I. Announcements

A. Welcome and Introduction of Faculty Senators and Visitors.

II. Visitors Reports

A. Mr. Greg Lovins (Business Affairs), Appalachian House in Washington, D.C.

B. Mr. David Larry (University Attorney).

Appendix A: The First Amendment and Symbolic Expression in State Offices;
Appendix B: Accommodations of Students with Disabilities;
Appendix C: FERPA Governing Laws and ASU Policies;
Appendix D: Academic Freedom;
Appendix E: Images

C. Ms. Tracey Wright (Assistant Vice Chancellor for Student Development).


Presentation on “How to be an Ally” and “Helpful Tactics for Recognizing and Responding to Dynamics of Oppression--Creating Greater Inclusion”.

D. Dr. Bobby Sharp (IRAP), Delaware Study Faculty Activity Checklist.

III. Minutes

A. Approval of December 10, 2007 Faculty Senate Minutes.
   Available online at:
   http://www.facsen.appstate.edu/Minutes/documents/FacultySenateMeetingsMinutesDecember102007.pdf

B. Approval of March 3, 2008 Faculty Senate Minutes.
   Available online at:
   http://www.facsen.appstate.edu/Minutes/documents/FacultySenateMinutesMarch32008Unapproved.pdf
IV. Provost’s Report

V. Committee Reports (Chairs’ Name in capital letters)

A. Academic Policies (ARNOLD, Butts, LAMBERT, Stallworth)
   No Report.

B. Agenda Committee (MARKING, Butts, Marland, Scherlen)
   No Report.

C. Budget Committee (STRAZICICH, Malloy, McBride, Price, Werts)
   No Report.

D. Campus Planning Committee (W. WILLIAMS, Mitchem, Rardin, Tiller)
   No Report.

E. Committee on Committees (MAMLIN, Marland, Ramey, B. Williams)
   A motion to approve the Faculty Senate departmental representatives as listed on Appendix F: New Faculty Senators from Departments/Units.

   A motion to approve the new faculty representatives on University committees as listed on Appendix G: University Committees: New Faculty Members Effective Fall 2008.

F. Faculty Handbook Committee (MARKING, Arnold, Marland, Weitz)
   No Report.

G. Faculty Welfare and Morale Committee (DAVISON, Carpenter, Fischer, Grube, Scherlen)
   No Report.

H. Welfare of Students Committee (ULMER, McKinney, Mines, Winn)
   No Report.
VI. Unfinished Business

VII. New Business

A. Chancellor’s Advisory Committee report from March 31, 2008 meeting (Senator Winn).

B. April 4, 2008 UNC Faculty Assembly report (Senator Arnold).


C. Appendix J: 2008 Board of Governors Award for Excellence in Public Service (Chair Marking).

D. Faculty Voting Update (Chair Marking).
List of Appendices

- Appendix A: The First Amendment and Symbolic Expression in State Offices
- Appendix B: Accommodations of Students with Disabilities
- Appendix C: FERPA Governing Laws and ASU Policies
- Appendix D: Academic Freedom
- Appendix E: Images
- Appendix F: New Faculty Senators from Departments/Units.
- Appendix G: University Committees: New Faculty Members Effective Fall 2008.
- Appendix J: 2008 Board of Governors Award for Excellence in Public Service:
The First Amendment and Symbolic Expression in State Offices

1. The First Amendment protects a public employee who speaks "as a private citizen . . . on a matter of public concern" unless "the public employer's interest in what the employer has determined to be the appropriate operation of the workplace" outweighs "the employee's interest in First Amendment expression." See Urofsky v. Gilmore, 216 F.3d 401, 406 (4th Cir. 2000) ("Urofsky II"), cert denied, 531 U.S. 1070 (2001).

2. "To determine whether speech involves a matter of public concern, we examine the content, context, and form of the speech at issue in light of the entire record." Id., 216 F.3d at 407 (citation omitted).

3. However, a public employer may fire an employee even "for speaking on a matter of public concern if: (1) the employer's prediction of disruption is reasonable; (2) the potential disruptiveness is enough to outweigh the value of the speech; and (3) the employer took action against the employee based on this disruption and not in retaliation for the speech." Jeffries v. Harleston, 52 F.3d 9, 13 (2nd Cir. 1995) (citing Waters v. Churchill, 511 U.S. 661 (1994)). See also DiMeglio v. Haines, 45 F.3d 790, 805-806 (4th Cir. 1995) ("[e]ven if [plaintiff] was speaking as a private citizen and on a matter of public concern, . . . it is still not clear that his speech would have been protected, since the interests of the State in preventing disruption of the orderly management of its offices might well have outweighed [his] interests in expressing himself on the subject and in the manner, time, and place that he did").

4. As the court observed in McVey v. Stacy, 157 F.3d 271 (4th Cir. 1998), "particularly in First Amendment cases, where a sophisticated balancing of interests is required to determine whether the plaintiff's constitutional rights have been violated, only infrequently will it be clearly established that a public employee's speech on a matter of public concern is constitutionally protected." Id., 157 F.3d at 278 (internal quotation marks omitted).

5. "In balancing the public employee's interest in speaking on matters of public concern against the government's interest in providing effective and efficient government through its employees, we must take into account the context of the employee's speech, including the employee's role in the government agency, and the extent to which it disrupts the operation and mission of the agency," and the "[f]actors relevant to this inquiry include whether the employee's speech (1) impairs discipline by superiors; (2) impairs 'harmony among co-workers'; (3) 'has a detrimental impact on close working relationships'; (4) impedes the performance of the public employee's duties; (5) interferes with the operation of the agency; (6) undermines the mission of the agency; (7) is communicated to the public or to co-workers in private; (8) conflicts with the 'responsibilities of the employee within the agency'; and (9) makes use of the 'authority and public accountability the employee's role entails.' Id., 157 F.3d at 278 (quoting Rankin v. McPherson, 483 U.S. 378, 388-91 (1987)).

6. A state university may, consistent with the First Amendment, restrict what a professor may teach in the classroom. As the Supreme Court emphasized in Rosenberger v. University of Virginia, 515 U.S. 819 (1995):

When the State is the speaker, it may make content-based choices. When the University determines the content of the education it provides, it is the University speaking, and we have permitted the government to regulate the content of what is or is not expressed when it is the speaker or when it enlists private entities to convey its own message. . . . A holding that the University may not discriminate based on viewpoint of private persons whose speech it facilitates does not restrict the University's own speech, which is controlled by different principles.

