

MINUTES OF A MEETING OF THE FACULTY SENATE

Wednesday, May 13, 1998

The Speaker, Professor John Pollak, Animal Science, called the meeting to order.

Speaker Pollak: "We are going to be doing things a little differently today. Rather than making some introductory comments as he typically does, Dean Stein will give closing remarks. So, we will go right into Questions and Answers with the Provost."

1. QUESTIONS AND ANSWERS WITH THE PROVOST

Don M. Randel, University Provost: "I have on my serious 'go to Albany' suit today because I just came back from Albany. It was a meeting called on very short notice to talk about the new resource allocation mechanism that they propose to adopt as the basis for the budget for next year and years to come. There is still more to be learned about this. But what one can see now is not ideal in any sense. It is a method of allocating resources based on formulas that do not do anything to reward excellence. The likely effect of it in the coming years is to allocate away from the best that there is in the SUNY system, namely Cornell, to some of what is the weakest that there is in the SUNY system. There are other rearrangements that are made, appropriately some of them enrollment driven. This will at least have the virtue of dealing with some of the state-operated campuses that are seriously under-enrolled and probably should have been closed, and probably would have been if there was the political willpower to do so. Although there are certain aspects of it that are perfectly okay, it really does not have built into it the kind of things one would like to see if they were serious about rewarding the kind of excellent programs we have here.

"The SUNY Provost, in a private conversation that I had with him this morning, assures us that he believes in the high quality of our programs, et cetera, et cetera; but I still fear that we are going to be locked in an arm-wrestling match with them. The method could be looked upon more favorably, if one thought that the resources available to SUNY were going to be increasing in the coming years. The fact is that one cannot be in any way confident that there will be increased resources available to SUNY in the coming years. This year, the SUNY Trustees were persuaded to request \$19 million over and above their steady-state allocation adjusted for inflation. In previous years, they were unwilling to even make a request of the governor for more money. This year they were willing to ask for slightly over one percent of their budget. The governor then vetoed all \$19 million of that request. That does not argue for the ability of the administration to pursue the legislature for significant or even modest increases to their budget, although the Provost does feel that the new allocation mechanism will create a basis that will make it easier for the administration to successfully pursue increases in the future. I have probably said more about this than I should have. This is not to distribute gloom and doom, it is just to let you know that not much has changed in our relationship with the SUNY system, and that we still have to think long and hard about what we expect from that relationship."

Assistant Professor Carlo Montemagno, Agricultural and Biological Engineering: "Has the issue of withdrawing from SUNY and being a stand-alone institution been shelved?"

Provost Randel: "It is hard to say whether that is a viable option. The only thing I can say right now is that we are still thinking about all of the options. We are not threatening to bolt in any sense, but anything is still a possibility."

Professor Mary Beth Norton, Mary Donlon Alger Professor of American History: "I have a question along the same lines. In this new formula, is there any provision for Extension?"

Provost Randel: "Yes, there is. They are separately itemized; after you go through all of the formulas that are basically enrollment driven, then there is a set of adjustments that have to do with the mission of the University. One of the categories there that is overwhelmingly ours and is a fairly big ticket item is the Land Grant mission. The thing one would have to wonder about is that if there are declining resources going to SUNY, how would this work? The enrollment formulas are independently driven. One would have to think that in the face of declining resources, it would be these other arbitrary methods that aren't driven by any formula that would be the first to go."

Associate Professor Jeremy Rabkin, Government: "You probably want to know that I want to ask you about Sexual Harassment. Last May, you said that you were within days of having a completed policy document, but you didn't want to distribute it in May because we were on the eve of graduation and everyone was dispersing and you wanted to give everyone an opportunity to respond. If, last year you were within days, how come it has taken an entire year to get to this point? And, if you were unwilling to release this policy at this time last year, what has changed to prompt you to release it at this time this year?"

Provost Randel: "About my being within a few days of it last year, I was manifestly wrong. That has to do with a long series of discussions that I have had with many people on this campus, some of whom are members of this body. What has prompted me to release it at this time now is, in fact, a year of discussions in which many people have been consulted. The matter has been discussed

back and forth at some considerable length. There was even a more recent exchange with the University Faculty Committee and the Committee on Academic Freedom and Professional Status of the Faculty. We still have this meeting remaining, at which I could take my public flogging. So, on that basis, I chose to proceed in this way."

Professor Elizabeth Earle, Plant Breeding and Biometry: "Several major components of Project 2000 have either been delayed or been on hold. Can you comment on that? Did we rush into this inappropriately? Have we spent a lot of money to no effect? What are your thoughts on this?"

Provost Randel: "Spending a lot of money is never to 'no effect'; the question is if the effect is a good one. I believe that Project 2000 is taking a prudent approach to it, which is to say that we now understand that we cannot have all that we aspire to with the amount of money that we were and have been prepared to devote to it. We have not at this time committed any more money from University resources than was imagined three years ago when it was launched. But, it has become clear that we cannot complete all of the things that were embarked upon for the amount of money that we have been spending up until now. That has led us to believe that certain things should be delayed. As these systems are being developed, we are only now learning what it takes to actually deliver one. Some of these projects are only being developed and designed by PeopleSoft itself. The design of those products is not even complete. In addition, the expenses of trying to do all of these things simultaneously would require us to spend much more money than we anticipated. Now, we are stepping back and trying to figure out how much money it is going to take over how many years to complete all of the things that we hope to complete. Essentially, we are doing the same things that any other university is doing that has taken on a project of this sort."

Associate Professor Randy Wayne, Plant Biology: "A couple of months ago, I mentioned how upset I was about how the Biology Task Force report was handled and asked for a vote. My personal feeling is that your office has a desire for the Division to die some sort of death and have the genomic initiative take its place. I just wonder if I am right."

