

MINUTES OF THE THREE HUNDRED AND THIRTY-EIGHTH PLENARY
SESSION
OF THE UNIVERSITY FACULTY SENATE
OF THE CITY UNIVERSITY OF NEW YORK

October 28, 2008

The meeting was called to order by UFS Chair Philipp at 6:30 p.m. in Room 9206/07 at the Graduate School and University Center. 65 voting members of 116 were present.

Baruch: Present – Hill, Martell, and Wine. Absent – Dumas, Freedman, Myers, Nematollahy, Pollard, and Vora. **BMCC:** Present – Genis, Kalogeropoulos, Martinez-Lopez, Soto, and Vozick. Absent – Friedman, Niyazov, and Persaud. **Bronx CC:** Present – Alternate Ismail. Absent – Alozie, Durante and Skinner. Vacancies – 1. **Brooklyn:** Present – Jacobson and Tobey. Absent – Bell, Cherukupalli, Duboys, Magliozzo, Massood, Morrill, Shapiro, Shortell, and Viscusi. **CCNY:** Present – Crain. Absent – Dalglish, Habib, Khalil, Lascar, Raj and Sank. Vacancies – 2. **CSI:** Present – Cooper, Petratos, Talarico and Alternate Stearns. Absent – Batson, Klibaner, and Yousef. **CUNY Law School:** Present – none. Absent – Farago. Vacancies – 1. **Graduate School:** Present – Baumrin and Weinstein. Absent – Lennon, Mathews, Nolan and Orenstein. **Hostos CC:** Present – August. Absent – Bernardini and Pimentel. Vacancies – 1. **Hunter:** Present – DeMeo, Grossman, Guzzetta, Spark, Strayer and Alternate Kindred*. Absent – Ancona, Kaye, Kuhn-Osius, Palanda, Simon and St. Hill. **John Jay:** Present – Chaffie, Crossman, Dunham, Kaplowitz, Katz and Alternate Benton. Absent – King-Toler and Kubic. **Kingsborough CC:** Present – Barnhart, Ruoff, Sarinsky, Stubin and Alternate Repetti. Absent – Hume and Wood. **LaGuardia CC:** Present – Beaky, Davidson, Mettler and Alternate Kurzyna. Absent – Lerman, Rushing and Shean. **Lehman:** Present – Hellmann, Marianetti, Maybee, Mineka, and Philipp. Absent – Jarvis. **Medgar Evers:** Present – Barker and Withers. Absent – Cuffee and Stewart. **NYCCT:** Present – Hounion, Richardson and Alternates Bakewicz and Pinto. Absent – Cermele, Horelick, Paynayotakis and Woytowich. **Queens:** Present – Bird, Brody, Gonzalez, Moore and Savage. Absent – Zevin. Vacancies – 2. **Queensborough CC:** Present – Barbanel, Pecorino, Sweetnam, Tai and Alternates Goldenberg and Volchok. Absent – Iconis and Wein. Vacancies – 1. **York:** Present – Lewis, Mawyer and Alternate Baron. Absent – Cockery. Vacancies – 1. Other faculty members attending were: Dahbany-Miraglia (QCC), Hartswick (CUNY BA), Hope (NYCCT), and Yanez (Law School).

Ernesto Malave, Vice Chancellor for Budget and Finance, attended.

Governance Leaders present: Baumrin (GS), Cooper (CSI), Kaplowitz (John Jay), Mawyer (York), Mettler (LaGuardia), Philipp (Lehman), Savage (Queens), Tai (QCC) and Tobey (Brooklyn) attended. Parliamentarian Moran (NYCCT), Executive Director Phipps, Administrative Assistant Pasela, and Secretary Blanchard were also present.

I. Approval of the Agenda: The agenda was adopted as proposed.

II. Approval of the Minutes of September 23, 2008: The Minutes were approved as distributed.

III. Reports (Recorded in Reports & Deliberations)

A. Chair

B. Vice Chancellor Ernesto Malave on latest budget developments,

C. Representatives to Board Committees

IV. Panel/Update on Student Complaints Policy (Recorded in Reports & Deliberations)

There being no further business, the meeting was adjourned at 8:37 p.m.

Respectfully submitted, Bill Phipps, Executive Director

Draft: Subject to Senate Approval

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UFS Plenary Rules of Procedure

1. Speakers will line up at the microphone and be recognized in order.
2. Speakers will identify themselves by name, discipline, and school.
3. Questions, comments, and motions should be brief and to the point.
4. Lengthy comments and speeches are not permitted and will be ruled out of order by the chair.
5. Follow-up questions are discouraged particularly when the line of speakers is long.
6. Questions should be broadly applicable to more than one campus.
7. Since union matters are not within UFS jurisdiction, the questioning period shall not be used to raise union matters or matters within the sole purview of the PSC with the Chancellor or with others.
8. Guests (non-senators) must ask for and receive permission of the body before asking a question or otherwise speaking at the meeting, and they may not vote.

1/02 (updated 11/08)

REPORTS AND DELIBERATIONS
OF THE 338th PLENARY SESSION
OF THE CITY UNIVERSITY OF NEW YORK

OF THE UNIVERSIT

October 28, 2008

Chair Philipp-- I would like to recognize Kim Hartswick, who is the director of the CUNY BA program. Welcome. Now, I'm going to delay my own report, which tonight will be verbal and not in written form. I'd like to immediately call on vice chancellor for budget Ernesto Malave, given that Governor Paterson has been issuing increasingly dire statements about the state budget. We thought it would be opportune to have him here, particularly today. So, welcome.

Vice Chancellor Malave--Good evening, everyone. I gave to the Senate staff a packet of materials for all of you, so I hope you all have one. You don't have to read it all, but let me just tell you what I was able to provide for you. My office has recently been producing a budget bulletin, three already this year. We've given you all three copies so at your leisure you can read it, and if you have any questions about anything, feel free to ask. Also in the packet is a recent press release by the New York State budget division and the Governor's office, as well as an abbreviated version of what the state budget director provided at about 11 o'clock today when the Governor was announcing the budget division's midyear report. I guess I'll begin by just saying what I want to cover, and then cover it, and then take your questions. I'm going to start with the status of the state budget--I'm not going to talk about the rewriting of the rules of capitalism today, but I'll let Professor Friedheim do that if he's here today--he would always do that when we had class a long time ago. Of course, the Dow was up 12% and ended the day up 900 points, which is a lot better news than most of us expected. I will focus on the status of the state budget and how it affects CUNY, and then I will proceed to the status of the city budget and how it affects primarily the community colleges. Then I'll talk a little bit about what is going to be happening over the next six weeks on the budget and what it means for the rest of this fiscal year, and what it may mean for the fiscal year beginning July 1, the fiscal year 2010.

Let me recap where we are and where we started the fiscal year. The state Legislature and the Governor enacted a budget this year that had for the senior colleges reductions of \$17.7 million. Those were embedded in the adopted budget. You will find in the first bulletin that we dealt with it largely through reductions in OTPS, 5% reductions. We felt that was not a significant hit. For those who have been familiar with the senior colleges, there has been a considerable amount of spending in OTPS almost throughout the colleges as a result of our directive to the colleges to begin spending down some of the reserves they had in the CUTRA accounts that were building up over time, in part because the idea was not to collect the revenue and make it a nice decorative piece but to spend it on the investments at the campuses. They needed a little bit of a nudging so there was a very high level of OTPS spending that occurred as we ended this past year. Therefore, we did not believe that a 5% reduction would be draconian. But then the Governor announced that the budget had begun to deteriorate, and he invited the

