

University Senate

Proposed: December 10, 2015

Adopted:

MEETING OF NOVEMBER 20, 2015

President Lee Bollinger, the chair, called the Senate to order shortly after 1:15 pm in 104 Jerome Greene. Fifty-four of 98 senators were present during the meeting.

Minutes and agenda. The minutes of October 23 and the agenda were adopted as proposed.

President's remarks. The president said he would take this opportunity to provide some context for recent events on campuses around the country involving race and ethnicity. He also wanted to provide a sense of what the University has done about these issues, and of how he thought the university community should think about them.

The president said he had spoken on these issues at the Alexander Hamilton Dinner the night before, at his Fireside Chat the night before that, and at the Medical Center a month earlier. But he has also spoken and written about affirmative action and related issues for decades. He proposed now to offer a synopsis of his views.

In Law School classrooms like the one the Senate was now meeting in, the president said he had learned the profound significance of the unanimous 1954 *Brown v. Board of Education* decision of the Supreme Court, which he called a defining moment in the nation's history. The decision's most immediate impact was on the official segregation of black children in the South. But its thinking radiated out through the entire country, touching also on what is called *de facto* segregation, shaping First Amendment jurisprudence that we now mainly take for granted, and also affecting criminal law and broader questions of equality.

The president said *Brown* set out an ideal about how we treat each other in society, how we understand and resolve issues of race, and what kind of society we should aim for. The president said he thought *Brown* is fundamentally about achieving an integrated society, whereas people like current Chief Justice John Roberts think it's really about stopping discrimination. The president said *Brown* was the lodestone of everything that followed in the next generation.

Starting in the late '60s and early '70s, universities and colleges answered the call of *Brown*, recognizing that they had not done their part in promoting equality of educational opportunity. They embraced policies of affirmative action, which became the norm in the American effort to achieve integration. Other institutions—corporations, the government, the judiciary—followed suit. Today there are more than 100 black judges in the federal judiciary; in 1965 there were a half-dozen. There have been profound changes in American life because of the efforts of universities—including this and other law schools—across the country.

Starting in the late 1980s, during the Reagan administration, these efforts began to be attacked. It started with Department of Education inquiries into practices of admissions offices. Then there were interventions by the Justice Department. The first real constitutional challenge was a 1994 case called *Hopwood v. Texas*, which overturned the affirmative action policies of the University of Texas Law School.

After that the opponents of affirmative action doggedly and aggressively brought referenda in state legislatures and on ballots, as well as constitutional amendments. California's Proposition 209 was their next success story. Before Proposition 209, 10-12 percent of the undergraduate population at the University of California at Berkeley was African-American; that fraction is now 2.5 percent. Proposition 209 brought a vote to change the constitution of the State of California to forbid universities to take race and ethnicity into account to build a more diverse student body. A similar referendum followed in the State of Washington.

In 1997, the president said, he became president of the University of Michigan, which soon became the next target of the anti-affirmative-action campaign. He decided to mount a vigorous and public defense of that policy for Michigan, but also for all of higher education. The happy result of *Grutter v. Bollinger* was a 5-4 Supreme Court decision in 2003 upholding the constitutionality of the affirmative action policy of the University of Michigan Law School, which resembles the policy of this and most other American law schools. This was an extremely important moment, the president said.

But this decision did not stop the opponents of affirmative action. One odd feature of Sandra Day O'Connor's opinion for the majority in *Grutter v. Bollinger* was her statement that while it was constitutional to take race and ethnicity into account for purposes of building a diverse student body, it was expected and hoped that this would only be true for 25 years. The president said he knew of no other Supreme Court decision that said a particular policy or practice is constitutional but will only remain so for a generation.

The most recent attempt to overturn the effect of *Grutter v. Bollinger* also involves the University of Texas. After the affirmative action policies of the University of Texas were overturned in *Hopwood*, the school adopted a "10% solution," accepting top 10% of every high school graduating class in the state, as a way to achieve the desired effect of a more diverse student body without relying on race.

After the *Grutter* decision in 2003, UT decided to keep the 10% solution but to supplement it with a Grutter-like analysis to expand diversity for an additional 3 or 4% of its student population. That combined policy is being challenged in a case called *Fisher v. Texas*. The Supreme Court took it up a year ago, but sent it back to a district court to review the UT's policy. Now it will be argued again before the Supreme Court on December 9. It's not clear what the result will be. The Court may have a majority to overturn *Grutter* and affirmative action generally. That result would mean the experience of Berkeley will be repeated at every public university in the United States, as well as every selective private university, including Columbia. This would be true not because the Equal Protection Clause applies to the private

university system—it doesn't. But a federal law passed in the 1960s requires any institution receiving federal aid (including private universities) to comply with the Equal Protection Clause as interpreted by the Supreme Court.

