MINUTES OF THE FACULTY SENATORS COUNCIL MEETING OF APRIL 11, 2013

The New York University Faculty Senators Council (FSC) met at noon on Thursday, April 11, 2013 in Room 905/907 in the Kimmel Center for University Life.

In attendance were Senators Alter, Billman, Cappell, Harrington, Hutchins, Jelinek, Jones, Kamer, Karl, Ling, Magder, Mincer, Monaco, Nolan, Raiken, Sternhell, Stokes, Sundaram, Tannenbaum, Thurston, Uleman, Van Devanter, and Zwanziger, Active Alternates Azmitia, Chan, Rubin, and Tuzhilin, and Alternate Senators Ebsworth, Klein (for Carpenter), Kleiner (for Anton), Nelson (for Jacobs), Reiss, and Simon. FSC Advisors Al-Askari, Lebowitz, and Moskowitz attended as guests.

APPROVAL OF THE MINUTES OF THE MEETING HELD MARCH 14, 2013

Upon a motion duly made and seconded, the minutes of the March 14, 2013 meeting were approved unanimously.

ANNOUNCEMENT OF THE CANDIDATES FOR FSC VICE CHAIRPERSON AND SECRETARY 2013-14

Nominating Committee member Senator Van Devanter announced the candidates for Vice Chairperson: Awam Amkpa from the Tisch School of the Arts, Warren Jelinek from the School of Medicine, and Jim Uleman from the Faculty of Arts and Science and the candidates for Secretary: Charlton McIlwain from the Steinhardt School and Allen Mincer from the Faculty of Arts and Science.

Senator Jelinek withdrew his nomination for the position of Vice Chairperson. Senator Harrington made a nomination from the floor, nominating Senator Jelinek for the position of Secretary. This was seconded by Senator Nolan. Jelinek accepted the nomination.

REPORT FROM THE CHAIRPERSON: TED MAGDER

Special Committee of the Board of Trustees

The FSC has been invited to meet with a Special Committee of the Board of Trustees on Thursday, April 18 from 11-12 pm. The Committee asked that no more than 15 members of the FSC attend. The Executive Committee suggested the following allocation: at least one member from each school, schools with more than three senators offered additional slots (School of Medicine=2 slots, Faculty of Arts and Science=4 slots), and the Executive Committee.

It was noted that other faculty councils, including the Steinhardt, Stern, and School of Medicine councils, were invited to separate meetings. Magder suggested if senators plan to attend a school council session to leave a slot open for another senator to attend the FSC session.
A FAS Senator reported the FAS Senators were invited to a meeting along with Faculty Against the Sexton Plan (FASP) and American Association of University Professors (AAUP). They declined the invitation to meet alongside these groups and asked to be rescheduled at a separate meeting, for FAS Senators only. The Senator stated the FAS Senators have the duty to represent the views of their school and their vote of no confidence. In addition, they plan to discuss the status of FAS in the university and issues related to pedagogy, education, and intellectual issues.

See attached Document A: The memo from Board of Trustees Chair.

Senators discussed the following key issues to discuss in the meeting:

• How decisions related to the GNU have been made, impact on academic quality, and the stresses it places on NYU.
• Inform BOT of the 2031 survey run by the FSC and the views and concerns expressed.
• The growing number of contract faculty and what this means for academic freedom.
• The need for transparency, especially fiscal transparency in relation to the termination and reorganization of academic programs, 2031, and the GNU. How fiscal decisions and the costs and benefits bear upon academic policies.

Senators also discussed the value of faculty participation on the Board of Trustees, which is not uncommon at other institutions. It was noted that at some institutions, a faculty member serving on the board is considered a token position, and a committee structure is more effective.

It was recommended to propose the creation of a standing, joint committee of FSC and BOT members.

A Senator asked how many BOT members are NYU alums. This information can be found on the Board of Trustees website.

A Senator reminded the Council that in the past a member of the BOT hosted a dinner and invited members of the FSC to attend.

Executive Committee Meeting with President

Magder reported the EC met with President Sexton on April 10 and focused their discussion on the Partners Plan. They discussed the need for further communication with the FSC and faculty regarding the Partners Plan as a core strategic fiscal plan, specifically how revenue is shared between the various schools, the balance of payments, and the identification of departments/center of excellence, and the relation to space allocation and faculty growth.

