

MINUTES OF A MEETING OF THE FACULTY SENATE

Wednesday, December 13, 2000

Professor Howard Howland, Neurobiology and Behavior, and Speaker: "Good afternoon. I'd like to call the meeting to order. I would like to remind you that no photos or tape recorders are allowed during the meeting. We have no Good and Welfare speakers today, so that time will be allotted to other matters. I would like to begin by calling on Provost Bidy Martin for remarks.

1. REMARKS BY AND QUESTIONS FOR PROVOST MARTIN

Provost Bidy Martin: "Thank you. Hi, everybody. It's so cold. I would like to give you an update on a presentation. I think most of you know that the full accreditation draft report is coming on-line. It will be available for your review and commentary. The full draft, including Chapter 5 on distance learning, will be out later today. That was the chapter that wasn't yet complete. Now we go into the public comment phase and we seek your input. As you know, the work on this accreditation report was started while Don Randel was still provost, and a lot of the work was assumed by his vice-provost at the time. We have had a change in teams, and I think the report has come out well, but there will certainly be awkwardness, possible omissions, statements for relations, or points of view with which you might not entirely agree. We welcome your input at this point in the process, and I look forward to receiving it.

"Other than that, I would simply say that in spite of being a little tired, I have really enjoyed this semester as provost. It has been enormously interesting intellectually, a lot of fun and I would just like to thank the committees of the Senate which I have been working with this semester—FACTA, the UFC, I haven't worked with the LAC but I know from Bob Richardson how much we count on that group. The discussions I have been asked and permitted to overhear in FACTA have been thoughtful and thorough and useful, and my discussions with the UFC likewise about every topic from eCornell to other matters which I won't enumerate here. The discussions have been good; the input has been thoughtful. From my point of view, I see the relationship as a really productive one, and I hope you all agree.

"We are conducting, as you know, a search for a new Dean of Engineering. We have a great search committee. The search is going well. We will have news that is worth printing about candidates at the beginning of next semester. We will have a new dean by July 1, 2001. As many of you know, there will be more about it in the paper, I think Thursday; Walter Cohen is stepping down as Dean of the Graduate School. So I will also be chairing an internal search for a new Dean of the Graduate School. Walter is stepping down as dean, but he is not stepping down as vice-provost, so I will still have his services in the provost's office next year. I think that is about as much news as you wish to hear. I see Peter Bruns is here. We all know that Peter is going to the Howard Hughes Foundation, which is an enormous honor, and we'll miss Peter. It's probably not my job to say anything. I just see you and wish you luck. If there are any questions, I would be glad to try and find some sort of response."

Speaker Howland: "The Chair calls on Dean Cooke."

2. REMARKS BY DEAN J. ROBERT COOKE

J. Robert Cooke, Dean of the Faculty: "My remarks can be quite brief. I would just like to point out a few things that might be of interest to you or to your colleagues in your department. FACTA produced a set of

recommendations on what should be included in a promotion packet for tenure to try to get some consistency across the different colleges. We hope that will be a document coming from the provost when it is finally a public document.

"The provost has just mentioned the re-accreditation. One other thing I would add is the web site you might want to jot that down so that you can get your hands on the document. It is quite lengthy.

<http://www.ipr.cornell.edu/accreditation/ReAccredindx.html>. The UFC has decided that it is not going to review it as a formal body, but I commend it to the committee chairs because it has an enormous amount of material collected that I believe will be useful to your deliberations in trying to understand where we have been and where we intend to go as a university.

"We are having some conversations about the 4:25 to 7:30 p.m. time which is restricted from having formal course work. The principal problem appears to be TA's, out of their generosity, try to arrange a review session for the students. It happens that after 4:30 the classes have stopped. That's when the review sessions occur, but that creates a problem for the students who have other plans at that time. We don't have a recommendation as yet but wanted to alert you in case some of you have some suggestions that could contribute to the process. There is also a discussion of make-up work for absences due to religious observance. There is a policy in the books, and we are just trying to work out some of the procedures to make it a little less of a surprise to the faculty when the students disappear.

"On today's agenda you are going to hear about distance learning, about the professorial titles, and about the academic calendar. You are going to hear a lot more about that in the coming semester, and I think that is enough--just to alert you to what I see coming over the horizon."

3. APPROVAL OF THE MINUTES OF THE OCTOBER 11, 2000 FACULTY SENATE MEETING

Speaker Howland: "Thank you very much, Dean Cooke. The Speaker would now like to call for approval of the minutes of the October 11, 2000 Faculty Senate Meeting. Are there any corrections? I ask for unanimous consent. Hearing no objections, they are approved. I would like to call now on the Associate Dean and Secretary, Professor Charles Walcott, for a report from the Nominations and Elections Committee."

4. REPORT FROM THE NOMINATIONS AND ELECTIONS COMMITTEE

Professor Charles Walcott, Associate Dean and Secretary of the University Faculty: "Well this is our report. (Appendix A attached) You have it already in your call to the meeting. There are more things in the pipeline that we are not ready to announce yet. But these are all ready to be voted on. There is one other item which I would like to tell you about which is that Dean Cooke's term as Dean of the Faculty ends at the end of this academic year, and the Faculty Senate can reappoint him for an additional two years. The Nominations and Elections Committee considered the matter at its last meeting and recommends that he be re-appointed. We will send you a mail ballot in the next few days to indicate whether you approve or not of that recommendation. This is our report, Mr. Speaker."

Speaker Howland: "Thank you very much, Mr. Secretary. Do we need to vote on it?"

Dean Cooke: "Yes."

Speaker Howland: "We ask if you accept the recommendations of the report. Any objections? Good,

unanimous consent. Thank you very much. I call now on Professor Rich Galik, Chair of the Committee on Educational Policy for a resolution on the commencement date and progress report. Do we have the resolution?"

5. RESOLUTION ON COMMENCEMENT DATE AND PROGRESS REPORT FROM THE EDUCATIONAL POLICY COMMITTEE

Professor Richard Galik, Physics and Chair of the Committee on Educational Policy: "Yes, you have it in your packets. We certainly have time for that now. I ask the Chair to vigorously keep the discussion and my comments to what was allotted – 10 minutes.

"I am speaking for the Committee of Educational Policy which I chaired this semester and chaired last year. My last act as chair is probably this discussion. I was asked to say a few things about issues that we have covered this semester and will be covering again in the upcoming semester. We'll hear more about the academic calendar on my third transparency. Bob has already mentioned the preservations of free time. The memo was put together by our committee and we are scurrying to circulate it this semester to you. We have surveyed the breadth of the problem; we have some documentation on the kinds of classes and academic activities that appear to be in violation of this free time period, which is more that just 4:25 to 7:30 during the week, but includes Friday evenings and some other times as well. We hope to make a further recommendation in the spring, as Bob suggested, particularly in regard to these review sessions, which seem, at least right now, to be the dominant thing that falls into the time slot in terms of activities.

"There is another question that has come up, actually raised partly by the Trustees. Is there an overload of evening academic activity, classes, exams, etc? This actually involves many aspects of student life. We are concerned that our students are becoming very tired. Some of this is the fact that they have very long days and part of it is that, for example, they don't have very much quiet time in their residences and things like that for actually studying for finals and sleep. We are all worried about the sleep deprivation that this incurs, and we are looking for ways to try and ameliorate the impact of cyclical things such as exams, and also try to involve other aspects of campus life as well.

