

**From the desk of:
Jamal T. Manassah**

July 5, 2003

Professor Susan O'Malley, Chair
University Faculty Senate

Dear Susan,

In lieu of the narrative Chair report that the Chair of the Faculty Advisory Council to the Research Foundation has traditionally submitted to the UFS Plenary, I thought that it would be more appropriate at this juncture to address specific faculty concerns and respond to questions that I received from colleagues immediately preceding and following my resignation from the post. The answers provided here represent my personal opinions – neither the questions nor my answers to them have been discussed with FAC members. I am providing this report pursuant to my obligations as an ex-officio member appointed to the RFCUNY Board of Directors by the University Faculty Senate.

The attached Q&A summarizes many exchanges with a large number of colleagues. Only the order in the listing of the questions has been rearranged from the chronological order for the sole purpose of improving the clarity of the presentation.

I will be pleased to answer other queries that you or other members of UFS may have. Please address all questions to: manassah@ccny.cuny.edu

I take this opportunity to thank you, former Chair Professor B. Sohmer, and the rest of the faculty elected leadership for the strong support that you provided the Office of the FAC Chair during my tenure.

I apologize for the delay in sending you this report, but I needed additional time to carefully recheck all the facts herein included.

With my best regards,

Jamal T. Manassah

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Cc:
Professor Bernard Sohmer
Mr. William Phipps

Q 1 – Until very recently you served as Chair of the Faculty Advisory Council to the Research Foundation and consequently as an ex-officio member of the Foundation’s Board of Directors and its Executive Committee. How does your perspective on the responsibilities of this office differ from that of the CUNY administration?

A – The present CUNY administration and, by extension, the RF leadership consider the FAC Chair job to be that of a facilitator, cheerleader, enthusiastic promoter and faculty contact for the Research Foundation. I also believe in the worth and validity of each of the above tasks. Where we do differ is on the identity of the Foundation’s clients. I consider it self-evident that the Foundation’s clients are the research and scholarly community of the University and, in particular, the Principal Investigators, the Project Directors, the researchers, the research assistants, the students and the technicians working on the different University research projects. I find it bizarre when some of the folks at 80th St and some others at the Foundation behave as if the Foundation is there to serve the needs of CUNY’s administrative structure.

CUNY’s Administration and I differ further on the importance of the role of faculty directors as independent overseers and trustees for the financial health of the Foundation. By the simple fact that Faculty Directors are elected by the constituency that is the major financier and stakeholder in RFCUNY, these elected offices impose on their incumbents a particular obligation: the goal of ensuring the long term financial stability and longevity of RFCUNY. This obligation will at times be necessarily at odds with the expediency and flexibility desired by a particular administrator whose immediate priorities may be to tailor the Foundation’s programs, practices, and scope of work to serve and financially support his/her managerial programs during the relatively short period of his/her administrative tenure.

These marked differences in outlook - who are the Foundation’s clients, what is the time frame over which the Foundation’s policies have to be optimized? - have often been potential sources of conflict in the relationship between the administrators and the faculty members serving on the Foundation’s Board of Directors. The expectation and tradition of all involved was that both parties would artfully manage these and other differences in a collegial style.

Q 2 – Were you able to resolve your differences with the CUNY administration through a deliberative process?

A – I attempted to follow judiciously this route for the duration of my tenure. Controversy in the market place of ideas is not a problem to any academics if issues are resolved following detailed consideration and deliberation and based on merit. Unfortunately, the relationship between faculty and administrators on the Foundation’s governance Board is not balanced. RFCUNY governance is hardly a successful textbook case study for administration/faculty shared governance.

The important premise of the absolute necessity of faculty’s active participation in academic decision-making, including program planning and allocation of funding for the support of research, is not accepted as a given by the present University administration. I sense that this administration and our University faculty are at odds on issues of governance philosophies and practices. Personally, I would feel more comfortable, to use a political systems analogy, with a system that is more parliamentarian than imperial.

