

April 2, 2009

MEMORANDUM

TO: The Educational Policy Committee:

Glynn D. Key, Chair  
The Hon. Alan A. Diamonstein  
Susan Y. Dorsey  
Adom Getachew  
Austin Ligon  
Vincent J. Mastracco, Jr.  
The Hon. Lewis F. Payne  
E. Darracott Vaughan, Jr., M.D.  
John O. Wynne  
W. Heywood Fralin, Ex Officio  
Edmund W. Kitch, Consulting Member

and

The Remaining Members of the Board:

Daniel R. Abramson	Robert D. Hardie
A. Macdonald Caputo	Thomas F. Farrell, II
Helen E. Dragas	Don R. Pippin
Warren M. Thompson	

FROM: Alexander G. Gilliam, Jr.

SUBJECT: Minutes of the Meeting of the Educational Policy  
Committee on April 2, 2009

The Educational Policy Committee of the Board of Visitors of the University of Virginia met, in Open Session, at 3:35 p.m., on Thursday, April 2, 2009, in the Board Room at the Rotunda; Ms. Glynn D. Key, Chair, presided.

John O. Wynne, The Hon. Alan A. Diamonstein, Ms. Susan Y. Dorsey, Austin Ligon, Vincent J. Mastracco, Jr., The Hon. Lewis F. Payne, and E. Darracott Vaughan, Jr., M.D., were present.

Also present were Daniel R. Abramson, A. Macdonald Caputo, Ms. Helen E. Dragas, Thomas F. Farrell, II, Robert D. Hardie, and Don R. Pippin.

Edmund D. Kitch, Chair of the Faculty Senate and Consulting Member from the Senate, was present.

Present as well were John T. Casteen III, Alexander G. Gilliam, Jr., Paul J. Forch, Arthur Garson, Jr., M.D., William B. Harvey, James L. Hilton, Ms. Patricia M. Lampkin, Ms. Yoke San L. Reynolds, Ms. Colette Sheehy, Thomas C. Skalak, David J. Prior, Sharon L. Hostler, M.D., J. Milton Adams, Gregory Roberts, and Ms. Jeanne Flippo Bailes.

The Chair asked Dr. Garson, Executive Vice President and Provost, to present the Agenda.

#### Report by the Dean of Undergraduate Admission

Dr. Garson introduced Mr. Gregory Roberts, the new Dean of Undergraduate Admission. Mr. Roberts told the Committee a bit about himself and then reported on the operations of the Admission Office.

He said the total number of applications received was 21,837, an increase of 17%. Of these, 13,761 were Non-Virginians (an increase of 23%) and 8,076 (an increase of 9%) came from Virginians. There were increases, too, by race: 23% for African-Americans; 48% for Hispanics; 130% for Native Americans; 47% for Foreign Nationals; 15% for Whites; and 34% for Asians.

Mr. Roberts speculated on the reasons for the increase: Admissions' move to the Common Application; the state of the economy; the University's increased presence in Asia; and a change in the reporting of race/ethnicity.

Possible results in this year's admissions season are an increased yield on Virginia offers with a decrease in the yield on Non-Virginia offers, and increased requests for financial aid.

He concluded with some goals for his office, which include increases in the yield for minority students, top scholars, math and science students, AccessUVa students, and international students.

#### Report on Community Service

Dr. Garson introduced Mr. J. Milton Adams, Vice Provost for Academic Programs, who gave a brief report on Community Service accomplishments this year. Community Service is an important aspect of the recommendations of the Commission on the Future of the University, as well as the Community Engagement project of the Commission on Diversity and Equity.

Report on the Status of Asian American Faculty

The Chair introduced Dr. Sharon Hostler, Birdsong Professor of Pediatrics and Interim Vice Provost for Faculty Advancement, and asked her to report on the status of Asian American faculty.

Dr. Hostler presented statistics: Asian Americans constitute an estimated 4.8% of the population of Virginia; Asian American undergraduates are 11.4% of the whole at the University and Asian American graduate students make up 4.3% of the total; Asian American tenure-track faculty constitute 7.5% (all of these are 2008 figures). Among its AAU peers, the University ranked 58<sup>th</sup> out of 61 in Asian American tenure-track faculty.

Nationally, she said, Asian Americans "are highly underrepresented at the top levels of American higher education."

Dr. Hostler concluded her report with suggestions of ways the number and status of Asian American faculty can be improved.

Report on Technology Transfer

Dr. Garson introduced Mr. Thomas Skalak, Vice President for Research and Graduate Studies. Mr. Skalak reported on the integrated structure for University Technology Transfer and Ventures. He said he is assembling a Tech Transfer and Ventures Advisory Group which includes venture capitalists (both local and national), faculty entrepreneurs, corporate leaders and tech transfer directors at other schools. The group should be formed by the middle of April.

The Advisory Group will analyze various models for tech transfer and venture operations, their analysis to include consultation with the UVa Patent Foundation, possible identification of integrated space, and budgetary considerations.

He hopes to have the analysis done by May 30<sup>th</sup>.

He then described possible parameters on the analysis as well as tactical considerations.

