

March 1981

1981-03-28, 1981-03-30 & 1981-03-31

Board of Regents, Murray State University

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MINUTES OF THE MEETINGS OF THE BOARD OF REGENTS
MURRAY STATE UNIVERSITY
March 28, 30, and 31, 1981

The Board of Regents of Murray State University met in Special Session March 28, 1981, at 7:55 a.m. in the Board Room, Third Floor, Wells Hall, on the campus of the University. The following members were present: Mr. J. W. Carneal, Mr. Terry Clark, Dr. Charles E. Howard, Mr. Jere McCuiston, Mr. Bill Morgan, Mrs. Sara Page, Dr. Ed Settle, Mr. Steve West, Mr. Jerry Woodall, and Mr. Ron Christopher, Chairman, presiding.

None were absent.

Also present for the meeting were Mrs. Patsy R. Dyer, Secretary of the Board; Mr. James Overby, University Attorney; Mr. Harold Hurt of Hurt, Haverstock, & Jones; members of the news media and visitors.

Chairman Christopher called the meeting to order and stated that he had received the following letters from two members asking for a special meeting for the purpose of allowing the University Attorney to discuss present litigation involving the Board of Regents. He further stated that following the report, if there were no other items requiring Board attention, the Board would proceed with the Hearing as scheduled.

March 26, 1981

Mr. M. Ronald Christopher
P. O. Box 309
Murray, Kentucky 42071

Dear Ron:

I hereby request a Special Meeting of the Murray State University Board of Regents for Saturday, March 28, 1981. This request is made pursuant to Chapter 164 of the Kentucky Revised Statutes.

Thank you.

Yours truly,
/s/ Steven West
1626 College Farm Road
Murray, Kentucky 42071

* * *

March 26, 1981

Mr. M Ronald Christopher
Chairman of The Board of Regents
Murray State University
Murray, Kentucky 42071

Dear Chairman Christopher

As a member of the Board of Regents, Murray State University, Murray, Kentucky, I request a meeting of the Murray State University Board of Regents to be conducted at the regents board room, Wells Hall, Murray State University, to begin at 7:55 a.m., on Saturday, 28, 1981.

The purpose of the requested meeting is to discuss pertinent and current matters of business of the Murray State University Board of Regents.

Respectfully
/s/ Billy B Morgan
Regent, Murray State University
Rt 8, Box 19
Benton, Kentucky 42025

Mr. Christopher: Mr. Overby, we would like to keep this a public session if at all possible. If there are some matters you can discuss in public and some matters that you feel you absolutely cannot discuss in public, feel free to say so; but I think it would be appropriate at this time to bring the Board up-to-date with the litigation.

Mr. Overby: Mr. Chairman, members of the Board, you have entrusted to me a responsibility that is somewhat awesome. You have asked for a report. I am prepared to give it to you. I will not, of course, discuss strategies that are involved, but I do feel a general report is in order.

Initially, let me say that in my judgment this University can survive the truth. It cannot survive an unwillingness to ask the question. This University can answer the question. It cannot answer it under an atmosphere of intimidation, a climate of half-truths and without the benefit of full and complete disclosure of information. Now, before you entrusted me with this responsibility, there was a meeting on February 7, in which this contemplated action was discussed. I want to say to the full Board that at this point I knew nothing whatsoever about what was taking place. I'm glad to make this report this morning because I am getting tired of answering "no comment" to some of the people who have been asking me questions. Subsequent to the February 21 [7] meeting, I was directed to look into the possibilities that could occur at the 21st meeting. This was approximately two days before the February 21 meeting. At this point I was asked to be prepared to present charges if that was the sentiment of the Board. I believe I commenced work on a Thursday prior to your meeting on a Saturday. For whatever it's worth, from Friday morning until you adjourned your meeting early on Sunday morning, I didn't go to bed. I was about your business and the business of this University. I was presented with some forty-five complaints. During the course of those long hours, I narrowed those down to some fourteen. Wisely I think, during the course of that meeting on the 21st, the Board directed that these charges could be amended, deleted, or added to as the result of an investigation. You gave me authority to hire additional personnel. I didn't ask for it. You gave it. As a result of that authority, I did hire additional personnel or caused it to be hired. When I left this meeting, I left it with the idea that you had given me a mandate to do certain things. I wasn't the happiest person in the world. If there is any person that has been caught in the middle of this thing, it seems to me that it is me; but when this Board of Regents tells me to do something, I'm going to try to do it. I'm going to try to do it thoroughly, and I'm going to try to do it to the best of my ability, and that's what I have done. I didn't delay. I didn't put it off. I didn't say maybe we can do this next month. I proceeded to ask the University officials to give me authority--not to give me authority--but to make arrangements for me to hire a law firm to assist. I knew the law firm that I wanted. I told you before, we have a lot of good lawyers in the State of Kentucky and in Western Kentucky, and arrangements were made, not by me directly, but by University personnel, to hire the law firm of Hurt, Haverstock & Jones. I want to say to you that I have known Harold Hurt for a number of years. I respect his ability and I respect the ability of the people in his firm. I didn't expect this to be something that would be easy. I thought there would be long hours entailed in it. I want to say to you: if there are those of you who say or think that this is something that the University Attorney could have taken on his own, I think your decision was wise to get additional help for two reasons. In the first place, since this thing has started or since I have become actively involved in it, on not more than four occasions have I gone to bed earlier than two o'clock in the morning. I haven't been working basically on anything but this. What I'm

trying to say to you is, it is a thorough job. It requires a thorough analysis, and that's what I tried to do. I want to say to you that the men who are engaged in this other law firm have been working long and hard and have been doing the task that I asked them to do and which you indirectly asked them to do. I also asked the University officials to make arrangements to hire a firm of accountants that had already been hired. They made those arrangements and those men are performing the task that this Board instructed them to do. I thought the need was urgent. I thought the caliber of the help was superior, and I obtained it, and they have responded in the manner that I have asked. I have a second reason for doing that, too, getting on it early. I had been closely associated as a result of my work with Dr. Constantine Curris, and I had a feeling that there were those of you on the Board which might have a question as to where my primary loyalty happened to be. It's natural that you would ask that question, and I dare say that you wanted an answer. One of the reasons why I have not taken the lead, although it is under my direction, and I take full responsibility for what's been done, is because I wanted you members of the Board to have no doubt in your mind as to whether or not you were being represented by people that were utterly and completely loyal to the Board as a whole. For that reason, although I have been active and although I have been working, the law firm has taken the lead in this particular litigation.

That brings me up to some other questions. As you know, charges were amended by this Board, some were added, and some were dropped, some were clarified and one of the reasons why I have been so reluctant to talk to the press is the fact that I do not want to inadvertently reveal what those charges might happen to be. The Board has taken a position that these remain confidential and are to be released, if by anyone, Dr. Constantine Curris. I didn't want to do it inadvertently even though I have been besieged by people who ask me questions right in the middle of a task that I'm trying to perform, and over the telephone without waiting for an answer on one occasion said, "Damn it, when are you going to make a comment?" I'm getting sick and tired of being pressed over and over and over again by someone to force me to take some sort of position other than in the courts. We have taken it, we are taking it, and we will continue to take it until this Board tells us at what time we should cease and desist from those efforts. Men and women, when starting this thing, it was with the purpose of having a hearing on March 28, on charges that have been preferred. There were three copies as it has been widely reported in the press, and I had a reason for that. The reason was not to conceal from any man or any woman on this Board; I didn't want extra copies to be lying around where somebody might pick them up or one get lost indirectly. Because apparently the press has a unique ability to find out what's going on at any rate, because they have done a pretty decent job of getting themselves completely involved in this litigation. As I said at the outset, this Board can survive the truth. This University can survive the truth. In my judgment, it cannot survive if it fails to ask the question and demand an answer.

Where are we at the present time? Following the setting of the hearing date, suit was filed in the Calloway Circuit Court which was not envisioned or anticipated although nothing surprises us as attorneys any more. Motions were made. They were argued. A hearing was held. Decisions were made. We have attempted by various means to obtain immediate relief. A writ of prohibition is now pending in the Court of Appeals. Further avenues of approach by way of appeal are available, and I suppose the question is, and you will have to answer and perhaps give direction to me, whether we should continue with those efforts. I say to you that you cannot, in my judgment as an attorney, seriously consider not continuing with those efforts.

