

A MEETING  
OF THE UNIVERSITY FACULTY SENATE  
WEDNESDAY, DECEMBER 2, 2020

CHARLIE VAN LOAN: Thanks for coming. I know any time is a busy time, but I know it is an added layer of busyness now as we begin to move towards the end of the semester.

There are the rules. You are familiar with them. Be brief, raise your hand, all that kind of stuff.

Couple of brief announcements. We have one more meeting this fall, in two weeks. There will be some voting, some sense of the senate things have piled up. There will be some things you'll see today that we'll process in that next meeting, but main event for the next meeting is present updates from the three working groups that have been hard at work on the antiracism initiative. Initially, the view was hey, they are going to submit their final reports to the senate, but it's not going to happen. It will be some kind of update or rough draft, but then we'll use the break to take into account feedback and show up in our late January meeting with some kind of finished product.

You probably have noticed the Weiss Awards were put on hold for a year. We are about to unpaue them. And the McClintock naming proposal is in the hopper. And the committee got quite a few submissions, and we should know all about that early in the spring semester.

Let's got to the first item. As usual, things are event-driven. We are all aware of hate email, and maybe you've been on the receiving end of it. I know I have over the years, especially like after you give a hard prelim kind of stuff. I've always been aware of it, but something came to my attention a couple months ago, and I had never seen anything like it. Then I got curious about how we process these, how we handle these.

In the course of doing that -- I don't want to call it research, but investigation or whatever, myself and others think that we have some work to do in this arena. So the point of this session is just to outline what we think has to be done and invite you, anyone, to participate with us over the break, to show up in January with some kind of a real protocol. Let's get on with it and take a look at what this is all about.

First of all, what do I mean by threatening communication? Certainly, it could be something that comes into your email inbox, but we're talking about all kinds of social media settings and so on, and different forms of harassment and intimidation. Now, the gaps we have to close has nothing to do with people not doing their job or whatever. It's simply that, as usual, Cornell's very decentralized, you can always have better coordination.

A big part of this is this faculty education. Just speaking for myself and Neema, as we sat in on some of these meetings, we learned stuff we never knew went on in various offices, so part of this is the usual faculty education thing. And then there's some sort of high-level philosophical points to this discussion.

The reason this is extremely important is because it can have a chilling effect on what we do; that is to say, teach and research and participate in campus governance and so on. It gets right at the core of what we do, and so it really is important. One of the things you'll see is how big is the problem. We have tons of anecdotal evidence, but one of our messages is we need more data.

Let's look at some of these things. So is this an urgent problem? Are we seeing more and more of this? So you each maybe have a snapshot of this. By the way, please feel free to contact me or Neema or put things in the chat, because we've got to get a handle on the size of the problem, but we do know this; that certainly in the last 20 or so years, we're all asked to have standard messages, do great research, do great teaching and then get out and tell the

world about it. And now the act of doing that involves much more use of the Internet. That's why we may have an increase in these sorts of episodes.

Picking up on those first two observations, we really need to be able to track these trends. If you believe that this is a threat, Step 1 is to be on top of it and to know exactly how big of a threat it is. One of our messages is we want to have some kind of system where we collect these episodes centrally; of course, respecting privacy and all that.

Second, look, we're expected to have an online presence, and say you are an assistant professor coming up for tenure. What is the expectation there? Of course, this is going to vary across the colleges and units, but maybe we ought to try to say a few things about that.

Again, I want to stress how helpful our discussions have been, and there's lots of offices out there that help us have an online presence. Certainly CIT, CTI, eCornell, University Relations, they are all there with services to help us enhance and create an effective online presence.

We want to get some kind of protocol. Something happens, you receive something, who do you tell, and so on? Here are the players. First of all, the department chair. The department chair is responsible for your teaching and research environment and, when a threat comes in the door like this, that person should know about it.

OFDD, they certainly are plugged into support when things like this happen. They deal with this -- it comes up in lots of their discussions and so on. We are talking about communication. Every college has a communication officer. They've seen stuff before. They should know, when something comes in or hits you in this regard, they should sort of be in the loop somehow.

CIT has technical skills in terms of how to perhaps create a filter or technical advice that might be relevant to the case. The threat level has to be assessed and, certainly, it can elevate to the potential of physical harm. CUPD has experience in this regard as well.

And finally, the Department of Inclusion and Workforce Diversity. Because many of these things have racial overtones to them, they, too, should be involved. They also handle the bias reporting system, and perhaps that's the way we can keep track of data and also statistics about who is receiving these things.

Protocol is going to involve informing these entities. Let's look what the properties of this protocol might be. First of all, it has to be low overhead. You can't expect the faculty member to get on the phone and call those six offices, so we have to design it in a way that's easily handled, that those offices are advised about this. Faculty are going to be reluctant to trigger a protocol unless it's nuanced. Maybe something relatively minor comes in the door. You might feel funny about engaging CUPD on that, so the system, however it's handled, has to be nuanced and not create an overload through other reactions, so to speak.

Finally, we need some kind of one-pager, a real document that maybe we circulate at the beginning of the semester, not just to faculty, but also to the chairs, the chair assistants and so on, spelling out exactly what their role is in this emerging protocol.

We have to be aware that there are legal things in this venue. We can't expect the university to rescue us, so to speak, on every occasion. There are limits. We all know that free speech protects a lot of things, and so we have to be aware that in this space, to be sensitive to free speech issues, not have elevated expectations, and to pay attention and to engage university counsel on the legal aspects of all this sort of thing. Again, it's education.

So just a couple of things. Policy 6.4 does say things about online harassment; so does the Student Code of Conduct. We have to be aware of what's out there.

In our discussions -- and I don't think I'm alone in this -- this was kind of the most disturbing thing or the most challenging issue here, and it gets back to these attacks are an assault on our profession. Standard advice is you never engage the perpetrator. That's sort of a

ground rule, and everybody mentions that. If the assault is at a fairly high level, you might think about taking down a website or closing down a social media account, maybe just temporary.

And all these things might be viable strategies, but what we have to be very careful of here is if we create a climate where the basic advice is keep your head down and quietly go about your business. These things have a chilling effect, and we want to respond to that. If we respond to it in the right way, I think it will be really, really helpful; but we have to be mindful that there's a climate issue here that relates to us doing our jobs in the proper way.

We put online, if you go, there's a link. We have some interesting references that were sent our way. We posted those, and here are two sort of high-level things that we should expect, and it's all about when these things hit you, you often feel very alone in the response. That's why we have to create a climate here on campus where yeah, the university is paying attention to this and they are taking steps to help me get through this.

And we mentioned two of them. One is the sheer public acknowledgment of this problem. Perhaps we need some data to get some force behind this, but this is a really serious problem and it has to be acknowledged. That's the first thing. I'm not saying it's not acknowledged now. It just isn't out there. We have other sorts of presidential announcements on certain very important things. We have to elevate this up to that kind of level somehow.

And second, recognition about the psychological harm that these sorts of things can render and to provide help for individuals who are the target of these things. Again, there is help right now. We just have to get organized so that faculty know about this. The sum total of these two points here makes a really important statement: That the university cares and is paying attention. And so what we want to do is move in that direction.

This is just a setup thing here. Hopefully things are in the chat and we can have some discussion right now, but we want to make sure these things presented on these slides, that we

are covering all bases. If you can think of gaps or certain things we should stress, I'm going to be working on this with Neema and Steve Jackson, who's chair of Information Science, and others over the break. And the whole point of this is simply to alert you to that activity, to invite you to participate or to send me or Neema your experiences. We treat everything in confidence.

