

Duke University

DURHAM
NORTH CAROLINA
27708-0928

ACADEMIC COUNCIL
304 UNION WEST
BOX 90928

phone (919) 684-6447
e-mail acouncil@acpub.Duke.edu
fax (919) 681-8606

Minutes of the Regular Meeting of the Academic Council

Thursday February 19, 2009

Paula McClain (Political Science, Chair of the Council): Good afternoon. It is now that time, and I begin with our first item of business which is the approval of the minutes from the January 22 meeting. [The minutes were approved by voice vote without dissent.] Thank you John and Sandra very much.

Departmental status for Dermatology

We have no extra announcements today, so we're going to move right to the first order of business which is a vote on the proposal to create the Department of Dermatology. At last month's meeting we heard a presentation from Dr. Michael Cuffe, Vice Dean, Medical Affairs, about this proposal. Dr. Cuffe is here today to answer any additional questions about this plan.

Are there any questions that you've thought about, things that we need answers before we move to a vote? If not, we move now to our vote:

Be it resolved, the Academic Council endorses the proposal from the School of Medicine to create a Department of Dermatology.

[The motion was approved by voice vote without dissent.]

Thank you – the motion passes unanimously. The Medical School now has a Department of Dermatology.

Election of Council Chair

We turn now to the election of the new Chair of the Academic Council, who will serve in the academic years 2009/10 and 2010/11. The candidates nominated are Professor Rich Burton, of the Fuqua School of Business and Professor Craig Henriquez, of Biomedical Engineering and Computer Science. I think I see both – would you both please stand so that your colleagues can see you? Thank you. Brief resumes were read at the last meeting by Professor John Aldrich, who was the Chair of the Nominating Committee, and fuller bios were distributed with today's agenda...In addition to the candidates presented by the nominating committee, nominations from the floor are open at this time – with one caveat being that the prospective candidate has had to have agreed in advance to serve. (laughter) Do I hear any

further nominations? Hearing none, I declare the nominations closed. And the counters, whom I thank for their assistance in this process are Professors Julie Barroso, School of Nursing, and Barbara Shaw, Department of Chemistry. They are now distributing the ballots, which will be collected after the discussion with the President, Provost and EVP. Please note, that while Academic Council is open to any faculty person at Duke University, only *active* Council members may vote for the next Chair of Academic Council – and only *once*. (laughter).

Voice: Not like Chicago, then!

McClain: Well, it's not Chicago and I don't know Rod Blagojevich! (laughter)

Executive Session: Honorary Degree

I now call the Academic Council into Executive Session for the purposes of considering an honorary degree and another agenda item. All individuals who do not hold faculty rank should leave the room...

[After the honorary degree matter, President Brodhead addressed the Council on the University's plans to deal with the financial crisis. After approval by the Board of Trustees, the substance of his remarks was released to the Duke community on March 1. It is reprinted here.]

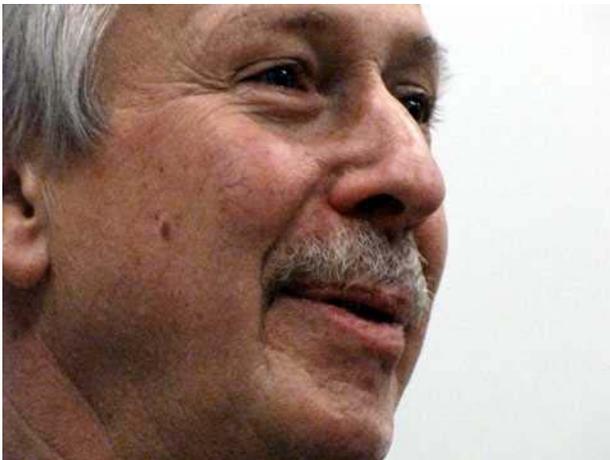
Dear Members of the Duke Community,

I am writing to address a subject that is on everyone's mind: the economy, how it is affecting Duke University, and the steps we are taking to keep Duke strong in the future.

