MEMORANDUM

To: Dr. Thomas E. Wehrly  
Speaker, Faculty Senate

Subject: Resolution on CAFRT Recommendations/My Response

The purpose of this memorandum is to respond to the resolution on CAFRT recommendations which you sent to me on July 15, 1999. The resolution contains five propositions to which I would like to respond.

**Proposition I:**

WHEREAS, It is the view of the Faculty Senate that a CAFRT recommendation should normally be accepted by the University Administration, and that a rejection of a CAFRT recommendation should be highly unusual;

**Response:** I agree.

**Proposition II:**

WHEREAS, We believe extraordinary actions require extraordinary reasons—even the appearance of impropriety should be eschewed;

**Response:** I agree in principle. However, the content and purpose of this proposition is vague and nonspecific. It would have been helpful if the Senate had identified what it means by “appearance of impropriety.” True improprieties are unacceptable. Individual opinions, which claim improprieties, need supporting details.
Proposition III:

WHEREAS, If a CAFRT recommendation is to be overturned by the Administration, a finding of very serious errors by CAFRT or extraordinary reasons should be given.

Response: I agree. I am not aware of any errors made by CAFRT in the Boies case. In fact, CAFRT has an extraordinary history of careful, highly objective, examinations of complex cases. As a University, we are well served by our faculty participating as members of CAFRT.

There are reasons for my decision which have been given to the Chair of CAFRT in a meeting on July 1, 1999. Whether or not they qualify as extraordinary is an individual judgment. In this memorandum, I wish to expand on the information which was provided at the July 1, 1999 meeting. In addition, I will provide information I have obtained since that time.

The CAFRT findings, as summarized by memorandum to me dated May 20, 1999, are as follows:

1) The CAFRT Committee found that a majority of the departmental negative votes were due to considerations other than his professional record or in retaliation of his exercise of academic freedom.

2) The CAFRT Committee found that the unanimous negative recommendation of the Dean’s Advisory Committee were made with considerations other than his professional record.

3) The CAFRT Committee found that the Provost made his decision with adequate consideration of Dr. Boies’s professional record.

4) The CAFRT Committee found that, at levels above the Department, decisions were not made in retaliation of his exercise of academic freedom.

5) The CAFRT Committee found that no decisions were made at any level as a result of illegal discrimination of any kind, including sexual discrimination.

In the period from May 20, 1999 until I wrote Dr. Boies on June 21, 1999, I reviewed with Dr. Douglas his process in reaching his recommendation to me. Please note item 3) above where CAFRT validates the process used by Dr. Douglas. From my conversations with Dr. Douglas, it was my conclusion that Dr. Douglas did not simply react to the three positive and one negative recommendations he had received in this case. He conducted an indepth review of the entire file, including and especially the outside letters of recommendation. It is my experience that Dr. Douglas is careful as he evaluates recommendations for promotion and tenure. In this case, given the differing recommendations and the internal divisions within the Department of Sociology, it was necessary for Dr. Douglas to conduct an even more intensive review.
After becoming convinced that his review was not colored by factors which, in the words of CAFRT, caused an "inability to objectively consider the academic record of Dr. Boies," I decided not to accept the CAFRT recommendation.

Subsequent to receiving the Faculty Senate Resolution, I invited Dr. Douglas to document for me his process with recommendations for promotions and tenure. I would like to share with you certain parts of what I was provided. His full memorandum to me is available to you if you wish to have a copy.

Dr. Douglas provided the following information:

"As you know the Provost review in our promotion and tenure process serves two principal purposes:

1) To ensure a measure of uniformity among colleges in the standards for promotion and tenure.
2) To validate the local assessment of the file by the department and college against the objective material in the file and the letters of recommendation from the outside community.

I believe the reason for the first purpose is obvious. For the second, it serves to help insulate the process from votes based on personal biases which may be intentionally or unintentionally injected into the decision making process.

As the Provost, I am charged with conducting a detailed and substantive review of every application and recommendation regarding the tenure process. On occasion, however, I am presented with cases where an even higher level of review is necessary. Examples include situations where there is disagreement among reviewers, cases in which the contents of the file do not fully support the conclusion reached, and instances in which the possibility of personal biases being injected into the review process is substantially higher than normal."

As his comments display, Dr. Douglas was well aware that every promotion and tenure process contains personal biases, both in support of and in opposition to the candidate. His role, among other things, is to conduct a review of the objective material. It is not simply to react to recommendations made by other groups. This fact is illustrated in the Boies case by the fact that, after reviewing the full file, he met with Dean Jones and requested additional information in hopes of clarifying all matters. In particular, he asked for any changes that might have occurred in Dr. Boies' record since the file was completed.
Based upon his review of the full file and supplementary information provided by Dean Jones, Dr. Douglas reached the conclusion that Dr. Boies had not earned promotion to a tenured associate professorship and made that recommendation to me. It is his position that he would have reached the same conclusions independent of the votes of the Department, the College and the Dean. Also, it is within his authority to reach a decision which is in disagreement with other recommendations. The last two points are fundamental to an understanding why I did not adopt the CAFRT recommendation.

Given the facts discussed above on the role of the Provost, it was my conclusion on July 1, 1999 that the decision on Dr. Boies is the correct one. I have the same opinion today. I readily accept the CAFRT conclusions about process at the Departmental and College level. However, I have become convinced that they did not influence the outcome of the final decision. I am also convinced that no inappropriate factors influenced the outcome of the final decision.

Proposition IV:

WHEREAS, A full reading of the CAFRT recommendation in the case of Professor Boies and the President’s reply does not show such errors or reasons; therefore be it

RESOLVED, That we call upon the President to reconsider his decision and let the CAFRT recommendation stand, thereby permitting Professor Boies to undergo a tenure review once again.

Response: It seems to be implicit in this proposition and the third one that the Provost and I are constrained to simply react to recommendations provided by the Department and the College. In addition, it is implicit in these propositions that should there be process problems at any of these levels, and the candidate not be promoted or awarded tenure, the process would need to be repeated. As indicated above, I do not agree. If there are process problems which contaminated the outcome, I would agree. I would not debate the proposition that process problems can easily contaminate the outcome. All of us have seen such cases. That is the reason I agreed with Proposition I.

