MINUTES OF A MEETING OF THE FACULY SENATE
Wednesday, April 14, 2004

Professor Mary Beth Norton, History and Speaker: "The Senate will come to order. I would remind you that no photos or tape recorders are allowed during the meeting. Please turn off your cell phones. The speaker already turned off hers. I will ask everyone who speaks to identify yourselves and your department, and I will also tell you that there are no Good and Welfare speakers who have come forward at this time. If anybody does want to do Good and Welfare, they can slip me a note during the meeting. Actually, I guess you are supposed to do it in advance, but if anybody has anything they want to say for Good and Welfare, the field is open, or perhaps we can adjourn ten minutes early if everyone speaks with dispatch. I will now call on the provost for remarks and to answer questions."

1. REMARKS BY AND QUESTIONS FOR PROVOST BIDDY MARTIN

Provost Biddy Martin: "I will speak with dispatch. Hi, everybody. I apologize for missing last month's meeting. I don't like to miss these meetings, and I don't even remember anymore why I had to.

"It has been a busy semester. We announced today the appointment of a new dean of Architecture, Art and Planning, and both Jeff and I are extremely enthusiastic about the appointment of Mohsen Mostafavi, who is currently the Head of School of the British Architecture Association School in London. He will join us in July. You will see the announcement in the press tomorrow, but I am giving you advance information. The search for a new dean of the College of Human Ecology will be completed within the next few weeks, and we hope to have a new dean in place in Human Ecology by the beginning of the semester as well. That will complete the four dean searches that I have chaired this year, and it will be very nice to have so many deans at the beginning as opposed to the end of their terms. I'm happy to answer any questions.

"The other highlights of the semester as I see them include but are certainly not confined to the beginnings of the Institute for the Social Sciences under the leadership of David Harris, who is a relatively new faculty member in the Sociology Department here. The new Institute for the Social Sciences, as many of you know, will be located in Noyes Lodge, a gorgeous site for an institute. The language lab currently housed there will be housed in the library. The humanities and social sciences seminars have both been very lively this year. I've enjoyed both of those tremendously, and in general the life sciences initiatives are going well. The searches seem to be generating good

appointments or at least a lot of interest in the positions among very excellent scientists. I can't think of anything at the moment that I would consider to be going badly, but given the questions that you will ask me, I am sure that I will learn what those things are. I'm happy to take questions from anybody."

Speaker Norton: "Questions for the provost?"

Professor Eric Cheyfitz, English: "Biddy, I came specifically just to try and get some information on university response to HR3077. Since from the beginning I had worked with graduate students on the GPSA (Graduate and Professional Students Association) to formulate a resolution asking the university to consider it in open debate. I know the graduate students tried to bring the issue up before this body but were told it wasn't specifically within the purview of the body. That seems strange to me since it is a pressing academic matter. It is now before the Senate of the United States, and it impacts obviously on area studies programs."

Provost Martin: "You need to explain what it is."

Professor Cheyfitz: "Yes, HR3077 is the modification of Title VI of the Higher Education Act. It impacts on area studies programs. There is certainly academic resistance that has been mustered around the country. It was passed by the House of Representatives last fall and (to many of us) has a particularly disturbing amendment that institutes a highly politicized advisory board to the Secretary of Education, including people from national security agencies, who will, unfortunately, mediate in granting decisions between peer review panels and the Secretary of Education and in recommendations generally about the kind of funding that will go out to universities.

"It is set in the context of post-9/11; it's set in the context of the Patriot Act agenda. It was instituted by certainly what is a declared neo-conservative academic influence on the Congress that saw that area studies programs were, to paraphrase, too left wing. It seems to me to be overly influenced by Edward Said's work. Be that as it may, the legislation did pass the House of Representatives, and it is now before the Senate. The graduate students in the fall formulated a resolution, which I worked on with them at their request, to ask if we could not have an open debate in the university about the university's position on this piece of legislation, because it is so crucial clearly to the future of academic studies. And it goes along with other initiatives like the Academic Bill of Rights proposal from David Horowitz, which has entered the legislative bodies of various states and is being considered by Congress as well and is itself an attack on academic freedom and autonomy. So I was wondering. I had spoken with Nick Van de Walle at some point, and he said the provost was

convening a committee or a group to talk about HR3077. I don't know if that's true or not."

LAUGHTER.

Professor Cheyfitz: "Sorry to take you by surprise."

Provost Martin: "No, that's OK. I would be delighted to convene such a group. I don't have control over the agenda of this group. You came to find out about that, so you should ask the body and not me. But I am aware of the issue and the problem. We oppose it. We have had our folks in Washington lobbying from the outset against this, and we will continue to. The folks in Washington are guardedly optimistic that it won't pass the Senate, and we hope it won't. That's about all I can say at this moment. Why it hasn't come before this body, thankfully I can say I have no idea or control over that.

"The Academic Bill of Rights—President Lehman and I were asked by a student group here to sign the Academic Bill of Rights, not the one composed by Horowitz but one composed by students here. It is actually a beautifully written document, and my position on that is simply that it says precisely what we already believe. It would be redundant to sign it and have the implication that we are not following our own principles. That's my stance on those two issues."

Professor Michael Lynn, Hotel School: "Since you spoke about the recently completed deans searches, and we will be looking for a new dean in the Hotel School, can you tell me anything about the timing of that search? When the committee will be constituted, etcetera?"

Provost Martin: "The minute we have completed the Human Ecology search and that will be within the next two weeks, we intend to then appoint a search committee for the dean of the Hotel School, and we will have some preliminary meetings before the end of the semester. I actually will, with John Siliciano, meet with faculty in the Hotel School soon, as soon as we are done with a couple of other things. That is an important search. I don't know how many of you read in the paper that David Butler, current dean of the Hotel School, decided that he does not wish to be reviewed for reappointment. Fatigue is setting in, I think for many of our administrators. Any other questions?

"I will get you more information, Eric. You can write to our Office of Government Relations and Steve Johnson, in particular, who is the one primarily responsible for the work we do in Washington, and he can give you the information about how we are working together with others on the legislation."

Professor Howard Howland, Neurobiology and Behavior, Senator-at-Large: "With regard to the review of the Biological Sciences, do we have any public document or output on that? Has the review been done? Remember when we passed the initial legislation . . . ."

Provost Martin: "For the undergraduate biology program?"

Professor Howland: "Well, for the whole program. It was going to be reviewed."

Provost Martin: "Yes, we had an external review of the Life Science Initiative a year and a half ago, an internal and an external review. The external review team is returning in June to do yet another review."

Professor Howland: "The Life Science Initiative isn't quite a review of the decision of abandoning the Division of Biological Sciences, is it?"

Provost Martin: "No, it's not. You're right. Do we intend to have what would constitute as an official review of that decision? No."

Professor Howland: "I thought that was part of the agreement. That was part of the legislation, when it was passed, that that was going to happen."

Provost Martin: "You may well be right. I would say that my personal feeling is that it would not be a good use of our time and energy to review the decision, given the exponential changes that have occurred since the Division was dissolved in the life sciences and its particular relations with physical and engineering sciences. However, having said that, if we agreed to review that decision, then we should certainly do it. As I say, what we did at that time, I know you remember correctly, is set up an internal life sciences advisory council and an external life sciences advisory council and agree to have regular reviews, internal and external of the life sciences generally across campus. That has been done, and the external reviewers are returning for a second visit in June. That group includes Harold Vramus, Gerald Fink, Chris Summerville, Bob Langer and Pamela Matson.

"So we should talk about the relationship among all these reviews. What I would not want to do is put our faculty through yet more program review unless there is some strong sense that we would actually revisit the decision. The undergraduate biology program is currently undergoing its own internal review, and we are waiting for the results from Jeff Doyle to see what kind of external review we might need to set up."

Speaker Norton: "The speaker will call on Dean Walcott for brief remarks."

2. REMARKS BY DEAN CHARLES WALCOTT

Charles Walcott, Dean of the Faculty: "I just have three things to report. First Bob Richardson and I have distributed to you all, somehow or other, conflict of interest forms, which can be completed on the web. You simply go to the Faculty Senate website, click on "conflict of interest" and the appropriate form magically appears. You just need to fill in a few boxes and most of you will be done. It's important, and please do it.

"Secondly, last time we talked about the suspension policy. We had a discussion of it here. I have subsequently talked with both the president and the provost about this, and I then had a meeting with deans who expressed some reservations about some parts of the policy. They have formed a group to work with the committee on Academic Freedom and Professional Status of the Faculty to try to find a meeting of the minds. That is going to be undertaken very shortly, and hopefully we will have some kind of policy to bring back to you in May or at latest in September.

"Finally, the third point is that Ken Kennedy talked to you about the Lectures Committee. What he didn't point out and which I would like to point out to you is this committee seems to have quite a lot of money available, an embarrassing amount of money. Therefore, we would welcome from departments and faculty members proposals to use this money, which can be supporting lecturers coming in, usually for the benefit of more than one department, so you will need to get somebody else to co-sign, but a simple letter of formal proposal will do it. The next deadline is October 1, so you have time to think about that. This is a substantial pot of money that is available that is not being used as fully as it ought to be, and I am embarrassed at its magnitude. So please help spend this in good and helpful ways to bring in interesting lecturers that you might otherwise not be able to afford in the departments."

3. APPROVAL OF MINUTES OF THE MARCH 10, 2004 SENATE MEETING

Speaker Norton: "Thank you, Dean Walcott. Now it is time to ask for unanimous consent for approval of the minutes of the March 10 meeting. Are there any corrections or additions to the minutes, which are available on the web? Seeing none, I assume we all consent to the approval of the minutes, and they are so approved. I will now call on Cynthia Farina for a report from the Nominations and Elections Committee.

4. REPORT FROM THE NOMINATIONS AND ELECTIONS COMMITTEE

Professor Cynthia Farina, Associate Dean and Secretary of the University Faculty: "Good afternoon. The Nominations and Elections Committee is bringing you today the first round of committee appointments for next year. So these are all appointments for the new academic year. There are a couple of additions that are marked with asterisks. That is the report."

Report from Nominations & Elections Committee
April 14, 2004

Terms begin July 1, 2004

Academic Freedom & Professional Status of the Faculty Committee
Shelley Feldman, CALS
Vicki Meyers-Wallen, Vet.

University Benefits Committee
Anil Nerode, A&S, Chair

Educational Policy Committee
Ann Lemley, CHE
Jean Locey, AAP
Elizabeth Sanders, A&S

Faculty Advisory Board on Information Technologies
Theodore Eisenberg, Law

Financial Policies Committee
Michael Heise, Law
Christopher Minkowski, A&S
Linda Nicholson, A&S

University Lectures Committee
Bart Selman, Engr.
David Winkler, CALS

University Faculty Library Board
William Arms, Engr.
J. Robert Cooke, CALS, Chair
Buzz Spector, AAP

Music Committee
Graeme Bailey, Engr.

Professors-at-Large Selection Committee
Daniel Huttenlocher, Engr.
Quentin Wheeler, CALS

Speaker Norton: "All those in favor of the committee's report, please say aye."

AYE.

Speaker Norton: "Opposed? The committee report is approved. Next on the agenda, I will call on Dean Walcott who is the chair of FACTA to present a resolution to revise FACTA legislation, which you all should have received."

5. RESOLUTION TO REVISE FACTA LEGISLATION

Dean Walcott: "Just a few words of preamble. One of the things that concerns me in looking at the whole faculty governance situation is to try and minimize the number of committees that we have and the amount of work that they have to do. One of our busiest committees is FACTA, which passes on, at the moment, all the cases in which the university is going to award tenure. This represents a very substantial workload for the committee. Some time ago we looked at the results of FACTA's deliberation and conversed about it with the provost to try and see if there were some changes that we could make to the committee's role that would make it less onerous. So we come before you today to propose basically two fundamental changes.

