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COMMITTEE ON FACULTY WELFARE AND PRIVILEGES

IN THE MATTER OF:

DR. LINDA GOTTFREDSON, PROFESSOR OF EDUCATIONAL STUDIES

VS.

DR. RALPH FERRETTI, ASSOCIATE PROFESSOR OF EDUCATIONAL STUDIES

DR. ROBERT HAMPEL, ASSOCIATE PROFESSOR OF EDUCATIONAL STUDIES

DR. DAVID KAPLAN, ASSISTANT PROFESSOR OF EDUCATIONAL STUDIES

DR. RICHARD VENEZKY, PROFESSOR OF EDUCATIONAL STUDIES

DR. VICTOR MARTUZA, CHAIR, EDUCATIONAL STUDIES

FINDINGS AND RECOMMENDATIONS

I. PROCEDURAL ISSUES

In a memo dated September 17, 1990, Linda Gottfredson requested a Step 3 hearing before the Committee on Faculty Welfare and Privileges, alleging unfair treatment in her quest for promotion, and denial of her academic freedom, by the 1989-90 Educational Studies Promotion and Tenure Committee (hereinafter referred to as the "P&T Committee"), and by Victor Martuza, Chair of the Educational Studies Department (hereinafter referred to as the "Chair").

Prior to the hearing, the P&T Committee and Chair alleged that, in connection with this grievance, the following procedural violations occurred.

(1) The Committee on Faculty Welfare and Privileges had chosen to ignore the difference between a "grievance" and "complaint." (2) Dr. Gottfredson had improperly initiated a Step 3 grievance without having first gone through Steps 1 and 2 of the Grievance Procedure. (3) The Chair of the Committee on Faculty Welfare and Privileges had improperly failed to appoint a subcommittee of five persons to hear Dr. Gottfredson's complaints, as required by Article 1-7 of the Faculty Handbook. (4) Dr. Gottfredson had improperly chosen an attorney, from outside the University community, as her advisor for this hearing.

This Committee's response to the procedural questions raised by the respondents was as follows.

(1) Whether what the initiator brings before this Committee is referred to as a "complaint" or a "grievance" is irrelevant. The only relevant distinction is whether the complaint/grievance is one that alleges a violation of the collective bargaining agreement. This Committee is charged with hearing complaints/grievances that do not allege a violation of the Collective Bargaining

Agreement. Since Dr. Gottfredson's complaint does not allege a violation of the Collective Bargaining Agreement, it is within the proper jurisdiction of this Committee.

(2) Dr. Gottfredson's decision to bring her complaint directly to this Committee without having gone through Steps 1 and 2 of the Grievance Procedure does not violate due process. An initiator may choose to waive Steps 1 and 2 of the Grievance Procedure, thereby bringing a complaint directly to this Committee. That this is a correct interpretation of the Collective Bargaining Agreement has been unequivocally confirmed by the University's chapter of the American Association of University Professors (see Documentation). Moreover, aside from the rights of the initiator, this Committee believes that, for the following reasons, Dr. Gottfredson's decision to bring her complaint directly to this Committee was appropriate. Step 1 is a hearing before the initiator's departmental chair. Step 2 is a hearing before the dean of the initiator's college. In this case, the initiator's departmental chair is one of the respondents. Therefore, a Step 1 hearing is inappropriate since one of the parties to a dispute cannot also serve as the judge in the dispute. Furthermore, the initiator has presented evidence, which this Committee finds convincing, that the dean of the initiator's college openly supports the Chair in this dispute. In this case, going through the motions of a Step 2 hearing would serve, we believe, little purpose other than to delay even further the initiator's opportunity for an impartial hearing.

(3) Contrary to what the respondents have alleged, the chair of this Committee has in fact appointed a subcommittee of five persons to hear Dr. Gottfredson's complaint. As is customary, the two remaining members of this

Committee serve as alternates, in case one or more of the five members of the subcommittee, for whatever reason, become unable to continue with the hearing or with the deliberation afterwards.

