

# Minutes of the Regular Meeting of the Academic Council

Thursday, January 22, 2004

3:45-5:05 PM

139 Social Sciences

Calling the meeting to order Prof. Nancy Allen (CliSci) as Council Chair attended first to the minutes of November 20 and of December 4, 2003, pre-circulated to the Council. The November 20 minutes were approved by voice vote, without dissent, after opportunity for discussion and correction. She then recognized Faculty Secretary **Donald Fluke** (BIO, Prof. Emeritus) for one correction to the December 4 minutes. On page 5 "American House on Education" should read "American Council on Education." This correction accepted, and also after opportunity of further discussion, these minutes were also approved by voice vote, without dissent. She thanked Don for these sets of back to back minutes, a challenge to pull together, particularly when there are sirens going off in the background. Don's absence from the December 4 meeting with a menacing cold had also, he pointed out, increased the liability toward such homonymic puzzles as "House" vs. "Council."

## ANNOUNCEMENTS

Among several matters of announcement Nancy Allen first noted that Duke has named Prof. Richard Brodhead of Yale University as Duke's 9\* President. Prof. Brodhead, currently the Dean of Yale College and the A. Bartlett Giamatti Professor of English and American studies at Yale, will join us at our March 18 meeting, she was happy to report, so all will have a chance to hear him and meet him. She thanked her colleagues who had served on the Presidential Search Committee, particularly Prof. Sara Beale (Law) who served as vice-chair, with Trustee Robert Steel having served as chair. The "Steel and Beale" team, as we got to know them, did a terrific job getting the rest of us in line, she could report.

We will also welcome Prof. George McLendon as our new Dean of Arts & Sciences. He is the current Russell Wellman Moore Professor of Chemistry and Chair of the Chemistry department at Princeton. He will also join the Duke faculty July 1, but like Prof. Brodhead will be coming to campus in a variety of transition settings and she hoped to have the chance of introducing him to the Council at a meeting in the near future. She wished to thank the Search Committee for the Dean of Arts & Sciences as well for having done a terrific job. Since Provost Peter Lange chanced just then to be entering, she remarked that the Provost would agree with her, "even though he may not know what I'm talking about." (Prov. Lange: "I always agree with you." Prof. **Allen**: "Is that true, Peter?")

Nancy **Allen** next announced that a committee has been formed for review of Prof. Katharine Bartlett as Dean of the Law School. The faculty members serving on that committee are: Prof.

Richard Burton (Fuqua), who will serve as Chair, Prof. James (Jay) Hamilton (PPS), Prof. Kerry Haynie (PS), Prof. Laurens Howie (ME&MS), and Prof. Michele Longino (RS, ECAC ). The committee will begin its work soon. Those who are faculty in the School of Law or who are touched by that school may be asked for input.

Another announcement is that ECAC is in the process of creating a new committee "(as if we need more)," the Academic Council Student Affairs Committee, or ACSAC. The primary responsibilities of this committee will be to provide advice and guidance to the Vice President for Student Affairs and to report to ECAC on issues pertaining to student affairs that warrant faculty attention. The committee will serve to provide faculty opinion to the administration during the planning stages of important Student Affairs initiatives and in significant cases where an administrative response to student requests or activities is required. ECAC is currently working on the membership for this committee and will report back to the Council when the committee is appointed. The two faculty representatives who serve on the Board of Trustees Student Affairs Committee will serve also on ACSAC.

The Council has probably read of the wonderful announcement made by UNC Chancellor James Moeser that UNC will name a new visiting professorship for President Keohane. Supported by a \$3M fund, the Nannerl O. Keohane Distinguished Visiting Professorship at UNC Chapel Hill and Duke, as it is formally known, will provide for a scholar to spend six months at each institution during a year. We are very pleased by and proud of that professorship.

We also want to congratulate President Keohane and Peter and Virginia Nicholas and all of those who have worked incredibly hard to achieve the amazing \$2.36 (or thereabouts) billion dollar goal in the Campaign for Duke. This is indeed a major achievement.

One other announcement that Nancy Allen had just seen posted on the board outside Faculty Commons is the announcement of the 3<sup>rd</sup> Annual *Duke Magazine* Campus Forum entitled "Higher Education, Emboldened or Embattled?" President Keohane and Cornell President Emeritus Frank Rhodes will be speaking in conversation on Tuesday, February 3, at 4:00 in this room, with a reception to follow. Look for more word about that event.

## NOMINATION OF CANDIDATES FOR EARNED DEGREES

The Council then took up the nomination of candidates for degrees earned during the fall term. Following usual custom a representative of each school or college was recognized to offer the names of students to be approved in behalf of the faculty and recommended to the Trustees, their names being recorded on lists delivered to the Faculty Secretary. The numbers for each degree were as follows:

Trinity College of Arts and Sciences Dean		
Robert H. Thompson, Jr.		
Bachelor of Arts		64
Bachelor of Science		23
Pratt School of Engineering		
Dean Kristina M. Johnson		
Bachelor of Science in Engineering		13
Master of Engineering Management		7
School of Nursing		
Dean Mary T. Champagne		
Bachelor of Science in Nursing		38
Master of Science in Nursing		6
Nicholas School of the Environment and Earth Sciences		
Dean William H. Schlesinger		
Master of Environmental Management		6
Fuqua School of Business		
Dean Douglas T. Breedon		
Master of Business Administration		95
Divinity School		
Dean L. Gregory Jones		
Master of Divinity		11
Master of Theological Studies		3
Master of Theology		1
School of Law		
Dean Katharine T. Bartlett		
Juris Doctor		3
Master of Laws		2
School of Medicine		
Dean R. Sanders Williams		
Master of Health Sciences in Clinical Research		9
Doctor of Medicine		13

The Graduate School	
Dean Lewis M. Siegel	
Master of Arts	48
Master of Arts in Teaching	1
Master of Science	29
Master of Public Policy	3
Doctor of Philosophy	81
TOTAL	444

The lists of names having been received, Prof. **Paul** Haagen (LAW, ECAC) made two customary motions, that the candidates for the various degrees be approved in behalf of the Faculty of Duke University and forwarded to the Board of Trustees for final approval, and that the Provost be empowered in the name of the Faculty to make any last minute adjustments to the lists of candidates, so that no person fully qualified should fail to receive a diploma, nor should any be granted to a person who is not fully qualified. The two motions were approved by voice vote, without dissent to either.

