

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

April 1, 2008

The meeting was called to order by UFS Chair Philipp at 6:45 p.m. in Room 9206/07 at the Graduate School and University Center. 67 voting members of 118 were present.

Baruch: Present –Dumas, Hill, Martell, Pollard, Vora, Wine, and Alternate Aubry. Absent – Albright, Brandwein, and Freedman. **BMCC:** Present – Friedman, Kalogeropoulos, Martinez-Lopez, Niyazov, Persaud, Rani, Vozick. Absent – Roy. **Bronx CC:** Present – Alozie, and Alternate Ismail. Absent – Durante, Skinner, Vacancies – 1. **Brooklyn:** Present –Bell, Duboys, Jacobson, Shapiro, Tobey. Absent – Antoniello, Cherukupalli, Rodman, Shortell, and Viscusi. **CCNY:** Present – Crain, Lascar. Vacancies – 1. Absent – Daglish, Habib, Khalil, Raj, and Sank. **CSI:** Present –Cooper, Klibaner, Levine, Stearns, Petratos, and Alternate Foleno. Absent – Batson, and Yousef. **CUNY Law School:** Absent – Farago, and Lung. **Graduate School:** Present – Baumrin, and Lennon. Absent – Cross, Matthews-Salazar, Nolan, and Orenstein. **Hostos CC:** Present – August. Vacancies - 1. Absent – Bernardini, and Pimentel. **Hunter:** Present –Palanda, and Alternate DeMeo. Vacancies – 2. Absent – Friedman, Guzzetta, Kaye, Krishnamachari, McCormick, Splitter, St. Hill, and Wimberly. **John Jay:** Present – Chaffie, Kaplowitz, and King-Toler. Absent – Crossman, Dunham, Kubic, and Romero. **Kingsborough CC:** Present – Barnhart, Hume, O'Malley, Ruoff, Stubin, and Wood. **LaGuardia CC:** Present – Beaky, Davidson, Lerman, Mettler, Rushing, Shean, and Alternate Kurzyna. **Lehman:** Present –Jervis, Kolb, Marianetti, Mineka, and Philipp. **Medgar Evers:** Present – Barker, and Alternate Daly. Absent – Hastick, Hope, and Stewart. **NYCCT:** Present – Cermele, Horelick, Hounion, and Paynayotakis. Absent – Karthikeyan, and Richardson. **Queens:** Present – Bird, and Moore. Vacancies – 4. Absent – Brody, Gonzalez, Habib, Savage, and Zevin. **Queensborough CC:** Present – Barbanel, and Alternate Sweetnam. Vacancies – 1. Absent – Iconis, Jacobowitz, Pecorino, and Wein. **York:** Present – Cockery, and Lewis. Absent – Divale, and Rosenthal.

Professor Weiser (Baruch/ UFS Legal Affairs Committee) attended.

Vice Chancellor Malave attended in place of Chancellor Goldstein.

Governance Leaders present: Anderson (BMCC), Baumrin (GS), Cooper (CSI), Hume (KCC), Kaplowitz (John Jay), Levine (CSI), Martell (Baruch), Mawyer (York), Mettler (LaGuardia), Tobey (Brooklyn), Woytowich (NYCTC) and Young (Hunter) attended. 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 March, 2008: Minutes were approved as distributed.
- III. Nominations for Officers and Members-at-Large of the Executive Committee:

The following Senators were nominated from the floor:

Chair – Professor Manfred Philipp

Vice Chair – Professor Lenore Beaky
Secretary – Professor Martha Bell
Treasurer – Professor Karen Kaplowitz

Members-at-Large: Professor Alfred Levine, Professor Sandi Cooper,
Professor Phil Pecorino, Professor Anne Freidman, and Professor Stefan
Baumrin.

Nominations remain open through the election at the May plenary.

- IV. Reports (Recorded in Reports & Deliberations)
- A. Vice Chancellor for Budget and Finance Ernesto Malave.
 - B. Chair.
 - C. Panel on Proposed Conflict of Interest Policy.
 - D. Representatives to Board of Trustee Committees.

V. New Business: There was a Resolution Proposing Facilities as a New PMP Category”.

WHEREAS, the Chancellor has established the Performance Management Plan (PMP) to annually evaluate the presidents of each college; and

WHEREAS, the PMP incorporates three goals and nine objectives, yet none of the objectives directly relates to planning and management of facilities; and

WHEREAS, the CUNY Master Plan states (2004 Plan p. 123) that the "objective of the University's capital program is to provide safe and functionally adequate facilities that encourage teaching and learning and are well designed, well built and operate in a cost-effective manner,"

THEREFORE, BE IT RESOLVED,

THAT the Chancellor be requested to establish a tenth objective concerning facilities,

THAT the objective provide for performance measures relating to the objectives in the Master Plan including but not limited to:

- a) safety and accessibility which includes compliance with codes and laws,
- b) functional adequacy which includes provision of sufficient space, maintenance of safe and sanitary conditions, and ongoing repair of infrastructure,
- c) support of teaching and learning and research which includes the maintenance and upkeep of instructional and laboratory technology and facilities,

d) appropriate design and construction, and

e) cost-effective operation which includes planned maintenance and achievement of environmental goals and standards.

Proponents: UFS Committee on Facilities, Planning, and Management
& UFS Executive Committee

The motion passed unanimously by voice vote.

There being no further business, the meeting was adjourned at 8:20 p.m.