As we look forward, it is useful to recall that the past decade has been most unusual. Since the mid-1990's we have lived through a period of wealth creation and economic expansion without historical precedent, a process that lasted year after year, establishing seemingly permanent new standards of economic expectation. Now we are watching something very different: a massive, rapid reduction of wealth and a downturn that may last for a sustained period. No doubt there will be an eventual recovery, but no one is predicting a rapid return to the recent prosperity.

Duke took advantage of the favorable economic conditions of recent years to create permanent and trans-

formative change for this university. Through the skill of the DUMAC management, our endowment grew at a more rapid pace than almost any other in the country. Our philanthropic support reached a new level each year, surpassing even the most optimistic projections. Our research funding grew to the point where Duke was ranked second in the country in funding from the National Institutes of Health.



We used this record of success to make highly strategic investments in the University's future. In the last decade we built a new library, a new art museum, significant new facilities for virtually every school, and hundreds of thousands of square feet of lab and research space. We raised significant new endowments for financial aid, created the signature civic engagement program DukeEngage, and founded interdisciplinary institutes that put Duke at the forefront in bringing knowledge to the service of society. Most important of all, we recruited top faculty in every discipline, and attracted to Duke the finest, most promising students from around the world.

As we used new resources to build enduring strengths, Duke also managed its funds prudently to ensure future stability. To help protect against inevitable downturns, the University placed a cap on spending from investment returns in years of unexpected plenty, limited long-term debt, and kept a tight lid on overhead and administrative expenses.

Now we face the challenge of dealing with an unexpectedly severe downturn with the same creative, strategic, yet careful spirit that brought Duke advantage in times of plenty.

In a contracting economy, the resources of the University are contracting as well. Our endowment, which stood at \$6.1 billion last June, saw a decline of more than 20 percent through the end of 2008. The disappearance of short-term investment returns has removed a significant source of revenue for strategic initiatives. Philanthropy has declined and may stay depressed for some time. While the number of people giving to Duke is greater than at the same time last year, major new pledges are down and may continue to decline in the years ahead, reflecting national trends. Federal funding for research has also steadily eroded over the past five years. While the new economic stimulus bill provides needed relief in this area, it is uncertain whether there will be sustained, long-term growth in funding for the NIH, the National Science Foundation, and other agencies.

Add up these exposures, factor in the more cautious projections for recovery that now seem warranted, and the estimated negative impact on Duke University's operating budget will be on the order of \$125 million. This means that over the next several years we will have to adjust to the reality that Duke's budget, instead of growing steadily, will have to be approximately \$125 million smaller than it is today. To make such an adjustment in one year would be enormously disruptive. With the approval of the trustees, we have chosen to use accumulated reserve funds to manage the transition to the new, smaller financial base. This will allow us to make changes to our operations in an orderly, strategic fashion.

A fixed across-the-board budget reduction would not make sense at Duke because of our decentralized management system. Different schools are exposed in different ways to different financial effects, and they have to manage them in somewhat different ways. There are, however, certain University-wide steps that can and must be taken. These actions were developed by the senior leadership after consultation with the deans, the directors of major operating units, the relevant University-wide planning committees, and the Academic Council. They have been reviewed by the Board of Trustees, which has been engaged in the planning process from the beginning, and which this weekend formally endorsed the University's strategic direction after extensive discussion and deliberation. They cover the following areas:

Compensation

In FY2010, there will be no salary increase for University employees making more than \$50,000 per year. Employees making \$50,000 and below will receive a one-time, \$1,000 payment provided their performance reviews are satisfactory. There will be no change in the comprehensive benefits program – health, life, and dental insurance, tuition reimbursement and retirement plan – during the coming year. The Duke University Health System (DUHS) determines compensation issues on a different calendar from the University, and guidance for the next year will be provided to DUHS employees at a later date, as will be the case for employees of the PDC. Salary increases for employees covered by collective bargaining agreements will be governed by existing contracts.

