

Minutes of a Meeting of the Faculty Senate
Wednesday, May 11, 2005

Speaker Mary Beth Norton: "Will the Senate come to order? We don't quite have a quorum yet but we do want to get started on the agenda and people are coming in. I hope we do get a quorum today otherwise; we are up a creek - not good. I would remind everyone that no photos or tape recorders are allowed during the meeting. Please turn off your cell phones. Please when you speak identify yourselves and your department. We have no Good and Welfare speakers today. So there are ten extra minutes at the end of the agenda should we need it.

"I now want to ask for unanimous consent to change the order on the agenda that you were sent. And that is to switch items five and seven. That makes the AFPS resolution first after the Nominations and Elections Committee report and the Library Board resolution last. This has to do with the schedule of Professor Arms who is presenting the Library Board Resolution. You may remember that we didn't get to it last time and he had already made a commitment for the beginning of the time at this meeting. So I ask unanimous consent for that change. Seeing no objection we will change the agenda in that way. I now call on Provost Biddy Martin for her remarks and to answer any questions."

1. REMARKS BY AND QUESTIONS FOR PROVOST MARTIN

"Thank you Mary Beth. Mary Beth has asked me please to be concise and to shut up exactly when she tells me to. And I am going to do that.

"I am going to give you a brief faculty salary update. It's been a long year. I gave you an update last time based on our projections. But now we have the actual data and we shared those with the Financial Policies Committee of the Senate and they reviewed the results and suggested that I show them to you now based on the actual data. I think you will be pleased with the results and I'll go through them quickly. As it unfolds you see before you - - as though you haven't seen it a million times - - our institutional goal on faculty salaries (Appendix 1), which was to reach the average of our peer groups. Those peers were different for the endowed and the contract college sides of the University as you recall. The peers were chosen by the Financial Policies Committee of the Senate. 2001/02 was the first year of our multi-year plan. This year was the fourth year. And here's the news that you will be interested in seeing (Appendix 2). According to the survey for 04/05, the average faculty salaries for all ranks grew 3.3 percent on the endowed side; 5.9 percent in the contract colleges. The five-year average was 5.6 percent in endowed and 6.7 percent in the contract

colleges. Now this is the average as measured by this point-in-time-analysis that we have to do for the purposes of the survey we participate in. The actual continuing faculty salaries on the endowed side grew 5.2 percent. The 3.3 percent is a consequence of the way the survey is done. When people change ranks, when they go on leave, when some people retire, and we hire a lot of new assistant professors, sometimes in certain lower-paid disciplines, all of that can throw off our overall average. But in any case, for the purposes of the survey, the increase on the endowed side was only 3.3 percent. Actual continuing faculty on the endowed side had their salaries grow on average of 5.2 percent and 5.9 in the contract colleges. So that's the five-year average on both sides.

"Here is a graph to show the progress we have made (Appendix 3). Just in absolute terms on the Ithaca campus. The red line is endowed and the blue line is the contract colleges, and then the peer group means. You can see that on the endowed side in relation to our peers, we took a little dip because of that 3.3 percent this year in our progress. We feel like we are still on track, we will still make our goal, but this year because of the artifact of this particular kind of survey, we didn't do quite as well as we had hoped.

"So these are the endowed peers (Appendix 4) that were named by the Financial Policies Committee that we adopted, and here you simply see the rate at which these averages are increasing. Now the averages, I think you know this, the average five-year change for the peer group on the endowed side was 3.9 percent. I think that's a key number. The average five-year change for the peer group was 3.9 percent. For us, it was 5.6 percent. When we started this program we were below 90 percent of the peer average. We are now at 98 percent of the peer average on the endowed side. Is that clear? Did I get there? Thank you.

"On the contract college side we have actually exceeded the goal on the contract college side (Appendix 5). The peer group average for a five-year change is 3.5 percent on this side. The Cornell average five-year change is 6.7 percent. Contract college average salaries were 88 percent of the peer average in 98/99. And they are now at 102 percent of the peer average. So we've met our goal within four years. We had a six-year goal. We've now met that goal. On the endowed side we still have a two percent difference to make up.

"As I said last time, going forward, we have agreed to college-specific goals for this next year (Appendix 6). They range from 3.5 percent to 5.5 percent for the most part. The targets are based on market data and they are discipline-specific. And as you know, the individual increases that you see are based on college and department-based definitions of merit and equity.

“And if you have any questions, I would be happy to answer them in a clear way.”

Professor Rich Burkhauser, Policy Analysis and Management: “I am on the Senate Financial Policies Committee and have worked with Carolyn Ainslie and others to create these numbers. I want to say that Carolyn has been absolutely super in terms of providing us with the information and trying to make the process transparent. And I really congratulate you Biddy on your willingness to share your numbers. That’s the good news.

“I would say that we have done a spectacular job in trying to achieve the goals as they were set. But we have a new President at Cornell who has said that he believes that the quality of education across all colleges should be equal. And in my view, costs of providing quality education are the same across all campuses. So the bad news about those numbers, if you looked at that little diagram, is that the difference in absolute value between the contract colleges and the private colleges is as big as it has ever been in the history of Cornell. I think that you cannot have a consistent quality across the campuses, if in fact you have differences, significant differences, in salaries that you are paying people

Provost Martin: “So that was not actually a question?”

Professor Burkhauser: “That was a statement. But would you agree with it?”

Provost Martin: “Here’s my response. You know in general why would I disagree with that. In principle you are absolutely right. What I said last time and have said before, I will say again. And that is, if you look at the differences, just take the endowed side on its own. If you look at the differences between some of the disciplines in arts and sciences, and let’s say the law school salaries. Or if you were, for example, to compare some disciplines in engineering with the business school, you would see that the disparities on the endowed side from one segment to another are probably, I would wager to say, as great as the disparity that you are seeing between endowed and contract. All I am saying is that there is, there will always be, disparities - and actually we are studying these salary averages across disciplines and within them, to see how it seems when you do a more careful analysis. I think this is a little coarse, simply to lump together all the endowed faculty and then all the contract college faculty and then worry only about that disparity. It’s not that I don’t worry about that one, but what I am trying to say is that there’s a lot of differentiation on both sides of that endowed and contract line. And I’m not sure that we know enough to say that that’s even our primary problem. Or, even that some of the problems that we will see define the differences in averages across disciplines. If you define that as a problem, it’s not clear to me that we’ll ever be able to solve it

completely because we operate in markets that simply require that we pay one thing for, as you know, economists, and another for German Studies professors. So I just want to be up front about that. We are going to continue to study this and my response is not meant to deny or disagree on what you are saying in principle, but the problem is more complicated than it is made to seem by this breakdown, which simply makes it seem as though on the endowed side there's one set of averages and on the contract side, everybody is making significantly less than that. If you compare your department to German Studies, you would get a different sense of what the problems of equity might be. I used those examples at random. But I hope you take it in the spirit in which I mean it, which is to say honestly it is really complicated. It's more complicated than that divide would make it seem. So, that's my response to that.

"But Rich, you and everybody on the Financial Policies Committee, have been incredibly helpful. And Carolyn Ainslie, our Vice President for Budget and Planning - and I think most of you know her title and who she is, but not all of you will - is a remarkable, remarkable person and very valuable to this University. And she actually loves working with the Financial Policies Committee, which is a great thing."

Dan Shawan, Graduate Professional Students Association, Ph.D. Student in Applied Economics and Management: "I understand through second-hand verbal account that there was a plan to increase the tuitions for Ph.D. and M.S. students in statutory colleges, which was circulated, or at least was proposed in some way, before the recent annual budget cycle and then withdrawn. I understand that that is likely to come up again for the next annual budget cycle and also that the proposal has changed significantly. Can you tell us what is the current content of that tentative plan? And, what are the intentions of the plan?

Provost Martin: "Thanks Dan. Actually the easy answer to you in response to question 'can I tell you the current content?', the answer would be no and then I could sit down. Actually, we are not at a point where there is any real content to a new proposal. It's being worked on. But even at the moment not that actively given all the other things actually that we're working on. We did, as you said you heard through rumor or second hand, just put a huge delay on what had been proposed for consideration in this academic year. And the reason we did that was there such a lot of consternation about the implications of changing the graduate student tuition. I have said this here before and I'll say it again, because I'm sure you haven't been here, the reason we ever proposed anything was because we heard from faculty that there was an educational problem with having students choose Ph.D. mentors or Ph.D. committee chairs on the grounds that they were in one or the other colleges. So the tuition disparity was actually making a difference in how graduate students chose their Ph.D. committee

chairs. And on the basis of that information and faculty concern that this was no way for graduate students to be making those kinds of choices, we started working with the Dean of the Graduate School to see whether he could do something that would be beneficial educationally, and not be a hardship, an undue hardship on the faculty and their grants and other sources of funding, and certainly not on grad students. What we heard back from a lot of faculty was that they really were worried despite the fact that at the center we were proposing to cover for some period of time the difference in what it would cost on grants for faculty on the contract side in order to make this possible. What needs to be decided now by the faculty - and that's why we don't yet have a proposal that has substantive content to give out again - is whether or not we were right to think this would have an educational benefit and we should address it, or whether you think it doesn't really matter, it doesn't bother you particularly that graduate students may, in fact, in some fields be choosing their Ph.D. committee chairs based on the cost of tuition. Or you may think that matters but you might not want to make the changes that we can come up with that will be revenue neutral for as many people as possible, in spite your concern about the educational problem. So I would say, and Charlie and I have talked about this, that really it's something that the Educational Policy Committee of the Senate ought to be discussing. I don't want to say we don't care. I care if there's an educational benefit to the change. I care that we at least consider seriously making that change. But if it's going to wreak havoc and if it's going to be perceived by people as some effort that Day Hall is making to increase tuition so we would benefit financially - which I assure you was not only not the case but the opposite was going to be the case, because we were going to put in the money to make up the difference of what people would have had to pay, so for us it was not only not a financial benefit, it would have been financial loss, but we were willing to do because we thought it was an educational benefit, so I am now leaving it to the intellectual community of scholars and teachers to figure out whether this is a good idea. And in that sense I am not heavily invested in the outcome. I just want to do the right thing."

