MINUTES OF THE FACULTY SENATORS COUNCIL MEETING OF OCTOBER 25, 2012

The New York University Faculty Senators Council (FSC) met at noon on Thursday, October 25, 2012 in Room 802 in the Kimmel Center for University Life.

In attendance were Senators Alter, Amkpa, Anton, Cappell, Carpenter, Cowin, Gale, Harrington, Jacobs, Jelinek, Jones, Ling, Ludomirsky, Magder, McIlwain, Mincer, Monaco, Nelson, Nolan, Raiken, Sternhell, Sundaram, Thurston, Uleman, and Van Devanter. Active Alternates Azmitia, Dehejia, and Tannenbaum and Alternate Senators Kinnally, Labanyi, Pearce, and Reiss. FSC Advisors Al-Askari and Lebowitz attended as guests.

APPROVAL OF THE MINUTES OF THE MEETING HELD SEPTEMBER 13, 2012

Upon a motion duly made and seconded, the minutes of the September 13, 2012 meeting were approved.

REPORT FROM THE CHAIRPERSON: TED MAGDER

Executive Committee (EC) Meeting with President: September 25

Chairperson Magder reported the EC meeting with President Sexton centered on the University Space Priorities Working Group. He reiterated the charges for the committee. See attached Document A.

Executive Committee (EC) Meeting with Provost: September 28

The EC discussed the Global Network University (GNU) and the re-organization of senior leadership, specifically the new roles of Linda Mills and Matthew Santirocco. Mills will focus on managing study abroad sites and Santirocco on curriculum issues. The Provost clarified that tenured faculty in Abu Dhabi will hold tenure with NYU Abu Dhabi. Tenure is connected to one’s school/department.

They discussed the "Annual Letter to NYU Faculty,” and Online Education and Technology in Instruction, which the Provost’s office sees as an enhancement to the classroom experience and not as a way of monetizing instruction. They also discussed the creation of a Faculty Subcommittee of the Teaching Technology Committee, which the FSC will be given representation.

Poly: School Status

NYU Poly is now on track to become a school and, in the future, the FSC should expect having representation from Poly on the FSC. Magder commented the FSC may want to discuss adding Poly faculty as observers at FSC meetings.
**Intellectual Property Policy: Update**

The Provost Office is establishing an Intellectual Property advisory committee, which the FSC can expect representation.

**SCPS Senator Update**

The Executive Committee meets with members of the administration on November 14 regarding the September resolution to appoint a retired SCPS faculty member as a FSC Senator. The administration expressed concerns about the appointment versus election of a Senator.

**Weapons Policy**

*See attached Document B.* Alison Leary sent the new Policy on Weapons, Simulated Weapons and Theatrical Use of Weapons for FSC review. The new policy does not allow for any requests for permission to carry a weapon. Magder asked the Council to review and communicate any questions or concerns.

**FSC COMMITTEE REPORTS**

**PAAC/Tenure Modifications: Senator Molly Nolan**

The Tenure Modifications Committee and Personnel and Affirmative Action Committee reviewed the Policies and Procedures for Appointment, Promotion and Tenure at the School of Medicine, which incorporates the establishment of a full-time non-tenure track for librarians. The Committee proposed approval of this policy with a few recommendations. *See attached Document C.* Upon a motion duly made and seconded, these recommendations were approved by the Council and will be sent to the members of the administration.

**Governance: Senator Christine Harrington**

*Shared Governance*

Senator Harrington presented the Committee’s draft memo regarding shared governance. *See attached Document D.* The document provides an explanation of what shared governance means as a concept in higher education and the ways in which it is not working at NYU. The document provides a response to the Administration’s June 29, 2012 memo on Governance Issues, *see attached Document E,* and addresses eight fundamental misconceptions about shared governance. The memo also states, in the interest of communication and reasoned justifications, the FSC will not remove the memo or resolutions regarding shared governance from the FSC website.

Senators discussed concerns with the first five pages of the document. Some stated they feel these pages are confrontational, may be seen as a threat, and may be counterproductive.

Others argued these pages are important because they state the problem and address the evidence that faculty are dissatisfied with governance at the University level. They layout the specific history at NYU that has led the FSC to be concerned about violations of shared governance and also highlight the definition of shared governance used by other universities and other bodies.
Another Senator added it is in the interest of the Board of Trustees and faculty to work together on this issue. If the faculty feel shared governance is not being met, faculty have the right to petition the National Labor Relations Board (NLRB) to unionize.

Senators questioned if it makes sense to split the memo into two different documents, one providing the history and the other discussing ways to move forward. It was decided to vote on the memo as a whole.

Upon a motion duly made and seconded, the memo was approved in full, with friendly amendments, by 14 in favor, 11 opposed, and 4 abstentions.

**Faculty Handbook Amendments**

Senator Jelinek stated members of the Governance Committee met with Bonnie Brier, Carol Morrow, and Diane Yu and discussed the procedure for amending the faculty handbook. In follow-up, they received a memo on July 12, 2012. See attached Document F.

The Committee presented a proposed resolution. See attached Document G. They also presented their proposed memo in response to the July 12, 2012 memo. See attached Document H. This addresses the FSC’s role in amending the handbook, its history of revisions, and examples when the FSC has not been involved in amendments. This proposed resolution will be discussed again at the November meeting.

**NEW BUSINESS**

**Senator William Nelson**

Senator Nelson corrected statements made concerning him and asked the Council to ensure accuracy in any future statements. He asked for more information regarding the investigation into the Law School elections and method of choosing representatives.

Senator Harrington stated the Governance Committee is acting under their duty to monitor school elections.

The issue was tabled.

**ADJOURNMENT**

The meeting adjourned at 2:00 PM.
Report of the Faculty Senate Council’s Representatives on the Space Working Group

From: Rajeev Dehejia and Angela Kamer

The University Space Priorities Working Group held its first meeting on 5 October 2012. There were two main goals of the meeting: for President Sexton to outline the Working Group’s charge and for members of the Working Group to discuss the guiding procedures and principles for future meetings.

President’s Sexton’s charge to the committee

The President summarized the history of the project from which we would highlight the following points:

- A previous university space committee identified the need for 6 million square feet of space over the next 20 years. Of this, 3 million were determined to be needed within the “core” (i.e., the Washington Square area).
- After prioritization and consideration of existing space available for purchase or renovation, this amounted to the need to build about 2 million additional square feet in the core.

The President and administration representatives recapitulated a few key points about the zoning permission obtained by the university:

- The zoning process has determined that the university must build on the southern block first; no construction will take place on the northern block for at least 10 years.
- On the southern block, no construction will start before the next 2-3 years.
- The zoning permission has a “use it or lose it” date.
- The university has obtained permission to construct four buildings on the superblocks. On the southern block so-called Zipper Building would occupy the site of the current Coles Gymnasium and a building would rise on the site of the current Morton Williams. On the northern block, two boomerang-shaped buildings would rise between the existing Washington Square Village buildings.
- The zoning process reduced the height and volume that the university is permitted to build by approximately 20% from the original proposal, most considerably to the “Morton Williams building” and the boomerang buildings on the north block.
- The university is restricted to building within the space “envelope” defined by the zoning process. Essentially this means that the university’s construction must build within the three-dimensional shapes outlined in their plan; they can of course choose to build less, but they cannot significantly increase the height of any part of any of the buildings (e.g., build a lot higher in one section, and less high in another is precluded).
- In the “Morton Williams” building the university has agreed to donate the above-ground site for a new school, which would occupy 100% of the above ground space. The university has offered to donate just the site, not the above-ground construction costs. The School Board has not determined if it wants space for a new school; it will let the university know by 2014. If it decides against a new school, the university will donate 25% of the above ground of space it builds (at its expense) for community uses (what exactly still to be determined). In both cases, the university retains use of below-ground space.
Given the zoning permission obtain by the university, the charge to the committee is twofold:

- Provide guidance on which project should be pursued first on the southern block and how (*inter alia* sequencing of the project, recommendations for how the space should be allocated, criteria for choosing an architect).
- Give recommendations on ameliorative efforts to minimize the impact of the construction on residents and the community.

The president also suggested that he viewed this committee as a model for the future for how different constituencies within the university can come together to advise decision-making.

**Guiding principles for future meetings**

The committee discussed what principles should be used to guide future meetings. One key theme sounded by the Chair, Ted Magder, and other members was transparency. To this end, summaries of the committee meetings will be made publically available; in order to preserve the spirit of free discussion, specific individuals will not be identified in the summaries (e.g., not “Rajeev Dehejia FSC rep said that…” but instead “A member said that….”).