Based on the analysis performed by the advisory group, as well as University mission and budget considerations, a job description for a new Executive Director of UVa Technology Transfer and Ventures will be written and a search undertaken. Mr. Skalak hopes that this person can be hired by the end of July.

Once the Executive Director is in place, that person will work with the Patent Foundation to define structural

relationships, including a new contract and job description of Director of the Patent Foundation. A search will then begin, which Mr. Skalak hopes will be completed by October 30<sup>th</sup>.

Remarks by the Chair of the Faculty Senate

Finally, Dr. Garson introduced Mr. Edmund Kitch, Professor of Law and Chair of the Faculty Senate. Mr. Kitch, noting that this was his last Board meeting as Chair of the Senate (his successor, Ms. Ann Hamric, Associate Professor of Nursing, takes office on June 1<sup>st</sup>), presented his reflections on the role and future of the University. His comments, he said, were based principally on a column by Stanley Fish in the *New York Times* in January. The column, "The Last Professor," in turn was mostly review of a book, *The Last Professors*, by Frank Donaghue. Stanley Fish is a former Professor of Law and English Literature at Duke University.

A copy of Mr. Kitch's remarks is appended to these Minutes as an Attachment.

On motion, the meeting was adjourned at 4:40 p.m.

AGG:jb

These minutes have been posted to the University of Virginia's Board of Visitors website.

<http://www.virginia.edu/bov/educationalminutes.html>

E.W. Kitch April 2, 2009 Remarks to the Educational Policy Committee of the Board of Visitors, the University of Virginia

Today is the last time I will have the opportunity to address you in my capacity as Chair of the Faculty Senate. On June 1, Ann Hamric assumes that position. She will be addressing you at your next meeting. I will then be the Immediate Past Chair, and in that capacity I will remain as a Consulting Member of this and two other Board Committees.

I am using this last opportunity to speak to you as Senate Chair to offer my thoughts on a basic question that must be confronted by the University of Virginia, by its faculty, and by you, the Board of Visitors.

Does the historic institutional model of the University of Virginia have a future in the 21<sup>st</sup> Century? Is the situation of the University of Virginia analogous to that of buggy whip manufacturers at the beginning of the 20<sup>th</sup> Century? Or analogous to that of contemporary newspapers which fail to adapt to the internet?

If the University of Virginia as we have known it does have a future, then the merits of a University like Virginia must be explained and defended.

If the University of Virginia as it has been historically organized does not have a future, then there is much very hard work to do. Activities must be reorganized, contracts must be bought out, different techniques of education developed, and new sources of revenue developed.

I became convinced that this basic question is worth our attention as the result of reading a column by Stanley Fish on the New York Times Op-Ed page in January. The column, mostly a review of Frank Donoghue's THE LAST PROFESSORS, was entitled *The Last Professor*. Fish, formerly a Professor of Law and English literature at Duke, sees himself as that last professor.

“People sometimes believe that they were born too late or too early. . . . I feel that I have timed it just right, for it seems that I have had a career that would not have been available to me had I entered the world 50 years later. Just luck, I guess.”

My responsibilities as Chair of the Faculty Senate have enabled me to learn about the University as a whole. That in turn has caused me to think about the University as a whole. Why is this institution structured the way it is, and what is its future? Those questions along with the Fish column motivated me to read the Donoghue book. Donoghue is himself an English Professor. He writes engagingly and well. The book reminds us that universities have always been controversial. The book’s analysis is deeply flawed.

The thesis of the book is that universities are evolving away from a structure centered on faculties with security of employment and significant autonomy in their teaching and scholarship. In the new University, teaching will be done by employees on short-term contracts. The content of courses will be centrally determined, and faculty will teach from standardized and uniform materials.

This is not the University of Virginia as we have known it. At the founding of the University, Jefferson envisaged faculty with employment security. The original statute of the University of Virginia, in a provision still in force today, provided that professors could only be removed by a vote of 2/3 of the Board of Visitors. This founding document made security of tenure the result of a partnership between the faculty and the Board of Visitors, a partnership in which it was the obligation of the faculty to behave responsibly and of the Board of Visitors to respect the autonomy of the faculty. No doubt Jefferson, who aspired to attract promising young academics from Europe to Charlottesville, understood that few would make that long journey across an ocean without security of employment. This is a partnership that has now endured for nearly two centuries.

The basic flaw in the analysis of Donoghue's book comes from his concept of what it means to be "corporate," a term that Donoghue conflates with "profit making." He reasons that because short-term employees cost less, and because there is more profit if costs are lower, then a "corporate" employer –be it a University or some other enterprise– will always seek to pay its employees less. The problem with this reasoning is that it pays no attention to the value of the work that employees do. Less costly employees are advantageous from the point of view of a profit making firm, but only if one critical condition is satisfied. That condition is that the quality of the work done by the cheaper employees is the same as the quality of the work done by the more expensive employees. In fact, employees of "corporate" or "for profit" employers are often paid high salaries. It is true that they do not have the security of employment provided by academic tenure. But they can –and many highly paid employees of for-profit enterprises do– have something better. They have a significant –and by this I mean a multi-million dollar– separation payment in the event their employment is terminated. This is the system that the University itself uses for its athletic coaches, who do not have academic tenure. There are many members of the academic faculty who would be happy to give up academic tenure in exchange for a similar arrangement.

