

DRAFT MEETING MINUTES TO BE APPROVED 12-13-2017

A MEETING
OF THE UNIVERSITY FACULTY SENATE
WEDNESDAY, NOVEMBER 8, 2017

1. DOF ANNOUNCEMENTS

Charlie Van Loan, Dean of Faculty: "I wanted to start by bringing up we are all stressed out and we are prone to all the stresses that our students are, so I think it's a good idea that in the senate, where we have to entertain opposing views and talk to one another, that we pay attention to all the things we ask our students to do. If we can't do it, then who can?"

"So a quick run-through, some announcements. I started this Monday morning message thing, where let's try it till December and see how it goes. The idea is just to highlight things that are of interest to faculty. There is information overload, so of course, the danger is we don't pay attention to things, but things do come up that are of interest to faculty and I'm just trying to capture some of these things here. In December, we'll talk about it and see if it's a valuable contribution.

"In September, we talked about the formation of a committee that's going to look into consensual relationships. As you recall, two years ago in the senate, there

was discussion of this. It did not go particularly well. The committee is set up, and there's the timeline. I would say in the fall, we are basically gathering information, doing research on various issues, and there will be public commenting all along the way.

“The committee has been formed, has these parts. I am co-chairing this with a graduate student, Anna Waymack, who put together the graduate student proposal in May that prompted this. We have a nice array of tenured track and non-tenured track faculty and post-docs, nice complements of graduate students and undergraduates.

“The idea here is we have more students than seats, that it makes it easier for them to attend. We tell them we don't care who comes; try to have three people there at the meetings. They are already doing things for us right now. For example, the grad TA/undergrad scene is a very important component, and they are right away looking into that.

“It is also important to have staff on the committee not just as consultants who say show up at the end when you have a policy. You don't want to lock yourself in a room, come up with something, only to discover that it won't work, so we have staff from all the key offices.

“We will have much more about this in the last part of the meeting, but just an overview here about the discussion on campus about these things. There is sort

of two centers of activity. One hangs off the University Assembly. There is a cogent judicial committee that works to propose changes to the code, which then go to the University Assembly that votes, then they go to the president, who must approve. Depending on what type of code change, it might have to go to the trustees. This is one thing that's going on right now.

“The Presidential Task Force, which is in the process of being staffed, has three parts. One part of it has to do with the code basically, and that's going to be the university -- the university counsel will be in charge of that part. They are still staffing that, but we'll want to pay attention to that. And there's an ad hoc committee that's being formed within the CJC that's expressly going to look at the issues that came up six weeks ago and are driving some of the interest in hate speech legislation and so on.

“We have had [elections](#), and here are the winners. We had just as many candidates as there were slots, and there will be more elections in the spring. We have to work hard at increasing the number of people who sign up for these very important positions.

“Let me just back up, before I talk about the syllabus. Chris has an announcement to make about a new faculty event.”

[Chris Schaffer](#), Associate Dean of the Faculty: “I just wanted to let everybody know a week from Thursday, so Thursday, November 16, the dean of faculty

office will be sponsoring a faculty reception. It will be held in the rare books area of the Kroch Library. And we have, as many of you know, one of the collections that Cornell houses is an extremely large collection of artifacts related to the origins and genesis of hip-hop music, curated by Cornell's own Ben Ortiz.

“We will have some artifacts on display, a guided listening party to learn a bit about some of the origins of hip-hop and then, of course, some nice hip-hop music in the background, beer, wine, et cetera. So you will all get a -- senators all get an invitation tomorrow morning in email, and you would just reply if you are interested in coming. Hope to see you there.”

[Dean Van Loan](#): “Thanks. So preregistration showed up a week or so ago, and that prompted the request by each college for the online syllabi. Just so that we understand the nature of the initiative, I will put a few mileposts over the last year. It all started more than a year ago with the Student Assembly. They had a thing about online faculty evaluations and also online syllabi, then it was sort of dormant for a while and resurrected a year and a half ago with another Student Assembly initiative.

“Just quoting part -- from one of the whereases, and I want to stress here, the key take-away here is the form of the syllabus. The level of detail is not prescribed, and it shows up in the language even in that original essay proposal, where they say whereas practical and appropriate.

“Then last spring, Becky Stoltzfus, the Vice Provost for Undergraduate Affairs, presented the system. All that happened last year is that it was technically possible to upload your syllabus into the course roster, and that system was described last March. Again, the quote off of those slides, the provost's office is not imposing requirements in either the form or the content.

“Then the instructions on how to use the thing hang off the registrar's web site. There is an FAQ that has maybe ten questions about the syllabus. Again, there's no reference to or expectation that you are to have a syllabus in a certain form.

“Then, the whole thing was delegated to the colleges. It is the colleges that contact you about the uploading process, so it's mixed. It is a way for students to shop around for their courses in a more detailed way, but there are other settings where you are not ready to sketch out your spring syllabus, or maybe it's undetermined or maybe you don't even know where you are teaching in the spring, so there are lots of reasons why you might not be able to put up anything, perhaps, more than the courses of study sentence about your course, which as near as I can make out, is okay.

“However, I think there's an absence of high-level guidance from the provost's office, so I will be working with them to get some language in there, so people don't feel, as I picked up from certain corners of the university, an intense pressure that they'd better do this or else.

“The next speaker is [David Delchamps](#), will talk a little more about the EPC, Educational Policy Committee's involvement in the syllabus project all during the last year. Are there any questions on any of the stuff I mentioned there? Okay. Yeah, Neil.”

[Senator Neil Saccamano](#), English Department: The English department and a number of our faculty have objections to being required to upload syllabi for various reasons, and I don't want to go through all of them all right here. You can assess whether or not they are adequate or not in terms of responses to the requests, but one of the things you have there is that there's no requirement that the syllabus take any particular form or content, but is there a requirement there be any syllabus at all? In other words, is it purely voluntary, or is it obligatory?”

[Dean Van Loan](#): “To me, I would say it's voluntary. I don't see any language -- clearly, many people feel it's a healthy thing, but I know from looking at the emails there, there are other points of view. I looked in vain -- I contacted all the associate deans and got back their messages and, again, I didn't see anything there that would twist my arm. But there's body language, and perhaps the message that came to you, you felt really pressured to do that. If you didn't do anything, you, Neil, what would happen?”

“So I think we need some language here. There are different reasons, and I think we should list out what these reasons are. Yeah.”

[Senator John Brady](#), Food Science: “My department delegated one person to manage all of this, and she pointed out to me there was no guidance about when the deadline was for getting it all completed.”

[Dean Van Loan](#): “Well, I think the subtext was preregistration, because that's when students are shopping their courses. That is why I think all these messages came out from the associate deans. Eric.”

[Senator Eric Cheyfitz](#), English: “The language that should go out is voluntary. That is what's missing. If that was put into a note saying we have the machinery to upload syllabi now, but it is entirely voluntary, because this is a matter of intellectual property. Faculty own the syllabi, and they can do with them what they want to do. The administration has no control whatsoever over intellectual property of the faculty.”

