

UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM

MEETING MINUTES

TUESDAY, DECEMBER 13, 2016

Attending: Hugh Roberts, Chair (UCI), Christopher Elmendorf, Vice Chair (UCD), Jeffrey Haydu (UCSD), Jayson Beaster-Jones (UCM), Erika Rappaport (UCSB), Emma Aronson (UCR), Eric Widera (UCSF), Thorne Lay (UCSC), Melissa Spencer (UCLA) (Alternate), Paul Gertler (UCB), Violet Barton (Graduate Student Representative, UCM), Kathleen Montgomery (Member, UC Cyber-Risk Governance Committee; Immediate Past Chair, UCAF) (telephone), David Lane (Systemwide Deputy Compliance Officer, Ethics, Compliance and Audit Services), Wendy Streitz (Executive Director, Research Policy Analysis and Coordination, Office of Graduate Studies and Research), Shane White (Vice Chair, Academic Senate) (telephone), Mona Hsieh (Office Manager, Academic Senate), Brenda Abrams (Principal Policy Analyst, Academic Senate)

I. Welcome

Following introductions, Chair Roberts reviewed the committee's charge, noting that it is very broad. Today's agenda is full but the committee may decide that some issues do not require action.

II. Consultation with Academic Senate Office

- *Shane White, Vice Chair, Academic Senate*

Vice Chair White joined the committee by telephone, explaining that he and Chair Chalfant were in Sacramento for a meeting of the Intersegmental Committee of Academic Senates and regret not being available to meet with UCAF in Oakland. Reportedly, President Napolitano is interested in student led courses following the recent controversy about one such course at UCB on Palestinian issues. Vice Chair White explained that the campus followed the procedures when setting up this student led course and the content was appropriate. The Educational Policy Committee is collecting information from the campuses about procedures and in the spring the Senate will send the president a report on best practices. The Senate is clear that this is not about a particular course or area of study, but about the best practices.

Vice Chair White explained that UCOP has contracted with FireEye to detect, manage and respond to cybersecurity threats. This includes identifying malware in UC systems, if any system has been taken over and used as command and control traffic nodes, or other indicators of compromise in UC systems. The medical centers are particularly concerned about patient data. While not required to use it, all UC locations will contribute to the cost of FireEye and campuses can use any additional measures they are willing to pay for. There will be no visible impact to users, web sites visited will not be monitored and no private information will be stored. The Administration may have done a better job with the roll out of FireEye, with Vice Chair White noting the lack of consultation with the Senate, but it appears that there are no attempts to stifle academic freedom in the effort to protect UC's employees and operations.

Following the presidential election, Chair Chalfant's remarks to the Regents' included the point that faculty support for UC students is unwavering. As the U.S. Homeland Security Secretary President Napolitano authored the Deferred Action for Childhood Arrivals (DACA) policy which the president-elect has promised to eliminate. It is not yet clear if UC campuses will call themselves sanctuaries for undocumented students. President Napolitano's public statements about DACA have been very clear and reassuring. Vice Chair White explained that travel insurance is automatic when UC faculty travel, but the new policy would provide a way for UCOP assist faculty who find themselves in trouble while traveling. This is not intended to be a duplication of effort or a way for the administration to spy on faculty but

rather a way to protect faculty. Faculty will be asked to sign up for the insurance voluntarily but the insurance will be required if they are traveling with students.

Discussion: Reportedly, UCOP Chief Information Officer Tom Andriola visited UCB and the message was that the campus could not opt out of using FireEye, that FireEye would store email and web searches and there would be a Chinese firewall between that and any government agency. Vice Chair White clarified that UCB is considering alternatives to FireEye. At UCSD, the question of storage is supposed to be decided at the campus level and that the campus would determine the retention policy.

Chair Roberts described UCAF's discussion about the Anti-Semitism Awareness Act and asked Vice Chair White for the best mechanism for responding to the Act. Vice Chair White indicated that UCAF can send a memo to Council to discuss which could then be forwarded to the president. Vice Chair White reminded the committee that several Regents were primarily focused on intolerance of an anti-Semitic nature and this overshadowed all other types of intolerance when the Statement on Principles against Intolerance was under debate. UCAF's position should be clearly stated in the minutes which will be publicly available. A member reported completing the registration for the travel insurance within minutes and reported that it can be applied retroactively.

