

UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM (UCAF) 2006-2007 ANNUAL REPORT

TO THE ASSEMBLY OF THE ACADEMIC SENATE:

The University Committee on Academic Freedom (UCAF) met twice in Academic Year 2006-2007, to conduct business with respect to its duties as outlined in [Senate Bylaw 130](#). Highlights of the Committee's activities and accomplishments are noted in this report.

Review of Regents' Item RE-89

In April, UCAF voted to oppose Regents' Item RE-89, a proposal to ban the acceptance of funding from the tobacco industry for University research, by a vote of eight to zero with one abstention. In the opinion UCAF sent to Academic Council, the Committee noted that a ban on tobacco industry funding would establish a dangerous precedent and could lead to similar bans being proposed on funding from other specific industries and corporations, based on political, moral, health, or other considerations. UCAF also noted that RE-89 would stifle the freedom of faculty to conduct research and advance knowledge; that it would be complicated, if not impossible, to enforce a ban on tobacco company money; and that concerns over inappropriate influences in research were fully and adequately addressed by the Faculty Code of Conduct (APM 015). Later, both the Academic Council and Academic Assembly voted to oppose RE-89 on similar grounds.

Academic Freedom and Students

The Committee reviewed comments submitted by systemwide Senate committees and divisions during the review of UCAF's *Student Freedom of Scholarly Inquiry Principles*. After revising the document to incorporate that input, UCAF submitted a modified version to Academic Council in March. Professor Patrick Fox, former UCAF chair and liaison to the systemwide Senate-Administration Student Academic Freedom Workgroup, led the effort to revise the document, using input received from UCAF members and their divisional academic freedom committees. In addition, a Work Group consisting of UCAF, CCGA, and UCEP members met to compare the concepts of student rights and responsibilities outlined in UCAF's *Principles* document with that contained in the UCEP/CCGA memorandum, *The Role of Graduate Students in University Instruction*, to ensure that both were consistent and aligned.

In its transmittal letter to Council, UCAF noted that the *Principles* was a statement of aspiration intended to clarify the relationship between the faculty academic freedom and student freedom of scholarly inquiry at the University of California, along with the attendant rights and responsibilities of faculty and students. UCAF requested the Council and the Assembly to endorse the *Principles* document and recommend to President Dynes that it be adopted as the policy of the University of California. UCAF also recommended that it be appended to APM 010 as a footnote reference to an Appendix containing the Principles. Council postponed final action on the document until the 2007-08 academic year.

Academic Freedom Paper

UCAF finalized its paper, *Academic Freedom: Its Privilege and Responsibility within the University of California*. The paper was written by Chair Jerold Theis and modified with the input of UCAF members and their divisional academic freedom committees. It presented a legal history of academic freedom in the United States, California, and at the University of California; outlined the responsibilities of the professoriate within their academic freedom privilege; and clarified the difference between the freedom of faculty members within the classroom and their First Amendment rights as private citizens. UCAF asked Academic Council to endorse the paper and distribute it to Senate divisions with a recommendation that divisions post the document on Senate websites as an educational tool to promote more understanding and awareness of academic freedom, and also to include the document in the start-up materials for new professors. In addition, UCAF requested that each member of The Board of Regents be supplied with a copy. Council declined to endorse or forward the document. In August, UCAF Chair Theis responded to Senate Chair Oakley requesting a more substantial explanation for Council's decision to suppress the paper.

Concern over the California Public Records Act

In December, UCAF relayed a concern to Academic Council Chair Oakley that the California Public Records Act (CPRA) was being interpreted to exclude UC faculty as "members of the public" eligible to make requests for public records under the act. The UC San Diego Committee on Academic Freedom brought the concern to UCAF's attention after a faculty member at UCSD was denied access to information from a public school district based on section 6252b of the CPRA, which excludes California state employees as "members of the public." Chair Oakley brought the matter to the attention of the Office of the President and the state legislature, noting that the exclusion of UC faculty researchers from the right to obtain information under the CPRA represented an intrusion on academic freedom. The UC General Counsel contacted the California Attorney General's office for a ruling. At the end of the year, it appeared that no further action was necessary to resolve the issue, as the California Superior Court ruled that employees of a public entity are permitted to use the CPRA to access records and UC Faculty could not be denied access to Public Records simply because they were State employees.

Campus Policies on Misconduct in Research

In February, UCAF obtained permission from Chair Oakley to contact campus Research Integrity Officers for data on the number of misconduct in research charges filed in 2005-06 and on the question of whether campus policies contained provisions for reimbursing the legal expenses of a faculty member accused of misconduct but later found innocent. No campus reported the existence of a policy to reimburse innocent faculty members for legal fees. In a letter to Council, UCAF noted that legal expenses are significant for the accused, some of whom may be targets of personal retaliation or attacks. In addition, unfounded accusations of misconduct can intimidate faculty into curtailing research activities, and as a result, harm academic freedom. UCAF asked Council to endorse its recommendation that UC policy should be modified to require the reimbursement of any legal fees incurred by faculty members who are found innocent of accusations of misconduct. The Committee also recommended that the Senate conduct a study or ask the University to conduct a study on the viability of a legal insurance policy that would cover legal fees for all faculty members, independent of the outcome of a legal action. Council delayed action on this matter until the 2007-08 academic year.