Respectfully submitted,

Bill Phipps
Executive Director

REPORTS AND DELIBERATIONS OF
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IV. Reports:

A. Vice Chancellor Ernesto Malave – Thank you, Manfred, and good evening everyone. I'm trying to figure out where to begin because it was only 30 days ago that I was here and I was talking about the Commission for Higher Ed. A lot has changed in 30 days. Just to give you a little anecdote, the Chancellor had a retreat with the Council of Presidents and it was the Thursday before the Monday. It was a great, great retreat. On the conference call we had the Governor

who called in to the retreat, spoke to Presidents, SUNY Presidents as well, we had Lloyd Constantine, the Governor's Senior Advisor, at our retreat, and he was there for three hours and he spent about an hour explaining the Commission and all of the great things that we were going to do together. He was praising the University to no end. He was very complimentary as to what the University has been achieving. It was like he was one of us, like we had in our midst as part of the Chancellor and Council of Presidents the person who was managing the higher education strategy for the Governor. I had to leave the retreat early on Friday but the next Monday we all know what happened -- so it all went from this high, it couldn't get any better than this. So when you're in a situation like that, you always know that you have the benefit of the doubt. If there's any doubt, when they love the Chancellor that much they'll say, "All right, all right, whatever you say because you guys are doing a great job." That edge is gone. So we start over again, that's what we do. We start over again with a new administration and we try to put back together and put front and center in the higher Ed agenda which for the moment has been dislodged. I'll give you an example of what I mean by dislodged by first going over what is happening on the budget side. I think it's important that we first talk about the Executive Budget that the Governor proposed, Governor Spitzer then, and how it's morphed into where we are today. Then I'll go over

what the Legislature is doing as we speak and what the city administration is also doing as they contemplate the preparation of the Executive Budget for the City of New York which is not due until the end of the month. The Governor's Executive Budget includes a number of things. You know and are familiar with the proposed endowment of and the \$4 billion endowment as part of a long term strategy to have a permanent revenue stream for Higher Ed. That is sort of a long term thing that everyone was studying and no one was quite sure whether or not it was going to take shape or how it was going to take shape. They were hiring financial consultants to help them crunch the numbers because it was all associated with a scheme to sell the assets of the Lottery. It was all very complicated. No one really anticipated that it would have any real effect immediately, but for the long term. The Executive Budget proposed by the Governor had increases in our budget of approximately \$40 million for the Senior Colleges that was the net number. There was a net of \$52 million in adds to cover our mandatory costs for increments of [unclear] fringe benefits, energy and in addition to that it had \$16.7 million in what they characterized as a "productivity challenge" associated with statewide reductions of \$1.3 billion. The Governor had announced a \$4.4 billion budget deficit and in that environment everyone had to take a reduction. Other agencies had a 5% cut; CUNY and SUNY had a 2.5% cut, which for

us translated to \$16.7 million for the Senior Colleges. For the Community Colleges the Governor had recommended reductions of \$3.1 million, associated with a reduction of \$50 in aid per FTE that goes to the community colleges. That was largely the politics of the budgetary process in Albany, whereby the \$50 increase was something that the Legislature added last year and as far as governor are concerned they have to buy it back. Nobody was really terribly concerned about that. In addition, there were cuts to the SEEK program of \$652,000, also because the Legislature added that last year. I did say before, last month, that while they still play that little budget dance it's just a little budget dance compared to the awful budget dances they used to play in Albany where they would obliterate the TAP program, cut \$300-400 million in aid between the TAP and the cuts to the Senior Colleges. That had gone away and hopefully that chapter won't return. So while the dance was being played it was something that we could sort of understand and deal with. All right, 30 days after that the Governor's 21 day amendment was introduced. It's where the Governor has an opportunity to revise the budget without legislative approval being required. He announced that there were another \$384 million in revenue losses and as a result there were going to be more changes and cuts required. But, this is what matters, CUNY and SUNY were spared any further cuts and they were just distributed to other agencies in

part because the then Governor Spitzer simply didn't want to impose any more cuts on the systems. That's where it was. This was still Spitzer's budget, and then of course we all know what happened. In addition to that, the economy continues to tank in a serious way as the markets decline, the credit markets; you've all read all about it, you've seen it in your 401K's. I didn't see it in mine because I recently moved and forgot to change the address. I thought that was automatic, but I guess not. Now I'm really going to regret that because I saw what the quarter shows for CUNY. Everybody knows what's going on, everybody understands recessions and what it looks like and what it feels like both when they're six months behind or when you're right smack in the middle of it. Now a budget crisis and you have a new Governor and they're saying you've got a couple of weeks to figure these things out. After a couple of days of distractions they finally got around to the budget. The first thing the new Governor did was to announce \$800 million in additional cuts to the Executive Budget. That was his opening gambit. He didn't want to talk about raising taxes. He said we're going to manage this through controlling spending. He did exempt the K-12 system and just to remind you the Executive Budget that the Governor had introduced included \$1.4 billion in increased aid to education. Belt-tightening exercises didn't apply to the K-12 system; they were exempt from any further cuts. In any event, we were now

facing more cuts. This is another example of how much it matters who's in the Executive Chamber. Because of the \$800 million in cuts we are now staring at another \$20.6 million at the Senior Colleges. Our cut went, in a matter of days, from \$16.7 to \$37.3 million and then they added another \$3.5 million in cuts to the community colleges. Suddenly the size of our problem almost doubled in a matter of days and the Legislature now has to deal with fixing this much larger problem which many people didn't have an opportunity to absorb, much less figure out what it means. Let me just tell you how the legislature does the budget process. They break up into committees, conference committees. There's a higher ed conference committee, a public protection conference committee, an education and health, etc. They scrambled and they had what they called a "conceptual framework," on Sunday. They had an agreement, a handshake that the budget would be roughly \$123.4 billion dollars and they would add another half a billion dollars in restorations. But the way they do it, they had agreed that the legislature would, among themselves, decide what to do with \$1 billion. It was sort of their money, their call. So they took that \$1 billion and they divide it into what they call their "table targets", various buckets. There's a conference for education, conference for health, conference public protection, higher ed, and so forth. They took, of the billion, \$400 million and gave it to that group that just

received \$1.4 billion, education. So now education gets \$1.8 billion in increases, I remind you. The health care budget that the Governor had introduced contained about \$900 million in cuts, quite sensible actually. So they said, "Let's take \$275 million, put that into health care and try to solve as many problems as they can there." In the case of higher ed they gave us \$90 million, so we got \$90 million out of the billion to try to solve the higher ed budget problems. So I talk about the CUNY budget but we also have to take the State University of New York, which, of course, is twice as big as us as well as the private colleges and a number of other programs. So that the challenge is for the Higher Ed community at large for the State of New York in cuts for the \$155 million -- those were the cuts when you add them all up. So they have \$90 million to try to solve \$155 million in problems. And that was their challenge, and they're still at it. I'll come back and tell you exactly where they are, so that was the challenge that the Legislature had and the Governor's office is basically sitting back waiting for them to finish their job. They said they were going to wrap it up last night, but they're still at it today and as I was leaving they were passing the health care budget so they are making some progress. Everyone really expects that they'll be done by Thursday night or Friday morning and then we'll have a budget in place. The only real question is what's the hole -- they've got \$90 million and can't fit it into \$155 million, so who is