Rosenberger, 515 U.S. at 833-34.
7. Likewise, the court in *Edwards v. California University of Pennsylvania*, 156 F.3d 488 (3d Cir. 1998), relying in part on *Rosenberger*, held that:

[A] public university professor does not have a First Amendment right to decide what will be taught in the classroom. This conclusion is compelled by our decision in *Bradley v. Pittsburgh Bd. of Educ.*, 910 F.2d 1172 (3d Cir. 1990), where we explained that "no court has found that teachers' First Amendment rights extend to choosing their own curriculum or classroom management techniques in contravention of school policy or dictates." *Id.* at 1176.

*Edwards*, 156 F.3d at 491. *See also Urofsky II*, 216 F.3d at 429 n. 4 (quoting *Edwards* for principle that "[A] public university professor does not have a First Amendment right to decide what will be taught in the classroom"); *Brown v. Armenti*, 247 F.3d 69, 74(3d Cir. 2001) ("in the classroom, the university was the speaker and the professor was the agent of the university for First Amendment purposes"); *Clark v. Holmes*, 474 F.2d 928, 931 (7th Cir. 1972) (rejecting contention that university teacher has First Amendment right to disregard established curriculum content), *cert. denied*, 411 U.S. 972 (1973).

8. In *Garcetti v. Ceballos*, 547 U.S. 410 (2006), the Supreme Court ruled that the First Amendment does not insulate from discipline a public employee's communications made in the course of his or her employment:

[An employee] did not act as a citizen when he went about conducting his daily professional activities . . . . In the same way he did not speak as a citizen by writing a memo that addressed [a matter within the scope of his employment]. When he went to work and performed the tasks he was paid to perform, [the employee] acted as a government employee. . . .

. . . Refusing to recognize First Amendment claims based on government employees' work product does not prevent them from participating in public debate. The employees retain the prospect of constitutional protection for their contributions to the civic discourse. This prospect of protection, however, does not invest them with a right to perform their jobs however they see fit.

. . . Employers have heightened interests in controlling speech made by an employee in his or her professional capacity. Official communications have official consequences, creating a need for substantive consistency and clarity. Supervisors must ensure that their employees' official communications are accurate, demonstrate sound judgment, and promote the employer's mission. . . . If [the employee's] superiors thought his memo was inflammatory or misguided, they had the authority to take proper corrective action.

*Garcetti v. Ceballos*, 547 U.S. at 422-23.


10. "The First Amendment permits [a state] to outlaw cross burnings done with the intent to intimidate because burning a cross is a particularly virulent form of intimidation. Instead of prohibiting all intimidating messages, [a state] may choose to regulate this subset of intimidating messages in light of cross burning's long and pernicious history as a signal of impending violence." *Id.*, 538 U.S. at 363.
11. However, intent to intimidate must be proved. A statutory provision stating that "any such burning of a cross shall be prima facie evidence of an intent to intimidate a person or group of persons" is unconstitutional on its face because such a provision "strips away the very reason why a State may ban cross burning with the intent to intimidate." *Id.*, 538 U.S. at 365.

12. Intent to intimidate is essential to the constitutionality of a ban on cross-burnings:

As the history of cross burning indicates, a burning cross is not always intended to intimidate. Rather, sometimes the cross burning is a statement of ideology, a symbol of group solidarity. It is a ritual used at Klan gatherings, and it is used to represent the Klan itself. Thus, "burning a cross at a political rally would almost certainly be protected expression." *R. A. V. v. St. Paul*, 505 U.S., at 402, n. 4 (White, J., concurring in judgment) (citing *Brandenburg v. Ohio*, 395 U.S., at 445). Cf. *National Socialist Party of America v. Skokie*, 432 U.S. 43, 53 L. Ed. 2d 96, 97 S. Ct. 2205 (1977) (per curiam). Indeed, occasionally a person who burns a cross does not intend to express either a statement of ideology or intimidation. Cross burnings have appeared in movies such as *Mississippi Burning*, and in plays such as the stage adaptation of Sir Walter Scott's *The Lady of the Lake*.

* * * * *

It may be true that a cross burning, even at a political rally, arouses a sense of anger or hatred among the vast majority of citizens who see a burning cross. But this sense of anger or hatred is not sufficient to ban all cross burnings.


13. However, intent is irrelevant with respect to harassment that creates a hostile environment in violation of the civil rights laws, e.g., Title VII of the Civil Rights Act of 1964.

14. Analysis:

a. The University prohibits discrimination on the basis of race, color, religion, national origin, creed, political affiliation, sexual orientation, sex or age.

b. The Supreme Court has ruled in *Meritor v. Vinson* that hostile environment harassment is a form of unlawful discrimination.

c. Faculty members generally are free to decorate their ASU offices as they please, and much of what constitutes such decoration also constitutes speech or symbolic communication.

d. Faculty members' ASU offices are provided to them solely for use in the course of their faculty employment.

e. State property (including faculty offices) may not be used for purely personal purposes.

i. State property "shall not be used for personal convenience . . . and must be limited to official use only." Faculty Handbook, § 6.4.

ii. "No person associated with the University in any capacity shall use for his or her own financial benefit or for any other personal purposes University facilities or property." ASU Policy Statement ("PS") 0.1 ("Policy on the Use of University Facilities and Property"), § 1.03.
To the extent that faculty members' office decorations constitute symbolic communication, such communications are made within the course of their daily professional activities.

State property may not be used for unlawful purposes, including discrimination or harassment.

Faculty members typically use their offices for, among other things, meetings with students and colleagues.

There is unequal power between faculty and students, and between tenured and untenured faculty.

Persons with less power in a given relationship are relatively unlikely to complain about the behavior of persons they perceive as having more power.

Consider an office display in a faculty member's office -- symbolic expression -- that is intended to communicate a message on a matter of public concern, even a very negative message.

Examples of persons conveying such messages include:

1. Members of the Westboro Baptist Church (classified as a "hate group" by the Southern Poverty Law Center) who picket memorial services with signs stating "God Hates Fags" whenever they believe the deceased person was gay, gay-friendly, or part of a gay-friendly institution.

2. Members of the American Nazi Party, the Ku Klux Klan, and similar organizations

Even if a faculty member does not claim to be speaking or communicating on behalf of the University, the office display is communication that occurs on and uses state property -- an office -- in circumstances in which it is foreseeable (and perhaps desired) that students, faculty, and others will see the display and receive the communication.

To the extent the faculty member is engaging in symbolic expression during the course of employment and on state property, the Supreme Court's ruling in Garcetti compels the conclusion that the faculty member is not "speaking as a private citizen" when engaged in that symbolic expression.

Assume that there is no evidence that the faculty member intends to intimidate anyone, and further, that there is evidence that intimidation is not intended.

Even if the faculty member were speaking as a private citizen on a matter of public concern, and even if there is no intent to intimidate, the symbolic expression is not protected by the First Amendment because "the public employer's interest in what the employer has determined to be the appropriate operation of the workplace" outweighs "the employee's interest in First Amendment expression." Urofsky v. Gilmore, 216 F.3d at 406.

