

# MINUTES OF A MEETING OF THE FACULTY SENATE

Wednesday, April 10, 1996

The Speaker, Professor S. Kay Obendorf, Textiles and Apparel, called the meeting to order. She then called on Dean Stein for remarks.

## 1. REMARKS BY THE DEAN

Peter C. Stein, Dean of Faculty: "I have two remarks to make. The first is on this transparency ([Appendix A](#), attached), just to remind you. I sent out a mailing to all faculty in solicitation of names for people to run for Faculty Trustee and the Nominations and Elections Committee. If you recall, under our new procedures, we no longer have those massive lists of committees to vote for&endash;all of that is entrusted to the Nominations and Elections Committee. Essentially, they are the only elected committee, except for the University Faculty Committee; so it is important to nominate good people for that committee, where the prime responsibility is to name members to other committees. I would appreciate your input on that. The Nominations and Elections Committee will be meeting this Friday (April 12) to make up the list for replacements for itself and for nominees for Faculty Trustee and also to name people to all of these other committees. As Senators representing your departments, if you would just take a moment's time to think of people in your own departments who would be good on these committees and send them to me by e-mail or regular mail, I would be much appreciative. The committee will meet at noon on Friday, and I would hope to have your input by then."

"Last time&endash;or two times ago&endash;I said that I had been looking into the Cornell Campaign and trying to understand it a little bit better. I would like to make a brief presentation to you on what I have found out. What I have to say will come as no news to any of you who have an understanding of the Campaign or who participated in it or who have thought about it. Rather, this is meant as help to non-experts&endash;of whom there are many&endash;who have, in one way or another, asked the question, 'Whatever happened to the \$1.5 billion?' Or, 'How can it be that an institution that raised this enormous amount of money can, at the same time, be telling you, "No, I don't have \$1,000 to fund this, that, or the other thing," because these amounts of money seem very small, compared to the \$1.5 billion?' I think I understand the answer to that question, and I would like to tell you about it."

"In trying to understand the Campaign, I have worked with the people in the Development Office, and they have been very helpful to me by responding to whatever requests I have made for numbers or information&endash;but what I'm about to tell you is my own, and I take full responsibility for it. I'll present to you numbers, and they may or may not be entirely correct. But I have confidence that the gist of what I'm going to say is correct, even though the numbers may be off by something like five percent. It's a very complicated picture, and it's hard to actually pin down accurate totals in all situations."

"So, why doesn't Cornell have an *extra* \$1.5 billion in the bank, now that the Campaign is over? I think there are some seven reasons that explain why it is that Cornell doesn't have this excess of cash ([Appendix B](#), attached).

"The first reason is that this Campaign was not a single event that, all of a sudden, just happened&endash;it was a seven-year effort. We announce it as one event, but it was really the sum of seven years of fund-raising. That's reason number one."

"Reason number two is that the Campaign was not an *extra* thing: While there was a particular effort to increase fund-raising over this seven-year period, it is nonetheless not all new money&endash;or money that wouldn't have come in&endash;had there been no campaign. Development work&endash;soliciting of contributions&endash;is an ongoing part of the operations of all universities, and Cornell is no exception. The Campaign took, as part of that \$1.5 billion, the money that would have been raised had there been no campaign. That's reason number two."

"Reason number three is that many of the contributions come with strings attached. This means the following: If you're a person who happens to be in a program which was funded as a result of the Campaign, you wouldn't be asking the question. You'd be saying, 'Yeah, I know about the Campaign; it's this particular thing that was done in order to support my activities.' If you're not part of what has been directly funded, then you don't think of yourself as directly benefiting from the Campaign."

"A fourth reason is that some of the contributions go into the endowment, so only the interest on them can be spent. That is not money that is readily available to be spent."

"Another reason is that we share the receipts with the Medical College in New York City&endash;it doesn't all go to the Ithaca campus. That \$1.5 billion includes contributions to the Medical College.

"A sixth reason is that some of the \$1.5 billion is in the form of IOU's&endash;it's money that hasn't come in yet but rather people who have promised to give money.

"And the last reason is that it costs money to raise money. Now I'd like to go through all of these very briefly with you.

"In trying to think through the Campaign, I have come to the conclusion that you have to think of the Campaign as composed of contributions going into several different pots ([Appendix C](#), attached). One pot is money that comes in with strings attached, where people tell you you have to spend the money in a certain way. That's what's called, in this business, 'restricted gifts.' Those, I think, are nicely divided into three different categories. One category for restricted gifts is support for activities that we're already doing at the present time. For reasons I'll show you later, there's good reason to identify that as one category. A second is that the gift is support for some new activity that we're not doing. And the third is that it's money that comes in that is dedicated to facilities&endash;either building a new building or renovating an old building or adding on to an old building.

"Then, of course, the other contribution type is unrestricted&endash;and this is the type we really like&endash;where people give us money and say, 'Here, you decide; you know the University better than I do, and you spend the money however you think it ought to be spent.' When we think of \$1.5 billion in the bank, that's really what we're thinking about&endash;we're thinking of money that comes in and which is spendable by our Provost or deans in whatever ways they think are appropriate. The other important distinction that is important to make is that some of the money, as I said, can be spent directly; but some of it comes in and goes directly to the endowment, where only the interest can be spent. To understand the Campaign, I think one needs to think of these categories.

"Let me give you some examples of the restricted categories ([Appendix D](#), attached). It just makes sense to try to understand what these restrictions are and what kinds of gifts there are. Let me talk about, first, the two classes of restricted gifts that I've talked about. The first class is used to support things that we are currently doing. Those neatly break down, really, into two major categories. First are contributions for endowed chairs. (These aren't chairs in the Endowed Schools; they are rather endowments for chairs, either in the Endowed or Statutory Colleges&endash;the words get a little bit complicated.) What that is is when someone wishes to honor a particular faculty member who's already at Cornell, she or he gives money to support the salary of that particular faculty member. So that support is directed to that particular individual; but, nonetheless, it's something that we're already doing, because we're already paying the salary of that particular individual. And the other category is financial aid: Someone wants to support financial aid; they give money to support it; but, on the other hand, we're already giving financial aid. So that's support for an activity that we're already doing. Support for financial aid isn't extra financial aid, it's essentially there to replace the financial aid that we're already giving.

"The other restricted category is what are called 'new academic initiatives.' I just made a list, to give you some sense of what new academic initiatives are. I took the list&endash;there were about 250 items on this list&endash;and I arranged them in order of size. The ones that are items a-i (see [Appendix D](#)), which you may just peruse, are the largest gifts. Those items represent something of the order of 20% of the so-called restricted gifts. So, if you're in the Art Museum, you would know about the gifts that have been given. There'd be paintings, I guess, or pieces of art that had been given or purchased. At the bottom of the page, until I ran out of space on the word processor, I listed some smaller gifts, which are not directly below the first few. These are all important parts of our academic programs, but they are nonetheless enhancements&endash;new or special things that we are not already doing.

