

MINUTES OF A MEETING OF THE FACULTY SENATE

Wednesday, April, 9, 1997

The Speaker, Professor John Pollak, Animal Science, called the meeting to order. He then called on Dean Stein for his remarks.

1. REMARKS BY THE DEAN OF FACULTY

Peter Stein, Dean of Faculty: "I have a couple of things that I want to address this afternoon. Pretty soon, we are going to have the annual elections to fill the UFC, the At-Large positions in the Senate, and the Nominations and Elections Committee. The Nominations and Elections Committee will today, submit for your approval, the slate of candidates for those elections. In addition, there are a relatively large number of committees that are filled by the Nominations and Elections Committee by appointment rather than by election. This is done to reduce the number of elections that we send around to you in the hopes that you will take the elections that we do have more seriously. There are roughly 30-35 appointments that have to be made to all of the standing faculty committees. In order to find appointees for these committees, we generally send a notice to all faculty asking them to nominate people and that process has generally been unsuccessful. We usually get very few nominations. It occurred to us this year that we might be more successful if we asked the Senate to provide these nominations. So, tomorrow, I will send an E-mail to the Senate, giving you a list of the positions that need to be filled and ask you to supply one or two nominations for these committees from your departments. We welcome your own self-nomination and we would also welcome the names of new people who would also be interested in doing this sort of work. Every year I telephone people and ask them if they are interested in serving on these committees and I keep a record of whom I call on my computer. I've been doing this now for four years and looking back over that file, I found that I call the same people again and again, so I think that we could benefit from some fresh blood. With regard to the E-mail, I ask you to send in nominations for two people in the next couple of days, maybe one of the usual people that get nominated and someone who is not on the list of people who are usually nominated. That's point number one.

"Point number two: I'd like to talk a little bit about the never ending saga of Sexual Harassment Procedures. We passed a motion suggesting a change in the Sexual Harassment Procedure two meetings ago. I duly transmitted that to the Provost and encouraged him to change the procedures to comply with what we thought was the appropriate policy for the University. The Provost, properly, sent this out to other constituencies such as the Employee and Student Assemblies to seek their input. They replied, giving both major and minor changes that they felt should be made to the policy. I have since had extensive conversations with the leadership of the Employee and Student Assemblies and they have many changes to suggest to our document. I find some of their suggested changes reasonable and I find that some of those suggested changes, in my opinion, would not be acceptable to the Senate. It has always been clear that it is the administration's responsibility to write a Sexual Harassment Policy. We understand that we are a very important constituency at this University, but we also understand that we are not the only constituency at this University. It is still my hope that in relatively short order that the University will sort out all of the input they have received and give us a Sexual Harassment Policy that is superior to the one we currently have. That concludes my remarks."

Speaker Pollak called on Provost Don M. Randel for Questions and Answers.

2. QUESTIONS AND ANSWERS WITH THE PROVOST

Professor Gary A. Rendsberg, Near Eastern Studies: Several meetings ago you presented the long range and short range budget to this body and if I heard you correctly, you said that the pool for faculty salaries would show an increase of 5% over the next few years. At a recent department meeting, our chair told us that in the College of Arts and Sciences, at least, that pool was only going to be 3%. I don't know if I am hearing conflicting information or if there is a deeper explanation of which I am not aware. I would appreciate your comments on this."

Provost Randel: "What I reported to you and what we made available to the colleges is a 3% pool and we have invited the colleges to respond to an opportunity to receive an additional amount that is equal to 2% of the salary base that will not be distributed uniformly. Now, this is in the endowed general purpose colleges: Arts and Sciences, Engineering, and Architecture, Art, and Planning. I've asked each of the deans of these three colleges to 'apply' for the additional 2%, giving

them a range of what they might apply for and asking them to say something concrete about where they feel the need is greatest. I will then respond to their requests and I expect that it will not be distributed uniformly to the colleges and I expect that the deans will not distribute it uniformly to the departments. The idea here is to apply that 2% with a particular emphasis on putting it into the places where it will be able to do the most good."

Professor P.C.T. deBoer, Mechanical and Aerospace Engineering: "Could you please comment on the Sexual Harassment Procedures?"

Provost Randel: "The Student Assembly is scheduled to meet tomorrow and I have a preliminary draft of what they plan to discuss, but I do not know what the outcome of it will be. Nothing would please me more than to have all of the constituencies agree on a policy that I could then 'rubber stamp'. Unfortunately, that is not going to be the case. Much of what the Senate proposed is an improvement on the existing policy and no doubt significant parts of what the Senate proposed in the way of changes or supplements to procedures within its own committee will surely be adopted. But, there are some serious differences of perspective with the Employee Assembly. For example, when a student is sexually harassed by a faculty member, there is an academic relationship there and certain conditions prevail and that calls for a certain kind of procedure. But why should a faculty member who is charged by an employee be treated any differently than an employee that is charged by an employee? I am confident, as is Peter Stein, that we will resolve these differences and reach some satisfactory conclusions by the time of your next meeting."

Professor Mary Beth Norton, Mary Donlon Alger Professor of American History: "I appreciate the fact that the Student Assembly hasn't met yet, but what are the main things that the Student Assembly is concerned about?"

Provost Randel: "The Student Assembly is, I suppose, primarily concerned about the degree to which the procedures are going to be used, and that they will provide a reasonable forum in which students can pursue grievances that they do have. From the perspective of some students, it looks pretty forbidding that you have to go through three different sets of hearings. From their perspective, they feel that some student counselors should be 'deputized' by the regular ones because there is a feeling that some students may not feel comfortable going to some 'grown-up'."