going to get left with cuts? We sort of feel, based on what we've been hearing, that for the community colleges there may not be any cuts. They will try to restore almost all of the proposed cuts and that's about \$5.5-6 million dollars. The SEEK program and the Murphy Institute, those things that were cut are also likely to be restored, leaving the Senior College operating budget as the one with greatest risk. We think we're going to be left after they do restorations with about a \$20 million dollar budget problem at the Senior Colleges. I'll come back to the Community Colleges because their real problem is not the State but the City. More importantly, there's nobody that has a stomach for tuition increases in Albany. As the Chancellor said, we're probably the only University in the country to go 6 years without raising tuition, and we'll do it again and we won't have any investment dollars and the State will go on making the case that we don't need to raise tuition but they're not going to give us any additional revenue. We have this problem that the University faces. What the Chancellor said yesterday and I'm going to say again today is that we've been in these situations, and a lot worse before. We have managed to get through them. We got through the post-911 recession, and in 2003 when they punched a \$100 million hole in our budget we got through that. The 1000 faculty that we've been able to hire over the past seven or eight years we achieved despite all of those challenges. When somebody places

a \$20 million problem in front of you, it is a problem. I don't like \$20 million being taken away, not \$15 million, I don't like any of it being taken away, but we have a responsibility to manage that and to continue to make the kind of investments that we've been starting to make. While it's a bit more challenging, the environment, that is something that we can continue to manage and it's very important that we send that message. This is not a gloom and doom that we are not out there trying to figure out how we're going to survive. We're going to get through this just fine and we're going to make sure that those things that are very important we're going to continue to do and do them well. We're not going to restrict ourselves to a retrenchment type environment. Nothing like that is on the horizon. It's important to recognize that this is 2009 and this is a \$20 million budget problem and everybody, is suggesting that 2010 is going to be really a bear of a problem. If we think we've got problems now, we don't know what problems are until the numbers start coming in for 2010, and the challenge that this Governor is going to have is that they're going to start putting together the numbers in July, August, September, that's when they really start playing the numbers for next year, and everybody really anticipates that those numbers are going to be pretty ugly. I think as we send out the guidance, we also have to send out the guidance that 2010 is going to be difficult, it's going to be challenging but the

Chancellor is absolutely committed to figuring out -- we don't yet have the plan but we're working on it-- to figuring out how we begin the fiscal year and how we get through this 24 month window while making the kind of investments we need to make. That's where we are on the State side, so let me just pivot very quickly to the City side and the community colleges. Some of you may have read in the newspapers on Saturday that there were 245 positions that were going to be eliminated at the community colleges because the Mayor was threatening yet another round of cuts to the community colleges if he didn't get what he wanted out of the Legislature. Everybody plays their games; we're all part of it. The community colleges actually do face a challenge -- the Mayor has recommended a \$30 million cut to the community colleges and in this environment it's hard to imagine how some of that does not stick. We have some challenges at the community colleges that we're going to have to deal with. We have some protections. There's a law that protects funding for the community colleges but it's still going to be tight. We may have a \$5 or \$6 million budget challenge at the community colleges but having witnessed two very good years in terms of revenues, in terms of investment programs, we have to scale back a little bit. Since when does stability become an ugly word? The notion that we're not hiring 40 more faculty this year -- I was talking to Manfred Kuechler from Hunter -- the Chancellor has

made a big priority of taking all of the substitute hires and converting them to full time. That alone is a big challenge. If you're the Provost at Hunter, or any other college, and you have about 30 positions that you want to make permanent, the fact that you don't have another 30 to 40 that you also have to hire in '09 is probably not the worst thing that can happen. Frankly, taking a little stock after a couple of years of significant growth is probably not a bad thing either. That's where we are. It's a situation that is unfolding but we are not sweating it. We are pretty confident that we will have a financial plan beginning July 1st, that will stabilize our budget environment and we'll be able to make the kind of investments that we all believe we need to make in this university.

Chair Philipp - Thank you, very encouraging. I'm sure we have some questions.

Professor Alfred Levine (Engineering Science and Physics, College of Staten Island) – Let me make sure everybody understands the numbers we're talking about. In the idea of the Compact, the State was going to fund 100% of our mandatory costs and 20% of the investment package. Is that a fair summary of the Compact? / Vice Chancellor Malave - That was the proposal in addition to other things, but those were two of the components. / Professor Levine- Those were two of the components. Now, is this potential \$20 million hole in the mandatory

costs or in the sum of the mandatory costs and the state share of the Compact? / Vice Chancellor Malave- It could either be in all of them or none of them. We don't have all of the numbers yet so haven't yet figured out exactly how we would implement the reduction. As you know, there are lots and lots of options. We could spread the cuts across evenly, or we could target it at certain areas of spending and say that that's where we want to put it. We could decide that we want to raise revenues in a way that we haven't yet contemplated. We haven't yet decided. The budget included a lot of the mandatory costs, which includes the increment costs OTPS inflation, we could say. All the increment costs are in there but you know what, forget the OTPS inflation. You're not going to get that because that's going to have to go and be applied towards the reduction. We could decide to just slow down the rate of replacements. I'll give you an example, we did an exercise for the Senior Colleges, and we would save about \$7 million a year if we were to cut back on 10% of the hires, which are largely the people who are being hired to replace other folks. In total, I have to think, if we hired about 800 faculty last year, and we have to have hired a few hundred non faculty members. We can easily as a system hire over a thousand individuals, and just slowing that down a little bit you can probably find \$10-20 million in there, so that's an option. What I'm saying is that all of those things are on the table, and we haven't got the cut yet but I've frankly been thinking about it for quite some

time. Also, the colleges have reserve capacity. They have reserves that they carry for rainy days and while it's not exactly a real storm outside, it's starting to drizzle.