[Dean Van Loan](#): “Okay, let's go on. David will tell us a little about perhaps the EPC view on this and other things.”

2. [EDUCATIONAL POLICY COMMITTEE REPORT](#)

[Senator David Delchamps](#), Chair Educational Policy Committee: “Regarding the nature of the message that goes out, it's local to colleges. And in engineering, the message was pretty unequivocal: Do this. I don't know what it was in the other colleges. It was passed down to the department DUSs and, depending on your

DUS and their attitude, it was do this. And people sort of reacted reflexively and didn't think of a lot of the issues that had been raised.

“For example, one of the issues the English folks raised was that younger faculty, doing this is going to take up a lot of their time, inconvenient and all that. Case in point, in my department, I taught a course for the first time last spring. I wanted to teach it again next spring to get it right, and a new guy came along and he really wanted to teach it, so we decided to let him teach it. Then when the syllabus time arrived, I asked our DUS, is it my responsibility to do the syllabus or does he have to do it? He's never taught the class before. He's a new faculty member. And our DUS said he has to do it.

“These are hiccups that have to be worked out, I think. I think that a lot of valid points have been raised. Historically, though, just wanted to tell you this goes back quite a ways. We had a very energetic student representative on EPC some years ago, three or four years ago, Joseph Fridman. He came to us with this idea -- and Mike is smiling. He remembers -- of what the Student Assembly was going to call open course eval.

“This was prompted by a system they have at Harvard. They have something called the CUE Guide at Harvard. I don't know how many of you are familiar with that, Committee on Undergraduate Education, where they have course evaluations, public for everybody, including student comments. He wanted all

the colleges to put up course evaluations with the numbers and the student comments, available for everyone to see.

“Well, we told him individual colleges have different policies on this. In Engineering, the numbers are up, the comments aren't. Like you can't read that so-and-so said you could replace this person by a trained monkey, which is actually something I have seen on a course evaluation.

“Arts and Sciences doesn't, as far as I know, post any course evaluations online. CALS posts theirs the way we do in engineering, but we told him essentially, if you want to make this happen, you have to go college to college; and thing number two, nobody's going to let you put the comments up, so we suggest you ratchet back your expectations.

“He came back with this idea, how about a syllabus? All we want is a little info of what we are in for, if we take a class. This is where it came from. We said well, you know, syllabi are out there. Can't you get them that way? He said it would be good to have an organized way to do this.

“That was the genesis of -- there was a latency period between his tenure on the Student Assembly and the next group that came up with this syllabus motion. The reaction of the EPC is we thought it was a pretty wholesome thing. And honestly, I still feel that way. I do agree with Eric and company, there were a lot of hiccups we have to consider here, and so -- but I think everything, as Charlie

pointed out is so weasel-worded; where appropriate, that kind of thing.

Voluntary, could be as short as the courses of study copy, et cetera, that we should tell the colleges that when they implement it, they shouldn't do it rigidly.

And our college, I don't think got that message, if it was ever given.

“End of my comments on the history of that. There is three other things I'd like to talk briefly about. One of them is a consent item at the very end, another response to a Student Assembly resolution.

“Yeah, these are my -- I can move your screen too. The provost, as you may or may not know, started a big committee, one of those committees called the Undergraduate Curriculum Committee or something like that, and he separated it into subcommittees. And one was called the Shared Educational Experience or Common Experience Subcommittee. They were supposed to look into the possibility of some kind of shared educational requirement, a university-wide thing.

“Of course, these ideas for these come up all the time. And as some examples of things that are in individual colleges that have a similar flavor that might be considered part of a shared university-wide thing are the human diversity requirement in CALS, where they have a menu of courses from which every student has to choose at least one; the cultural perspectives requirement in ILR, similarly architected. And the question for that group was what about that.

Should we think about some kind of university-wide common experience, educational experience.

“They weren't thinking about lunches up at RPU or something like that. They weren't thinking about stuff happening on west campus. They were thinking about actual coursework, actual something like that. Not necessarily a required course university-wide, but some kind of educational, intellectual experience university-wide.

“Their deliberations kind of fizzled, because I think after -- the first reaction anyone has to that is a truism that's only partially true, quote, curriculum belongs to colleges. We all know that. That is one of the Cornell's axioms, right. And how are we going to do this? How are we going to have something university-wide?

“So basically, they punted, they said okay, we don't really have a mechanism for this, so maybe we'll do it with one-credit seminars in RPU and west campus. That was the end of it. EPC, since EPC is entrusted with looking after issues of educational policy that transcend the colleges, thought about this and is continuing to think about this.

“We are not about curriculum, we are not about content, but we are perhaps about mechanisms. How does one establish some kind of university-wide educational requirement? Where does it come from in the faculty? Where does

the idea come from? How do people vet it and say this is good enough to satisfy what I want to do. We don't have answers to those questions, and so we are ruminating about that now. I just want you to know we are thinking about it and that's an active item of discussion.

“Another thing we did was we revised the text in the faculty handbook pertaining to final exams, rules around final exams and other end-of-semester activities. The main reason for that was that the text there is factually incorrect as it stands. When the current calendar, not the new calendar that's coming next year, when the current calendar came into play, the text became factually incorrect because, for example, the current text says that the registrar's office gives every class a final exam time. That is not true anymore. The registrar's office gives final exam times only for classes that request it, so that had to change.

“A lot of other stuff came off of that, like branches on a tree, fruit of the poison tree, so to speak, so we had to fix those. So we corrected that factual error and a lot of the descendant errors from that single factual error.

“We also substantively changed the language around conflicts, three exams in 24 hours and so on. It looked a little too official the way it was of the university policy in general frowns upon three exams in a 24-hour period. We thought of it less as a matter of university policy, because we couldn't find that written

anywhere, and more a matter of people being reasonable. So the new text urges faculty members to be reasonable and grant students accommodation when their exam schedules are so cluttered as to create a hardship. Examples we cite in the text are three exams in 24 and direct conflicts. Those merit such consideration, so I encourage you to have a look at the new text at some point.

“The consent item I wanted to bring up is a response to a Student Assembly resolution regarding laptop use in classes. They passed a lengthy resolution. And we spent some time reading this on EPC, and we really couldn't figure out exactly what they wanted, what they didn't want, and I think the gist of it was they were trying to make it forbidden for faculty members to prohibit laptops and other electronic devices globally in their classes, but they didn't really come out and say that.

“I think Charlie pulled this one quote out of the resolution, and I think sums up what they really wanted. They wanted people to be urged to allow people to use laptops in class, no matter what the class. By the way, there's all kinds of rules that people have in their courses all over the university. Examples: No laptops, laptops allowed only in the back three rows, laptops allowed anywhere but in the front three rows. These are examples of rules that people have in their classes. And sometimes they are not enunciated clearly at the beginning of the semester or on the online course syllabus or wherever, but we decided that of

course instructors have control over their classrooms and have a right to establish whatever rules they want to establish with regard to the use of electronic devices, provided they state them clearly at the beginning of the semester.

