

Duke University

Durham
North Carolina
27708-0928

ACADEMIC COUNCIL
304 UNION WEST
BOX 90928

Minutes of the Regular Meeting of the Academic Council

PHONE (919) 684-6447
FAX (919) 681-8606
EMAIL: ACOUNCIL@ACPUB.DUKE.EDU

March 21, 2002

The Academic Council met in regular monthly session from 3:45 -5:15 p.m. on Thursday, March 21, 2002 in 139 Social Science Building with Professor Peter **Burian** (Humanities) presiding.

MINUTES

As always, the **Chair** opened the meeting with the request for a motion and a second to approve the minutes of the previous meeting of February 21, 2002. They were **approved** as submitted by acclamation.

Since he had no announcements to make, Professor **Burian** took the opportunity to thank the outgoing Council for its faithful work and added that those who would not return as reelected members would always be welcome to continue to participate in its deliberations.

REAPPOINTMENT OF FACULTY OMBUDSMAN

The **Chair** said that he was gratified that Dr. Paul Killenberg of the Department of Medicine after the first two-year term had agreed to serve for another term as ombudsman and that ECAC warmly endorsed his reappointment. Dr. Killenberg was present and had agreed to answer any questions people might have about the ombudsman's role and activities.

Professor David **Howell** (Pathology) said that he didn't have a question but wanted to offer an unsolicited comment. He had known Dr. Killenberg for 15 or 20 years, first as a teacher and then as a colleague and he thought he was ideally suited for this role, because he was a man of great compassion and gentleness and a man of great stature both within the university community and physically.

The **Chair** thanked the speaker and said that although the bylaws did not specify an election for this office, ECAC had decided just as it had when Dr. Killenberg was first appointed to ask the Council's consent. He then made a motion on behalf of ECAC that the Academic Council endorse the reappointment of Dr. Paul Killenberg for a second two-year term as Faculty Ombudsman. Dr. Paul **Killenberg** was

reappointed by voice vote without dissent.

ELECTION OF FACULTY SECRETARY

As the next item on the agenda, the **Chair** moved to the election of the Faculty Secretary. The primary responsibility of the secretary was to provide the minutes of these meetings. He or she was also a member of the Executive Committee. He remarked that the outgoing Secretary, Professor Tilo Alt, had served faithfully and well for four years and he wanted first to thank him for all that he had done. He asked for a warm round of applause. (Clapping) He then asked if there were any nominations from the floor of candidates who had indicated their willingness to serve. Not hearing any, he offered the name of John Staddon as Faculty Secretary for the academic year 2002-2003. Professor John **Staddon** was elected by acclamation. (Clapping)

UPDATE ON CAPITAL PROJECTS IN PLANNING

The next item of business concerned an update on the capital projects in the Master Plan, i.e construction going on on campus and he invited Executive Vice President Tallman Trask to address the audience.

Tallman **Trask** said that he agreed with ECAC's suggestion that it would be a good idea if he came before the Council a couple of times a year and explained what was about to happen or was happening. At this point, they were looking at construction on the campus either just completed or just about to start or in design which was in excess of half a billion dollars. So today he wanted to run quickly through twenty projects that were currently in one stage or another.

First, he mentioned a tower being built next to Cameron intended to carry chilled water to the top for air-conditioning the stadium as well as providing exit staircases to satisfy fire regulations. It also included a large new restroom for women. (Clapping) The Center for Human Genetics had most of its shell on the building and was up off Science Drive and would be occupied late this summer or early fall. Many had already seen the Doris Duke Gardens Building which was finished earlier this year. The Football Building under construction adjacent to Cameron would be done in July. The Student Center expansion for the business school would be done in August. The Research Center for Human Disease Models, also known as the 'mouse house' was a little bit slower in construction, but now looked like it would be finished a year from now. The Richard White Lecture Hall on East Campus opened in June and Academic Council actually should meet there. It was a better room than this one. The **Provost** interjected that that was not allowed. EVP **Trask** continued listing construction projects, by referring to a new Chilled Water Supply Plant next (located off University Road).

Much of the air conditioning on the Duke campus was a retrofit of buildings that were not air conditioned when they were originally constructed, and so they had lots of buildings with single chillers. This plant would replace these chillers, and that would reduce a deferred maintenance backlog by about \$40M for an initial outlay of \$5M for the new plant, because it was much more economical to chill many buildings centrally rather than singly. Another structure nearing completion was the new West-Edens Link, a new dormitory ready for students to move in in mid August.

