

Minutes of the Meeting of the Academic Council
Thursday, October 17, 2019

Kerry Haynie (Academic Council Chair / Political Science and African and African American Studies): Welcome, everyone, and thanks for coming to our meeting on this beautiful fall day. I would like to begin with a few recognitions. I'll begin with one of our own Council members, who was recently awarded the McArthur Genius Grant, Professor Jenny Tung from our Evolutionary Anthropology and Biology departments. Jenny, please stand. [applause] Professor Tung received both her BS and PhD from Duke and is the first Duke recipient in more than 30 years for this prestigious award. The only two other recipients in Duke's history were also women scientists. In 1985 Jane Richardson, a long-time Academic Council member, and in 1989 Patricia Wright. Professor Tung studies long-term health consequences of social stress in macaques and wants to understand how social and environmental adversity affect health and survival over the lifespan of the individual. Congratulations, Jenny. [applause] Later, I'll be speaking with you and Jane about a new Academic Council campaign. If you join Academic Council, you, too, can be a genius. [laughter] We'll be in touch.

The next recognition is for another Duke alum who was recently awarded the Nobel Prize. Dr. Bill Kaelin was awarded the 2019 Nobel Prize for Physiology and

Medicine for research on how cells sense and adapt to oxygen availability, a process that is essential for survival of any organism and is a part of cancer resistance. He shares the prize with Sir Peter Ratcliffe of Oxford University and Gregg Semenza of Johns Hopkins University. Dr. Kaelin received both his undergraduate and medical degrees from Duke and was also awarded an honorary degree from Duke in 2018. He is a professor in the Department of Medicine at the Dana-Farber Cancer Institute at Harvard Medical School and a Howard Hughes Medical Institute investigator. Congratulations to Dr. Kaelin. [applause]

APPROVAL OF THE MINUTES FROM THE SEPTEMBER 19, 2019 MEETING

Haynie: Now we will move to the minutes of our September 19 meeting. They were posted on our website. Are there any corrections or additions to the minutes?

[Minutes approved by voice vote without dissent]

ANTITRUST POLICY AND IMPLIMENTATION GUIDELINES

Haynie: One of the things that ECAC has been discussing in our weekly meetings, and things pop up often from time to time, is that the nature of being a professor is changing. There are constant

changes in what it means, obligations that we have and expectations of us as faculty. We think it's important that this Council stays on top of these changes so that we can then inform our colleagues in the larger faculty community. We have two items on the agenda today that are in keeping with this desire to stay on top of the changing context in which we do our work. Things that we're having to learn, that we're responsible for, and obligations that I never imagined. The first item regarding antitrust is one of those things. When the General Counsel's Office sent me a copy of the new policy and I read through it, I immediately called and said, we need to have a conversation at Academic Council about this topic. There are things in the policy – I can admit if I've done some things, I'd better stop – [laughter] there are things that some of us may have done or routinely do in that policy that we need to be made aware of. Again, faculty have been trained to do research and teach, and not stay on top of some of the things that we're now being held accountable for. I want to welcome Chris Lott from the Counsel's Office, who is here today to talk about the new antitrust policy.

Chris Lott (Deputy General Counsel):

Good afternoon, everybody, and thank you for having me. The subtitle of this is "Everything you need to know about antitrust law in ten minutes." It takes many people years to figure this all out, but I think today we're going to try to hit some of the highlights of the new policy that we recently adopted. The link to it is in the presentation later on, and it is in your materials as well. Trying to hit for you what you really need to know, the big takeaways, and then to answer any questions you might have.

Let's start first with what the antitrust laws are. You might not have heard of them before today. These are the laws that Congress has passed over the years that really focus on protecting the free market. Everything that comes through the antitrust lens is all thinking about competition, it betters consumers, it makes more products, it drives prices down. All analysis in the law is about, is it going to help consumers through competition? There are two main areas of the law that it has its focus on. One is on monopolies. The law doesn't prohibit monopolies. Monopolies are companies with very significant market power. But it does prohibit monopolies from taking certain actions to exclude rivals or exclude entrance to a market. We don't need to talk any more about that today. That's not as much relevant to our day to day lives here at Duke. But I do want to go to the area that's a little more relevant, which is that the antitrust laws prohibit competitors from entering into agreements that unreasonably restrain competition - the short word is collusion - among competitors that can drive down competition. You're thinking, what are agreements between competitors that might affect competition? We know from the courts that there are certain types of agreements that, on their face, per se, are anti-competitive. The courts have looked at these for years and said, we don't need to do any more looking, other than to know that there is one of these agreements. And if there is, it carries with it civil exposure, and potential criminal penalties that can attach as well. We're talking here about things like price fixing. An example might be if multiple universities got together and said, hey, let's set the tuition price increases for the next ten years. That could be considered price fixing, because tuition is the price of

a good that we offer. Customer or market allocation is another example. If two schools got together and said hey, you're only going to recruit employees or students south of North Carolina, and we're going to recruit students or employees north, that is customer or market allocation, and that could be considered, per se, unlawful. These are the areas, these per se violations, that, I think if you take away anything from today, these are the ones that we really want to stay away from. We obviously don't want the criminal violations attached to them, and when you're in the per se world, you don't get an opportunity to tell the judge or the jury about all the good reasons why you did something. It's automatically illegal. What about everything else? There's obviously a lot of collaboration, a lot of agreements that we enter into with our competitors. What are these judged under? As a general matter, under what the law says, the rule of reason. The reasonableness standard. Are the benefits to competition outweighing the costs? In ten minutes, we don't really have the time to get into all the nuances of this. I think the takeaway is, you want to be away from these per se violations and most of these types of other agreements, like joint ventures you might enter into, or collaborations to create new research or a new device. These are the types of things that are generally going to be acceptable but we have to think about them carefully and structure them carefully.

A question we often get is, the antitrust laws certainly apply to for-profit companies, but do they apply to nonprofits? The answer is obvious at this point, it's yes. But really the focus of the antitrust laws is going to be more on the commercial sides of our business than on

the day to day research that we do. The research collaborations, the academic collaborations, the scholarly collaborations. That's not as much the focus of the antitrust laws as are the main commercial side. Recruiting and trying to attract students, competing for patients, competing for employees, competing for contracts, competing for research dollars. These are the types of areas where, if universities or our other competitors are colluding to try to set the market, we have to be particularly sensitive.