The University does not tolerate harassment that creates a hostile environment.

Prohibiting and preventing hostile environment harassment is part of what the University has determined to be "the appropriate operation of the workplace."
iii. Harassment is one of the forms of expression (e.g., obscenity, defamation, fighting words, harassment) which the Supreme Court has held constitutes "constitutionally proscribable content." See R. A. V. v. City of St. Paul, 505 U.S. at 382-86, 390-92 (1992).

m. Under the rationale of either Garcetti or Urofsky, the University may prohibit workplace expression that is antithetical to, or disruptive of, the appropriate operation of the workplace.
Accommodation of Students With Disabilities

1. Applicable Law

   a. Section 504 of the Rehabilitation Act of 1973 provides that:

      no otherwise qualified individual with handicaps . . . shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity[, including those operated by a college, university, or other postsecondary institution, or a public system of higher education,] receiving Federal financial assistance.


   b. Title II of the Americans with Disabilities Act ("ADA") forbids disability discrimination in the provision of public services. See 42 U.S.C. § 12132.

   c. Both Section 504 and Title II require that public universities provide reasonable accommodations to qualified individuals with disabilities, unless doing so would create undue hardship.

      In the context of public higher education, Title II requires that disabled students not be excluded from educational programs or activities, or otherwise discriminated against, because of their disabilities. Title II also imposes an affirmative obligation to make "reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services" to enable disabled persons to receive services or participate in programs or activities. Id. § 12131(2). In the context of public higher education, Title II requires state colleges and universities to make reasonable accommodations for disabled students to ensure that they are able to participate in the educational program.

      Constantine v. The Rectors and Visitors of George Mason University, 411 F.3d 474, 488 (4th Cir. 2005) (emphasis supplied).

   d. Reasonable accommodation might include:

      Modifications or adjustments to the work environment, or to the manner or circumstances under which the [work] is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; . . .

      Modifications or adjustments that enable a [person] with a disability to enjoy equal benefits and privileges of [education] as are enjoyed by . . . other similarly situated [students] without disabilities.

      Making existing facilities used . . . readily accessible to and usable by individuals with disabilities; and

      . . . [A]cquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations . . . or policies; the provision of qualified readers or interpreters; and other similar accommodations for
individuals with disabilities.

*See*, e.g., EEOC Regulations Governing Reasonable Accommodation, 29 C.F.R. § 1630.2(o)(1)(i) and (ii); 29 C.F.R. § 1630.2(o)(2)(i) and (ii).

e. "Undue Hardship" is Narrowly Defined:

i. "Undue hardship means, with respect to the provision of an accommodation, significant difficulty or expense incurred by a covered entity. . . ." 29 C.F.R. § 1630.2(p)(1).

ii. In other words, if an accommodation is required, and if providing an accommodation will not cause the University significant difficulty or expense, failure to provide the accommodation will violate the law.

f. The Interactive Process for Reaching a Reasonable Accommodation:

To determine the appropriate reasonable accommodation it may be necessary for the covered entity to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

29 C.F.R. § 1630.2(o)(3).

g. The Limits on Accommodation in the Academic Setting

i. Section 504 does not require a university either to lower its academic standards or to compromise the reasonable policies of its academic program. *See*, e.g., *McGregor v. Louisiana State University Board of Supervisors*, 3 F.3d 850, 860 (5th Cir. 1993)

ii. Section 504 does not require a university to grant accommodations that "would constitute preferential treatment and go beyond the elimination of disadvantageous treatment mandated by § 504." *See*, e.g., *McGregor*, 3 F.3d at 860.

iii. Updated Proof of Disability, Sufficient to "Satisfy a Reasonable Expert in the Field," as a Pre-condition to the Obligation to Provide Accommodations:

A public agency may require reasonable evidence of a disability before providing accommodations. *See Weinreich v. Los Angeles County Metro. Transp. Auth.*, 114 F.3d 976, 979 (9th Cir. 1997) (public agency may require updated certification of qualifying disability). . . . A public agency may not, however, insist on data supporting a claim of disability beyond that which would satisfy a reasonable expert in the field. *CF. Grenier v. Cyanamid Plastics, Inc.*, 70 F.3d 667, 674 (1st Cir. 1995) ("Where an applicant requests reasonable accommodation, an employer may request 'documentation from an appropriate professional (e.g., a doctor, rehabilitation counselor, etc.), stating that s/he has a disability,'") (quoting Equal Employment Opportunity Comm'n, *Enforcement Guidance: Preemployment Disability-Related Inquiries and Medical Examinations Under the Americans with Disabilities*
Act of 1990 § IV.B.6.b (EEOC Notice 915.002) (May 19, 1994)).

Vinson v. Thomas, 288 F.3d 1145, 1153 (9th Cir. 2002) (emphasis supplied).

h. The Fourth Circuit has Recognized a Cause of Action for "Hostile Environment Harassment" Based on Disability

[A] . . . plaintiff must prove the following to establish a hostile work environment claim: (1) he is a qualified individual with a disability; (2) he was subjected to unwelcome harassment; (3) the harassment was based on his disability; (4) the harassment was sufficiently severe or pervasive to alter a term, condition, or privilege of employment; and (5) some factual basis exists to impute liability for the harassment to the employer.

Fox v. GMC, 247 F.3d 169, 177 (4th Cir. 2001).

i. This cause of action is based on the case law concerning sexual harassment.

ii. In addition to the employer or educational institution, plaintiffs generally sue the individual who engaged in the harassment as well.

iii. In addition, plaintiffs often sue for infliction of emotional distress, and the North Carolina Court of Appeals has ruled that "sexual harassment is substantially certain to cause [such] injury to the person harassed."

iv. Because harassment, a form of discrimination, is unlawful conduct, and because the N.C. Court of Appeals also has ruled that sexual harassment does not "arise out of or occur within the scope of the [harassing] employee's employment," the Attorney General might determine that the harasser is not entitled to a defense or indemnification from damages under the Defense of State Employees Act.

2. Applicable Appalachian State University Policies

a. Appalachian State University's Office of Disability Services

i. As stated in the description of the Office of Disability Services:

Educational access is the provision of eligible accommodations to ensure equal educational opportunities for all students regardless of disability. Creating equal educational opportunities is a collaborative effort between the student, faculty member, and the Office for Disability Services. At Appalachian, the Office of Disability Services (ODS) is the office designated to determine eligibility for federally mandated academic accommodations and services.

********

Faculty do not have the right to ask students if they have a disability, or to ask about the nature of a documented disability. However, they do have certain rights in dealing with students with disabilities. Faculty can:

- Expect the student to initiate accommodation requests.
• Request verification [from ODS] of a student's eligibility for any requested accommodations. ODS is the only office designated to review documentation and determine eligibility. . . .