As I have stated, given the significant collegiality issues which burden the Department of Sociology, Dr. Douglas was especially careful in this case to reach a decision which was not infected by these issues. The particular decision in this case was based on the fact that Dr. Boies had not earned tenure.

There are other process questions which have been raised within the campus community. While they were not raised explicitly by the Faculty Senate, I would like to use this letter to communicate information which could be useful.
MEMORANDUM

TO: President Ray M. Bowen

SUBJECT: Resolution on CAFRT Recommendations

At its regular meeting on July 12, 1999, the Faculty Senate approved the attached resolution.

We would appreciate your consideration of this item. Please let us know your action on this recommendation.

Thomas E. Wehrly
Speaker, 1999-2000

Enclosures

cc: Dr. Ronald G. Douglas, Executive Vice President & Provost
    Dr. Janis Stout, Dean of Faculties
    Dr. Jonathan Coopersmith, Chair, Personnel & Welfare Committee

Approved:

Ray M. Bowen, President

Date
It has been written that the so called minority report was distributed to the Dean’s Advisory Committee by order of the Provost. This is incorrect. The minority report was sent to a number of individuals. The Dean transmitted a copy to the Head of Sociology. In his letter of transmittal, he directed that the report become a part of the promotion dossier. In addition, he called for the Head and the Chair of the Departmental promotion and tenure committee to comment on points in the minority report and to make those comments a part of the promotion dossier. When it reached the Provost’s Office, the dossier contained the minority report, extensive comments on the minority report by the Department Head and by the Chair of the departmental promotion and tenure committee. Their comments spoke directly to the three specific assertions in the minority report.

It has also been written that the Provost inappropriately utilized the minority report. He was sent a copy at the same time it was distributed to the Dean and others. This copy was not considered at that time. It was simply filed by the Dean of Faculties. Later, when the promotion dossier arrived from the Dean, the minority report was present along with the normal materials and the minority report related materials described above.

As the Provost evaluated the qualifications of Dr. Boies, along the lines described above, he read the full file. CAFRT concluded that, unlike the Dean’s Advisory Committee, the Provost made his decision with adequate consideration of Dr. Boies’s professional record and that record alone. It is a logical conclusion from the CAFRT report that the Provost did not make inappropriate use of the minority report.

In summary, the process problems in this case which have been identified by CAFRT, occurred before the promotion dossier reached the Provost. The decision made by the Provost was not influenced by these process problems or any other inappropriate advice or activities.

I hope this long memorandum gives you insight into how Dr. Douglas reached his decision, and why I chose to agree with his decision. As usual, I am always available to discuss this matter with you at your convenience.

Ray M. Bowen

cc: Dr. Ronald G. Douglas
THE FACULTY SENATE

RESOLUTION ON CAFRT RECOMMENDATIONS

WHEREAS, It is the view of the Faculty Senate that a CAFRT recommendation should normally be accepted by the University Administration, and that a rejection of a CAFRT recommendation should be highly unusual;

WHEREAS, We believe extraordinary actions require extraordinary reasons—even the appearance of impropriety should be eschewed;

WHEREAS, If a CAFRT recommendation is to be overturned by the Administration, a finding of very serious errors by CAFRT or extraordinary reasons should be given;

WHEREAS, A full reading of the CAFRT recommendation in the case of Professor Boies and the President's reply does not show such errors or reasons; therefore be it

RESOLVED, That we call upon the President to reconsider his decision and let the CAFRT recommendation stand, thereby permitting Professor Boies to undergo a tenure review once again.

Approved by the Faculty Senate on July 12, 1999
The following document rebuts the arguments made by President Bowen in his memorandum to the Speaker of the Faculty Senate (variously dated Aug 16, 1999 and Aug 20, 1999) explaining his decision to disregard the recommendation of the Committee on Academic Freedom Responsibility and Tenure (CAFRT) in the tenure and promotion case of Dr. John Boies of the Texas A&M Department of Sociology.

**SUMMARY**

The consensus of the Faculty Senate and the President is that overturning any CAFRT recommendation requires a finding of "very serious errors by CAFRT or extraordinary reasons must be given" (Senate Resolution, Proposition III). The President concedes that he is "not aware of any errors made by CAFRT in the Boies case." Thus, if the President is to be justified in overturning this CAFRT recommendation, then he has the onus of giving extraordinary reasons.

It is the President's opinion that he has given such reasons. These reasons consist of arguments to the hypothetical conclusion that the Provost would have made the same decision even if there had been no procedural errors in Dr. Boies' case.

Neither the CAFRT report nor the Faculty Senate resolution have taken any position on this subjunctive claim, nor does the faculty petition delivered to the President on August 23-24. Concern for proper, unbiased procedure is the primary issue driving the actions of the CAFRT, the Faculty Senate, and the members of faculty who have signed the petition. None of these actions is based on an evaluation of the merits of Dr. Boies' tenure case. By targeting a point that is not contended, the President's argument does not address the issue of central concern.

The central concern is with the integrity of the tenure and promotion process, including the role of the CAFRT in hearing appeals. The CAFRT found that in Dr. Boies's case, the decision-making process was compromised by the distribution of a "minority report" to the Dean's Advisory Committee in the College of Liberal Arts. To say that the process was compromised is not to say that any particular decision was incorrect, but it is to raise doubts about our knowledge of how those decisions would have turned out in the absence of undue interference.

Uncertainty about what would have happened had the "minority report" never been improperly distributed should not be confused with certainty that the outcome would have been different. The CAFRT recommendation conforms to the reasonable belief that the uncertainty in this case is best alleviated by conducting a review that is free from compromising influences.