(4) This Committee grants Dr. Gottfredson's request to have, as her advisor in this hearing, a person who is an attorney. To permit attorneys to be advisors to parties is consistent with this Committee's practice in previous hearings. It is also consistent with paragraph III-N-1 of the Faculty Handbook, which states that any party in a hearing before this Committee "shall be permitted to have advisors of his own choosing in his representations." Because of an attorney's knowledge of the law and of rules of evidence, parties in a formal court proceeding who are represented by attorneys have a significant advantage over parties who are not so represented. The hearings before this Committee, however, are not formal court proceedings. Our hearings are constrained only by that which is fair and reasonable, and in accordance with University policy. This Committee does not believe that attorneys are necessarily any more qualified in knowing or presenting what is fair and reasonable, and in accordance with University policy, than are members of the University community. Therefore, we do not believe that, in these hearings, it is necessarily any advantage to be advised by an attorney. This Committee reserves the right, of course, to restrict the participation of advisors, be they attorneys or not, if there exist special circumstances in which the interests of a fair hearing may be better served by doing so. The respondents, however, have not presented this Committee with reasons for believing that any such special circumstances exist in this case.

A hearing was held on the complaint on February 22, 1991, in the presence of the initiator, Dr. Gottfredson, and respondents Dr. Martuza, the Chair, and Dr. Ferretti, representing the P&T Committee. Also present were Mr. Steven Jenkins, an advisor chosen by the initiator, and Professor George A. Cicala, an observer chosen by the initiator, and Dr. Jan Blits, who had initiated a related complaint against the same respondents, and whose complaint was heard before this Committee along with Dr. Gottfredson's.

Upon hearing this Committee's ruling on the last of the above four procedural matters that they had raised, Dr. Martuza and Dr. Ferretti walked out of the room, thereby refusing to participate in this Committee's hearing on any of the substantive complaints brought by Dr. Gottfredson.

If the respondents to a complaint were able to bring a hearing to a halt whenever they wanted merely by not participating, then such a situation would render it impossible for this Committee to carry out the duties with which it has been charged by the University Senate. Therefore, this Committee proceeded with the hearing without the presence of the respondents. Prior to their leaving the hearing, however, the respondents were informed of, and understood, the decision to proceed in their absence.

Before leaving the hearing, the respondents also requested that this Committee enter two lengthy documents (a total of 69 pages) into the record of these proceedings--documents in which the respondents offered selected replies to Dr. Gottfredson's and Dr Blits's complaints. The respondents were out of order in presenting these documents at this time, since Paragraph I.B. of this Committee's Hearing Procedures, a copy of which had been provided to all parties well before the hearing, requires that any documents to be considered by this

Committee must be made available to all parties and the hearing panel at least "five working days before the initial date of any hearing." The reason for this procedural requirement is to allow the opposing parties sufficient time before the hearing to examine the documents and prepare any response to them that they may wish to make at the hearing. Because the opposing party in this case had not had an opportunity to examine these two lengthy documents and prepare a response, as is her right, this Committee was unable to accept these documents.

The respondents' refusal to participate in the substance of this hearing and to answer questions prevented this Committee from reaching conclusions on some of the allegations brought by Dr. Gottfredson. The documentary evidence, however, was sufficient for enabling the panel to reach conclusions on certain other allegations.

## II. UNFAIRNESS IN DEPARTMENT PROMOTION PROCEEDINGS

### A. Background and Allegations

In 1989, the P&T Committee recommended that Dr. Gottfredson not be promoted to the rank of Professor on the grounds that her scholarly work did not meet the Department's requirements for promotion to that rank. The Chair, in a separate recommendation, supported the P&T Committee's report on her scholarship, and also recommended that she not be promoted. The year before, however, the P&T Committee and Chair had both found that her scholarship clearly did meet the requirements for promotion. Dr. Gottfredson's dossier on scholarship was the same in 1989 as it had been the year before, except for the addition of two articles co-authored with Jan Blits. Eight of the nine outside reviews of Dr. Gottfredson's scholarship that the Department had solicited were very favorable,

and recommended her promotion without qualification. One review (the only review that had not been available to the P&T Committee the year before) was unfavorable. In spite of the negative recommendations of the P&T Committee and the Chair, Dr. Gottfredson was promoted.