The committee agreed that meetings should be closed to observers, to promote candid discussion, but that guests would be invited on specific occasions to make presentations to the committee. There was wide agreement on the committee the members of Faculty Against the Sexton Plan (FASP) should be invited to speak to the committee soon (within the next month). The FASP counter-plan to 2031 was part of the material circulated to the committee.

Finally, the committee agreed that it was essential to engage with the community. There was no agreement on how exactly to do this. Some were in favor of town hall-style meetings, others were opposed. Another idea floated was for members of the committee to make presentations to department and school faculty meetings.

**Impressions and our goal**

We are aware that there is some skepticism among faculty regarding the administration’s intentions in creating the Working Group at this point. Our initial impression is that the composition of the committee is balanced and reflects the range of opinions within the university. Our goal is to continue to report back to the FSC with honest impressions and to highlight any key developments as they occur.

Since this was the first meeting of the Space Working Group we thought it would be useful to produce a summary of key points. Since the committee has decided to release summaries of each of its meetings, in future we will not circulate written summaries but will instead highlight key developments in verbal summaries to the FSC. The summaries and agendas of the meetings can be found here:

http://www.nyu.edu/about/university-initiatives/space-priorities/documents.html
Title: Weapons, Simulated Weapons, and Theatrical Use of Weapons

Policy Effective Date:

Supersedes: Policy on Theatrical Use of Simulated Firearms and Other Weapons; Weapons Policy and Simulated Firearm Policy

Issuing Authority: Executive Vice President for Operations

Related NYU Policies: None

Responsible Officers: Vice President for Global Security and Crisis Management

Purpose of this Policy

New York University (“NYU”) is committed to maintaining a safe and secure environment for the NYU Community and its guests. In support of this commitment this policy sets forth the rules and guidelines governing the possession and use of Weapons.

Scope of this Policy

This policy applies to all members of the University Community, as defined below. It also applies to any person on NYU property, in an NYU facility, or at an NYU-sponsored activity.

Policy Definitions

NYU includes the schools, colleges, institutes, and other administrative units of NYU, NYU’s Global Network University sites, and all University Affiliates, as each term is defined in NYU’s Policy on Policies.

Simulated Weapon mean a facsimile of any category of Weapon, as defined below, that resembles the actual Weapon but is not capable of use as a weapon.

University Community includes the following persons associated with NYU: (a) the Board of Trustees (“Board”); (b) faculty, including visiting faculty; (c) researchers, including persons conducting research at or under the auspices of the University; (d) employees; (e) volunteers; (f) fellows, trainees, and post-doctoral appointees; (g) students; and (h) others who are performing activities or providing services at or under the auspices of the University, including consultants, vendors, and contractors.

Weapon includes an instrument used to inflict physical harm, that is intended to inflict harm, or that could reasonably cause fear of infliction of harm, and any item that may be deemed a weapon under applicable law, including but not limited to: a pistol, revolver, shotgun, rifle, firearm, stun gun, BB or pellet gun, taser, electric dart gun, and other instrument that launches a projectile by pressure
resulting from combustion of propellant material, including a weapon related to or using air, sound, flare, hunting, or springs; bombs, grenades, mines, explosives, or incendiary devices (which can include “ignition devices” and aerosols; and daggers, stilettos, swords, and knives (including switchblade and gravity knives); and including parts, components, spare parts, or ammunition relating to the above. A disarmed weapon is a Weapon unless it is a Simulated Weapon.

Policy

A. The possession of any Weapon or Simulated Weapon has the potential of creating a dangerous situation for the bearer and others and therefore is prohibited as set forth in this policy.

B. NYU prohibits the possession of any Weapon and, except as set forth below in “D”, any Simulated Weapon, (i) in and/or around the NYU campus, including any and all NYU facilities (whether academic, residential, or other facilities), and this prohibition extends to all NYU property, whether owned, leased, or controlled by NYU, regardless of whether the bearer or possessor is licensed to carry that Weapon and (ii) at any NYU-sponsored activity, whether on-campus or off-campus.

C. The prohibition on Weapons and Simulated Weapons does not apply to law enforcement personnel who are legally permitted to carry a Weapon on campus. A law enforcement officer bringing a Weapon onto NYU premises, including a Global Network University site, must carry valid identification that establishes the person’s law enforcement status.

D. The prohibition on Simulated Weapons does not apply to instances in which all of the following requirements are satisfied:

1. The bearer of the Simulated Weapon has written permission from a dean, associate dean, assistant dean, or department head to possess the Simulated Weapon and the bearer has a copy of that written permission on his or her person at all times while in possession of the Simulated Weapon.

2. Such possession or use of a Simulated Weapon is directly connected to an NYU or school, college, institute, or Global Network University site related event (e.g., play, film production).

3. The approved Simulated Weapon may be used only during the time and in the manner specified in the written approval.

4. Whenever an approved Simulated Weapon is transported from one location to another, including within the same building, it must be placed in a secure container in such a manner that it cannot be observed.

5. The individual to whom written permission has been granted to possess a Simulated Weapon must maintain custody of the Simulated Weapon at all times and may not transfer custody of the Simulated Weapon to any person not specified in the written permission. The individual to whom permission has been granted to possess a
Simulated Weapon may not drink alcoholic beverages or engage in any reckless behavior while in possession of the Simulated Weapon.

6. When not in use for the approved NYU or school related event, the Simulated Weapon must be stored securely in a location approved by the Vice President for Global Security and Crisis Management. Under no circumstances may a Simulated Weapon be stored in any NYU owned, leased, or controlled facilities other than an approved safety storage area.

7. If for any reason it is not possible for an individual in authorized possession of a Simulated Weapon to return the item to an approved safety storage area after authorized use, the Simulated Weapon should be brought for temporary safe storage to the Department of Public Safety (at 14 Washington Place in the case of Manhattan).

8. There is no exception to the prohibition of having a Simulated Weapon in an NYU residential facility at any time and for any purpose.

9. Under no circumstances may a student bring his or her own Simulated Weapon to campus. Students are limited to using Simulated Weapons supplied by their schools, colleges, institutes, or Global Network University site, or rented from a University-approved licensed third-party supplier of theatrical Simulated Weapons.
October 9, 2012

To: FSC

From: PAAC and Tenure Modifications

Re: NTTF library position at the School of Medicine

PAAC and Tenure Modifications have reviewed the revised SoM proposal to create NTTF library positions. The SoM addressed most of the concerns we had about their first proposal and the committees recommend that the SoM be allowed to create NTTF positions, providing that the following issues are addressed in the proposal.

1. Positions in the library should be clearly advertised as either TT or NTTF so that applicants know exactly what they are applying for or accepting.

2. The SoM should clarify at what point those holding library positions can deliberate on whether to switch tracks. If appointed on a TT position, will this come at a mid probationary period review or only near the end of the probationary period? The SoM should note that according to the Faculty Handbook and to the University Bylaw 82 (b) “A full-time assistant professor in the School of Medicine or any of its departments and the College of Dentistry or any of its departments or its College of Nursing, who is not promoted at the expiration of ten years as a full-time assistant professor shall be ineligible for further full-time appointment.” Hence the last possible time for switching to a non-tenure track line should be specified.

3. Would it, in fact, be possible for someone to switch from a NTTF position to a TT one, as the proposal states? This is not possible elsewhere in the University. If it is possible, the proposal should clarify the point at which librarians are able to discuss and make such a switch? If it is not possible, it should be clearly indicated.

4. If a TT or NTTF librarian and his/her chair or dean are unable to agree on the issue of switching tracks, grievance procedures to adjudicate such differences should be in place and clearly described.

5. In light of the fact that the current group of TT librarians have not been properly mentored with respect to expectations or their likelihood of getting tenure, a program of remediation should be in place for those who wish to continue on the TT. We recommend extending the probationary period by an appropriate time so as to conform to the guidelines for notification stipulated by SoM policy.
To: John Sexton, NYU President  
    David McLaughlin, NYU Provost

From:

Cc: Bonnie Brier, General Counsel  
    Carol Morrow, Chief of Staff to the Provost  
    Diane Yu, Chief of Staff and Deputy to the President

Re: Shared Governance

The practice of shared governance – in which major university policies are collaboratively developed and governed by the Board of Trustees, the President, and the Faculty – has been neglected at NYU. This is a concern not only to faculty, but also to students, the public trust, and the NYU institutional vision alike.

In the interest of repairing this fundamental body of governance and moving forward together as a fully transparent and collaborative institution, we begin by specifying the problem and suggesting a range of remedies that we can work together on implementing. To this end, we first briefly examine recent evidence of neglect. Then we define the practice of shared governance in some detail, noting how the failure of shared governance negatively impacts U.S. colleges and universities. Next we discuss the Faculty Senators Council’s (FSC) initiative to reinvigorate shared governance at NYU, elaborating its purpose and place in academic communities and organizations. Finally, we respond point-by-point to your July 29, 2012 memo on “Governance Issues”, which we received 1 year and 2 months after the FSC’s Shared Governance Resolution was submitted to you for your comments on May 10, 2011.