We need to talk about information sharing. And we need to talk about it because the antitrust laws don't just cover written agreements or even just oral agreements. You can get into an antitrust case simply because you passed information that's commercially sensitive back and forth, and there's some sort of parallel conduct that happens afterwards. By that I mean, let's say two competitors share what their prices are going to be and they do it casually. Then all of a sudden there is a big jump in prices for something. That alone is enough to get an antitrust claim brought against you. Whether it ultimately is going to be enough to succeed is another question. But that is an antitrust issue. So we have to be particularly careful when we share certain types of information. Here, we're talking about things like future tuition, future plans with respect to what we're going to provide regarding salaries, or what our hiring strategies are going to be, really under the umbrella of confidential information about future strategic plans. That's the real big focus of the "don'ts," if you will. I don't want you leaving here thinking there's nothing you can share, because I know we all work in a very collaborative environment and interact with our peers all the time. What is

generally going to present lower risk? Sharing information about best practices, that's generally going to focus on historical information, things that have happened in the past, how they work. That's lower risk under the antitrust laws. Publicly available information, that's generally not going to be a risk under the antitrust laws. So if it's already out there, it's not a huge concern to share with competitors. Benchmarking surveys. We get this question a lot. So we get salary surveys, or maybe other surveys about pricing or other things in the higher education market. Is it okay for us to participate in those and to see them? If it's a general matter, yes, as long as they're done right. There are guidelines from the Department of Justice that say that if the survey is conducted by a true third party, and here I mean not one of the participants in the market, but a third party organization, if the data they collect is historical, and if the data they then produce is aggregated in some way so we can't tell who our competitors are, that's generally going to be safe, and is a good, beneficial thing for the markets. Then, of course, the normal academic and research collaborations that we do every day, those are not going to be a problem. We're focused more, as I said, on the commercial side.

I wanted to give you an example of where information sharing has gotten some universities allegedly into trouble. It's a current investigation that the Department of Justice launched a couple years ago. It involves the early decision admission process. You might be aware this is a process that Duke and several other schools offer to students. You can apply early, the student is supposed to, if they are admitted, drop their applications to other schools. It's generally viewed as a

good thing from a market standpoint because it gives more options. Well, there are allegations that schools who admit during early decision, not Duke, share lists with other schools of the students who they've admitted. The Department of Justice is investigating whether that information sharing of those lists is harming students who apply early decision because it's essentially schools getting together to try to enforce the early decision agreements. That's still an ongoing investigation. There are a lot of reasons, both ways, why this may or may not be a problem. But it's an example of where this information that flows back and forth between schools can create antitrust risk.

The last topic I'm going to address is antitrust in the labor markets. This has been a big issue from the Department of Justice antitrust division's perspective. They announced in 2016 when they issued the guidance that's referenced on the slide that they were going to take a big enforcement position here. They were going to press criminal charges if they felt it was warranted. It's also an issue for Duke because we recently faced litigation about an alleged no-poach agreement between the Schools of Medicine at Duke and UNC. I want to put on the screen, this is a slide directly from the Department of Justice's guidance. You'll see, these are all the red flags that they say, as HR professionals – and I know people in this room might not have titles at HR, but I think many are probably involved in recruitment or the hiring process in some way. So these are things for you to keep an eye out for as you are involved in that process. You, of course, cannot enter into agreements with other schools about whether we're going to recruit or hire their employees. That's a basic standard

here. As you'll see, about halfway down, we're starting to talk about the information sharing and other flows of information that go back and forth between schools and the hiring process. We really need to watch out for communicating with other schools about who we intend to hire and why. As I mentioned, Duke recently settled a case, the Seaman case, about no-poach agreements. As part of that, with the Department of Justice, we agreed, and you'll see the bolded language here, [refers to slide] what's specifically from the agreement, Duke has agreed not to "enter into, maintain, or enforce any agreement that restrains any person from cold calling, soliciting, recruiting, hiring, or otherwise competing for employees." That's the basic prohibition in the settlement agreement, what we've agreed to do. There are some exceptions to that. I'm not going to get into all the layers of the exceptions here. The message is, if you have one of these agreements that comes up in a contract, and don't be surprised if it does come up in a contract – we've seen them in MOUs between schools, in any number of educational collaborations, we see them in vendor contracts. If you hire a consultant, you might see non-solicitation provisions in them. The main message today is, if you see them, flag them, and call me. Because under the agreement, there are, as I said, some exceptions, but we have to work through it, from my office's perspective, to be allowed to do it under the settlement agreement. So that's everything you need to know in ten minutes. I'm sure you probably have some questions. I'll open it up now and I'll flip past that slide and just leave on the screen some resources for you to keep in mind.

Alex Rosenberg (Philosophy): This is not a question for you at all, it's an observation. By and large, a significant number of these challenges reflect initiatives by people who are opposed to or suspicious of the agendas of the modern American university and seek to prevent us, nonprofit organizations, from engaging in sensible and reasonable collective action solutions that involve the better use of scarce resources. We really need to understand much of what you've told us as reflecting the political climate in which our university and other universities are operating to the disadvantage of science, humanities, and the interests of our students.

Lott: I think that's a really important comment. In the litigation that we were involved in, we made that point in a number of ways. I'll tell you, it didn't resonate as much with the judge as we thought it would either. (laughter) I think that's a fair point.

John Klingensmith (School of Medicine / Graduate School): Would these no-poach restrictions also apply to students? For example, graduate students.

Lott: In what way?

Klingensmith: Right now, there's an agreement among graduate schools that, after April 15, they won't try to recruit students who have already committed to go to another school.

Lott: Is that an agreement through a third party organization? Those issues could actually come under challenge in the undergrad world. I mentioned the early decision information sharing. NACAC [National Association for College Admission Counseling], which is the

undergraduate organization like you're talking about, they just had some of their rules challenged that were in line with what you said, I think some of the undergrad rules where you couldn't offer certain recruiting incentives after a certain date. As a general matter, the DOJ allowed most of the deadlines and rules to stay, but there was a long investigation into that. But it could apply to students if there is a challenge to it.

