be Judge Barker's decision to some extent; however, he did not feel the NCAA would be agreeable to in letting Judge Barker determine what material would be submitted to the Infractions Committee. He stated that Mr. Berst did not feel that an extension until Friday would be a problem.

Mr. Forgy then said that "it is obvious that you can get to the courts pretty fast since this whole question of the open meeting under the open meetings law went all the way to the Supreme Court in one day. I guess I am trying to probe here is the possibility that if the NCAA's response was delayed by a week or ten days and if the document itself was completed and was available at the reach of all, it was not a partial document, it was here, we admitted it was here, and the court ruled that certain segments of it as I think they ultimately will, I don't want to prejudice your case, John or Judge, but I think this whole question of the reach of the open records law to this response is probably *res judicata* to the decision that was made in the prior case. I just make that statement because it is virtually the same document. The first was a set of allegations, the second is the response. I am wondering if the document was available on the President's desk and it was obviously there if the court decided it was going to disseminate it and that it was subject to the open records law, the NCAA delayed slightly, then whatever Judge Barker decides is in the public domain and at virtually the same time that order would be executed, we have a meeting and we talk to the Board about it. Now, that gives us some of each."

President Roselle stated that the University's position at the present time in a legal sense is that any information made public about the investigation, etc., is better made public as a result of a court order. That is true whether it is information that is released or whether it is information that's told by persons to whom the information has been told.

Mrs. Hayes called for other questions or concerns.

Mr. Darsie cautioned the Board that further litigation may not be resolved as expeditiously as the temporary restraining order.

Mr. Wilcoxson asked if the information available in President Roselle's office would be the same information that would be disclosed in a closed session.

President Roselle stated that he would be available to consult with the Board members and/or legal counsel at any time. He indicated that the report was still not complete and that he only saw a draft copy recently, noting the October 9th resolution that said the investigation should be carried out free of influence of the University President.

Mr. Wilcoxson asked why would the matter of confidentiality be any different in a closed session than it would be in a private session. He expressed concern about Mr. Manuel's attorney having mentioned that somebody on the Board had disclosed the allegation.

President Roselle stated that Mr. Darsie had made the argument that the allegation that someone on the Board disclosed information was not supported by any evidence.

Mr. Sturgill asked if there was a possibility that the University could get additional time over and beyond the Monday deadline.

President Roselle indicated that Mr. David Berst, Director of Enforcement for NCAA, had stated that he did not want the report piecemeal. He explained that addenda may be submitted later. Mr. Berst wants to wait for resolution of the Eric Manuel federal court case which is scheduled for Friday, February 3.

Mr. Forgy asked if the motion was to go into Executive Session and discuss the matter rather than discuss the procedural complications that may come from the discussion in the Executive Session. Mrs. Hayes replied affirmatively.

Mr. Forgy indicated that did not want to be on record or be voting on going into Executive Session to go through the report piece by piece.

Mrs. Hayes asked Mr. Stricker to clarify his motion.

Professor Betts stated that on the basis of the legal counsel and the President's discussion, it seemed to him that the meeting is unnecessary and unwarranted at this time. He explained that when he voted for the meeting, it was for information only and that information was to be the completed report. The Board has heard from Judge Park and others that the report is going to have to be seriously amended to remove those materials which Judge Barker said could not be included in his decision of the other day. Therefore, it seemed to him that to discuss the report at this particular time would be only to discuss a portion of it. He stated that it seemed to him that the meeting could be delayed until the final report is submitted as was the intention of those who voted for the meeting in the first place. He, therefore, stated that if the motion does include discussion at this point, he could not support it.

Mr. Stricker stated that the intent of his motion was to go into Executive Session and indicated the reason to go into Executive Session was to determine whether or not the Board is going to review the report.

Mr. Darsie reported that "the open meetings law declares that all meetings of public bodies which we are dealing with here are open to the public with certain very narrow exceptions. The law further

says that in order to fit within one of those exceptions, a motion must be made in public session specifying the business to be conducted in the closed session. And that specification of what you are going to do in the closed session has to fit within one of the exceptions." He stated that, "the possible exception applicable here is exception (6). Exception (6) has to do with discussions which may lead to the discipline or dismissal of an individual student or an individual employee. So, in arguing this case in the courts, the basic position we have taken is that there are serious allegations against employees and students of this institution which this report contains and further that the report contains proposed corrective actions with respect to those." He then repeated Mr. Stricker's motion, to go into closed session under exception 6 which would be discussions leading to the possible dismissal or discipline of an individual student or an individual employee.

