

A MEETING
OF THE UNIVERSITY FACULTY SENATE
WEDNESDAY, MAY 10, 2017

1. CALL TO ORDER

Speaker Alex Susskind: “Good afternoon, everyone. I hope all's going well today. We have a very full agenda, so I'd like to get started. The first item is just a couple of consent items, the approval of the [April 12](#) and [April 19](#) minutes. And so without objection, we will approve them.

“And now we can hear from Charlie on dean of faculty matters first.”

2. FACULTY MATTERS, DEAN CHARLIE VAN LOAN

Dean Van Loan: “We will talk about this, but I thought you would be interested in seeing that as a warm-up.

“Just a couple of quick announcements, then we'll get to the calendar, and then the two resolutions after that. First, if you go to the commencement office, there's a whole wall of aerial photos, and every one of them has this little empty tiny square, which varies from year to year and weather to weather, but it really is an important day, and it's great to have a terrific faculty showing. So enough said. If you look carefully, there's always empty seats. Fill it up, okay?

“Two things from students. From the graduate students, they passed Resolution 14. You may have been following this in "The Cornell Sun," concerned with consensual relationships between supervisors and students. And if you were

around in the senate two years ago, November of 2015, a bunch of resolutions showed up and were rejected, three of the four were rejected.

“Anyway, this is a very important topic, and it's going to be revisited. Over the summer, myself and other faculty will work with graduate students basically to get our head around the issue and study what other schools do in this arena so that, when we come back in September, we're sort of ready to have productive senate discussions on this. There's a little web page on the DOF site that has information about this.

“The undergraduates passed a resolution concerned with exam scheduling. It's kind of a coincidence, because next year, as I'll mention with the new calendar, whatever it is coming down the pike, we're going to revisit lots of stuff, including how finals are scheduled and also prelims. And we have a great OR department with experts in scheduling, and they are looking at prelim scheduling to make that a more satisfactory arrangement.

“This is an aside. Sometimes these resolutions come out with things that are kind of really way out there. For example, part of that resolution is they would like to have a 4- and 48-hour exam rule. So all these things are interesting. They will all show up next year in some committee that's going to look at this stuff. Whether or not they're way out there or sensible is irrelevant. We should be glad that they are thinking about this stuff, and we will pursue it.

"I think I mentioned last time, I collected all these comments on snow days.

There's a 100-page PDF on our web site, so this summer you can curl up with that on the beach and see -- it's very interesting to read all these comments, everyone telling a different story, but there's some real serious stuff in there.

Some parts of the shutdown protocol have to be revisited, and I hope to show up in the fall with some concrete stuff.

3. ACADEMIC CALENDAR (DISCUSSION AND VOTE) [REBECCA STOLZFUS \(VICE PROVOST FOR UNDERGRADUATE EDUCATION\)](#) [CHARLES VAN LOAN \(DEAN OF FACULTY\)](#) [The Report of the 2016-17 Academic Calendar Committee - Senate Presentation \(4/19\) - Ballot](#)

"Here is the calendar discussion. I will do a little brief review real quick, and then Q&A, as much as necessary. Well, let's try to keep it under 15 minutes, so that the other items can get proper time.

"We are one of five assemblies, and the way we work, every assembly was asked -- the voting members were asked to rank the three options. Everyone had a little box they could fill out, to put any kind of comment in there; for example, I don't care which one you pick or I hate them all, or whatever.

"But the fact is everybody, every voting member in every assembly, including us, was asked to rank. We are the last ones. This is still ongoing. This was taken this morning, and you can see the results. Very high, and we are proud the assembly stepped up and got good turnout, close to 95%, almost to 100%.

“There are two committees that paid attention to this; one is the Calendar Committee, and the other is the Educational Policy Committee that hangs off the senate, and you can see the voting there. If you look at that, there's sort of a heavy interest in -- the modified calendar seems to dominate here. However, this goes to Mike with comments, as provided by the respondents, and it's not like this has to be crystallized into this is the winner or this is not a winner or here's a score for this. It is not that.

“Mike looks at that stuff, we'll talk to deans and so on about it, because some of these calendars have financial ramifications. If you spend orientation, it might cost some bucks. That has to be looked at. We didn't look at that, but Mike will have to factor things like that into the final decision.

“I don't know how long that's going to take. Kent took over the summer, and early in the fall, I think, the last Calendar Committee made the announcement. So that's the timeline.

“(Off mic.) the employees, a little more variation there. A lot of it revolves around I haven't had Memorial Day weekend with my family in 25 years, so the commencement thing is unpleasant for many of our employees. University assembly has members from the other assemblies. This is the group that has (Off mic.) individuals may show up behind several numbers here. If you are a

member of the SA and UA, you are up there twice. Rob Thorne is a senator, on the ETC and Calendar Committee, so he's up there three times.

“Any questions?”

“But the thing is, instead of having the assemblies react to us, we want to have them feed into our thinking. Here it is. You probably made up your mind, or your department, but you want to have this out in the open when we show up. Anyone looking at all the responses to the surveys and stuff sort of know how faculty and departments think. It's all over the place. But anyway, I appreciate the California remark.

“This is a quick review. Here's our current calendar, and we have the 13-day exam period, the sort of early February break. This is a three-day orientation, but one weekday showing up there, so it's a very short orientation period. There are New York State rules about how many green tiles and yellow tiles you have and so on, so they are definitely constraints. Also, the one gray tile you see over there, that's the senior days. It was compressed last time.

“The modified calendar expands orientation, puts two extra days after Thanksgiving, positions the February break so that it's always after 24 class days. We have a slightly compressed study exam period. And senior days, we'll have to think of a new name for that. Those four gray tiles you see there, right in front

of the purple commencement weekend tiles, that's expanded. This is back to the way it sort of was five years ago.

“The early commencement calendar has the same exact fall. It differs in the spring. How does it differ? It shoves everything up two weeks, but gets rid of February break. And what that means is that first green tile you see up there is eight days before what it is now.