## INFORMATION TECHNOLOGY AT DUKE

Council Chair **Nancy Allen** next recognized VP Tracy Futhey, Vice President for Information Technology, for an update on IT at Duke. In acknowledging Prof. Robert Wolpert (ISDS), Chair of IT AC, the Information Technology Advisory Committee, who was in attendance, she thanked the committee for their work, as she was sure VP Futhey would agree.

VP **Tracy** Futhey expressed her appreciation for the opportunity, and noted having met with ECAC a month or two before. There had been a good discussion and it was clear from the comments at that time that there were things that this Council might like to hear and talk about as well. She proposed to talk for about ten minutes, using overhead projected material as background, and then have some time for some discussion. Recognizing that the Council had in hand her pre-circulated report, she would start with a short recap, a quick roadmap of where we've been in the last decade or so. The Office of Information Technology (OIT) that she heads did not exist 10 years ago. At that time there was a great deal of concern about the lack of cohesive effort. There were many great things going on in schools and departments, but no coordinating entities and a lot of disconnected effort. When OIT was formed it provided more focus on a few aspects of IT, especially in establishing a campus-wide network, which was successful. There was also a focus on telecommunications, and a focus on administrative systems. Great progress has been made in some areas, with good progress in coordinating efforts across schools. More recently, and as a result of "Building on Excellence," our strategic plan, there has been a greater focus of attention toward how IT can support the academic and research efforts of the campus. In addition, she had focused on more than coordinating efforts, about how we can have folks collaborating more deeply on some projects.

With that as a quick roadmap she wanted to talk a little about how Duke's success in IT stems not from a strong central computing organization, nor simply a strong set of technology groups in the schools, but from the combination of both. She had described this arrangement in several job descriptions in trying to recruit people for senior IT positions at Duke. What she was typically saying is that the degree of decentralization in IT at Duke is one of our strengths, such that people have to come to the campus ready and able to help establish the level of collaboration that can take the decentralized activities and re-draw them as appropriate — draw the lines together across the institution.

There are many IT providers. She oversees the OIT. There is also Duke Health Technology Solutions for those in the School of Medicine, a recent renaming, with a new chief information officer for Duke Health Technology Solutions and for the Health System also. A host of other central functions that may be referenced here or there aren't necessarily operations under OIT, but were functions she sought to keep in collaboration and to engage in discussion from her role of chief information officer. Those include such groups as the CIT (Center for Instructional Technology) which operates out of the Library, the CSEM (Center for Computational Science, Engineering and Medicine) which is headed out of the Provost's office, as well as significant effort in the administrative units. She pointed to the school and department focus of all these efforts in the University, including the School of Medicine but not the Health System. Her operation represents probably 25 to 30% of the people who do IT. While OIT is the largest organization on campus that focuses on IT, it's only a small part of what is happening with IT on campus.

In terms of services, much of what OIT does involves underlying infrastructure, the networks and telecommunication services to the campus as well the common systems for mail and printing. In between is a layer of what she considers functional components, the administrative systems, the soft systems that students register through, and the financial systems for the campus. Another area of such functional components includes the academic and research pieces that we operate, support for faculty in cluster computing. There is a top layer in OIT's effort that includes a help desk that provides a great deal of assistance to people on campus, and which all our analysis shows has become a much stronger group than it was several years ago.

Moving on from specific services she wanted to address a couple of the uses in particular in the academic area. We have as part of the "Building on Excellence" project an effort called CITIE (Computer and Information Technology Intensive Environment) that has been very successful. It was originally intended as a program that would require students to own laptop computers, bringing their laptops to class for classwork. We've made some tuning adjustments on that expectation, but all in all CITIE has brought technology much more into the forefront of students' lives as they think about what they do here at Duke. One quick example would be the promotion of laptops in preference to desktops as platforms for students. She showed a graph distinguishing the pre-CITIE time from the post-CITIE time in terms of the total number of laptops that students purchased from the Computer Store during the early years, and the number of desktops. The trend has been overwhelmingly toward laptops. That's no surprise as we note the prevalence of

laptops around us, but there was a market jump when we started talking about the CITIE project guaranteeing students who own laptops better and faster turnaround time, and loaners if their laptop breaks down. It has been a highly successful programs. About 90% of the student-purchased computers in the last year have been wireless laptops. She showed a graph of the number of wireless connections on campus over a 24-hour period. As might be expected there is a busy period in the middle of the day, with 550 simultaneous connections in the October example. In terms of unique [different?] people connecting in a day it's a couple of thousand. A large number are connected at a single given time on campus, showing that the CITIE initiative and the idea of having students understand that technology is part of their everyday life is taking hold of students.