Mr. Stricker remarked that he stood corrected, that he agreed with what Mr. Darsie said and his motion remained. He also agreed with Mr. Wilcoxson about not seeing the difference between meeting in closed session as far as information and confidentiality is concerned versus meeting individually and reading the report privately.

Senator Huddleston asked if the only material in the prepared report that the University is not permitted to submit even to the NCAA or make public in any way by court order, is that material relating to Eric Manuel? Mr. Darsie replied in the affirmative. Mr. Huddleston then asked if the report is in position to be sent -- the only thing that would have to be deleted from it would be that particular section relating to Mr. Manuel? Mr. Darsie asked Judge Park to speak to that question.

Judge Park stated that the discussion would impact a number of areas because the whole matter is interrelated. The specific information which cannot be discussed with the Board, the media or the NCAA under Judge Forester's order is fairly specific. There can be some discussion of that matter but obviously not complete.

Senator Huddleston stated that the Judge's order was narrow, and it related only to his grades.

Judge Park replied that there were six items that the Board could not discuss.

Senator Huddleston asked if you took the position that that was the only thing that prevented the submission of the report and that could be done relatively easily to expunge that part of the record, what is the downside or upside to presenting the rest of the report? Now or as soon as possible without waiting to see whether the courts are going to take this action or that action? "I don't know - what are we going to gain by waiting?"

Judge Park explained that by waiting until Friday as opposed to Monday, the University would be able to present the entire response. The matter of expunging portions of it are not as simple as it would look because there are a number of documents.

Judge Stephens stated that it seemed to him that the purpose of the motion made by Mr. Farmer, who was not present, and by Mr. Stricker was not necessarily to visibly see all of the report but to have it discussed for information purposes before the whole Board. He remarked that he did not personally want to see the report and that he would be more than willing to hear the report with the exception of anything that would violate Judge Forester's order. He stated that the assumption had to be made that the Board would not leak anything. He emphasized that he did not want to hear anything that would even come close to violating Judge Forester's order. Whether or not the response is a matter of public record is for litigation in the Kentucky court system. He, therefore, did not see any reason not to hear the report under those restrictions.

Senator Huddleston asked if it is possible that there might be other litigation or situations that would further preclude action?

Judge Park replied that anything is possible and that he could not guarantee there would not be litigation.

President Roselle stated that there might be litigation that would make it more complicated; however, there might also be litigation that clarifies the situation.

Mr. Forgy stated that, since he is a member of the Athletics Association Board of Directors and the Board of Trustees, he would like to make a dual motion that Mr. Stricker's motion be tabled, and he provided an explanation for tabling the motion. His motion was seconded by Professor Betts.

Mrs. Hayes explained that Mr. Forgy's motion takes precedence over Mr. Stricker's motion and asked Mr. Darsie to call the roll. Upon a vote being taken on Mr. Forgy's motion, the result was as follows:

Yeas

Mr. Bates
Professor Betts
Professor Coleman
Professor Driscoll
Mr. Forgy
Senator Huddleston
Dr. Pisacano
Mr. James Rose
Mr. Jim Rose
Mr. Sturgill
Judge Tackett

Nays

Mr. Burnett
Governor Chandler
Mr. Ockerman
Judge Stephens
Mr. Stricker
Mr. Wilcoxson
Judge Wilhoit

Mrs. Hayes instructed the Athletics Association Board of Trustees to proceed with their business.

President Roselle, Chairman of the Athletics Association Board of Directors, stated that the Athletics Board did not have a motion on the table. Mr. Forgy moved that the Athletics Board adjourn and it was the consensus of the Board to adjourn at 9:50 a.m.

Mrs. Hayes stated that the Board of Trustees was in session and asked if she could have a motion for adjournment. A motion to adjourn was made and seconded by Dr. Pisacano.

Dr. Pisacano suggested that the lawyers and judges get together on both boards and inform the laymen of the right road to pursue for the benefit of the university and for the benefit of the people who have had allegations made against them. These people have their rights and are 100 percent innocent, even by NCAA standards, as of now.