This is a question that should be answered and it should be answered at the top level because a system of higher education in the State of Kentucky must have a careful, well reasoned, well documented opinion if the system of higher education is not to be adversely affected by what I would consider to be somewhat hasty, certainly ill-conceived and ill-advised opinions such as you have had in the Circuit Court. I think the decision is wrong. I think it is clearly wrong. I think it is in error. I think it should be appealed with all of the vigor which this Board can address to the issue, and I say this to you not because of the effect, direct or indirect on Constantine Curris. Now, obviously, that is important. If there were some way that I could put my arms around everybody and make this problem go away and the University survive in a healthy sort of way, I would do it; but, men and women, I can't do that. This is not of my making. The instruction that I am proceeding under is of your making and whether or nor I do the job is mine. If you are asking my opinion as to whether or not an appeal should be taken, I would say an appeal should be taken. It should be taken through all avenues. It should be taken with new vigor so that a well reasoned, carefully analyzed opinion could be rendered. There is no doubt in my mind but what that is the proper course of action to take. Now, some people have had a heyday with fees that have been engendered. I guess I could say to you that I have been arguing for a long time that I was worth more money than I was being paid. I've been seriously of that opinion. I think I could say to you that I ought to have more help than I have been given, and I think that would be accurate. But regardless of how you answer those questions, if you are going to do this thing and if you are going to do it right, you need to have the assistance and the help of people who can devote themselves to this task and that is what we have had in the past. Now, how much longer that can continue from the standpoint of outside help is debatable. I know this: that yesterday the attorneys for this Board--two of them--were in Frankfort and were obtaining an exparte hearing both before the Court of Appeals and the Supreme Court and that's unusual. I know that one of the judges, if he was quoted accurately in the Courier-Journal, said that an orderly process of appeals was the proper way in which to proceed. I agree with that assessment. This is perhaps the most traumatic, the most significant event that has happened in the history of Murray State University; and although the impact is seriously felt by one man, and I don't underestimate that for one moment, the long-range effect on the law of higher education is at issue also. The long-range effect on the stability of policies of the Board of Regents of Murray State University is also at issue, and so I would say to you if there is any doubt in your mind as to whether or not we should appeal, you ought to give me direction from the Board as a whole. I have other questions that I would like to discuss with you this morning, and I am glad I'm doing it in open session. I reserve the right at all times, and I want to make this abundantly clear, in the course of litigation to change my opinion. Any lawyer that's worth his salt knows that an issue that he considers well resolved on one day, may not be well resolved the next. Consequently, what I say to you today is not embalmed in concrete from the standpoint of a strategy. I have had decisions made, and I have been asked to respond within one minute after those decisions were made as to what my future course of action would be, and I haven't even had the opportunity to read the opinion. People have been distressed, especially our good friends of the press have been distressed, that I couldn't answer those and all I can do is say to you that I'm going to do my job. I'm going to do it as well as I can. I'm going to try to do it with the utmost fairness, but I'm going to try to do it with vigor.

That's the first question, Mr. Christopher, that I feel the Board ought to address. Now, I've got others, and I want to come back to them before we leave, but I think the first question that should be addressed is the question of whether or not you wish me to continue with the appeal. That's for the Board as a whole to make the decision, but before I do that, with your permission, Mr. Christopher, let me call on the senior partner of the law firm that I have chosen to have associated in this endeavor, Mr. Harold Hurt, and I would like to ask him to report to you just briefly. This is not adversary to what I'm saying to you. I'm not arguing a cause for or against, but everybody seems to have an opinion on this thing but me when it comes time, and now I'm in open session and you've asked me and, by golly, I'm willing to answer unless you get into what the charges are or unless you get into trial strategy.

Mr. Hurt, would you address whatever concerns that you might feel.

Mr. Hurt: Thank you, Mr. Overby. Ladies and gentlemen of the Board, it is our opinion, and particularly after being before the Court of Appeals yesterday and also five Justices of the Supreme Court, that this matter should be appealed through the proper appellate procedure. The issue here, as Mr. Overby, stated to you, does affect one man, but it also affects the institution and will have wide-spread implications not only for Murray State University, but for every other university in this State. It is our opinion and also the opinion of the five Justices on the Supreme Court in the State of Kentucky, as they stated yesterday, that this matter should proceed through the courts as quickly as possible. Thank you.

Mr. Christopher: As Mr. Overby and Mr. Hurt mentioned, are there any questions from the Board members about the appeal? Does anybody have any questions they want to ask either of the attorneys about the appeal?

Mr. Carneal: Ron, I think I have a question. We're talking about the continuance of the appeal. I'd like to talk about the appeal itself. As far as I know, this Board did not authorize an appeal at all. We're talking about continuing an appeal; I know of no authorization for the appeal in the first place.

Mr. Overby: May I respond to that briefly?

Mr. Carneal, I was instructed to proceed to investigate and to proceed with representing the University in the bringing of charges against Dr. Curris. You're saying was I precisely instructed to do a particular thing, the answer is of course I was not. I would consider myself derelict in my duty to this Board had I not responded in the manner that I did when I had proceeded to file the various documents. If I have to come back to this Board on every particular motion that I make in court, then it is obviously going to be a farce, and the reason that I'm coming to you today is because it is the first real good opportunity that I've had to clear the air. I think that my authority is broad enough to proceed. For example, I was not directly authorized to get involved in the suit that was filed downtown,

Mr. Carneal: That is true.

Mr. Overby: but I would say to you, Mr. Carneal, that any lawyer would be subject to the utmost ridicule and scorn and charges of dereliction of his duty had he not gotten involved. I feel comfortable with my decision. I feel I did the right thing. I presented charges; if this full Board tells me they want me to drop out of what I am doing, you're my boss. I'll do

that; but until such time as this full Board by proper resolution tells me not to, I'm going to do my duty as I see it, and the duty as I see it is to proceed. As a matter of fact, I feel like that within the constraints that you have put, and you put some from the standpoint of cost at the last time and I recognize and respect that, my authority would be to represent the University at all levels and to do it as efficiently as I am capable of doing. I have no apology to make whatsoever for the action that I took. The only reason that I bring it to the attention of the Board, and I think your point may be an issue the Board ought to direct, is because if you want to tell me to drop these charges, if you want to tell me not to proceed as a Board as a whole, you are the client, you are the boss; I will follow your direction.

Mr. Christopher: I think it would be appropriate, Mr. Overby, for you to explain what procedures have been taken and what you mean about asking for authority to appeal. I think that is where there is some confusion.

Mr. Overby: First of all, when the suit was filed in the Calloway Circuit Court, it was my feeling as an attorney that that Court did not have subject matter jurisdiction. We made that motion. The motion was overruled after it had been briefed. The next logical step was to ask the Court of Appeals for a Writ of Prohibition which was designed to prohibit the Circuit Court from proceeding further in that matter. That matter will be determined, I'm told, on April 6. It is currently pending.

In the meantime, because of the urgency of this action for which we are here today--the hearing of the charges, it was necessary to ask the Court of Appeals for what is known as emergency relief which is an ex parte proceeding. Now a full appeal which can be presented at various levels--one with respect to the temporary injunction, another with respect to possible outcomes of the litigation downtown, another maybe with possible outcomes as to what happens after the hearing--all of those are avenues that will, of course, need to be addressed.

Unfortunately, this is a situation, ladies and gentlemen, in which people feel deeply, and I understand that. I've been around you, men and women, too long not to know that these are issues that transcend the purely legal issues on many occasions. I know that many times I'm asked questions that don't direct themselves exclusively to the legal side.

Those were the proceedings, Mr. Christopher, as I have outlined them to you that have been taken.

Mr. Christopher: So, the question that you need answered today is whether or not this Board will give you authority to appeal the decision of the Calloway Circuit Court.

Mr. Overby: Mr. Christopher, I would hesitate to limit it in that connection. I would say that to prosecute appeals that arise out of this action in which the Board is directly involved, whether we're talking about pursuing with the Writ of Prohibition, whether we're talking about pursuing an appeal from injunctive relief, or whether we're talking about appealing from any decision that might be rendered here, because either side can appeal in a court system. So the question is do you want this thing to proceed legally or do you want it to stop now. That's the question. For heaven sakes, don't tie my hands if you're going to ask me to act as your attorney and say that he's got to read his instruction as to whether he proceeds with this motion, with this writ, or with this method of appeal. Either you want the suit defended or you don't.