That's a revenue capacity that they have so they don't have to sustain the cuts. All of those options are on the table. / Professor Levine- I would just hope that we would avoid raising tuition on our Master's students. I understand that the Legislature has said that we shouldn't raise tuition on our Undergraduates and I would hope that we would keep the Master's students tuition the same / Vice Chancellor Malave - If I could just respond very quickly, I appreciate your view on that. The Legislature, in a terribly unenlightened approach, decided that it doesn't want to raise any revenues and this is a multi-billion dollar enterprise -- to turn on the lights I need \$80 million a year. This is not a cheap operation. You can't say that you're not going to raise revenue, you're not going to make revenue available, that you're going to go year after year without any new revenue while your costs keep going up. It's just not doable. In 2005 as a system, we had a \$30 million hole in the budget so we raised graduate tuition, 15-18%, and I forget which it was now, probably 18%. We didn't have to do that. We could have taken the \$20 or \$30 million hit. We would have been in a very different situation. We would not have had a stable budget environment, and we would not have hired, in fact we actually engaged in, we gave back \$5 of that million for graduate student investment programs. We could say no to all of the

revenue choices and be in a situation where we are saying, “you know what, we were planning on replacing ten of those faculty but we can only replace three because we don’t want to raise revenue.” We’re not going to take that position. We may decide that revisiting the graduate tuition is not what we want to do this year, but we’re going to take revenue options off the table and then simply enjoy budget cuts is not something we’re prepared to live with.

Professor Emily Anderson (Social Science and Humanities, Borough of Manhattan Community College)
- The cut for the community colleges seems like a pretty huge one and it has to do with the City budget related to the State budget. I’m really concerned about two things. We’re in the process of hiring; we’re doing searches right now for full time faculty. I would just like to get a sense from you as to how that may play out considering what you said about what may happen next year so that we’re bringing on people who a year from now may be told goodbye. My second piece is, how does the financial picture reflect on the collective bargaining that is at a standstill? We haven’t even gotten an offer of any kind of salary increase or any of those kinds of things. Could you give me a reaction to how that may play out? / Vice Chancellor Malave - Those are two very good questions. Let me do the easy one first, the collective bargaining. That’s a very easy one; it’s really, really easy. Some of you will recall that in the Governor’s Executive Budget

there was a document that summarized the budget and talked about gains, about SUNY, CUNY and the cuts and all the other things. It also said that the Executive Budget contains \$200 million set aside to deal with prospective collective bargaining agreements. What the State does is that they put it into a labor reserve -- the City does the same thing by the way -- they put it into a labor reserve the pattern that they've associated with their other unions, the CSEA, the SUNY faculty and staff, who were given contracts. So they set the state wide pattern so those dollars were set aside pretty much in those forms in anticipation that maybe, maybe there'll be an agreement with CUNY along those lines. The city does the same thing. The issue of labor negotiations and when they start and how long they take is really separate from the dollars that are set aside from the respective governments. The governments know how much they're going to spend, give or take a half a percent or two for labor contracts. They know that and they set it aside, and everybody knows they set it aside. The PSC knows how much is in there, we know how much is in there, everybody knows and at some point people will have a handshake. Let me just say I don't think there's any risk to that. I would've loved right now to already have those dollars in the bank. The fact that they're not in our bank yet worries me given the state budget situation but I think it would be very difficult for the state to have financed the union contract for SUNY and not finance the CUNY collective bargaining agreement. That's very,

very difficult, although not impossible. I was reminded the other day when we were having this discussion that there was one year that the State University of New York did not get their labor contract funded for one year and put an \$80 million hole in their budget. That did not happen to us but it happened to them and I was just reminded of the history that these things can happen. On the issue of hiring, I was having this discussion with the Budget Advisory Committee of the Faculty Senate about Colleges being engaged in all kinds of recruitment and searches. I think it depends if it's for replacement for something that's already been financed. I think there's no danger and I wouldn't tell anybody to take back any of those searches. If, on the other hand, people perhaps a little prematurely decided to start significant searches in anticipation that the '09 Compact, which is a pretty rich Compact and was going to be fully financed in the way that Compact One and Two were, if that's what you're talking about, I would urge colleges to be very careful. They clearly have the capacity to manage it and I wouldn't dictate that they don't take the kind of risks they're prepared to take. But those are the kinds of costs that once you get them in and they're permanent positions you really reduce your flexibility in '10, and you need to be careful but I'm not going to dictate that to the campuses. / Professor Anderson- You mentioned reserves and unfortunately most of the community colleges don't have a ton of money in reserves. At BMCC we have \$1 million, that's it. / Vice Chancellor

Malave - That's \$1 million more than some of the other schools have. I think Staten Island would like that now very much.

Professor Anne Friedman (Developmental Skills Department, Borough of Manhattan Community College) – Thank you, Ernesto, we know you have a special eye for us at BMCC. That's not good enough for this body, we're looking at the entire university. It's very tempting to talk about the contract negotiations since my colleague opened that up but I'm not going to do that. I just want to throw something out here that will probably seem very wild and people will say or think, "Well, where have you been, Anne," and that kind of thing. The dirty word is taxes. I'm serious, at some point some people are going to have to say, "Look, we cannot go through this every year, every other year trying to get out of the hole when we know that we have to not just stay flat but we have to move ahead." I'm wondering if -- we have a new governor -- taxes are such a political issue, but there is no way ever, maybe I'm being naïve, I'm not an economist, there is no way ever in the city or in the state that we are going to be able to fund public education, public higher education and all of our other public services without tax increases, without some kind of reasonable tax policy and so forth. I'm wondering if there are any conversations about this up in Albany. You talk about Albany, we have a new governor, is it possible for CUNY or has 80th Street ever entertained the idea

that since we don't get elected that it's possible to start to put forth some ideas about people paying for public education and people talking about taxes? Otherwise, I've heard the same thing, you've been around, you do a great job, spinning gold from straw but this is getting worse, and worse, and worse. The idea of tuition going up -- we've become a private university basically.