A Senator stated this information is available in FAS and recommended it be circulated.

A member of the Executive stated that issue is being raised because of questions from the faculty, particularly regarding the current status of hiring and subsidy from the professional schools. In focusing on fiscal transparency of GNU and 2031, the Partners Plan is another major initiative that faculty are interested in more information, including the exchange of revenue between schools, how decisions have been made, and the level of faculty involvement.

Senators discussed the challenges of distributing information on the specifics related to the sharing of revenue between schools. Complaints have been voiced at professional schools about the amount being sent to other schools. Another Senator suggested that information is necessary for an informed discussion.
FSC COMMITTEE REPORTS

Executive: Chairperson Magder

Rules for Officer Elections

Magder stated the original agenda contained a copy of the suggested edits to the FSC rules regarding the election of Officers. The Executive Committee suggests tabling this discussion to the last meeting.

A subsidiary motion was moved by Senator Tannenbaum and seconded by Senator Thurston to postpone the motion to the May. The motion was approved by vote of 14 senators in favor and 13 senators opposed.

It was noted that items that appear in the agenda notice, should not be removed in advance of the FSC meeting.

Rules for Senator Elections

The Executive Committee presented the proposed resolution concerning the amendment to the Bylaw regarding Elections and Appointments. See attached Document B: Proposed Resolution Regarding Amendment to NYU Bylaw 63(c).

The following resolution was moved, seconded, and approved by vote of the Council:

Resolution:

IT IS RESOLVED, that The Faculty Senators Council proposes the following amendment to NYU Bylaw 63 (c):

All elections for members of the Faculty Senators Council shall be held prior to June 1, except in extenuating circumstances, which have been explained in writing to the FSC Governance Committee by June 6. The name of each representative to the Senate should be transmitted to the Secretary of the Senate not more than five days after June 1.

School of Medicine (SOM) Base Salary proposal

Magder reported that he contacted EVP Bob Berne and Provost David McLaughlin regarding the Base Salary Proposal for the School of Medicine. He suggested the base salary proposal is a change to the terms and conditions of academic tenure, in which case it should come before the Tenure Modifications Committee for review. Berne responded that the proposal does not constitute a fundamental change to the terms of tenure, so there was no need to consult with the FSC.

Magder stated that the EC suggested that the next step is to initiate a conversation with the administration and explore the meaning of the following highlighted phrase:

*Title 1: Statement in Regard to Academic Freedom and Tenure*, Section 3, The Case for Academic Tenure: "Academic tenure is a means to certain ends, specifically, (1) freedom of teaching and research; and (2) a sufficient degree of economic security to make the profession of teaching attractive to men and women of ability."

The FSC has passed four resolutions since 1998 regarding the connection between tenure and salary.
Senator Harrington, Chair of the Governance Committee, stated the issue is not specifically about base salaries but how this decision was handled. This is as an opportunity to practice consultation and understand the deliberative process.

A retired SOM Senator mentioned a presentation by the SOM Benefits and Tenure Committee. See attached Document C: Minutes of the Benefits and Tenure Committee, 4/4/2008. He stated it was determined that tenure is given by the university, not by the school or School Dean. Any decision concerning salary must be done though the Council and the University. He added tenure means salary without a change.

A Senator stated it seems the issue has been discussed and debated and the opinions of the Council have been communicated. The decision made is that not an issue of tenure but of salary.

A Senator commented that the change going on at NYU’s School of Medicine is not as severe as what has happened at other schools, including Harvard and Columbia. For example, at Columbia, faculty have no guarantee of tenure with salary or tenure doesn’t guarantee more than 25% of salary. Schools of Medicine are funded in different way than the rest of the university. Medical schools cannot support research establishment on tuition alone and they rely on research grants.