Provost Randel: "You're wrong. I could expatiate on that if you wish, but I wonder on what earthly evidence you are basing that claim. If you could advance that kind of evidence, then it would be worth talking about. I think you ought to talk to a lot of your colleagues in Biology, including the Section of Biochemistry, a number of whom I met with a couple of days ago. I have steadily said the only objective we have in any changes to the way Biology is done at Cornell is to make Biology better at Cornell. We have an enormous amount of resources invested in Biology. We have enough invested to make us better than anybody. The only question is how do we make sure that we maximize our return on that investment so that Biology can become steadily better."

Speaker Pollak: "That is all the time we have for questions today. Provost Randel, between Albany and here, I hope you enjoyed your day."

2. APPROVAL OF MINUTES OF APRIL 8 AND APRIL 15, 1998

Speaker Pollak: "You've all had a chance to read the minutes from the last two meetings. Are there questions, comments, or changes to those minutes as they appear on the web? Seeing none, I will cast the unanimous ballot on your behalf in favor of them."

"Now, we will move on to the Report from the Nominations and Elections Committee."

3. REPORT FROM THE COMMITTEE ON NOMINATIONS AND ELECTIONS

Professor Kathleen Rasmussen, Nutritional Sciences, and Associate Dean and Secretary of the University Faculty: "I think the Nominations and Elections Committee is starting to think that this is the year that will never end. We are still filling positions, we still have quite a few more to go."

POSITIONS TO BE FILLED BY APPOINTMENT:

Academic Freedom and Professional Status Committee

Melissa Hines, A&S (Chair)

S. Kay Obendorf, CHE

University Assembly

Yrjo Grohn, Vet.

Marvin Pritts, CALS

POSITIONS TO BE FILLED BY ELECTION:

Faculty Trustee - 1 vacancy

David B. Collum, A&S

William E. Fry, CALS

Francis C. Moon, Engr.

Mary Beth Norton, A&S

Nominations and Elections Committee - 2 vacancies

Geoffrey Chester, A&S

Jennie T. Farley, ILR

Paul Houston, A&S

Richard Polenberg, A&S

University Faculty Committee - 3 vacancies

Barry Carpenter, A&S

Richard S. Galik, A&S

Risa Lieberwitz, ILR

Christopher Minkowski, A&S

Peter Schwartz, CHE

Seymour Smidt, JGSM

Faculty Senate At-Large, Tenured - 2 vacancies

Rosemary J. Avery, CHE

Joseph M. Ballantyne, Engr.

Dan L. Brown, CALS

Robert A. Milligan, CALS

Alice Pell, CALS

Faculty Senate At-Large, Non-tenured - 1 vacancy

Rebecca Schneider, A&S

David Yearsley, A&S

"If you approve this slate of candidates, you will receive a ballot shortly in the mail. Are there any questions or comments?"

Speaker Pollak: "Seeing no comments or questions, we will accept those on behalf of the body.

"The next issue is the Parental Leave Policy, and I will call on Professor Montemagno, Chair, Academic Programs and Policies Committee, to introduce it to you."

4. RESOLUTION CONCERNING PARENTAL LEAVE POLICY

Professor Montemagno: "I can almost guarantee that there will be discussion on this issue. Before I begin, I would like to stress that

the resolution that we are putting before the Senate is not something that was just thrown together. We have worked on it since last October. We have had numerous meetings and consultations with the University Counsel, senior administrators, and Human Resources at the University and College level. What we are presenting is a resolution that will best serve Cornell given the financial and other constraints that we are facing. So, when you review this proposal, you will see that it is not the ideal proposal from many different perspectives, but we believe that it is the best compromise for the given situation at Cornell at this time.

"Our principal goal in preparing this is to create uniformity in the application of parental leave benefits to faculty members throughout the University. There was wide disparity in liberalness or lack of liberalness depending upon departments and colleges. These variations ranged from a woman who just had a child and was expected to come back to work in a couple of weeks, to having the whole semester off. This is unfair and we felt it placed women in a position where they were forced to negotiate with regards to having a family. The second issue was the fact that now there are many families in which natural childbirth is not the only option and adoption is becoming more and more common. There is no real mechanism aside from the Family Leave Act. We felt that this is unfair and that adoption is sometimes more stressful and requires more attention than natural childbirth and we felt that adopting parents deserved the same amount of latitude and freedom as parents who acquire a child through natural childbirth. The final thing that we were trying to achieve here was that we wanted to make Cornell more friendly for women; in particular, to encourage women to see Cornell as a place where they wouldn't have to make significant sacrifices in terms of deciding whether or not to raise a family or be a faculty member. With that little prelude, I'd like to read the resolution for you:

WHEREAS, tenure track faculty members undergo great stress during their entire non-tenured probationary period, and

WHEREAS, the care of a newborn or newly adopted child always requires considerable time and effort, and

WHEREAS, Cornell University desires to create an environment in which non-tenured tenure track faculty do not have to choose between their career and parenthood, and

WHEREAS, the law does not allow Cornell to distinguish between the gender of parents and between newborn and newly adopted children in the granting of childcare leave benefits,

THEREFORE, BE IT RESOLVED, that the Senate recommends that Cornell adopt the following policy for non-tenured tenure track faculty members who are the primary care-giving parent of newborn or newly adopted children less than five years old.

Eligible faculty members may receive a work load reduction (at full salary) for a single semester to care for a newborn or adopted child. They may choose any semester that overlaps with the first year following the child's arrival. During that semester, the eligible faculty members will be excused from teaching, administrative, and extension assignments. They will be, however, expected to make themselves available for consultation with students and continue with their research. Eligible faculty members may, with the permission of their chair, elect instead to take two sequential semesters of partial work load reduction by agreeing to teach half of their normal course load and making themselves available for half of the administrative assignments they normally perform.

The work load relief provision will supplement any disability coverage associated with childbirth if applicable.

The tenure clock will be delayed for one semester for any faculty member electing to take one semester of work load relief or two semesters of partial work load relief.

BE IT FURTHER RESOLVED, that the appropriate officers of the administration take steps (1) to ensure that all other members of the Cornell faculty and staff are made aware of their rights and responsibilities under the Family and Medical Leave Act and under the relevant provisions of Cornell's disability policy, and (2) to urge supervisors to exercise appropriate levels of flexibility in work assignments and other arrangements for primary care parents.