Mr. Burnett offered a motion that if the Board was not going to discuss the report today, which evidently it was not, that the report be held strictly silent, in a confidential file not subject to review by any member of the Board or the Athletics Association Board of Directors so that there can be no comments from anyone that the Board has leaked any information concerning this report. He also moved that legal proceedings be pursued through the highest court of appeals which is the Supreme Court of the Commonwealth of Kentucky or the Supreme Court of the United States of American whichever is necessary and that after such time as the courts have ruled that this Board then be furnished the information in private session before it is sent to the NCAA.

Mrs. Hayes stated there is a motion on the floor by Mr. Burnett that has been seconded by Professor Coleman.

Mr. Stricker indicated that he had a problem with the motion because some of the Trustees had already seen the report and some of had not.

President Roselle stated that no one has yet seen the report.

Mr. Burnett replied that those that have discussed it, he assumed, are known to the administration of the institution. Any leak of information had to come either from the institution itself, the lawyers involved in the investigation or those people that have had the review. He emphasized that an investigation should be done on any leaks.

President Roselle expressed appreciation for Mr. Burnett's motion and stated that he would like to violate his position and talk about it a little bit. He stated that he could not discuss the report with the members because of the federal restraining order about

anything relating to this particular student's academic record until at least February 3. The sense of Mr. Burnett's motion was precisely the message that he hope to get to the Board.

Mr. Wilcoxson asked that if, according to his understanding of the motion, the Board would be privy to the information prior to the time the final report goes to the NCAA.

Mr. Forgy replied that was already in his motion, and he believed that the record will show that.

After being asked to repeat the motion, Mr. Burnett stated "the purpose of the motion is that the report will not be available to anyone until such time as the legal cases have proceeded through the court of highest appeal and the federal case if it goes through the federal court, that is the United States Supreme Court. If it goes in the State court, it is the Supreme Court of the Commonwealth of Kentucky. After those courts have ruled, this Board would then have a joint session or individual session, I could care less, in Executive Session, and receive the report before it is filed with the NCAA or anyone else. And, you never know what the court's going to rule and I am not going to try to guess what they are going to rule. I think we should be entitled to review that report and make our comments on it before such time as it is filed."

Professor Coleman recinded her second to the motion because she did not want to see the report before it goes to the NCAA.

Judge Tackett then seconded Mr. Burnett's motion.

Professor Betts asked if that interfered with the tabled motion indicating the Board would have to untable the motion that was just voted on before the Board could have the Executive meetings. He continued that the last portion of this particular motion seems in conflict with the earlier motion.

Mrs. Hayes asked Mr. Burnett if there was any confusion with his motion.

Mr. Darsie stated that Judge Park wanted to get one thing clarified about Mr. Burnett's motion and that was whether or not the sense of the motion is to preclude filing the response with the NCAA at this point.

Mr. Burnett replied "absolutely." "It is not to be filed until after the Board has reviewed it. The Board would inform the NCAA that it has legal difficulties. In order to protect the University and people involved, the Board can not afford for the report to be filed with the NCAA until the legal issue is resolved."

F. Meeting Recessed

Mrs. Hayes declared a recess at 10:04 a.m.

G. Meeting Reconvened

The meeting reconvened at 10:16 a.m. and Mrs. Hayes asked Mr. Burnett to state the motion.

Mr. Burnett stated, "The motion is to read as follows: The administration is directed to submit the report to the NCAA as soon as legally possible but not before the report is presented to the Board of Trustees and prior to the report's submission to the NCAA. The report is to be held in the strictest confidence and not be discussed with anyone."

Mrs. Hayes asked if there was a second to the motion.

Mr. Forgy seconded the motion.

Mr. Stricker asked if the motion passes would the Trustees who have not been briefed on the contents be permitted to be briefed?

President Roselle replied that he is not now, by the federal court order, in that position with respect to Mr. Manuel.

Mr. Burnett stated that in order to protect the people involved, the report should not be discussed with anyone. Those people that the report may have been discussed with will be known to the administration, and if there are any leaks, the administration will diligently seek to resolve how that leak occurred.

The motion carried with one no vote by Professor Coleman.

H. Meeting Adjourned

There being no further business to come before the Board, the Acting Chairperson adjourned the meeting at 10:20 a.m.

Respectfully submitted,

John C. Darsie
Assistant Secretary
Board of Trustees