"The first and most far-reaching change is that lateral appointments, that is appointments to the faculty of people who have achieved tenure elsewhere and who are coming into Cornell, go directly to the Provost, and if she has any questions about the file, she will refer it to FACTA. If there are no questions, and in the vast majority of cases there haven't been, she will simply act on these and they will not need to go through the FACTA process. That is the first and most important change. (FACTA resolution – Appendix 1) That is number one on the list of proposed changes. The second is to clarify the relevance of departmental college standards by reference to the *Faculty Handbook*, and the third is to make explicit FACTA's ability to comment on things that it sees that are problematic in individual units, to comment on those things separately from any particular tenure case. Those are the major content changes. There is one final one, a clarification in FACTA's role in determining the sufficiency of the file. I have transparencies which go through all the usual 'whereases' and so on, and I'm happy to show them to you, but I really think that the essence of it is first, the 'no laterals' being reviewed by FACTA and secondly these others, it would seem to me, less significant changes.

"I am certain Provost Martin would be happy to entertain questions about her . . . . I mean after all FACTA is a committee that is to assist her in determining suitability for tenure. So I think it would be helpful, if there were questions, if she would be willing to help respond to them. So that is the motion, and it comes from FACTA itself, so I don't believe it needs a second."

Speaker Norton: "Is there discussion on the proposed amendment to the faculty legislation. Actually, the speaker would make a comment. The speaker's comment is grammatical. Shouldn't the first verb be 'are' sufficient rather than 'is' sufficient, since we have the 'documentation and the evidence.' The speaker has graded many papers recently."

LAUGHTER.

Speaker Norton: "This is a grammatical correction. I assume unanimous consent on the part of the body. Is there general discussion?"

Professor Alan McAdams, Johnson Graduate School of Management: "I mentioned to my colleagues that this is coming before the Senate, and they are delighted. I share their delight. We are at the moment negotiating with a person who looks like a wonderful addition to our faculty, and if this is passed it would help us a lot."

Speaker Norton: "Are there other general comments? The chair acknowledges that there is going to be an amendment in a moment, but the chair would like to see if there are other general comments before calling on the person who is going to offer the amendment."

Professor Peter Stein, Physics: "I have a general question. It's a good idea to try to reduce people's workload, but of course we could reduce their workload by just having FACTA be advisory to the provost when the provost wants it. That would be a substantial decrease in the workload."

Provost Martin: "Don't count on it."

Professor Stein: "Well, perhaps, but it certainly couldn't be an increase. That's for sure. The original premise of setting up FACTA was that one, the university faculty have a stake in the quality of tenure appointments that are made anywhere on the campus. Number two—in order for a broad university group to make an evaluation, they have to have a good sense of the range of excellence of people that we appoint to tenure. If one is only pulled out to look at a few cases and doesn't see the whole broad spectrum, then one loses some measure or

some judgment to make an individual measure. It seems to me that one could, for instance, imagine a situation whereby we made much better tenure appointments when they were lateral than when they were promotions from the inside. If in fact the FACTA did not get to see what the quality of lateral appointments are, then they would miss that particular conclusion. It is not clear to me what is to be gained by that. The majority of our tenure cases are internal, so it doesn't reduce the work of the committee by a substantial amount."

Dean Walcott: "It's about one quarter, three quarters, just for your information."

Professor Stein: "OK. Well, then it reduces it by 25%, but why one would think that for this particular group . . . .I don't quite understand the rationale for it, except to reduce people's workload by 25%."

Dean Walcott: "May I respond?"

Speaker Norton: "Sure, go right ahead."

Deal Walcott: "I think the real reason is that if you look at the results of these reviews, you see that essentially they have been 100% positive. So FACTA has not, in my opinion, contributed anything but an approval to the process. There has been I believe only one case that was in fact problematic."

Professor Stein: "It has been near 100% for the internal cases or certainly higher than 90%."

Speaker Norton: "Perhaps the provost would like to comment."

Provost Martin: "I think FACTA members have their own reasons for thinking this is a good idea, and I respect those reasons. It does have to do with simplifying the process and reducing the amount of labor. It is also true, however, that the faculty in departments and deans have sometimes felt seriously disadvantaged in their efforts to recruit senior faculty by the time it takes to get these cases through to tenure. I am sympathetic to the views of department chairs and deans who really do feel, especially in the professional schools for whatever reasons but also in some of the others, that the time period is simply too long. It is a disadvantage when we are competing for the top senior people in specific fields whose processes are much more efficient.

"So there are many reasons to think this is a good idea. I happen to think that one of those reasons is the recruiting advantage that other schools have over us when we are competing for top people, and I think that any provost can be trusted to see a case that seems divided or problematic and seek FACTA's

advice. I think it's not a good use of the committee's time to look at every single senior hire, since in most cases departments and schools are sharply critical when it comes to hiring someone from the outside onto their senior faculty in a way that doesn't, in my opinion, warrant quite the same process. I don't have a high stake in it, because I have to do the same amount of work regardless. I think that the respect that faculty and deans have for FACTA will only increase if we make this decision, because there is a way in which FACTA feels to some parts of the campus as though it stands in the way of their being able to do serious recruiting. I think it would be very helpful to have FACTA viewed by the faculty, the department heads and the deans as a positive rather than a potentially negative part of the process."

Professor Francis Kallfelz, Clinical Sciences: "I would just like to know if you have a sense of how much time or how long the process is extended by having FACTA review these cases, since my understanding is that FACTA reviews these sorts of things just before the meeting of the Board of Trustees, and it can't be formalized until the Board of Trustees votes on it anyway."

Provost Martin: "They don't meet right before the Board of Trustees. They meet in time to advise me, and help me and whatever members of the provost's staff."

Professor Kallfelz: "Yes, but it is in sync with the Board of Trustees."

Provost Martin: "It's several weeks."

Professor Kallfelz: "You think that having to go through FACTA increases the process by several weeks?"

Provost Martin: "Yes, because FACTA, as it should, has a regular process with specific deadlines and times by which members of the committee can be expected to read files. That inflexibility, which makes sense for the committee, doesn't make sense when people are tying to make senior hires in any part of an academic year. That sort of timing just does not mesh well with the time frames within which different schools try to recruit senior people."

Professor Kallfelz: "My understanding is, having been on FACTA, that the rules that we set up for ourselves in terms of the process and of this being done are self-imposed rules, and it would seem to me that, all things being equal, it would be possible for FACTA to decide that if there was such a case where a timely decision was crucial, because the individual was being recruited by other institutions or whatever, that a quicker review would be possible. They could assign the dossier to four people and say we need this back within 24 or 48

hours, and it everything goes well, there would be no problem. If things didn't go well, then there would be a special meeting of FACTA to deal with that."

Provost Martin: "I think that is underestimating, and I imagine you all probably know this from your own experience, what it takes to get a group of people that large together at a special time outside of the regularly scheduled meetings for a given year. I think it's asking too much of FACTA to be perfectly honest, even though as I have said publicly and will say again, I find FACTA's work, my attendance at the meetings and participation in the discussion and the feedback I get to be entirely useful—very positive. I think the relations between FACTA and the provost's office have been completely positive, and it is very helpful to me. But I think it is asking too much of people to say that whenever we need to expedite, FACTA can be counted on to have four people read the file; depending on the outcome of those four readers' evaluations, the entire group will have a special meeting; everyone will be able to gather. It just seems unrealistic to me."

Professor Kallfelz: "Just one last question—is it certain that this will only refer to lateral moves from other academic institutions?"

Provost Martin: "Yes."

Professor Kallfelz: "So if we are bringing in someone from NIH or from some high level scientific institution that wasn't academic, those would go through the FACTA process."

Provost Martin: "That would be an interesting amendment. My understanding was that it pertained to someone from another academic institution."

Speaker Norton: "The language says 'achieved tenure at another institution.'"

Provost Martin: "Yes, so we are talking about people who are already tenured at another institution."

Professor Kallfelz: "So a high ranking person from a non-academic atmosphere but with excellent credentials would have to go through the process."

Provost Martin: "The other thing is, even though I am happy to answer these questions, I want to remind you that this was FACTA's request not mine."

Professor Steven Shiffrin, Law School: "I'll just make a comment that maybe they will want to respond to. It turns out to be the case in the Law School that recommendations for lateral appointments at the earliest would be in February and probably in March, because one will be evaluating their teaching and we

wait to get the evaluations in December. The school is not running in January, so then people get to it in February. Letters come in late, so that the faculty will vote in March. Then one has to appoint an *ad hoc* committee. If one then has to go through FACTA, there is a problem. The American Association of Law Schools says that if you are going to offer someone a job, you have to offer it by March 15. So even if we do it in March, we're in trouble with the *ad hoc* committees, as we were with a candidate this time who had an offer from a European university and another American university that were competing to get him. There are real time constraints because of the FACTA process, which the deans have long been concerned about."

Speaker Norton: "Professor Stein, we do have an amendment coming, so I'm just going to let you make one last comment."

Professor Stein: "I just want to follow up on the colloquy between the provost and Fran Kallfelz. Biddy, I served on FACTA for one term. When I served, there was no general meeting of FACTA required. If the four people who read the files independently all thought that there was no problem, no meeting was required. And the vast majority of cases do not require such a meeting. So I think it's unfair to say that you have to call together the whole committee; you don't have to call the whole committee together, particularly when it is a slam-dunk appointment. It's not clear to me why …… I'm sympathetic to the problems. God knows, you don't want a procedure to stand in the way of hiring a good faculty member. Yet someone has to look at the file, and I would think that FACTA could be responsive to finding four people. They don't have to meet; they could drop by the Dean of the Faculty's office and read the file and respond within a matter of several days, if it was a case where there was some academic emergency. I just think that the procedures that FACTA uses makes it quite easy for it to adapt to the condition of necessity when it arises."

Speaker Norton: "Professor Shiffrin will offer an amendment."

Professor Shiffrin: "The amendment that I am offering was distributed to you."

Dean Walcott: "This is the original text. I'll put up the amendment."

Amendment to
Resolution to Amend FACTA Legislation

(Addition = CAPITALS, BOLDED)
(Deletion = strikethrough, bolded)

If, in the course of reviewing an individual case, the committee becomes concerned that the **TENURE REQUIREMENTS AND CRITERIA**

> ~~**standards**~~ of a department, or a school or college, are inconsistent with Cornell's high standards or otherwise not in the best interests of the university, it shall report this separately to the Provost. FACTA will not use these concerns in reaching a tenure recommendation for the individual involved.

Professor Shiffrin: "The amendment is a friendly amendment. It's a clarifying amendment. My understanding is that the people who have proposed this report are prepared to accept this. It's simply designed to make clear that certainly FACTA can say that when a department is applying bad standards in terms of whether or not something is good scholarship or good teaching, it is FACTA's role to advise the provost that he/she ought not to promote this person. When the Philosophy Department in tandem with every other major philosophy department in the country doesn't require that somebody publish a book in order to get tenure, and the History Department does require that somebody have a book in order to get tenure and the Business School has different criteria than the Hotel School, it is not the province of FACTA to say that the Philosophy Department is not requiring a book and they ought to require a book. They can write the provost and say that should be the case, but they don't apply it in the individual circumstance. This, I believe, has long been the practice of FACTA. It is clearer than the original language, and it puts the language there. My experience, when I was on FACTA, was that Bob Cooke kept reminding us, 'Now, you know that you have to apply the criteria of the department.'"

Speaker Norton: "Is there a second to this amendment?"

SECOND.

Speaker Norton: "Is there any further discussion of the amendment? Seeing none, I will call for a vote on the amendment. All those in favor, please say aye."

AYE.

Speaker Norton: "Opposed? The amendment is adopted. We now return to the main motion. Are there further comments on the main motion? Seeing none, the chair would call for a vote. I assume you are ready for a vote if there is no further comment on the main motion. All those in favor of the main motion, that is the resolution to amend the FACTA legislation, please say aye."

AYE.

Speaker Norton: "All opposed."

NO.