Dr. Gottfredson alleges that "Both the [P&T] Committee and the Chair violated a series of stated University and Department procedures as well as basic canons of professionalism and fairness." She alleges that, in their recommendations, the P&T Committee and the Chair unfairly made it appear that the outside reviews were more negative than they actually were, that they did not give adequate recognition to the positive reviews, that they suppressed the fact that the single, negative reviewer's conclusions were improperly influenced by his own social values, and that they did not adequately explain the reasons for their conclusion that her works misrepresented the positions of others. Dr. Gottfredson also alleges that the Committee deliberately solicited the negative review, that this was over her explicit objections and at the behest of a faculty member known to be seeking to harm her career; that the Committee, contrary to past practice, failed to provide an advance draft of its recommendation to the Department; that the Chair failed to supervise properly the promotion process; that the Chair, contrary to past practice, emphasized promise not achievement in its recommendation, and improperly negated nine years of "very impressive" scholarship merely on the grounds that in one year scholarship was allegedly not "exemplary."

We should mention one additional allegation made by Dr. Gottfredson. This allegation is not contained in the formal complaint brought before this Committee, but came to our attention for the first time during the hearing.

Dr. Gottfredson alleged that she had been sexually harassed by an influential member of her Department, who is not a respondent in this case. She testified that, after she had rebuffed his alleged advances, this Department member became increasingly hostile towards her and, through behind the scenes maneuvering, contributed extensively to the alleged, improper attempt to undermine her bid for promotion. On the basis of her testimony (pp. 64-80 of the Transcript; see esp. pp. 64-68 and 74-75), we believe that this allegation of sexual harassment is, potentially, a serious matter. Since, however, this allegation is not a part of the complaint before this Committee, we offer no opinion about its truth. Dr. Gottfredson testified that, at her behest, the Office of Women's Affairs is currently investigating this matter. Dr. Gottfredson also testified, however, that it has been over a year since she brought this matter to their attention and, to her disappointment, she has yet to hear the results of their investigation. We expect that the Office of Women's Affairs will bring this matter, without delay, to a timely and appropriate resolution.

**B. Findings of the Committee on Faculty Welfare and Privileges**

1. The report of the P&T Committee neither accurately nor honestly reflects the support of the outside reviewers for Dr. Gottfredson's scholarship. This distortion goes beyond any reasonable range for academic judgment. It violates the requirements for fairness in evaluating documentation for promotion and tenure, as alleged by Dr. Gottfredson in her complaint. Dr. Gottfredson's scholarly work is praised highly by eight of nine outside reviewers, all eight of whom have impressive credentials and recommend Dr. Gottfredson's promotion without qualification. Indeed, their reviews must be read to appreciate fully



the extent to which these reviewers praise her scholarly work. Yet, not one of their numerous, extremely positive comments is cited in the P&T Committee's report; this report cites only six negative comments. Moreover, these six negative comments are made to appear as if they come from a number of different reviewers when, in fact, four of the six come from the lone, negative reviewer. The other two comments are quoted out of context, making them to appear to be far more negative than they really are. The only exception to the general impression created by the Committee that the outside reviews are unfavorable is a single sentence, near the end of the Committee's report, that states: "Most of the reviewers were highly complimentary of her work." This single sentence at the end of a report which, up to that point, has focused exclusively upon what would appear to be unfavorable comments from a number of different reviewers is simply not enough to communicate accurately and fairly the fact that eight of the nine reviewers unequivocally endorse both Dr. Gottfredson's work and her promotion.

2. In their reports on Dr. Gottfredson's work, the P&T Committee and the Chair unfairly suppress the fact that the single, negative outside reviewer states that what distresses him about Dr. Gottfredson's work are his own social values, which, strictly speaking, should be irrelevant. As the Chair's Handbook states, "(I)t is...important that evaluation be obtained from people who are disinterested." Yet this reviewer, in summing up his review, writes, "What ultimately gives me pause about LG's work are my own social values and my views about the appropriate role of education in society." The main difference that this reviewer perceives between his own social values and those of Dr.

Gottfredson is that Dr. Gottfredson lacks, so he alleges, "charity of spirit."

As this reviewer says:

Shortcoming of charity of spirit is hardly a recognized ground for denial of academic promotion, I realize, but it is what bothered me most about IG's writings.

