

**Minutes of the Academic Council Meeting  
Thursday, February 15, 2024**

**Trina Jones (Chair, Academic Council / Law School):** Welcome everyone, I hope you're doing well. We have a very full agenda today so my opening remarks will be brief. I begin first with sad news regarding one of our colleagues in the Art, Art History, and Visual Studies department. Professor Hans van Miegroet died in a single car accident Friday evening near West Campus. Hans was a beloved faculty member in his department. He mentored many graduate students and he taught a very popular course to undergrads entitled *The History of Art Markets*. Hans' colleague of 35 years, Art History professor Rick Powell, described him as one of the chief engineers behind the department of Art, Art History, and Visual Studies name change in 2006 and the department's move to the Smith Warehouse in 2014. Quoting Powell, "Hans was prescient through these changes in addition to how the department might pedagogically advance further with an even greater interdisciplinary and technological thrust than previously enacted. For that inestimable foresight, we are forever indebted to him." Our thoughts are with his family, his friends, his students, and his colleagues.

I'd like to remind everyone, if you haven't already done so, to complete the Duke Campus Culture Survey, which closes tomorrow.

***APPROVAL OF THE JANUARY 18  
MEETING MINUTES***

**Jones:** Let's move to the approval of our minutes from January, which were posted with today's agenda. Are there any corrections to the minutes? May I have a motion to approve? A second? All in favor please say yes. Any opposed? Any abstentions? Thank you.

*(Minutes approved by voice vote with no dissent)*

***EXECUTIVE SESSION FOR PROPOSED  
HONORARY DEGREE CANDIDATE***

**Jones:** Next, we will move in to executive session to discuss an additional honorary degree proposed for this May's Commencement ceremony, which was presented at last month's Academic Council meeting. All those who are not members of the Duke faculty, I kindly ask that you leave the room at this time and someone will notify you when you can return.

*[Executive Session for the purpose of discussing a proposed Honorary Degree for Commencement 2024]*

***MEETING RETURNED TO OPEN SESSION***

***ANONYMOUS QUESTIONS FOR THE  
ADMINISTRATION TO ADDRESS***

**Jones:** As you know, we have a tradition of receiving anonymous questions from faculty for submission to the President and Provost's Office. ECAC does not draft these questions. We are simply the messenger. *(Laughter)* We received two anonymous questions for this month's meeting and forwarded those questions to the Provost and President's Offices to be addressed. These questions were posted with the distribution of the agenda per our usual practice. Question one:

*Duke recently settled a lawsuit alleging that it practiced illegally need-aware admissions. We believe it would befit the administration to brief faculty on the lawsuit and the settlement and provide insight into their thinking regarding settling the suit instead of fighting it in court (since Duke denies wrongdoing).*

*Specifically, the news coverage leaves many questions unanswered and can be seen [as] damaging to Duke's reputation. Where are the funds coming from to pay the settlement and will it have any budgetary consequences for the institution or individual units?*

**Jones:** I invite whomever has been selected to address this question to the podium.

**Daniel Ennis (Executive Vice President):** Short straw! *(Laughter)* So thanks for this question.

**Jones:** Do you really mean that?

**Ennis:** No. *(Laughter)* I have my lawyer in the room, so it's going to be managed carefully, as you would expect. These matters are quite serious in terms of ongoing litigation. I'm going to speak broadly about what we're experiencing as

a university when it comes to these actions. Universities, and it's really important to note here that this is specifically private universities, are increasingly the target of class action litigation. This is a broad trend that we've seen across a number of areas. So, this is one. We saw it in retirement administration. We saw it in relation to recruitment and related antitrust concerns. The plaintiffs' bar the class action litigation firms are incredibly well capitalized and aggressive, and they are putting significant pressure on this sector as they have others. And so, when you're in receipt and navigating the facts and working through the case, it is very quickly an economic cost benefit analysis. And that is the fact that you're going to pay an enormous amount of money one way or the other. The defense of a case of this complexity is enormous. It takes an incredible number of hours to prepare to go to defend the case to its ultimate conclusion in terms of legal costs, leadership time, leadership depositions, interviews...it is just an enormous impact on what we're actually trying to do relative to our core mission. So, we, working very closely with the Board, regularly revisit that matter, which is the total cost of proceeding with the case versus the cost of settlement. And, in this case, we did that cost benefit analysis and made the decision to settle. And we believe that was a smart path for the institution. Many of our peers have done the same. Others have not. It's not clear whether they have the chance to settle or they're making a decision to proceed. That's for them to communicate and not for us to communicate. So, that's the broad response and the context within which we're working as we navigate these very complicated cases.

What I would say about these cases is that they are creating significant challenges as it relates to insurance markets and in our ability to get coverage to protect the institution. We are seeing failures in insurance, enormous price increases with insurance. So in this case, we have insurance, the insurance companies are of course saying, "We're not going to protect you for X, Y or Z. We will subsequently be litigating those questions." But the short answer on funding is we're still working from the assumption we'll have insurance coverage for this case.

**Steffen Bass (Physics):** Daniel, what you describe is really troubling. Essentially, there is a racket out there that shakes down industries or institutions because it seems they can't lose. Either they get a piece of the settlement money or they get a day in court with apparently good odds of succeeding. It's kind of frustrating, right? Because we're playing into their hands by settling. Whereas, in order for that racket to stop, they need to encounter a situation where they're not winning anymore. And I don't know, in typical hostage taking situations or blackmail, usually the advice is not to give in because you're just opening yourself up to more and more shakedowns down the road. What's the thinking there? It's kind of really infuriating that we have to do this.