Associate Professor Harry Kaiser, Agricultural, Resource, and Managerial Economics: "Can you give us an idea of what is going on with statutory faculty salaries?"

Provost Randel: "We continue to expect that there will be a salary program for statutory faculty salaries but the SUNY budget is late as usual. We continue to believe that there will in fact be a program available for next year."

Dean Stein: "I would just like to make a comment on the last thing that was discussed, namely the differences in opinion between these various constituencies. I've made many people laugh at dinner parties about very long arcane discussions about conversations over the construction of sentences and the possible misinterpretations that could result from them. I think that this obscures the real point on which I have found nearly universal agreement: we do not want to be a part of a community in which people of authority can sexually harass people over who they have authority. There is no dispute about that whatsoever and I feel that we should not lose sight of that. I've sat through long discussions with members of the faculty and I have never gotten the sense that this is something that should not be taken seriously. It is very important that in all of these public discussions we have, that we keep in mind that we are united in our belief that we do not have to support a community in which sexual harassment is allowed or tolerated."

Professor David Wilson, Biochemistry, Molecular and Cell Biology: "There was an article today in the *Ithaca Journal* about the problems of graduate students at Cornell. I was wondering how exaggerated that story was and what was happening in general in that area."

Provost Randel: "On the agenda for the academic deans meeting next Tuesday morning, we will meet with Walter Cohen, Dean of the Graduate School, to address some of the questions that have been recurring over time. Some of them are financial. One of the recurring issues over time has been the issue of health insurance for graduate students. So we are going to see what we can do about ameliorating the strictly financial difficulties. We have been trying to grow stipends faster than we have been growing other components of the budget. There is some debate over whether it is better to grow their stipends or to subsidize their health care. Another set of issues concerns the terms and conditions of being a graduate teaching assistant. This varies somewhat across the colleges and there is a feeling among some of us that we

ought to cause the deans to at least discuss this as a group and place more uniform demands upon graduate teaching assistants, there being greater demands placed on graduate assistants in some quarters than in others. The President is also very concerned about this issue and has animated some of these discussions."

Professor John Silcox, David E. Burr Professor of Engineering: "Can you or will you be able to give us some information on the shut down of the Theory Center?"

Provost Randel: "I can't say anything now about the implications of a shut down, if it were to be a shut down or anything like that. What I can say is what is likely to happen instead. There are rumors going around about what might become of the Theory Center. It seems likely that the funds being made available by the National Science Foundation will require a reduction in their expenditures of a sort that will see a reduction in our indirect cost recoveries, even in the current year and a substantial amount in the following year. The indirect cost recoveries in the Theory Center amount currently to about three million dollars a year and in the main, if the work of the Theory Center goes away and we are not able to make up those recoveries, the costs of the Theory Center do not necessarily go away along with the grants. So we may find ourselves with a hole in the budget in the amount of three million or maybe less, but in any case, it will be a very substantial amount of money. It will be a hole in general purpose revenues; it will not be simply that one can neatly target those categories of expense and get rid of them. It is not simply a matter of the work of the people employed in the Theory Center and the work that supports the faculty effort there and the science that is done there, but there has also been this major affect on our otherwise unrestricted revenues. As I said, we will begin to feel it this year and next, even though the transition phase for the Theory Center will be about eleven million dollars, but they were spending at a rate far in excess of that per year and this eleven million dollars is supposed to be spread over several years.

"If I may conclude with some recommendations for weight loss that I read in the *New York Times* that I felt resembled life in Ithaca. Three good recommendations for weight loss are constant nagging, personal anxiety, and debilitating depression (laughter). I am beginning to feel in the past few days now that the sun is out and it is sometimes warmer that we will no longer need those remedies and life will resume again."

3. APPROVAL OF THE MINUTES OF FEBRUARY 12 AND FEBRUARY 19, 1997

Speaker Pollak: "If there are no corrections or changes to the minutes from the meetings of February 12 and February 19, they will be accepted and approved. There being none, they are approved."

4. APPROVAL OF THE SLATE OF CANDIDATES FOR UNIVERSITY FACULTY ELECTIONS

Professor Emeritus Daniel N. Tapper, Physiology presented the slate of candidates on behalf of the Nominations and Elections Committee.

ASSOCIATE DEAN AND SECRETARY OF THE UNIVERSITY FACULTY - 1 vacancy

James W. Gillett, Professor, Natural Resources

Kathleen Rasmussen, Professor, Nutritional Sciences

NOMINATIONS AND ELECTIONS COMMITTEE - 4 vacancies

Ronald L. Breiger, Goldwin Smith Professor of Sociology

Frederick C. Gouldin, Professor, Mechanical and Aerospace Engineering

Timothy D. Mount, Agricultural, Resource, and Managerial Economics; Director, CISER

Richard Polenberg, Goldwin Smith Professor of American History

Susan J. Riha, Charles Lathrop Pack Research Professor of Forest Soils

David Robertshaw, Professor, Physiology; Acting Associate Dean of Academic Programs