The other quick example is a project you might have read about in *The News and Observer* just last week. Called "Frosh Life," it's a project we worked on collaboratively with Student Affairs to get students to understand that technology is not just something in the classroom, but it's also for everyday things. Frosh Life brings together students in the first-year residence halls and basically gives them video cameras and computers and whatever equipment they need for a 2-week period to produce a video that depicts life as a student here at Duke. We have had really interesting submissions. She projected some pictures from six of these last year. We'll be doing our Frosh Life premiere, a big red-carpet event — not quite the kind covered on the entertainment channel, but still a big event. Provost Lange has been one of the judges and has graciously agreed to do so again this year. It's really interesting to see how wild these students go, in a creative sense. We just give them the tools and a little in the way of guidelines and they come up with some really great ideas and special effects.

With three of her intended ten minutes left she turned to IT AC, the Information Technology Advisory Council, and what it does. One part of its mission is to serve as her chief advisory group. It consists of a long-standing group of individuals with a commitment to provide advice and to tackle what are sometimes difficult topics, as well as keeping the campus engaged with and informed about what we're doing with IT. A unique thing about IT AC in her experience is that it is not simply a faculty group, or student group, or advisory group from any one [constituency]. It is across all of the constituencies of the campus, with faculty and students and technical support staff all talking together about what ideas will or won't work and why or why not, and sharing those perspectives. Several ITAC members were present and she invited them to "just stand or give a wave," recognizing Greg McCarthy (RAD), John Board (E&CE), Robert Wolpert (ISDS), and Pat Halpin (NSEES). [Others include Linda Goodwin (NUR), Craig Henriquez (BME), Scott Lindroth (MUS), John York (P&CB), Jeffrey Taekman (Anesth.), and Claire Tufts (RS).] There are other faculty who participate in ITAC, but these are the ones who are explicitly appointed by ECAC. Among two or three things they've done this past year, one example is high performance and cluster computing. ITAC has done a lot of work wrestling with the fact of the North Carolina Super Computing Center having gone out of business, closing its doors. ITAC was instrumental in helping us not only identify what we might do in terms of providing cluster computing support, but also in figuring out how we could offer those things — what the models would look like for those clusters. We started this year having technology updates from the

schools, asking both the IT AC representative and another faculty member from the school to give us an update on what IT activity is going on in that school.

Another example involves bandwidth utilization in the residence halls. Some will no doubt have heard about peer-to-peer [file sharing], lately much in the news. An issue we've contended with is peer-to-peer in general, and use of peer-to-peer software can contribute to the bandwidth use in the residence halls. Whether generated by peer-to-peer activity or otherwise, the residence halls use a significant amount of bandwidth. Through IT AC we've done a lot of work to come up with new policies and guidelines for handling network bandwidth. The result has been that students are much happier and much more productive and we no longer have 10% of the students in the dorms using 90% of the available bandwidth.

A further and final example we're working on right now in IT AC is to come up with some policy recommendations to take to the Provost and others about how we look at the web. The web has been a great resource. At the same time there are often questions about how many clicks down from the front page should be University pages vs. pages of whatever anyone wants to put there. How many are controlled, that is, vs. being available for all users. A variety of other questions also come up about the web and how it should be used. That may in fact be a topic that we need to discuss further with this Council or with ECAC.

With a final overhead she indicated two issues she was thinking about right now as big issues. Money is always a big issue, but lots of other things are, too. The biggest worry now has to do with security. Five years ago if she misconfigured her system, for example, or had some data in her computer that didn't quite have things right it was unlikely that that was going to result in a ruinous situation. But these days security has become much more of a problem for us to pay attention to. Any computer that's compromised can potentially have disastrous results for the entire network, for all of us. We have become much more aware and much more involved in talking with system administrators in schools and departments about how they configure their systems, and how they should be configuring them, to make sure that we don't unintentionally cause problems for the entire campus.

And last, another such big issue that's being faced also involves peer-to-peer file sharing. Institutionally, every university is facing the situation of having students not quite understand historically the degree to which they were at risk for law suits, and other [hazards] for violations of intellectual property related to music and talking files. We try to provide some education on that, but there is continuing discussion more broadly about how much of that education is the job of the institution. It may be that legislators will decide that universities must take certain actions relative to file sharing. Those are all things that may be down the road, and that again may bear more discussion with [ITAC and this Council]. With that, she invited questions, also inviting her colleagues on ITAC to chime in and help.

## DISCUSSION OF INFORMATION TECHNOLOGY AT DUKE

Prof. **Robert Wolpert** (ISDS) offered a comment that there is a strong faculty voice and faculty leadership in IT AC, and they look to you [as faculty] for any expressions of concerns, any questions, and any comments. "You have a voice there. If you send e-mail to us with your concerns we'll address them as quickly as possible and get back to you. You do have a voice and can use it." **Nancy Allen** commented that Wolpert had chaired IT AC for a number of years, and has a long perspective on the changes that are taking place. **Wolpert** added that it has been exciting to watch while Duke has grown from a place where inability to support research and scholarship because of computing inadequacies left us completely left behind in the dust to now, when we're on the forefront of having the best-run IT facility. It's very exciting.

Prof. **Barbara Shaw** (CHM) remarked that it's obvious that VP Futhey has a really complicated position here, one that deals with so many problems, and there has been great improvement. One of the considerations she had as a chemist is that her department is not receiving the necessary attention needed from computer support. Over the last six months there has been just one person serving 7,000 undergraduate students, 20 faculty, and 200-300 graduate student and post-docs, and he is the only person who is allowed to install things - install programs - on computers. With 15-20 computers in her laboratory she was concerned about this level of support. For example, we're not getting adequate support in relation to our overhead funds. A third or more of her \$800,000 [in annual funding] goes to University overhead. But is any of that overhead going to support specific research in Arts & Sciences programs? There's a distinction from some of the big programs that OIT supports. By her perception, none of the people on your advisory panel [ITAC] are experimental scientists.