"The last item that we have been working on to some degree, Bob Kay, I should say is actually the person who is most looking into this aspect—spacing the exception period. We also sent down a memo I drafted in late October for the Senate on this. These are the examinations which in general have exceptions from the determination of exam time based on the first class meeting time, because there wasn't a first class meeting time, so there is no way to get that in the algorithm, and so we then have these exception exams. We are looking to see whether all the courses that are on the exception list really belong there, and it appears that we are doing pretty well in that regard. Last semester I brought to you the notion of our extending this so that the six exception periods don't occur in four days but occur in five or six days. This was prompted by a professor's plea to please stop giving him two exams on the last day of class, the last day of exam period. Of course the humanities classes do tend to get piled up at the end of the exam period, partly because most of these exception classes are in the sciences, and they get, right now, the first four days. So I sent out this memo and two of you responded. If more of you would like to respond, that would be appreciated. The two, who responded, responded positively.

"My last transparency—I sent out a memo on most of this a week ago, so that you have had a chance at least know if this should work. Labor Day is of prime concern for the student assembly. We have looked at the three aspects of this. One is to give some sort of relief in the sense of excuses or extensions or make up work for the students to go to programming either on campus or in the greater community. Or we looked into starting after Labor Day and found that that is essentially impossible given the present calendar that we have. We thought about this a lot. We were actually almost to the point of drafting something, but the more we

looked, we realized the harder this was going to be to formulate. So presently we have not decided to give a formal excuse for this programming option, and we are putting together a memo largely to the student assembly which will also go to you with the details as to why we were unable to actually do that. Electronic registration is coming on line soon, and when that happens the two days that were normally needed for registration and course exchange will shrink to one. That will give us an opportunity to use that Wednesday as a Monday for most classes that don't actually have to meet on that Monday. We are looking into that plan as well.

"Spring term—those two long stretches of academics that last eight weeks. Eight weeks before spring break, and there are eight weeks from the end of spring break to the end of exams. There are two eight week periods, so the question is are these two long stretches of academics too long, and whether or not there should somehow be a break at some point as was imposed in the fall term. Because we thought it was too many weeks of instruction, that is the reason the fall break is where it is. We think maybe that is the case here as well. None of those involve commencement, and a lot of people rely on knowing the commencement date four years from now, particularly the parents of the freshmen, as do the Trustees and a whole number of organizations on campus. Our committee realized that nothing we were talking about would have an impact on commencement, so the resolution came before you that at a minimum we are now prepared to certify that we are happy with the dates of commencement. I would like to open the floor to more general comments on any of these issues, but specifically if you have any comments on this issue of commencement."

Speaker Howland: "So this resolution is now before us all for discussion and a vote."

Professor Joseph Ballantyne, Electrical Engineering: "I just wonder if the committee discussed the possibility of moving commencement back again to Memorial Day, as it was for many years."

Professor Galik: "On the Monday, instead of Sunday?"

Professor Ballantyne: "Yes, it was always on Memorial Day."

Professor Galik: "Well, we certainly did not discuss that issue. We just assumed that holding commencement Sunday of Memorial Day weekend was or has been the status quo and seemed to be acceptable to us. No one indicated that they preferred to have it on Monday."

Professor Naomi Altman, Biometrics: "I was wondering if it was possible to have it on a regular weekend rather than Memorial Day weekend."

Professor Galik: "Well, the academic calendar, as you know, has many constraints on it, including the fact that we certify seniors to graduate. So we do have to have a space of time after the examination period. If we wanted to have it on a regular weekend, we would need to go later in the summer. This would mean that summer school would have to be delayed in terms of its start, as well as shortening the job period for students, or we would have to go earlier and eliminate winter session. Neither of those two sounded like very viable options."

Speaker Howland: "Additional comments? You are ready for the vote? All right. We are going to vote on the resolution (Appendix B attached) that the University Faculty Senate endorses the proposed date for Cornell commencement, namely May 26, 2002, May 25, 2003, May 30, 2004 and May 29, 2005. All those in favor say 'aye.'"

"AYE."

Speaker Howland: "Opposed? The motion passes. Thank you very much."

Professor Galik: "Please send me comments on these issues, particularly Labor Day and the extension of the exception periods so that we can work on those."

6. UPDATE ON THE FORMATION AND FIRST STEPS OF eCORNELL AND NEXT SEPS FOR THE ADVISORY COMMITTEE ON DISTANCE LEARNING

Speaker Howland: "The speaker would like now to call on Professor William Arms for an update on the formation of and the first steps of eCornell and the next steps for the Advisory Committee on Distance Learning."

Professor William Arms, Computer Science and Chair of the Advisory Committee on Distance Learning: "I am speaking as the Chair of the Advisory Committee on Distance Learning. The Advisory Committee on Distance Learning which is a provost committee that also has the direct responsibility of reporting to the University Faculty Senate. We were formed about half way through the spring semester this year with some fairly urgent topics to address.

"In the first place, this committee was handling things with urgency. Particularly there is the proposal on the table for an organization which is usually called eCornell which had some aspects to it which many people thought were problems. We looked at those and we endorsed the proposal, subject to certain conditions. The primary conditions were that it should be an organization that only directed its intentions to non-degree courses and programs, which is, by the way, a topic that is going to come later on the agenda, and also to a number of conditions about the university's control, particularly the academic control of these programs. The University Trustees accepted those conditions and they created the organization in September of this year. From the point of view of our committee, it meant that we were in the strange position of having to address the special case before looking at the general case. Therefore, we enjoyed this fall the chance to go back and look at some of the more general underlying issues. What we tried to do is to have a more leisurely discussion of topics that we expect will become urgent sooner or later. And we would like to be prepared for them rather than being forced to react. We looked at two particular topics: One is the question of intellectual property—the copyright of educational materials, who controls educational materials, and the question of if the university wants to have distance learning programs that involve distance education, what is the decision making process? We increased the size of our committee by adding two students, one representing the undergraduates and one representing the graduates.

"I have slides (Appendix C attached), first on eCornell. It is officially Tower Innovative Learning Solutions, but it trades under the name of eCornell. There are complex legal reasons for that distinction. From the Trustees' go ahead, all the normal things that take place when you set up a new organization, a new company, have been taking place. I should say this is a wholly owned company. All the stock is owned by Cornell University and it is completely under the control of the university through the Trustees. We have appointed a chief executive officer, Francis Pandolfi. His background is in publishing. By the way, he was CEO of Times Mirror magazines at one stage. I think that is quite important because the relationship between the university and eCornell has many aspects of the relationship between a publishing house and a university and the faculty members at the university. There is a board, chaired by Peter Meinig, who is one of our Trustees and chaired our Trustee Subcommittee in this area. There are, I think, four more members who are University Trustees, Inge Reichenbach, representing the university administration, a faculty member appointed by the provost, who happens to be me, and Francis Pandolfi, as the CEO. I think that is the members of the board. I see my role as having two parts: One is, as the member of the board of any organization, you have a responsibility to make that organization succeed. You clearly want it to succeed for all the right reasons. The other is that I see myself as representing the faculty in trying to identify things that are important to the faculty and make sure

that the spirit of what the Faculty Senate has discussed, as well as the letter gets carried out. We are going through all the normal things, recruiting senior people, opening offices in college town and opening a marketing office in New York City—all the things that are needed to get an organization going.