Haynie: One of the things that I, I mean, a friend of mine, did, [laughter] was to have a conversation as a DGS with a colleague who wrote to say, hey, what do you guys offer for a graduate package? We are trying to make ours more competitive and we want to get a sense of what folks are offering. And we had an exchange that then included two or three other exchanges about packages. When I read that, it seems like that is a violation.

Lott: I'm not sure I would call it a violation. I think it's a best practice to avoid. Not having those conversations. [laughter] I think we at Duke, probably, because of the litigation we've had, and obviously the settlement agreement, have taken a little bit more conservative lines than some other schools. They might be joining us soon. I hope not, for their sake. But I think it's a best practice to avoid those conversations.

Vince Price (President): And I would just add that the advice that was given that it's best if a third party does it, not the institutions themselves, that it's only historical, and not forward looking, and that you aggregate the data so you don't have information about individual competitors. If you can do those three things, and there are devices to do those, then it's okay. But I think we should be

reluctant to get on the phone and have casual conversations about our pricing strategies or financial aid strategies.

Victoria Szabo (Art, Art History and Visual Studies / Member of ECAC): I have a question about the salary situation. You said that you cannot say what the salary was of one institution versus another institution. But I'm imagining an actual candidate wanting to verify for a new potential employer what their salary was. Does that mean that there can no longer be a verification by the office of the place that they're currently in of what the salary is as they're looking for future positions?

Lott: We can always ask candidates for positions for verification. We can't ask the other school, from an antitrust perspective. We can't call up the other school to ask for verification, but our conversations with potential candidates are not going to be an antitrust issue. Does that make sense? So if we say, hey, we have a candidate for a position, we need verification of what your prior salary is, and they go to their employer and they provide something to us, that's not generally going to be an antitrust issue because there is not collusion among competitors.

Szabo: But it's an individual disclosure, which is similar to what it sounds like you're talking about in a cocktail party context or conference context or something like that.

Lott: The main difference is that the antitrust laws are focused on when two competitors are working together in a way that might limit the markets. If it's between us and one of our potential

employees, that's not going to raise the same risk.

Haynie: Thank you, Chris. [applause]

A CONVERSATION WITH THE NEW VICE PRESIDENT FOR RESEARCH, LARRY CARIN: ROLE AND PRIORITIES

Haynie: The next presentation is by the new Vice President for Research, Larry Carin. Larry is the James L. Meriam Professor of Electrical and Computer Engineering and previously served as Vice Provost for Research. Starting in August he was appointed as the new Vice President for Research. He is here to talk about his new responsibilities and again, in keeping with my comments earlier, to alert us to some of our responsibilities and obligations that are constantly in flux and changing.

Larry Carin (Vice President for Research): Thank you very much. Thanks for the invitation. I notice on the agenda it said a "conversation," with you, so I would actually like to have a conversation. There are probably some things you want to talk about, perhaps. But let me quickly introduce myself to some of you, because not all of you know me. Because what I'm going to tell you is important, I think, to what I will say subsequently. I've been at Duke for almost 25 years. I am in the Pratt School. I am a professor of electrical and computer engineering and I have a very active research program to this day. My research touches all of the research enterprise. So that means we are dealing with human subjects, et cetera. I also have a startup company. The reason I say that is that I deal with issues of conflict of interest, I deal with issues of IRB, and I do the Responsible Conduct in Research [RCR] training as all of us do. The thing I

just want to underscore is that all of the additional responsibilities that Duke is asking of all faculty, I want you to know that I am with you. I feel your frustration personally. And I can tell you many personal stories where I have said the same things you have said to the COI officer, for example, "How can you possibly think I would do xyz?" I understand. So I just want you to know that I am serving as the Vice President for Research. I am in an administrative role. I arguably am an administrator, [laughter] but at heart, I do not think of myself as such. I am a faculty member, I'm one of you. So please be completely open in your comments. Fire away as you wish, but do keep in mind that everything that we are asking of you, I am asking of myself and I feel your pain. Believe me.

With that preface, I thought I needed to say that, [laughter] because I've heard from some of you already. I want to talk a little bit about this change. In many ways, this is many years coming. This should have been done long ago. At most universities, there's either a Vice Chancellor for Research, a Vice President for Research, or a Vice Provost for Research. That is true of every university. Unlike Duke, that role, almost at every university, has responsibility for the entire university. That means the Health System as well. Duke was very unique in the fact that it did not. In my previous role, prior to August, I was the Vice Provost for Research and I had responsibility for the campus but not the School of Medicine. So the President and many leaders, Chancellor [Gene] Washington, Dean [Mary] Klotman, and of course the Provost, we have done a lot of soul searching, and I'll tell you about that process. The end of that process, which I'll talk a little bit about, was that Duke

needed to go to a *One Duke* framework. And we emphasized this concept of *One Duke*. So why is that? First of all, why did we have what we did? Again, I've been here 25 years. When I came here 25 years ago, we had a major health system, like we still do, but we had a rather small engineering school that could fit in Hudson Hall, if you guys know where that is, and it's a very small building. That was the entire engineering school. The point was that we had this very large research enterprise on the medical side and we had a relatively small campus side research enterprise. Perhaps at that time, I wasn't an administrator, but it made sense that the medicine side was really quite different. So they did their thing differently. We are at a very different place as a university today. The campus has grown significantly. The research enterprise on the campus has grown markedly. I come from the Pratt School. I'll just speak about Pratt. The Pratt School of Engineering could hold its own with any department in the School of Medicine, from the standpoint of research. So we are in a different place. Duke has matured significantly. In addition to that, as you know, we had a recent very unfortunate event in the School of Medicine. The so-called Pulmonary Case, Thomas Case, it has many names. As a consequence of that, never mind the \$112 million settlement, the National Institute of Health, NIH, imposed restrictions on our research, how we execute NIH work, for everybody that has NIH funding. So the point was that individuals, somewhere at Duke, it happened to be in the School of Medicine, but believe me, I see the entire university. To say that it could not have happened on the campus is absolutely wrong. So we should be careful about pointing fingers because the next case might be on the

campus. In any case, it happened to be on the School of Medicine side. As a consequence, all of us at Duke are affected, and are still affected, because those sanctions have, to this day, not been changed. So I want you to know, as Sally [Kornbluth, Provost] will tell you, and Vince [Price, President] will tell you, I strongly advocated for this change. Strongly advocated that we have to operate as one university. If we are all going to be affected by the action of any one, we have to operate as one university. So this change is a long time coming. It is necessary. It probably should have happened years ago. We had a really unfortunate event. If anything good came of it, we've made this change. We have a lot of work to do. This is a very significant change.