VP **Futhey** responded that for many providers there is a complication in knowing who provides which services. Much of the local day to day support within academic units is actually not within the purview of OIT. In some ways that is owing to a history of people needing support long before the central group was formed. That needed support grew up and cropped up in the individual units. By and large, the local support you see and know of every day would come through your school, or your department, or in another way. OIT provides sort of the generalized support, so we have a help desk, but we do not have people who do installation of machines in schools and departments. She noticed that Prov. Lange wanted to add something. Prov. **Peter Lange** had two things to say. First of all, the issues Prof. Shaw raises are responsibilities of Arts & Sciences Computing. With respect to the overhead, the Dean of her school sees the lion's share, very largely, of the overhead from grants in Arts & Sciences, and [that overhead] is based in Arts & Sciences administration. It feeds the general fund of the Dean, which he uses, among other things, to pay for Arts & Sciences Computing, the operation which services your department. **Shaw** wondered if that was considered adequate. **Lange** said that that's an issue between your department and your Dean. **Nancy Allen** noted, with some amusement of the Council, that the new Dean of Arts & Science is a chemist, to which **Lange** added "That means you'll get even less than you're getting."



Prof. **Michele Longino** noted a mention of the Patriot Act in one of the overheads, which wasn't then discussed. Could VP Futhey say a few words about how that affects the situation. **Futhey** answered that, well, she didn't know [in general] but could say a few words about how it affects her, and "then the FBI might take me away, the way the Patriot Act is looking." She could say that Kate Hendricks from the University Counsel's Office had met with IT AC, with a good discussion. University Librarian David Ferriero was very engaged in this matter and had shared his concerns about how the Patriot Act impacts IT and also impacts library records. The principal outcome of that discussion was clarifying processes that people should use as system administrators in departments if they should get contacts from people relative to the Digital Millennium Copyright Act or to the Patriot Act. We want to make sure that these individuals understand that if someone from outside contacts them, saying they need these records and this information about these computers on your network, that they knew what the process is. They need to know where to go, how to deal with that from an institutional level, rather than reacting as perhaps a junior system administrator feeling somewhat intimidated by a very official and [legalistic] request. She asked the Librarian David Ferriero if he might have further clarification or additions in reference to the Patriot Act.

**David Ferriero** responded, for the Council, that as of late December [as corrected in an e-mail exchange] the proposed second piece of the Patriot Act was under consideration, having even more restrictions than the first part. It would put teeth into what Tracy Futhey was saying at the beginning. There is language in the original Patriot Act that says that when we are approached, as she has described, we are not allowed to let anyone know we have been approached, for access to records or access to who's been using which web-sites. The proposed addition would add a penalty. If the individual who is being observed is convicted, the person who spills their guts [tells anyone about being contacted incidental to the conviction] now faces ten years in jail. Prof. **Claudia Koonz** (HIS) asked whether Duke lawyers would support such a person. What's the institutional position on that, when the individual just says "all right, here are my records to look at," without contacting anyone at Duke? Prov. **Peter Lange** then entered the discussion, saying that his understanding of the issue is that if the Librarian, say, is approached by the FBI seeking the records of a particular person, the Librarian is not permitted to inform the person that he has been so approached. So, is your question then whether the Librarian, if he did tell the person, would be supported by the institution [in doing so]? Is that your question? **Koonz** said no, she was asking whether Duke would defend somebody who, without telling the person being investigated, refused to give over the records. Lange: "We haven't had the discussion so I can't answer that question".

At this point Pres. **Nannerl Keohane** entered the discussion, seeing that as a very important question. It was not one that we've had to face, nor that she was frankly even fully aware of, [including] what our Librarian has just said. It is clearly something that we do need to look at. Our general answer to that question is that if people are following their responsibility, and are then subject to some kind of arrest or subpoena or whatever in the line of duty, the University Counsel's Office does support them. But she couldn't say that in every instance there would be such support, although [in general] that is certainly our policy. "We need to learn a lot more

about what is involved here. I'm glad you all brought it up and we'll put it on the agenda right away."

**Tracy Futhey** said that one of the briefings for the new President that several of us have been asked to produce includes a question about what issues may be coming before him over the next six months, and that she has the matter of this balance between personal privacy and personal rights and liberties, and government requests — some of them through legal mechanisms. That's a difficult situation.

**Blanche Capel** (CBI) said she had a more mundane question. When will wireless connection be possible throughout the whole Medical Center? In the Medical Center it's still spotty. **Futhey** asked if she was talking about the Davison Building, and **Capel** said that she was in the Nanaline Duke building. **Futhey** said that much of the Health System and the School of Medicine are covered [by wireless]. In fact, it was her impression that they were completely covered, so she would check on that. Although that network coverage is provided through Duke Health Technologies Solutions, she would work with them to figure out where there needs to be some additional coverage. There being no further questions she thanked the Council, which responded with applause.