“And the in-between break, the December/January break, is shortened. It depends on what calendar year it is. It could -- 28 days, 29 days. It varies, but it is definitely shorter. Roughly speaking, you might want to think of it, the in-between break is two weeks shorter. Summer starts two weeks earlier. That's the executive summary of that.

“Let me go on. We can answer questions on anything you want. Just two final thoughts, basically work that's been done since we last chatted three weeks ago, or reminders of some things. You have to be concerned about the exam period. If you compress it, are we inviting conflicts and bad things to happen? And there are two groups out there, one in Operations Research, one in the Hotel School, both of which are experts at scheduling and so on, have software that's used for this purpose, and the high-level take-away is there's no problem in this regard.

“The things you look at, and these are dials you can set, you want to minimize back-to-backs, direct conflicts, the 3- and 24-hour rule. Two of those, the last two I mentioned really are rules. The other one is the guideline, but in the optimization, you can weight these things differently.

“When we get down to it next year, we'll really play with those dials and really get it right, get it perfect. Right now, the take-away is this is not a problem.

Interestingly, in all the discussions we have had with students, this was mentioned, but it is not -- there's not a big-time concern about this.

“The second thing is this. This is really just step 1. All next year, we have to spend a lot of time getting it right. Orientation is expanded. Exactly what are you going to do? We are not going to stuff it with too much stuff, so we have to pay attention to that.

“If you have this expanded senior week, how are we going to manage that? We should revisit the whole thing about makeup exams, about scheduling exams and all that kind of thing. If we have the early commencement calendar, how are you going to do that? How are you going to tell all these parents that they have to change their reservations two years from now. So there's tons of logistical questions about that. If that December/January break gets compressed, how do we deal with that?

“So there's tons of stuff that remains, and it's extremely important stuff. It is not over right now. A lot of these are EPC-related things. We'll work on these through the EPC and with students and staff and whatever, but this is a very important thing.

“I think that's it. Oh, anyway, sorry for all the paper. Maybe we'll figure out for next year how to do voting in a better way; but there's a green ballot and, before you leave, you should have filled it out.

“Let us just back up. Any questions whatsoever on any features of these calendars, anything?”

Senator Linda Canina, Hotel School: “When you say the scheduling of the exams, it's not a problem; I don't know what that means exactly, because I think it's a problem right now, where students especially in Engineering have chemistry or physics and math on the same day.”

Dean Van Loan: “There are two parts, end-of-term stuff, which includes final exam week, projects, final papers how that all falls in. We are hoping that with this sort of thing right here, professors will be able to wrap up their courses in a more graceful fashion. We have to still figure out what kind of rules will we have about what you can put on those two days.

“There may be things we can do in those units where big projects sometimes are there with final exams, and that whole scene can be addressed, as sort of that

thing I eluded to, like next year, we have to look at that. In terms of what the optimizers do, we have these two groups I said we are looking at things. There you go in and you try to minimize things, like number of 3 and 24s. Recognize, there are about 40,000 exams given.

“I am happy to share off-line. Some of the simulations say that the number of 3 and 24s is in the dozens. It's very small. Of course, when it's in your class, means perhaps a lot of extra work for you, but these optimization tools, and there's been scientific progress in scheduling in the last few years, that these can be reduced. They can never go completely away.

“And maybe you are eluding to this as well, that in an exam period, you likely have the big courses done early for grading purposes, but what does that tell freshmen; all your big courses are front-loaded. So again, these are things we can work on.”

UNIDENTIFIED SPEAKER: “I don't think it's the number of overlap. It is the number of students that it impacts.”

Dean Van Loan: “But what is fed into these simulations? What we did here is we took spring '16 and fall '16 data with actual this number of students and these courses, and we can address these things. It is not going to be perfect, but the software we have, the talent we have here on campus to look at these things can

take that into account, that your class is loaded with freshmen, and they are also taking these other nearby courses. It is part of the thing.

“Remember this as well; that amongst our peers, even eleven days is a long exam study period. Our peers seem to manage. I'm not saying they have it right, but this is not a radical compression, by any means, to put 20 exam slots spread over seven-plus exam days.”

Professor Csaba Csaki, Physics: “I am wondering if their committee was thinking about there can be any flexibility about the date of the spring break. For example, next year, it turns out the Ithaca Schools spring break is actually one week before the scheduled spring break, and there will be a lot of unhappy employees when they see that. And the question is if there is any way to be somewhat flexible.

“And clearly, this year the spring break was way too late in Ithaca to do anything about it; but next year, it's going to be in the March 26 period, which sounds like a reasonable option.”

Dean Van Loan: “A couple of things. First, these are frameworks. It means hey, we are going to have two breaks. You can fiddle with things. So perhaps move those red tiles around. Some other facts: You have a course, you have a syllabus and you have done this course a couple of times. If that red bar moves, you may have to do a major rethink of your syllabus.

“It may or may not. On the other hand, the Ithaca Schools, all the schools in the surrounding counties are pretty much on the same schedule. They don't tell you their calendar until -- right now, they just released next year's calendar. We can't do that. We have to fix our calendar years in advance.

“That is the whole point. So it's hard. Sometimes the red tiles may land on Easter, slash, Passover. Sometimes they don't. What we sort of thought is this, and we can't be bullies, because we aren't the only show in town. Ithaca College has concerns here as well. What we think we can do is have sort of a presence. When they schedule their spring breaks, we make sure we have a good profile down there, to perhaps lobby this way or that, but it's not exactly easy what you are saying, to move that around, because there are other plans. We do travel plans far in advance, perhaps.

“But that's definitely on the table. This is a framework. Mike gets the frameworks. It's still up for grabs whether we can tweak things this way or that. The thing with the child care days, we paid a lot of attention to that. We've removed two August child care days. They are sacrificed because now the February break is not pegged to Presidents' Day, so there's no net gain here in terms of child care days.”