Legislature to return to Albany on August 19 to reopen the budget. At that point, the Governor announced that he was making \$96.6 million reductions to the State University of New York, and he was doing it by administrative fiat because he could. He didn't require the Legislature's approval, in part because of the way the state university is organized--it's more of a state agency so he just went ahead and took \$96.6 million from the state university of New York. Having done that, for the sake of parity they recommended a cut to CUNY of \$50.6 million. You'll find the news on that in the second bulletin we provided. Fortunately, we knew this was coming eight or nine months ago, so we were able to anticipate that fiscal year 09 was going to invite a midyear reduction. As a result, we were able to set aside certain reserves so that when it came down we were able to apply \$25 million in reserves, shift some costs over to the capital side of the house, so we could take that \$50.6 million hit and turn it into an \$18.6 million problem that I had to deal with by passing it along to the campuses. That required a more aggressive vacancy control program with a so-called pause or soft freeze--whatever you want to call it--but we have two principles that the colleges have had to adhere to. One is that all full-time faculty positions had to be maintained, that is, a replacement had to go forward, and that whatever savings could not come as a result of a reduction in full-time faculty. Secondly, any personnel that were in direct student services--mental health or financial aid counselors or people who were involved in advising students--those positions also had to be replaced, and whatever savings came from not replacing people had to come from elsewhere. The other thing we had to make sure we protect were health and safety considerations with the emphasis on health because there are always other ways of handling public safety issues in hiring peace officers. So that was the directive. I believe we have been able to, from what I've been hearing from the campuses, implement that. I have not heard or have any sense in any way that that commitment has not been able to be sustained. Part of the reason it's easier for the campuses to get through this is because last year, despite the reserves that we had set aside, the colleges ended the year with about \$30 million in reserves. There were campus-based reserves in the CUTRA accounts so they were in a position to handle it. Third, enrollment. You'll find this in the third bulletin. Enrollment increased considerably this fall, about 4% at the senior colleges, and about 7% at the community colleges. That increase alone will generate about \$25 million in additional revenue for the campuses. If you are sitting there with a 10% increase in FTEs at Queensborough or BMCC, those are additional millions of dollars that will be able to allow the colleges--after you account for the increased costs associated with that enrollment, for the instructional costs which that brings--will also enable the community colleges to deal with it. So that's where we are today, in reasonably good shape.

In the materials that you have, in the budget bulletins, I characterize what the Governor had characterized as a budget shortfall of up to \$8 billion--that was a month ago. It had grown from \$6 billion to \$8 billion. He announced today that the figure was \$12.5 billion in the shortfall for the state of New York beginning in fiscal year 2010. In the current fiscal year, he had projected the shortfall at \$1.2 billion, and today he characterized it at \$1.5 billion and is inviting the Legislature to come back on November 18 to reopen the budget yet again. He is asking the Legislature to come up with \$2 billion in ideas in spending reductions in the current year. November 7 will be an important date because

presumably the Legislature will begin to give the Governor some ideas as to what they have in mind, and the Governor may be coming up with some ideas. So there'll probably be about a week's time when there will be some discourse, something in the air, for people to contemplate. But, nevertheless, it's a serious problem when it is November or December and the Governor is inviting the Legislature to make \$2 billion in budget reductions. Everything I've heard from the Assembly speaker and the Senate--and understand it's very hard to grab onto anything before November 4 in terms of what people say and what they mean--is that education cuts are off the table but whether that means K-12 or higher education is impossible to tell; it depends on who you talk to. So that's where we stand. We're staring at November 18. There will be cuts and the only question is what the level of cuts will be, and whether CUNY or SUNY are going to be given any consideration for the fact that we've already given considerably. CUNY is down \$82 million this year already--that's a lot of money. I don't want to suggest that we are in a panic mode. We are not. People come to my office to see whether I'm still smiling. I'm still smiling, and I'm not terribly concerned about the current year. There may be actions that we need to take, but there are none that are making me worry about whether or not we are in an environment that is any different from what I just suggested about our priorities on protecting the core business of the campuses.

On the other hand, the fiscal year 2010 when people start talking about a \$12.5 billion budget problem, that's really a little scary. Just to give you a sense of what that means, I'm going to tell you a couple of things. Have we been here before? Look on page 21--it's called historical perspective. \$12.5 billion is a lot of money, and it's \$12.5 billion against what is called the general fund. The budget of the state of New York is over \$120 billion. A lot of that is federal aid, but the revenues that come as a result of the levy of business taxes and income taxes are roughly \$56 billion. The deficit is not against federal funds. It's against what the state of New York is able to generate. In the preceding slides, you'll be able to see the dramatic drop in personal income associated with the projected 160,000 job losses in New York and the effect that that is having on the revenue side. The biggest difference between what the Governor presented in his plan two months ago and today is the collapse on the revenue side. It's not that they are spending a lot of money, although they were already doing that. That was already part of the problem. They had that problem, but then the revenues collapsed by another \$5 billion as a result of the job losses and the collapse on Wall Street and the impact that collapse has on the state of New York. I was reminded about post-9/11 and the effects of the economy of that on New York was pretty dramatic in New York, and I remember an \$11 billion deficit in 2003. But as a share of the total pot, in 2003 the budget problem was even a bigger problem for Gov. Pataki at the time because the \$11 billion represented 24% of the general fund and the current deficit of \$12.5 billion represents 22.3%--not a huge difference but it gives you a sense of whether the state knows how to handle it. But the scary part, if that's not scary enough, is that in the case of post-9/11 people did not see the challenge of seeing multiples of \$11 billion every year. The problem now is that it appears that we are looking at a three-year deficit that we are figuring here there's a \$12.5 billion that is not going away. Over a three-year period, we are looking at an almost \$50 billion budget deficit. I'm not smart enough to figure out a \$50 billion budget problem, so I'm not going to worry about that today. I will say that we are bracing for, like the

Governor said today, real budget reductions. We've talked about tuition policy here before, and we will talk about it again, and we all know what is going to happen. The only question is whether tuition is going to increase by \$10 or \$1000. Pick a number. Tuition hasn't been raised at CUNY for over six years. For those who track the past 25 years of state fiscal policy, you can count on any national recession resulting in a major budget problem, resulting in a major budget cut, resulting in a tuition increase, the only question is whether it's a major tuition increase. The choices are very clear. I was telling some students today, nobody has to raise tuition, it's not like it's a mandate from the heavens. There are always alternatives to raising tuition. We could cut \$100 million from the budget. We could cut \$150 million from the budget. Who is to say that CUNY is somehow entitled to \$2.5 billion of public resources? What makes us so special? So the issue of tuition is going to come up in that context. I reminded my colleagues at a financial management conference that I didn't get elected to anything, and at the end of the day it's the body politic that decides what the right price is, what the right pressure is, and not me and not CUNY. This is not just any environment. Even in 2003, people were not rewriting the rules of capitalism. Maybe Terry Martell wants to tell us where it's all going to end, but the fact of the matter is these are not the same times. These are very different times. I'm not going to speculate on how our political leadership is going to respond. I think Gov. Paterson, from everything I've heard on the staff level, recognizes the importance of public higher education. I think they understand the work of the commission on higher education that Gov. Spitzer had empanelled that called for public investment. I really believe they get it. I'm a little concerned that there is now a new administration being formed in the Governor's office because we did a lot of work with the Governor's secretary before his tax troubles forced him to resign, so it's now the third administration that we are working with. You make an investment with one, and they are gone, and then the next one comes in, and then they are gone, and it makes it hard to keep it going but I know for a fact that the people in the budget division, some of whom worked on the commission on higher education with me, are very interested in maintaining the systems and making sure that we get through this very difficult period. You know, I've basically thrown out of my Budget Request a \$100 million because I'm not going to ask the state for that knowing what is coming. But we are going to ask for a modest investment program. We are going to continue to grow. We expect that our enrollment will continue to rise, and we can't retain the level of quality that we'd like to maintain without additional faculty levels, without additional support levels, so we're not going to abandon that, and we're pretty confident from everything that I've seen that what we're going to be seeing over the next few days--I don't expect to be here a month from now talking about the major cuts that the system is going to have to endure. I don't expect to be having to talk, ever, about a retrenchment environment. I like to tell people that we are working for a stable environment, and the last I checked that is not a dirty word. We've gone through a couple of really good years, hired hundreds of faculty. In fact, when we issued the fourth bulletin reflecting on what we did in this first quarter, we added another 220 net full-time faculty over last fall. So over the past two years alone we hired nearly 500 net full-time faculty, and if I can maintain that environment that's fine. But I'm not going to be able to hire another 200 next year, I can guarantee that. But I can assure you that we will be in a position to replace those who separate, absent some act of

God that turns a \$12.5 billion deficit into \$24 billion. So I'm optimistic that we can find a solution.