## **CLASSIFIED RESEARCH POLICY**

Thanking VP Futhey and also Prof. Wolpert and the rest of the team from IT AC **Nancy Allen** moved on to two further matters, as she said, of governmental intrusions into university life. VProv. for Research **James Siedow** was recognized for presentation of two issues that he has been discussing with ECAC over the past few months: changes in the Classified Research Policy, and standardizing language in the Conflict of Interest Disclosure Forms. VProv. **James Siedow** agreed with the remark about governmental intrusions. The first issue he proposed to discuss has been driven a lot by the post 9/11 world as a matter of fact. Of the two matters he was bringing before the Council one was a voting item, and the other one is more for information. But he would welcome any input the Council might have about either. Taking up first our Research Policy as it has to do with classified and restricted research, after 9/11 many would be aware that a number of institutions (MIT probably most publically) undertook a look-see at their clauses to see whether or not they did the kind of restricted research they may or may not do. Here at Duke, the senior officers at one of their meetings basically charged the Research Policy Committee, which he as VProv chairs, with reviewing our Classified Research Policy to see if there might be any sense of wanting to change it in any way. He could say that in the sense of changing the policy to allow restricted research, that was something the Committee had no interest in whatsoever. Basically, on philosophical grounds alone, not doing classified or restricted research was something that Duke University should maintain. There are a number of legal reasons why it would be very difficult for us to do [such research] without major changes as well. But quite beyond these reasons, the Committee was in firm support of maintaining a policy of our not doing classified and restricted research.

Now rather than just leaving things as they have been, it can be noticed that we're going from a fairly terse policy to a somewhat wordier one. He could ask himself why and remind himself that there is a reason for this. It goes back, actually, to the post-9/11 business, because since 9/11 we have increasingly found contracts that our faculty have applied for that come in with restrictive clauses. It occurs not so much grants, but with contracts, of which there are a fair number within the University from Federal agencies, most notably defense-related agencies, but not totally. And if you look at the sort of narrowly prescribed Classified Research Policy [in its current form] we find that faculty will say, "well, I can't see where there is any policy against this restriction or that restriction." And yet these clauses keep coming up and so we felt we had to be more prescriptive in our policy about the various things that doing classified research can mean. One of the most important of those, independent of the Federal side, is simply that it also includes research with commercial entities, which can be just as restrictive as anything from the government. In order to address this problem we put together a revised policy that was taken to ECAC for discussion. ECAC raised a concern. Suppose you have a contract that was independent of Duke, working as a consultant to do restricted research, which is perfectly legitimate. But what happens if you use your computer for any [related] purpose whatsoever? There was a sense that we needed to make sure, maybe, that people weren't to feel like they were running bootleg booze or something if they happen to use their computer to write a letter. Again, this concern was not about a long-term activity, but something brief and small. And so, he went back to the Research Policy Committee and we all agreed to add that last sentence: "The prohibition against the use of University resources and facilities shall not preclude their occasional or incidental use in the conduct of faculty members' independent projects." We wanted to make clear that that was probably OK, and we weren't going to come in and suddenly clamp down on somebody if that happened. But the larger issue before the Council today, and which should be voted on, is basically the revision of the policy, a revision which doesn't actually again change anything [beyond clarification]. He then invited questions then on this first issue.

## DISCUSSION OF CLASSIFIED RESEARCH POLICY

**Peter Feaver** (PS): That distinction probably makes sense in the sciences and engineering but it doesn't make sense in the Social Sciences. **Siedow**: Which distinction? **Feaver**: The distinction between occasional and incidental use of University facilities. **Siedow**: In what sense? **Feaver** explained that if he were to do classified research in the Social Sciences, 95% of the classified work might be open source. What would make it classified was in linking it together to some need that the sponsor had. Sitting in his office reading the *New York Times* could be a significant portion of the research. **Siedow** thought would be considered incidental. Reading the *NYT* you're going to do anyway. **Feaver** asked what about research in the Library, reading articles. **Siedow** didn't think there [would] be a distinction there, either, philosophically. He thought he was understanding what was being asked, that if you have a laboratory and go do research there, the laboratory setting is something fairly clear. That's not just incidental, it's in the lab. But if you are being paid as a consultant on a contract that's classified, then the work you do on that contract that's basically associated with the classified aspect of the contract, then he thought that work you would have to do at home.

**Feaver** saw the argument then as that if you're going to do that research anyway, then you can do that in your office. Is that right? If he were researching about Iraq and doing that for his teaching, then he could do that in the office and effectively [be doing what he was doing anyway]. Yes, **Siedow** agreed, because you would be doing that as a part of your role as a teacher, or part of your role in just wanting to read the *NYT*. That would be normal. He didn't think [the proviso] extends into that [activity]. What he was saying is that you cannot have a contract for a project, one that would be in the 20% of time allowable for consulting, which is again legitimate, that can be classified. You can't be doing all of that work in your office if you will or using University resources. Although, again, if it's classified and open source, he wasn't sure. He thought it would be really hard to see what the classified sources would be necessarily. So he thought he did understand what was being said, but the examples given he didn't see as problematic.

Prof. **John Payne** (Fuqua) offered another example, one that might be problematic. In the Business School people often have consulting relationships with particular industries and companies. That's encouraged, in fact, in part so that the faculty become more familiar with business policies, and so forth. Those consulting relationships often will have some restrictive covenants against sharing what is learned about the company. As part of that [activity] you might actually go on the various Library data bases and access journals, and the like, as part of the project. That's a restricted deal, and would be a form of consulting, he assumed.

**Siedow** saw that as a gray area. It has been discussed in the Research Policy Committee, and there are several members here who can help out with any thoughts. There's not a clear line. You have to ask yourself as an individual, he guessed, whether this work in essence is totally what you're getting paid to do as a consultant. If it is, then you ought not be using Duke resources and facilities to be doing that work, because you should be doing that as a consultant. Again, if there is a restrictive covenant associated with that [situation] ~ it's a gray area. The difficulty is that at the end of the day it's going to be left up to the individual in some degree. It does become a lot easier call in a lab, where you simply can't do it. We have the policy out there and what we're saying is that because we don't do classified research or restricted research in any way, if you've got a contract to do that as a consultant, you should not be using Duke facilities to do that research.

