Note: Only business included in the agenda can be transacted at the Special Meeting.

The meeting will be recorded for the purpose of preparing the minutes.
Upon completion of the minutes, the recording will be destroyed.


Senators Absent: Jack Censer, Vikas Chandhoke, Yvonne Demory, Charlene Douglas, Kelly Dunne, Cody Edwards, Daniel Garrison, Mark Ginsberg, Jorge Haddock, Mark Houck, Bruce Johnsen, Ning Li, Alan Merten, James Olds, Daniel Polsby, William Reeder, Edward Rhodes, Pierre Rodgers, Lesley Smith, Ray Sommer, Peter Stearns, Shirley Travis, Halaevalu Vakalahi, John Zenelis.

Visitors Present: Phil Abbruscato, Student Government; Rizna Ahmed, Director, Benefits & Absence Management, Human Resources/Payroll; Betsy Appleton, Electronic Resources Librarian, University Libraries; Dominique Banville, Associate Professor, School of Recreation, Health and Tourism; John Blackston, Associate Vice President, University Relations; Don Boileau, Professor, Communication; Allyson Bowers, President, Student Government; Jo Marie Burt, Director, Latin American Studies and Associate Professor, Public and International Affairs; Joey Carls, Chair, Staff Senate; Jim Carroll, Professor of Jazz Studies/Director of Instrumental Studies, College of Visual and Performing Arts; Traci Claar, Director, Community Relations; Marion Deshmukh, Robert Hawkes Professor of History; Pat Donini, Employee Relations Director/Deputy Director HR, Human Resources/Payroll; Maria Dworzecka, Director, Distance Education/Professor, Physics, School of Physics/Astronomy/Computational Sciences; Esther Elstun, Professor emerita, Modern and Classical Languages; Josh Eyler, Associate Director, Center for Teaching Excellence; Jeremy Freer, Assistant Director, Athletic Bands, School of Music; Sarah Gallagher, Community Relations/Mason Speakers Coordinator; Dolores Gomez-Roman, University Ombudsman; Linda Harber, Associate Vice President, Human Resources/Payroll; Robin Herron, Associate Director, Office of Media & Public Relations; Corey Jackson, Director, Equity and Diversity Services; Steve Klein, Electronic Journalism Minor Coordinator, Communication; Justin Lalputin, News Editor, Broadside; Michelle Lim, Human Resources Faculty Business Partner, Human Resources/Payroll; Anthony Maiello, Professor/Conducting and Associate Director, School of Music; James Martin, Vice Chair, Staff Senate; David Miller, Assistant Professor, Communication/Media Production; Sarah Nutter, Associate Professor, Accounting, School of Management; George Oberle, Head, Johnson Center Library; Morgan Paugh, Student Government; Claudia Rector, Assistant Provost, Academic Affairs; Priscilla Regan, Chair/Professor, Public & International Affairs; Zachary Schrag, Associate Professor, History and Art History; Linda Schwartzstein, Vice Provost, Academic Affairs/Vice President, Enrollment Services; Jen Stevens, Humanities Liaison Librarian, Fenwick Reference, Library; Karen A. Studd,
I. **Call to Order:** The meeting was called to order at 3:02 p.m.

II. **New Business**

Introduction by Faculty Representatives to the Presidential Search Committee

1) **More Information:** A brief summary of further information about the presidential search that the three senators on the Search Committee can share with the rest of the Senate.

2) **Question re the Candidates' Response:** Were the candidates made aware of the Senate resolution calling for finalists, in keeping with the Faculty Handbook, to come to campus so members of the campus community could meet with them? If so, how did they respond?

3) **Meeting with the New President:** We propose asking President-Elect Cabrera to come to campus during the spring semester for a visit that would include two meetings: a large open meeting with all interested members of the campus community; and an ensuing smaller meeting with the Faculty Senate and the GMU chapter of the AAUP to discuss issues of shared governance.

4) **Status of the Faculty Handbook:** Discussion of the status of the Faculty Handbook after one of its important provisions has been set aside by the BOV and Faculty Senate. Does this open the door for similar violations in the future? What guaranteed rights do Faculty now have re employment and governance?

5) **Post-Meeting Communications:** In light of our discussion, what message(s), if any, should the Senate send to the BOV, President-Elect, and General Faculty?

Attachments (5)
Attachment A: Faculty Handbooks as Enforceable Contracts for Governance Provisions (*AAUP Summary of three court cases involving governance issues*)
Attachment B: FROM: “Faculty Handbooks as Enforceable Contracts: A State Guide” (*AAUP, 2009, includes link to AAUP Publication*)
Attachment C: AAUP Presidential Search Committee Checklist
Attachment D: Preface to the GMU Faculty Handbook
Attachment E: GMU Faculty Handbook: Section 1.2.5 Faculty Participation in the Selection of Certain Members of the Central Administration
Chair Pober: We have a quorum and I want to give everybody an opportunity to speak so I am going to make this as quick as possible. Let me quickly talk about procedure so you know exactly what’s headed on. We do have to be out of here by approximately 4:25 as there is a class coming in at 4:30 so if you decide to extend discussion at 4:15 for the following ten minutes we’d still, no matter what, have to be out of here at 4:25 at the absolute latest. Second with regard to actual protocol: after I finish the discussion of procedure right now, the representative of the group that asked for the meeting will have five minutes to speak with you. After which time the three Senators who are also in the presidential search will have a total of approximately five minutes to speak with you. Beyond that, each and every one of you who wishes to speak can have up to two minutes. I will have a timer and I will let you know when there’s thirty seconds left in the interval of time that’s given to you. So at one minute and thirty seconds I will say “thirty seconds remaining” and I don’t mean to intrude, just keep talking right over me as if you can’t – I’m not trying to interrupt you. Some things to remember: first and foremost I hope that this is a wonderfully positive experience for all of us; that we have voiced issues related to the faculty, that faculty are given voice; and are heard. But I sincerely hope that we’ll keep professional and keep a sense of civility about us. With that in mind please remember unfortunately if I or the parliamentarian believe that anything moves towards an ad hominem attack, we will stop it instantaneously. I also remind you that if anything reflects personally with regard to me, it would mean I would immediately have to step away from the chair and turn it over to the chair pro tem. So if I stop you in the middle of something because you’ve either developed a motion that somehow would be directly antagonistic, if you will, to me, it’s not that I’m trying to stop the motion, it’s that I have to stop the procedure and turn it over, because I don’t want any appearance of bias whatsoever. The question with regard to audio-taping of this and why we’re doing it is because our secretary wants to make sure she gets all of this correctly in the notes – that’s Earle – and also obviously as a confirmation for Meg. There is no other intent with regard to the taping except for accuracy, that’s exactly why it is done. Additionally, my plan is to recognize each individual who wishes to speak for that two minute period before recognizing someone else for a second time. I hope everybody understands that. I would love to give everyone the opportunity to speak, OK? Another one last quick reminder: should you decide to call the question, which obviously means you’re stopping debate on a specific motion, that’s one of the primary discussion points that requires a two-thirds vote, not a majority vote, in order for the question to be called before the vote takes place. So if I have to ask, just so you know, for call for the division of the house, that means I don’t feel like my ears can tell which way the vote is happening and it means I’m asking for a hand vote and that’s what we call, obviously, the division of the house. Cool? Fab! Yah! Rock and Roll! It is my privilege at this point to introduce Professor James Sanford for a total of five minutes. Jim, you’re on.

Senator Sanford: Thank you Peter. I’m Jim Sanford. I’m one of the faculty members who requested this meeting and I want to kind of lay out why we did this, why we made this request. Let me start by reading the first three paragraphs of the preface of the Faculty Handbook, and I’m reading it directly.

“The GMU Faculty Handbook defines and describes the conditions of full-time instructional, research, and clinical faculty employment; the structures and processes through which the
faculty participates in institutional decision-making and governance; and the academic policies of the University as established by the [its] Board of Visitors.

The provisions of the Faculty Handbook are incorporated by reference in all full-time instructional, research, and clinical faculty employment contracts. These provisions are binding on the University and on individual faculty members. The Faculty Handbook governs the employment relationship of individual faculty members, and sets forth the rights, privileges, and responsibilities of faculty members and of the University. Faculty and academic administrators are expected to read the Handbook and be familiar with its contents.

Except as noted below, revisions to the Handbook may be proposed by any of the parties who have participated in its adoption: The Board of Visitors, the Faculty Senate, acting on behalf of the General Faculty,’ and the central administration.”