Speaker Norton: "Okay. Thank you Madam Provost. And I pleased to announce a quorum is present. However, I want to tell everyone that it's only a bare quorum that is present. So I don't want to lock the doors but you know what happened last time. We had a quorum and we lost it. So please no one leave."

3. APPROVAL OF MINUTES OF THE APRIL 13, 2005 SENATE MEETING

"The Speaker now calls for approval of the minutes of the last Faculty Meeting, which did not get a quorum. Were there any changes, corrections or additions to the minutes? Seeing none, I declare them approved."

4. REPORT FROM THE NOMINATIONS AND ELECTIONS COMMITTEE

"I now call on Cynthia Farina, Chair of the Nominations and Elections Committee for a Committee report. She's also going to present the slate of candidates for Speaker and Speaker Pro Tem for the next two years."

Cynthia Farina, Secretary of the Faculty Senate and Chair of the Nominations and Elections Committee: "You have before you the next set of committee assignments for next year from the Nominations and Elections Committee."

Report from Nominations & Elections Committee

Academic Freedom and Professional Status of the Faculty Committee

Philippe Baveye, CALS

Faculty Advisory Board on Information Technologies

Gun Sirer, Engr.

Faculty Committee on Program Review

Brian Chabot, CALS

Thomas Fox, CALS

Robert Hillman, Law

Marilyn Migiel, A&S

Financial Policies Committee

Elizabeth Peters, CHE

Jan Nyrop, CALS

Music Committee

Jerrold Meinwald, A&S

University Assembly

Ellis Loew, Vet.

University Benefits Committee

John Abowd, ILR

Speaker Norton: "All right. I call for a vote. I ask for unanimous consent for approval of that slate. Seeing no objections – slate approved."

Secretary Farina: "And then later in the summer, after the new senators are seated, you will be asked to vote on your new Speaker and your new Speaker Pro Tem. This is the slate of candidates that Nominations and Elections is bringing you. And you will, I believe, be asked if you want to add to this slate from the floor by the speaker."

SPEAKER OF THE FACULTY SENATE (2-year term)

William Arms, Professor, Computer Science
 Barbara Knuth, Professor, Natural Resources
 Vicki Meyers-Wallen, Associate Professor,
 Biomedical Sciences
 Jeremy Rabkin, Professor, Government

SPEAKER PRO TEM OF THE FACULTY SENATE
 (2-year term)

Barbara Knuth, Professor, Natural Resources
 Vicki Meyers-Wallen, Associate Professor,
 Biomedical Sciences
 Jeremy Rabkin, Professor, Government

Speaker Norton: "Yes. Are there any additions to the slate of candidates being proposed for Speaker and Speaker and Pro Tem for the next two years? Are there any additions to the slate?"

"Okay. Seeing none the slate is approved. And that will be the ballot that everyone will receive later in the summer."

Unidentified: "Exactly what do you mean by later in the summer? Some of us travel on business."

Secretary Farina: "We will attempt to have the election in late August, close to the beginning of the school year. The goal will be to make sure the Speaker is in place for the September meeting. But after people get back so that we have enough time to make sure everyone can vote."

"Now I have the happy job of announcing the winners - - who have been notified of this - - of the elections that we did this spring: for Senator-at-large for the Tenured Faculty - Ann Blackburn and Charles Greene; for Non-tenured Faculty - Sergio Servetto. And for the two Faculty Committees that are elected by the faculty-at-large - Jonathan Culler and Tove Hammer for Nominations and Elections; and for the UFC - Rosemary Avery, Peter Loucks and David Pelletier were selected. So, congratulations to all of them."

Speaker Norton: "Congratulations to all of you. And, I will now move on to the next item on the agenda. This is great. We are five minutes ahead of schedule. Remember we changed the agenda so the next item is Professor Peter Stein, Chair of the Committee on Academic Freedom and Professional Status, who will present a resolution to adopt a policy on the sanctions for job-related faculty misconduct."

5. RESOLUTION FROM THE FACULTY COMMITTEE ON ACADEMIC FREEDOM AND PROFESSIONAL STATUS OF THE FACULTY (AFPS)

Professor Peter Stein, Physics and Chair of Faculty Committee on Academic Freedom and Professional Status of the Faculty: "Thank you. This resolution was distributed with the call to the meeting (Appendix 7). There was a new policy on suspensions that was also distributed with the call to the meeting and this is enabling legislation asking this body to endorse it and pass it on to the Provost. So, that's what we're here to discuss.

"And before we discuss it, I would like to ask for unanimous consent to make a modest change in one section of the policy that was distributed. And believe me there's no intentional change. Professor John Guckenheimer suggested that the way we had written 3A, 3F could be misinterpreted. And so there were some clauses shifted around that cause it to be now written in the way that we originally wanted it to be written. And essentially, what the issue here is that when the hearing committee takes testimony then there will be a tape recorder there and the person who is appealing will get a copy of that testimony. Professor Guckenheimer feared that the way this was written, the grievant would also have the right to hear a tape recording of the actual internal deliberations of that committee. So we just changed that to make it clear that that's not what's involved."

Speaker Norton: "What wording do you propose?"

Professor Stein: "Well, here's what we propose (Appendix 8). The top one is what's there now; the bottom one is what we propose. And believe me that's all it is, is a rearrangement of clauses to make sure what modifies what."

Speaker Norton: "Is there any objection to accepting the document in front of us with this amendment? Okay. We're not voting on the document, we're just saying that this amendment is in it. Okay. Seeing none.

Professor Stein: "Thank you. So, anyway also, there was a sheet (Appendix 9) that was distributed to you showing exactly what the changes were between the last time this was presented to you, which was a year and three months ago, and now. And I can go through these. They are modest.

"This policy has been sitting around in the Academic Freedom Committee for two years and three months. We are just trying to bring it to conclusion. The first half was the committee deliberations. The second half of that was waiting for the academic deans to have their take on what this policy meant to them.

"Okay, well let me go through this very quickly. After the last meeting there was extensive discussion at the meeting of the Senate, the March meeting of the Senate, of last year, there were a couple of suggestions made. Those suggestions were adopted and the language was changed. Modest changes were made in the language. Then after that the committee waited for some time until we had the response of the academic deans. We, in fact, got the response from the deans and they made, I think, three or four suggestions, or complaints, or whatever – suggestions. And what we did was to consider each one of them and made changes to correspond to each of their suggestions. Not always the change they asked for. But changes that went in the direction that they asked for. We then gave it back to them. They are still considering our responses.

"The one outstanding issue is how exactly these grievances will be heard. A faculty member who is suspended can take the case to someone and have that someone listen to the case and then make a recommendation to the Provost. The question is, who is that someone? The way the policy was written, the one you saw fifteen months ago, that someone was the procedure that is authorized by the Trustees for dealing with dismissals, when a tenured faculty member is fired. Okay. There's a Trustee procedure for adjudicating that or giving advice to the President and the Trustees about what to do about that. That is the usual arbitration way of my side chooses two, your side chooses two, those four choose a fifth and then that group hears the dispute.

"The problem is that it has been interpreted by University Counsel that that procedure requires the active participation of lawyers. That lawyers come in and examine witnesses and cross examine witnesses and there was strong feeling by the Deans that it was not appropriate for a suspension to be adjudicated by a procedure that had a trial-like atmosphere with active participation of lawyers in

questioning the witnesses. Now you can agree with that, or you cannot agree with that, but I think what is probably clear is that the participation of lawyers makes it a much more complex procedure.

“The Deans on the other hand asked to have it done using the ordinary grievance procedure. Now AFPS thought about this and decided that they did not like using the ordinary grievance procedure because, and I’ll just go to the bottom line on this without explaining why, they felt that the grievance procedure is stacked against the appellant for various reasons. And, so what they decided to do was to have a procedure that would be adjudicated by a group they felt was not stacked against the appellant. That was a modification of the procedure by which appeals to the not granting of tenure are heard at the moment. There is something called the University Appeals Panel. That’s a procedure that has been tested time and time again. I imagine it must have been done fifty times by now and the Dean of the Faculty office is now a slick expert in making that kind of procedure work. It’s a procedure which I have never heard a complaint about. People pretty much accept this as a fair and reasonable way to do that. So what we have done is piggyback on that procedure and said that if there are to be suspensions adjudicated, that will be the procedure by which a dispassionate group will give the Provost and the President advice on whether or not that suspension should be overturned. So that’s what we have presented to you. There is some dispute about that procedure that we have invented. Professor Guckenheimer said that he would prefer to have us put together a brand new procedure. It seemed to the Academic Freedom Committee that it was not worth the effort to build an entirely new procedure for hearing something that happens very rarely. As far as we know there are only a handful of suspensions that have been – and by a handful I mean less than five – or took place within the past five years. So we thought that to simply piggyback on a working procedure was a better way of doing it than either using the Trustee procedure or putting together a brand new procedure on our own. So, that’s the argument.”