3. There is insufficient basis, in the P&T Committee's report, for what it calls a "perhaps more serious problem" with Dr. Gottfredson's research--an alleged "recent tendency to misrepresent the positions of others." The only evidence the P&T Committee cites in support of this very serious charge is that, in her two recent papers co-authored with Jan Blits, she (and Dr. Blits) misrepresented "the basic findings of the (NAS) panel report"—a point the P&T committee substantiates by an appeal (once again) to the one negative reviewer. The P&T committee does not even specify exactly how these findings have allegedly been misrepresented. Written argumentation and testimony from Drs. Gottfredson and Blits support the conclusion that the legitimacy of this sole example of misrepresentation is highly questionable at best. Indeed, one of the authors of the NAS report in question is among the eight favorable outside reviewers of Dr. Gottfredson's work, and states that, although he disagrees with her conclusions, he views her as a worthy opponent. None of the other eight reviewers mention any misrepresentation in Dr. Gottfredson's work and, in fact, they praise the quality of her scholarship. Yet, all of these reviewers had been asked to base their reviews on copies of Dr. Gottfredson's papers they had been given that, for six of the eight reviewers, included copies of the two co-

authored papers in question. None of the six favorable reviewers who received copies of the two co-authored papers in question has anything negative to say about them, and five of the six, in fact, single out these papers for special praise. For example, one of the reviewers writes:

Many critics of the (NAS) report have been more emotional than rational. Indeed, many of the critics did not even read the report. Linda not only read it, she understood it and in some respect saw through it. Linda is always rational. Her analysis is cogent and perceptive, as always. She has helped to clarify a number of issues left murky by the report, with her characteristically thorough analysis.

Another of the reviewers, referring to the two articles in question, writes:

They are soundly based on research evidence and are well argued. Their relevance to important broad questions can be seen in several recent Supreme Court decisions, particularly the Wards Cove decision. Perhaps the Supreme Court Justices are reading her publications.

The evidence that the P&T Committee cites for Dr. Gottfredson's alleged "recent tendency to misrepresent the positions of others" is, therefore, far too weak to substantiate such a sweeping charge. If this Committee, from its own

readings of Dr. Gottfredson's recent work, had more evidence than this single, alleged example, then it should have made this evidence known in its report. The evidence, if any, for charges as serious as misrepresentation must be made explicit. As the Faculty Handbook (p. III-K-3) states, "the reasons for adverse recommendations must be explained to the candidate as specifically and completely as possible and reasonable."

One general observation: The two papers by Drs. Gottfredson and Blits in which the alleged misrepresentation occurs are extremely controversial, so much so that, in a respected journal, a symposium devoted entirely to one of these papers has been published. As is to be expected, the participants in this symposium disagree with many things that Drs. Gottfredson and Blits say. But this controversy and these disagreements must not be confused with misrepresentation and lack of scholarly merit. Controversy and disagreement are at the very heart of the scholarly enterprise in a free society. Papers that really do misrepresent and lack scholarly merit are more likely to be ignored in the literature than to become the object of a symposium.

4. The Chair states that he is "persuaded by the (P&T) Committee's reasoning" about the lack of scholarship and, presumably, the alleged misrepresentation in the two co-authored articles in question, and that this is in part the basis for his own negative report on Dr. Gottfredson's scholarship. Therefore, to the extent that the P&T Committee's report with respect to these two articles is unfair and fails to explain the reasons for its objections adequately, by implication, the Chair's report suffers from these same deficiencies.

5. Because the respondents' refused to attend the substantive part of the hearing and we, therefore, were unable to question them about other allegations that Dr. Gottfredson made regarding the promotion process, we are unable to reach conclusions on these other allegations. This situation must not be construed, however, as a finding in favor of the respondents on any of these allegations, or as, in any way, calling into question any of the conclusions that we have been able to reach, all of which have been arrived at unanimously, and largely on the basis of what is self-evident merely from a careful examination of the various documents and reviews at issue.

### III. ACADEMIC FREEDOM

#### A. Background and Allegation

Nothing is more essential to the well-being and integrity of a university than academic freedom. The Faculty Handbook (p. III-8-1) puts it as follows:

It is recognized that if faculty members are to teach and carry on research effectively, academic freedom is necessary. Academic freedom is the freedom of the faculty to teach and speak out as the fruits of their research and scholarship dictate, even though their conclusions may be unpopular or contrary to public opinion.