So what that means is that there are three signatories to the Board of Visitors [Faculty Handbook]: the Faculty Senate, acting on behalf of the faculty, the General Faculty; the central administration, and the Board. And it is contractual, as the preface says. Any contract must involve multiple parties. In this case the parties are the three signatories, the three groups who signed off on the Handbook, and that the contract, that is the Faculty Handbook, specifies the rights, privileges, and responsibilities of these parties. Therefore it’s binding, it’s binding on all the parties that signed it. Regarding the presidential search part of the Faculty Handbook, Section 1.2.5, it states, and again I quote:

“The search and selection process must include opportunities for the General Faculty to meet with candidates who are finalists for the presidency.”

The search process that was used in the recent search for a presidency violates the Handbook in several ways. First, there was no inclusion of open meetings to the General Faculty. Second, the words taken directly from the Handbook: “Candidates who are finalists” are plural, meaning that there would be multiple finalists “must be available”. And, in addition, the mandatory confidentiality agreements that faculty representatives, and all committee, all search committee members, were required to sign precluded these representatives from keeping faculty apprised of the progress of the search. Clear that the Handbook was violated. If one party that is a signatory to the Handbook can ignore its provisions, it brings into question the entire contractual nature of the Handbook. Therefore several Senators, including myself,, requested this Special Meeting to discuss the search process that resulted in Dr. Cabrera being named our next president and also the ramifications regarding the future validity of the Handbook as a contractual document. Thank you.

Chair Pober: Thanks Jim. We’ll now move on to the three Senators who were part of the presidential search process. Each one of us, myself included, will have approximately one and a half minutes of discussion. The first up: Linda Monson.

Senator Monson: Thank you. It is indeed a privilege to have represented you, the faculty, on the Presidential Search Committee. The committee consisted of the BOV members, four faculty representatives, two that were elected by the General Faculty, June and myself, and two that were appointed: Peter, as chair of the Faculty Senate, and Dan Houser, appointed by the Provost. Additionally, the chair of the Staff Senate, the president of the student body, the president of the Mason Alumni Association, and several prominent business leaders from the community served on the search committee. Throughout the entire process the faculty voice was heard, solicited, and
respected. The Board took the faculty priorities to heart. Leading candidates were all from the academy and all had a keen understanding of and commitment to shared governance models. I know that I can speak for each of the four faculty reps when I say that we gave a hundred percent of ourselves to this process. We worked extremely hard and took the job very seriously. Our primary goal was to find the most qualified president who would indeed be a great match for George Mason University and of course, who was available at the time of the search. There are many questions surrounding the need for a confidential search. Market realities cause candidates to choose what searches they will be in based on part of the process being used is public or confidential. Since the mid 1990s candidates who were presidents, who were sitting presidents who were looking at other presidential opportunities have had four troublesome impacts on themselves and on their universities. Some have lost their jobs. Some have lost donor funding. Some have lost legislative funding and many have lost goodwill on their home campus, if indeed, it was made public that they had interviewed elsewhere. It is predictable that almost all of the public and private research universities are now using a confidential process. Examples regionally include University of Virginia, James Madison University, to name a few. Thank you.

Chair Pober: Professor Tangney will now speak for two minutes as well.

Senator Tangney: I was asked to briefly summarize the search process from our perspective. Faculty had input on two levels: first through your four representatives and secondly through the faculty surveys. We did a really intensive survey and a qualitative analysis of the surveys and those were referred to throughout the process. The process started with an ad and extensive outreach for nominations for president and also outreach to potential applicants. We had over a hundred and fifty nominations. All of the search committee members reviewed all of the CVs of all of the applicants, including an elementary school music teacher. I’m not making that up. There were many iterations. I don’t have access to the original CVs; the website is down now, but I believe there were at least fifty. Search committees voted on which of those CVs to go further with, to fact-find and that included google searches, signs of problems from, known to the search firm, knowledge of the search committee, and so forth. We identified sixteen semi-finalists who were interviewed individually at a secret location. And there was extensive reference checking and more fact-finding done on these sixteen candidates, and the faculty participated in that referencing. Four finalists were identified by the search committee and two more were recommended by BOV members. And now things moved very, very quickly because there were competing offers with some of our top candidates. We re-interviewed the finalists. We had dinners with them and their spouses, and the selection committee then voted on request and was solicited for additional comments and advice. The invitation to Senators to a breakfast meeting then went out. The BOV had a closed session meeting and I believe there was a clear consensus on the top candidate from both the search committee and then from the BOV. Then there was the actual breakfast with Angel Cabrera and a final BOV vote afterwards and a press conference.

Chair Pober: They both illuminated most of what I had to say, but I did want to make it clear to everyone that integral to process was our ability to engage with each of the candidates at all of the levels. So when we went the eleven semi-finalists, we were all actively involved in the process. I in fact asked a question of each and every one of them and I promise you we did significant research into the background of each of these individuals and asked illuminating questions with regard to what it would mean for them to be president of George Mason University. Additionally, beyond that, there was constant questioning of us as faculty members on the part of every single member of the Board of Visitors and of the search committee. So when we would finish with one candidate, almost
instantaneously, members of the community who were on the search committee would come up and ask “What did you think of that person? Do you think that individual has the academic credentials? Do you think he or she would fit into the paradigm of George Mason University?” And we were actively involved in every single one of those discussions. So we asked questions, we were engaged in the process, and additionally the last thing is, we did indeed make sure that they understood every single step of the process that we wanted more faculty input and that we were concerned about the prospect of not having an open meeting with candidates during the latter stages. While we were told the confidentiality must remain until the very end because the six finalists were indeed asked and they insisted that it remain until the very end. We kept the concerns of the faculty alive through the duration of it and we kept pounding away at the notion of having an open meeting with faculty. I assure you we did our best as your representatives to make sure your voice was heard.

Chair Pober: OK, at this point now, Linda’s going to be on one microphone and Sheryl’s going to be on the other microphone, and I will happily recognize anyone who wishes to speak for a total of two minutes. ___ is the first, so as soon as Sheryl can get the microphone out –

A Senator: As one of the members of the Faculty Senate that put in the request for the Special Meeting, I’d like to make clear at least what those of us who discussed this and asked for the Special Meeting asked for it, the reason we asked for it. It’s not about whether our colleagues did their best, it’s not about whether you did whatever you could to share, to represent our interests. It’s not about the assertive confidentiality which extends, I think, to your death, is that not right?

Chair Pober: It is correct.

A Senator: which does not lead me to any kind of an action, I want to tell you.

Chair Pober: I’m appreciative.

A Senator: So what it is about, what it is about, is the violation of the Faculty Handbook. That’s the subject – the concern about violation of the Faculty Handbook, which is a contractual agreement, and where it leads us, the faculty and the university, in the future. That’s what we called the meeting about, not about casting blame.

Chair Pober: Who would like to be recognized? Yes, ___, over there.

Another (second) Senator: Hello. I just wanted to ask (those who called the meeting) what do you propose as a remedy? I agree that the issue is the violation of the Faculty Handbook and not casting aspersions on people who represented the faculty. Everybody, I’m confident that everybody worked in good confidence. But what do you propose as a remedy? What do we want to ask the Board of Visitors to do? What do we want to bring to the Board of Visitors? I think we should discuss that.

A Senator: Well, what we want is an assertion, an agreement, from the faculty, from the Board of Visitors, that this is a viable contract. There are legal remedies, and we are not proposing that we seek those at this time. But this is a really serious matter for reasons that I think we can all agree to, because it sets aside every tradition of governance we have tried to build here for forty years. And if it’s done on this incredibly important issue, where are we in any of our activities on campus? So we’re looking for them to explain to us why they thought that was important, and if they can’t explain
it, to guarantee to us that we’ll move forward. They’re going to take this document seriously as a legal document.

Chair Pober: June (Senator Tangney) wishes to be recognized and I know that she has an answer to that as well.

Senator Tangney: Thank you. I’ve given some thought about where to go from here and I think we have two goals here. One is to fight erosions of shared governance and to protect the weight of the Handbook. That is critically important. And a second goal is to preserve faculty input into searches, and where possible, to enhance faculty input into presidential and most importantly now, provost searches. It’s important to carefully examine what happened in the past, and I think it’s really important for us to do this through this forum and in others. But we also need to focus on how best to meet our long term goals going forward. And I’d like to suggest that one possibility is to change the Handbook so that we enhance meaningful faculty input even more, and protect the Handbook. Right now the Handbook is vulnerable because the section on faculty input to searches is outdated. It’s over twenty years old. And it’s not feasible, given the realities of the marketplace right now. The BOV, given the choice of a very poor field of candidates which we would have gotten had we had an open search, or in contrast, procedures that would allow the best candidate to emerge. That’s the choice that they had. And in some sense they were (pauses) kind of forced to violate the Handbook. So what we really want is extensive, meaningful input into these searches. A one-hour open forum with a large crowd of faculty isn’t terribly effective, I would argue. Minimal contact with candidates is what you’d get, minimal feedback to the BOV and so forth. So I think what we need is to instead change the wording in the Faculty Handbook so that we have proportional representation, say twenty-five percent of the search committee for presidents, fifty percent of the provost, and make that the meaningful way that we have the biggest weighted impact on these searches and in a way that can be accommodated by the BOV and by the realities of the current job market.

