REPORT CONCERNING THE INVESTIGATION INTO THE UNIVERSITY'S CONDUCT TOWARD STUDENT PROTESTS AT THE 2015 MARCH BOARD OF TRUSTEES MEETING

Submitted to the Faculty Senate, March 2016

Ad Hoc Committee Members
Charles Brittain, Member
Paulette Clancy, Member
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A. INTRODUCTION

- The committee was charged with investigating whether the conduct of the Cornell University
 administration, was in violation of the Cornell Campus Code of Conduct provisions that
 guarantee the right to free expression, academic freedom, and freedom of peaceful assembly
 with respect to the interrogation by the Cornell Police (CUPID) of an undergraduate student,
 Daniel Marshall, and the university's filling of a complaint against Mr. Marshall in the aftermath
 of the student protests at the March 2015 meetings of the Board of Trustees.
- The committee was further asked to examine whether the protocols governing police conduct in such situations are adequate and are in accordance with the need for campus police and the university administration to respect and protect freedom of expression and academic freedom on campus as enshrined in the Campus Code of Conduct.

B. DELIBERATIONS OF THE COMMITTEE

3. The Committee met several times and interviewed the following persons: The Police Chief, Kathy Zoner; Daniel Marshall, the student interrogated by CUPID; Professor Risa Lieberwitz; Professor Yuval Grossman; Jody Kunk from The University Judicial Officer's office; President David Skorton; and Mary Opperman. The Committee further examined all relevant documentation and listened to the tape recording the interrogation of Mr. Marshall by the Cornell Police.

C. THE SITUATION GIVING RISE TO THE INVESTIGATION

- 4. At the March 2015 Board of Trustees meeting, students organized protests against the introduction of a \$350.00 health fee levied on students who opt out of Cornell Health Insurance Scheme. The students felt that the fee was unjustified and they protested by, among other acts, interference and installing a different screen on the computer located in the Board of Trustees meeting room. It was alleged that on the evening of March 25 or early morning hours of March 26, 2015, an individual or individuals entered the Statler Amphitheater and accessed a computer they were not authorized to access. Cornell University officials lodged a complaint with the Cornell University Police, which investigated the matter as a burglary. This and other aspects of the students' protest triggered police action which included an investigation into who was responsible for the interference with the computer.
- 5. During these investigations, Mr. Daniel Marshal was considered the principal suspect in the break-in. He was interrogated by the Cornell Police. Following complaints from a large number of faculty at the University's treatment of Daniel Marshall the university settled the matter by an agreement with Daniel Marshall and the complaint with the Cornell Police withdrawn. The following statements were released to the public by Mr. Marshal and Cornell. "In my recent campus activities my intention was to bring to the attention of the Trustees the important grievance of students, which I felt were being ignored. I did not damage property or harm anyone. Nor did I engage in any criminal acts whatsoever. I do realize I violated the Campus Code, however, and I accept responsibility." The University issued the following statement: "With Mr. Marshall's acknowledgement of responsibility, the matter has been referred to Cornell's Judicial Administration for appropriate disposition. Consequently the University has withdrawn its complaint with the Cornell Police and further investigations of the events in the Statler Amphitheatre on March 26-26, 2015 will cease."
- 6. It is alleged that the Cornell Police Department (CUPID), in investigating the students' protest, engaged in intimidation and aggressive conduct, including conducting coercive interrogations of students; threatening to remove a student from class in handcuffs; threatening a student with a lengthy prison sentence for non-cooperation; and subpoenaing the students' Facebook page. If proven, this would be a violation of the students' right to remain silent when faced with a criminal charge.

D. RELEVANT EXCERPTS FROM THE CAMPOUS CODE OF CONDUCT

7. The Campus Code in Article 1 guarantees the "freedom to teach and to learn, to express oneself and to be heard, and to assemble and to protest peacefully and lawfully." The article recognizes that these tenets are essential to academic freedom and the continuing function of the University as an educational institution. These rights are to be exercised with due regard to the rights of others. Infringement upon the rights of others or interference with the peaceful and lawful use and enjoyment of University premises, facilities, and programs violates this principle.