"One of the problems with the current policy is that if you have a baby, you have to have a doctor's note explaining that you are unable to perform your regular duties. They treat childbirth as a disabling illness. Unless you have a real medical complication, it is very difficult to say that you can't come back for medical reasons. While it can be done, we feel that we put the faculty member in an awkward situation. Second, some policies require a person who is having a newborn to petition to have the clock stopped. We feel that the tenure clock should stop automatically and there should be no petition required. We feel that if a woman petitions to have her tenure clock stopped, it could be perceived adversely, so we feel that it should be stopped automatically for everyone."

Speaker Pollak: "Are there any questions or comments?"

Professor Judith Reppy, Science and Technology Studies: "In the case of two non-tenured faculty members who both work for

Cornell, would this force them to choose a primary care-giver?"

Professor Montemagno: "Yes, but if they did a coordinated effort, they would probably be able to both get half-time."

Associate Professor Allard Jongman, Modern Languages: "How did you go about defining 'primary care-giving parent'? The footnote now seems rather circular. It basically says that the primary care-giving parent is the parent that gives primary care."

Professor Montemagno: "We assume that one parent will be taking off to care for the child. The issue of self-police is there and it is consistent with our financial analysis that if everyone who had this option available to them took advantage of it, we could afford it."

Professor Leonard Lion, Civil and Environmental Engineering: "I plead ignorance. Is there any comparable policy for tenured faculty members? If not, is the assumption that they don't have stress? If not, why aren't they entitled to leave for these reasons?"

Professor Montemagno: "When we formulated this policy, we had this policy for all tenured and tenure-line faculty. Peter researched the policies at a number of other peer institutions and we found that the policy was consistent with a new policy just put in place at Columbia and I believe, MIT. We felt, at that point, that that was how we wanted to pursue this issue."

"In further discussions, we found that there would be a considerable amount of resistance to this, not so much for the additional reduction of workforce, but because of what they called 'mission creep'. They were afraid that if this benefit were accorded to tenured faculty that then it would creep down to staff and hourly people and, during contract negotiations, that would constitute real money. The sense that we had at that point from the administration was then, 'we don't want to give this to everyone, so we won't give it to the faculty.' We felt that non-tenured, tenure-line faculty were a box that we could fence off and prevent the 'mission-creep' that they feared. Again, it is not the ideal situation, but it is a reasonable first measure. When you look at non-tenure line faculty, most of them are paid less than tenured faculty members. They tend to be younger, and at that time in life, there is a greater propensity for a desire to increase family size. They also have the additional issue of having the tenure window which forces many people to make decisions not to expand their family because they are worried about it impacting their research and their long-term career. We felt that this provided them with a better safety blanket than they have right now."

"What they have right now are the provisions of the Family Medical Leave Act which allows people to take unpaid leave or for natural childbirth. The medical disability time could be negotiated with the department chair. That is what we meant by that blue section, 'we hope that discretion will be exercised by department chairs or division directors in applying a comparable policy to tenured faculty members'."

Professor David Mermin, Physics: "If more than one child is born or adopted during the pre-tenure period, will this apply to both?"

Professor Montemagno: "Yes. That was the subject of a long discussion. We thought that someone could prolong the tenure review three or four years; they could just keep on having children and before you know it, the person has been here ten years, and heck, after they've been here ten years, how can you not give them tenure? We considered that a kind of an aberration. We tried to base this procedure on more reasonable circumstances. Columbia limits it to two for the lifetime, we decided not to specify a number and leave it at that."

Professor Locksley Edmondson, Africana Studies and Research Center: "I would like a clarification about the language. In the preamble, paragraph four, it says 'the law does not allow Cornell. . .' Is that a statement that if the law allowed, Cornell would want to distinguish between the gender of the parents?"

Professor Montemagno: "Actually, there are people who would like to distinguish between the gender on this issue. There are some senior administrators who would like this to only apply to women. We didn't feel that, and that is the reason why it is placed there."

Professor Edmondson: "I understand that, but it doesn't seem like a Cornell commitment. It just seems that we are doing it because the law requires it, is that right?"

Professor Montemagno: "I'm an engineer and it seems fine to me. (laughter) I don't see the problem, but I'm sure that there is if you say there is."

Professor Richard Galik, Physics: "I think that that really makes it clear to someone, perhaps an administrator, that they cannot make a proposal to restrict this policy only to women."

Associate Professor Risa Lieberwitz, Industrial and Labor Relations: "I was wondering if you have spoken to Vice-Provost Winnie Taylor about this, because I understand that her office was in the process of looking into this question and I wonder if she was one of the people you spoke with."

Professor Montemagno: "I didn't. Peter, maybe you did?"

Dean Stein: "We had extensive discussions with Winnie about this. She has seen and commented on all of the drafts back and forth."

Professor Lieberwitz: "Do you think that this is consistent with the work coming out of her office? Is this parallel with it? Are we working in conjunction with her office?"

Peter Stein, Dean of Faculty: "I honestly don't know what her office is doing. She certainly never volunteered any other policy. She made a couple of suggestions. I forgot what they were, but they were incorporated into this policy."

Professor Richard Baer, Natural Resources: "I want to raise a question of equity. It seems to me that if both husband and wife are working outside the home, they may be short on time, but not necessarily money. I know of cases where the wife stays at home, there is a baby, and they may be short of money and not so short on time. I am wondering why there should be a salary compensation in the one case and not some kind of financial compensation in the other? It seems to me that you can make a very strong case where the wife is not working outside the home and they may be short on money instead of time, that you ought to give time to the people in the one case and money to the people in the other. This seems to me to be a kind of double discrimination."

Professor Montemagno: "I'm not sure how you could administer something like that. When you are trying to legislate a benefit, which is what we are doing right here, if you make it such that you take into account every situation. . . "

Professor Baer: "No, it is not. It is simply taking into account that you have some people working at Cornell who are not tenured, who have spouses who are full-time homemakers and mothers and they have financial needs that are in excess of the financial needs of a couple where both spouses are professionals. I don't think that we should discriminate against them financially when the cause in both cases is the arrival of a child."