“There is a lot of fringe cases the Student Assembly brought up during their discussions that didn't appear in their motion, their resolution; for example, students with learning disabilities that preclude their learning other than by using a laptop, and they didn't want faculty members to only allow such students to use laptops for fear it would stigmatize them. Oh, that kid's using a laptop. He or she must have some type of learning disability; or that they would have to sit in the first three rows or whatever, but those weren't in the resolution.

“We didn't feel obliged to bring them up on our own, so this is how we are responding; and I think since we are speaking on behalf of the faculty, I ask for your consent for this response. If you have objections, happy to hear them.

“Okay, did I finish on time?:

[Speaker Walcott](#): “You did. You are two minutes ahead.

[Senator Delchamps](#): “In that case, if you have any questions about the syllabus policy, things you want me to take back to the EPC, because clearly, that's the big controversial thing we are dealing with right now, I'm happy to hear them. And I have seen a lot of the email exchanges. Risa.”

[Senator Risa Lieberwitz](#), ILR. Yeah, on the syllabi issue, I think one of the fundamental questions that's being raised is the way in which this was presented as kind of a top-down edict. I was at the meeting on March 8, when it was first raised. And even though there are statements about well, there's no one form or content you have to use, what we are getting is language that the provost and whoever meets with the provost from the administration believes this is a reasonable expectation for faculty to do.

“And so I think one question is well, why is it the provost and the administrators who are telling the faculty what's reasonable for them to do about their syllabi, so it's a governance question that --

[Senator Delchamps](#):: “Regarding that, I think it's on me not to have alerted you folks that this was coming down the pike, because we have been involved with this for quite a while now, EPC has, starting with that open course eval idea, which died quickly.

“All along the way, we were the ones who said well, what you should do is go to the VPUE as a representative of the provost's office and propose this to them. Maybe we shouldn't have done that without coming to the full senate and saying this is what we are doing; what do you think. That is probably my fault that you haven't -- that you feel it's top-down, but I don't feel the history is top-down myself.”

3. [NEW EMERITUS PROCESS \(WITH VOTE\) - SLIDES](#)

[Dean Van Loan](#): “Okay, not sure we have a quorum. I will act as if we do, and we'll see what the numbers come out. This was brought up two months ago, and the pending legislation has been sitting on our web site. There have been a few comments about it, but quickly remind you what it's all about.

“If you are a tenured faculty member and you have been here ten years and you retire, you are eligible for emeritus status, retirements, HR event, emeritus status's academic event. And the one-paragraph thing here is quite general. We expect -- the university expects meritorious service, et cetera. There are a number of things wrong with this, and let me talk about them as I show you the new policy, which takes three slides, and I'll highlight the features of it that correct this.

“The first thing is we are proposing emeritus become a modifier, like visiting or adjunct or courtesy, so modifiers modify titles. The idea is that whatever your last -- whatever you retire at, whatever position, you become emeritus of that position, so a professor would become professor emeritus. Associate professor would be associate professor emeritus. With the modifier set up and if we approve it, for example, one can have senior lecturer emeritus or research

professor emeritus. We have this wide array of titles, so the modifier idea would make it possible to modify these other positions.

“The other thing is instead of just saying meritorious service, spell it out a bit. It is not about how many papers you published in your last year. It is about your career and all the different ways that you contributed to it, so there's language in there reminding the department that when they vote, that this is the perspective that one could have.

“Then there's a question of who votes. When I looked at this first across the ten colleges, there were about seven different plans. You might say, well, let's decentralize Cornell, but what it really sends the signal is it's kind of an ad hoc business, and it is very ad hoc. Most of the time, it goes through fine, but I see cases where things get derailed. And part of it is because of the ad hocness of it.

“The who can vote thing, basically the tenured faculty and the emeritus faculty. If you are a professor going for this, then it would be the full professors and the emeritus; so just cleaning that up, making it easier for the chair to navigate these waters.

“There is no appeal process, so we put in a very light appeal process, simply that if the chair -- if the department or the dean vote is negative, the candidate has the right to ask why. And the provost's office, the dean of faculty office will adjudicate and navigate those waters.

“Here is the summary. Again, the idea is to make the transition to retirement as painless as possible. It is a big event for many people, and we should make it, the process as smooth as possible. The modifier thing helps do that. Again, the definition, as it were, of meritorious service, we reminded people that it's a broad definition, and you look at the whole career and so on.

“Finally, the low-overhead appeal process will ensure fairness, that people are paying attention and that the rules will be followed. First of all, any questions, any clarifications that I can offer here? Yeah.”

UNIDENTIFIED SPEAKER: “This is a bit picky, but you say emeritus for voting, and it doesn't specify which emeritus people should vote. In other words, do all –”

[Dean Van Loan:](#) “All, yeah.”

UNIDENTIFIED SPEAKER: “So if the modifier is subsequently used down the line, then emeritus senior lecturers would vote on the –”

[Dean Van Loan:](#) “Right now, this is just about modifiers for -- if it comes to this, if we talk about modifying other titles, those details would have to be worked out.”

UNIDENTIFIED SPEAKER: “But for now, all the of the emeritus professors will vote on –”

[Dean Van Loan:](#) “Yes. Right.”

UNIDENTIFIED SPEAKER: “My question also concerns having emeriti vote on the new emeriti; and that is, would they count towards a quorum? We have a fair number. They mostly don't live in Ithaca anymore. Can we not vote until we have a quorum of the current faculty –“

[Dean Van Loan](#): “One doesn't have to be physically present. If I was the chair, I would simply email all the emeriti who are tracking faculty development, saying here's the case, here's the vote; what is your vote.”

[Senator Michael Thonney](#), Animal Science: “Our department actually had a vote on this, and the vote was to basically vote no. And the reason is that we think it's ludicrous that we're having these modifiers that faculty, whether they're full professors or associate professors, should be meritorious, given professor emeritus status, not associate professor emeritus status or whatever.

“I would urge you to make things less complicated and vote against this resolution. If I had time, I would propose an amendment to it, but it's worded too complicated to make an amendment.”

[Dean Van Loan](#): “I get problems all over the place. In the emeritus category, I have seen, every case that has difficulties has been about this. Some units have issues with granting emeritus status to associate professors, so one way of looking at this is to make that smoother for that group of faculty.”

[Senator Michael Fontaine](#), Classics: “I spoke against this last month on the basis of discussions with my colleagues. We had a vote in my own department today, and people changed their minds, and they told me to vote yes today for this. And the rationale is that we are hearing from people we asked that are associate professors. They would like this opportunity.

“I don't know if you are hearing similar things yourselves, but this is what we are hearing people want from the people most eligible to be affected by it.”

[Speaker Walcott](#): “Ready to vote? Further discussion? All in favor of this motion, please raise your hand.

“All opposed, please raise your hand.

“All abstaining, please raise your hand.