That's the end of it. Again, I want to stress all those six offices that I showed you a couple of slides ago are paying attention to that; there's no question. We just have to coordinate and make faculty aware of those services and connect them together in a really effective way. Lastly, I'll just mention a document that University Relations has, what to do, how to protect yourself from online harassment.

That's the end of this. Let's just see if folks want to chime in with some questions or observations about this.

Risa.

RISA LIEBERWITZ: Thanks, Charlie, for raising this. I think it's a very important issue, and I posted in the chat the site to the AAUP campaign on this, which has been going on for years, the problem of targeted harassment, and I'm hoping we can add that to the resources.

But one thing I wanted to point out which I think is so important is that at some schools there have been well-publicized situations of harassment, attacks on faculty because of the faculty's statements, some of them online, some of them through social media, where the faculty statements have been very sharp critiques of racism or other kinds of sharp critiques that could also address issues of critiques of Israel, Zionism, I mean, hot-topic issues.

And unfortunately, some administrations at some schools have simply folded and, instead of really protecting the faculty, they've sometimes either suspended people or put them on some kind of a leave. And I think that the point that's coming through in what you're saying, that the administration in these situations needs to have the faculty's back, right, and support

them or not even put out like a milk toast sort of statement of well, we don't really agree with this, but -- so I think this is a very important issue and I'm glad you're raising it.

CHARLIE VAN LOAN: Thank you. Any other comments here? I was sort of thinking, my own experiences, most of the things that come my way have always been related to exams. And course evaluations are online and also anonymous. Nothing serious has ever come my way in that venue, but I know other faculty, the course evaluation scene is actually part of this, in a way, because it's anonymous and online.

Peter, then Mark.

PETER WOLCZANSKI: I have run into these cases in the past. And I've been here, seems like an infinite amount of time, so I've run into a couple of them. I contacted someone in the undergraduate office, and it's been handled, but I didn't see any of the undergraduate office deans listed in that group. Was there, in that six?

CHARLIE VAN LOAN: Again, I don't want to say we've done extensive research, but seems to be the communications officer in the college is the one that handles it. Things should show up in the college office, and how it percolates to associate deans for undergrad and whatever will be part of the scene, but in our first pass --

PETER WOLCZANSKI: I had a couple of these cases, and I've gone into the associate deans in undergraduate education, have been very helpful, they've been in contact with the student's advisor, there's a sit-down with the student usually or something. And a lot of these things are sort of mental health issues, too, so it can get involved at the advising office. I found the people over there to be very helpful.

CHARLIE VAN LOAN: Excellent. Mark Wysocki.

MARK WYSOCKI: Just to make sure, I've been involved with two of these types of cases that I didn't know who to contact, dealing with students. And so because of that, it was sort of a

delay, sort of like playing Ping-Pong. You go to one person, they say well, it's not really our area, you should try this person and so forth.

I think it's good that you at least have some kind of a list up there of where you might want to start with at least letting people know about an incident and how to proceed with it, because it's sort of like I didn't know where to go. And it was just by chance that we ended up with the chair and the dean in trying to solve some of this. So I don't know if these people would be willing or wanting to have more work put on them as being the first contact person.

CHARLIE VAN LOAN: Emphasis on low overhead. The protocol we develop has to be low overhead, very effective and so on, absolutely. The job of being chair is immense, and we have to be mindful of that all along the way. So maybe it's not chair. Chair or designate or something like that, so strict attention to that very important workload component.

MARK WYSOCKI: And the other thing would be, as it escalates, it goes from a dean to the Cornell police, do we get more than a couple people involved in the beginning, or do we kind of wait until it escalates, and then more and more on your list have to get involved?

CHARLIE VAN LOAN: Exactly right. So when I say it's nuanced, the system has to be nuanced. I think what we want is the faculty member to contact one person, hopefully, and then a ball is set in motion. Again, I like to think in terms of having a one-pager with some guidelines. We were advised against not trying to come up with categories of intensity; in other words, here's a Level 1 threat, here's a Level -- we were advised not to have that. The system has to filter through that.

Nathan. We have experts on the faculty on this stuff, and Nathan is one of them.  
Nathan.

NATHAN MATIAS: I'm very encouraged to see the senate taking this up, and I'll follow up over email, but one thing I wanted to underscore is that in the U.S., nationally representative



surveys have found that black people are 18 percentage points more likely to experience online harassment, and Hispanic Latino are 9% more likely to experience online harassment, often because of race and ethnicity. And similarly, women are far more likely to experience harassment than men.

As the university thinks about recruitment and retention of people who might be underrepresented in certain guilds, that should be an important consideration as you think about this, because I think many folks who are identifiably underrepresented in their fields disproportionately face these kinds of risks. And happy to follow up out of this meeting with more thoughts, especially as you think about doing research and framing the interventions.

CHARLIE VAN LOAN: Thanks, Nathan. Nathan, you're in Communications, I think, right?

NATHAN MATIAS: That's right. My second year as faculty.

CHARLIE VAN LOAN: That's great. It is wonderful to have you here, and we look forward to engaging you and your knowledgeable colleagues in this. Steve Jackson, and then Connie.

STEVE JACKSON: Yeah, this is really only to echo Nathan's point, but one -- this is largely anecdotal, and when we got together in a room and started comparing stories, there seemed to be a pattern, but we don't have the data to substantiate this at our university yet, but only to echo the anecdotal sense that Nathan references as well, is that it's not just that there's a chilling effect here. It's a disproportionate chilling effect; that certain kind of faculty seem to be affected by this more than others. That can be by area of research, it can also be by categories of identity that sometimes have nothing to do with research. That's an additional reason for the university to take this on and do it carefully.

And Nathan, I'm really glad that you're willing to work on this, and let's be in touch separately, because I think you've got tons to bring into this.

CHARLIE VAN LOAN: Connie.

CONNIE YUAN: Hi. I think this is a great initiative. I know right now the conversation is about faculty, but I just want to mention, just this week, my student's reflection paper reported a student also being harassed because having different political views. The student was actually quite upset with Cornell, saying Cornell is not doing anything. So I wrote to the student, give her a website where he can report, so I just wonder whether there's a way to convey the information to student that we care. They don't know, and they were complaining about Cornell, so I just want to mention also let them know places where they can report the cases.

CHARLIE VAN LOAN: Absolutely. We'll make sure we work through the GPSA and the SA on this, but paying attention to T.A.s and students in your class. The phenomena certainly transcends faculty, and we'll make sure we pay attention to that. A lot of this is education. Thank you, Connie, for bringing it up.

So please be in touch with us about this. And hopefully, when we meet in January, we'll have something to say and offer.

Quickly, the next item. At the November 11 meeting, Vice Provost Jon Burdick, who is in charge of enrollment and enrollment strategies, gave a presentation, and there's some follow-up there. This is just very brief. Let me talk through this. The goal here, are we missing anything here. We want to have some kind of sense of the senate resolution that we'll vote on next time. And perhaps in the interim, I can flesh out some of the details here. I think we're probably all in favor of these things, but I would like to emerge from this semester with a little bit more of a plan.

Here is some of the high points, no surprises. The pandemic greatly complicated the use of standardized tests, and the colleges went to tests of optional strategies and so on. As usual, the pandemic sharpens ongoing debates, so the whole role of standardized tests and the

controversy has been around for a long time; but again, the pandemic has sort of brought things up to the surface, and now let's do something about it. John, if you look at his slides, which we have a link to, mentions the national scene out there; in particular, the California system and so on.

So there are two outcomes here. One is short-term in the sense that hopefully the pandemic is short-term, but we're walking into the next round of applications and whatever, and he wanted us to weigh in on just continuing the test-optional strategy that we exercised this year. Sort of let's continue that for the time being.