"There are two draft legal agreements going around. Why is it that legal agreements take three times as long as they should to happen? There is an overall agreement between eCornell/TILS and Cornell. A draft of that was circulated to the faculty; a draft, which, by the way, had some things which many of us didn't like. The comments are being incorporated, and I am hopeful that people will like the final version. Also know that each program is going to have to have an agreement between eCornell on the one part and the university academic units and the individual faculty members. That agreement is being drafted also. Legal agreements are somewhat chaotic, but I think they are turning out to be working well, and I have to thank Provost Martin very much for being personally involved in handling some of the more sensitive topics.

Program planning is well under way on a number of non-degree programs leading to certificates with Hotel Management and Industrial and Labor Relations and Systems Engineering among others. All in all, it is very much the plan prepared by Vice Provost Mary Sansalone last spring from the financial point of view and it is probably going a little bit slower than we would have all liked.

"Leaving eCornell, let me just put up two slides about the topics our committee has been talking about this semester. First of all, we discussed control and copyrighting course materials. The question is who controls the use of course materials and who owns the copyright on them, particularly when many people are involved in their creation? The basic conclusion of our committee is that the university copyright policy is inadequate for this new world. We have drafted a letter to the provost that is going to recommend that the university look at revising the university copyright policy. One hates to tackle this thing but I think it is necessary. We have drafted some considerations that I have here on the slide. Perhaps the most important one is the copyright policy, which, as written in the present, treats things differently depending on the media in which they are expressed. So if one of us writes some lecture notes on paper and distributes them to our students, one set of rules would apply. If you put them in a digital form and distribute the digital file in some way, then a different set of rules apply and this may have made sense when it was written but it doesn't make sense nowadays. Whatever the rules are our committee feels that they should not be tied to the media, they should be tied to the intellectual creativity. We believe strongly in the fundamental principle of universities as being the creators of intellectual works and having control of intellectual output. We think that's the number one problem, but sometimes the university puts enormous resources into supporting things, and we think the university also has some rights then. We keep seeing questions where conflicts of interest and conflicts of commitment are tied up with this area. The key recommendation of our committee is that the university needs to look carefully at the copyright policy, and we'll be pleased to work with that. So that needs a process to be set up.

"I see my time is coming to an end; let me just give you another one we have looked at. Remember that eCornell—the purpose there is on non-degree, non-credit programs—so the question is if an academic unit wishes to offer degree credit for a non-residential or partially residential course or program, are the existing academic procedures for approval sufficient? We are looking at how existing things have been done—things like summer school courses taken by distance learning or professional courses offered in New York City or lectures delivered on-campus where the instructors are off-campus. In these cases in the past approval has come from the regular academic process. For example, the general committee at the Graduate School has been involved with many of these. The question arises is this process relying on the usual academic procedures adequate? We know that there are some academic units that are considering quite ambitious programs. We also know that there are some other universities that may compete with us for students, faculty and so forth who have ambitious plans in this area, and we have to be ready for that. Recent announcements by Harvard Law School and Harvard Business School are examples. There is going to be a

discussion on this topic later in the next item on the agenda. I just wanted to tell you what we have been talking about, and to leave a few minutes for questions on our committee or reactions."

Speaker Howland: "You do have time. Questions for Professor Arms?"

Professor Katherine Stone, Law School: "My question has to do with copyright policy that your committee has been taking up. It seems to me that there are a lot of real puzzling and very serious conflicts down the road between the faculty and the administration or at least the board of governance of eCornell over this kind of issue. So my question is rather than simply recommend that the university revise the copyright policy, that perhaps we in the Faculty Senate or your committee should ourselves come up with what we think the policy should be and perhaps initiate a discussion with the university from the vantage point of already having formulated a decision ourselves. Have you thought of approaching it this way?"

Professor Arms: "I believe very strongly that this is something in which the faculty viewpoint should be the dominant viewpoint. Sometimes I'll argue the other way, but on this particular point, I think the academic traditions have served universities extremely well. I think we need a process, and I need to talk to Dean Cooke about what that process is which results in a very clearly articulated faculty point of view. I believe it is possible to have a point of view that the university will be happy with from an administrative point of view and from an academic point of view. We should think of lawyers as people who write the words around what we have agreed, rather than sometimes it going the other way."

Professor Joseph Ballantyne, Electrical Engineering: "I just want to reinforce that comment. Having been the officer in Day Hall who was in place when the last revision took place, I think it would be very important for the faculty to take the initiative in this area and then bring it to the administration."

Professor Arms: "Would you like to comment on that?"

Provost Martin: "I agree with that."

Professor Arms: "I think we hear that one loud and clear."

Speaker Howland: "Additional comments? Fine, thank you very much. The speaker would like now to call on Professor Barry Carpenter of the University Faculty Committee for a resolution on eCornell Overarching Agreement."

7. RESOLUTION ON eCORNELL OVERARCHING AGREEMENT

Professor Barry Carpenter, Chemistry and University Faculty Committee: "I need to give you a little bit of the background to the creation of this resolution, because as I learned this morning, the UFC when it came up with this resolution was laboring under something of a misapprehension. Nevertheless, the resolution itself I think still stands and there are still some things that we want to consider. The misapprehension has to do with some of the wording in the rationale. So I'll tell you about the history. (Resolution attached as Appendix D.)

"On November 14, the UFC met with the president and the provost and we discussed the Overarching Agreement between TILS and Cornell University. The UFC made some recommendations for amending the wording of the draft that was before us, and the amended version is what was circulated to you. Subsequently, the UFC came to understand that eCornell was going to want to offer some for-credit courses, and we believed that some of the programs already on the docket for eCornell would in fact be carrying credit, and we had originally thought that that was not going to be the case.

"It also seems that the Faculty Senate was going to have to address this issue on a rather short time scale. Because this looks to us like a complex and sensitive issue, it seemed that a sensible way to proceed was to give the Faculty Senate a kind of 'brain work,' bare bones version of the Overarching Agreement, which is the provisionally amended version of the Overarching Agreement that was circulated to you, so that you could deal with what we believe to be a relatively uncontroversial framework overarching agreement. If you then approved that, we could focus our attention on the issue of whether the Faculty Senate was comfortable with eCornell offering any kind of for-credit courses, and we could then move fairly swiftly on that, because we were under the impression that this was something that would need to be acted on quickly. This whole first draft is a way of trying to give you all of the information while moving as expeditiously on this matter as we can. I think the issue of whether you approve this framework, bare bones overarching agreement is still a good one. I think that is still a resolution. You'll notice that the resolution really addresses in large measure that question. It does also commit us to try to act as expeditiously as possible on anything that might come subsequently, but the question of credit is not something that is in the resolution that you will be asked to vote on. By bringing up the issue now, we wanted you to be able to express your opinions on this matter so that the issue could then be framed by those wanting to present it in a way that would be consistent with your concerns.

"The change, however, came this morning when Dean Cooke and I received an e-mail from Bill Arms saying that UFCs understanding of what was going to be asked was in fact not correct. So at this moment I will step back and invite the Speaker to have Professor Arms explain what the current situation is."

Speaker Howland: "Professor Arms are you prepared to do that?"