Mr. Christopher: I think that one of the first questions that needs to be answered is, if you're given the authority to proceed, what type of costs are involved. What expenses are involved?

Mr. Overby: You can be talking in terms of short range or you can be talking in terms of long range. I should say to you that the accountants that have been retained say to me that probably in order to proceed through this hearing an extra \$2,000 is to be expended. Everybody is thinking in terms of expenditures in funds; you're talking in terms of matters of budgetary constraint, etc. It's just a question of whether you want it defended properly or whether you don't. I can't put any upper dollar limit. The law firm is here; let me let them speak for themselves.

Mr. Carneal: I still have a question.

I think that what Mr. Overby is talking about is two things. I think he wants approval of the appeals he has already made as well as to continue. As far as I'm concerned, Jim, I don't question your feeling comfortable with what you've done. I still question the authority to make any appeal in the first place based on the motion that's on the Minutes as modified on March 14. It seems to me you have two things to consider--whether or not what you did in going to the Court of Appeals and the Supreme Court should have been authorized by this Board in the first place. That's one of my questions. It seems to me you need to address that as well as whether you continue or not.

Mr. Overby: Mr. Carneal, I have already addressed it. The question is whether or not the Board either wants to approve it or reprimand me or take whatever steps you want to do.

Mr. Carneal: That is not my point.

Mr. West: I haven't said a whole lot lately, certainly not said a lot publicly. In a sense, I feel like my First Amendment rights may have been trampled on occasionally, but I can understand the importance of maintaining silence during these critical matters.

I think also the Oath of Office of each member of this Board is at issue here. In that Oath of Office, we talk about representing the people. This Board is an agency through which the people can redress or have their grievances redressed. We have that to consider. There are also some statutory duties that this Board has. I agree with Mr. Overby; I think the issues are bigger than one person. They are bigger than Steve West. They're bigger than Terry Clark. They're bigger than Ed Settle. They're bigger than Dr. Curris.

For that reason, I'm going to move that we ratify those actions which have already been taken on behalf of this Board through the legal process and that this Board authorize legal counsel to do all things necessary and proper, to appeal the decision of the Circuit Court or any other actions necessary to bring this matter to a proper hearing.

Mr. Christopher: Mr. West, I want to ask you to separate your motion and make it in two parts. If you want to address ratification of the prior litigation--I'm not sure that it's necessary in light of the previous resolution--but if that's what you want to address, I prefer that you separate that into two parts.

Mr. West: I move first that all necessary and proper action be taken to appeal this matter and to bring it to a proper hearing;

Mr. Christopher: If you're going to do that, in light of what this Board did on the 14th, I think you've got to address the cost involved so that Mr. Overby has some direction on that.

Mr. West: Can that not be handled in a separate motion?

Mr. Christopher: I don't see how it can be. You're going to have to address both at the same time because he cannot proceed and not know how much he's got to work with.

Mr. West: I haven't heard any recommendation on that so--

Mr. Christopher: Where do we stand? I think this Board needs and wants to know what costs are involved to proceed from the present forward. You were here and you were aware of the action of the Board on the 14th in light of that.

Mr. Overby: Let me say, generally, it would be my best judgment based on what I might know about charges for hourly work by attorneys and what little I might know about the hourly charges from certified public accountants that you are about at the end of what you have authorized, if not at the end. They're going to have to tell you; I can't precisely. I know I operated within the limits of what the Board in its two resolutions did. Again, these matters are expensive. They and you can't judge, unless they can give you a definite figure. You might want to consider what it would cost you to get you through this hearing.

Now, at the time when you authorized this thing, you were under the pressure of time. I was under the pressure of time. I was also operating under a semi-cloud because some of you were a little bit concerned, and rightly so, as to where I might be coming from. I want everybody to feel perfectly comfortable in that connection. I have always said that a client had a right to release an attorney from duties at any time. I have a sneaking suspicion that if this thing doesn't go right that I might know a little more at first hand what we're talking about. I know for a fact from trying to get witnesses to this hearing here today that there's any number of people who are frightened for their jobs, and, men and women, that should not be the case. If this University has gotten to the point where people are hesitant to take the witness stand and swear under oath what has happened because they have a feeling of intimidation, for me to say to you that I'm not concerned would be inaccurate. For me to say to you that I'm not going to follow through with what you told me to do is also inaccurate because I am. It doesn't matter what the consequences might happen to be.

I'd like to ask again--and I don't want to put Mr. Hurt on the spot, but from the standpoint--it is entirely possible once we get out of this hearing, the big crash is over. I think I can handle this thing on appeal. These men have gotten me off to a good start. I can do it as part of my duties as University Attorney if I don't get inundated with requests for other types of services. You'll notice that I walked out of this hearing down here in Calloway Circuit Court. That was because there were other duties. I even got a somewhat stern communication with respect to it--somewhat strident in tone. As to the University Attorney, maybe a bomb ought to be put under it, and when you work until 2:00 in the morning and when you've given services gladly, I resent it, and I resent it completely, utterly, and totally.

Dr. Settle: Is this the time for a question, second to a motion or what?

Mr. Overby: Let's let Mr. Hurt address that...

Mr. Hurt: First of all, it's awfully hard to answer your question and this is one of the things that the courts addressed yesterday in one of the arguments that was made yesterday. For example, and this is what Chief Justice Palmore talked about. His opinion is have this hearing at the present time while this matter is

before the court--and there is strong suspicion that what Judge Keith did the other day may not be upheld--that to go to an expense of a hearing now--we'll go through it, approximately three days--and then a week or two weeks from today the Supreme Court or Court of Appeals rules that the action taken by Judge Keith was in fact wrong, then we're going to be back here again going through the same hearing at the cost of someone. If we're talking about getting through the hearing this week, Mr. Christopher, we can give you an answer. If we're talking about the future, ... At the time we were engaged, we didn't anticipate litigation in Calloway Circuit Court and obviously we've been there. We have reached our limit and I'm not even sure what our limit is. The motion was vague on that. Maybe you can tell me what it is.

Mr. Christopher: I think he withdrew his motion.

Mr. Hurt: No, I'm talking about from the last time when you...

Mr. Christopher: At our March 14 meeting, I believe this Board took the position that we were not going to permit Mr. Overby to expend any more University funds without additional approval of the Board up to what he had already expended or had entered into contracts with your firm and the Meany firm. In light of that, Mr. Overby has suggested that we appeal and follow through with the measures that have been initiated in the litigation. I think what this Board needs to know is will any additional funds be necessary or can it be done under the present situation. Is that clear? Isn't that the question that everybody would have?

Mr. Hurt: If I understand the authorization correctly, and I'm a little confused about it because I think the Board has done one thing and some of the documents prepared another way, and if the authorization was for \$20,000, we'll take you through the hearing for that--this hearing. Beyond that, Mr. Overby said he would handle the appeal. We will absorb any costs above that. Does that answer your question?

Mr. Christopher: Is that where we stand, Mr. Overby?

Mr. Overby: I think so. Mr. Christopher, I didn't actually prepare these documents. I proceeded to tell the University who I wanted to assist me. I wanted this law firm. These accountants were already working for the University, and I wanted them. They were prepared through Mr. Shelley's office. There is a \$15,000 and \$5,000, with the \$5,000 as contingency as I recall, on the attorneys. They were signed by someone else, not by myself, but they were on an hourly basis, and they had an upper limit which was prescribed as I understand it by law.

I'm saying to you that I think that I can proceed as University Attorney to handle appeals once it gets out. It would be nice if I had some help, and that certainly would be in order, but we're getting three or four things that are rolled into one. Now, if you're going to consider what had already been done, if that's before the house, can you get that part...

Mr. Christopher: Let's separate the hearing proceedings from the actual court litigation, alright?

Mr. Overby: You're talking about these hearings before this Board?

Mr. Christopher: Yes. As I understand what you're saying, you are recommending to this Board that it proceed with an appeal or whatever legal proceedings are necessary to proceed on with the litigation.

Mr. Overby: Precisely.

Mr. Christopher: And you can proceed on with no additional expense to the University?