The implications of *Fisher* are profound, the president said. If the Supreme Court does not take a drastic step it may require universities to prove that they have tried alternatives, such as focusing entirely on socioeconomic status (and not race), as another way to achieve ethnic diversity. The president said all the scholarship shows that this approach will not achieve the desired result, for purely demographic reasons. But the decision might be to try this approach to see if it works. Columbia could probably overcome such a burden. Meanwhile, the president said, we're about halfway to the 25-year limit that Justice O'Connor announced in her opinion.

After *Brown v. Board of Education*, the president said, this country went through a period of enormous social effort in the 1960s and 70s—of which affirmative action in colleges and universities was a major part—to overcome long-term effects of slavery, Jim Crow laws, and other kinds of discrimination.

Discrimination has also been supported by public policy, the president said. He mentioned a book by Columbia professor Ira Katznelson called "When Affirmative Action Was White," which argues that federal legislation and programs after World War II—particularly the GI Bill and federal home mortgage assistance policies—provided a massive shift of public resources to white citizens, but not to blacks. Prof. Katznelson called it a "Marshall Plan for whites."

The president said the long-term effects of these conditions over the course of generations—the transfer of wealth from one generation to the next, the consequences for young children and for people seeking employment in the society—amount to a tremendous legacy of discrimination and unfairness that must be overcome. No university, the president was proud to say, can claim greater contributions to solving these problems than Columbia. He cited Jack Greenberg and Judge Robert Carter as key people in the fight for integration. He added that Columbia has not always been perfect by any means. He has asked Prof. Eric Foner to review Columbia's history in connection with slavery and discrimination, and publish his findings. The president said Columbia has its share of involvement in this country's deeply unjust systems.

Returning to the present, the president said there has been an increasing sense of amnesia over the last two decades, an ahistorical sense of race and ethnicity in this country. One prominent example is the thesis that we live in a post-racial society, which became influential after President Obama was first elected. President Bollinger said he has encountered again and again the view that affirmative action is no longer needed, that the historical injustices have been overcome. This is one of the sad parts of this story, he said.

The president said there are not enough strong voices now reminding everyone of this history, which has a pervasive effect on the present: there is still racism, discrimination and insensitivity in American society, and opportunities are not equal.

The president traced this absence of leadership to the famous 1978 *Bakke* decision, the first Supreme Court case to take up the constitutionality of affirmative action. The decision struck down a quota system that had been used to set aside a certain number of seats for black students in the entering class of the University of California Davis Medical School. But the Court split on the issue of affirmative action generally, and the crucial opinion was Justice Powell's, a view the president considered highly influential and problematic. Justice Powell said universities can take race and ethnicity into account for the educational purposes of building a diverse student body. But they cannot justify this practice as a means toward the end of correcting a history of slavery and racism unless their own institution has been discriminating right up to that point.

Thereafter, the president said, college presidents and other administrators have understood, at least implicitly, that they must not say they take race into account in admissions to help remedy this society's legacy of racism, for fear that the policy will be held unconstitutional. Instead, they can only talk about a vague, general, almost vacuous idea that they're doing it for educational benefits.

These two current trends—the idea of a post-racial society and the current diffidence of supporters of affirmative action—help to account for the present environment and events on campuses, the president said. They make it seem like more of a shock when events like Ferguson and other mistreatment of blacks by police take place. And that then fosters the revelation that blacks, Latinos, and other minorities encounter different kinds of daily life experiences than white people do. It's no wonder that the present situation would erupt, the president said, and Columbia must do as much as it can to address it.

The president concluded with a few remarks about Columbia. He said the university has worked to promote diversity in the last decade, committing \$80 million to establishing a more diverse faculty. This is more than other institutions have committed to this effort. Columbia has also made extraordinary efforts to increase financial aid for students from all sectors of society.

The president said Columbia has received awards for the diversity of its undergraduate student body, particularly its fraction of African-Americans. And every University division works on diversity constantly. Less than a year ago the president set up the Office of University Life, and appointed Suzanne Goldberg to direct it. This appointment was very much to deal with issues of student sexual misconduct, but there was also a broader purpose—to address questions of community life and values, and how people are treated, particularly members of minority groups. Prof. Goldberg has conducted town halls on these issues, and will set up a task force to study them. The president wants to set up a group to look into ways Columbia can do better as a university. This is another moment in a struggle with a society that has made some progress but has not come close to fulfilling the ideals set forth in *Brown v. Board of Education*.