Very quickly on the city budget. The third bulletin talks about Mayor Bloomberg and City budget problems, the other shoe dropping. The state of New York did all right by the community colleges. They had no cuts to speak of to the community colleges, and I've heard nothing to date that that's going to change in the current year from the state side. I think they are concerned, as they should be, about questions of access in this environment, and I don't think we should expect any major erosion. On the other hand, the Mayor ordered cuts of 2.5% against city funds. For CUNY, that represented a \$5.8 million reduction target. We had also anticipated that that was coming, and we have set aside some reserves so we were able to reduce the amount that we had to allocate to the colleges to \$2.6 million, and those numbers you will see reflected in the schedule on page 2. I think frankly, given the fact we have a 7% increase in enrollment at the community colleges, which is translating into about a \$12 million increase in revenue, that clearly more than offsets the budget pressure of \$2.6 million. I think the colleges are handling it reasonably well. This is from a group of schools, by the way, that ended the year with \$6 million in reserves. So they ended the year with enough capacity to take care of the \$2.6 million budget problem before even thinking about applying any of the revenues from the new enrollment. So I don't have any real concerns yet about the community colleges. What I mean by "yet" is that I hear some rumblings that the Mayor is planning additional reductions in January across the board for city agencies, and that would include the community colleges. So I'm bracing for some more budget pressure. How much more is uncertain at this time, as is how the city council reacts to it now that they've all been reelected, I suppose--they are all going to stick around for a little while. We thought half of them are going to leave, but they are not. How they will react is unknown, because the last I saw Speaker Quinn she's already talking about an increase in income tax for New Yorkers, and the Mayor is also talking taxes so I think what is going to happen is that they will put on the table many cuts to scare the living daylights out of people so that they won't increase the personal income tax and will do something about the property tax. Some of that is going on, but it's hard to get people to say yes to increased taxes unless they see an alternative that is pretty gloomy. We won't know more until perhaps January. The city won't know how much damage the state is going to inflict on the city until maybe November 18. So the city is getting ready, just as I am getting ready, to see what they have in store for the city of New York.

On November 24, the CUNY Board of Trustees committee on fiscal affairs will meet and consider the CUNY Budget Request for the next year. You should look forward to seeing that in the next couple of weeks in draft form, for comment. We have a meeting on October 31 with the Senate budget advisory committee to get further input to see what the Budget Request should look like. On December 8 the Board of Trustees will meet and enact that Budget Request, I hope, and on December 16 the Governor has made clear that my Christmas Eve will be spent looking at budget tables because on that day the Governor is issuing the budget for 2010. Normally that budget is issued in the middle of January, but not now. The Governor wants to get started on December 16 with the executive budget proposal, so things are moving really, really fast.

We are in a state of a little bit of uncertainty, but I'm really not concerned about our ability to get through this. I remember the last budget situation in 2003--I believe we made most of the right calls at the time, and I believe we will make most of the right calls this time. We may make a mistake here and there, but by and large we will get it right, and we'll be able to figure out how over the next few years. I don't know how New York State will rebound. I don't know the Wall Street factor. Historically, Wall Street always came back to represent 20% of revenues in the state of New York, and I don't know about that anymore. It could come back in a structural sense to represent only 17% of revenues, and how the state of New York makes that up going forward is anybody's guess. It's already, some would argue, a somewhat high tax state so there are limitations on that, making it hard to see how that gets solved. We will have to monitor it very carefully, whether or not any new industries move in and take the space that Wall Street investment banks used to take. I do know one thing. It's not going to go away in 12 months. If we can manage a few good years of stability, to let the system rebound, I think we'll be in really good shape and securing that prospect will be our task and our mission over the next few months.

Chair Philip--The floor is now open for questions. I should emphasize questions, not statements or speeches. The Executive Committee has asked me to be strict on speeches and to cut them off, which is not my natural inclination but I am under orders to do so. I was tasked specifically at a meeting at which I was not able to be present. So if you want to make a speech, write it down and hand it in to the Vice Chancellor.

Professor Dean Savage—One of the things we have a chance to do when we have these painful moments is kind of look back and see what we perhaps could have done differently. I remember at an earlier gathering you had been talking about the way in which some campuses were running up their CUTRA accounts, and that this was a dangerous thing to do. Given the current state of affairs, might it not have been a good thing in retrospect to let those accounts accumulate--would that have helped us through this rough patch? Vice Chancellor Malave—Maybe there is some confusion about this. We directed the campuses to have CUTRA balances that were not in excess of 2% of their budget. We thought that was a reasonable amount of resources to hold aside. In the case of Queens College, that would have represented \$2.5 million. In fact, Queens College was the poster child for this policy. Professor Savage—We had \$7 million. Vice Chancellor Malave—Yes. What I saw there was students paying tuition, and somebody putting in a box as a nice decorative piece as opposed to making the investments needed to be made, or Compact dollars that were directed to the campuses for investment that were also being put in a nice decorative piece. I did not think that was a sound policy. Knowing what I know now, I think 2% is just fine.

Professor Dennis Bakewicz--In view of the gravity of the present economic situation, and the inevitability of cuts if not now then a year or two down the line, basically you mentioned the stable environment. Has the university thought seriously of how it would pass future cuts along to the colleges? Would they be done across the board, would it be done in a way that takes into account the economic stability of the colleges? Have you

given the serious thought and, if not, when will you? Vice Chancellor Malave—We always do that. We always give it serious thought. In the same way in which when we craft the Budget Request we recognize the differences among the campuses, we created a budget model that helps allocate those resources. We do it in a combination of ways. If we had to, and I don't anticipate administering cuts, but if we had to it would be foolhardy not to acknowledge that there are certain investments that need to be made on certain campuses. For example, this year notwithstanding the budget problems that we had, we made an additional \$2 million infusion of resources into John Jay consistent with what we recognize to be an historic funding inequity at John Jay and the need to make investments in John Jay. We decided this year, in spite of the budget pressure, that we were going to finance the graduate student health insurance program, by hook or by crook. That was a commitment that the Chancellor made. We still have a \$2.5 billion budget, and where I come from that is still a lot of money. Third, we made a major commitment to mental health counseling services throughout the university. We were not going to back away from hiring mental health counselors on every campus at this time when we have a hiring pause. So the answer is we do it all the time, and I expect to continue doing it in the future. Professor Bakewicz--Will the capital budget suffer, do you think, in any way because of the cuts? Vice Chancellor Malave--Probably less than most people think. You could cut now and it will appear as though you are doing the right thing, saving money, but there's also a concern if you don't do the planning work that needs to be done. In two or three years we'll be out this mess, and if you're then able to spend money on the capital projects but you didn't do any design work, you've got nothing to do. I'm sure there will be some cuts focused on health and safety matters and perhaps a lot of new projects will be put on hold, but they're not going to put themselves in a bind so that when they are ready to spend there aren't design work, planning documents that are ready to contract out to firms that are ready to work.

Professor Bill Crain—With the economy diving, and with hardship coming for the students, what's the justification for the chancellery continuing to recommend high salary increases for the Chancellor and college presidents, for those living high off the hog to live even higher off the hog in these difficult times? Vice Chancellor Malave—I really would only say that the Chancellor has an Executive Compensation Plan that's in place, that all workers have performance evaluations on an annual basis, and like every other set of workers they're entitled to have either cost of living or performance awards. There are some executive in this system who got zero.