"In trying to understand all this, I think there are some important observations to make ([Appendix E](#), attached). The first is particularly important. If someone gives us a gift that is restricted to doing something that we're already doing or committed to do, then that's entirely the same as giving money that's unrestricted, because it just frees up the money that we're already spending to use for something else. So you can think of these as equivalent. But there's some argument about that; not all endowed chairs support current faculty members&endash;some hire new faculty members, so, of course, that's not a replacement. There is also an issue about financial aid, whether gifts to financial aid should be considered as replacements for ongoing activities. Some people argue that, in fact, had that money not gone to fund financial aid but had been given to us as unrestricted, we wouldn't have chosen to spend it that way, and we would have backed away from our policy of meeting full need. It is the same as an unrestricted gift only to the extent that we intend to continue this policy of meeting full need. It is my personal belief that this commitment is very deeply held by this University and that whether or not we had

those gifts, we would have continued this policy; we would have found the money to continue this policy of meeting full need. But I may be wrong. Under that assumption, that endowed chairs and financial aid are simply doing things that we would have been doing had we not gotten the gifts, then those restricted gifts are essentially unrestricted. That's observation number one.

"Observation number two is that a contribution of \$100 to the endowment gives only \$3.60 a year, but it gives that in perpetuity. The other side of that is that a contribution of \$100, unrestricted, can meet a pressing need that we have at the moment, but it can meet it only once. It is not obvious which one of these two is the right decision to make. We all know the tale of the profligate son, who went out and spent everything he had on ice cream and candy; but we also know the story of the hermit who died eating dog food with \$1 million in the bank. Both of these are seen as errors of judgment in our society, and someplace in between is the right answer. But the two poles should be noted.

"The other point that I think is worth making is that the costs of fundraising are debatable. The official view, from the Vice President for Financial Operations, is that it costs us \$8.70 to raise \$100.00. One could argue that it costs more than that; and I made an estimate; that you could disagree with; that it costs \$17 to raise \$100. Why so much? If you ask the questions, 'What is the Alumni Office doing?' and 'Why do we have an Alumni Office?' you'll understand. Why is it that M.I.T. writes me once a month; and has been writing me once a month for 40 years; to tell me all the wonderful things that M.I.T. is doing and telling me about tours I could go on and asking my opinion about what M.I.T. should do? (I never answer, but they continue to ask me.) My presumption is that they're looking for money from me; it's as simple as that. You may think that I'm wrong; you may think that M.I.T. values me as an alumnus and therefore values my opinions. It's my guess that it's the former and not the latter. To the extent that it's the former, then our expenditures on the whole alumni operation should be considered as part of the fundraising. Also, there's this magic item called 'overhead.' We say that, if a federal grant comes in, it costs us an extra 60% beyond the direct expenses. They don't pay that, but it costs us an extra 60%, on top of the salaries, to pay for the institutional overhead. And I believe that it does cost us that. If it costs us that for sponsored research, it also costs us something in overhead for our Development Office. If you put on what I think is a reasonable, even understated, 40% charge and add on the Alumni Office, you get \$17. It costs us \$17 dollars for every \$100 raised, according to my calculations. And as Dean Lewis points out to me every time I talk to him about this, there's yet another charge, which is hard to put a dollar figure on, and that is all of the time that the academic administrators spend doing this, where they could be doing something else, namely thinking about the academic programs of the institution. It's hard to put a dollar charge on that.

"The last important point is that the fundraising costs for all gifts; either this \$8.70 to \$17.00; whether it's used to raise a restricted gift or an unrestricted gift, must be paid out of the unrestricted funds. That gets paid out of the current operating income of the University.

"To sum up, it seems that these are the appropriate categories to consider when we look at gifts ([Appendix F](#), attached): The gifts which are effectively unrestricted; the unrestricted gifts plus those that are restricted to doing what we would do anyway, new initiatives, facilities, and promises. I've tried to divide the numbers into those four categories, and keep in mind that it costs us somewhere between \$8.70 and \$17.00 to raise each \$100.00.

"My last transparency ([Appendix G](#), attached) shows you how these numbers break down. So where does an average \$100 raised go? Well, something like \$9 goes into unrestricted current funds, something like \$20 goes into endowment for current funds; the current new initiatives take \$30, and so on and so forth. The interesting point, as I've said before, is that if you happen to be working with some program that's funded as a 'new academic initiative,' you're not asking the question as to where the \$1.5 billion is, because you know. If you're not in one of these programs, you're looking at the 'effectively unrestricted' pot, because that's the only place you can get money if you don't happen to be associated with a restricted program. You can expect to get the money from either the unrestricted funds or the interest from the endowment. And now the whole thing becomes somewhat clearer if I lay on top of the transparency the costs associated with fundraising. The costs associated with fundraising are either \$8.70, if you take Fred Rogers' estimate, or \$17.00, if you take my estimate. If you look at that, you can immediately understand that there's no money. This is the charge for raising all of the money on this transparency; plus the other \$22 that are in the form of promises. Indeed, if you're thinking to get money from this \$1.5 billion; this immense amount of money; out of the unrestricted funds, you find that there isn't anything there to hand out. The \$8.70 to \$17.00 cost must be paid out of the \$9.00 raised that was 'effectively unrestricted.' Well, then you ask about the interest on the endowment. If you calculate the amount of interest from that pot (i.e., the 'effectively unrestricted' endowment), it's something like \$0.80 per year. In order to get up to that \$17.00, you have to take

the interest on 10 years of the unrestricted endowment that comes in in order for you to have paid for the cost of raising everything. So that's my insight.

"I want to close by saying I don't want to be misinterpreted. This is not to say that the Cornell Campaign was a failure. What it did was to give us this big black bar (see [Appendix G](#))&endash;the restricted initiatives&endash;and that's all good stuff that we wouldn't have otherwise had. Essentially, the costs for paying for the fundraising associated with all funds, both restricted and unrestricted, cancels out the unrestricted funds. So there aren't any unrestricted funds left, and that's where the \$1.5 billion went."

Speaker Obendorf: "Thank you, Dean Stein."

## **2. APPROVAL OF MINUTES OF MARCH 13 FACULTY SENATE MEETING**

Speaker Obendorf: "The next item on the agenda is to approve the minutes of the March 13 meeting of the Senate. Are there any corrections to these minutes? They were distributed on the Senate Web page. Hearing no corrections, the Chair notes that the minutes stand approved."

## **3. QUESTIONS AND ANSWERS WITH THE PROVOST**

Speaker Obendorf: "I would like to turn next to Provost Randel. Maybe he's happy that Dean Stein answered the question as to where the money went, but the Dean might have generated some more questions. We're open for questions."

Professor Terrence L. Fine, Electrical Engineering: "We just heard a very interesting report from the Dean about the Campaign. Since you also just heard it, do you think it was substantially correct?"