A SOM Senator clarified that other medical schools have changed their pay scale in a similar way, with a base salary and a portion generated by research funds. But it is not retroactive. Schools that have the same type of tenure as NYU, that provides economic security, have not been applied to those already with tenure. For example at Virginia Commonwealth University tenured faculty are not subject to these rules. This is also true of the University of North Carolina, although they added a financial incentive to anyone who wished to change from the old tenure rules to the new tenure rules. In comparison, NYU is making this retroactive to those already tenured.

A Senator summarized the action was decided at the SOM, the issue then came to the Governance Committee, then to EC, the EC asked Provost if it had been finalized, the Provost’s Office stated the FSC has no jurisdiction, and the Chair suggests forming a committee to discuss the broader issue of examining tenure and compensation.

A Senator stated it is important to examine in the context of why this decision was made and suggested a relation to the significant financial loss from the failed merger with Mt. Sinai.

At the conclusion of the discussion, the following motion was moved, seconded, and approved by vote of the Council with 1 senator opposed and 1 abstention:

Resolution:

Representatives from the Finance and Policy Planning, Governance, and Tenure Modifications Committees will form a joint committee to discuss this issue.

University Space Priorities Working Group: Senator Kamer and Active Alternate Chan

Senator Kamer stated the Working Group is still in the process of gathering information and reaching a conclusion. The subcommittees are working on space needs, finances, and quality of life. As mentioned in a document on the website, the Group’s initial charge was modified and now includes a broader range of options to consider, including no construction and constructing in other areas.

The Finance Subcommittee has met with Marty Dorph and is examining the issue of the effect on the University’s Moody’s rating. The current NYU Moody’s rating is AA3, which is a good rating and not expected to be affected by 2031 construction, GNU, Poly, or the damage by Hurricane Sandy to the NYU Medical Center.
In terms of acquiring spaces at different sites, the University is always looking for the right opportunity, but faces challenges related to zoning. For example the Kmart building on Broadways cannot be considered due to zoning constraints. Kamer also reported that the rumors that the University is selling the Forbes building are not true.

The mitigation efforts include plans regarding, air quality, noise, and rodents.

In terms of the effect on tuition, salaries/benefits, the cost of construction is not based on raising tuition. In addition, salaries will not be affected. As previously stated, enrollment will only increase by 0.5%.

Alternate Senator Chan, stated the Sub-committees will gather together and deliberate and hope to offer an interim report in May. Chan commented there is a clear need for space, but it is likely we don’t need specific space in current plan.

**ADJOURNMENT**

The meeting adjourned at 2:10 PM.
Dear Fellow Members of the NYU Community,

Over the past several months, the NYU community has been engaged in an active conversation about the governance of the university and, specifically, the role of the faculty. As noted in my email a few weeks ago, President Sexton now has encouraged the Board to help identify ways in which we might create better ways for the constituent voices at NYU to be heard.

As Chairman, I will be convening a special Board Committee that will meet with various stakeholders to listen and to seek the best ways forward in the evolution of our processes towards this end. These discussions are envisioned to be forward-looking; we intend to build upon, not supplant, the University Framework approved by the Board in 2008 after extensive consultation with the NYU community, the Faculty Senators Council and the University Senate.

NYU is in a fast-changing educational environment and it is vital that we find ways to act decisively; nonetheless, as we make major strategic decisions, we can benefit from as wide a conversation as possible, so that we can elicit the wisdom of the University’s stakeholders. To that end, the Board Committee ultimately will issue a report that suggests improvements regarding NYU’s governance.

The Committee will meet with various NYU groups (both school-based and university-wide) that exist to represent the elements of the NYU community. We will begin to set up meetings soon. Of course it is impossible to meet with everyone; therefore, if you have a view or perspective that you wish to share, please email me at mlipton@nyu.edu.

A fair amount of the debate over the past months has centered on differing views of NYU’s progress to this point. From my perspective, one of the problems has been the degree of misinformation and lack of specificity in the claims that are made. To help lay the groundwork for this next phase, I am attaching a document that lays out various statistical facts about where the University stands now and how that position has changed over time. You can view this at: www.nyu.edu/nyubythenumbers.

I look forward to this process.