Speaker Norton: “Thank you very much Professor Stein. Are there questions or comments for Professor Stein before we begin general debate? This is just a question for Professor Stein.”

Associate Professor Sherene Baugher, Landscape Architecture: “I don’t remember, I read through the procedure, but does the faculty member who is being suspended or dismissed still have the right to have a lawyer?”

Professor Stein: “Yes. That part mimics what happens in academic integrity disputes with students. Okay. The person may have a lawyer to advise him or her on how either he or she may proceed but that lawyer is mute.”

Professor Baugher: "Right. But the reason I just raised that is two meetings ago, Phil Lewis raised the whole issue that was seen played out with Ward Churchill and what happened in Colorado about actions taken by Ward Churchill where it's being considered having his tenure taken away from and be dismissed. We are in a different political climate in the United States where your political opinions may be impacted. So I think if we move anything forward, we need to bear in mind that we may in a different political climate. While we hope what's happening in Colorado never happens to us, I think we want to make sure that that the faculty member is protected with a lawyer."

Professor Stein: "Yeah. That raises another issue that some people have complained about. Mainly there is nothing in this document that indicates what are the crimes for which a person can be suspended. The committee debated that back and forth. You know it's really complicated once you start putting down the list of things that seem unreasonable, but what about something else, what about something else, because any list can be considered exclusive rather than inclusive. That's really a problem. Without any experience on what sorts of crimes there are that require suspension, the committee preferred to leave that mute and to rely on a procedure which is adjudicated by a group of faculty members who are respected enough to have been put on this University Appeals Panel, which are jointly chosen by the Dean and the faculty member to uphold the standards which we all hold close to our heart. That was what's taken. You could argue the other side of that. I, myself, think that's a wiser thing to do."

Speaker Norton: "Other specific questions for Professor Stein before we have a general debate?"

Professor Carol Rosen, Linguistics: "Referring to page 1 under definitions, it gives a list of titles of who will be non-voting members of the college and school. There exists legislation within the Arts College, which says that lecturers and senior lecturers shall be voting members of the College on matters pertaining to their academic activity. So what would be the resolution on the outcome of the conflict?"

Professor Stein: "We take no responsibility for that wording. That wording is a word-for-word quote of the Trustee Policy that defines faculty. And it's defined in such a way, I don't have it in front of me, but it's defined in such a way that it allows the Colleges to decide which ones of those people are in fact admitted into the faculties of the College."

Professor Rosen: "Well it says that each College or school faculty may in its discretion grant membership to etc., etc.. Then there's an open list."

Professor Stein: "Well, okay, if it's not there far be it from me to try to rewrite the Trustee Policy."

Professor Rosen: "Okay. I just wondered whether that needs to be quoted and repeated in the resolution itself, in this document."

Professor Stein: "Well again I say that this is the definition of what is a faculty member. I mean what we could have done was just left it out and said the faculty member as defined by University legislation. But we thought it was wiser to quote that legislation."

Professor Rosen: "Okay, so there still is a contradiction but this document is not responsible for that contradiction."

Professor Stein: "It's not responsible for that contradiction."

Speaker Norton: "Are there other questions for Professor Stein?"

Professor Bud Tennant, Clinical Sciences: "Can you give me some idea about the use of the emergency suspension policy of the phrase 'property'? As far as I know this may be unique among university suspension policies because it includes the phrase, 'danger to property'."

Professor Stein: "It probably is. The way this started out was the emergency was defined only as emergency to an individual. That's the way it was when it was heard by this body 15 months ago. Then there's a reference in there to various other university policies, which make a suspension possible. And in particular there's a substantial irregularities policy where essentially someone's been cheating the University and then the auditor comes in and seals the office and says the faculty member can't get at the office because it's necessary to preserve the records of his financial regularities or irregularities as the case may be. Then someone pointed out that we call a suspension anything that keeps a person from doing his job. And if you keep a person from his office, then in fact that keeps a person from doing his job. So, we felt it was necessary to broaden that to the point of where an emergency could be defined as including a destruction of his records. Then other people said, well suppose that faculty member goes into another office and tries to destroy his colleague's beakers full of some wonderful new enzyme that he's discovered. What about that? And the more we thought about it, the more we thought that there were a number of examples of where the destruction or the potential destruction of property could be considered an emergency."

Professor Tennant: "Well did you consider stipulating the University property?"

Professor Stein: "No, because it might be the property of some individual."

Professor Tenant: "So the property of some individual 'where ever'?"

Professor Stein: "Well if the faculty member was destroying it in the Nines, then it's a little hard to see how he could be suspended for doing that because later in the document it says that in an emergency, the places and times, the scope and period of the suspension must be narrowly tailored to the danger of what the person is doing. So, if somebody was destroying property outside of the University, there's no logic to suspending that person from his or her office. It's not a punishment. It's a protection of something."

Speaker Norton: "The chair will assume we are ready to debate this. Basically because there were no amendments offered, you either vote yes or no on this policy. The floor is open for debate."

Professor Burkhauser: "I was nervous about this proposal last time and asked for a clarification of language in section 1E regards to suspension. And I was concerned that you were taking what normally would be, I think, a fairly esoteric and rarely used issue, mainly suspension of people, and walking on to an area that is much more important and I would say is not related to suspension policy. And that is the question of reductive wage policy and how wages are set. I see no problem with thinking of suspension when you are talking about suspending a person's wages, but when you define it as you now do in Section 1A/1E. If you look at the first amendment to say that the clauses of the sentence were rearranged to make it clear that salary reduction by itself will be considered a suspension. So that means that me as chair of the department, if I recommend to the Dean that I have reduced a person's salary, that will by itself, according to this language, bring in the mechanism that you've set up for suspensions. That's what I read."

Professor Stein: "No. That's what you read in the sheet that explains it to you because I was really cramped for words. But if you look at the document you will see..."

Professor Burkhauser: "But this is the document that you handed out to us. I'm not talking about the one sheet, I'm talking about the thing you sent to us in the mail."

Professor Stein: "No. The thing that we sent to you in the mail say it's a temporary abrogation."

Professor Burkhauser: "Or full reduction of a faculty member's salary."

Professor Stein: "A temporary partial or full temporary is in there in both cases."

Professor Burkhauser: "Temporary partial or temporary full reduction."

Speaker Norton: "Yes."

Professor Burkhauser: "As long as you mean temporary as opposed to a permanent reduction."

Speaker Norton: "Yes."

Professor Stein: "Yes. That's what we mean. Okay."

Professor Burkhauser: "I believe that's not the correct English if that's what you mean."

Professor Stein: "Well I'd be happy to add that as a clarification if you think that's important."

Speaker Norton: "Is there a unanimous consent to add a second temporary? Seeing no objections, so ordered. Additional debate on the resolution, please."

Nick Calderone, Entomology: "I think this issue that was raised about not having the actual list of offenses is not a trivial issue. It's like having an entire judicial system without any laws. It's like saying when someone brings a complaint, then we'll decide if it's really a complaint. And how do we deal with that?"

Professor Stein: "I agree with you. It's a matter of judgment. For instance I'll give you another example. When we sent to the Deans a copy of the emergency suspension and said that it was only for harm to a person, they sent back a recommendation which said harm to a person or harm to Cornell. And we would not buy that because harm to Cornell seemed to us, much too broad. And it opened the kind of interpretation that Prof. Baugher just described having to do with Ward Churchill. Okay, so we wanted it much narrower than that and that's why you see harm to a person or property rather than harm to Cornell. We are subject to the same complaint. But it was our decision that given the situation we are in now - the fact in the past suspensions that were given were for, I think, things we are would agree even the most progressive of us would agree are misdeeds of a faculty member - it just didn't seem wise to start out by defining these things. But, you know, if it happens that in their wisdom the

Deans start to suspend people for all kinds of things, then I am sure that this body will quickly look this up and rewrite it to respond to that attack."

Speaker Norton: "Do I see further debate? Seeing none I assume you are ready to come to a vote. Any objection. All those in favor of the resolution from the Committee on Academic Freedom and Professional Status of the Faculty as presented by Professor Stein and amended here on the floor, please say aye." It passes." (Appendix 10, Policy as approved).

Speaker Norton: "Okay the next item on the agenda is a resolution from the Law School. As you can see on your agenda, this was supposed to be presented by Professor Steve Shiffrin. Unfortunately Professor Shiffrin has been called out of town because of a family emergency. So Professor Brad Anton will introduce the resolution on behalf of the University Faculty Committee."

Professor Brad Anton, School of Chemical and Biomolecular Engineering: "I just want to move that we adopt this resolution (Appendix 11). Representatives of the Law School will present it and discuss it in detail."

Speaker Norton: "Professor Farina, who will speak as a member of the Law Faculty, she's taking off her hat as Associate Dean, and putting on her hat as a member of the Law Faculty, will give the background of the legislation and the Law School proposal (Appendix 12)."