Professor Csaki: "Is it possible to move it for next year, for example? And what would go wrong? Because I don't know too many things that are already set a year in advance."

Dean Van Loan: "What you are sort of saying is the public schools should dictate when our -- that's what you're saying. I guess in the end, we feel we can't do that in a lock-step fashion. If people think that moving the five-day break up a notch or down a notch would increase likelihood of a coinciding with the public schools, that's fine. But in terms of having a flexible calendar that way, we just felt at this point that we can't do that.

"But you all have a little box on your ballot, things that are not captured by the ranking. And this is where, if you feel something like that is important, all these comments will be assembled and will be passed on to Mike.

"Okay. Is it the green one? Yeah, use the back side, if you feel strongly about something like that. So the proposal is to -- or comment might be that we should determine our five-day spring break to coincide with what the high school chooses, the public school chooses, when possible, yeah.

"We spent a lot of time on those concerns. We just came down on a certain way.

Any additional -- yes. You have something to say?"

Senator Roger Gilbert, English: "I am just wondering, is there a reason why spring classes can never start on a Monday?"

Dean Van Loan: "It has to do with the number of tiles, sort of working backwards. An advantage of this is Martin Luther King Day is never an interior holiday. And if you put that green tile in there, and for certain years, that would sit on top of Martin Luther King Day. And what happens then? So they all look like this. You will simply relabel these dates, but the pattern stays the same.

"And one fringe benefit of that, if we all think hard about those last seven class days, if you develop a strategy, a point of view, you can apply it for both semesters. So there's some value in having a lookalike there at the end of the semester.

"Okay, oh, yeah, there's a question."

Senator Michael Mazourek, At-Large- Member: "Just a quick voting logistics thing, maybe for next time. It feels a little, not terrible, but a little awkward to be in a -- while we are in here dropping off ballots, and people have might have to leave early, and just dropping them off in an open box in the Temple of Zeus area. So I was wondering if we could do something more towards a closed box or maybe moving it more toward our purview."

Dean Van Loan: "First of all, the short-term, please, if you have to leave early, please give it to either C.A. or Karen before you leave, or to your neighbor, if that's okay. Whole thing about voting, making it efficient and whatever, it's a subject for the summer and will show up in the fall with a better plan for this

stuff. We don't like clickers. This is a little clunky. It is really reliable by hand and we can really tabulate the things carefully, and it's also faster, several votes to take place, but good point.

“Okay, so fine. So we can move on to the next agenda item. You can still email the Calendar Committee, you can still, final thoughts. As I said, you write stuff on the back of that ballot, it will be fed into the hopper, okay.”

Speaker Susskind: “Does anyone else need a ballot that doesn't have one? Okay, I'll bring one right over.

“Our next item on the agenda is the resolution on academic freedom. There will be a vote following. Risa Lieberwitz will come up.”

4. RESOLUTION ON ACADEMIC FREEDOM (DISCUSSION AND VOTE) – [SENATOR RISA LIEBERWITZ, REVISED STATEMENT, THE RESOLUTION AND SUPPORTS THE STATEMENT](#)

Senator Risa Lieberwitz: “Thanks for being here on a beautiful day. We discussed the resolution to support the statement on academic freedom the last time we met. And we got some responses to the proposal, as it was put in front of you last time. So the first thing we need to address is a slight amendment that the sponsors to the proposal or the resolution made in response to some comments.

“The first change -- we'll deal with that first, the amendment, and then we can address the statement on academic freedom as a whole and have further discussion prior to the vote. What we did was to make the changes you see in red here. And one comment we received had to do with the original statement, which proposed more of a prescriptive statement of that Cornell should adopt policies that prohibit unauthorized recording or taping of classes.

“And one comment we received was that, in itself, seemed somewhat controversial and it might or might not be a good idea to have those policies. So we changed that to Cornell should consider whether to adopt policies that prohibit the unauthorized recording or taping of classes. And that consideration could be part of the general review that we're recommending here in the statement, the general review of academic freedom policies, to see if they should be strengthened in various ways.

“The other change deals with another comment that we received with regard to the issue of surveillance. The original statement had said the administration should commit to that Cornell will refrain from monitoring student organizations or political groups and their faculty advisors, and that it will actively prevent any non-university or external organizations from engaging in the surveillance of such groups.

“We received comment saying that would be very difficult for Cornell to prevent non-university organizations from engaging in surveillance, so we simplified it.

And now it says that we ask the administration to commit that Cornell will refrain from engaging in surveillance of student organizations or political groups and their faculty advisors.

“Those are the two amendments that we made in response to comments we have received. Shall I just make a motion, or should I -- the simplest way to do this would be to have unanimous consent. So I would ask for unanimous consent to make this amendment. And should I ask for all in favor? Or is that your job?

Okay.”

Speaker Susskind: “All in favor?”

“Opposed? So moved.”

Senator Liebewitz: “Let me do a quick introduction and kind of summary before seeing if you have comments or questions. As I said last time, the statement itself, in creating it, was created because of the moment that we find ourselves in, as a preamble to the statement says: We are in a time where there's a lot of vulnerability that's been created after the election in November, and actual problems of threats that have been made with regard to freedom of speech and particular groups being vulnerable.

“In this current climate, we thought it would be useful to have this statement of academic freedom. There is really three parts to the statement. One of the three parts has to do with a reaffirmation of what we already have, so we begin the statement with saying that Cornell should reaffirm the university faculty's 1960 principles of academic freedom and responsibility and to reaffirm the statements in the campus code of conduct dealing with freedom of speech, and to reaffirm processes of hiring and promotion, that those processes should be free from being influenced by candidates' political viewpoints or actions; and also, they shouldn't be issues such as race, gender, class, religion, sexual orientation or gender identity.

“Those are reaffirmation. Those are right here, in terms of the reaffirmation aspects that I just described. Then there were certain things that are more affirmative in terms of university commitments that we ask the university publicize the series of guidelines and should refrain from engaging in surveillance.