Working together with you, our intent is to reverse the erosion of shared governance at NYU and put to rest the mistrust and cynicism that has taken its place.

The Problem

The Faculty at NYU are dissatisfied “with the level of faculty participation in decision-making” at NYU.

In the Fall of 2009, the Dean of the School of Medicine asked the Provost to authorize a salary reduction plan that would permit a 20% reduction in yearly salary of tenured faculty should they fail to generate a specified level of extramural funding determined by the administration of the school.

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1 This memo is addressed to those to whom the original memo on the “Governance Issues” (June 29, 2012) was addressed, rather than to all those who have participated in these discussions since.
The Provost approved this plan without any consultation with the FSC. The FSC has since passed three separate resolutions affirming that tenure guarantees one’s institutional salary, yet the School of Medicine has gone ahead and instituted this salary reduction policy with the blessing of the Provost and the President. See http://www.nyu.edu/about/leadership-university-administration/university-senate/membership/councils/faculty-senators-council/council-records/resolutions.html for three FSC resolutions.

In the Spring of 2010, the FSC surveyed all current and retired faculty (except from the School of Medicine) asking about several issues (http://www.nyu.edu/content/dam/nyu/facultySenatorsCouncil/documents/RepSurvey112210.pdf). When asked about governance at the university level, 75% were dissatisfied (i.e., 37% “dissatisfied” + 38% “very dissatisfied” = 75%). By comparison, faculty dissatisfaction with governance at the school level, while still a majority sentiment, was 57%.

In the Fall of 2010, according to the Global Network University (GNU) website, “NYU opened NYU Abu Dhabi, an audacious step in higher education: the first comprehensive liberal arts and science campus to be operated abroad by a major American research university” (http://www.nyu.edu/global/the-global-network-university.html). Indeed, the planning and development of GNU – with the Abu Dhabi “portal campus” and 10 international study centers---was not thoughtfully considered. It was formulated without being reviewed by and accepted by the Faculty. Senators report that schools at NYU-NY are incentivized to support this administrative initiative, rather than participating in making the substantive, academic policy decisions directly.

This past academic year (2011-12) resulted in yet more faculty dissatisfaction with governance at the university level. The NYU Traveler affair – in which a new travel reimbursement policy was rolled out with inadequate faculty consultation – produced such an uproar on email that it had to be largely retracted; in effect retaining only the provision on travel involving undergraduates and administrative staff on university business.

The NYU-2031 Plan has also met with strong faculty opposition. The April 5-13, 2012, FSC’s Faculty Survey (including the School of Medicine but not alumni), found that nearly two-thirds opposed the plan, with most respondents indicating that they “strongly opposed” NYU-2031. Three-fifths expressed “no confidence in the university’s ability to carry out the plan” (http://www.nyu.edu/about/leadership-university-administration/university-senate/membership/councils/faculty-senators-council/senators-committees/committee-reports/nyu-2031/fsc-survey-on-nyu-2031.html).

Independently, 37 NYU departments, programs or schools drafted, debated and then passed resolutions against the NYU-2031 Plan. Of these resolutions, 22 passed unanimously and the other 15 were strongly supported. It is remarkable that not a single department put forth a resolution in favor of the NYU-2031 plan (http://nyufasp.com/nyu-departmental-resolutions). Indeed, faculty opposition to NYU-2031 marked the first time in the University’s history that faculty opposed an NYU development proposal.

Altogether, there is a prolonged pattern of faculty dissatisfaction with their rightful role in decision-making at NYU. Though faculty report higher levels of satisfaction on other matters, the lack of
meaningful participation in university decision-making unquestionably stands out as a significant problem.

**Shared Governance**

The clearest solution to this problem is to foster more vigorous “shared governance.” The definitive statement on shared governance is the “Statement on Government of Colleges and Universities,” formulated collaboratively by the American Association of University Professors (AAUP), the American Council on Education (ACE), and the Association of Governing Boards of Universities and Colleges (AGB). NYU is a member of these last two organizations. The statement, developed in 1966 and revised in April 1990, can be found at [http://www.aaup.org/AAUP/pubsres/policydocs/contents/governancestatement.htm](http://www.aaup.org/AAUP/pubsres/policydocs/contents/governancestatement.htm).

The statement calls for “appropriately shared responsibility and cooperative action among the components of the academic institution” with the expectation “that the principles asserted will lead to the correction of existing weaknesses and assist in the establishment of sound structures and procedures.” It “is a call to mutual understanding regarding the government of colleges and universities.” It addresses the unique roles played by governing boards, presidents, faculty, and students, with many of these roles codified in charters, legislation, and judicial opinion.

Within this context, the most relevant aspects of shared governance for the problem noted above can be found in Section 2.c, **Internal Operations of the Institution**.

“Effective planning demands that the broadest possible exchange of information and opinion should be the rule for communication among the components of a college or university….”

“The board, president, and faculty should all seek agreement on basic decisions regarding buildings and other facilities to be used in the educational work of the institution….”

“A third area is budgeting. The allocation of resources among competing demands is central in the formal responsibility of the governing board, in the administrative authority of the president, and in the educational function of the faculty. Each component should therefore have a voice in the determination of short- and long-range priorities, and each should receive appropriate analyses of past budgetary experience, reports on current budgets and expenditures, and short- and long-range budgetary projections….”

“Joint effort of a most critical kind must be taken when an institution chooses a new president…. The president should have the confidence of the board and the faculty.”

To further clarify how shared governance is practiced, the AAUP has compiled a list of 36 items by which those involved in institutional governance can gauge their own institution’s practices [http://www.aaup.org/AAUP/issues/governance/ramintro.htm](http://www.aaup.org/AAUP/issues/governance/ramintro.htm). Below are the 7 that are most germane.
26. Faculty members have *timely access to the information* they need to make informed decisions or recommendations on institutional matters. [Italics added]

27. The president and board use established mechanisms to ensure a faculty voice in matters of shared concern, consulting *either the faculty as a whole or representatives who have been selected or approved by the faculty*. [Italics added]

28. Faculty representatives to institutional committees, advisory boards, and the governing board have adequate time to consult with their constituents before voting or making recommendations on important issues.

29. *Faculty members who represent* the faculty on the governing board, institutional committees, and advisory groups, or who represent the institution to outside agencies such as athletic conferences, and *selected by the faculty or are selected by others from a list provided by the faculty*. [Italics added]

31. The faculty has an influential role in developing the institutional budget.

33. The faculty shares with the governing board the primary responsibility for selecting a president.

36. *Faculty representatives* to the senate, institutional committees, and other representative bodies *keep their constituents informed* of the agendas of those bodies and solicit constituents’ views whenever appropriate.” [Italics added]

The Association of Governing Boards of Universities and Colleges (AGB), of which NYU is a member, also has several relevant recommendations in its “Statement on Board Responsibility for Institutional Governance” (http://agb.org/news/2010-03/statement-board-responsibility-institutional-governance).

Writing about “the need for a new collaborative spirit in governance,” AGB notes “Leadership of this sort links the president, the faculty, and the board together in a well-functioning partnership purposefully devoted to a well-defined, broadly affirmed institutional vision.” They also “challenged the board to remember that they are accountable for institutional mission and heritage, for the transcendent values of American higher education (self-regulation and autonomy, academic freedom and due process, shared governance, transparency, and educational quality and fiscal integrity), to the public interest and public trust, and to the legitimate interests of various constituencies.” We trust that these values should also govern a global university.

AGB lists eight principles on “Board Responsibility for Institutional Governance.” The second one is that:

“The board should establish effective ways to govern while respecting the culture of decision making in the academy…colleges and universities differ from businesses in many respects…. by virtue of their special mission and purpose in a pluralistic society, colleges and universities have a tradition of both academic freedom and constituent participation—
commonly called ‘shared governance’ – that is strikingly different from that of business and more akin to that of other peer-review professions, such as law and medicine. The meaningful involvement of faculty and other campus constituencies in deliberations contributes to effective institutional governance.”

The findings of the two FSC Faculty Surveys cited above (2010 and 2012) suggest that this second principle has eroded at NYU.

And their sixth principle echoes the AAUP item # 33 above: “The process for selecting a new president should provide for participation of constituents, particularly faculty….”

The core principles of shared governance are clear in these statements excerpted above and they are widely endorsed by governing boards and faculty.