In 1988, the P&T Committee of the Department of Educational Studies found that Dr. Gottfredson's scholarship "clearly" met the University's standards for promotion to Professor. It found her record of high-quality scholarship to have

been no less than "unequivocally established." Nevertheless, one year later, the P&T Committee, in a new report on her scholarship, reversed its finding and concluded that her scholarship no longer met the requirements for promotion. Yet (as already pointed out in Sec. II.A above), Dr. Gottfredson's dossier with respect to scholarship was exactly the same in 1989 as it had been in 1988, except for the addition of two recent articles co-authored with Jan Blits. These two articles are on the topic of "race-norming," which is the practice of reporting candidates' scores on employment tests not in relation to all other candidates, but in relation only to those of the same race or minority category--a practice designed to benefit Blacks and other minorities and help achieve equal opportunity. In these articles, Drs. Gottfredson and Blits conclude that, contrary to what the NAS panel says, race-norming "represents a giant step backwards in the struggle for human dignity and equality." This conclusion is very controversial and, among many academics, is unpopular. Finally, merely to help place Dr. Gottfredson's allegations against the P&T Committee and Chair in perspective, it should be mentioned that, shortly before the P&T Committee's new report, it was discovered that Dr. Gottfredson had received research grants from a private organization, the Pioneer Fund, that has been accused by some individuals of racism.

The Chair of the Educational Studies Department was required by University policy to write a separate recommendation on Dr. Gottfredson's qualifications for promotion. In his recommendation, the Chair supports the P&T Committee's reversal of its 1988 report on scholarship. Accordingly, the Chair follows the P&T Committee in recommending that Dr. Gottfredson not be promoted. He admits that, in reversing its prior report on scholarship, the amount of weight assigned

by the P&T Committee to the two recent articles co-authored with Dr. Blits "appears to be heavier than one might expect." "But," he continues, "this is understandable given the...P&T Committee's concern about the trend in Dr. Gottfredson's writing and what this might portend for her future work." He concludes by writing:

Whether these manuscripts signal the onset of a permanent change in the character and quality of her work is impossible to ascertain at this time. Once there are clear indications of a return to the level of quality characterized by her earlier work, I will once again wholeheartedly support her application for promotion to full professor.

The P&T Committee concludes its recommendation with a similar statement. In other words, both recommendations suggest that either Dr. Gottfredson must change the character and quality of her recent work, or else not be recommended for promotion.

Dr. Gottfredson alleges that the objections which the P&T committee and the Chair have to her recent work are ideologically motivated; that what they really object to are the unpopular and controversial conclusions she is reaching. Therefore, this pressure to change the character and quality of her work is, she alleges, a violation of her academic freedom.

B. Findings of the Committee on Faculty Welfare and Privileges

Neither the P&T Committee nor the Chair ever state in their reports on Dr. Gottfredson's scholarship that they are objecting to the two articles in question because of the nature of the conclusions reached in them. Rather, their objections are purportedly directed toward the scholarly merits of these articles, and nothing more. Yet, what makes the motivations of both the Committee and Chair questionable is this: neither the Committee nor the Chair makes it clear in their reports how these two articles could possibly be so completely lacking in scholarly merit as to transform what only one year earlier had been a record of scholarship that "clearly" met the Department's standards for promotion into one that did not. It is especially unclear how this could be possible in view of the praise these two articles receive from five of the eminent outside reviewers that the Department had solicited. One of these reviewers says that, in these articles, Dr. Gottfredson's "cogent and perceptive" analysis "has helped to clarify a number of issues left murky by the (NAS) report." A second says that these articles "are soundly based on research and evidence and are well argued." A third says that, in these articles, Dr. Gottfredson is "an articulate spokesperson for a viewpoint different from mine." A fourth (a member of the NAS panel that these articles criticize) says that, in these articles, "the essential issues are made admirably clear to non-specialist readers." And, finally, a fifth outside reviewer says that, in these articles, "Dr. Gottfredson writes so clearly and persuasively that she is bound to have an increasing influence on social policy in this country." With only one exception, nothing negative is said by any outside reviewer about the scholarship exemplified in these two articles. The only exception comes from



the sole negative review of Dr. Gottfredson's work, a review in which, as explained in II.B.2 above, the reviewer admits that what ultimately gives him pause about Dr. Gottfredson's work are his "own social values." Moreover, one of the two articles in question here has received the rare honor of being the object of an entire symposium in a respected journal. In a letter to the Chair of the P&T Committee, dated February 1, 1990, Dr. Irving Louis Horowitz, Hannah Arendt Distinguished Professor of Sociology at Rutgers University, who edits this journal, states that, although the participants in this symposium naturally will have genuine differences of opinion with Drs. Gottfredson and Blits, "the appearance of this symposium in Society already denotes the quality" of this article. Professor Horowitz goes on to say that:

To be frank, if these four (symposium) papers are used as intellectual cannon-fodder to deny Professor Gottfredson a promotion overwhelmingly recommended only one year earlier I should be dismayed.