“Then there are other prescriptive kinds of things that we have as well, that we ask Cornell to commit to; that Cornell will commit to foster and cultivate existing Cornell programs and departments that concentrate on study and knowledge about minoritized or disadvantaged nationalities, religions, populations and other groups, particularly those that have been a target of discrimination. So

basically to ask Cornell to commit to continue to support and to foster programs such as ethnic studies and gender studies and racial studies.

“Another commitment that we ask for, legal resources to be committed by the university to support and defend faculty, in the event that external entities or organizations attempt to intrude on academic freedom or free speech. Those are more kind of active things we ask Cornell to do, and those are up here as well, in terms of the ones I just talked about, to commit to foster and cultivate and to commit legal resources.

“Then a final piece of it, the third piece, is to say that at this point, it would be useful for Cornell to work with the governance bodies on campus, including the faculty senate and the student assembly and the other governance bodies on campus to review existing policies to see whether there are aspects of those policies dealing with academic freedom that could be revised in ways that strengthen academic freedom.

“That would probably be a good idea anyway, because it's been a while since we looked at that; but particularly at this time, the statements put forward the view that it would be useful to review them, to see if they would be strengthened. And any changes of that kind would come back to the faculty senate, if there were changes in policy.

“We attached to the statement some excerpts to give examples of AUP policies that exist that we might consider, for example, on extramural speech, to make things more explicit on issues of politically controversial positions, and there may be other kinds of documents that we would look at that we might want to consider in reviewing and revising academic policies.

“So that's my introduction, and hope it's been useful to kind of bring everything back in front of you. Are there questions or comments?”

Senator John Weiss, History Department. “I came to Cornell in 1974, at the time that Nixon resigned. In fact, loading up my moving van, I missed the spectacle of him resigning, unfortunately. I followed the whole thing on Watergate.

“When I arrived here, I was told something I wasn't told during my interviews, was that Cornell required you to sign a loyalty oath, so I said well. So I started bracing myself for a controversy. Well, what happened was that my department never bothered to enforce that so-called requirement, so I just thought I'd bring a little history into this whole thing.”

Senator Lieberwitz: “Yeah, I think it also tells us that we don't really know what will happen. We can get surprised about things that happen. I mean, obviously, everybody watching the news last night was a little surprised what was going on, and so it's good to have policies on the ground where we are, where I think we are satisfied that they're as protective as they can be.”

Senator Tim Devoogd, Psychology. "I have no concern about the content of this, but a concern about the clause that says: In the current climate of silencing and fear, where I think that the principles of academic freedom should apply all the time. And it may not be unanimous across the group that everyone regards the current climate as being silencing and fear. So is there a way that just that clause can be taken away?"

Senator Lieberwit: "Let us see. Where exactly are you -- ."

Senator DeVoogd: "It was on your first slide.

"You just passed it.

"Current environment of silencing and fear."

Senator Lieberwitz: "It sounds like you are asking whether we should just say to commit to publicize the series of guidelines pertaining not only to academic freedom, but also to academic responsibility, period. Would that be what you had in mind?"

"Right, to put period after "responsibility?"

Senator DeVoogd: "After "protected speech"."

Senator Lieberwitz: "Okay, just period. Speech, period. I think that would be fine. Looking over at my cosponsors there.

"Matt, you think it would be fine?"

Senator Matthew Evangelista, Government: "Okay, if you are looking at the actual document, it would be Number 2, under the part that says: In addition, we call on Cornell to endorse and formally commit?"

"I think it would be fine. It's the kind of thing we could ask for unanimous consent."

Speaker Susskind: " We are asking to put a period after "speech," and we can ask for unanimous consent, once again. So all in favor?"

"Opposed?"

"Any abstentions? I forgot to ask that last time. Okay. I think we're good, then."

Senator Lieberwitz: "Okay. Great. Thank you. Does that do with what you were thinking about? Okay, great."

Senator Dan Brown, Animal Science: "In terms of fear or restrictions, prior restraint on intellectual academic work, the greatest threat from what I see is not within the university or the government, and it's something that's been an increasing problem for the last 20 years, and that's the power of private industry and corporations to squelch research publication. There are a couple of structural things in the way that we deal with this that has left Cornell very vulnerable to that. There is area of research we can't conduct because of the fear of legal action. It has really become a problem.

“So I guess you say outside organizations, and hoping that Cornell would defend academics or investigators from attack from the outside somewhere in your slides there. And hopefully that would include private organizations, not just government, not just that sort of thing.

“We have a serious problem where the organizations that will limit what you can do research on, whether you can use their products as part of research, whether you can use a process as part of research, and then attack the journal, attack the publisher if you dare come up with data that contravenes what they want. This has really become a problem. Is that included in this academic freedom resolution?”

Senator Lieberwitz: “Well, everything requires some interpretation. I mean, one of the things that you have pointed out that's in the resolution has to do with asking a university to commit to providing legal resources and expertise of counsel's office to support and defend faculty in the event of external intrusions on or other violations of Cornell's academic freedom and free speech protection. So what you described might well fit into that.

“The provisions in this are not so detailed that they give a list of instances that would necessarily be included in that; but certainly, one could make a strong argument that if there were an attempt from external organizations to enjoin the publication of research findings that a faculty member had done, then that may

well be the kind of thing where we'd hope that Cornell would provide the legal resources to support faculty in their mission to put their publications out in print or in the public domain in some way. So it well may be that.

"There may be other instants that could also fit into this. For example, if there were a subpoena served on a faculty member, asking for their emails pertaining to their research or pertaining to their associations, that may well be in this area as well. So I don't think that we can detail all of the areas that would fall into that, but I think the example you gave may well fall into that.

"I would also mention, in terms of your concern about the role of corporations; in particular, for-profit corporations on research, there is a very extensive report that a committee wrote -- I forgot exactly the year. It might have been 2003. I could be wrong on that. 2005, something like that -- on issues of industry-university relationships, particularly where there are so-called strategic alliances, corporate strategic alliances, giving large amounts of money to the university for research.