Professor Mike Vozick—As the person struggling to represent adjunct concerns here, I have a general question and a specific question. The general question relates to the Chancellor's comment that in order to cope with the coming budget crisis, he had set up three vice chancellor level committees to review all the expenditures of CUNY and to find new approaches that would save funds, and so I wonder if you could give us any update on any of those areas. My specific question is that whenever the University hits hard times financially, although it is uncomfortable to say so since it goes against the desires of the people in this room and the full-time faculty, the number of adjuncts hired has to go up to cover the balance—it's just simple arithmetic. So along with this, since this should not be a surprise to serious administrators and you are not only a serious but

an extraordinary administrator, is there any thinking about how to optimize, how to get the best benefit out of adjuncts, how to recognize the value that the adjuncts are playing, rather than just see them as a failure of our ability not to need them? Vice Chancellor Malave—I wouldn't characterize adjuncts in that form. I just think we don't need to characterize it that way. On the three working groups, the Chancellor in this environment, I think properly so, has asked us to take a fresh look. One is a budget group that I'm chairing, and he wants me to lay out in as transparent a way possible how we spend \$2.5 billion, so that if we are in a position where we have to make difficult decision, we do that in an environment of complete transparency and light. Another task will be to put various things in various buckets—the things that we do that are clearly part of our core mission, education in a quality fashion and timely fashion, with our research and various parts of our core. Then we do things that are good things that are perhaps on the periphery of our core. For example, we have lots of collaborations with the Board of Education. The CUNY budget sheds \$20 million for those programs, an interesting sum of money. So in times when difficult budget choices must be made, should we continue an activity despite the fact that we can't hire more full-time faculty or do we need to tell Chancellor Klein that it's time for you to take care of this? We do things for immigration services, for example, on our campuses. They are terrific things, but that's a social service function that the City of New York provides in many other venues. Should we be expected to spend upwards of several million dollars on that? So we need to put these things into buckets. Mind you, there are things we do outside of our core that we do extremely well and even better than some of the thing we do within our core. So part of the exercise is not just identifying our core, but eventually what part of our core are we not managing well? It's easy to cut programs, but it would be very difficult for me to cut programs of value, regardless of whether they are core or not, and maintaining program that are not working very well. The other thing, on the capital side, Iris Weinshall is look at how we can capitalize our assets a little bit more. We have 28 million square feet, a lot of buildings, and maybe there is some financing that can go on there. Third, Vice Chancellor Schaffer is examining all the operating rules of CUNY. We have some really strange ones, as you probably know. Particularly at a time when we're dealing with constraints and budget problems that tie the hands of colleges and make them do terrible things when it comes to handling budget problems, he's being asked to look at whether we have a set of rules that work for the 21st century—many of them were done 40 or 50 years ago. So hopefully the Chancellor will have a set of ideas going forward that are going to have to be taken to another level and drilled down to the extent we need to implement any of those. Professor Vozick—And the question about optimizing adjuncts? Vice Chancellor Malave—I'd defer to Lexa Logue the next time she arrives to answer that question.

Professor Terry Martell—I would agree this is unusual times, and I expect the next two years to be very tough for us. I'm wondering as we put these committees together at the very highest level of the University if there wouldn't be a role for one or two members of the University Faculty Senate because it's my experience that sometimes with the best of intentions a faculty perspective is often a useful perspective in these budget items. So I'd ask that it be considered particularly in the budget areas. One other point—the silliness of our tuition policy is becoming absolutely clear right now. We're going to have a

tuition increase: it could \$1,000 or \$500, but it's not going to be small. The idea of having small, regular tuition increases makes some sense, so I'd ask that policy be reconsidered. Vice Chancellor Malave—I more than agree on the value of faculty input. For now over 10 years I've enjoyed and appreciated the work of the Budget Advisory Committee of the UFS, and I would expect if it goes to a second phase that the University will engage the faculty as it will engage the students in whatever we ultimately do. We have to, and I'm sure we will. On the issue of tuition, for those who don't know, the SUNY student Assembly met in Syracuse on October 18 and voted by 50-10 to endorse a "rational tuition policy." So the students at SUNY have come out of the box, embracing a tuition policy that keeps tuition increases low. They're not begging for higher tuition, but they are saying don't slash and burn our budgets beyond what you've already done – and the cuts at SUNY this year are about \$150 million – and they see what is happening on SUNY campuses and they are seeing that their initial investment of \$4,350 plus their room and board is resulting in not a whole lot if they're doing deep budget cuts. So the students over at SUNY are saying there are going to have to be increases and if so keep them modest, but they understand they need to contribute because they recognize it's an investment in their own education. It's an interesting development.

Professor Gail August—This semester I applied for a PSC-CUNY Research Grant, and I was told the college was no longer able to give released time with those grants. Is this a result of a budget adjustment, or is this something going on at my college? Vice Chancellor Malave--It's going on at your college. No one has been directed to do this. They do have a new provost at the College, and with a new change in leadership there is sometimes a change in policy with respect to released time.

Professor Stefan Baumrin—Don't you think it would be a good idea if in addition to the University having faculty members in a budget advisory position, that before anything actually gets done each college should have a faculty committee, or at least a committee with elected faculty, as part of its budget planning? Vice Chancellor Malave—Colleges should have budget planning committees under any circumstances, which includes faculty and others, so let's start with that. We may be heading in that direction anyway. I would not put too much into this budget working group stuff, because again I don't anticipate they will be engaged in an environment where people are going to be trying to figure out what to contract. What we'll do in the next month perhaps is come up with a set of observations. We'll have a set of numbers at a pretty high level of how we spend \$2.5 billion. Then, in order to do this well, we probably need to move into a different phase that involves a lot of different folks with different levels of expertise in a lot of different areas. If we decide we want to examine technology issues, security issues, consolidation issues, for example really look into administrative consolidation, that would include lots of folks, including faculty and administration. I don't think this involves a lot of academic restructuring issues at all; it's mostly focused on administrative restructuring issues except where it comes to issues such as whether we need to move into a terrible environment in terms of retrenchment – none of which is foreseen even in my goriest budget planning – that we would entertain that. We can't do that at the University level. We know the action is at the colleges at the end of the day. I get the report and see the numbers, but the real work goes on at the campuses. Professor

Baumrin—We agree on all that. What happens historically when things get dicey, is some neophytes are brought into the show and while they are trying to get up to speed, all the decisions get made. I'm recommending that some people be in the picture on the college during the buildup rather than the countdown. Vice Chancellor Malave—I'm not allowing any neophytes in. We're not going to repeat the past, and I'll give you an example. Having been around in 1990 as a junior budget officer, in 1995 when we made that awful decision on retrenchment, not only did we make that awful decision but the buildup to that was even worse. When Gov. Pataki had recommended \$100 million in cuts, 80th Street decided to assign theoretical targets to the campuses. What would happen if your budget cut was 20%—something obscene like that—and colleges were then told do these exercises. So Hunter College, what would you do with \$15 million less? And they would have to come up with proposals, while everyone knew this was going to end in a tuition increase to offset the cut. So in 2003, having learned that lesson, I advised the Chancellor not to even talk about retrenchment, don't even assign a budget reduction target because it's not real, and all it's going to do is create an environment that's going to sap the energy. He didn't need my advice because he knew what the experience was, but we're not going to do that again. If somebody punches a \$100 million hole in the budget six weeks from now, I'm not going to send Jennifer Raab a \$12 million budget reduction target so she can drive everybody at Hunter nuts. We're going to figure out how to get through, it may be unpleasant, we may have to do things we don't want to do, but we're not going to do that.

Professor Phil Pecorino—You're actually using the R-word tonight. No member of the chancellery has used that word in this body... Vice Chancellor Malave—Only in the right way. Professor Pecorino—Even so. Have you picked up lately in any form whatsoever any speculation or rumors about the merging of the State and City University systems? Vice Chancellor Malave—In somebody's fantasies? No. SUNY's already too big.