**Faculty . . . have certain responsibilities** to students with disabilities. These [include]:

* * * * * * * * *

• Provide accommodations only to students who are registered with the Office of Disability Services.

Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g
Governing Law and Appalachian State University Policies

I. Introduction

A. Protecting Confidentiality of Student Education Records

1. State Law Mandates the Disclosure of Public Records

N.C.G.S. § 132-1(a) defines "public records" very broadly, to include:

all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions.

N.C.G.S. § 132-1(b) declares that "[t]he public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people," and mandates that "the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law."

2. Education Records Would Constitute "Public Records" Absent Other Protection

North Carolina's Public Records Law does not provide an exception for "education records," and State law provides no other statutory protection for education records. In other words, in the absence of Federal statutory protection, all kinds of information about a student would be public, including applications for admission, grades, papers, disciplinary records, on-campus financial transactions (including financial aid information), parental information, etc.

3. The Legislature has Protected Personally Identifiable Admissions Information

Because applicants for admission are not yet "enrolled," they are not "students" for FERPA purposes, and thus, public universities previously had to produce applicant's records when requested. However, the legislature has closed that gap by amending the Public Records Act to protect that information. Thus, N.C.G.S. § 132-1.1.(f) provides that "[r]ecords maintained by The University of North Carolina or any constituent institution . . . which contain personally identifiable information from or about an applicant for admission to one or more constituent institutions . . . shall be confidential and shall not be subject to public disclosure. . . ."

II. The Family Educational Rights and Privacy Act and Implementing Regulations

A. Protection Against Unconsented Disclosure

The Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, provides that:

No funds shall be made available . . . to any educational . . . institution which has a policy or practice of permitting the release of education records (or personally
identifiable information contained therein other than directory information . . .) of students without the written consent of their parents to any individual, agency, or organization, other than to . . . other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests, including the educational interests of the child for whom consent would otherwise by required.

20 U.S.C. § 1232g(b)(1)(A) (emphasis supplied).

B. Who "Owns" the Right of Confidentiality?

Although the statute initially grants the rights of privacy and access concerning education records to the student's parents, the student becomes the "owner" of those rights upon his or her eighteenth birthday or upon beginning attendance at a college-level institution. Thus, "whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student." 20 U.S.C. § 1232g(d).

This means that the parents of a student eighteen years of age or older may not have access to the student's education records without the student's consent, unless the parents are "parents of a dependent student of such parents, as defined in section 152 of the Internal Revenue Code of 1986 [26 U.S.C. § 152]." 20 U.S.C. § 1232g(b)(1)(H).

The Internal Revenue Code, defines "dependent" to include:

any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer (or is treated under subsection (c) or (e) as received from the taxpayer):

(1) A son or daughter of the taxpayer, or a descendant of either,
(2) A stepson or stepdaughter of the taxpayer, . . .

26 U.S.C. § 152(a) (emphasis supplied).

In other words, even if the student does not consent, if the student is a dependent for purposes of the IRS code, the parents who may claim the student as a dependent may have access to the student's education records.

Generally, the University encourages parents and students to work out issues of consent between them. The Department of Education regulations implementing FERPA provide that if an unconsented disclosure is not permitted, "[t]he parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records. . . ." 34 C.F.R. § 99.30(a). Such written consent must: "(1) Specify the records that may be disclosed; (2) State the purpose of the disclosure; and (3) Identify the party or class of parties to whom the disclosure may be made." 34 C.F.R. § 99.30(b)(1)-(3). Students may grant online access to certain records.

If an adult student (at least 18 years old) does not consent, but is a dependent, the persons who may claim the student as a dependent will have to supply proof of that dependent status, either in the form of an affidavit (a sworn and notarized statement) or a copy of the most recently filed income tax return, with
personal financial information redacted.

Any requests for access to education records should be made through the Registrar's Office. The Registrar's Office can also provide a form affidavit. In any event, proof of dependent status must be provided for each year in which access to a student's records is sought.

C. What is an Education Record, and What is "Directory Information"?

Under FERPA, "the term 'education records' means . . . those records, files, documents, and other materials which . . . contain information directly related to a student." 20 U.S.C. § 1232g(a)(4)(B)(i). This is a very broad definition, and includes virtually all information the University maintains concerning a student.

The term "directory information' relating to a student" includes:

the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

20 U.S.C. § 1232g(a)(5)(A). Again, directory information is the information that may be released without consent to anyone who requests it.

D. Who Has a Legitimate Educational Interest – and Thus May Have Unconsented Access to a Student's Education Records?

The statute does not define "legitimate educational interests," although the statutory language indicates that such interests must "includ[e] the educational interests of the child for whom consent would otherwise by required." See also Lynn M. Daggett, "Bucking up Buckley I: Making the Federal Student Records Statute Work," 46 Cath. U.L. Rev. 617, 631 n. 109 ("Pursuant to 1994 amendments, the child's own educational interests must be considered.") (Spring, 1997).

The Department of Education regulations implementing FERPA likewise do not define "legitimate educational interest." However, in language similar to that of the statute, 34 C.F.R. § 99.31(a)(1) provides that "[a]n educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required . . . if the disclosure . . . is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests."


The ASU FERPA Policy¹ provides, inter alia, that "Appalachian State University will disclose information from a student's education records only with the explicit written consent of the student, except that records may be disclosed without such consent when the disclosure is . . . [t]o Appalachian State University officials who have a legitimate educational interest in the records."

Of course, "directory information" can be disclosed without consent. According to the ASU

¹ See http://www.registrar.appstate.edu/admin/ferpapolicy.html.
FERPA Policy:

Appalachian State University designates the following items as Directory Information: the student's name; local telephone listing; University Post Office box number; E-mail address; academic classification; enrollment status during a particular academic term (i.e., full-time or part-time); field(s) of study; dates of attendance; degrees, honors and awards received; participation in officially recognized activities and sports; weight, height, athletic statistics and photographic representations of members of athletic teams.

An "Appalachian State University official" is defined to include, among others, "a person employed by the University in an administrative, supervisory, academic, research, or support staff position, including health and medical staff," and "a member of the Appalachian State University Board of Trustees, acting in his or her official capacity."

Further, the FERPA Policy provides that "[a]n Appalachian State University school official has a legitimate educational interest if that official is, among other things:

--- performing a task that is specified in his or her position description or contract agreement.
--- performing a task related to a student's education.

**************
--- providing a service or benefit relating to the student or student's family, including, but not limited to, health care, counseling, job placement, or financial aid.

F. Sharing of Information Concerning Student Conduct That Poses a Significant Risk to the Safety or Well-being of the Student or Others

As discussed above, although FERPA generally prohibits the unconsented release of education records, there are exceptions in a variety of circumstances, including release required by court orders or subpoenas. See 20 U.S.C. § 1232g(b)(1)(J); 20 U.S.C. § 1232g(b)(2)(B).