Professor Montemagno: "I don't see how we discriminate against them financially, they both get the same financial. . . "

Professor Baer: "Because we receive a work load reduction at full salary. That means that there is compensation financially in that case. There is no compensation in the other case."

Professor Montemagno: "If my wife doesn't work, she is a homemaker and we adopt a newborn. I can designate myself as the primary care-giver. There is no problem with that unless both parents are non-tenured faculty members at Cornell."

Professor Baer: "So there is a kind of fiction then that the primary care-giver would be. . . "

Professor Montemagno: "Part of this was done to, first, prevent two faculty members from taking off for the whole time with the idea that you want to have some family time. Second, when you have new additions to a family, you like to be home as a family unit. That was the intent behind this policy. There is no intent to discriminate against a faculty member whose spouse does not work."

Professor Baer: "Then I'd like to be very clear that that is the case. Because in the case where the wife is not working outside the home, she would be considered by most reasonable people, the primary care-giver. I would like to make an amendment to clearly make that the case in the legislation."

Speaker Pollak: "You can't bring that amendment up on the floor at this time."

Professor David Gries, Computer Science: "The footnote says that 'a primary care-giving parent is defined as one who has primary responsibility for the care of a child, and is either a single parent or one whose partner is employed'. So if your wife is not working, you may not claim yourself as the primary care-giver. That is what the footnote says."

Professor Sally McConnell-Ginet, Linguistics: "My understanding of it is that this is not designed to address financial issues, but rather career implications for Cornell faculty, and that is what it essentially does."

Professor Montemagno: "The focus of it is to allow a man or a woman who has new additions to a family to be home for the child, and not to feel that you have to make a choice between raising a family or pursuing a career. This fits into the goal of becoming a more family-friendly institution in order to help us be more competitive in attracting qualified women and retaining them, and to make Cornell a better place to work. We have been discussing for two years the salary inequities compared to peer institutions, but this is one of the ways of compensating for that in balancing the overall quality of employment. If we want to attract top-quality faculty and we cannot offer them the same amount of money that they will get somewhere else, maybe we can balance out the package with benefits like this one."

Speaker Pollak: "We are at the time when we are supposed to move on to the next item. There is a motion to call the question. The

motion has been seconded and we will now move to a vote on calling the question. All those in favor of calling the question, please raise your hand. All those opposed. The question has been called and we will now move on to a vote on the resolution. All those in favor of the resolution, please raise your hand. All those opposed. The resolution carries.

"Peter, will you introduce the next item?"

5. RESOLUTION FROM THE ACADEMIC FREEDOM AND PROFESSIONAL STATUS COMMITTEE REGARDING THE PROVOST'S PROPOSED SEXUAL HARASSMENT POLICY

Dean Stein: "I cannot recall the number of times I have stood before you to give the context on Sexual Harassment Procedures. This is complicated and a little bit hard to follow, so let me once again proceed. As of yesterday, we had a Sexual Harassment Policy that was put in place about a year and a half ago. Then, following that, this body submitted to the Provost an extensive set of proposed revisions to that policy. It has taken a year and half for the Provost to decide what to do with those suggestions that this body submitted to him. He proposed to modify those Senate recommendations in what many people on the Academic Freedom Committee felt was a very substantial way. The response to that intention was sent around to you in a motion from the Academic Freedom Committee. Then after that motion was sent around, there were subsequent discussions between the Provost and the Academic Freedom Committee that caused them to change what they and the UFC are bringing to you today. So according to Roberts', what is before you is their original motion, which they intend to ask you to modify and then there is an additional amendment on the floor from Professor Norton which will ask for a further modification."

Speaker Pollak: "The order will be that Professor Strike will come down and present his original resolution and then the AFPS/UFC amendment and then Professor Norton will present her amendment."

Professor Ken Strike, Education, and Chair of the Committee on Academic Freedom and Professional Status of the Faculty: "I am apparently going to be the agent of the public flogging. But, I only brought my cat-of-two-tails along."

The original motion follows:

WHEREAS, a just and well-governed community must strive to eliminate all forms of unlawful discrimination and at the same time provide adjudicatory procedures that satisfy reasonable standards of process and fairness, and

WHEREAS, the Provost has shared with AFPS the sexual harassment policy he proposed to adopt, and has, after discussion with the AFPS, stated his intention to modify this policy in some measure in accordance with the proposals below, and

WHEREAS, the Senate finds that by narrowing the jurisdiction of the AFPS adjudicatory hearing, the Provost's proposed policy -- which does not guarantee the charged the right to confront his or her accuser(s), the right to know and rebut the evidence for the charges brought, or the right to present evidence on his or her behalf -- does not guarantee fairness or process to a faculty member accused of sexual harassment, and

WHEREAS, the proposed policy affords significantly less fairness and process to a faculty member accused of sexual harassment than the July 1996 policy that it is proposed to replace, and

WHEREAS, the Senate understands and is sympathetic to the Provost's desire to reduce inappropriate asymmetries between the fairness and process afforded to different segments of our community, and

WHEREAS, both subordinate-supervisory academic relationships and issues of academic freedom are unique to the academic staff, and

WHEREAS, the February 1997 Senate adopted recommendations were triggered by strong dissatisfaction with the current (July 1996) Sexual Harassment Policy expressed by the faculties of the College of Arts and Sciences and the Law School,

THEREFORE, BE IT RESOLVED THAT THE SENATE RESPECTFULLY REQUESTS THAT the procedures in the Provost's proposed policy be redrafted to expand the fairness and process afforded to both academic and non-academic staff and to reduce the asymmetry between the two parallel procedures. The changes made should minimally provide every charged individual with a right to confront his or her accuser(s), a right to know and rebut the evidence for the charges brought, and a right to present evidence on his or her own behalf and,

THAT the jurisdiction of the AFPS adjudicatory hearing be broadened to include all allegations that arise out of the context of subordinate-supervisory academic relationships (e.g., teaching, advising, research, thesis, or dissertation

supervision) as well as issues of academic freedom (a jurisdictional scope that is a compromise between the narrow definition in the Provost's proposed policy and the wide definition in the Senate's February 1997 recommendation), and

THAT, the current (July 1996) policy remain in place until these changes are made, since it is preferable to the Provost's proposed policy.