- Mr. Overby: There would be indirect expense to the extent that my salary would come out of it. If you're talking about can I proceed with the appeal without the help of counsel, in my judgment, I can. I would hesitate to be limited to that extent. I feel that additional help certainly would be in order because these things are complicated, but that's your decision, not mine. I'll do whatever you tell me to do.
- Mr. Christopher: We need some guidance and direction from you, Mr. Overby, if you'll make it clear what you're suggesting.
- Mr. Overby: Number one, I would suggest that you approve what has been done. I'd suggest that you do that now and lay that question to rest. Then, I'll go from there. Are you willing to do that?
- Mr. Christopher: Alright. Is there a motion?
- Mr. West: I so move.
- Mr. Carneal: ..questions?
- Mrs. Page: I have a question.
- Mr. Christopher: We've got a motion.
- Mr. McCuiston: I second.
- Mr. Christopher: Mr. West moves and Mr. McCuiston seconds. Now, discussion.
- Mrs. Page: I just want to ask if Mr. Overby consulted with any of the Board of Regents before he made the appeal in Frankfort yesterday, and if so, who.
- Mr. Christopher: He's telling you, Mrs. Page, that was not necessarily an appeal in his language, and he's saying that he proceeded in that manner based on how he interpreted the resolution previously adopted by this Board.
- Mrs. Page: That's not my question. My question is which Board of Regents members did he discuss it with before he did it.
- Mr. Overby: The only person that I may have discussed it with, to my present recollection, would have been Mr. Christopher from the standpoint that he would have been knowledgeable. I don't know that I asked him specifically for approval--no, ma'am.
- Two nights ago the motion that was prepared, I prepared it. I finished up at 6:00 a.m. in the morning. If you're asking me, if I'm going to have to take a poll, or if I'm going to have to consult this entire Board before I take a particular step, I'm saying to you that's an utter and complete impossibility. I am concerned with doing the job that you have given to me. I want to do it to the best of my ability, and I am. I did not consult. I have no apology to make to anybody, any time, any place. Mrs. Page, and I do not mean to appear to be coming on strong, the answer is I think I did right. If this Board tells me that I did wrong, tell me now, get it out in the open. I'm tired of fighting a legal battle, having to go through all of these side maneuvers that people are putting on me, trying to take up my time to raise doubt as to whether I'm doing the proper thing because I don't have Board authority. If you're saying to me as a Board that I don't have authority to do this, for God's sake, tell me now so I won't lose anymore sleep.
- Dr. Settle: I think the suit was ethical on your part, but to appeal...
- Mr. Overby: Mr. Settle, if you're questioning my ethics, go to the Bar Association, and let's get it out in the open. I'm looking you right smack in the eyeball, and I say it's not a question of ethics.

Dr. Settle: You're coming on pretty strong, Mr. Overby.

Mr. Overby: I intend to come on strong, Mr. Settle.

Dr. Settle: Right. Can I comment now?

Mr. Overby: Yes sir, you may.

Dr. Settle: I think that the appeal or the defense of the Board in the court suit was ethical, but I'm not sure that the appeal mechanism without the consent of the client, and that's the Board, is the proper thing to do. We've had a called meeting within a twenty-four hour period to get this answered, and it seems to me that we could have had a called meeting between Tuesday and Wednesday or whatever to address this question.

My way of looking at this thing is that this case has been unique. It did not start at the bottom and cascade upward. We had a special judge appointed to hear this case by the Supreme Justice of the State of Kentucky, and at four different levels, the case has certainly had questionable merit already. Now, Terry Clark and other Regents have expressed a desire to get to the hearing and hear the issues of the hearing, and decide--the Board--about the merits of those issues. Then, based on that decision, then take action according to the Board's desire. To me this case started at the top, at least in the State of Kentucky, and we're wasting taxpayer's dollars if we keep it going.

Mr. Overby: Mr. Settle, I think when you said it was a question of ethics what you really meant was it was a question of authority to proceed. At least, I'm putting it on that basis.

Number two, this thing has proceeded in an orderly manner. I didn't ask that this item be put on this agenda. I was that comfortable with what I had done. Now, again, if anybody has any question about it, get it out on the table, vote on it, tell me if you disapprove or you approve.

Dr. Settle: I think what we have to do is address what we think--the Board thinks--is right concerning the issues that are about to be heard in the hearing. The legal thing to do--your job, your consultant's job, be it black or white, maybe it is gray, whatever--but the legal, proper thing to do would be I'm sure to appeal, but we're talking about, as Board members, addressing the issues of the hearing to see if they have merit and go from there concerning the proper, legal thing to do. I think you have to separate out what we feel is right as a Board versus what the legal steps to take should be.

Mr. Overby: Mr. Settle, none of us are so naive as not to realize that there are two contending forces on this Board. There's one side that wants to hear it with a certain group of Regents. There's another side that wants to hear it with another group of Regents. I'm aware of that, and this jockeying that's going on back and forth addresses itself somewhat to the ultimate determination of that issue. What I'm saying to you is if you want a legal answer to the legal question of who is entitled to sit, then proceed with it in an orderly fashion through the courts, and let's get that job done. But, the motion you had, Mr. Chairman, was whether or not you are going to approve the steps that have been taken. I've answered as far as I can.

Mr. Christopher: Is there any further discussion on the motion?

Mr. Carneal: That isn't what I understood the motion to be. I understood the motion to be to approve expenditures that have been made.

Mr. Christopher: No, Mr. Carneal. The motion was to approve--since you've questioned what Mr. Overby has done, I think Mr. Overby has asked again for authority or approval from this Board--the various steps in the litigation that he has taken. In the litigation we're talking about. We're not talking about a hearing or anything related to the hearing. We're talking about the litigation initiated by Dr. Curris. Alright, are we clear on that? We're not talking about any expenditure of funds. We're talking about what he has done as the University Attorney on behalf of the Board of Regents of Murray State.

Mr. Carneal: As he understands it. Are we approving what he has already done in the appeal as well as approving the continuation...

Mr. Christopher: No; we're taking it one step at a time, Mr. Carneal.

Mr. Carneal: Shouldn't we take the first...

Mr. Christopher: That's what we're trying to do. Mr. Overby has asked that this Board--since you questioned his authority--now ratify the authority that he's taken in this litigation to date.

Dr. Howard: Isn't that what you call in law moot at this point?

Mr. Christopher: Well, it may well be moot.

A motion is before the Board.

Mr. Clark: Have we got further appeals that we're going to have to go through now?

Mr. Overby: Probably, but let's get this one issue, if you will, clear and before the court.

Now, I don't want this hearing or this proceedings--if I have anything to do with it--to degenerate into something other than what it is--a serious matter. The question has been raised as to whether I have interpreted my authority correctly up to this point. You have already approved at your last meeting, I believe, the contracts that have been entered into. So, it doesn't require that. All I'm saying is, if there is a question I'd like for the full Board to answer and to answer it as you see fit whether you are ratifying the action that's been taken or not, and the only reason that I do is because it has been questioned.

Mr. Christopher: Any further discussion?

Mr. Woodall: Would the Secretary read the motion so that it will be clearly understood.

Mrs. Dyer: "Mr. West: I move that all necessary and proper actions be taken to appeal this matter and to bring to a proper hearing."

Mr. West: That died for lack of a second.

Mrs. Dyer: "Mr. West: I move that the authority of the University Attorney be ratified in the actions that have been taken in this litigation to date."

Mr. Christopher: Is that motion sufficient for what you're asking?

Mr. Overby: Yes, at this time.

Mr. Christopher: Any further discussion on that? All those in favor say aye. Opposed, nay.

Are there more than three nays? Four nays.

Mr. Carneal: Put it on the record. Call the roll.

Mr. Christopher: Alright.

Mr. Clark: Mr. Chairman, I would like to ask for additional discussion if that would be in order.

Mr. Christopher: I think it is out of order. Let's vote.

Mr. Carneal: Nay

Mr. Clark: Aye, and I'd like to explain my vote.

Mr. Clark: It seems that a lot of Board members in here can tell exactly what Terry Clark is thinking without Terry Clark ever saying a word. I think it's time the Student Regent be given a voice even though it was out of order a second ago.