Yervant Terzian, James A. Weeks Professor of Physical Sciences; Chair, Astronomy

Elaine Wethington, Associate Professor, Human Development and Family Studies

FACULTY SENATE AT-LARGE, NON-TENURED - 1 vacancy

Thomas J. Christensen, Assistant Professor, Government

Eunice Rodriguez, Assistant Professor, Human Service Studies

FACULTY SENATE AT-LARGE, TENURED - 2 vacancies

Cornelia E. Farnum, Professor and Chair, Anatomy

Sandra E. Greene, Associate Professor, History

Sidney Leibovich, Samuel B. Eckert Professor of Mechanical and Aerospace Engineering

Robert F. Lucey, E.V. Baker Professor of Agriculture

Jeremy A. Rabkin, Associate Professor, Government

Danuta R. Shanzer, Professor, Classics; Director, Medieval Studies Program

UNIVERSITY FACULTY COMMITTEE - 3 vacancies

Kerry H. Cook, Associate Professor, Soil, Crop and Atmospheric Sciences

David M. Galton, Professor, Animal Science

Sally McConnell-Ginet, Professor, Linguistics

Subrata Mukherjee, Professor, Theoretical and Applied Mechanics

Peter Schwartz, Professor, Textiles and Apparel

Michael O. Thompson, Associate Professor, Materials Science and Engineering

Speaker Pollak: "If you have any concerns about the names here, vote this down and it will go back to the Committee. So as you look at these names, I ask you to vote on them as a single block and either reject or accept the entire slate."

There being no discussion, the Speaker called for a vote and the slate of candidates was approved.

5. DISCUSSION OF STUDENT ASSEMBLY PRINCIPLE OF COMMUNITY RESOLUTION

The Speaker called on Dean Stein to provide background information on the Principle of Community Resolution.

Dean Stein: "The University Faculty Committee was approached about three or four months ago by members of the Student Assembly with a document that they had been working on called the 'Principle of Community', which they feel is an important expression of a sense of community and that they hope will combat some of the disunity that is felt throughout the campus. They asked the UFC, as the executive committee of the Senate, for the opportunity to tell you about that resolution and to hear what you had to say about it. So with that background, they will present it. There is nothing to vote on here since it is their principle of community, not ours, but they are interested in what we have to say. They do have four different versions of that resolution and after this meeting I will circulate an E-Mail ballot that will allow you to select which one you like best."

"Our rules do not permit anyone but Faculty members to speak, so in order to have them address us, we need to suspend the rules."

Professor Norton: "Mr. Speaker, I move to suspend the rules to allow students to present this proposal to us."

Speaker Pollak: "Is there a second? [seconded] So moved. Suspension of the rules requires a two-thirds vote of the Senate."
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The motion was approved and the rules were suspended. The Speaker then called on Heather Hollidge, Arts and Sciences '99, to present the Student Assembly's Principle of Community Resolution.

Ms. Hollidge: "My name is Heather Hollidge, and I am one of the Arts and Sciences representatives on the Student Assembly. I am a French Studies major with a concentration in International Relations. Last week you should have received four different copies of what the Student Assembly calls its 'Principles of Community', or as it is affectionately called the 'POC'. The first statement is what the students passed in a resolution formed a year ago last month. The second one resulted from a desire to make the first statement shorter and more concise. Finally, the third and fourth statements are this semester's versions of the POC. Obviously, the Student Assembly has put a lot of effort into trying to perfect a Principle of Community. So before taking any comments, I would like to spend a few minutes trying to clarify some of what was written to you in your agenda packets, including what I feel are the goals and purposes of the POC, some of the ideas and influences that may affect the POC in the future, and finally I would like to address your role as the Faculty Senate in this process.

"First of all, it is assumed that this statement is addressed to the entire Cornell community, this includes all students, faculty, employees and administrators. As I see it, there are two main goals behind such a statement. One is to promote the development of respect between individuals and among groups by creating a set of principles behind the idea of community or communities at Cornell and by attempting to define community and how it can be promoted. The second goal of this statement is to recognize the common bonds between us all, the fact that each and every one of us contributes to this University in a positive way and that we are all here to learn and to benefit from our experiences here at Cornell.

"The implementation process might include making the statement part of the recruitment and application processes, the Orientation and first-year experience and in our daily interactions. By incorporating a statement such as these into literature about the University like the *Big Red Book*, for example, the University is in fact recognizing the importance of the Cornell community. Now, for your role in all this. As representatives of the entire University Faculty, the Student Assembly recognizes the importance of your input regarding the development of a principle of community. Ever since I have been a student at Cornell the word 'community' has been tossed around during various discussions. We think that it is time for us as an intellectual engaged community to challenge ourselves to try and define exactly what this is.

"Just as a side note, I believe Princeton came up with a resolution similar to this one, but dealt more with academic integrity. The first two statements are obviously very similar, the second one is much shorter than the first. They try to achieve the first goal of recognizing the importance of respect between individuals and among groups. The third and fourth statements address the second goal which is recognizing the common bond among us. Obviously we are having a difficult time with this, which is why I am here seeking your advice."

Principle of Community

#1 Fostering a sense of community includes the development of mutual respect among individuals, an appreciation for the traditions of the University, and a recognition of the concerns shared by all who live, learn, and have grown as a result of the Cornell institution. In order to promote community, the following serves as a standard of behavior for each individual associated with this University:

The life experiences and academic endeavors of a Cornellian should include an awareness of others within the community as well as a respect for all individuals. There should be a shared sense of loyalty to and pride in the institution, its undertakings and its traditions. Each member of the community should possess a level of individual responsibility, honesty, and respect regarding all rules, regulations, and codes which govern the Cornell community, such as the Code of Academic Integrity and the Campus Code of Conduct. Finally, all Cornellians should work toward a common goal: to achieve a personal level of moral and intellectual growth as a result of their Cornell experience.

