Meeting
Regular meeting of the full senate, 3:15 p.m., Kendall Cram Room, Lavin-Bernick Center.

Presiding: The chair, President Cowen.

Attendance
Ex Officio: Cowen (pres./chair), Long (vice chair), Bernstein (provost), Y. Jones (COO), Koski (proxy for Cullen, pres. ASB), Barrera (chair, SAC), Mackin (sec), Wiese (parl)
Deans: DeNisi (ABF), Query (Libraries), MacLaren (NTC), Schwartz (Arch.), Marksbury (SCS), Ponoroff (Law), Haber (SLA)
A. B. Freeman School of Business: Sujan, Page, Smith (proxy for McFarland)
Newcomb-Tulane College: Kalka
Architecture: V. Jones
Continuing Studies: Green, McLennan
Law: Davies, Overby
Liberal Arts: Horowitz, Bidima, Cole, Rothenberg, Langston (proxy for Maveety)
Medicine: Mushatt, Doucet, S. Landry, DeSalvo
Public Health and Tropical Medicine: Hutchinson, Webber (also proxy for Rose)
Science and Engineering: Schmehl, Wietfeld, Walker
Social Work: Pearlmutter
Student Senators: Walker, Pillert, Couper (proxy for Kelley), Pond (proxy for Beyerstedt)
Staff Senators: Earles
Senators at Large: Robins, Hoeffel, Parker, Langston, Desai, Carroll, Purrington
Invited Guests: Levy (assoc. sr. vp research), Dozier (vp, development), Barron (CIO), Johnson (gen. counsel), Hogg and Mitchell (assoc prov)
Absent Senators: Sachs, Lorino, Buekens, Altiero, Marks, Bernhard, Nowicki, Balée, Bunnell, Tasker, Lewis

Introduction of New Senators and Guests
The following new senators were introduced by President Cowen: Victor Jones (Architecture), Brooke Overby (Law), and Morris Kalka (Newcomb-Tulane College).

Minutes
The minutes of the October 6 meeting were approved without change.

Elections
Committee on Committees
Bruce Bunnell was elected to the Committee on Committees as the representative of the School of Medicine.

President’s Report
President Cowen said he would discuss two topics: the recent sexual assaults and the state of the national economy.

The president noted that he had sent the entire campus a Tulane Talk discussing the sexual assault incidents that occurred in the vicinity of the campus over the previous several weeks. His report to the senate was a follow-up to that message. He discussed the additional precautions the university was taking.
First, the Tulane University Police Department had for some time been patrolling a large area around campus from State Street to Carollton Avenue and Claiborne Avenue to St. Charles Avenue. TUPD was now increasing the number of patrols in the immediate area of the campus, especially from Thursday through Sunday between 8:00 p.m. and 4:00 a.m.

Second, the university had ordered 19 cameras to be installed around Broadway and Freret streets. Eight of them had already been installed by the time of the senate meeting. Those cameras worked and were being monitored. In addition to the 11 cameras on order, the administration was considering ordering six more, thus adding another 17 cameras to those already in service.

Third, several senior administrators had walked about at night and checked the lighting on campus. They found some areas that were dark. The administration would work on improving those areas, but changes to lighting required coordination with the neighborhood. The university could not simply put up a lamp post. Also, President Cowen said, some brush around the campus periphery would be cut to make the area more open and visible.

Fourth, the administration planned to change the language of its crime alerts to make them more vivid and to include as much information as was legally allowed. Some students had been treating the alerts as routine messages and deleting them. Safety tips had also been posted around campus.

Fifth, the president said he had met with the leadership of the New Orleans Police Department to better coordinate efforts and communication between the university and NOPD.

President Cowen said he believed three assaults had occurred. The alleged perpetrator of the third assault was in jail and would not be released on bond. He was identified by witnesses in the third case. Police believe he could also be responsible for first case. The police knew nothing official about the second assault. The victim had not filed a report with TUPD or NOPD. He said all supposed information about that assault was hearsay and therefore was not actionable.

President Cowen said that when an assault occurs, the university's first concern is the privacy of the individual. The university respects the desires of the victim, and the victim is not required to report an attack.

The president emphasized that the administration took the threats to student safety seriously. He viewed it as the most important concern on campus.

Asked where the security cameras were placed, President Cowen said he was not sure that information should be public, but he said he would check with the Tulane Police Department.

Senator Purrington requested that additional lighting be designed to direct light downward not upward. President Cowen agreed to take that concern along with the concerns of the neighborhood into account. Although lighting changes could take longer, the administration hoped to have all cameras installed and operating by Thanksgiving.