Finally, these two articles are not quantitative, empirical studies; they are instead contributions to the vitally important debate currently taking place among those in Educational Studies and related fields on the broader, social and philosophical implications of prior empirical studies and the NAS Panel's recommendations. But to conclude that these articles lack scholarly merit merely because they are not empirical studies, complete with quantitative analyses, would be highly inappropriate. "Responsible" contributions to debates upon

important social and philosophical issues are just as vital a part of the scholarly enterprise as are "responsible" empirical studies.

The Committee on Faculty Welfare and Privileges believes that these facts establish a strong prima facie case that the respondents have violated Dr. Gottfredson's academic freedom, as defined in the Faculty Handbook. Unfortunately, since the respondents refused to appear before this Committee to answer any questions about this matter, we are unable to determine, beyond any reasonable doubt, whether this prima facie case can be rebutted. Therefore, so as to give the respondents the benefit of any reasonable doubt, this Committee unanimously concludes that either one of two things is the case. Either the P&T Committee and Chair really do, in spite of everything, object only to alleged scholarly deficiencies in these articles, in which case it must be pointed out that, in their reports, this objection is not fairly presented and the reasons for it are not adequately explained to the candidate, as required by p. III-K-3 of the Faculty Handbook (for more detail on this, see Secs. II.B. 1, 2, 3 and 4 above). Or, alternatively, the P&T Committee and Chair are, just as Dr. Gottfredson alleges, objecting on ideological grounds to the conclusions she is reaching, in which case the pressure they are exerting upon her to change the character and quality of her work is a clear and very serious violation of her academic freedom.

#### IV. RECOMMENDATIONS

As a result of the P&T Committee's and Chair's unfair 1989 report of Dr. Gottfredson's scholarship (see Secs. II.B.1-4 above), her reputation as a scholar

has been unjustifiably damaged within her Department, and is likely to be damaged further, both within and outside her Department. As a remedy against this and further damage, Dr. Gottfredson requests that the P&T Committee's and Chair's 1989 report on her scholarship be deleted from all personnel files, and that an explanation for the deletion be added to her personnel files. Dr. Gottfredson also requests public censure of the Chair and four members of the 1989 P&T Committee. At the hearing, Dr. Gottfredson suggested that, if this Committee finds in her favor, then public censure, at least in part, may take a form such as that of distributing a copy of this Committee's opinion to the members and Chair of her Department, and to the Dean of her College. Finally, at the hearing Dr. Gottfredson requested that the possibility of her relocating to another Department or College within the University be given serious consideration. The reason for considering relocation is that the matters relating to this case have created, within her current Department, hostility toward her that may be difficult to overcome.

Dr. Gottfredson's request for public censure requires, we believe, qualification. Distributing this opinion as suggested by Dr. Gottfredson may indeed be useful for reminding those concerned of the standards of academic freedom and of fairness that are appropriate in writing promotion recommendations. Yet, we choose not to refer to this distribution as "public censure." Public censure implies, we believe, condemnation of the motives of the respondents, whereas this committee has not presumed to judge their motives, only certain of their actions.

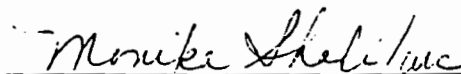
Given this qualification upon the request for public censure, the Committee on Faculty Welfare and Privileges considers each of Dr. Gottfredson's requests

to be reasonable under the circumstances and recommends unanimously that they be granted.

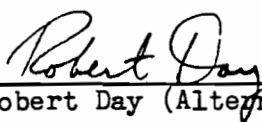
May 31, 1991



Gordon R. Bonner  
Associate Professor  
Business Administration



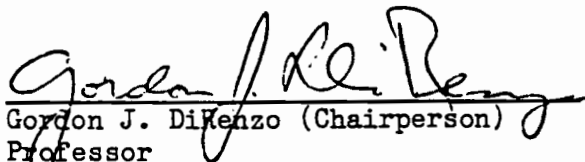
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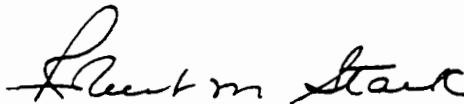
Robert Day (Alternate)  
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David Sheppard  
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Sociology



Robert Stark  
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