Professor Farina, Law School: "I'm multi-tasking this afternoon. The University Faculty Committee felt that it would be very useful for a representative of the Law School to do two things this afternoon. Because the Clinical Professor enabling legislation was enacted in September 2002 and has never been used, the UFC felt that it was important that the Law School's representative quickly review the procedural requirements, because they are unlike those connected with any other title. So very quickly those requirements are these. A school or unit seeking to use the title must take a vote on the proposal by both the tenured and non-tenured faculty separately and by secret ballot. The proposal must be approved by two thirds of those voting, and those voting yes must be half of those with voting rights in each of those respective groups. The proposal must then be put out for comment by the University for sixty days. That was done here by putting a proposal on the University Faculty website. It then goes to the Committee on Academic Policies and Procedures who is to look at it for conformity with the University legislation. It then comes to you for determination of whether you agree with CAPP's conclusion on that. And there is a 25 percent limit on the number of persons who may hold this title - 25 percent of the number of tenured/tenure-track faculty. If Professor Shiffrin were here, he could tell you from personal experience that the legislative history of

this legislation is that the two colleges that were specifically in mind for using this proposal were the Vet School and the Law School. As I understand it, the Vet School did attempt to go forward on this and was not able to obtain the required supermajority votes. So the Law School is the first to use it. For that reason, there were no models for the proposal that the Law School submitted. It contains lots of information but apparently still didn't address all questions. So the UFC also suggested the Law School's representative speak to several of those questions.

"Here I am going to depart a little bit from that recommendation. Professor Jenny Gerner, the Chair of CAPP, is going to speak to what her committee looked at specifically and that's some of those questions. And I expect that you may have other questions. I will attempt to answer them. Also the Dean of the Law School, Stewart Schwab, is here and he can answer them. But following UFC's recommendation, I will speak to two areas now.

"The first of those is the role of the two groups of lecturers (who are not, by the way, all of the lecturers in the Law School) that the Law School proposes to move into this title or to make this title available for – the legal-aid faculty and the lawyering faculty – in the teaching mission of the Law School.

"Apparently in the proposal's desire to emphasize the importance of the courses that these faculty offer to our curriculum, it created the impression that the tenured faculty were off-loading teaching responsibilities in the Law School. And I wanted to give you some data to correct that impression. The JD Program is a three-year program. The first year is regarded as fundamental in both senses of that word. In other words, it is considered both basic and foundational. It has a prescribed curriculum. There's no student choice. Students take 32 credits in the first year. Of these, four are taught by the lawyering faculty. The other 28 credits are taught by the tenured and tenure-track faculty. First year teaching is considered so essential, and for that matter so satisfying, by the Law School faculty that of the 33 current tenured/tenure-track faculty, 26 of us teach either regularly or occasionally in the first year curriculum. And in the 20 years that I have been on the faculty, I see no indication that this trend is changing."

"In the upper level, we do not have a prescribed curriculum beyond the fact that there is a required professional responsibility (i.e., professional ethics) course and four designated core courses (i.e., strongly recommended) courses. They are offered both semesters. I looked at this coming year's curriculum, and in that curriculum, 68 courses are taught by tenured/tenure-track faculty. That does not count courses in which we do individual supervised writing one-on-one, or small group directed readings. In these 68 are all of the professional responsibility courses except one and all of the core courses in both semesters.

Twenty courses are taught by the lawyering and legal aid faculty. Those include one of the professional responsibility courses. So these data may help to allay concerns that the teaching is being substantially off loaded.

“The second thing I wanted to address is the use of the adjective ‘clinical’ for these faculty, and in particular for the lawyering faculty. I think the questions that have been raised here may be an example of the real challenge that we face as a diverse University in recognizing and accepting how different academic practices and cultures are in different units. And that’s probably why the legislation warns CAPP ‘that the committee is not to substitute its judgment for that of the originating college or school as to the need for, or the wisdom of the college’s or the school’s adoption of the clinical professor title.’ Nevertheless, it seems to me that the questions that have been raised about this really have been asked in a spirit of genuine curiosity. And so, I did want to address the issue.

“I think the first answer to why use the ‘clinical’ title for some of these faculty, particularly the lawyering faculty, is that some of them teach courses that are just like the legal aid faculty. Each of them teaches at least one additional course beyond the course in the first year. For example one of the most talented of those faculty teaches an immigration clinic. That is, she is currently representing refugees who claim that they have a well-founded fear of persecution if they are deported to their home country. That course is identical to the kind of course that legal aid would be teaching.”

“But more broadly - and this is a place where I do not know whether this is the case with medical and vet faculty as well - in legal education the term ‘clinical education’ has become broader than, has come to encompass more than, the use of live clients. Certainly live client-focused instruction remains the ideal. But in legal education the term ‘clinical education’ now does include simulations, role-playing, mock trials, and similar instructor-contrived or hypothesized situations, so long as the focus is on students actually performing, and analyzing the performance of, lawyering skills. If you think about it for a minute from our perspective, you will see that the reason is simple. No matter how careful the selection of cases by the instructor is, no matter how well organized or well planned, clients, adversaries and tribunals often stubbornly refuse to conform to the academic schedule. So if you want to introduce a student to a full range of skills, if you have a selection of skills that you need to get into a semester, frequently you have to stack the deck. And I think that that’s why, and I will start with the law school of our revered President, you’ll see clinical assistant professors being used for teaching these kinds of skills, as well as what medical school or vet school might recognize as core ‘clinical’ teaching. The Legal Practice Program is what Michigan would call our Lawyering Program. What unites the lawyering and the legal aid faculty, and what distinguishes them from

the tenured/tenure-track faculty is that they come from a background of active practice of law. That gives them an active engagement with the on-the-ground skills of lawyering. That makes them not only competent, but actually superior to the tenured faculty in teaching those kinds of skills to our students. That is why schools like Michigan and Northwestern use the clinical professor title for both groups of people.

"The only thing I wanted to say additionally was that originally the proposal included both a request for permission to use the title and a waiver of the 25 percent limit. That was because, given the existing number of lawyering and legal aid faculty, the Law School felt it needed somewhat more leeway than the 25 percent limit gave us. When UFC first looked at this proposal, we were advised that the appropriate way to proceed was not the way we had done. Rather, it was first to seek permission to use the title under the legislation as it currently exists, and then separately later to seek to amend the legislation – because, of course, an amendment requires Trustee, as well as Senate, approval. And so as you saw from the second item in the packet, the Law School has withdrawn its request for a waiver at this time. So the only thing before you is to review CAPP's conclusion that the proposal, the basic proposal, complies with the statute.

"And with that I will leave it to Professor Gerner to tell you what CAPP thought about that."

Professor Jenny Gerner, Policy Analysis & Management and Chair of Committee of Academic Programs and Policies: "We were asked, according to the enabling legislation, to examine this proposal for conformance to the requirements of the enabling legislation, which is what we did. We did not see our role as making a recommendation to you to either approve or not approve this, but rather simply as making sure the elements of the proposal were present so that you could look at it and decide yourselves what you wanted to do. And that's what we did.

"We had three concerns with this proposal as we got it. One was we didn't know the vote. So we asked for the vote and you see the vote on the overhead (Appendix 13). The second was that there was the request for the waiver and we talked to the Law School about this. They have withdrawn their request for that waiver. And so we did not consider that in our further deliberations. The third was a discussion in the enabling legislation that says that this title should not wholesale be substituted for all lecturers and senior lecturers in the College.

"We talked with the Law School about this. The Law School has a very clear idea about whom they wish to offer this title to. All of the people that they think they would in the end want to offer this title to are currently lecturers or senior

lecturers. However, they do see a role for lecturers and senior lecturers in providing other kinds of instruction. So that their argument was that while they will wholesale replace these lawyering and clinical faculty titles, they nevertheless will continue to have lecturers and senior lecturers doing other things. Hearing that, we came to the conclusion that the requirements of the legislation are met and we offered our report to UFC and to you suggesting that you should debate and discuss this.

"We are not making a recommendation. We did not offer the resolution; it was offered by UFC. So here it is. And we leave it to you to discuss this. And I am happy to answer any questions if you have any about CAPP's deliberations."

Speaker Norton: "Thank you Professor Gerner. The floor is open for debate and discussion on the resolution (Appendix 11)."

Professor Steve Vavasis, Computer Science. "I am just curious on what is the career track on some of these individuals. Is it six years like for an assistant professor and some get a promotion? How does that work?"

Speaker Norton: "Dean Schwab, do you want to answer that question?"

Stewart Schwab, Dean of Law School: "Typically they have had a number of years of practice before they come to the Law School. They are initially appointed for a three-year appointment as a lecturer. Then there is a reappointment process in which it's another three-year term as a lecturer. After that it's succession of appointments to a five-year term as a senior lecturer. The evaluation reappointment is every five years."

Speaker Norton: "So would your intention be, I guess the question is, the intention to operate with the terms of assistant clinical professor and so forth?"

Dean Schwab: "Yes, assistant, associate, and full clinical professor. We think we would have all three grades, which will probably match those or be similar to the two grades now of lecturer and senior lecturer."

Speaker Norton: "Any other comments or questions?"

Assistant Professor Marianella Casasola, Human Development: "I am curious. There were ten 'nos' of the tenured faculty. Do you know any of the reasons as to why they voted against it?"

Dean Schwab: "Secret ballot."

Professor Farina: "There was a secret ballot. There was very little discussion. However, from the kind of informal discussion that there is among faculty, I think it is fair to say that the reservations that were expressed are very similar to the kinds of reservations we heard here during the discussion we had about the Non-tenure-track Faculty Report. As the prerogatives of non-tenured faculty grow, there are a certain amount of reservations among some tenured faculty. While this was a divided vote of the faculty, this is actually a two-thirds vote: what it would take, or be sufficient, to appoint a lateral tenured candidate. So we would consider this an extremely strong vote. It is also an indication to us that there is a natural limit on how large this group can grow in the Law School, because all of these appointments will be done with full faculty approval. And so I think there was very little discussion."