"So there is quite an extensive report. I am sure it's on the university faculty web site somewhere, and I certainly commend people to read that, because it is out there. And as far as I know, Cornell has not adopted the recommendations in that. That is apart from this resolution, of course."

Senator Richard Bense: "Risa, I have a question about Number 3, the first part of it."

Senator Lieberwitz: "This one up here? Because the numbers aren't here. I am sorry."

Senator Bense: "It starts: To commit that Cornell will refrain from engaging in surveillance. My question is this: I mean, that covers student organizations, political groups and faculty advisers. Would it cover or is there some other section of this resolution that would cover the University monitoring faculty emails?"

Senator Lieberwitz: "I suppose that in surveillance of these groups could include and advisers could include surveilling their emails. Again, it's not detailed in there. I think one could argue that it does."

Senator Bense: "It is more of a general question. So my emails to anybody, can those be monitored under this resolution?"

Senator Lieberwitz: "Again, it's something where I can't read that and say oh, yes, definitely, because it hasn't been adopted yet, so it may well be in Cornell's committing to do certain things that it could be further detailed. So right now it says that Cornell should refrain from engaging in surveillance of students organizations."

“Now, surveilling their emails would be surveilling of the organization, certainly. Engaging in surveillance of faculty advisors for groups, if you are looking at their emails, I think most people would say yeah, looking at people's emails would be surveillance of the organizations.”

Senator Bense: “I asked this question last year and got the answer that Cornell can monitor faculty emails. They are presumed open, just ordinary emails.”

Senator Lieberwitz: “Well, that's a legal question, as opposed to a policy question. It may well be that Cornell, because they own the email, can say well, legally, we can look at people's emails. What we are doing here is asking Cornell to commit to certain things, and this would be this refraining from surveillance. Now, in working out the details, perhaps some details could be put on emails.

“Another aspect of looking at the academic freedom provisions that we have and that we have in here specifically, we should review and revise academic freedom and free speech provisions in order to strengthen academic freedom and free speech. Within that revision process, it may be that because emails are such a common way of engaging in communication, that's one way that our policies could be updated to protect academic freedom.”

Senator Bense: “That is what I want to hear.”

Senator Hayden Pelliccia, Classics: "Can we look at that slide that we just amended, please, again? Does the end of the first sentence fall under the criticism on the basis of which we amended the last, that paragraph in the --."

Senator Lieberwitz: I am sorry. Could you speak up a little bit?

Senator Pelliccia: "Does the end of the first sentence, starting with "in a climate," fall under the same category, into the same category as the basis of which we removed the end of the last sentence? And if it does, should maybe the entire document be revised with a view to removing appeals of references to the current climate or --."

Senator Lieberwitz: "Well, it seems to me you are raising two potential things: One is should the entire document be revised to remove "in the current climate."

Senator Pelliccia: "Should we just address the first question. In the climate of growing political monitoring and intimidation, basically pretty much the same as given the current environment of silencing and fear; if we should remove the latter, should we also remove the former?"

Senator Lieberwitz: "One possibility would be to say to commit to publicize a series of guidelines pertaining not only to academic freedom, but also to academic responsibility, period.

"I think that the "in a climate of growing political monitoring and intimidation" here relates to the next sentence, which is: For instance, Cornell should consider

whether to adopt policies that prohibit the unauthorized recording or taping of classes. So that the concern is that in this sort of climate, there is a particular concern with potential for unauthorized recording or taping of classes. So factually, that's the kind of thing that people are concerned about occurring. So I think that --."

Senator Pelliccia: "Well, the whole thing is predicated on the possibility of these types of nasty things happening, right? I mean, we don't actually need that in a climate. Just if those things happen, we're opposed, right?"

Senator Lieberwitz: "Right. Yeah. So another possibility would be period after "responsibility," and then just Cornell should consider whether to adopt policies that prohibit the unauthorized recording or taping of classes at the same time, et cetera. I mean, I personally think that in a climate of growing political monitoring and intimidation makes sense there."

Senator Pelliccia: "These guidelines apply, even if the climate changes, right? We still want to commit to them as permanent principles."

Senator Lieberwitz: "Yes, absolutely. Right."

Senator Evangelista: "I am a co-sponsor with several others of the resolution, so I just wanted to comment on that. I did favor taking out the last line, partly because I saw it as partly redundant; but I don't think it's fully redundant. And I

think the difference is, as Tim expressed it, not everyone here feels fear or feels they are being silenced. That's fine.

“But there is growing political monitoring and at least attempts at intimidation, and I think it's different enough not to be fully redundant, and I think it's relevant enough that it should be there. We are asking to commit to publicize these in the climate now. That is what prompted us to want to commit to publicize our commitment to academic freedom.

“I disagree, actually, a bit with Risa's presentation, that it's a product of the election in November. I don't think so. It's of longer standing concern, but it is the climate that prompted us to do this. So I think the literal reading is fine and, as I say, I don't think there's so much redundancy that we can't keep it. So that would be my position.”

Senator Lieberwitz: “Also, just following up -- thanks, Matt. The publicizing is particularly important now, and I think that's the point that's being made. It is not saying we should have these guidelines only in, or these rights only in a climate of growing political monitoring and intimidation, but commit to publicize these at this moment. And then we removed it from the end.

“Also, I'd note that we have in the appendixes to the statement some examples of intrusions and interference with academic freedom that have been occurring in different locations and different units, so that in terms of the kind of factual or

evidentiary base, there are some really concerning kinds of actions that have been taken that have, in fact, been quite intimidating and engaged in monitoring.”

Professor Magnus Fiskesjö, in Anthropology: “I am also the faculty advisor for undergraduate student group called the Tibet Initiative. Two weeks ago, they had their lawn exhibit, which has just been remounted outside, torn up and partly stolen. And I feel that there's -- it's very encouraging that you have identified as a threat to academic freedom on campus also external entities and governments, as I remember the phrase there, because I feel another mounting growing threat is foreign governments who want to monitor their own nationals on our campus. I am thinking in particular of China.