Professor William Arms: "Thank you very much. I am now changing hats and speaking as a director of eCornell you'll understand. I was rather taken by surprise when I saw this draft resolution sometime the middle of last week, because there had been absolutely no discussion by the eCornell board about anything other than non-degree programs. Fortunately, we had a board meeting last Friday and raised the question. As far as I can make out, the situation is as follows: We have a new organization with a lot of new people. The institutional memory is weak. Some of the new people, including the new CEO, had raised the question about eCornell and degree programs. So I believe the statement in your rationale was about the situation when you said it was actually right. However, the board wanted to make it very clear that the promises made and the commitments made in forming eCornell were to do with not-for-credit courses, so eCornell was created on the assumption we should offer only non-degree programs. The financial plans, all the things under way, at present are all about non-degree programs. Any suggestions that eCornell should at any stage offer courses that receive academic credit, any initiatives in that area should come from the academic units of the university. The board would clearly listen to such requests, but it is the academic units of the university that have to make such requests. The board was very supportive of the resolution that Barry is presenting."

Speaker Howland: "Thank you very much."

Professor Carpenter: "So we have this resolution before us, which as I say, the resolution really only asks you to consider this framework version of the Overarching Agreement which we think is going to be 95% of what the final version might look like. We still think that that is a sensible way to proceed, so that if there are any significant amendments to this, you can focus your attention on those when you see a final version. So I'll leave the discussion at that point."

Speaker Howland: "So the motion is open for discussion."

Professor Brad Anton, Chemical Engineering: "I read through this fairly carefully, and I noticed that section four, Right of First Refusal, in parts a and c bind the university and all of its colleges and sub-units to develop

and market all distance learning products as exclusively through TILS unless TILS allows the university to escape this obligation through the specific conditions in section 4b. Is TILS similarly bound to market products developed exclusively with the intellectual content from Cornell University? Section two does not state this and section six, Other Programs, gives TILS the right to negotiate with another institution or source if it wants to develop other programs that don't interest Cornell University. This is a worry I had. I don't see anything in this agreement that would prevent TILS from entering into a similar overarching agreement simultaneously with another university, for example, Princeton, and being eCornell and ePrinceton at the same time. I wondered am I missing something in here? Is this taken care of?"

Professor Carpenter: "I don't think I am the right person to answer that question. Perhaps either Professor Arms or Provost Martin will respond to that question."

Provost Martin: "I can try, and then I might defer to Glenn Altschuler who has taken responsibility along with Polley McClure for being the university administration's point folks for distance learning on campus and for negotiating with eCornell. There wouldn't be any way under the terms of this agreement, as I understand it, that TILS could sign an overarching agreement of that sort, a sort of sweeping agreement with another university. If we had no courses in a certain area we wish to offer, they could contract with individual faculty members at other institutions to provide those programs, because no one at Cornell University was interested in doing so. As a wholly owned subsidiary of Cornell University, it could not enter into an equal contract with another university."

Speaker Howland: "Professor Schuler."

Professor Richard Schuler, Economics and Civil Engineering: "Could you refresh our memory of what the consequence of our passing this resolution is? I really have a two-part question, so that's the first part. The second part is that under the second 'whereas' it seems to me it says only that the Senate shall be informed and nothing else and given adequate time to respond. Again, I'm trying to zero in on what is the weight of this resolution if we do act upon it."

Professor Arms: "I have spoken with Francis Pandolfi, and it's fair to say that he and the members of the eCornell board are very interested in having the faculty involved in whatever it is that they do. So while I don't think that this body has any veto power over an agreement signed between the university and TILS, nevertheless, as with lots of other resolutions that this body passes, I think it will carry a lot of weight, and if you say something with a strong voice, it is very likely that the parties to whom you are speaking will listen."

Professor Schuler: "So it's advisory."

Professor Arms: "Yes. That is my understanding."

Speaker Howland: "Additional comments or questions?"

Professor Paul Velleman, ILR: "I 'm not a member of the Senate. I'm concerned with paragraph five on non-competition which in the papers that have been distributed admits requires further discussion. I wonder if there has been any further discussion on that, just mostly to be sure faculty at the university aren't going to be constrained in teaching our courses through some distance medium simply because eCornell is already offering a course that resembles that course, regardless of whether we are teaching it to people who are enrolled in degree programs here or perhaps to others who might be participating. There are some distance learning courses we have already done where there have been participants from around the world who have not been students at Cornell and may not even be getting credit from Cornell in some formal fashion. We want to be able to keep them participating. Has there been further discussion to clarify that?"

Professor Carpenter: "There has been quite a bit of further discussion and, Glenn, I don't know whether you want to talk about that at all?"

Professor Glenn Altschuler, Continuing Education and American Studies: "I don't want to talk about it, but it seems I have no choice. Perhaps I ought to begin by asking(It's always good defensive strategy to ask a question, especially if you're Jewish you learn that's the way you should respond to almost everything.) I'd like to begin by asking Professor Arms for clarification that is relevant to Professor Velleman's question. You seem to me, at least, to use the phrase 'degree programs' interchangeably with the phrase 'courses for academic credit.' Did you wish to be understood to say that the board of eCornell was not intending to bring forward any proposals about degree programs and/or about authority to produce, market and distribute individual courses that might give rise to academic credit? That distinction needs to get at an important distinction that Professor Velleman is making."

Professor Arms: "What I intended to say was, first of all, the distinction between program and course is an important one. The eCornell board feels strongly about its previous commitments to the university and it will not bring forward any proposals for either, but it will listen to requests from the academic units of the university if they want and support developing such programs."

Professor Altschuler: "At the moment then, I guess the response to Professor Velleman — my main response to the situation that is now and then I will make an observation of my own which may or may not be relevant—is that at the moment, as you see, all courses for academic credit are exempt from the non-compete clause, and therefore there would be no situation, Paul, in which a for-credit course could be construed under the present draft of the Overarching Agreement as competing with an eCornell generated course or series of courses. At the moment there is really no competition."

"Having said that, I will say that my own recommendation, as someone who has been involved in this area for some time, is that eCornell, in order to be competitive, is going to need the authority to be able to produce, market and distribute courses which give rise to academic credit for several reasons. First, that is what is desired in the marketplace and secondly, as far as I know, every entity that has been endowed by other institutions, either peer institutions to ours or lesser institutions (I guess there are no superior institutions) is a given as part of its mandate. If, as Professor Arms has suggested, we all want eCornell to succeed, my own recommendation is that we take up this matter of giving to eCornell, not the authority to grant credit which I believe it never should have, but the authority to produce and distribute courses for which credit is given in the ordinary way that they might then offer for extramural credit. The reason I made the distinction I did with Professor Arms is—if you grant extramural credit, you are, by definition, taking that course entity outside the framework of a degree program and it would operate in the same fashion as we grant extramural credit now in the School of Continuing Education and Summer Session. I know that is not the item that you are talking about, but since Barry invited comment on it, I did feel some obligation to say that, and you do understand that I have no particular interest, other than wanting eCornell to succeed, to make that recommendation. However, I think that when you put the kind of resources into eCornell that we have put into it, you want it to succeed."

Professor Velleman: "Glenn, that does answer part of my question, but the course that I currently offer through Summer Session and Continuing Education is..."