I have had a reputation for being prepared before coming to these meetings. I've always been prepared, and not being unusual to my nature, I did several bits of research in this past week talking to different regents across this State and different lawyers and to say that there is concern across this State with the decision that was made in our Circuit Court is an understatement. Members of this community, the lawyers that I have talked to, and the trustees across this State feel that it is the responsibility of this Board to reach a decision on a state-wide level as an interpretation of that decision. It's your responsibility in your oath of office that you represent the Commonwealth of Kentucky, that you find out exactly what the truth is. This court decision sets a precedent for a long time, and to turn our backs on this and just walk away from it, I think would be an injustice to the people you're supposed to represent. I vote aye on that for the sheer sake of saying that we're going to find out at the State level exactly what the Supreme Court had to say not by opinions and not by preliminary hearing, but have a decision made and let that decision stand.

Dr. Howard: Nay

Mr. McCuiston: Aye

Mr. Morgan: Aye

Mrs. Page: Nay

Dr. Settle: Nay

Mr. West: Aye

Mr. Woodall: Aye

Mr. Christopher: Aye

Mr. Christopher: Motion passes 6 to 4.

Mr. Overby, what's the next item?

Mr. Overby: The next item it seems to me would be whether or not you want to instruct me to proceed with avenues of appeal as are deemed necessary.

Mr. Christopher: I believe you have told this Board you can do that without expending any funds that have not heretofore been previously ratified by the Board or approved by this Board.

Mr. Overby: As far as the appellate work, that would be my judgment at this time. If I feel later that my judgment is in error, I'm perfectly willing to come back to you as Chairman or to the Board as a whole and make those facts known.

Mr. Christopher: Is there a motion to that effect?

Mr. West: I so move.

Mr. Christopher: I think you need to spell out your motion.

Mr. West: That the attorney to the Board be authorized to take all necessary and proper action to appeal this matter.

Mr. Christopher: You're referring to the matter that was filed in Calloway Circuit Court?

Mr. West: Yes.

Mr. Christopher: Is that sufficient, Mr. Overby?

Mr. Overby: Keep in mind we're talking about the appellate process as a matter of law.

There's always a possibility that you'll have one hearing before this Board and later that you would need another hearing which you are not addressing...

Mr. Christopher: We're talking about the litigation initiated by Dr. Curris in Calloway Circuit Court.

Mr. Overby: You're not talking about any possible appeals that might come out as a result of this hearing?

Mr. Christopher: Not at this time.

Mr. Overby: If those are the limitations, then ...

Mr. Christopher: It is my understanding.

Mr. West: I'd like to include that in that motion.

Mr. Christopher: Include what? What is it you're saying?

Mr. West: Give the attorneys the authority to take necessary and proper action to represent this Board through the appellate process both in the matter filed in the Circuit Court and in any other matters which might come out of these proceedings.

Mr. Christopher: Is that what you deem is necessary for you to act appropriately at this time?

Mr. Overby: I would like that it would be, yes. Although if you want to take them one step at a time, I'm agreeable to that, but if you have another lawsuit that's filed in connection with this, and then I'm supposed to say wait, let's see if we can get this Board as a whole before I file an answer or something to it.

Mrs. Page: If you include that, he's talking about spending more money.

Mr. Christopher: No; he has not asked for that. He would be acting as the University Attorney.

Mrs. Page: If he has to appeal as a result of this hearing, we're talking about more money, aren't we?

Mr. Overby: The only money that you're talking about, as far as I know, would be travel expenses and that sort of thing. We're not talking about additional help that would be needed.

Mr. Woodall: The issue of this hearing hasn't even come up yet. We're not talking about that; she referred to an appeal of this hearing.

Mr. Christopher: I limited it, and I think Mr. West expanded it again.

Mrs. Page: So, now, we're talking about appeals from the hearing, too.

Mr. Overby: This matter is sufficiently important. If you folks really want a determination as a Board, and this is your decision, not mine, you're going to have to be prepared, it seems to me, to appeal a decision that might come about as a result of this hearing. Now, the motion that's before you, if I understand it correctly--you do whatever you want to do as a Board, that's obvious--now is whether or not we continue with the appellate process in the trial that's downtown. You're limited to that point.

Mr. Christopher: You're also including any possible litigation that may become necessary as a result of the hearing. Is that what you're asking?

Mr. Overby: I would ask that, yes; but if you want to limit it to one at a time, that's alright.

Mr. Christopher: Is there a second to that motion?

Mr. Morgan: Would you read the motion again.

Mrs. Dyer: "I move the attorneys for the Board be authorized to take all necessary action to appeal this matter both in the matter filed in Circuit Court and any other matter that may come out of these proceedings."

Mr. Morgan: I second the motion.

Mr. Christopher: Mr. Morgan seconds it. Is there any discussion?

Mr. Clark: One question. This doesn't entail any further expenditures per se outside the University?

Mr. Christopher: That's right, except he's saying travel expenses and so forth. Do you wish a roll call vote on that?

Mr. Carneal: Roll Call vote.

Mr. Carneal: No, and I want to explain why.

Mr. Carneal: Steve has expanded the original concept of appealing the case that was before the Calloway County Circuit Court, and again we're getting into an open-ended sort of thing that I objected to on March 14--giving open-ended approval. I see no reason that if there is an instance in which we want to consider action that it can't be done after the fact. I see no reason to give a broad approval at this time as we're doing. So, I vote no.

Mr. Clark: Aye

Dr. Howard: No

Mr. McCuiston: Aye

Mr. Morgan: Aye

Mrs. Page: No

Dr. Settle: No

Mr. West: Aye

Mr. Woodall: Aye

Mr. Christopher: Aye

Mr. Christopher: Let me state to you, Mr. Carneal, I think all that Mr. Overby is asking for is--since there have been some questions by some members of this Board as to what he's done--clarification. It would be very cumbersome and it would be ludicrous to ask an attorney to represent this Board and expect him to have to come to this Board for approval of every matter that he initiates or has to respond to.

Mr. Carneal: I understand that.

Mr. Christopher: And I think that's all that James Overby is asking for..

Mr. Carneal: This is a matter of sufficient import; we've called a meeting on a 24-hour notice--five minutes before the hearing was supposed to start. I think we're talking about something more than the ordinary and normal decision.

Mr. Christopher: I think you'll agree, though, that we called this meeting some five weeks ago, Mr. Carneal.

Mr. Carneal: We didn't call this special call meeting of the Board five weeks ago.

Mr. Christopher: But you knew you were going to be here,

Mr. Carneal: Sure, I knew I was going to be here.

Mr. Christopher: and the meeting was called five minutes before.

Mr. Carneal: I didn't know it was going to be for this purpose.

Mr. Christopher: Well, let's don't make Mr. Overby's position any more difficult than it already has been.

Let me just say that the motion passes, six to four.

Mr. Overby: Let me just make one observation.

Now, this has been done with the idea that there's no additional expenditures. I'm taking that what you're saying to me is we don't hire additional legal and accounting help. If you're saying every time I make a long distance phone call that I've got to make an appeal, I think you're asking the absolute impossible, and I didn't take it that was within the tenor of what you're doing. I don't want to be retained on a basis that makes it impossible for me to proceed and each little item of that sort that you're talking about, because what the Chairman has told you is absolutely correct. You don't give your undivided attention to a legal problem and then have to stop and think about all the little minutia that might go with it. That's all I have to say on that.

Mr. Christopher: Are there any further matters to be discussed before the full Board?

Mr. Overby: I think there's one other matter, and that matter is you have authorized me to appeal, and I think that question is whether or not we proceed to appeal following this hearing or whether or not the appellate process, I think you need to know, should go forward prior to the hearing. I'm going to confine myself to one observation and then I'm going to leave. As an attorney defending a legal position, I feel like the legal procedure should precede this administrative hearing. There may be policy considerations that indicate that the hearing should go forward previous to that time. That is for you, gentlemen, to determine and not me. I do think you've got that consideration--whether you go now or whether you go later. Again, we're here for a hearing; we're here prepared to go through the hearing. I think it needs to be addressed.

Somebody is going to have to address, pretty soon, whether or not the hearing is going to be closed or whether it is going to be open. Now, that's the only remark I have at this point.

Mr. Christopher: Mr. Logan, haven't you previously announced that you have requested an open meeting?

Mr. Logan: Absolutely, Mr. Chairman. Dr. Curris has made it well known that he has nothing to hide.

Mr. Woodall: Mr. Chairman, I move we recess for five or ten minutes.

Mr. Clark: I second.

Mr. Christopher: Any objection to that? Motion carried.

There being no objection, the Chairman declared motion carried and the Board recessed at 9:10 a.m. The meeting reconvened at 9:25 a.m.