**Ennis:** There are matters of policy and regulation, as a broad layer, I'm not speaking about this case. We've got to be alert to them and navigating them, and these firms are hanging around on the margins on those questions and seizing opportunity. I would say, I should have maybe framed differently...just as a broad matter, could these firms in these cases be calling attention to important matters of

public policy, of governance, of leadership? Yes, they could. And there's a service to society without question to that. You know, we obviously don't feel that in this case and we're clear about what our views were of the merits. But having said that, you're engaged. You're engaged in a litigious process, and it is all consuming if you see it through to the end. And we have a much bigger and more important mission. So, we have to assess sort of the consequences to our mission and our broad reputational view in relation to the specifics of the litigation, the specifics of the economics relevant to that cost benefit analysis. It is difficult and it's maddening at times, I can assure you, with regards to this dilemma.

**Karin Shapiro (African and African American Studies):** I was wondering, you touched on this very slightly, but I was wondering if you are aware of other universities that have decided to settle or not settle. If you're aware of what the calculations are. Are you privy to that at all? Or do we just wait to read, what we read in whatever newspapers we read?

**Ennis:** That's a question for Pam [Bernard, General Counsel].

**Pam Bernard (Vice President and General Counsel):** First, I want to know if I will be able to grade Daniel when he's done. *(Laughter)* The only thing I would say about that is that I think that's a really good question. We do have intelligence on that. We do take that into consideration. And the other thing I would add, too, is that we're not only looking at the economics, it's not just this is going to cost us too much money. But we are also evaluating how is this theory going to play out before a jury? And right now, one thing you should be aware of is that

higher education is under attack. And when you have...we do mock trials where we have mock juries come in and go through exercises. They're very hard to win on these cases where the public thinks that American higher education, particularly elite education, is ripping people off for doing things that are wrong. So, we take all those things into consideration. But, we definitely get intelligence about what the settlement value is, what other people are doing. And generally, in these cases, I have found that the earlier you are able to settle, you're going to get a discount. So, if you are going to do it, you're going to make the decision sooner than later.

**Tom Metzloff (Law School):** I'd like to push back a little bit on the fact that all this class action litigation is a shakedown, especially with respect to antitrust litigation. There are many groups in the United States that sort of feel that the antitrust laws don't apply to them. That's been true for higher education. That's been true for the legal profession. That's been true for many things. And some of these antitrust cases, it's fundamentally important American policy, at least some of the cases I know here. I think in fact, I'm not saying Duke did anything wrong, or that other institutions didn't. But these are not inherently non-meritorious cases. I think the idea that this is all a big shakedown is a bit of a misperception.

**Lee Baker (Culture Anthropology):** My question is, I think under the COFHE [Consortium on Financing Higher Education] rules you could be need blind all the way through. Are we saying through the transfers, as well as off the wait list, or are you thinking that they got it wrong or that we had it wrong?

Where's the wrongdoing based on the rules?

**Bernard:** It's a good question. It's a highly technical question and when this exemption was granted, this antitrust exemption, it was granted and worded in a certain way that everybody that was participating in trying to spread as much financial aid across as many students as was possible; that was the whole intention of the group. But you have these lawyers that are reading it the hyper technical way, and if read in a hyper technical way there's some appeal to their argument. Unless every single student that you admitted was done on a need blind basis, then the exemption wouldn't apply. And that's basically the argument.

**Vince Price (President):** I just want to reiterate the need for all of us to be thoughtful about antitrust in the climate we're in. We do mandatory trainings as administrators at this institution on a regular basis. We are in a profession that views information sharing as the heart and soul of our enterprise. And we do this all the time. We have to stop ourselves from sharing information in an environment oftentimes that would view behavior that you would see as meritorious and well-meaning as potentially violating antitrust laws. So, if you in this room, I know not all of you are in administrative positions or as you move into such positions, just reach out for help. Because I will just say over the course of my professional lifetime, things that 20 or 30 years ago would have been viewed as just normal business operations at a university are now highly suspect and likely to produce lawsuits just like this. So, I just want to plead with those who are in receipt of an email suggesting you go to antitrust training,

that you go. I know we don't love trainings. We've talked about this in this room, but this is one, please, you want to attend. Thanks.

**Bernard:** A. That's an A for that.  
(Laughter)

**Jones:** An A for Tom, and for all the other lawyers in the room.

Question two: *The Chronicle of Higher Education (CHE) recently reported that Professor Dan Ariely told the CHE that Duke had completed its investigation of allegations of data fraud against Professor Ariely, and that Duke concluded that Ariely had not falsified data or knowingly used falsified data, although he should have been more careful in vetting data and more diligent in retaining records. Contacted by CHE, a Duke spokesperson reportedly stated that “we are not in a position to confirm or fact-check anything on this.” As CHE noted, this left “Ariely—the subject of the investigation—as the only source of information about the university’s findings.” In sharp contrast, Harvard has made it abundantly clear that it takes very seriously related accusations against Professor Francesca Gino, having gone so far as to place her on unpaid leave and seek to revoke her tenure. Could you please explain why Duke is “not in a position” to reassure the Duke community—and indeed the world—that Duke takes academic fraud seriously? Or, better yet, could you please reconsider your determination that Duke is not able to provide any information on this matter?*

**Jones:** Again, I would like to recognize whomever from the administration that has been selected to address this question today.

**Jenny Lodge (Vice President for Research & Innovation):** First, let me assure you that Duke takes any allegations of research misconduct seriously and we have policies in place to ensure a fair process and address our obligations about privacy. When we receive an allegation of research misconduct, we keep it confidential. If allegations warrant an investigation, that process remains confidential. If the findings of an investigation warrant any personnel actions, those remain confidential unless we are required by regulation to report, for example, to a funding agency. This confidentiality protects the privacy of faculty and others who might be involved, and it protects the integrity of the process that Duke has adopted to respond to allegations of misconduct. We follow these processes and take our confidentiality responsibilities seriously. I'm just going to read the section, a short section, from our misconduct policy, and this is in [chapter three](#) of the Research Policy Manual. “*All those participating or involved in research misconduct proceedings shall not disclose any information regarding the allegations, the proceedings, or the identity of the individuals involved in the proceeding, except as necessary to the proper discharge of their employment responsibilities or as required by law.*”

**Roxanne Springer (Physics):** It occurs to me that a couple of meetings ago we were talking about this idea of the whole “Pass the Harasser” and I wonder if this falls into the same kind of category. So, it's kept confidential, but if the faculty member leaves the university and is hired by another university, does it just go away?