But then more long-term, he brought up lots and lots of issues, a handful of really important issues. And he invited us, and I've had conversations with him on this since he arrived, we need some kind of faculty involvement in the enrollment scene. Over time, the faculty involvement in college admissions has gone down. Arts was sort of the last college standing.

And I did that for many, many years, where you would go over and read folders, but now it is pretty much delegated to professionals and whatever, but the faculty still need to have a presence in there in terms of what is the role of standardized tests or how are you setting up the essays. We need faculty presence in there and, again, emphasis on low overhead.

John is thinking of forming, wants to form sort of an advisory committee. He would chair it, but we certainly need faculty there. What I'm asking for here -- we have very limited time, but if you put in the chat or email us what should be the charge of that committee, what are the issues they should deal with, more pragmatic thing like how many faculty do we need on that, what should be their expertise, and so on.

I'm just sort of saying this will show up in more of a fleshed-out version in the next meeting with maybe a few more details, but please think about this and send us your thoughts

about this, especially the committee thing. We need to have a handle. This defines our undergraduate teaching life, the students we admit, and we should pay attention to it. And it is a setting where we want people who are interested in the big picture and who can, in turn, relay the thinking of that committee to the senate in a real systematic way so that we're in touch with all that.

That's about it for this. Anyone want to comment here? It is a very big and important issue, and we need to have a systematic way for faculty to be involved in big-time decisions here.

There's one. Richard, you have your hand up. Yeah.

RICHARD BENSEL: Yeah, I think this is a great idea. I wondered for some time -- I go back far enough that I sat on committees with these professionals and went over the files. Sometimes it was really boring, like New Jersey private schools, it's really boring because they're all plastic. Sometimes it really makes a difference because there's -- in the variety or the difference of those things, so I think this advisory committee is a really good idea.

One of the things they might consider is, in fact, reopening that faculty involvement. Doesn't have to be all the files, but some of them, so we have a better sense of how this is working out. I think it's a good idea.

CHARLIE VAN LOAN: Yeah, thanks. I've read folders in Arts for many years, and I used -- three-hour sessions, I'd dread getting up early and going over there. But when I walked out, it was really exhilarating because you really read some fantastic stories. Carl has his hand up.

CARL FRANCK: Yeah, I also very much appreciated working on these admissions things and made some tremendous friendships and found wonderful colleagues in the people I was working with. It may be a pie-in-the-sky idea, but one of the things I hope, if it is even possible,

is do something to suppress the academic integrity violations. I think maybe that's something we can do on the front end through admissions.

CHARLIE VAN LOAN: Okay, that's a good topic. Buz.

BUZ BARSTO: Charlie, thank you so much for bringing this up. I think all of us have been thinking a lot about how standardized testing seems today to be really sort of entrenching societal advantage, like there's sort of oft-quoted statistic that your SAT scores better reflect through zip code more than anything else, but I really think the counter-argument, of course, that if you move away from standardized tests, you're basically left with the old boys' club. It's no better than doing away with tests. And I'd love to see us address the issue, can we come up with testing schemes that better measure people's potential and act as sort of tools for societal advancement and sort of giving people a leg up and giving them opportunity.

CHARLIE VAN LOAN: Absolutely, yeah. And we have experts on the faculty on these sorts of issues, and we'll, as we crystallize our thinking about this advisory group, engage them. It doesn't have to be a huge time thing. Just a couple of really well-placed discussions over the year can make a giant difference.

Thank you very much, and I look forward to feedback on this, and we'll return to it with some kind of sense of the senate resolution next time.

Madelyn, are you in the house?

MADELYN WESSEL: I am. Hi, Charlie. Thank you.

CHARLIE VAN LOAN: So background, it used to be called the Campus Code of Conduct, but there was some faculty stuff in there. The revision process has gone on for a couple of years. It's coming to a head, and the trustees are going to want to adopt a new version very soon. And one of the players, central players in the development of this is in our university counsel, now General Counsel Madelyn Wessel, and she will give us an overview of the

proposal. During the last few weeks and months, various issues have come up, and the stress here is on how Madelyn sees those issues and how they have subsequently shaped the nearly adopted finished version.

Take it away, Madelyn.

Jill, you run the slides.

MADELYN WESSEL: Thank you. Thank you for inviting me, Charlie and colleagues. It's great to have a chance to actually present to the senate.

I was encouraged to give a little bit of a sense of getting here from there, and it has been a multiyear process, really going back to when President Pollack first came to Cornell, read the Campus Code and went to the UA and asked them to consider reviewing, updating and simplifying the Campus Code, which, as I think anyone who would plow through it, would have to agree is pretty dense and at times quite confusing.

In 2017, the Presidential Task Force on Campus Climate was also established after a series of pretty serious racial incidents in Collegetown that broiled the student and faculty communities, the whole community. And the Presidential Task Force also made some significant recommendations and changes to the Campus Code.

In 2018 and '19, the CJC, which is, I guess, a subcommittee of the UA that has owned changes to the code, and the UA engaged in review processes, but no specific proposals were made. In 2020, the CJC sent a version of code and procedures to the UA. And separately, the Student Assembly endorsed a profoundly different version of code and procedures. And those two drafts came in really after the pandemic had started, and the UA ended up adopting a resolution that asked my team, me and my team to review the different versions that had surfaced after this multiyear process and to try to prepare a version that would address input from both the assemblies or all assemblies and the community.

I want to point out that there was common ground in the proposals that came in. There were also some really significant differences, but both the CJC and the UA and the Student Assembly proposals recommended applying a new code only to students and removing jurisdiction over faculty and staff. Both proposals also fundamentally agreed that the new student conduct system should move to Student and Campus Life, which is a much more typical framework around the country for how student behavior and student conduct is managed.

A little sub-note there is that the vast, vast majority of cases were always undergraduate cases. There are always a few graduate and professional student cases, and really just a tiny handful of employee cases. The existing Campus Code has exempted any matters involving faculty or staff that arguably arise in the context of work activities, and so the fraction that could even apply to faculty was very de minimis. And both sets of proposals ended up, I believe, agreeing we should focus a new code as a Student Code of Conduct.

We were a little bit delayed in my team with the pandemic, but we did send, instead at the beginning of the semester in September, we sent a new code of procedures to the UA at the beginning of October, and they have been posted now for a couple of months.

I really want to say that fantastic comments were received; some quite critical, some critical and very helpful, and that initiated a process for me of very intensive work with the complainants' advisors, the JCCs, the judicial code counselors from the Law School, I got very focal feedback from the CJC representing the UA, and new drafts were prepared and posted before Thanksgiving. They are also up on the senate website. And the drafts that are posted, I thought importantly, should be drafts that would show the changes that have been made as a result of the community-based feedback.

So what are some of the fundamental goals that applied to this process of reworking the code and procedures? I would say the preeminent first order goal was to increase education

and rehabilitative components of the system consistent with contemporary practices, to take it away from the paradigm and a model that is highly legalistic and often quite adversarial, where that's possible. It is not always possible, but the real focus on the student affairs conduct systems around the country is increasing education and rehabilitation.

There was a very strong focus on the Presidential Task Force recommendations; in particular, to try to provide rights and protections in cases involving racial harassment or assault, of which there had been these prominent incidents in the fall of 2017, that would be reasonable comparable to the way cases involving gender harassment and assault are managed, in particular with respect to consideration of the feelings and the experiences of victims and complainants.

Another major prerogative was to de-escalate the adversarial nature of these student conduct hearings. Corollary to that was to eliminate the prosecutorial role of the Office of the Judicial Administrator and to move that student conduct system to SCL.