So I just want to quickly talk to you about the organization. This is a new org chart. [refers to slide] There is the Vice President for Research, that is currently me. Some of these positions are not filled, but we're going to hire a chief of staff, and I have an administrative assistant. In addition, we have two Associate Vice Presidents for Research. One is dealing with issues of research administration, and the other is scientific integrity. The research administration is Chris Freel and the scientific integrity person you have met, is Geeta Swamy. The stuff here, this is kind of a historical view because this used to be done under the Provost. It still is, but it's part of a larger organization. We can talk about this if you want. It's really just details, not to worry about too much. On the right hand side is the bigger change. What we're doing is that all aspects of research integrity, training, compliance, all aspects, are now handled under the Vice President for Research, managed in this case by Geeta Swamy,

who is the Associate Vice President. There are several components under this. These various things, for example, ASIST [Advancing Scientific Integrity, Services, and Training], is meant to reflect what it actually is. It's about trying to assist faculty in dealing with all of our various responsibilities: conflict of interest, research misconduct, et cetera. The key change is this one. [refers to slide] This affects us all and we'll probably talk about that a bit. And then, on the right there, is stuff like Office of Licensing and Ventures, Export Control, and things of that sort. So that is the office. Let me quickly show you one more slide and then I'll be happy to take any questions. I have a few more slides if we wish.

So what are we trying to do? I have served in administrative roles for perhaps longer than I should, but I've been doing it for a while. I've been in administration for some eight years. One of the things that I think, when I think about Duke, and what we do as administrators, we work very hard to create an environment in which our researchers, the limits of their science and all of their research, whether it's science or not, is limited by the capacity of the individual, their ideas. In other words, there's nothing institutionally that gets in the way of achieving all of the great things that you want to do. Again, I am a very active researcher. I have been here for 25 years. I will tell you, I absolutely believe that. I have never, in my entire time at Duke, found a situation that got in the way of me getting things done. Any limitations that I have, have been my own. As part of that, what we've done as administrators is to try to take all aspects of administration away for faculty. In other words, don't worry about it. We'll take care of it. I think that that's a good thing. There is a lot of logic to that.

But what happens as a result of that is, I think that we can, as faculty, and remember, I am a faculty member, and a very active one, we can tend to focus on our little part, and it may not be that little, but our part of Duke. Our lab, our students, our post docs, our grants, and not feel a sense of responsibility to anything more. In fact, we have not asked you to have any such responsibilities. While that is good in many ways, I think it has some problems. This, now, is based upon history. Unfortunate history. I take this role very seriously and I do a lot of thinking about it and reading about it. So there is a book that I recently read that many of you might have read that's by Atul Gawande and it's called *The Checklist Manifesto*. He talks about the fact that we oftentimes have to remind ourselves of seemingly simple things. If you think about it, you have a person who has flown an aircraft for 20 years, and the flaps are working, we have gas, the tires are inflated, whatever the questions, but these are actually really simple questions. You would think that a pilot of tremendous experience should know these things. But we have found that this checklist is incredibly important. The other part of that is, when an aircraft crashes, they do a very deep investigation of that. They ask, can we improve things? Are there things that we can learn from this? Can we get better? These things inform that checklist but they also inform and improve flight. So what I would say is that we've had two crashes in a relatively short period of time. As a consequence of that, we have done a very deep post-accident investigation. I'll tell you a bit more about the more recent one. But as a consequence of that post-accident, and we've had two very serious accidents, we've come to the conclusion that one of our very serious gaps is the – I'm not

saying this is true of everybody – but that we have too much attention to our own little part of Duke and a sense that, if it's not part of my world, it's not my responsibility. The reason I point that out is that in our two plane crashes there were people who were close to these events who should have said something. So what we're really trying to work toward, or what I'm trying to work toward, is what I call an ownership culture. That each of us, as faculty, have a responsibility to this institute, that we own this institute, and that if we see something that looks amiss, we have a responsibility to say something. It seems very simple, but that's why I mention *The Checklist Manifesto*. These things are simple things actually. But in our busy lives, we tend to miss them. In any case, that's the number one priority: culture. I'm happy to talk about this with you. The other thing, which I hope you know, I don't pretend to have all the answers. So I'd love to hear what you think. The other major priority, of course, is to establish the office itself. This office did not exist before and many of those positions are not even filled. So we're going to do that. Third, so this integration of the campus and the School of Medicine and the School of Nursing is a fundamental change. For example, Conflict of Interest now is going to be done across the entire university, so no longer separate. We're going to do COI across the board. We're going to try to uniformize our policies across IRB, data handling, et cetera. *One Duke*. And then finally, the Duke Office of Scientific Integrity, which is led by Geeta Swamy, this is a new entity we need to fully develop. And also we need to integrate it across Duke. So I have a couple more slides, but let me stop. I'm happy to take any questions, and suggestions, any criticisms, any thoughts.

Michael Gillespie (Political Science):

We corresponded by email. Is it true that this new requirement is going to involve us taking part in the seminars that you announced? Or are we still going to be able to do our online verification?

Carin: Nice to meet you. I know we've communicated. The Responsible Conduct in Research. I want to come back to *The Checklist Manifesto*. Why is that important? Or at least why do I think it's important? Again, if you read the book, you should read the Gawande book, and I'll tell you a little bit of a story. There's an entire book about checklist manifesto, Gawande is the author of the book, and he comes to the last chapter. And he asks the question, do I, Atul Gawande, need to do a checklist? And Atul Gawande is a surgeon at Harvard and a very distinguished surgeon. He said, well, of course not. I'm Atul Gawande. I mean, it's for everybody else, but not for me. And I would say, well, everybody else has problems with misconduct, not me. Everybody else has issues with COI, not me. Now, when I can speak with some authority, personally. So Gawande was actually going through – he wrote the book, after all. And even lectures, he did Ted Talks, whatever, so he at least should do it. So he kind of was going through the motions. But he didn't really believe in it. There was a surgery that he was doing and one of the key things in the checklist, the surgical team has to talk, and they have to go through the list of all the things that they need for that surgery. So one of the lists was, okay, there is a potential that if we have a complication, very unlikely, less than one percent chance, we're going to need a lot of blood. So they asked, do we have the blood? We don't have the blood. Of course, Gawande is not going to have a complication because he's Atul Gawande.