**Lodge:** I'm seeing Pam shake her head.

**Bernard:** Thank you. That is a good question. The thing that we are very interested in is this concept of, when another university hires from our faculty, the importance of them doing due diligence. So, it is not something that just goes away. If we have an authorization, we will tell the hiring university what happened and that's something that we ourselves think is important to do. But it certainly is incumbent on any hiring institution to make at least minimal inquiries into a faculty member's past history of misconduct, whether it's sexual misconduct, research misconduct, or another type of misconduct.

**Metzloff:** Still at the Law School, I hope. *(Laughter)* I speak to this question from some of my background for four years as the university Ombuds, also as Chair for many years of the Faculty Hearing Committee and member of the Faculty Hearing Committee. I think your answer is exactly right with respect to confidentiality. Trina, my concern is this question, which involves this particular individual, an anonymous question. And I don't know the motivation of the question, but it seems to be inappropriate that a particular faculty member's situation, which is being brought up in this meeting without...I don't know...I've never seen a question quite like this that was this personal. I know that I have worked as the Ombuds and have seen claims to the Faculty Hearing Committee about faculty involved in situations like this who are challenging findings with misconduct through both the OIE and Duke Human Resources. And the Faculty Hearing Committee at times has upheld the faculty challenges to those processes. I was troubled when I saw this question,

and I just wanted to put that on the record.

**Jones:** I'll circle back to that, Tom.

**Bass:** I want to take the discussion a little bit away from this specific case to a more general question. We are an education institution. We are here to educate students, grad students, postdocs in our subject matter, but also in doing the right thing, in terms of how we conduct ourselves in research. And there's a tension here between the legal mandate or necessity of confidentiality and taking these things that happen, and I mean, not perhaps this case, but think back to the hydraulic fluid, right? Or [Anil] Potti case or all the different things that we all remember because they were splashed across the headlines of major newspapers. How do we make these a teachable moment for our institution, for our people that we can learn something and get something positive out of that while still maintaining the confidentiality and the dignity of all parties involved? This is not an easy question, but I think this is something that I think Duke could do a better job at.

**Lodge:** I completely agree with you. And I think there's some avenues that we can use. There is RCR training, Responsible Conduct in Research training. And some of that is case based and often these cases can be taken from real life situations and anonymized. So, I think there's some opportunity there to make these teaching moments.

**Veronica Martinez (Law School):** I have two comments. I wonder what it means to have authorization. If that's authorization from the employee to provide

information to a prospective employer. Is that right?

**Bernard:** Right. From the person who was charged with this.

**Martinez:** So that seems challenging for a variety of reasons. *(Laughter)* And I just know that there are some higher education institutions that are changing their offer letters to get pre-authorization. Mine didn't have it but anyway...so I'll just say that. The larger concern I have is about...is essentially the concern that was raised below. There are lots of instances where because of confidentiality concerns, someone gets to just be a recidivist. Unfortunately, the best example I can give is the internal investigation report for the Michigan Provost from a few years ago. That report is stunning as someone who reads a lot of these reports. I think confidentiality is really important for a variety of reasons, but this is a big complex organization where you can have multiple investigations going on at the same time by different units. And if that confidentiality impedes the ability for those different units to realize you have a recidivist that seems problematic. That's one part of it. The other part of it is that we have a system where folks who...if you file a complaint...I'm not talking about this situation, I'm just talking about generally. If you file a complaint and you don't have a way in which to figure out what happened with that complaint, you might actually be discouraging people to file complaints. I'm thinking now of some allegations at Yale's Law School. I think that there are lots of instances of faculty misconduct and I'm not sure just a straight up only confidentiality policy is as complex as maybe the situation warrants.

**Lodge:** Two things. One, Leigh Goller has her hand up and wants to comment on this. The other is that we talked about this with this body before, is can we anonymize some of this and post it? And I apologize, I had some transitions in my office and it fell off the radar. But it's back on the radar to get those kinds of things posted so that people can see we have complaints that come in, they get investigated, and then there are consequences. So that you can feel assured that we are actually doing our job with respect to this.

**Leigh Goller (Chief Audit, Risk and Compliance Officer):** On the note of being able to talk about cases that have happened and using real facts but obscured by identity, we are also creating vignettes that go beyond our research mission. And those will be available in the values.duke.edu site very shortly. Counsel's Office has released me to hit go on that with a couple of minor changes. We've known this to be an important question beyond the research mission. Second thing, Veronica, on your question about how we support relators and individuals who bring concerns forward, if those concerns come through the Institutional Speak Up program, again back to values.duke.edu, you can click and do a web form or make a phone call to a hotline that's third party administered. So, you can be anonymous and receive a case number that you can call back in and once we have a case number, we provide status updates. We can't necessarily tell you what happened with the case, but you can get assurances that it's either being investigated, been investigated and closed, or unable to substantiate. So, we do have some information that encourages our relators, but it does have

to come specifically through the Speak Up program to get that case number to close the loop on that conversation.

**Bernard:** Just answering your question, Veronica, we do let people who complain know the outcome of the complaint. That's not included in the confidentiality. And you're right, it is tricky to get an authorization from a person who has left, or is leaving the institution under poor circumstances. But if you're the hiring institution and you can't get that authorization, that says a lot. So that is a very big flag for you.