“46-6-1, so I believe the motion passes.

“Risa's next, yes.”

4. **ACTIVITIES OF THE [CODES AND JUDICIAL COMMITTEE](#) [SLIDES]** – **BACKGROUND**

[Senator Risa Lieberwitz](#): “Thanks. I am here because I'm a member of the Codes and Judicial Committee. I am the faculty representative on the Codes and Judicial Committee. As you know from the discussion already today, and I'm sure you know separately from discussions in the community, that the Codes and Judicial Committee, also known as the CJC, a lot easier to say that, is the

committee that has jurisdiction over the campus code, so any changes to the campus code would go through the CJC, and then the CJC would take action, if it so desires and then make recommendations to the University Assembly. As Charlie pointed out before, in some instances, that would go just to the president. In other instances, it would also have to go to the board of trustees.

“The issue that we are working on now is the question of speech and whether the campus code adequately defines the line between protected and unprotected speech, and in particular with regard to speech that has -- the term "hate speech" is one of these general terms that doesn't have a particular legal significance, and I know we'll hear more about that today, but it is understood in terms of the kinds of issues of bigotry and bias and some of the incidences that have occurred on campus most recently.

“It did seem appropriate for the CJC to look at this question. And so to do that, the CJC has a working group that's in the process of being formed. And that working group is going to go through a process of considering whether the code is adequate as written, whether there are changes needed, and that could entail certain types of proposals or it could entail doing nothing, but we are at a very early stage. The committee is not fully formed yet, but we are putting it together.

“I will go into more details in terms of the makeup of the committee in a moment, but just in terms of what you have in front of you here, you see the

working group reports to the CJC, and then the CJC will take action one way or the other on any proposals from the working group, and the CJC will again report -- as it usually does, when it has changes it wants to recommend to the campus code, will report to the University Assembly, which can then vote on the recommendations.

“Here is the nature of the process at this point. With regard to who's on this working group, it's designed to be a group that is representative of different parts of the community, and also is very open and interactive with regard to anybody who's not actually a voting member being able to come to all the meetings and come to various forums or fora that are created and really have a lot of community participation.

“The plan is to have four members of this working group who come from the CJC members. And at this point, we have three of the four people who are appointed to the working group, and we still are going to fill the position for the employee representative, who's somebody from the CJC. There are also four people who will be appointed.

“We have asked the Student Assembly, the Graduate and Professional Student Assembly, Employee Assembly and Faculty Senate to appoint somebody, so we have four more people, which would make eight voting members. And then, anybody who wishes to come to meetings and to participate and, as I said, in

various fora, are welcome to come, because we really want this to be very much an interactive, participative process.

“The following slides, I’m not putting them up here to go into the substance in any deep way of what’s in the campus code at this point; but just to note we do, of course, have language that exists in the code that we will be looking at closely and asking questions about; whether that code is adequate to define lines between protected and unprotected speech; to define lines between speech and conduct and the protection that speech gets and that conduct may not get; issues of academic freedom in a university and how do we deal with questions of academic freedom in speech; at the same time that we address questions in terms of when speech loses its protection because of the nature of what the speech is and to whom it may be addressed or targeted.

“Currently, we do have this language in the code, which is from Title 3. The harassment language in the code refers to Policy 6.4, and I thought it was important to note that, as you may recall, Policy 6.4 was created as a separate policy from the code to deal with issues of sexual harassment and sexual assault and other kinds of sexual misconduct.

“And this came after the 2011 action by the Office for Civil Rights, which is part of the Department of Education; so what used to be in the code about sexual harassment has been taken out from the code and it is in this separate policy, 6.4.

But even though it's not in the code, it seems that as a working group for the CJC, we do need to consider what exists currently in the policies about speech that's related to the concerns about bias and so-called hate speech; but the code does have this definition of harassment that is very focused on targeting a particular individual, and we'll have to look closely at that and ask whether that should be changed at all.

"Title 4 has to do with issues of where ethnicity, gender, national origin, et cetera are prohibited as uses for making decisions about public speech and ceding, et cetera. There's also language to protect speakers from disruption. Again, these may not be directly relevant to issues of where we draw the line between protected and unprotected speech, but they're certainly related and we'll be considering those.

"Then we have a definition of bias in Policy 6.4, the sexual harassment and sexual misconduct policy, and there's this definition of bias, but it really doesn't do much in those policies; but I thought that it was important to point that out.

All of this is available on the web site. You can certainly take a look at this language.

"Then we also have in the various policies, there are definitions of what's the nature of protected status under federal and state law; and that kind of protected status, being one that's considered in terms of the protections that people have

from harassment or other kinds of targeted speech or conduct that crosses the line into harassment on the basis of these protected statuses.

“I am not doing this so that we can have a discussion at this point about where should that line be drawn. Certainly, if we have time, there could be thoughts that people have, but just to point out that we do have the existing language that exists in the code and in Policy 6.4; and that as a working group, these are the kinds of issues that we will be addressing.

“Is the code adequate? How do we deal with the fact we have 6.4 separately? And again, to make sure we have full participation on these issues, so we can really hear from everybody fully.

“I also wanted to mention that, as you know and as Charlie went over earlier, there is the Presidential Task Force, which is looking at some of the same questions about speech, so one of the points, I think, that's important to remember is, as I said earlier, that the CJC has jurisdiction over making recommendations about changes to the code and making those recommendations to the University Assembly.

“And so we have discussed this in the CJC and certainly welcome the kinds of input we can get from other sources like the Presidential Task Force; but that the jurisdiction here belongs to the CJC to make those recommendations to the University Assembly.

“Any questions? No? I love answering questions. Okay, thanks.”

[Speaker Walcott](#): “Thank you, Risa. Nelson Tebbe going to talk to us about the 1st Amendment on campus. Welcome, sir.

5. **FIRST AMENDMENT ON CAMPUS -- [SLIDES](#)**

Background: 1. [Hate Speech is Protected Free Speech](#), 2. [There is no first amendment right to speak on a college campus](#), 3. [Hate Speech](#), 4. [Classic First Amendment Tradition Under Stress](#)

[Nelson Tebbe, Professor of Law](#): “Thanks. Hi, everyone. My name is Nelson Tebbe. I teach in the Law School. I teach courses on the 1st Amendment and constitutional law, and I thought I would just offer some perspective from just an objective point of view on what our law says about issues that have been confronting the university in recent weeks and months.

“After my [presentation](#), Wendy is here from the university counsel's office, who can address more specific kinds of questions. I will try to confine my remarks to general constitutional law on these issues, and then answer any questions that you might have.

“The topic I'm going to address is just what may a university do to address discriminatory speech on campus consistent with the 1st Amendment. And the answer that I will give or I have for you is that universities may not prohibit hate speech, but they may take certain other steps, without offending freedom of speech and academic freedom.

“I will address that briefly: The status of Cornell as a private actor; that is, whether it's subject to the 1st Amendment; free speech rules and values that inform the law in this area; any considerations about whether universities are special, different from other areas of our public life; and finally, what universities can do to respond to discriminatory speech on campus, keeping all this at a fairly general level.