Another goal was to increase opportunities for mediation, alternative dispute resolution and restorative justice. Parts of this came out of that Presidential Task Force report that really saw the current system as poorly serving students who had experienced racial harassment and other forms of identity-based harassment and really seeking a system that would facilitate learning and conversations that could really resound in the restorative justice space.

Components of all of this are here. One was to get rid of the recording of minor offenses on transcripts. This was a very big deal for undergraduate students that I personally spent a lot of time working with. The point there was that the practice of the current judicial administrator or the then current judicial administrator was to put everything on a transcript, which was a huge demotivation for students to ever agree to a resolution of really rather minor matters.



One component that's now in the code is a very strong message that minor offenses just don't need to be on transcripts. We focused the code and procedures on students only, made a very serious attempt to make both the code and the procedures more readable and more coherent.

Here's a very big point that came through from both the Faculty Senate and faculty loud and clear, which was to eliminate the separate -- it was certainly deemed to be a privileged system for fraternities and sororities. Under the current campus code, fraternities and sororities are excluded. And so other student organizations, if they got into hazing or other misconduct as organizations, went through the campus code, but the Greek system had its own system. And the faculty message and the message from many others loud and clear was get rid of that. All student organizations ought to be treated the same.

Another issue, and this is feedback that I heard personally on numerable occasions, as have members of my team, are that students experience -- some students, not all the time, but that there was perceived really inappropriate, quite abusive treatment of students by some of the JCCs and by outside attorneys during hearings; that they were put through highly adversarial forms of cross-examination, without there being an actual trained judge involved, which you would see in a civil court system, that students found extremely intimidating. And not just respondents, but complainants, students on both sides of these cases found very, very concerning. This went into the same concept of trying to reduce, if we could, the adversarial nature of these hearings.

And then the final, I'd say, driving goal was to try to ensure that changes and amendments to the code and procedures could be made in a much more nimble and flexible way. I can't possibly expect that the work that's been done, although it's been very, very hard work, will be perfect. We will all learn from development of actual new systems, and to have a

set of procedures and a code that can be responsive to community input and what we learned from this was certainly deemed to be very, very important.

Here's a very quick overview of some of the key procedural changes. Going to dig into actually some of the criticisms and try to outline how we've addressed them. First, some of the key procedural changes. There is a new office, the Office of Student Conduct and Community Standards, OSCCS, which would be set up within Student and Campus Life. The way that office is described in the procedures is to clearly articulate this team as a team dedicated to fairness for all parties within the system.

This office would handle investigations, it would not make findings of fact. Those findings remain with hearing boards. The OSCCS also doesn't represent the university in cases brought against students or student organizations. That role of the JA is just completely eliminated in the drafts that are posted. When individual complaints are brought by students, they would be handled by students with help from the complainant's advisor.

Cases that would be brought by the university -- let's say the university has a case to bring against a fraternity for severe hazing or against an individual student for hazing -- be brought by the administrative staff from the unit that deals with those issues, not lawyers from the Office of the JA, which is the current situation.

OSCCS has broad discretion to work with the parties to resolve cases through alternative dispute resolution, but they can't compel anybody into that. Then again, many minor offenses are not reported. The hope is this would encourage accountability and education and would reduce the overall adversarial approach that's been part of this system.

All of these issues and all these changes involve balancing, and I respect and understand that, but the goal here has been to balance in a way that hopefully is good for the community and for students. First of all, stressing informal resolutions, mediations. The aim there is to

reduce hearings altogether, to have as few of them as possible, but have them when they're appropriate, have them when -- if it's a student-on-student case, the parties are not comfortable resolving their dispute of their issue informally, and certainly if the unit is bringing charges against a student and the student doesn't want to agree to a resolution with the university, then they should absolutely have a hearing in front of a hearing board.

But there are many, many parts of these new procedures that are intended to make the process a lot more fair and to really reduce surprises and confrontations if there are hearings. For example, both parties will have complete access to the complete investigative report and all of the records that are developed, and they get this access well in advance of any hearing so that they know what the issues are and they're in a position and prepared to respond to them.

The procedures involve a trained hearing chair who would chair all hearings. The idea here is to have someone with professional training, likely some form of legal training, to manage these hearings, manage objections from the parties and their advisors or lawyers, and to have consistency and fairness in these rulings across all the cases, not have rulings depend on who happens to be chairing a hearing.

The procedures do allow for cross-examination in all cases, with potential for student's suspension or expulsion. Frankly, this is likely to be essentially all cases or virtually all cases, I think, that go to a hearing because cases that don't involve these more serious sanctions under this new system are far more likely to be resolved in a less adversarial way, but there are some civility protections that the chair can employ to protect parties and witnesses.

I put this on this slide called balancing, and this is balancing very strong advocacy from people who believe that only a fully adversarial hearing can resolve these kinds of cases and the many students who came to the table saying that that form of hearing was not working for them, was intimidating and was not serving justice in their opinion. What I've tried to do here is

balance in a way that ended up restoring cross-examination, which was very, very important to the Law School community and to people like Risa and others.

Another element is equivalency of counselors or advisors for respondents and complainants. I discovered as part of this process that the students from the Law School representing complainants were actually paid less than law students representing respondents. It seemed very important to require training for both of these teams, and there is some oversight by the OSCCS director built into the new system, but with a focus on administrative support and with support for training. All student organizations are now covered under the same code and procedures, so the Greek system is no longer out.

And then finally, and I made this point before, it is obviously going to be crucial to learn from experience to make reasoned changes and improvements and, therefore, an amendments process that has been simplified and centers on the two student assemblies and Student and Campus Life. There are concerns that were highlighted by the GPSA, and there are a few more highlighted in comments back to our office from the CJC, but they're all important. There are also some positive comments in the GPSA resolution, which obviously, I'm not going to cover here today.

Here's the list, and let's just drop right into them, so I can provide a more substantive response to these issues. A really important issue that kept on surfacing was the ability of advisors, whether these advisors are law students trained out of the Law School or outside lawyers -- and outside lawyers are fully able to participate in hearings. It doesn't have to be other students -- this is the language which is posted up online, and this is the language that clearly provides for, I would say, robust participation by outside attorneys and counselors or advisors in cross-examination and direct questioning in any case of an individual respondent facing suspension or dismissal.

Confidentiality. This was completely unwitting on my end in drafting, but there was a concern that the draft posted at the end of the summer inhibited the ability of the JCCs, the advisors to talk with each other about cases. Now, there was language that had been put into that draft reflecting concerns from the undergraduate community who felt that they sometimes saw their own privacy breached when counselors were talking with each other about cases, and I guess some of our students who are either complainants or respondents then heard about this and were concerned about breaches of confidentiality.

I talked about this with the JCCs and the complainants' advisors, and those two teams came up with wonderful language that they proposed to address this confidentiality concern. I took it verbatim. It's excellent. It was a very good way to resolve this, so this language that's now posted came from the law student community who were concerned about the confidentiality issue before.

Independence of advisors. Currently, the JCCs are appointed and can only be unappointed by a vote of the board of trustees. There are changes in the proposed procedures with respect to that role of these second- and third-year law students. There's a great attempt to preserve the functioning of a lead counselor and the oversight of that individual over the office. Individual counselors cannot be dismissed under the proposed procedures except by the lead counselor, and the management of that individual over the office is secure.

All of this is direct language from the draft that's been posted, but there is oversight, and that oversight is proposed to be held by the SA and the GPSA as the two assemblies that actually involve the constituencies now subject to the code, and the Office of the Student Advocate, which was created by the Undergraduate Student Assembly a couple of years ago to work on its work for students who are facing other types of legal problems outside of the university.