Academic Initiatives

Duke's responsibility-center management system delegates significant budget authority to our schools. Given the diverse sources of their revenue, some units will see tighter constraints than others. In all cases, though, schools will be required to present balanced budgets, and thus may choose to implement cost savings and revenue enhancements in different ways. Faculty hiring will continue, though at a slower pace than in previous years.

Tuition and Financial Aid

We recognize that the families of our students are experiencing the same financial challenges as the University and we have sought to keep cost increases to a minimum. Undergraduate tuition, fees, room and board will increase by 3.9% for the 2009-10 academic year, one of the smallest tuition increases in recent years. The costs of

graduate and professional programs will also rise more slowly than in the past. At the same time, Duke reaffirms its commitment to admitting the best undergraduates regardless of their ability to pay and to meeting the full demonstrated financial need for all students. The funds the University invests in undergraduate aid will continue to increase at a significantly greater rate than tuition. In addition, Ph.D. stipends will see a modest increase, and financial aid for graduate and professional programs will remain strong.

Capital Projects

Duke has recently completed the most intense period of construction since the founding of the University, opening more than \$1 billion in new facilities that added well more than one million square feet of new or renovated living, teaching and research space to the campus. Just this fall, Duke opened major new additions to the School of Business and the School of Law; in January 2009, we completed work on Few Quad, creating more than 800 renovated student rooms on the West Campus. Because construction projects incur long-term obligations during a period of great uncertainty, however, no new buildings will be initiated until external funds are identified and secured. Planning for certain developing projects, including New Campus, will continue, but the start of construction will be deferred. Duke University Health System plans for a new cancer center and a major hospital addition have a different budgetary base, and decisions on these projects will also be made with care.

Administrative Expenses

The University will implement a new regimen to identify and control administrative expenses in schools and central departments. Filling staff vacancies and hiring contractors and consultants will require justification and approval within schools and units, as well as by the Provost, Executive Vice President or Chancellor for Health Affairs depending on the unit. All units will be required to reduce expenses for travel, entertainment, overtime, equipment purchases, and other goods and services. In addition, the University will undertake an intensive process of examining, consolidating and ultimately restructuring support programs and services, to ensure that we operate more efficiently and effectively.

Workforce

There is one question that requires as direct an answer as we can offer at this time: what will happen to the size of the workforce of this university? Given the scope of the challenge, and given the fact that compensation makes up 60% of the University's operating budget, we have to assume that the number of people employed by Duke University in the future will be smaller than today. Making this transition will require us to demonstrate the same thoughtfulness and creativity that guided our decisions in more prosperous times. Before any involuntary layoffs are contemplated, we will thoroughly explore and implement steps including curtailing external hiring, eliminating vacant positions, making internal reassignments and exploring a retirement incentive program for University staff. The deployment of these systematic strategies will

significantly mitigate the impact of any workforce reduction. Our workforce is among our most important resources for ensuring our excellence going forward, and we must nurture its quality even as we make inevitable adjustments.

I conclude with a simple truth. We have entered a world very different from the one we have grown used to in recent years. In this new circumstance, Duke has no choice as to whether or not to reduce its expense base. This is the reality that we now face, together with every other university and virtually every American institution. The choice we have is in how to meet this problem. We could suffer our way together to a shrunken, dispirited status quo. Or we could use our collective energies to envision how to meet our goals and aspirations in new ways in face of this new situation.

I have often boasted that Duke's special strength lies in the use of intelligence to devise solutions to real-world problems. Now is the time to apply this skill to our own institutional challenge. I am most grateful for the spirit of realism and constructiveness in which this community has embraced this challenge to date. Working together, I am confident that Duke will be able to navigate through these difficulties with our values and momentum intact.

Richard H. Brodhead, President

For more information, visit

<http://www.duke.edu/economy>

Intellectual Property and the Google Settlement

McClain: Next on our agenda is Kevin Smith. He is on his way, he is not a faculty person, so we told him to go back to his office and we would call him when we were ready for him. So, he is on his way.