Because of its inherent uncertainty, the hypothetical reasoning that the President has presented for rejecting this recommendation fails to rise to the level of extraordinary reasons for overturning the CAFRT and is thus not consonant with principles of faculty governance officially endorsed by both faculty and University administrators. While the issue of Dr. Boies's tenurability is a matter of legitimate disagreement, the only way to resolve this disagreement in an unbiased fashion is to accept the recommendation of the CAFRT that Dr. Boies be given a new tenure review, free from any taint from procedural violations.

We therefore again call upon the President to heed the recommendations and resolutions of the CAFRT and Senate. As duly elected faculty bodies, both groups have conscientiously deliberated without bias against either the faculty member or the administrators involved. Specifically, we call for:

- The immediate reinstatement of Dr. Boies' employment as an untenured faculty member at Texas A&M University.

The opportunity for Dr. Boies of a new review for tenure and promotion to the rank of Associate
Professor.

SPECIFIC REBUTTALS

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Rebuttal text is in this color and bounded by dashes.
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College Station, Texas 77843-1246
(409) 845-2217
FAX (409) 845-5027
E-Mail: PRESIDENT@TAMU.EDU

Office of the President
Ray M. Bowen

August 16 1999

MEMORANDUM

To: Dr. Thomas E. Wehrly
Speaker, Faculty Senate

Subject: Resolution on CAFRT Recommendations/My Response

The purpose of this memorandum is to respond to the resolution on CAFRT recommendations which you sent to me on July 15, 1999. The resolution contains five propositions to which I would like to respond.

Proposition I:

WHEREAS, It is the view of the Faculty Senate that a CAFRT recommendation should normally be accepted by the University Administration, and that a rejection of a CAFRT recommendation should be highly unusual;

Response: I agree.

Proposition II:

WHEREAS, We believe extraordinary actions require extraordinary reasons-even the appearance of impropriety should be eschewed;

Response: I agree in principle. However, the content and purpose of this proposition is vague and nonspecific. It would have been helpful if the Senate had identified what it means by appearance of impropriety. True improprieties are unacceptable. Individual opinions, which claim improprieties, need
supporting details.

The first paragraph of the June 21, 1999 memorandum of Dr. Ray Bowen to Dr. John Boies titled "Response to CAFRT Report" indicates that the CAFRT report is "contradictory". This was an improper claim, as apparently now conceded in the response to Proposition III below. The Faculty Senate cannot, therefore, be faulted for taking the position that there was at least the appearance of impropriety in that initial response to the CAFRT recommendation.

Dr. Thomas E. Wehrly
August 20, 1999
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Proposition III:

WHEREAS, If a CAFRT recommendation is to be overturned by the Administration, a finding of very serious errors by CAFRT or extraordinary reasons should be given.

Response: I agree. I am not aware of any errors made by CAFRT in the Boies case. In fact, CAFRT has an extraordinary history of careful, highly objective, examinations of complex cases. As a University, we are well served by our faculty participating as members of CAFRT.

There are reasons for my decision which have been given to the Chair of CAFRT in a meeting on July 1, 1999. Whether or not they qualify as extraordinary is an individual judgment. In this memorandum, I wish to expand on the information which was provided at the July 1, 1999 meeting. In addition, I will provide information I have obtained since that time.

The concession that there are no errors in the CAFRT report represents an important shift in position since the June 21 memo. Faculty objections to the contents of that memo should not be faulted if the target has now shifted.

The second paragraph continues to shift the target. Arguments given to the chair of CAFRT in an unpublicized July 1 meeting could not have been considered nor should not be considered in assessing whether general faculty reaction to the June 21 memo is appropriate. Furthermore, if information relevant to understanding the June 21 memo was obtained by the president after July 1, as stated here, then his decision described in the memo of June 21 was based on partial information and should not be justified retroactively by the new information.

The CAFRT findings, as summarized by memorandum to me dated May 20, 1999, are as follows:

1) The CAFRT Committee found that a majority of the departmental negative votes were due to considerations other than his professional record or in retaliation of his exercise of academic freedom.
2) The CAFRT Committee found that the unanimous negative recommendation of the Deans Advisory
Committee were made with considerations other than his professional record.
3) The CAFRT Committee found that the Provost made his decision with adequate consideration of Dr. Boies's professional record.
4) The CAFRT Committee found that, at levels above the Department, decisions were not made in retaliation of his exercise of academic freedom.
5) The CAFRT Committee found that no decisions were made at any level as a result of illegal discrimination of any kind, including sexual discrimination.

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Items 3-5 all misdescribe the CAFRT findings. This is relevant further below especially in the case of item 3. The CAFRT did not find that "that the Provost made his decision with adequate consideration of Dr. Boies's professional record." Rather, the report states that "Dr. Boies did not meet the burden of proof by a preponderance of the evidence that the Provost made his decision without adequate consideration of Dr. Boies's professional record or by considering other than Dr. Boies's professional record." It is an elementary point of logic that failure to establish a particular claim does not constitute the establishment of its opposite. Items 4 and 5 contain analogous misdescriptions of the absence of findings as positive findings.

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In the period from May 20, 1999 until I wrote Dr. Boies on June 21, 1999, I reviewed with Dr. Douglas his process in reaching his recommendation to me. Please note item 3) above where CAFRT validates the process used by Dr. Douglas. From my conversations with Dr. Douglas, it was my conclusion that Dr. Douglas did not simply react to the three positive and one negative recommendations he had received in this case. He conducted an indepth review of the entire file, including and especially the outside letters of recommendation. It is my experience that Dr. Douglas is careful as he evaluates recommendations for promotion and tenure. In this case, given the differing recommendations and the internal divisions within the Department of Sociology, it was necessary for Dr. Douglas to conduct an even more intensive review.

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The argument to which the passage above is building depends on the premise that if, in the Provost's considered opinion, Dr. Boies does not deserve tenure then he does not deserve a second review. The CAFRT report and the President's statement immediately above give grounds for denying this premise. Specifically, the CAFRT found that the negative vote of the DAC was made in consideration of "information not relevant to promotion and tenure." This coupled with the statement above that given the negative vote at the DAC, "it was necessary for Dr. Douglas to conduct an even more intensive review", indicates that this more intensive review was motivated by factors irrelevant to Dr. Boies's promotion and tenure. This reduces confidence in the integrity of the procedure. Even accepting the Provost's considered opinion against Dr. Boies's tenure, it does not follow that Dr. Boies does not deserve a second review.