And in consultation with the director of the new office, this group would meet to select the lead counselors from nominations given by the existing group of counselors. That same group could also remove a lead respondent's co-counselor or complainant's co-counselor for good cause, such as significant dereliction of duty or gross misconduct.

I would say this is a hybrid solution that seeks very much to preserve strength and independence in these offices, but also responds to the perspective that came in from the undergraduate students who actually wanted to completely abolish the JCCs entirely and bring all of this under the management of the Office of the Student Advocate, this undergraduate office. This is a compromise.

The standard of evidence is another big issue, and I just want to say that this was posited in the draft that I posted in October as a community decision, not a decision for counsel. I don't know that there's been a vote on this by any body, but it's certainly clear that the community feedback and the comments strongly supported maintaining the clear and convincing standard of proof for all cases involving individual respondents, so that is what I put into the draft.

Today, when the respondent is a student organization such as a fraternity or a sorority, the current standard of proof is preponderance, and we propose to maintain that preponderance standard when it comes to student organizations. When a student organization faces a sanction under either the current Greek system or under the current code, the harshest outcome is that that organization loses its right to be contractually related to the university and to have a contractual relationship to operate at the university. So with student organization cases, there is no opportunity for an individual student to face individual sanctions. It's a group decision about their relationship with the university, so this is the proposal that's been made.

The right of students to be informed of their ability to access an advisor was an easy fix. It's an absolutely appropriate request, honestly was something probably just omitted in the drafting, so there are now multiple places in the procedures that make clear that at the very first contact that would be made with the student that a case or charges may be made against them, that the student, the party must be informed that they're entitled to representation by an advisor, lawyer, counselor of their choice, including a code counselor.

There's a lot of additional text that has been added to the draft in a couple different places, but just no quarrel with this. It's really good advice. Here again, I would say that the law students who are both complainant advisors and respondents' advisors gave really good ideas, and I used most of their language in the revisions.

Public hearings. There was a concern that the draft was going to bar a respondent, a student who has a case brought against them by the University from requesting a public hearing. This is, again, not something that was intended at all, and good language was proposed through comments, which has been integrated into the new draft that you can read all the sections of, but there are some nuances here.

When it comes to a case that might be brought by the University against a student, the current code language actually doesn't provide an unequivocal right to a public hearing. It says that the hearing chair can decide if it serves the best interest of something or other for public hearing to be granted. It seemed to me that if a respondent accused by the University wants a public hearing, they should get it, so the language is actually stronger on this point than it is in the current Campus Code.

There are other nuances, though, because if you have a case where one student has accused another student, let's say, of assault or harassment or stealing their computer or any number of other interpersonal offenses, our students, under federal law, have a right to privacy.

Hearings where there are students accusing other students would remain private and, in fact, I don't think under the current code there is provision for one student to drag another student involuntarily into a public hearing. Certainly, if both students in a particular case wanted to have a public hearing, there would be nothing prohibiting that; but if one student is accusing another student and they don't agree on a public hearing, then the hearing would be private.

Then the final point on the publicness of hearings is that in a hearing that was designated to be public, if an individual student witness was uncomfortable testifying in that public setting, again, our read is they have a right to privacy, and so that witness's specific testimony would be put back into a closed session, even if the hearing is all public.

Temporary suspensions, the principal concern was that right now, appeals from temporary suspensions which are imposed as an interim measure in cases where there's a perceived really significant threat to the university community in one sort or another should be reviewed by panels non-administratively.

What's happened with that proposal is that it has led to an even greater strengthening of restrictions on the imposition of temporary suspensions through what I'm going to term a least restrictive measures kind of approach, which is that a temporary suspension imposed on a student can only be done if there aren't other measures that can achieve the protections or the needs of the community otherwise.

Second, language has been put into this section of the procedures to make clear that the form of a temporary suspension needs to be the least restrictive option that's available. In other words, if there's a way to address the misconduct or the concern about threat that doesn't involve completely separating the student from the community, but involves other types of restrictions that still do the job, those are what have to be selected.



What's also been crafted is a strengthening of the process of review of those suspensions. The first level of review would come from the Vice President for Student and Campus Life, and the vice president needs to review under a standard that ensures that in their view there isn't an alternative way of managing the concern. They also must review whether circumstances have changed so that a suspension isn't necessary and, if so, the suspension would be lifted immediately.

For suspensions that still allow a student to remain engaged academically; in other words, that aren't kicking a student basically out of school, but limiting their activities, that's the final appeal under this process. For the rare cases where a student is deemed to be such a threat to the community that they simply can't continue in classes anymore, the revised version of this section proposes a final additional appeal to the provost as the Chief Academic Officer of the university. And in that case, the provost's decision would be final.

There was a concern about the time frame within which complaints can be brought. Right now under the code, it's one year of the alleged prohibitive conduct. The proposed procedures do allow the director of the Office of Student Conduct and Community Values to receive and accept a report after one year and to determine whether that report should still be acted on in some way or other. The trigger here is whether the respondent, the person who's alleged to have engaged in misconduct, is still a student, was a student at the time and still is a student.

And further, the proposal allows a student organization to still be made accountable for behavior such as a fraternity or sorority, even if the bad conduct was not discovered within one year of its occurrence, so it does allow in certain cases both student organizations and students to be subject to jurisdiction under the code.

Finally, there were questions about the scope of the code's application. Actually, an aspect of this is directly relevant, as I saw a note flash up on here to the earlier presentation that Charlie put together on online harassment. First of all, and front and center of course, the code applies to conduct on campus or on other property used for educational purposes or on the property of a university-recognized or registered student organization. So if a sexual assault or racial assault occurs at a fraternity house, that's covered, even if the University doesn't own the property.

Second, the code applies to conduct that involves the use of university computing and network resources and to online behavior just generally. And third, the code would apply, regardless of the location, under two circumstances, and here some of the community feedback was helpful. I eliminated one aspect here because it seemed to me the points made against it were really good.

Here, the application, regardless of location, would occur if it occurs in the context of a university program or activity or if it poses a threat to the university's educational mission or to the health and safety of individuals or the university. This used to have "or the university's reputation." That was viewed as too squiggly and too open-ended, so that language has been removed in the draft.

I think we can go to the next slide, but I'm not sure there is one. Yeah, I think we're done. And thank you, Charlie and company, for providing me with this opportunity to provide an overview. And I really do want to say at the end that the input from a wide swath of the community was very, very helpful in refining these drafts. And again, the changes that have been made are fully visible up on the website.

CHARLIE VAN LOAN: Okay, thank you, Madelyn, for such a comprehensive overview of the last few months of work there, and more. Do we have any questions for Madelyn? I see David Delchamps.

DAVID DELCHAMPS: Just a quick question. What does the JA do now? I don't see what a person does anymore.

MADELYN WESSEL: The JA actually is currently an interim JA, and that position is going to disappear completely, David. There isn't going to be a judicial administrator.

DAVID DELCHAMPS: Okay. I was just curious, because I kept seeing the JA won't do this anymore, the JA won't do that anymore, and I wasn't sure whether there was --

MADELYN WESSEL: Luckily, we sort of have a vacancy in that position. It will end up being, then, up to Ryan Lombardi and his team, as they build this new program in August. My expectation is that many of the staff, maybe all of them who are currently working under the JA will hopefully have retraining and good roles in the new system, but they're going to learn a lot of new things because the focus is going to be quite different.

CHARLIE VAN LOAN: Mark Wysocki.

MARK WYSOCKI: Not to pose too much kind of involved question here, but we see more student organizations that are now going to professional conferences and so forth. The Code of Conduct obviously will have to cover out to off-campus in that particular case; but if it's an individual student that misbehaves, is it the whole organization, then, that gets dragged into it, or just the individual student?