In addition, FERPA permits release of confidential student records "in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons. 20 U.S.C. § 1232g(b)(1)(I).

Further, pursuant to 20 U.S.C. § 1232g(h), an educational institution may:

(1) includ[e] appropriate information in the education record of any student concerning disciplinary action taken against such student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community; or

(2) disclos[e] such information to teachers and school officials, including teachers and school officials in other schools, who have legitimate educational interests in the behavior of the student. 20 U.S.C. § 1232g(h)(1) and (2).

As stated in an April 12, 2002 Dear Colleague letter (entitled "Recent Amendments to Family Educational Rights and Privacy Act Relating to Anti-Terrorism Activities"), Mr. LeRoy S. Rooker, Director of the Department of Education's Family Policy Compliance Office, stated:
the Department consistently has limited the health and safety exception to a specific situation that presents imminent danger to a student, other students, or other members of the school community – or to a situation that requires the immediate need for information from education records in order to avert or diffuse serious threats to the safety or health of a student or other individuals.

Accordingly, it would be inappropriate to disclose information about a student (without the student's consent) relying on these statutory provisions unless there were an "emergency" (presenting an "imminent danger"), or unless the student had been the subject of institutional disciplinary action "for conduct that posed a significant risk to the safety or well-being of" others.
"Academic Freedom"

In language derived almost verbatim from Sections 600 and 601 of The Code of the University of North Carolina, the Appalachian State University Faculty Handbook emphasizes the importance of "academic freedom and responsibility." Faculty Handbook, § 3.2 ("Freedom and Responsibility in the University Community"). The Faculty Handbook states that "Appalachian State University is dedicated to the transmission and advancement of knowledge and understanding," and that because "[a]cademic freedom is essential to the achievement of these purposes," the University "supports and encourages freedom of inquiry for faculty members and students, to the end that they may responsibly pursue these goals through teaching, learning, research, discussion, and publication, free from internal or external restraints that would unreasonably restrict their academic endeavors. Faculty Handbook, § 3.2.1.

With respect to "Academic Freedom and Responsibility of Faculty," the Faculty Handbook emphasizes that the University supports and encourages academic freedom "within the lawful freedom of inquiry, discourse, teaching, research, and publication for all members of the academic staff," and that "[m]embers of the faculty are expected to recognize that accuracy, forthrightness, integrity, and dignity befit their association with this institution and their position as men and women of learning...." Section 3.3.1. Accordingly, the University "will not penalize or discipline members of the faculty because of the exercise of academic freedom in the lawful pursuit of their respective areas of scholarly and professional interest and responsibility." Faculty Handbook, § 3.3.2 (emphasis supplied).

As is apparent from the Faculty Handbook's language, "academic freedom" is not an open-ended freedom from all constraint or governance by the University, but rather is a "freedom" from "internal or external restraints that would unreasonably restrict" a faculty member's "freedom [within the law] of inquiry, discourse, teaching, research, and publication" in the faculty member's "areas of scholarly and professional interest and responsibility." Faculty Handbook, §§ 3.2.1, 3.3.1, and 3.3.2. The "academic responsibility" expected of faculty members in their exercise of academic freedom is to be marked by "accuracy, forthrightness, integrity, and dignity." Faculty Handbook, § 3.3.1.

The Faculty Handbook's repeated emphasis on a faculty member's "lawful" academic conduct is significant. Faculty members may not "lawfully": (1) defame other persons; (2) discuss or share with non-authorized persons confidential "personnel file" information about another university employee; (3) disregard University, College, or Departmental instructions or policies concerning curriculum; or (4) engage in conduct or speech that disrupts the workplace or causes morale problems. Thus, the law does not authorize or protect such conduct, and even under the Faculty Handbook's academic freedom policy, "academic freedom" does not include a "right" or a "freedom" to engage in such conduct.

Finally, "academic freedom" does not protect a professor from every form of unpleasantness he or she may encounter at the University. Neither the concept of academic freedom nor the First Amendment guarantees that a professor: (a) will be permitted to teach specific courses (whether or not "previously approved"); (b) will be free from disruptions in his or her relationships with students; (c) will in all circumstances have uninterrupted access to University property containing (among other things) the professor's personal and intellectual property; (d) will be free from investigations concerning alleged misconduct that may, despite efforts to preserve confidentiality, create upset, gossip and interference with relationships with students; or (e) will be free from non-supportive or even hostile responses by University administrators in reaction to information obtained during an investigation of alleged misconduct. None of these circumstances runs afoul of the First Amendment or the concept of academic freedom articulated in the Faculty Handbook.
### Appendix F: New Faculty Senators from Departments/Units for 2008-2009, 2009-2010, 2010-2011 Terms