“Collegiality” as a Factor in Personnel Reviews

UCAF discussed concerns over the possible inappropriate use of “collegiality” as a factor in the evaluation of faculty for merits and promotions. “Collegiality” does not appear in the published APM advancement criteria, which state that reviews should be based on the quality of research, teaching, and service, and UCAF felt its use could have a negative effect on personal expression and speech. Chair Theis requested data from UCAP on the use of “collegiality” in personnel actions. UCAP’s chair responded that UCAP does not collect data on collegiality and UCAP members could not recall a case where a CAP recommended denial of a merit or a promotion based solely on “collegiality.” UCAF decided there was insufficient data to determine whether or not a widespread problem existed, but that faculty deserved to know what criteria they are judged on; whether “collegiality” was one of those criteria; and if so, what is meant by “collegiality.” In August, UCAF Chair Theis sent a memo to Senate Chair Oakley asking Council to appoint a systemwide committee to look at the issue in more depth and make recommendations for the definition of the term and its use in the personnel review process. UCAF also requested that until the three recommendations contained in the memo are carried out, the use of Collegiality as a term for evaluation conduct of a faculty member be replaced by the Faculty Code of Conduct.

Assessing Shared Governance in Privilege and Tenure Decisions

UCAF discussed reports of cases in which administrators had overturned Privilege and Tenure committee decisions, noting that such actions represented potential threats to shared governance and academic freedom. Chair Theis requested data from the University Committee on Privilege and Tenure (UCPT) in an attempt to gauge the extent of the problem. However, the annual divisional P&T survey conducted by UCPT did not address the specific questions requested by UCAF.

Institutional Review Boards

In April, UCAF reviewed a draft of the University Committee on Research Policy (UCORP) report, *Institutional Review Boards at UC: IRB Operations and the Researcher’s Experience* and submitted comments to Council. UCORP’s study was prompted by concerns expressed in 2005 by UCAF and others that IRBs were overstepping their main charge to protect the safety and confidentiality of human subjects and interfering inappropriately into research methodology and research quality. UCAF expressed support for UCORP’s recommendations to implement more uniform IRB standards and more timely IRB approvals across campuses; to develop distinct social and behavioral science protocols based on the unique nature of those fields; to increase resources, staff support and training for IRBs where justified by workload; to institute more meaningful recognition and compensation of IRB members; to seek more Senate input into IRB membership so that that adequate expertise is present on IRB committees; and to establish formal procedures to allow faculty to challenge the decision of an IRB.

Academic Freedom and the UC Education Abroad Program

In April, a senator from the Associated Students of the University of California, Davis asked UCAF to consider the academic freedom implications of a UC Education Abroad Program policy that excludes the opportunity to study abroad through EAP in countries with a US State Department travel advisory. UCAF agreed that academic freedom concerns were warranted. In August, UCAF requested Academic Council to ask UCOP to rescind the policy of denying student fee funding for study abroad in such countries. UCAF also asked Council to establish a

faculty committee to investigate UC's relationship with study abroad providers and the possible influence of gifts and perks on the decision-making of UC officials.

Other Issues and Activities

UCAF also submitted formal opinions on the following policy review issues:

- **A UCOP Proposal on the Relationships between Pharmaceutical Vendors and Clinicians**
- **A Proposed University of California Open Access Policy**

UCAF devoted part of each regular meeting to reports and updates on issues facing local committees, including discussion of specific academic freedom cases at UC and other universities. UCAF discussed campus-specific effects of post 9-11 legislation, particularly the impact of the Patriot Act, visa restrictions on foreign students and scholars, and government access to student records. There was discussion of political influence in federal scientific review panels; efforts by politicians and other outside groups who were seeking to legislate political controls on speech and academic freedom at UC or who were targeting faculty colleagues for their politics and/or scholarship in organized protests; academic freedom at the Department of Energy National Laboratories; how Research and Instruction (R&I) support funds were being distributed to the campuses; and concerns about the possible adverse influences of corporate funding on research integrity and academic freedom.

Finally, UCAF occasionally consulted with the Academic Senate chair and vice chair on issues facing the Academic Council and Senate.