Speaker Norton: "The ayes have it and the motion passes (Appendix 2 – FACTA legislation as passed). The chair now calls on Associate Dean Cynthia Farina, Chair of the Ad hoc Committee on Strategic Corporate Alliances for a report."

6. REPORT FROM THE AD HOC COMMITTEE ON STRATEGIC CORPORATE ALLIANCES

Professor Cynthia Farina, Associate Dean and Chair of the Ad hoc Committee on Strategic Corporate Alliances: "You have seen me a couple of times now this year on the subject of Strategic Corporate Alliances. I will just remind you briefly of the history of this and put this long draft that you have received in a little bit of context but leave most of the time that we have for your questions and comments.

"In November we had a forum on the subject that was well attended. Shortly after that the decision was made to form an *ad hoc* committee to try to come up with a statement of principles and practices. This draft (Appendix 3) is the result of that committee's work over several months. It is lengthier than any of us expected when we started, partly because after we worked through it, we decided that it was important to try to give a fair amount of specific guidance, probably primarily to the Local Advisory Committee, if that proves to be the faculty committee most involved here. But, also we tried to set that within a framework of principles that we hoped were familiar to us, but to try to give some larger intellectual content to this.

"We were also aware, and I hope in our discussion here we keep this in mind, that this document in its final form will become part of an existing landscape. There are documents specifically on Strategic Corporate Alliances that it must be a complement to. Those are listed in the document. There is a document from the Trustees, *Considerations and Principles Regarding Strategic Corporate Alliances*, and there are at least two Cornell documents that do not originate from the Trustees, *Cornell Principles* and *The Strategic Corporate Alliance Plan*. And there are documents that more generally govern sponsored and even non-sponsored academic work on campus, *Policies and Procedures from the Office of Sponsored Programs*, *Conflict of Interest Policies and Procedures* and a lot of important stuff in our own *Faculty Handbook* on academic freedom, responsibility and things like that. Part of the challenge for our committee and I think for the faculty as a whole is trying to predict and ultimately to observe and determine whether and

how this particular form of research support is going to implicate a lot of these familiar but important principles.

"As the cover memo explained to you, this draft is a consensus document of the *ad hoc* committee with one exception and that is the section on licensing, section A4, page 8 and 9. The committee has not yet completed its discussion on licensing. What we did agree was that this language should be put before you for discussion. I will say further that I asked Bob Richardson, who has been very generous of his time on an informal basis, (nothing that he says has of course committed the Office of Sponsored Programs, the administration or anything else on this, but he has been so helpful to us) whether this language was in general in line with Cornell's current policy with respect to exclusive licensing. And it is, for whatever help that is to you. But we would very much welcome your thoughts on this, because the committee itself is still struggling with the issue of licensing.

"Additionally, I want to flag for you an issue that arose late in the committee's discussion and is only touched on briefly in the current draft. That is the issue of the probability and likely impact of the sponsor's employees being in residence in the department or program for significant periods of time during the alliance. Charlie Walcott, Elizabeth Earle and I were fortunate enough to have some time with Bob to talk about an earlier version of this draft. When we raised that question with him, he said he thought it would be unlikely, because in many departments space is at such a premium that we aren't going to be able to offer it to corporate employees. We barely have enough for ourselves. Some faculty have since mentioned to me examples, such as Xerox, where corporate employees have been in residence. So it occurs to us that there may indeed be space. In units where space is not an issue, we may see programs and departments where these alliances might be possible. Again, we could use your guidance on the likelihood as a factual matter. Is this something that we should worry about? Is there space out there? More importantly, as a matter of principle, what ought we be thinking about if we are going to have employees of a sponsor around on a regular basis? One can imagine the kinds of implications that might have. For example, pressure not to publish unpleasant results or to reveal sponsorship is likely to be greater if there are employees of the corporate sponsor working here on a daily basis. That's not to suggest anything underhanded or immoral or anything like that, it's just to understand that close working relationships will develop. What ought to be the kinds of ways we should be thinking about that?

"As I said, Bob was extremely generous of his time in reviewing an earlier draft, and in general he had very supportive things to say about the committee's work, but I do want to flag for you a very significant area of disagreement. The final

topic I wanted to touch on before opening to your observations and questions, was the subject of direct involvement by the corporate sponsor in selecting specific faculty whose research would receive support. If you had a chance to look fairly carefully at the draft, you will see that the draft contemplates that the corporate sponsor will be involved in setting the terms of the request for proposals and of course in setting up the initial goals and objectives of the alliance, but the decisions about which specific research to fund would be done through conventional academic protocols for proposal evaluation. This was something that the committee probably spent more time on than anything else, worked harder on than anything else, really trying to separate the corporate sponsor from evaluation of proposals and grant awarding. Bob told us quite frankly that that was likely to be a deal killer. For the committee this is a real problem, so I think we need to engage that issue. What are the lines that we think we can accept on that? Is there an area of compromise that we can reach on that? How do we think we can preserve our integrity in this area and still make this workable from the perspective of the donor, assuming that we can? I think I will leave it at that. I should say that I think we have everybody from the committee here, and I'm very much hoping that they will respond to your questions and comments, because they are the knowledgeable ones. I am mostly the person who put this together in writing."

Professor Sheila Hemami, Electrical and Computer Engineering: "In looking at some of the questions that were brought up here, I have a question. Does the committee have any particular examples in mind or is this just being put together thinking about these things in the abstract? My reason for asking that is a lot of the questions that you brought up and some of the issues that I have with what is in here, I would consider them differently if we are talking about relatively small sums of money that are going out. I have reviewed for PCCW (President's Council of Cornell Women) those very, very small grants. I think those are very different from, for example, if Microsoft comes in and wants to fund an entire department, and they are giving out parcels of money on the order of $200,000 a piece to fund four graduate students. So are there models in place that various schools or departments are thinking about? What is the thinking on that?"

Professor Farina: "That's an excellent question. I think where we started from was the definition of strategic corporate alliance that is in the Cornell Strategic Corporate Alliance Plan, which is at page three, footnote two. 'A comprehensive formally managed company-university agreement centered around a major, multi-year, financial commitment involving research, programmatic interactions, intellectual property licensing and other services.' Clearly, this level of both concern and monitoring makes sense only if indeed we are talking about a major, multi-year financial commitment. Part of the scope provision does try to take account of the possibility, which Bob did raise with us, that things might come to

be called strategic corporate alliances that in fact were not so major, comprehensive or multi-year, and if that were to be the case, would this make sense? Probably not. So I think there is a real significant trigger question."

Professor Hemami: "Then let me just make a follow-up comment. Having said that, I'll assume that these are major, major grants that we can use to give to junior faculty members for three years of summer salary and students and huge amounts of money. I think that a lot of the stuff here is not strong enough. 'Interference with publications should be minimized?' No. It should not be there at all. 'Interference with academic freedom should be reported to the dean who will counsel remedies and track it?' No. I'm in engineering; I work with a lot of companies, and, man, they want to screw you for everything they can get. I don't think this offers enough protection."

Professor Richardson and several others: "I agree."

Professor Farina: "I'm happy to have people from the committee speak up here. One of things that we understand about this is that it is not focused on particular individuals; the notion is supporting a large amount of research that will cover multiple individuals."

Professor Hemami: "If you are talking about huge amounts of money, for example, to fund a new initiative in some type of bizarre type of physics that they just invented. The Physics Department could say, 'Oh, we are going to hire five young people and give each a substantial amount of money.' So now we are talking about lots of money for which presumably the company is going to want their name on everybody's business card, let alone the papers. The students will have to name all their children 'Corning.'"

LAUGHTER.

Professor Risa Lieberwitz, Industrial and Labor Relations: "I'm on the committee, and I really welcome these kinds of comments, because it seems to me that if there are things in this document that people think should be strengthened in order to protect academic freedom and to protect our independence, that it is very important for us to hear that from the Senate, because this way the committee can really go through the process that we anticipate, which is to put this out in front of the Senate to have it fully discussed. If there is a feeling that it should be strengthened, whether based on people's experiences or their anticipating problems that could come up, I think it is going to be really important to go back to the committee, talk about the various issues, and then if we have some questions to coordinate the committee work in that area, that that really is very helpful for us as a whole body. At some point

we will bring it back for a vote. If there are ways to strengthen it, we vote on it and we then go to the administration, it makes our position much more strong and united if we have the full senate. So I think these kinds of comments are very, very helpful, and I hope other people will bring them up."

Professor Farina: "It would be really helpful if you could flag for me—maybe you could e-mail me—the particular things. Because we were actually working to try to make this pretty bullet proof, so if there are specific places that you think we haven't done it, let us know. CRF7."

Professor Bob Richardson, Vice Provost for Research: "I want to say that I absolutely agree with your comment. In The *Faculty Handbook* the discussion of sponsored programs is significantly stronger, particularly in this protection of publication. One of the more time consuming jobs I have is being the absolute 'no' for the university. There are corporations and government agencies increasingly that come through and want to have higher approval. No, absolutely, no we won't, no matter how much money the individual loses. We have a very strict rule in our *Faculty Handbook*, ninety day maximum for review by the corporation. I am in total sympathy with your point of view on that."

Professor Ted Clark, Microbiology and Immunology: "In looking through this, the one section that really did catch my eye was the one that you alluded to earlier about corporate representatives should not participate in the actual selection of faculty in the process of funding. That does seem like a deal breaker to me at least. I'm wondering what the logic was among the people that blocked that?"

Professor Farnia: "I am definitely going to defer to the committee on this, because this was, as I say, the thing that we probably had the most discussion about, and the committee feels very strongly. Do you want to start us off, Peter? And then John."

Professor Stein: "It's hard to answer that question in just a few words, but when you read in the literature, there are people who write that these strategic corporate alliances do essentially threaten the traditional role of universities as a source of basic science which is publicly available to all. This isn't just a little thing; this is a big thing. The danger that many of us saw that we are trying to protect ourselves against is the notion that the university, in this case Cornell University, becomes essentially a low cost research laboratory for the corporation. That does seem like a very serious danger.

"It of course is a reasonable thing for a corporation to fund research in a particular area that they are interested in, and you could make reasonable

arguments for the delay in publication and so forth. But it seemed, at least to me, that one crosses the line of who decides exactly what research is funded, one crosses that line of the university being an independent research organization whose funding decisions are driven by the science that is involved and how important it is versus decisions that are driven by how much it will aid a particular commercial product, which is about to be introduced. In fact, it should be reasonable for the sponsor to identify the science that they will fund rather specifically as long as it's made publicly and the basis for deciding on what proposals to fund are namely what science they are looking for. But they should not be deciding to fund particular grants or not fund particular grants. Some of the dangers are that people are put under pressure to a) do the research that is necessary to market the particular drug or b) to report that that drug is efficacious when in fact it is not, because that becomes a condition of their being funded. I mean that is obviously a hypothetical string that gets strung out, but one way of protecting against that it seemed was to simply take the commercial interest of the corporation out of the individual decision to fund a particular piece of research."

Professor Clark: "I guess the question then becomes who would decide? If a corporation wouldn't decide whom to fund, then who would decide?"

Professor Farina: "The structure that the plan sets up here, which is actually part of the Corporate Strategic Alliance Plan that the university has, is a joint steering committee that would have Cornell and corporate representatives. What the plan contemplates is a joint steering committee that would put out requests for proposals, would get proposals and then would decide. There are no details in the Cornell plan about how that would all happen. What the committee did was then basically flesh that out with one vision of how that would happen, and the vision in this draft is a vision that says there are company and Cornell representatives, but where the company participates as an equal player is only in the request for proposals, in putting out the kind of thing that it wants and then what happens after that is peer review basically takes over. It's the academics who decide what proposals get funded under that RFP. It's up to the company to specify what kinds of projects it wants. It is up to the academics to decide what are good projects. That is the way it would work under this proposal."