III. Systemwide Review Items

UCAF should determine if there are academic freedom issues in the policies under systemwide review that require comment from the committee.

1) Proposed Revisions to APM 015, APM 016, & Senate Bylaw 336

Chair Roberts did not identify anything troubling in the proposed changes revisions recommended by the Administration-Senate Joint Committee on Investigation and Adjudication Processes for Sexual Harassment and Sexual Violence cases involving faculty, in the Joint Committee's [Report](#) of April 4, 2016 or in the amendments to Senate Bylaw 336 addressing procedures and timelines for Privilege and Tenure proceedings in discipline cases.

Discussion: Removing the statute of limitations for reporting means that faculty will have an obligation to maintain records permanently which will be a burden. It is not clear if UC is imposing a higher standard by having no time frame or if there is a legal precedent. The potential burden resulting from this record-keeping is not an academic freedom issue but Faculty Welfare might be the concerned about that aspect. UCSB's Committee on Faculty Welfare is reportedly discussing this concern.

2) Proposed Revised Presidential Policy on Nondiscrimination & Affirmative Action Regarding Academic & Staff Employment & APM 015

The Policy on Nondiscrimination and Affirmative Action Regarding Academic and Staff Employment directly addresses free speech and academic freedom. Academic freedom is incorrectly defined as a "special area of protected speech." UCAF should consider if it is worth commenting on the definition contained in the policy.

Discussion: Members agreed that defining academic freedom as a "special area" is problematic. The final paragraph of the definition incorrectly states that freedom of speech and academic freedom do not protect speech or expressive conduct that violates federal or state anti-discrimination laws. The committee agreed on a reworked version of the definition to submit.

Action: Chair Roberts will draft a memo with UCAF's feedback.

IV. UCI Endowed Chairs

The issue with Endowed Chairs at UCI is now resolved and the proposals of the ad hoc committee were adopted by the campus. The report explained the process for endowed chairs and highlighted the fact that future and existing faculty were open to potential coercion and pressure that could distort their scholarship. The University was vulnerable to this pressure as well. Because of shrinking funding, UC is at increased risk of various kinds of problems or vulnerable to things that threaten academic freedom. Since it is not immediately clear how UCAF might intervene, Chair Roberts asks that members keep their eyes open to incidents like this at their campuses and at other public universities. UCAF will keep track of any problems and this information could be used to make recommendations to Academic Council. A specific policy that would make it more difficult for this type of incident to occur would be useful.

Discussion: For guidance, UCAF may want to look at campus policies to establish research funds that come with publication or other restrictions on the use of data. The committee may also want to look at how think tanks are responding or not responding to the perception that they are doing the bidding of particular groups that are endowing research positions. It may be difficult to establish clear lines beyond publication restrictions or control over data but one policy is that donors cannot have veto power over who is selected to serve as endowed chairs. It is very useful to have campus policies about donors that faculty can point to when faced with restrictions.

Chair Roberts noted that nationalistic sentiment is on the rise and nationalist and fundamentalist organizations of different kinds are trying to have an influence on approaches used in specific fields. The danger may be greater for faculty in the Humanities where funds are generally limited. Members have the sense that these incidents will occur more frequently. One issue in the UCI case was the lack of faculty consultation. It would be good to have a rule or policy directly addressing the issue of donor restrictions or interference. Conflict of interest policies may be applicable in these situations. Members may want to consult with their campus counsel.

V. Review of Proposed New Presidential Policy on Compliance with the Clery Act

- *David Lane, Systemwide Deputy Compliance Officer, Ethics, Compliance and Audit Services*

UCAF was asked to review the proposed policy on compliance with the Clery Act by Chair Chalfant, and Deputy Lane joined the committee to discuss any concerns about academic freedom. The Clery Act was passed by Congress in 1988 in response to the on campus murder of Jeanne Clery at Lehigh University. Ms. Clery's parents advocated and pressured Congress which eventually amended a provision requiring universities to notify the community about crimes on campus. UC campuses have been reporting this data for years, usually through their police departments. UC began closely reviewed this policy because it relates to the sexual assault and sexual violence policies as well as shootings at UCLA and near UCSB in Isla Vista.