Executive Committee chair's remarks.

--*Announcement of the new University Judicial Board.* Prompted by Executive Committee chair Sharyn O'Halloran (Ten., SIPA), Rules Committee chair Angela Nelson

(Research Officers) presented the [roster](#) of the University Judicial Board, the five-member panel that will hear charges of violations of the new Rules of Conduct. The UJB had been appointed by the Executive Committee on November 13.

Sen. Nelson said her committee will work with internal experts to set up training for the panel.

ACSRI response to the latest student proposal for divestment of Columbia's holdings in fossil-fuel companies. Sen. O'Halloran said that among the packet documents available at the door was a statement from the Advisory Committee on Socially Responsible Investing (ACSRI) responding to the student group Columbia Divest for Climate Justice. She then read aloud the following statement from Prof. Jeffrey Gordon, ACSRI chair: "ACSRI rejected the CDCJ call for across-the-board divestment of all large fossil-fuel firms. The Committee will, however, continue to work on a targeted divestment proposal focused on firms that deny climate change science, whether by word or deed. In addition ACSRI will call for President Bollinger to appoint a committee that would formulate a comprehensive Columbia plan of action that would continue diverse responses, including reduction of the University's carbon footprint, as well as initiatives for the University's research and public education missions."

Faculty quality-of-life survey. Sen. O'Halloran thanked faculty senators who had filled out their test quality-of-life surveys. The real survey is now expected to go out to all university faculty on November 30. Sen. O'Halloran thanked everyone who had participated in preparing the survey, reserving special mention for Senate staff director Geraldine McAllister.

Sen. O'Halloran said the Senate office will also send out individual emails to all faculty senators with lists of their constituents, asking the senators to urge their constituents to fill out the surveys. The better the response rate, she said, the more accurate the data, and the greater the opportunity to inform policy decisions about Columbia faculty.

Committee reports.

Faculty Affairs on Title IX and the Classroom. Faculty Affairs Committee co-chair Letty Moss-Salentijn (Ten., CDM), accompanied by co-chair Raimondo Betti (Ten., SEAS) and Sen. James Applegate (Ten., A&S/Natural Sciences), reminded senators about her statement at the April 2, 2015 plenary, which sought to reopen the discussion on open course evaluations. That initial statement was attached to the committee's current document (now called the Second Statement). Since April, discussions in the Faculty Caucus and Faculty Affairs Committee have indicated increasing concern about the potential impact on freedom of exchange in the classroom of reportable Title IX complaints that statements by professors constitute discrimination or sexual harassment, and create a hostile environment.

Sen. Moss-Salentijn said this concern needs to be addressed because it affects everyone. She said FAC leaders had held a productive meeting with the Provost on October 8. Afterward the committee identified four approaches to protect academic freedom in the classroom, on the one hand, and the ability of the institution to investigate Title IX complaints on the other. It shared the draft statement that was now before the Senate with the provost. Unfortunately,

due to the vagaries of the email system at CUMC, his response offering revisions was not in her mailbox until minutes before the present meeting.

Sen. Moss-Salentijn hoped for a good discussion of this issue at the present meeting. She said she did not necessarily agree with all of the provost's revisions, but thought it was essential to have his input. She reviewed the following suggestions:

1. The provost proposed to edit the first item as follows (deletions in brackets, additions in bold):
Preparation of a resolution to be voted on by the University Senate reaffirming the concept of the classroom as a protected entity which allows for a free exchange of ideas [without fear of creating a hostile environment that triggers Title IX investigations];
2. The second suggestion from the Provost was to modify item #3 three as follows:
Development of guidelines **reaffirming the current policy that isolated anonymous comments in student evaluations or elsewhere do not constitute grounds for Title IX sanctions** [assuring that anonymous comments on Courseworks (or Culpa, Bwog, Spectator, or anywhere else) are off limits to Title IX investigations];
3. Finally, FAC, in item #4, proposed an IT solution to create an activated link from course evaluations to a separate site for Title IX complaints. This link would be un-activated, meaning that it would be possible to identify the person who made the complaint, which would help in an investigation.
The provost's response [which Sen. Moss-Salentijn did not report at this meeting] was that a link to a separate site would encourage precisely the kind of frivolous reporting that the committee is hoping to avoid. He asked the committee to drop this idea.

Sen. Moss-Salentijn asked Sen. Applegate to respond for the committee.