Sincerely,

Martin Lipton
Proposed Resolution Regarding Amendment to NYU Bylaw 63(c)

Presented by the Executive Committee for consideration
at the Faculty Senators Council Meeting, 4/11/13

Background:

In the Bylaws of New York University (Amended and Restated: Effective September 1, 2011), NYU Bylaw 63 (c) Elections and Appointments states:

_All elections for members of the Faculty Senators Council will be held prior to May 1, and the name of each representative to the Senate will be transmitted to the Secretary of the Senate within five days._

In the Rules of Procedure of the Faculty Senators Council of New York University (as Amended through May 3, 2012), Rule 1. Representation (d) Time of Elections states:

_All elections for members of the Faculty Senators Council shall be held prior to May 1, and the name of each representative to the Senate shall be transmitted to the Secretary of the Senate within five days._

Resolution:

IT IS RESOLVED, that The Faculty Senators Council proposes the following amendment to NYU Bylaw 63 (c):

All elections for members of the Faculty Senators Council shall be held prior to _June 1_, except in extenuating circumstances, which have been explained in writing to the FSC Governance Committee by _June 6_. The name of each representative to the Senate should be transmitted to the Secretary of the Senate _not more than five days after June 1_.


Minutes of the Benefit and Tenure

4/4/2008

S. Al-Askari, Chair., M. Monaco, B. Bogart, D. Meruelo, K. Krasiniski, N. Soter, R. David, B. Young

Agenda:
1- Benefit Survey,
2- Tenure at NYU including Financial security.

The executive committee of the Faculty Council of the medical school requested the benefit and tenure committee to review Tenure at NYU and the financial impact of salary reduction on the tenured faculty, both in basic sciences and in the clinical departments.

The committee reviewed several documents including the Faculty Handbook of NYU, the related resolutions, the statement of the Vice President for legal affairs at NYU regarding tenure, the minutes of the Faculty Council at the medical school and the position of peer institutions about tenure.

The Faculty handbook states that academic tenure consists of 1-freedom of teaching and research and 2-sufficient degree of economic security (page 25, item III) without any reference to an outside source of the salary. Thus, tenure and economic security are inseparable. Thus, tenure entitles the tenured faculty to the right of full employment including full salary except under conditions of adequate cause or a declared financial exigency. This has been a successful modus operandi at NYU including the medical school for several decades. It is a clear demonstration of how the mutual trust between faculty and administration has successfully served the medical school and the university in their academic mission and satisfied the faculty and administration.

The full salary obligation to the tenured faculty was emphasized by the vice president for legal affairs at NYU in his 1996 statement at the AAMC conference (exhibit 1) and the Faculty Senators Council resolution of 1998 (exhibit 2).

Although the Board of Trustees of NYU has the authority to amend its policies regarding tenure, no amendment shall take away the status of permanent or continuous tenure acquired before such amendment (faculty handbook, page 25, item I). Thus, any changes concerning tenure are prospective but not retroactive.

The committee also noted that not all medical schools define tenure as having economic security component. However, 9 schools, including Yale and Stanford, have economic security linkage to tenure, grandfathered existing faculty (exhibit 3). The linkage between tenure and salary is also emphasized in the report of committee A of the AAUP (exhibit 4, item 5).

Tenured faculty may opt for an early retirement and voluntarily relinquish
their tenure by negotiating an agreement with the medical school administration (the dean) i.e. buy-out (exhibit 5).

The committee also reviewed the potential impact of salary reduction on the total income of the affected faculty both in basic sciences and clinical departments. Reducing the school commitment to salary by 50% will obligate the affected faculty to seek similar funds with associated fringe benefits from outside sources. Thus, a faculty member with an assumed salary of $100,000.00, will be receiving $50,000.00 from the school budget. In addition the following changes in benefits will occur:

a- The school contribution to the annuity plan (10% pre tax dollars) will be reduced from $10,000.00 to $5,000.00. The affected faculty member will be forced to purchase $5000.00 of supplemental annuity, which is capped.

b- Additional benefits will also be affected including life insurance, disability insurance etc.

Thus, unless the affected faculty member can generate 50% of his salary from outside sources, which must also pay for the reduced fringe benefits, the total impact on the income will be more than the 50% reduction.