Chair Pober: Time is up. _____, you’re next.

Another (third) Senator: I’m not sure that I agree with your answer to the question. As I said, I’m not sure I agree with changing the Faculty Handbook as some may consider. But what I would like to respond to is, I think, I would like to have assurances that this will not happen again, and I’m concerned that by violating the Faculty (Handbook), what is to stop the Board of Visitors from doing this to the Provost search, with deans searches, and even chair searches? What we had is a violation of the Faculty Handbook when the Board of Visitors told us that they did not, really were not going to listen to us. So I would like, I don’t know how we’re going to get assurances. I would suggest, but probably no one would agree with me, that no faculty member should serve on a committee in the future when they’re under these provisions. And I’ve told members of the committee that you were put in an untenable position. I mean it was unbelievable, you should not have been subjected to that and I would like to have some assurances, if we could, that this will not happen again.

Chair Pober: _____.

Another (fourth) Senator: I had an interesting exchange at the reception, the AAUP/Senate reception with one of our Visitors and inevitably the search process came up. And this Visitor informed me that our Faculty Handbook was totally and irresponsibly out-of-date. I pointed out to this Visitor that we had just spent some two-and-a-half years bringing it up-to-date and then it had been approved fully, just six months before this Visitor joined the BOV. And you know, I mean, hey,
if you’re not going to follow it, don’t sign on to it. But the way I see it now is that we really do not have a functioning Faculty Handbook. And that raises a question of, you know, how do we operate in the absence of a set of rules governing relationships between the BOV, the faculty, and the central administration? I just don’t understand this, and you know, hey, like it or not, when you sign on to something and you agree to it as a contract, you follow that contract. And the question is, what about the future? How is, what does the future hold for our relationships? I’m done.

(Chair Pober recognized the next speaker.)

Another (fifth) Senator: Yes, half a minute only. One question, I think. Were the candidates, during your meetings and discussions with them, were the candidates, did they become aware of our Faculty manual (Handbook)? And did they know that our process, and if they become aware of it, how did they react? And if they didn’t become aware of it, why not?

Chair Pober: I’ll assign myself on this one. The answer is that they were made aware of it, that they did understand, and that they chose, they chose to sustain confidentiality throughout the duration of the process. So they understood the faculty was of concern, that we exhibited concern, that we wanted it to be open. But all six of the final candidates insisted on confidentiality to the end. But, yes, they were made aware of our desire to have an open meeting.

(Chair Pober recognized the next speaker)

Another (sixth) Senator: Were they aware that they were applying to be president of the university, that they would be violating the contractual agreement they have with the faculty besides just being aware that we were unhappy ---did they that it was in writing, you know that it wasn’t right this process was taking place as it was?

Chair Pober: I’m not sure I understand the exact question.

Follow up: Did anybody tell the candidates that we had a Handbook, that specifically did not allow the type of application process occurring?

Chair Pober: My understanding is that they were aware of the fact we were concerned, that they also were aware of the fact that the Board of Visitors, according to the contractual arrangement, is the one, is the body that actually appoints the president of the university.

Follow up: Were they aware that the Handbook said there should be open meetings with candidates?

Chair Pober: I don’t have an answer to that to be honest with you. They were aware of the Handbook. They were aware of our concern as faculty members that we wanted an open meeting. I don’t know if they were aware of the exact 1.2.5 that would have reflected the mandate of an open meeting. I can’t answer that.

(Chair Pober recognized the next speaker.)

Another (seventh) Senator: I’m just curious. What evidence is there that a transparent search results in a group of inferior candidates?
Senator Tangney: There are some data here from, this is just recent searches. One search committee chose to interview seventeen – this was a confidential search – they chose to interview seventeen successful presidents. Another institution did a public search. They had one search committee that had no candidates for presidents at comparable universities agree to be interviewed. An example of another search that – where the finalists were announced in a public process, three of them were previous presidents and had been fired; and another one had a serious reference omission. So there are just story after story after story of small pools of applicants who would be willing to participate in an open public search. And one question that someone asked: “Has this been addressed in the Chronicle of Higher Education?” It has been. Last July, in fact, Jan Greenwood had written an article about this issue and was an invited article by the Chronicle. We can send that out if people would like.

Another (eighth) Senator: I guess I’d like to follow up on that. Maybe you’ve answered it, maybe not, but, what’s the source of this data? If it’s the companies that do the searches, I think it’s questionable. If it’s empirically gathered data that’s scientifically studied, that’s a little bit different. Can you answer that?

Senator Tangney: I don’t believe anyone has done an outside, you know, independent, empirical study of this. The information that I have is

Follow up: So this is just somebody’s opinion, really.

Senator Tangney: Well no, this is someone’s experience doing over a thousand searches for higher level administration, many, many presidential searches.

Follow Up: But, but they’ve done that as their living and therefore it’s in their interest to keep these quiet, because they do move more quickly.

Senator Tangney: Not really, they do both public and private searches. And their experience in doing public searches is that the pool is greatly, greatly reduced. And when they do them as private searches, that confidential searches, that the pool is much larger. The year we searched was a particularly difficult year because there were many, many openings for presidencies.

(Chair Pober recognized the next speaker)

A Professor: I hate to make a sports metaphor but I will. In 1968 while I was a student at the University of Wisconsin, the university was hiring a new football/ basketball coach. The candidates insisted on a process in which confidentiality was maintained. It wasn’t and both Shem Beckler went on to coach at the University of Michigan and Bob Knight went on to coach at the Indiana University. I realize it’s only basketball and football, but that’s what happened.

(Chair Pober recognized the next speaker)

Another Professor: I also want to thank the search committee members. I do agree with the idea that you were in a very tough situation and nothing that we’ve said so far I think reflects criticism of that job. But I do have a couple questions. When did you, as members of the committee, become aware that it was going to be a process that would violate the Faculty Handbook? And when did the Faculty Senate find out that it was going to be a process?
Chair Pober: The answer to “When did we know?” was not until the very end. Up until then we were told there was a possibility that if the candidates agreed to relinquish the confidentiality when we moved towards the last group, that it would indeed be an open process where people would be invited. It was not until the very end when we were told that all six of them insisted on maintaining their confidentiality. That was when the process stopped. So we thought, which is why we kept pounding away again and again and again asking for open so they realized how important it was to all four of us as faculty members.

(Chair Pober recognized the next speaker)

Another (third) Professor: I’ve heard several people ask for assurances that this would never happen again. I would really like an assurance that my retirement account will never fall 25%. This is ultimately a question about power. The Board of Visitors has it, we don’t. I wish we had more. I think the reality is simply, you know, they chose to do what they thought was in the best interests of the university. Our only potential for any leverage, I think, is in speaking directly with Dr. Cabrera in regard to the provost search. Otherwise, this is water over the dam.

(Chair Pober recognized the next speaker)

Another (fourth) Professor: I’m unhappy with the process also, but I think that latter point is really the most important. The function of a president is largely externally focused on fundraising and relations with the state government these days. The function of the provost is to be the chief operating officer of the University. I think that any provost who interviews without speaking to deans and directors and even some department chairs and rank and file faculty has no idea what he or she is getting into in terms of the personal relationships that will be necessary to actually accomplish the job. I think going forward, one of our best strategies would be to work with the Senate and with the Board of Visitors to try to ensure at least some participation of some groups. I can see where the provost candidates may not want to have full meetings. If that’s the case, I’m not sure what leverage we have. But there is no participation of faculty beyond search committee members, then the person is off on the wrong foot, and is almost bound to have difficulties getting started on the job.

(Chair Pober does not see anyone who wishes to speak for the first time and recognizes a speaker for the second time, adding that this does not mean you cannot interject shortly.)

Another Senator: I’m think I’m very sympathetic to the idea that we should ask for clarification of the status of the Faculty Handbook of the Board of Visitors. I had occasion to ask a few members of the Board of Visitors that very question, and I was met with silence. So is it appropriate to make a motion at this time?

Chair Pober: Absolutely.

Follow Up: So I move that the Faculty Senate send a letter to the Board of Visitors asking them to clarify the legal status of the Faculty Handbook.