**Other Instances of Shared Governance Failure**

NYU is not the only university where shared governance is in need of repair, and occasionally its failure is exposed in public. Just this past June after the Board of Visitors (trustees) at the University of Virginia fired President Teresa Sullivan, she was then reinstated owing to the massive faculty and student protests over her firing. The University of Virginia faculty passed a resolution of “no confidence” in the Rector and the Board of Visitors. A few months earlier, over “the objections of President Richard Levin ’74 PhD, the Yale Faculty of Arts and Sciences passed a resolution that criticizes Singapore’s human-rights record, [calling] on Yale’s new joint venture there with the National University of Singapore (NUS) to ‘respect, protect and further principles of non-discrimination for all, including sexual minorities and migrant workers, and to uphold civil liberty and political freedom on campus and in the broader society’” (see *Yale Alumni Magazine* blog [http://www.yalealumnimagazine.com/blog/?p=14031](http://www.yalealumnimagazine.com/blog/?p=14031)).

Such instances are not that uncommon, although not all of them make headlines. Between 1989 and 2008, there were over 70 votes of no confidence against university presidents in the U.S. In his recent study of these events, McKinniss found that they brought “paralysis to the campus community,” and that “most of these votes are held because faculty members believe that shared governance principles have been violated” (2008, p. ii). The affected campuses include American University, Antioch, Baylor, Case Western Reserve, Goddard, Harvard, Rensselaer, Rhode Island School of Design, San Diego State, and the Universities of Cincinnati, Colorado, Maine, Massachusetts, and Pittsburgh.

Even when breakdowns in shared governance are less egregious, they squander the value time and resources of talented professionals and leave a trail of division and acrimony on campus.

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The Faculty Senators Council (FSC) Initiative

Concerned with the erosion of shared governance, the FSC-Governance Committee studied current practices at other major universities (e.g., University of Chicago, Johns Hopkins University, Boston University, University of Michigan), and drew up Shared Governance Resolutions for FSC to discuss and debate (http://www.nyu.edu/about/leadership-university-administration/university-senate/membership/councils/faculty-senators-council/senators-committees/committee-reports/governance.html).

On May 5, 2011, FSC unanimously passed them.

On May 10, 2011, FSC submitted them to President Sexton and Provost McLaughlin.

On October 12, 2011, FSC unanimously passed a “Resolution to Incorporate the Shared Governance Resolutions into FSC Rules of Procedure.”

The Shared Governance Resolutions are designed to describe FSC’s actual practices, and to serve as a template for how FSC envisions working with the rest of the university.

The Shared Governance Resolutions cover five areas:

1. **Representation**, including having “representatives, selected by the FSC, on University Committees, Taskforces, or other like bodies…”;
2. **Information**, including making the content of deliberations with the administration more transparent whenever possible;
3. **Consultation**, including consultation “before decisions that affect faculty are made and adequately responding to faculty input,” as well as providing “a reasonable length of time for consultation”;
4. **Reasoned Justification**, including asking the administration to provide, in writing, “its reasons for not accepting the FSC’s advice developed through the process of consultation”; and
5. **Communications**, including an agreement with the provost “which allows Senators access to email addresses of all faculty for the purpose of communicating with the faculty (their constituents).”

Since December 15, 2011, when the FSC unanimously passed a “Resolution to Incorporate the Shared Governance Resolutions into the NYU Faculty Handbook,” the FSC has worked to include these principles in the NYU Faculty Handbook. Meanwhile, on April 4, 2012 members of the administration (Bonnie Brier, Carol Morrow and Diane Yu) had a conversation with FSC members (Ted Madger, Christine Harrington and Warren Jelinek), which resulted in FSC revising the “Consultation” provision of its Shared Governance Resolutions to accommodate a concern raised by the administration regarding “timing” (http://www.nyu.edu/content/dam/nyu/facultySenatorsCouncil/documents/ResRevisedPrinciple5312.pdf)
The Administration’s June 29, 2012, Memo RE: Governance Issues

In June, FSC’s executive committee received a memo from Bonnie Brier, Carol Morrow and Diane Yu, in response to some of the governance issues raised by the FSC resolutions, which were subsequently discussed with Ted Magder, Christine Harrington, and Warren Jelinek of the FSC. We do appreciate your written response, which concurs with the Reasoned Justification principle above. At the same time, we believe that the memo contains eight fundamental misconceptions about shared governance.

1. The listing of meetings (p.1) with FSC members does not address the elements of shared governance raised under Information, Consultation, and Reasoned Justification above. The number of meetings is not at issue. Their substance is.

2. The paragraph beginning with “We are pleased to continue our discussions…” is appreciated, because it is consistent with the FSC’s obligation to discuss any issues with the administration. Note: University Bylaw 63(a) provides that

“The Faculty Senators Council may consider any matters of administrative and educational policy… [and] may bring to the attention of the President and Chancellor any matters that it wishes to discuss with him or her…” (See http://www.nyu.edu/faculty/governance-policies-and-procedures/faculty-handbook.html, p. 11, Faculty Handbook.)

This, however, requires timely, in-depth communications with a variety of administrators. In addition, the well-known U.S. Supreme Court decision NLRB v. Yeshiva (http://supreme.justia.com/cases/federal/us/444/672/case.html) held that “the faculty exercises authority which in any other context unquestionably would be managerial, its authority in academic matters being absolute.” Timely and in-depth communications are central to the faculty functioning as “management” in any sense. To relinquish these communications would jeopardize our managerial role. To make communications meaningful and permit faculty to fulfill their managerial role requires, at a minimum, adherence to the five principles of shared governance outlined above.

3. The paragraph on Representation seems to assume that having FSC members on committees precludes having additional faculty with substantive expertise.
   • There is nothing to prevent FSC members from serving along with other experts.
   • Furthermore, allowing “the FSC an opportunity to alert those individuals [serving on specific committees] about FSC concerns” is an unacceptable substitute for having FSC members on committees. Without FSC representation on committees, how is the FSC to know what a committee is considering and whether it is of concern to the FSC?
   • Finally, without elected representatives on committees, the representativeness of committees, and their legitimacy under the principles of shared governance, can always be doubted.
We therefore conclude that the Administration’s proposed alternative is unsatisfactory on these three grounds.

4. The paragraph on Information, and particularly on invoking “deliberative privilege” to restrict sharing information, enumerates additional topics where deliberative privilege may be appropriate. We point out that:
   - Deciding when deliberative privilege is appropriate should not be the responsibility of committee chairs, but of those who are privy to the information.
   - Clear and legitimate reasons for invoking deliberative privilege should be provided to committee members, including FSC representatives.
   - Consistent with committee members’ responsibility to represent not only their constituents’ thoughts to any committee, but to represent the committees’ deliberations to their constituents, invoking deliberative privilege in an academic community should be (in contrast to the wordings of the administration’s June 29, 2012 memo on “Governing Issues”) the exception rather than the rule.
   - Finally, it should be re-emphasized that secrecy is generally contrary to the academic setting, where free exchange of ideas and academic freedom is the norm.

5. The paragraph on Consultation notes that “a reasonable length of time for consultation… will not always be practical or possible, as the University must make and implement hundreds of decisions all year round.” FSC believes:
   - It is more practical or possible if consultation is built into the process rather than being an afterthought. Having FSC members on committees helps to ensure that consultation is built into the decision-making process.
   - Qualifying the availability of consultation with phrases such as “to the extent possible” and “when time for reflection can be built into the process” makes a basic element of shared governance--- consultation--- a matter of administrative discretion. We recommend that consultation be obligatory, and that exceptions be limited to extraordinary circumstances rather than suited to administrative discretion or convenience.
   - Finally, the plethora of requests for special considerations during the summer when the FSC is not in session illustrates the general failure to engage in either the letter or spirit of shared governance. This summer, for example, five major policy decisions were brought to the FSC that could easily have been presented to FSC during the academic year. These concerned intellectual property, conflict of interest, shared governance, amending the Faculty Handbook, and the NTTF-Library issues.

6. The paragraph on Reasoned Justifications appears to agree with FSC’s resolution, but only “in most instances.” Why not in all instances? We hope that there are no “decisions the University makes” that are not grounded in reasoned justifications.

7. The paragraph on “how the Faculty Handbook can be amended” will be taken up in detail elsewhere. However we note here:
   - FSC Resolutions on Shared Governance do not seek “enlarged powers.”
   - Furthermore, none of the bullet points citing New York State law, University Bylaws, or outlining the powers of the Trustees contradicts anything in the documents cited above
under “Shared Governance.” They are all relevant, compatible and must be considered together.

8. The last paragraph beginning “The University Administration is pleased….” asserts that the resolution on shared governance goes “beyond the powers of the FSC as granted by the NYU Board of Trustees.”