There's an answer to this but we have to have this in our heads. If people are not going to pay taxes or rich people are not going to pay taxes we are never going to be able to recover this university the way it should be. / Vice Chancellor Malave - The only thing I can say is that the Assembly did propose a tax on high income earners in New York to generate \$1.5 billion. By the way, not a dime of that goes to public higher ed, so you have to be very careful. They want to use it for infrastructure and a lot of good stuff but not a penny that Shelly Silver and his House, that approved this tax increase proposal, which was killed. I'll just leave you with that thought. / Professor Friedman - We have to think about who we support in the electoral process in the future and I know that we have lobbyists and so forth. Thank you.

Professor Susan O'Malley (English, Kingsborough Community College) – On Channel 1 they said that financial aid for higher education was being cut. My question is about TAP and if they're holding it harmless or if they're going to do their annual TAP dance. **Vice Chancellor Malave** – This was part of the Governor's

\$800 million in cuts that he imposed on everybody except the K-12 system. Ours was \$20 million. This 2% cut to the TAP program resulted in a \$15.4 million cut to the TAP program and that was picked up by New York 1 as a reduction. That was part of the 2%, part of the \$155 million in challenges that I said that they had included this TAP reduction, which by the way was restored by the Legislature. They were going to recommend a \$50 decrease in the TAP award across the board so that was rejected. The only thing apparently that was still holding up the budget was a proposal in the Executive Budget that prevented the use of TAP dollars for anyone who was in default of a student loan. There are some suggestions that it doesn't matter if someone is in default of a student loan, they should still be eligible for TAP. They were caught up with that. Some were saying that if you were in default of a student loan you really shouldn't be drawing down TAP awards. They were sort of hung up on that. That was another part of the cuts to the TAP program but it was only \$2.1 million and it did not result in any, or wasn't projected to result in any, reductions of the awards to the students.

Professor Terrence Martell (Weissman Center for International Business, Baruch College)- I thought and think that the Compact plan is a brilliant plan but I remind everyone that it requires a couple of things, either a tuition increase, some new state money and some actions at the college level. All three parts are integral to this. I thought it was a mistake last year and I understand

why it happened, that we didn't take a tuition increase but let the state give us that additional money. I would recommend that if we get no net new dollars, no state money or tuition increase, we simply put the Compact on hold for a year because if we continue to pretend that we're implementing it, we're sending the wrong message to the Legislature. I know this is tough. Baruch benefited greatly from this Compact but without the net new money, the incentives to the college for productivity savings or channeling philanthropy in a particular way will simply go down. / Vice Chancellor Malave- I appreciate the fact that we're in a different environment and we're entertaining cuts. I should also add that the thing to look for in the next few days and weeks is how these independent fiscal monitors react to the budget. If they concur that the state did a really good job of counting and that the revenues are real and that the expenses are going down and that the budget is in balance, that's a good thing. On the other hand, they may say that the numbers aren't adding up. For those of you who were around in '92, I think, maybe '93, then we're confronted with mid-year cuts and that's a possibility as well. I just want to remind you as you read the papers keep in mind what the independent fiscal monitors are saying. With respect to the Compact and how we should approach it in the future, we'll be debating both sides and how we should approach it over the next few months. The Compact also included enrollment growth and revenues from enrollment growth; it also included

philanthropy, as a couple of components. I think that enrollment may continue to grow and if your Compact on your campus depended on additional revenue from enrollment growth, and you get that revenue then you should in fact partially implement the investment plan that you have laid out. The risk of abandoning the Compact, even if it's just abandoning the rhetoric of the Compact is that it loses its ability to continue to push, and I think we now have a situation where the endowment may be thrown off the table and the only reasonable future financing scheme is the State Compact. So we need to be careful, we need to modify perhaps but we run real risk of not having the strategy if we abandon it entirely. / Professor Martell - I appreciate that and the word that I really liked best was "proportional" if we're going to do someplace there, proportional across all of the categories.

Professor Glenn Lewis (English Department, York College) - I'm more concerned, I guess from a personal level, for all the things I see going on about priorities if there are large cuts here, what will be protected and what won't be. If there are new majors, or new BA programs or MA programs that were approved by the Board, let's say within the last year and are scheduled to begin this coming year that need facilities, that need additional outlay for resources, are those protected monies or is that something that's going to be subject to how severe the cuts are and also the capital budget for developing sites.

For instance at York College site 9 is the largest undeveloped site in the University and we're in desperate need of space. What's going to happen to those kinds of things? / Vice Chancellor Malave - First, when people approve new programs, 1) they're not terribly expensive to begin with in terms of new costs because most of it is taught by the existing faculty on the campus and so there's maybe a modest investment associated with that. If it requires laboratories, etc., facilities, that may be a bit more problematic but, and frankly anything that people have proposed over the past year or two they have proposed I would hope because there is a considerable demand for it. To take that off the table would just seem to me that we're not anywhere near, nor will we ever be near a situation where we will have to withdraw any program that's approved. That doesn't sound right. On the capital side, that's the other thing they're working on in Albany. The Assemblymen have said that they want to add money to the Executive Budget, around maybe \$700 million more than the Governor had proposed, and that's a good thing that they both want to add money. They'll probably split the baby somewhere and by Friday there will probably be around \$300 million more than was included in the Governor's budget. Hopefully your project is in there. / Professor Lewis - Does that prevent large projects from taking off for instance? / Vice Chancellor Malave - The governor's Executive Budget already included nearly \$1 billion, \$960 million, so that was not bad and if the Legislature adds to that it won't be

what we wanted because we did have a very substantial capital budget request but we'll take a few hundred million dollars more. Hopefully the York project is on that list.

Professor Stefan Baumrin (Philosophy Department, Graduate Center) – It's really the same question that Professor Lewis just asked but slightly different. In all of the discussion of the Capital Budget I never hear about flexibility for moving funds within that budget from unpressing projects to pressing projects. Could you address that? / Vice Chancellor Malave - You of all people know that that's that other Vice Chancellor, Iris Weinshall, who can tell you all about the flexibility they have or don't have to move money around between projects. My only observation is that there's probably some of that, but not a lot because when a project gets, let's take New York City Tech, somebody gives New York City Tech \$221 million in additional monies to finish their project, trust me someone at New York City Tech is watching that \$221 million very carefully to make sure it doesn't "fade away" and sneak into some other budget. There is probably some flexibility but not a lot; I don't think there's a lot there. / Professor Baumrin - In ERP which is a university wide project, there's nobody watching that money. / Vice Chancellor Malave- There are tons of people watching that money. / Professor Baumrin - I'm watching the money, you may be watching that money, but there's a lot of money there.