MADELYN WESSEL: Mark, it's a good question. I really can't imagine that the misconduct of one student would implicate a whole organization. It would simply be an individual matter for that student. And whether a student's misconduct outside of the university at a professional conference would be covered would really depend on whether those

focused criteria were met: Did it pose a threat to the educational mission? Was it part of a university program?

So there'd have to be a fairly fine-grained look at whether this was covered or not, but let's say two students from an organization at Cornell go to a conference together and there's misconduct that occurs between the two of them, and the university covered their travel, sent them there, say a department did. I think the factors would much more clearly implicate applicability of the code in that kind of situation, but facts always matter.

MARK WYSOCKI: Okay, thank you.

CHARLIE VAN LOAN: Richard Bensel.

RICHARD BENSEL: Thanks for that. That was a very clear overview, and many of the things in the revision are quite good, quite admirable. I do have several concerns. One concern is a comment. I served on the CJC and the UA for a number of years. The JCCs I've known -- and I've known a lot of them -- are universally just wonderful people, very articulate, very careful. You can see their comments from online. So that abusive, I've never heard of an example of that, so this is a character endorsement of them.

The concerns I have, one of the things I'd learned in those years is that something like 50% or 60% of all of the cases processed by the JA were, in fact, first-year students involved in alcohol, and it was a processing thing. I mean, they had to move them through, tell them not to drink on campus and so forth and so on, but there were some cases that were very important, and those cases involved public dissent from university policies.

And sometimes the prosecution of those policies was really heavy-handed. And there you really -- it was an adversarial relationship in those cases was unavoidable. The University was prosecuting them. I'm worried about decreasing the independence of the JA's office and the role of the JCCs is going to make it more easy for these kinds of prosecutions.

I should say in one case, the hearing board exonerated the student after a very heavy-handed process. And the other one withdrew the complaint. So this is a worry. I mean, this is a revision to consolidate the process under the control of the University, and I'm very skeptical of that.

MADELYN WESSEL: Well, Richard, I respect your point of view. I can only echo your positive comments about the JCCs that I have met. It has been really wonderful to work with this group in the last few months, and they've been extremely thoughtful and really, really helpful, and I have not personally seen anything other than a strong wish to be collaborative in this process, which I hope continues.

The realities that you're describing from the past are realities where you see an unreasonable prosecution and heavy-handed university behavior that was accomplished through the Office of the JA. My hope would be that we're not going to see that kind of case happening in the same kind of adversarial framework with this new structure.

But one of the things that I would advocate that people at least hopefully think about is that we're building a structure that will be more nimble. And if students or faculty or the community believes that the system is not working well or that the JCCs or complainants' advisors are being subjected to inappropriate pressure, then the system can change. I have never seen at Cornell a lack of a willingness to be critical and be open and public with critique, and I expect that to continue.

CHARLIE VAN LOAN: Okay, we're going to have to move on to the next item. Thank you, Madelyn.

MADELYN WESSEL: Thank you for inviting me.

CHARLIE VAN LOAN: Sure thing. Senators, please put in the chat or contact me or Madelyn, or you can post things online, if you have final observations.

A third part of this, actually, is a statement about academic freedom, freedom of speech and expression, and there's some new prose about that. And Risa is going to give us an overview of that.

Take it away, Risa.

Next slide, please, Jill.

RISA LIEBERWITZ: I'm getting weird feedback.

CHARLIE VAN LOAN: Maybe turn off your video to get better bandwidth.

RISA LIEBERWITZ: Yeah, I think someone just needed to mute themselves. Thank you.

As Charlie said, this piece of the meeting that we're going through is related to the changes in the Student Code of Conduct, but it's separate from it, and that is that many of the provisions about free speech and association and academic freedom were contained in the old -- well, the current Campus Code of Conduct, we still have it, but that many of those, in terms of these proposals are now going into this new and improved statement about academic freedom, so that was one reason for creating this new statement.

But another reason, as noted here, is that this new academic freedom statement, the statement on academic freedom and freedom of speech and expression strengthens what we already have. And so in the faculty handbook, this is a statement that was adopted by the Faculty Senate, approved by the trustees in 1960, and that's still there, but this adds to it and builds on it.

What we have here are some points that are key points in this new statement. You can link to the new proposed statement, which I understand is now residing with the Committee on Academic Freedom and Professional Status of the Faculty, for them to review and to possibly edit, so I'm sure that there will be a place where people can put their comments, if Charlie hasn't already created that. Please do go look at the proposal, because there may be things that

can be strengthened even further or tweaked in some way or, simply, this is a time to comment on it.

The key points here with regard to what we've done is to make clear in this proposed statement that the scope of academic freedom is extremely broad; teaching, research, what we call extramural speech or kind of private citizen speech on or off-campus, as well as campus governance -- the kind of work we are doing here, governance outside of a formal governance body, is part of academic freedom -- and then the ongoing consultation and commitment between faculty governance and other assemblies and the president to support academic freedom and free speech.

It's not noted here, but as you'll see when you look at the statement, there are provisions that apply not only to protect faculty, but also students and employees in their speech. There are provisions about issues of what to do with imminent threats to public safety. Please look at those carefully. I personally think those could be tightened up a bit in a way that protects speech a bit more, even if recognizing that perhaps the president needs to take action with regard to threats to public safety.

There's also provisions that refer to academic freedom in conjunction with addressing issues of bias, harassment, sexual misconduct, and the assurance of being able to engage in association and assembly outdoors without permits, which we already have in the current campus code and is transferred.

I'm not sure if Madelyn's still here -- I see she is still here -- that my understanding from Madelyn is that she is quite pleased with the posted proposed statement. And I think it's great that it's at the Academic Freedom and Professional Status Committee to look at it, so I hope that I'll be able to vote on that at some point relatively soon, hopefully by sometime in January.

MADELYN WESSEL: Charlie, if I might just respond, I have really appreciated Risa's comments on that draft, and I think that strengthening the components which really are not very big in the current campus code that really look at academic freedom issues for faculty is long overdue, and I feel very supportive of it. So this was a very good collaboration, which I really enjoyed, Risa. Thank you.

RISA LIEBERWITZ: Thank you. Let me also say, as you may have seen, I posted on behalf of our Cornell chapter of the AAUP, which endorsed the statement that is almost completely represented in this posted draft. And that, I think, is also a very positive thing, to get the AAUP involved here as well.

CHARLIE VAN LOAN: Very good. Our AFPSF Committee will take a look at this, and there's some chance maybe at the December 16 meeting, but more likely in our January meeting. So thank you, Risa, on this, but please continue now with the Title IX discussion.

RISA LIEBERWITZ: Yeah, thank you. So we have about twelve minutes left, and I'm going to try to put out some points that we started talking about at the last meeting, but also ran out of time there, with regard to the review that you've heard about already, at least generally, of Policy 6.4. What I'm going to do is to continue the discussion from last time, but point out some pieces that I think are particularly important for you all to know.

I'm on this kind of Stakeholder Review Committee, as it's called, that's dealing with Policy 6.4. And I notice it says here on this slide that Policy 6.4 is separate from the procedures to enforce the policy. 6.4 deals with prohibitive bias, discrimination, harassment and sexual-related misconduct. It does not include any procedures. It doesn't really even define the specific misconduct.