Chair Pober: Is there a second. (No response). The motion fails for a second.

(Chair Pober recognizes another speaker)
Another (ninth) Senator: I guess several comments. Just in response to the motion: I’m in some ways sympathetic that we send something to the Board of Visitors, but that they don’t define the legal status of the Handbook. But anyway I’m sympathetic with your main concern. I’m also sympathetic with what June said about maybe we need to revise the Faculty Handbook. But I will point out that I spoke with the legal and the governance divisions of the AAUP this morning, and the word I heard was that they thought the process was regrettable and that they still believe in their checklist which includes open visits by the finalists to the university. So our primary faculty professional organization thinks that open visits are still highly recommended. Thank you.

(Chair Pober recognizes another speaker.)

Another (tenth) Senator: So listening to all this, I’m thinking about how do we move forward? And coming from the Conflict Resolution School process matters. And so there seems to be some concern about the process that was used and we want to move towards keeping shared governance. And so we work a lot with apology. So would it be appropriate to request an apology for neglecting the 1.2.5 et cetera, and a commitment to work by the existing Handbook until such time as the parties revise this Handbook through the established procedures? I think to re-establish this is our Handbook. Sorry, mistakes happen, things happen, we’re sorry about it, would be something I’d want to hear: the recognition of the Handbook and an apology for the mistake of not following it, and a commitment to work through. There may be perfectly great reasons to revise the Handbook and I look forward to learning about those and I think we could do that.

Chair Pober: Is there a specific motion you wish to put on the floor? Do you want to think about it for a moment?
Follow Up: Yes.
Chair Pober: OK. Others who have not spoken first? None? (Chair Pober recognizes the next speaker who has spoken before.)

Another (eighth) Senator: I’d like to endorse the general concept that was put forward. And I think if at the same time it would be very important for us as a body to indicate to our new president that whether he knew it or not, the commitment that the Board made relatively recently and after several years of opportunities to change whatever they saw fit that we would agree to – that’s all been breached. I think why that’s important is it goes right at the heart of the most important part of the relationship which is trust. They have damaged the trust that we have in the leadership of the university, and I think that’s unfortunate. That’s why I would love it if they would apologize and make some movement towards honoring that until it’s changed. But secondly, that gives him an opportunity to show good faith by saying he will stand behind following the Handbook procedures for transparency, etcetera, when we in fact go look for a new provost.

Chair Pober: Is it your will to put this in the form of a resolution that could be worked on and brought to the February 29th meeting?
Follow Up: Sure.
Chair Pober: I would encourage you and (the tenth Senator) and members who called this meeting specifically to draft such a resolution and we will put it on the agenda for the 29th of February? Meg, duly noted? Thank you so much.

(Chair Pober recognizes the next speaker.)
**Professor Don Boileau:** I’m Don Boileau from the Communication Department, former chair of the Faculty Senate at one time. I’m very, very very concerned about the provost search. I tell my students don’t use very so much – except in spare exceptional times. The aspect of the provost search which (4th professor) articulated very effectively. It’s vital, it’s important. I read the article in the Chronicle in July and I was very worried that that would affect our search in the fall, which it did. I’m sympathetic somewhat if the society is changing – footnote – it’s following a corporate model which bothers me. If all six of our finalists going through a normal process of screening was done, wanted that confidential – confidentiality and were willing to drop out if they didn’t have it – that’s a crisis, and I know that Madison and UVA went through the similar sorts of process. We’ve got to respond to that reality. At the same time I have a least a value that the provost search, because of what (), ideas behind what () said, have to be fought for by the Senate. And I’m not sure of whatever comes out of it. We have to, have to make sure that there is public situations. My very second year of teaching, back at Central Washington, the candidate the president wanted, the candidate the search committee wanted for provost, until the Faculty Senate the search and on-site visits, which I went to, the leading candidate’s place, and we discovered he would have been the wrong person. The Faculty Senate representatives were able to stop the search because the provost is so important to the University.

**Chair Pober:** Thanks Dr. Boileau. (Chair Pober recognized the next speaker.)

**Another (fifth) Professor:** Hi. I just had a point of information. Do you know whether or not the new president plans to come now that he’s been appointed and speak to the faculty before he officially begins his job or is he waiting until his arrival?

**Chair Pober:** He does expect to speak with the faculty. We’re waiting on the exact date. My understanding is that it will be before he comes officially in July. As a matter of fact when I saw him at the Mason Inn a couple of weeks ago, he made a point of coming over and immediately said I want to speak with the faculty, I want to meet the faculty. So it is his intention to meet and speak with the faculty as soon as possible and to make that arrangement.

(Chair Pober recognized the next speaker.)

**A Senator:** I am really against at this time initiating any kind of a revision of the Handbook which I think would only serve the Board of Visitors’ interests. I think the assertion of power is clear. I’m not arguing whether they have it, but I refuse to accept that it’s theirs alone. There is power in the faculty. For us to say you’re our boss in a corporate model, and our place is as clerk in the institution is an unacceptable position at base, not only for faculty, but for the students that we seek to serve in the mission of the institution. I also think that there’s a self-fulfilling prophecy here. Greenwood, who wrote the article for the Chronicle, is the same consulting firm that this university used. Hello. At the end of the day, this is not about whose fault, this is about, as people have said, how we go forward. But accepting this in silence when any faculty member in this room that wants to look for a job elsewhere at the miniscule little salaries that we get here, has to put our names, our reputations, our everything on the line or we’re not considered. If a university considers firing a president because they’re looking for a better position, my guess is that they were looking for a reason to fire them anyway. Because if they were looking to keep them, they would offer them a better retention offer, which is exactly what we do in academia.
(Chair Pober recognizes the next speaker.)

Another (seventh) Senator: I would like to endorse (the 10th Senator’s) strategy of an apology. Perhaps we could have it in the motion itself at a future time. I think that puts the ball in the BOV’s court and we’ll see how they respond. But I would also like to finish this business expeditiously because I think it’s important that we get started off on the right foot with the president. That we draw a line and say OK — we’re done, and now it’s time to move forward. Now where that time is, where that line will be, I don’t know. But I think it’s got to be done before he arrives so there’s no spillover in the coming year where his arrival here is poisoned in some way. That’s also good manners, OK?

Chair Pober: Again, my hope is that this resolution will be presented and it will be on the agenda for the 29th of February. For those of you who have input that you’d like to give to (8th or 10th Senators) in the creation of this resolution, please don’t hesitate, but it will be on the agenda and it will hopefully encompass all your concerns.

(Chair Pober recognizes the next speaker.)

Another (ninth) Senator: I’m concerned about what I’ve heard so far about the president-elect coming to the university. What we heard in the Faculty Senate was that the Provost had asked him to speak to the Senate. I don’t know what else has been done, but I would hope that this visit would represent the wishes of the general faculty and the Faculty Senate and we would work out with the president-elect what meetings he would have and who would be in attendance. So that otherwise it seems like to me it’s another in a run around faculty governance.

(Chair Pober recognizes the next speaker.)

Senator Tangney: I want to get back to the provost search. For this past presidential search, faculty representation was inexplicably cut from six members to four members, faculty members, on the search committee — two elected and two appointed. We were lucky this time around, this particular Board listened carefully to what we had to say; they were very interested in it. But that won’t always be the case and the Board is constantly changing. I think that this is a really, really good time for us to specify what percentage, and I’d love to see fifty percent, of the provost search committee be composed of faculty members. And I think that’s something that we could do in a timely fashion to put in the Handbook. I know that some people are opposed to changing the Handbook. I worry that if we insist on an open search at a time that we need a very, very well-seasoned provost, that we will not have the pool that we really need and deserve.

(Chair Pober recognizes the next speaker.)

Another (eleventh) Senator: I just wanted to say that I agree with June’s recommendation that whatever happens to the open forum question, I think some specification of the number of faculty, as well as how they represent units across the institution. We don’t want six faculty all from one college, having some specification that there had to be a certain number of units represented as well. I think it would be a good addition, regardless of the question of open forums or not.

Another (twelfth) Senator: I would just like to add if we specify proportions or numbers, proportions are better and we use phrases such as “as least this many” so the potential for more faculty participating is still there as well.
Another (third) Senator: Yeah, I just wanted to reiterate that I think we should be careful, we should be very careful about, the more I think about it, revising the Faculty Handbook for the reason that June said, but maybe taking the opposite interpretation. That the Board is always changing and that what we need is a Handbook that states what the faculty interests are and what has been agreed upon by all three sides. I’m really reluctant to talk about Handbook revisions at this time. Outside of what is going on right now and that’s all. I love the idea of an apology but I – call me skeptical.