Next, he listed three or three and a half building projects that were about to start in the coming weeks. The Nasher Art Museum design was essentially complete. The documents were out to bid with contractors. The Center for Interdisciplinary Engineering, Medicine, and Applied Sciences (CIEMAS) which sat across from Hudson and closed Science Drive would start construction immediately after commencement. The contract had been awarded. Soon thereafter, the work on the Divinity School addition would start with the same contractor since those jobs physically overlapped. That project was taking a little bit longer to design because his office had made a decision which he thought was the right one although it was an expensive one. The building sat near the Chapel and therefore the west face of it would look like it was built in 1929. They were at an early design stage of a multidisciplinary science facility for Arts & Sciences to go along somewhere on Science Drive. The architects were working on it. It looked to be about an \$80M project which would probably start construction in a year. They were also about to start construction of a small addition to the Admissions Office. One of the problems in admissions had been that they never had a room large enough to greet the applicants who wanted to come hear about Duke. A donor had provided funding for that project which would start this summer.

Right after commencement ground would be broken for the first on-campus parking structure which would sit between the Bryan Center and Science Drive. It's actually 80' of trees away from Science Drive. It was to provide flexibility for some of the parking the campus was losing along Science Drive and also for visitor parking for the Chapel, Page and other central campus activities. They were also well into design on expansion, renovations and readjustments of Perkins Library which he would hope would begin probably within the next year. A proposed addition to the Sanford Institute was now through schematic design and awaiting funding. His office was in some early conversations about a renovation of the front half of the Law School. The Law School would like anyone with 10,000 linear feet of granite to give them a call. Further, they were in active discussions about an addition to the Washington Duke Hotel, both meeting spaces and room spaces. The biggest project they were at least beginning to explore was the redevelopment of Central Campus which was in the Master Plan. As

He had been heard to say, the Central Campus was neither central nor a campus. It was a great opportunity for them to do some things and with Larry Moneta's help they were trying to rethink some housing opportunities but also some research and office and commercial opportunities that might fit there. That was likely to be a very large, very long term project that they were in early design discussion about. In addition to these twenty, there were ten more that sat right behind them. They now had a capital budget for the next ten years. There now was a process by which these projects actually got on the list and moved from one category to another. So he thought they had actually managed to track it [the process?], and given the fact half a billion dollars was going to be spent that was an important thing to do. He'd be happy to answer any questions. He would come back whenever Council wanted him to, because these things were going to change and impact people for several years.

Professor Kenneth **Knoerr** (NSEES) brought up a parking related issue since parking had been mentioned. For some time there had been pretty casual tolerance of parking in the evening along Science Drive. Last night he had gone to a performance at Page and when he walked back he saw all these cars with tickets on them which had not been ticketed for a long time. He wondered if somebody had gotten a lot of telephone calls today about that. There had not been a sign saying one could park and yet as far as he could tell they were tolerating it since they weren't ticketing people.

Vice President **Trask's** response was that they were trying to be somewhat more careful. Especially around athletic events, people might just park along wherever they wanted to and they were trying to stop that. One of the problems they were trying to address in particular was the ability of students and especially graduate students to move around campus especially at night. He suspected a lot of people who were parking in some of those spaces were students. He wanted to change the way students were allowed to move around campus. They were getting some pressure from the fire marshal, because those were all fire lanes and hence they had become a bit more aggressive than they had been, but some signs ought to be put up.

Professor Earl **Dowell** (Engineering) had three questions which he would reduce to two if others had questions as well. The first question concerned the overall M&O figure for the half a billion dollars in improvements. EVP **Trask** responded that numbers varied widely by building type. For a science building it was probably \$100/sq. ft. by the time everything was said and done. A high-end science building would cost 3.5% to maintain and operate, but office buildings would be somewhat lower. He confirmed that the total cost might be \$20 or \$25M/year when asked by his interlocutor. Those dollars were built into the operating budget of the units who were building. Provost **Lange** added that the expense

was built into the planned rather than the current operating budget.