Q 3 - Were you forced out from the FAC Chair?

A – I was appointed to this office by a unanimous vote of the University Faculty Senate Executive Committee, the full support of which I enjoyed during all my tenure. Also, I am most grateful and appreciative for the strong expressions of support that the Office of FAC Chair received from the various faculty elected leadership and from a wide professional spectrum of faculty colleagues throughout the University when our strong differences with the CUNY Central Administration became public knowledge.

What actually decided me finally to insist to the Chair of the UFS on my resignation was my belief that I had exhausted all available mechanisms inside to CUNY and RFCUNY mechanisms for adjudicating our differences with the CUNY leadership. There is really not the equivalent of the independent ombudsperson in either organization - the legal department in both organizations works for the Chief Executive. With the realization that I could not, from my point of view, properly fulfill legally and ethically my fiduciary responsibilities as an ex-officio director, coupled with my reluctance to seek adjudication external to RFCUNY and CUNY on outstanding fundamental governance issues, resignation became my only option.

Q 4 – There are a number of rumors that a member of the Chancellory lobbied vigorously for your removal from FAC. Can you comment?

A - I also heard the same rumors. If true, I believe that this was a flagrant usurpation of power. I trust that the UFS will investigate these allegations and if confirmed deal expediently with the responsible party, by excluding him/her from its fora. Furthermore, I will not be too surprised that, as a result of my public differences with the administration, some of the underlings in the administration will try to prove their loyalty to their superiors by pursuing a continuing harassment campaign against me. This will be unfortunate, but I hasten to assure everyone that strong arm tactics never impressed me nor influenced my actions, my decisions, or my speech.

Q 5 – Would you give examples of the sort of fiduciary issues with which you were uncomfortable?

A – While a member of the RFCUNY Board I also served on its Finance/Budget and/Audit Committee. The responsibilities of this Committee, or similarly named committees in all non-profit organizations, include the role of an independent watchdog over the finances and financial reporting of the institution.

To fulfill the above tasks:

(i) *The FBA committee members need access to all pertinent internal documentation.*

What happened at two critical junctures was that the Foundation Executive Director with the approval of the Chancellor denied me in one case access to financial reports submitted by the grantees receiving support from the Foundation, for the simple reason that the Executive Vice Chancellor for Academic Affairs did not wish the committee to have access to these reports! In another instance the Executive Director claimed that answering my request for some specific information would take staff time, while I knew independently from the RFCUNY staff member privy to the information requested that it

was already on file, but that there was a clear directive not to share this information with the faculty-directors.

(ii) *The FBA committee should be able to investigate and follow-up on complaints from whistle blowers.* The investigation of a particularly troubling case related to a debt swap/ investment transaction made with a company that had previously received Foundation financial support. An exhaustive enquiry, which I pursued, revealed, inter alia, that the Foundation made Wall Street history when it paid more than \$.20 for a future buy option for the share of that company when the market price for the underlying equity was selling on the open market for less than \$.10 on the same date of that transaction. This was explained away with the claim that this was the result of only a poor business decision. The facts that one of the largest shareholders of this company is a well-placed CUNY Professor and that rules pertaining to conflicts of interest may have been seriously breached did not register as issues of concern for the RFCUNY leadership.

(iii) *The FBA committee examines the system of internal financial checks and balances and recommends to the Board corrective actions.* The Board passed in December 2002 a resolution requiring the Foundation Executive Director to engage an outside consulting firm with the task of reviewing and recommending necessary changes to an existing internal system that allowed the previously described financial transaction to be concluded without the approval, much less the knowledge, of the organization's Chief Financial Officer. When, in May 2003, five months following the vote on this resolution, I requested a status report on the progress of this project, the RFCUNY Executive Director informed me that he required further clarification from the Board before he can proceed further with this resolution's implementation. To this day, I do not know the substance of these required "clarifications" nor do I recall that they were ever asked, or been followed upon.