We do not understand the way(s) in which this is true. Please cite specific parts of the resolution and describe how they go beyond the powers of the FSC, particularly in view of the FSC’s obligations under the University Bylaw 63(a) and its managerial role as described in *NLRB v. Yeshiva*.

We will not, as the administration recommends, remove our Shared Governance Resolutions from the FSC website. Their presence is an official record of our past actions and current practices.

In closing, this FSC memo will be posted on our website together with the Administration’s June 29, 2012 memo, in the spirit of *Communications*, one of our five principles of shared governance. We seek to Consult with the Faculty who elected us and to Represent, as well as to Inform them in a timely manner of our Reasoned Justifications contained in this response to the Administration.
Memorandum

Date: June 29, 2012

To: Ted Magder, Chair, Faculty Senators Council
    Robert Schact, Immediate Past Chair, Faculty Senators Council
    Marie Monaco, Vice Chair, Faculty Senators Council
    Mary Ann Jones, Secretary, Faculty Senators Council

From: Bonnie Brier, General Counsel
      Carol Morrow, Chief of Staff to the Provost
      Diane Yu, Chief of Staff and Deputy to the President

Cc: John Sexton, President
    David McLaughlin, Provost
    Christine Harrington, Faculty Senators Council
    Warren Jelinek, Faculty Senators Council

Re: Governance Issues

Ted, Bob, Marie and Mary Ann,

We appreciated the opportunity to meet with members of the FSC (Ted Magder, Christine Harrington and Warren Jelinek) and thought it would be useful if we provided a further written response to some of the governance issues raised by the Faculty Senators Council in its “Resolutions Regarding Shared Governance”.

As you know, NYU is a large and complex institution with many channels for formal and informal communication between NYU administration and the faculty. The Faculty Senators Council is one of the most important channels for those communications. We thought it would be useful to mention here some of the many ways that the FSC and NYU administration currently communicate during the academic year. They include:

- Regularly scheduled meetings each semester of the FSC Executive Committee with the President;
- Regularly scheduled meetings each semester of the FSC Executive Committee with the Provost;
- Occasional meetings of the members of the FSC and/ or FSC chair with the President and Provost
- Meetings of the entire FSC with the President, typically once per semester;

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1 On November 15, 2011, Carol Morrow responded to questions that were raised with respect to representation, and sent you an historical list of recent University advisory groups and their membership.
• Participation by members of the FSC at the President’s Saturday Sessions during the year;
• Participation by members of the FSC at the faculty lunches hosted by Diane Yu throughout the year;
• Participation by FSC members who are in the University Senate at the Senate committee meetings, where they receive briefings by the University administrators;
• Participation by FSC members in the Senate, where they have additional opportunities to hear about University initiatives from the President and other University officials;
• Other various meetings of the FSC (and/or committees thereof) with members of the University leadership team.

We are pleased to continue our discussions about how we might improve these avenues of communication and/or create others, and welcome your suggestions in this regard.

With respect to the five “Shared Governance Principles” mentioned in the FSC memorandum, we discussed some key limitations and clarifications. Regarding the first principle of “Representation,” for instance, we indicated that there may be times when faculty membership on University committees, task forces and other bodies should include FSC members, and other occasions when it is prudent for the University to reach out to non-FSC faculty members whose knowledge, expertise, or experience justify their service. However, we do think that it would be possible to advise the FSC Executive Committee as to the names of faculty serving on specific committees, to allow the FSC an opportunity to alert those individuals about FSC concerns. We will endeavor to do this.

The second principle related to “Information” and articulates the FSC concerns about “deliberative privilege” and confidentiality generally. We noted that “deliberative privilege” or other degrees of confidentiality were warranted in more instances than privacy rights and negotiating positions with external entities, which the FSC acknowledges are appropriate occasions for its invocation. These include, but are not limited to: individual student, faculty, administrator, staff, or candidate (in admissions or employee searches) matters; litigation or potential litigation; on-going business or labor negotiations; internal or governmental investigations or monitoring issues; the University budget before it is finalized; Trustee or donor concerns; and situations where the University could lose a competitive advantage or strategic opportunity if information were to be released prematurely. However, we are willing to ask that chairs of University-based committees and task forces be conscious of situations where information can be disclosed without jeopardizing important interests or violating the types of interests stated above.

Regarding the third principle on “Consultation,” we have received from the FSC a revised version of this Shared Governance Principle whereby the FSC states that “when a decision is not pressing, a reasonable length of time for consultation must be provided” – which is described as “at least a few weeks” during the academic year and to a special internal structure that can be consulted during the summer months when the FSC is not in session. This is helpful, but it will not always be practical or possible, as the University must make and implement hundreds of decisions all year round. Having said this, to the extent possible, when time for reflection can be built into the process, we will work with the summer consultation group on a basis similar to the way we would work with the FSC Executive Committee during the academic year.
As we advised at the meeting, the fourth principle on “Reasoned Justifications” that seeks a rationale in writing in support of decisions the University makes that are contrary to the advice of the FSC is a good one, and we will endeavor to do so in most instances.

Finally, critical questions have been posed about how the Faculty Handbook can be amended. We discussed this at length and agreed to draft a paragraph for the Faculty Handbook on amendments, which we will send shortly for review, in the first instance to Ted, Christine and Warren as your representatives. The essence of our discussion was as follows:

- **NYU is a New York not-for-profit education corporation and governed by New York law; in this regard, the State of New York retains certain powers over NYU, but otherwise bestows all powers and duties on the University’s Board of Trustees.**
- **All powers – whether involving administration or the faculty – emanate from the Trustees.**
- **The Trustees are not permitted to delegate certain of their duties but may delegate others if they choose, although even then they may be required to maintain general oversight. To this end, the Bylaws of NYU as adopted by our Board of Trustees delegate certain rights and powers to the President, the Provost and other officers of the University, to the University Senate and University Councils and Commissions, including the FSC, to the schools and to the faculty, among others, while other powers are retained by the Board itself.**
- **No individual or body, including University administration or the FSC, is permitted to assume powers greater than those delegated by the Board of Trustees, to act contrary to the direction of the Board or to change policies or mandates promulgated by the Board, without the express approval of the Board.**
- **Under the University’s Bylaws, the President is both the Chief Academic Officer and the CEO of NYU, serving as the Board’s representative for both academic and non-academic matters; and the Provost is the President’s chief assistant for academic matters.**
- **Key portions of the Faculty Handbook, including the “Organization and Administration” part of “The University” section and “The Faculty” section, among others, and a number of the significant “Selected University Policies” in the Faculty Handbook (such as the Code of Conduct, Academic Conflict of Interest and Conflict of Commitment, etc.) were adopted by the Board of Trustees and can be changed only by the Trustees.**
- **Where the FSC seeks enlarged powers or changes to the Faculty Handbook, it should collaborate with the Provost’s Office with respect to determining whether common ground can be found. If there is agreement, the President will consider the proposal and determine whether to recommend it to the Board of Trustees for its consideration.**

NYU’s Trustees have both the legal and the fiduciary obligation to establish policy and strategic direction and to oversee the operation and affairs of the University, including both with respect to the academic and non-academic aspects of the University; and Marty Lipton, our Board Chair, and our other Trustees take their responsibilities very seriously. To the extent that there may have been some lapses in the past, the Board Chair has made it clear that the Board expects to be involved in important academic issues, including faculty governance. Where there is a question as to whether a matter requires Board approval, the Board Chair or the Board will decide.

The University Administration is pleased to consider suggestions from the FSC as to how we can better work together. However, because the resolutions on shared governance go beyond
the powers of the FSC as granted by the NYU Board of Trustees, they are not appropriate. For that reason, we recommend removing them from the FSC website. We also noted at the meeting that the resolutions were not accurate in describing the role of the FSC as the personnel committee for the faculty; the University Bylaws provide that the FSC is the faculty personnel committee of the Senate, with the right to designate representatives on Senate standing committees and, in appropriate cases, on Senate ad hoc committees. The Bylaws respect the roles of the University Senate and the Councils, including the FSC, but they also respect the roles of the Schools, Colleges and Institutes, Departments, Deans and the Faculties themselves. As discussed above, the views of the FSC are of critical importance to administration, as are the views of a diverse spectrum of the faculty.