Professor Strike then introduced the substitute amendment:

WHEREAS, a just and well-governed community must strive to eliminate all forms of unlawful discrimination and at the same time provide adjudicatory procedures that satisfy reasonable standards of process and fairness,

THEREFORE, BE IT RESOLVED THAT THE SENATE RESPECTFULLY REQUESTS THAT the procedures in the policy be redrafted to expand the fairness and process afforded to both academic and non-academic staff. The changes made should provide every charged individual with a right to confront his or her accuser(s) and a right to know and rebut the evidence for the charges brought.

"The history of this is that about three weeks ago, Provost Randel was good enough to share with the AFPS a proposed draft of the Sexual Harassment Policy. That draft in our judgment made one quite substantial change. In the policy that the Senate passed last year, every case in which faculty were charged with sexual harassment came before the AFPS for adjudication. Under the proposed cases, only those cases involving issues of academic freedom would come before the AFPS Committee. That is a fairly significant change considering the following three kinds of cases. One might be a case where a faculty member is accused of sexual harassment because of something that a faculty member says in a class where a faculty member is in the academic line of duty that is a quite controversial issue. Case two, might be a case where a faculty member is accused of harassing a student in the faculty member's office. Case three might be the case where a faculty member is accused of harassing a secretary or other employee.

"Under the procedure the Senate passed last year, all three of those cases would end up before the AFPS Committee. Under the proposed policy, only the first of those would come before AFPS for adjudication. It is important to remember the alternative to coming before the AFPS Committee is that the adjudication of the event is conducted by the OEO. The procedure for the AFPS has a very high level of due process, whereas the OEO has a very low level of due process. The AFPS response to that which is the essence of the initial resolution was to ask for two things: first, we ask that cases involving what is referred to as subordinate-supervisory academic relationships come before the AFPS Committee. The second thing we ask is that the OEO procedures, which apply to everyone, be expanded to include three things: 1) the right to confront one's accusers; 2) the right to know and rebut the evidence with respect to the charges brought; and 3) the right to present evidence on one's behalf. None of those things was clearly provided for by the procedure at the OEO.

"Having introduced that resolution on May 8, a Sexual Harassment Procedure was promulgated by the University which includes two changes from the proposed policy. The first is that the adjudicatory jurisdiction of the AFPS Committee is expanded to include subordinate-supervisory academic relationships. The second change was that the OEO process was expanded to include the right to present evidence. We now have two changes that were made as a result of discussions that occurred between the proposed policy and the May 8 policy. However, there are two things that we asked for that we did not get. The first is the right to confront one's accusers and the second is the right to know and rebut the evidence against one. After some discussion, the AFPS Committee is not of a single mind about the right to confront. We have included it in the resolution because we have a motion to amend and that will give the Senate the opportunity to discuss and decide. We are of a single mind about the right to know and rebut evidence presented against one. We believe that is a significant omission in the May 8 policy."

Speaker Pollak: "We have motion on the floor and an amendment and we will begin discussion of that."

Dean Stein: "I was just wondering if we could ask the body for unanimous consent to substitute the amended motion for the original motion since the situation has changed."

Speaker Pollak: "Is there any objection to that? Seeing none, so be it. Now we will discuss the motion."

Associate Professor David Wippman, Law School: "I have several concerns about the proposal and the policy we are being asked to follow. First, the policy was just issued on Friday and most people have not had a chance to read it, never mind even see it. Nonetheless, we are being asked to vote on a resolution that would change a policy that we haven't even seen. That leads me to think that what maybe we ought to do is table this, but before I recommend that, I want to ask a clarification on two points. One is with respect to what you described about the inclusion of case two back into the jurisdiction of the AFPS Committee. That depends on how you read the language, 'arising out of the nature of the supervisory relationship'. If you read that literally, no sexual harassment arises out of the nature of the relationship; it may arise out of the context, but not out of the nature. If you read it narrowly, nothing is included. If you read it broadly, it is not clear what is explicit. So I have a question about how it is likely to be

interpreted, what procedure is to be followed and what the understanding of the Committee is as to what the meaning of that phrase is. My third set of concerns relates to the OEO process. It seems to me that that process, or anything that does not fall within the jurisdiction of your Committee, is deficient in a number of respects, but perhaps the most important one is that it is entirely up to the discretion of the dean what the final outcome is. If the dean is a friend of the accused faculty member, he can go against the accuser on that ground alone. Conversely, if the dean is hostile to that faculty member, I wouldn't be very comforted that the dean would make these decisions. There are no guidelines, no standards, no review of the dean's decision. It seems to be entirely up to the dean. I have a problem with the policy as a whole and with the procedure."

Professor Strike: "The first time I saw this was, I believe, Monday, so none of us had a great deal of time to consider this. With respect to the language concerning the supervisory relationship, the original motion that the AFPS Committee proposed had, I believe, 'context,' and that was changed to 'nature'. We had a debate over what that meant, whether that was any clearer than 'context' and produced a reasonable range of possible interpretations. A view that was commonly voiced was that the word 'nature' was neither any more nor any less clear than the word 'context' was. What seemed to be significant was that it is the AFPS committee that gets to decide the meaning of the phrase. Because AFPS is first asked to decide whether or not the charged behavior falls under either academic freedom or an academic supervisory relationship, it seems that an essential principle is that the judgment of these matters belongs to the faculty. It seems that bringing this matter before the Academic Freedom Committee in a way that allows us to decide what this means preserves the essence of faculty control over this matter. Since both academic freedom and the phrase 'the nature of' is interpretable by the AFPS Committee. It is certainly possible that a subsequent Committee would define either of these phrases narrower than this Committee intended. That is certainly a possibility."