Prof. **Craufurd Goodwin** (ECON) brought up a problem that used to come up fairly regularly in the Graduate School [where he was a former Dean]. A graduate student would produce a dissertation which he or she was convinced included important new ideas and would ask that it be kept under wraps until it could get into publication. The [concern] was that once it reached the public domain somebody could steal it. Having the word "unduly" in there he supposed made it fairly safe. But if the Graduate School risks conspiring to keep such a document out of the public domain for a little while, is that going to become a problem? **Siedow** thought that in that case it's the individual's own research and nobody is saying it has be published - it's their call because it's their research. **Goodwin:** Dissertations are open to public through a University microfilm process. **Siedow:** But how long is the delay? **Goodwin:** It varies according to particular cases.

**Siedow** said that restricted covenants of up to two months are certainly acceptable. **Goodwin** asked just how "unduly" is defined, then, and **Siedow** said it would be as 61 days it appears. But it's an interesting question. He hadn't been aware of this situation in the Graduate School. It's significant there that the restriction isn't being imposed from the outside, but from within by the individual who did the research. He'd go with the restriction being internal and sort of self-motivated, where he didn't see it as running afoul of this policy at all. If somebody from the outside says we'll fund you, but you can't do this or that, to him that was a different thing.

Prof. **Loren Nolte** (E&CE asked for some idea how much this matter had been vetted among Pi's (Principal Investigators) who [would be the ones mainly affected]. **Siedow**: Vetted where? **Nolte** said he was wondering about the representation on [the Research Policy Committee]. Was there PI representation, or a chance [to have that point of view considered]? **Siedow** answered that, yes, there are certainly plenty of scientists on the committee, if that's the concern. He listed the committee members offhand as Rob Clark (ME&MS), Prasad Kasibhatla (NSEES), Ann Marie Pendergast (P&CB, ECAC), Rich Burton (Fuqua), Jim Haggard (NSEES), Judy Dillon (Office of Research Support), and Renee DeGuehery as another representatives from that office, and Ross McKinney (Ped-Inf, SOM). There are Pi's on the committee, if that's the question. **Nolte** said it was, since it had been indicated earlier that there was a group of Pi's or contracts where some difficulties had arisen, motivating these changes. **Siedow** said OK, good, the motivation for the changes has really to do with a process of education. People were saying "I don't see in our policy where this clause [in a contract] is a problem," so we're simply trying to make the policy just a little bit clearer, about the kinds of things that Duke doesn't allow. It's not that we've actually changed the policy in any way, because we weren't accepting any of those [restricting clauses] even before. The Office of Research Support is extremely good about working with the individual and the funding agency, when they get a contract like this coming in the door, to try to get the language changed. In his time there have only been two that we've had to turn down, that we couldn't get funded. So in fact we work very hard with the Pi's to see that the funding gets through. And ECAC has looked at this policy [with sensitivity toward PI concerns]. So, to reiterate, we're not really changing the policy, but just trying to clarify it as it currently exists, particularly in light of more recent times.

Prof. **Barbara Shaw** (CHM) asked if departments will have opportunity to review this. **Siedow** wanted to make sure that it was clear that the current policy was not being changed in any way, shape, or form. If the Council approves [this clarified language] there is no contract that's going to fail to get through the Office of Research Support tomorrow that would have got through yesterday. We don't allow restrictive covenants to get through, basically to be allowed in contracts that are funding Duke research. The goal here was to try to clarify the kinds of things that we don't do, rather than have just one broad brush statement that we don't do classified research. With that digression, the answer to your question is "not that I know of." There aren't any plans to go by departments, but if departments said "we don't like this," well, the fallback is to stay where we are now, and it doesn't change anything. **Shaw** was still troubled, thinking there might be matters of interpretation, say, [that would change]. **Siedow** asked if she could be specific. **Shaw** [reading from the document] pondered the recasting and relocation of "results of

which cannot be published in a scholarly manner." Perhaps there's some change here. She would just like to ask that her department have the opportunity to review this, so that the chemists are aware [of what's involved]. **Siedow** wondered just what the chemists might think to do. This Academic Council in essence represents the larger faculty. **Shaw** thought that the Council might be voting too quickly after this first look at some changes, and **Siedow** said that OK, by Council rules, if people consider this a sufficiently [important change it could hold it over for further consideration]. But he would caution against sort of going out for [successive rounds of] wholesale rewriting of policies. Recognizing where we are now and where we are moving toward, "it ain't much of a move." He deferred to Council Chair Nancy Allen on the matter of delaying the Council vote.

Prov. **Peter Lange** said that if there are any implicit or implied changes, they have to do with the fact that this revised policy explicates something which is implicit in the preceding policy. That is, you are not supposed to use University resources in conducting classified research, because the University does not permit its faculty to conduct classified research. That has been a principle we've had for a long time. Going back to Peter Feaver's question, and he's using a computer which the University bought for him to do research on resources which are public except for some reason some federal agency thinks that if he puts that material together in a particular way the result could be classified. That's more or less what happens in some of this stuff. There's no recourse to any classified resources, but he's not allowed to do that research on University time. The question is that he wants to be able to do it in his office rather than at home using a computer bought under the contract for that purpose. Now that's a question. His own personal preference was if he were to write the rule in as absolutely clear a way as possible he would say, that if you're doing classified research, buy your own computer, and don't do it using University facilities. **Feaver:** You don't have a 3-year old. **Lange:** So, hire a baby sitter and put that on your contract. The underlying issue here is that we need to protect the integrity of the University's research enterprise. That's the underlying principle. It's not to go out and police in a narrow way the behavior of every faculty member. We don't have a policy now, nor will we have to have one, such that classified research police will be going around and will be saying Peter Feaver spent X amount of time [on this] and there are, say, 3 files on his hard drive that eventually ended up [doing that]. But if we believe in the integrity of the University's research enterprise in the scientific sense, and if we believe that part of that integrity is that we not lend our resources in a way that compromises that integrity, and if we believe that faculty members as part of our community adhere to those principles or they shouldn't be at Duke University, then they should go somewhere where they can do classified research.