“First, this is an issue that I think is the subject of some confusion on campus, and certainly was not clear to me before I sat down and did research on this question, and it's fairly clear; both New York state courts and federal courts located in New York state have held that parts of Cornell University are not state actors for purposes of civil rights law. And there are virtually no cases going the other way, so it's fairly clear the university is not a state actor for purposes of constitutional law.

“Nevertheless, some universities adopt constitutional limitations by code; that is, they voluntarily restrict themselves in ways that would be required by the 1st Amendment and/or they seek to conform to 1st Amendment values, just as a matter of good governance.

“Again, I will defer to university counsel on whether that's true at Cornell, but I wouldn't be surprised if it were true. Starting from the most general perspective, there are three kinds of values that tend to inform the 1st Amendment, not only

on campus, but generally; and these are not values that I'm making up or arguing for.

"This is a depiction of what the courts care about when they enforce the 1st Amendment. When I say the 1st Amendment here, I mean freedom of speech, so I'm putting to one side freedom of religion and the press and so forth.

"Democratic self-governance is one. We need free, uninhibited and robust debate in order to engage in self-governance as citizens. If we are to hold our representatives in government accountable, we need to be able to debate the issues of the day in an open and robust form.

"Second, that doing that, that is allowing diverse perspectives. Free reign in the marketplace of ideas can lead to truth. Only by subjecting one another's perspectives to rigorous criticism can we sort of arrive at the best outcomes.

"Then third, independent of democratic self-governance and independent of the search for truth, there are values of kind of individual autonomy and expression, actualization that inform the 1st Amendment, especially when it's dealing with nonpolitical speech, but things like artistic expression and so forth.

"I think this is a fairly noncontroversial list, although some theorists would emphasize -- democratic self-governance and others would emphasize other aspects of the 1st Amendment. The rules that govern in this area are also not controversial; just as a descriptive matter, what are the rules.

“Content and viewpoint discrimination are both presumptively prohibited. The distinction between these two is a matter of some complexity; but just generally, content discrimination is when the government singles out areas, topics of speech for special prohibition.

“Political speech, for example, is excluded from certain places. And viewpoint discrimination is where the government singles out perspectives within those topics; so speech by Republicans would be allowed, but not by Democrats. Both those forms of discrimination are presumptively prohibited in constitutional law.

“This is a canonical kind of idea, but speech may not be regulated simply because it is offensive. And hate speech -- I mention this just because it's pertinent to our discussion today -- hate speech is presumptively protected, fully protected under current law.

“Those are sort of general rules that apply everywhere. Then there are categories of speech that are not protected, that can be regulated by the government.

Incitement to illegal activity is one of those; fighting words, true threats, defamation, which includes libel and slander, obscenity; child pornography and speech that's owned by others, speech that's copyrighted or trademarked, unprotected speech. But otherwise, speech is protected, and that includes hate speech.

“Then there are some rules that apply to not whether the speech can be prohibited or not, but how it can be regulated. And there are three categories of forums that are, I think, helpful to keep in mind here, and this has application for the university.

“First, there are traditional public forums, so these are like streets and sidewalks, the proverbial town square and the literal town square. Speech here can be regulated, but only for a time, place and manner. So the government could say you have to get a license before you march down 5th Avenue, and you can only do it on the weekends between certain hours and so forth.

“These restrictions must be reasonably related to a significant government interest, they must be content- and viewpoint-neutral, and they have to allow for alternative channels for speech, alternative forums. So that's in traditional public forums, the so-called Hyde Park corners of the world.

“Then there's a second category, which are areas, typically government property, that the government elects to open for speech. These are designated by the government as forums for speech, or they're sometimes called limited public forums.

“Here, the government may support speech only on the basis of -- they select out speech to first support on the basis of content. So for example, the government could choose to open public school buildings to use by community groups after

hours. And on the weekends, and when the government does that, it designates these public school buildings as public forums for certain purposes.

“It can say we're only going to allow community groups to use these spaces. We are not going to allow them to be used for political electioneering or union organizing or commercial activity by for-profit organizations. And that is permissible in these forums, as long as those limits are reasonably related to the purposes of the forum.

“But even then, the government may not discriminate on the basis of viewpoint. So it could say no political electioneering, but it could not say political electioneering by Democrats or non-Republicans.

“Another example is, and this came up at the University of Virginia, the university had a student activities fund that students could use to publish student newspapers, but the university prohibited religious students from publishing newspapers that took a religious perspective on issues of the day.

And the court said that is the government establishing the limited public forum. It cannot exclude student groups on the basis of viewpoint. And excluding student groups on a religious basis is viewpoint discrimination.

“Then finally, there's government speech. So when the government itself speaks, when the government itself transmits messages, the free speech clause does not apply. Even viewpoint discrimination is allowed. When you think about that for

more than a minute, it becomes obvious. The government has to be able to take perspectives in its own speech. It has to be able to say smoking is a dangerous activity that you shouldn't engage in or democracy is good and communism is bad. The government does that in its speech all the time.

“One way to think about these three categories is these are kind of ways in which private and official speech are kind of mixed. In a traditional public forum, these are just private speakers kind of taking to the streets. In a designated forum, the government is kind of supporting certain types of private speech, but not other types of private speech, so it's sort of government kind of lending a hand to certain speakers.

“And then when you get to government speech, you might think well, this isn't mixed speech at all. The government is just speaking. But when you think about the fact the government is an abstract entity that can only speak through private individuals, you can think about this, too, as kind of one point along a spectrum of mixed government and private speech.

“Do universities differ? And if so, how do they differ? This is a complex subject, which is close to the heart of the topic for today, but I think a relatively clear answer is to say that universities exist to support the professional discovery and pedagogical transmission of knowledge; so academic freedom is, again, a complex concept.

“And we can talk about its contours later, if you want; but at the very least, it guarantees the expression of ideas that are consistent with those two goals.

Some content discrimination must be permitted.

“Scholars and students have to be able to sort out ideas, both as to subject matter, so you can't talk about non-anthropology in an anthropology classroom, and it's okay for the professor to exclude non-anthropology topics, and I also have to be able to distinguish worthwhile and not worthwhile ideas; yet students and faculty also have to have the ability to take controversial positions consistent with their mission. The kind of standard statement on this is the AAUP's 1940 statement on principles of academic freedom.

“So in some ways, the universities do differ, because they have a special mission. In other ways, maybe not so much. So given all of that, what the values that the free speech clause pursues and the law we have developed around it, how can universities respond to discriminatory speech on campus? I will have several things to say about this.

“The first is that hate speech is, again, fully protected, even on campus. And courts have invalidated several university code provisions that sought to eradicate hate speech. Some of these were fairly straightforward prohibitions on hate speech that the courts had little trouble with. Stanford's was maybe the closest to permissible. It had a provision that prohibited speech that was

intended to insult or stigmatize individuals and so forth in a particular kind of way.

