

UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM

April 25, 2006 Meeting Minutes

Attending: Herma Hill Kay, Chair (UCB)

Jerold Theis, Vice-Chair (UCD), Ronald Amundson (UCB), Bettina Aptheker (UCSC), Edna Bonacich (UCR), Mark Eisner (UCSF), Patrick Fox (Student Academic Freedom Workgroup Liaison, UCSF), Lisa Hajjar (UCSB), Robert Josephson (UCI), Fengxia Qi (UCLA), Mark Massoud (Student Rep-UCB), Michael LaBriola (Senate Analyst)

I. Chair's Announcements – Herma Hill Kay

Chair Kay reported that she had received notification of two issues sent by Academic Council for systemwide review—UCPB's *Proposed Principles on Private Funding for Senior Leadership Salaries at the Level of Dean and Above* and *Proposed Amendments to APM 200-18: Criteria for Advancement to Professor VI and Above Scale*—but determined that neither issue had academic freedom implications and had therefore declined comment on behalf of the committee. Chair Kay asked members whether they wished to review a third policy review request, *Revisions to APMs 700, 710, 711, and 080 Re: paid sick leave, reasonable accommodation, medical separation and constructive resignation*. The committee declined comment.

II. Corporate Influence on Research

Last year, UCAF endorsed Academic Council's [Resolution](#) in support of the right of faculty to pursue research funded by any source deemed legitimate by University policy, but UCAF also noted that there should be more consideration into the possible adverse influences of corporate funding on research integrity and academic freedom. UCAF's concern prompted Council to ask UCORP to consider the issue of corporate influence more closely. UCORP Chair Sensabraugh sent a memo to UCAF in early April, noting that although UCORP felt the issue deserved continued surveillance, it could not identify examples of corporate interference not covered by the general principles articulated in UCORP's 2004 "[Research Strings](#)" report. UCORP said it wished to close the issue unless UCAF could provide specific examples involving particular research areas or specific sources of funding.

Members said the "Strings" report should be seen a victory for academic freedom. But some members also felt that the issue of corporate pressure on research would remain an issue and perhaps grow in importance as public-private partnerships such as the Cal ISIs move the university toward greater corporatization. Such partnerships can be positive, as in the development of new drugs and therapies for patients. But there is also a fear that the integrity of the institution could be compromised if corporate agendas transform the very nature of University research agendas, or worse, intrude into research results. These influences and their effects can often be subtle and hidden, however, making it difficult to identify an effective policy to combat or monitor them.

It was noted that the structural pull to seek more revenue from private sources highlights the failure of the legislature to support the University and the faculty at sufficient levels. But faculty themselves must take responsibility by acting ethically and taking steps to ensure that they retain total control over their research. The Senate could also consider ways to encourage ethical behavior. In addition, the administration should consult the faculty if it wishes to enter into a major partnership agreement with a private entity.

Members discussed the practice of recruiting faculty into Adjunct positions on the basis of their grant potential. UCSF has been encouraging departments to use the In-residence series, rather

than the Adjunct series, in an attempt to correct a structural problem that prevents faculty in those titles from being represented in the academic senate.

Action: Chair Kay will send a memo to UCORP Chair Sensabrough noting that although UCAF has nothing to suggest, the committee believes there are still problems and would like to be kept informed of any issues UCORP becomes aware of in the future.

III. Consent Calendar

Action: The committee approved the minutes of December 1, 2005 with several minor changes.

IV. Academic Freedom and Students – Patrick Fox

Two years ago, a joint faculty-administration-student systemwide Workgroup was established to discuss the issue of academic freedom for students. Led by former UCAF chair Patrick Fox, the Workgroup produced a statement of principles about the rights and responsibilities of students, outlining a range of possible student freedoms, according to the differing levels of competence and expertise of an undergraduate, a graduate student, and a doctoral candidate engaged in a joint research proposal with a faculty member. A preamble was added to the statement that provided background, context, and a summary of its philosophy and relation to student academic freedom.

Between December and March, UCAF members and their divisional academic freedom committees reviewed, commented on, and ultimately endorsed the statement and preamble. UCAF submitted its final recommendation to Academic Council in April. Council is expected to send the statement out for systemwide review, before acting on it late this year or early next year.