Professor John Guckenheimer, Mathematics: "Speaking for myself but as a member of this committee engaged in these discussions, I think the dividing line on this particular issue for me is very much the nature of what is a strategic corporate alliance. Suppose corporation X wants to come to Cornell and spend $5 million a year supporting research of the faculty here. If they pick out a dozen individuals that they are going to give money to, the Office of Sponsored Programs would then review each of the particular agreements. And I'm very

thankful to have Bob Richardson sitting there to say no if the corporation is asking for terms that the university finds really objectionable.

"On the other hand, if there is a single strategic corporate alliance that is approved in advance and then money is to be distributed to Cornell faculty members without each of those individual agreements then going through this kind of review process, then at that point, I want the fiduciary responsibility in the decisions to be in the hands of Cornell faculty rather than in the hands of the corporate representatives who are part of the steering committee in this sort of process. That is, I don't want one overall agreement that allows an individual from corporation X to be here inside Cornell, and there is some sort of overall agreement allowing their corporation to be able to give money to faculty members effectively whom they choose within general terms. If it's really the corporation making the money, I want to see each of the individual agreements be subject to much more stringent review than is likely to be the case under the umbrella of the strategic corporate alliance."

Professor Farina: "I asked Bob to give you the explanation that he gave to Charlie and I about what he anticipates to be the practicalities of this."

Professor Richardson: "I would like to respond to John first. My model is from things that we know work very, very well, that is federally sponsored job centers. The successful ones I see are CCMR and CNF; we have half a dozen major ones on the campus, and how do those work? A group of faculty who are interested in a particular subject will get together, and they will have a mixture of senior people, who are well known and stars in the field, and junior people who they want to bring along and train. They will put into it a request for equipment and so forth. They will make a proposal and say in the ideal case where the least strings are attached. With NSF there are more strings than you might think. Then there is a review that starts, that's a scientific peer review. That's the part that you might say is different, but then there are terms and conditions for how those funds get turned over to the university. The management is done by people within the university, but it's certain death (and you have almost annual reviews) if you don't more or less do what you said you were going to do and have the people who showed up at the first site visit and gave the flashy show participate in it.

"Let's talk about trying to have a strategic corporate alliance agreement. There is a salesmanship there. We are not going to have, at least we haven't yet, all kinds of corporations coming to Cornell and banging on our door saying, 'Hey Cornell, we want to throw money on a subject because it is important to develop.' No, what we have to do is persuade somebody that we offer some skills and research capabilities, and we have a compatible overlap in Cornell research interests and

the things that corporation wants to do. I can imagine starting two ways. I think the ones that are going to be effective are going to start off at the ground level, where there will be Cornell faculty in a couple different departments that will know a bunch of different people in a corporation and will develop it. There is also the vision that Inge and the Development Office will start it out. In any case, there will be a salesmanship part where we would have a group of people that come from the corporation to visit Cornell, and we'll have some of our superstars and say, 'We have all this gee whiz, wow stuff that we want to do, and it has a certain amount of overlap with the interest of your corporation.' So they say, 'Hey, that would be good. We would like to have a working relationship with you all because there is a compatibility of interest.' Now, in the language of this [draft], if you say ok we are going to have this agreement and then say, 'But you guys can't pick which research is going to get done. You just send us the $10 million, and we'll just do it,' there's no company on earth is going to agree to that."

Professor Alan McAdams, Johnson Graduate School of Management: "But that's not what they are saying."

Professor Richardson: "It sure was."

Professor McAdams: "May I comment? What I heard my colleague saying is that it is not that the company providing the funds can't identify the kinds of research that will be done, but that we don't want the company telling Cornell which people will do the research."

Professor Richardson: "We had our superstars up there, and there is a world expert in the linear dynamics of unusual widgets, and he is the leader in selling this thing. If he isn't going to get supported, the corporation is going to say, 'Go to hell.' Sorry for the technical term."

LAUGHTER.

Professor McAdams: "It seems to me that is done informally, and that can be achieved. I agree with my colleagues that the academic people should be selecting which of the actual projects will be done within the overview and which . . . ."

Professor Richardson: "OK, Alan. Let's go back to the NSF. When the funding comes in, the people that wrote the proposal have their own internal committee, and they decide on how the center will best survive and how to allocate resources. This describes having a group of faculty in no way connected to it

reviewing the scientific merit of the proposals and selecting on that basis, not the people that were involved in developing the proposal."

Professor McAdams: "If the faculty people who are part of the alliance are the ones who are selecting. . . ."

Professor Richardson: "That's not what it says in this draft."

Professor William Arms, Computer Science: "I have actually got a lot of experience in leading these sorts of projects. I think the most important comment was the one John Guckenheimer made. He said that there are several very different models. I think the model that seems to be envisioned by this paper is a very unusual one, which I have never seen—the idea of a corporation giving money for essentially a grants program. I could list the models that I have seen that work, and I could list the models that I have seen fail, but I think that is inappropriate.

"I think the key thing is that there are some principles that apply all the time. They are principles of publication, how one deals with trade secret information of the corporations, and there is the fact that the faculty should never be under pressure to do research that they don't want to do. That may be the most important. An understanding of the publication rules that may be different for faculty and Ph.D. students who have got to get their work published very quickly. I actually think that the model here, this discussion about who should review internal proposals, is very unlikely actually to be a real example. The successful examples I have seen have been cases where there has been genuinely joint research. In one state I was in charge of a group that had ten IBM employees as part of the group. It was like doing joint research with Columbia University only one did it with IBM. There are many models and there are some principles that apply to them all, and I think we should focus on those principles."

Professor Brian Chabot, Ecology and Evolutionary Biology: "I agree with Bob's assessment. I think this is going to be a deal breaker, because right now we are literally getting hundreds of grants sponsored by outside corporations and other groups. It is not just corporations that are giving us money with the intent of benefiting from the outcome of that research. They already do this, and they are the only ones choosing."

Provost Martin: "What about the farmers of New York? Are we going to apply this to them? Seriously."

Professor Chabot: "Or small communities or whatever. They have specific vested interests in wanting us to do this research because it is of practical importance to them. It's just continuity from the corporate model. But they can already do this, so why would they give up this privilege to create this kind of alliance?"

Professor Lieberwitz: "In response to some of the comments, the way that the university first proposed these strategic corporate alliances was that in fact there was something different about them. Yes, there were some similarities, speaking now in terms of faculty that already had funds coming in anyways, but that the scale of these and that is where we look at the definition, is contemplated as being much bigger and broader in terms of the scope, perhaps supporting entire research programs in some ways and involving lots of faculty.

"We were approaching this realizing that many of the principles that we are addressing have a resonance in other areas, but also recognizing that if the strategic corporate alliance is in fact something that is different in terms of its scale that it should also be addressed differently to protect certain principles. In contrast to the Berkeley/Novartis deal, which of course was very notorious, we wanted to avoid some of those problems that created that notoriety. For example, one of the things Berkeley/Novartis had were corporate representatives on the committee that made the decision on who got the grant. This really violated the notion of university independence, and that principle is what gives legitimacy to the university, and we wanted to maintain that legitimacy. Academic freedom and university independence requires a wall between funders and the university. This is a wall of separation for the university and industry that we felt was essential to protect in order to protect the work that we do and the public trust in it.

"I would like to respond very briefly in terms of Bob's statement about comparing this to public funding. The public funding is in fact a different issue. We could address the question of public funding, but it is not public funding given to us to make profits for the government. What we are talking about here is a corporation that wishes to make profits and its interest is private; it is not public interest."

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Professor Farina: "I bet you can see why we have been working so long on this."

Speaker Norton: "The provost wants to make a comment on this, and then we have reached the end of the time for this agenda item."

Provost Martin: "I just want to say that I hope the committee will take into account all of the different practices that will be affected by the principles that you inscribe for this. If the boundary is whether you are a corporation or profit making organization of any kind or not, then that's one thing. But I'm glad Brian raised a question, because I've been sitting here after reading through this for the past few days thinking that much of what goes on in the College of Agriculture and Life Sciences is disqualified by this principle. Much of what is done in the Vet School is disqualified by this principle. Any money that comes from labor unions for specific kinds of work that is done in ILR is disqualified by this principle."

Professor Lieberwitz: "But those aren't strategic corporate alliances by definition."

Provost Martin: "As Bob said, you can call all kinds of things a strategic corporate alliance. You give the Novartis example always, Risa, and I understand why. It is a great example of how to do things badly, but there are also the examples of money that we get from labor unions, the money we get directly from the Legislature for education to go to specific faculty and where there is no peer review whatsoever. I don't want to just argue with you about it. I want to say that you could come up with and pass principles that will affect all kinds of programs on campus that I don't think you intend to affect."

Speaker Norton: "We have reached the end of the time on this. Anyone with further comments should e-mail Professor Farina at CRF7. Send your comments to CRF7, and we will see this again. The chair now wishes to call on Professor Jenny Gerner to present a motion."

7. RESOLUTION ESTABLISHING A GRADUATE FIELD AND PH.D. PROGRAM IN COMPUTATIONAL BIOLOGY

Professor Jennifer Gerner, Policy Analysis and Management and Chair, Committee on Academic Programs and Policies: "I am the chair of the Committee on Academic Programs and Policies. This is a motion that we are presenting to the Faculty Senate. You can see and read it. The graduate field of computational biology has been proposed; the general committee in the

Graduate School has approved it. It now needs to go to the Department of Education for approval, and before it can, you have to say yes. So we have brought you this motion, and I think David Shalloway is here in the event that you have questions about it."

Speaker Norton: "Are there questions about the proposal to establish a graduate field and Ph.D. program in computational biology? I assume you have all read the information that we got. Yes, sir."

Professor Mike Lynn, Hotel School: "I'm sorry. I don't like to parade my ignorance, but what is computational biology?"

Unknown: "Biology and computers."

Professor David Shalloway, Molecular Biology and Genetics: "It is at the interface of the two. It encompasses things that you've heard about like genomics. When you start getting these large data bases, whether it is satellite imaging of the earth's biosphere, whether it's how the heart moves when you get an image from an MRI, it requires a very different academic program. Almost all of our biology programs are heavily experimental and don't have the flexibility to provide the type of theoretical training that is needed."

Speaker Norton: "Are there other further of comments? Seeing none, the chair assumes that you are ready for a vote. All those in favor, please say aye."

AYE.

Speaker Norton: "Opposed? It passes.

Resolution to Establish a
Graduate Field and Ph.D. Program
In Computational Biology

WHEREAS, the Committee on Academic Programs and Policies has reviewed a proposal for the establishment of a Graduate Field and Ph.D. Program in, and

WHEREAS, the Committee recommends creation of this new graduate field and Ph.D. program,

THEREFORE, BE IT RESOLVED that the Faculty Senate approves the establishment of a Graduate Field and Ph.D. Program in Computational

Biology and urges the administration to place this on the agenda of the Board of Trustees for approval.

Since there are no Good and Welfare…"

Professor Lieberwitz: "Since we have a little bit more time, I think it would be worth going back, because the provost has made a statement that I think should be responded to by members of the committee. I do think that because we ended on such a rushed note that it would be helpful to actually talk a little bit more about that issue."

Speaker Norton: "Well, it is true that we have seven more minutes before we must adjourn."

Unkown: "Do we have unanimous consent to do that?"

Speaker Norton: "To what? To adjourn or say yes to her request."

Unknown: "To say yes."

Professor Arms: "I would just point out that the chair of the working group has left, and it seems inappropriate to carry on this conversation in her absence."

Professor Lieberwitz: "We'll tell her what we said."

Professor Stein: "Probably Professor Arms would not give unanimous consent."

Professor Arms: "That is correct, sir."

Speaker Norton: "Are you moving to adjourn, Professor Stein?"

Unknown: "I move the meeting be adjourned."

Speaker Norton: "There is a motion to adjourn. All in favor say aye."

AYE.

Speaker Norton: "Opposed?"

NO.

Speaker Norton: "The ayes have it. We are adjourned."