As indicated earlier, this will affect both the basic sciences and the clinical faculty. Tenured research faculty may be able to obtain grants to compensate for some of the reduced income. However, clinical faculty who have been providing clinical services and teaching for many years will not be able to obtain such outside support should their assignment and income be reduced. This may also apply to tenured faculty members participating in a medical school linked practice plan. There is no guarantee of continuation of clinical services. These are subject to the decision of the department director or chairman.

Salah Al-Askari
Statement made at the 1996 AAMC Conference in Washington.

C. Andrew Schaffer, New York University

Mr. Schaffer closed this session with the prudent and realistic advice of a lawyer. He cautioned that to make retrospective changes in the existence or attributes of tenure won't work under most university tenure statements, except for cause, financial exigency, or program termination. The courts in most states, interpreting contract law, in most cases the legal system would consider all salary covered unless the institution can convincingly demonstrate that salary was mutually understood by faculty members and the institution to be composed of parts. The solution must be prospective in writing new contracts in which salary is divided into parts. And a critical test of our proposed changes to tenure plans is to ask how they might set in the English, Chemistry, Humanities and Physics Departments of our universities, because few university presidents are likely to enthusiastically embark on a university-wide tenure war.

This meeting occurred because of the enormous financial liability of tenure. Some speakers found flexibility in the tenure contract and pointed out that tenure and compensation are parts of a reward system. It was emphasized that we, as a community, must pay greater attention to how we reward our constituents for good work. Generalization is not easy when most issues will be local and highly varied. One thing for sure, however, medicine and medical education will be highly accountable to the public. A quotation by Ken Pye was particularly appropriate, "Medicine is private in structure and public in purpose." The desired goal must then be to recapture public support without looking at levels of compensation and lifetime employment.

Success in the university of tomorrow will require that it achieve, in the minds of its faculty, a position of being the preferred place of employment because it has a sense of community and humanity that places a premium on a good job and the personal development of its greatest resource, its people. It must be an institution that is more communicative and interactive with its faculty, joining them as partners in shaping the culture and future in a way that is more responsive to public need and accountable to it. Tenure agreements will require clearer more explicit definition of expectation and linkage between performance and compensation. An unanswered question, that might be considered in the future, is precisely how we motivate and achieve the enormous degree of post-tenure development upon which all of our futures rest so heavily.
Resolution of the Faculty Council  
Approved January 22, 1998

The Faculty Council affirms that tenure at NYU is a declaration of mutual trust and commitment between New York University and its teaching faculty who have a proven record of productive scholarly work, teaching ability, recognition among their peers and dedication to academic career. The Senate resolution dated May 10, 1979, concerning the rights of tenured faculty in the instance of program termination or reorganization, states that in the event that financial exigency has been declared by the Trustees, the obligation of the University shall be limited to the obligation adopted as part of the program of the University under financial exigency. Therefore, tenure entitles all active faculty to the right of employment, including full salary except under conditions of cause or financial exigency. Reduction of the salary of tenured faculty without cause or exigency constitutes violation of their tenure rights.
Peer Institutions and Methodology used for altering economic security formula associated with tenure.

A search was done for the methodology used by medical schools that changed to an X+Y+Z system. It is important to note that not all medical schools define tenure as having an economic security component. However, for the 9 schools for which methodology could be found, all 9 proceeded by grandfathering existing tenured faculty. That is, at those schools the tenure salary of existing faculty was considered to be their institutional salary. These schools were:

Dartmouth
Stanford University
University of Colorado
University of Maryland
University of North Carolina
University of New Mexico
University of Vermont College of Medicine
Virginia Commonwealth University
Yale

Concerns for the legal implications of acting otherwise were cited by some of the above schools. In some cases, existing faculty were rewarded for voluntarily moving from the grandfathered tenure definition to the X+Y+Z model. The University of North Carolina, for example, used this model.

No example was found where changes from tenure equals institutional salary for existing faculty were found in our search.
more institutions, a teacher is called to another institution, it may be agreed in writing that the new appointment is for a probationary period of not more than four years, even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years. Notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued after the expiration of that period [see also the Association's Standards for Notice of Nonreappointment (1954)].