Professor **Dowell's** second question concerned the reason for the decision to spend \$500M on buildings out of a total of \$700M of new investment provided for in the Strategic Plan. Tallman **Trask** explained that the campaign proceeds that were going directly to buildings were substantially less than that. Most of these buildings were debt-financed so it was not at the expense of campaign proceeds per se. The total projected investment in the Strategic Plan was \$727M and the investment in buildings was \$450 or \$460M out of that total. When the total campaign was increased from a billion and a half to two billion dollars, the assumption was that they would try to get \$150M out of that \$500M to go toward capital. The other \$350M would not go toward capital. But they were also doing debt borrowings against fund flows to preserve capital.

Professor **Dowell** thought the answer very helpful and turned to his final question which concerned the responsibility for shortfalls in projected building costs. By way of an example, he asked whose budget was responsible for the Art Museum budget, whether it was the Provost's or Arts and Sciences' budget that would take the 'hit' in case of a shortfall. Tallman **Trask** replied that he hoped nobody would. One thing he was trying to do was to make people realize that buildings had costs and one had to figure out in advance how to pay for them. Right now the Art Museum had a fixed budget, and so if it came in over budget the first question would be how to reduce costs to get it on budget. They would do that before looking for any more money. Ultimately, one could go up the hierarchy of who owned certain facilities and who had money. Peter **Lange** added that they had plans that allowed them to know how schools intended to pay these costs if revenues fell short and that the primary and first responsibility lay with the unit itself to have contingency plans in place to fall back on rather than to have the costs borne by all the other units or the Provost. EVP **Trask** continued his explanation by recalling that there used to be an assumption that if one had half the money one could start construction. What his office discovered, however, was that they ended up with half the money and no one knew what to do about the difference. So instead of that approach, they were now asking how the unit intended to pay for the entire building, how much it actually had in hand and where the rest of it was going to come from, after which his office would ask what would happen if the unit's assumptions were wrong. They were not proceeding with buildings until all of those things had been clarified first, because he spent the first two years he was here trying to find \$40M to cover a shortfall for a building.

Professor Richard **White** (Natural Sciences) asked about an eyesore opposite the main entrance to the university that did not convey a favorable impression of the university to visitors. It was a

grassy area people used to park and it was also hazardous to get in and out of because one had to dodge traffic. Tallman **Trask** said that it had begun as a place where once a year people coming for an alumni function could park, and over time it had become attractive to more and more people. It was not an official parking lot and there was a sign that said so. It had become a very popular place to park because people didn't have to pay. They were going through a process now to redesign the parking system which would roll out over the next 4-5 months. But once he had become convinced that there was adequate parking, and they were fairly close to that point, and also that there were pricing options that allowed people a range of choices to make, then he intended to put a big fence up around that lot and plant trees in it. It was a very ugly place to have a parking lot. It just sort of happened, but he hadn't felt comfortable shutting it down until he had reasonable alternatives. They had tried with the city to get a cross walk and a signal put there because it was dangerous to cross there, especially at night, but the city refused to give Duke either one. Professor John **Staddon** (Natural Sciences) interjected that there was also what looked like a large dirt pyramid. His interlocutor replied that was dirt from the West-Edens Link. It was convenient storage for surplus dirt to put back in the landscape.

FINAL DISCUSSION OF CONSENSUAL RELATIONSHIPS POLICY

The **Chair** asked if Council was ready to move to the last item of business, namely what he hoped would be the last time to discuss the proposed Consensual Relationships policy. He needed to make two corrections in the text first, however. On p.3, prgr. 3, line 2 "superior" should be added to the sentence to read ". . . must disclose the relationship to the appropriate superior. . ." On p.4 in the first paragraph of # 6 (Guidelines) a missing "s" should be added in the second line to read ". . .to intrude on the privacy of members of the Duke Community. . ."

There may be others but those were the two that had been brought to his attention, for which he thanked attentive colleagues. Vice President Sally **Dickson** was present again to help answer any questions that people might still have. ECAC, hoping that Council would be ready and able to vote today, had chosen to offer the following motion simply to frame the discussion.

The motion read: "The Academic Council approves the proposed policy on consensual relationships for inclusion in the Faculty Handbook."

The resolution reflected the fact that Council's role here was not precisely a legislative one, but the material that went into the Faculty Handbook was brought before the Council for its approval. With the motion on the floor, the discussion may resume. He reminded the audience of some changes that had been made in the text. The primary changes made were that the sanctions about which a great deal was said last time had been removed from the policy.