“Here are the provisions of that code: It sought to leverage one particular category of unprotected speech, which is the fighting words category. And ultimately, a court found that this provision violated a California law that applied 1st Amendment standards against private universities. The Stanford called this a discriminatory harassment provision. And I think we’ll hear more about that later, but the term harassment did not appear in the operative provisions of the statute, so I think there’s some question about how it relates to harassment law.

“Another category -- we know a few other things that are sort of fairly clear. One is that illegal conduct can always be punished by a university, whether it’s accompanied by speech or not. I think it’s also fairly clear that illegal conduct that is motivated by bias toward protected groups can be subject to elevated forms of punishment, as it can in the ordinary criminal law.

“Another point that’s fairly clear is that the university’s own speech may condemn discrimination. It is perfectly permissible for a university, whether it’s subject to the 1st Amendment or not, to in its own statements condemn hateful discriminatory behavior and speech.

“Then finally, reasonable time, place and manner restrictions; making sure that speech doesn't interfere with university functions. Slightly more controversial, but I think also clear under the doctrine, at least at a sufficiently high-level abstraction, is that true threats can be disallowed.

“According to the Supreme Court, here's their definition: True threats encompass statements which a speaker means to communicate a serious intent to commit an act of unlawful violence to a particular individual or group of individuals. The idea here is that these statements can be proscribed because they amount to conduct, they elicit fear of physical harm in the hearer. The assessment of whether they do that is based on a reasonable person standard. In the context of a university, that would be kind of a reasonable student standard, if that was the issue.

“Finally, harassment is not protected. Here, the law is kind of analogizing to employment cases. There is law saying that discriminatory harassment in the workplace is illegal and can be proscribed, even when that harassment takes the form of speech.

“The classic example is an employee in a workplace puts up a poster that's offensive to a protected class of other employees, let's say women, and that constructively makes it impossible for them to go to work there, because they are in an unwelcome and hostile environment on the basis of a protected

characteristic. The courts have said it's okay for the government to require private employers to protect against that kind of harassment, even if it takes the form of speech.

“This is a kind of definition of harassment the EEOC developed. And Erwin Chemerinsky, in his book on Free Speech On Campus, kind of reproduces it this way, and I think it's helpful, just a definition of harassment. It is also, I think, important to keep in mind that federal law already prohibits sex- and race-based harassment on campus. Sex-based harassment is prohibited by Title IX. And Title VI, which applies to all federally funded entities, includes a similar protection for race-based harassment.

“The issues you are kind of most interested in are the ones that I'll leave kind of for discussion, but there are difficult questions about how to apply those values and rules to specific kinds of issues that have arisen on campus, like protests on campus, classroom speech that involves trigger warnings, off-campus and online speech, invited speakers, especially when the speakers are invited by students, the demand for safe spaces, use of sensitive terms or micro-aggressions, and nondiscrimination requirements for student groups. All of these have been different and complicated areas for discussion and debate, and how the rules and values that I have outlined apply to these issues, I think, is something that reasonable people can debate.

“I think -- should we hold questions until after the next presentation? Yeah, why don't we do that.”

6. **REGULATING SPEECH: HATE SPEECH VS HARASSMENT -- [SLIDES](#)**

Wendy Tarlow, University Counsel: “Hi. I'm Wendy Tarlow from counsel's office. I know some of you. Nice to see you. [Madelyn Wessel](#), general counsel, asked me to step in for her. And [Nelson](#) has done a terrific job at giving you the overlay of what 1st Amendment protections are. I want to reiterate, because I've litigated these case (**Technical difficulties – missing verbage**) -- that has to have a legitimate governmental interest in doing so.

“In the Michigan case, I will tell you about it very quickly, they had this speech code, and they tried to define what kind of speech they were going to limit or take actions against. In the Doe versus Michigan case, 1989, Doe was a graduate student in physiobiology. And what he wanted to study and talk about were the differences between male and female differences in mammals, as well as in humans, and he was concerned that his speech, saying things that women might be not as good at X as men, would get him in trouble under the speech code.

“And he brought a legal claim, and the court agreed with him and struck it down, so what you have here is the language of the code; language must stigmatize or victimize an individual. And what the court said is sorry, but that's so vague that this gentleman who wants to talk about maybe women not --

remember Lawrence Summers getting in trouble for these kind of comments?

Women aren't as good in engineering, maybe that's why; that what the court was saying is lots of protected speech is going to stigmatize individuals, but it's still protected nonetheless, so that's why that code was thrown out.

“And what you find is that these codes were also -- each court is finding them unconstitutional generally speaking. Again, you see it here. Individuals might consider it demeaning. Even if it's demeaning, it is still protected by the 1st Amendment. So these codes have all been thrown out, the one that Nelson talked about, the Stanford one. Now, Stanford is a private institution, but California has a specific law that banned even the privates from having these kinds of limitations.

“Let us go on to it. You see the outcomes. These were all coming out of the '90s, and many institutions realized that you have in the constitutional standard and what Nelson was talking about, you have a long and well-developed body of law that helps articulate what's protected speech, what's not protected speech.

“Where these universities got themselves into constitutional law trouble was to try and come up with their own standards, which ended up being so vague and unable to be well-interpreted that they got thrown out as being overly broad limitations on free speech.

“What are our options? Could a hate speech code be developed that would survive judicial scrutiny? And the answer is potentially. We all know, and Risa mentioned it, there's a number of entities that are all considering this issue on campus because it's such an important issue for everybody to be thinking about. The real question is, in my view, is the question should Cornell adopt such a code, as a private institution.

“Let me go back and say again, we have not been obligated by the law to adopt 1st Amendment principles; but we, in large part, have chosen to, at least when it comes to our code of conduct. If we were to choose to move off of that, that would be a broad community conversation, and one of the things that I think is really important to think about is the code primarily.

“Although it sets community standards for all of us, the code provisions do not, on their face, apply to staff or faculty acting in the scope of their employment, so it's a broader conversation than changing words in the code. It is a conversation that involves the entire community.

“And one of the things that I think is really important that you might think about, as you are thinking this through, is when is a faculty member, primarily a faculty member, staff also, acting in the scope of their employment; because we so broadly ask our faculty to be out there to be thought leaders, is when would

you say yes, you're acting in the scope of employment, the campus code of conduct in that regard would then have no application.

“And then we'd have to look at something like our Policy 6.4, which we are also looking to redress, but it's a broad conversation that includes lots of people. And I do mostly employment law. That is why I know a number of you anyway.

There is really different things you need to think about when you are thinking about harassment of student on a student versus alleged harassment by a faculty member in her or his classroom or in a counseling setting and/or by staff towards faculty, by faculty towards other faculty. Those contexts are so radically different that I would argue that you really need to give it some very important broad consideration by a broad group of people.

“I just want to end by saying one of the things that Nelson brought up that's so important is, again, because we are not a public institution, this issue of free speech doesn't apply. However, because we are an academic institution, the issues of free speech in academic freedom are the most privileged principles that the institution has.