But they said, alright, get the blood. Anyway, it turned out, if you read the book, they had a complication. And if they didn't have that blood, that patient would have died on the operating table. And Atul Gawande said that after that, he realized that all of us, in our very fast-moving, complicated lives, we have a tendency, or at least a potential, to miss some very key things that we really know, that don't really seem too important, but in some cases can be calamitous. So the reason I wanted to point that out is that, in my view, things like RCR training, which I can see to you are a pain – and I'm going to get to your question – I would say to you that they are our checklists. For all of us who are engaged in research, RCR training – and we're only asking you to do it once every three years – that's our checklist. For those of you who are doing human subjects research, our IRB is our checklist. For those of you who have outside activities, our COI form is our checklist. It is annoying, it is demeaning, it is insulting, it is necessary. That's why I think the Gawande book is important. With regard to your question, on the RCR training, we're going to ask you to do it every three years and there are three ways you can do it. We are running monthly what we call town halls, which I think are very nice. If you come, you've checked a box. Done. All you have to do is show up. Done. If you don't want to do that, we have a self-assessment quiz. So you don't have to do any training, you don't have to show up, just take the quiz. That's what I did. It took me 20 minutes. Miraculously, I passed. If you don't want to do that, then you do online training and then you take a test. So there are three options. Now the criticism that I've gotten, which I think is deserved, was that all of our town hall events have been on West Campus. I got complaints that we

then go to East Campus and it's unfair to the humanists, I've been told, so we are planning to have town halls on East Campus. Ed Balleisen [Vice Provost for Interdisciplinary Studies], if he's here, he's going to be helping me. Ed is a card-carrying humanist and a social scientist, I guess. In any case, so we hear you, it is absolutely a true criticism that most of the training has been directed pretty much to lab scientists. We're working to change that. Indeed, be careful about sending me emails. Because I got another one like yours, particularly about East Campus, and I asked that faculty member, alright, you have a point, how about you help me plan this thing? And that faculty member is going to help me plan that. So we hear you and we don't pretend to have all the answers. If there are ways that we can improve things, please tell me. I have thick skin, so I'm fine with criticism.

Gillespie: Thank you for not asking me. [laughter] I would have agreed to do it, but I'm already running a number of programs. What amazes me is the sense that people have that these are actually going to be successful in stopping fraud. Fraud is not accidental. It isn't a mistake that people make. It isn't because people don't know things. It's because they're intentionally falsifying what they're doing. That's really obvious. I'll give you an example. I don't know if this came from your office, but we got this alert about a new computer program that we can use to detect plagiarism. It was suggested that we run our own work through that. I did that and I passed, but then I thought, I wonder how difficult it is to get around this system? So I took a passage from another work, I passed it off as my own, and it caught it immediately. I changed about 14 words in the passage and it passed straight through. So it seems

to me that the training might have exactly the opposite effect. It may teach people how to avoid a lot of the controls that you want to put in place.

Carin: That training was not part of our office. [laughter] I don't know who is responsible for that but that was not our team. That's number one. But I want to say two things. I actually said something potentially important. We've had two serious plane crashes and the way that we now can fly with very infrequent plane crashes is by learning from every event. So one of the key things that we learned was that there are indeed sociopaths and there is nothing you can do, training, to change that. But this is where the ownership culture comes in. If you see something that doesn't look right, it has nothing to do with your lab or whatever, but you see it, you are a citizen of Duke University. You have a responsibility to bring it forward. That's what we mean by ownership culture and a culture of integrity. I come back to my checklist. You think about an airplane pilot who has been flying planes forever and asking these stupid questions. But they have found that they can at least get you to think about it. In any case, I never said it was perfect. But I would say this. We have had two plane crashes. To do nothing is not right. Whether we have exactly the right answer, I don't claim that. If you have other suggestions, quite seriously, other than nothing, I'm happy to hear. Not now, necessarily.

Gillespie: No, I'm not going to do that, I'm just going to say: for those of us who don't fly in airplanes but who go for nice hikes in the woods, it's a much less complicated process and I think it would be very useful to have some other way to think

about academic integrity and I'll be happy to do something about it.

Carin: So, I'll tell you something. My neighbor is a Duke MD and I actually was talking to him last night. I gave him my plane analogy and he said, well, flying planes or doing surgery is not the same thing as doing research. The risks are not as high. I would ask the question, what is a \$112 million settlement? And what is the damage to the reputation of the university? I would say that all of us and the actions that we do in our research are engaged in very high stakes activities. It's not flying a plane, but we have evidence that, if done inappropriately, some very serious consequences can occur. We're not done. If there are better ways to do it, we're happy to hear. If you have other suggestions, I'm happy to talk to you.

Ara Wilson (Gender, Sexuality and Feminist Studies / Cultural

Anthropology): First, I wanted to share with you from an article I taught this week. "List making has frequently been seen as one of the foundational activities of advanced human society." So I just thought I would share that with you.

Carin: Thank you. I'll pay you later. [laughter]

Wilson: You brought up the settlement issue. One of the things that we're all aware of is how much your office is actually also a finance office. I'm just wondering what your thoughts are...

Carin: It's not a finance office.

Wilson: Fiscal, in this sense. What are your thoughts about the role of large-scale, grant-seeking, its funding role in the university? I am seeing you as an

important fiscal part of the university. I'm just wondering what your thoughts are about the role that that plays, the overhead fees, and the role that that plays in the broader university?

Carin: So, we are a research university, so research is incredibly important. In certain areas of research, particularly in laboratory sciences, it's very expensive. So we need grants to do that work and we need to pay students across the board. So money is not the end. In other words, we're not about money. We're not about bringing in a lot of money. We're about doing great research. If it requires money to do that, then we need to get it. That would be my answer. I don't even think, even in the tenure cases, money is not a major consideration. The impact of your work, your research, that's the measure. The overhead, the reason we have overhead, is because buildings cost money to run. To run laboratories you need staff. We have cores and we have all kinds of things that cost money. You can't direct charge that to the grant. In some sense, the overhead is essentially a bargain. Oftentimes, with the federal government, our major source of funding, they understand that the research mission of Duke is in the interest of the country. To support that, the government provides overhead to allow us to maintain that operation. But I will say, what we do absolutely have, is a responsibility to be good stewards of that money. That is very important.