**Cam Harvey (Fuqua School of Business):** Very briefly, two quick questions. Number one, does Duke plan to amend the retraction notice for the PNAS 2012, given the findings of no falsification or fabrication? Number two, I would like to emphasize what Steffen said, what we are talking about is reacting to a problem. It is a symptom and we need to get to the cause. I predict that we will have many more retractions with AI tools, finding falsified images and things like that. And Duke is in the crosshairs. We are a top two university - in misconduct, along with Harvard. I think that we need to think about changing our culture and I am afraid that RCR training is not it. It is a fundamental question and the question for you and the Provost, how do we change our culture to reduce the incidence of research misconduct?

**Lodge:** I completely agree with you. It is about culture and this starts from the top down. I think you've got a group over there that is very much interested, supportive, and articulating the value of integrity in our scholarship. And that comes down to our Deans and either our department, center, or institute leaders.

These are all important people. And then it's you. It's the people in this room who have to imbibe that culture and extend that to our trainees.

To your first question, there's no plans to amend the retraction.

**Jones:** Thank you so much Jenny and Daniel. To Tom's question, and I welcome that question. We receive these anonymous questions and ECAC and I talked about whether we would use any metrics to filter them and decide which ones come to the Council and which ones do not, and whether to change the language in the question. So, we did have a conversation about this because of the tone of a question that we received in the fall. And we decided that we would prefer not to affect faculty voice and just present the questions to the administration as we receive them. So, that was the choice that we made. We also did not want to get into the business of making value judgments about the contents of the questions. So, we receive them and unless the propounder asks for our input, we just pass them to the administration. Now, it could be that we made the wrong call, but in this particular situation, we did talk about the very issue that you raise, and that is including the faculty member's name in the question which is posted on our agenda. And the reason that ECAC decided to proceed, and perhaps we'll go back and reconsider this, is because this has been widely covered by the press. It's been covered by the Chronicle of Higher Education, the Hartford, and other major news outlets. And the professor has spoken publicly about this case and his interpretation of Duke's investigation. So, given those background circumstances, ECAC decided to proceed with the question as written. But we will



reconsider this comment and reflect on this. Thank you.

### **PANEL DISCUSSION REGARDING DUKE ATHLETICS**

[\(Slides used in presentation\)](#)

**Jones:** In September, ECAC asked Council members for feedback on matters that we might address this year in addition to our normal routine business. We've been carefully working through the resulting list, with more to come. One area which received a number of questions is Athletics. Reflecting on your questions and this truly complicated and changing terrain, ECAC thought it might be helpful for the Council to engage with faculty who have knowledge of this general subject matter. Fortunately, Professor Linda Franzoni, the Faculty Athletic Representative, and Professor Andrew Janiak, the Chair of the Athletic Council, kindly and perhaps courageously (*Laughter*) agreed to help navigate this terrain with us. Please know that Linda and Andrew are here in their individual capacities and are not speaking on behalf of the university or on behalf of the Athletic Council. I also would like to underscore that the purpose of this conversation is to disseminate some basic information and to get a better sense of your views. All of your questions may not be within the purview of Linda and Andrew's knowledge base, but we will consult with additional persons if there are questions that we cannot address today. I'm going to moderate the conversation for about 20 minutes, and then we will use our remaining time for Q&A. The questions that I will be presenting were crafted by ECAC, so Linda and Andrew would you join me. We may have to skip some questions because

we allocated an hour for this and we now have 35 minutes, but we'll do our best.

The first question is to you, Linda. Could you tell us a bit about the FAR [Faculty Athletic Representative] and what the FAR does?

**Linda Franzoni (Pratt School of Engineering/ Faculty Athletic Representative):** The Faculty Athletic Representative is a position held by a faculty member, reports directly to the President or Chancellor of a university. All of the NCAA schools Division 1, 2, or 3 - they all are required to have a FAR. The faculty member sits outside of Athletics. That's really important that it not be someone in Athletics. Primarily, this person is looking out for student athlete welfare and keeping an eye on the academic side of student athletes. Some of the roles pertain to legislation, NCAA rules and regulations and the FAR looks at those and votes on things. The FAR also looks at waivers. When a coach or an athlete wants to ask for an exception to something, that will come through to the FAR.

**Jones:** Thank you. Andrew, could you tell us a bit about the Athletic Council?

**Andrew Janiak (Philosophy/ Chair of the Athletic Council):** I just note that Athletics is today's least controversial topic. (*Laughter*) The Athletic Council is not a committee of all faculty, although there is a subcommittee. It actually involves the whole Duke community. It has trustees, alumni, current students, faculty, staff, and then lots of people who come to our meetings ex-officio. We advise the president. We disseminate information. We do analyses of various sorts of issues that concern Athletics, as

you can imagine, that might be anything that happens at the university. We deal with admissions, academic questions, budgetary questions, and as I hope we'll get to today, the astoundingly complicated world of intercollegiate athletics, which is now just vastly different than what it was ten years ago. We're constantly hearing updates about various kinds of litigation, legislation, regulation, and other things.

**Jones:** This first question is a big one. How does Duke balance its need for academic rigor with its desire to also have excellent sports teams? And perhaps it's helpful to break this down into components. So, I'm going to focus on you first, Linda. Some faculty wonder whether Duke student athletes are athletes first and students second. Some have suggested that student athletes struggle with their coursework and have asked if our normal admissions criteria apply to student athletes across the board.