040414-9980S

Respectfully Submitted,

Cynthia Farina, Associate Dean and Secretary

040414-9981S

Appendix 1

Resolution to Amend FACTA Legislation
April 1, 2004

WHEREAS, the Faculty Advisory Committee on Tenure Appointments (FACTA) was created by the Faculty Senate on November 12, 1997 and its charge was revised October 11, 2000, and

WHEREAS, the current members of FACTA in consultation with Provost Carolyn Martin have unanimously recommended that the legislation be amended in order allow for more expeditious handling of external lateral appointments, and

WHEREAS, the current members of FACTA in consultation with Provost Carolyn Martin have unanimously recommended that the legislation be amended : (a) to clarify the relevance of department/college standards by referencing the Faculty Handbook; (b) to make explicit FACTA's ability to comment on problematic unit standards; and (c) to clarify FACTA's role in determining sufficiency of the file,

THEREFORE, BE IT RESOLVED, that the following amendments be made: (additions are underlined, deletions appear with strikethroughs in brackets)

Opening Paragraph

The Faculty Advisory Committee on Tenure Appointments (FACTA) is established to advise the Provost on [~~all~~] proposed promotions to [~~and appointments with~~] tenure, as well as proposed denials of tenure by a dean after a positive recommendation from the department. Review of tenure recommendations for those who have achieved tenure at another institution will be at the discretion of the Provost.

Procedures (1st paragraph)

The committee will determine whether the documentation and the evidence in the tenure file is sufficient to show[~~s~~] that the candidate has demonstrated excellence in [~~scholarship, teaching and public service at a level warranting appointment to tenure at Cornell~~] in carrying out the responsibilities of the position, and unusual promise for continued achievement. More detailed information on tenure criteria can be found in Section 2.3 of the Faculty Handbook.

In particular, the committee will consider the evaluations made by the candidate's peers and students, as well as those of outside reviewers and the ad hoc committee. The committee will also take into consideration the academic standing of the candidate's outside reviewers, as well as any special considerations that might pertain in the case of those candidates with appointments in professional schools, performing arts or extension

programs. In coming to its conclusions, the committee will limit itself to assessing the strength of the candidate as summarized by prior substantive reviews. The committee will not solicit additional reviews; its judgment will be based on the information in the candidate's file. University financial and other non-academic considerations will play no role in the committee's deliberations. The committee should ensure that tenure appointments are consistent with Cornell's high standards, but that no faculty member is turned down for tenure wrongfully, capriciously, or without reference to the responsibilities of the position or the mission of the college.

If, in the course of reviewing an individual case, the committee becomes concerned that the standards of a department, or a school or college, are inconsistent with Cornell's high standards or otherwise not in the best interests of the university, it shall report this separately to the Provost. FACTA will not use these concerns in reaching a tenure recommendation for the individual involved.

Appendix 2

FACULTY ADVISORY COMMITTEE ON TENURE APPOINTMENTS

The Faculty Advisory Committee on Tenure Appointments (FACTA) is established to advise the Provost on proposed promotions to tenure, as well as proposed denials of tenure by a dean after a positive recommendation from the department. Review of tenure recommendations for those who have achieved tenure at another institution will be at the discretion of the Provost.

Composition of the Committee

The committee will be composed of fifteen tenured faculty members, one elected by the professorial faculty in each college and five nominated by the University Faculty Nominations and Elections Committee and appointed by the Faculty Senate. The five faculty nominated will be selected in such a way as to achieve appropriate balance among the various schools, colleges, tenure-granting centers, disciplines, and job functions (including extension) to make the committee of fifteen representative of the diversity of the faculty of the University with due regard to race, gender and ethnicity. Members will serve for two years. Terms will be staggered so as to replace half of the members each year. In addition, the appointments within a given year shall also be staggered among the review cycles to minimize the transitional impact upon the committee[1]. Vacancies caused by the resignation of a college representative will be filled by a vote of the college faculty or by an elected college committee, or by the Nominations and Elections Committee for a non-college representative. No member of the committee will serve for more than 3 consecutive years. The Dean of the Faculty will be a non-voting, administrative chair of the committee. The chair will strictly refrain from taking part in the committee's decision making. The role of the chair will be limited to facilitating timely decision making and ensuring that the committee adheres to its charge and mandated procedures.

Procedures

The committee will determine whether the documentation and the evidence in the tenure file are sufficient to show that the candidate has demonstrated excellence in carrying out the responsibilities of the position, and unusual promise for continued achievement. More detailed information on tenure criteria can be found in Section 2.3 of the Faculty Handbook.

In particular, the committee will consider the evaluations made by the candidate's peers and students, as well as those of outside reviewers and the ad hoc committee. The

[1] The Nominations and Elections Committee will provide a procedure to accomplish this additional staggering within the year.

committee will also take into consideration the academic standing of the candidate's outside reviewers, as well as any special considerations that might pertain in the case of those candidates with appointments in professional schools, performing arts or extension programs. In coming to its conclusions, the committee will limit itself to assessing the strength of the candidate as summarized by prior substantive reviews. The committee will not solicit additional reviews; its judgment will be based on the information in the candidate's file. University financial and other non-academic considerations will play no role in the committee's deliberations. The committee should ensure that tenure appointments are consistent with Cornell's high standards, but that no faculty member is turned down for tenure wrongfully, capriciously, or without reference to the responsibilities of the position or the mission of the college.

If, in the course of reviewing an individual case, the committee becomes concerned that the tenure requirements and criteria of a department, or a school or college, are inconsistent with Cornell's high standards or otherwise not in the best interests of the university, it shall report this separately to the Provost. FACTA will not use these concerns in reaching a tenure recommendation for the individual involved.

A. Positive Recommendations by the Dean

Four members of the committee chosen at random will read each file. Each member will independently prepare a written evaluation of the case not to exceed one page in length. If all four members are positive with no concerns or reservations, a positive recommendation will be sent to the Provost with copies of the four reviews.

If any one of the four has reservations, each member of the full committee will then write a brief, preliminary evaluation which in no case can exceed one page in length. After these have been circulated, the full committee will meet for discussion and a vote. Each committee member will vote yes or no on the issue of whether the tenure file presents convincing evidence (based on an assessment of the strength of the candidate as summarized by prior substantive reviews) that the candidate has satisfied the requirements for tenure contained in the legislation or by-laws of the candidate's school or college.[2] The committee's decision, including the individual evaluations, revised on the basis of the discussion as each committee member sees fit, will be sent to the Provost. Committee members must be present in order to cast a vote on a candidate. The committee will make its recommendations within four to six weeks of receiving a file.

All members of the full committee shall have access to all recommendations sent to the Provost.

[2] For various reasons, the file of a candidate deserving of tenure may not demonstrate that fact. Thus a vote of No on the issue as stated may not mean that the candidate does not deserve tenure.

If the Provost rejects the Committee's recommendation, the faculty requests the Provost meet with FACTA to discuss the disposition of the case. This meeting should occur, if possible, prior to Trustee action.

B. Negative Recommendations by the Dean

If a dean reaches a preliminary decision to deny tenure to a non-tenured faculty member whose promotion to tenure has been recommended by his or her department, the dean will forward the file, together with an explanation for the preliminary decision to the Provost. If the Provost does not have any concern or reservation about the dean's proposed action, she or he will so inform the college dean. If the Provost does have any concern or reservation, she or he will forward the file to the committee, who will consider it at a meeting of the full committee, following the procedures used by the committee in cases following positive recommendations by the dean. After receiving the committee's recommendation, the Provost will consult with the dean. Until the dean has received a response from the Provost, the dean's decision will be considered provisional. The University Level Appeal Procedure shall not commence until the dean's decision is final, and is not supplanted in any way by FACTA consideration.

Previous Involvement or Conflict of Interest

If any member of the committee has voted or otherwise participated in the tenure decision at an earlier stage he/she will recuse him or herself from the case. If any member of the committee has any relationship with the candidate that might significantly affect his or her opinion, the nature of this potential source of bias must be described in the member’s written evaluation of the candidate. A member who has a relationship that falls under the nepotism policy (Faculty Handbook, p. 86), will recuse him or herself from the case.

Report to the Faculty Senate

The committee will report the number of cases considered and the number of positive and negative recommendations annually to the Faculty Senate. This report shall not divulge case-specific information.

The original was adopted by the Faculty Senate, November 12, 1997; amended May 12, 1999; amended October 11, 2000; amended April 14, 2004.

Appendix 3

To: Members of the Faculty Senate

From: Ad hoc Committee on Strategic Corporate Alliances

The attached statement of proposed principles and best practices regarding strategic corporate alliances represents several months of information gathering and thoughtful discussion by our committee. We have had the benefit of informal consultation with knowledgeable people in the administration, which has revealed much common ground and some areas in which we may ultimately have to agree to disagree.

This draft -- with the exception of one section, A.4. Licensing -- represents the consensus of all the members who have taken active part the committee's discussions (listed below). (The committee has not completed its discussions on Licensing, but is generally agreed that something on the topic should be included for your discussion.) We believe the appropriate next step is broader vetting of the draft through discussion by the Senate, to be followed by more formal consultation with appropriate administration officials.

So far as we can determine, no other university faculty has attempted to examine so comprehensively the implications of these arrangements, and to specify in advance a set of guiding principles and best practices. It is to Cornell's credit that both the administration and the Board of Trustees have already issued statements addressing some of the questions raised by strategic corporate alliances. This Statement continues, and extends, the process of institutional engagement with these important questions.

Elizabeth Earle, Plant Breeding, Faculty Trustee
John Guckenheimer, Mathematics
Risa Lieberwitz . Industrial Labor Relations
David Levitsky, Nutritional Science
David Pelletier, Nutritional Science
Peter Stein, Physics, Faculty Trustee
Elaine Wethington, Human Development
Steven Wolf, Natural Resources

Charles Walcott , Neurobiology & Behavior, Dean of the Faculty
Cynthia Farina, Law, Associate Dean of the Faculty, Chair of the Ad Hoc Committee

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D*R*A*F*T* 4-1-04

FACULTY STATEMENT OF PRINCIPLES & BEST PRACTICES CONCERNING STRATEGIC CORPORATE ALLIANCES

INTRODUCTION

Historically, research universities and for-profit corporations have had very different goals, and very different ways of organizing to achieve those goals. The goals of the research university have characteristically included the creation of new knowledge and its broad dissemination. The university typically pursues these goals by affording faculty the freedom to define their own research agendas, and by protecting unrestricted access to the results of scholarship and research. The primary goal of the for-profit corporation has characteristically been to generate a return on investment for its shareholders. The corporation typically pursues this goal by channeling the efforts of its employees towards the objectives defined by corporate leadership, and by utilizing the intellectual property its employees produce for commercial purposes.

While acknowledging these distinctive characteristics, we also acknowledge that harnessing the methods of universities and corporations to work in tandem towards a single purpose could yield great social benefit. Indeed, Cornell is well-attuned to the possibilities of such collaboration. Whether expressed in Andrew Dixon White's revolutionary commitment to pairing technological with classical education, or in the land grant mission to couple research with the practical education of society, Cornell has a rich history of working with both public and private research sponsors. But it is equally part of Cornell's history to guard academic values jealously. For example, it has refused to sacrifice public access to new knowledge by permitting classified research on campus[3]. It has been a strong proponent of peer review in allocation of research funds, declining offers of earmarked funding from Congress that lacked this hallmark of academic integrity. In each instance, Cornell has refused to compromise the values of open access and research autonomy in exchange for financial support.

Against this background, the faculty has considered the Strategic Corporate Alliance Plan. As modes of funding for scientific research change, the faculty both appreciates the need to find new sources of support for the research mission of Cornell and applauds the creativity and initiative the administration has shown in pursuing this idea. Faculty opinion is divided as to whether, in the end, Strategic Corporate Alliances

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[3] See Cornell University Guidelines on Sensitive and Proprietary Research, adopted by the Cornell Research Council on May 20, 1985, reproduced in Faculty Handbook at 91 ("Given the open nature of Cornell University, research projects which do not permit the free and open publication, presentation, or discussion of results are not acceptable. ... In particular, research which is confidential to the sponsor or which is classified for security purposes is not permitted at Cornell University.")