B. Chair's Report:

Chair Philipp - The report is given in written form and I'd like to draw your attention to a few of the items. One is the proposed Conflict of Interest Policy on which we're going to have a panel discussion. The thing that you should pay attention to in this report is the Master Plan. I have distributed copies of the proposed Master Plan to the faculty governance leaders with the request that they distribute it to their Senate and Faculty Assembly committees for their comment and ask that those comments be brought back to the UFS. At the same time the Chancellery asks the Presidents to involve their campuses in a discussion of the Master Plan. The Master Plans in CUNY are actually followed; they are road maps for the future so these are important documents. In the more distant past they were just pieces of paper that were generated and then ignored but that is not really the case now. They are actually followed to the best of our knowledge and I would ask you to please make comments. It would be terrible to come back later on and say you didn't see this one item that was terrible for your campus or that was missing or was present. Of course the UFS Executive Committee will be looking at this carefully but we have to be informed by your opinions.

Professor Mike Vozick (Science Department, Borough of Manhattan Community College) - I did a search of the

Master Plan on the website, 131 pages, and I put the word “adjunct” in, and I found one reference on 131 pages for our billion dollar institution with 7-8,000 adjuncts. / Chair Philipp - That’s interesting. / Professor Vozick - We still are in a phase of development where adjuncts are essentially invisible or just beginning to poke their heads above visibility. / Chair Philipp - We have so many of them it’s hard to imagine. / Professor Vozick - Here I am trying to do this in a nice way. I want to just remind everyone that the adjuncts represent a serious part of the future of the university, not just the past of the university. It is not my wish and desire, it is just the self-evident fact and we would be well behooved as a body to try to make the best possible use of adjuncts and see that the Master Plan, which I agree with you is going to be implemented, takes into account the value that adjuncts can bring to this University. / Chair Philipp - Thank you so much for your comments. If you want to draft possible changes to the Master Plan please do submit it to us.

C.Panel on Proposed Conflict Policy at UFS Plenary:

Manfred Philipp - Let me frame this discussion. The proposed conflict of interest policy was first generated by the chancellery a year ago, and we had some discussion about it here in fact with VC Schaffer, and then it disappeared for a full year. We were wondering if we should poke a stick in the lair of the dragon to see if

there was a policy coming forward, but we decided not to do that. But then it did come forward unexpectedly not so long ago, with the request for comments from the UFS. That's the appropriate thing for the Vice Chancellor to do. So I immediately distributed it to the proper constituencies, but this body needs to have some ability to discuss this before some of us meet in a small group with VC Schaffer to hammer out the details. That meeting is scheduled, to go over the document line by line, but we want to be informed by this group before that, which is why we're having this panel discussion to elicit response.

Michael Barnhart I don't know that I have anything more enlightening to say than anybody else particularly. I did read the thing over, and I sent Manfred some comments, and that's probably why I'm sitting up here. I assume everybody else read it, so I'm not going to go into the details unless you want me to. I guess the only thing that would qualify me as having any slight expertise in this would be the fact I've served on an ethics committee now for about 10-12 years out in the municipality where I live. Primarily what an ethics committee does at that level is pass on conflicts of interest or appearances of conflicts of interests, which public officials are supposed to avoid like the plague. So my familiarity with this kind of issues has to do with avoiding conflicts or appearances of conflicts and judging whether in fact they exist or not. When I first

looked at this, I thought, well, I know about this, it's about avoiding conflicts of interest or appearances of conflicts. Then I read through the policy and realized this is not what it's about. It's about essentially managing conflicts of interest, that is, as the policy says, conflicts are inevitable in the modern university (and I don't know why they weren't inevitable in the old university, too). In fact, they are something that is most desirable because it indicates productivity on the part of the faculty. I started thinking about this in terms of sitting on the kind of committees that are envisioned here in order to figure out if someone has a manageable conflict of interest, instead of what I was trained in, which is to recognize when they do have a conflict of interest, and I have to say I didn't get an awful lot of guidance from the policy about how I would go about making that decision about what constituted a manageable conflict. I think the idea or intent, especially if you look particularly at section 2 and the definitions, is to determine whether someone's judgment would be biased. Then I started thinking how would you determine whether someone's judgment is biased or not? You ask them? They say, of course I wouldn't be biased. That didn't seem to be a productive way of making this type of decision, but short of that I didn't see how you would do it. Now, when I raised this with VC Schaffer when he was here, and there were excerpts of this in the packet, I think it's interesting to point out how he responded to it, and as I recall what he said is that

“People tell me it works very well.” I haven’t done it myself, he said, but they tell it works well and is routine in other places. I’m always suspicious of answers like that, because it seems like hearsay evidence -- usually not very good. I’m not sure it works well at other places, or if so why it works well. So I’d be very leery to move ahead with a policy like this, which seems to me to be basically vapid in that it doesn’t provide much guidance about what exactly management of a conflict would entail and how you would go about managing. In sum, that’s my general reaction to this policy. I’m sure many of the vaguenesses and inconsistencies noted in commentary in the packet are there, but from my vantage point this seemed to be the most serious defect in the policy and one that I think would need some form of address to make it worthwhile.