Chair Philipp—Is there any talk affecting the State expenditures on TAP as a result of the budget crisis? Vice Chancellor Malave—I actually thought there would be more talk because it is a \$1 billion program. It seems like a nice target for budget cutters, but I think at the other end, to the extent there is talk of tuition increases and other issues that affect access, that there's a reluctance to do anything about TAP. There's also lots of people in the Budget Division who served on the Commission for Higher Ed as staff members with me who are now basically crafting the higher education budget who remember all the studies we did on the existing problems in the TAP program, how it doesn't do justice by independent students. There are opportunities in the TAP schedule because they're asserting at the highest ends they are giving awards to people making \$100,000 even though they are minor. I'm not sure what the future holds, but I think it's pretty safe. Chair Philipp—What has the discussion been around opportunity programs such as SEEK in terms of the budget? Vice Chancellor Malave—Nothing at all. Chair Philipp—Since SUNY doesn't have a chancellor yet, does that affect its ability to formulate cogent budget proposals to the State? Vice Chancellor Malave—SUNY has an acting chancellor now, and it thought it would have a permanent chancellor by now but that seems to have run into some bumps. They appear to have a divided board. They have not been able to craft a budget solution to deal with the \$96.6 million problem that

they have. The State has taken their money, but they are struggling with it. Part of it is they have an acting chancellor and a board that is divided, and they don't have a strong administration—an acting person here, acting person there. The former budget director for SUNY is now in the State Budget Division, so it's very difficult. I think Carl Hayden is doing a good job in a difficult situation. It's unfortunate for us to be going into this budget process in Albany without a strong collaboration with SUNY. The fact that they are in the woes they are in without a chancellor makes it difficult for us to form alliances. Last year, we were working together very closely, but when both systems aren't working together it's the whole divide thing. I have to tell you, whether it's faculty or students, it is going to be an awful environment in Albany. I expect it is the poor in New York, as is unfortunately often the case, that are going to bear the brunt of the budget crisis. That's what happens given the relative powers; the poor don't have labor unions so the whole social services network that is designed to protect the poor through health and social services agencies are the ones who are going to bear a significant burden. To the extent the labor unions protect, as they should, workers and there is no significant workforce reduction, all that means is that the payments and transfers that go to social service agencies are the only place left to go. So when we go to Albany, we are going to be competing with major, major reductions in the safety net of New York. To the extent CUNY and SUNY are different, it's going to be hard to have a coherent message for the Governor and the Legislature. Chair Philipp—If tuition is increased, do you think the Governor will try to keep some of it for the State Treasury? Vice Chancellor Malave—I think he'd try to keep most of it for the State Treasury! We've seen this movie before. There will be cuts in the State, and our hope is we have convinced most of the key players that you can't do a tuition increase unless some of it comes back to the system for investment. You can't just take the money, and put it into the hole of the budget cut. I believe we have made some headway, so I'm fairly optimistic that while we will take a cut in State aid we won't be making major cuts because they will likely be offset by an increase in tuition, enough even to make modest investments going forward. Chair Philipp—Just using your crystal ball—differentials between graduate and undergraduate tuition. Do you think increases might be similar or different? Vice Chancellor Malave—That's a good question. When someone tells you you're going to have to raise revenue, what does that mean? There's lot of ways. You could raise graduate tuition twice or three times the rate of undergraduate, or you could triple the non-resident rate. You could eliminate the discount between 12 and 18 credits that all the students enjoy at CUNY. We've had some discussion of that at BAC. Right now, students don't pay any more for that 15th or 18th credit. Some have argued that discount should be eliminated as a way of keeping the rate for everyone else as low as possible. The last time we had to do tuition, the Governor had recommended a \$1,200 increase in tuition. Our friends in the Legislature said it had to be under \$1,000 so they came in at \$950. The question was, how do you make up the difference; we thought they were going to come up with additional State support. They said no, for the undergraduate residents you do \$950, but for the non-residents you do a \$5,000 increase. That was their enlightened proposal. They walked away from that quite easily because as far as they are concerned they don't enter the ballot box. We decided not to do that, but instead we eliminated the discount and charged all non-residents on a per-credit basis. So if you wanted to take more than 12 credits you had to pay for it, but the effective rate for everybody else, the increase was

\$2,000, not \$5,000. We considered briefly whether to apply that to the resident students, but decided at the time not to. But all these things will be on the table, and we will hopefully have a good debate about what the right price is. On the graduate side, depending on the program, there are a lot of third party payments that come from corporations or educational entities that are paying for someone's graduate course. We've even considered lowering some forms of tuition like the Maintenance & Matriculation Fee—I thought we already did it. It wouldn't be the worst thing to do to lower tuition in some cases. The issue of differential tuition has also come up as to whether or not there should be a difference in price between a set of programs similar to what we already have for the MBA programs, the School of Architecture, Engineering, Physical Therapy, and open that up a little more—it's a discussion. It doesn't generate a lot of revenue, but people at the campuses have programs they believe they could propel to real significant levels if they had that extra revenue, so that ought to be considered seriously. Chair Philipp—Thank you for coming!

Chair's Report

Chair Philipp—The UFS of CUNY and SUNY will have a joint meeting, together with the Faculty Council of the Community Colleges of SUNY. Lenore and I will be representing our group in New Paltz in early December. There are issues with the University Committee on Research Awards. The UFS Research Committee was not able to get a liaison for all disciplines, although substantially all. The Chancellor has objected to the costs of administering the PSC-CUNY Awards, and Vice Chancellor Gillian Small is putting together a committee to discuss revisions in how these awards are structured. We're monitoring that very closely and our voice will be heard in these deliberations. This is of great concern to us. For the Faculty Experience Survey, which is being led by Professors Kathleen Barker and Dean Savage, we have asked for money from the Chancellery to conduct that survey, about \$20,000. We got a response back, asking what the difference would be between that survey and the one that Interim Executive Vice Chancellor Lexa Logue is planning to do. Hers is a survey, which if I recall correctly is directed primarily to younger faculty members, which is nationally normed but is quite expensive, about five times more than we were envisaging for our survey, and it's our expectation and hope that both will proceed. It would be interesting to have a nationally-normed survey, but the survey she is intending to do is not particularly attuned to the particular conditions of CUNY. In particular, we want to get some feel for the difference among the campuses and how they deal with and treat their faculty members, and how the faculty members view their campuses as a place to teach and do scholarly work. The Council of Faculty Governance Leaders, which includes the Executive Committee of the UFS, will be meeting with Daniel Doktori in early November. He is the Governor's special assistant for higher education, the person ultimately responsible to advise the Governor on higher education policy. It's been our understanding that Doktori has been travelling among the campuses of SUNY and CUNY, not necessarily meeting with faculty governance leaders, however, and so we thought it appropriate to invite him to a meeting. I've met Doktori while he was working in the Spitzer administration, and he was an approachable person that one could talk to. The idea of a new community college is not dead. John Mogulescu, who is a university dean, has prepared a draft report for the

Chancellor. The UFS Executive Committee will be discussing that with him, I believe before that draft goes to the Chancellor. More than that I can't say because I haven't received that report. The Chancellor had, before the fiscal crisis exhibited its full force, planned to mount a new endowment drive. You will recall that members of the UFS many years ago demanded that the University establish such a drive. We were laughed at, all around, but we only suggested that it be \$1 billion. Well, it's over that amount now, and the new announcement was going to be even more, but that's been put off for the obvious reason that this is not the best time to do that. Any questions?

Professor Crain—On the matter of speeches, you were directed by the Executive Committee not to permit speeches, only questions. Does *Roberts Rules of Order* cover that? I'm not sure that it's the prerogative of the Executive Committee to make that decision. It may be the body has to rule on that way of conducting business. I don't know if the Executive Committee can order the Chair to conduct business in that way.

Chair Philipp—It's my belief that they can, but of course we can speak about it to our parliamentarian. OK? As a courtesy to the body at large, we have to keep all comments brief because -- tonight was not an example -- on other nights we run out of time and the guest has to leave before all people have a right to ask questions. That's really of concern, when people are prevented from asking questions because some individuals spend a lot of time at the microphone. I think that's a denial of speech, and I don't really appreciate that myself, but nonetheless I was so directed by the Executive Committee to take that action and I will do that.