Some campuses have Clery Coordinators and others are in the process of hiring them. The Coordinators asked OP for a systemwide UC policy that clearly explains what is required by law. Certain individuals are designated as the Campus Security Authority (CSA) and are required to report crimes to Clery Coordinators. The goal is to give the faculty, staff, parents and students a view of the campus safety environment. Deputy Lane deferred to UCAF but he is not aware of problems in the policy related to academic freedom. The Deputy thanked the members for their time and noted that the Compliance office manages the presidential policy process, a key part of which is consultation with the Academic Senate.

Discussion: The policy applies to crimes that occur at the campuses as well as off campus, so the UC Washington Center and the medical centers are included. The shootings in Isla Vista may not technically have been counted because the incidents did not happen on UC property. All crimes are tracked

regardless of the victim. Chair Roberts indicated that the policy does not impact academic freedom and noted that all faculty are not mandated reporters and the CSAs are not required to identify anyone involved with the crime. The data is available to parents making decisions about where their child will attend college. The information is currently only available in English and a member recommended making the information available in other languages. The data provides helpful information to UCOP about safety trends.

VI. Senate Travel Procedures

- *Mona Hsieh, Office Manager, Academic Senate*

The Senate's Office Manager joined UCAF to briefly explain current travel procedures and policies.

VII. Cyber-Governance Committee Update

- *Kathleen Montgomery, Member, UC Cyber-Risk Governance Committee; Immediate Past Chair, UCAF*

UCAF's former chair, Professor Kathleen Montgomery, explained that, following a major cybersecurity hack at UCLA last year, the Regents urged the President's Office to address cybersecurity at UC campuses immediately. The administration's handling of the UCLA hack and implementation of systemwide monitoring was rushed and disorganized. Recognizing the need to treat this problem in a methodical way, UCOP set up the Cyber-Risk Governance Committee (CRGC) upon which Past Chair Montgomery sits and the Cyber-Risk Advisory Group includes industry experts. The CRGC includes individuals from UCOP and individuals from the campuses who are the designated Cyber-Risk Responsible Executives (mostly Vice Provosts or Vice Chancellors) and are subject matter experts while Past Chair Montgomery was appointed for her academic freedom expertise. Past Chair Montgomery has reported back to Chair Roberts and Senate Chair Jim Chalfant on CRGC meetings she attended in August and November (the CRGC will meet quarterly) and strongly recommended greater Senate representation on this committee going forward.

There are no apparent threats to academic freedom and no specific role for UCAF in the cybersecurity effort at this point, but UCAF members were encouraged to review slides in the agenda from the August meeting highlighting threats to academia. Compliance with UC's existing mandatory cybersecurity training is unsatisfactory so a major focus for the CRGC will be how to increase faculty awareness, and training for students is also under discussion. The education component is important in part because we need to learn how we make ourselves vulnerable, but also because a high rate of compliance with the training will decrease the premium the Regents pay as a result of cyber-breaches. Faculty may have questions about whether the monitoring being implemented or planned will intrude on their activities. There is no easy answer to how much monitoring is too much, and UCAF may want to think about how UC's efforts to raise its cyber-security profile are overly intrusive. Campuses have contracted with outside vendors who will conduct risk assessments to identify the weaknesses at each location. UCOP will prepare a systemwide report based on these assessments by March 2017 to be followed by a discussion about the specific next steps and actions.

Discussion: The classification of different types of data, such as medical records or students' grades, and the requirements that would be imposed on each of those levels have not been formally discussed by the CRGC but campuses with health centers may be more attuned to this specific issue. Weighing concerns about academic freedom is complicated because failure to protect UC's computer systems would prevent faculty from conducting research involving records with personally identifiable information while at the same time UC could be attacked by hackers using information from its computer systems.

