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Minutes of the Regular Meeting of the Academic Council

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February 17, 2 000

The Academic Council met in regular monthly session on February 17, 2000 from 3:45 to 4:25 p.m. in 139 Social Science Building with Professor Robert **Mosteller** (Law) presiding.

ANNOUNCEMENTS, APPROVAL OF MINUTES

The **Chair**: We have two sets of minutes, and I want to thank Tilo for turning out two sets of minutes during this last month. We have the minutes of the special meeting on January 18th, and the regular meeting on January 20th. Barbara Shaw has corrected a couple of things with respect to one event, are there any other additions or corrections to either set of minutes?

Both sets of minutes were **approved** unanimously, by acclamation.

Prof. **Mosteller**: I have two announcements, then I'd like to call on the President for another matter. The first two announcements have to do with two positions that we elect annually or biannually. The first is the Faculty Forum editor, and we've been trying to find someone to stand for election. Vic Strandberg has indicated this is the last year he would hold office and Larry Evans has agreed to be a candidate. We would like to have the election for this office as of next month, and since we simply have not announced a schedule for the election, we will hold the nominations open until next month. If possible, if there are any other nominations, we would like for them to be received several days before the meeting so that ECAC can talk about them, but we're very pleased that Larry is willing to stand for election, so next month we will vote on Faculty Forum editor. Secondly, Tilo Alt has agreed to stand again to be Faculty Secretary, I'm very pleased about that. Again, we can receive other nominations on that office and we will hold that election next month also, so that we will hold elections for proposed Faculty Forum editor and

Secretary at our March meeting. Nominations can be received from anyone in the community with respect to either of these offices. You need to secure the willingness of any of the individuals to be nominated before submitting the nomination. I'd like to call on the president.

President **Keohane**: As I think all of you are aware, we have this past week lost one of our most dedicated and accomplished colleagues, Prof. Thomas Langford. I wanted to say just a word about Tommy and then ask you to join with me in honoring him. Tommy once said 'Duke has literally been my life. I came here to the Divinity school as a graduate student, I stayed on to teach, and never left. I simply found at Duke what I believe was my vocation.' He became professor, chairman of the Religion department, and then Dean of the Divinity School for a decade. He was Vice-Provost, interim Provost and Provost to the University. He was a member of the Board of the Duke Endowment in his last years, and in all of these high-profile roles, he was, as another admirer says, from beginning to end, an intellectual. That's what allowed him to excel as an administrator. I was very pleased not quite two years ago to present Tommy the University Medal for Distinguished Meritorious Service to the university. During the search for that medal, I became more fully aware of his enormous accomplishments, and I think for all of us it was his personal presence in the university as a colleague, as a friend, as a mentor, as a guide, as a person of deep humor and compassion that we're going to miss most. I think you're aware also that there's a service tomorrow afternoon in Duke Chapel at 3:00 p.m., and it will be followed by a reception where Tommy's family will be present, as well as several current members of the student body. I would now like to ask you to stand and join with me in a moment of silence to honor Thomas Langford. Thank you. [The assembly rose and stood in silence for a moment]

Prof. **Mosteller** announced that it was time to hand out ballots for the election of the new chair of the Academic Council. The two candidates, Peter Burian and Sunny [Helen] Ladd, were seated side by side. He reminded those present that all current members of the Academic Council were eligible to vote. The ballots would be picked up in a few minutes by Profs. John Baillie (Medicine) and Jan Ewald (History) to be counted. He expressed his pleasure at the willingness of the candidates to stand for election.

He then called Council into **executive session** to consider honorary degrees. The session would be brief and those

that wished to return to the open meeting should not go far. --

Robert **Mosteller** called the meeting back into **open session** and invited Provost **Lange** to come to the podium to provide a brief update on the Strategic Planning process.