Professor Robert Bland, Operations Research and Industrial Engineering: "Two things – Could you clarify what the distinction would be in responsibilities in the future between people with the clinical professor titles and people who will be titled lecturer or senior lecturer?"

And second, are there people now in the clinic and the lawyering program full time?"

Professor Farina: "Yes. These people absolutely are full time. Some of them have been on the faculty preceding me. Indeed one of the reasons that we need this title so desperately, or felt this was needed so desperately, is exemplified by the immigration clinic I talked about a minute ago. The co-teacher in that clinic is one of our adjunct professors. He's actually a nationally known figure on the immigration law scene. But he comes one afternoon a week to the school. On the other hand, the lawyering faculty member who is there is full time and has recently been given by our students one of the most prestigious awards in the school, for service to women students. Students call him Professor X. They call her Ms. Y or, worse, by her first name. And so, there is a real felt disparity there. These are full time people. There is also a good example right now of the difference between lecturers and what this new title would be. We have our JD Librarians who teach legal research in the first year. We do not contemplate them being eligible for this title because they teach a very important, but very narrow, skill set. And they would not be appropriate for this title. Similarly were we ever, for example, to hire lecturers to teach something like our Nature, Functions, and Limits course, which is an undergraduate offering that our tenured faculty have always wanted to teach, they also would not be appropriate for this title. We believe that this is the right title for what these people are doing given the way that legal education defines clinical teaching, whereas it is simply not the right title for that other kind of teaching."

Speaker Norton: "Are there other comments, questions?"

Professor Fran Kallfelz, Clinical Sciences: "Just a point of information on the report from CAPP which indicates that the Law School has withdrawn Section D – percentage limitation."

Speaker Norton: "Yes."

Professor Kallfelz: "Is that in its entirety? It is being withdrawn because it says the school will abide by the limit of 25 percent of the Law School's tenured track faculty but also under D, percentage limitation, the proposal speaks to the designation of the nine current lecturers and senior lecturers to these new positions, which does seem to be a bit at variance with the enabling legislation. But if they are withdrawing all of Section D then it's not an issue."

Speaker Norton: "It's my understanding that Section D has been withdrawn."

Professor Kallfelz: "All of Section D, so they are not planning right now for the designation of the nine current members of these new titles?"

Speaker Norton: "Well the report we had before us from CAPP, suggests that the Law School will review the current faculty individually for appointment to the new titles. So there won't be any sort of mass movement."

Professor Kallfelz: "So that means, that doesn't mean that all of Section D is being removed because it does say under there that it envisions the initial designation of nine current members to these new titles?"

Professor Farina: "I just want to make sure that nothing happens that would seem to be disingenuous. There are actually forty tenure/tenure-track lines in the Law School. We are currently at 35 people because we had departures last year that have not been filled yet. We have new chairs that we have not completed searches for, and we have the President and Vice Provost currently engaged elsewhere."

Professor Kallfelz: "These are tenure-track?"

Professor Farina: "Absolutely. But also, there is not a plan at this point to implement the title. I am not exactly sure what your are asking."

Professor Kallfelz: "No, no, my question was not about the 25 percent limitation."

Professor Gerner: "I will say that we, CAPP, if you ask us, we would say that we would expect that the Law School will look at those current lecturers and senior lecturers who are lawyering and clinical faculty and individually evaluate whether they should be this clinical professor in anticipation of probably most of them being offered that title. That was how the Law School said what they said."

Professor Kallfelz: "Yes. That is why I asked the question because your report says that Section D – Percentage limitation has been taken out. Section D speaks to the 25 percent issue, which I understand. Section D also refers to the envisioning of initial designation of nine of the current members to these new titles, which suggests that they are envisioning moving nine people."

Professor Gerner: "Well they assured us they would not do this with a wave of a wand. They did say they would do serious reviews."

Professor Kallfelz: "Are there other lecturers and senior lecturers in the Law School, other than these people that you are talking about?"

Professor Farina: "Yes. That's what I said earlier."

Professor Kallfelz: "There are others?"

Professor Farina: "Right. There are definitely others."

Professor Kallfelz: "Okay. So this is not meant as a whole plan of replacement to these titles?"

Professor Farina: "No. The titles will remain in use."

Professor Kallfelz: "So it is not correct to assume that this report from CAPP says Section D percentage limitations is being withdrawn *in toto*. It's just being withdrawn with respect to the 25 percent."

Professor Farina: "It's certainly being withdrawn with respect to the 25 percent limit. Right."

Professor Kallfelz: "Only? Not all of Section D is being withdrawn."

Professor Farina: "Right."

Speaker Norton: "I think basically what's happening by the withdrawal of this is that the Law School is not saying that it envisions a movement of any particular number of people and will evaluate on an individual basis who will be moved."

Dean Schwab: "Except the total will be less than 25 percent."

Speaker Norton: "Except the total will be less than 25 percent or no more than 25 percent. It could be exactly 25 percent but it won't be any more than 25 percent."

"Are there further comments or discussions? Seeing none I see you are ready to come to a vote. All those in favor of the resolution (Appendix 11) presented by the UFC to recommend that the Law School be permitted to use the title of Clinical Professor, please say aye. Opposed?"

Motion carries: Unanimous

Speaker Norton: "The Speaker now calls on Professor Bill Arms (who I saw walk in the door), a member of the Library Board to present a resolution from the Library Board concerning faculty self help to protect access to scholarly research. Thank you very much Professor Arms for waiting from last month to present this Resolution."

6. RESOLUTION FROM THE UNIVERSITY FACULTY LIBRARY BOARD:

Professor William Arms, Computer Science and member of the Faculty Library Board: "So what I want to do is just briefly outline why the Library Board has brought this resolution (Appendix 14). Fundamentally there are two major topics, interrelated topics that the Library Board has been talking about intermittently for several years. What we want to do is to get the faculty to understand and hopefully support the Library Board's viewpoint on this."

"These two topics are interrelated, but separate. One is that there are problems caused by a certain number of scientific and scholarly publishers whose pricing is, well, in the resolution we use the word 'exorbitant' and I think that is a fair term."

The second is in the changing world of information, particularly on line information. There are many opportunities for open access and on-line publication of scholarly papers and we would like the faculty to express opinions on those."

"Let me give you just a little bit of background. The background is, as faculty members and researchers at Cornell, when we write a paper we own the copyright of that paper. And we are free to choose whether we publish it and where we publish it. And typically in the past you fairly automatically sent it to the journal closest to the subject matter involved. Hopefully, to one with a high

readership because high readership has all sorts of good things like people read it and you also have the associated prestige. This point is actually a very important one. We publish for two reasons. One is we publish to communicate, and the second is we publish for what is called professional reasons so we get our materials reviewed, we get prestige for ourselves and our departments and so forth. These are really two very separate reasons.

“Anyway, the first two parts of our resolution talk about the pricing issues. Basically, we are asking faculty to become more involved in thinking about the pricing issues when they submit papers to journals or when they join editorial boards or otherwise get involved. In particular, we ask the tenured, senior faculty to set an example. We know that there are times when junior faculty are very much constrained by the need to establish their reputations.

“The situation is quite simple. There is clearly a cost in publishing. And for many of the best publishers, including many society publishers, their pricing is quite simple. They work out the cost and they add a small amount or somewhat more to cover other things. And that is their price. But there are some publishers who take advantage of their semi-monopoly or monopoly position in certain areas to set prices which are based very much on what the market will bear. In colloquial terms, what they do is they rip-off the academic community. And the difference between the pricing that they come up with, and the cost that the good society publishers come up with, can be on the order of 10-1.

“Now why is this bad? It’s bad for two reasons. One is that high prices for journals mean that there are fewer subscribers and fewer people read them. And in many of the fields, we have a downward spiral where every year the price goes up and the number of subscriptions goes down. And the number of people outside well-financed universities and research organizations who can read the papers goes down and down.

“The other is that higher prices mean that the university has less money to spend on other things. So the library is torn every year between the questions of do they pay these higher prices, which means cutting down on something else, or do they purchase fewer journals. From the University point of view, the Provost and the academic administration have always the question of given the scarce money they have, where should it go?

“So the first two parts of our resolution urge people to be aware of where they publish, the price of where they publish, and to not automatically become editors of journals and reviewers of journals if those journals behave in ways which are antagonistic to our mission.

“The third part of our resolution repeats the support that we carried over from 18 months ago to support the libraries and the very difficult decisions they have to make in these areas. And by the way I have great admiration for way the libraries have tackled this.”

“Moving on, let’s talk a little bit about ‘open access.’ By open access I mean putting our papers in places, typically on the web, where anybody in the world can read them at no cost. I hasten to add that this does not mean that there’s no money involved. It costs money to create, edit and put papers up. These things are not free. Somebody’s got to pay them. But what it means is that there’s no restriction on readership.

“Now the motion is quite simple. It’s to urge faculty members to consider publication options that result in papers being available on line with open access. Personally, I have for more than a decade followed that since I started putting papers up on a gopher server. Some of you present may remember that precursor to the worldwide web. It has an interesting effect. It’s that people who I wouldn’t expect to, occasionally read something that I have written. And this is really very important, particularly if you are in one of the disciplines where the potential readers are broad. An example of this is something like public health. When you write an article for public health you are not just writing for other researchers. It’s possible that the general public, patients, people like that, might read this material if it’s available for open access. In fact the National Institutes of Health has a policy of strongly urging that all articles based on research that it supports be placed on line, open access, within one year after publication. I believe also that there’s a bit of a motivation that if the taxpayer pays for the research, the taxpayer should get to read about this research. I personally find that to be quite important.