"On your third concern, I will speak only for myself, because we did not have extensive discussions about this as a Committee. But, we feel that this is a compromise. It is no one's ideal Sexual Harassment Policy, and in my view, we are reasonably close to a compromise that nobody likes but everybody can accept."

Speaker Pollak: "Before we go on with this discussion, we have an amendment to this resolution that needs to be discussed before we discuss the resolution."

"Professor Norton has asked for unanimous consent to apply this amendment to the new resolution. We had a resolution and the AFPS Committee proposed an amendment which the body unanimously consented to amend and replace the original resolution with the amended resolution. Professor Norton is now asking for unanimous consent to apply her amendment, which applies to the original resolution, to the new amended resolution."

Professor Mary Beth Norton: "If you look at the second motion, my amendment will remove the words, 'the right to confront his or her accusers' from essentially the penultimate line."

Speaker Pollak: "Is there a second to this amendment? The amendment is seconded."

Professor Norton: "As I considered this issue of confrontation in the light of my own experience with sexual harassment procedures, I thought to myself that the idea of a right to confront his or her accusers sounds pretty good, but is probably not going to be too good in practice. I move to delete those words from the resolution. Now I remind you that as Professor Strike just said, the language in this resolution only applies to the OEO procedure. It does not apply to the AFPS procedures, but rather to the earlier phase of sexual harassment investigations that happen at the OEO. The way that that is conducted is through the OEO with a faculty co-investigator that is appointed by the Nominations and Elections Committee."

"I think that the goal of a Sexual Harassment Procedure is to ultimately reduce the number of sexual harassments that occur at Cornell. In order to accomplish that goal, we need to have fair procedures, but we don't have to act like a court of law in order to be fair. I agree with the AFPS Committee that the charged party should be able to see a statement prepared by his or her accuser and should have the right to respond to whatever is said by the accuser. But, that does not necessarily mean that you have to respond in person. I think that the demands of fairness can be fulfilled by following a procedure that occurs in writing rather than a face-to-face confrontation. A confrontation would seem to me to require a mini-hearing, not just an inquiry by the OEO with a faculty co-investigator. The accused faculty member, in the academic setting as Professor Strike has just described, will indeed have the right to a full hearing before AFPS with lawyers, which is a part of this process that I oppose."

"What is to be gained by a confrontation at the level of the OEO investigation? My perception is that there is nothing to be gained and there is a lot to be lost. For one thing, one of the things that can be lost is the ability to resolve simple misunderstandings in a low-key fashion without the possibility of either side taking a position or saying things that they might later regret. If all of the exchanges take place in writing or through the vehicle of an OEO investigator, then you don't have the possibility of things escalating out of control at an early stage. Also, without possibility of a face-to-face confrontation, this makes the process of filing a complaint far less emotionally fraught for a potential complainant. It does us no good and lays us open to multiple law suits if we design a procedure that appears to be designed to prevent complaints. I think that if we say that you can't file a complaint without a

face-to-face complaint, a lot of young people may be intimidated. I think that there is a prospect, with use of the OEO procedure, of complaints being successfully resolved confidentially and without publicity. Confrontation, to me, implies not only the presence of the accused and accuser, a hearing office, but also witnesses. In at least one of the sexual harassment cases that occurred under the Arts College procedures, multiple witnesses create a greater possibility of the charges being publicized because there are so many people involved.

"I arrived at this conclusion from my own personal experiences. As many of you know, I was involved in the Arts College procedures in a variety of ways. In one instance, a friend of mine was accused of racial harassment by a student and was very nervous about this and asked me to attend the interview by the OEO. In fact, the charge was based on a series of misunderstandings with a particular student. The OEO sorted it all out and cleared my friend. There was absolutely no confrontation necessary, and I think in that case, a confrontation would have detracted from resolving that issue.

"I would also like to say something about my own personal experience with sexual harassment. When I was an assistant professor, one of my senior colleagues in my department created what we today call a 'hostile-working environment' for me. There was no definition of sexual harassment at that time, there was no such term, and there was no procedure. I had no way to deal with this experience, except, to confront him directly, which is something I never did. I was in a position where I had a department chair whom I thought would be unsympathetic to any complaint that I raised about this senior colleague of mine. Eventually he stopped harassing me and then started on the second woman who was hired in the department, and he did the same thing. He created a hostile working environment for her, and subjected her to continuous sexual innuendo in her presence. She consulted me about what to do. I didn't have a clue because I didn't successfully deal with it either. Had this procedure, without a confrontation, been available to me, I might well have taken advantage of such a procedure. I know that I would not have wanted to confront him directly. To this day, I have not confronted him directly. He is still in the department, he is still my colleague, but he doesn't do this to me anymore."

Dean Stein: "I don't see how we can resolve this issue today in any kind of a sensible way. I don't see any reason why this needs to be settled today. We can settle this next September, there is something more urgent, namely the resolution on the Division of Biological Sciences."

Speaker Pollak: "There is a motion to postpone this discussion until the September meeting. Is there any discussion on postponement."

Professor Rabkin: "I just want to say that I believe that the Provost has deliberately put this off so that it will die a thousand deaths. By next fall, everyone will be saying, 'wait a minute, what was that sexual harassment issue three years ago, four years ago?' At this point, we just have to accept it; there is nothing we can do about it now. I think it is really outrageous to have these continuous delaying tactics."

Professor Earle: "What about the possibility of having a special meeting next week?"

Dean Stein: "There are many options. I have given you one. This is a very complex issue. People are going to want to think about this and many other things. In my mind the best thing to do is to postpone it until September."

Speaker Pollak: "We have had a motion to call the question on postponement, and the motion has been seconded. We will now vote on calling the question. All those in favor, raise your hand. All those opposed. The question has been called. All those in favor of the postponement, signify by raising your hand. All those opposed. The motion has carried and we will resume this discussion in September.

"The next resolution will be presented by Professor Wilson. Professor Howland is unable to attend today."