“There has been multiple incidents around this country and others of interference of that nature, pressure to universities to not invite certain guests that disagree with that government, with the Chinese government, and so on and so forth. So I think that is something that we need to be aware of.

“And I am encouraged that you have noted external entities. There could have been a phrase to identify them as also the foreign governments as the threat, since I expect that to become more and more of a threat.

“There is a place where you said on point 5 to commit legal resources to defend -
- support and defend faculty in the event that external entities, organizations

intrude upon academic freedom. And I was puzzled that students are not included there, because I think what we see are examples of foreign governments instructing their people to act in certain ways to impinge upon academic freedom on campus.

“But I'm not arguing that should be added. It may be that in your resolution -- I think it is a very good resolution -- that maybe in your resolution you have other ways to cover this support also for students, to guarantee their right to express themselves. Thank you.”

Senator Lieberwitz: “Thank you. Any other comments, questions? Anybody else? Have I missed any hands here?”

“In terms of the actual resolution, do we have that up here again? Excuse me? Or at all? Okay.”

“So we have the actual statement up here. The actual resolution that you're voting on has a lot of whereases, but the actual resolution is: Be it therefore resolved that the faculty senate endorses the attached statement on academic freedom. And of course, that's what you're voting on, is the resolution to endorse the attached statement on academic freedom. The whereases are to set it up.”

“Any other comments or questions? Should people do the same thing; vote, and then put something on their way out?”

Speaker Susskind: "Complete your ballot, and we'll put them in the box, along with the others. Thank you.

"Now we'll move forward and we'll call up Richard. He is going to talk about his resolution on judicial administrative procedures, and I believe he has also an amendment that we'd like to discuss, so you can come on up."

5. RESOLUTION JUDICIAL ADMINISTRATOR PROCEDURES

(DISCUSSION AND VOTE) – [SENATOR RICHARD BENSEL](#) – [THE](#)

[RESOLUTION](#) – [SUBSTITUTE AMENDMENT](#) –

BACKGROUND - [McBride A](#), [McBride B](#), [McBride C](#), [Union A](#), [Union B](#), [Daniel Marshall A](#), [Daniel Marshall B](#), [Daniel Marshall C](#)

Senator Bensel: "So one way or another, you have heard a lot from me this semester, and I don't mean to impose myself any more than I think is useful today. Might catch up just a bit, that the university hearing board did meet on the Mitch McBride case and decided his leaking of the document from the working group was not covered by the code. And because it was not covered by the code, even though they felt what he had done was wrong, he could not be punished for it.

"And because there was no punishment, the OJA could not appeal the decision.

If there'd been any punishment at all, they would have been able to appeal the

decision, even though the hearing board, majority of them, thought it wasn't covered.

"That is just to catch us up. A couple things happened on the way to that decision. One of them -- let me step back for a moment and just review what the OJA did in the Mitch McBride case, because that is the proximate reason for the original resolution and the substitute resolution.

"What they did in this case is provide -- be very clear about what they did -- is provide a format through which the senior vice provost could charge Mitch McBride, file a complaint. Then she said she withdrew the complaint; they turned it into an incident report. An incident report cannot be withdrawn, and so he was charged in effect by nobody, even though she had done it originally. They then moved to deny a public hearing to Mitch McBride, so that only he would meet with the hearing board in the OJA.

"They then moved, because he hired counsel from New York City -- and it cost him a lot of money, and the reason he was doing that is because it was a threat to his law school career -- they moved to deny his counsel from participating in the hearing.

"At the very end, and this comes after our last meeting, they moved to deny the presentation of exhibits that he had prepared, that he and his counsel prepared, and to block the testimony of witnesses.

“Now, all of that was for the purpose of prosecuting Mitch McBride. And in doing this, the OJA was acting as a prosecutor for the central administration, for this original complaint that the senior vice provost had said she'd withdrawn.

“That is one of the problems -- we'll get to the substitute resolution in a moment - - that's one of the problems the substitute resolution is intended to address is the problem; when a student faces a senior administration official, the office of the judicial administrator acts as a prosecutor and, as all good prosecutors are, attempts to disable the mounting of an effective defense against the administration charges.

“That they did, I think, extremely professionally. I think they were within the modes of operation and so forth that the OJA routinely uses. Very few cases go to the hearing board. Most of the cases are like this: You throw everything at the defendant, go to the defendant and then say, like plea bargaining in any regular prosecuting case, you say all -- this is the Daniel Marshall case, if you want to think of it that way -- all these things you are being charged with, we'll only charge you with one, if you consent.

“That is not a fact-finding, truth-finding, ethical way to proceed in a community, particularly when the issue is political protest, which it was in Daniel Marshall's case, which it was in Mitch McBride's case.

“One of the issues the resolution addresses is a resetting, we hope, in the end, of the OJA, so that it no longer has the incentives to act as a prosecutor, as an arm of the central administration in cases involving political protest.

“But there's a broader issue here, of course, that was brought up in the Daniel Marshall case, the Mitch McBride case; the recent AFT election in which the senior vice provost, the day before the election, sent out a message in violation of her own order, warning graduate students that if the students unionize, there might be fewer graduate students.

“And then, of course, the most -- what I think is the most egregious one is the provost himself sent out a letter to the editor to the "Cornell Sun" the day before the Mitch McBride hearing, prejudging the case, expressing his full support for Barbara Knuth. I am not going to go through the letter. The letter's not accurate in its specifics or details, but that wasn't the purpose of the letter. The purpose of the letter was to bias the hearing board.

“Then perhaps more remotely, we have the case of the College of Business last year, which was also a violation of the code, in that it violated the policy rights, responsibilities, duties of this body.