<table>
<thead>
<tr>
<th>Dept./Unit</th>
<th>Name</th>
<th>Email</th>
<th>Phone</th>
<th>Term Expires End of Spring Semester</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A&amp;S Departments:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Anthropology</td>
<td>Diane Mines</td>
<td>Minesdp</td>
<td>6382</td>
<td>2009</td>
</tr>
<tr>
<td>Biology</td>
<td>Wayne Van Devender</td>
<td>Vandevenderr</td>
<td>6907</td>
<td>2009</td>
</tr>
<tr>
<td>Chemistry</td>
<td>Michael Ramey</td>
<td>Rameymb</td>
<td>2760</td>
<td>2009</td>
</tr>
<tr>
<td>Computer Science</td>
<td></td>
<td></td>
<td></td>
<td>2010</td>
</tr>
<tr>
<td>English</td>
<td>Wendy Winn</td>
<td>Winnwl</td>
<td>6923</td>
<td>2010</td>
</tr>
<tr>
<td></td>
<td>Craig Fischer*</td>
<td>Fischercj</td>
<td>2325</td>
<td>2010</td>
</tr>
<tr>
<td>Foreign Lang.</td>
<td></td>
<td></td>
<td></td>
<td>2011</td>
</tr>
<tr>
<td>Geography</td>
<td>Peter Soule</td>
<td>Soulept</td>
<td>7056</td>
<td>2009</td>
</tr>
<tr>
<td>Geology</td>
<td></td>
<td></td>
<td></td>
<td>2010</td>
</tr>
<tr>
<td>History</td>
<td>Rene Horst</td>
<td>Horstrh</td>
<td>7066</td>
<td>2011</td>
</tr>
<tr>
<td>Interdisciplinary St.</td>
<td></td>
<td></td>
<td></td>
<td>2009</td>
</tr>
<tr>
<td>Math Sciences</td>
<td>Eric Marland</td>
<td>Marlandes</td>
<td>2374</td>
<td>2010</td>
</tr>
<tr>
<td>Philosophy/Religion</td>
<td>Patrick Rardin</td>
<td>Rardintp</td>
<td>2423</td>
<td>2010</td>
</tr>
<tr>
<td>Physics/Astronomy</td>
<td>Jim Sherman</td>
<td>Shermanjp</td>
<td>3090</td>
<td>2010</td>
</tr>
<tr>
<td>Political Science/CJ</td>
<td>Adam Newmark</td>
<td>Newmarkaj</td>
<td>6341</td>
<td>2011</td>
</tr>
<tr>
<td>Psychology</td>
<td>Doug Waring</td>
<td>Waringda</td>
<td>2738</td>
<td>2009</td>
</tr>
<tr>
<td>Sociology</td>
<td>Jammie Price</td>
<td>Pricejl</td>
<td>6935</td>
<td>2010</td>
</tr>
<tr>
<td>Social Work</td>
<td>Beth Davison*</td>
<td>Davisonb</td>
<td>6397</td>
<td>2009</td>
</tr>
<tr>
<td><strong>F&amp;AA Departments:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Art</td>
<td>Vicky Grube</td>
<td>Grubev</td>
<td>2220</td>
<td>2010</td>
</tr>
<tr>
<td>Communication</td>
<td>Monica Pombo</td>
<td>Pombomt</td>
<td>7287</td>
<td>2010</td>
</tr>
<tr>
<td>Family &amp; Consumer S.</td>
<td>Ellen Carpenter</td>
<td>Carpentres</td>
<td>7763</td>
<td>2009</td>
</tr>
<tr>
<td>Health, Leisure/ES</td>
<td>Wayne Williams</td>
<td>Willwe</td>
<td>6335</td>
<td>2010</td>
</tr>
<tr>
<td>Military Science</td>
<td>Maury Williams</td>
<td>Williamsma</td>
<td>-</td>
<td>2011</td>
</tr>
<tr>
<td>Nursing</td>
<td>Karen Reesman</td>
<td>Reesmanks</td>
<td>8039</td>
<td>2009</td>
</tr>
<tr>
<td>Technology</td>
<td>Jeff Tiller</td>
<td>Tillerjs</td>
<td>6355</td>
<td>2009</td>
</tr>
<tr>
<td>Theatre/Dance</td>
<td>Ray Miller</td>
<td>Millerrf</td>
<td>2707</td>
<td>2010</td>
</tr>
<tr>
<td><strong>School of Music:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Music</td>
<td>Kim Wangler</td>
<td>Wanglerkl</td>
<td>265-8674</td>
<td>2011</td>
</tr>
<tr>
<td>Library:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Library</strong></td>
<td>Pam Mitchem</td>
<td>Pricemtchemp</td>
<td>7422</td>
<td>2010</td>
</tr>
<tr>
<td></td>
<td>Betsy Williams*</td>
<td>Willamsem</td>
<td>2817</td>
<td>2009</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>College of Education:</th>
</tr>
</thead>
<tbody>
<tr>
<td>C&amp;I</td>
</tr>
<tr>
<td>HPC</td>
</tr>
<tr>
<td>LRE</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>LES</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>College of Business:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounting</td>
</tr>
<tr>
<td>CIS</td>
</tr>
<tr>
<td>Economics</td>
</tr>
<tr>
<td>Finance, Banking/Ins.</td>
</tr>
<tr>
<td>Management</td>
</tr>
<tr>
<td>Marketing</td>
</tr>
<tr>
<td>International Business</td>
</tr>
</tbody>
</table>

* Four out of Five At-Large Seats (One Vacancy)
### Appendix G: University Committees

#### New Faculty Members Effective Fall 2008

<table>
<thead>
<tr>
<th>Committee/Board: New Faculty Members</th>
<th>Department</th>
<th>College/School</th>
<th>Term Expires</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Academic Integrity Board:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Paul Orkiszewski</td>
<td>Library</td>
<td>Library</td>
<td>2011</td>
</tr>
<tr>
<td>Norman Clark</td>
<td>COM</td>
<td>F&amp;AA</td>
<td>2011</td>
</tr>
<tr>
<td>Tammy Wahpeconiah</td>
<td>ENG</td>
<td>A&amp;S</td>
<td>2011</td>
</tr>
<tr>
<td><strong>Academic Policies &amp; Procedures Committee:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Carol Truett</td>
<td>LES</td>
<td>COE</td>
<td>2011</td>
</tr>
<tr>
<td>Faculty Senate Liaison</td>
<td>Acad. Policies Committee</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Admissions Committee:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cheryl Lee</td>
<td>FCS</td>
<td>F&amp;AA</td>
<td>2011</td>
</tr>
<tr>
<td>Scott Welsh</td>
<td>COM</td>
<td>F&amp;AA</td>
<td>2011</td>
</tr>
<tr>
<td><strong>Awards Committee:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vacant</td>
<td>Music</td>
<td>Music</td>
<td>2010</td>
</tr>
<tr>
<td>Vacant</td>
<td></td>
<td>COB</td>
<td>2010</td>
</tr>
<tr>
<td>Ross Gosky</td>
<td>MAT</td>
<td>A&amp;S</td>
<td>2011</td>
</tr>
<tr>
<td>Vacant</td>
<td></td>
<td>A&amp;S</td>
<td>2010</td>
</tr>
<tr>
<td>Vacant</td>
<td></td>
<td>COE</td>
<td>2010</td>
</tr>
<tr>
<td>Pamela Mitchem</td>
<td>Library</td>
<td>Library</td>
<td>2011</td>
</tr>
<tr>
<td>Teresa Lee</td>
<td>T&amp;D</td>
<td>F&amp;AA</td>
<td>2011</td>
</tr>
<tr>
<td><strong>Core Curriculum Committee:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vacant</td>
<td>Music</td>
<td>Music</td>
<td>2011</td>
</tr>
<tr>
<td>Catherine Fountain</td>
<td>FL</td>
<td>A&amp;S</td>
<td>2011</td>
</tr>
<tr>
<td>Tom Jamison</td>
<td>LES</td>
<td>COE</td>
<td>2011</td>
</tr>
<tr>
<td><strong>Library Services Committee:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mary Dean Coleman</td>
<td>FCS</td>
<td>F&amp;AA</td>
<td>2011</td>
</tr>
<tr>
<td>Elicka Peterson</td>
<td>PS/CJ</td>
<td>A&amp;S</td>
<td>2011</td>
</tr>
<tr>
<td>Dave Koppenhaver</td>
<td>LRE</td>
<td>COE</td>
<td>2011</td>
</tr>
<tr>
<td>Committee/Board:</td>
<td>Department</td>
<td>College/School</td>
<td>Term Expires</td>
</tr>
<tr>
<td>-------------------</td>
<td>------------</td>
<td>----------------</td>
<td>--------------</td>
</tr>
<tr>
<td>New Faculty Members</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Non-Tenure Track Faculty Committee:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kathleen Campbell</td>
<td>ART</td>
<td>F&amp;AA</td>
<td>2011</td>
</tr>
<tr>
<td>Faculty Senate Liaison</td>
<td></td>
<td></td>
<td>2009</td>
</tr>
<tr>
<td><strong>Registration and Calendar Committee:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Travis Triplett</td>
<td>HLES</td>
<td>F&amp;AA</td>
<td>2011</td>
</tr>
<tr>
<td><strong>University Bookstore Committee:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lynn Lysiak</td>
<td>Library</td>
<td>Library</td>
<td></td>
</tr>
<tr>
<td>Faculty Senator</td>
<td></td>
<td></td>
<td>2009</td>
</tr>
</tbody>
</table>
As a college student in Chapel Hill, John Allison stumbled across a collection of essays by Ayn Rand and was hooked by her philosophy of self-interest and limited government. As he rose over the decades to chief executive of BB&T, one of the country's leading regional banks, Rand remained his muse.