“Those principles, they don't have to be constitutional principles. Those are principles generated by the institution, but they are challenging in terms of balancing these issues of justice and fairness, as well as speech. I am done, and I think we'd all be happy to answer questions, if you have any.”

(APPLAUSE)

[Senator Dan Brown](#), Animal Science: "I have been here about 23 years. I have always been entertained by the opinion, the assertion, the pretense that Cornell is a private university. It is far from subtle; it can be demonstrated to be no different from the other state land grant universities. So I think even trying to hide behind a self-prescribed private status, I don't think of it in a major court case, I think that would go out the window too.

"I know that's a whole other conversation. I hope to have that someday, but the idea that we are any different, Berkeley's a 501(c)(3). All these other public land grant institutions are organized for tax purposes the way Cornell is. And I'm just amazed they have gotten away with it as long as they have, and they won't forever.

"So I think differentiating ourself because we're private, we can do this other stuff, if you want to perpetuate that, you probably won't go against the full application of the 1st Amendment, because I think you would lose your perceived private status pretty quick in the process of a trial, so I believe we are a state actor.

"I know that's the opinion of a person who actually knows something about law, but it's an opinion, and it is not subtle, and I don't think hiding behind that's a

strategy, especially on this issue, because you'll wind up being declared a state actor and we'll be the public university we always were.

“The other comment I have is I have trouble understanding, and if you could clarify the difference -- some of the words I don't understand. Fighting words, I do, in a general colloquial English type of idea. Fighting words, hate speech, I don't understand exactly what those mean.

“Also, defamation is only defamation in the United States if what you say is not true and you know it's not true. So at the point of regulation or stopping or allowing any kind of speech too early, you don't know -- whoever would be regulating it wouldn't know if it's defamation or not, because that could only be found in court. So I'm just confused by some of the terms, what's fighting words and that are sort of thing.

“Obviously, there are differences. There are some, as you said, nonverbal actions that are different. Having a little bon fire or camp fire is one thing. Burning a cross at a meeting is quite another, and there is a way of drawing a line between those. Just hope I never have to do it.”

[Professor Tebbe](#): “Was your comment about state action a question? Would you like me to respond to that? Or -- okay, just wanted to be clear. I did the research on this myself, because I wanted to know the answer. So I actually read the cases, and they all go one way, and there are a bunch of them. There are state

court cases and federal court cases. And they all say with respect to Cornell specifically, that it's a private actor.

“And some of the cases deal with land grant schools. So there's one case of the veterinary school saying for purposes of civil rights law, this is a private actor.

The rationale is that although there's state funding that's directed towards some of these schools at Cornell, that's not enough to make it a state actor, because the state doesn't exert control over the university. It's not the case the majority of its board are appointed by the governor or state officials, so it doesn't take the form of more traditional state schools.

“There was one case that's quite old, where they found that a particular program was state action, and that was a cooperative program between Cornell and the Ithaca Police Department, where they teamed up to do very specific kinds of things. And they found that was at state action. So I'm just describing the law here, not taking a position or voicing my opinion, but I think it's going to be a really tough climb to start arguing that -- again, this is not my personal view. I am writing a paper right now about state action, so I care about it and am interested in it.

“I would not advise students or faculty members who are seeking a change to the code to argue that their reason this code change provision is acceptable is

because the 1st Amendment does not apply, because I just don't think that's argument's going to get you anywhere.

“To that degree, I think you are totally right, and I would be very surprised if people who are arguing for those kinds of changes in today's climate argue that the 1st Amendment doesn't apply and that's why the code is okay. There's room in the ways I described under current doctrine in the 1st Amendment to make certain kinds of changes, as long as they're carefully drafted, so I would be surprised.

“On your other question, let me address your other question quickly. Inciting to illegal activity is "you should go out and make acts of violence right now." It has to be imminent and there has to be a real likelihood that will result in imminent illegal activity. So this is a clear and present danger test. It's quite strict.

“Fighting words are words that are likely to illicit a violent response from the hearer right then. Has to be imminent. True threats are statements that make a specific person feel afraid for their life and that there will be violence against them. The classic example from the Supreme Court precedent is burning a cross on an African-American family's lawn. Not just burning a cross in a public place, even though the meaning of that is very clear, but burning it in a targeted way with respect to a specific family.

“And defamation, in a famous court case, Sullivan, the court said that if you're speaking about or to a public figure, and you don't have to prove that what you are saying -- or you have some leeway. If the public figure were to sue you for defamation, they would have to prove that you had malicious intent to say false things about them. It would be a much higher standard than a normal defamation case, so the 1st Amendment does help here, but you can't -- especially if they are not public figures. And then the others, you didn't ask about.”

[Senator Richard Bense](#), Government Department: “I have two questions. One is with respect to the task force. The Code and Judicial Committee of the University Assembly is already dealing with or considering hate speech under the code, and I think has jurisdiction. So what is the relationship between the task force and the CJC?

“The second question has to do with the implicit distinction between faculty and staff and students. I would urge the task force in considering possible hate speech prohibitions that in considering those things, apply the same standard to faculty and staff and administrators as they do to students. I don't think we should be off the hook. I also don't think there should be any restrictions, but that's another issue. The issue to me is that we're one community, and if we are

going to do anything like this, it should apply to all members of the community, not just to students.”

[Senator Lieberwitz](#): “Before you came in, Richard, I had actually addressed that in terms of pointing out that the CJC is the one that actually has jurisdiction over recommendations to the University Assembly to change the code. So given that jurisdictional issue, the Presidential Task Force, from my understanding, and we have our chair here, who's heading -- he's the chair of the CJC, would be that we will work in conjunction in various ways in thinking about what the presidential task force is doing.

“We welcome input from all places, including the Presidential Task Force. And hopefully, as we work through this, it will be one where there's a helpful relationship between the two, as opposed to one where we simply have two parallel lines working on these issues separately.

“But I think the jurisdictional issues about the CJC are very important, as a governance matter, for us to say this is the way it's been set up as governance and, therefore, this is the proper body to be making those formal recommendations in changing the code.”

[Speaker Walcott](#): “Again, in the back row.”

[Senator Ken Birman](#), Computer Science: “My question is quick, then Dick can get his chance. I am Ken Birman, Computer Science. I am just interested because

you several times mentioned that state law in California turned out to override, and then state law in Michigan turned out to sort of override. I am wondering if New York state law constrains us in any ways. I was fascinated by the presentation. I want to thank you, by the way, for such a -- it strikes me it's the only thing you didn't touch on."

[Professor Tebbe](#): "Yeah, so I was interested in that too. Do you want to address that? Do you know the answer?"

[Counsel Tarlow](#): "I defer to the constitutional law expert."