Professor Altschuler: "And a fine course it is!"

LAUGHTER

Professor Velleman: "Thank you. It is an introductory statistics course and on this campus we have, by my count, about fifteen virtually equivalent introductory statistics courses. If that course were to be offered

through eCornell, would that then prevent any of my colleagues who teach similar courses from teaching their course through distance learning? The way I read this paragraph, they would then be competing with that course."

Professor Altschuler: "That course cannot be offered through eCornell under the current circumstance because it is a for-credit course."

Provost Martin: "But he is asking about the hypothetical situation..."

Professor Velleman: "I see a hypothetical situation in which for-credit courses are instigated by faculty but implemented through eCornell."

Professor Altschuler: "That can't be. If you take a look at the Overarching Agreement, the Overarching Agreement indicates that courses or entities which give rise to the granting of academic credit may not be offered by eCornell and then if you look at Appendix D to the agreement, courses for academic credit, by definition, cannot compete with any course entities offered by eCornell."

Professor Velleman: "You're saying that eCornell will not even implement a course that carries academic credit."

Professor Altschuler: "Under the present Overarching Agreement, that is the case. I am saying that."

Professor Velleman: "Have I misunderstood or is that what Professor Arms was saying?"

Professor Altschuler: "That is what Professor Arms is saying."

Provost Martin: "No, not exactly."

LAUGHTER

Speaker Howland: "I am going to call on the Provost now."

Provost Martin: "Well, I understood it a little differently too, Glenn, even though you and I are..."

Professor Altschuler: "We're not talking now."

LAUGHTER

Provost Martin: "I'm already thinking I'm overworked so now I'm dead. I thought Bill said that eCornell would accept and review proposals that come from academic units in the university for for-credit courses. I did hear that."

Dean Cooke: "Once that process is authorized."

Provost Martin: "Once that process has been authorized by a college, a school or a unit that has the authority."

Dean Cooke: "Or when the Senate has taken action."

Professor Velleman: "He is saying then that there is the potential that the non-compete clause would then preclude other faculty who teach similar courses that would be perceived to compete. We allow courses to compete on-campus; there are a number of instances of very similar courses."

Provost Martin: "Unfortunately, very many. Yes."

Professor Velleman: "Yes. Would that then present a problem?"

Professor Altschuler: "At the risk of disagreeing with the person who pays my salary, the Overarching Agreement in its present iteration does not permit eCornell to entertain the production, dissemination or marketing of courses which give rise to the granting of academic credit."

Provost Martin: "There we agree, but what Bill Arms announced was at odds with that. So there was a contradiction. That's all I wanted to say."

Professor Altschuler: "It's always...."

Provost Martin: "And it's true that Professor Arms can't, on behalf even of the eCornell board, say that they will receive and review courses that have been granted credit by an academic unit at this university, if the Overarching Agreement explicitly forbids it. I think where we are headed is towards a recommendation on the part of faculty in specific units or the Senate itself, that eCornell should be able to produce, market and distribute courses that have been granted credit by the usual means in the university, but at the present time, the Overarching Agreement does explicitly say that that can't occur. We are between what the Overarching Agreement says, what Glenn is recommending that eCornell do, what Bill is imagining eCornell will do and where we'll probably all end up in February.

"Your question— is this not confusing, troubling, and potentially difficult once eCornell is producing, marketing and distributing courses have been granted credit by a legitimate unit of the university, given the non-compete clause? I think the answer to that is yes, in all honesty. And that's why we have senate committees and faculty committees of other kinds working on these problems. So far, I would say, it has worked very well to have faculty committees working on these problems to identify these kinds of problems. I don't think it means it is a tragedy, or that it will stand in the way of eCornell being able to offer courses that have been granted credit by our academic units, but we have to figure out the right mechanism, certainly, to deal with potential problems.

"Our non-compete agreement with eCornell would mean that if your statistics course is being produced, marketed and sold by eCornell, somebody else's couldn't necessarily be offered to UNext. I'm not familiar with other vendors. There are lots of reasons why we wouldn't want a bunch of our courses being offered through UNext anyway. The non-compete clause creates a set of decisions and mechanisms we need to invent, which are already under discussion, but for you to identify that as a complication is accurate. That's all I have to say. I think it can be worked out, but it is going to take the same kinds of people who have been working on Bill's committee and elsewhere to think through the best way to deal with the problem."

Speaker Howland: "Dean Cooke."

Dean Cooke: "My understanding is that the Senate will have an opportunity to express its view on the transition from non-credit awarding to that process. It will not be an individual one of the 1,600 of us who individually says that eCornell will do this. My expectation is that the UFC and this body will have some formal conversation before that process is put in place."

Professor Carpenter: "Yes, indeed if I can just answer that. That's really the whole point of the resolution is to clear away the stuff that isn't controversial so that we can focus on the stuff that might be."

Professor Peter Stein, Physics and Faculty Trustee: "I would like to concentrate a little bit on the mountain instead of the molehill if I am following this. I understand Professor Velleman's concern about the

non-compete clause, but there is a whole bigger issue that we almost seem to have taken for granted. Namely, the first time I heard of eCornell, it wasn't very long ago, we were assured that the niche that eCornell had was non-degree granting programs or I thought courses for credit, although I don't remember that explicitly being said, that the niche was a rather small and limited number of professional education offerings in areas in which Cornell excels. And we were all enthusiastic about that. Who could think that was a bad idea? But there were many of us who were concerned about the brave new world out there where we would be having Cornell degrees and PhDs and God knows what freely marketed on the Internet. It almost sounds to me like we have accepted that now. I may be mishearing something, but I'm understanding people to say, 'Well, yeah, sure. We haven't done that yet, but that's going to come up. In February it will come up.' There is more than a problem with the non-compete clause. There is a major problem I think of whether indeed that's the way that we want to go, and I didn't think that there was general agreement in that direction in this body."

Provost Martin: "Peter, I think that you might have misheard me, but it's also true that I'm not really clear. I don't know anyone with whom I've spoken who wants to move in February or any time in the near future or foreseeable future towards degree programs being offered through eCornell."

"There is a distinction that Glenn tried to make between extramural for-credit courses as part of the kind of niche offerings and markets that we have identified for eCornell and degree programs. Why are we even thinking then about these extramural credit courses? Because, this is what I've learned, there are a lot of people out there who will want to take the kinds of certificate programs that we are offering, but there are even more who will want to take courses and programs in those areas, such as Hotel Management or Human Resources, who will want to be able to take the course for credit, rather than simply paying for a certificate because they can apply that extramural credit to a degree that they are getting through another institution for example or because the for-credit could be used later in ways that a certificate can't. The fact that we are thinking about courses for extramural credit that eCornell could produce, market and distribute has really nothing to do with a switch in sentiment in favor of looking at the offering by eCornell of for-degree programs, at least not at the moment. And certainly, that is not what I intended to say."

Speaker Howland: "Go ahead, Professor Stein."

Professor Stein: "I think it is important to recognize that there are only two divides between us and the University of Phoenix. The first divide is extramural credit and the second divide is degree-granting programs and then we are there. I think that people were concerned about that transition. I just heard a general acquiescence that we were going to cross the first divide in February without a whole lot of trouble and that concerns me, that's all."