Professor Pecorino—On Friday, November 14, we have a conference. You have a flyer on it. It's entitled "Welcome to the Academy," and it's intended primarily for faculty that have joined CUNY in the past three to five years. However if you have any faculty on your campuses who are very much interested in the topics here, we encourage you to circulate the word, and they can participate....Right, there are no pictures on the flyer of adjuncts. If you attend, you'll find that when we are discussing faculty that adjuncts are faculty. They will be included every time we mention what the prerogatives and rights are of faculty, and the exercise of academic freedom, and in many other ways. The designers of the program don't make a distinction between faculty and adjunct faculty. Professor Vozick – off microphone. Chair Philipp—Our target audience is new faculty members, with preference, because the Executive Committee felt new faculty members needed a stronger introduction to the particular culture and mores of CUNY, the unique conditions that we work under. They need to be brought up to speed a little faster. It's true that colleges do this among themselves to some extent, but that's the intent of this meeting.

Professor Vozick—With relation to the joint meeting at New Paltz, is that open to others?

Chair Philipp—No, it's simply the top leadership discussing in private what our strategies are in our approach to the Governor, and of course that has to be closed.

Update on Student Complaints Policy

Chair Philipp—As you will recall, this policy came up last year, and in particular at Professor Benton's campus some interesting issues have arisen. I look forward to hearing this as much as you do.

Professor Karen Kaplowitz—The Board of Trustees passed this policy a year and a half ago, and we at the UFS raised a lot of concerns and identified a lot of problems. We were shown this document when it was already vetted by the legal counsels at the colleges, and the vice presidents of student development at the colleges, and the provosts. We saw it very late. So we got a lot of changes made, but in recognition of the potential legitimacy of the issue raised, the Board of Trustees added to the policy that the Board would review the policy in the spring of 2009, and revise it if it is needed. To my knowledge, this is the only policy that has written into it a plan to review and revise if necessary with an actual date to do so. So the CUNY legal office, this semester, is gathering information on how many cases were at each campus, reading the reports of investigators such as Ned has been for three cases at John Jay, and preparing possible recommendations for the Board, and the UFS has been invited to communicate with the legal office about ways we think it should be revised. In that context, we invited Ned, both because of his experience professionally and at John Jay so that we could decide what we might like to recommend as a body to the legal office and then the Board of Trustees about revising this policy, which I think we will decide needs to be revised after we hear from Ned, if we didn't already think so.

Professor Benton—The CUNY Student Complaints Procedure is now available to students to raise complaints about faculty members. As a department chair, I have now been involved in three such situations, and two of them involved adjunct members of the faculty, and one a regular member of the faculty. The results turned out to be the three different possible results: one in favor of the student, one finding that the whole matter was subject to academic freedom and therefore the whole investigation stopped at that point, and in the third a complete fact-finding was done and found in favor of the faculty member. In part of my work, I'm director of the MPA inspector general program at John Jay, which is involved in inspection and oversight. As a result, we have classes in investigation, and I'm also the monitor in the *US v. the Commonwealth of Puerto Rico*, and I work for the federal court down there. It's a case between Governor and the Justice Department, and we monitor the quality of a lot of services down there in youth corrections, and also design and redesign and monitor investigation systems. So, in getting involved in this I looked at CUNY's procedure from the point of view of how we look at investigation systems in other settings and a lot of ideas came up. So I'm just going to go through some comments on what I've encountered, and ways we might consider improving the procedure that we have.

First, we need a form which indicate when the student has really filed a complaint. What happens is you get a student saying I'm complaining about such and such, and we say are you complaining or are you COMPLAINING, and the student will then say, well, that wasn't my real complaint, or the student will withdraw the complaint, but what we need is something so we know when the student actually filed a complaint. Otherwise, it's left to the discretion of participants within the process to try to figure out if this was a real complaint. The complaint form should also contain the essential information; for

example, you are supposed to throw out the complaint if the activity occurred more than 30 days before the complaint was filed. You're not supposed to proceed to fact-finding if that's the case. But if the student doesn't indicate when the behavior is alleged to have occurred, then you have to start investigating to find out whether you are going to investigate. The basic cover sheet of this needs to lay out the essential information to determine some kinds of threshold issues.

Second, while the policy says if something is covered by another procedure then the complaint process shouldn't go forward, it's very vague who gets to decide that. It implies the student gets this advice from a student services official, but it should explicitly provide that the chair can determine at a particular point that this is covered by something else. It doesn't say that, and you could read it as not something the chair gets to decide.

Third, the procedure should bar other kinds of fact-finding and settlement processes while the complaint procedure goes on. I had a situation where I was in the middle of a process, and the student says don't worry about that because I'm discussing that with the Vice President for Student Affairs and they may be giving me a tuition refund. Based on what? Did we discover anything went wrong yet? Then I'm trying to say to the Vice President let's first figure out if there's something you're supposed to give someone a refund about. So we can't have a three-ring circus. If the student wants to invoke the process, then we have to invoke it.

Fourth, the procedure should anticipate multiple complainant cases, because they're going to happen. Invariably, you're going to have a case in which six students at the same time complain about a faculty member. They're not all necessarily complaining about the same thing. In one case, I made a table with little x's about which student is complaining about what so we could keep track. Then you have to determine which of these things occurred within the 30-day limit with which students. Then you have a very complex matrix of time line analysis to figure it out.

Fifth, the procedure should have a step that allows the chair to recuse him or herself from a case. It allows the student or faculty member to ask that, but not the chair. Why put the chair in a position of having to invite someone to say ask me not to be involved—I'm not the right person, I've already made up my mind, I was involved, etc. It should be clear the chair can be recused.

Sixth, it does not clearly state how a chair can decide to rule out certain parts of the complaint or the entire complaint based on timeliness. It simply states that timeliness is a consideration, but not when the chair gets to throw certain kinds of things out in the process. It also says in the procedures that you can grant an extension for good cause, and gives an example of good cause, but I didn't have a clue what the difference is between good cause and insufficient cause. No advice whatsoever, and I think the result is you're going to get a random set of responses as to what one chair allows and another does not.

Seventh, the procedures should provide early in the process for the faculty member to get to provide the faculty member's written side of the story. I've never dealt with an investigation procedure in which the person who is the target of the complaint isn't asked what is your side of the story? You're supposed to eventually meet with the person, but there's all kinds of conclusions you're supposed to draw first without ever hearing from the faculty member who is being accused of something. I think that's really unprofessional and inappropriate.

The next one concerns the whole question of academic freedom. For example, it starts out saying the fact-finder is supposed to pause and consider the facts alleged by the student in the light most favorable to the student, and then make a determination whether what is alleged is clearly covered by academic freedom. This structures the analysis in a manner that is amazingly favorable to the student because first of all you have to consider the facts in the light most favorable to the student. Well, what if the student asserts no facts, but only a conclusion: my professor is a racist. Am I supposed to accept this as a fact, and consider it in the light of that fact, or am I supposed to figure out if the student offers any factual basis for the conclusion. It's not clear whether they're talking about the facts asserted by the student, or the opinion that the student asserted. This is the first part of the procedure that asserts a standard, and in this instance the standard is clearly covered, and I just want to point this out because we'll get back to it in a minute.

Ninth, there should be more guidance about how this concept of academic freedom is to be applied. It's profoundly important. I would prefer that they state a list of things we could all agree are not covered by academic freedom, and then expect that the fact-finder will look for one of those things, as opposed to asking this in this vague way in which they don't really define what is allowable under this procedure. They give examples, but why don't we just lay it out there. Say it's incompetent or inefficient service, neglect of duty, physical or mental incapacity, conduct unbecoming to a member of the staff, and I would throw in based on AAUP reading I've done the concept of persistent irrelevance to the subject matter of the course. This ought to be written that if it's not one of those things, we're done.

Ten, we ought to ask they eliminate the word "investigation" and substitute the word "fact-finding." I think "investigation" is a pejorative term, that typically comes from criminal kinds of things. We would be better off in an academic setting using the term "fact-finding."