(iv) *The FBA committee and the Executive Committee are informed and consulted on financial issues with serious policy implications* - I only learned from external sources and well after the fact that the Foundation acted in one instance as a pass-through vehicle for a governmental agency to pay a former employee a salary for a no-show position. In another instance RFCUNY was used as a conduit for some College Presidents to pay a lobbying firm a fee in excess of four hundred thousand dollars, without notification or action by its Board of Directors. I am not persuaded by the argument that the contract for service that RFCUNY signed with CUNY includes necessarily the implementation of all CUNY leadership's requests.

(v) *The FBA committee reviews and recommends to the Board of Directors the acceptance of the organization audited financial statements* - The position of the Chancellery and the Foundation's management on this issue is that the Board of Directors discharges completely its fiduciary responsibility by appointing the External Auditors. I had difficulty with this practice and RFCUNY management's interpretation of the law regarding this issue when I discovered that management, with the consent of the External Auditors, claimed in official filings that the Centrally Allocated funds of the Foundation are part of the RFCUNY assets, while maintaining that these funds, for the purpose of avoiding Board oversight over their expenditure, were unrestricted gifts to the University. My confidence in the accuracy of the financial statements was not bolstered when I also discovered that in reviewing the itemization of liabilities of the Foundation and of the individual College accounts on deposit with the Foundation, I found nowhere reserves set

aside to cover accumulated employees' annual and sick leaves. To put these numbers in perspective: the sum total of these obligations is in the millions of dollars, and is comparable to the annual administrative budget of RFCUNY.

Q 6 – Would you suggest means by which there can be more transparency at RFCUNY?

A – To start, I would make sure that the RFCUNY detailed financial schedules presently circulated only to the Board of Directors be made part of the RFCUNY annual report. I am not persuaded by the argument which claims that publication of this data will decrease our competitiveness in seeking outside grants and contracts, the implication being that this data contains strategic information on our operations and finances, which may be of help to competitors.

In my opinion, the Foundation's credibility internally and externally would greatly be enhanced if it were to adopt a policy of full financial disclosure and reporting transparency. Furthermore, I believe that, as a result of full transparency, the Foundation will also be in a better position to comply with the new disclosure provisions of the pending New York legislation for not-for-profit organizations - modeled after the Sarbanes-Oxley post-ENRON Federal legislation (so far limited to corporations).

As for the control and expenditure monitoring of the Centrally Allocated Budget (i.e., the portion of the RFCUNY allocated to the University) I would strongly encourage my colleagues at the UFS to take whatever steps may be necessary, including highly publicized public action, to force the immediate implementation of the Senate resolution (adopted in Spring 2003) on peer scientific merit review of funds administered by the University Office of Academic Affairs.

Q 7 - What were the circumstances surrounding the formation and then dismissal of the Faculty Review Panel?

A – As you may know, the Foundation collects a management fee of 7.75% from almost all CUNY grants and contracts. The guidelines developed through informal consensus of the RFCUNY Board of Directors for the allocation of this money are that approximately 5% (the actual is closer to 6.1%) of the grants total be designated for support of the Foundation's infrastructure and that approximately 2.75% of the grants total (designated as the Centrally Allocated Budget) be designated to provide central support for the initiation of new research, financing the expenses associated with the protection of intellectual properties and supporting Ph.D. students.

While the guidelines for the distribution of the Ph.D. student support are clear and are well managed by the Ph.D. Executive Officers, FAC received numerous complaints on the opaqueness and on the possible unfairness of the process leading to the allocation of a substantial portion of the rest of the money. The Faculty Directors took the issue to the RFCUNY Board where it was suggested that FAC and the University Dean of Research work out the details for a transparent and peer review process for the control of expenditure from this money.