Another (eighth) Senator: I am not sure how I feel about trying to modify the Handbook at this point. It sounds like quite a reasonable suggestion, but it immediately raises in my mind – how do we know they’ll honor it? They’ve already decided once that they’re not going to honor the Handbook whether for good reason or bad reason they decided to go back on their word. And we all know that one of the basic tenets of being ethical or having integrity is honoring your word. Well they did not honor their word, but they unilaterally claimed that or announced that. They didn’t come and say we need to change the Handbook. Can we work through this really quickly? They just said here’s what we’re going to do and I think, again we have no reason to trust regardless of what they might say. So I’m a little skeptical even though I like the general tenor of that argument.

Another Senator: So I don’t particularly like the idea of requesting an apology. I think, an apology and $2.50 gets you a cup of coffee. However I do think that it would be worthwhile to clarify to the Board of Visitors how we view the Faculty Handbook. We view it as a contractual document I think and we can ask the question how they view it? That was the spirit behind the motion that I had made earlier. Ask the Board of Visitors to clarify how they view the Faculty Handbook. It would be more useful.

Another (thirteenth) Senator: I have a small question. You know whatever has been done has been done and I don’t think we can undo it about the president, selecting the president. Now my question is: what is happening right now about the search for the provost? If they are moving? When it is planned? And how are they going to proceed? Have you heard anything from the Board of Visitors? What are their plans? So I am worrying about this just because I know that the Provost is the one who is going to talk with all the departments and all the colleges and the units.

Chair Pober: The answer is what I’ve heard, which is that that Provost – the Board of Visitors has not discussed in detail the Provost search yet. My understanding is that the beginning of the process will be in July, that the beginning stages of putting a committee together and beginning of the process will happen in July. At this point, that’s what I know. Those who have not spoken before, yes____

Another (sixth) professor: Thanks, I really like what I’ve heard so far. I serve as the chair of the College of Visual and Performing Arts. First of all, I want to thank Senators. Wow, right in the middle of all of this – I think you guys are wonderful, you did a great job. Also can’t help but
thinking the whole time I’ve been here: is there another model out there somewhere that we’re not seeing? The Handbook. There’s not a model of governance you know, I’m frustrated with it too. I really see both sides and don’t know the answer. I’m not a big fan of AAUP either. But I see that but I see that there’s something out there. One question I have too, that comes from me personally. I’m not sure about the Faculty Handbook, can anybody answer? Has that been tested in the courts? Maybe it’s answer there that everybody knows. But has it been tested? What’s the answer to that? And how far did it go? What court did it go to and so on and so forth?

**Chair Pober:** Counsel, can you respond to that?

**Tom Moncure, University Counsel:** Actually I could, let me, let me – I’m going to be discreet and not quote me but I’m going to quote the circuit court in for the county of Rockingham. The issue before the circuit court was a provision in the *Faculty Handbook* at James Madison University related to faculty involvement in curricula and schools and some language that was very analogous to the language you’re dealing with in this case with regard to the presidential search. I’ll quote the court: “The crew may be displeased with the captain, but that displeasure does not give rise to a right of action. Cognizant rule of the Commonwealth.” You’ve got no cause of action. You all have referred to, let me, let me make one correction with you that the *Faculty Handbook* informs the contract. It is a part of the contract. There are certain contractual rights that arise from the *Handbook*. Part of it is also aspirational. Now what the circuit court – and this is pretty good law – what the circuit court was dealing with was again, same sort of situation. They were talking about the enforceable parts of the contract, enforceable parts of the *Handbook* versus the unenforceable parts of the *Handbook*. An illustration of enforceable contract provisions would be the specific payment terms of individual faculty member’s contract with the university which it breached. They provide a basis for monetary damages. Personal service contracts setting compensation, term of service, duties performed, are ready examples of definite and enforceable contractual provisions in such, in such concrete terms, stand in stark contrast to the general extortatory and therefore unenforceable as a contract term of the grievance procedure. Grievance procedure in this case analogous to the selection processes that you got before you in the Handbook. These governance provisions express the parties’ hopes and aspirations, but they are not enforceable contract between the defendant and the faculty. That’s the law of the Commonwealth.

(Chair Pober recognizes the next speaker.)

**Another (fourth) Senator:** Well the crew, it seems to me, can leave the ship. And it seems to me if we don’t have rules that we follow, we really don’t have a basis for operating as a Senate. Maybe we should simply dissolve. When there are important issues to be decided and invoked, if we are to be excluded, why bother just to diddly around with the trivial? Let them do it. And then we’ll just see how it turns out. I mean, it seems to me that the crew doesn’t have to stay on the ship, sir.

(Chair Pober recognizes the next speaker)

**Another (fourteenth) Senator:** It’s interesting. There is one part of me that says we need to move forward and figure out how to create better relationships. Issues and procedures have been mentioned. Issues of apologies have been mentioned, but I think that one can say “sorry” at any time and then when it’s later go back to doing the same things. I’m not sure what power we have. I’m not sure if we even need to make it a power struggle. My colleague who mentioned that there must be something somewhere out there in terms of another model, that would be less focused on the power
struggle, and a little bit more collaborative. I don’t have that image in my mind. I don’t even think I’m good at that. I could think about it with others. But I also appreciate the several mentions that as the new president comes in, it behooves each one of us to sustain our community by being professional and positive, because the alternatives may not be prettier necessarily. So how do we establish a system that establishes, that restores this trust that feels like it’s eroding. The idea of dissolving in my mind, it’s kind of tricky because, I think the issue we’re having was not being represented. I think we disagreed on the extent of the representation because we were represented to a reasonable, you know, extent. So I think we just need to continue thinking about it and pose the question to the Board about how we could be more collaborative and restore this trust. Thanks.

(Chair Pober recognized the next speaker.)

Professor emerita Elstun: My name is Esther Elstun. I am professor emerita in the department of Modern and Classical Languages, but a little personal history may be helpful here. I was a co-founder of the Faculty Senate, well not quite this Faculty Senate, but a co-founder of the Senate in the early 1970s. I served as a peer-elected member of the Senate for over twenty-five years, chaired the body once, and I guess should perhaps also mention that I was the principal author of the 1994 Faculty Handbook. It appears to me that what you are struggling with today, the underlying problem you’re struggling with, is the insidious corporatization, and I think I’ve just made that word up. But I think you understand the corporatization of higher education. The academic world is not a corporation and applying the same rules is not a very good idea. I think that you have, we have heard, a number of excellent suggestions. The one that I found very appealing was that a motion be drafted for presentation to the faculty in towards the end of this month and I wish you well.

(Chair Pober recognizes the next speaker.)

Senator Sanford: I would just like to re-read a couple of sentences from the preface to the Handbook.

“The provisions of the Faculty Handbook are incorporated by reference in all full-time instructional, research, and clinical faculty employment contracts. These provisions are binding on the University and on individual faculty members. The Faculty Handbook governs the employment relationship of individual faculty members and sets forth the rights, privileges, and responsibilities of faculty members and of the University.”

That does not sound like we can play around with the corners there. That sounds like that’s pretty determined and whatever is in the Handbook we are guided by it, we are governed by it, whether we’re the faculty, whether we’re the administration, whether we’re the Board of Visitors. If the Board of Visitors can play fast and loose with the Handbook, I don’t know why the faculty can’t.

(Chair Pober recognizes the next speaker.)

Another (third) Senator: I heard the term “power” used. I’m a conflict sociologist and that’s what we do, study power. I think that the power is something that is given. I don’t see the Board necessarily has it. But I am also a naïve conflict theorist, a naïve sociologist, because I think that somebody has to speak truth to power, and there’s only two places I see in our society. One is the church and look around me - we’re in a theater. The other is the university, and if we don’t do it, who is?
Another (seventh) Professor: I’ve been following much of the discussion and am kind of impressed with the idea that while there are principles at stake, certainly the current issue in some respects is going to be the provost search and what to do with that. There’s some places where much of the discussion about principles may appear apropos; overlap nicely however with our, the future search for the provost. So rather, for example, asking to an apology at this point, it may be and I trust the Senate will reword this and make it a little softer, I’ve haven’t had time to do that. But it may be that we would want to point out to the Board that x number of months ago the Board approved an amendment to the Handbook knowing that there would be a forthcoming search for a replacement president. And that then a few months later, parts of the Handbook were found to be out-of-date in their eyes, so that they wanted to alter its use. Maybe we should just be asking them if there are other parts of the Handbook they think may be out-of-date in time for the provost search, and if so, would we be warned about them a little bit ahead of time?

Chair Pober: My understanding from (seventh professor) is that this might be included in the resolution as part of a whereas, as a reminder of the passage of the revisions to the Handbook by the BOV. (Chair Pober recognizes the next speaker.)