**Franzoni:** First, I would say that the academic standards at Duke are upheld across the board. Faculty don't lower standards for student athletes. The question about academic rigor - you shouldn't be worried about that. I think we uphold our academic rigor in the classroom. As far as admissions goes, a couple of things have happened recently that have nothing to do with student athletes, COVID. So, because of COVID standardized testing went online. The availability of standardized tests...we're talking SATs, ACTs, in some cases AP exams, availability was not what it used to be. So there was a decision made to become test optional and that's across the board, not just for student athletes, for all Duke admissions. That has limited some of the information available for

admissions. There's also a change recently having to do with the essays, things like Chat GPT are out there or there are professionals that will edit your entrance essay over and over again, or maybe write it for you. So those are looked at...they're looked at, but kind of with a bit of skepticism. I would say that something that's poorly written will count against you. Things that are well-written, they have a grain of salt there, but there's no longer points scored for an essay. There's no longer points scored for standardized testing. The data that Christoph [Guttentag] has in the Office of Admissions is the academic rigor of your curriculum, what you took relative to what's offered at your school, the grades that you have in those classes, your letters of recommendation from teachers and guidance counselors, and your extracurricular activities. That's what he's got to go on. I think that we are in a little bit of a changing world with admissions, but the standards have not been changed. Christoph and his office are still looking for people who can succeed academically and personally at Duke.

**Jones:** Andrew, the second part of the question could be looked at from a macro level, and that is from a reputational dimension are athletics eclipsing the academic reputation of Duke? In other words, are we moving away from the Ivies and closer to the Alabama model? *(Laughter)*

**Janiak:** The Athletic Council has not directly addressed that question, but I would say, from my own judgment, I don't think the comparison on either side is apt academically or athletically. In my opinion, we're younger and more creative than the Ivies, so I wouldn't really compare them academically to us. I think,

for example, you look at Duke Engage, Bass Connections, FOCUS, this is a sign of a really creative, nimble institution. Obviously, we're celebrating our 100<sup>th</sup> anniversary. I happen to be a Bostonian, although I don't sound like it. And 100 years is nothing from Boston. They're about to celebrate a 400-year anniversary, so I don't think it's academically apt. My view would be the comparison to something like Stanford would be a lot more apt, both athletically and academically. We're trying to compete at the highest level in athletics and in academics. I think we're doing that very well and we continue to be more creative than a lot of these other institutions that people sort of perennially compare themselves to but it doesn't seem apt to me in either way. I think the balance we've achieved is actually very nicely done, but Athletics is changing nationwide in a dramatic way. I just have to note the old paradigm, sorry for using Thomas Kuhn [American historian and philosopher], is over. Collegiate Athletics is not what it used to be. We don't know what the new paradigm is going to be. Clearly, we're in a chaotic, he [Thomas Kuhn] would call it a crisis moment. There's litigation and legislation. I mean, are athletes going to be unionized employees or not? That's radically different than what we have now.

**Jones:** Do we have any data to suggest that students are considering a host of factors, in addition to the quality of our athletics teams when they are making a decision to come to Duke?

**Janiak:** Yes, I do recall Dick Brodhead used to talk about how Duke Engage was one of the number one things people talked about in their applications,

obviously I believe that's true, if someone could confirm what it is now. Certainly, I talk to prospective students and parents all the time in my day job and Bass Connections is extremely popular. I looked this up and there's almost 70 teams with 500 students this year. So, it's across the entire campus and we involve our entire faculty. It's incredibly creative, in my opinion, and that's a big part of why people are interested in Duke. Not because we're some version of an Ivy League Institution, because we are our own distinctive institution. That's my impression.

**Jones:** Going back to the student athlete conversation. Student athletes do have additional demands on their time, right? Do we have institutional support in place to assist them, both in terms of their academic work, but also their physical and mental health?

**Franzoni:** Yes. The Department of Athletics has a lot of academic support. They have a whole unit on academic support. There are different layers. So, student athletes have a Faculty Advisor, just like every student. They have an Academic Dean and then they also have an Academic Coordinator, which is another layer that's provided through Athletics. That person, they're assigned by team, the Academic Coordinator is familiar with the practice schedule, travel schedule, and the demands of the sport on that student. That Academic Coordinator is another layer of advising for the student. They also provide tutoring, mentoring, and other academic support for the students. As far as mental health, they have a unit on mental and behavioral health, which has four full time people who are familiar with treating, in particular, student athletes. They also

have someone who's a postdoc in training at CAPS, and that person is also available to student athletes. There's also telehealth and all the other things available for students, all students including student athletes.

**Jones:** Question two, are there academic programs, majors, classes in which we see a higher representation of athletes? And if so, do we have a sense of what may be driving these enrollment numbers?

**Franzoni:** I have a slide here. I don't know if Andrew mentioned the breakdown of the Athletic Council, but there are three subcommittees, and one of the subcommittees is the Academic Subcommittee, which is made up of all of the faculty members on the Athletic Council. We meet with both, Christoph and the Assessment Office and look at data. This is part of what we look at. What do the student athletes major in and what do non-student athletes majors in? *(References Slide)* If you look at this visually what you see are two pie charts and the pie charts have lots of colors and lots of slices. And if you didn't know what was in the labels, they would look very similar. But what you see is that some of the larger slices - there's no slice that's more than 20 or 23% or so of the entire pie - the slices for the student athletes, they're Social Sciences. They tend to be more interested in Social Sciences and we can hypothesize reasons for that if you want, but it would just be my opinion. The non-student athlete population, you do see more sciences, sort of Pre-Med, Computer Science. Those are their kind of career goals and what they want to major in. What I found interesting, my field is Mechanical Engineering, it's on both lists and of all of these it is the same percentage. So, in mechanical

engineering, we have 4% of the student athletes and we have 4% of the non-student athletes. Unless you want my hypothesis on why this is the case, we can move on.

**Jones:** Andrew, I think that you had some information about some work that the Athletic Council or the Academic subcommittee did with regard to this question last year?