Don M. Randel, Provost: "It was, in the main, correct. There are things that could be added to it, of course. For example, when Peter talked about gifts for endowing existing positions or gifts to financial aid endowments as offsetting money that we would otherwise be spending anyway, on the financial aid side, you have to clarify that a little bit by recognizing that the financial aid budget has been going up rather more steeply than any component of our revenue. So part of the money that has been raised for financial aid cannot really be said to have liberated anything that we otherwise would have spent; it has been in order to fuel the growth in that component of the budget. Also, you can make a nice chart that shows our increase in money for financial aid raised balanced almost perfectly by a decrease in money for financial aid coming from the state and federal government. So what we've raised for financial aid has enabled us, more or less, to maintain the policy that we've had for a long time."

Speaker Obendorf: "Other questions?"

Associate Professor Robert A. Corradino, Vet Physiology: "There was an article in the *Ithaca Journal* either last night or the night before indicating that Cornell's investments produced a 34% return in the last year. Upon what base was that 34% return founded?"

Provost Randel: "I didn't see the story, but it apparently said that our investments had performed at the rate of 34 percent. The question is, 'On what base was that?' I don't know exactly what's being talked about there, without having seen the story. It's clear that the market did some 30-odd percent last year, and so anybody who had money in the market&endash;as we did&endash;made 30% on that money. Of course, there have been those years when we have lost absolute value on the market, and so the reason Peter speaks of \$3.60 (I would have thought it was a little bit more like \$4.00, actually, the pay-out on endowment funds.); that is calculated to smooth out all of those things over time."

Professor Corradino: "But on what base? There has to be some funds set aside for investment. What is the total of all that?"

Provost Randel: "The sum total of money invested is in excess of \$1 billion dollars. I don't remember what it's current book value is, but not all of that is in equities. A good deal of it is in fixed incomes, securities, preferred stock, or stock without a public market&endash;so it has to be evaluated in a different way. Supposing that we have \$1 billion, though, we did not produce \$334 million worth of gravy. The policy for managing the endowment recognizes that not all of it is in equities, and that the part that grows the most is also the part that falls the most. So what we have under the oversight of the Trustees is aimed at producing a steady source of income for the University over time that is inflation-proof. When we have a windfall, we don't want to blow it, because we know there will be years like 1987, if you can remember what happened then."

Assistant Professor Linda K. Nicholson, Chemistry: "Dean Stein made the point that we have to share this \$1.5 billion with the Medical College. Could you give us an idea what the breakdown of initiatives is?"

Provost Randel: "Of new initiatives? Peter may know better than I what their goal was&endash;it was a couple of hundred million."

Dean Stein: "I thought that the new initiatives was about 25% of the total we raised."

Provost Randel: "I didn't think it was quite that much, but it was a few hundred million, at least."

Professor Howard C. Howland, Neurobiology & Behavior: "One thing that Peter made clear was that we would have been collecting money over this period anyway. So I wonder whether people have looked at the additional money collected through the Campaign, compared them to the additional costs, and then asked whether it was a good idea to have had the Campaign."

Provost Randel: "Well, it was certainly a good idea to have had the Campaign; we are better off than we otherwise would have been, in ways that have to do not just with money. We went into the Campaign raising something of the order of \$150 million per year, so if you multiply it out and subtract that from the goal (\$1.25 billion), not all that much was ever anticipated to be really new money. Part of the reason for having the Campaign was to raise the annual level of fundraising to a higher level that we would hope to sustain. The other thing was that, over the course of the Campaign, we identified 17,000 new, now tracked, prospects&endash;people who weren't on our lists before and who are now on our lists. We received some substantial number of gifts from people: million-dollar gifts from people who had never given the University anything, or who had only given, say \$3,000. Part of what the Campaign yielded was a much bigger pool of people to keep track of and to solicit from in the future, and that's what enables us to sustain the new higher level of annual giving, if we do it right. So that's why one has to continue spending money to raise money. When we went into the Campaign, we planned to ramp up the amount spent on fundraising, and we planned, at the end of the Campaign, to ramp it back down&endash;which we are doing next year, to the tune of a couple million dollars, about which you have all read. (However, much of what you have read has not been quite straight regarding what's being accomplished in that organization.) Nevertheless, we aim to bring it down. We are not going to bring it down as much as we had originally intended, simply because we must invest in the personnel to keep track of those 17,000 new donors and keep them interested in Cornell, or else our efforts will be wasted. We can't just take the money and then sit back and relax."

Associate Professor Joseph Laquatra, Design and Environmental Analysis: "In looking at the *New York Times* over the past month or so, I get this sense that there is an increase in negative public perception to the University. There was the 'Can SUNY Afford Cornell?' story, and then there was President Rawlings' response to it&endash;but few people read that in relation to the first story. And then, the other day (Monday or Tuesday), there was a story about Taiwan. There was a short section there about President Li coming here, giving his speech, and giving money. The article stated he had received an honorary degree&endash;which is of course wrong, since we don't give honorary degrees. Is the Administration concerned about the ramifications this public perception may have in terms of state funding, for example? And do you have any plans of addressing them?"

Provost Randel: "Well, we're certainly very concerned about that. Much considerable effort goes into public relations, both to the public at large and to our friends in Albany. A good deal of effort went into the Albany scene following that story. You should know that Emily Bernstein, who wrote that story, spent a couple of days on the campus before writing it; and she had been given figures&endash;quite different from the ones she reported&endash;that showed the ways in which she reported were defective, in fact. But the person most often quoted in her story was a Trustee from Buffalo, and the State University of New York at Buffalo has been the origin of a very considerable amount of energy to see Cornell's allocation as a State University reduced. Evidently, she talked to SUNY Trustee Gardner after she had talked to us, and even though she had the ammunition to know better, what she printed was, in fact, factually incorrect in many respects. So, a good deal of effort went into the Albany scene after that, to make sure people understood. Interestingly enough, the biggest single complaint from legislators in Albany about that story was that they had not gotten their names in the story as supporters of Cornell. We, in fact, enjoy much greater support in the legislature than the State University does; and this is part of the tension with our relation with the State University, because they resent the fact that we have better friends in the legislature than they do. That's one specific kind of case."

"There are many other things you've read about&endash;financial aid, for example. In the *Wall Street Journal*, there was a

story that told some quite devilish tales about the way other institutions manage their financial aid budgets. There have been stories in the *Philadelphia Inquirer* recently about high tuition and high costs&endash;that continues to be a theme. We have, in fact, pushed down the rate of growth of tuition rather faster than our peers have, although they are all getting the idea. From the days we were going up 10.0% annually, we are now only increasing by 4.5 percent. Other institutions are starting to get that idea; but there are still institutions who are a thousand or two more than us in total price for endowed tuition. But, yes, we are combating that both on the public relations front and by, in fact, trying to address directly in our policies some of the critical things that have been said about higher education."

Speaker Obendorf: "Thank you very much, Provost Randel."

#### 4. DISCUSSION OF THE SEXUAL HARASSMENT PROCEDURES

Speaker Obendorf: "I'd now like to call on Professor James Gillett, who will introduce the discussion on sexual harassment procedures."