He is Scholarly Communications Officer for the Library, he is a librarian as well as an attorney, and many of you may know about the Google books settlement that occurred recently and about author's rights among the faculty? He is going to talk to us today a little bit about what the Google settlement means. If you remember Google was just going to digitize as many books as they could find in the entire world. And someone went to court and I think they were stopped from that. So Kevin is going to talk to us about what the settlement means for your rights as an author...

Kevin Smith (Scholarly Communications Officer): Good afternoon. I'm sorry to be the last thing between you and the end of the day. I'm also conscious that I come before this body every February. I've worked at Duke for three Februaries, and I've been to every one of them. I don't know what that means, but it does mean that at least you don't have to anticipate me again for another year.

I have the unenviable task of convincing you that there's a problem, and then asking you to help me find the solution. And the problem, if it is a problem, is the settlement in the Google Books lawsuit. We've all heard about the lawsuit that was brought against Google for copyright infringement, by publishers and authors. In

November, the court announced that there was a settlement agreement that would change radically the way Google Books looks when you search for something in it, and also has a tremendous impact for authors who own copyrights, including, I believe, many of the faculty at Duke.

First of all, the Google settlement will dramatically change how libraries do their business – once it's approved, it will bind all members of the class, and the class for this settlement is defined, among other things, as "all authors who own a copyright that was registered before January 9, 2009." So it's a huge class that includes lots of people, including potentially many faculty at Duke. It will include those whose copyright, for ex-



ample, reverted to them when a book went out of print, which was a common clause – well it used to be anyway, it may now be less common, because Google is making the idea of out-of-print, pretty much, old-fashioned – but for many authors, copyright will have reverted to you when your book went out of print.

Many authors will receive in the mail notice about the settlement. Those notices started being mailed out last week. But a lot of you will not receive notice because they don't have your address. If the court or the plaintiff have the address of members of the class, they are obligated to send a personal notice. Otherwise, notice is given through publication, that is, they print a notice in the New York Times, and in...lots and lots of other places, to let you know that you have to make a decision.

That's really what the core of this is about, the notice requires that authors who are potentially members of the class make a specific decision. And that is: do I stay in the class, do I opt out of the class, or, do I remain in the class but send an objection to the court? Those are the decisions that are available to members of this class, that is, anybody who owns a copyright.

If you do nothing, either because you choose to do nothing, or because you don't know you're a member of this class, you will remain in the class, and that means you will be bound by the terms of the settlement.

If you opt out, you preserve your freedom and you get no money, if there is any money, and that's an interesting question. Or, as I said, copyright owners can send an objection to the court and say, "I want to stay in the

class, but I want you to consider changing the settlement agreement in some way."

For example, many authors already have planned to send objections to the potential monopoly power that the books-rights registry that is created by this settlement, would have. So all of that is just by the way of framing the problem. Many, many Duke faculty, who are authors of copyrighted books, are impacted by this settlement, either because they have to make a decision, or possibly because decisions about what will happen to their books will be taken out of their hands.

The solution that I want to ask your help with is not a solution so much as a chance to give this information to a larger group. I'm planning **a workshop on March 17 in the library, 4:00 in Perkins, Room 217**, to explain to anybody who has gotten this intimidating 38-page – and this is the simplified version, the actual settlement is almost 400 pages – anybody who has gotten this simplified 38-page notice and doesn't know what to do about it, or who hasn't gotten notice but thinks they might be a member of the class, or who is just concerned that the way their own book is made available and marketed is decided without their input.

I would like to invite people to this workshop on March 17 to discuss all those issues. Are you a class member, do you understand the document, what are the implications of the decision you're being asked to make, and what possible reasons might you have for objecting to the settlement?

What I'm asking from all of you is to spread the word to your colleagues about this workshop so that people know that this is happening, because I don't think the newspaper and media accounts of the settlement have made it very clear that this could have an impact on lots of people, including lots of Duke faculty. And also to solicit from you any suggestions about how I can best communicate with the right people about this issue. Really, that's what I came to say, to ask your help, and to give you a chance to ask me any questions if you have them.

McClain: Can you give us a broad outline of what will happen?