Sen. Applegate, a member of Faculty Affairs and chair of the Tenured Caucus, said the basic issue for the committee is the triggering of Title IX investigations because of anonymous comments made in CourseWorks. He identified himself as an author of the committee's four recommendations. He objected to the provost's comments, saying they would eviscerate what he was trying to accomplish.

His recommendation was that anonymous comments made in course evaluation forms, in *Spectator* editorials, Bwog, CULPA, or anywhere else are simply not admissible in Title IX cases ever. He recommended that complaints should be made confidentially, not anonymously—and that is the key point. In a confidential complaint the identity of the complainant is known to the investigator, not to the person who is the subject of the complaint; the investigator can talk to the complainant about why the complaint has been made. An anonymous complaint that someone is a racist or a sexist can trigger an investigation, damage a reputation, and imperil a career, without anyone ever knowing who made the complaint. The only way to pursue the investigation under these conditions is to call half a dozen students in the class and half a dozen

departmental colleagues and ask them if the professor is a racist or a sexist. The capacity of such a process to destroy a career should be self-evident.

Sen. Applegate said the reason for the FAC statement is simply that the classroom needs to be a place where you can have open debate, and that the standards for determining a “hostile environment” that underlie the current interpretation of Title IX should not apply in a classroom, if they are to be the settings for the kind of discussion that a high-quality university should have. He added that discussion of this caliber is essential if the university is going to address the issues of race that President Bollinger had just called on it to address. Sen. Applegate said academic freedom is a paramount priority for Columbia.

The president asked about the status of the business FAC had brought to the Senate. Sen. Applegate said it was for discussion at the present meeting, not a vote.

The president asked if the FAC statement had been reviewed by the General Counsel’s office. Sen. Applegate said it had not.

The president said Columbia has a framework: it is deeply committed to academic freedom and freedom of expression, especially in the classroom. It is committed to making sure that an objection that faculty have said something offensive in the classroom must not be the basis for punishing them. On the other hand, there are federal laws and recognized exceptions to academic freedom, in which speech that constitutes a hostile environment is not protected, and also can be punished.

The problem, the president said, is how to get that line right. He asked if Sen. Applegate was saying that the university should disallow complaints about a hostile environment that are made through course evaluations.

Sen. Applegate said complainants should be required to identify themselves confidentially to a Title IX officer.

The president posed a question for consideration, without taking a position on it himself for the moment: What are the federal requirements for complaints? Would Columbia be in violation of the law if it forecloses one of the accepted channels for becoming aware of a complaint? The president said he did not know enough about “hostile environment” federal discrimination law to answer that question. Had Sen. Applegate looked into that?

Sen. Applegate said he had not.

Sen. O’Halloran said Columbia has a statement of principle that what is said in the classroom is not subject to punitive action.

Sen. Applegate said Columbia’s anti-discrimination policy statement says basically that nothing in the policy shall abrogate academic freedom or the free exchange of ideas in the classroom.

The president asked two more questions.

1. Would Sen. Applegate agree that it is possible to have a hostile environment in a classroom and that classrooms can't be completely off limits to Title IX investigations? Sen. Applegate agreed.
2. President Bollinger noted the passage in the FAC Second Statement that "we believe that course evaluations should not be the occasion for [Title IX] complaints." Did that mean that if the University becomes aware through course evaluations that there may be a hostile environment in a classroom, the finding must be disregarded because it came through course evaluations?

Sen. Applegate said all anonymous comments in CourseWorks should be disregarded.

He added that in the highly unlikely situation that 20 people in a class all make the same anonymous complaint about a professor, and none of them step forward to identify themselves by complaining to the department chair or a Title IX officer, that would be a problem. But at this point, he said, this risk pales before the danger to that anonymous comments pose to academic freedom.

The president asked if the committee's current initiative had resulted from a single episode. Sen. Betti said that episode started with one anonymous comment.

The president understood that that investigation arose within a particular school, and was discontinued. Sen. Betti said the investigation was closed down after the professor had been removed from teaching while the investigation was underway.

Sen. Richard Smiley (Ten., P&S), a member of Faculty Affairs, said there were two separate issues to consider, which might not have been presented as clearly as they could be.

1. Anonymity. Sen. Smiley said that anonymous charges leading to punitive action have been a problem at different times in American history, and ought to be fought. And while FAC should certainly talk to General Counsel about what it can do about this, he asked the president to make sure the General Counsel works for what the faculty wants, and not vice versa.
2. How can classroom teaching and discussion be protected? Sen. Smiley said these issues can be difficult, but it was not acceptable to him that a teaching point should trigger a hostile environment charge. The need to protect academic freedom and free discussion, he ventured to say, is more important than some of the other issues that had been raised.