Professor James W. Gillett, Natural Resources, and Chairman, Committee on Academic Freedom and Professional Status of the Faculty: "You've seen the resolution amending the University's sexual harassment procedures ([Appendix H](#), attached). I want to deliver the Committee's report to you. I hope this will be the last time we present new material on this. I particularly want to thank the Provost for his cooperation after our March 27 meeting; on March 31, he responded to and agreed to practically all of the changes in the letter. We had agreed to review the findings of Henry Shue's committee&endash;working on parallel tracks with us&endash;but it was quite clear that we weren't going to be able to review them and get back to their committee. Dean Stein and I met with them after our meeting and went through the process with them, so I think that I can state that they substantially agree with our position in the letter and in the resolution as well. They may have some of their own comments and concerns to add to this&endash;over and above our concerns&endash;but I greatly appreciate their cooperation in this. With that said, I'd like to leave our time open for questions from the floor."

Speaker Obendorf: "I think that's very helpful, because I think we will have several people who would like to speak on this issue."

Mary Beth Norton, Mary Donlon Alger Professor of American History: "Madam Chair, I'd like to move that we divide the question on this, so we consider each of these five clauses separately."

Speaker Obendorf: "Is there a second to that motion? The motion is to consider each item&endash;Roman numerals I through V&endash;as individual motions. [Seconded] It's my understanding that the motion to divide is not debatable, so we'll move ahead to the questions. With the issues today, I would like to ask you to stand. Those in favor of dividing the motion, please stand; those opposed; and abstentions; thank you. It is clear to the Chair that the motion carries to divide, so we will proceed to consider the first item, Roman numeral I. This item deals with footnote three on page three, and we have substitute wording recommended. Since you have it in writing before you, I won't read it all to you. Are there comments on item I?"

Professor Norton: "Yes, Madam Chair. I'd like to speak against the adoption of recommendation number one in the motion we have before us. It's not that I have any quarrel with the intent, but I think it is easier to revert to the language in footnote three than to try to perfect the language in the proposed motion before us. Let me explain to you what my problems are with this language. I absolutely agree that there should be something in the sexual harassment procedures that protects academic speech; there's really no problem with that. But if people here will look carefully at the proposed language as opposed to the language that is in the original footnote, among the words that were taken out are 'generally' and 'ordinarily,' so that the language that we have in front of us is much more all-encompassing and allows for absolutely *no* occasions under which speech of this sort might *not* be protected by academic freedom. I think it is, in fact, possible to have occasions that occur when such speech should not be, in fact, protected by the principle of academic freedom. I think we should have language in this statement that allows for that. I would also point out that the language in front of us substitutes the word 'academic' in the first line for the word 'instructional'; I assume that's to include things that happen, for example, in advising contexts. (But since I was not a member of the committee, I don't know; but I'm assuming maybe that that's what they had in mind.) I'm not sure how I feel about that&endash;it's possible that the broadening of that language is all right; but it does, in fact, broaden the language, and I would like to point that out to people."

"Frankly, my most severe objection to this language that's here before us is the word 'and' in the third line from the bottom,

where it says, 'either abusive or severely humiliating and persists despite the objection of the person(s) targeted by the speech.' The original language has the word 'or' there, and I would point out that, in fact, if this language is adopted, Cornell is requiring the subject of sexual harassing speech to do something that nothing else requires them to do&endash;that is, specifically, to complain about it. We have, legally, no basis for doing that. The law does not require a person who is making a complaint of sexual harassment to specifically complain to the person whose conduct they're objecting to before they file a complaint. If this language goes through, we're saying that Cornell is setting a higher hoop&endash;or setting a higher hurdle&endash;that a complainant would have to jump through or over than, in fact, is legally required. I suspect that it would open us up to lawsuits. So I believe that the word 'or' should be retained: it allows the possibility of such objections, but 'and' is, in fact, more than we should legally be required to do. As I say, there are so many problems with this new language that I think we should just vote it down and stick with the original language in the footnote."

Speaker Obendorf: "I think that that was a fairly clear statement in opposition to the proposal. Now I'd like to take speakers in favor of the resolution."

Dean Stein: "Let me tell you the history of this recommendation. First, we desired to bring this from a footnote into the main document; this was probably the most important reason why the committee wanted to change this. It went back to the committee's original wording and did not like several features of the wording that was adopted by the Mingle-Randel draft. As I was reading through it, Mary Beth, the thing I think people found most objectionable was the word 'ordinarily' in the Mingle-Randel draft. Even if some listeners find objection, 'ordinarily' will not be considered to constitute 'unless.' The feeling was that that left open a big hole, and people are very sensitive about this. There have been cases in the academic community where people have made statements that we normally think of as being protected by academic freedom and our principles of openness, and people were concerned about that word 'ordinarily.' That's my memory of the debate that went on in the committee."

Speaker Obendorf: "I'd like to remind the body that we have five items to get through, and we'd like feedback on all of them."

Joel Porte, Ernest I. White Professor of American Studies and Humane Letters: "Responding to Mary Beth Norton's preference for the footnote language on page three, I also have a problem with the footnote. It speaks about speech being targeted at a specific person that is 'unreasonably offensive.' I have trouble understanding the difference between something that is 'unreasonably offensive' and 'reasonably offensive.' Who decides the difference? The footnote language does not seem clear to me as it stands."

Professor Gillett: "I just wanted to help out on the 'academic' versus the 'instructional' division here. 'Academic' is much broader than 'instructional' for a reason. When you leave a class and the students are trailing along beside you back to your office, where can the instructional/academic line be drawn? Anything can happen in that interim, so we felt that it was very difficult to make that an absolute division."

Speaker Obendorf: "So is the body ready to deal with the first item, which is to substitute language in footnote three and bring it into the main text?"

Professor Frederick M. Ahl, Classics: "I move that we substitute as suggested in the resolution."

Speaker Obendorf: "I believe that's the motion that's on the floor and has already been seconded. Are you moving the previous question?"

Professor Ahl: "Yes."

Speaker Obendorf: "Then I need a second for that. [Seconded] We're moving the previous question, which requires a two-thirds vote. Those in favor of voting on this question, please stand. You're just saying you're ready to vote when you vote for this. Could I have those opposed? I think it's clear to the Chair that we will address the question. The question that's before us is to vote on the substitute language in Roman numeral I in the resolution. This is footnote three on page three; it should be deleted, and the substitute wording should be inserted."

Professor Cutberto Garza, Nutritional Sciences: "Question: In voting for the motion, if this motion is defeated, it does not automatically mean that we accept the present language. Is that correct?"

Speaker Obendorf: "That's correct. So, all those in favor of the motion before us&endash;adopting the substitute language as Roman numeral I puts forth&endash;please stand. I think we'll need tellers. Okay, you may sit. Those opposed, please stand. We count 43 to 47 against. And I've been asked to take abstentions. Thank you. The motion is narrowly defeated, with a vote of 47 to 43. The resolution does not pass."