Some had expressed concern that moving forward with the statement could expose the university to attacks by groups seeking to impose political controls on academic freedom at UC. Others thought it was better to be pro-active in forming a statement, both to clarify and re-emphasize the commitment of the faculty to student freedom of scholarly inquiry, rather than risk having less desirable policies imposed from the outside.

Questions were raised about what mechanism will exist for students to complain when they feel that a professor has presented an unreasonable bias in class in violation of the existing academic code of conduct. Professor Fox distributed a proposed appeal protocol developed by the Workgroup outlining the steps students would take if they felt their freedom of scholarly inquiry had been abridged. This mechanism would parallel the process for student grade assignment protests. Whether this ultimately becomes UC policy depends on the status of the Principles as they move through various levels of review.

UCAF Student Representative Massoud reported that after the divisional CAF review, he shared the statement with the Board of the UC Students Association (UCSA), which added its endorsement in an 8-0-3 vote. In February, Mr. Massoud led a workshop on academic freedom for UC students, as part of their annual Lobby Day Conference in Sacramento. The workshop was well-attended and generated much interest among both undergraduate and graduate students.

Professor Fox also reported that Senator Morrow had withdrawn his proposed Senate Bill 1412, “Student Bill of Rights”, which was re-introduced in March, and had included a new provision mandating the recording of meetings concerning faculty hiring, promotion, and tenure. The Academic Senate and the University will continue to monitor future renditions of this bill.

Chair Kay thanked Professor Fox for his contributions to the FOSI effort and for his service to UCAF and the Senate. Chair Kay also thanked Mark Massoud for being an outstanding student representative. UCAF members gave Professor Fox and Mr. Massoud a round of applause.

V. Campus Reports

Santa Cruz. In 2005, the Pentagon labeled UCSC a “credible threat” to national security after students protested against the presence of military recruiters on campus (this label that was later removed). A recent campuswide teach-in organized by faculty entitled the “War on Terror: a Credible Threat”, included discussion of academic freedom issues. The divisional CAF is planning a follow up teach-in for the fall that will specifically address academic freedom. The [Resolution](#) on the Patriot Act passed by the UCSC Senate in 2004 continues to be evoked.

San Francisco. The CAF communicated its opposition to a proposal by the chair of the department of medicine that members of the Professional Research Series would no longer be able to serve as Principal Investigators on grants. This policy is now undergoing revision. The committee also reviewed the draft White Papers of the Senate’s Special Committee on Scholarly Communication. There was concern about a recommendation in the White Papers for individual faculty to adopt the practice of negotiating with journal publishers to retain at least some limited copyright on their articles in order to place them in open online repositories. CAF felt there was too much responsibility placed on faculty members to negotiate individually with journals, and that UC should be working out these issues on a systemwide basis. CAF was also concerned that compulsory restrictions on copyright would affect the ability of faculty to publish in the journal of their choice. Finally, CAF has been trying to organize a symposium on the politicization of science, but finding speakers has been difficult.

Berkeley. The committee reviewed a faculty member’s claims that the recent [modifications](#) to APM 210 represent an infringement of academic freedom. CAF heard arguments from both sides of the issue and concluded that the new wording suggested an institutional preference for certain research conclusions, and as such, is contrary to the principles of academic freedom in APM 010. The committee sent a recommendation for revised wording to the UCB Council. CAF also considered claims that the governor’s veto of continued funding for the UC Institute for Labor and Employment represented a violation of University autonomy and academic freedom. CAF determined that the cuts were not a violation of academic freedom because the ILE was created through funds earmarked by the state legislature for a specific purpose, not through standard academic procedures. It was noted that CAFs are not charged with evaluating the government, but conditions within the university. One member remarked that the ILE’s established institutional footprint is one argument for continued funding. Members expressed concern over the legislature’s use of UC funding as a political football.

Santa Barbara. UCSB Senate’s ad hoc committee on the Patriot Act completed its report assessing the impact of the Act on the campus, with particular focus on libraries and foreign students and scholars. The UCSB committee is hoping to organize a teach-in about the conditions of academic freedom in Middle East Studies.