(SCAs) will benefit the university.[4] Some fear that the corporate and university cultures are too incommensurate for true partnership. Others are more optimistic and believe that mutually beneficial collaborations are possible without compromising Cornell's academic values and mission. In any event, there is broad agreement that Alliances must be carefully managed at all stages: negotiation, initial implementation, ongoing oversight, post-hoc assessment and, if warranted, policy and practice modification. Attention to the following principles and practices will help ensure that Cornell retains its academic integrity as it enters into these new collaborations.

It will be noted that many of these principles and practices are germane to sponsored research other than SCAs – and, in some instances, to all research. Indeed, study of this topic has suggested areas in which the faculty might be well advised to examine the adequacy of existing university policies and/or to formulate new ones.[5] Nevertheless, the fact that the administration is actively pursuing SCAs makes it imperative that faculty guidance on corporate alliances not be delayed pending possible broader policy review.

Perhaps more important, good reasons exist for concluding that concerns about academic freedom and responsibility, conflicts of interest, etc. – although present in many research settings – are heightened in the context of SCAs. These reasons include: the potential scale and comprehensiveness of SCAs; the role of the corporate partner in management of the alliance and allocation of research funding through it; and the contemplated presence of the corporate partner's employees in the participating department/program on a day-to-day basis. Thus it is important that those responsible for negotiating, approving, and monitoring SCAs focus specifically on such values as academic freedom and avoiding conflicts of interest, and be more than usually sensitive to protecting them within the context of each alliance.

Several of the principles and practices called for here are also endorsed in the following documents:

- Trustee Document: Considerations & Principles Regarding Strategic Corporate Alliances (May 22, 2003), issued by the Research Subcommittee of the Board of Trustees
- Cornell Document: Current Cornell Principles to Guide Development of Strategic Corporate Alliances (undated)
- Cornell University Strategic Corporate Alliance Plan (7/30/03)

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[4] "A strategic [corporate] alliance is a comprehensive, formally managed company-university agreement centered around a major, multi-year, financial commitment involving research, programmatic interactions, intellectual property licensing, and other services." Cornell University Strategic Corporate Alliance Plan (7/30/03 version) at 1.

[5] Compare Trustee Document: Considerations & Principles Regarding Strategic Corporate Alliances ¶ IIa ("A review of the University's intellectual property right policies ... should be undertaken, optimally before any major strategic alliances are concluded").

To the extent that the trustees, the faculty, and the administration have arrived at similar understandings of the important considerations in assessing any potential SCA, the faculty is encouraged by this degree of consensus. This Statement, however, addresses several issues that are not addressed in any of the above documents. Moreover, in a small but significant number of instances, this Statement takes a position that is, or may be, at variance with the position taken in the Cornell University Strategic Corporate Alliance Plan (7/30/03).[6]

It is hoped that this Statement will form the basis for even broader consensus about applicable principles and practices among those responsible for targeting potential corporate partners, negotiating the terms of SCAs, giving final approval to the agreements, and overseeing their implementation. As paragraph V of the Trustee Document appropriately recognizes:

> Faculty should be deeply involved in the planning, execution, and monitoring of any plan for a specific strategic alliance, as well as being involved in and committed to the creation of the plan.

SCOPE OF THE STATEMENT

Because the Cornell Strategic Alliance Plan (7/30/03 version) defines SCAs as "*comprehensive*" agreements centered around "*major*, multi-year financial commitment[s]," it is the intent of this Statement that its Principles and Practices apply to all SCAs.

If, however, experience reveals that some alliances are in fact less comprehensive in their scope and/or sweeping in their impact, it may be appropriate for LAC to suggest a threshold for triggering the full procedural review required here. In that event, careful review of this Statement will be necessary to identify provisions that apply irrespective of size of the alliance.

By the same token, the Principles and Practices called for by this Statement should not be avoided merely because a private research support arrangement is not formally labeled a corporate strategic alliance.

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[6] Those instances are flagged in the text below. Sometimes, the text of the SCA Plan is *capable* of being interpreted in a way consistent with this Statement, but inconsistent interpretations are also possible.

PRINCIPLES & BEST PRACTICES
TO BE CONSIDERED DURING THE TARGETING, NEGOTIATION, APPROVAL, IMPLEMENTATION, AND OVERSIGHT OF STRATEGIC CORPORATE ALLIANCES

A. THE POWER TO CHOOSE RESEARCH TOPICS FREELY AND THE ABILITY TO PUBLISH RESULTS PROMPTLY AT THE TIME OF ONE'S CHOOSING, WITHOUT REGARD TO OUTCOME, ARE BASIC ELEMENTS OF ACADEMIC FREEDOM.

1. Research Autonomy Should Be Safeguarded.[7]

Autonomy in selecting the topics and direction of research is a defining distinction between holding a faculty appointment, and working as a non-academic employee or as a consultant for hire. Obviously, no faculty member or graduate student should be coerced into participating in any project funded by an SCA.[8] But research autonomy will not be preserved merely by prohibiting direct coercion. Rather, the entire circumstances of the department/program must be evaluated to ensure that there remain sufficient institutional resources and support to allow the flourishing of research not allied with the SCA.

To be sure, constriction of research freedom by the pressure of donor preferences is not unique to SCAs. Unless a gift is unrestricted, sponsored research (public and private) always forces the researcher to choose a project of interest to the sponsor. However, the potential magnitude and comprehensiveness of SCAs substantially enhances the threat. Therefore, the key question is whether the SCA occupies so much of the department's/program's potential research capacity that it crowds out non-conforming research agendas.

An SCA should be approved only if faculty within the department/program will, as a practical as well as theoretical matter, retain a sphere of freedom to pursue research topics of their own choosing – either within the SCA or by seeking alternative support for such projects. Factors relevant to this assessment include:

(a) the proportion of department/program faculty expected to receive all or most of their funding through the SCA;

(b) the magnitude of any unrestricted funds available within and outside the SCA;

(c) the proportion of department/program physical, administrative, support, and other resources devoted to SCA projects;

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[7] Compare Trustee Doc: Considerations & Principles ¶ II.1("The academic independence of the University and the integrity of the Cornell name will be paramount.")

[8] Compare Trustee Doc: Considerations & Principles ¶ II.4 ("Faculty participation in any alliance, as outlined, will be voluntary."). See also id. ¶ VIII.1.

(d) the narrowness or breadth of the type of projects fundable through the SCA;

(e) departmental/ program commitments to funding diversity of research beyond the SCA;

(f) whether the success of the SCA has been identified as one of the strategic goals of the department, thereby putting undue pressure on faculty to take part in it;

(g) likely effect of the SCA on projects/programs traditionally conducted in the public interest.

Particularly in light of these concerns, the faculty commends the administration's commitment to obtaining, in the SCA agreement, both full recovery of overhead costs and a philanthrophic portion of funding.[9] The former is essential to ensure that other Cornell resources are not covertly underwriting the SCA and so exacerbating the problem of crowding out. The latter can affirmatively expand the sphere of research freedom if it is channeled to support meritorious projects that do not readily attract sponsors..

2. RESTRICTIONS ON RELATIONSHIPS BETWEEN FACULTY OR STUDENTS AND "COMPETITORS" OF THE CORPORATE PARTNER SHOULD BE MINIMIZED.

Agreeing to restrict faculty or student relationships with "competitors" of the corporate partner both shrinks the sphere of potential alternative research support and inhibits the public dissemination of knowledge that is a central part of the university's traditional mission. Therefore, such promises should be made only sparingly, and should be very narrowly drawn.[10] In particular:

(a) The group of "competitors" should be *defined in advance* at the time of entering into the SCA, should be *as limited as possible*, and should in any event include *only for-profit* entities.

(b) The "when" should be very clear, covering only work done *simultaneously* for the corporate partner and the competitor.

(c) The "who" should be very clear, covering only the *same* faculty member or graduate student.

(d) The "what" should be very clear, covering only *similar* work as defined in

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[9] See Cornell SCA Plan at 6, 8.

[10] Compare Cornell SCA Plan at 6-7: "Among the benefits Cornell may offer companies are: ... Agreement that Cornell will not enter into research sponsored by competitors that involves the same investigator and similar work."

advance at the time the faculty member's project is funded through the SCA.

Legally justified claims to protect trade secrets or similar proprietary data from competitors can be more broadly recognized, but the scope of claimed protected material should be clearly identified in advance whenever possible.

In a related but more subtle area, it is important that commitments in an SCA to "facilitate" access by the corporate partner to Cornell faculty and students[11] not become the effective equivalent of discouraging such access to the partner's competitors. A properly conceptualized SCA is a collaboration supporting academic research of interest to the corporate sponsor – it is not a joint venture in which a Cornell department/program becomes a remote research facility "belonging" to the sponsor.

3. INTERFERENCE WITH PUBLICATION SHOULD BE MINIMIZED.

Any censorship of the content of publication by the corporate partner (beyond legally justified claims to protect trade secrets or similar proprietary data) is obviously unacceptable. However, even "first look" rights can threaten academic freedom and inhibit public dissemination of knowledge. In some fields or sub-fields, timing is so critical that an enforced delay of even 30 days can be significant, and 90 days can be disastrous. Moreover, the right of delay is susceptible of being misused to waylay undesirable results.

Therefore, granting "first look" rights should be understood as undesirable from the University's perspective.[12] Rather than being routinely offered as part of an SCA,[13] they should be regarded by University negotiators as a *significant* concession that will made only for good and sufficient reason. Moreover,

> (a) To minimize disputes over publishability and to protect graduate students, the scope of claimed proprietary or other protected material should be clearly identified in advance whenever possible.[14]

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[11] See Cornell SCA Plan at 7: "Among the benefits Cornell may offer companies are: ... Facilitated access to facilities, faculty and students."

[12] Compare Cornell University Copyright Policy (adopted by Board of Trustees Executive Comm., 6/28/90) ("As a matter of principle and practice, the University encourages all members of the Cornell community to publish without restriction their papers, books, and other forms of communication in order to share openly and fully their findings and knowledge with colleagues and the public.")

[13] See Cornell SCA Plan at 6-7: "Among the benefits Cornell may offer companies are: ... First look at discoveries."

[14] Compare Cornell Guidelines on Sensitive and Proprietary Research , Fac. Hand. at 91 (" Such information [i.e., proprietary] must be identified as such in writing when transmitted and the condition of its acceptance specified.")

(b) If first look rights are given, they must be accompanied by conditions and safeguards that should, at a minimum,[15] include:

(i) separately identifying each medium (journal publications, external presentations, dissertations, etc.) included in first-look review;

(ii) such rights should never extend to work beyond that funded directly through the SCA;

(iii) the corporate partner should to be urged to develop a rapid clearance procedure (i.e., considerably shorter than 30 days) for time-sensitive material and circumstances such as external presentations;

(iv) the right to delay beyond 30 days should in no event extend beyond 90 days;[16]

(v) the corporate partner should give explicit written assurances in the SCA agreement that the right to delay will not be invoked for the purpose of temporarily suppressing undesirable results;

(vi) exercise of the right to delay beyond 30 days should be justified in writing by the corporate partner[17] and monitored by the Joint Steering Committee (see Section C) to ensure that it is not being used as a means of censoring results.

4. LICENSING OF INVENTIONS DERIVED FROM SCA-FUNDED WORK **[N.B. THIS SECTION IS STILL UNDER DISCUSSION BY THE AD HOC COMMITTEE ON SCAS AND DOES NOT REPRESENT A CONSENSUS VIEW OF THAT COMMITTEE]**

Cornell has repeatedly reaffirmed its fundamental commitment to faculty "shar[ing] openly and fully their findings and knowledge with colleagues and the public,"[18] and has recognized that "the University's primary obligation in conducting

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[15] Regulations from the Office of Sponsored Programs may impose additional limitations on first look rights.

[16] Compare Current Cornell Principles (undated) No. 3 ("Reasonable delays would be permitted for review for confidential company information, patentable subject matters and, if appropriate, preparation of patent applications. In no case will the total delay exceed 90 days.")