Senator Walker asked whether the cameras would be used to observe underage students possessing an alcoholic drink. President Cowen replied that it was not the administration's intent to harass students but to make the campus safer. However, he pointed out, additional patrols and cameras could also result in more enforcement of all the laws.

Senator Sujan expressed his concern as a parent. He said his daughter had asked about the best path across campus at night. He wondered whether the administration could provide information on best routes.

The president said that the most important advice was to avoid walking alone late at night. He said some students walk alone at 2 a.m., talking on a cell phone. As many times as the administration had advised students of the danger of walking alone, recent checks had shown that some students continue to ignore the advice. He said he would check on the possibility of recommending safer routes across campus.

Asked whether he was concerned about the campus downtown as well, President Cowen replied that he was concerned. He said the administration would repeat the safety review
downtown. The downtown campus had a smaller geography but some unique issues.

President Cowen then turned to the issue of the national economy and its effects on Tulane. He had published a Tulane Talk on the issue and he invited questions from the senate on the economy and Tulane.

Senator Horowitz asked when the administration would move to a decentralized model of budgeting. The president replied that the model would change when the university eliminated its operating losses. He was still hoping for 2011 or 2012. He said the current system was a hybrid system in which schools could earn incentives through their performance.

Senator Kalka asked the president to clarify his somewhat vague statements in his message about what expenses would be put on hold. President Cowen said that if Senator Kalka was referring to the president’s use of the phrase “modulating hiring” in his message, that phrase had been carefully chosen to indicate flexibility. The administration intended to be flexible in deciding whether to slow down or continue at same pace of hiring. He said the administration would have a better feel for what needed to be done in 30 to 60 days, or the end of the calendar year.

Professor Smith asked if the problems with the national financial system were having an effect on student loans. The president said that he had raised that issue with Registrar Retif and found that students were not yet having a problem getting loans, but they were suffering some delays in getting approvals. The administration was working case by case with the affected students to accommodate the delays. He said the administration was also sensitive to the issue of need-based aid and was looking at the possibility of an increase in financial aid next year.

Senator Sujan said that a bad economy can present opportunities and asked whether the administration was considering any initiatives. President Cowen said he would love to hear ideas about taking advantage of the current situation. He encouraged members of the faculty to discuss ideas within their schools. He pointed out that Tulane’s endowment has been affected but his major concern was about a long-term downturn. Tulane relied on the endowment for 5 percent of its budget. Some other schools were much more dependent on endowments. Tulane also had the advantage of having maintained liquidity instead of paying down low-interest loans the previous year. He said liquidity was valuable in the current financial situation.

A student senator asked how the freeze on capital projects would affect the need for new residence halls. President Cowen said the university had been planning to start on a new residence hall next year, but would not start without the funds. He said that residential housing remained one of administration's highest priorities, but this was a difficult time for fund-raising.

Unfinished Business
Committee on Research

Laura Levy, the associate senior vice president for research and chair of the Committee on Research, presented the committee’s proposal to change Part III, Section H of the Faculty Handbook in three ways:

1. To remove specific details of government regulations, which frequently change.
2. To remove references to the senior vice president for health sciences to reflect the reorganization of the university.
3. To change the term “Fraud in Research” to “Research Misconduct” in the title and throughout the section because not all misconduct amounts to fraud.

The committee’s proposed changes to the Handbook had been given a first reading at the October senate meeting and had been distributed in advance of this meeting in written form.

Dean Ponoroff asked whether the intention of the terminology change was to broaden the scope of coverage of the section. Vice President Levy said that it was not; the intent was simply to be consistent with federal rules.

Senator Carroll remained concerned about the broadness of the term “misconduct.” Vice President Levy pointed out that the section
referred to the federal definition of “misconduct.” President Cowen added that the term was also defined, with examples, in the section.

The proposed change to the Handbook was then approved unanimously by a vote of 42 in favor and zero opposed.

Committee on Faculty Tenure, Freedom and Responsibility

Senator Langston, chair of FTFR, presented the second reading of two motions to amend the Faculty Handbook. These motions had been read at the October meeting. The first motion was to replace the current wording in Article V, Section 2, of the Handbook with the Interim Principles and Procedures on Financial Exigency that had been previously approved by the senate.

Before discussing the main motion, Senator Langston proposed an amendment to the motion that would add a sentence at the end of the second paragraph that read as follows: “The Board of Tulane University, in consultation with the president and the Faculty Committee on Financial Exigency, may alter the deadlines for various actions set forth below.” He said that the amendment recognized that the board has ultimate fiduciary responsibility for the university.

Senator Carroll said she understood the intent of the amendment but thought that some minimum period of time should be stated. She suggested that such important decisions could not be made reasonably in less than 15 days or, in the worst case, seven days.