Provost Martin: "Well, we may not. It is up for discussion, because eCornell is in competition with other university entities of this kind that can give courses for extramural credit, so it's an issue if we want eCornell to succeed, but I don't think we are going down a slippery slope. The provost is certainly not in favor of offering degree programs through eCornell."

Speaker Howland: "Professor Ballantyne."

Professor Ballantyne: "If this Overarching Agreement is approved and put in place, will it then constrain our further discussions of other options or can such things as the non-compete clause be removed from it at a later date?"

Professor Carpenter: "My belief is that the UFC in presenting this for your approval is presenting something that it believes to be a framework, but that framework, if it is going to be substantially amended, actually as the resolution says, would come before you again."

Professor Terrence Fine, Electrical Engineering: "I must start by saying I'm not particularly enthusiastic by the prospects of eCornell. I really couldn't care less about the prospects of eCornell. I'm also not happy about having an anatomy lesson right now. What I thought was the nose of the camel in my tent, turns out to be the rump of the camel. I seem to be seeing pretty much the whole camel. We start with the confusion in remarks about degree programs and courses for credit. These things are getting said sort of interchangeably. Now that has gotten separated. We have a barrier here about courses for credit. What is going to maintain that barrier? Well, it just needs some faculty members to come up with some departments to come up and ask that they give courses by distance learning that get degree credit. That would happen. That is an inevitability. We are a big university. I don't know how many departments we've got. I'm sure that that is already happening out there in departments, units. It will happen over Winter Session or whatever that some people will say that yes they would love this. Now, who is to be the gatekeeper? This talks about a rather weak sentiment that you come in and advise the senate, and the senate promises here to act with due deliberation and rather hastily respond. I think it is a more important matter than that. I think, I'm on the UFC so I take responsibility for this, but I think there is a more immanent prospect of having courses for credit than we are contemplating here, and I would like a stronger gatekeeping function than just 'ask us and we'll have to respond in the next week.'"

Professor Carpenter: "I've never been in favor of word smithing, but I will word smith with you on the word 'hastily'. I don't think we are at all recommending that the senate consider the issue of credit hastily. It says, 'as expeditiously as possible'. 'As possible' means until we are satisfied that it's done."

Speaker Howland: "Yes."

Professor Arms: "I'm speaking as Chair of the Advisory Committee on Distance Learning. I want to emphasize what Professor Stein said. We have not had the discussion about what we should do with for-credit or degree programs. That was very clearly articulated at the end of last semester and at the beginning of the semester that that discussion is in the future and I disagree with Biddy Martin. I, shall we say, believe that this is moving ahead at the pace at which it is moving ahead. There are going to be these questions come up and there are going to be discussion about them, but I don't think any of us should assume the answers until we get to those discussions and have had good discussions. I think the administration will listen to the faculty very, very carefully."

Provost Martin: "I withdraw all wording I used about relative speed."

Speaker Howland: "I remind me you that we are going to vote on this motion. Therefore, be it resolved that the Senate endorses the Overarching Agreement made November 14th subject to the UFC provisos specified above, and be it further resolved, that the Senate commits to consider and respond as quickly as possible to the anticipated request for amendment to the Overarching Agreement from TILS. Further discussion? "

Professor Risa Lieberwitz, ILR: "I am glad to hear that the credit issue is not a done deal and that it is not even yet on the table and that if it will be on the table, it will be fully discussed. Right? I think that's good, but just in terms of a word about the problems that we are running into. I think that people like Terry and Peter Stein keep reminding me of the underlying discussion we had originally about making this a for-profit corporation which is what's driving one's decisions. If the reason that credit needs to be given for these courses is because eCornell won't succeed in the marketplace situation as a for-profit corporation, then that's a good example of why not to make the educational process that we are engaged in driven by a for-profit market. So that if the reason credit should be given is so that we make money from it, and we won't make money if we don't give the credit, then it seems to me that it's a finished discussion and there's no need to give credit."

Professor Nick Calderone, Entomology: "I like to make one quick point. I'm in need of clarification on this."

What would be the defining characteristic of a program that would require it to be placed under the purview of eCornell?"

Provost Martin: "Could you repeat the language, I'm sorry."

Professor Calderone: "What are the defining characteristics of a program that a faculty member might create that would require it to be placed under eCornell?"

Provost Martin: "I hope I can answer that. It's the right of first refusal. I don't trust myself entirely on this. You've got the language...?"

Professor Calderone: "Let me put it bluntly."

Provost Martin: "Yes, please do. I'll do better with blunt."

Professor Calderone: "If I develop a program or if a program is developed, what benefit do I have in putting it under eCornell rather than running it myself?"

Provost Martin: "Running it yourself?"

Professor Calderone: "Right."

Provost Martin: "What do you mean 'running it yourself'?"

Professor Calderone: "Well, I mean distributing the information, running the program independently of eCornell, not necessarily with another university, but just out of my office."

Provost Martin: "I think that's a really good question, because what the language says is that you can't contract with a third party. I think in so far as you were running it out of your office and offering it to an audience outside the university, you would be working with a third party. You would be constrained from doing that by the language in the right of first refusal provision, if you see what I mean. So we are talking about courses that are to be offered over distance, that is non-residential courses, and any such courses, at the moment, that are not for-credit or degree granting courses are subject to the right of first refusal by eCornell. Isn't that the correct understanding? Except—there is an exception; there are a couple of exceptions such as, courses that are currently being offered through Continuing Education or by other routes as distance learning courses will not have to be submitted to eCornell."

Speaker Howland: "Ladies and gentlemen, I'm sorry to have to cut this conversation, but we are reaching the end of our time allotted for this discussion. Now, if the faculty . . ."

Provost Martin: "Have I misrepresented it? No. That's correct, isn't it? You see, there's no point . . . here's how I understand it, and you all know that I wasn't in on the beginning of this, so I am also catching up. There is no point in having a separate entity wholly owned by Cornell in which Cornell University has invested, let's face it, a lot of its money, there is no point in having it if it doesn't have the right of first refusal and a non-compete provision. So now we've got eCornell; we want it to succeed, and I want to say something really quickly about succeeding and profits.

"I think the whole question of giving eCornell an opportunity to do well is not just in a really narrow sense about profit. It's in the larger context of the welfare of the university. We have approved this entity; I think we want it to do well. Why would we not want it to do well? I mean, Terry, I sort of understand why you say you couldn't care less, but in so far as we think of ourselves as part of a larger university community, I think it matters to care how it does. This is an investment of, at the moment, \$12,000,0000, in an entity that we hope

not only will make a profit and serve the community outside of the university, but that will put us well on the way to providing education, life-long learning if you will, in addition to the service of more short term professional development and training for people, even if it's being done through an entity that has been made a for-profit entity.

"You might not buy that argument, but I am a sentimental believer in the notion of a university community, and that there's a reason why we would want eCornell to succeed for our own good here on campus. Given the kinds of revenues that it could produce for us here on campus and given the fact that it is in keeping, in a very large part, with some of our most important missions and the fact that it is being delivered through a for-profit entity, as long as it is wholly-owned by Cornell, I think, doesn't make it some kind of sleazy operation at which we should look askance. I have come to that by virtue of assurances— by ways in which I can satisfy myself — that the kinds of things we are going to be offering through eCornell are really going to serve people and hopefully benefit those of us on campus who know that we need to move much more quickly in the direction, even for our students on campus, of better technological delivery of knowledge. I just want to work a little bit against the kind of cynicism that I admit I have also felt throughout my life about the distinction between what we really think we are doing and for-profit things. In this particular case, though I don't like the argument that they are part of us and therefore anything that eCornell wants to do we should support because it's all Cornell—that's obviously too simplistic—I do think that we care about it doing well, and I think it has the potential to do some good for human beings as well as Cornell University. That's my line on that.