Eleven is the issue of standard of proof. The fact-finder is never offered a standard of proof for the fact-finder to evaluate conflicting evidence. It does offer a standard of proof in the standard about academic freedom, and it also offers a standard when you get to appeal, that it must be clearly erroneous before the appeal is to overturn it. But when it's dealing with the chairs' fact-finding determinations, there is no advice whatsoever. I don't know whether they mean preponderance of the evidence, or clear and convincing, or like a jury beyond a reasonable doubt. I'm trained in this and I know the difference, and I know that the answers I would have come up with would have been completely different if they told me a particular standard. I think we need to be aware of that.

Twelve, the procedure allows either the student or the faculty member to challenge the objectivity of the chair, and then it allows the provost to select “somebody else.” I think it absolutely clearly ought to be a chair. The provost could choose someone from the accounting office or anybody, but it should be a chair because the issues here balance pedagogical considerations, administrative considerations, all kinds of considerations that chairs are in the best position to understand, particularly because they are elected by the faculty, which is a good thing.

Thirteen, there are a lot of assumptions that chairs know how to [tape turned over]...there is a clear and convincing evidence. Well, exactly where is this clear and convincing evidence going to come from if there is no further fact-finding. Even if someone drops it on your table, if you look at it that is fact-finding. I think the burden ought to be on the appellant to present some new evidence which if found to be true would substantially affect the result. That would be sufficient for the appeal body to turn it back over to the fact-finder in light of the new information and get a new analysis of it. That’s the way it ought to be structured, but the way it is, is ridiculous.

Two more points. The first has to do with stripping the chair of the chair’s authority during the pendency of the fact-finding process. It basically says the chair makes findings and recommendation, and then you go through this process, and then the provost makes action decisions. Well, does this mean that in the period between the time when the student makes the complaint and we go through this entire process that the chair lacks the authority to do the things the chair normally is authorized to do? I found in the course of these fact-finding processes there were several moments when I felt I needed to do things simply in order to maintain people whole. In one instance, a student was given a grade by a faculty member which resulted in the student’s being thrown out of the college and not be allowed to reregister for the next semester. It looked to me, based on the assessment I’ve done thus far, that I thought that this might not work out this way, that there might be some other resolution, but if I didn’t do something the student was going to be irreparably harmed. So I then proceeded in my capacity as chair to take a step to deal with the situation, and I asked the registrar to do something to hold this together. Well, I think first of all that during the case the chair should retain the chair’s authority to do what the chair usually does, and I also think we need to figure out why it is that if the chair finds that certain things should be done and recommend that they be done, and if they are in the capacity of the chair to do them, why does the chair have to get permission to do something that the chair has the authority to do already? I don’t think that’s appropriate.

Finally, I think the whole procedure would benefit by reducing certain kinds of things to forms. For instance, it says that the chair has to send a letter to the faculty member stating certain kinds of things. Well, why do we have to write this letter up each time? Why not have a form? Also, can’t I send an email? It’s a lot easier. There are a lot of issues like this that have to do with mechanics.

I'd like to close by saying that in each of the cases, I think that the result was just. In two of the cases, I think the clarity and finality of the determination that the accusation against the faculty member was being rejected was very important. The two adjuncts involved in my two cases were very high-ranking officials in very important agencies. It mattered for these people that there was a result that said what the student alleged was not sustained in this fact-finding. Furthermore, I think in the other case it worked to help some students who were in a very difficult situation in a very positive way, so I don't really want to say I don't think this is a good idea, there is just a lot that needs to be done to improve it.

I also want to see that an *easy* one of these is going to take a chair five hours to do. The more complicated ones took me easily 20 hours each. So this is a very serious responsibility, and a very serious addition to the workload of department chairs. Thank you.

Professor Frances Ruoff—There are some departments in some schools that already have forms in place for student complaints. My question is, when you spoke to the faculty in any one of these cases, full-time or adjunct, were the faculty members apprised that they had the right when accused of something or having a complaint drawn to them of allowing a union rep be with them or another faculty member so they were clearly aware? They were aware and opted not to? OK.

Professor Michael Barnhart—I was wondering of the three cases, under the old system do you think the complaints would have surfaced in one form or another, that they would have been handled differently or in a less optimal fashion? Did this improve what would be the outcome under the way we used to handle these sorts of things? Professor Benton—It's hard to say because there's such a variety in different departments. In the case that was handed to me from a different department, it was apparent to me this had been going on for a while and it wasn't until this procedure that there was a way for the issue to be addressed. But the procedure encourages other informal mechanisms of resolving things, and I think departments should be thinking about other ways for these kinds of issues to be resolved so the students understand this is not the only choice, and that this is the one they choose when the other options don't seem to solve the problem. In two of the instances, I think the procedure provided a finality. The faculty members sort of wanted this to get finality. I could have achieved a form of finality before as merely a chair, but these decisions can be more binding as facts on other actors in the system, so in that respect it's a benefit.

Professor Pecorino—I have three things to bring up, and I hope I'm permitted to do that because we didn't have a full panel. I testified against this thing at the Board of Trustees. The three points—first has to do with whatever this is, the second has to do with the role of chairpersons, and the third—very important—has to do with academic freedom. First, it's titled a policy because I guess that's what the Board passes. But it really isn't a policy, it's a procedure to handle a certain kind of thing. At the time it was pointed out it wasn't needed, but as so often happens at this University, the Board and Chancellery acts on political considerations more often than academic or any other considerations. So

some student wanted this, and I guess there is some unevenness in the University, and even in a college, from department to department, on how events, behaviors, were handled. But when pressed, and they were pressed with, what exactly is covered by this that isn't covered by other procedures already in place, based on policies like harassment and grade review, came the language that you recited. That's word for word from Articles 21 and Section 11, Contract and Board of Trustees Bylaws dealing with disciplinary actions. Indeed, if it was that type of behavior that the student was citing, not covered by other procedures already in place, then there were already provisions in place in both the Contract and the Bylaws to handle such complaints about such behaviors in the word you recited. The procedure is a mess—what did you have, 16 points? As so often happens when the UFS gets to see something being proposed, it's really bad. Then the decision comes, do we get to oppose it altogether and hope to defeat it or do we work real hard to make it less bad? More often than not, we try to make it less bad when it looks like it's going to happen, and less bad in this case is still really bad. Second point: chairpeople are human beings. They vary. Even when they have similar skills, they don't possess the skills to the same degree. I wouldn't want anything important resting on any chairperson's ability to conduct investigations, or even keep something confidential. I've got a long list of things that are supposed to be confidential that I know about that I shouldn't know about that I heard from chairpersons. So the procedure process putting so much on chairpersons leaves a lot to be desired. At Queensborough when it was being rolled in, I addressed a meeting of all the chairpersons and said the best you can do is recuse yourself because you're going to have a relationship with whoever is being accused and it may go on for many years, so do that. In one case he didn't do it, and I saw him 10 days ago and he regretted not doing it. Last, academic freedom. There's nothing in there that gives you a clue. I'm grateful that the UFS passed a statement on academic freedom that could serve as a guide. One of my great fears was in the beginning that some case at Brooklyn would be decided as being covered by academic freedom, then the same kind of situation...Chair Philipp: Phil, your colleagues on the Executive Committee are objecting to the speech, so you have to stop, please. Professor Vozick—Just one sentence about my earlier query, not requiring a response at this moment. But could concerns raised by Professor Crain about interaction with our guest, be given time for discussion, not necessarily today, but by the body as a whole? I'd ask that be noted. Chair Philipp—I'll put that to the Executive Committee at some point. Professor Vozick--And if not, can that decision be questioned. The second point is you've done an amazing job. You've dissected every angle, but my question is, you're a man of procedure and you know this body, did you have any sense from your perspective of how we might handle all the many issues you brought up in our format? Professor Benton--In the process that Professor Kaplowitz framed. They are going to ask for comments, and I'll certainly be providing mine. Professor Vozick—So you're saying free-form comments from whoever puts them in, and then somehow...Chair Philipp: We now have a Student Affairs Committee of the UFS. That might be one committee to help formulate a response. The Executive Committee itself will be looking at a transcript of this meeting to consider an appropriate response. We will have a coordinated response. Professor Vozick—I will make one point to the content. I know that as faculty we are concerned about our own role and the possible damage done to us in these proceedings, and I commend you for thinking of many of the possibilities, but I think in our

professional responsibilities it's also very important that the students' rights also be very strongly concerned and they are less well prepared—they're learning the institutional route. So being certain the procedure has proper advocacy for the student as well as for the faculty I think is deeply in the faculty interest.

