MINUTES OF THE FACULTY SENATORS COUNCIL MEETING OF April 10, 2014

The New York University Faculty Senators Council (FSC) met at noon on Thursday, April 10, 2014 in Room 905/907 in the Kimmel Center for University Life.

In attendance were Senators Allgood, Amkpa, Backus, Carpenter, Chan, Dinwiddie, Dreyer, Goodwin, Jacobs, Jelinek, Kane, Karl, Ludomirsky, McIlwain, Mincer, Morning, Porfiri, Rajagopal, Simoncelli, Stanhope, Stokes, Sundaram, Uleman; Active Alternates Dasanayake and Stewart; Alternate Senators Archer, Ebsworth (for Alter), Kallenbach (for Cappell), Pearce (for Disotell), Reiss, Rubin, Simon, Sternhell (for Becker) and Tannenbaum; and Immediate Past Chair Magder. FSC Former Chair Lebowitz attended as a guest. Martin Dorph, John Sexton, and Diane Yu attended as Special Guests.

APPROVAL OF THE MINUTES OF THE MEETING HELD March 13, 2014

Upon a motion duly made and seconded, the minutes of the March 13, 2014 meeting were approved unanimously.


The nominations were presented to the council and Chairperson Sundaram opened the floor for nominations. Senator Uleman suggested Senator Porfini to run for Secretary instead of Vice Chairperson to give a bit of competition to the Secretary race. It was seconded and Porfini agreed to run for Secretary. The slate of candidates is:

Candidate for Vice Chairperson:
- Allen Mincer (FAS)
- Angela Kamer (College of Dentistry)

Candidate for Secretary:
- Mitchell Kane (School of Law)
- Maurizio Porfini (NYU Polytechnic Institute)

REPORT FROM THE CHAIRPERSON: RAGHU SUNDARAM

Chairperson Sundaram mentioned the email circulating regarding the Medical School salary reduction issues. Sundaram asked the chairs (Senators McIlwain, Jelinik, Uleman, and Backus) of three FSC committees (Governance, Finance, and PP and Tenure Modifications) to form an ad-hoc committee. This committee will look into the issue of what economic security means in the context of tenure. Sundaram
would like the conversation to be framed by the Medical School issue but not limited to it. This ad-hoc committee will submit a brief note for the May 8th FSC meeting regarding what they exactly plan to look into. They will then present during the next FSC meeting in October with their findings.

Sundaram raised the issue regarding the tenure track and contract faculty again following a meeting with the Board of Trustees. Sundaram expressed that no one really seems to know what the role of tenure track or contract faculty is at a research university. It is mentioned that both parties are upset by this. Sundaram explained that everyone is waiting on the Administration to articulate a role because it is so different across schools and departments. Sundaram proposed to set up an ad-hoc committee to meet with the contract faculty to design a mandate to look into this issue. Sundaram asked the council to think about framing parameters to discuss the issue and at some point make recommendations to the university. Sundaram requested that Senator Karl and Ampka co-chair this ad-hoc committee and have a report by November.

Sundaram reported that Bob Burn informed him, in a conversation that the university was thinking of starting a Global Institute of Public Health. The parameters have not yet been formulated but they were going to invite the departments in Steinhardt to join in. It would be up to the school and departments to decide what they want to do. Nothing will fall to the faculty. A letter was written and later sent to Steinhardt faculty regarding this topic. Sundaram can confirm that the contents of the letter were the same topics expressed in the conversation with Bob Burn. The university assured Sundaram four things: a) Steinhardt and its departments will make the decision, b) the decision will be revenue neutral to Steinhardt, c) the FSC will be involved every step of the way once the decision process has been established and, d) the Senate will be involved every step of the way once the decision process has been established.

Senator Karl asked the council members from Steinhardt if they had anything else to add to this conversation since they had a faculty meeting and vote recently. Active Alternate Senator Stewart stated that at the faculty meeting there was no time to discuss this particular matter. But, a resolution was passed for a letter to be sent to the Board of Directors and the President asking them to hold off any recommendations or decisions until Steinhardt hires a new dean. The new dean will be in place on May 30th. The letter also asks for the Board of Directors and President to give the dean a year before Steinhardt can make the decision on if it wants to be involved.

FSC COMMITTEE REPORTS

Governance: Committee Chair Jim Uleman

Proposed Resolution: Faculty Handbook Changes

See Document A: Resolution on Rescinding Part of an Addition to the Faculty Handbook.