Although academic freedom is not an immediate concern, Past Chair Montgomery emphasized the importance of faculty Senate involvement in the CRGC, and specifically recommended that the Senate Chair should serve on this committee. Another suggestion is that UCOP CIO Andriola meet with the Academic Council to discuss cybersecurity and provide information with the aim of increasing faculty buy in. UCB's Academic Freedom committee met with the Chair of Berkeley's computing committee and plan to develop a joint statement on cybersecurity to submit to the Divisional Senate. There are concerns about the storage of the information into perpetuity and the need for sunset clauses for destruction of the information after the risk is assessed. The need for cybersecurity is recognized but more information is required about the ground rules for how information is used, assessed and discarded. Another concern is that the information will go to the monitoring firm but there is no verification about how the information will be stored, and there is nothing to keep the data collected by the firms to be hacked. UCAF members agreed there must be oversight for the private firms conducting the risk assessment. The committee also agreed to send a memo to Chair Chalfant about the currently insufficient faculty presence on the CRGC.

Past Chair Montgomery mentioned the travel policy under discussion at UC, indicating that there are real risks to faculty since foreign governments can confiscate their computers. Faculty can encrypt their laptops but refusing to decrypt them can result in jail time. Another issue is ransomware which involves hackers stealing data and demanding payment for its return. An emerging risk is the targeting of international graduate students and threatening their families to force the students to steal data. Cloud storage solutions used by many faculty are extremely vulnerable. If a hack is found, it is not yet clear how faculty will be notified or if the Cyber-Risk Responsible Executive will simply handle the matter.

The Governance Committee has discussed the issues in terms of the need for a culture change and the Regents have to be prepared to fund what is required to improve UC's cybersecurity. Chair Roberts will send a memo to Chair Chalfant about increasing faculty participation on the Governance Committee. It may be worthwhile having individuals from Faculty Welfare on the CRGC. Chair Roberts will try to attend the March CRGC meeting in Professor Montgomery's place and CIO Andriola will be invited to attend the UCAF meeting scheduled for March 13th. Members should notify their local committees in an effort to keep faculty abreast of major developments and increase overall awareness of cyber-risks.

VIII. Campus Reports and Member Items

UCSD: There were issues in the spring related to the presidential campaign but these have been resolved.

UCSB: The division only has an ad-hoc group on academic freedom that is subsumed under the division's Committee on Faculty Welfare. The representative is interested in changing this structure and involving more faculty interested in academic freedom.

UCSF: The committee has discussed hosting another symposium on academic freedom and members were asked to suggest subject experts who might speak.

UCB: The CAF tries not to intervene on specific cases and the situation involving the student-led course on Palestinian issues was given to the Divisional Council. The CAF supports the Divisional Council's statement on this matter. The policy on accrediting, evaluating, and deciding on content is being clarified in UCB's bylaws. Another issue was the reaction of the Interim Provost to the return of a law school dean who was accused and penalized for sexual harassment last year. This dean stepped down and assumed his faculty office in the law school but, following complaints from students and colleagues, he was relocated to a building some distance away. The CAF took this case up on the basis that having an office close to colleagues is important to intellectual exchange and this relocation violated the former dean's academic freedom. The CAF has just finalized a memo indicating that the campus needs to have a process when

deciding to remove a faculty member from his or her habitat while recognizing that in some situations it may violate the rights of others to keep an individual in a particular environment.

UCSC: The representative had no issues to report.

UCD: Last spring there were disagreements between student groups related to speakers and displays in public forums which led the CAF to issue a memo with guiding principles for the campus.

UCR: The campus may hold a vote of no confidence in the Executive Vice Chancellor in part because recently hired faculty, primarily women and people of color, were disproportionately offered space they were told would not be renovated. UCAF members agreed that this matter is an academic freedom issue but should also be brought the attention of the committees on Affirmative Action and Diversity, Faculty Welfare, and Planning and Budget. Chair Roberts suggested that in general space issues and resource allocations do have implications for academic freedom. Another member pointed out that the overcrowding of undergraduates is negatively impacting their educational experience and opportunities.

Graduate Student Representative: The lack of civility is impacting freedom of speech and campus climate, and in some fields it is having a bigger impact than in others. The UC Student Association is seeking clarification about or guidelines on the order in which authors are listed for publication but members suggested that this question is more appropriate for the Committee on Research Policy.