[Professor Tebbe](#): "I defer to the real lawyer. I was interested in that, too, because I read the Stanford case, so I looked it up. And I don't believe there is a provision in New York state law that makes the 1st Amendment applicable to private universities within New York state. So there's not an analogous provision; however, there's one pending in the New York state legislature right now, and I wouldn't be surprised if it passed. I don't know anything about it, but I can imagine it passing."

[Senator Birman](#): "Because New York state legislation operates on a two-year cycle, nothing is pending today. It has to be reintroduced in January."

[Counsel Tarlow](#): "I am just going to add something. I don't know if this is quite addressing your question. It is not really, but it's what hurdles we would have to tackle from the legal perspective, if we were to make some changes. So from a

legal perspective, what we see and the reason the lawyers get involved in this, we don't take a position on what your policy should be; however, we do take a position, from trying to defend the institution, that the policies be clear, they be published, they be articulated and they be followed. So if we were to move off of something like this, where the law would step in would be to scrutinize whether or not we're actually following our own policy. And when you get into some of these that are less clear, that can propose a legal challenge.

“The other thing we see in our student cases is students are often bringing contract claims, saying that your policy has created a contract with me and, therefore, you have changed it, you haven't applied it fairly, et cetera. But in terms of your first question, I agree with Nelson. I hope that was helpful.”

[Senator Richard Miller](#), Philosophy: “I have three brief comments, and really, they're addressed to all three speakers, Risa included. First of all, we are operating, I gather, under a campus code that prohibits disruption of speakers. If Richard Spencer would come on campus and make a speech about how we're a white nation, degraded by too much cultural power of nonwhite people and he were heckled, I would think that's a good thing, even if what people yelled was you racist jerk.

“And I think, then, that the disruption prohibition should be clarified or changed to permit that, from that matter of Richard Spencer or followed around

afterwards by people who yelled at him: You racist jerk. That is harassment, I gather, under the campus code, and I think that should be changed.

“My second comment involves threats to freedom of expression at Cornell. In recent years, the threats that have, I think, troubled large numbers of faculty the most have come from the Cornell administration. For example, a demonstration against Israel's invasion of Gaza in Operation Cast Lead being interrupted by the campus police with threats to arrest and appropriate application of the campus code, a campus activist being pressed under an interrogation with intimidating proposals that his life would otherwise be ruined by a charge of burglary, to reveal who he was working with, in a protest against the trustees. It is not clear to me there's room for protecting against this bullying in the Campus Code Committee or that it has any scope in deliberation being described. It should.

“Finally, I think there's a need of all of us to talk about the pressing academic strategic concerns about incidents that we fear that are not strictly matters of policy, but involve democratic values. If right-wing provocators come on campus and they cause a stir, they're getting just the effect they need. On the other hand, people feel threatened by the presence of lots of right-wing provocation, above all, of racist kinds.

“I don't know how faculty should work out an appropriate response to those two countervailing kinds of danger, and I hope that the UFC organizes open

discussions to Faculty Senate, at which we can take this broader view. I don't think it's just a legal or policy view."

[Alternate Senator Emeritus Professor Martin Hatch](#), Music: "I think just given my experiences a number of years back when the code was revised, and I was on the committee doing it, there's going to be some real problems -- I'm speaking not about things that have already been said. I think there's good reason to be worried and work on those things. This is just a matter of the campus code faces the problem of being defined as a campus entity, and we always had trouble talking about where the campus ended. There's literally the physical question of where the boundaries are. For example, fighting words, in one of the incidents that prompted all of this, the fighting words occurred elsewhere than on campus, literally speaking.

"A second area is -- I think it was brought up, the campus police. We always had a discussion in our committee about were the campus police acting as campus agents, private, or were they public, and how were they employed as a result in the adjudication of the campus code, or were they actually separate and following state law in some way or another, so were they agents to patrol the code. That strikes me as going to be a big issue to spend a lot of time figuring out."

[Speaker Walcott](#): I am afraid that's all the time we have. One more."

[Senator Wojtek Pawlowski](#), Plant Biology: "I just have a question. I wonder if in all your consideration there's a place for taking into account the mission of the university in teaching and scholarship. Specifically, would bringing a controversial seminar speaker be treated any differently than organizing a rally on campus, but that's not a part of an academic or teaching activity?"

[Counsel Tarlow](#): "I would argue that's up to you all, but the university exists to do exactly what you said, and so I think the things that we are trying -- that it would be core to the institution would be to preserve the right of the faculty to express their academic freedom to bring a controversial speaker, if it's in the scope of what they're trying to instruct upon, that would be the most critical mission of the institution."

[Senator Pawlowski](#): "Would there be a difference under the law, whether it's one or the other? We talk about the state law and how courts would view it."

[Counsel Tarlow](#): "I don't see any legal issue with what you're talking about at all, in any case, because we have the right to -- again, not saying that we do this. We have right to do it, because we're a private institution, to either choose to have someone on campus or not. Our current policies try and reflect the values of the 1st Amendment, and so we try not to limit them and invite controversial speakers, among others; but in terms of trying to protect them, the defense you would have would be I'm exercising my academic intellectual freedom by

inviting this speaker to contribute to the intellectual diversity of our community.”

[Speaker Walcott](#): “Thank you so much. I am afraid our time is up. Thank you.

(APPLAUSE)

“Before everyone runs away, we have one Good and Welfare speaker for one minute. Risa.”

7. GOOD AND WELFARE

[Senator Risa Lieberwiz](#): “I will be quick. I asked to be put on Good and Welfare on an issue that relates directly to what we were just talking about, and that is, in case you haven't heard, we are reviving the Cornell chapter of the AAUP.

“AAUP was founded in 1915 to protect faculty rights to academic freedom, job security in the form of things like tenure and due process rights. I'm interested in AAUP for various reasons. One is because I value academic freedom, tenure and due process rights and, more broadly, I value those kind of rights for people who don't have tenure as well. I'm also the general counsel for the national AAUP, and it seems to me that right now, more than ever, we need a Cornell chapter of the AAUP.

“It is a national organization and there are chapters all over the country, and you might be interested to know that Cornell was one of the first chapters of the AAUP that was created after the organization -- after the national AAUP was

founded in 1915, so we have a tradition to uphold. And in recent years, the Cornell chapter has gotten a little dormant, and so I think it's time for us to do this.

“This is the kind of thing where we can have discussions about academic freedom, about the scope of academic freedom, about how to extend academic freedom rights to all our colleagues, tenured and non-tenured, how to increase their job security. We can talk about governance issues, because academic AAUP exists also to protect shared governance and faculty governance, and that would include things like understanding the budget, participating in those kinds of issues. There is a myriad issues to talk about.

“So I hope that, with Charlie, that we can get the word out to the senators who could also relay it to your colleagues in your departments that we are reviving the local chapter. If you are interested, certainly be in touch with me. I am happy to talk with you, but I do want to get that on your radar. We had a meeting about a week ago, and I think that we are going to have -- this is the moment to get it going, to figure out how we would like the local chapter to function and what we'd like to work on. Thanks.”

[Speaker Walcott](#): “I declare the meeting adjourned.”