The definitions had been moved up front and there was one substantive change in addition, which was simply that on p.2 of the policy consensual relationships, which was now used as the term throughout, had been defined somewhat differently as dating and sexual relationships willingly undertaken and sustained by the parties. What this did, among other things, was to remove marital relationships from this policy on the grounds that they were, after all, a rather different category and, in essence, were covered under Duke's nepotism policy. So what had been done, and people had got this as the last page of their handouts for today, was simply to add a paragraph which spoke to the one element of consensual relationships not covered in the current nepotism policy, namely the situation where a family member was teaching another family member. He could simply read it out. It would be appended to the policy at the top of the page.

"There is also a potential conflict of interest if the student enrolls for academic credit in a course taught by a member of his or her immediate family. Authorization of an alternative arrangement for the student's evaluation should be obtained from the faculty member's chair or the appropriate dean. Should that not prove practicable, the faculty member must obtain approval for evaluating the student from the chair or dean."

ECAC believed that covered marital relations so that they could simply be set aside and put in the nepotism policy where essentially they belonged. The Chair then invited further comments and discussion.

Professor Robert **Mosteller** (Law) had some concerns the first of which centered around the word "mentoring" as used in the fourth part of the policy. It seemed to him that mentoring, seen in the proper context, did not have to be questionable at all as long as it was defined broadly. On the contrary, it was a good thing. So, he proposed tightening up on the language, i.e. either omitting it from the list of situations of authority between faculty member and student or singling it out for a tighter definition and dealing with it elsewhere in the policy. Provost **Lange** interjected that there were departments that used a formal mentoring system and that, therefore, the exhortation for a faculty member acting as a formal mentor not to enter into a consensual relationship with his/her charge would apply. The **Chair** then asked Professor Mosteller if he felt comfortable with simply adding "formal" to the word "mentoring," and Bob Mosteller agreed. In order to resolve the problem and unless he heard an objection, he would be glad, therefore, to accept the addition of the word on behalf of ECAC as a friendly amendment. His **interlocutor** then continued with his second concern which involved the statement in the same paragraph that a faculty member who had or had had a romantic or sexual relationship with a student under his/her authority also should not participate in decisions pertaining to that student's grades, honors or degrees. In the Law School, for instance, the entire

faculty participated in decisions having to do with every senior and this university's degrees at the end of the year. So, again he would like to see the language 'tightened up.'

The subsequent effort to correct collectively the language of the document centered on the following points:

1. Distinguish between a faculty member's substantial responsibility in the case of a particular student's honors, grades and degrees as opposed to voting on an entire class or on a Ph.D. student's preliminary examination committee. In the first instance, a conflict of interest existed, whereas in the second case it did not, hence the language of the policy should reflect that. Nevertheless, it was agreed that the language of the document made that implicit, since it clearly referred to a student with whom the faculty member had a relationship.
2. The wording of the first sentence of part 6 (Guidelines) . There would be instances where violations of the policy were such that punitive action would be called for. In order to avoid ambiguity, it was agreed that the adverb 'primarily' be added, so that the sentence would read: "The intent of the policy is primarily to be instructive and corrective rather than punitive."
3. In the second sentence of "Guidelines" the adjective "true" should be replaced with "appropriate," to read: ". . . or to interfere with appropriate mentoring relationships."
4. The final paragraph of the document on p.5 was felt to be unrelated to the previous points and led off in a different direction. It should, therefore, be deleted. It was also pointed out that the reference in that paragraph to counselors, clients, and doctors and patients was already covered by specific policies in this area, including state law that affected a physician's license in case of violations.
5. Change the wording of the first sentence of the second paragraph of part 4 (Policy Regarding Faculty-Student Consensual Relationships) which treated two situations as parallel when they could be mutually exclusive: "No faculty member should accept authority over a student with whom he or she has or has had a consensual relationship without agreement with the appropriate dean." It was felt that it was entirely possible that a dean might agree to a faculty member's assumption of authority over a student if the consensual relationship no longer existed. In the end, people found it difficult to imagine a situation where a dean might be called upon to exercise discretion to permit an act of authority to be engaged in, hence the sentence could be left the way it was.
6. The first sentence of paragraph 4 on p.3 should be changed to