We note a number of devices in the medical-school setting to lengthen the probationary period, for example, by allowing adequate time for persons in clinical positions to seek board certification, time devoted to patient care rather than research. While the complexities with respect to clinical practice may make such arrangements not only useful, but also beneficial to the clinical faculty member, we see no reason to consider the extension of such a practice to researchers in the basic sciences when expectations for the award of tenure conform to those extant in connection with appointments elsewhere in the university.

5. The sources of funding for positions in academic medical schools vary perhaps more greatly than in other units of the university, with the faculty member being expected in many cases to make up a designated portion of his or her salary from patient care or research. The 1940 Statement of Principles stipulates that tenure is a means not only to academic freedom, but also to "a sufficient degree of economic security to make the profession attractive to men and women of ability." Except, as is sometimes the case, where the reward of rank and tenure is purely honorific, all tenured and tenure-track faculty should be guaranteed an assured minimum salary adequate to the maintenance of support at a level appropriate to faculty members in the basic sciences, and not merely a token stipend, on a formula to be determined by the administration and board of trustees after consultation with a representative body of the faculty. The unilateral administrative abrogation of a portion of that salary, absent a prior understanding as to the extent of its guarantee, may reasonably be interpreted not as an exercise of fiduciary responsibility but as an attack on the principle of tenure. While the same minimum may not apply in the case of non-tenure-track faculty, those faculty should have a clearly understood and contractually enforceable expectation of a stipulated salary that cannot be unilaterally or arbitrarily abridged during the appointment period. Although the extent of economic security may be subject to interpretation, due process must be assured for all faculty regardless of the nature of the appointment.

6. Since medical schools, whether freestanding or part of a larger institution, demonstrably engage many of their faculty in the traditional areas of teaching and research, the participation of the faculty in governance is as essential to educational quality in the medical school context as in any other part of the university. According to the Association's 1966 Statement on Governance of Colleges and Universities,

The faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty.

The level of faculty participation, of course, may be adjusted in individual cases to take into account such considerations as the tenurable or nontenurable nature of the appointment, as well as full- or part-time status, though we suggest that a functional definition of the faculty member's role ought to be the chief determinant. We have seen no compelling argument why the faculty of such schools should exercise a more limited influence in those schools than do faculty elsewhere in higher education, especially since in an academic health center a large portion of the budget may be generated by faculty in the form of clinical income as well as external grants. Key to the role of medical faculty, for the purposes of the present report, is the opportunity to define the terms and conditions of faculty employment, including such appointments as are necessary to
bility of teaching facilities to match the innovative changes in the curriculum and expressed hope that these important issues can be addressed in the future.

II. Dean Scotch addressed the following issues:

a. **Budget.** There will be a budget reduction of about 18-20 million dollars. This reduction will be distributed roughly as follows, 2.5 million from the school budget, 11-12 million from the Tisch Hospital and the rest from Central Administration. The detailed budget will be discussed with the Budget and Planning Committee. In addition, it is anticipated that there will be a reduction in the affiliation budget from Bellevue Hospital. He stated that each medical school department was asked to prepare a budget with a 10% reduction. He also stated that there will be no tuition increase for students but that fees will increase by 3%.

b. The discussion between NYU Medical Center and Mount Sinai Medical Center and North Shore Hospital are continuing but there is nothing new to report. The discussions are focused on financial issues. However, there will be a lot of additional matters which need to be addressed.

III. **Early Retirement.** Dr. Scotch confirmed that in the School of Medicine a number of tenured faculty had negotiated early retirement "buy out" and relinquished their tenure. The University has used this method of early retirement for a number of years. Faculty members who desire early retirement see Dean Scotch and negotiate a financial agreement for relinquishing their tenure. Since tenure is granted by the University the negotiated contract is signed by the faculty member and the University which is basically relinquishing tenure for an agreed upon sum of money. In addition, there is a lot of leeway in dealing with issues which may not show up in the contract. The additional terms are worked out in a letter of agreement signed between the Medical Center and the faculty member and include title, activities, office space, etc. In addition, the University has recently changed its policy and now allows faculty to retire at age 60, draw income from their annuities and can retire from their tenured position and be appointed on a part-time basis with pay.