Even if it is granted that Dr. Boies does not deserve tenure, this response fails to address the underlying faculty concern that this administration has inadequately respected procedure in this case. By the end of May, after the delivery of the CAFRT report, the principal issue was not whether Dr. Boies should receive tenure -- the CAFRT took no stand on this issue -- but whether the violations in procedure warranted a second, complete review of his case. To argue that the CAFRT recommendation should be dismissed because, in the Provost's opinion, he does not deserve tenure is to miss the essential point of that recommendation, which focuses on ensuring an uncompromised review. The admission in the passage above, that the close review was brought on by the negative vote of the DAC, is tantamount to an admission that the process was compromised even at the level of the Provost.

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Dr. Thomas E. Wehrly  
August 20, 1999  
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After becoming convinced that his review was not colored by factors which, in the words of CAFRT, caused an inability to objectively consider the academic record of Dr. Boies, I decided not to accept the CAFRT recommendation.

Again, because the CAFRT report does not recommend tenure for Dr. Boies, the question of agreement or disagreement with the provost's decision is irrelevant. The question at hand is whether he deserves a proper review at all levels. Manifestly he did not receive one. By admission in this very document, the Provost's particular scrutiny was motivated by the irregular procedures at lower levels. It is difficult to escape the conclusion that process should be repeated for the sake of propriety and for the sake of fairness. Faculty at Texas A&M deserve assurances that the university will insist on a fair review at all levels, that this review shall not be compromised by hostile parties, and that administrative overrule shall not reinforce the tactics of those who deliberately and wrongfully undermine the integrity of the tenure and promotion process. These fundamental issues have not been addressed in any of the administrative responses thus far.

Subsequent to receiving the Faculty Senate Resolution, I invited Dr. Douglas to document for me his process with recommendations for promotions and tenure. I would like to share with you certain parts of what I was provided. His full memorandum to me is available to you if you wish to have a copy.

Dr. Douglas provided the following information:

As you know the Provost review in our promotion and tenure process serves two principal purposes:

1) To ensure a measure of uniformity among colleges in the standards for promotion and tenure.  
2) To validate the local assessment of the file by the department and college against the objective material in the file and the letters of recommendation from the outside community.

I believe the reason for the first purpose is obvious. For the second, it serves to help insulate the process from votes based on personal biases which may be intentionally or un-intentionally injected into the decision making process.

As the Provost, I am charged with conducting a detailed and substantive review of every application and recommendation regarding the tenure process. On occasion, however, I am presented with cases where an even higher level of review is necessary. Examples include situations where there is disagreement among reviewers, cases in which the contents of the file do not fully support the conclusion reached, and instances in which the possibility of personal biases being injected into the review process is substantially higher than normal.

As his comments display, Dr. Douglas was well aware that every promotion and tenure process contains
personal biases, both in support of and in opposition to the candidate. His role, among other things, is to conduct a review of the objective material. It is not simply to react to recommendations made by other groups. This fact is illustrated in the Boies case by the fact that, after reviewing the full file, he met with Dean Jones and requested additional information in hopes of clarifying all matters. In particular, he asked for any changes that might have occurred in Dr. Boies record since the file was completed.

Since this information was not presented to the CAFRT, despite ample opportunity for Dr. Douglas to do so, it is not germane to the assessment of the CAFRT's recommendation. Again, this administration should not present a moving target. Dr. Douglas was given the opportunity to explain his procedures thoroughly to the CAFRT. On the basis of those explanations, the CAFRT unanimously found that Dr. Boies deserved a new review. There is no telling what the CAFRT might have decided if they had been told something else. This argument should not therefore be admitted as a valid reason for rejecting the CAFRT recommendations. It shows a worrying disregard for due process for the President to argue now that he has information that justifies his decision to reject the report of a committee whose members were not presented with that information even though it should have been available.

Dr. Thomas E. Wehrly
August 20, 1999
Page 4

Based upon his review of the full file and supplementary information provided by Dean Jones, Dr. Douglas reached the conclusion that Dr. Boies had not earned promotion to a tenured associate professorship and made that recommendation to me. It is his position that he would have reached the same conclusions independent of the votes of the Department, the College and the Dean. Also, it is within his authority to reach a decision which is in disagreement with other recommendations. The last two points are fundamental to an understanding why I did not adopt the CAFRT recommendation.

No one doubts the first point, that Dr. Douglas thought Dr. Boies did not deserve tenure. Nor do they disagree with the last point that it is within the Provost's authority to reach a decision that disagrees with the other recommendations made during the tenure and promotion process. But there is reasonable doubt about the middle point, namely the hypothetical claim that he would have reached the same conclusions independent of the other decisions.

The DAC decision was improperly reached on the basis of the "minority report" according to the findings of the CAFRT. This report motivated the Provost's "more intensive" review. Thus there are grounds for doubt about whether the outcome would have been the same without the influence of that "minority report". Doubt about what would have happened had the "minority report" never been improperly distributed should not be confused with certainty that the outcome would have been different. The CAFRT takes no stand on that subjunctive claim. Rather, the point is that violations of procedure are sufficiently major to warrant a second review. Such a review would avoid the need for the kind of uncertain and hypothetical reasoning that is being presented here as a justification for rejecting this recommendation.
The grounds for uncertainty about this hypothetical reasoning are given in the CAFRT report. If (as conceded above in the first paragraph of the response to Proposition III) the CAFRT made no errors, then their finding that "the inadequate consideration at the Departmental level and at the DAC compromised the subsequent decision-making process" must be accepted. It should be emphasized that "compromised" does not necessarily mean incorrect. After all, the Dean's own positive recommendation, as part of the subsequent decision-making process, was also compromised according to this view. The point is that if both the subsequent positive and negative recommendations of the Dean and Provost were part of a process that was affected by earlier misdeeds, then there can be little certainty about what would have happened in the absence of those misdeeds. Hence, the fairest approach is to conduct a complete reevaluation of the case at all levels.