IX. Openness in Research

- *Wendy Streitz, Executive Director, Research Policy Analysis and Coordination, Office of Graduate Studies and Research, UCOP*

The work on the Openness in Research policy began several years ago. As a result of discussions with Vice Chancellors of Research, the Office of Graduate Studies and Research (OSGR) learned that some faculty have sought funds for restricted research. There are arguments in both directions with relationship to academic freedom issues. If UC accepts restrictions for national security reasons, funds would not be available to foreign nationals. Reasons for considering changing the policy are to allow research that is not pursued currently and that it can provide campuses the flexibility to develop their areas of strength. OGRS has heard about cases involving researchers who hit a wall due to the restrictions and have to decide whether to leave UC to pursue the research. Another example is faculty hired by UC who later find out about the policy against publication restrictions, making this a recruitment and retention issue.

This is a significant shift away from UC's open research environment. As a fundamental research institution, UC publishes its research and does not accept citizenship restrictions. Changing the policy could limit the communication among research team members or limit the makeup of the team. Students might be prohibited from participating in some types of research projects. This policy has been discussed with Council, UCAF, UCORP and CCGA. Director Streitz hopes this policy will be distributed for management review in January and it is expected that UCOP will simultaneously issue an export control policy for systemwide review.

Discussion: A member commented that this policy change could lead UC down a slippery slope. Only UC's president has authority to grant an exception to this policy and there have not been exceptions to this policy in the last twenty years according to Executive Director Streitz. The citizenship issue is rooted in UC's non-discrimination policies. There is no way of knowing how much funding is involved. Not having access to this funding so a faculty member can research a certain subject may be an academic freedom issue. One campus CAF suggested that faculty should be involved in decisions about funding restrictions because these decisions will have consequences for other researchers and UCOP should encourage campuses to develop a structure for faculty involvement.

X. Anti-Semitism Awareness Act

Passed by the U.S. Senate last week, the Anti-Semitism Awareness Act directs the Department of Education to adopt the State Department's definition of anti-Semitism when investigating any incidents at universities. Chair Roberts reminded members that last year UCAF was concerned that the Regents would use this definition in their Principles against Intolerance. The definition is so broad that essentially anyone critical of any actions by the state of Israel could be tainted with the suspicion of anti-Semitism. Any university found to have failed to respond seriously to such incidents under this State Department standard could result in the university losing all federal funding. UCAF could wait and see what develops, consider joining any public debate as the Act moves towards the House, or encourage the Academic Senate to play a role.

Discussion: UCAF could submit a memo expressing the committee's concerns to Academic Council to send to President Napolitano. It is not clear how the Principles against Intolerance will be implemented by UC campuses. The wording of the Regents' Principles against Intolerance avoids the problems in the State Department definition but a concern is that the Regents might eventually sharpen their language. Members suggested not responding at this stage especially to avoid making an issue out of it prematurely. UC's debate about the Principles against Intolerance has been cited, even by President Napolitano. One suggestion is for the committee to release a statement reiterating UCAF's original concerns about the State Department's definition and pointing out that the Act will have unforeseen consequences. There is a potential for UCAF to take the momentum forward and discuss how this kind of action is an assault on academic freedom. UCAF might want to use a different country as an example to take the focus off of Israel and clarify that part of academic discourse is criticism of any country's actions or positions.

UCAF might anticipate the problems with the Act including how it could be used against individuals and propose responses including open discussion about the issues. The analyst will find out the procedure for publishing an op-ed piece. The Chair and Vice Chair will draft the statement for the committee's review. The memo could go to the UC government relations units. One member would not be in favor of an op-ed piece. It is broadly recognized that passage of the Act is a troubling step. It is not clear if the Department of Education would focus on classroom course content or academic publications as aspects of hostile environments. UCAF could reiterate that there are policies in place to address discrimination and constitutional rights. Given existing policies at universities, this Act strongly suggests the intent to focus on faculty teaching about Israel-Palestine relations. It is also troubling that the Act gives a great deal of power to the Department of Education.

XI. New Business

Chair Roberts reminded the members about the committee's 2015 civility statement which was intended to be released at the campuses to coincide with the release of the chancellors' annual statement on civility. Members were asked to find out if the UCAF statement has in fact been disseminated at their campuses. UCAF might send out a reminder if the statement has not been disseminated as suggested.

XII. Executive Session

The committee did not hold Executive Session.

Meeting adjourned at: 2:45 pm
Minutes prepared by: Brenda Abrams
Attest: Hugh Roberts