“In all those things, this is the second big issue -- in all these things, the central administration can proceed now with impunity. There is nothing, there's no body, no second-guessing of these actions. They can just do them. I tried to

inquire about what exactly -- how the code covers, if it does, senior administration officials, and it does cover them. It covers them as employees of the university.

"As employees of the university, I said, the simple publication of this letter by the provost the day before the hearing board meets, that looks like a violation of something in university policies and codes and sense of justice. How would I charge the provost with this violation under the code?

Michelle Horvath said well, there are two possibilities. First, she said, all employees are covered, that the letter to the "Cornell Sun" was in the line of duty by the provost, so it was an employee action. And because it was an employee action, it would not be covered by the hearing board; that the provost would either be susceptible to review, discipline, whatever by the office of the president or by the division of human resources.

"That is not going to work. So I don't know the whole structure of Cornell's administrative structure -- I imagine the provost runs the division of human resources in one way or another. And certainly, the office of the president is so closely tied.

"So what we need is a revision of the code of conduct, which the University Assembly, by the way, will take up during the summer and into the fall. So this resolution, we can't do that. We don't have jurisdiction over the code of conduct.

All we can do is indicate our concerns with what forms and what issues and what things the University Assembly might take up as they revise that code.

“One way to think about this, and I think we should think very carefully about it, is that the code of conduct in some sense, it's partial, but in some sense is in fact the Cornell constitution. It is what, if we have anything, guarantees rights and ethical behavior on the part of all of us, staff, senior officials, faculty, students. It is that document.

“So it is the appropriate vehicle. Because otherwise, we don't have one, for considering how to bring back what I think is -- we could say that individual cases, they are accidents, they are mistakes, they are misinterpretations, but there's a real pattern here. And I think somehow bringing back the central administration's behavior so that it's covered by what I think are, I believe, to be our own ethical and -- ethical commitments and sense of justice.

“This really comes down to, I think in the end, and I think this is the way to see it, senior administration officials see Cornell as a corporation. We are employees. Our rights are subject to those kinds of things. Students are clients.

“There is another way of thinking about it, and that is we are an intellectual community, and everyone should be susceptible to the same rights, duties and responsibilities, and that includes senior administration officials.

“That is the purpose of the substitute amendment, is to get the focus on those kinds of questions, when the University Assembly brings it up.”

Speaker Susskind: “First we'll put up the resolution, and then this is the substitute amendment. And what Richard is asking for, again, is a vote for unanimous consent to accept the substitute resolution.”

Senator Bense: “What I'm asking for is unanimous consent to substitute amendment for the original resolution, which dealt only -- to substitute the substitute amendment for that text. That is unanimous consent. And then the substitute amendment would be open for debate, for amendment, for anything we want to do with it.”

Speaker Susskind: “So he's asking again for a vote to accept this substitute amendment by unanimous consent. Yes.”

Unknown Speaker: “Sort of a parliamentary inquiry. I don't see this as an amendment in the same sense as the things we have talked about already. I see this as a totally separate resolution. And I think under senate procedures, it can be argued for in this meeting, but there would have to be a separate meeting subsequently to consider it. So this is being directed to parliamentary people here.”

Speaker Susskind: “That is an option. And what we are hoping to do is accept -- with an objection, what we'll do now is we'll go to a vote to either keep the

original amendment in place or accept the substitute amendment. And then after that, we can debate and discuss. So based on your objection, that's what we'll do.

Okay.

"First, let's move to debate, then."

Senator Bense: "So we are doing debate on both the original resolution and -- we can debate either one.

"The original one, as it says in the bottom, just requests that proceedings in which a senior administrator prosecutes a member of the Cornell community be open and public if the defendant requests they be open and public. That was the only operative clause."

Senator-At-Large Ben Anderson, History of Art. "I am still puzzled. Has anybody read the text of the proposed new amendment, or has it been distributed in any fashion?"

Senator Bense: "It was on the web site, so yes, it was distributed. This screen has all the whereases. The next one, this is the resolved, the resolution itself."

Professor Paul Velleman, ILR. "I am confused about the process here. If we are supporting a revision, who would make the revision to the campus code of conduct and how would that take place, and does this amendment have any teeth to it, in effect? We are proposing, we are supporting, but we are not doing, right?"

Senator Bense: "That is our usual function. (LAUGHTER)

'We cannot do actually anything; but what is important here, the University Assembly, which some of us are also members of, will take it up, does have jurisdiction of the code of conduct. And so our action here would be information that they are certain to receive.

"But you're right. I said this the last time; if we have a real function in the university, it's as a moral conscience to the university. We have no teeth. It's basically it. We came closest last year in the spring to having teeth when the motion to censure the administration on the College of Business, which I think probably would have passed; but with Elizabeth Garrett's passing, we did not press it. That's teeth. That's an awfully blunt instrument. In this case, we are just expressing sentiment."

Speaker Susskind: "Any further questions? Comments?"

Senator DeVoogd: ""I have been involved in the judicial board for about ten years, and I guess my response to the first one, the original resolution was that there was a process in place, a process that should have been given and ultimately was given a chance to work, and did work.

"My response to this one is, again, that echoing what was just said, that it really doesn't do anything and that in the structure of the code right now, it indicates

that students, staff, faculty and senior officials are treated equally. So I don't see what's broken that this would fix."

Senator Bense: "Well, I would just repeat, they are not treated equally. For example, in the Mitch McBride case, facing a senior administrative official, his lawyer was silenced in the proceedings, could not proceed; while the senior administration official had two lawyers, who actively prosecuted Mitch McBride. "But this also covers many other things. The Daniel Marshall thing, which we probably should have taken up and so forth, Daniel Marshall, in the end, because of the publicity and because he had the foresight to record the interrogation by the police officer, in the end, Cornell offered to bargain with him and withdrew charges in return for which he said he would not comment further on the proceedings.

"That is not equal. We are not anywhere close to equal, if the same violation by a senior administration official is treated entirely differently than when they are prosecuting a student. We are not going to be able to make this perfect, but I can't see for the life of me how we can say this is a community in which all speech, all political -- and these are political protests we're talking about -- all political protests, all actions, all speech by whomever it might be are treated equally under the code. That is just not true.