Another (fifteenth) Senator: I’m in perfect sympathy with the idea of writing the letter. I do think we have to consider our options if they ignore it, or they come back and tell us “we’ll do anything we want with the Handbook.” We end up, if we don’t consider those options, we end up with a self-inflicted wound, just simply being ignored.

(Chair Pober recognizes the next speaker.)

Another (sixth) Senator: Rather than addressing the Handbook right now in terms of the provost search, what about the Senate putting together a proposal where we outline the type of procedure we’d like to have in the provost search? Let’s say the Faculty Senate requests that we have x number of faculty members involved. In other words, give a guideline of how we would like to see the provost search procedure be set up and maybe have some negotiations going on so we have a chance of getting more of what we want in a proactive way, suggest what we’d like to have as a model for the provost search.

Chair Pober: Do you see that as linked to the present resolution that’s being constructed or do you wish that to be separate?

Follow Up: Separate.

Chair Pober: Separate. OK. Do you wish to put that into a motion then?

Follow Up: Not right now, to write it carefully.

Chair Pober: OK. When you do, you’ll let me know. Absolutely.

(Chair Pober recognizes the next speaker.)

Another (sixteenth) Senator: Just on what our lawyer friend said earlier, AAUP doesn’t share your opinion of Virginia law. And they have a pdf report about that and they cite the case to Mahler vs. Regent University where the court treated the Faculty Handbook as legally binding.

Tom Moncure, University Counsel: The decision in that case is twofold. That case basically hinged on differences in contractual obligations, number one. Number two, it’s a private university. And
this University is bound by the statutes of the Commonwealth. And that’s the major distinction to play in that case.

(A Follow Up question was asked without a microphone - indecipherable)

**Tom Moncure:** No, no my point with regard to the Liberty University case is that there is not a chapter in the Code of Virginia that specifically sets forth what’s involved with Liberty U. In this case we do have statutes that govern what we do.

(Another question asked without a microphone – indecipherable)

**Tom Moncure:** Well the court of Virginia U case basically says that it’s an agent of the Commonwealth and subject to provisions of sovereign immunity, which Liberty is not.

(Chair Pober recognizes the next speaker):

**Another (ninth) Senator:** I know from reading some of the AAUP documents – the Handbook as contractual document - that AAUP speaks of it as a growing body of law and also they summarized one case at James Madison University where faculty were protesting the closing of a department without being consulted. And the court takes the Handbook very seriously on that issue. And they decide that the Faculty Handbook, in fact, didn’t prevent the president and the Board of Visitors from closing it. And the implication seemed to be that if the Faculty Handbook had spelled that out, then maybe the court would have decided differently, but they were acknowledging that in this issue of faculty governance, it seems to me, that the Handbook is to be taken seriously. Needless to say, I’m not a lawyer, but I strongly encourage the idea that we get a legal reference from the AAUP and that we consult with a qualified lawyer that may look at it differently than University Counsel. I think the fact is that quite often, lawyers representing different sides take different opinions. That’s why the cases go to court.

**Chair Pober:** Are you formulating a motion?

**Follow Up:** Not at this time.

**Chair Pober:** Anyone who hasn’t spoken yet? We have approximately five minutes remaining. (Chair Pober recognizes the next speaker.)

**A Senator:** You know I think we can all cite different kinds of cases which, I don’t know what James Madison’s handbook says in the place where our Handbook says that this is binding. I don’t know what it says. Maybe it says the same, maybe it says different. I know at other universities where they have hired people, where they have hired presidents, that where the faculty hasn’t been consulted, the faculty doesn’t cooperate and in those instances the presidents end up resigning. It’s not that we are powerless and I am not suggesting that we do that. I am saying that we ought to be able to, as a very smart and interested faculty, come up with something that serves our interests and the interests of the institution in a way that’s not pleading, begging, or apologizing. I’m not going to apologize and I don’t expect that the Board of Visitors will do that either, although come the day. But in a place where, for God’s sake, everywhere we look “innovation is tradition” we ought to be able to come up with something.

(Chair Pober recognizes the next speaker.)
Another (seventh) Senator: All right. I wasn’t going to do this, but OK. I really wish to disparage any thought that if we ask the Board of Trustees to apologize, what if they don’t? Well, so what, OK? We will have lost nothing. They will have lost a lot because they’ll look pretty silly, OK? All right. The other thing is we’re faculty. Without the faculty a university is nothing. Think of the combinations – students and administrators – oh, that’s good. OK. All right. And the final thing I’ll point out as a historian is that we will outlast them all. We have endured for a thousand years, OK? And maybe they should contemplate that. But I think we have to get up off our backsides and be very, very proactive and not be afraid of them. They put their pants on one leg at a time just as we do. My heavens!

Chair Pober: Just to clarify for the minutes, you meant the Board of Visitors, correct? Not the Board of Trustees? (Yes). We have two minutes remaining unless somebody asks for additional time, two minutes remaining.

(Chair Pober recognizes the next speaker.)

Another (eighth) Professor: Marty DeNys, Dept. of Philosophy. I agree with (A Senator) that what we’re essentially dealing with is an issue having to do with the new balance of power and an imbalance of power that we would like to try to rectify in some way or another. As someone who is not presently a member of the Senate, I would not dare to propose a means by which one might go forward in this regard, but I do have a thought that might be a germ of a proposal. One might send a motion or a resolution, whatever – to the Board of Visitors asking for the institution of a means of adjudicating situations in which one or other of the signatories to the Faculty Handbook perceived the necessity of an action that would violate the express principles of the Handbook. What that would do would convey, not indirectly, the suggestion that all of the signatories are equal with regard to enforcing the provisions of the Faculty Handbook, and that all should have a voice. And settling situations in which some conflict might be perceived as necessary by one of the signatories.

Chair Pober: Is it your hope that it will be part of the resolution that they’re working on? Follow Up: If their will is to do that.

Chair Pober: Fantastic. Unless anyone wishes to extend discussion (pause). Seeing none, I want to thank all of you for an incredibly civil and focused discussion. Is there a motion to adjourn? (A motion was made and seconded.) All in favor of adjournment say aye? (AYE). All opposed, same sign (no response). Thank you everyone and have a wonderful day.

III. Adjournment: The meeting was adjourned at 4:15 p.m.

Respectfully submitted,
Earle Reybold
Secretary
III. Faculty Handbooks as Enforceable Contracts for Governance Provisions

Courts are often asked to decide whether faculty handbooks, which include policies, rules, and procedures under which professors work, establish contractual relationships between a professor and an administration. While the issue usually arises in the context of individual breach-of-contract claims in the employment context, sometimes litigation arises between trustees and faculty senates about the legal status of faculty handbooks generally and whether governance provisions are enforceable specifically.

*University of Dubuque v. University of Dubuque Faculty Assembly*, No. EQCV90784 (Iowa Dist. 1999): The university's board of trustees, apparently in an effort to amend the university's faculty handbook without seeking faculty approval, sued 46 faculty members. The board sought a court order declaring that the faculty handbook used at the university was not a contract, but simply a "formal institutional policy statement." The faculty members argued that the handbook provided for faculty approval of handbook revisions. The trustees argued in state court, where they sought a declaratory judgment, that the faculty handbook was a "guidepost" because, if it were otherwise, the board would be "stymied by the faculty senate." The court noted that the faculty handbook was incorporated into each individual faculty member's letter of appointment. The court further observed that the preamble of the faculty handbook stated that the handbook was "legally binding." Accordingly, the court concluded that the university faculty handbook was "legally binding and enforceable upon both parties." At the same time, the court found that two provisions of the handbook conflicted, and resolved that potential conflict in favor of the trustees. Specifically, one clause provided for modifications of the handbook by the trustees only, and another provision established procedures for faculty approval of handbook revisions. The board claimed victory in the lawsuit, because the court "allow[ed] the Board of Trustees . . . . to adopt and incorporate into the Handbook any proposed modification submitted to the Amendment and Revision Committee, regardless of whether the same has been approved by the faculty at large."

*Tabbox v. Indiana State University Board of Trustees*, Cause No. 84D01-9203-CP-445 (Vigo Superior Court, Indiana, Apr. 1992): Seventy-eight members of the Indiana State University faculty sought a declaratory judgment and permanent injunction against their board for continuing a presidential search and appointing a new president in violation of their faculty handbook, which provided that faculty members serve on the search committee of the university. The court was asked to review not only the specific violation of the presidential search provision of the handbook, but also the larger issue about the legal status of the handbook as a "contract between the Faculty and the University." The parties settled. The settlement agreement did not directly address whether the faculty handbook was enforceable as a contract. Rather, it affirmed that the handbook "provide[s] for meaningful faculty participation in University governance. . . ."