Associate Professor Alan K. McAdams, Johnson Graduate School of Management: "It seems to me that we have two words that need to be changed in number I, and then I would strongly support it. The first change would be to take the 'and' and replace it with 'or'; the second change would be to reinsert from the footnote language the word 'generally.' If that would happen, I think we would support the resolution."

Speaker Obendorf: "Since we've already dealt with the issue, I don't know if we can take additional commentary at this point."

Professor Norton: "May I propose a parliamentary solution? The solution I would propose would be to go through all of the items on the agenda, since the motion has been divided in front of us, because that's on the floor&endash;that's from the committee. After that, it would then be germane to address other motions that members of the Senate would like to make with respect to material that would go from the Senate to the Provost as a recommendation."

Speaker Obendorf: "So we will go through the other issues first. Then it will be in order for Professor McAdams to frame a new motion&endash;his resolution&endash;after we consider the other four issues. Okay. Now what is before you is Roman numeral II, and it has a part 'a' and 'b.' Part 'a' states, 'In the "Faculty Co-Investigator" paragraph on page 11, the words "Office of Equal Opportunity" should be replaced with "Dean of Faculty" in line 5'; and part 'b' states, 'The words "elected pool of faculty members with experience in conducting administrative investigations and hearings" shall be replaced with "a pool of faculty members chosen by procedures to be established by the Faculty Senate.'" This is open for discussion."

Dean Stein: "I move the previous question."

Speaker Obendorf: "Is there a second? [Seconded] So now we will vote on whether you're ready to vote on this issue. Could you please stand if you're prepared to vote. Thank you; at least you won't get bored. [Laughter] Could I have those opposed, please. It's clear to the Chair that that has passed by more than a two-thirds majority. So we move immediately to voting on Roman numeral II. Could you please stand if you're in favor. And if you're opposed, please stand. Are there any abstentions? Okay, Roman numeral II has passed and been approved by the body."

Professor Ahl: "Madam Chair, there seems to be a discrepancy between the number of votes cast and the number of Senators present. That is, the number of votes that were cast exceeds the number of Senate members present. Perhaps some of us have not signed in?"

Speaker Obendorf: "Secretary Lucey, how many are you showing present?"

Robert F. Lucey, Associate Dean and Secretary of the University Faculty: "I have that 86 have signed in."

Speaker Obendorf: "Do we have any non-Senators present who were voting? And do we have any Senators who have not signed in? Okay, there are three. Does that bring us up to the number that is the discrepancy? That brings us up to ninety."

Professor Ahl: "I was just curious, as 92 was the vote: 43 for, 47 against, and two abstentions."

Speaker Obendorf: "Could I please call on Dean Stein for some insight."

Dean Stein: "I fear that we will get hung up in this way and not be able to finish this job, which is important. Provost Randel would like to have a procedure in two weeks, and we've done the best we can in counting votes, but it's not always going to work. But I feel that we have to trust the Speaker and the people she appoints to count the votes properly, and I don't think we should have instant replays. I think we ought to have calls by the umpire and just let the chips fall where they do."

Professor Ahl: "I think this should serve as a reminder, perhaps, to non-members of the Senate that voting is restricted to members of the Senate."

Professor Corradino: "But are we voting on the entire sexual harassment policy today, up or down?"

Speaker Obendorf: "No, we are voting on the five changes that were brought to us by the Committee on Academic Freedom and Professional Status of the Faculty."

Dean Stein: "I'm wondering if the body is willing to give unanimous consent to doing the other three all together instead of ad seriatim."

Professor Norton: "I object."

Dean Stein: "Okay, sorry. I thought maybe they were all non-objectionable."

Professor Norton: "They're not."

Speaker Obendorf: "We're ready for item number III."

Professor Norton: "Madam Chair, I do have a question about III. I think that the committee, in making this recommendation, did not think of a particular possibility that might occur. Again, the committee, by taking the language 'may include appropriate' and changing the word 'may' to 'will,' provides that in the case of a no-cause finding, all records will be expunged. It strikes me that, in fact, a charged party—who has been cleared—might very well want to have the records retained, to keep on record the fact and details of that clearance, just in case a vindictive, potentially paranoid, complainant might come back again in the future with a similar complaint. Therefore, it seems to me that what the committee is concerned about is the discretion; that it's not fully at the discretion of the charged party. Now I know I can't make a speech and then propose an amendment, but, if I could, I would propose that the language, instead of being replaced with 'will include,' be replaced with 'may include, at the discretion of the charged party'; to make it very clear that that's what's going on. It strikes me that there are, in fact, occasions where a charged party might very well wish to have these records retained, and this change would not allow that."

Dean Stein: "Again, in the interests of moving it along, we are in the fortunate position of not writing legislation. I will tell you that the committee, in writing this, did not even notice the point that you're making. What they were worried about was the part that said 'reasonable steps to restore the reputation of the charged party' in the "'No Cause' Finding' paragraph on page 13; and then they stopped reading. I certainly stopped reading at that point. The point they were trying to make was that seemed always appropriate: If there had been damage to the reputation, reasonable steps should be taken to restore that reputation. The rest of it, they just didn't notice. So it's in that spirit that this is offered. It was not meant to be that prescriptive."

Speaker Obendorf: "In the interest of time, with your consent, we will vote on Roman numeral III of the resolution. Will those in favor please stand. All right, would those opposed please stand. Thank you. Any abstentions? From our count, we have 44 in favor and 41 opposed or abstaining. Since the abstentions don't count, we have 44 to 33. So resolution III passes. Now to Roman numeral IV."

Professor Norton: "Madam Chair, I'd like to speak against the adoption of this particular Roman numeral, which adds a new sentence in the case of a contested finding. It says that 'the standard of proof shall be clear and convincing evidence that sexual harassment has taken place.' A number of people here may not be aware that the words 'clear and convincing evidence' have a particular legal meaning. The usual standard in civil procedures or administrative procedures such as this is something called 'preponderance of the evidence' or even something less. In fact, if this language is adopted by this body and incorporated into the procedures, this is a higher hoop than Cornell has to jump through for anything else on campus. It makes sexual harassment a total anomaly. It will be sure to get us sued by complainants. Cases that meet a preponderance of evidence standard—which is all that Cornell needs to have anybody dismissed for anything else other than sexual harassment—would not happen under this standard. I think that it is, in fact, inappropriate to adopt this standard."

Professor Gillett: "This was done under the advice of Bob Green, a member of the Law School, and of Mr. Mingle, that this was the standard applicable, in this case, for dismissal of a faculty member. That's what we were concerned with."

Professor Norton: "My understanding was that this language does not just apply to dismissal for cause, but it applies for other less severe sanctions than dismissal. I'd agree that this should be the standard for dismissal. But the language that's here is not just for dismissal."