Given the facts discussed above on the role of the Provost, it was my conclusion on July 1, 1999 that the decision on Dr. Boies is the correct one. I have the same opinion today. I readily accept the CAFRT conclusions about process at the Departmental and College level. However, I have become convinced that they did not influence the outcome of the final decision. I am also convinced that no inappropriate factors influenced the outcome of the final decision.

Again, the issue is not whether Dr. Boies deserves tenure, but whether he deserves a new review. The CAFRT did not recommend tenure be granted. To resist the CAFRT's recommendation on the ground that Dr. Boies does not deserve tenure to is miss the point of the recommendation, and the point of the CAFRT itself, which is to ensure due process.

It is this very point that is behind the strong faculty protest in this case. The vast majority of signatories to the petition have no opinion and no basis for an opinion on John Boies's tenure. Their concern is with respect for procedure. That concern remains completely unaddressed in the administrative responses delivered so far.

Proposition IV:

WHEREAS, A full reading of the CAFRT recommendation in the case of Professor Boies and the Presidents reply does not show such errors or reasons; therefore be it RESOLVED, That we call upon the President to reconsider his decision and let the CAFRT recommendation stand, thereby permitting Professor Boies to undergo a tenure review once again.

Response: It seems to be implicit in this proposition and the third one that the Provost and I are constrained to simply react to recommendations provided by the Department and the College. In addition, it is implicit in these propositions that should there be process problems at any of these levels, and the candidate not be promoted or awarded tenure, the process would need to be repeated. As indicated above, I do not agree. If there are process problems which contaminated the outcome, I would agree. I would not debate the proposition that process problems can easily contaminate the outcome. All of us have seen such cases. That is the reason I agreed with Proposition I.

Since the Senate Propositions here deal only with the acceptance of the CAFRT recommendations, the references to Department and College recommendations in tenure and promotion cases are irrelevant to those Propositions. Also, given that reactions may be either positive or negative, it is unclear what is meant by "constrained to react" here. Perhaps the President meant to write "constrained to accept". Yet there is no such presupposition in the Senate Propositions which assert only that insufficient grounds for rejecting the
recommendations have been provided.

Otherwise this paragraph contains only a repetition of the claim that there were no process problems which contaminated the outcome in Dr. Boies's promotion case. The grounds for agnosticism about this position have already been detailed. The CAFRT's recommendation to address this agnosticism by conducting a new review is eminently reasonable, and as conceded in the response to Proposition III, devoid of significant error.

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As I have stated, given the significant collegiality issues which burden the Department of Sociology, Dr. Douglas was especially careful in this case to reach a decision which was not infected by these issues. The particular decision in this case was based on the fact that Dr. Boies had not earned tenure.

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It is the President's view that Dr. Douglas's decision was not "infected". In the view of the CAFRT all decisions from the time of the DAC onwards were compromised. The word "infected" appears to be a synonym for "compromised"; if so then the President does believe that the CAFRT made an error. If the basis for this error is the President's discovery that there are factors in Dr. Douglas's decision of which the CAFRT was not adequately informed, only the Provost should bear responsibility for that. Such after-the-fact justifications provide the continued "appearance of impropriety", to use the language of Senate Proposition II, as well as the appearance of insufficient respect for the mechanisms of faculty governance.

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There are other process questions which have been raised within the campus community. While they were not raised explicitly by the Faculty Senate, I would like to use this letter to communicate information which could be useful.

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August 20, 1999
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It has been written that the so called minority report was distributed to the Deans Advisory Committee by
order of the Provost. This is incorrect. The minority report was sent to a number of individuals. The Dean transmitted a copy to the Head of Sociology. In his letter of transmittal, he directed that the report become a part of the promotion dossier. In addition, he called for the Head and the Chair of the Departmental promotion and tenure committee to comment on points in the minority report and to make those comments a part of the promotion dossier. When it reached the Provost's Office, the dossier contained the minority report, extensive comments on the minority report by the Department Head and by the Chair of the departmental promotion and tenure committee. Their comments spoke directly to the three specific assertions in the minority report.

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This paragraph is apparently in reference to the petition letter which was widely known to the administration, but only directly delivered to the President on August 23, subsequent to the date of the President's memorandum. An early draft of that petition, written in early July did contain the factual error indicated. But that error was corrected in the on-line version of the petition as early as July 11, 1999. According to the CAFRT report and testimony given at the panel hearings, it was in fact then Dean of Faculties Dr. Perry who instructed the Dean of Liberal Arts what to do with the so-called "minority report" -- a point that is omitted in the description above. The Dean of Faculties is a member of the Provost's staff, charged with ensuring that procedures are correctly followed. It is disturbing that the Provost's office compounded the procedural violations, as it did in this case.

The description above also significantly fails to note the written protests of both the head of the departmental promotion committee and the head of the sociology department in their memoranda regarding the irregular inclusion of this "minority report" in Dr. Boies's dossier. Furthermore, it ignores the conclusion of the CAFRT that the memoranda prepared by these two individuals were not given adequate time and "did not allow input from the full P&T committee" -- factors considerably affecting the judgment that the process was compromised.

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It has also been written that the Provost inappropriately utilized the minority report. He was sent a copy at the same time it was distributed to the Dean and others. This copy was not considered at that time. It was simply filed by the Dean of Faculties. Later, when the promotion dossier arrived from the Dean, the minority report was present along with the normal materials and the minority report related materials described above.

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Even if the history given in this paragraph could be verified independently, it does not meet the burden of showing that the decision-making process was uncompromised by the minority report. In fact, the decision to place the report in Dr. Boies's file indicates that administrators aware enough of its contents to consider it appropriate for filing. This degree of knowledge of its contents, prior to exposure to any other piece of the dossier, is sufficient to raise questions about its possible effects on the eventual outcome. Again, it must be emphasized that grounds for such questions do not establish that there was an effect, but they do go directly to the issue of proper procedure which was manifestly violated here because the candidate's dossier should be transmitted as a whole from the department upwards.