6. RESOLUTION ON THE DIVISION OF BIOLOGICAL SCIENCES

Professor David Wilson, Biochemistry, Molecular and Cell Biology: "The resolution is very straightforward and short. It is very simple and I don't even think I need to speak about it. If anyone objects to it, I would like to know."

Professor Peter Schwartz, Textiles and Apparel: "I actually don't oppose it. I find it extremely vague as to when enough is enough. Having spent a year on the Senate where enough never seems to be enough, I'd like to try to get some specificity about when enough is enough or when a decision is made, whichever way it goes, you'll consider it a final decision."

Professor Wilson: "A process has started where we have outside experts coming in to review the Division. We'd like to make sure that is completed before a decision is made and that is the main impetus behind this motion. The Provost has already committed to that. So, in some ways, this is unnecessary, but I think it would still be useful and important to have the Senate's endorsement of

this."

Speaker Pollak: "Are there any other comments? The question has been called and seconded. Let's now take a vote on calling the question. All those in favor, please raise your hands. All those opposed. The question has been called. All those in favor of the resolution, please raise your hand. All those opposed."

The resolution carried as follows:

Resolved: The Senate urges the University Administration not to disband the Division of Biological Sciences without further and full consultation with the faculty of the Division and the University, with the Faculty Senate and with outside experts, and without the same thorough and careful deliberation used in the creation of the Division in 1964.

Speaker Pollak: "We will now move on to the next item on the agenda - the closing remarks by Dean Stein."

7. REMARKS BY THE DEAN

Dean Stein: "When Franklin Roosevelt first entered the White House in the depths of the great depression, one of his first appointments was with John L. Lewis, the head of the United Mineworkers' Union. Lewis opened the conversation with a simple and stark image that summed up the desperate situation facing American working men and women: 'Mr. President,' he said, 'the miners are feeding their families out of garbage pails'.

"Soon after I became Dean five years ago, I had a brief conversation with the Dean of the Law School that was, relative to the responsibilities I had assumed, nearly as ominous as John L. Lewis' words. Dean Osgood told me that he had canvassed the entire faculty of the Law School, and was unable to find a single one who was willing to serve on the FCR.

"Faculty governance had fallen onto hard times. Arts and CALS could not find enough candidates to stand for vacant seats. Regular meetings were routinely canceled for lack of business, and quorum counts hung like the sword of Damocles over those that were scheduled. Reports, rather than resolutions, dominated the agendas. When advice was given to the administration, it was more likely to be politely acknowledged and then ignored than it was to influence policy in any substantial way. In short, it was hard to argue that the faculty governance structure was an effective vehicle for the faculty to influence decision making at a level appropriate to a great university.

"I decided early in my tenure that the overriding challenge facing the Dean of the Faculty was the declining health of faculty governance. Some have argued that faculty governance is, in itself, a false goal; that we are here to work, not to govern; that committees, bureaucracy, and meetings at best waste time, and at worst strew obstacles under the feet of hard-working faculty. There are surely dangers in rampant bureaucracy, whether promoted by faculty or administrators. However, it seems almost axiomatic to me that healthy faculty governance firmly coupled to university priority-setting and decision-making is important for two reasons. First, the decisions will usually be better (it would be nice for a faculty advocate to say always, but honesty obliges me to make more modest claims). Secondly, any society, and particularly a university, cannot reach its full potential if its citizens do not feel the loyalty and personal responsibility for its well-being that comes with the sense of full participation in its affairs.

"That said, building responsible, functioning faculty governance is easier said than done. Both the faculty and the administration must take it seriously. For that to happen, it must address issues of substance. It must deal with those issues in a comprehensive and realistic way. Lastly, the administration must learn to regard that structure as the authoritative voice of the faculty, which is the linch-pin of the many constituencies that make up Cornell.

"These conditions are all interrelated, and actuality is dependent on perception. It is the classic chicken-and-egg dilemma. If the administration does not take the deliberations and recommendations of faculty governance seriously, neither will the faculty, and vice versa. But one thing is clear; without a steady diet of issues of substance, faculty interest will drift away, and even a robust structure will eventually wither.

"Over the past five years, I have worked hard with the leadership and committees of the Senate, and its predecessor, the FCR, to present a meaningful set of issues to these representative bodies for action. We debated and passed motions recommending changes in the status of lecturers, the distribution of patent royalties, a graduate tuition policy, and the establishment of a Latino Living Center. We crafted and passed a major change in the faculty governance structure that established the Senate and the partnership with the administration in appointing faculty to policy and search committees. We passed policies regarding romantic relationships between students and faculty, the form of transcripts (i.e., the median grade policy), and academic program review. We modified the Code of Academic Integrity. We recommended a substantial increase in funding for graduate fellowships in the sciences, and asked for other changes in University financial priorities. We devoted a great deal of time to debating procedures to adjudicate sexual harassment. We devoted even more time to devising a process for faculty involvement in granting of tenure,

resulting in the establishment of the Faculty Advisory Committee on Tenure Appointments. We subsequently modified the administration's 'Transition to Retirement' report. Last month, we established the Natural Sciences Research Advisory Councils, and just now, in keeping with our torrid pace, we recommended a Parental Leave Policy to the administration.

"While we certainly did not achieve unanimity on many of these items, few would dispute the importance of each of them, and their centrality to what we do as faculty members. The faculty responded with renewed interest and involvement. All departments were represented in the initial and subsequent Senates. Agendas have been overflowing, and Hollis Cornell has resounded with spirited and intelligent debate. As far back as our office records go, each year at least one of the eight regular meetings had been canceled for lack of an agenda, and at least one of those meetings that were scheduled failed to attract a quorum. That pattern has been stunningly reversed. For the past five years, not a single regular meeting was canceled, and of the 44 meetings that were called, only one, the snowed-out meeting of last December, failed to attract a quorum.