Senator Langston said that, even with the amendment, the proposed procedures would be a significant improvement over the current Handbook. After Hurricane Katrina, some faculty members were not pleased that the President’s Faculty Advisory Committee was used as a stand-in for the University Senate. He recognized Senator Carroll’s concern and acknowledged the possibility that the board could act in an arbitrary and capricious manner. But, he added, if the board chose to act that way, nothing in the Handbook procedures could prevent it. He believed that some level of trust in the board’s sense of responsibility was necessary.

Secretary Mackin suggested that putting in a minimum number of days might work against faculty involvement. The board could decide that seven days was too much delay and then might bypass the proposed procedures completely.

Senator Schmehl said he understood that under the amendment the board would consult with the president and the faculty committee, but he wondered what “consultation” meant. President Cowen said that consultation would require the board to discuss and share its thinking with the president and the faculty committee. Ultimately, the board has the power and the responsibility for the decision.

Senator Langston said that he would not want to be more specific than calling for consultation, given the possible situation in which the procedures would take effect. He would not want to eliminate the possibility of using conference calls.

Senator Carroll then made a parliamentary inquiry whether the amendment was a large enough change to require the main motion to revert to a first reading. Parliamentarian Wiese said the interpretation of the degree of change was up to the chair.

Senator Langston pointed out that the need for giving the board more flexibility on deadlines had been discussed at the first reading. At that time, he had offered to consult with the president to come up with specific wording, which was the amendment he proposed. In his opinion, that discussion in October provided sufficient notice of the change proposed so that an additional reading was not required. President Cowen concurred with Senator Langston and ruled that the proposal could proceed toward a vote.

The senate then voted 38-4 in favor of the amendment.

Senator Langston proposed several minor editorial changes to make the interim procedures fit better into the Faculty Handbook, as follows:
- Delete: Title and the word "Preamble."
- Insert as new Article V, Section 2.
- Change "Section 2" to "Section 3" in point number 6 (last paragraph).
- Renumber remaining sections of Article V.
These editorial changes were accepted without objection.

The proposed change to the Faculty Handbook, as amended, was then approved by the senate 41-1.

Next, Senator Langston introduced the second reading of FTFR’s motion to add a sentence to the introduction to the Faculty Handbook, which would read: “As a general guide, this Handbook does not constitute an enforceable contract under Louisiana law.” This sentence would follow the current sentence that reads: “This Handbook is intended as a general guide to the policies and operation of Tulane University.”

Senator Langston explained that the motion was a response to the board’s reply to a senate inquiry about the status of the Faculty Handbook. The board said that the Handbook was not a contract and that the faculty might not like the changes that would be necessary to make the Handbook an enforceable contract. Senator Langston said that FTFR proposed the additional sentence to provide fair warning to faculty members.

Senator Purrington agreed with warning the faculty but said the sentence should attribute that interpretation to the Board of Tulane University and not merely to Louisiana law.

President Cowen asked General Counsel Johnson whether the notion that the Handbook was not an enforceable contract had been tested in the Louisiana courts. She replied that it had been tested.

Senator Purrington said that Loyola University apparently had a faculty handbook that was an enforceable contract. So the issue was either how the handbook was written or the way that the governing body of the university interprets the document.

Senator Langston said his understanding was that Loyola’s letters of appointment referenced their faculty handbook, thus incorporating it into the contract.

President Cowen cautioned that Tulane University had not conducted an analysis of Loyola University’s procedures. But even if the claims were true, the status of their handbook did not prevent Loyola from laying off tenured faculty after Hurricane Katrina.

Vice Chair Long argued against FTFR’s motion. He said the proposed sentence might be true, but that fact was not sufficient reason to enshrine it so that it could become a self-fulfilling prophecy. The Handbook is a guide to the policies of the university, and policies are not law. He did not understand why it was deemed necessary to warn the faculty that policies were not law. Furthermore, he argued, the law changes and evolves. Louisiana courts are not always bound by precedents. What a court might decide in a particular situation is never certain. He said he could imagine a case in which, depending on the circumstances, a court might hold that some statement in the Handbook, together with other relevant facts, did amount to a contractual obligation. But by adopting this change, the senate would be posting a notice to all, including the legal system, that one need not look at this document for anything that might support a legal claim.

Vice Chair Long said that the faculty would be better served if FTFR revisited Part III, Article IV, Section 2, of the Faculty Handbook, which states that a tenured faculty member’s contract may not in normal circumstances be modified without the consent of the faculty member. A careful explication of that section might provide an answer to Senator McFarland’s question at the October senate meeting, when he asked whether tenured faculty have more protection than untenured faculty. FTFR could contribute more by explaining what the practice and policies are instead of simply saying that policies are not the same as law.