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As the Provost evaluated the qualifications of Dr. Boies, along the lines described above, he read the full file. CAFRT concluded that, unlike the Dean's Advisory Committee, the Provost made his decision with adequate consideration of Dr. Boies's professional record and that record alone. It is a logical conclusion from the CAFRT report that the Provost did not make inappropriate use of the minority report.
This paragraph repeats the basic logical error described above of conflating the failure to establish a proposition with the establishment of its denial. The only logical conclusion from the CAFRT report is agnosticism on the question of whether the Provost made inappropriate use of the "minority report" in his decision.

Based on materials presented during the CAFRT hearing, a case can however be made that the "minority report" did exert an inappropriate influence on the Provost's decision, especially if one assumes that the Provost believed that the procedural violations had been adequately redressed prior to his review of the dossier (albeit that they hadn't been redressed according the CAFRT). With such a belief the Provost may well have been inclined to give undue weight to the "minority report". Evidence of this appears in the Provost's memo to Dr. Boies dated May 20, 1998 explaining his reasons for denying tenure to Dr. Boies. In that memo the Provost makes only two specific negative comments about Dr. Boies's record. The first is a reference to "the publication of your dissertation". The allegation that Dr. Boies's book is nothing more than a publication of his dissertation was made only in the "minority report". It is not substantiated by any other document in his dossier, and it is rebutted by other documents belonging to the dossier.

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In summary, the process problems in this case which have been identified by CAFRT, occurred before the promotion dossier reached the Provost. The decision made by the Provost was not influenced by these process problems or any other inappropriate advice or activities.

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The CAFRT found the entire decision-making process subsequent to the DAC to be compromised. This includes the Provost's decision. We reiterate that "compromised" does not mean wrong. It simply means that the conditions under which the decision was made engender reasonable doubt about the outcome. Such doubts warrant revisiting the case.

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I hope this long memorandum gives you insight into how Dr. Douglas reached his decision, and why I chose to agree with his decision. As usual, I am always available to discuss this matter with you at your convenience.

Ray M. Bowen

cc: Dr. Ronald G. Douglas

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By focusing on the question of whether the Provost thinks that Dr. Boies deserves tenure, the responses presented above do not adequately address the issues of commitment to due process and faculty governance mechanisms. By accepting the CAFRT report's findings President Bowen admits that procedural violations occurred. It is also the President's opinion that these violations did not affect the outcome in Dr. Boies's case. While this point is a matter of legitimate disagreement, the only way to resolve this disagreement in an unbiased fashion is to accept the recommendation of the CAFRT that Dr. Boies be given a new tenure review, free of any taint from procedural violations.

CA - 8/29/99
Date: July 6, 1999

To: Members of the Faculty Senate

From: John Boies, Department of Sociology

Re: The President’s decision to reject the recommendations of CAFRT in Dr. John Boies’ tenure appeal

I am circulating the enclosed report and subsequent University response because the Faculty Senate may be discussing them at the July 12th meeting.

On May 18th and 19th 1999 the Committee on Academic Freedom, Responsibility, and Tenure (CAFRT) heard my appeal regarding the Provost’s decision to deny me tenure. I appealed the decision because I felt there had been significant procedural violations in my tenure case. Violations were the result of retaliation against me for lodging complaints of academic misconduct against Mary Zey. CAFRT concluded that procedural violations and retaliation against my exercising academic freedom tainted the review process sufficiently to warrant a reconsideration of my tenure case. Despite the CAFRT recommendation, the President claimed the Provost properly reviewed my professional record and rejected the CAFRT report.

The President’s decision is a slap in the face of Faculty governance at Texas A&M University. What is the point of having CAFRT if its deliberations and conclusions are given little or no weight by the University administration? This decision is especially alarming because the Department of Sociology voted 12-7 in favor of my tenure. Rogelio Saenz, Head of the Department of Sociology, and Woodrow Jones, Dean of the College of Liberal Arts also recommended me for tenure. This most recent decision comes after the President rejected the Faculty Senate’s proposal for a cultural diversity requirement.
Report, Findings and Recommendations of the CAFRT Panel  
in the Case of Dr. John Boies  
20 May, 1999

Dr. John Boies requested a CAFRT hearing after receiving notice that he was neither promoted nor granted tenure. The bases for his appeal are that the decision not to promote or tenure was based on factors other than an adequate consideration of his professional record, were made in retaliation of his exercise of academic freedom, and were made due to illegal discrimination, namely discrimination on the basis of gender. This panel was convened at the request of Dr. Bowen after the recommendation of the Preliminary Screening Committee. The CAFRT panel conducted the hearing in accordance with University Rules 12.01.99.M2.9.5.

On 18 and 19 May, 1999, a CAFRT panel heard testimony in the appeal of Dr. John Boies. In brief, we find that:

1. Dr. Boies did meet the burden of proof by a preponderance of the evidence that, at the departmental level, a majority of the negative votes were due to considerations other than his professional record or in retaliation of his exercise of academic freedom. (Panel unanimous)

2. Dr. Boies did meet the burden of proof by a preponderance of the evidence that, at the Dean's Advisory Committee (DAC), the unanimous negative recommendation was made with considerations other than his professional record. (Panel unanimous)

3. Dr. Boies did not meet the burden of proof by a preponderance of the evidence that the Provost made his decision without adequate consideration of Dr. Boies's professional record or by considering other than Dr. Boies's professional record. (Panel unanimous)

4. Dr. Boies did not meet the burden of proof by a preponderance of the evidence that, at any level above the Department, the decisions were made in retaliation of his exercise of academic freedom. (Panel unanimous)

5. Dr. Boies did not present any credible evidence that any decisions made at any level were the result of illegal discrimination of any kind, including sexual discrimination. (Panel unanimous)

The inadequate consideration at the Departmental level (see 1 above) and at the DAC (see 2 above) compromised the subsequent decision-making process. Therefore, the CAFRT panel recommends the following actions be taken:
1. Dr. Boies’s appointment should not be terminated, but rather extended. During the extension Dr. Boies should be given another full evaluation for tenure and promotion. (Panel unanimous)

