



**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

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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".<sup>1</sup>

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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<sup>1</sup> 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.