Senator Carroll said that Louisiana courts have reinstated Loyola faculty members based on their faculty handbook. Currently, she said, several court cases are testing the firing of faculty members at Loyola after Hurricane Katrina. Responding to Vice Chair Long, she said many of her colleagues were not aware of the difference between policies and law. The proposed sentence would be useful as a warning to present and future colleagues.

President Cowen clarified the administration’s
position on the motion. He said the administration had not asked for this change. The proposal was solely from FTFR without any input from the administration.

Senator Desai said he concurred with Vice Chair Long’s position; the sentence should not be included in the Handbook. His experience with the board suggested that the board would operate responsibly, and he did not believe that the board wanted to change the tenure system.

Senator Langston asked what the appropriate alternative would be if the amendment were not approved. FTFR had seen the amendment as a suitable response to the board’s interpretation of the Faculty Handbook.

Vice Chair Long said that Senator McFarland’s question about the administration’s responsibilities to the tenured faculty was the right one. Article IV of the Faculty Handbook could include more affirmative statements about tenure and an explication of Section 2.

After a brief discussion of the options for dealing with the FTFR motion, Senator Walker moved to refer the motion back to the committee. His motion was seconded.

Dean Ponoroff pointed out that if the senate were to defeat this motion, that action would not preclude FTFR from rethinking the issue and coming up with an alternative. Senator Langston responded that FTFR would be under no obligation to provide an alternative if this amendment were defeated.

President Cowen asked what the senate wished FTFR to do if the motion were to be referred back to the committee. If the purpose of FTFR’s motion was to respond to the board, that could be done with a letter instead of a change to the Faculty Handbook.

Senator Pearlmutter said that her impression of the amendment was to clarify the Handbook’s status for the faculty to provide informed consent, not to send a message to the board.

Senator Landry suggested that FTFR could provide language in the Handbook indicating where the faculty’s contract existed. For example, would the contract be in the letters of appointment?

Senator Walker said that his purpose in moving to refer the issue back to FTFR was to clarify the language of the amendment. The amendment stated what the Handbook was not. He would like a statement of what it is.

Senator Carroll responded that the language describing what the Handbook is already existed in the introduction. The Handbook is a “general guide.” Clarifying tenure seemed pointless to her because the Handbook was not a contract.

The motion to refer the amendment back to the committee was defeated by a large majority.

After some brief discussion, the FTFR motion to amend the introduction to the Faculty Handbook was also defeated by a large majority.

**Committee Reports**

**Committees**

The chair of the Committee on Committees, Vice Chair Long, briefly discussed his written annual report. Most of the report referred to the activities of the committee under the leadership of Senator Langston in the previous year. The committee completed its review of the senate’s committee structure and recommended changes to the bylaws that were approved by the senate. The remainder of the report addressed the repopulation of the senate committees for the current academic year. Some 40 appointments to committees had been made. He said he expected the remaining committee vacancies to be filled soon.

**New Business**

**Committee on Research**

Vice President Levy presented two committee motions requesting approval for guidelines for COR fellowships and for COR travel. The committee had unanimously recommended approval of the guidelines, which had been distributed to the senate before the meeting. The fellowship procedures governed the allocation of funds up to $10,000 for each fellowship to support research activities by the faculty. The travel procedures governed allocation of travel funds of up to $1,000 each for faculty professional development at international venues. Both sets of
guidelines would take effect in fiscal year 2010.

Secretary Mackin pointed out that the guidelines referred to a subcommittee that did not exist. Vice President Levy said a proposal to change the bylaws would be forthcoming if the guidelines were approved.

Senator Desai asked how many travel grants were distributed under the current system. Associate Provost Mitchell said that the current program gave out very few grants and the maximum amount was only $400. Vice President Levy added that under the current system, the travel grants were not awarded competitively but on a first-come-first-served basis. She said many faculty members were unaware of the grants. The committee believed the quality would be improved with a merit-based process.

Dean Ponoroff asked about the eligibility for the fellowship program. The guidelines indicated all full-time, regular, tenure-track faculty were eligible but preference would be given to faculty members in their first three years of appointment and to more advanced faculty initiating a new area of research. He asked whether the term “tenure-track” included tenured faculty applying in the advanced category. Vice President Levy said the term “tenure-track” applied to both probationary regular faculty and tenured regular faculty.

The senate unanimously approved both sets of guidelines by voice vote.

With no further business, the meeting was adjourned at 4:35 p.m.

Respectfully submitted,
Jim Mackin, Secretary

Secretary’s Note: All written reports mentioned in the minutes, together with the full text of approved Handbook revisions and other policy changes, will be available on the senate Web site, http://www.tulane.edu/~usenate/.