Sen. Smiley said the committee was deeply disturbed that a comment that could never be traced to anyone could nevertheless trigger an investigation that could damage a professor's career and reputation. He said the very fact of an investigation, regardless of the outcome, can have severe negative consequences for faculty.

The president expressed complete confidence that the General Counsel would strongly support academic freedom when considering such issues.

The president said he had not had a chance to review this issue, which he considered extremely important. He said he could imagine situations in which comments that gain traction as accusations have a chilling effect. He suggested broadening the discussion to include “trigger warnings”—alerts from professors to students that certain topics in a book or discussion are going to be difficult in some way—and other issues in a larger review of the classroom.

Sens. Applegate and Moss-Salentijn both agreed with that idea.

Sen. Applegate agreed with Sen. Smiley that the FAC statement raised two issues. He said the entire FAC was in agreement that a confidential complaint on Title IX grounds must be taken very seriously; but anonymous comments should not trigger investigations.

As for the broader issue, Sen. Applegate said the question of how faculty and students do what they do in classrooms is crucial. He said this was a good time to open this discussion.

Sen. Betti outlined the committee’s “IT solution”—a link to a separate site that would enable investigators to do their job without compromising the identity of the complainant.

Sen. Greg Freyer (NT, Public Health), another FAC member, stressed that over the course of numerous discussions of these issues, FAC was determined to make clear that it is not trying to hide or cover up anything, and that it does not favor or encourage discrimination in any form.

Sen. Freyer, who runs a graduate program at Public Health, mentioned one chilling effect that Title IX has had on him personally. Because of the requirement that every officer must report any indication or hint of discriminatory behavior, he said he has stopped reading qualitative evaluations, because he does not want to be subject to the mandatory reporting requirement. He’d prefer not to read the evaluations and not know.

Sen. O’Halloran said the Senate would follow up on this discussion.

Other reports.

--Joan Waters on her first year as University Ombuds Officer. Ms. Waters presented her report, referring closely to a set of slides in a [PowerPoint report](#).

--Presentation from Soulaymane Kachani, Vice Provost for Teaching and Learning, and Kathy Takayama, Executive Director, Columbia Center for Teaching and Learning. Sen. Kachani (NT, SEAS) recalled addressing the Senate a year earlier about the work of the Provost’s Faculty Advisory Committee on Online Learning, which he co-chairs with David Madigan, EVP for Arts and Sciences. The report’s top recommendation was to establish a Center for Teaching and Learning to support faculty and students in all aspects of teaching and learning, including the use of educational technologies. This recommendation was consistent with one from the

Senate Task Force on Online Initiatives, chaired by Sen. O’Halloran, and one from another provostial faculty committee back in 1995. Over the past twenty years most peer institutions have established university-wide teaching and learning centers that benefited from centralized support, while Columbia has pursued a local and heterogeneous approach.

On September 15 of this year the Columbia Center for Teaching and Learning opened. It incorporated the former Center for New Media Teaching and Learning as well as the GSAS teaching center for graduate students, and also works closely with the CUIT Learning Applications Group. The Center has space both at CUMC and on Morningside (in 212 Butler). After a national search, Sen. Kachani welcomed a new director for the center, Dr. Kathy Takayama. He said she formerly directed Brown University’s teaching and learning center, where she established world-renowned programs. She has already met with the Senate Education Committee and is keen to work closely with the Senate.

Dr. Takayama then reported on the Teaching and Learning Center, referring closely to a set of slides in a [PowerPoint presentation](#).

After the presentation, Sen. Daniel Savin (Research Officers) asked how CTL would address training for faculty and research officers who mentor students who do research.

Dr. Takayama said one program she developed at Brown was for professional development in research mentoring. But this area has barely been developed—rather like the state of teaching 20 years ago; it’s widely assumed that if you have a doctorate in physics you just automatically know how to mentor. She said one-on-one mentoring takes a lot of time and effort, but its value is seriously underappreciated. The challenge in this kind of training is scalability. She created cohorts that became peer learning communities to share mentorship practices. She modeled some of her programs on research on mentoring that was presented in an influential paper in the science journal *Nature*. She hoped to apply these lessons to new professional development programs she will launch at Columbia.

Sen. O’Halloran thanked Sen. Kachani and Dr. Takayama for their report.

She adjourned the meeting shortly after 2:30 pm.

Respectfully submitted,

Tom Mathewson, Senate staff