“There’s another interesting and important one, that there’s no restriction on teaching. If your article is on line, anybody in the world can use it in teaching without having the high costs. So that’s the fourth part of our resolution.

“The next thing part of the resolution is about copyright. When we write a paper we own the copyright. But typically publishers will come to us with a form asking us to transfer the copyright. When we do that we are making a decision. This resolution urges people to consider the implications before making that decision. Notice we are not saying that it’s inappropriate. Personally I took the pledge more than twelve years ago that I never transfer a copyright unless I was paid. And this is something I have been able to stick to. But I am in a field that has a lot of industrial authors and many companies just refuse to transfer copyright so the publishers are used to this.

“There are two things to understand here. One is, and this is very discipline-specific, many publishers in fact have more than one copyright agreement. I have a formula. Whenever I submit a paper I write, ‘it’s not my policy to transfer copyright in my academic work; I will give you my copyright license or I’ll be interested in what you have.’ And almost every publisher comes back – ‘oh, we have this other license as well as the former.’ So the Library Board then is recommending that the author should ask that. Remember, if you transfer copyright you lose control of your work. You may find yourself in the position, at the extreme, of having to pay a copyright fee to copy your own paper to distribute to your colleagues or your students. So the thing that we have asked in the resolution is to consider the implications before doing so.

“And finally, the last part of our resolution is to urge people to put some version of our papers on line with open access, not necessarily the paper itself, maybe a preprint or a post print. There are many options. You can put it on a web site, or use an institutional repository such as the one run by the library. When your paper is in such a place, there is no chance of the strange world of business hounding you out. And if the publisher goes out of business, or the price goes up so high that the library can no longer subscribe to the copy, your work is still there for others to see. So this is a multi-part resolution and I think we should hand it over for discussion.

Speaker Norton: “Thank you very much Professor Arms. Are there comments, questions, debate on this resolution?”

Professor Rich Burkhauser: “We have seven minutes and I am going to do you the honor of saying that this is an extremely serious issue that you are bringing up here. That’s why I am going have to oppose this amendment. And I’m going to give you two basic reasons why I am concerned.

“First of all I think you should choose your enemies and choose your friends carefully. In your language you cause people who could be your friends to be your enemies by using what I think is overheated language. ‘Since that date the underlying problems of certain publishers charging excess prices for subscriptions has continued, driven by the stock market forces that demand ever-higher profits’. That may be good on the resolution, but I don’t think that’s a very sensible way to frame a very serious question.”

Speaker Norton: “The chair would point out that that’s not a part of the resolution.”

Professor Burkhauser: “I understand that but it is part of the discussion that gives us the context in which we can answer this problem.”

Professor Arms: "But those are true statements."

Professor Burkhauser: "For that statement alone I would disagree with you because I think it's monopoly problems that you are talking about here not competition. There are many firms out there in the world that compete. And in fact competition lowers prices. It doesn't raise prices. So I think that your understanding of the way the markets work is different from mine. But I have a more serious and important point because it is one that is asking me to do something, which I absolutely would never do to a junior faculty member. I would urge a junior faculty member to publish in the journal that is most prestigious. And that's the thing that he or she should worry most about in terms of progression in succeeding in our discipline. It's fine if you are a full professor to worry about these sorts of things. So I think I wouldn't encourage all faculty to talk about encouraging junior people to worry about the kinds of questions that you have."

"Finally I would say that I think you misunderstand the purpose of journals to some degree. The problem is not that we have too little information in the world. It's that we have too much information. And when all the information goes on the web we don't have that group of people who are telling me and signaling me what I should spend my scarce time looking at. So there is a role for private property. There is a role for journals. There's also a role for open access. But I think there should be a balance here, which is not in this resolution."

Speaker Norton: "Thank you. Another comment?"

Associate Professor Sheila Hemami, Electrical & Computer Engineering: "I completely want to back you up on what you have said. I think, this as written is great for the New York Times. I would be proud that Cornell University has done this and we can tell our friend in the Netherlands that we don't want him any more. But, at the same time I appreciate that you have strategically put tenured in this. I don't think the language is strong enough to send a message to junior faculty that, politics aside, they need to be concerned about what's helping them the most. And I feel that a junior faculty member may see this as undue pressure. And then that will lead them to make some poor decisions. So that's my concern."

Professor Philip Nicholson, Astronomy: "I am an editor of a journal published by our infamous friends in the Netherlands at the moment. It has been edited here at Cornell since its inception, more or less, in the 1960s. And it's a small field, planetary science, but almost everybody would accept that it's the prime journal in the world, not just in the US, in that subject. So from that point of view

I would certainly not vote for this resolution in a sense that I could not feel in good conscience that I could advise my fellow faculty members that they should stop sending papers to their journal, which is the main one in their field any more. Although I sympathize with the underlying reasons for this, I think it's very good to encourage the library to go ahead and do whatever they can to put the screws to Elsevier and other companies to reduce the prices. I don't think we should go to the point of encouraging people to boycott either serving on the editorial boards or submitting their papers when that should again be determined logically by the suitability of the journal that you are sending it to and the reputation of the journal in this case."

Speaker Norton: "Is there further debate?"

Professor Steve Vavasis, Computer Science. "Do you keep track of the price of the journal? How is your price going?"

Professor Nicholson: "No, we have no control. Obviously not, it's a commercial journal. It's an unusual one in that it's a commercial publisher, which is sort of officially endorsed by the Society. So it's not a society-owned journal but it's a society-endorsed journal."

Professor Vavasis: "You don't think there's anything wrong with that?"

Speaker Norton: "This is not the place for that conversation."

Professor Kathleen Rasmussen, Nutritional Sciences: "The last part of your 'be it resolved' suggests putting things on D-space as preprints and post prints. As president of a scientific society that publishes its own journal, I am very, very concerned with this issue as NIH has gone to open access. What you are suggesting here is making multiple versions of a single scientific work available. Certainly from the point of view of a working scientist, I need one version. From the point of view of the journals that actually wind up or may wind up holding the copyright, having multiple versions on this kind of a repository, I don't see this as a constructive suggestion. Now maybe I don't understand what you are trying to do, but that does not seem to me to be helpful."

Professor Arms: "My simple answer to the question is that for the best models we see, pardon me, the best model is Physics. It is the most established model. And Physics has managed to establish a very stable situation in which there are simultaneously preprints of most of the articles and the established journals, American Physical Society, which is an admirable journal publisher and this is an existing proof that you can get a very nice stable relationship. Discussion of the

preprints, correction of mistakes and things, review, formal publication later is a very nice balanced framework. It definitely can happen."

Professor Rasmussen: "Is the preprint then withdrawn?"

Professor Arms: "No. The preprint sits forever."

Speaker Norton: "Are there further comments?"

Professor David Grubb, Materials Science & Engineering: "One of the suggestions up there is that one should refrain from refereeing for these varied commercial journals. I should just remark that in the past years when I have been asked to referee for some company that's highly commercial, I say 'you are a commercial enterprise, I am willing to referee at my usual commercial rate. Unfortunately I haven't had many takers'."

Speaker Norton: "Are there further comments?"

Professor Stuart Blumin, History: "It's good to see there are a few humanists in the room. There was concern about the rising prices in science journals on the library budget and for acquisition in humanities. I should point out the American Historical Reviews is going to cost something like a \$170.00 a year. That being the case, the whole purpose I gather is to relieve library acquisition budgets and I'm wondering, I keep trying to guess what the actual effect, the realistic effect on pricing in this market place will be. There are other proposals that I know have gone out such as consulting with other universities to create perhaps a consortium for purchasing journals on a regional basis rather than individual university library basis. I wonder if proposals such as that have been considered or whether you might consider some way of exerting pressure on the publishers by reducing their market in that way."

Professor Arms: "I could give you a very long answer to that. But perhaps I could simply answer the question that came up right at the beginning about pricing. I have been a consultant to Elsevier, Wiley, and Springer. I have been on the board of a major Thompson subsidiary, American Physical Society. I've had a lot to do with the ACF. I know all about pricing. The Thompson example is quite simple. Every year they are told this is what we expect your profits to be next year. Okay? And if you don't make it - I've seen it happen - the president of that subsidiary got fired. Okay? That's the basic pricing policy. So all these consortiums you are talking about are different ways for the same group of universities to pony up the same amount of money. So it sounds great if you are doing it on a cost basis, but it's not if it's on a pricing basis. There are experts in

this room from the Library who can speak at length, but we probably don't have time."

Speaker Norton: "We don't have time. In fact we are past our adjournment time at the moment. So in fact it is time to adjourn. Orders of the day were basically, quietly called to the chair, order of the day called for a coming to an immediate vote on all pending legislation. Unless there is a move to extend time..."

Professor Anton: "Do we still have a quorum?"

Speaker Norton: "Do we still have a quorum? I saw one person leave and the presenter came in. We should be all right. I think we have a quorum. Yes. We were about two over a quorum. My suspicion is we have a quorum. If you would like let's vote. Yes. The point is we must come to a vote under orders of the day unless there is a move to extend time. I don't see any."

"All those in favor of this resolution, please say aye. Opposed, say nay. The ayes have it. Motion passed."

Meeting adjourned at 6:05 p.m.