2. The evaluation should be in the 1999-2000 promotion cycle (6 votes) or in the 2000-2001 promotion cycle (2 votes).

Adequate Consideration of Dr. Boies’s Professional Record

According to University Rules 12.01.99 M2, 4.5.3, adequate consideration “consists of a conscientious review, which seeks out and considers all available evidence bearing on the relevant performance of the faculty member, and assumes that the various academic units follow their approved procedural guidelines during the tenure and promotion review process (see 4.4.2 and 4.4.3). Such consideration should be based upon adequate deliberation over the evidence in light of relevant standards and exclusive of improper standards. An improper standard is any criterion not related to the professional performance of the faculty member.” Although Dr. Boies raised many questions about how various parts of his publication record were valued, the panel found no credible evidence that his professional record was not adequately considered in its entirety at all levels. The procedural issues will be discussed later in this report. The issue of improper standards is discussed in the ensuing paragraphs.

Many witnesses testified to the animus of Drs. Zey and Murdock toward Dr. Boies. One stated that Drs. Murdock and Zey were out to “destroy” Dr. Boies. Another said that he thought that Drs. Murdock and Zey would do anything they could to prevent Dr. Boies from receiving tenure. Furthermore, there was no testimony that would indicate otherwise. The lawsuits brought by Dr. Zey also indicate her inability to objectively consider the academic record of Dr. Boies. From such statements and observations and from the “minority report,” we conclude by the preponderance of the evidence that Drs. Zey and Murdock voted negatively on the basis of criteria other than Dr. Boies’s professional performance. (Neither Dr. Zey nor Dr. Murdock testified to the CAFRT.)

In addition, points 1 and 2 of the “minority report” dated November 12, 1997, introduced considerations not germane to a tenure and promotion discussion. Point 1 discusses an item that is not in Dr. Boies’s research statement or curriculum vita that went forward in the dossier, so is not relevant for discussion at the DAC and higher levels. Point 2 raises the issue of the scientific misconduct investigation (wrongly accusing Dr. Boies of making an incorrect statement about the investigation) which is not relevant to tenure and promotion discussions. These points are indications that the other signatories also considered factors not relevant to tenure and promotion in making their decisions.
The panel is convinced by the preponderance of the evidence that the DAC members also considered information not relevant to tenure and promotion in making their decisions. The evidence for this is that at least 3 members of the DAC testified that they considered the “minority report” in their deliberations. Also, at least 2 members of the DAC were influenced by the number of negative votes at the Departmental level.

Retaliation for Dr. Boies’s Exercise of Academic Freedom

Considerable testimony and documentation centered on the allegations and counter-allegations of scientific misconduct and on lawsuits brought by Dr. Zey against Dr. Boies and others. The panel finds that the negative votes of Drs. Zey and Murdock were made in retaliation for Dr. Boies’s exercise of academic freedom when he became party to allegations of scientific misconduct against Dr. Zey. Thus, the panel concludes that at least two negative Departmental votes were made in retaliation for Dr. Boies’s exercise of academic freedom.

We find no credible evidence that any decisions made at any higher level than the Department were made in retaliation for Dr. Boies’s exercise of academic freedom.

Illegal Discrimination

Dr. Boies alleged that Dr. Henderson’s receiving tenure with a record similar to his was evidence of discrimination on the basis of gender. The fact that Dr. Henderson is female is not evidence of gender discrimination. The panel finds that there was no evidence presented that gender was an issue in either decision.

Different Standards

Dr. Boies alleges that he was held to more stringent standards than was Dr. Henderson. Many witnesses testified that the two files were similar. Some said that her letters were better than his. Some thought his research was stronger than hers. Some stated that one or the other file as a whole was stronger. Such differences in opinion are common in academe and in no way indicate that different standards were used. Furthermore, choice of people to write letters varies greatly. The use of European letter writers can be argued both for (in that they can provide strong evidence of international reputation) and against (in that their standards may differ from those in the U.S.). None of these arguments or any other evidence provided the panel with credible evidence that Dr. Boies was held to different (let alone higher) standards than was Dr. Henderson.
Procedural Errors

Section III.C of the College of Liberal Arts Procedures for Review, Tenure and Promotion (2nd Revision) is headed "Materials to be included in the promotion/tenure dossier." Section III.C.7 is "Committee Minority Report." Since Section III.C.8 is about the Department Head's report, we conclude that any minority report should be in the dossier at the Departmental level so that the department head may discuss it in his/her report. The writers of the "minority report" did not inform the head prior to the dossier leaving the Department that such a report was forthcoming and did not give it to him to forward to the Dean as is proper procedure with all supplemental material. In addition to bypassing the P&T committee, its chair and the Department Head, they delivered the report simultaneously to the entire chain of command. Thus, their report was the first piece of the P&T dossier to arrive at both the Dean of Faculties' and the Provost's offices. Both these actions are clear violations of College procedures.

In addition, Dr. McIntosh testified that they (the "minority report" signatories) were justified in their not going through the Department Head because they were worried that the Department Head wouldn't forward the "minority report." Because the procedures require the Department Head to forward any minority report (after sending it through the P&T Committee for comment), the claim that the report would not be forwarded is a serious allegation against the integrity of the Department Head, for which there was no evidence presented. By broadcasting the "minority report" to everyone who would evaluate the dossier, the signatories also impugned the integrity of Dean Jones and Dr. Perry. Since other remedies (such as checking the dossier using an open records request to see if their report was attached) were available, we reject the claim that they were justified in their method of distribution.