It is astonishing that neither Donoghue or Fish even consider the question of whether experienced and tenured faculty teaching in a supportive environment can and do actually deliver an educational experience that is superior to that of a transient adjunct.

Teachers are not cans of soup. I know when I buy a can of Campbell's Chicken Noodle soup, I can open the can, warm up the soup and enjoy, well, a can of Campbell's Chicken Noodle. But the University cannot purchase, say, a freshly minted Phd. from Princeton, and simply open the "can." Great teachers and scholars benefit from years of experience in an environment which enables them to focus on their work and to enhance their skills and knowledge. The University can not hire its faculty in finished form. The environment in which the faculty works has a great deal to do with what the members of the faculty can and do become.

Compare airline pilots. Airline pilots receive compensation on average superior to that of academic faculty. They have substantially lighter workloads than academic faculty. And, thanks to their union contracts, they have equivalent security of employment. If a new, low cost, airline were to set up business and advertise that its strategy is to cut costs by hiring its pilots from a pool of unemployed pilots who will have the opportunity to bid for the opportunity to fly on a day-by-day basis, would you want to fly on that airline? Would you commit the education of future leaders of society to a faculty hired in the same way?

Fish and Donoghue are both English Professors. English literature in particular and the humanities more generally are at the moment afflicted by severe self-doubt. Why this is so mystifies me. My field –law– can best be understood as an applied humanity. An understanding of human nature –and of the tools and perspectives that can be used to understand human nature– are essential attributes of the successful practicing lawyer.

Donoghue's predictions are based on two empirical realities. One is the phenomenal success of the University of Phoenix. The other is that an increasing percentage of the people

teaching in American higher education are not working under the terms of the traditional academic contract. Both are true, but neither has the predictive significance that Donoghue attributes to it.

The University of Phoenix is indeed a phenomenon. If you had been foresighted enough to invest in its New York Stock Exchange listed parent in 1995 at \$1 a share and kept your position, you would now own a stock worth \$65 a share. The University of Phoenix phenomenon mesmerizes many in higher education. There are people on our own campus who argue that it is the pole star for the future of higher education.

What are the characteristics of the University of Phoenix?

First, the University of Phoenix has economy of scale. Nearly 400,000 students, roughly 20 times the University of Virginia.

Second, the University of Phoenix has flexibility. Twenty thousand of its 21,500 faculty are on short term contracts. And the University of Phoenix has minimal physical place. Its classes are taught in shopping malls or other locations with convenient access and parking, all on short term leases. The University of Phoenix can “turn on a dime.”

Third, the average student at the University of Phoenix is in his or her 30's, and working.

Fourth, the graduation rate at the University of Phoenix is debated. Clearly, it graduates far fewer than the 100,000 students a year that its total enrollment figures might suggest.

Fifth, the courses at the University of Phoenix are centrally organized and their content mandated. Faculty function as educational facilitators. They do not create and offer lectures or material that they themselves have created.

Sixth, the faculty of the University of Phoenix produces no research.

Whether or not the University of Phoenix is the pole star for the future of higher education, and in particular the University of Virginia, turns on whether or not it is involved in the same activity. Does it offer programs of instruction suitable for the training of future leaders? Does it offer an environment which helps young students navigate the transition from a protected family environment to the larger world? Does it inspire its students to seek to expand human knowledge and to elevate the human condition?

An examination of the most basic information suggests that it does not. The University of Phoenix is a very successful institution that offers useful services to its many students. But its area of activity –or in economic terms its market– is not the area of activity in which the University of Virginia has managed to excel. Those who apply to us to become students here do not view the University of Phoenix as their alternative. It is not their backup school. The University of Virginia and the University of Phoenix do different things. The University of Phoenix has grown and flourished without having the slightest impact on the core activities of the University of Virginia.

The other empirical reality on which Donoghue relies is the increase in the number of employees performing teaching functions in higher education who are not “on the tenure track.” However, the fact that the balance between faculty working with traditional academic employment arrangements and other teachers and researchers has shifted, does not mean that the shift will continue until the academic faculty are eliminated. Trends do not go on forever. There have always been “assistants,” “adjuncts,” “helpers” in Universities. I know from reading about the history of the law school that in the nineteenth century the Professor of Law –and in those days there was only one Professor of Law– had helpers. There is a very real issue about how the effort should be allocated among different types of employees. No doubt the answer differs depending upon the field. But the answer to that question provides no support for the proposition that the present generation of faculty are, as Donoghue titles his book, “The Last Professors.”

I believe that there is an important – even flourishing – future for institutions organized like the University of Virginia. But we cannot hide our heads in the sand and ignore the fact that there are many important and thoughtful analysts who do not<sup>6</sup> share that belief. Those of us who do share the belief that institutions like Virginia have a future need to join issue with those such as Donoghue who have a different belief, and explain why he is wrong.