Peter **Lange**: Good afternoon. As was promised, we are bringing forward to the Board [of Trustees] at its meeting next Friday, a set of documents which are the preliminary [phase?] [of] what we earlier called an elaborated outline and now is actually a set of five documents outlining the current state of planning with respect to Strategic Planning. Those five documents are a personal assessment on my part dealing with the present state of the university and what we might do to bring it into alignment with our aspirations, a set of planning principles and perspectives that have emerged out of the discussions with the faculty in the various schools in the various working groups as well as the discussions in the Dean's Cabinet, Planning Steering Committee, Academic Priorities Committee, ECAC as well as various faculty bodies.. Third, there is an analysis of the economic environment. Preliminary analysis of the economic environment which will underpin planning, looks basically into various streams of income which come into the university and what expectations we might have about how we have evolved over time. There is a summary document which summarizes the initial school documents that were brought forward by the deans. The initial thinking in the schools with regard to planning are summarized as well as the Task Force reports at this stage, and there is an Executive Vice President's perspective dealing with administrative planning, which is at a much earlier phase, and how that might relate to the academic planning which has already gone forward. So, we will be bringing those documents forward to the Board next Friday and expect to get them back. Those documents are already being shared with the Dean's Cabinet, with the Academic Priorities Committee, with the Planning Steering Committee, with the senior officers, with my staff, and we are quite pleased with the progress we've made. The schools have done a remarkably good job of getting this process going and self-assessments are rather well advanced in most of the schools and in the school where we're not as well advanced it reflects processes that have been going on in the Nicholas School of the Environment which was externally reviewed which would not be expected to go through the same stage in its planning document before its external review had come in. It has been [positive?], so we are quite pleased and we will be

reporting back to this Council, to ECAC and to others as this process goes along. Are there any questions?

While the ballots were being counted, the **Chair** made sure that everyone present had copies of the documents on Appendix M modification and the decision by ECAC to continue the position of ombudsman.

The **Chair**: Let me start the discussion. Tom Rowe is here to help me with Appendix M discussion. What we talked about in the fall was a question of whether or not the ombudsman position should be continued, and Carl Anderson, who is here to answer questions, had [originally] raised the question about whether the position should be continued. The principal reason that we raised the question was a matter of good news, namely that over time, over the years, the workload of the ombudsman had gone down, and it seemed that it was happening for a couple of reasons. The principal reason seems to be that the people were learning the procedures on both sides of any kind of disputed issue, that tenure cases were happening more cleanly, that procedural issues weren't as messy and there had been a time when a number of issues would come out of the hospital but better grievance procedures have been developed in the hospital environment and so that the number of cases had been reduced, so we wondered about a phase-out, whether a phase-out would be appropriate. So in the fall, we basically presented to the Council that we weren't certain about the answer to this question and that ECAC wanted to consider it further, and we would come back to it. Carl was willing to be re-elected but wished only to be re-elected for a maximum of one year and so he was elected for a 1 year term hoping, in fact, to finish that up early if another mechanism could be worked out, and in January I got together a group of past chairs of the Faculty Hearing Committee and Carl Anderson and we talked about this, and the conclusion, not unanimously, but the general conclusion was that it made sense to continue the position and we set out some of the reasons on the second page of the memo that one of them was to have an intake person, an intake individual who stood separately from the Faculty Hearing Committee to be able to answer questions and to provide a role in the process that a person who might be a litigator or a decider of the issue later on would have difficulty doing. As a fact gatherer, someone who could get the facts and get them into a systematic form for the Faculty Hearing Committee and for the purpose of mediating those issues that could be mediated. We also did not know of the long term future of cases. There has been an ebb and flow over the past, and there might, in fact, be an increase in the

future. We hope not, because it's healthy for the university if there isn't any, but we didn't feel we were at a point where we can confidently say the position should be terminated. So that was the conclusion that this group reached, not unanimously, as I mentioned, but that was the position of the group and we talked about it in the Executive Committee, and that is our recommendation. Now since that would be a recommendation to continue the status quo, it seems to me that no motion need be made to force the continuance of the position. Appendix M has such a position, and that is where we operate right now and so the only way we would have a motion and have further discussion is if people want to raise questions or someone wants to flip over to the contrary position, so I'm happy to discuss this issue further without a motion or if anyone would like to move to the contrary.

Ok, we will move forward then, and we will be in a process of trying to find someone to fill Carl's shoes that he's filled so admirably for over ten years and with wonderful service to the university. Now, there was one point that came out of that discussion that seemed to merit change in Appendix M, and I would call one Tom Rowe [Chair, Faculty Hearing Committee] to come forward, at this point, to highlight and to talk about those changes and I will stay with him during the introduction.