Respectfully submitted,

Jerold Theis, Chair (UCD)

Raphael Zidovetzki, Vice Chair (UCR)

Ronald Amundson (UCB)

Bettina Aptheker, (UCSC-fall)

Ethan Bier, UCSD

Miriam Kupperman (UCSF)

Albert Lin (UCD)

Patrick Fox, Liaison to the Student Academic Freedom Workgroup (UCSF)

Janice Plastino, UCI

Hossein Ziai, UCLA

John Oakley, Academic Senate Chair

Michael Brown, Academic Senate Vice-Chair

Marthine Satris, graduate student (UCSB)

Max Besbris, undergraduate student (UCB)

Michael LaBriola, Committee Analyst

UNIVERSITY COMMITTEE ON ACADEMIC PERSONNEL (UCAP) 2006-2007 ANNUAL REPORT

TO THE ASSEMBLY OF THE ACADEMIC SENATE:

In Academic Year 2006-2007, the University Committee on Academic Personnel met four times to conduct business with respect to its duties as outlined in [Senate Bylaw 135](#). The issues that UCAP considered this year are described briefly as follows:

UCAP's Recommendations for Improving the UC Faculty Compensation System

UCAP reviewed feedback received from systemwide Senate committees and divisions to UCAP's June 2006 report, [*Synopsis of the Present Status of the UC Merit and Promotion System and Principles of and Policy Recommendations for UC Faculty Compensation*](#), in which the Committee made recommendations for improving the fairness and transparency of the published salary scales. In March, Council forwarded UCAP's report, along with all of the feedback, to Provost Hume and the President's Work Group on Faculty Salary Scales to help inform its deliberations and recommendations. UCAP Chair Croughan, along with the chairs of UCFW and UCPB, served as members of the President's Work Group, which was convened in November by President Dynes.

Recommended Modifications to APM 620 and the Faculty Salary Scales

In May, UCAP reviewed and endorsed an initial set of recommendations from the President's Work Group for amending policy language in APM 620 governing the use of off-scale salaries. In its memo to Council, UCAP noted that the modifications would help bring about the larger goals of improving the fairness, relevance, and transparency of the published salary scales and of returning the majority of faculty to on-scale status. UCAP also felt the modifications would help align off-scale policy to actual practice and recognize that off-scale salaries are a normal part of compensation practice necessary to meet market conditions. In addition, UCAP endorsed a draft proposal for implementing market adjustments to the salary scales. The Committee noted that raising the scales would help improve equity and morale problems across ranks and disciplines, and would have a particularly beneficial impact on salary inversion and disproportionately low salaries in the assistant, associate, and early full professor ranks, and for women and ethnic minorities who have less frequently utilized external job offers to negotiate higher salaries. UCAP felt that local implementation of the new scales would sometimes have to proceed on a case-by-case basis; would require significant input from various campus entities, including the Senate and campus CAPs; and that campuses should consider empowering all CAPs to review and/or set salary.

UCAP's Recommended Modifications to APM 220-18b (4)

UCAP reviewed comments from systemwide committees and divisions to UCAP's proposed modifications to APM policy 220-18b (4), articulating the criteria for advancement to Professor Step VI and Above Scale. Council recommended endorsing UCAP's proposal with a few minor modifications, and forwarded its final recommendation to Provost Hume, who initiated a systemwide review at the end of the 2006-07 academic year.

The Role of Collaboration in Evaluating Research and Scholarship Achievements:

Chair Croughan established a UCAP subcommittee to consider the need for new APM language that would provide clearer guidance to CAPs in their evaluations of “independence” and “collaboration” in research and creative work. The subcommittee was chaired by Margaret Walsh (UCSF) and met once by conference call. Its recommendation to UCAP was for deletion of the word “independent” from the Professional Research Series policy (APM 310-4(a)), in order to make the language more consistent with language in other APM series and with current CAP practice. UCAP endorsed the recommendation. UCAP decided that proposing the small change also presented an opportunity to promote broader consideration of independence and collaboration in research and guidance for the evaluation of independence in the context of collaborative work. The Committee thought this could be accomplished through an accompanying White Paper, appropriate for the Call.

Evaluating Service in Academic Personnel Reviews

UCAP discussed concerns about the role of “service” in merit and promotion criteria and in CAP reviews, including whether the APM should place more emphasis on Senate service; whether Senate service should be made an explicit criterion of career reviews; and whether the academic personnel system disincentivizes administrative service. UCAP decided not to pursue any changes to the APM. The Committee also reviewed the draft Berkeley Budget Committee’s *Campus Service Guidelines*, an educational document outlining the role of service in the faculty reward system. Chair Croughan suggested that UCAP ask Council to endorse a statement about the importance of service and circulate the Berkeley *Guidelines* as a recommended model to be incorporated into the Call on each campus.

Diversity Issues Academic Senate Analysis of Inclusiveness and Proposition 209

UCAP discussed an Academic Council request for committee input into a comprehensive study about the effect of Proposition 209 on diversity at UC. UCAP submitted comments to Council about issues and barriers having an impact on the hiring, promotion, and retention of a diverse faculty and possible steps to improve the situation. UCAP also discussed the local implementation progress of diversity modifications to APM 210, 240 and 245.