Professor Rick Repetti—I'm also on the committee here, our own committee on academic freedom and in our earlier meeting we thought the procedures largely hinge on whether or not the complaint involves behavior that is protected by academic freedom, and so academic freedom committees, either here or on each campus, might be a relevant part of the process to make that sort of determination. Our committee here would definitely like to be part of revising these procedures.

I think the question with respect to academic freedom---in my first encounter with this, I got the sense that the AAUP articles seemed to be reluctant to say exactly what academic freedom is, because to define it is to limit it. I kind of think that's the approach we should be taking here. We shouldn't be saying what it is that faculty members are allowed to do in class. We should see if we can negotiate a very short list of things which are clearly what they are not allowed to do in class, and then limit this whole process to those things. I think the guidance from the people involved in it is going to be important, but I think we need to approach it that way. Chair Philipp--The UFS has taken the position that all campuses ought to have an academic freedom committee, and we ought to encourage that. Every campus needs one.

Professor Angela Crossman—I'm on the John Jay appeals committee, and we had a meeting today. First of all, you do an amazing report. I asked at the time, had this not come to us what would have happened with this situation, and I was told that these sorts of things end up going to Student Affairs, and they get bounced around to different people depending on who the students talk to, and often we get repetitive problems coming up because there wasn't in many cases the incentive or desire to go to full-fledged disciplinary proceedings, but there wasn't a more formal level of action. One concern is that not everyone will have had to do their reports. I think you would get a huge variety, and it was very thorough and helpful. Second, in terms of the appeals, I second the idea that there should be some sort of burden on the appellant to bring some information because it looked like this was very accurate and not erroneous, so done—there wasn't much to be done at the appeals level.

Professor Stefan Baumrin—When you got to the question of evidence, it reminded me of my law school evidence class, where you're going to distinguish between the substantial evidence rules, preponderance of the evidence, without a doubt. That's too much of a burden to thrust on faculty members, much less student advocates, in the middle of trying to decide whether the student complaint can be vindicated. The drafters have made it into a full-fledged statute, and I think it needs to be simplified and streamlined. Professor Benton—You don't need three rules of evidence, for the chair, you simply need to tell the chair how to analyze conflicting evidence. The three rules have to do with how the procedure is structured at different points, but I'm just saying that when the chair is assessing conflicting evidence, the chair needs to be told how you decide, because you

just have to do that. You can't do these reports without finally getting to the point that you have the best that you can, and you have to make a choice. Some guidance as to how you make the choice is necessary. Not a legal treatise, but it just says look at the evidence and decide which one you think is more likely to be right, or rule in favor of the faculty member unless you're absolutely sure the student is right. It can be stated very simply, but just make up your mind what it's supposed to be.

Professor Kaplowitz—At John Jay there is a case where a student cursed profanely at an instructor in a classroom in front of the rest of the students and disrupted the class, and then went and made a complaint against the faculty member while the class was still in session. The faculty member proceeded to file a complaint against the student, but the treatment of the faculty member's complaint was that that's a cross-complaint, which can't take place because the student had already complained against the faculty member. So one thing that needs to be written into the procedure is that there is no impediment to a cross-complaint being investigated. The silence of the policy makes it seem that way. I wrote to one of the lawyers at 80th Street, and the answer was there is no impediment to a cross-complaint being investigated, but because it's silent in the policy that's how it's being interpreted, at least in this case. The second thing is from what I know as John Jay as head of the faculty senate there, just tangentially, is that there have been about 10 cases of student complaints, but when we were preparing for this presentation the best information we were able to get from the Faculty Governance Leaders is that there have been zero or one or two at other campuses. So do you have any way of knowing how these 10 students would know about a policy that's very new, that presumably other students at other campuses don't know? I don't think the faculty are ten times allegedly as problematic at other colleges. Do you know how students came to know to file these complaints? Professor Benton--I think that the chairs know about the policy, and they have been instructed that when the students use the C-word, you listen very carefully and try to assess whether the student is filing a complaint. It puts me in the position of trying to decide whether this is a complaint or a COMPLAINT. Our chairs have been advised, here is the procedure. Professor Kaplowitz—My third comment is under the Board Bylaws about complaints against students, there is a judicial proceeding and three rotating chairs who have to receive training from 80th Street's legal office. Do you think the chairs should be offered to be trained that way? Professor Benton—The procedure should be structured so that it's easier to follow, there should be forms that they use, it would be clear what you're supposed to do, there should be examples of what a report looks like. That may solve a lot of the problem. My concern as a chair is that they want to haul us to give us training on everything, and I think a lot of times training is a substitute for designing the procedure well in the first place. And it's very expensive. So I refuse to go to training where they can't give me some kind of document that shows me what it is I'm supposed to do and where I can't identify what I would learn at the training.

Professor Lenore Beaky—If anyone know of any cases at your schools we would be interested in hearing about that. Also, can we find out from 80th Street if there are numbers available and how many cases there have been since the policy was instituted CUNY-wide? Chair Philipp--On my own campus, I did a diligent search and came up

with no cases, but there is a strong tradition on my campus of handling these things in departments. There was a previous procedure, which I would bet is still being used in the absence of wide publicity about the new procedure. I suspect I was the only one to mention the new procedure on campus. When we did search other campuses by asking FGLs, as you pointed out, there were no responses.

Professor Sandi Cooper—After a lot of probing, I got the information that there was one case but was unable to find out what department, who was involved, and I'm not even positive my information was accurate. The only way we'll ever get this answered is if you can get Rick Schaffer to give you a gross number of what number of cases come to 80th Street, so I'm throwing the ball back to the leadership of the Senate. If this is supposed to be conducted confidentially, I don't even know how you know there are 10 cases. It's being held under wraps where I am better than, for instance, CIA leaks. If they won't tell you who, where, or how many, try at least to get a gross number.

Professor Benton—If you file a complaint against a faculty member, and the case is not sustained, I think there is some value to not touting around the notion that somehow this faculty member had a complaint. I think a certain degree of confidentiality about these things is really inherent to preserving the justice of the process. Professor Cooper—I'm not saying they should be broadcast over the Listserv. If we're going to deal with the shortcomings of this policy, we need to have a little bit of data. One other question. You mentioned a complaint about a grade. Where I come from, we have separate grade appeals committees in each department. This issue would never come under this complaint policy. Professor Benton—It didn't. It was a part of a very complex set of complaints that came up against a faculty member in which I threw out all of the grade-related ones right from the start. Professor Cooper---OK, because I would be very unhappy if we lost control of that local issue of a faculty member failing a student and then having someone else overrule it. Professor Benton—You can have grade issues come up in a different way. For example, a faculty member might be revealing a student's grade to another set of students, which is a different issue. Professor Pecorino—Ned, you've been through it three times, and you've reflected on it. At any time, did it occur to you as a fact-finder that should an appeal uphold the student's complaint, that the faculty member then stood accused and found, sort of, guilty of a behavior covered by the disciplinary section of the Bylaws and Contract, for which action could be taken, during which time you would be placed under oath to give testimony as to your qualifications as a fact-finder, in preparing the report that now becomes part of the record? Professor Benton—I'm always in court, so I have no problem being hauled into court. Professor Pecorino--Were you aware at the time that this subjects the fact-finder to that possible position? Professor Benton—I think that in all kinds of things I do as chair I'm subject to be being hauled into court, being sued, to all kinds of things happening to me. That's the nature of the job. Professor Pecorino--Would the ordinary department chair be aware of it, do you think? Professor Benton—I think department chairs have a general understanding that in what they are doing there is a possibility that they might be hauled into court for things they do as department chairs. If they don't know that, they probably haven't been talking with their peers.

8:37 p.m.