Mr. McCuiston moved that the Board adjourn this meeting for the purpose of hearing charges against President Constantine W. Curris. Mr. Carneal seconded. Motion carried and the meeting adjourned at 9:30 a.m.

The Board of Regents of Murray State University convened for a hearing of charges against President Constantine W. Curris at 9:30 a.m., Saturday, March 28. Sitting for the hearing were the following members of the Board: J. W. Carneal, Charles E. Howard, Sara L. Page, Ed Settle, Jerry Woodall, and Ron Christopher, presiding.

Attorneys for the University were James O. Overby, Harold Hurt, Gary Haverstock, and Rick Jones, all of Murray.

It is noted that Mr. Carneal was represented by Mr. Kirby Gordon, and Dr. Settle was represented by Mrs. Debra Terry.

Attorneys for President Curris were William Logan, Madisonville; Don Overbey and George E. Overbey, Murray.

The Chairman acknowledged that Mrs. Carolyn Conner was hired by the Board and was present at the hearing to perform the responsibility of preparing the official transcript of the hearing.

Chairman Christopher outlined the following procedures for the hearing:

1. No meeting will be held on Sunday.
2. Voir dire
3. Opening statements
 - a. Counsel for the Board
 - b. Counsel for Dr. Curris
4. Counsel for the Board will read a charge and proceed with his evidence on that charge.
5. Counsel for Dr. Curris will proceed with his evidence on the charge as read.
6. Opportunity for rebuttal on behalf of the Board.
7. Opportunity for surrebuttal on behalf of Dr. Curris.
8. After all charges have been presented, opportunity for Counsel for Dr. Curris to make closing statement; then, Counsel for the Board will make closing statement.

Procedures for the hearing were discussed and Mr. Carneal moved that the Board recess for thirty minutes. Dr. Settle seconded and the vote was as follows: Mr. Carneal, aye; Dr. Howard, aye; Mrs. Page, aye; Dr. Settle, aye; Mr. Woodall, no; and Mr. Christopher, no. Chairman stated motion carried.

The hearing reconvened at 10:30 a.m., at which time the examination of the Board members proceeded. Whereupon it was determined that the following Board members would participate in the hearing: Mr. Carneal, Dr. Howard, Mrs. Page, Dr. Settle, Mr. Woodall, and Mr. Christopher.

The Chairman directed Counsel to read the first charge. Testimony was heard on the following charge:

"The President has abused his position and the power incident thereto by interfering or attempting to interfere with the judicial processes of Calloway County and the Commonwealth of Kentucky by attempting to have felony criminal charges dismissed. In August of 1979, Vice President Frank Julian, at the direction of President Curris, contacted Calloway County Attorney, Max Parker, requesting that felony charges against a criminal Defendant, Kenneth Gordon, be "dropped". Kenneth Gordon was a convicted felon, having previously been convicted of a felony drug offense. These charges arose out of the theft of chemistry equipment from a Murray State University chemistry laboratory which was later recovered pursuant to a search warrant of the premises of Dr. Wendell Gordon, father of the accused, Kenneth Gordon. The equipment stolen from the Murray State University laboratory was being used by Kenneth Gordon to manufacture illegal drugs.

The felony charges resulted from the combined efforts of the Murray State University Security, the Murray City Police and the Kentucky State Police. Kenneth Gordon was seen entering the chemistry building after hours with the assistance of an unauthorized key. He was charged with theft of chemistry equipment. The County Attorney, Max Parker, refused to honor the request of Vice President Frank Julian to drop the felony charges and requested that Vice President Julian require University personnel to be present at Grand Jury proceedings. Vice President Julian stated that University personnel would not appear at Calloway County Grand Jury proceedings. The County Attorney then indicated that judicial subpoena powers would be used if necessary.

The County Attorney, Max Parker, after refusing the request of Vice President Julian, went directly to the office of the President Curris to confront the President with the request of Vice President Julian concerning the Kenneth Gordon charges. President Curris confirmed that he and Vice President Julian had met. He further admitted that he had directed Vice President Julian to contact court officials to seek dismissal of the charges."

Upon conclusion of the testimony, Chairman Christopher stated the hearing would be recessed until Monday, March 30, 1981, at 8:00 a.m. The hearing recessed at 5:00 p.m.

March 30, 1981

The hearing reconvened at 8:00 a.m., Monday, March 30, 1981. Mr. Gary Haverstock read the following charge and testimony was heard.

"In September of 1980, President Curris, through neglect and refusal to perform his duty to provide Murray State University with adequate fire protection, failed and refused to carry out his duties when he unilaterally refused the request of the City of Murray for assistance in the purchase of a fire fighting unit capable of reaching all buildings on campus so as to prevent a possible disaster in connection with the University's high-rise buildings. This refusal was in spite of the fact that potential funds were available for such a purchase."

Mr. Haverstock read the following charge and testimony was heard.

"The President refused to furnish financial information requested by Board member, Steve West, in a written request dated November 24, 1980. A copy of said letter is attached hereto and incorporated as if written herein in full. The President was aware of the fact that the Board member not only had a right to the requested information but required such information in order to carry out his duties. The President continued to refuse to grant access to the requested financial information to Board member West in disregard of the University attorney's legal opinion indicating that the Board member was entitled to such financial information."

"November 24, 1980

Dr. Richard C. Gray
Treasurer
Murray State University Board of Regents

Dear Dr. Gray:

This is to formally request a copy of the representations recently made by Murray State University to the external auditors during their external financial audit of Murray State University. This would be a copy of the internal work papers prepared by Jackie Harrison for the financial report as revised.

After a review of these documents, I would like a copy of the following:

Table of Contents; Balance Sheet; Statement of Changes in Balances, Statement of Current Funds, Revenues, Expenditures, and Other Changes; Notes to Financial Statements; Schedule of Current Funds Revenues, Schedule of Current Funds Expenditures and Mandatory Transfers; Schedule of Current Funds Expenditures and Mandatory Transfers by Major Object; Schedule of Changes in Loan Fund Balances; Schedule of Changes in Agency Fund Balances; Schedule of Unexpended Plant Funds Project Accounts; Schedule of Changes in Unexpended Plant Fund Balances; Schedule of Changes in Retirement of Indebtedness Fund Balances; Schedule of Changes in Investment in Plant Fund Balances; Schedule of Investments by Fund Groups; Schedule of Bonds Payable and Interest on Bonds.

This request is made in accordance with KRS 61.874 and more generally with respect to my rights and responsibilities as a member of the Board of Regents under Chapter 164 of the Kentucky Revised Statutes.

I do appreciate the fact that I have been given the right to inspect these documents in accordance with KRS 61.872, but I am troubled by the fact that I have been denied the right to make copies since Monday, November 17, 1980. This has seriously impaired my ability to prepare for the next meeting of the Board of Regents, and to evaluate budgetary possibilities prior to that meeting.

In addition to the above request, I would like copies of the "August Report" for the previous five years. This is the report required by KRS 165.420.

It is ironic that even a private citizen would have the right to a copy of the information I have been refused as a member of the Board of Regents.

Thank you for your attention to these matters.

Sincerely,
/s/ Steven L. West
Faculty Representative
Murray State University
Board of Regents

SLW/cs
cc: Mr. James Overby"

"November 26, 1980

Mr. Stephen L. West
Assistant Profess and
Coordinator of Legal Studies
Department of Political Science
and Legal Studies
Murray State University

Dear Mr. West:

The Office of the President has been designated as the appropriate point of contact at the University to handle requests for information under the provision of the Open Records statutes. Accordingly, I am forwarding your request of November 24, 1980 for copies of certain financial information to the Office of the President for disposition.

Respectfully,
/s/ Richard C. Gray
Vice President

RCG:ksk
xc: Office of the President
Mr. James Overby
Enclosure"

* * *

"November 26, 1980

Dr. Richard C. Gray
Treasurer
Murray State University Board of Regents

Dear Dr. Gray:

Thank you for your response to my letter of November 24, 1980 requesting internal budgetary information.

It should be made clear that my request is made as a member of the Board of Regents and as such is not contingent upon the provisions of the Open Records Law. I mentioned that law in my letter to demonstrate that in my opinion even a private citizen would be entitled to a copy of the information I am still seeking.

My opinion has not changed in that respect. I do not question the fact that under KRS 61.876 public agencies have a right to adopt rules and regulations "in conformity with the provisions of KRS 61.870 to 61.884." It should be noted that you are a "public agency" as defined by KRS 61.870 (1). As such you are responsible for responding to requests for information.