Prof. Thomas **Rowe** [Chair, FHC]: Thanks Bob. The first thing I would like to do is to add my thanks to those you've already expressed to Carl for the service he has rendered as the ombudsman. Having been on and off Chair of the Faculty Hearing Committee, I have seen what Carl does and [he does] very conscientious work. For cases that do come on from the ombudsman to the Faculty Hearing Committee [he adds] a very helpful file description to the case, [with] identification of issues that makes the Faculty Hearing Committee be in a much better position to take its job forward, which is one reason why I thought the position should be continued despite Carl's advice. The main thing that occurred from this, in thinking about how the position functioned, is that, as presently framed, and this is described in the memo that you have, Appendix M calls on the ombudsman to attempt conciliation in every case, i.e. to see if something can be worked out, if maybe there's something that everybody can agree is a procedural step that ought to be redone or some settlement that ought to be agreed on. Well, that's appropriate for some cases. Other times, you can tell from some initial talking to the parties, looking at what's gone on already, that they have just plain taken their positions, that nothing is going to change and that

you have a dispute which requires adversary resolution with the complainant and whoever is the respondent presenting cases to the Faculty Hearing Committee, in which case it makes no sense to put the complainant and the ombudsman through the time and effort of attempting conciliation.

So our thought for how to try to administer that, was that after the ombudsman gets a case, there is an initial informal stage in which people can consult with the ombudsman about whether to take the grievance forward, but then once the ombudsman has the case and maybe does some preliminary inquiry, that it may make sense for the ombudsman to get together with the chair of the Faculty Hearing Committee or someone else on the committee designated by the chair if the chair is disqualified for whatever reason and to try and figure out just what makes sense by way of processing the case next. Does it make sense to try and spend time on just conciliation or is this something that is pretty well ready to go to the panel of the Faculty Hearing Committee for an adversarial proceeding, and findings and our recommendation whether anything should be done?

So, that's the basic idea. This is something that is familiar in the literature of alternative dispute resolution. There's sometimes a reference to the idea of a multi-door courthouse where people come with a dispute and it doesn't automatically get one single form of processing, but there's an effort at the beginning to try to figure out how it makes sense to process the case rather than 'one size fits all' and that's the thought behind these changes. They also try to retain the file-developing and reporting function of the ombudsman which has proven really handy, so you see detailed amendments on what I gather went out to you as an appended document to take the present text of Appendix M and make changes.

You see that paragraph IV A. 1 is a suggested change that emphasizes the early-stage, informal consultative role, just adding that the ombudsman be available in a consulting role to answer questions about how properly to file a complaint, before anything heavy and formal gets triggered. One thing that I recall that I mentioned to your Chair while looking at this just before coming over is, I think, in ECAC there was a discussion that it might be better phrased as "to consult with potential complainants" rather than to say "the complainant," because someone need not already have submitted a complaint to go talk to the ombudsman. I think that might just be an agreed on change. And one thing that this does is, it makes it clear that this kind of consultative

role, that should be available, is something that is better done by the ombudsman who is not in an adjudicatory position. Once in a while, when I have been Chair of the Faculty Hearing Committee, people have come to me with a grievance or potential grievance and tried to get advice. I think that's an inappropriate role for someone who might later sit as an adjudicator deciding one way or the other, and so I say, 'well, I will talk to you about procedural questions, how this thing might work,' but then I have always drawn a fence around 'but I will not get into being your advisor and that is a role that is more appropriate for the ombudsman,' if the person wants advice. Sometimes people think about it and decide, after advice, that they don't want to proceed with a complaint or attempt to see the ombudsman to talk to them, so that's one thing about that advice.

The rest of the amendments are meant to carry through on this idea of 'once you get a formal complaint and the ombudsman doing the necessary preliminary investigations to figure out what is going on,' then the ombudsman and the chair of the FHC get together and try and figure out 'OK, what's the best way to process this case? Does it make sense for the ombudsman to spend some time on conciliation or is it not such a case?'— and all you'd see is of language intended to carry out that idea, to set up stages of consultation, figuring out appropriate modes of processing and do whatever makes sense rather than just a single type of procedure that is mandated by the present state.

It does very much keep in place people's right to go to the Faculty Hearing Committee, whether or not conciliation is attempted. A complainant who has filed a complaint within the jurisdiction of the FHC and asked for the ombudsman to prepare the report and for the matter to go forward for adversary proceedings before the Faculty Hearing Committee, -- nothing has changed in terms of the complainants right. In fact, if anything, things might go more quickly because there might be a realization there's nothing to conciliate here, all it needs is preparation of a file that can be the starting point for the adversary process before the panel of the Faculty Hearing Committee. That's all I have to say by way of introducing it. Are there any questions either on what we're trying to do or on the language of the proposal?

Bob **Mosteller**: This is a matter that we'll vote on next time, this is a two-meeting matter.