We look forward to continuing to work with the FSC in a spirit of collaboration and respect and a collective goal of working to make NYU an even greater university. To that end, we note that the formation of a small working group that Diane Yu has recently discussed with Ted Magder might serve a useful purpose by providing a forum for considering the ramifications of the shared governance resolutions in more detail, which we hope will lead to a better understanding and amicable resolution of the issues of concern.
Memorandum

Date: July 12, 2012 (REVISED)

To: Ted Magder, Chair, Faculty Senators Council
    Robert Schact, Immediate Past Chair, Faculty Senators Council
    Marie Monaco, Vice Chair, Faculty Senators Council
    Mary Ann Jones, Secretary, Faculty Senators Council

From: Bonnie Brier, General Counsel
    Carol Morrow, Chief of Staff to the Provost
    Diane Yu, Chief of Staff and Deputy to the President

Cc: John Sexton, President
    David McLaughlin, Provost
    Christine Harrington, Faculty Senators Council
    Warren Jellinek, Faculty Senators Council

Re: Faculty Handbook - Amendments

As a follow up to our meeting earlier this semester with the FSC (Ted Magder, Christine Harrington and Warren Jellinek), we have per your request drafted language to include in the Faculty Handbook with respect to the process for amending it. You will see that our language is consistent with our June 28 memo to you about Governance Issues. Please review the proposed language, which we share with you on behalf of the Provost and the President, and let us know what you think. We appreciate it is the summer and this matter is not time sensitive. Accordingly, if you prefer to defer this matter to the fall semester that is perfectly acceptable from our standpoint.

Current Language (See http://www.nyu.edu/faculty/governance-policies-and-procedures/faculty-handbook.html)

The Faculty Handbook is a guide to the faculty and is designed to present in a convenient form general information about New York University, and some of the more important University policies and practices as they apply to the faculty of the University. The Handbook has been compiled from a number of sources. Some parts quote those formulations that have a controlling effect throughout the University, such as the Charter granted by New York State, the University’s Bylaws, and various policy statements and procedures formally adopted by the Board of Trustees. A careful attempt has been made to set forth such passages in a way that will prevent their being confused with those statements that merely describe practices that have evolved or have been adopted administratively over the years. Matters that have a controlling effect are subject to reasonable interpretation by the officers charged by the Bylaws with that
responsibility, but can be changed only by action of the body or bodies that enacted them. Matters not in this category may be modified by administrative action from time to time as may prove advisable.

The policies included and referenced in the Handbook form part of the essential employment understandings between members of the faculty and the University. Other University policies and guidelines are available here. In addition, schools, including institutes and colleges for this purpose, and units have additional policies. For example, school statements on faculty appointment policies and procedures, particularly those concerning promotion and tenure criteria and review procedures, supplement policies outlined in this Faculty Handbook. The Handbook is meant to inform and serve members of the University Community.

**Proposed Language:**

The Faculty Handbook is a guide to the faculty and is designed to present in a convenient form general information about New York University, and some of the more important University policies and practices as they apply to the faculty of the University. The Handbook is maintained by the Office of the Provost. It has been compiled from a number of sources. Significant portions of the Handbook have been adopted by, or reflect actions of, the University’s Board of Trustees, including: the excerpted portions of the University’s Charter and Bylaws; matters involving the Faculty such as those with respect to academic freedom and tenure, appointment of faculty, faculty grievance procedures, and organization of the faculty, among others; the establishment of University Councils and Commissions; and key policies, including the NYU Code of Ethical Conduct, Policy on Academic Conflict of Interest and Conflict of Commitment, and Statement of Policy on Intellectual Property, among others. Certain portions of the Handbook provide an overview of the University and its administrative offices, libraries and student affairs. The Handbook also provides links to Selected University Policies, which represent a broad array of policies, including policies that principally affect faculty and policies that may be of interest to faculty but that apply broadly throughout the University community. The Handbook is meant to inform and serve members of the University Community.

Where a University Council, dean or faculty of a school, which includes a college or equivalent institute or center for purposes of this Handbook, or other appropriate member of the University community seeks to propose changes to the Faculty Handbook, the body or person should contact the Provost (or his or her designee). The process for considering changes varies depending on the nature of the issue and whether the matter falls within the purview of the Board of Trustees or another body outside of the Office of the Provost. Where a matter is within the purview of the Board of Trustees, the Provost (or his or her designee) is responsible for making a recommendation to the President of the University as to whether the President should present the matter to the Board. Where changes to the Faculty Handbook principally affect faculty, the Office of the Provost strives to assure that faculty are engaged in consideration of the changes and/or have an opportunity for review and comment, which may be through established channels such as
representatives of the Faculty Senators Council or committees of the University that include faculty.

The policies of the University form part of the essential employment understandings between members of the faculty and the University. Polices beyond those referenced in the Handbook are available here. In addition, school and units have additional policies. For example, school statements on faculty appointment policies and procedures, particularly those concerning promotion and tenure criteria and review procedures, supplement policies outlined in this Faculty Handbook.
TO: NYU’s Faculty Senate Council

FROM: FSC- Governance Committee (FSC-GC)

Pamela Cowin pamela.cowin@nyumc.org
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RE: Proposed FSC Resolution on Procedure for Amending the Faculty Handbook

Background: During AY 2011-12 and the summer of 2012 several revisions were made by the Provost’s Office to the Faculty Handbook (FH) with no review or only an incomplete review by the full Faculty Senators Council. Examples include:

- Addition of a “Preamble,” which is a modified version of the “Foreword,” on the front page of the online version of the Spring 2012 FH edition;
- Alterations to the policies on Intellectual Property and Conflict of Interest.
- Removal of the sentence verifying FSC approval of FH revisions: “All of the material included in this Faculty Handbook has been reviewed by and accepted by the Faculty Senators Council of New York University.”

FSC’s principles of shared governance, along with past practices wherein the Faculty, the Administration and the Board of Trustees work collaboratively to reach mutually agreeable revisions of the FH, underscore the importance of consultation in an academic community.

Note: For more detailed background information on this Resolution see “Proposed FSC-GC Response to Adm FH Memo & Unilateral Revisions _ 10.13.12.docx”.

Resolution on Procedure for Amending the Faculty Handbook

WHEREAS the previous NYU Faculty Handbook (2008) contains the following statement on its last page – "All of the material included in this Faculty Handbook has been reviewed by and accepted by the Faculty Senators Council of New York University.” – and the new (2012) online and pdf versions omits this important provision; and
WHEREAS the new, 2012 Faculty Handbook was not reviewed by and accepted by the Faculty Senators Council; and

WHEREAS the new, 2012 Faculty Handbook contains recent amendments to important academic policies, such as the policy on “Intellectual Property” (patents, copyrights, and tangible research property) and on “Conflict of Interest and Conflict of Commitment,” which have not been reviewed by and accepted by the Faculty Senators Council;

RESOLVED that all changes to the New York University Faculty Handbook shall be reviewed and accepted by the Faculty Senators Council before such changes are included in the New York University Faculty Handbook, as has been the practice in the past. If a change to the Faculty Handbook must be made before the Faculty Senators Council is able to review and accept such change, it shall be noted in the Table of Contents and in the amended text that the “change was made administratively,” as occurred for the “Principles and Procedures for Dealing with Allegations of Research Misconduct” in the 2008 edition of the Faculty Handbook. This designation shall remain until the Faculty Senators Council has reviewed and accepted the proposed change; and

RESOLVED that the Faculty Senators Council will post the following statement on its website and widely publicize:
“Unlike the prior edition (2008) of the NYU Faculty Handbook, the new (2012) online and pdf versions of the NYU Faculty Handbook has not been reviewed by and accepted by the Faculty Senators Council.”
Memorandum

Date:

To:   Bonnie Brier, General Counsel
       Carol Morrow, Chief of Staff to the Provost
       Diane Yu, Chief of Staff and Deputy to the President

From:

Cc:  John Sexton, President
      David McLaughlin, Provost

Re:   Faculty Handbook - Amendments

Thank you for your July 12, 2012 memo with proposed language on how to amend New York University’s Faculty Handbook (FH). Some such language should be included in the 2012 online and downloadable pdf edition of the FH. However, the Faculty Senators Council (FSC) recommends the language below under the heading, Language Proposed by Faculty Senators Council.

We must also call your attention to the fact that, contrary to past practices at NYU and minimal requirements of shared governance, the FSC was bypassed in revising the 2012 FH. As NYU’s elected faculty representatives, FSC must be consulted prior to posting any FH changes, as was done for previous FH revisions (e.g., 1999 and 2008). We document these past practices below under the heading, Procedure Followed by Faculty Senators Council for Amending the 1999 FH.

Consultation should follow the established and customary procedure used to amend the FH: Amendments that the administration proposes are sent to FSC’s Executive Committee, which then requests an initial evaluation from the appropriate committees. For your 2012 proposals, this is the FSC’s Governance Committee (see Faculty Senators Council Rules of Procedure, Section VI. 1. g.). They then should be discussed and approved by the full FSC. See Procedure Followed by Faculty Senators Council for Amending the 2008 FH.