Again, I mentioned the Open Records Law to point out the irony of this situation. In my view a Board member has the absolute right to inspect and copy any and all records in performance of his fiduciary duties as a Board member.

Sincerely,
/s/ Steven L. West
Faculty Representative
Murray State University
Board of Regents

SLW/cs
cc: Jim Overby"

At the conclusion of testimony, Mr. Carneal moved that four charges be dropped. Dr. Howard seconded and the following voted: Mr. Carneal, aye; Dr. Howard, aye; Mrs. Page, aye; Dr. Settle, aye; Mr. Woodall, abstained; Mr. Christopher, No. Motion passed.

The Chairman stated that the Board would recess until 6:30 p.m. The hearing recessed at 5:00 p.m.

The hearing reconvened at 7:00 p.m. Dr. Settle moved to dismiss the remaining two charges. Mr. Carneal seconded and the following voted: Mr. Carneal, aye; Dr. Howard, aye; Mrs. Page, aye; Dr. Settle, aye; Mr. Woodall, no; and Mr. Christopher, no. The Chairman declared the motion carried and called for final arguments.

Upon conclusion of final arguments and at approximately 7:45 p.m., the Chairman stated that the Board would go into executive session to discuss the evidence presented.

The hearing reconvened at 11:15 p.m.

Mr. Christopher: The procedure we will use to announce each member's vote will be just that; we will give each member an opportunity to announce his vote and make any comments he wishes to make, starting on my far right with Dr. Howard.

Dr. Howard: Mr. Chairman, on the charges I have heard, I do not feel the evidence exists to remove the President. I have no other comment.

Mrs. Page: After hearing the testimony presented on the three charges against Dr. Curris, I find insufficient evidence on any of the three charges to justify removal. I vote not to remove.

Mr. Christopher: Please indulge me with what will probably be a rather lengthy statement. I have had a lot on my chest and haven't had an opportunity to get it off, so I'd like to take advantage of that opportunity.

Let me say at the outset that this entire conflict has been exceedingly difficult for me and my family and for everyone involved and their families.

I have learned the hard way that being a board member and representing the people and overseeing the affairs of the University can be a thankless and trying task. The problem becomes especially acute when one assumes the duties of chairman at a time when a movement is made to change the course of the University's future. Change is, has been, and always will be painful. It carries with it strong voices in support; there are equally strong voices in defense of the status quo. As your chairman, I have in the past few weeks found myself in an absolutely no-win situation. I am sure that several of you Board members have had the same feeling. With regard to those who have served on this Board through this crisis, you have my utmost respect. At times tempers have flared and heated exchanges have occurred. However, upon reflection, I sincerely know that everyone of you--all ten--have acted from conscience and that you genuinely did what you thought was right.

I have often been reminded of a quote from Lincoln when his cabinet was at odds over a certain issue and several about him were perplexed at what was occurring. To one of the competing factions he said, "Did you know that there could be persons on opposite sides of an issue and both of them be right?"

In the sense that the entire Board is and will continue to have Murray State University foremost in their minds, both sides will be right. I commend all of you for your hard work and pursuit of what you think is best for our University.

I love this University. It has been a part of my life since my father came here as a chemistry professor in 1957. I received a large part of my collegiate education here, and I will forever be indebted to this institution for what it has given me. I know that all of you share my sentiments in this regard and that you, too, have a special feeling for this place. This University will survive either because of us or in spite of us. It is much bigger than any Board, Board member, or employee. I appreciate your indulgence in permitting me to make these remarks because those feelings have sustained me during the past few weeks.

Now, to the charges, the evidence presented, and my vote. I have always had and will continue to have sincere admiration for Dr. Curris. He has brought to this University a youthful vigor that has up to this time served it well. He is articulate, hard-working, and a debater without equal as he has proven in his statements to the media in the past weeks and in his performance in this hearing. With all of those qualities, he, too, has his faults. His faults may very well be the excess of his strengths as is so often the case. Nevertheless, no man is indispensable. Many outlive their usefulness and do not perceive that the times change and faces are needed to meet the changing times. What is the time, as I see it? Above all, it is the day when money is tight. It is the day when the words "shortfall" and "cutbacks" ring in our ears. The leadership of this University must deal effectively with these times and yet be human and compassionate toward persons who are most affected. The leadership must deal forthrightly with and cultivate its alumni. They are a practically untapped source of support. The leadership of this University must relate to the community in which it lives and to the region which it serves. The relationships with teachers and administrators throughout this region must be strengthened and cultivated. It is from these that our students come. You will note that there is one thread that runs through all of the goals that I have noted. That thread is the thread of human relations. Our leadership must be able to get along with and deal effectively with people. In this day of the cutback and shortfall, dealing with faculty, staff, alumni, and community becomes increasingly critical.

I have tried carefully to evaluate the three charges, and I have heard all of the evidence. As I understand the law, I must decide whether Dr. Curris is guilty or innocent on each charge. The evidence indicates to me that he is guilty on charges 1, 2, and 3. But, then asks the question: What about removal? I am very upset that this body refused to protect some people who had indicated that they would come forward. Because we were unable to hear all of the charges and because of the pending litigation, I, therefore, must abstain on the removal question.

It is very tragic that the entire Board could not be a part of this proceeding and voice their opinion. Perhaps their votes will be heard another time. Their removal constitutes a dangerous precedent that can affect all boards of trustees of institutions of this state as well as local boards of education, city councils, fiscal courts, or, indeed, any public boards that are responsible for employees, presidents, executive directors, policemen, or any public employee.

However, in the meantime, we must live together and work together for the good of Murray State University. Those of us who have lost must not permit that loss to embitter us, and those of us who have won must not use that victory to become vindictive. As your chairman, I will do my very best to assure that neither of these events occur.

Finally, let me say one other thing concerning the four Board members who were restrained from voting because of a court order. Because of the nature of these proceedings, they not only were restrained from voting, but were also restrained from speaking.

With a personnel matter, one cannot comment on proceedings. Because of this, they have been the subject of rather severe comments by the press. That is certainly understandable when the press is getting only one side of an issue. However, I can assure you that those of us who voted to charge Dr. Curris initially did not do so for frivolous reasons as you may have been led to believe. We did not do so because of petty politics, which is a term that has also been thrown around. We did so because 1) we received a multitude of complaints from the community, state, faculty and staff, 2) these complaints reached a crescendo immediately after the public became aware of the Regents' concerns, 3) some of these complaints indicated to us possible violations of State law which should not be tolerated by anyone in authority. Some of these complaints together with the knowledge we have gained in our experience as Board members indicated to us that there were serious leadership problems at the University that should be addressed. For these reasons, I voted to charge Dr. Curris. The others who voted to charge him may have had other reasons, but I feel the public is entitled to understand my motive. Thank you very much.

Mr. Carneal: I have made a lot of notes and I could comment on each of the three charges that we've had, but I am going to refrain from doing that. I am simply going to state from the charges that I've heard I do not feel that there is sufficient evidence to remove the President of the University.

Dr. Settle: First of all, I am extremely sorry that we did not have the opportunity to hear all the charges, but based on evidence presented by witnesses under oath and my understanding of Kentucky Statutes required to remove the President from office, I do not support any of the charges.

Mr. Woodall: I would like to make a short statement.

When appointed to the Board, never in my wildest imagination did I visualize I would be involved in the episode of the past few weeks. When I came to the infamous Board meeting of February 7, I came with concerns of University leadership that had been expressed to me from alumni, friends, and concerned citizens. When other members of the Board had similar concerns at that meeting, I took the position I have since that time. At all times, the best interests of the University was my utmost concern. You do not drive five hours and 250 miles for each meeting for political, personal, or clandestine purposes as I have been accused. Despite the events that have occurred, I will continue to strive for the best interests of Murray State University.

In regards to the charges, I have never been in a position to serve on a jury before, but I guess that's what I felt I was doing here, and I've always let my conscience be my guide in a situation like this. The first charge which involves an obstruction of justice, involving drug related activities--and even though it was sort of decided that Dr. Julian was the fellow that actually did the talking--having a business background, I just can't get away from the organizational structure where the vice president is ultimately responsible to the president, so I have to lay that charge in Dr. Curris' lap. The other two charges I do not feel show any evidence of breaking the State Statutes that have been quoted so many times, and I would find him guilty on the first charge and innocent on the second and third charges.