Smith: What happens is that the Google book search is going to look very different. The books that are already in the public domain will remain free and fully available. Nothing should change there. Right now, for anything that is still in copyright, and that's most things (according to Google anyway) since 1923, you can only see a two-line snippet. If the agreement is approved, for most of those books you'll be able to see the snippet, and a much larger chunk, maybe as much as five pages of the book. You won't be able to see the last five pages of a work of fiction, so forget about looking to see whodunit, but otherwise, they're going to make a lot more books available for free, which is a good thing.

Then they are also going to market a product which will give you the full text of many, but not all, in copyrighted works, if they're no longer commercially available – they're no longer in print, but still in copyright. They'll be available in full text, either through an institutional subscription, that will be marketed to libraries like

Duke's libraries, or individually to consumers, who buy specific titles.

We have no idea what the pricing is going to look like, and that's one of the big concerns. The Books Rights Registry will set prices, and there's a lot of concern about monopoly power there, there's not going to be much opportunity even for authors to have an input into what the pricing of everything is going to look like. There are some privacy concerns that when you buy books, they will go into an electronic bookshelf, in your name, that Google will maintain. The Duke libraries protects the circulation records when you check out books; we're not at all sure that Google will do that.

Those are some of the concerns, and that's the broad outline of what it's going to look like. There is a provision here, with those sales from institutional subscriptions, or consumer, individual purchases, Google will make money. And that money will be split 70/30, Google will keep 30% of it, 70% will go into this Books Rights Registry, some of that money will be distributed to publishers and to authors. So that's why I say there is the potential of getting a small check from Google, if your book is in the project.

Questions

John Staddon (ECAC/Psychology & Neuroscience): Cambridge University Press is currently asking authors who have the rights to their own out-of-print Cambridge U. P. books to let them, Cambridge, market an electronic version, with the proceeds to be shared. How will that relate to what Google is doing?

Smith: That's really interesting, and that's the first I've heard about Cambridge doing that. The publishers – there are two classes in this class action suit, authors and publishers – so the publishers, one issue will be: are they entirely united in their agreement to the settlement? We don't know that yet. So far what's happened is the court has given a tentative approval for this settlement, enough for them to start sending out notices. It's when they hear back from all of you, as well as from Cambridge and other publishers, that they'll decide, in what's called a fairness hearing, whether the settlement is overall fair to everybody and should be approved. So it'll be interesting to see if Cambridge objects, because they want to make their own digital product. And that's interesting, because Google is going to have an awful lot of power – or the Books Rights Registry will have an awful lot of power – over later projects to digitize books.

Is there anything else I can tell you, or can you tell me about how best to get in touch with your colleagues, or are you the folks who do that, who take the message back and tell people who are concerned about this March 17th workshop. Are you?

Barbara Shaw (Chemistry): Is there a website we can go to?

Smith: That's a really good idea, I should do that. Right now, there is not. But that's certainly something that we could do. One thing though is it's difficult for me to know how to suggest people respond until I hear back from you and your colleagues about what they

think their situation is, and what their concerns and needs are for their own work.

Provost Lange: I think that the website is great, but it doesn't solve the problem, so I think the best way to proceed is to use a kind of snowball that starts with me, and the deans, and have the deans communicate with their faculty in the arts and sciences to either the chairs, to their schools directly, because they're much smaller, and with a memo that you would prepare, that would be, I think, sufficiently tantalizing to the faculty member...

Smith: Is this a tantalizing subject?

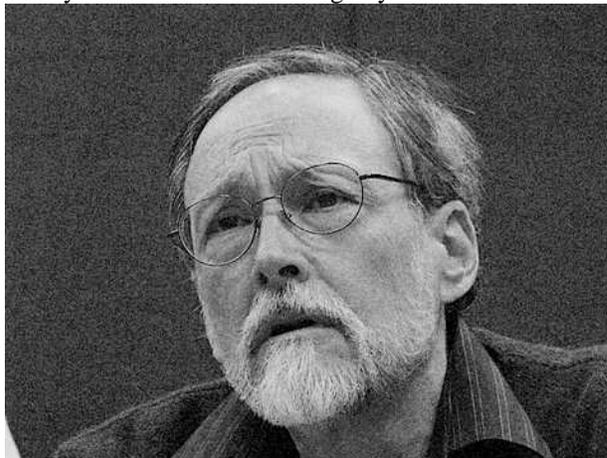
Lange: I think if you mention money, rights, what else "privacy"...control, I think if you just put "Here's an issue that involves money, access, control, I'm not telling you what it is, but if you show up on the 17th of March... (laughter)" it will work great!