#2 The following serves as a principle of community for each individual associated with Cornell:

The life experiences and academic endeavors of a Cornellian should include both an awareness of and a respect for all individuals in the Cornell community. There should be a shared sense of loyalty to and pride in the Cornell institution, its undertakings, and its traditions. Each member of the community should possess individual responsibility, honesty, and respect regarding the Code of Academic Integrity, the Campus Code of Conduct, and all rules, regulations, and codes which govern the Cornell community. Finally, all Cornellians should work toward a common goal: the achievement of a personal level of intellectual and social growth as a result of their experience with Cornell.

#3 Cornell University is a singular institution. We are a collection of individuals, groups, and communities. We are students, faculty, staff, and administrators, representing a multitude of values, beliefs, interests, and ideals. We all contribute to the greatness and uniqueness of this institution. No two of us are alike, yet there is a single truth that unites us all. We are all Cornell.

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Cornell University is my institution. I am loyal to and take pride in it and the ideals upon which it was founded. I possess individual responsibility, honesty, and dignity. I respect my fellow Cornellians in our common journey toward intellectual and social growth. I am a Cornellian.

Professor Danuta Shanzer, Classics: "I feel that someone from the English Department should be saying this instead, but, just as regards to the last statement, I was just wondering if 'singular' is the word you want. I was wondering what exactly you meant by 'singular', the word is usually used in a pejorative context. You know, a rather 'singular' circumstance. Do you mean it is a one-of-a-kind institution or an unusual institution?"

Ms. Hollidge: "That was a word used by a member of the Student Assembly who thought it sounded good [laughter]. We tried to address the idea of a balance between students growing individually and growing together as a community and we felt that 'singular' got to the heart of that."

Professor Shanzer: "I just found it confusing, you may want to look into that further, maybe expand upon it."

Professor Emeritus Donald Holcomb, Physics: "Just a personal reaction, I found the last two quite empty. I read through them and I found very little sense of community. They have a flavor of modern America [laughter] in which every individual looks out and wants to reserve their own personal ability to interpret everything I'm going to do in the context of this or that. The advantage of number two for example, while I don't think that it should necessarily center on the Code of Academic Integrity, that is some kind of bedrock. But, if there is not shared commitment, among many students and faculty to the Code of Academic Integrity, as there is not now, among many students, it seems to me that if we do not focus this on something explicit then this thing simply goes out on paper and nothing else."

Ms. Hollidge: "A lot of Student Assembly members felt that the first two were more eloquent and more appropriate to be University documents, while the other two were more modern [laughter]."

Professor Rendsberg: "I echo the previous remarks and then I would like to raise two questions of my own. Numbers three and four make it clear that this is a statement that is to be made by all members of the community and I don't see that in numbers one and two; in other words, the express statement 'faculty, staff students' and so on. My second point is in comparing the end of number one with the end of number two, has there been a decrease in the desire for moral growth and an increase in the desire for social growth in the last year which explains the change in wording? Although I do note that 'intellectual' has moved up from the number two space to the number one space. [laughter]"

Ms. Hollidge: "Some members were a little apprehensive about using moral in the statement because they felt that we shouldn't be telling people what is moral and what is not, that is why we moved 'intellectual' up, 'moral' out, and 'social' in [laughter]. By 'social' we mean, growth as a result of conversations and daily interactions with others."

Professor Kenneth Strike, Education: "I actually hope that you don't do this. When I thought about which of the four choices I would prefer, the answer that came to mind was 'none of the above'. My reasons for that is that three of the four include among their comments that we need loyalty to and pride in this institution and its traditions. I think that loyalty is a good thing, but it must be a voluntary thing. Thus, I am uncomfortable making it an issue of institutional policy. It seems to me that if a student or faculty member wishes to make his or her way through the institution maintaining an arm's length relationship and treating it as a business transaction where money is given for a benefit received, he or she should be allowed to do so. I wish that they would strive to achieve more than that but I am not going to put myself in a position to tell them that they can't do that."

"With respect to three, I think the best explanation that somebody gave me was that it is an anarchy united by a common parking problem. I think that is true, and I think that number three makes that an institutional policy and I think goes too far in the other direction."

Associate Professor Risa Lieberwitz, ILR: "I am really glad to hear someone say that. I think that there are some really dangerous and negative things involved here that are probably unintentional. I would call one, two, and four loyalty oaths. I think we've seen loyalty oaths in the United States and we've seen the danger and damage that loyalty oaths do by well-meaning as well as not well-meaning people. It presumes that the institution is deserving of loyalty, regardless of the substance of the institution and what the institution is doing at the moment or generally. It demands that each individual profess either implicitly by being here, or explicitly if there is something to profess to out loud, that you are loyal to this institution. It makes participation in this institution, and perhaps sharing in the benefits of this institution conditional upon professing loyalty to this institution. This is a negative thing."

"Why is this a bad thing? I think that this is a bad thing because it goes against basic notions of a university that has an essential place in a democracy to promote democratic ideals. Part of that democratic ideal is to promote the essential nature of dissent. So a loyalty oath discourages dissent and encourages conformity and assent. I think that this is really a very dangerous thing, and I was even more discouraged when you said that everybody should sign on to this, because we've seen the dangers of loyalty oaths. With regard to number three, it does not seem to be doing anything good. It does not have the loyalty issue, but it does seem to play into the notion that there is a single truth that unites us all. 'We are all Cornell'. I don't know what that means, but I don't think that we can agree on it. I really hope you don't do this."