**Janiak:** Can I say one thing about this? We're working on this right now. We don't have any conclusions, but my faculty colleagues have been going to a lot of extra meetings. We just had one a couple of weeks ago. I'm actually looking at something that sort of follows everything we've been talking about, which is two kinds of majors, one with external prerequisites and one without. So, external prerequisites means you have to take Physics, Chem, Stats 101, etc. before you can major in whatever it is; then you have your ten plus courses. Then the other kind, which could be Social Sciences, it could be Humanities, it might even be Natural Sciences, don't have any external prerequisites. It's all internal to the major, it's partly historical accident and how we do that. I'll take a simple example from my own field. We teach all the mathematical logic in Philosophy. If you want to take Set Theory, you first have to take Predicate Calculus. That's done in Math Departments at a lot of universities, here it's done in Philosophy, so we don't have any extra prerequisites. It's easier to major in something, if you have a lot of scheduling constraints, where there are no extra prerequisites, then if you have one where there are extra prerequisites. So that's something we're looking at. We haven't been able to systematically study it, but we should be

able to get some answers in March when we look at the data from across the college.

**Franzoni:** Can I add one more thing? Also, the Academic Subcommittee interviews the student athletes at the end of their four years, at the end of their season, and this is in person with a person from Athletics and a member of the Academic Subcommittee. And one of the questions that's asked is, "Did playing your sport affect your choice of major?" And the students, almost always, they say, "No. I chose what I chose to major in independent of playing the sport." That sort of speaks to like maybe they were interested in this to start with. But the second question after that is, "Did your choice of classes, was that affected by playing in your sport?" And almost always the answer is, "Yes. The classes I chose were affected by my practice schedule, my travel schedule, things like that." But the major seems to be what they really want to major in.

**Janiak:** This was in the annual report last year, there's an annual report to the Council. Some people are nodding. The way the Council works, of course, we always start with individual opinions, anecdotal information, but we never really end there. We always try to see if we can get data on that. So, we had heard there were a lot of athletes in the MMS program in Fuqua then we got the data and it turned out there are, there's a high percentage of athletes. The faculty were wondering about that, why is that? Is there any interesting explanation? So, we spent the year investigating, that's a strong word, but looking into it. We talked to the faculty in Fuqua. So, faculty talking to other faculty members. How is the program going? Are the students

successful? What's your acceptance rate? And we came away, I think universally thinking, it's very successful. They have a really good student body. Often, they have one year of eligibility, so they're transfer students from a lot of the Ivies, believe it or not. If people are interested in that kind of thing, they come for a year, they study, they have a one-year degree from Duke. So, it was the faculty talking to their colleagues and finding out how it works. That's sort of how we operate and we can be doing that in other domains too. We have the faculty on the committee who would like to learn more.

**Jones:** So recently, the ACC expanded to include some West Coast schools. Welcome Stanford and Berkeley to the Atlantic Coast Conference. What are some of the implications for student athletes of the expansion of the ACC? How will this affect travel schedules and what, if any, mechanisms are in place to protect the athletes physical health and make sure that their academic work is not disrupted? And this was a question from the Council from our September meeting.

**Janiak:** I think we have a slide. Thank you to Heather Ryan and folks in Athletics for putting this together. So, the Council heard about this in the fall and the faculty had lots of questions. This was a really good example where we are distilling a slide deck that had about 40, I think, slides, an incredible amount of information. The faculty were, of course, wondering about this. How will it affect our students? Briefly put, basically half the teams will not be affected because of the way that the schedules work. They will not be going to California. This is the half that will be affected. Here you can see they've worked incredibly hard to minimize the disruption. At most I think a

team would go to California once per year. A lot of them are going less often than that. Obviously, the California teams may have a completely different experience because most of the ACC teams are here. I don't know exactly how they're thinking about it. I know it's being discussed in great depth, but from our point of view there will be a pretty minimal disruption to our teams. It's much less than the faculty were expecting and I think we were pretty glad to see that.

**Franzoni:** Some things that I just heard recently, this is more...if you are worried about Cal and Stanford because they will be traveling East a lot more than any of the East Coast schools traveling West. They are looking at pairing schools. So, like if you came to the East Coast, you might play Duke and then play UNC before you travel back West. Some of that is being done to try to minimize this. The other thing that we may not realize is their calendar is different from ours. We start end of August. They don't start until much later and they're on the quarter system, so they have breaks that are different than ours. If you line things up just right, you might not even miss school because you can travel East when we're in session and things like that. There is a lot of hard work being done behind the scenes by people across all of the ACC trying to optimize this schedule and minimize the impact on the student athletes.

**Jones:** Now to another big issue. The landscape of Collegiate Athletics has changed tremendously in recent years. How might changes in transfer rules for student athletes and changes in rules concerning the recruitment of students to professional leagues, one and done,

affect the student dimension of being a student athlete? For example, many people noted how quickly Riley Leonard entered the transfer portal after the departure of Coach Elko.

**Franzoni:** So, there's a lot in there. Transfers...landscape...all of that. First, I don't know if you keep up with the news on what's happening with transfers, but if you go back, I don't know how long you'd have to go back, but certainly before a lot of this chaos, it used to be true that if a student athlete transferred to a new university they had to sit out for a season. That was primarily to discourage transferring, some of this upheaval. But as things were changing within the NCAA and the transfer portal was created, then the rule changed so that if you transferred you were automatically...if you were eligible at the old school, you were eligible when you transferred. The deterrent to transfer, kind of that barrier was reduced. So, you have more students that are transferring. And this could be good or bad. You may have students that...they commit when they're in high school, sometimes earlier than you think, and then they get somewhere and either there's not an academic fit for them, they thought this major existed and it's not at that school or the academics were harder than they thought or not what they really wanted, or the sport, they're a benchwarmer and they were used to being first string when they were in high school. For various reasons, students want a change. It used to be with that rule that students felt trapped and now they feel more free to transfer. So the NCAA allowed that. Recently, there was a case where a student transferred more than once and the NCAA said, "Well, now more than once you're going to have to sit out that second transfer." But there was a

case where this went to court and the judge said, "No, no. Why are you doing this?" And there was an injunction. Right now there's sort of a hold on that, so that student athletes that transfer more than once can play as soon as they transfer. This is causing more of this upheaval. But here at Duke, we have very few students that transfer midyear. And we have, I don't know if we have any students that transfer after they've been somewhere for two years. Christoph will take students after they've been at a university for a year or two years, but not beyond that. There are other schools where if you've been somewhere for three years and you can transfer somewhere else, you're already like pretty far down that path. And it can cause progress toward graduation issues for students.