Dean Alexandratos, a distinguished chemist in his own right, understood the importance of having a peer and scientific merit review system to anchor a credible funding program. As a consequence, after consultation with the University Dean of Research, discussions with many research-active faculty members, university-wide calls for nominations, and

intensive recruiting efforts, FAC elected a committee from among the most distinguished and internationally prominent CUNY faculty to serve as a review panel to vet the requests for support from these funds. Following this, I informed the RFCUNY Board of Directors of the formation of the Panel and circulated the protocol that detailed the agreed upon mandate of the Panel. The Chancellor, in his capacity as Chair of RFCUNY Board of Directors, and in response to the enthusiastic support that the Panel received from many of the RFCUNY Directors, sent the appointment letters to each of the members of the Panel.

When it became clear, nearly five months after the official appointment of the Panel that the Centrally Allocated Budget money was going to be managed and distributed in a professional and equitable manner, and that whatever patronage system may have existed under the previous Privy Purse system will be no more, powerful interests decided to move and thwart the newly established system.

The Executive Vice Chancellor, who did not have at that time any official capacity within RFCUNY governance, went ahead and called, without informing or consulting with FAC, individual members of the Faculty Panel (a RFCUNY body) and told them in a not subtle manner that she was dissatisfied with the new peer review structure and as a result, she was dismissing the Panel because it was agreed to by the outgoing Dean of Research without her knowledge and without her approval! [This incidentally was not required as per job description of the Dean of Research, as approved by the CUNY Board of Trustees]. The sad part of this story was that the Chancellor, despite strong faculty-directors objection and protests, condoned the Vice Chancellor's action.

In retrospect, I consider this affair and its unsatisfactory denouement as the most critical wounds that were recently inflicted to both the institutional independence and the governance integrity of the Foundation.

Q 8 – Faculty keep enquiring about the details of expenditures made by their Presidents from the Colleges' overhead recovery accounts on deposit with RFCUNY. Should the Foundation publish these details?

A – Legally the Foundation is a trustee, a banker if you will, for this money and banks do not publish their depositors' statements of activities.

The above constraint should not however prevent the different College governance bodies, or the UFS for the case of the Central Office, obtaining this information directly from their respective unit's administrators. Each College and the Central Office receive from RFCUNY, on a regular basis, detailed and accurate statements of their overhead accounts expenditures, classified to mirror the same categories as in the tax-levy expenditure reports. These reports use the same classification system detailed in the May 2001 report prepared by the outside consultants who developed the CUNY funding model.

In the absence of a positive response by the College administrations for supplying this information, faculty senates should not hesitate to seek this information through FOIL. All of this money is part of the assets of a public institution and therefore the manner of its disposition is accessible through the FOIL mechanism. However, I urge my colleagues not to wait for the different expenditures to have occurred and then complain about it but to follow on and implement the resolution passed by the UFS in Spring 2002, which recommended the establishment on each campus of an advisory committee that will take

charge of recommending to the respective administration the allocation of this money and the manner of its expenditure.

Without being more specific about any particular College or 80th St respective accounts, I can say that in general, except for few bright spots, only a small fraction of this money is being presently invested in supporting new or on-going research. This practice does not serve research well at the University and it ought to change.

Another important aspect pertaining to these accounts that is worth mentioning is the question of reserves. I suggest that this is also an issue worth close faculty scrutiny and mentoring. In short, these reserves need to be maintained for the purpose of contingencies, i.e., ensuring adequate cash flow for operations when problems resulting from delayed reimbursement from agencies, deductions for non-performing contracts, and claims in dispute, etc... occur. The other important purpose for maintaining these reserves is to secure employee accumulated benefits such as annual vacations and medical leaves (a labor law requirement).

From a recent review of the status of these reserves and the potential obligations and liabilities they may be called upon to cover, I believe their level to be presently either inadequate or grossly inadequate – an unacceptable and unsustainable situation, in my opinion. The RFCUNY Board passed the proper resolutions to remedy this situation, but I do not know officially the level of the different colleges' compliance with these resolutions' requirements.

Q 9 – What items in the expenditures of the overhead accounts need to be specially monitored?