Stefan Baumrin -- I have a lot of problems with this of a slightly formal sort. I hate this kind of stuff. One of the reasons I don’t practice law is because it brings me into contact with lawyers, and also with things that purport to be laws. When I first read this, I thought what a waste of effort, and it was going to lead to the creation of a committee that would deal with exceptions and it would deal with what is covered and not covered. Then Phil Pecorino pointed out to me that it really had nothing to do with that at all. It has to do with exceptions, and the exceptions are how can you permit people to engage in activities which are a conflict of interest and not be in

conflict with the NYS ethics laws. And I thought, no, that can't be, but it is. The lovely set of comments in the back, which you should read carefully before we have VC Schaffer here, is Phil Pecorino's very careful reading through this. Prof. Weiser found at least half a dozen places where the document is so vague it would require litigation to say what it meant, and then you come to this section:

- 4.2.1. Proposals and Applications for Research Funding
- If (a) a Covered Individual intends to design, conduct, or report research, or participate in the regulatory review of research, and (b) funding for the research is being sought directly or indirectly from a government agency, non-profit institution, or Company (as defined in Section 5.6), and (c) at the time a proposal or application for such funding is being prepared, the Covered Individual has a Significant Financial Interest that would reasonably appear to be affected by the research, or the Covered Individual intends to acquire such a Significant Financial Interest at any time before two years following the conclusion of the research, then the Covered Individual must disclose the Significant Financial Interest to the College Conflicts Officer before the proposal or application is submitted to the agency, institution, Company, and/or the University. In addition, the Covered Individual must comply with any

disclosure and approval procedures required by the agency, institution, or Company in connection with any such proposal or application.

That doesn't sound so bad. Of course it covers virtually everything that you could possibly make an application for, and then it goes on to give an exception of how you could be excluded from having such a conflict be a conflict. If you know that you're going to make money, or might make money, or maybe you'll get a salary for the research or maybe travel funds, you ask to be excluded, have the conflict declared no conflict, then it gets declared by a committee to be no conflict. I don't really want to be a part of this. My problem – that's why I wanted Prof. Weiser and Phil to be here – is I think this is a joke, and I'm going to tell the Vice Chancellor this is a joke because it's a way of doing the unethical but getting a stamp of approval for it before you do it. It's unethical to take money from the government, then develop a patentable product, then patent it, then use the proceeds for a residence in the Hamptons – government property belongs to the people. Now I don't know how they get away with these things, but they do. And when you have a grant to write a novel, we have a tradition – most novels are junk, most of them make no money – occasionally, you make some money and get a prize and income. That's okay -- we let you have the copyright right up front when we give you the money. We understand it's your copyright, and not the university's.

But our university has its rules written in such a way, believe it or not, that it does actually belong to the university, because you used their typewriter, and their time, and maybe even their library, and nobody pays attention to that. So why should I all of a sudden pay attention to the proceeds of a grant; why should I take that seriously? I was going to make these comments after Prof. Weiser perhaps told us this is not such a terrible thing, but I think it is a terrible thing. I think you should read this and be prepared to discuss this with the VC because this is going to become regulation within the university that you'll spend your academic careers in.

Manfred Philipp -- This is going to come up to the Board of Trustees in June. We anticipate that VC Schaffer will be at our next meeting. He originally asked to be at this meeting, but we thought it would be premature since we hadn't discussed it among ourselves first. I should add that the Research Foundation of CUNY has its own policy, which we discussed at the Faculty Advisory Council on Friday, and President Rothbard told us he would be acting to synchronize their policy with CUNY's so the two would be substantially identical. The exclusion of sponsored research in this policy would then be meaningless and immaterial. So you should now, if you wish, ask questions.

Sandi Cooper -- This is schizophrenic in context with the pressure from 80th Street on faculty to conduct

research, to engage in small business initiatives, to try to expand what the university does in terms of reaching out to corporations. There's a report that talks about that science facility at City College which is supposed to engage Raytheon and other corporations. On the one hand, they speak out of one side of their mouth, and this is the other side. I think what we're dealing with is schizophrenia. I think we need to ask the VC what side of this they are coming down on? How can you encourage someone – which I do not do – to go out and make money by their research (I'm in no danger of making money on 19th century European history and therefore I can speak in a lofty manner) – how can you encourage younger faculty to make sure that when they get their labs funded they have a practical objective in mind, etc., and then turn around and slap them with half a dozen potential lawsuits, the least of which is they can't use one of their relatives in the lab on Saturdays?

Manfred Philipp -- There have been two illustrious families of chemists and physicists. The Curie family, for instance, in two generations the husband and wife worked together. They were Nobelists in both generations. That would be very difficult under this policy. I have a colleague who has done his career with his wife, and for insurance reasons she was not a professor but a secretary of a scholarly association. They were a wonderful team, working together, and I'd be very loath to see this made illegal inside this university.

Lenore Beaky -- I just want to point out that I believe an email attachment was sent to you called "Background Material" and it reproduces the transcript and then beginning with page 12 there is material I had prepared for that meeting based on my conversations with people who, unlike me, are expert at these issues. I would suggest you would find this useful along with everything else. I had summarized the basic sections but that was based on the 2007 draft, so these sections may be different in some respects from what we have now. Beginning on page 15 are 8 questions I culled from my discussions with people, which are things we need to consider as we look at the policy and decide for ourselves – but again they are keyed to particular sections of the old draft.

Anne Freidman -- I'm trying to think of a strategic way of addressing the VC when he comes next month because we may want to say we don't any part of this, but that won't get us anywhere. I think a good way to focus might be to pin him down on every vague thing that we can find, page by page, and ask him to address that or explain that. Vague is very dangerous and we've seen it very recently in the Computer Use policy where one of things we were very concerned about is the part which said you can't use the college computer system for political use. I focused on that at the CFSA Committee with Schaffer. Even Jeffrey Wiesenfeld asked, what

about union stuff, is that political? Schaffer's answer was basically don't worry about that, whatever goes now will go later. We've seen what happened at LaGuardia Community College in terms of how they are using that policy to really change the policy that had been in place in terms of the union communicating *vis-à-vis* college computer systems. I think we need some kind of strategy so we can expose some of the real problems here, and also think of ways this can redound to the chancellery itself and the Board of Trustees, because if we're talking about conflicts of interest for the entire CUNY community what might this mean for the trustees? If this might be problematic for the trustees or vice chancellors, this might be a way of getting them to back off and we don't have that much time.