[17] Compare Cornell Guidelines on Sensitive and Proprietary Research , Fac. Hand. at 91 ("Beyond the thirty days, delays of up to three months are acceptable on the basis of *a formal request* from the sponsor.") (emphasis added)

[18] Cornell University Copyright Policy, General Statement.

research is the pursuit of knowledge for the benefit and use of society."[19] Moreover, it has acknowledged its obligation "to seek assurance that any patent right be administered consistent with the public interest."[20]

In light of these commitments and obligations, licensing of inventions derived from SCA-funded work should, whenever possible, take the form of non-exclusive licenses to the corporate partner to use university-owned patents. By giving the licensor a monopoly over use of the patented invention, exclusive licensing inevitably interferes with full and open sharing of the results of academic research. Moreover, it may, unless circumstances are very carefully assessed, allow the principal beneficiary of the patent right to become the private, rather than the public, interest.[21]

In the event that exclusive licensing rights are given to the corporate partner, such rights should be as narrowly drawn as possible. For example, they should cover the fewest number of patents, for the shortest period of time that can be negotiated.

Most important, all SCA agreements should include a provision protecting Cornell's right freely to use and distribute research methods and results to academic researchers at Cornell and other academic settings. Even if an exclusive license is granted, these rights to use and distribute methods and results for academic research must be retained.[22]

5. ANY INTERFERENCE WITH ACADEMIC FREEDOM SHOULD BE REPORTED TO THE DEAN OF FACULTY, WHO IN ADDITION TO COUNSELING ORDINARY REMEDIES WILL ENSURE THAT SUCH REPORTS ARE TRACKED.

Any faculty member who experiences interference with academic freedom in connection with an SCA should seek the assistance of the Dean of the Faculty.[23]

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[19] Cornell University Patent Policy, ¶ A.1.

[20] Id. ¶ A.2.

[21] The Patent Policy recognizes that "the development and marketing of inventions resulting from University research so as to reach a public usefulness and benefit ... may require various forms of agreements including the granting of exclusive licenses." Id. ¶ F. The challenge, of course, is accurately predicting the circumstances in which exclusive licensing will indeed be the optimal strategy for developing the invention in the public interest.

[22] Compare Cornell Principles (undated) No. 5 ("Cornell will retain the right to practice any inventions for its own research and education purposes, and will retain the ability to distribute any biological materials created under a corporate research sponsorship to other academic researchers.")

[23] See Faculty Handbook at 89 (statement on research freedom of faculty, indicating that those who are threatened or harassed in the exercise of this freedom "should seek assistance through the Dean of Faculty.")

Moreover, "[i]ndividual faculty members are encouraged to speak out on behalf of a fellow faculty member's academic freedom, either individually or through the Faculty Senate and its committees"[24] or by seeking the assistance of the Dean of the Faculty.

In such circumstances, the Dean of the Faculty should counsel the faculty member as to the range of remedies ordinarily available for such interference. In addition, he/she should (1) report the complaint to the Local Advisory Council (LAC), who should take such complaints into consideration as part of its periodic review of the operation of the alliance (see Section E.2); and (2) ensure that a database is being maintained of such complaints, in order that they may be appropriately considered in assessing the experience under particular alliances and SCAs in general.

B. ACADEMIC FREEDOM ENTAILS THE RESPONSIBILITY TO UNDERTAKE AND PRESENT RESEARCH WITH OPENNESS AND INTEGRITY, AND CONDITIONS MUST BE MAINTAINED IN WHICH FACULTY CAN FULFILL THIS RESPONSIBILITY.

Academic freedom brings with it the responsibility of disinterested integrity in the conduct of research and the publication of results. While this responsibility attends all research, sponsored or not, the comprehensiveness and scale of an SCA and the pervasive influence of the corporate partner may make it particularly difficult to maintain the conditions in which faculty are able, and motivated, to fulfill their responsibility.

1. NO RESTRICTIONS ON REVEALING THE SPONSORSHIP RELATIONSHIP ARE PERMISSIBLE.

No SCA should contain any provision that permits, or even implies, that the corporate partner has the right to forbid faculty or graduate students from disclosing SCA sponsorship of research. Oversight of SCA implementation should be sensitive to any evidence that the corporate partner (or its on-site employees) is exerting pressure on faculty or graduate students not to disclose sponsorship.

Forthright disclosure of the sponsorship of particular research is one of the simplest, and best, antidotes for the suspicion that the quality of work has been compromised by the interests of its sponsor. Increasingly, external review organizations, top journals, and even entire disciplines are adopting norms that require disclosure of sponsorship relationships as a matter of course. It may be that Cornell ought consider adopting a university-wide rule in this area, as a way to safeguard the integrity of research that is so essential to the academic mission. Such a norm would protect faculty from pressure not to reveal sponsorship affiliation when publishing results that are counterproductive, embarrassing, or otherwise undesirable from the sponsor's perspective.

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[24] Id.

2. MULTIPLE SIMULTANEOUS RELATIONSHIPS WITH THE CORPORATE PARTNER SHOULD BE CAREFULLY MANAGED.

SCAs pose significant challenges for departments/programs and for individual faculty in maintaining the line between academic independence and corporate employment. These challenges become even greater if the corporate partner seeks to employ faculty as consultants or independent contractors while faculty are also receiving funds through an SCA.

Such simultaneous arrangements must be very carefully managed, and must be avoided unless a clear separation can be maintained between work done as a faculty member of the university (though made possible through SCA sponsorship) and work for hire done for the corporate sponsor. See generally "Cornell University Conflicts Policy, Academic Policies/Responsibilities: Consulting"; Office of Sponsored Programs, "Guidelines for Consulting Agreements." The circumstances of a particular SCA may make it prudent to require the corporate partner to forego entirely such simultaneous, potentially confusing side relationships with faculty receiving support through an SCA. Indeed, experience with SCAs over time may reveal that general guidelines in this area are possible and appropriate.

3. ANY INTERFERENCE WITH A FACULTY MEMBER'S RESPONSIBILITY TO PUBLISH RESULTS, REGARDLESS OF EFFECT ON THE SPONSOR, IS UNACCEPTABLE.

To be consistent with academic integrity and responsibility, a faculty member's decisions about whether and when to publish results must be based on objective assessment of the value of the work, using the standards and norms of the discipline – not on perceptions about the likely reaction of the sponsor to publication. Unfortunately, effectively insulating faculty from pressure to behave in ways that will please their sponsor is difficult – especially when the sponsor has committed large amounts of funding to the department/program over multiple years. The difficulties are multiplied when the faculty member has been working side by side with employees of the corporate partner, who understandably share their employer's interests.[25]

At a minimum, the SCA agreement should contain an explicit written commitment that neither the corporate partner nor its employees will attempt to dissuade faculty from publishing results obtained from sponsored research.[26] Such a provision at least puts the partner on notice that publication decisions lie solely in the realm of

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[25] Among the duties of the new Director of Corporate Strategic Alliances is "keeping companies fully engaged" by "e.g., facilitating symposia, arranging visits, and placing company researchers in residence at Cornell. [The Director] ... will maintain close communication and coordination with Cornell faculty, and will help bridge any culture gap by exhibiting and encouraging mutual trust and synergy among scientists." Cornell SCA Plan at 8.

[26] Compare Cornell Guidelines on Sensitive and Proprietary Research , Fac. Hand. at 91(" Nor will the university enter into any agreements unless the principal and co-principal investigators have the final authority on what is to be published or presented.")

academic judgment, and are an area in which the partner has no legitimate role. Beyond this, oversight of the SCA in progress must be alert to any indications that faculty are being induced to engage in self-censorship based on sponsor interests rather than appropriate scholarly norms.

C. *PRIMARY DECISIONMAKING AUTHORITY OVER CORNELL RESEARCH MUST REMAIN WITH CORNELL DECISIONMAKERS.*

The Corporate Strategic Alliance Plan calls for creation of a Joint Steering Committee to manage the SCA.[27] Beyond providing that the JSC will be "led by a Cornell and company representative,"[28] the Plan does not specify organizational or operative details of the JSC. Under the Plan, the JSC "will review and select faculty proposals for funding," through a process involving "internal faculty Requests-for-Proposals."[29]

1. THE MANAGEMENT GROUP SHOULD CONTAIN NON-PARTICIPATING, AS WELL AS PARTICIPATING, FACULTY.

The JSC should contain some faculty members who are not direct stakeholders in the SCA. Being themselves outside the funding opportunities of the alliance, their perspective can help provide balance and objectivity, flag potential conflicts and other incipient problems, and prevent the fact or appearance that the enterprise is becoming inbred. Moreover, participation of disinterested faculty gives additional reassurance – both within and outside the department/program involved – that funding decisions will be evenhanded, and that the SCA is being managed with due regard for the values and mission of the university as a whole.

2. DAY-TO-DAY MANAGEMENT OF THE SCA SHOULD BE BY CORNELL FACULTY, NOT CORPORATE REPRESENTATIVES.

One fundamental touchstone must never be lost: This is academic research, not corporate research.[30] If there is a Director of the alliance (see Section D.3), that Director

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[27] Cornell SCA Plan at 6, 7, 8.

[28] Id. at 8.

[29] Id. at 8, 7.

[30] See Cornell Guidelines on Sensitive and Proprietary Research, Fac. Hand. at 91:

> The university will accept only sponsored research projects which are expected to further the research and educational mission of the institution. While a sponsor may delineate the areas of research to be supported, the principal and co-principal investigators must have final authority for decisions on the course of the research program within these limits. The principal and co-principal investigators must also have final authority regarding employment of personnel for the project. In particular, research that is subject to a sponsor's approval of personnel is not permitted at the university.

must be a Cornell faculty member. If all management is to be done by the JSC as a committee of the whole, then Cornell representation must predominate. The corporate sponsor appropriately has a voice in management decisions, subject to the exception for actual funding awards discussed next. However, the sponsor should not be in the position of either having a representative as Co-Director or having equal representation on the JSC.[31]

3. CORPORATE REPRESENTATIVES SHOULD NOT PARTICIPATE IN THE ACTUAL SELECTION OF FACULTY PROPOSALS FOR FUNDING.

In keeping with the purposes of the alliance, representatives of the corporate sponsor can appropriately play a collaborative role in shaping the Request for Proposals from faculty desiring funding through the SCA. Once the relevant criteria have been settled and announced, however, the sponsor's role ends – or at least substantially diminishes.

We are a research university, not a vendor supplying a corporate customer's requirements. Therefore, the distribution of alliance funds to Cornell faculty, staff and students should be in the hands of Cornell, not the sponsor. The sponsor's interests and priorities can be expressed through the RFP; beyond that, decisions about which research receives support should be based on scientific merit assessed through conventional scholarly methods. (See Section D.) Corporate representatives on the JSC may appropriately participate in discussion of proposals, but these members should not have any role in the actual award decision.

D. *OBJECTIVE STANDARDS, PEER REVIEW, AND SOME FORM OF EXTERNAL ACCOUNTABILITY PROTECT ACADEMIC INTEGRITY IN THE FUNDING PROCESS AND ENHANCE FAIRNESS.*

Although the subject-matter interests and commercial priorities of the corporate sponsor may appropriately inform the general objectives of the alliance, the process for funding research through the SCA should follow traditionally respected academic protocols for proposal evaluation and grant awards.

1. THE JOINT STEERING COMMITTEE SHOULD PREPARE REQUESTS FOR PROPOSALS THAT SPECIFY AS CLEARLY AS POSSIBLE THE CRITERIA THAT WILL GOVERN GRANT AWARDS AND THE PROCESS FOR APPLICATION.

Clear and detailed notice of the criteria and the process for obtaining funds through the SCA serves several purposes. Most obviously, it enables participating faculty to design their proposals as effectively as possible. In addition, it facilitates the job of those who will be reviewing the proposals (see Section D.2). Finally, from an institutional perspective, it is a small but important piece of the transparency that allows external monitoring to confirm that research funding through the alliance has been

[31] Compare Cornell SCA Plan at 6-7: "Among the benefits Cornell may offer companies are: ... Shared management of the Alliance via Joint Steering Committee."

evenhanded and based on scientific merit. (See Section E.2).