Now that was transfer...

**Jones:** And then there are the one and done. The piece of information, I think that the two of you have shared, most frequently with me, is that it is a fairly rare situation underscoring the fact that we have over 700 student athletes. So, when you think about the larger picture, the one and done is incredibly rare.

Question five, how might name, image, and likeness [NIL] rules and private donor groups who pay athletes to attend a particular school affect Duke's Athletic program and Duke's ability to compete with other Athletic powerhouses? Is this pay for play? And is this something about which faculty should be concerned? And there's a lot of press on this.

**Franzoni:** Also affecting this transfer portal thing is...the word that there's deals. So, if you're playing at one school and you switch to another school, you

might have more name, image and likeness opportunity. And these donors, whatever you call them, they actually are called Collectives. So there are boosters, donors, whatever you want to call them, that create an entity and can pool resources so that there's a pot of money that can be shared across the student athletes. In case you were wondering, does Duke have such a Collective, such an organization? They do. That's the devil whatever up there on the right. *(Refers to slide)* NIL opportunity for Duke student athletes. If you would like to join the Collective, they'll take your money. You can join now. I clicked on this. There are some perks like you might get an autograph or something. So, we do have a Collective. I think what is happening right now is that student athletes are being swayed by economics, by these opportunities as opposed to their academic opportunities that they have at universities like ours or others. They may see big dollar signs and be lured somewhere else. So that is troubling. I think the question was, should we be concerned? I think, yes, we should be concerned. The other thing about this is that there really aren't uniform rules right now. Different states have different rules. Different universities have different rules. And so, it is really like the, Wild, Wild West.

*(Refers to slide)* So, if you look...I just Googled this morning. Googled headlines on NIL, headlines for NCAA lawsuits. There are a lot of lawsuits out there. There are lawsuits on things like whether student athletes should be employees. Many people, I think it was in The Chronicle of Higher Education, Dartmouth basketball players, the NLRB ruled that they can unionize. "NLRB rules Dartmouth College Athletes can form a union." So, this

is in the works. There are lawsuits about former NIL that was deprived for students that didn't get NIL before they knew the new rules. Similar to the conversation earlier about lawsuits against Duke or higher ed, the NCAA has like a target on their back and one of the FARs from another ACC school at our recent meeting, in Charlotte, she said this is like Whac-A-Mole. If you settle one case, they're coming after you with another one. And that was, I think, what Steffen was referring to with the higher ed cases. They're out there. Lots of lawsuits and the landscape is changing. Andrew made the comment earlier, I don't know why we're making this presentation, because what we say today could be totally different tomorrow. So, with that, I guess we can open up for questions.

**Jones:** Before we do that...detailed financial information is not within the purview of the FAR or the Chair of the Athletic Council. So, we did reach out to Daniel Ennis, the Executive Vice President, who is going to come back to share some financial information about our Athletics program. The specific question that we asked Daniel was how much money does Duke raise yearly from its basketball and football programs? How is that money used to support other sports, and how is that money used to support our academic programs? Daniel came to ECAC with a very thorough response, as he always does when he comes to ECAC, and shared some additional information that we thought might be useful for the Council to consider.

**Ennis:** Thanks for the question. Athletics does a terrific job of generating revenue for this set of activities and supporting

our student athletes, which is what this program is all about. So, the way to think about it is roughly \$150 million is spent in relation to our Athletics programs. Those expenses are then covered by a number of sources. The NCAA and ACC distributions are 32%. So that's media rights, that's connection to bowl games. There's revenues that are flowing to the institution. Just a critical source of support and it's largely driven by football, in terms of what is rewarded in those revenue streams. Gifts are roughly a little under 20%. Tickets 10%. There's an all other category. But what's important to know is that Athletics is not able to stand alone financially. So, it's not a tub on its own bottom. The institution supports Athletics, and that's roughly 23%. It has varied. Through COVID, when there were no ticket sales, institutional support went up significantly, more like 40%. But in general terms, you can think about 25 to 30% of the activities of this program require institutional support. Then there was a question about basketball and football, and just the broad sense that those are generating more revenue, are more "profitable." And there's a report, it is publicly available, that really disaggregates a lot of what happens in Duke Athletics, and in every university. So, there's a lot more information you can glean. But those two sports, if you think about men's basketball and football, just looking at direct cost, they generate surplus. That then is contributing to the rest of Athletics. But even with that surplus, which goes to support the total Athletics program, it's insufficient. The university then invests behind that. I think there was a bit of a sense of what happens to that money and that money is getting reinvested in those programs and in the broader Athletics program in support of all of our student athletes.



**Price:** The bulk of the university's support to Athletics is in the form of scholarships for the student athletes, and that's important to recognize. There are other institutions that don't even consider subsidies...scholarships to students as part of their support of Athletics. Here, it's actually the lion's share of what the university contributes.