Dean Stein: "This is, of course, not the highest level of proof. In order to be convicted in a criminal court, it has to be 'beyond

a reasonable doubt' or something like that. It seemed to the people on the committee&endash;and it seems reasonable to me&endash;that a faculty member who is deprived of a raise pool or not allowed to teach or advise students or who is dismissed&endash;or any of those things&endash;it ought to be more than a 51 to 49 decision. It doesn't have to be 99 to one, but it ought to be more than 51 to 49. That tries to incorporate that thought into the resolution, and I think it's proper."

Associate Professor Jeremy A. Rabkin, Government: "Aren't we required to have clear and convincing evidence, anyway?"

Speaker Obendorf: "In the expedience of time, with your permission, could we consider the question? Those in favor of Roman numeral IV, please stand. And those opposed, please stand. Are there abstentions? Thank you. Roman numeral IV has passed.

"Now we will consider Roman numeral V. 'In the "Faculty Grievance Procedure" paragraph, the words "severe sanction such as" in lines 8-9 should be deleted in the interest of specificity.' This is open for discussion. Seeing no discussion, we'll move to consider this resolution. Would those in favor of resolution V, please stand. Those opposed; abstentions. It clearly passes."

Dean Stein: "We're past the hour of the day. I'm wondering if we could have unanimous consent for another five minutes to allow Professor McAdams to make his resolution."

Speaker Obendorf: "We will extend for five minutes, and I will call on Professor McAdams."

Professor McAdams: "I move that we substitute the footnote three on page three with the paragraph appearing under item number I, with the introduction of the word 'generally' in the second line after the word 'harassment' and the deletion of the word 'and' at the end of the third line from the bottom and substitution of the word 'or.' It would read '... specific person and is either abusive or severely humiliating or persists.'"

Speaker Obendorf: "Is that clear, or should I read it again? Is there a second? [Second] We now have the motion open for discussion."

Assistant Professor J. Ellen Gainor, Theatre Arts: "A point of clarification: I believe the 'generally' should follow the 'is' in line two and should read 'is generally protected.'"

Speaker Obendorf: "Thank you for that point of grammatical correction."

Professor N. David Mermin, Physics: "That text just doesn't work. It says that if the speech is not abusive or severely humiliating, providing it persists, despite the objection of the person targeted&endash;that's no good."

Dean Stein: "But I think that's what it's supposed to say. If something is directed against a specific person&endash;remember, the separation that's made is a statement about generalities. 'All women are, blank, blank, blank.' That is not sexual harassment. Saying something to somebody who objects&endash;but then saying it again&endash;that would be sexual harassment."

Professor Ahl: "Would it help if we said 'is abusive, severely humiliating, or persists' in the text?"

Speaker Obendorf: "Are you discussing or amending?"

Professor Ahl: "I'm amending. I'm doing what my colleague Professor Gainor just did, making a grammatical correction."

Professor McAdams: "It sounds fine to me that way, with the commas."

Speaker Obendorf: "Okay, now even the Speaker has it. He's made a series and connected it at the end with an 'or.'"

Professor Gainor: "Except grammatically&endash;I'm terribly sorry&endash;we can't have a series of three after an 'either.'"

Professor Ahl: "We got rid of 'either.'"

Professor Gainor: "Oh, I'm sorry. I didn't hear that."

Professor Fine: "I call the question."

Speaker Obendorf: "Okay, with no objections, the Chair is moving ahead for you to vote on the resolution by Professor McAdams, as grammatically amended. Would you like me to read it?"

Professor Corradino: "I object to moving ahead and voting."

Speaker Obendorf: "Then we will call the question, which requires a two-thirds vote. Would those in favor of going ahead and voting on this resolution, please stand. And now those opposed, please stand. I think it's clear to the Chair that this is passed, and we will go directly to voting on the resolution that is before us. I heard that you did not want me to read it again, so would you please stand if you are in favor of the resolution. Thank you. Would you please stand if you are opposed. Now, could I have abstentions. It's clear to the Chair that this resolution has passed." (The resolution as amended appears as [Appendix I](#), attached.)

Dean Stein: "Could we have orders of the day?"

Speaker Obendorf: "Thank you. With orders of the day, we move on to the next agenda item. I now call on Dean Stein to introduce a discussion on the academic grading policy."

## 5. DISCUSSION OF THE ACADEMIC GRADING POLICY

Dean Stein: "We've talked about this twice before and I would hope that we could come to a vote. I'd just like to report, very quickly, on three things that happened in the intervening month. Number one, we held a forum, as you suggested, with students; essentially, they didn't show up. We had a forum in Uris Auditorium, but only maybe 10-15 students showed up. And there was desultory, albeit interesting, discussion. One issue persistently raised by the students that I tried to look into was the question, 'Will this grading policy hurt us in our searches for jobs and admission to professional schools and graduate schools?' It's hard to think this through; people give plausible reasons on both sides. Professor Adler made a suggestion, which I thought was a good one, which was to call up the folks who have such a grading policy. So I made phone calls to a number of deans and directors of placement at McGill, Toronto, and Vancouver. McGill and Toronto have such a policy, but Vancouver does not&endash;although they are now in the process of adopting it. I can tell you honestly that I probably spoke to ten different people at those institutions, and not a one had ever heard of any complaint by any students that this policy hurt them. I said, 'Aha! But perhaps those students are competing in an environment where everyone does this.' They hotly replied, 'No, no. Our students compete for jobs and places in graduate and professional schools in your nation as well as ours, and we have never heard that it hurts them.'

"The second thing I'd like to report is that I've received a number of phone calls from a number of you about the problem of the senior-level course, which has only very, very good students who all get 'A's. So the median grade will be 'A,' and someone will say, 'Aha! That's a gut course.' That strikes me as a problem, but I had an idea as to how to look at it. So I got the grade distributions for all of the 300- and 400-level courses in ten diverse departments&endash;English, Government, Physics, Math, Rural Sociology, Human Development and Family Studies, and a couple of others. I looked at all of the 300- and 400-level courses and came up with 126 courses in those departments, and I defined the problem in the following way: I looked for courses where the median grade was 'A' wherein two-thirds or more of the students got an 'A.' Out of those 126 courses, I came up with six courses that satisfied that criterion. So I convinced myself, at least, that this was not a serious problem. It's something that should be thought about, but it shouldn't, in itself, sink this whole proposal.

"The third comment I want to make is that I was discussing this with Donald Kagan of Yale, who came to give a seminar. He was laughing uproariously when he said, 'I read in the *Sun* that this hotly debated issue wouldn't take place for another six years.' He thought that was the funniest thing he'd ever heard of. Of course, that's true&endash;it really won't appear on a transcript for another six years. I'd like to point out that that gives us a lot of time to evaluate the experience of Dartmouth, which will have happened, the experience of the University of British Columbia, which will have happened&endash;that gives us time to think about the impetus of these individual problems that have been raised about honors courses and the senior courses with smart kids. Maybe, this will give us the opportunity to address these problems by the way we number courses or how we write the transcripts with regard to these or perhaps other problems. If we do not pass this, then, of course, it will disappear, and we will not be considering it in the future. That's what I wanted to bring to your attention."