2. PROPOSALS SHOULD BE EVALUATED BY NON-PARTICIPATING CORNELL FACULTY COMPETENT TO ASSESS THEIR MERIT.

Peer review by disinterested scholars remains the premier method of assessing the merit of academic work. Cornell recognizes this in a number of relevant settings; for example, it constitutes internal peer review panels to evaluate proposals for the Affinito-Stewart Grant Program of the President's Council of Cornell Women.

After proposals are submitted in response to the RFP, internal peer review panels of non-participating faculty should be constituted to evaluate their merit. Factors to be considered may include the mission statement of the alliance. These evaluations need not be lengthy; examples of modest-length evaluation instruments exist from other programs. The important point – vital to honoring the principle that we are engaged in academic, not corporate, research – is that genuine, disinterested peer review occur.

3. FUNDING DECISIONS SHOULD BE MADE IN A WAY THAT ENHANCES ACCOUNTABILITY, AND SHOULD BE THE SUBJECT OF PERIODIC EXTERNAL REPORTING.

The final step in the grant process – deciding which proposals to fund – should be structured to maximize accountability. This goal can be accomplished by placing ultimate responsibility in the hands of an alliance Director who will make grant award decisions (after receiving the peer review assessments) with the advice and consent of the JSC.

> Note the important constraints that Section C.3 imposes on this: The Director must be a Cornell faculty member, and the corporate JSC representatives may not participate in actually voting on the list of grant nominees.

The Director should prepare a report of funding decisions from each grant cycle and submit this report, along with the relevant RFP, no less frequently than annually to the Local Advisory Council (LAC). (See Section E.2). This report should be sufficiently detailed in describing projects both funded and not funded that LAC can satisfy itself that research support through the alliance has been evenhanded and based on scientific merit.

E. BECAUSE SCAS REPRESENT AN IMPORTANT BUT POTENTIALLY HAZARDOUS EXPERIMENT IN SUPPORTING THE CENTRAL RESEARCH MISSION OF THE UNIVERSITY, THE FACULTY, THROUGH ITS REPRESENTATIVES, SHOULD HAVE A CENTRAL ROLE IN THEIR APPROVAL AND OVERSIGHT.

Both the Trustee Document: Considerations & Principles and the Cornell University Strategic Corporate Alliance Plan (7/30/03 version) commendably contemplate that LAC will play a key role in review, approval and oversight of SCAs.[32] LAC's substantive expertise, its tradition of providing rigorously independent faculty

[32] See Trustee Doc: Considerations & Principles ¶ VII; Cornell SCA Plan at 5.

judgment within a constructive working relationship with the administration, and its demonstrated ability to handle sensitive information appropriately, all make it the logical first choice for this role.

Nonetheless, some caution in calling upon LAC is appropriate. This committee already performs a vital service that places heavy demands on the time of its member faculty.[33] If a complex SCA were to be proposed and/or if multiple SCAs were simultaneously to be undertaken, the burden could quickly become overwhelming. The faculty role in approval and oversight contemplated by this Statement is significant, and should not be undermined by entrusting it to a committee which, no matter how well-qualified and well-intentioned, is simply too busy with other important matters to carry it out. Therefore, although this Statement refers to LAC as the faculty committee with responsibilities in this area, entrusting the responsibilities to some other faculty committee might prove necessary.

1. NO SCA SHOULD BE ENTERED INTO WITHOUT THE APPROVAL OF LAC, WHO SHOULD BE INVOLVED EARLY ENOUGH IN THE PROCESS THAT THE AGREEMENT IS NOT A FAIT ACCOMPLI. AMENDMENTS TO AN SCA SHOULD ALSO RECEIVE LAC APPROVAL. LAC SHOULD REPORT ITS CONCLUSIONS TO THE DEAN OF THE FACULTY, AS WELL AS TO THE APPROPRIATE ADMINISTRATION OFFICIALS.

Finalization of an SCA should not occur unless and until LAC has reviewed its terms and determined that the SCA – both in concept and, so far as can reasonably be predicted, in likely implementation – is consistent with this Statement and any refinements suggested by practice and experience under it. Moreover, LAC should be involved early enough in the process of attempting to form an SCA that it can have meaningful input in changing problematic elements. This timing issue is a point of considerable sensitivity for several reasons.

Involving LAC early in the process will raise concerns. From the perspective of the negotiators, the period before key terms of the deal are finalized is understandably viewed as highly confidential, volatile, and vulnerable to private leaks or unguarded public statements. Multiplying participants multiplies risks. From the perspective of the faculty, involving LAC while bargaining is active poses the danger that LAC will become invested in achieving an SCA. LAC's role as independent reviewer is compromised if it becomes a stakeholder in getting to an agreement.

On the other hand, too-late involvement also carries serious risks. If LAC does not review the proposal until the deal has been effectively struck between the administration and the corporate sponsor, the costs of disapproval become enormous.

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[33] Currently, LAC performs two principal functions. It advises the administration, through the Vice Provost for Research, on key issues pertaining to the research enterprise at Cornell. Recent examples include review of the Center for the Environment and the Ward Center for Nuclear Sciences. In addition, it reviews proposals and nominations and makes recommendations regarding the relative ranking of Cornell candidates for external grants and awards in cases where the competition is limited to a fixed number of applications or nominations.

Considerable time and effort will have been expended by administration and corporate officials (often at the highest levels of both organizations), faculty in the involved department/program will have become invested in going forward, and a great deal of money and other research support is likely sitting on the table. LAC objections at that stage may divide the faculty against itself, and will surely put the faculty and the administration on a high-stakes collision course from which no one benefits.

In arriving at the form and timing of LAC involvement that best balances these various risks, the faculty must largely rely on the administration. The Cornell SCA Plan (7/30/03 version) contemplates LAC involvement at the point at which the negotiations team has reached a Memorandum of Understanding (MOU).[34] An alternative model, that we encourage in the spirit of open and thoughtful faculty consultation, would be a carefully selected subcommittee of LAC who is initially briefed on the target project, who is kept informed by the negotiating team of any significant policy issues as they emerge, and who then can take an informed lead in full committee discussion of the MOU. In any event, subsequent to the MOU, LAC must *also* review and approve the final version of the SCA.

Recognizing that experience and/or external events might prompt changes during the term of an alliance, the Cornell SCA Plan provides for the possibility of amendment.[35] The advice and consent of LAC should be sought before any not insignificant amendment is made to an SCA.

After it has made its assessment of the MOU, the final version of the SCA, or any amendments, LAC should communicate its conclusions to the Dean of the Faculty, as well as to the appropriate members of the administration.

2. LAC SHOULD REVIEW THE PERFORMANCE OF EVERY ONGOING SCA ANNUALLY, RECEIVING FROM THE JSC AND/OR THE ALLIANCE DIRECTOR PERIODIC REPORTS AND OTHER INFO AS NEEDED TO PERFORM THIS REVIEW.
LAC SHOULD REPORT ITS CONCLUSIONS TO THE DEAN OF THE FACULTY, AS WELL AS TO THE APPROPRIATE ADMINISTRATION OFFICIALS.

No matter how carefully the faculty, the administration, and the trustees attempt to think through the issues SCAs will pose, we can be confident that alliance implementation will be a work in progress that needs refinement. The planned scale and comprehensiveness of SCAs may produce a variety of unanticipated consequences in practice – consequences, for individual faculty and for departments/programs, that differ not only from those produced by other forms of sponsored research, but also from one

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[34] Cornell SCA Plan at 5. The MOU sets out the "key elements" of a proposed SCA ("the expectations of the parties and the source(s) of alliance funding"), but has not yet been approved by either legal counsel or senior management. Id.

[35] Id. at 6-7.

alliance to another.[36]

Therefore, in addition to approving the initial agreement, LAC must review the actual implementation of SCAs. Annual review appears the appropriate starting point, although actual experience might reveal that the period between reviews can be lengthened without undue concern. (E.g., annual review in initial years of an SCA, then less frequent review as program administration becomes well settled). To conduct its review, LAC should receive from the JSC and/or alliance Director the reports of funding decisions (see D.3), and any other material LAC needs to determine that the SCA is being implemented consistent with this Statement and any subsequent refinements suggested by practice and experience under it. It should also consider any complaints forwarded from the Dean of the Faculty under Section A.5, along with the results of any university processes that have been invoked to resolve those complaints.

The LAC's annual review of SCA implementation should be communicated to the Dean of the Faculty, as well as to the appropriate members of the administration.

Comment [c1]: David P: suggests an external review every few years by qualified social scientists

3. TO PERFORM ADEQUATELY THE FUNCTIONS OF APPROVING SCA AGREEMENTS AND REVIEWING THEIR IMPLEMENTATION, THE COMPOSITION OF LAC SHOULD BE BROADENED.

To the extent that it is engaged in review of SCA-related matters, LAC should be expanded to include significant representation from some or all of the following groups of faculty: (1) natural scientists with no personal stake in the alliance funding opportunities; (2) social scientists; (3) ethicists; and (4) researchers with experience in human and animal subjects research protocols.

Just as participation of disinterested faculty on the JSC helps expand the viewpoint of day-to-day alliance management (see Section C.1), so broadening the composition of LAC will enhance the range of perspectives that are examining SCA proposals and reviewing implementation. Broadening the expertise base of LAC review in this way could have very specific benefits. For example, private research is not covered by current federal law on human subjects research; therefore, the ramifications of the complex, and sometimes time-consuming, compliance procedures in this area may be outside the contemplation of the corporate partner. Ensuring that someone on LAC has this expertise could help bridge a potentially significant cultural gap.[37]

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[36] The Cornell SCA Plan acknowledges this by contemplating the creation of a new administrative position, the Director of Corporate Strategic Alliances, although the focus of this position may be more on facilitation of alliance activities than oversight of them. See p. 8.

See also Trustee Doc: Considerations & Principles ¶ IX ("The plan, and any alliances, will include provisions that will require periodic review and will allow the University to implement modifications or terminate alliances that were not judged to be successfully furthering Cornell's research or educational missions.")

[37] We assume that every SCA agreement will contain an explicit statement that research conducted under the alliance will comply will all rules, policies, and protocols applicable to other Cornell

More important, however, is the general benefit of bringing representatives of the larger university community into the process of SCA review, approval, and oversight. The addition of social scientists and ethicists, for example, will better position LAC to assess the alliance's ongoing impact on the department/program and on participating (and nonparticipating) faculty and graduate students.

F. ONCE AN SCA HAS BEEN FINALLY APPROVED BY CORNELL AND THE CORPORATE PARTNER, THE TERMS OF THE SCA SHOULD BE MADE AVAILABLE TO THE CORNELL COMMUNITY.

Transparency and openness are significant steps towards reassuring those who fear the effect of SCAs on Cornell's tradition of research autonomy and integrity. As the chair of LAC said in discussing his committee's report with the Faculty Senate, "We think the way to deal with these potential fears, from our committee's point of view is..., 'Let there be light'." Many of the practices set forth in this Statement implement this general principle.

Allowing the community to see for itself what is permitted – and forbidden – under the terms of an alliance is essential. Otherwise, an undertaking that will inevitably be the subject of considerable interest and debate may become the object of uninformed speculation and wild rumor. Obviously, confidentiality is essential while negotiations are pending. Once the agreement is final, however, the administration should work hard to overcome any reluctance, on the part of the corporate partner, to make the terms of the agreement public to the university community. Openness about such matters may be a cultural difference about which the corporate partner will require education; nonetheless, it has such a high value in this environment that the administration should be insistent.

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research. Of course, it is a wholly separate matter whether the corporate sponsor *knows* the full extent of these rules, policies and protocols – and appreciates the practical implications they may have for how research is done and published in academia.