A – First, I would make sure that the total yearly expenditures from these accounts are commensurate with their income for that year, and that adequate reserves are being maintained for the purposes described above. Second, I would verify that the salaries of the personal staff members of senior administrators, including special assistants, appointment secretary, driver, etc., are not charged to these accounts. Third, I would look into whether the official salaries of some select administrators or others are being supplemented with bonuses from these accounts, beyond and above what is published in the University/Chancellor reports as supposedly their official remunerations. Fourth, I would examine the travel and “entertainment” expenditures item and compare its total with the total funds claimed to have been raised as a result thereof.

In this regard, it will be very hard to find a scholar at a public institution who will advocate the position that the research enterprise has the obligation to finance all other sundry expenditures at the University not paid for by tax-levy funds.

Another related issue to the question of overhead recovery funds, and which I would like very much to address, is the question of the academic atmosphere that they may breed. In particular, I am concerned that the present overdependence in many units of the University on overhead funds may lead to a serious distortion in the academic vision of some of our administrators. I am fearful that unwisely some do tend to consider as low priority all intellectual pursuits in their units which do not bring as collateral additional funds to their little kitty. In the extreme, this attitude may very well threaten academic excellence and hinder, especially among junior faculty, the pursuit of some research activities. In particular, it may interfere with the choice of which topics of scholarship and research a faculty member decides to pursue. This, of course, and if it occurs,

infringes on specific faculty rights guaranteed by the accepted norms of academic freedom.

Q 10 – Is it your opinion that RFCUNY is fully carrying its mandate, as defined in its Charter?

A – Hardly so. The Foundation’s Charter includes many functions presently inactive. At present the Foundation is no more than the administrative back office which supports the post-award phase of the grants and contracts received by the University - it cuts checks for staff and suppliers, processes procurements, submits compliance reports, transmits progress reports and bills to funding agencies etc... It also serves as a sort of a “funds parking space” to facilitate for the University the processing and expenditures of soft money, outside the procedures, constraints, and transparency imposed on tax-levy money expenditure.

It is my assessment that the Foundation is not fulfilling one of its original goals, that of bringing added value to the research/scholarship enterprise at the University. I believe that RFCUNY ought to be active in the pre-award phase of the grant process. It should play a critical role in directly and indirectly securing and raising additional funding for the support of research at the University. In the absence of a University Vice Chancellor for Research, this task becomes even more critically needed.

It is unfortunate that in the recently completed search for the new RFCUNY President, this aspect of the RFCUNY mandate was not adequately emphasized. The present level of CUNY support from both the public and the private sectors is not commensurate with either CUNY’s potential or in comparison to other leading comparable public universities.

Q 11 – Is RFCUNY present organizational structure the most suitable vehicle for performing the limited scope of work that it is presently pursuing?

A – It is my opinion that the present RFCUNY organizational structure is suboptimal if its sole purpose is to provide post-award services to grants and contracts. Unless RFCUNY is allowed to explore and engage in activities that add value to the research enterprise at the University, researchers and the faculty leadership at CUNY are strongly encouraged to explore alternatives to the present structure. There certainly exist more efficient organizational structures than the existing one for a unit with the sole task of acting as grants and contracts fiscal agent. While these organizational alternatives are being seriously explored, the important issue of faculty role in the control over what is essentially a service organization to the projects they generate would necessarily need also to be revisited and renegotiated with the University Administration.

Q 12 – Some RFCUNY employees claim that its Board of Directors is not in compliance with the organization’s bylaws which require it to have a compensation plan for the so-called Excluded Staff (i.e., non-union members) of the RFCUNY Central Office. Would you comment?

A – Actually, this is not correct. A performance-based pay plan covering non-union staff was developed, upon the Board’s request, by an outside consultant. The Board of Directors adopted this plan and ordered its implementation in its meeting of Dec. 2002. I have presently no information on the progress of the plan’s actual implementation.