Senator Uleman explained the familiarity with this issue. It stemmed from the amendment to the Faculty Handbook that was talked about before. This amendment was approved but, there was a statement in the text that proved to be antithetical to shared governance that was passed and approved by the Board of Trustees. The statement is as follows: “Nothing in this Handbook constrains the board of Trustees from making changes to this Handbook with respect to any matter, and in the manner, it finds appropriate in carrying out its duties.” The committee, in this resolution, is proposing to strike that statement.

Chairperson Sundaram commented that the changing to the Faculty Handbook has been in negotiations for 19 months. Two of the sharpest-eyed members of the FSC were in charge of this committee and
actively involved in the discussions. The changes were unanimously approved by the Governance Committee and pass to the FSC which unanimously approved them and passed it along to the university. The now offending sentence has been staring everyone in the face since the beginning. The sentence was moved from the footnote to the main text by the explicit insistence of the Governance Committee. To say now to rescind the approval makes the FSC appear unreliable and unstable negotiating partners whose word cannot be taken seriously by Administration or the Trustees. This brings up a credibility issue for the Governance Committee and the FSC. Sundaram expressed that this is not an issue to lose credibility on. Sundaram mentioned that Senator Uleman alluded to the offending statement as gratuitous and was in agreement. But, Sundaram also stated it being of fact that the Trustees have this legal right. The mere assertion of the existence of a legal right, distasteful as it may seem to the council, is not a violation of shared governance. Not accepting that the legal right exist makes the council appear unwilling to accept reality. Sundaram pointed out that what would constitute a violation of shared governance would be the indiscriminate exercise of that right, not seeking faculty input or not consulting faculty at all in the decision process. Sundaram suggested passing a different resolution to the one the Governance Committee recommends. A resolution that acknowledges the right the Trustees have but that insists that, in consonance with NYU’s own principles of shared governance, it not be exercised unilaterally except perhaps in extenuating circumstances with said circumstances to be explained at the earliest opportunity to the FSC.

Senator Kane requested that Senator Uleman elaborate on the genesis of the overall language. Senator Uleman stated that the language was handed to the Governance Committee by the University Leadership Team. The reason the said language is not on the website is because it has not been adopted by the Board of Trustees. They meet in June and will adopt any recommendations they have received. Kane expressed that the committee achieved their goals with the addition and language to the Faculty Handbook and does not see this resolution as a battle to be fought. The council got what they wanted and should save their political capital for the next battle. Uleman clarified that the reason to reject that language is because it amounts to adopting that language, which was done already, and abrogates shared governance. It doesn’t seem necessary. The council adopting the language could easily be seen as giving up shared governance. It’s gratuitous and true whether it’s in or out but, it seems to run the danger of having the FSC essential say now that shared governance is adopted we don’t really care.

Senator Karl responded that it was true that the Trustees always had the right but, it was never stated in the Faculty Handbook before. Maybe elsewhere but, not in the Faculty Handbook. The Faculty Handbook has a particular roll for the faculty. There is no reason for the faculty representatives of the FSC to go on record to exceed to the abrogation of their own rights. If the Board of Trustees wants to abrogate the FSC rights and insert their rights over the FSC’s rights, let them do it. Then the FSC can make an issue of it. Karl expressed that the substantive effect is very real. If they want to abrogate the FSC’s right, the council should let them do it so there is an action to fight back on. Many faculty members have written in to the senators asking to stand firm on the issue. Rescind the part of the addition by passing the resolution to protect the “faculty” part in the Faculty Handbook. Karl urged the council to stand on principle.

Senator Kane reiterates that the credibility with the Board of Trustees is important because this is an ongoing collaboration. Kane mentioned that he is opposed to striking the resolution because if the council felt so strongly about it, it should have been caught before. Kane informed that he felt more strongly about the “whereas” clauses then striking the language itself. The council should be more careful with the “whereas” clause because they are factually inaccurate. Kane referred to the document and read: “Whereas this language seems to confer unilateral and unconstrained “final authority” on the Board of Trustees, in the governance of NYU, contrary to the principles of shared governance.” Kane insisted that the statement was not true. The principles of shared governance do in fact state the Board does retain
“final authority” under the article in the bylaws which states the Board is constrained by only three things: the law, the charter of the university, and the bylaws. The Board can do what it wants if it complies with those three things. Kane added that he agreed with Senator Karl’s point in regards to the Faculty Handbook being for the faculty. It’s a complicated point because the handbook is an accumulation of policies which the faculty is not the authors. The handbook is for the faculty because they are the users. The handbook is the only resource to find out about the policies. Senator Uleman asked if Kane was suggesting a friendly amendment to strike the “whereas” clauses. Kane believed that it was a substantial enough change that he would prefer the resolution be redrafted and considered from scratch.