Smith: Well thank you, and that's why I came to talk to all of you, to try to get that network going.

Voice: Could you tell us the date by which people have to decide?

Smith: People have to decide **by May 5th**, so there is a very short window here, May 5th is a drop-dead day. If people haven't responded by May 5th, and they own a copyright, they are part of the settlement class and bound by its terms.

Peter Burian (Classics): Could you just explain briefly more about the book registry and what sort of



powers it has beyond setting prices for the Google project...you mentioned...

Smith: The Books Rights Registry is a collective rights agency, and any of you who are musicians or know musicians know about ASCAP, which is a collective rights agency. That's the best parallel to what it's going to do: it will represent the publishers and the authors as rights holders, and work with Google.

So, for example, suppose you own a copyright in a book, and so you're a member of the class, and you decide you don't want that long view, up to five pages of your book. You're happy with the snippets, but you don't want the long view. You can do that – you can exclude your work from certain uses in Google. You would do that by contacting the Books Rights Registry, and they would speak for you.

Now most of those decisions are going to be made by publishers that are going to be made en masse for their whole list. And then the Books Rights Registry will col-

collect the money, and figure out how to divide it. So they'll figure out who owns what copyrights, and how much of the money they should get. Right now, even in a 300-page settlement, we don't have a lot of detail about how they're going to do that...



Craufurd Goodwin (Economics): Are journals excluded from this?

Smith: Journals are excluded. This is books. This is by the way, only U.S. books, U.S. publications, copyrights, registered in the United States, and this product won't be available overseas, and most of the broader views of the books won't be available overseas either.

I actually have an interesting project I've been invited to, an international conference, and I'm supposed to go and tell them about the implications of the Google Books settlement, and I'm very excited to talk to them, but the implications for them are pretty much...none! The implications for you could potentially be very important. Thank you...

Shaw: Perhaps you said this (we were counting ballots). It appears to me that by having exclusions, and also having high costs, that we're actually almost making it more difficult for people to have their work available. You consider a 400-page dissertation in science for a student, is that a book? They always have the right to copy that, for PhD or Masters. Where does that fall? And where do other things...I guess it appears to me that the plus, having everything available after a certain amount of time, for free, is the way that I would see, at least, science moving.

Smith: I absolutely agree with you, but this is a very different model than what Google said they were starting out to do, and one of the groups that's rather angry about this are the libraries, at least some of them, that provided all the material that has been digitized by Google up until now.

You may have seen that Harvard said, "We're not going to provide anything other than public domain documents, because we're concerned about exactly the issues you were talking about, access and cost." We don't know how much it's going to cost, and it's actually going to make it harder for other organizations to digitize. So for the doctoral student, I would say the advantage here, at least if you're writing a PhD dissertation at Duke, is that we will put a digitized copy out there on the internet for you, make your research more accessible, so you don't have to rely on Google. But once copyrights get transferred to publishers, authors no longer have that choice, so that's why making this decision between now and May 5th.

That's March 17th for our meeting, so anything you can do to help spread the word to your colleagues, I'd be very grateful for, and I'd hope they would be too. Thanks!

McClain: I'd like to thank both Rich and Craig for standing for election for Academic Council, this is a tremendous service that one puts one's self forward for,



and I'd like to congratulate **Craig Henriquez** on his election as the new chair.

We are at the end of our meeting so our meeting is adjourned. See you all on March 19th.

Respectfully submitted,

John Staddon
Faculty Secretary, March 4, 2009