So Policy 6.4 is what's up for review through the formal review process that Cornell has put in place for official policies, but our Stakeholder Review Group is also looking at the



procedures to enforce Policy 6.4, which can be amended and that do not need to go through the formal policy review process that Cornell has been engaged in. The procedures are separate. They deal with Title IX cases, as well as non-Title IX cases; Title IX cases being those that are directly regulated by the Department of Education with requirements. Cases that may overlap with some of those Title IX cases would also deal with other kind of discrimination. Non-Title IX cases have separate procedures.

What I put here is dealing with Policy 6.4, not the procedures. And I think one of the important issues to consider here is the standard of proof. Currently, in the Policy 6.4 provisions, it is a preponderance of evidence, more likely than not standard. The arguments in favor of that that have been put forth is that this is consistent with the standard of evidence that was prior to August in Policy 6.4. Some people think this may encourage complainants to come forward because it's a lower standard of proof than clear and convincing evidence, and it's a standard usually used in civil lawsuits. It's a noncriminal standard of proof.

On the other hand, what I wanted to raise here is that one of the important points I think as well, as Madelyn talked about with regard to the student code, is is there a possibility that the clear and convincing evidence standard is more appropriate, including for 6.4; not only for the student code, but also for 6.4, is something highly probable, that proof.

And arguments in favor of that would be that where somebody faces potentially severe sanctions, whether it's as a student being dismissed or as a faculty member losing your job or being suspended, that you need a higher level of certainty that something is proven than just more likely than not. Clear and convincing is used in AFPS hearings, Academic Freedom and Professional Status Committee hearings. This is also consistent with the national AAUP principles for using clear and convincing standard for serious sanctions, where serious sanctions can occur.

And also, I'd note that the hearings are private. Civil suits are carried out in public hearings, and so the protection of due process is also through public hearings. But here, of course, we have private hearings, and so clear and convincing could be used. I wanted to point that out because I thought people may have thoughts about it, as well as want to post comments on that, or you can send things to me. Charlie, perhaps you could set something up for this as well.

Moving now to procedures, what I noted last time and I'm just going to repeat quickly here is that if you look at Title IX-related cases of sexual misconduct and sexual harassment, there are separate student procedures and separate employee procedures. Employee procedures cover faculty and all other employees.

I am only focusing now on faculty issues for purposes of time and because we're Faculty Senate, but I want to point out that for Title IX-related cases, that the procedures are really the same for student respondents and faculty respondents, where you're charged, whether you're a student or faculty with misconduct, an investigator decides whether there's enough evidence to send the case to a hearing, and then there's a full hearing before a hearing panel for students called Hearing A, but it's basically a full hearing prior to any conclusions on the allegations or recommendations on sanctions.

However -- and I'm going to make this easier to read in a second -- if you line up non-Title IX procedural issues, if you line up students with faculty, there's a real difference. The students continue with the same process I just talked about: Investigator decides whether to send something to a hearing, there's a full hearing by a hearing panel prior to conclusions on the allegations. There are some differences in the hearings, depending on the nature of the sanction, but they are full hearings prior to decision.

For faculty and other employees, it's completely different, and you can see it's much lengthier. And I'm going to tease that out for you in terms of the differences, in terms of the types of procedures and the timing on the next slide.

On this slide, as you'll see, in non-Title IX cases, things change radically. The investigator concludes whether misconduct occurred and recommends sanctions. No hearing. The investigator sends the investigative report to the dean to make the final decision. No hearing. There can be a full hearing under the procedures, but only where there's a subordinate-supervisory relationship -- for example, faculty-student -- or an academic freedom issue. And this is a full hearing by the Committee on Academic Freedom, AFPP -- Freedom of Professional Status, but only after the decisions have been made by the investigator and the dean.

I think it's great that the Academic Freedom Committee's doing the hearing, but only after those decisions. And in any other kind of non-Title IX case that falls into these procedures, there's no hearing. The dean reviews an investigative report, makes a final decision. The faculty respondent can file a grievance in college-level grievance procedures, but that's very different.

What I've done here in red is to show you what I think could be done to create a more consistent process of having full hearings prior to any decision. It could be made much simpler. The investigator could decide whether or not the evidence exists to send the case to a hearing, as they do in all student cases. And the Committee on Academic Freedom and Professional Status could do a full hearing prior to any decision -- it should say all non-Title IX cases -- and then it could go to the dean.

And under the current procedures for the Committee on Academic Freedom hearing, it states the dean is expected to -- must accept the hearing findings of fact and conclusions, but may modify recommended sanctions. That's much simpler.

Next slide is the last slide, please. So in the interest of pros and cons, on one side in favor of the amendments I just put out, there as a possibility -- and I hope our stakeholder review that I described to you will consider all these things -- is that it's consistent with due process and fairness to have full hearings by our peers in all cases, including non-Title IX cases. It separates the role of investigator and decision-maker, rather than having the investigator also make decisions; the timing of hearings prior to decisions, which is consistent with fairness; and it's consistent to have faculty and students have the same levels of due process.

What I've heard against the amendments is in terms of the fact that this level of due process is simply not required by law, which is true for non-Title IX cases, but that's also true for student respondents. It's not required by law, but we give that kind of fairness. And also, I've heard the concern that students are hesitant to bring complaints or appear as witnesses against faculty, which is generally an argument against having any hearings for faculty, so I wanted to tell you that I've heard this objection, but it seems to me this is an objection to not having any hearings.

I am done getting through a whole lot of material, and I hope we have some time, if people have questions.

CHARLIE VAN LOAN: Yeah, absolutely. Of course, if you have to go, you have to go, but certainly five or ten minutes of questions is totally okay.

RISA LIEBERWITZ: Also, before we start questions -- sorry, Charlie -- will there be a place where people can put comments as well?

CHARLIE VAN LOAN: Yeah. The agenda page, you could put comments, but I will get something set up, so when I send the synopsis out in a day or two, people will know exactly where to go.

Comments and questions for Risa? Ken. And then Jerry, I see your physical hand, but use the blue hand. Ken.

KEN BIRMAN: Risa, thank you very much for a real interesting and detailed presentation. I'm just curious about this very last slide. I know of a situation where a student who was sort of a witness, but not directly involved in something, absolutely didn't want any role in talking -- confided in a few of us what they had observed, and it was relevant. So would a situation like that cause a case potentially to essentially fail by virtue of that person not being willing to appear?

RISA LIEBERWITZ: Well, I think regardless of the kind of case that exists, any time there is a charge brought against somebody for misconduct, you have to have evidence. And so if the evidence does not exist because people won't testify, well, then the proof isn't there. I don't really think that goes to what I was raising in terms of issues of fair hearings, other than if there's an argument well, maybe sometimes it's hard to get evidence and so people won't be willing to go to hearings.

But I think one has to balance that against what is fair to the person who's being charged. And where somebody's being charged with misconduct that could result in severe sanctions, then basic fairness calls for testing the evidence through hearings. But I think what you're saying, if I understand, is that because of hesitancy for people to bring complaints or to be witnesses, that this is an argument against perhaps having a hearing. And I think one could argue that, but --

KEN BIRMAN: -- a powerful person is going to end up at a different university after we ask them to leave is going to be very, very angry for the rest of their career at that student for having spoken out. That's the sentiment.

CHARLIE VAN LOAN: Jerry Stedinger.

JERY STEDINGER: I was asked by Charlie to help investigate in a case. I don't know if it was Title IX or not, but it followed this procedure. The description of the investigator bringing a case ignores the portal. There was someone from the staff and there was somebody from the faculty because the concern was the faculty member.

I certainly, being a faculty member, put there as a faculty, was concerned the faculty member's point of view was considered as we interviewed different students. And we interviewed a number of students and other faculty. And if I had been the faculty charged, I wouldn't have been anxious to have had all those people at a hearing talking.