Wilson: That part's a lot of what you're talking about.

Anne West (Neurobiology): One good thing about *One Duke* would be the idea that we would have maybe increased efficiencies and oversight, but that's a

really complicated org chart. We talk a lot about reducing costs and making sure that we're eliminating redundancies, and I just wanted to say that I think it's really important, as this blows up and gets bigger, that's what I see. When you break out those org charts, if you go to SOM on a day when the dean is talking about this, those org charts have many more little circles and arrows in them. Keeping an eye on the idea that this doesn't become a larger and larger cost to the university. It needs to be a thoughtful cost.

Carin: There's no question about that. No argument.

West: So, how are you going to do that, I guess? Once you put names on things and hire people...

Carin: The thing about it, it's interesting, so I met with a colleague this morning to talk about budget issues relative to this thing. Some of these buckets have like one person in it. So it actually looks more complicated than it is. Because in many of these boxes, there's one person. That said, that one person, they have a mission. That's not to argue with you. I agree with you 100%.

West: And do you know if it's more or less expensive than it was before, when we had two systems?

Carin: It's certainly less expensive, at least already. Because we're consolidating. For example, COI. There's one COI now. And that will take time. Actually, we should become more efficient. I'll give you one example. You're going to regret these questions because I do think about this a lot. [laughter] I do care about it. When I started as Vice Provost for Research – and for those of

you who are engaged in global research – I had a sequence of people who came to me, one after another, who said that we were terrible at executing global research, Duke was. So then, working with my colleagues, we tried to understand why. What we realized was, most of our research is NIH-funded or NSF-funded, it's not global. So, if you look at the global footprint, it's very important, but maybe 5% of the portfolio. So, what would happen is, a grant would come in and it would just be given to the same people who are doing NIH and had no expertise. So you would have somebody who would have a grant in Kenya, on the campus, Susan Alberts would be in Kenya, and we'd have a very complicated situation. We solve it. And then in the School of Medicine, they had another faculty member in Kenya. But they didn't know. And we never learned. So the learning from here never impacted here. So what we did over the last several years was we consolidated, if you will, made efficient, how we handle global research. So we've actually been moving towards a *One Duke* now for many years. Globally, we've been *One Duke* and we hired a guy named Broderick [Grady, Associate Director, International Grants and Contracts] - those of you who are global and you know Broderick. All global research, it doesn't matter if it comes from Medicine or Campus, goes through this office. So when we execute in Kenya for biology, we learn more about how to operate in Kenya for neuroscience. What I would expect is, as we move forward – so that's one that we're proud of. I would say, for those of you in global, I would say we're good. We're actually really good in global research. That took thinking, that took effort, but we did it. We're going to be looking for more of those. But it will take work. It will take focus, it will take you

challenging me. That's a good thing, challenges. We're very cognizant of it. I will say though, if you go and look at the Vice President for Research org chart of any major university, it looks pretty much like that, if not more complicated.

Craig Henriquez (Biomedical Engineering): I wonder if you thought any about what's the motivation for sociopathy or fraud? One thing I've noticed over the past 30-some-odd years that I've been here at Duke is the increase of expectation for commercialization of research. One of the plane crashes, I think there was an expectation that the work could be commercialized and there's a potential for a big personal reward from that. I'm wondering if you thought a little bit about the connection between the research enterprise and the commercialization enterprise and how that could be leading to an uptick in fraud or sociopathy.

Carin: Craig, this is a great question. I'm not going to joke with you. I could make some joke. But that's why, for example, the way we handle COI. Remember Craig's question when the COI looks a little bit more serious than it did before. It's precisely that question. The other thing I want to say is, I want to tell you about another plane crash. It's not our plane crash, thankfully. It's Stanford's plane crash. Have any of you read the book *Bad Blood?* That's not quite Stanford's plane crash, but Stanford is quite embarrassed by this. If you go look at that story, it has a lot of similarities, particularly to the Potti situation. What I would say is, these situations, these plane crashes, they are a consequence of the fact that we are engaged in a highly human endeavor. Human beings. Human beings are fallible. Human beings have ambition of a

company, what have you. That's where we get in trouble. So we have to understand that we have to build processes that try to mitigate the human tendencies. As you said, in the Potti case, there was a company in addition to everything. So we need to be really good at COI. We need to say no. In fact, we're going to be changing policies and we're going to start saying no to things that we previously said yes to. It's because of the fact that we see these things repeatedly. If you haven't read the book *Bad Blood*, first of all, it's not about Duke, although there are some Dukies in it, it turns out, but in any case, it's a good book to read. Luckily, it's not mostly about us. But it does kind of underscore – I think we've been pretty unlucky. We got two pretty bad plane crashes in a pretty short period of time. *Bad Blood* was an even worse plane crash. But there are a lot of similarities. We're trying to, in a very efficient way, but in a very good way, address these limitations. We won't get it right. We'll be back and forth, but that's our ambition, in any case.

Haynie: Thank you, Larry. [applause] Of course, this is something we'll continue to watch and follow, and have Larry come back as needed to speak with us.

PRESENTATION ON THE NEXT GENERATION LIVING & LEARNING EXPERIENCE TASK FORCE

Haynie: I'm pleased to welcome to her first meeting of the Academic Council, Duke's new Vice President and Vice Provost for Student Affairs, Mary Pat McMahon. Mary Pat began her position at Duke in July and succeeded Larry Moneta as Vice President for Student Affairs. Mary Pat's previous post was as Dean of Student Affairs at Tufts University's School of Arts and Sciences and

Engineering. She is joined today by Professor Gary Bennett, Duke's Vice Provost for Undergraduate Education. Gary holds his PhD degree from Duke [in 2002] and returned as a faculty member in 2009 after serving on the faculties at Harvard's School of Public Health and the Dana Carver Cancer Institute. They are here to talk with us about a Board of Trustees Task Force on the Next Generation Living and Learning Experience at Duke. Welcome, Mary Pat, to Duke, and welcome to Academic Council. [applause]

Mary Pat McMahon (Vice President and Vice Provost, Student Affairs): I like that Larry talked about human accountability, because now we can talk about the human fallibility of the unformed prefrontal cortexes. [laughter] We can move quickly through this to give you a chance to ask us some questions. Thank you Kerry, thank you everybody for giving us a chance to be here.