**Ennis:** Right. So, the truth of the matter is, if we didn't have an Athletics program, we would be providing financial aid for that same number of students. So, we should, as a way to help dimensionalize that subsidy we should do some discounting for the fact that there's scholarships that are provided and there would be some financial aid. So, the net is actually probably smaller in terms of what the institution does to support Athletics. The final thing is to just reinforce, and this is what we've talked a lot about in ECAC, is just that the landscape is changing. When you think about pressures on employment, the potential of our student athletes being employed, other litigation, the cost of being in intercollegiate athletics is only going up and the uncertainty is profound. So, we're navigating that and I spent a fair bit of time trying to **read** ECAC into the ambiguity within which we're operating.

**Jones:** Let's take a few minutes for questions.

**Shapiro:** I was wondering whether there's a limit on time that the sports teams can call on students for practice, weight training, and game play and if there is some oversight? Very quick antidote – I've had a number of students over my years of teaching and I would say, "Why don't you do your reading on

the bus or on the plane?" And they would say, "No, they have to watch tapes of previous games by the team they have to play." This was over and beyond what they were otherwise called to do to be a successful athlete. In some of these instances I've had a student during the season and in the off season, and in the off season the quality of their work goes up because they've now got more time to get their reading done. I was wondering if this is a concern, what's the balance and if there's any oversight to that?

**Franzoni:** There are rules about the amount of hours per week that student athletes can devote to their sport. I would say that is what a coach can require. Talking to student athletes, I think a lot of them go above and beyond what is required, just on their own. That's not things like watching tapes on the bus or whatever, but things that are required, like watching tapes would be included in the hours. But, if you talk to student athletes, let's say you talk to a swimmer and they have swim practice, but they're going to go to the pool to swim anyway on their own to practice flip turns or do whatever. That doesn't count in what the coaches requiring. There are things like that that are on the student, but there is oversight. The oversight is in Athletics, in the Compliance Office. We haven't looked at that, but we have charts on practice times and other things that are required of the students.

**Shapiro:** I'm hearing something slightly different from some of these students.

**Janiak:** This is what happens a lot with faculty is there's anecdotal information that you're trying to deal with 700 students at one time. But I will say, what we have been looking at a lot, as I

mentioned earlier, you can infer from it, barriers to participation in academic life that are structural. So, you're in practice you can't be doing these other things. We're working on that right now. We're trying to see where we can make adjustments to help students participate as much as possible. Obviously, you can't have zero conflicts, you get up every morning and you're practicing. There are classes at that time, but we're trying to minimize that. And we have the great people in the college, Jennifer Hill [Office of Assessments Director] and Alessandra [Dinin, Associate Director], they're working on...they know a lot more about statistics than I do. They really are down in the weeds, every team, all the scheduling, they know when every course is. We're really trying to reduce barriers as much as possible. We hope to have some successes by the end of the semester.

**Joshua Socolar (Physics):** You mentioned that there are rules that govern these Collectives. I think, if I heard right, there are state rules, there are NCAA rules, and there are also university rules. I wonder who makes the rules for Duke, what they are, how they compare to other schools, and what drives those decisions?

**Nina King (Vice President, Director of Athletics):** Collectives are tricky. There are not many rules governing Collectives. So, they are, to be very clear, an outside entity formed by a group of boosters to support student athletes in terms of name, image, and likeness. Let me just give some really quick background. Name, image, and likeness came on so that student athletes can go out, get sponsorships, build their brand. We had a student athlete write a book, promote her

book and make money off of it, that type of thing. Very in favor of those type of student athletes promoting themselves. But then what happened was these Collectives started forming, and so now they are in contact with our student athletes. If you make an appearance at the Ronald McDonald House we'll pay you X number of dollars, or if you sign this basketball we'll pay you X number of dollars. Here at Duke, we're very fortunate. We actually have two Collectives that work with us. We have great relationships with them so that we can educate them on what is allowed, what isn't allowed. They can come to us, ask questions. It's been a pretty transparent relationship. They let us know what they're doing, who they're talking to in terms of our student athletes, what they're paying them. Student athletes also have an obligation to report within our name, image, and likeness policy. So, we feel like we've been able to work really well with them. Then as Linda mentioned, a lot of our student athletes are not here for the NIL money. It's additive for them. They want to be here for the Duke education and then they kind of get to the cherry on top, the opportunity to make some money. In terms of the Collectives, there are very few NCAA rules governing Collectives. It is not to be pay for play, there is not to be recruiting inducements, but we are seeing a lot of headlines and a lot of what's happening at other institutions that that kind of is what is going on. But again, very comfortable with our Collectives. Both Collectives have a board and we often talk with them. We can, just so you all know, NCAA rules do allow an institution to help the Collective fundraise or raise money, I should say, because an IRS letter came out last summer that Collectives cannot be nonprofit organizations. So, a donation to

a Collective is not a philanthropic donation. There is no tax benefit to a donor for investing, an investor in the Collective, not a donor. But an institution...We could sit with a donor and say, "Here are our menu of needs." And NIL, donating to the Collective, can be on our, kind of, wish list and put in front of donors. But we have also worked with all of our development staff, Dave Kennedy and his staff, to ensure that everybody understands when having those conversations with donors, it's not a donation to Duke. You do not get Duke credit and there is no tax benefit to donating to the Collective. Hopefully that's some helpful background.

**Jones:** Thank you so much, Nina. At the beginning of today's meeting, I asked Nina if there's anything she wanted to say at the end and she said, "Watch the Women's Basketball game."

**King:** 8:00 tonight. ACC Network.

**Jones:** Thank you so much for coming over and responding to that question. This concludes our meeting for today. Although, if you want to continue to talk with Andrew about sports, he wanted to talk about whether pickleball and tennis are different. *(Laughter)* But this concludes our meeting today. We next meet on March the 21<sup>st</sup>, which is the annual faculty meeting and a reception will follow.