Riverside. The CAF established a subcommittee on the Patriot Act. The committee is also considering the corporatization of the University, issues around foreign students; and complaints about Institutional Review Boards.

Irvine. The committee felt there were serious implications for academic freedom in the Scholarly Communication White Papers, and recommended new language for the proposed revision of UC copyright policy. The committee invited faculty representatives and staff from the three campus Institutional Review Boards to present their views before the committee. There

have been some complaints about the practices of the IRBs, particularly among social scientists, having to do with the timeliness of approvals and the impediments to research erected by IRBs.

Los Angeles. UCLA professors have been targeted in a coordinated campaign by an outside group for their political views. The group is encouraging students to monitor alleged classroom bias by taping lectures and submitting them to a website. Students on the CAF helped organized a January teach-in on the subject, entitled “Defending Academic Freedom”. The committee is also thinking about how to consider the academic freedom rights of graduate students who conduct research under a professor, particularly in situations when the student’s interpretation of data may differ from the professor’s. The CAF continues to examine reports about interference by IRBs into the way faculty conduct research at UCLA, and is interested in learning more about universities that “opt out” of IRB the approval mechanism for “non funded” research; that is, research funded by private sectors.

San Diego. The UCSD representative was not present but asked that a memo from the CAF be distributed. The memo asked UCAF to advise UCSD CAF about a potential mechanism for students to protest under the Student FOSI Principles, and also whether UCAF could seek legal advice as to the enforceability of laws like SB 1412. UCAF will refer UCSD to the draft Student Freedom of Scholarly Inquiry Appeal Process memo that was distributed earlier in the meeting, and will refer the legal question to the Senate Legislative Analyst. [Professor Fox did this after the meeting.]

VI. Academic Freedom Paper – UCAF Vice Chair Jerold Theis

UCAF Vice Chair Theis asked members for feedback on his draft paper, “Academic Freedom: Its Privilege and Responsibility within the University of California.” He said there is confusion among faculty and students about what academic freedom means. An institutionalized educational effort is needed to promote understanding and highlight the issues. He proposed that UCAF contribute to that effort by developing an educational document that could ultimately be distributed to all UC faculty and made available on a website.

Members expressed support for the effort. They recommended that the writing be more compelling and succinct; that an executive summary be included; and that the historical information about academic freedom be kept separate from information about funding impacts and other political topics.

Members noted that it would be important to highlight the difference between First Amendment rights and academic freedom rights. One of the biggest misunderstandings about academic freedom has to do with the distinction between classroom speech and extramural speech. In addition to being professionals, faculty are private citizens with rights to political expression.

Finally, thought should be given to the intended audience and venue for distribution. All faculty would benefit from the information, which could also be included in the materials new professors receive at training seminars or elsewhere.

Action: Members will forward comments to Professor Theis and 2006-2007 Vice Chair Lisa Hajjar. The committee will continue work into next year.

VII. Integrity and Misconduct in Research

Davis was asked by the NIH to write a new Integrity in Research policy that would be consistent with an NIH template. The updated policy first developed by the administration was opposed by CAFR and the Davis Senate Council as a violation of academic freedom and shared governance. The policy left faculty members vulnerable to false accusations of misconduct and did not

involve the Senate in a way consistent with shared governance. (Among the most egregious elements were provisions giving the Chancellor the ability to suspend a faculty member without salary and appoint an investigating committee without Senate consultation.)

The Davis Senate and Administration worked together to develop a revised, expanded policy that complies with NIH and involves the faculty at levels satisfactory to the Senate. The vice chancellor also agreed to report annually the number of accusations filed and what ultimately was the level of inquiry and outcome for each investigation. Historically, 65% of complaints at Davis have been shown to have no substance. Final approval of the revisions to the policy is yet to be made by the Davis division, and a few issues remain, including a provision faculty want added in which the university agrees to reimburse the legal expenses of falsely-accused faculty members.

UCAF members were asked to check the status of the NIH request on their campuses and to verify that their campus policies on integrity and misconduct in research refer matters of investigation and discipline to Academic Senate Privilege and Tenure committees. The UC Davis policy was distributed to members and is available as a possible model for campuses.