“My own feeling, looking at the provost's letter published the day before the hearing, open letter declaring Mitch McBride's guilty and he should be punished to the full extent of the law, that's far more serious violation of the code of conduct of what we are as a university than anything Mitch McBride did.

“I think things are broken, that the office of the judicial administrator is able, for example, to move to close a hearing. They shouldn't be able to move to close a hearing if a senior administration official is prosecuting a student. That should be open.”

UNIDENTIFIED SPEAKER: “This is real quick. Does this mean the resolution would no longer call for open meetings? Because that's not in here. If that's the case, this is a totally different resolution. We can't consider or vote on it till next year. If you go back to the original resolution, it says that a defendant could ask for an open meeting, but it said only when a senior official is prosecuting a student or something like that, could that be the case.”

“Maybe, if you want a quick substitute amendment, make it go either way. In other words, if a person who's not a senior administrator is prosecuting a senior administrator, they could also ask for an open meeting, if they wish. I could see that as an amendment, but by removing the call for an open meeting and substituting instead what you have, it's a totally different resolution.

"I am willing to vote on something like this one way or the other, especially if it's orthogonal and everybody has a right to an open meeting. But the other one, no. It is too late for this year.

"Also, as pointed out, it doesn't add anything. We need to enforce upon the administration what is in the current rules. Repeating the rule isn't going to make them change. So let's vote on this one here, we'll vote on the next one next year and get this done."

Senator Bense: "I understand the parliamentary procedure. We can do that. We vote to not adopt the substitute amendment. That would return us to the original amendment. We could do that. I will say, and I made the argument when I got the ruling, but the ruling that it was germane came out of our discussion last time, in which there were several objections made that the resolution as it was originally worded was too narrow to really reach the problems we were describing.

"In response, we put together the substitute resolution, but it grows right out of that discussion. It's meant to encompass the open hearings -- for example, proceedings, da, da, da, that is covered by the last part of create an institutional structure in which students, staff, faculty and senior university officials are treated equally. I intend that to be -- I mean, that's our intended meaning."

Senator Vicki Meyers-Wallen, Biomedical Sciences. "I agree with Dan that it's too late to put a substitute resolution. I think what you have as an amendment is a different resolution, and it's too late for us to go there. It would have to be done next fall.

"And that's very sad, because I think there's a lot of good things in there; but I think we really have to say what can we do today for the shameful way this particular student was treated, which I do think, quite frankly, was very shameful. And we should try to do something to make this system work, because I don't agree the system worked.

"I think the student was pummeled into the ground and beaten up, and then there was a way out. But the problem was the student was pummeled and beaten into the earth. Shameful.

"So I think what we should do today -- we are going to vote on these, but what I think we should do today is adopt the original resolution, because I think that's what we can do today; and that in the fall, we'll have to look at it again.

Thanks."

Senator DeVogd. "If we are talking about voting on the original resolution, it talks about making a hearing public. Any respondent, whether it's a student who's charged with public drunkenness or an administrator charged with

stealing a computer or anything, respondent can request a public hearing. That is into the code. There is no mandate that it must be that way.

“What there is is a mandate that the chair of the hearing board, who is somebody independent of the office of the judicial administrator, the chair of the hearing board makes a determination of whether it's appropriate under those circumstances. That is as fair as it can get. That is the way it is now. That is the way it worked with McBride.”

Senator Bense: “I have to differ with that. The Office of Judicial Administrator was able, and the hearing board -- what is your title, Tim? I've forgotten.”

Senator DeVoogd: “Chair of the hearing board.”

Senator Bense: “The chair of the hearing board. So the chair of the hearing board entertained the motion. The point of the original resolution is that it should not be discretionary; that when a senior administration official charges a student, it should be an open hearing. And that should be not entertaining a discretionary decision on the part of the chair of the hearing board, but it should be open, that there should be -- look, it comes down to this, and again, we don't have any teeth, but in the end, what we want is a code of conduct that reconciles, readjusts the imbalance in resources, authority, ability to intimidate on the part of senior administration officials compared to students.

"It is only a start. What happened -- go through it again? There was an anonymous charge, supposedly the complaint was withdrawn. There was a motion to deny a public hearing. There was a denial of participation of counsel. That did happen. There was a denial of exhibits. That did happen. And the blocking of witnesses.

"Yes, it doesn't cover everything. That's the reason we had the substitute."

Speaker Susskind: "Right now what we are debating and what we need to decide right now is the original resolution, we'll vote for either the original resolution or the amended or substitute amendment. And then we can move forward after that. But until we do that, I think additional discussion is not a good use of time. So why don't I call the question.

"Those in favor of the original amendment, show of -- the original resolution, show of hands. In favor.

"This is just whether we're going to adopt the substitute amendment or we're going to stick with the original amendment. Then we can move forward on voting on the original amendment as before. Because he proposed the substitute amendment, we are giving him the opportunity to discuss that and present that.

"Now we are going to make a decision about whether we're going to stick with the original resolution or we're going to accept the amended resolution. Just by a show of hands, those in favor of the original resolution.

"We are not passing that. This will get us back to square one, where we started, then we will have to vote on which ever one emerges. So there will be a second step added.

"Show of hands in favor of the original.

"In favor of the substitute.

"Looks like the original resolution stands. And so now we, as a body, can vote on that, based on our original plan. The forms that you have, we can now vote on them.

"Yes, we should have some discussion now. At 5:01, can I get approval for us to continue for a few minutes for discussion before the vote? Is that something we're willing to do? I would say a few minutes, five minutes. Will we do that? Can we stick around for five minutes?

"We will have to count. We have less than 50, so we can't vote. So I guess we'll have to move to table. We will have to vote on this another day. Well, I guess meeting adjourned, without objection."

MEETING ADJOURNED