Prof. Mary **Boatwright** (Classical Studies): I'm interested

in your discussion of how people have in the past come to you as head of the Faculty Hearing Committee, [and my?] question about the ombudsman's position is exactly that. It seems to me that, well, I tend to think people are more litigious than ever, but it seems to me there is a tendency for people to try and leap frog and get to the most important affirmative person possible. So, maybe [by] just simply voting on this amendment and bringing the question of the ombudsman forward again, maybe people will start turning to the ombudsman for the purposes that are described in the Appendix. But I guess, if people continue to go to the highest rank they possibly can, then the ombudsman is superfluous.

Tom Rowe: Thanks. One, of course, the change of the language on consultation has this function that has been available to the ombudsman [and it] is meant to underscore that, 'hey, if you want to talk to somebody, the ombudsman is there.' When I was referring to people coming to the chair of the Faculty Hearing Committee and seeking advice, that, as I recall in my experience, invariably has happened after they have been through the ombudsman stage, that they are then trying to say 'OK, what happens next, do I want to go further?' So, they haven't been trying to leapfrog the ombudsman, at least *so far* it has been situations in which the ombudsman has already done his thing, and they are then trying to figure out what to do next, which, of course, they may talk to the ombudsman about. But then I don't regard it as inappropriate for people to come to the chair of the Faculty Hearing Committee to say, 'I don't understand about this or that aspect of the process, can you explain that to me?' [If] it's such that if they are wanting me to try and tell them should you take this forward or not, I say, I'm not getting into that, and we haven't had the problems to which you refer as leapfrogging and paragraph 1 is meant to underscore 'here is where you go at first.'

Prof. Kathy Ewing (Cult. Anthropology): In the original Appendix M, it says the ombudsman has 60 days with which to investigate the complaint and try to attempt reconciliation. And the 60 days remains in the revision, but I'm wondering if that much time needs to be allowed in cases where there is no attempt at reconciliation. I can just imagine that there is no attempt and it just sits around for 60 days and nobody gets around to it.

Tom Rowe: Yes, if you decide to cut that stage out, then you don't need the 60 days. I have the impression that we've done fine on the 60 days. We could try varying time periods. My impression is that it might be more complicated than necessary, because I don't actually

think it's going to take 60 days for the Chair and the ombudsman to get together and say 'this is not a case that can be conciliated;' then it's just not going to take that long. If it turned out that there were some such cases, then, maybe, we should consider such an amendment but it could be done now. I'm inclined to think that it would be a bit longer than I hope is necessary.

Bob Mosteller: As I understand it, if there's a decision made to not conciliate, then it would move straight on and the 60 days would not be considered. No need to take the 60 days if the decision is just moved on. It leaves the 60 days as the maximum period so that it won't linger and if FHC and the ombudsman decide that it's not necessary, it can move on day one to the Faculty Hearing Committee.

Kathy Ewing: Good, but it might not. My concern is that people would give it low priority in their things to do over the next 60 days.

Tom Rowe: The ombudsman has often been an emeritus member of the ^faculty who has been able to get onto these things quickly. My impression is that it hasn't arisen in reality. The problem, actually, is getting the chairs of the Faculty Hearing Committee itself to move fast enough, not the ombudsman.

The **Chair** closed the debate by saying that the matter would be brought back next month.

ELECTION OF COUNCIL CHAIR

He then announced that the balloting had been completed and the ballots counted. He thanked both candidates for standing for election. The election was close. Peter **Burian** will be the Chair of the Academic Council starting July 1st. [applause]

RESOLUTION SUPPORTING PROPOSED MERGER OF BOTANY AND ZOOLOGY DEPARTMENTS

The **Chair:** It's now time to move to the continued discussion of the combining of Botany and Zoology into the Biology Department. We passed out a revised resolution and it contains an additional "whereas" clause. It's the fourth "whereas," which says "whereas the Zoology and Botany Departments have taken strongly affirmative stands in support of the Barr Task Force report on Biology;. . . Additional votes were taken in those departments in between last meeting and this

meeting. The "be it resolved" clause says "Be it resolved that the Academic Council endorses the recommendation of the departments, that the Departments of Botany and Zoology be merged into a single department of Biology and forwards our endorsement to the Provost and the University Secretary for consideration by the Board of Trustees." The floor is now open for further discussion. The plan was not to make any additional presentations, but there are a number of people here to answer questions that anybody might have, so are there additional questions about the proposed merger?

In the absence of any further questions, Prof. **Mosteller** then asked for a motion to adopt the proposed resolution. It was moved and seconded and **passed** unanimously by voice vote. There being no further business, he thanked everyone for coming, and with that the meeting stood adjourned.

Submitted for consideration by the Academic Council,

A. Tilo Alt
Faculty Secretary