Speaker Obendorf: "It's my understanding that since we postponed this for a definite time period and since the resolution is before you, it is now open for discussion."

Professor Reeve Parker, English: "I want to propose an amendment and then speak briefly to it. The amendment addresses language in the first and second items of the resolution. In the next-to-last sentence of item 1, it says 'courses with enrollments of fewer than ten students will also be exempt from this policy.' I would change the word 'ten' to '35.' I would like to make the same change in the first sentence of item 2, which would read '... a list of median grades and enrollments of all undergraduate courses with 35 or more students.'"

Speaker Obendorf: "Is there a second to the amendment? [Seconded] You may now speak to the amendment."

Professor Parker: "My concern comes straight from my colleagues in the English Department, and it addresses the problem that Dean Stein has spoken about as well as other kinds of courses going up and down our curriculum, mainly writing courses at both the lower and upper levels. At the upper level especially, my colleagues are strongly opposed to the situation Peter was addressing, where there are often self-selected enrollments in the courses. I would also add to this a general sentiment of the department. I put the minutes of the earlier meetings on display in the department office, and approximately 25 colleagues got in touch with me individually to say that they were opposed to the resolution itself, but they would strongly support the resolution with the amendment I have proposed. With that comment, I propose the amendment."

Speaker Obendorf: "It's my understanding that we're discussing the amendment, and that is to change the cut-off number of enrollment from ten to 35."

Professor Peter Schwartz, Textiles and Apparel: "I am generally opposed to the amendment, because I remember Dean Stein's figures regarding how many courses would be included. A large percentage of courses would be excluded if we increase the minimum enrollment to 35, and that would pretty much defeat the purpose of the policy."

Dean Stein: "I don't have the number in front of me, but I can say that it would eliminate practically all 300- and 400-level courses that I analyzed when I did my study, except for, I think, computer science, which had larger enrollments in its upper-level courses. It may sound good, but I think it's a mistake. You may aid some students, but you'd hurt others. My guess is that it's something like a third of the courses that a student takes would be eliminated by this. Imagine the student who excels in 300- or 400-level courses. I think of the student who is a physics major and who doesn't do so well in the psychology or sociology courses, so he won't appear good in that measure. But he loves physics and excels in all of the upper-division courses given in the Physics Department and the Math Department. Look at that student's transcript: That student's transcript will have a lot of 'A's on it, with nothing to give median grades in those courses. In the Physics Department, that student would have stood out very well. In our 300- and 400-level courses, we don't give 'A's as the median grades. So what will appear on that student's transcript will hurt him. In fairness, if we do it, we ought to do it across the board. These little patches may get rid of some of the problems you see, but we can continue to think about them. I think it's a very special problem, but your fix would create a lot of unfairness for a lot of other students."

Speaker Obendorf: "Let's have one more comment, and then we'll move to consider the amendment."

Professor Ahl: "If I could speak to the same point as Peter. If we had the number 35 as a minimum for counting, then there would regularly be only two faculty members in our department whose courses would ever be subject to such a marking. This would, in effect, isolate those two particular professors and would be unfair, giving a distorted impression of the department's grading policy as a whole. I think we should either say, frankly, that we should have this apply to all courses, regardless of size, or to none. However, if the group is in favor of having a cut-off point, ten makes more sense to me, I think, than 35."

Dean Stein: "We're required to have the ten because of the law, by the way. We'd violate the Buckley Amendment if we went below eight, I believe."

Speaker Obendorf: "I've had a busy day, but if there are no objections, we'll vote on the amendment. The amendment is to change the number from ten to 35 students in both parts 1 and 2 of the resolution. Could I have those please stand who are in favor of the amendment. And those who are opposed, could you please stand. Thank you. Do I have abstentions? The Chair rules that the amendment has failed."

"Now we're back to the main motion on the grading policy."

Professor Mermin: "I'd like to speak against the motion. I have always regarded grades as a necessary evil. I see the point of giving grades, but I think they are quantifiers placed on something that really cannot be quantified. They are very imprecise,

crude markers. At the end of four years of college, when you have a transcript and you are applying somewhere, it is possible for people to look and see something like thirty-such numbers and form an impression that is about as accurate as those numbers deserve. I think that by passing this proposal, we will be giving a spurious sense of precision to those numbers and we will suggest that those numbers are more precise than they actually are. I think it will heighten interest in grades, and it will result in grades interfering even more than they already do in the educational process. For those reasons, I will vote against the proposal."

Speaker Obendorf: "The Chair will recognize someone speaking in favor of the motion."

Benjamin Widom, Goldwin Smith Professor of Chemistry: "I am very rarely on the opposite side of an issue from my colleague Professor Mermin, but I am in this case. I'm from the Chemistry Department, and our department, as a whole, very strongly favors this proposal. We consider it such a good idea that we have resolved, among ourselves, that we will report the median grades of our courses. At the moment, the grades carry no information, and we would like them to carry at least the minimal information—the median grade and the course enrollment."

Speaker Obendorf: "The Chair realizes that we have one more important item on the agenda."

Professor Robert Ascher, Anthropology: "Madam Chairman, I would like to speak against the motion. The first time we heard this, it was called a resolution that would be used to inform the students better. Then we were told that it had to do with grade inflation. At our second meeting, we were told that it had nothing to do with grade inflation. Dean Stein has presented on several occasions his opinion leaning toward why we should do this, and yet it has been wrought with problems, because several people have brought up at least twelve or fourteen caveats about problems this may cause. We're in the position where we'll be voting on something where we have no idea what it will do. There's no evidence that it has anything whatsoever to do with grade inflation. There is no evidence that it would, in fact, be good for the students rather than do harm. In fact, we have some evidence that it might be harmful for them. The simple case that it might be harmful for the students is sufficient for me—and I hope everyone else in this room—to vote 'no,' against the resolution."

Dean Stein: "I move the previous question."

Speaker Obendorf: "Is there a second? [Seconded] We've all learned this one very well. When he's moved the previous question, that means we will vote on whether we are ready to vote on the previous question. Can I have those stand who are ready to vote. And the same for those who are not ready to vote. Are there abstentions? The Chair moves that we have approved the vote on the previous question, so we will go immediately to voting on the grading resolution, as written and distributed with the call to the meeting. May I have those stand who are in favor of the resolution regarding grade reporting. And now those who are opposed. Are there abstentions? The Chair rules that we have voted in favor of the grading report, with a vote of 44 in favor and 36 opposed."

Dean Stein: "Would people be willing to stay for five minutes to hear a report from Professor Fine?"

Speaker Obendorf: "Is there a second? [Seconded] All those in favor of staying the additional time, please raise your hands. And those opposed; thank you. Now we'll hear from Professor Fine."