"Sorry, for the little inspirational speech, but I don't think we should give over to eCornell things it shouldn't have. We should make educational decisions here on campus and the faculty should be making them. I agree with all of that. I'm just urging that we not get too cynical, that we think to the degree we can about ways in which all of this is part of what we are trying to do as a whole, as long as we are all participating in the discussion. I don't want to go back to the times when the faculty feels that they are cut out of the discussion and decision making. As long as we are all part of it, let's not divide ourselves up and think cynically about what is going on over here until we know for sure that damage is being done to the fundamental mission of Cornell University."

Speaker Howland: "We've reached the time when we should be deciding. The

Chair would like to ask for unanimous consent to continue the discussion. Do I hear any objections? No. Then, we will continue with the discussion."

Professor Velleman: "Biddy, there is one thing that you just said that concerned me. I read the discussion as saying that we could not as faculty members contract with another commercial entity competing with eCornell, which sounds perfectly reasonable, but to say that anything we offer by distance learning to anybody outside is automatically dealing with a third party and then comes under this provision, bothers me a great deal. I, for example, support a group of teachers who teach advanced placement statistics in high school. I don't do it for credit, but I post things; I host a discussion in some sense; I participate in an on-line bulletin board. I would not want to be told that I have to do that through eCornell, because I'm dealing with outside parties who are not registered students at Cornell. Many faculty do similar kinds of things."

Provost Martin: "I agree with you, Paul. I think you are raising real issues."

Speaker Howland: "Whoever was in the very back is first and then here and then...."

Professor David Delchamps, Electrical and Computer Engineering: "In the rationale of the resolution it says that at the time of the writing the UFC has not received a response from the TILS board or the administration concerning the proposed changes. And I'm just wondering if that's a sign of happy acquiescence or something

else."

Professor Carpenter: "To my knowledge we still have not received it. Am I correct, Dean Cooke? No, we still haven't. I think what it's a sign of is of something very much in flux."

Professor Richard Schuler: "My question is really a follow on Provost's Martin's interpretation. The scenario: Many programs on campus offer professional, degree for-credit activities that are off campus. Is your interpretation of this non-compete clause that if one uses electronic media to facilitate that discussion that eCornell would have to have the right of first refusal?"

Provost Martin: "No. Not if its part of Cornell programs"

Professor Schuler: "OK. If it's part of Cornell programs. Thank you."

Professor Jeremy Rabkin, Government: "I'm concerned that we do not know what is meant by this term 'course.' Let's say that Carl Sagan were out there today, doing 'Cosmos: The Continuing Saga,' I'm pretty confident that if he were doing that, instead of marketing it the way he did the first time on video, he would now market it on ... what's that called 'Continuous Streams' or something like that... video service. Is it a course? I don't know, maybe."

Provost Martin: "No."

Professor Rabkin: "Why do you say 'no.'?"

Provost Martin: "Because it would not have been approved by the College of Arts and Sciences Educational Policy Committee as a course. It can't be a course unless it's a course according to the academic units of this university. So anything that is offered through Cornell now is characterized as a module in a program."

Professor Rabkin: "Does the right of first refusal hang on our calling it a course or anybody out there calling it a course?"

Provost Martin: "What the right of first refusal ...I'm assuming he is going to let me answer."

LAUGHTER

Provost Martin: "Quickly. Here's the debate we are having right now (I'm in favor of the openness), that is a discussion with eCornell about whether the gatekeeping function, for the very questions you all are asking, Paul and Jeremy, should be at eCornell or in the university. Of course, I'm saying in the university. The gatekeeping function about decisions concerning the status of modules, programs, and course materials that eCornell refuses and that then shouldn't come under the non-compete clause. Do you see what I mean?"

"A course, though...your question about the definition of a course I think is really an easier one, because a course is really only what has been designated a course by the relevant academic unit and its educational policy group, an already existing entity within the university itself."

Professor Rabkin: "Then a distance learning venture, which is not by some definition a course, do you have to clear it with eCornell?"

Provost Martin: "Yes."

Professor Rabkin: "Or can you sell it to anyone you want?"

Provost Martin: "You have to clear it with eCornell, and then the question is if eCornell doesn't take it, what do you do?"

Professor Rabkin: "My concern is back in the old days when we were doing books instead of computer modules, nobody would have said 'Cornell Press has the right of first refusal, you must first take it to Cornell Press.' Cornell Press would never have dared to say that, and we would never have put up with it, and the reason no one ever thought of that is that Cornell Press was non-profit. It's trying to promote scholarship. It's not trying to keep the faculty, as if it were the MGM Studio, for all time. But what now seems to be happening is that we've turned this around and said there's this moneymaker out there, not MGM Studios but eCornell. All of us are now in the studio system to eCornell and whatever we do out in the world, we have to clear it with them, because they don't want us working for another studio."

Provost Martin: "Well, you have to clear it with the university and with them. You're right. That's right. We approved a for-profit, a wholly owned for-profit corporation to deliver this, and it makes sense in that world to have a right of first refusal."

Speaker Howland: "Allow me to break in here and let me recognize this individual."

Professor Emeritus Donald Sola, Linguistics: "I would like to know how overarching this is? Do emeritus professors either get constrained by this or is there a privilege in this? Have you got a role written in?"

Provost Martin: "You know what? I think that's an excellent question, and I don't know the answer, do you, Glenn? Do you, Bill?"

Professor Arms: "I believe the key question is something called a 'Cornell offering.' So if I produce the 'William Arms' course on computing networks, I can negotiate with any publisher in the world. If I produce the 'Cornell' course, then these rules apply."

Provost Martin: "Yes, I thought that was understood, and that's also the distinction in the example you gave, Jeremy, of Cornell University Press."

Professor Arms: "That's a crucial part of what triggers the right of first refusal—that is carries the Cornell name."

Professor Harry Kaiser, Applied Economics and Management: "This is just an informational question. What is the relationship, if any, between Cornell Cooperative Extension and eCornell, and is eCornell specifically going to be able to have restrictions on any 'courses' that are offered through Cooperative Extension?"

Professor Glen Altschuler: "In the Overarching Agreement, as it is now written, I believe this is in the draft that Barry and his colleagues have seen, Cooperative Extension is specifically exempted from those offerings that eCornell may undertake. So Cooperative Extension remains, as it has been, not subject to eCornell in any way. That's in Appendix D."

Unknown: "Which none of us have."

Provost Martin: "Sorry?"

Speaker Howland: "The comment was that none of them have Appendix D. They would like Appendix D."

Professor Lisa Earle, Plant Breeding: "In view of all the questions that have been raised and also the likelihood that there will be amendments coming up quite soon, does it make sense for us to vote on this resolution at this time? I would to hear your opinion on that."