It seemed to him that this policy [revision of language] should basically be supported, because the alternative is not just to go back to the more vague policy, but to write the rules in such a way that we essentially restrict in the most explicit form any use of any kind of University resources in the pursuit of classified research. The reason is that as an academic institution with a certain set of principles we don't lend our faculty and our resources to classified research, that is, to research which cannot be fed into the body of scholarly material which is intended for the enhancement of knowledge. That's our basic underlying principle. So, addressing Prof. Shaw, it

was his sense that if we go back to Chemistry and Chemistry professors [we'd need to be] saying, well, we've been writing contracts that don't fit this policy, or you've been behaving in a way that doesn't fit this policy, because you've been doing all of your contract research and your consulting time in your lab and using all the equipment the University allowed you to buy, or the NIH or the NSF allowed you to buy. [If that's the situation], then we have a problem with that research, not a problem with the policy. That was his view and it seemed to him that in the context of the discussion we had earlier about the Patriot Act we want to set a pretty high threshold rather than a pretty low threshold [for such abuses].

**Shaw** said she wasn't questioning that threshold, but just asking for more time to consider. **Lange** understood that, but was just laying out what this [revision of policy language] is trying to do from his point of view as Provost, and with his responsibilities to the academic sector. That's the underlying thrust, to protect our institution from actions undertaken by individual members of our institution that compromise our basic integrity.

**Siedow** ventured that as a former chair of this Council he understood the inclination toward waiting for a second meeting, if the issue is considered that sufficiently important. The reason it had been brought in up for consideration and vote in one meeting was simply from a sense that we weren't really changing policy in any way, but just clarifying it.

Prof. **Nolte** said he favored holding it over for the next meeting. He was very uncomfortable about voting on something which may or may not effect some of our other colleagues, or involve something that he for one hadn't thought about. He saw this policy as something that some people participate in and some don't. He'd heard some stories here today [that were new to him], and had had no idea what some of these problems could be. He wondered how much of a rush there is, and if it couldn't be voted on at the next meeting. Siedow said he wasn't going to go fall on his sword about it. Next time was fine by him. But he did want to say don't go back and just read this policy. Go back and read the existing policy. That's what we're looking at the one or the other. He thought he could speak for the senior officers, as well as for the Research Policy Committee, and for ECAC as well, that we shouldn't unduly delay for reasons he thought the Provost had stated much more eloquently than he could. We aren't going to keep revisiting the question of whether or not we do classified or restricted research. That's simply not on the table. In order to do that [kind of research] we would have to do a lot of other things which we simply can't do. That was his one admonition [in holding this open until next meeting].

Prof. James Cox (Law) observed that deliberating the revision of a policy like this serves a purpose beyond just putting it over. Even if we're not changing anything we may get some feedback back that makes us think, and that carries a nice message and reminder of what the policy is. And even though it does take some of the mystery out of what we're going to do at the next meeting. (Laughter) Siedow again promised not to fall on his sword, but expected he would sweat a few bullets until some of those comments came in.

**Nancy Allen** agreed that indeed that [development offers] a preview for next month. She

respected Prof. Shaw's wanting to put this off for a month, letting people have more time. It is a complex issue that does take a while to digest. VProv. Siedow had met with ECAC three times over the past nine months on this, and we've provided feedback along the way as it came back and forth several times. It was her sense that it would be best to delay the vote on any resolution, which ECAC will further consider and propose for the next meeting. If Council members have suggestions between now and then, please forward them to Siedow or to ECAC. With that, she invited moving along to Conflict of Interest disclosure forms. Thanks. Jim, your second item.

## CONFLICT OF INTEREST DISCLOSURE FORMS

VProv. James Siedow, referring back, suggested forwarding comments to both himself and ECAC, and to Barbara and to anyone else. He'd be happy to go talk to any department at any time about this policy, because once you dig into this issue, again, there are a lot of things under the surface here. He'd be happy to basically discuss this as much as anyone wants. "That was a tough one."

Moving along to the Conflict of Interest Disclosure forms, well, we're not doing [away with the forms], so let's not raise that issue unless we have to. Seriously, one of the things the Research Policy Committee has been trying to do this last year in various meetings is basically to [vet] some policies associated with the University, and once you go through them, if you ever have done that, there are some remarkable disjuncts that exist not only within our own Faculty Handbook but between the Medical Center and the campus otherwise. One of these we took a hard look at is the Conflict of Interest Disclosure Forms. The Conflict of Interest Policy is the same for the two parts of campus, but the disclosure forms differ. The campus-side form is missing some things that the medical side has. It was considered desirable to make them more closely uniform in general. There are a couple of things about clinical practice that occur in the medical form that obviously wouldn't be needed on the other side, but the basic idea is to align the two forms much more closely one with the another. Today, in addition to some wording that he really didn't think changes meaning in any way, notice on the handout that we have added two questions to the [campus-side] form. One is #4: "Have you or any member of your immediate family accepted any significant gift, favor or hospitality from any individual or anyone doing business with Duke?" He'd come back to that in just a second. And then #5: "If you are a faculty member do you devote more than the amount of time prescribed in the Duke University Faculty Handbook to professional pursuits beyond your professional contractual obligations to Duke?"