The Use of “Collegiality” in Personnel Reviews

UCAP considered a request from the University Committee on Academic Freedom (UCAF) for information about the use of “collegiality” as a factor in promotion and merit decisions. The UCAF chair also asked UCAP to conduct a ten-year audit of divisional CAP records to determine how many CAP decisions were overturned by the administration. UCAP responded that it does not conduct such audits; that CAPs review all files based on criteria outlined in APM 210; and that UCAP members could not recall a case where a CAP recommended denial of a merit or a promotion based solely on “collegiality.”

Other Issues and Additional Business

In response to requests for formal comment from the Academic Council, UCAP also submitted views to Council on the following:

- **A Joint UCEP and CCGA Proposal on the Role of Graduate Student in University Instruction**
- **A Proposed Senate Bylaw 16 – Executive Director**
- **A Proposed Amendment to Senate Bylaw 181 – Information Technology and Telecommunications Policy Committee**
- **A practice at UC Davis of recharging faculty salaries to extramural grants**

UCAP also reviewed a set of budget recommendations from the University Committee on Planning and Budget; a set of draft Guiding Principles for Policy Setting and Compensation Governance; a proposed UC Open Access Policy that would grant to the Regents a license to make published faculty scholarly work available in an open-access online repository; and, in accordance with [APM 260](#), a list of ad hoc committee nominees for review of a University Professor title.

Campus Reports

UCAP devoted part of each regular meeting to reports from its members about issues facing local committees and comparison of individual campus practices. In these discussions, UCAP touched briefly on procedures for campus Ad Hoc Review Committees; local efforts to define – and re-engage – “disengaged” faculty; the need to make teaching evaluations more consistent across campuses and to communicate more clearly to students the purpose of evaluations; rampant decoupling and the use of “shadow” salary scales; procedures for reviewing endowed chairs; improving efficiencies in the personnel process; credit for electronic-only publications compared to print publications; five-year stewardship reviews of deans, chairs, or unit heads; and finally, how to evaluate the role/commitment for named Investigators, Co-Principal Investigators and the Principal Investigator on grants, especially for multi-component program projects and multi-million funding awards.

UCAP updated its annual survey of local campus CAP practices and experiences. The survey covered a wide range of topics, including the type and number of files reviewed by CAPs; CAP support, resources and member compensation; final review authority; CAP’s involvement in the review of salary and off-scale increments at the time of hiring or in retention cases; the use of ad hocs; and recusal policy. UCAP considers the survey to be an important resource that helps UCAP identify areas in which campus practices might be brought into closer congruence.

UCAP discussed the role of CAPs in determining or reviewing salary and off-scale offers that had either a merit or a market component, and for those CAPs that review salaries, how to determine the appropriateness of a given proposal. Significant concern was expressed about the lack of CAP involvement in salary and off-scale decisions at some campuses. Some CAPs were satisfied with their current position—not commenting on salary—while others saw their involvement in salary matters as a vital part of shared governance. There was a suggestion that UCAP make a statement recommending that CAPs as a minimum should be entitled to see salary and off-scale information, if they so request it.

UCAP Representation

UCAP Chair Mary Croughan represented the Committee at meetings of the Academic Council and the Assembly of the Academic Senate. Professor Croughan was unable to attend one Academic Council meeting and one Assembly meeting; vice Chair James Hunt attended both meetings in her place.

Committee Consultations and Acknowledgements

UCAP benefited from regular consultation and reports from Acting Assistant Vice President for Academic Advancement Sheila O'Rourke and Director of Academic Personnel Jill Slocum, who presented regular updates on systemwide APM policies under review, benefit and compensation plans, the Mercer Consulting study, proposed changes to policies covering compensation, outside activities, and leaves for the Senior Management Group, the Policy Framework project, policy revisions covering sick leave, reasonable accommodation medical separation, and presumptive resignation, and a UC Retirement Plan inactive COLA policy.

UCFW Chair Susan French joined a UCAP meeting (by telephone) to discuss areas of interest shared by her committee and UCAP, including the work of the work group and Mercer Consulting's studies on UC compensation and the potential impacts of various proposed changes to UC health and retirement benefits.

At the first UCAP meeting, Academic Senate Vice-Chair Michael Brown updated the committee on issues facing the Academic Council and Senate, and the Academic Senate executive director spoke to UCAP about Senate office procedures and committee business.

Respectfully submitted,
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James Hunt, Vice Chair (UCB)
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Carl Shapiro (UCB)
Ambuj Singh (UCSB)
Richard Sutch (UCR)
Alladi Venkatesh (UCI)
Margaret Walsh (UCSF)
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