And they sometimes say where there's smoke, there's fire. There would be damage done from that which would not necessarily happen if a small committee of investigators pursued all angles of the case without making any more trouble than they had to, in case it was dismissed; because just having a hearing -- I don't want to have a hearing, even if I'm dismissed. A lot of people don't appreciate what the collusion was. Thank you.

RISA LIEBERWITZ: Thanks. Can I just clarify something? Number 1, I think you made a very important point that there are co-investigators. So for faculty, there would be a faculty co-investigator. And I know I've been involved in that years ago, and it's very important and I agree with you completely, but one thing I want to point out is that what I'm trying to raise about fair hearings is not to say that what we would like to see is more hearings.

If there's not sufficient evidence to send a case to a hearing, it will be dismissed by an investigator, whether it's one or two co-investigators, as it should be, whether it's a student respondent or a faculty or other employee respondent. The question is if the case is not dismissed, what will happen. One hope is that there will be some kind of a settlement. Consistent with our discussion before, restorative justice issues are very important. Other kind of alternative dispute resolutions can be used, which can be very important. So just as that's

true for any kind of charges for misconduct, whether Title IX or non-Title IX, alternative processes for resolution are very important so that we don't have to go to a hearing.

Of course, you know a faculty respondent could say I prefer not to have a hearing at all. I just want a decision to be made by a dean. They could waive the hearing, but it's to have it available, if somebody would like to have a hearing.

CHARLIE VAN LOAN: Thank you. Madelyn, and then Joanie.

MADELYN WESSEL: Thanks, Charlie. What I want to say is that I don't have any actual stake on this one as counsel. My team was not involved in the revisions to this part of the procedures that were done very quickly to try to get something pulled together with the Trump administration's implementation of the whole 2,000 pages of new OCR Regs in the middle of a pandemic.

It seems to me there are important issues that Risa is raising, but I really would encourage the faculty senate to also make sure that you hear from Mary Opperman, who is the vice president who manages the Title IX program, and from graduate students as well, because there are important perspectives that I know motivated some of these changes. I know that Mary is perfectly open to good recommendations and thoughtful perspectives. I think she would be the first to agree that these procedures were revised in haste, but I just want to speak up for the importance of the senate hearing from all of those who have a role and who are, I think, really trying to do the right thing for the whole community before you make a particular decision on something like this.

CHARLIE VAN LOAN: Thank you. Joanie.

JOANIE MACKOWSKI: Thanks. And thanks, Risa, for the presentation. I want to ask you about the word "fair, fairness." One of the reasons for the preponderance of the evidence versus beyond reasonable or clear and convincing is how certain Title IX issues are affected by

structural inequality. And so I think it would be good, before sort of thinking in an abstract about fairness, rather to look at some data. Does it suggest that people who shouldn't be found responsible are being found responsible? Yeah, so just wanted to raise that.

RISA LIEBERWITZ: Yeah, can I just make a couple comments? One is that there is data and concerns that had been raised generally in terms of this question of the standard of proof with regard to the fact that a higher standard of proof is actually something that can protect against structural inequalities, including racism, because of some of the stereotypes that affect people being charged -- for example, stereotypes with regard to black men -- and faculty of color being actually subjected to allegations historically in the United States with regard to issues of sexual misconduct.

So that also is an issue. It is not only from the complainant's standpoint, but it's also from the respondent's standpoint. And I think that sometimes that gets lost, whether it's for students being charged or faculty being charged, and I think it's something we should really consider.

The other thing I also wanted to mention with regard to Madelyn, I think Madelyn's absolutely correct. It's really important to hear from many, many perspectives and views. With regard to the graduate students, I'd also point out that if you're a teaching assistant or research assistant, but now I'm just focusing on teaching assistants in particular, they will be considered employees with regard to cases being brought making allegations. So it's not only the potential for graduate students to bring claims, but they may also be respondents as employees.

CHARLIE VAN LOAN: Risa, can you give us -- just quickly, there must be a timeline here. So the Stakeholder Committee's gathering information. Laura was at the last meeting. Can you give us a sense of -- I'd like to follow up on engaging folks like Mary Opperman and so on. Can you tell us what the timeline is here?



RISA LIEBERWITZ: Yeah. Thanks, Charlie. Such an important point. The good news in terms of not having a squeeze on procedures is that there isn't a kind of a tight timeline or deadline that exists with regard to our consideration of whether to recommend to amend the procedures. The tightness of the timeline has only to do with Policy 6.4 itself, which is separate from the procedures. So if you had some thoughts about that policy, the timeline that our stakeholder review has is December 9, because of the formal policy review process that apparently is an unstoppable train, so that's quick.

CHARLIE VAN LOAN: Okay, thank you. We'll be in touch on that.

Richard, then Mark, then we'll go to the hallway portion of the meeting. Richard.

RICHARD BENSEL: Maybe these comments are very good. Any procedure is not neutral. They affect the way people make their calculations, whether they're guilty or not, whatever that means, in cases like this. So if you tilt the procedure against faculty, you will get more convictions because people don't want to go to hearings, they don't want to expose themselves. This is a really difficult problem, but I lean in favor of not convicting people -- unfair practice -- allow people to defend themselves without the adverse effect of a procedure that tilts against them, but strongly support Risa's point.

CHARLIE VAN LOAN: Thanks, Richard. Mark, and then we'll wrap up.

MARK WYSOCKI: One point, Risa. When you kind of concluded here for T.A.s, it doesn't matter whether they're paid or whether they are getting college credit, because we use undergraduate T.A.s. So that would be a correct statement, correct? That it doesn't matter whether they're paid or not; they're still an employee, so to speak?

RISA LIEBERWITZ: Well, I'd have to go and look at the procedures to see if they make anything more specific. I'd have to look at that, but I think it's a really good point about

undergraduate students as well possibly. I don't know if that question has come up. I'd have to look at the procedures, but I really appreciate your raising it.

MARK WYSOCKI: Okay, thank you.

NEEMA KUDVA: Charlie, can I just jump in and ask Risa a quick clarification question, before you end the meeting?

Risa, thank you for that. I'm just trying to understand -- maybe you told us this, but I want to make sure I understand it right. So for the faculty respondent, if the investigator concludes that misconduct has occurred and sanctions have to be made, they send the report directly to the dean, and this is because we assume that the faculty person is always the more powerful? What's the assumption there?

RISA LIEBERWITZ: I've been trying to figure it out. And unfortunately, I think to some extent the answer is we're doing it this way because we can -- sorry about the cat -- from the standpoint of the administration, I think that from what I've heard, at least some arguments are in non-Title IX cases, the Department of Education does not require a full hearing.

Under current Title IX regulations for sexual harassment, there is a requirement of a full hearing, which is why you have that consistency with students. But once we move into non-Title IX cases, the university is free to create the procedures it wishes. And so I think this is really a reflection of a managerial prerogative that's being expressed by the administration, and I think that as a senate, we should be concerned with what is good for the faculty and the employees, as well as what's good for the students. You know, as Richard was saying, there's trade-offs, and how do we protect people from unfair or unprovable allegations.

And I also just want to make a note that I think that we all know that if we were charged with some sort of misconduct of this kind, it would be devastating to be charged. And some people may be responsible for misconduct, and we should find that to be true, but I also want to

bring in the subject of reality for those of us who are here and understand that an allegation of this kind is devastating, even if we're found to be not guilty in that sense. And so the procedures, I think, should encourage restorative justice, should encourage good communications to avoid hearings; but when needed, we need really fair hearings.

NEEMA KUDVA: Thank you.

CHARLIE VAN LOAN: Thank you, Risa. We have to let Jill push the stop record button.