He's trying to replicate that encounter through the charitable arm of his Winston-Salem-based company, which since 1999 has awarded more than $28 million to 27 colleges to support the study of capitalism from a moral perspective.

But on at least 17 of those campuses, including UNC Charlotte, N.C. State and Johnson C. Smith University, the gifts come with an unusual stipulation: Rand's novel, "Atlas Shrugged," is included in a course as required reading.

The schools' agreements have drawn criticism from some faculty, who say it compromises academic integrity. In higher education, the power to decide course content is supposed to rest with professors, not donors. Debate about the gifts, which arose at UNCC this month, illustrates tensions that exist over corporate influence on college campuses.

UNCC received its $1 million gift pledge in 2005, but details about the "Atlas Shrugged" requirement came to light as the school dedicated an Ayn Rand reading room March 12.

"It's going to make us look like a rinky-dink university," UNCC religious studies professor Richard Cohen said Thursday after UNCC Chancellor Phil Dubois told the faculty council about the gift. "It's like teaching the Bible as a requirement."

Dubois, who learned of the book requirement this month, says it was ill-advised. He may ask Allison to reconsider it, he told faculty.

Allison has been surprised that the gifts can generate controversy. He says he simply wants students exposed to the late author's ideas, which he believes the academic community has largely ignored. He welcomes opposing ideas.

He also points out that the schools approached the foundation, not the other way around.

"We obviously can't make anybody teach something," he says. "We wouldn't want to, we wouldn't try to. These are professors that want to teach this."

"Atlas Shrugged" tells of an America where the most gifted industrialists and creators go on strike. The book, more than 1,100 pages long, showcases Rand's philosophy of Objectivism, which says individuals have the right to live entirely for their own self-interest.
An atheist, Rand criticized government regulation of business.

Her followers "regard her as the greatest thinker to have graced this earth since Aristotle and the greatest writer of all time," Reason Magazine wrote in 2005. "Mainstream intellectuals tend to dismiss her as a writer of glorified pulp fiction and a pseudo-philosophical quack with an appeal for impressionable teens."

Allison discovered Rand as a business major at UNC in the late '60s. "Atlas Shrugged" remains his favorite book.

"Most of the defenders of free markets mostly do it from an economic perspective," Allison says. "They argue that free markets produce a higher standard of living, which is certainly very good. But Rand makes a connection to human nature and why individual rights and free markets are the only system consistent with human nature."

BB&T officials say they never made a specific decision to spread the gospel of ethical capitalism and Ayn Rand.

But in 1999, Duke University received money from BB&T to support the teaching of values and ethics in business. The gift didn't require that Duke teach Ayn Rand. Her work was already being taught there.

As word spread of that gift and others, more colleges approached the foundation with proposals. Allison shared his interest in Rand with them.

At least one school, UNC Wilmington, offered to make "Atlas Shrugged" a requirement, figuring "our proposal might be more favorably received" if it were part of the package, officials said in an e-mail to the Observer.

Wilmington got a commitment of more than $1 million. But unlike most campuses, the faculty voted to approve the proposal first.

Money with conditions

Companies have long endowed college professorships and programs that fit their areas of interest. Sometimes, schools reject gifts if they can't live with a donor's conditions.

But as state legislatures reduce higher education budgets, business is playing a bigger role in the classroom, experts say.

"They're so desperate for funding sources that they're willing to take more money with strings attached," says Jennifer Washburn, author of "University Inc.: The Corporate Corruption of Higher Education."

Some companies, including IBM, have developed curricula for schools that teach skills to make graduates good employees. In California, critics have complained that the University of California system has sold out to oil, following a $500 million research deal with oil giant BP.

At Hunter College in New York, faculty are crying foul over a course sponsored by a coalition of companies, including Chanel, Coach and Reebok, that's trying to combat low-cost knockoffs of their products. In the class, students would create a campaign against counterfeiting.
But many schools defend the "Atlas Shrugged" requirement. Administrators say it'll be one of many views studied, and professors are free to teach it as they want. "We would not have accepted anything that would have been so narrowly drawn that it restricted academic freedom," JCSU President Dorothy Cowser Yancy said in a written response to the Observer.

At UNCC last week, several business students said they weren't bothered that a donor is choosing a book to be required in a course. The school needs money, several said, and it can't hurt to read a book, as long as it's presented objectively.

"I certainly don't see an issue, unless the cost outweighs the benefit. That's what they teach you in business school," said Josh Greenberg, 23.

But the gift sparked controversy in Raleigh, where faculty at Meredith College rejected $420,000 from BB&T in 2006, saying the book requirement violated their academic freedom.

In West Virginia, some Marshall University faculty recently voiced similar criticisms.

Details were a surprise

At UNCC, few people knew much about the BB&T money until a couple of weeks ago.

UNCC's $1 million is to be distributed over five years to develop a course on the fundamentals of capitalism, organize a speaker series on business ethics, provide faculty research money and create an Ayn Rand reading room in the business school.

The deal was brokered by former business school dean Claude Lilly, who left UNCC last spring to become a dean at Clemson University. At that point, UNCC practices didn't require a review the agreement, though they would now.

Dubois came to UNCC as chancellor after Lilly got the gift in 2005. He says Lilly told him the money came with two conditions - creating a course on the ethical foundations of business and giving copies of "Atlas Shrugged" to business students. He says Lilly told him the book would not be required.

But Dubois says when he saw the agreement for the first time recently, "it had more conditions."

Lilly, asked to respond to Dubois' recollection, said he wouldn't want to speak for the chancellor.

In a 2005 letter to Allison, Lilly had offered to teach the first "Ethics and Capitalism" course. When it was offered last spring, Lilly was listed as co-instructor with another professor. Lilly taught only one meeting of the semester-long class.