## **6. REPORT FROM THE COMMITTEE ON ACADEMIC FREEDOM AND PROFESSIONAL STATUS OF THE FACULTY ON APPEALS FOR DENIAL OF TENURE AT THE PROVOST LEVEL**

Professor Fine: "You've all been given, I hope, our rather brief report about the ad hoc process for appealing a negative tenure decision made by the Provost when he is the first negative—that is, when the dean has sent a positive decision forward ([Appendix J](#), attached). The procedure that was distributed here was created largely by Dean Stein and was then reviewed by the Committee on Academic Freedom and Professional Status of the Faculty. Some suggestions for changes were made and were incorporated into this draft. Essentially, what happened was that the procedure for appealing a negative decision by a dean was raised up by one. That is, the dean was replaced by the Provost, and the Provost was replaced by the President. The final arbiter of things where there is an irreconcilable conflict now becomes the President. This process is currently being used by an appellant; in fact, the process is underway at this point. So it's actually in use now, for the person for whom it was originally created."

"A sub-committee of the Committee, Professor Robert Green from the Law School and I, met with the Provost on Monday to ascertain his objections toward this process. He's not completely happy with it; but, basically, he said he would accept it for

the moment, as it is constituted. But he keeps in mind that if there will be revisions for the whole tenure process, perhaps in the next academic year, that the whole appeals process would have to be revised accordingly. At the moment, what we have is this ad hoc process that is, in fact, operational. It may not need any further action on your part if you don't wish it, because we may have to look at all of the appeals processes all over again in the next year. But this is what we have at the moment. End of story."

Professor Richard E. Schuler, Economics, Civil & Environmental Engineering, and Faculty Trustee: "As I read over the grounds for an appeal, the first four are purely procedural. Only number five deals with appearance. It seems to me, however, that the legal standard that is set, 'arbitrary and capricious'—that is, the decision by the Provost would have to be so inconsistent with the evidence—is a remarkably strict standard—so strict that one would think the Provost would almost have to be mad in order to think something along those lines. [Laughter] Of course, that excludes the current provost." [Laughter]

Provost Randel: "Right. He's just crazy." [Laughter]

Professor Schuler: "It is my understanding that the process of bringing the Provost into the process on a more regular and thorough basis is one of highly gauged, relative equity across the campus and within the disciplines. Is this standard so difficult on demerits to make it, essentially, a non-standard at all? And is there an opportunity to provide a somewhat lesser standard that still is quite stringent but doesn't engage in the mad Provost syndrome."

Professor Fine: "This standard is precisely the standard that is used in all of our appeals processes; nothing new was created here. We are not holding the Provost to any different standard than we already do the deans."

Professor Gillett: "Here's just a point. The process has to stop before it gets to the Board of Trustees. It is in the hands of the President now, and it can go no further. If we go to a University-wide committee, as evoked by the Dean of Faculty, that will radically change this whole process. So we don't see the point in going much further. With one case in hand, we don't know how many other cases there will be in the interim, but it should not be many."

Professor William H. Lesser, Agricultural, Resource and Managerial Economics: "Professor Fine, I'd like to ask if the committee considered the authority of this ad hoc procedure. I don't really know all the processes of the University, but it seems to me reasonable that the procedures in the Faculty Handbook are passed by some University Faculty groupings. But to my knowledge, it wasn't done; at least, it wasn't discussed either in an open forum like this or in any other context. Hence, does it have any legitimacy? Since someone's future at the University is being decided, in part, by the wording of this process, how will this all be considered? And what about the other matters that have been raised here? Were they issues that weren't addressed, such as the conflicting procedures in the Faculty Handbook and the Appointment Manual?"

Professor Fine: "If you'd like me to speak to legitimacy, we are a legitimate faculty committee performing our legitimate function."

Professor Lesser: "You're legitimate to accept procedures. Do procedures for the Faculty as a whole have to be adopted by the Faculty Senate or its predecessor?"

Professor Fine: "Generally, procedures would have been adopted by the FCR."

Professor Gillett: "Excuse me, I'll speak to that. Absent this procedure, the matter is moot. Absent this procedure, the decision is made by the Provost. Under current rules, as it stands, there is no appeal beyond the Provost, even in the case of that being the first negative decision. We felt that that was, in our mind, unfair, and we wanted to provide at least some recourse to this. That hasn't been satisfactory, as with the current case, there is no appeal."

Dean Stein: "Professor Lesser, this is not ideal. I won't pretend that for a moment. It is a situation that arose; there was no procedure that covered it. It seemed to the people involved in it that the choice was between giving a faculty member no avenue to appeal what he considered to be an unfair decision or clobbering together something that, while not totally legitimate, was at least based, very substantially, on documents which had been legitimized by the faculty governance structure and which had been used successfully for 15 years. That's the choice we saw at the time."

Speaker Obendorf: "Let me remind you that this is not for vote; it is discussion only. We will take one more question and then deal with our time."

Professor Kenneth A. Strike, Education: "I think this procedure has some problems. One is that it's vacuous, and second, it addresses the wrong problem. It's vacuous because the grounds that justify the appeal, on the whole, refer to the kinds of events that are not likely to occur beyond the department or college level, so they really provide little substance for anyone on the defensive of a genuine appeal. It addresses the wrong problems because, it seems to me, that, unlike the kinds of processes that go on at the department and college levels, each of those processes involves some sort of mandate related to procedure, which provides advice or counsel or reflection on the substance of the case. At the Provost level, it seems to me that the problem to be addressed regards some sort of deliberate procedure at each level, such that the body will be sure that the opinions are good."

Speaker Obendorf: "Our time is now up. Does anyone wish to move to adjourn?"

Professor Donald J. Barr, Human Service Studies: "I'd like to ask for a clarification. Do I hear right that the appeal is already in process?"

Professor Fine: "Yes."

Professor Barr: "So something is already going on?"

Professor Fine: "In one case."

Professor Barr: "So what are we doing with this?"

Speaker Obendorf: "You are being informed. This is a report, Don, and not a resolution to be voted upon."

Professor Fine: "This was requested at the last Senate meeting."

Professor Lesser: "A point of clarification: Essentially, the option for the individual was to follow these procedures or not do anything at all. I think that the question before this body is whether that was an appropriate action for the administration to have taken. I'd like to have that answer. Essentially, we've been told that this is the only option. It's not at all clear to me, if there indeed was no appeals procedure, why the appeals procedure could not have been brought before the FCR or the Senate for our deliberation. Why was it essential that it was established with an ad hoc committee? Is there essentially no choice in this whole procedure? This doesn't seem appropriate to me, as I think we should have the opportunity to deliberate the processes that have been employed and which are now determining the fate at the University of one of our colleagues."

Speaker Obendorf: "Some of your colleagues have voted to adjourn by leaving. Are we ready to consider whether we are ready for a motion for adjournment? [So moved] Do I have a second? [Seconded] Could you please stand if you are in favor of adjournment. Okay, I'm interpreting that as a unanimous 'yes.' The meeting is adjourned."

Adjourned: 6:10 PM.

Respectfully submitted,

Robert F. Lucey, Associate Dean and Secretary of the University Faculty