"But while an engaged faculty, vigorous debate, and a meaningful agenda is a necessary condition for healthy faculty governance, it is not sufficient. Indeed, it is the easiest of the three conditions to satisfy. A second condition is the willingness on the part of the administration to look to the Senate as the definitive voice of the faculty, and the third is the willingness of the Senate to provide advice that is thoughtful, considered, and in the best long-term interests of Cornell. Neither of the latter two conditions is easily accomplished. They can only be built on a solid foundation of patience, experience, and mutual respect.

"We must realize that it is always difficult for the chief executive of any organization to look to an elected, representative body as the authoritative voice of the larger constituency. It is the same dynamic that commonly plays out between mayors and city councils, presidents and congresses, and university provosts or presidents and faculty senates.

"Chief executives are chosen because of their wide perspective, their sense of judgment, their broad experience, and their leadership capabilities. They devote their waking hours to solving the problems of the institution they govern, to arbitrating between an ever-increasing assortment of legitimate and illegitimate conflicting claims, and to developing a realistic vision for the future.

"Democracy is a messy business. The members of representative bodies often, and perhaps always, lack the perspective, experience, knowledge, and dedication to the business at hand that the chief executive brings to the table. They have other interests and other obligations. Their primary loyalty to those whom they represent often results in a vision that is narrowed in space and time. Is there any wonder that the chief executive rolls her eyes with disbelief, in private if not in public, when the quick judgments of the representative body differ with her own reflective and considered opinion?

"But, you will be quick to point out, Cornell is not a democracy. Mayors, governors, and presidents can hardly ignore their representative bodies, since these bodies enjoy parity with them in the decision-making process. In universities, the role of faculty representative bodies is almost exclusively advisory. Of the fifteen previously mentioned motions passed by the Senate or FCR, thirteen started with '...The Senate (or FCR) recommends that the administration' The Senate proposes, and the administration disposes. When the Senate supports administration decisions, there is no problem. The administration welcomes, and is appreciative of the Senate's support. But when there is a disagreement, the administration is faced with the disagreeable choice of acting against its own better judgment or ignoring the will of the faculty.

"This lack of shared authority creates a very serious obstacle to healthy faculty governance. If the Senate is consistently ignored, it has no function. Neither the faculty whom it represents nor the Senate itself will take the Senate seriously. On the other hand, an administration that totally cedes its authority is not acting responsibly. The only stable solution to this dilemma is for the administration to maintain a healthy respect for the views of the faculty, even when the administration disagrees with those views, simply because they are the views of the faculty. The administration must adopt a mode of decision-making that allows a reflective tempering of its conclusions by the views of the faculty. Its timetables and channels of information must learn to adapt to the traditions and rhythms of the faculty.

"Which brings me to the last condition, in some ways the most difficult of the three to achieve. The Senate must learn to give reflective, considered advice. It sounds easy, but for a body of 100 people that meets for only an hour and a half a month, it is a major undertaking. The Senate must avoid the temptation to shoot from the hip, to act as a least common denominator of short-term faculty interests. It must learn to take seriously the deliberations of its committees, and to spend the time to read reports and raise concerns in a clear and timely manner. Furthermore, it must exercise restraint. It must learn to distinguish between our self-interests as individuals and the interests of Cornell. They are often, but not always, aligned. Charlie Wilson's half-century-old aphorism, 'What's good for General Motors is good for the country', adapted to our context (i.e., 'What's good for us is good for Cornell') contains a lot of truth, but sweeps in a healthy modicum of error as well. If the Senate never sees a faculty perk that it doesn't like, if it adopts a strategy that asks for the moon in the hopes of at least getting a piece of cheese, if, in short, its responses are totally predictable, how can we expect the administration to give the full measure of serious consideration and deference to faculty viewpoints that I referred to previously? We must not shirk from our obligation to forcefully give our best advice and

perspective, but we must be ever vigilant to the pervasive human failing of equating one's own self-interest with the common good.

"I deeply believe that it is in Cornell's best interest that faculty governance become firmly established as a vibrant forum for faculty participation in decision-making. Faculty governance will not make us a great university, but its absence will impede our pursuit of this noble goal. It cannot succeed without serious effort on all our parts. It will now be Bob Cooke's primary responsibility to ensure a steady flow of meaty issues for the Senate to chew on. But it will require more than his efforts. It will take the hard work, restraint, consultation, mutual respect, and dedication to faculty governance on the part of both the administration and all of you.

"Now it's come time for me to say good-bye. It has been an exciting five years. It would take me too long to acknowledge the help of all of the good people I have worked with, but I do want to especially recognize the advice and support of my colleagues and friends Kay Obendorf and Dick Schuler, chairs of the FCR Executive Committee, and Bob Lucey and Kathy Rasmussen, the Associate Deans of the Faculty. I also want to thank all of you, those with whom I have agreed, and those with whom I have disagreed. All of us, in the broadest sense, have been working the same side of the street. It has been a singular honor for me to have been able to represent you, to work on your behalf, and to advocate for you in the pursuit of an important goal in which I deeply believe." (Applause)

8. GOOD AND WELFARE

Professor J. Robert Cooke, Agricultural and Biological Engineering, and Dean-elect of the University Faculty requested permission to read a brief letter from the Dean-elect to the outgoing Dean of the Faculty.

Professor Peter Stein

Dean of the University Faculty

Cornell University

Dear Peter:

Today's Faculty Senate meeting brings this semester to closure, but today's meeting also represents the culmination, or near culmination, of your term as Dean of the Faculty. We wish to recognize this milestone and to salute you for your considerable and sustained leadership contributions as Dean of the Faculty.

Your abiding belief that the University's welfare is enhanced by an energized and active faculty governance apparatus has been manifested in many ways. This restructured and revitalized Faculty Senate is surely one of the enduring parts of your Deanship legacy.

As a symbolic reminder of your leadership and energy as Dean, I've attached a copy of the enabling legislation for the Faculty Senate with this note.

We thank you for your tireless devotion on our behalf.

Sincerely,

J. Robert Cooke

Dean-elect University Faculty

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

Respectfully submitted,

Kathleen Rasmussen, Associate Dean and Secretary of the University Faculty