Professor Richard Baer, Natural Resources: "I would echo many of those comments. I am loyal to my family and they to me. I'm not proud of everything that I've done and I hope that my wife and children are not proud of everything I've done either. I'm not always proud of some of the things that they have done. I'm not particularly bothered by loyalty to the institution, but when it comes to loyalty, or taking pride in its undertakings, I am not proud of some of the things we've done as a University. I think that right now we are in the midst of some soul searching about how much we should pay our employees that clean the buildings and provide some of the essential services for us. I have raised some very deep criticisms of the College of Human Ecology, I hope that I would not be considered disloyal to the institution because I thought that those particular undertakings were not worthy of Cornell. I think that dissent is part of the greatness of the academic tradition and of this University. This is a troubling statement in all of its forms."

Professor Gordon Teskey, English: "I'd just like to say before continuing this discussion that even if you do not go forward with a written statement about the principle of community, just by your visiting us and showing the desire to share this with other groups that make up Cornell, is an excellent manifestation of a principle of community and I would like to commend and thank you for that."

"Several of the statements involve, as the highest goal in the University, achieving a personal level of academic growth. I am particularly interested in the word 'personal'. We engage in the common enterprise of teaching and being taught and I hope that its value goes beyond the personal that we are doing something like contributing to the expansion and sophistication of knowledge, that we are advancing research and possibly even growing wiser as a group and that we are engaged in passing on whatever knowledge we attain onto future generations. I seem to feel that the word 'personal' restricts that rather than opens it up."

Professor Strike: "If I was going to draw up a statement like this, I would start by asking what in fact are the purposes of an institution like this that are going to be shared. They ought to have something to do with the idea that commitments ought to be based on reason and that certain moral obligations follow from those commitments like reporting accurate data, not

cheating on exams, etc. It seems to me that loyalty to the traditions of this University require me to affirm throwing dead fish at Harvard hockey players. Why can't we begin with a sense of what intellectually diverse Universities ought to share and have in common? Because after all, they should be about certain things and if we are then going to impose moral commitments on anyone then they should flow from those common bonds."

Speaker Pollak: "Thank you very much Ms. Hollidge. We'll now move on to the last item on the agenda and Peter will provide us with some background on it."

6. RESOLUTION ADOPTING A PROCEDURE FOR REVIEW OF A NEGATIVE TENURE DECISION BY THE PROVOST

Dean Stein: "On behalf of the body I'd like to thank Heather for bringing that to us and I think that the discussion was spirited. I will send out an E-Mail asking which of the four you prefer and I think I will include Ken's 'none of the above' as a fifth choice. Let me now try to set the context of the next item on the agenda.

"In probably the most raucous Senate meeting we ever had, in May 1996, the UFC brought you a proposal for reviewing tenure decisions at the University level. You almost universally trashed that proposal and sent us back to the drawing board. Over last summer, through an E-mail attempt to achieve some focus on how to address this question, we came up with three different notions of proposals that were quite different and then debated them in the Senate. These were only three or four line descriptions of how the faculty might interact with the administration in this crucial, final decision on granting tenure. In our closest, cliff-hanging vote which was actually reversed upon a recount, we selected what was known as Option 6b. Then, I recruited a drafting committee to flesh out Option 6b and turn it into a real proposal. Its chair, Professor deBoer, is ready to present a proposal to you. I should remind you that this is not Senate legislative business; we cannot legislate any kind of procedure into existence. We can only recommend to the administration that they adopt a procedure that we think will be fair."

Professor Tobias deBoer, Mechanical and Aerospace Engineering, and Chairman of the Option 6b Drafting Committee: "On behalf of the Committee, I'd like to move the resolution that has been distributed in the call to meeting.

WHEREAS, the Faculty Senate in its meeting of October 16, 1996, adopted a motion to appoint a committee to draft a procedure for a "Substantive and Procedural Review of a Provost's Negative Tenure Decision" (designated as Option 6b), and

WHEREAS, a detailed proposal in accordance with this motion has been formulated by a drafting committee,

THEREFORE, BE IT RESOLVED, that this proposal, titled "Procedure for a Mandatory Review of the Provost's Preliminary Decision to Overrule a Positive Tenure Recommendation by a Dean," be adopted by the Faculty Senate, and

BE IT FURTHER RESOLVED, that the Faculty Senate recommends the proposal to the Administration for endorsement.

"These are the members of the committee: Tobias deBoer, Chair, David Grossvogel, Risa Lieberwitz, Robert Lucey, Alan McAdams, Laura Meixner, and Peter Schwartz. Peter Stein sat on the committee *ex officio* and attended most of our meetings. We met once with Provost Randel. I'd like to say a few more words about this. As Peter indicated, after the meeting in which this was read and passed as an idea, it was considered an option and was not in its final form. It was assumed that it would be left up to the committee to draft its final form ([Appendix A](#), attached). We started early in December and we started by consulting what is called 'Procedures for Appealing a Negative Tenure Decision'. That is, a negative tenure decision at the Dean's level. There are several differences between that procedure and the current proposal. It was included explicitly in the motion that we adopted that this review would be substantive as well as procedural. The second big difference is that at the Dean's level there is an authority to appeal to, which is the Provost. The Provost has the responsibility for making the final decision. First of all, at the Dean's level, there is talk about an 'appellant' and an 'appeals committee.' Wherever appropriate, we changed 'appellant' to 'candidate' and 'appeals committee' to 'review committee'. The emphasis that was in the original motion was to get faculty input as soon as it became clear that there might be difficulties at the Provost level in approving a recommendation of the Dean.