In this past year, the following changes were made and posted to the Spring 2012 online and pdf edition of the FH by the administration without prior full review and approval by the FSC:

- The sentence, “All of the material included in this Faculty Handbook has been reviewed by and accepted by the Faculty Senators Council of New York University,” which appears at the end of the 2008 edition of the Handbook and in the updated Spring 2012 “strikeout” and “clean” versions of the Handbook distributed to Christine Harrington, Molly Nolan and Warren Jelinek at the January 27, 2012 meeting with
Carol Morrow, Peter Gonzalez and Julie Adams was removed from the 2012 online and downloadable pdf edition of the Handbook.

• In addition, changes to the Intellectual Property and Conflict of Interest policies were incorporated, as clickable links, into the 2012 online and downloadable pdf edition of the Handbook, absent full review by the Faculty Senators Council. Complying with a request for urgency from the administration, the Faculty Council Summer Committee did a preliminary and incomplete review of the current Intellectual Property and Conflict of Interest and Conflict of Commitment policies, and asked for more time for a complete review. This request was ignored. Instead, new versions of these policies were unilaterally incorporated into the 2012 edition of the Handbook by the administration — versions that differ from those given to the FSC Summer Committee for its review, and that do not incorporate the few changes it suggested. Thus these changes were a) not reviewed by the Summer Committee, b) not reviewed by the Governance Committee, and c) not accepted by the Faculty Senators Council. In the case of the Intellectual Property policy, the number of changes was substantial.

The Faculty Senators Council objects to, and cannot support unilateral changes to the Faculty Handbook. Such changes are serious breaches of the principles of shared governance, precedence, and trust between the faculty and administration. The Faculty Senators Council considers it essential that established procedures for amending the Faculty Handbook be made explicit and followed.

Language Proposed by Faculty Senators Council:

NOTE: This section should be included in the body of the FH and referenced in the Table of Contents as “Procedure for Amending this Faculty Handbook.” As currently presented online, this section is not included in the downloadable FH.

The Faculty Handbook is a guide to the Faculty and is designed to present general information about New York University, and some of the more important University policies and practices as they apply to the Faculty of the University. The Handbook is maintained by the Office of the Provost. It has been compiled from a number of sources. Significant portions of the Handbook have been adopted by, or reflect actions of, the University’s Board of Trustees, including: the excerpted portions of the University’s Charter and Bylaws; matters involving the Faculty such as with respect to academic freedom and tenure, appointment of faculty, faculty grievance procedures, and organization of the Faculty, among others; the establishment of University Councils and Commissions; and key policies, including the NYU Code of Ethical Conduct, Policy on Academic Conflict of Interest and Conflict of Commitment, and Statement of Policy on Intellectual Property, among others. Certain portions of the Handbook provide an overview of the University and its administrative offices, libraries and student affairs. The Handbook also provides links to Selected University Policies, which represent a broad array of policies, including policies that principally affect faculty and policies that may be of interest to faculty but that apply broadly throughout the University community.
The Handbook is meant to inform and serve members of the University Community.

Where a University Council, Dean or Faculty of a School (which includes a College or equivalent institute for purposes of this Handbook) seeks to propose changes to the Faculty Handbook, the body or person should contact the Provost (or his or her designee). The process for considering changes varies depending on the nature of the issue and whether the matter falls within the purview of the Board of Trustees or another body outside of the Office of the Provost. Where a matter is within the purview of the Board of Trustees, the Provost (or his or her designee) is responsible for making a recommendation to the President of the University as to whether the President should present the matter to the Board. This recommendation may be based upon prior consideration and approval of the proposed change by one of the elected Councils that comprise the University Senate. To clarify the history of a policy, all policies should designate the body or bodies of origin, the dates of approval and the body or bodies approving and date effective, as well as the office and individual responsible for the policy. The body or bodies of origin and approval should review any changes to be made.

Where changes to the Faculty Handbook principally affect Faculty, the Office of the Provost strives to assure that faculty are engaged in consideration of the changes and/or have an opportunity to review, comment and approve, which may be through established channels such as representatives of the Faculty Senators Council and committees of the University Senate that include faculty.

All changes to the Faculty Handbook are reviewed by the Governance Committee of the Faculty Senators Council and approved by the Faculty Senators Council before inclusion in the Faculty Handbook, including changes to policies provided only by clickable links. If a change to the Faculty Handbook must be made before the Faculty Senators Council is able to review and accept such change, it shall be noted in the table of contents and in the changed text that the change was made administratively until the Faculty Senators Council is able to review and accept the change.

The policies outlined in the Faculty Handbook at the time of hire form part of the essential employment understandings (contract) between a member of the Faculty and the University. Policies beyond those referenced in the Handbook are available here. In addition, schools and units have their own internal rules, procedures and policies, such as school statements on faculty appointment policies and procedures, particularly those concerning promotion and tenure criteria and review procedures, which may supplement but do not supersede or replace policies outlined in this Faculty Handbook.
Procedure followed by Faculty Senators Council for amending the 2008 FH

1. The Faculty Senators Council received an edited version of the FH from the administration (Sharon Weinberg, Vice Provost for Faculty Affairs and Peter Gonzalez, Director of Academic Appointments).

2. A comparison was made between the amended version and the existing FH. Copies were distributed to all the members of the FSC. While the comparison revealed that most of the changes made were well delineated, one was not.

3. The Governance Committee reviewed the entire handbook and presented its recommendations to the Faculty Senators Council for action (see appended January 30, 2006 summary letter to Sharon Weinberg and Peter Gonzales from Virginia Black and the recommendations for review of the FH referred to therein). The Faculty Senators Council received the entire FH, with changes presented as strikeouts and underlines, as well as the letter summarizing the Governance Committee’s recommendations prior to taking action. The Faculty Senators Council discussed and approved the recommendations and the letter.

4. Subsequently, changes were proposed by the administration, coming primarily via Pierre Hohenberg.

5. Virginia Black, the Chair of the Governance Committee, sent E. Frances White, who had replaced Sharon Weinberg, the appended recommendations for review and arranged a meeting with the Governance Committee.

6. The Governance Committee met with E. Frances White, Peter Gonzalez and/or Pierre Hohenberg to review all parts of the FH that pertained to the Faculty, focusing on, but not limited to, the sections on “Responsibilities of the Faculty Member” and “Guidelines for Sponsored Research,” as well as some changes to the section dealing with titles for non-tenure track faculty. Changes were recommended on the basis of those meetings.

7. Each of the revised sections was then presented to the Faculty Senators Council with all changes marked in strikeouts and underlines. After all the recommended changes were discussed at a Faculty Senators Council meeting, the Faculty Senators Council voted to approve these amendments in March of 2007.

8. Very late in July 2007, the Faculty Senators Council received a plea from Pierre Hohenberg for changes in the section on “research misconduct” that he felt were necessary to review and approve in order to comply with new NIH requirements. Some communication problems regarding the changes to be made and the late date of the request meant that the Governance Committee and the Faculty Senators Council could not review the changes in a timely fashion. Furthermore, since the Senate originally approved the policy, the changes would have to be ratified by the Senate.

9. Yet still, FSC’s Governance Committee and Executive Committee drafted a letter to members of the Council identifying the changes requested, noting the irregular procedure in hopes that it would not recur in the future, and only requested a “provisional approval” from Council members. However, the decision was made to enter the changes into the FH, noting in the index and in the text of this policy that the amendment was “administrative”.
10. Subsequently, FSC’s Governance Committee reviewed the administratively amended “research misconduct” policy at two of its full Council meetings (October and November of 2007) and submitted some points for consideration to Pierre for the final policy.

11. Following this, the Faculty Senators Council received the IP and Copyright policies, which Pierre Hohenberg had worked on with large committees. Both policies were also reviewed by FSC’s Governance Committee, suggestions were made and most were incorporated, all prior to the Governance Committee recommending the policy for presentation to and approval by the FSC. FSC requested outside legal review of one particular point. This was done, a few changes were made in response to that outside legal review, and subsequently the policy was approved by the full Council in 2009.

Procedure Followed by Faculty Senators Council for Amending the 1999 FH

Supporting Documents:

MEMO, January 30, 2006

TO: Sharon L. Weinberg, Vice Provost for Faculty Affairs
    Peter Gonzalez, Director of Academic Appointments

CC: E. Frances White, Vice Provost for Faculty Affairs
    Pierre Hohenberg, Senior Vice Provost for Research

FROM: Virginia H. Black
    Chair, FSC Governance Committee

RE: Changes to the NYU Faculty Handbook

The Faculty Senators Council, after being given the opportunity to review the draft Faculty Handbook and the recommendations of the Governance Committee, at its meeting on January 19, 2006, approved the well-demarcated proposed changes (deletions struck over, additions underlined) in the draft Faculty Handbook that the Governance Committee had received in October, with the exception of the deleted cross-references and with the provisions noted below.