*Faculty for Responsible Change v. Visitors of James Madison University*, 38 Va. Cir. 159 (Va. Cir. 1995): An association of faculty sued the university for breaching faculty employment contracts by closing some academic programs without having first obtained the recommendation from various faculty bodies, including the faculty senate. The faculty handbook, which was incorporated into individual letters of appointment, provided that JMU faculty had the "primary role" in the development, modification and review of the curriculum, while the president of JMU had the "final authority and responsibility" for curricular matters. The administration announced that it was merging one of its colleges with another, and that it was closing a number of academic programs. The administration announced these changes "without obtaining the recommendations of the University Council, the Undergraduate Curriculum Council, the Graduate Council, or the Faculty Senate." The court noted that "FRC does not allege that its claim is formally supported by the JMU faculty as a political body." The court found no breach of contract. The court reviewed the faculty handbook language, and noted that the dictionary definition of "recommendation" does
not require a recipient to be "bound to follow it." The court also noted that the president had "final authority" over all curricular matters. The court reasoned: These governance provisions expressed the parties' hopes and expectations with respect to faculty reorganizations and curriculum changes, but, as applied to the facts of this case, they are not an enforceable contract between the [administration] and the faculty as to the faculty's mandatory participation in the curriculum changes which the President made and which the Board of Visitors has not rescinded. FRC's remedy as a group in this case is political not legal.

ATTACHMENT B

FROM: “FACULTY HANDBOOKS AS ENFORCEABLE CONTRACTS: A STATE GUIDE” AAUP, 2009

VIRGINIA

Tuomala v. Regent University, 477 S.E.2d 501 (Va. 1996). Three professors signed “three-year continuing contracts” for “tenured faculty appointment[s],” the terms of which were defined in the faculty handbook, and the university later modified that handbook to provide that professors receiving appointments under continuing contracts were entitled to annual “new contract[s],” rather than renewal of existing contracts. In the end, the professors were entitled to three years of employment under their three-year contracts, and after that they were entitled to one-year contracts only.

Sabet v. Eastern Virginia Medical Authority, 775 F.2d 1266 (4th Cir. 1985). A professor believed that a university offered “permanent tenure” in accordance with AAUP policy. This belief, based on the widespread adoption of AAUP policies and the fact that the university had always renewed contracts in the past, was not justified, the court ruled, when the faculty handbook stated that the university had no such tenure policy.

Siv v. Johnson, 748 F.2d 238 (4th Cir. 1984). Where standards for tenure in the faculty handbook were formally adopted by the board of visitors, which had sole authority to grant tenure, the standards were presumed by the court to be part of a nontenured professor’s contract. Although the handbook stated that faculty recommendations for tenure should be followed barring some “compelling reason,” the faculty member’s constitutional due process rights were not violated when the administration denied tenure in spite of faculty recommendations and did not state a compelling reason for doing so. The administration’s decision was based on the perceived lack of scholarly potential, a constitutionally permissible reason.

The URL for the AAUP publication, "Faculty Handbooks as Enforceable Contracts: A State Guide":

http://www.aaup.org/NR/rdonlyres/3F5000A9-F47D-4326-BD09-33DDD3DBC8C1/0/FacultyHandbooksasEnforceableContractssmall.pdf
The search for a new president is one of the most significant instances of shared governance in the life of a college or university, but it is also one of the most a challenging. Although governing boards have the legal responsibility for selection of a president, the process of selection is the fundamental in determining which candidate has the appropriate academic leadership and administrative skills needed to lead the institution. The recognition of shared responsibility in the search process for academic administrators is reflected in the American Association of University Professors’ 1966 *Statement on Government*:

Joint effort of a most critical kind must be taken when an name institution chooses a new president. The selection of a chief administrative officer should follow upon a cooperative search by the governing board and the faculty, taking into consideration the opinions of others who are appropriately interested.

AAUP’s 1981 *Faculty Participation in the Selection, Evaluation, and Retention of Administrators* articulates the importance of faculty participation:

The Statement on Government emphasizes the primary role of faculty and board in the search for a president. The search may be initiated either by separate committees of the faculty and board or by a joint committee of the faculty and board or of faculty, board, students, and others; and separate committees may subsequently be joined. In a joint committee, the numbers from each constituency should reflect both the primacy of faculty concern and range of other groups, including students, that have legitimate claim to some involvement. Each group should select its own members to serve on the committee, and the rules governing the search should be arrived at jointly. A joint committee should determine the size of the majority which will be controlling in making the appointment. When separate committees are used, the board, with which the legal authority rests, should either select a name from among those submitted by the faculty committee or should agree that no person will be chosen over the objections of the faculty committee.

The following is intended as a practical guide for implementation of these principles in the search for a president.

**Search Committees**

The board of trustees, working with the faculty, creates the search committee structure and defines the charge of the committee. The committee may be formed as a single entity representing both the faculty and the board, or there may be a two-tiered committee structure. In the latter case, the faculty committee—which may include other constituent groups such as students and alumni—is separate from the board committee. However, a single committee representing the faculty and
board is the most common standard. Such a committee provides an opportunity for shared perspectives and broader understanding among the various groups and thus fosters a sense of unity in accomplishing a common goal-identifying a president who is qualified to serve as both the chief academic and the chief executive officer of the institution.

- **Committee Composition.** Representatives from the board already and faculty as well as representatives of other institutional constituencies commonly serve on joint search committees. Because faculty play a significant role, their representation on the committee should not be limited to a single member. The precise number is dependent on the size of the committee but should reflect the primacy of faculty concern in determining presidential leadership. The involvement of administrators on the search committee is problematic and should be discouraged since they may represent the perspective of the outgoing administration.

- **Committee Chair.** The chair appointment is typically made prior to the formation of the search committee. The joint search committee chair is typically chosen by the board and is usually a trustee who can provide an important connection between the board and the search committee. In cases where a two-tiered committee structure is utilized, a trustee chairs the board committee and a senior faculty member chairs the constituent group committee.

- **Committee Selection.** Each constituent group should select its own members to serve on the committee. This gives the greatest sense of legitimacy to the members and acknowledges the respective roles of the constituent groups.

- **Committee Size.** The size of a joint search committee will vary according to the institution but may range from nine to twenty. Larger committees are not necessarily less effective, and a good process is considerably more important than the size in determining a successful outcome. In cases of a two-tiered committee structure, the individual committees are smaller.

- **Committee Charge.** The search committee charge is formulated by the board, in consultation with other constituents, and reflects the role of the board in making the selection of the president and in defining the terms and conditions of the appointment. The charge also will set forth other criteria such as:
  - search committee membership
  - statement of presidential leadership qualities
  - breadth of the search: regional or national
  - expectations regarding use of search consultants
  - number of candidates to be recommended to the board for the final decision
  - date by which the board expects recommendations of nominees
Search Process

The search committee has the responsibility of designing its own procedures and timetables. The basic functions of a search involve the identification of candidates; screening and interviewing; and the recommendation of a short list of candidates to the board for consideration. Key factors that should be considered in structuring the search process are:

- **Search consultants.** If executive recruiters or consultants are to be utilized, their selection (or that of a search firm) is one of the first tasks of the committee, unless this decision has already been mandated by the board. A search consultant may be most helpful in educating the committee about the search process, providing a broader pool of candidates for consideration, or checking the candidate references beyond the scope of traditional academic criteria. However, the role of the search consultant should be clearly defined and should not extend into matters of educational or institutional policy. Search firms (which may be non-profit or for-profit organizations) and their consultants range from those that serve only educational institutions to those that have an education division within a large executive search firm. It is important to interview the potential search firms, preferably those staff members who would be assigned to the presidential search, to determine if the match is appropriate to the institutional characteristics and needs. References of the search firm candidates should be contacted. Among the questions that might be asked: How successful were they in previous searches? What were their interactions with faculty and other constituent groups? Do they understand and support the role of faculty in the search process?

- **Confidentiality.** The presidential selection process is a classic conflict between the right of individual privacy and the public's right to know. It is important for the campus community to know the procedures that the committee will use in the search process, and these should be made public early in the search. It is the responsibility of the search committee to keep constituent groups informed of the progress of the search. However, in order to attract the best candidates, the search process may involve some measure of confidentiality, especially during the early phases. The disclosure of candidates prior to the development of a short list of nominees to recommend to the board can result in the loss of the best candidates. However, to ensure a successful search, the nominees who are recommended to the board should visit the campus and be interviewed by the faculty and possibly other constituent groups. The approach to implementing confidentiality and the process and guidelines for campus visits are matters to be resolved early on in the search process.