Senator Tannenbaum stated that the Faculty Handbook is a mish-mosh of processes, procedures, and policies. Some parts might be legally binding and contractually binding. Tannenbaum expressed that it was never explained which parts could be contractually binding and offered in the court of law. If none if it can be than this conversation is irrelevant. If some of the handbook is contractually binding then the principle of having the Board of Trustees or the Provost be able to add language and make adjustments is menacing to the FSC. Senator Jelinik responded that indeed parts of the handbook are legally binding. Especially in Titles I-IV. Senator Karl referenced that in an appeal of sorts the process is stated in the handbook. Senator Uleman added that the handbook is often invoked in court cases.

Senator Uleman presented the Committee’s proposed resolution regarding Rescinding Part of an Addition to the Faculty Handbook.

At the conclusion of the discussion, the following resolution was moved (by Senator Uleman), seconded (Senator Karl), and rejected by vote (10 senators in favor and 16 senators opposed, with 2 abstentions) of the Council.

Senator Uleman requested anyone that would like to propose additional text for the Governance Committee to consider regarding this issue should send it to him.

**Administration and Technology: Carol Reiss and Ted Magder**

**Electronic Communications and Social Media Policy**

See Document B: Electronic Communications and Social Media Policy

Senator Reiss briefly reviewed the policy for Electronic Communications and Social Media. Reiss pointed out important issues regarding the new policy. The policy incorporated a new section for freedom of expression and the academic community, which Senator Magder developed the language for. Another important issue was a section regarding criminal and civil liabilities for people who abuse social media. Reiss explained the section on anonymity. There is no anonymity because actions can be traced back to the person. Reiss elaborated on the section for appropriate use and misuse of electronic communications regarding unauthorized bulk email (spam). It is a misuse of electronic communication unless you provide a way to unsubscribe from the mailing. The use of the NYU logo in electronic communications has to follow all the rules and policies. You cannot create your own NYU logo that has not been vetted. Reiss added that authority relationships regarding social media are very important and need to respected and not abused. The council was informed that a new committee was formed to meet with Marilyn McMillian’s group to go over the enforcement of the current and past policies and procedures for electronic communications and social media. Any policy, by which enforcement can take place, needs to be revisited on a regular basis to see what is working and what is not working. Reiss pointed out generational differences regarding contexts of statements in social media. Using the term “shots fired” may mean actual shots fired but, for the new generation it means a back and forth argument with warring points. Chairperson Sundaram asked if it was worth having the few lawyers on the FSC take a look at the
policy since there are a lot of legalities. Reiss responded that it wasn’t needed since Bonnie Brier was the lawyer on the committee that reviewed the policy.

Senator Magder mentioned that NYU ITS has been monitoring the use the electronic communications in certain instance as in IP address violations. Magder expressed his concerns regarding this policy and was delighted that one of his concerns was added which was the freedom of expression. Madger’s other concern was that the university should create a sort of oversight committee or warrant court. They would perhaps meet on an annual basis so that the people who were responsible for administering all IT policies would meet regularly with university stakeholders, faculty, students, as well as the AMC to review all of the monitoring that is taking place and procedures to make sure that IT is doing everything to respect the law and privacy of the NYU community as well as uphold the principles of academic freedom. Magder stated that this policy is not the place to put that language because it is just one policy among many. Bonnie Brier has stated that at this point the university is seriously considering adopting an IT oversight committee in the fall because they see the value and need for it.

Chairperson Sundaram requested that all questions regarding this issue and policy to be sent to Senator Reiss and Magder.

**Finance and Policy Planning: David Backus**

**FSC Finance Report**

See Document C: FSC Finance Report

Senator Backus reported that the committee decided to do more than just a recommendation on salaries. In conjunction with Martin Dorph, Executive VP of Finance and Information Technology, the committee complied data to see what’s going on at NYU financially so the committee can engage in a more informed way. Referencing the document, Backus presented five key points. First, from 2002-13 revenue has doubled. Second, expenses have doubled as well which are mainly salaries. The biggest component of revenue is tuition and the salaries for expenses. Third, assets and liabilities went up because NYU owns a lot more real estate now than in 2002. Fourth, staffing went up. There is twice as many staff than faculty especially in the schools. Lastly, there is a substantial increase in contract faculty. Across the board, the top researching groups has had an increase which is a growing trend.

Senator Ampka asked if Polytechnic was included in the current report. Dorph confirmed that their numbers were not included because of the time series. The report was ended as of fiscal year 2013 which was November 2012. The university is currently in fiscal year 2014 and technically Polytechnic wasn’t part of NYU until January 2014. Eventually Polytechnic’s data will be picked up in this report going forward.