Mr. Christopher: How do you vote on removal?

Mr. Woodall: Abstain on that.

Mr. Christopher: The vote then is four with two abstentions not to remove the President.

Mr. Carneal: At this time, I move that all charges against the President be dismissed with prejudice.

Mrs. Page: I second.

Mr. Christopher: Further discussion? [For the vote on the motion,] I will start to my left.

Mr. Woodall: No

Dr. Settle: Yes

Mr. Carneal: Yes

Mr. Christopher: No

Mrs. Page: Yes

Dr. Howard: Yes

Mr. Christopher: Four--yes; two--no.

Let me announce at this time that there will be a meeting of the full Board in this room at eight o'clock in the morning for the purposes of addressing the resolution adopted by the Board at its February 21 meeting, wherein the primary duties and responsibilities of Dr. Curris were removed. Anyone have any other comments?

We appreciate the hard work of counsel for the University and the fine job that was shown to the Board on behalf of the attorneys for Dr. Curris.

Mr. Christopher: With that, this hearing is adjourned.

The hearing adjourned at 11:30 p.m.

March 31, 1981

The Board of Regents met at 8:00 a.m. with all members present. Chairman Christopher called the meeting to order at 8:15 a.m., stated that the purpose of this meeting is to handle the resolution that was adopted at the February 21 meeting, and further stated that he understood there is another resolution to be offered by Mr. Overby.

Mr. Overby: Ladies and gentlemen of the Board, may I urge you to adopt the following resolution:

"Be it resolved by this Board that it will not tolerate any retaliation by any means directly or indirectly against any witness that may have testified or offered to testify or anyone who has assisted in the investigation of this case in any way. This prohibition against retaliation applies to the members of the family of the individual involved. This resolution is non-partisan and applies to each side of the existing controversy.

Be it further resolved that any person who violates this resolution shall be responsible directly to this Board for their action."

Mr. Christopher: Is there a motion that this resolution be adopted?

Dr. Howard: I so move.

Mr. Clark: I second.

Mr. Christopher: Dr. Howard moves, Mr. Clark seconds. Is there any further discussion? All those in favor of adopting the resolution as stated by Mr. Overby, please state aye. Opposed, nay. There being no nays, motion passes.

Mr. Christopher: As all of you recall, this Board adopted a resolution at our meeting on February 21, 1981, wherein many of the duties and responsibilities of the President were taken from Dr. Curris, and I, for one, felt last night that this issue should be addressed by the full Board. I think it is only appropriate that the full Board address this issue in light of the outcome of the hearing last night, so do I hear a motion concerning this resolution.

Mr. Woodall: Mr. Chairman, I move that the resolution restricting the powers of the President is hereby rescinded subject to any right of appeal.

Mr. West: I second.

Mr. Christopher: Mr. Woodall makes the motion. Mr. West seconds. Is there any further discussion?

Mr. Carneal: What about that "right of appeal?" I thought the motion was going to read that the motion be rescinded.

Mr. Christopher: I believe it was conditioned, as we discussed last night, that this Board has authorized Mr. Overby to appeal the decision in Calloway Circuit Court and also recognized that there is a writ of prohibition that is currently in the Court of Appeals in Kentucky that will be acted on--I think April 6 was the date given.

Any further discussion? There being none, Mrs. Dyer, let me ask you to call the roll, please.

Mr. Carneal: Aye

Mr. Clark: Aye

Dr. Howard: Aye

Mr. McCuiston: Aye

Mr. Morgan: Aye

Mrs. Page: Aye

Dr. Settle: Aye

Mr. West: Aye

Mr. Woodall: Aye

Mr. Christopher: Aye

Mr. Carneal: This motion restores to the President his full duties and responsibilities as President of Murray State University. Is that right?

Mr. Christopher: That is right.

Do you wish to make any comment, Mr. Overby, so that it's on record as to what counsel for the Board....?

Mr. Carneal: We've got another motion that, I think, has to be rescinded, and that's the one giving Marshall Gordon certain authority, and I so move that the motion be rescinded giving Marshall Gordon certain authority for a temporary period and that the appreciation of the Board is conveyed to Dr. Gordon for his services.

Mr. McCuiston: I second.

Mr. Christopher: Any further discussion? All those in favor of the motion, state aye.

Opposed, nay. Being none, the motion passes.

Any further business to be brought before the Board at this time?

Mr. Overby: An answer will be filed in the Calloway Circuit Court. While all of the members of the Board are present, I want to make it abundantly clear we will file an answer on behalf of the Board as instructed, but for those of you who do not wish an answer to be filed for you in your individual and in your official capacity as members of the Board, I wish you would indicate to me if you can today because I understood, for example, that Mr. Gordon represents Mr. Carneal and that Mr. Settle was represented by Mrs. Terry.

With that in mind, the other members, if you'll please express to me, and I think I know your sentiments, but I want to be clear because I don't want to foul up in it. I think that will involve Mr. Howard and Mrs. Page, and whether you're represented separately obviously is your own decision, but I don't want to mess up by not filing an answer. So, is that your decision that I not file an answer for you in your official capacity or in your individual capacity?

Dr. Howard: Yes, sir.

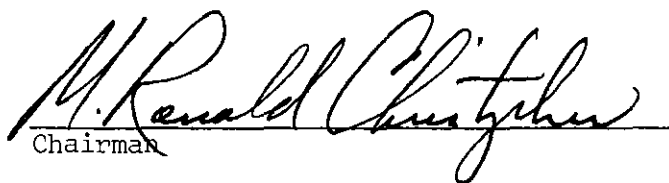
Mr. Christopher: Mr. Clark, you had expressed concern about the number of classes you've had to miss because of your responsibilities to this Board. Do you want any further action taken as far as recognizing that you have been involved with the Board, or do you think that is sufficient?

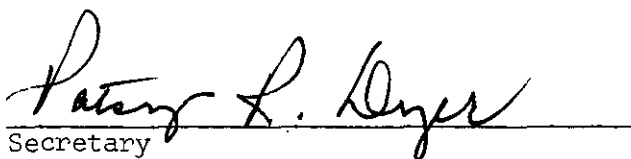
Mr. Clark: I feel it will be sufficient at this time.

Mr. Christopher: Just recognize in the Minutes that you have spent many hours with the Board over the past five or six weeks.

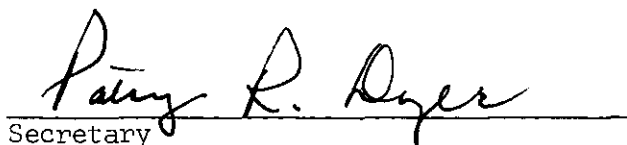
Is there any other business to come before the Board at this time? Being none, I'll entertain a motion to adjourn.

Mr. Woodall moved and Mr. McCuiston seconded that the meeting be adjourned. The meeting adjourned at 8:30 a.m.


Chairman


Secretary

Additional documents to be filed herewith include a) transcript of the hearing on March 28 and 30, 1981, b) the complete record in the case of Constantine W. Curris, President, Murray State University, Murray, Kentucky, 42071, vs. M. Ronald Christopher, Murray, Kentucky, Jere McCuiston, Trenton, Kentucky, Bill Morgan, Benton, Kentucky, Jerry Woodall, Lexington, Kentucky, Steven West, Murray, Kentucky, Terry Clark, Murray, Kentucky, Dr. Ed Settle, Princeton, Kentucky, Sara L. Page, Paducah, Kentucky, Dr. Charles E. Howard, Mayfield, Kentucky, J. William Carneal, Owensboro, Kentucky, individually and as members of and constituting the Board of Regents of Murray State University in the Commonwealth of Kentucky Calloway Circuit Court Civil Action 81-CI-054, and c) the decision of the Court of Appeals and the decision of the Supreme Court. Said documents are filed in Minute Book No. _____ and located with the Board of Regents records in the Office of the Secretary of the Board.


Secretary

Note to the File:

The above documents are not included in the Minutes of the Board of Regents inasmuch as on July 14, 1983, as directed by the Chairman, Richard Frymire, I instructed the court reporter that the Board of Regents was no longer interested in a transcript of the hearing and said transcript should not be transcribed. The other documents were never received by the Secretary of the Board.

July 15, 1983