Respectfully submitted,

Cynthia R. Farina
Associate Dean and Secretary of the University Faculty

APPENDIX 1

(Martin slide – institutional goals)

APPENDIX 2

(Martin slide – 2004-2005 Faculty Salary Increases)

APPENDIX 3

(Martin slide – Average Faculty Salaries*

APPENDIX 4

(Martin slide – Endowed Ithaca Faculty Salaries

APPENDIX 5

(Martin slide – Contract College Faculty Salaries

APPENDIX 6

(Martin slide – Faculty Salary Planning 2005-2006

APPENDIX 7

**Resolution to Adopt
Policy on Sanctions for Job-Related Faculty Misconduct**

WHEREAS the Committee on Academic Freedom and Professional Status of the Faculty was asked by the Dean of Faculty in 2002 to review existing relevant policies on suspension and to make a recommendation for a Cornell policy that regulates suspensions and similar sanctions for job-related faculty misconduct; and

WHEREAS the Committee has engaged in an extensive process of study that included consultation with the deans, and now recommends the attached “Policy on Sanctions for Job-Related Faculty Misconduct,”

THEREFORE BE IT RESOLVED that the University Faculty Senate recommends to the Provost and Board of Trustees that the “Policy on Sanctions for Job-Related Faculty Misconduct” be adopted and implemented as University policy.

4/29/05 Submitted by:
Committee on Academic Freedom and Professional Status of the Faculty

5/3/05
UFC approval

APPENDIX 8

Section III.A.3(f) as distributed in the call to the meeting

(f) If the faculty member requests before or at the opening of the hearing, he or she shall after its conclusion be furnished, without cost to him or her, a full report of the proceedings before the panel, including an audio recording of the testimony taken, copies of documents received, and the panel's findings and recommendations.

Proposed amended Section III.A.3(f)

(f) After the conclusion of the hearing, the faculty member will receive a copy of the panel's findings and recommendations. If the faculty member so requests before or at the opening of the hearing, he or she shall after its conclusion be furnished, without cost to him or her, a full report of all the evidence received by the panel, including an audio recording of the testimony taken and copies of all documents received.

APPENDIX 9

Proposed Suspension Policy
May 11, 2005

At the March 10, 2004 Senate meeting, Prof. Ochshorn, then chair of the AFPS, presented the committee's proposed suspension policy to the Senate for discussion. The proposed policy was modestly revised in the light of that discussion, and the revised policy was posted on the web and sent to the academic deans for their comments.

The academic deans responded to AFPS request for comments in March, 2005. The AFPS discussed the objections of the deans and revised the draft to meet each of their objections either fully or to the extent that the APFS felt was consistent with protecting the rights of an accused faculty member. The revised document was then sent back to the academic deans, and the AFPS has not yet received a full response from the deans.

The changes that were made in the March 10, 2004 draft are each listed below. For each change, a brief explanation is presented.

1. Section I.E: The clauses in the sentence were rearranged to make it clear that a salary reduction by itself will be considered a suspension.
2. Section III.A.1: Emergency suspensions were exempted from the time limit restrictions to accommodate unforeseen emergency situations.
3. Section III.A.1: The minimum allowed suspension was reduced from 30 days to two weeks. The aim of this provision was to ensure that a suspension was in fact a severe sanction, and the deans suggested that 4% of a person's annual salary was a more appropriate lower limit than 8%.
4. Sections III.A.3(c) through III.A.3(h) are all new. The March 10 2004 draft designated the Trustee adopted dismissal procedure as the procedure to be used for appealing suspensions. The deans argued that this procedure, with its reliance on lawyers examining and cross-examining witnesses was too burdensome and unsuited for panels with little or no judicial experience. In response, the AFPS devised a procedures which mimicked the dismissal procedure while reducing the level of participation of attorneys to giving advice to their client.

5. Section III.C.1 The definition of an emergency was broadened to "imminent serious harm to the [faculty] member or others or property". The deans argued that the previous definition of harm to persons was too restrictive. AFPS agreed, and opted for this wording rather than the broader definition of "... or harm to Cornell" suggested by the deans.

6. Section III.C.2 The first sentence was added to make sure that the scope and duration of the emergency suspension corresponded to the scope and duration of the emergency.

APPENDIX 10

**Policy on Sanctions for
Job-Related Faculty Misconduct**

Prepared by: Committee of Academic Freedom and
Professional Status of the Faculty, 04-04-05

Policy Statement: (To be standardized by University Policy Office)

Reason for Policy: (To be standardized by University Policy Office)

Entities Affected by this Policy: University professors and college or school
faculty members.

Who Should Read this Policy: (must include faculty and deans, to be
standardized by University Policy Office)

I. Definitions

A. College or school faculty member: as defined by Art. XIII of the Bylaws
of Cornell University:

Each college or school faculty, except the Graduate Faculty, shall be composed of the President; the Dean or director of the college or school; and all professors, associate professors, and assistant professors in the department or departments under the charge of that faculty. Instructors, senior research associates, senior extension associates, lecturers, senior lecturers, clinical professors, associate clinical professors, and assistant clinical professors, and those bearing the adjunct title shall be non-voting members. Each college or school faculty may, in its discretion, grant membership to senior scholars, senior scientists, and other professional personnel for whom such membership is deemed appropriate by such faculty. Any college or school faculty may elect to its membership persons who are already members of other faculties of the University for so long a period as they continue to be members of such other faculties.

B. Emergency suspension: A suspension with full salary pending the ultimate determination of the faculty member's case where the member is charged with misconduct and the member's continuance threatens

imminent serious harm to the member or others or to property.

C. Minor sanction: any sanction other than a "severe sanction."

D. Severe sanction: dismissal or suspension.

E. Suspension: a temporary abrogation of the faculty member's rights or responsibilities that effectively prevents the faculty member from carrying out the responsibilities of his or her position or a temporary partial or temporary full reduction of a faculty member's salary will be considered a suspension for the purposes of this policy, whether or not it is named as such.

II. Purpose and Scope of this Policy

To ensure fair and adequate processes for faculty charged with job-related misconduct or failure to perform the duties required of the position held, the following procedures govern the imposition of severe sanctions, minor sanctions, and emergency suspensions.

III. Procedures

A. Severe Sanctions

1. Duration of suspensions: No suspension, other than emergency suspension, shall be imposed for a period of less than two weeks, nor more than 12 months.
2. Reporting requirements for dismissals or suspensions: All dismissals or suspensions, including those resulting from informal settlements, shall be reported to the Dean of Faculty by the appropriate administrator. Such reports shall include a summary of both the complaint and its resolution, and shall be maintained in a permanent archive.
3. Suspension procedures for university professors, professors, associate professors, and assistant professors¹:

¹ The procedure used for dismissals is the procedure adopted for that purpose by the Board of Trustees.

- (a) The term "faculty member" in subsection III A. 3. shall refer exclusively to university professors, professors, associate professors, or assistant professors.
- (b) If the administration believes that the conduct of a faculty member is sufficiently grave to justify imposition of a suspension, the procedures in III.A.3. (d) below shall apply.
- (c) Where the recommendation for a suspension is a result of action taken under any other university policy (including those policies governing "academic misconduct," "sexual harassment," "financial irregularities," and "conflict of commitment/interest"), the faculty member may appeal the recommendations issued under that policy by requesting a hearing according to III.A.3.(d) below. In this case, the administrator shall not implement the sanctions recommended under the initial policy procedures but shall instead report to the Provost the results of any investigations undertaken, together with his or her recommendations. The Provost shall cause the faculty member to be furnished with a written and detailed statement of the charges against him or her if, after receiving the administrator's report and making such independent investigation as may seem appropriate to the Provost, it is the opinion of the Provost that further proceedings are warranted.
- (d) The charges against the faculty member shall be heard by a hearing panel appointed as follows. The faculty member and the Provost shall each choose four members of the University Appeals Panel. The faculty member's nominees shall choose two of the Provost's nominees, and the Provost's nominees shall choose two of the faculty member's nominees. The four so chosen shall then choose a fifth tenured University member, who shall chair the hearing panel. Any person nominated who has participated in the matter being heard or feels unable to render an unbiased judgment

or perceives a conflict of interest shall disqualify him or herself.

- (e) At the hearing, the faculty member shall be entitled to be accompanied by an advisor or counsel of his or her own choice, to present witnesses in his or her own behalf and to confront and question the witnesses against him or her. The faculty member's advisor or counsel may not address the panel or question the witnesses unless requested to do so by the chair of the panel.
 - (f) After the conclusion of the hearing, the faculty member will receive a copy of the panel's findings and recommendations. If the faculty member so requests before or at the opening of the hearing, he or she shall after its conclusion be furnished, without cost to him or her, a full report of all the evidence received by the panel, including an audio recording of the testimony taken and copies of all documents received.
 - (g) The panel shall report its findings to the President in writing within eight weeks of being formed. The decision of the President will not be subject to further appeal or reconsideration.
 - (h) The office of the Dean of the Faculty will provide staff support for the panel.
4. Procedures for suspension and dismissal of college or school faculty members other than professors, associate professors, and assistant professors:
- (a) When complaint from any source is made against such member which might lead to the imposition of a dismissal or suspension, and unless the alleged misconduct falls under the jurisdiction of a specific Cornell policy containing alternate procedures, the Dean of his or her college shall inform the member of the complaint against him or her, investigate the case, and if the faculty member is willing, consult with him or her regarding it.