Senator Rajagopal inquired about school subvention and what central administration is thinking regarding it. Dorph explained that the university administration is not interested in disseminating school by school comparative data because it takes the university down a path of both understanding and conflict. Understanding how the university puts together each school’s budget is important. The university starts with a baseline budget and then there are certain parameters that are inflated every year. For instance tuition has gone up 3.5% and expenses like salary go up as well. Typically there has been a spread between the tuition rate of increase and the salary rate of increase. What happens to a school’s numbers is the top line grows by more than the expense line. That means the bottom line will grow. The larger part in the growth of subvention isn’t because there is a unilateral decision to take money out of schools it’s just the mathematical impact of growing revenue faster than growing expenses which drops money into the bottom line. The question is does the school or the university get to keep the money and that’s where
the budget discussion school by school is most meaningful. The budget is not based on just the numbers. The Provost meets with the Deans to work on an academic plan in the fall and that translates on what is going to possibly happen to the budget in the spring. So with the baseline inflated, the Deans come with their requests and issues that need to be resolved. So the growth in the bottom line, in some case, is retained by the school to self-invest. In other cases of subvention, which is a term not used anymore, the money is contributed back to the university which can in turn be used to invest somewhere else. For instance, the money can go to a school that doesn’t have money to invest.

Senator Backus mentioned that if you look across different universities they have different types of budgeting operations. At Harvard, each school has their separate budget. At NYU it is a centralized system which you bargain for what you think you need. This is useful to adapt to change and circumstances but, the downside is that it creates adverse incentives. Backus asked Dorph how central administration is going to run a large university with a lot of subunits. Dorph explained that points of view on different budgeting systems depend on what you are used to or where you view things. Ultimately all budget systems rely on a) good data, and b) fairness. If you have both then the budget system could work. If not, you are going to have arguments no matter what budget system you are on.

Senator Karl inquired about the operating surplus. Dorph clarified that when a school reaches the end of a year and more revenue is generated than expenses, the money would be transferred to their operating reserve which is called the Fund 20 Account. This allows the school to maintain a reserve based on accumulating surpluses. For the university, the money would either be spent on capital, which was not budgeted as part of the operating budget, or placed in a reserve account to save for future expenses. In the end, the surplus gets dealt with as either funding capital or transferred into reserve accounts. Karl followed up by asking about the surplus being used for the 2031 Plan. Dorph confirmed that the sum of the surpluses that is generated is expected to be usable to fund the capital, not all of it, for the 2031 Plan. Karl implied that the way the university uses the operating surpluses is discretionary and Dorph agreed.

A senator asked about the university’s debt and is it comparable to other institutions. Dorph commented that to benchmark the university's debt they use rating agency data to view the medians for other institutions. NYU is an AA rating like most private universities but, it is very unique. NYU has fewer endowments and more investments which gives the university more debt than a typical private university.

A senator inquired about financial aid for NYU students. Dorph reported that 47% of NYU students receive financial aid. Financial aid students receive an average of 57% discount, an increase to the 31% 10 years ago. Even though the pre-capital endowment has tripled over the years, it is still $75k a student. NYU’s peer institutions, the poorest, are still 5-20% more.

Chairperson Sundaram requested that all questions regarding this topic to be sent to Senator Backus.

**John Sexton, President, New York University**

Chairperson Sundaram introduced and opened the floor to questions for President Sexton. Senator Stokes wanted President Sexton to elaborate on who exactly are the contract faculty members. Sexton explained that the word faculty has many meanings and is more complex in a contemporary modern research university. Sexton pressed that the contract faculty should have a voice. In some areas contract faculty would be indistinguishable depending on their status, weight of ideas, level of research, and thought creation. In other places, that dichotomy would be very clear. Stokes expressed his concern about the number of contract faculty in different schools exceeding the number of tenure-track faculty and the higher representation. Sexton commented that it’s unlikely that given the thought and various balances that went into contract faculty vote that a creation of a superior alternative this year and
postponing would be a disaster. The tenure and tenure-track faculty is the core constituents of the university with certain equivalencies. A weight is given to various opinions and the greatest weight should be given to the ones that are rationally dependent and advanced and the position the person holds in the university. The people that are running the university need to have a reliable interlocutor. They need to be a representative and approach things at the highest level of information possible.

A senator mentioned the middle states meeting. Sexton stated that he did not receive a formal report but, an oral report was given in the meeting which confirmed excellence is breaking out all over the university.

Sexton closed by thanking the FSC for their time and energy. He stated that it is not a casual commitment and hoped to set a legacy and very productive relationship.

**ADJOURNMENT**

The meeting adjourned at 2:30 PM.