E. TESTIMONY OF PERSONS INTERVIEWED

- 8. The Committee heard testimony that the complaint relating to the break-in at the Statler was reported to the Cornell Police by the University Administration. The police chief, Kathy Zoner, testified that acting on the complaint they launched investigations in the matter. The police chief believes that her officers conducted the investigations in accordance with standard police practice. She did not think that their conduct violated Mr. Marshall's rights. She also stated that they did not prevent the students from protesting the health charge and that they believe strongly in the freedom of expression and the right to protest. But she acknowledged that in their efforts to ensure that protests are peaceful the police sometimes come into conflict with students.
- 9. The university administration testified that the Cornell Police act independently and that their policing powers are regulated under state law. The University administration stated that they exercised oversight over the Cornell Police in terms of the budget and complaints against Police misconduct. The procedure followed is, first, an internal inquiry within the police is made and then, if the police think it is necessary, it is passed to the University Administration. The administration averred that the Cornell Police are well trained in Community Policing and regularly update their practices.
- 10. One faculty member testified that the University Police did not adequately protect dissenters from other students. She also expressed concern as to whether there was appreciation by the police of the importance of academic freedom to the university enterprise. Another faculty member testified that student protests have at times been violent and that the Cornell University Police had shown remarkable restraint in handling such situations. But everyone who testified before the committee recognized that students have a democratic right to protest and also recognized the centrality of academic freedom to the university enterprise.
- 11. No one testified that the students were prevented from protesting. Also confidentiality around the agreement between Daniel Marshal and the University meant that the committee could not examine the terms of the agreement or the negotiations leading up to the agreement.

F. FINDINGS OF THE COMMITTEE

12. The Committee found that the interrogation of Daniel Marshall was unnecessarily aggressive. The issuance of threats as recorded were not in accordance with good police practice and were in violation of Mr. Marshal's right to remain silent when faced with a criminal charge. The committee was also found that there is an uncomfortable level of mistrust in the student body and among the faculty of the Cornell Police in their handling of student protesters.

- 13. The Committee found that the procedures for handling complaints against perceived police misconduct are not clear and transparent and could be improved to the benefit of Cornell Police and the Cornell community. The current arrangements foster a belief in many members of the community that investigations of alleged police misconduct are superficial at best and a cover up at worst. Internal disciplinary procedures of police departments are seen as unsatisfactory, and the administration does not seem to be exercising due oversight.
- 14. The Committee concluded that it will take a strong and sustained effort by the Cornell community and the Police to promote good police/community relations.

G. RECOMMENDATIONS

- 15. The committee recommends that Cornell should embrace the concept of community review for allegations of police misconduct. This would entail creating a review Board to be composed of representatives from every part of the Cornell community, including CUPD. A Cornell community review Board would promote accountability, and strengthen the mutual trust between the students, faculty and administration that is fundamental to the well-being of the university. It would also serve as an important source of information about the conduct of the police and alert the administration to the steps they should take to curb misconduct in the police department. The Committee believes that there is a pressing need for this review Board, and that timely action should be taken to establish it.
- 16. For such a body to be effective and have credibility, the Committee recommends that the following principles are observed: (a) The Review Board should be independent and should have authority to receive from the Cornell community and investigate complaints about police misconduct. Its findings should be made public. (b) It should have power to independently investigate incidents and issue findings on complaints. (c) It should be assured of Police cooperation. (d) Its composition should be broadly representative of the Cornell community, including the police; and, (e) it should be housed away from the Cornell Police.
- 17. The committee recommends increased oversight by the university administration of the police. Increased oversight would increase the public confidence in the accountability of the police to the university community. It also recommends continuing education for the police aimed updating the police on police skills and practices.
- 18. The Committee also recommends that the Cornell Police continues to promote community engagement through the holding of workshops and forums which promote understanding of their work in the Cornell community. Police policies should be open to public review and debate instead of being viewed as the sole province of police insiders. Open policing not only allows police officials to benefit from community import, but it also provides an opportunity for the

police to explain to the public why certain tactics or procedures may be necessary. This kind of communication can help anticipate problems and avert crises before they occur.

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