The Next Generation Living and Learning Task Force was charged last year by the Board of Trustees. The objective was to advise the administration and trustees on their plan to guide the university in the next generation of our student population. You can see the other parts of the charge. [refers to slide] Promoting growth and health, strengthening the intellectual life of students. And the idea was to bring a set of recommendations forward that could look critically at the university's current state for undergraduate education, particularly around living and learning, and then come with a set of things to explore further and provide some options to the senior administration and to, I think, me in my new role, and to Gary in his role.

Gary Bennett (Vice Provost for Undergraduate Education): The task force, as you might have heard, met for about a year and we had nearly 100 meetings on campus with students, with faculty, with alumni. We did some peer benchmarking, telephone calls and meetings with peer universities. We presented a series of options to the President, to the Board, you'll see those listed here. [refers to slide] In general, the big takeaway is that Duke's houses, which you might think of as dorms, are relatively small in size. So the ways that our students tend to experience community is really through affinity-seeking. So you might have a selective living group, or a Greek organization, or a living and learning community. So they're very affinity-based. That stands in contrast to many of our peer institutions, particularly those that have residential college systems that are much larger. In those kinds of systems, you have opportunities to encounter community, both through affinity and through diversity, given the larger size. But it's also sort of an architecture that allows you to use as a resource for these student communities in somewhat of a more effective manner. What the task force recommended was to organize Duke's existing houses into what we're calling neighborhoods, which are really small collections of geographically proximate houses. Then, what that allows you to do is to achieve a scale that will allow students to experience community, both in terms of affinity, but also through diversity. And then it gives you an opportunity to resource these neighborhoods with faculty engagement, social events, and programming that can really help to bond those students in more effective ways. That's one of the biggest recommendations. I'd say the

other thing that's really notable is that in contrast to our peers, the characteristics of the best performing residential living and learning systems, the key differentiator is really faculty engagement. Many of our peer institutions have invested mightily in trying to engage faculty in meaningful ways with students outside of the classroom, bounded to the residential experience. That was a significant recommendation as well. The last thing, and we'll talk about it in just a little bit, is the task force also called for the development of a widely-shared intellectual experience that would assist the students in making the best use of their time here and our liberal arts model would help them to deliver skills for personal development and emotional wellbeing, and also to allow them to begin to explore questions of purpose in a way that might ultimately align with their educational plans. That's one of the recommendations. We call it Duke 101. I'll talk a little bit more about that in just a second.

McMahon: So, stepping back for a second, I wanted to take my opportunity to walk through a couple points around what's going on at the undergraduate level. Those of you who have kids, those of you who spend a lot of time with undergrads, know that some of this stuff is true. I have collected over time observations in 20 years of doing this around why some of the resources and structures have built up the way they have in supporting undergraduate education. Folks here probably know this, but the PEW foundation research suggests that US high schools are more racially and socioeconomically segregated now than when Brown vs. Board of Education was decided. Our high school populations

coming through are continuously coming up to college from a background where they're with more students like themselves, and then when we bring in people from all over the world and all over the country, we're bringing people into a conversation that is, in many ways, new to them. They might be learning in different ways than at the high school level. We've been talking about this. The actual experience of living together is a new one for most of our students. In the mid-2000s, there were a lot of regulatory shifts, changes to the ADA laws in learning accommodations and teaching at the secondary level and at the elementary level. IEPs, learning accommodations. Gary, what's the percentage change in the students who have registered for accommodations?

Bennett: 500 percent.

McMahon: That's a lot. And the number one accommodation is mental health. That's true for Tufts as well, although I think it's antitrust for me to share that. [laughter] This is actually really interesting data. We are seeing declines in the extreme end of high school level substance use. The peak was around 2003. We are also seeing new attention right now in issues associated – not surprising, given the stuff on bullet one – with the cost of attendance in a college experience, particularly one that is – there is a high expectation for how you're going to engage in a place like this. There are many material costs associated with your time, your summer internships, job seeking, and different components. Nationally, there is a big conversation on that. We're excited to engage in new ways in that conversation here. I could take you through a bunch more. I wanted to ask you in your faculty role, what have you

seen differently since coming into administration, based on these and other pieces?

Bennett: For me the fundamental challenge is really the generational issue. Many of us who teach undergraduates experience them as being particularly instrumental in their approach to their undergraduate studies. That is to say that they are good at checking all the boxes and they are very planful and they get very confused and upset when things don't move according to plan. There is a lot of good evidence to suggest that this is really a function of their current generation, one in which their lives and steps have been relatively ordered for most of the time that they've been on the earth, and so they have literally gotten into places like Duke because they have been such good planners. They get here and we say, this is a large institution. Go explore, have breadth, fail, break things, be innovative. These are just not things that are necessarily in their toolbox. What I think a lot of us are experiencing is that the need to really help students to take the most advantage of the liberal arts environment really requires a lot of time guiding them and disrupting their inclination towards instrumentality.

McMahon: I wanted to point out, since I know many of you are graduate and professional school faculty as well, that this bump, this common thread through the undergrad, I don't know if we want to put you on the spot and offer his own lecture, but the number of things start showing up in a different way in the graduate student populations here at Duke, that mirrors my experience at Tufts and in other places. That is, in many ways, a good change, but we need to change how we engage these questions. This is

the slide where I tell people I swear it's going to get more encouraging in a minute, but we're not there yet. People know that in 2011, regulations around Title IX, the 2018 DeVos regulations around Title IX, we're expecting the outcome of the comment period and the next things that universities are going to have to do before Christmas, I think. Threat assessment, campus violence, thinking about ways that universities have to rethink some of their structures. Virginia Tech was a major game changer around FERPA and how universities talk to one another and share risk practice. And then Charlottesville changed it again around the question of a university as a sort of landing site for outside agents and the different ways you have to think as a community, communicate as a community. That lands in my life, that lands in Kyle Cavanaugh's [Vice President,

Administration] life, that lands in anybody who is working with students that you have concerns or if there's disruption. This is the understatement of year: social media's impact is not fully understood and how that changes how students live and learn. Information literacy, we've been thinking about where we can go with that, the way that that impacts discourse in some ways and a lack of empathy, and of course the impact on mental health. Gary and I would like to come back any time you want us to talk a little more in depth around the mental health piece of the puzzle. So this is here to contextualize the Living and Learning Task Force and give a little context as to why the task force came together and how that informs what we're talking about next. I really like these. [refers to slide below]

What we teach through Duke's living and learning experience is more important than ever...