Stefan Baumrin -- One of the things that came up last year was that the Chairman of the Board and a president of one of the colleges had significant interest in a corporation, the Council for Aid to Education, which was doing business with the university. When this was pointed out by members of the Executive Committee fairly forcefully, the Chairman of the Board withdrew from supporting the product that that company was providing, the Collegiate Learning Assessment, and it was removed from the college's agenda. That was clearly a conflict of interest, and my deeper suspicion is that this is designed to make it possible for those kinds of individuals to have such conflicts because in the case of

the Chairman of the Board in particular, he has extensive educational business interests. Now, in addition to which, as Sandi pointed out, there is a policy to create business outcomes from university scientific research. We have whole fields whose only real purpose is to create products. They're not basic research. I think you need to be aware of the fact that this is not driven by the desire to be moral. This is driven by a newly found desire to be immoral and get away with it.

Alfred Levine -- There is a statement in here that says: Section 4 sets forth specific obligations of Covered Individuals who are involved in research or similar educational activities (collectively, "research")....

I don't know what is included under that "research," There are circumstances in research where you really do have to do public disclosure of any significant financial interest in publications describing the research results. This is expected in many fields. I am much more disturbed by the statements that Phil has highlighted, and I'll call your attention to the possible violation of academic freedom because this policy states that we are not allowed to engage in any professional activity which is in substantial conflict with the best interest of the university. So if we offer, as he says, speeches, lectures, articles, or books that are critical of CUNY, the CUNY Board of Trustees or the CUNY Chancellor or programs and policies of CUNY are we now in danger of being

declared in violation? Now, at a minimum, in many previous policies we got them to put in a statement acknowledging that we have certain rights covered by academic freedom. This document is unique in that it does not include such modifying statements, and I would hope that we could convince VC Schaffer to add these “pro forma” statements.

Richard Woytowich -- It's my first year as FGL at City Tech, and one of the things I've become very much aware of is the need for checks and balances. Any unchecked power is a terrible thing to create. This policy might work if people enforcing it have the wisdom of Solomon, but I think people like that are in short supply. On page 13, it says all decisions of the committee shall be final. I think there absolutely has to be some recourse for anyone who feels they've been treated unfairly by a conflicts officer or conflicts committee.*

Manfred Philipp -- This meeting is being recorded, and these comments will all be transcribed and made available.

Leslie Jacobson -- We have discussed this, as you mentioned, at the FAC meeting last week, and one of the things that came up was what is our Intellectual Property policy like? We have really no clear indication. We also know the committee and the person in charge has not

met, so unless they get IP in shape, I don't see how they can put all these caveats on it, and I think that's one thing that needs clarification.

Manfred Philipp -- What Prof. Jacobson is referring to is the CUNY IP policy, which is governed by the committee whose members are appointed by the chair of the UFS, and the chair is the EVC for Academic Affairs although in actual fact she delegates that job to a person known as the University's IP officer whose name is Jake Maslow. We've been having discussion with him encouraging him to have frequent meetings of the committee. I should say the UFS appoints the committee after consultation with the Chancellor, which has been of course done.

Jay Weiser -- My background, before becoming an academic, was being a lawyer in private practice and also an in-house corporate lawyer, so therefore I just look at this from the point of view of seeing how it was drafted, did it hold together, were there glitches, and certainly it seems that people have already found many. In general it looks like while it is a decent first cut, it is certainly very overbroad with a lot of things that are not clear standards. I think the IP conflict part of it may actually work a little bit better in terms of the financial conflicts. That I read in TurnItIn.com, and that was taken from existing policy at UMass, and that's par for the course -- lawyers routinely use forms that have worked in other

contexts. So at least that part of it when I read it for the first time I had relatively few comments, and that was obviously because it had already been vetted there -- which is not to say that this perfectly meets our needs, but at least most of it appeared to be coherent and it more or less worked. The general ethics policy just appeared to be way overbroad with a lot of undefined terms, and nobody here is going to want to have me walk through all my comments, but in general we don't know what confidential information is but we're not allowed to disclose it, we're not allowed to try to get unwarranted privileges, so does that mean that if you're asking for released time for administrative or other purposes that's unwarranted? I agree with the prior speaker to say that you're on the hook if you say anything against CUNY -- that's way overbroad and should go beyond being tied to academic freedom -- who's going to determine that? And then I think that, at least arguably, Section 2.8 requires that textbook selections be put out for competitive bidding; I don't think that's what they intended, but it's broad enough so that that could happen. So I think a lot of this is going to need at least clarification, cleaning up, being sure faculty have the right to speak out and remain active. Another issue is that while there is a clear appeal process for the financial conflicts in Article 4 which is the chunk that was taken from UMass, there is no clear appeal or much of anything in Article 2, which is the general conflict stuff, so that's really an invitation for unjust decisions, a lot of

contentiousness, and similar problems. It also clearly has got to be set up, and this relates to what the earlier speaker said, so that whatever the appeals process is, if somebody makes some sort of bad decision then there has to be a right to go through the NY administrative law procedures under Article 78. That shouldn't be waived. I doubt they intended to have it waived, but as this is currently structured there is really no clear relationship. So I do not regard this as something that was malevolent, but it was a cut that does need substantially more work.

Manfred Philipp -- I should mention that the intended fourth panelist was another member of the Legal Affairs Committee, Marissa Moran, but she hasn't been able to come, so are there any questions or comments?

* Richard Woytowich -- I have to retract what I said earlier because I didn't realize that what I was reading was in fact the appeals process.

Michael Barnhart -- Right, but the committee remains the court of final appeal and there's nothing beyond that and I think you were talking about an Article 78.

Jay Weiser -- The Article 78 is what NYS administrative law provides. If the government agency acts more or less arbitrarily or capriciously then there is a right to go through the courts and have the courts overturn that decision, and the remedies may vary. So that's

ordinarily what is used to police the actions of government agencies and administrators in New York.

Stefan Baumrin -- Besides encouraging you all to really look this over carefully, you should consider the fact that the college conflicts officer is the college counsel. He or she has a conflict of interest immediately in putting a lid on all possible problems. It's the last thing you would want to do. I mean, would you want the president to be the ombudsman of a college? This is just the wrong person to have here. Maybe the person should be elected, or appointed by the faculty executive committee, maybe they should be hired from the outside – I don't know. But you can't have the person who is running the place be the person you have to run to to find out if something is wrong.