Professor Carpenter: "My opinion is that the answer is yes. While it's true that there have been questions and they will have to be addressed, there are 10 or 11 pages of this thing most of which there haven't been questions about and rather than having the entire document before the body to be voted on in final form, to me it would make more sense to vote on this version and then to trust that the UFC will identify any substantial variations from that version and bring them before the body again, so that it can focus on the important stuff."

Speaker Howland: "The Chair would like to remind you that if you agree or disagree with this proposition, you can vote for it or vote it down when we come to a vote."

Professor Richard Baer, Natural Resources: "I'm not sure I understand 'right of first refusal.' Is that as in a real estate negotiation at a given price in terms of the faculty's benefit? How does that work?"

Professor Carpenter: "The wording is that there has to be good faith negotiation between the unit wanting to offer the program and eCornell. That has to last for ninety days and if, after ninety days of good faith negotiation, nobody has an agreement, then you are free to go and do what you want."

Professor Katherine Stone: "I think a lot of the questions about the right of first refusal and the non-compete clause actually implicate a prior question and one that I spoke to earlier and came up in an earlier part of this meeting which has to do with who owns our intellectual property. I think a lot of the discomfort with the non-compete clause as it appears is the fact that suddenly we lose control over our courses, our curriculum, our syllabi, our course materials, all the things that we put our intellectual efforts into and we consider to be our own intellectual property."

"Suddenly we are being somehow usurped by this for-profit corporation. Now, I guess I don't agree (and I come late to the eCornell discussions, because I was away last year) or I don't fully understand why simply by agreeing to a for-profit enterprise we have agreed to give away our intellectual property. I don't think one follows from the other. Nor do I understand from Provost Martin's comment, maybe she can explain, why the success of the enterprise, which I think it would be great if it succeeded, but I don't think that depends upon the existence of the non-compete clause or the right of first refusal. It seems to me if eCornell is successful as a marketing vehicle for getting course materials and courses into a larger audience, then many of us might want to put our courses and participate in it. It still, I should think, is a matter of choice for us. I don't think the success of the enterprise depends on it capturing or somehow usurping or somehow taking from us what we consider to be our own intellectual property."

"I would really like to hear an answer to that question; I didn't hear the earlier proposal to that. Also I do think the prior question, the prior issue here is the intellectual property issue, and somehow that has to be addressed head on and not just sort of slipped through under some assumption that once you have voted for a for-profit corporation, you have given away your life's property. I don't think that's true."

Provost Martin: "Kathy, I don't think we have given away our intellectual property for the reason that we just went over in the distinction between the Press and eCornell. Let's say that I develop a course on **Nietzsche, Salomone and Freud** (I'm sure it would be a big seller), and I want to offer it over the Internet through distance learning, and I don't care whether it's designated to be a Cornell course or not, I can go exactly the route I went when I published a book on the subject. However, the Cornell name is really at issue here, and I think it makes sense to, as Bill said earlier, think hard about our intellectual property and copyright provisions, given these new technologies, and that has yet to be done. But we are not, in signing an overarching agreement of this kind, giving away our rights to our own intellectual property. What we are saying is that Cornell programs have to go first to eCornell, Cornell programs of the kind we have described, but if you, Kathy, wanted to do something on your own, then you would go the route that we typically go."

That's my understanding. Do you agree, Bill?"

Speaker Howland: "One more here and then I'm going to say that we've reached the time limit and halt the questions."

Professor Robert Connelly, Math: "There is an inconsistency here that I don't quite understand. Suppose Carl Sagan develops a course. It is not a course at Cornell, it just 'Cosmos.' It's a big winner, and he goes into a big agreement with PBS, whatever, and then he decides later to develop it as a course, does that mean he has to negotiate with eCornell later?"

Provost Martin: "Well, as it now stands, as we have been trying to explain, if it were a Cornell course, in this case it would be the College of Arts and Sciences to which the College of Arts and Sciences Educational Policy Committee had granted credit, then it wouldn't go to eCornell anyway."

Professor Connelly: "But the materials already exist in this separate form..."

Provost Martin: "The Educational Policy Committee of the College of Arts and Sciences doesn't care if the materials exist in another form, it would still have to meet their standards as a course."

Professor Connelly: "Well, then, fine. But the Overarching Agreement prohibits developing material with the other outside entity and not eCornell...."

Speaker Howland: "I'm sorry to have to cut off this conversation. The question before us is should we vote for 'be it resolved that the Senate endorses the Overarching Agreement made November 14th subject to the UFC provisos specified above, and be it further resolved, that the Senate commits to consider and respond as quickly as possible to the anticipated request for amendment to the Overarching Agreement from TILS?' Yes."

Professor Fine: "I'd like to move to table."

Unknown: "Second."

Speaker Howland: "I have a motion to table."

Dean Cooke: "Simply to set aside, it really should be a motion to postpone indefinitely or postpone until a certain time. Tabling is not used appropriately in this case."

Professor Fine: "I move to postpone to the next meeting."

Unknown: "Second."

Speaker Howland: "Right. All those in favor of postponing this topic . . ."

Unknown: "Could I get a clarification? Would the next meeting be next week?"

Dean Cooke: "February, unless you specify otherwise. I think it's near impossible to get a meeting next week."

Professor Stein: "Could we hear Professor Carpenter on this issue? Whether he thinks this would be a disastrous state of affairs if it was postponed until that time?"

Professor Carpenter: "I'll tell you my concern is that if TILS or the administration comes back to the Senate with something that covers this for-credit issue that many of us have been worrying about here today, and we are supposed to deal with that and all of the rest of the agreement all in one go, that seems like a very

large chunk of material to look at in one meeting. So I'm really trying to focus the attention on the crucial issues."

Professor Stein: "On the other hand, all of our attention has been focused on the issues that you don't want to focus on."

Professor Carpenter: "That's right. But I'm also not sure what will be gained by tabling it."

Provost Martin: "The UFC has looked at this and has had problems of a kind that it itself revised and that the administration has agreed were problems and should be revised in that way. Since I can't stand the prospect of dishonesty, let me say that I see the problem with tabling this to be the following: That is that we are being pressed and pressing ourselves to move forward quickly, and we will be under enormous pressure to sign an overarching agreement of the sort UFC thought would be appropriate at this time between now and February. And I don't want to sign the agreement where the Senate has tabled something, but I also don't want to go back on an agreement that we made that if the UFC thought that this was appropriate that we would go ahead and sign with eCornell. You could say that we don't care about the bind it puts you in, but I want to forewarn you that by February something may have occurred."

Speaker Howland: "I think we have to move to the question on the table."

Unknown: "I think we're still debating whether to postpone or not."

Speaker Howland: "If anybody calls for the order of the day, we're done now."

Dean Cooke: "Order of the day. I didn't mean to adjourn, but to not continue the debate."

Speaker Howland: "All those in favor of postponing the motion say 'aye.'"

"AYE."

Speaker Howland: "Those opposed?"

"NAY."

Speaker Howland: "Nays have it. We come then to the motion itself. All those in favor of the motion as presented and discussed, say 'aye'."

"AYE."

Speaker Howland: "Opposed?"

"NAY."

Speaker Howland: "We have got to count. All those in favor please raise your hand. All those opposed please raise your hand. The motion passes 47 to 16. Abstentions? 3"

We have reached the limit of our time; that will be it."

The meeting was adjourned at 6:00 p.m.

Respectfully Submitted