In an attempt to "cure" the procedural irregularities, Dr. Perry instructed Dean Jones (see Dr. Jones's answers to the question 5 from Mr. West) to include the "minority report" in the dossier. Dean Jones then sent the report back to the department for the P&T Committee Chair and the Department Head to discuss and reply to, as they would have had the report been sent according to procedures. However, we find that the 1 1/2 days Dean Jones gave Dr. Sell, Chair of P&T Committee, and Dr. Saenz, Head of Sociology, did not give reasonable time to reconvene the P&T committee to discuss the "minority report" and respond to it. We find unconvincing the argument that the fact that the DAC was scheduled to meet on the 24th to discuss Dr. Boies's case required a response in such a short amount of time, since the DAC could have rearranged its schedule to consider his case later. Thus, the panel finds the "cure" did not allow input from the full P&T Committee. Moreover, the panel questions why the Department Head and the Chair of the P&T Committee did not request a time extension.

At the hearing, there was discussion of the propriety of Dr. McIntosh's signing the "minority report" since he was also a member of the DAC. The panel agrees that Dr. McIntosh
has the right to express himself as a faculty member within the Department of Sociology and to sign (and even write) a "minority report." However, as a member of the DAC, he should have been particularly vigilant to observe all procedures for a minority report. The panel thinks that his signing the "minority report" after the dossier had left the Department and not sending the report through the Department Head constituted his signing the "minority report" while in his capacity as a member of the DAC. Since there were other problems with this case, the panel decided not to discuss this issue further, except to state that we hope that future members of the DAC will seek to avoid even the appearance of attempting undue influence and to be scrupulous in following procedures.

Panel Recommendations

The accumulated violations and procedural problems detailed above have convinced the panel (unanimously) that Dr. Boies's tenure and promotion decision should not stand as is. The panel (unanimously) also thinks that simply awarding Dr. Boies tenure is not an appropriate way to redress the errors. Thus, the panel unanimously recommends that Dr. Boies be given another full evaluation for tenure and promotion.

The panel is split as to when such an evaluation should occur. Six members of the panel recommend that the process be done in the next academic year since Dr. Boies has had all of 1998 and 4 months of 1999 to produce more research and strengthen his record. Two members recommend that the evaluation occur in 2000-2001 promotion cycle, so that Dr. Boies will have a year without CAFRT concerns in which to produce research.

Dr. Sue Geller, Chair of the CAFRT
Dr. Richard Alexander, Engineering Technology and Industrial Distribution
Ms. Candace Benefiel, Evans Library
Dr. Gary Briers, Agricultural Education
Dr. Richard Feldman, Industrial Engineering
Dr. David Forrest, Animal Science
Dr. Thomas Lalk, Mechanical Engineering
Dr. David Reed, Horticultural Sciences
Dr. Charles Schultz, Evans Library
TO: Dr. Ray Bowen, President
Texas A&M University

FROM: Dr. Sue Geller, Chair
Committee on Academic Freedom, Responsibility and Tenure (CAFRT)

RE: Clarification of the Report of CAFRT panel in the case of Dr. John Boies

Upon rereading the report, we discovered that we had inadvertently misedited a sentence which appears on page two in the second full paragraph. The sentence currently reads,

“The lawsuits brought by Dr. Zey also indicate her inability to objectively consider the academic record of Dr. Boies.”

It should read,

“The lawsuits brought by Dr. Zey also indicate that she may have been unable to be completely objective in her consideration of the academic record of Dr. Boies.”

Of course, all our findings are based on the preponderance of the evidence presented at the hearing and in the documentation. As you know, we are a hearing panel and not an investigative committee. In particular, we do not call witnesses (see Procedures for CAFRT hearings, approved 21 November, 1997).

I hope the above clarifies our report.

xc: Dr. Ronald Douglas, Provost
Dr. William Perry, Executive Associate Provost
Dr. John Boies, Sociology
Dr. Janis Stout, Associate Provost and Dean of Faculties
Gaines West, Counsel for Dr. Boies
Jerry Brown, Assistant General Counsel
CAFRT Panelists
Dr. Richard Alexander, Engineering Technology and Industrial Distribution
Ms. Candace Benefiel, Evans Library
Dr. Gary Briers, Agricultural Education
Dr. Richard Feldman, Industrial Engineering
Dr. David Forrest, Animal Science
Dr. Thomas Lalk, Mechanical Engineering
Dr. David Reed, Horticultural Sciences
Dr. Charles Schultz, Evans Library
MEMORANDUM

TO: Dr. John Boies, Assistant Professor
Department of Sociology

SUBJECT: Response to CAFRT Report

June 21, 1999

I have received the May 27, 1999, report of CAFRT on your tenure appeal. As you know, the University has depended on, and highly values, the work and advice of this faculty group. The response this time is somewhat complex and, at times, even contradictory. Let me analyze it.

First, since tenure is the cornerstone which supports the relationship between faculty members and the University, the process by which tenure is earned and awarded is critical and of central importance. It involves a rigorous probationary period followed by a careful, deliberative review at the department, college and university level with the ultimate authority for granting tenure vested with the Board of Regents. Since all tenure-track appointments are to faculty possessing the potential to earn tenure, actual accomplishment and performance are the key factors weighed in reaching a decision. Finally, the provost normally conducts the final substantive deliberation in the process integrating all material and data assembled at previous levels with any further information the provost chooses to seek.

CAFRT provides for appeals to ensure the process was fair and comprehensive. There are three possible grounds on which one can appeal a negative tenure decision to CAFRT: (1) that the decision was not based upon adequate consideration of the individual's professional performance, (2) that it was made in violation of academic freedom, and (3) that the decision was a form of illegal discrimination. The CAFRT report rejects unanimously the appeal you made based on the third ground. There was unanimous concern expressed regarding the first that the Department and the Dean’s Advisory Committee took into account materials not appropriately entered into the process. There was unanimous concern over the second ground regarding the Department for the same reason. However, since all information was incorporated properly into the decision process at the provost’s level and this is the final substantive deliberation, these points do not seem to me to negate the validity of the
Dr. John Boies  
June 21, 1999  
Page 2

conclusion reached, namely that you have not, based on the record, earned tenure. Moreover, CAFRT has unanimously found that the review by the provost was appropriately based on adequate consideration of the professional record without considering other factors than the record. Thus, I am allowing to stand the earlier decision denying you tenure.

Ray M. Bowen  
President