That course's syllabus didn't include "Atlas Shrugged." Lilly says he assigned students to read a chapter or two from the book.
This semester, the course isn't being offered.

Dubois explained the BB&T gift's history and conditions to UNCC's Faculty Council last week. He said he didn't like the "Atlas Shrugged" requirement or the fact that the school has named a business school reading room for Ayn Rand, but he believes UNCC should live up to its commitments.

Cohen, the religious studies professor, responded that Rand was an ideologue, not a serious economist. "It would be exactly like having a Karl Marx room," he said.

One faculty member asked Dubois if he could renegotiate terms of the gift with Allison.

Dubois said he's planning to talk to Allison about it. But "we would like it not to be the last gift from BB&T."

* 


BB&T gifts

The bank's charitable arm has awarded more than $28 million to 27 colleges - including 14 in the Carolinas - to support the study of capitalism from a moral perspective.

Carolinas colleges

Those marked with an asterisk have agreed to include "Atlas Shrugged" as required reading in a course.

Appalachian State University*
Campbell University*
Clemson University
Duke University
Greensboro College*
High Point University*
Johnson C. Smith University*
N.C. State University*
UNC Chapel Hill
UNC Charlotte*
UNC Greensboro*
UNC Pembroke*
UNC Wilmington*
University of South Carolina*
Other colleges with BB&T gifts
Christopher Newport University (Va.)*
George Mason University (Va.)
Marshall University (W.Va.)*
Rockford College (Ill.)
University of Charleston (W.Va.)*
University of Florida*
University of Kentucky
University of Texas at Austin
University of Virginia
Virginia Tech
West Virginia University*
Western Kentucky University*
Wheeling Jesuit University (W.Va.)*

Source: BB&T Foundation, individual colleges

PHOTOS: 3
1. LAYNE BAILEY - LBAILEY@CHARLOTTEOBSERVER.COM. BB&T CEO John Allison talks capitalism with UNCC students this month, just before dedicating the Ayn Rand reading room at the Belk College of Business. The room is stocked with free copies of books by Rand and other authors who support individual rights and economic freedom.; 2. Rand; 3. Allison
Edition: ONE-THREE
Section: MAIN
Page: 1A

Record Number: 0803230002
Copyright (c) 2008 The Charlotte Observer
Inside BB&T Corp., chief executive John Allison has turned "Atlas Shrugged" into something of a company guidebook.

The principles of Ayn Rand, its controversial late author, influence policy decisions, employee evaluations and charitable donations. As validation of this strategy, BB&T points to its balance sheets: At a time when many banks are faltering, BB&T, the country's 14th largest by assets, is posting bigger profits.

Chief among Rand's principles is that people have the right to act in their own interest. "A lion has to hunt or starve," Allison said in a lecture this month at UNC Charlotte, in which he touched on Galileo, Socrates, Michael Jordan and Bill Gates. "A deer has to run or be eaten."

Besides, Allison theorizes, acting selfishly translates into acting in the best interest of others: He didn't want to be saddled with clients who couldn't pay their loans, which is why he largely avoided subprime lending - a major factor in the country's mortgage meltdown. He wants the society he must live in to be better, which is why he gives to charities and schools.

The BB&T Charitable Foundation distributed $6.8 million in 2006, according to its tax filings. The college programs related to the study of capitalism make up less than 20 percent of the corporation's giving, the bank says. It gives to a wide variety of causes, from an animal clinic near Southern Pines to Southeastern Baptist Theological Seminary in Wake Forest.

BB&T posted $411 million in profits in the fourth quarter of 2007, up more than 60 percent from the year before. It has more than 29,000 employees and operates in 11 states.

In 2006, BB&T made headlines when it said it would not lend money for commercial projects on private land the government seized by eminent domain. That decision also carries echoes of Rand, a strong advocate of minimal government: "We believe that rationality requires independent thinking," Allison said, "and independent thinking leads to the concept of property rights. If the government can control your property, you can't think independently."

Allison sends a copy of "Atlas Shrugged" to employees who reach the level of senior vice president or above. Around 1995, when BB&T was preparing to merge with Southern National Bank - a move that nearly doubled its assets - he laid out his company's guiding principles in a booklet called "The BB&T Philosophy." Every employee gets a copy on their first day, he says.

The booklet outlines 10 values, which are also the basis for employee evaluations. The list includes standard corporate maxims such as productivity, teamwork and honesty. But No. 1 on the list is reality, and No. 2 is reason.

To explain the importance of honesty, which is No. 5, Allison writes that being honest means being consistent with reality. "To be dishonest is to be in conflict with reality," he writes, "which is therefore self-defeating."
John A. Allison IV

Born in Charlotte and educated at UNC Chapel Hill and Duke.

The married father of three turns 60 this year.

He politely declines to discuss his religious and political beliefs, but he opposes antitrust laws and progressive taxes, which he says punish people for doing well.

He earned $4.8 million in total compensation last year, not including stock options awarded.
March 13, 2008

MEMORANDUM

TO: The Chancellors
   The University of North Carolina

FROM: Bart Corgnati

SUBJECT: 2008 Board of Governors Award for Excellence in Public Service

On behalf of the Board of Governors, this correspondence provides you with the procedures for nominating candidates for the 2008 Board of Governors Award for Excellence in Public Service. We have attached a general explanation of the Award, created at the February 9, 2007, meeting of the Board of Governors to recognize and reward public service by the faculty of the University.

Please note that nominations should be received in the Office of the Secretary by May 16, 2008. Each nomination should be accompanied by biographical information and a statement of the nominee's public service. We will forward all nominations to the Board of Governors Committee on the Public Service Award.

Presentation of the award is being planned for October 17, 2008, as part of the Board of Governors meeting.

The committee chair, Gladys Ashe Robinson, urges all institutions to participate in this process.

Please contact me directly at (919) 962-4592 or by email at bbc@northcarolina.edu if you need assistance with this process.

Attachment

cc: Jim W. Phillips, Jr., Chairman, Board of Governors
    Gladys Ashe Robinson, Chair, Committee on the Public Service Award
    Members of the Board of Governors
    Erskine B. Bowles, President, University of North Carolina
Board of Governors Award for Excellence in Public Service

Award Description

The Board of Governors Award for Excellence in Public Service was created in 2007 to encourage, identify, recognize and reward public service by faculty of the University.

Selection Criteria

- Faculty of any of the 17 institutions of the University of North Carolina are eligible.

- Sustained, distinguished, and superb achievement in university public service and outreach, and contributions to improving the quality of life of the citizens of North Carolina.

- The creativity and impact of a nominee’s achievements are of a magnitude that greatly exceeds the normal accomplishments of a productive faculty.