"Another difference between the procedure and this motion is the selection of this committee. It was stated that this

committee of five would be appointed by the Provost, and selected from the University Appeals Panel. It was suggested that it might be better if the committee was appointed by the Dean of Faculty, with help from the Associate Dean of the Faculty. We would like to give some say in the composition of the committee to the candidate and the Provost. So there would be seven people appointed by the Dean of Faculty and Associate Dean of Faculty, and the Provost and candidate would each strike one. As far as the procedure to be followed, the committee is strongly urged to read files of recent cases, and that access to these files must be provided, keeping in mind the absolute necessity for the confidentiality of those files. An objection that was raised in our discussion of this option, was that people would not have the general view.

"The committee has eight weeks to report. We suggest that they may attempt to arrange an informal settlement, this is always preferable. The outcome of the committee deliberations we suggest will consist of three possibilities; one, the appointment of the candidate to be extended for a certain time period, giving the candidate the opportunity to improve his or her record for tenure. The recommendation will go to the Provost and the Provost has the final decision on that matter. The second possibility is that the committee agrees with the Provost, there is clear and convincing justification for overruling the Dean's positive recommendation. There was some debate over this 'clear and convincing' but it was pointed out that this is used in a number of University documents and this is probably the best language to use, although one can argue about that. A third possibility is that the committee disagrees with the Provost about the clear and convincing justification and that conclusion is sent to the Provost. The Provost still has the final decision and this decision is not subject to further review within the University. So, we hope that this will serve to get faculty influence into tenure decisions at the Provost level by getting the faculty committee involved in the process early on."

Associate Professor Harry Kaiser, Agricultural, Resource, and Managerial Economics: "I shared this document with faculty members in my department and I got back one set of comments from a faculty member who has actually gone through this process, and I'd like to share his comments with the body. He thought that the document could be strengthened by giving a little more power to the candidate in this process. Probably the biggest suggestion he made was in section B1 on the selection of a review committee and the thought there was that not enough power was given to the review committee. I am basically wondering why you chose to go with this model as opposed to say the appeals at the dean's level, where, for example, the candidate could choose two candidates, the Provost could choose two candidates, and then the candidate could strike two of the Provost's selections and the Provost could do the same for the candidate and then the Dean could select a fifth member. So, my question is did you consider that model and if you did, why didn't you choose that one instead of the one you chose?"

Professor deBoer: "We considered that in detail and for a while that was in the document. We met with the Provost and he pointed out that what you really want at this level is a committee of peers that will keep in mind the background of the candidate. We decided that the current procedure would serve those purposes better."

Professor Kaiser: "It seems that this is somewhat of an adversarial process. On the one hand you have the Provost selecting some members and to me it would make more sense to have the candidate represent his or her own interests and not the Dean of Faculty. I have a number of comments on this paper, but I don't know if it is worthwhile to go through it if we are not going to have a say in amending this document at this point."

Dean Stein: "Just a comment, the Provost does not pick any candidates in this model. On a procedural note, the one recourse that we do have other than voting it down, is to refer it back to committee. Our rules are that if you want to make amendments, you have to make them twenty-four hours in advance of the meeting."

Professor deBoer: "If I may say one thing, the wording that we came up with is that 'In developing their list, the Faculty Deans must be mindful of the mission of the particular department or group in which the Candidate serves the University'."

Professor Kaiser: "Just to summarize the remainder of the suggestions from the person in my department, he suggests rewording section B1 to 'the Provost picks four names and the candidate picks four names, the candidate strikes two of the Provost's names and the Provost does the same with the candidate's names'. Furthermore, all of the members should be full professors, otherwise an associate professor may go against the Provost on a close call."

"Section C2, the following should be added: 'If the candidate is alleging discrimination in the evaluation of the Provost or any other person evaluating the candidate's package, then the Office of Equal Employment Opportunity will be formally

responsible for rendering a final discrimination charge.'

"Section C4 add the following sentence: 'Subsequent changes in the first and final drafts should be resubmitted to the committee by the candidate and the Provost.'

"Finally, Section D3: 'If the review committee still finds that the Provost does not have due justification for overruling the Dean's positive tenure recommendation, then the committee shall bring its findings to the entire Faculty Senate body. If the Senate so chooses, it will vote on a vote of confidence on the Provost's actions.'

"So those are the suggestions that I have for you."

Professor Richard Schuler, Economics and Civil and Environmental Engineering: "I recall that what precipitated this entire discussion in the initial phase were situations when the first, initial decision was made by the Provost. The way this revised recommendation is written, it would also allow for this process to be enacted if as an example there were a negative determination by the department, the Dean overruled, and then the Provost were to agree with the department. Was that the intention of the Committee in drafting this, to extend this kind of review to that sort of decision as well?"

Professor deBoer: "I don't recall discussing that point. It was only discussed in respect to a positive recommendation by the Dean."