- Being a part of something bigger than oneself
- Encountering and engaging leading scholars
- Developing empathy and awareness of others' views and experiences
- Becoming healthier and more emotionally well
- Fostering accountability, resiliency and purpose in a challenging environment
- Honing leadership skills, critical thinking and problem solving abilities for a changing workplace

STUDENT
AFFAIRS

Duke
UNIVERSITY

You know this, but this is why what we teach in the residential setting, the components that wrap around your work in research and in labs and in teaching instruction, that these parts of, what are we doing at Duke, why are we not going to give in to the mooks, what's happening here that's creating leaders and really great thinkers and community members. We're doing all this. We're helping people. We're touching all these, as important as ever, although how we go about is a little different.

There's a picture of Gary, he let me put this in here with the facts. [refers to slide] As far as next steps, one big piece on the first round of the Living and Learning Task Force implementation will be looking at the East Campus, where all the first years live, and their affinity with West Campus. The task force looked at this and when I came, having done this at other places, it was pretty clear immediately as well, that we have a strong, robust community on East, and then we have this moment of intersection where students have to pick where they're going to live, how they're going to affiliate, are they going to be in a Greek organization, another kind of selective living group, and that really guillotines that feeling of community pretty quickly. We are looking at ways, there have been some trials already around creating more of an affinity over to a community over in West. There are ways we can really make some progress there. We're looking at common programmatic experiences that bring students together in different ways. And I'll also take this as a chance to say this: I feel like I was brought here, I'm looking at some of my associates over here, to further align Student Affairs priorities with the living and learning and teaching, and with the leadership of the

schools and understanding that my job is to put ready, healthy, engaged learners in your classrooms. I'm working in that interest, in that spirit, and my team has to reorient itself a little bit to make sure that's our focus as we go forward. That's what we're doing and that's where we're going.

Bennett: You've been here for how long?

McMahon: Three months.

Bennett: Three months. It feels like three years. Already, it's been absolutely wonderful, in many ways, to imagine a new approach to living and learning, one that really is designed to put ready learners into our classrooms.

Moving forward, we are in the process of naming a faculty steering committee who will help us to steward the path forward. We're asking that committee in the very near future to help us think about how to do two things that were suggested by the task force. One is to help to develop a faculty in residence program on West. Another is to develop a faculty fellows program, in which faculty would have a wide variety of potential engagements with the residential experience, in a non-residential fashion. And we're also going to ask them to help us to provide a strategic insight. That should be getting started very soon. We also have an internal working group that's meeting regularly. We have plans to start in the next couple of weeks a series of salons, listening sessions, feedback sessions, time for faculty to get together with one another at the Washington Duke Inn and spend some time thinking about these things, so be on the lookout for that. If you're interested in joining with our steering committee or our teams to talk

about these types of enhancements, we would love to have you. I think one of the most important contributions we can make in this effort is to bring faculty minds together.

McMahon: A couple of questions for you to consider or for us to consider collectively as far as where there are opportunities for partnership. I'm interested in partnership with faculty where it is the logistics and the management of all the encompassing pieces of it. My team can do that part so that we're not asking you for things that are burdensome to the many other priorities that you have, but we'd love to think about ways to balance the proactive work. I see opportunity for us to engage in different ways of thinking about first year student learning, empathy, extending orientation into across the first year experience, continuing to help students build skills versus covering information at orientation. There are lots of different proactive things we can do and are doing. We can think about ways to create common experiences that introduce and promote the liberal arts, and then we can think about how we foster student accountability in many ways. That is pretty much it. I think we're ready for your questions.

Warren Grill (Biomedical Engineering): I have a comment and then a question. First, there are programs intended for first year students to join together as groups in the summer before they arrive here on campus at Duke. If you go to move in over on East Campus, you'll see groups of students who are all wearing the same t-shirt. They were part of one of the summer experiences. I think this may be having the opposite of the intended effect. I think what occurs in

those groups is that students tend to clique up early, and they are not interested in approaching other students who might be living next door to them in their dorm. Students who didn't participate in those summer programs are feeling somewhat at a loss when they show up on that first day, because they don't have a t-shirt, they don't know anyone, and they don't have people to talk to. So I would encourage you to take a look at that and see if there is a way that it could be more inclusive.

McMahon: I would draw a distinction between the programs that are designed to help level up the experience of students that may not have families that have gone to college for multiple generations, and then the pre-orientation programs that we do that create a social cohort first. I'm very interested in moving on the idea of a common experiential orientation program that supplants that pre-orientation so that everybody is doing something together to meet that same point. I think that there's some balance with the value of the programs that are designed to foster STEM learning, foster all these different pieces that students coming in on the first day will really gain a cohort benefit from that summer piece. But I hear your point on that.

Grill: My question has to do with sexual assault. I'm really surprised that this wasn't part of what you mentioned. My understanding is that, statistically, Duke has a significant problem with sexual assault on our campus, as do other universities. What are we doing about this?

McMahon: I have the Title IX piece up there, but I didn't specifically name the percentage of students reporting

experiencing sexual assault while they're here. You're right that it's a big problem. It's a big problem for us and across our peer schools, the AAU data that came out. We're not part of the AAU now, although I would like us to move to that survey so we have better comps. It showed a very similar number at many of our peer schools around students reporting experiencing some form of sexual assault. I'm co-chair of the Sexual Misconduct Prevention Task Force with Kim Hewitt, who is new in OIE, and we really had a great first conversation with students. It goes to this proactive piece. I think we have significant work that we could be doing and harnessing great work that's happening now to create a much better training routine, engagement points with students and student leaders, to foster a culture where we are reducing sexual assault. And then also working on our response when it's happening. I've done that at two places and seen huge traction and progress, so I'm confident we can partner up on that. It's big.

Haynie: Any other questions? [applause]

That's the last item on our agenda. The meeting is adjourned. See you November 21.