Now, with respect to #4, by and large it should be pretty straightforward. However, after meeting with ECAC about this, one ECAC member who wasn't at the meeting got in touch with him and said, you know, how do you necessarily know if an entity is doing business with Duke? That's a fair question. What he had sent to Nancy Allen is that we'd like to put a phrase in front of that, making it read "to the best of your information and belief have you or any other member... That is, to the extent that you are knowledgeable. That proviso had been considered by Prof. Paul Haagen (Law, ECAC), resulting in that added language, a change he saw as pretty straightforward. And then, under #5, as said in his explanatory letter to ECAC, we've actually



run into a problem about once a year where the notion of conflict of commitment based on the current campus-side form seems not to come into play. There are people who have had conflicts of commitment and there wasn't any prompt anywhere to say anything about it, so they didn't. As one might suspect it could get a little messy. It was felt really critical to have that conflict of commitment out in front on the Conflict of Interest form, since that really represents one form of conflict of interest and it needs to be there. As already said, everything else about the form he thought pretty much [self-explanatory]. Again, the wording has been changed a little bit, but not in any substantive way he thought.

## **DISCUSSION OF CONFLICT OF INTEREST FORMS**

Prof. **Tom Metzloff** (Law) raised a question on #4, about the footnote on [what can constitute a gift]. He understood what gift means, but the word significant needs to be [more precisely defined]. For some institutions, such as the State Government of Minnesota, you cannot do anything. He could not buy a judge lunch, even though he didn't do business with the Supreme Court of Minnesota. There needs to be some help for people about what significant is. If somebody buys him dinner is that significant? Siedow: Personally I wouldn't have thought so, but you are right [that it might be].

**Cox** added that most of us, similarly, know what the meaning of business is, but in a charitable organization, one that admits people to graduate schools and things like that, it was never clear to him what some people consider business. For example, business may be seen as involving a donor, prospective or ongoing. Is that relationship a matter of business with Duke? That's one question. Another arises where on a regular basis [some entity] tries to get a citizen or employees into the graduate [and professional] programs at Duke, and pays their tuition. Is that business?

**Siedow** said that's also fair enough, and this form — when you fill it out, and let him make it clear that it doesn't say [explicitly] that there is a conflict [for these examples] - you're simply alerting somebody to the fact that there is an issue that might be a conflict. And then it's reviewed, on our side at least, by no fewer than three people (the chair, the dean, and himself). Ultimately it's [usually] passed. The vast majority of things that get filled out here just get passed on as no conflict, because they're not. Rather than attempting to define every organization that might do business with Duke it's a lot easier for your dean just to look and say "well, this isn't a conflict," put that down and it gets passed on. As for the word significant, he heard the concern, and maybe we need to sort out how does the law defines significant. He was sure we have an answer to that question, and he would try to run that by some folks who would know, and see if we can come up with an answer.

Prof. **Ann Marie Pendergast** (P&CB, ECAC) said she didn't know an exact amount but Prof. Ross McKinney (VDean for Research, SOM) had indicated that in the Medical School there is an amount set for what violates a gift limit. Prof. Srinivas **Aravamudan** (English) said he thought the amount is \$75 according to the IRS. Siedow was interested in this information and would check with Prof. McKinney and see what further he could find out about how

significant is defined. Prof. **David Brady** (E&CE) said that as he recalled, in relation to the footnote, it would seem that we have to make a list of all gift equipment in our lab every year. **Siedow** asked if he could be more specific, and **Brady** said all gift equipment. For example, he would typically have all sorts of equipment from say IBM or Cisco that would be given in the course of research. Is it expected that every laboratory is to make a list of all equipment from every company every year? **Siedow**: If it was given to you free, yes. **Brady**: Is there a difference between given to him and given to the Engineering School? How should he determine the difference? **Siedow** thought yes, there is a difference. **Brady** asked if that meant things to which he has title, or does he need to list anything that's given to the Engineering School that's in his lab? **Siedow** said it was only things he would have title to, exactly. If it's a gift to you, not to the Engineering School. There would not be a lot of things like that, he thought.

Prof. **Ronen Plessner** (PHY) asked what comes under #5. If he agreed to be the chair of some committee of the American Physical Society, not obliged by his obligations to Duke to do so, and it's a professional pursuit, does that apply as "beyond?" **Siedow**: Not at all. **Plessner** wanted to make certain that there's nothing about payment or whatever in this provision, nothing beyond what appears there. There's no mention in item #5 of getting paid for this or about doing anything more than the one day a week that is not part of his obligation to Duke. Prov. **Lange** spoke up to say that the example that he gave is part of his obligation to Duke under the service expectations. **Siedow** added that under Chapter 5 [of "Research Grants and Consulting Policies of the Duke University Faculty Handbook" at [www.provost.duke.edu/fhb.pdf](http://www.provost.duke.edu/fhb.pdf)] it could be noted that there is in fact some mention [of compensation]. Chapter 5 actually talks about being paid some sort of fair market value for an obligation. It doesn't define what that is, but it basically says that you can do that. But if you get paid a million dollars for doing that, you probably ought to mention it.

With that, he guessed what he had heard is basically that he would look into the issue of significant, bring that back to ECAC, and come up with a modification, but it sounds like everyone is OK with everything else. Yes? There being no disagreement with that impression, he thanked the Council for its attention to these matters.

**Nancy Allen** thanked him in return, and there being no further business, declared the meeting adjourned.

Prepared for consideration by the Academic Council,

Donald J. Fluke, Faculty Secretary