Professor Schuler: "Again, the distinction I am trying to make is when the initial negative determination is by the department, not by the Provost. Is there a distinction made in the treatment of the case if the first negative decision is made by the Provost or when it is made by some lower department?"

"Let me just reiterate what I am trying to say, the department says 'no,' the Dean says 'yes,' the Provost says 'no.' It is my understanding that this process can then be enacted under those circumstances."

Professor deBoer: "I would say yes, that could happen."

Dean Stein: "If I can make a quick response. To try to sort that out like that would be a mistake, because departmental decisions are ambiguous. For instance in some departments, a departmental decision is a decision of the chair. In some places, departments have a tradition that a close vote is considered negative, the decision of the Dean and the decision of the Provost are always binary, there is never any dispute as to whether they are 'yes' or 'no'. But departmental decisions are a little bit murkier."

Professor Wilson: "I oppose this resolution, because in my reading of it, it seems fairly valueless. It will waste a huge amount of time, raise a lot of negative emotions and will do almost nothing positive. I also think, perhaps I am having undue faith in our current Provost, but I think that no Provost is going to step up and arbitrarily overrule a positive tenure recommendation from the Dean. It is not something that you do because you are having a bad day and you just roll out of bed and decide to overrule a tenure decision (laughter). I honestly think that anyone who sat down and chose to overrule a tenure decision sent to them by a dean is doing it from certain institutional perspectives that are very important. Then there is going to be a committee put together to review this and cover all that ground, and I don't think that if the Provost really sat down and thought about this before he made his decision that he is going to accept a reversal from the Committee. It doesn't make sense to me that the committee is going to come up with any new facts or information that would greatly affect the Provost's decision. I think it is only going to stir up a lot of problems and do nothing positive."

Professor deBoer: "I respect what you are saying, but let me point out that it was decided by the Senate overwhelmingly to take this approach." (dissent from the crowd).

Associate Professor Jeffrey Scott, Entomology: "I agree with Dr. Wilson that there is a lot of wasted time. We sorted out one option without looking at everything. I think that this is not perfect, but it is a big step forward and a positive step forward. It makes good suggestions, and I think the structure of the committee is excellent. I don't want to make this a representative committee of the Provost or of the candidate; I think that a committee selected by the Dean of Faculty is the way to go. This isn't an advocacy situation, at least that isn't how I want to view it. I would like to think that there will still be quality control at this level, not just an advocacy. I think that relative to the current situation, while this Provost is exemplary, down the road, there may be a Provost who makes a decision that may be questionable, motivated perhaps by

political or personal reasons, and things that we never thought would happen, but could. This is a safety check. The Provost will have to stand up to five people and say 'I did make the right decision,' and these people have the right to say, 'no you really didn't.' Then, the Provost can change his decision or stick with his original one, but the point is that the faculty have a voice."

Professor Terrence Fine, Electrical Engineering: "I have a number of questions about this, but my biggest concern is the 'clear and convincing' language. The document reads that the Provost is the final arbiter. If we accept that he is the final arbiter, what I would like to know is not whether he has other motives behind his decision, but whether he has run off the track. I don't know if he has decided something beyond a reasonable doubt or with 'clear and convincing' reasons. I want to know if he has made a bad decision. Imagine if we moved it up to 'beyond a reasonable doubt', then how interesting would this be. It wouldn't be very interesting at all. I really would like to know whether what he has done is fraudulent, so I would like to move that standard down. I would like to see 'clear and convincing' moved down to 'preponderance', or maybe even slightly lower than that and that would be a little more interesting standard and a little more appropriate."

Associate Professor Risa Lieberwitz, ILR: "I was on the Committee and we discussed many of these issues, but first, I would like to say something in terms of the faculty input question. the Provost is already getting input on these issues. In fact, the Provost made particular comments that faculty input is what he was looking for, and it seems to me that this proposal is very much consistent in terms of the type of advice the Provost is looking for on these decisions. In terms of the amount of time, we are not talking about a lot of time or a lot of cases, only those cases in which the Provost has indicated that he will be making a negative decision, that is cutting down the number of cases enormously. Thirdly, on the 'clear and convincing issue', we discussed this at length and we were trying to find a process that would be fair to the candidates and at the same time keep in mind the Provost's powers as the final arbiter. The essential point was that when a Dean makes a positive recommendation, it deserves respect so that when the Provost makes a decision contrary to that positive recommendation, the Provost should have to give 'clear and convincing' evidence why after a positive recommendation from the Dean he still chose to make a negative decision."

Associate Professor Robert Green, Law: "The standard here of the review is whether the Provost has adequate justification. I wonder a little bit how predictable the standard really is. My guess is that the normal justification from the past is the desire to raise the tenure standard, and that the Provost has applied the existing standard, but that is no longer high enough. There is an implication in this that the Committee is supposed to look at recent cases and apply the standard applied there to the current case. The Committee can turn around then and say that the Provost's decision is not in line with those cases. So, if the Provost wants to raise the tenure standard, is this review committee going to say that that standard is too high? I'm just wondering how they are going to handle something like this."

Professor deBoer: "I think that the intent was that the committee would not be working in the dark. It would have at least knowledge of recent cases, but without being obligated to act in accordance with those cases. The committee would, of course, be expected to hear the Provost and the candidate and gather the information for itself."

Professor Holcomb: "I haven't heard anything in the way of a motive for this, usually when one develops a piece of legislation and sets up a machinery to enact that legislation, there is something to be fixed. Yet, I have heard nothing in this conversation to indicate what problem we are trying to fix."