The Faculty Senators Council had approved the language inserted under The Faculty V. Academic Tenure regarding the tenure extension to ten years by the Leonard N. Stern School of Business in 2004 and the Board of Trustees also passed the changes to Bylaw 72 in 2004. The Workload Relief Policy inserted under Other Faculty Policies, Leave of Absence, was approved by the Faculty Senators Council and the University Senate in 2004 and passed by the NYU Board of Trustees.

The Faculty Senators Council also approved changes in Faculty Titles, Non-tenure Positions for Tisch School of the Arts. However, the Council noted, that revision in the descriptions of the Teaching Associate, as well as those of Teaching, Graduate and Research Assistant Titles in the section on Other Faculty Policies, Faculty Titles, Further Information on Selected Non-tenure Position Titles, although well delineated, were made without prior consultation with the Faculty Senators Council.

Although it is our understanding that the usual practice has been to include at least the Chairs of the Governance Committee and Tenure Modification Committee, as well as the Chair of the Faculty Senators Council, when changes in the Faculty Handbook are being discussed, particularly when policy changes that impact the faculty are being contemplated, these latter changes were approved in order for them to be made in a timely manner.

One set of changes, not well delineated, was also approved. In the section under Other
Faculty Policies, Responsibilities of the Faculty Member, the sub-section title Academic Responsibilities of the Faculty Member (p 55) had been eliminated and the paragraphs in that sub-section had been reshuffled, without any change in wording, to follow a new paragraph (p 52) inserted at the beginning of the section on Responsibilities. The first paragraph of Teaching Assignments was been placed at end of this initial section under Responsibilities. The rest of the paragraphs from Teaching Assignments remained under a new title Teaching Load Assignments (p 53).

These changes were approved, despite the fact that they had not been properly delineated, because there had been no change in the wording.

In addition to the delineated items, the Faculty Senators Council found in its review the following problems that need correction prior to publication:

GENERAL- Structural:
The Index is incorrect

The Table of Contents should come before the introductory pages. The dates of policy adoption and the footnote regarding these should be included as in the 1999 edition.

The formatting is uneven. For example fonts are not uniform for the different section, e.g. ‘Ethical Commitment’ on second page of Introduction should be bolded as in ‘Letter From The President” on the previous page.

There are too many blank spaces. The text should be tightened up, re-paginated and re-indexed.

Cross-references should be reinstated for ease of use

SPECIFIC:

Minor:
p 2, para 4, line 6. ‘School of Education’ should read ‘Steinhardt School of Education’
p 3. last para The phrase ‘took flight’ should be changed. We would suggest ‘began’ or omit the whole sentence in which the phrase is found, substituting ‘…for the next stage in its development. In 1981, Dr. Brademas came to NYU after a distinguished 22-year career in the U.S. Congress. Under his leadership, the……’
p 5. Numbers are missing in para 1
p 9 and throughout. The title ‘chancellor’ is used, but we do not currently have a chancellor
p 3 vs 13. There is a discrepancy in the name attached to the School of Social Work
p 25. We suggest that, until a section on use of the handbook can be written (see below), the information in the sidebar on p 25 in the 1999 edition be reinstated at the beginning of this section and that a sentence be added advising faculty that there may be additional, but not substitute, School bylaws, policies and procedures relevant to their positions.

p 34. The footnote regarding third and/or six year reviews should reflect the changes in the Leonard N. Stern School of Business.

p 57, para 3, line 4. Suggest using ‘is paid’ rather than ‘will receive’.

p 57, para 5, line 1. There is a typo: ‘mont’ should be ‘month’

p 64. If items 5 and 6 of the section Faculty Grievance Procedures, Faculty Grievances, General, are on the same page one footnote, referenced twice will suffice.

p 80. Names are not current

p 89, para 7, line 4. There is a typo: The phrase “and/or Mt. Sinai health systems” it should read “and/or Mt. Sinai Health Systems’

p 97. In G, ‘section ____’ has been left blank

Major

p 2 & 13. The changes in the College of Dentistry and Division of Nursing are not reflected.

p 11. The AMC was approved as a separate Council of the University Senate, by action of the Senate in 2002. This change needs to be reflected in the By-Laws as well as in the Faculty Handbook.

Policies: The Equal Opportunity and Anti-Discrimination Policy, Affirmative Action Policy, and Policy on Sexual Harassment have all been revised and the revisions approved by the University Senate. They should be included in the Faculty Handbook as revised.

The Code of Ethical Conduct should be included in the Faculty Handbook and referred to in the Introduction, in paragraph on Ethical Conduct.

I would be happy to go over these aspects with you, if that would be helpful.

In addition to the above, we would like to formally submit recommendations made by the Governance Committee in April of 2005 (please see attached memo), as modified and updated at the December 15, 2005 meeting of the Faculty Senators Council. The Governance Committee and Faculty Senators Council plan to undertake the tasks of
changing the organization and indexing of the Faculty Handbook to make it more user friendly and writing a section on “How to use the Handbook”. We would appreciate it if the administration could provide a Table of Organization to accompany the Handbook, as this would help faculty members in understanding the University structure and in directing questions or issues. As noted, the University Charter and Bylaws should accompany the Faculty Handbook, in all venues, printed, CD and on-line.

We thank you for the opportunity to review the changes in the Faculty Handbook \textit{in toto} and look forward to working with your office on the new endeavors, as well as future updating of the Faculty Handbook.
RECOMMENDATIONS
FROM THE FSC GOVERNANCE COMMITTEE, 2004-2005
REGARDING THE NYU FACULTY HANDBOOK

1. The Faculty Handbook should be revised to reflect changes in the University's structure since 1999 to assist new faculty in understanding the policies that relate to them and how changes affect faculty hired prior to a revised edition.

2. Several changes to the format would make the Handbook more usable, including:
   a. A comprehensive index;
   b. A Table of Organization of the University to accompany the Faculty Handbook;
   c. An introductory statement that explains how faculty should use the Bylaws, policies and procedures compiled in the Faculty Handbook and an advisory note to faculty that there may be School bylaws, policies, and procedures relevant to their positions in the faculty;
   d. CD-ROM and online access (pdf version only) that correspond to printed and paginated archival copies of the Faculty Handbook;
   e. The University Charter and Bylaws should accompany the Faculty Handbook.

3. The Faculty Senators Council should vote on procedures for annual Faculty Handbook reviews so that it is an ongoing process.
   a. The Faculty Handbook Subcommittee of the FSC’s Governance Committee should review potential revisions annually in April (after the last Senate meeting) to include information from:
      • Senate and Faculty Senate Council reviews of minutes/resolutions;
      • University structure changes;
      • Questions that have come up each year from faculty, Schools, and deans; and
      • New policies that impact faculty.
   b. A committee of the Faculty Senators Council including, at a minimum, the Chair of the Faculty Senators Council, the chair of the FSC Governance Committee, the Chair of the Tenure Modification Committee and/or a representative of those committees, should meet with the Director of Academic Appointments and the Vice Provost for Faculty Affairs in June of each year to discuss Handbook changes.

4. Printed archival copies of the Faculty Handbook, as well as School documents and policies that clarify terms of employment should be retained in the Faculty Senators Council Office, the Office of the Provost, the Office of the President, and the University Archives.
New York University
Interdepartmental Communication

July 15, 1999

MEMORANDUM TO: Professors Salah Al-Askari, H. Paul Gabriel, Judith Gilbride, Melvin Hausner, Clifford Jolly, Lynne McVeigh, Burt Shachter, and Paul Wachtel

FROM: Steering Committee
1999 Edition of the NYU Faculty Handbook

We are delighted to be able to send you a copy of the 1999 edition of NYU's Faculty Handbook. With your good advice, and with the patient assistance of numerous administrators in our vice presidential areas, we finally have an updated version of our 1982 edition!

Early in September, the Handbook will be sent to all full-time faculty at the University who were on board in 1998-99. Copies will also be handed to new full-time faculty members by the various dean's offices, i.e., to faculty whose appointments are effective September 1, 1999 or later.

Please note that the Handbook is being issued with a few out-of-date statements in the Bylaws because the University's Board of Trustees has not yet made appropriate changes. However, all the non-substantive revisions in our formal rules (gender neutral changes and corrections) did not need to await Board approval and have therefore been incorporated throughout the 1999 edition.

We are most grateful for your excellent suggestions and your kind support during this long and complex project. Our special thanks to Lynne McVeigh and Judith Gilbride for shepherding the Handbook through the governance process. We hope very much that the 1999 Faculty Handbook will be useful to NYU's faculty over the coming years.

Signed by:

Harvey J. Stedman
S. Andrew Schaffer
Ada Meloy
Jo Seelmann

cc: President L. Jay Oliva