- **Institutional Analysis and Leadership Criteria.** The search committee should spend some time defining the present condition of the college or university, determining what problems must be faced, what priorities the
institution has, and what direction it must take to meet its challenges and opportunities. This institutional analysis is needed in order to determine the type of leadership qualities needed for this particular stage in the college or university’s development. The leadership criteria statement defines the principal qualities that are required in the new president--an academic leader, an experienced fund raiser, etc. The statement of leadership criteria should be circulated to various institutional constituencies for review and comment. Consensus within the campus community on the leadership qualities is important since these criteria are used in evaluating candidates' credentials and again in the interview process.

Sources of Potential Candidates

In most instances, institutions engage in a comprehensive search. Casting the net broadly includes soliciting nominations from faculty, administrators, and alumni; running advertisements in national journals; and, if an executive recruiting firm is engaged, using the search consultant to identify candidates for review. The issue of confidentiality will again be raised during this step in the process since some nominees, particularly those who are currently successfully leading an institution, may not wish to be identified as candidates.

Screening

The purpose of screening is to identify a limited number of candidates from the applicant pool. In the first phase, the list is commonly reduced to fifteen to twenty-five names, in the second stage, to eight to ten names. The final stage of the process involves selecting candidates whom the committee will recommend to the board. Issues to be considered in the screening process are:

- **Background and reference checks.** The search committee may charge a subcommittee with checking the references of the fifteen to twenty-five candidates selected after the initial screening of credentials. These are generally the references provided by the candidate. In this phase of the search process, the committee usually refrains from contacting other possible sources of information out of respect for the candidate's privacy. In the case of the eight to ten candidates who become semi-finalists, additional sources of information beyond those listed by the candidate may be contacted. A search consultant may be useful at this point in the referencing process, particularly for conducting criminal and media background checks. In the final phase of screening, anyone who might be able to provide useful information on the candidate's leadership qualifications should be contacted. Referencing by faculty members of the search committee who can contact their counterparts at the candidate's campus is particularly crucial at this stage. Background information at this point can be obtained not only from telephone calls but also from visits to the candidate's campus.

- **Interviewing.** The interviewing process may occur in two stages. In
order to preserve confidentiality, there may be off-campus interviews with the semi-finalist candidates. Direct contact between the candidates and the search committee is important. The second stage of the interview process involves campus visits where the candidate will meet with different constituencies, particularly faculty and students. These open visits are crucial in the success of the search process because they permit members of the campus community to participate in providing impressions, as well as to contribute to the candidate's understanding of the culture of the institution. In this final phase of the selection process, open visits present vitally important opportunities for both the campus community and the candidate to determine each other's suitability. This final step is extraordinarily useful to the search committee in making its final recommendation to the board.

Final Recommendation

The search committee, depending on its charge, may recommend only one candidate to the board. A committee that has conscientiously fulfilled its duty will recognize the best candidate, one who "fits" the institution, and will be able to convince the board of the wisdom of its recommendation. On the other hand, a successful search committee may be able to identify three or more candidates who would make an excellent president. The final act in the search process is the appointment of the president, a decision usually made by the full board.

This checklist is intended as a brief guideline for the presidential search process. The search itself is an opportunity for a university or college to take stock, consider new directions, and identify the individual best suited to lead the institution into its future.

References


ATTACHMENT D

GMU Faculty Handbook Preface:

The 2009 edition of the *GMU Faculty Handbook* becomes effective on January 1, 2009. It defines and describes the conditions of full-time instructional, research, and clinical faculty employment; the structures and processes through which the faculty participates in institutional decision-making and governance; and the academic policies of the University as established by its Board of Visitors.

The provisions of the *Faculty Handbook* are incorporated by reference in all full time instructional, research, and clinical faculty employment contracts. These provisions are binding on the University and on individual faculty members. The *Faculty Handbook* governs the employment relationship of individual faculty members, and sets forth the rights, privileges, and responsibilities of faculty members and of the University. Faculty and academic administrators are expected to read the *Faculty Handbook* and to be familiar with its contents.

Except as noted below, revisions to the *Handbook* may be proposed by any of the parties who have participated in its adoption: the Board of Visitors; the Faculty Senate, acting on behalf of the General Faculty; and the central administration.

Proposals to revise the Handbook originating from the Faculty Senate or University administrators will be considered by a joint committee of the faculty and the central administration consisting of three faculty elected by the Faculty Senate, at least one of whom must be a Faculty Senator, and two administrators appointed by the Provost. The chair of the Faculty Senate appoints one of the elected faculty members as the committee chair. Arrangements must assure an expeditious meeting in cases of urgency. It is not necessary to convene a committee for the following cases:

- Revisions proposed and approved by the Faculty Senate, and approved by the Provost;
- Revisions proposed by the central administration, and submitted to and approved by the Faculty Senate.

All revisions require the formal approval of the Board of Visitors. Each revision shall be incorporated, as of the effective date fixed by the Board, in all existing and future faculty employment contracts; however, no revision shall operate retroactively to change materially the substantive rights of any faculty member or the conditions of award of tenure for faculty members already granted tenure, or who have filed a written request with his or her dean or director to be evaluated for the award of tenure. For example, the conditions of employment governed by the *Handbook* may be changed prospectively and criteria for tenure may be changed for faculty who have not been awarded tenure, but may not be changed for faculty already tenured. Where no effective date is fixed for a revision, it shall become effective on July 1st following its approval by the BOV.

When a policy or procedure described in this Handbook is subject to alternative interpretations, then the Provost and the Faculty Senate Executive Committee will be the designated body to resolve the disagreement.

As of the date of the adoption of this edition of the *Handbook*, all prior policies with respect to matters covered therein are superseded. With the exception of the bylaws governing the University’s Board of Visitors, the provisions of this *Handbook* supersede all inconsistent bylaws, policies and
procedures in effect at the time of its adoption by the Board of Visitors (including, if applicable, custom and usage) of any officer, person, body, or unit of the University, including but not limited to and the Provost's Office assume joint responsibility for updating and maintaining the contents of the Faculty Handbook in both the print and web versions.

As of the date of the adoption of this edition of the Handbook, all prior policies with respect to matters covered therein are superseded. With the exception of the bylaws governing the University’s Board of Visitors, the provisions of this Handbook supersede all inconsistent bylaws, policies and procedures in effect at the time of its adoption by the Board of Visitors (including, if applicable, custom and usage) of any officer, person, body, or unit of the University, including but not limited to the President or other officer of the University and any college, school, institute, department or other faculty organization.

The Handbook Committee acknowledges that some sections of the 2009 edition use language taken from policy statements of the American Association of University Professors. The use of AAUP language does not, however, represent any University endorsement of AAUP policies other than those explicitly contained in this Handbook.

The Faculty Senate and the Provost's Office assume joint responsibility for updating and maintaining the contents of the Faculty Handbook in both the print and web versions.

University policies are located on the university’s website at http://www.gmu.edu/facstaff/policy/newpolicy/. The Provost’s Office web address is http://www.gmu.edu/departments/provost/. Other important information is located on the websites of the Human Resources and Payroll Office (http://hr.gmu.edu/) and the Office of Equity and Diversity Services (http://www.gmu.edu/equity/). Please refer to these websites for issues not addressed in the Faculty Handbook.

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ATTACHMENT E

From GMU Faculty Handbook

Section 1.2.5 Faculty Participation in the Selection of Certain Members of the Central Administration

The faculty plays a vital role in the appointment and reappointment of senior academic administrators and other leadership positions related to the academic mission of the university.
The Board of Visitors provides for participation on presidential search committees by faculty who are elected by the General Faculty. The search and selection process must include opportunities for the General Faculty to meet with candidates who are finalists for the presidency. The Board of Visitors also provides for participation in the process of presidential reappointments or contract extensions by faculty who are elected by the General Faculty. This process includes an opportunity for the General Faculty to meet with the President to discuss his or her achievements and future plans for the university.

The President provides for faculty participation on search and reappointment committees for the Provost by faculty who are elected by the General Faculty. The search and selection process must include opportunities for the General Faculty to meet with the Provost or with candidates who are finalists for the Provost position.

The Provost provides for participation on search and reappointment committees for college, school, or institute deans and directors by faculty who are elected from and by the faculty of the college, school, or institute in which the appointment will occur. The search and selection process must include opportunities for the college, school, or institute faculty to meet with the dean/director or with candidates who are finalists for the position.

The Faculty Senate will assist in conducting elections by the General Faculty.

IV. Adjournment: The meeting was adjourned at 4:15 p.m.