Dean Stein: "We are here because we voted about five meetings ago to pursue this path. I don't really think that I have more to say than that. There were some very different approaches that had very different aims. One approach, was trying to make a consistent set of standards. Another one was trying to check possible abuses of power by the Provost. This proposal I think came out of the stream of thinking of the second rather than the first. I don't think that anyone ever made a justification before the group that showed clear and convincing evidence or even a preponderance of evidence that showed Provostial abuse of power, but people did raise the concern that an unchecked Provost may someday go wild (laughter)."

Professor Strike: "It strikes me that there might be occasions where a Provost might, in fact, want to gain the kind of information and insight that this type of committee could offer prior to making a decision. It might be useful to trigger this procedure by the Provost without requiring a negative decision to come before the process is triggered. I was wondering if the committee gave that any consideration."

Professor deBoer: "We did not consider that. We did, however, emphasize that the committee should become involved very early in the process, as soon as the Provost indicated that he might turn the candidate down. "

Dean Stein: "To answer you directly Ken, the committee was constrained by the Senate resolution. There was another proposal on the floor that would have allowed that. The line between a tentative negative decision and seeking advice but at least the intent is clear."

Professor Strike: "If I may make a comment on that, it seems to me that if you have a dead heat between two proposals, and one wins by only a few votes, if you write the proposal so that it 'throws a sock' to the loser, that's a good thing not a bad thing."

Professor Teskey: "I would just like to underline that point. If I recall the choices were Option 3 and Option 6b. Option 6b won on a very narrow margin and on a recount, some people have been claiming that it won hands down, and that is just not the case. I was thinking as we brought this up, I cannot remember the content of Option 3 very well, however, I do remember that I voted for it (laughter). "

Professor Peter Schwartz, Textiles and Apparel: "My recollection is slightly different than Dean Stein's. My recollection is that the driving force behind this, is that in almost all University procedures there is an appeal process for a negative decision except at the Provost level. It was felt that part of the motivation behind this was to complete the appeal process so that there would be some form of equity for someone who received a first negative decision, so that this would not seem to be out of the blue.

"The question about Option 3, what the committee felt, and I am only speaking for myself, was a very great deep concern about standing faculty committees for faculty control, and I've heard this in my department and throughout the statutory departments and colleges, and that is why we developed this ad hoc committee. The other proposal would not have been all that different from the current appeal process. The feeling was that when a positive recommendation from perhaps the two most qualified groups, the department and the dean of the college was overruled, that was more than just a procedural issue and that is why we chose to follow this path."

Professor Norton: "I walked in here today not knowing whether I was for or against this, and now I know that I am against it. I am against it because I realized that I am still in favor of Option 3, which only lost by a few votes to this. I am against it because Option 3 had qualities that this one lacks. I have always argued for a consistent faculty voice in decisions and I don't think that this option gives us that. I think Option 3, that is a standing committee that would look at all tenure decisions at the level of the Provost, would have been a consistent faculty voice. This will not be, this will only be sporadic. I don't really believe that the provision that the committee will look at relevant cases will solve the problem, in part because of some of the issues that other people have raised. For example, is it possible to ever raise tenure standards if all of the decisions are based on previous decisions?

"I also think that the kind of committee that we were proposing in what ended up being Option 3 would have been a much better vehicle for what Ken Strike was proposing, that the Provost receive advice before the negative decision was reached. I just want to make one last comment on the time involved, going back to Professor Wilson's comment about wasting a lot of faculty time for no purpose. I am going to tell a story from the midst of time back in the dark ages of this University, the Provost was a member of an appeals committee with me, when he was merely a faculty member, I was actually the chair of the committee and he was a member. I recall that we spent many, many, many weeks on that appeal, and I certainly don't want to do that again."

Professor John Abowd, ILR: "I came here not knowing how I would vote on this, but still preferring Option 3. If the Provost wants advice from faculty, I think that there is a clear way to provide that. I don't like the notion that he has to first put a tentative decision on the table and then can get that advice. The faculty cannot take part in that process. I think that the University ought to be taking a long hard look at every tenure decision at every level and I think that this resolution will not enable that, but it will go against it."

Professor Rendsberg: "I suspect that two things are possible. I believe that the Provost has the right, power, and ability to ask any member of the faculty for an opinion at any time. I think that is within his jurisdiction, so that should answer a number of the questions we just heard. Secondly, he also has the possibility of not knowing, in a case that is not prima

facie approving of the decision delivered to him by the Dean's office, of overturning that decision for the specific reason of bringing about the committee that is to review his decisions. So there still is the possibility of faculty input overturning that decision, and the Provost, after hearing the comments from that committee, may decide that in fact his decision was wrong and that he should reverse his decision, and he has the power to do that."

Dean Stein: "I am surprised at the amount of division in the room. I don't think that we should make this decision looking at the clock, so I am going to move to adjourn [seconded] and that means reconvene in a week (groans from the crowd)."

Speaker Pollak: "In a moment it is going to be 6:00, but we do have do go by this vote. All those in favor of adjourning, please raise your hand. All those opposed? The motion has failed."

The question was called and a roll call vote resulted in 23 votes in favor of the resolution, 40 votes opposed to the resolution and 2 abstentions.

The resolution was defeated.

Adjourned 6:07 p.m.

Respectfully submitted,

Robert Lucey, Associate Dean and Secretary of the University Faculty