avoid violating a point of logic. The offending statement in question read: "If nevertheless a consensual relationship exists or develops between a faculty member and a student involving any situation of authority, that situation of authority must be terminated or avoided. Termination and avoidance include . . . the student withdrawing from or not enrolling in a course taught by the faculty member . . ." The objection was to the words 'avoided' and 'avoidance' in this context, since if the situation existed it was very hard to avoid it. The only matter that referred to avoidance behavior for the remainder of the paragraph had to do with allowing the student to enroll in the course. It was agreed by members present to strike the words "avoid" and "avoidance."

Outside of striking the final paragraph on p. 5 of the document, the wording changes were accepted by the Chair as friendly amendments to the ECAC motion on the floor. Since striking the last paragraph involved a more substantial change, although it too represented an amendment to the motion, the Chair asked for a vote. The amendment **passed** by voice vote with one opposing vote.

VOTE ON THE PROPOSED POLICY OF CONSENSUAL RELATIONSHIPS

After some discussion about the wisdom of voting on the policy as a whole when it was not clear whether all ambiguities had been worked out, the **Chair** voiced his concern that as of the next meeting a new Council would be seated and that it would seem extraordinary to have to start from the beginning just because many new members were not up to speed on the issue. The issue had already received more attention than any other issue before the Council. Not one issue had been raised on this day that went beyond some verbal changes, albeit useful ones. He would, therefore, prefer it if Council voted on the motion so that there be sufficient time to consider other issues before it.

He summarized the results of the afternoon's discussion by stating that only verbal improvements had been suggested. Essentially, it remained the same document before Council with some amendments, namely the addition of the word "formal" before "mentoring" in paragraph 1 of part 4 on p. 3, the addition of "primarily" and the deletion of "rather than punitive" in the first sentence of the Guidelines on p. 4, and in the third line of that same sentence the substitution of "appropriate" for "true" mentoring as well as the elimination of the final paragraph of the document on p 5.

After some procedural questions were raised and whether there was a quorum present, Professor Joel **Huber** (Fuqua) proposed that Council vote on accepting the document before it in principle and to delegate ECAC to make the revisions that had been discussed. Professor Kenneth **Knoerr** (NSEES) who had previously called the question, immediately embraced the proposal by seconding it and by adding that whatever draft ECAC came up with be circulated first

via e-mail.

The **Chair** said that Joel Huber's proposal had been moved and seconded and that it superseded the original motion on the floor made by ECAC. It now proposed to delegate to ECAC authority to make appropriate changes and to circulate among Council members for further comment and for second thoughts which as Euripides once said were often best (Laughter). The motion **passed** by acclamation with one vote in opposition. Before turning to new business, Professor Joanne **Wilson** (Clinical Sciences, Medicine) asked that ECAC look at a more global address of abuse of power. This was coming from several women faculty in the Medical Center. Patterned after the Consensual Relationships Policy, she thought that – perhaps in the coming year – a proposal ought to be made concerning global abuse of power as opposed to consensual relationships. The **Chair** responded by saying that it would be put in the record.

NEW BUSINESS

Professor Marjorie **McElroy** (Social Sciences/ECAC) asked Council for support for Professor Richard Ha **in** (Mathematics) who had circulated a letter, signed by 22 department chairs, requesting the administration to implement a policy that asserted that the welcome-home reception for the men's and women's basketball teams should only be minimally disruptive and not conflict with classes. Hence, such receptions should only be scheduled on weekends.

There was some discussion as to what the Provost's position was as well as the President's who, last year, had commented in response to Richard Hain's suggestion to hold such receptions in the evening, that there were also evening classes and hence no good time to avoid a conflict. Therefore, Professor Hain said that, this time, he had omitted any specific reference to evening classes. After Professor John **Staddon** (Natural Sciences) interjected that it seemed to him a less than radical proposal for the faculty to come down on the side of education in a situation like that, the **Chair** said that the letter had already been drafted and sent, hence there was no issue of modifying its content, rather Council was voting whether or not to support it. A motion to support it was made and seconded. It **carried** by voice vote with two negative votes. With that the meeting was adjourned.

Submitted for consideration by the Academic Council,

A. Tilo Alt Faculty
Secretary