

NYUFSC

Faculty Senators Council

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November 5, 2012

MEMORANDUM

TO: President John Sexton
Provost David McLaughlin

FROM: Faculty Senators Council

RE: Shared Governance

Please see the attached memo regarding Shared Governance.

CC: Bonnie Brier, General Counsel
Carol Morrow, Chief of Staff to the Provost
Diane Yu, Chief of Staff and Deputy to the President
Ted Magder, FSC Chairperson
Marie Monaco, FSC Vice Chairperson
Mary Ann Jones, FSC Secretary
Christine Harrington, FSC Governance Committee Chair
Warren Jelinek, FSC Governance Committee Member

Date: October 29, 2012

To:¹ John Sexton, NYU President
David McLaughlin, NYU Provost

From: The Faculty Senators Council

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 – by which the development of university policies reflect a collaboration between the Board of Trustees, the Administration, and the Faculty – has the advantage of providing access to a wide range of expertise and opinions during the decision-making and implementation processes. Unfortunately, in recent years shared governance 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 goal 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

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.

to generate a specified level of extramural funding determined by the administration of the school. 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 the 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>). The planning and development of GNU – with the Abu Dhabi "portal campus" and 10 international study centers--- was not formulated in conjunction with or approved 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 marks the first time in the University's history that faculty oppose 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 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>).

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>). 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.

Consequences of Shared Governance Failure

Recent experience suggests that neglect of shared governance principles can result in unnecessary turmoil. This past June, for example, the University of Virginia faculty passed a resolution of “no confidence” in the Rector and the Board of Visitors to protest the Board’s unilateral firing of the university president, Teresa Sullivan. 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)². 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 valuable time and resources of talented professionals and leave a trail of division and acrimony on campus.

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.

² McKinniss, S. (2008). *Understanding no-confidence votes against academic presidents*. Unpublished MA thesis, The Ohio State University, Columbus, OH.

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* (1980) (<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 look forward to hearing back from you within a reasonable period of time.

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.