VIII. Restoration of Research and Instruction Funding

In December, Vice Chair Theis asked UCAF members to consider the distribution of Research and Instruction (R&I) funds with their local committees and academic councils; specifically to find out how much R&I money per FTE comes to the campus from the Legislature, how much is taken for administrative purposes and how much is passed on to departments.

He said at one time R&I funds went directly to individual faculty members. It is inappropriate if the administration is using money intended to support faculty for administrative purposes. The situation is detrimental to the research and teaching mission of the university and prevents faculty from participating fully in education. Academic freedom without fiscal independence is a hollow shell, and the Senate should petition the administration to restore R&I funding. The University has an obligation to protect the fiscal independence of its faculty

The vice chair and committee analyst were working with the office of the vice president for budget to ascertain the original intent of the R&I funds and how they were currently being used.

IX. UCORP's Draft Report on Institutional Review Boards

Earlier in the year, Academic Council asked the University Committee on Research Policy (UCORP) to take the lead in reviewing Institutional Review Board and human subjects committees' policies and procedures to determine whether there were problems that warranted the establishment of new systemwide policy guidelines. UCORP asked UCAF to comment on its draft report.

All UCAF members agreed that meaningful evaluation by IRB committees consisting of members having the appropriate expertise is critical for the protection of human subjects. Some members felt strongly that IRBs have strayed beyond their charge to protect the safety and confidentiality of human subjects into overzealous and inappropriate interference into research methodology and research quality. Other members of UCAF reported that IRB operations were not an issue of contention on their campus, and expressed skepticism about the need for drastic policy changes, especially if that meant weakening human subject protections or adding more layers of bureaucracy to an already sluggish system.

UCAF members noted the timeliness of IRB approvals as among the most significant problems. The committee heard a number of anecdotes about faculty and graduate students who had experienced unreasonable delays in the IRB approval process. Such delays can negatively affect a research project and even a career, especially if grant monies intended to support a project are held up during the IRB review. UCAF strongly supported UCORP's recommendations for increased resources, staff support and training, as well as for more meaningful recognition and compensation of members.

The composition of IRB committees was another point of concern. It is critical to have people on IRB who have experience in the areas they are reviewing and who don't have a conflict of interest. More input from the Senate into committee membership is needed to guarantee that adequate expertise is present. In addition, there should be uniform standards across campuses about who appoints the committee members.

The majority of complaints seem to emanate from faculty in the Social Sciences. UCORP noted in Recommendation #8 that the medical model is inappropriate for most behavioral and social sciences protocols. UCAF agreed that using medical research protocols for non-medical research was not ideal. Although clearly social science research can expose people to very serious risks, it is problematic if that research is not being evaluated in a meaningful way by people with appropriate expertise. Efforts should be made to develop a distinct model for social and behavioral science protocols based on the unique nature of those fields. UCAF though UCORP should include some discussion in their draft about what the medical model is.

The committee heard stories about protocols submitted by graduate students and faculty to IRBs that had been rejected with no explanation and giving the researcher no opportunity argue their case before the board. UCAF members agreed with UCORP that there should be formal procedures set up on campuses that will allow faculty to challenge the decision of an IRB, through an independent body.

The rules under which IRBs operate are primarily a function of local culture and interpretation and the standards are unclear. Many faculty are not aware of the rules or procedures governing the IRB process. An effort should be undertaken to clarify the standards and how they should be interpreted.

UCAF was not convinced about the need to establish an additional level of oversight at the systemwide level to monitor IRBs, but thought it would be helpful for faculty have a clarification of what the standards are and how they should be interpreted. In addition, IRBs need more staff support, training and resources, and the process needs more Senate involvement and more membership and regulatory consistency across campuses.

Action: UCAF will send comments to UCORP.

X. Future UCAF Issues

Members discussed some future goals for the committee, including revision and dissemination of the Academic Freedom paper, further investigation into the R&I funding issue; funding from the Senate for more in-person meetings and more interaction and communication with other systemwide committees on issues of shared interest.

Members gave outgoing Chair Kay a round of applause.

The meeting adjourned at 2:30 PM

Minutes prepared by Michael LaBriola; Attest: Herma Hill Kay