- (b) If the matter is adjusted informally to the satisfaction of the Dean and the faculty member, no further proceedings shall be invoked by them. If the matter is not adjusted informally, the Dean shall cause the faculty member to be furnished with a written and detailed statement of the charges against him or her.
- (c) No dismissal or suspension shall be imposed without first giving such member an opportunity to invoke grievance procedures and seek review by the Committee on Academic Freedom and Professional Status of the Faculty [AFPS], to the extent permitted by the specific policy guidelines governing such reviews, and within the following stated time periods: The member shall have 4 weeks after being informed in writing of the charges and recommended sanctions to invoke grievance procedures or review by the AFPS. Where a review by the AFPS is requested following a grievance action, the faculty member shall have 4 weeks after the completion of the grievance procedure to request review by the AFPS.
- (d) The opportunity to invoke grievance procedures and seek review by the AFPS before the imposition of a dismissal or suspension, as described above, applies also to cases where the recommendation for a dismissal or suspension is a result of action taken under any other college or university policy (including those policies governing "academic misconduct," "sexual harassment," "financial irregularities," and "conflict of commitment/interest").

B. Minor Sanctions

If the administration believes that the conduct of a faculty member justifies imposition of a minor sanction, the following procedures will be followed:

1. If a minor sanction is imposed under a specific university policy (such as "academic misconduct," "sexual harassment," "financial regularities," and "conflict of commitment/interest"), the faculty member may obtain consideration and, possibly,

redress by invoking a formal grievance action according to the grievance procedures adopted by his or her college and, where appropriate, request review by the AFPS.

2. If the conduct justifying a minor sanction is not regulated under any other specific university policy, the appropriate administrator will notify the faculty member of the basis of the proposed sanction and provide the faculty member with an opportunity to persuade the administration that the proposed sanction should not be imposed. A faculty member who believes that a minor sanction has been unjustly imposed may invoke a formal grievance action according to the grievance procedures adopted by his or her college and, where appropriate, request review by the AFPS.
3. A faculty member who believes that a sanction proposed under the procedures for "minor sanctions" is, in fact, a "dismissal or suspension" may invoke a formal grievance action according to the grievance procedures adopted by his or her college and, where appropriate, request review by the AFPS.

C. Emergency Suspension

1. If a university professor, or college or school faculty member, is charged with misconduct and if the member's continuance threatens imminent serious harm to the member or others or to property, the faculty member may be suspended by the President (or his or her designee) or assigned to other duties in lieu of suspension pending final resolution of the charge.
2. The scope and duration of the emergency suspension shall be tailored as narrowly as possible to the nature of the harm posed, so that the faculty member's rights and privileges are not summarily abrogated more broadly than is reasonably necessary to protect persons or property pending completion of the suspension procedures. Whatever other rights and privileges may be withdrawn by an emergency suspension, the faculty member's full salary shall continue during the period of the emergency suspension.

3. The President (or his or her designee) shall promptly report to the Dean of Faculty concerning the propriety, the length, and any other conditions of the emergency suspension.

University Faculty Senate Approval
May 11, 2005

APPENDIX 11

Resolution to Recommend that the Law School
be Permitted to Use the Title of Clinical Professor

WHEREAS the Law School wishes to use the title of Clinical Professor and has taken the steps specified in the Enabling Legislation, approved by the University Faculty Senate on September 4, 2002, in making a proposal for that use; and

WHEREAS the Committee on Academic Policies and Procedures has determined that Law School proposal meets the requirements of the Enabling Legislation; and

WHEREAS the University Faculty Senate concurs with the conclusion of the Committee on Academic Policies and Procedures,

THEREFORE BE IT RESOLVED that the University Faculty Senate recommends to the Provost that the Law School be permitted to use the title of Clinical Professor as specified in the Enabling Legislation.

UFC
May 3, 2005

APPENDIX 12

Law school proposal – page 1

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APPENDIX 13May 2005

Report to the Senate Concerning the Law School Proposal
for the Clinical Professor Title

Forwarded to the Senate from the Committee on
Academic Programs and Policies

As specified in the Enabling Legislation for the Clinical Professor Title, CAPP has considered the Proposal on Clinical Professorships received March 9, 2005 from the Law Faculty.

CAPP asked the Law School to provide us with the vote for this proposal. It was:

Tenured/Tenure Track Faculty: 20 Yes; 10 No

Total Current Tenured/Tenure Track Faculty: 33

Non-Tenure Track Faculty: 8 Yes; 0 No

Total Current Tenured/Tenure Track Faculty: 9 + 1 new appointment to begin next year.

CAPP questioned the Law School about their intention to offer this title to all current lawyering and clinical faculty who now hold the title of lecturer or senior lecturer. The Law School responded that they intend to use the clinical titles for all faculty with similar duties, retaining lecturer and senior lecturer titles for faculty with other responsibilities. They intend to review current lawyering and clinical faculty individually for appointment to the new titles. In view of this, CAPP agreed that the Law School Proposal as a whole meets the requirements of the Enabling Legislation.

The Law School has withdrawn **Section D. Percentage Limitation**, noting that at this time they will abide by the limit of 25% of the Law School's tenure track faculty.

With these two issues resolved, CAPP forwards the Law School proposal to the Senate for discussion.

APPENDIX 14

**Resolution from the
University Faculty Library Board
Concerning Scholarly Publishing**

WHEREAS Cornell's longstanding commitment to the free and open publication, presentation and discussion of research advances the interests of the scholarly community, the faculty individually, and the public, and

WHEREAS certain publishers of scholarly journals continually raise their prices far above the level that could be reasonably justified by their costs, and

WHEREAS the activities of these publishers directly depend upon the continued participation of faculty at Cornell and similar institutions acting as editors, reviewers, and authors, and

WHEREAS a lasting solution to this problem requires not only interim measures but also a long-range plan, and

WHEREAS publication in open access journals and repositories is an increasingly effective option for scholarly communication,

THEREFORE BE IT RESOLVED THAT

The Senate calls upon all faculty to become familiar with the pricing policies of journals in their specialty.²

The Senate strongly urges tenured faculty to cease supporting publishers who engage in exorbitant pricing, by not submitting papers to, or refereeing for, the journals sold by those publishers, and by resigning from their editorial boards if more reasonable pricing policies are not forthcoming.³

Reaffirming and broadening the proposals discussed during its meeting of December 17, 2003, the Senate strongly urges the University Library to negotiate vigorously with publishers who engage in exorbitant pricing and to reduce serial acquisitions from these publishers based on a reasonable measure of those subscriptions' relative importance to the collection, taking into account any particular needs of scholars in certain disciplinary areas.

² See, e.g., <http://oap.comm.ndl.org/10most.html> (listing 2005 prices of journals in various disciplines); <http://www.ala.org/ala/acrl/acrlissues/scholarlycomm/scholarlycommunicationtoolkit/faculty/facultyeconomics.htm> (providing general journal price info).

³ See, e.g., <http://www.arl.org/sparc/author/addendum.html> (discussing what faculty referees and editors can do to change journal policies).

The Senate strongly encourages all faculty, and especially tenured faculty, to consider publishing in open access, rather than restricted access, journals or in reasonably priced journals that make their contents openly accessible shortly after publication.⁴

The Senate strongly urges all faculty to negotiate with the journals in which they publish either to retain copyright rights and transfer only the right of first print and electronic publication, or to retain at a minimum the right of postprint archiving.⁵

The Senate strongly urges all faculty to deposit preprint or postprint copies of articles in an open access repository such as the Cornell University DSpace Repository or discipline-specific repositories such as arXiv.org.⁶

DISCUSSION

This matter has been before the Senate previously. On December 17, 2003, the Senators present unanimously supported the Cornell University Library's efforts to control spiraling acquisition costs by tough negotiations with certain journal publishers who were exploiting their market power.

Since that date the underlying problem of certain publishers charging excessive prices for subscriptions has continued, driven by stock market forces that demand ever-higher profits. At the same time, these journals could not even exist without the faculty who submit papers and act as editors and reviewers.

The resolution has been helpful to the Library in resisting the price increases and in protecting its acquisition budgets, so that funds are not transferred from other disciplines to pay the excessive prices from certain publishers. However, this is still a severe problem.

As regards copyright, faculty should realize that documents sent to authors by publishers to transfer copyright are often negotiable. Many publishers have alternative copyright arrangements for those who do not want to transfer copyright. See also Footnote 4.

⁴ See, e.g., <http://www.doaj.org/> (listing peer-reviewed open access journals); <http://www.earlham.edu/~peters/fos/do.htm#faculty> (providing advice and sources for open access publishing); <http://www.library.cornell.edu/scholarlycomm/> (same); <http://www.ala.org/ala/acrl/acrlissues/scholarlycomm/scholarlycommunicationtoolkit/toolkit.htm> (same);

⁵ See, e.g., <http://www.arl.org/sparc/author/addendum.html> (providing a form to use to retain necessary rights); <http://www.ala.org/ala/acrl/acrlissues/scholarlycomm/scholarlycommunicationtoolkit/faculty/facultyauthorcontrol.htm> (providing model agreements and negotiation advice). See also <http://www.sherpa.ac.uk/romeo.php?stats=yes> by Project SHERPA (<http://www.sherpa.ac.uk/>)(listing journals that permit such archiving without special arrangement).

⁶ See, e.g., <http://www.earlham.edu/~peters/fos/do.htm#faculty> (describing methods and results of open-access archiving);

Also over the past few years, open access journals and repositories have emerged as an important extension of or alternative to conventional journal publication in many disciplines, though far from all.

Definition of open access from Peter Suber's web page - "Open-access (OA) literature is digital, online, free of charge, and free of most copyright and licensing restrictions."

4/11/05