

## UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM

## MEETING MINUTES

THURSDAY, DECEMBER 4, 2014

**Attending:** Kathleen Montgomery, Chair (UCR), Moradewun Adejunmobi, Vice Chair (UCD), David Steigmann (UCB), Hugh Roberts (UCI), Clyde Spillenger (UCLA), Wei-Chun Chin (UCM), Ward Beyerman (UCR), Sarah Schneewind (UCSD), Christian Van De Walle (UCSB), Ron Glass (UCSC), Steve Drown (Deputy General Counsel, Office of General Counsel, UCOP), Mary Gilly (Chair, Academic Senate), Dan Hare (Vice Chair, Academic Senate), Brenda Abrams (Principal Analyst)

**I. Welcome and Introductions**

Chair Montgomery welcomed the members to the meeting. The chair announced that the agenda will be changed to include a discussion about proposed revisions to APM 210-1-d. The committee's charge is broad and the committee will need to prioritize the academic freedom issues. The analyst explained the committee listserv and asked members to provide their preferred email address.

**II. Administration Protections Against Harassment of Researchers**

Harassment of researchers at UCLA has received the most attention but incidents have occurred at other UC campuses. Not much was done with a 2006 UCLA task force report. Media attention intended to support researchers can inflame those upset with animal research. But this needs to be balanced with supporting researchers. A 2011 report described some steps taken to protect the UCLA researchers. The immediate past chair of UCAF wrote a memo to the immediate past Senate Chair Jacob requesting support from the central administration for dealing with activists. UCAF members should determine if the committee should attempt to bring this matter to the attention of President Napolitano. With her background as former Secretary of Homeland Security, the new president may have a unique perspective on how to manage this.

**Discussion:** The situation at UCLA has improved, and members discussed what types of action could or should be taken at a systemwide basis. Protestors still can be found outside of researchers' homes, but these groups have diminished in size. The op-ed by Professor Jentsch and the Chancellor's response appearing in UCLA's *Daily Bruin* have had a positive impact, so UCAF should be cautious against roiling the waters right now. UCAF can't enforce academic freedom on the general public, and there are limited legal remedies available to address this. Some faculty have left UC because of concerns about activists. More formal statements of support for faculty conducting controversial research from UCOP might be beneficial. However, because of her previous position at Homeland Security, a statement by President Napolitano may be a lightning rod for more negative incidents. Members agreed that the focus could be on making sure that the administrators at UC campuses are supporting and protecting researchers. There is agreement that the idea of a systemwide conference involving researchers and activists is not viable. The UCLA representative will keep UCAF abreast of any recent incidents at that campus.

**III. Learning Assessments, Accreditation, and Encroachment on Faculty Autonomy**

Last year UCAF discussed concerns raised about the accreditation process at UCM. It was felt that some of the requirements imposed by WASC were encroaching on the academic freedom of the faculty. UCAF asked for the local committees on academic freedom to be given a leading role in reviewing measures, including learning assessments, which might negatively impact faculty control over their curriculum.

**Discussion:** It was noted that there are several accrediting bodies such as the Accreditation Board for Engineering and Technology (ABET). ABET's standards have remained the same for some time, while the WASC standards change. Attempts to standardize the curriculum should be avoided. Federal support for students makes it necessary for UC to have WASC accreditation. Last year's discussion at UCAF about the accreditation process at UCM was confusing because it was not clear what was being imposed by WASC versus the Merced administration. A member reminded the committee that UCAF's letter to the chair of the UCM divisional Senate stated: "We are concerned that the blanket requirement that all courses have documented Course Learning Outcomes that explicitly align with Program Learning Outcomes could have the unintended consequence of discouraging faculty members from offering courses that challenge or interrogate the foundations of their discipline." Students and their parents are aware of accreditation, and it is important to them. It is suggested that UC faculty engage with WASC, ABET and other accrediting bodies to educate them about the University and to be more interactive about the process. UCAF members might want to reach out to the local committees on undergraduate education and let them know that this issue has been discussed. The Heritage Council is involved with the Council for Higher Education Accreditation, which is controversial.

#### **IV. Instructor Autonomy and Syllabi, Exams, Content and Grading**

The UCR representative described a case involving a distinguished professor and a lecturer teaching the same course; the case focused on the question of how much freedom the lecturer had in this process. The department chair was unable to find any policy that addressed this situation.

**Discussion:** One question is whether there be a general, systemwide policy about curricular. There also is a question about whether an instructor can change the grading policy after the syllabus has been published. There are potential downsides to having a systemwide policy. Students have successfully sued faculty for changing the syllabus. Members are asked if there should be written guidelines and policies, and what limitations such guidelines would be imposed by principles of academic freedom. Issues of this type can be brought to Privilege and Tenure or Rules and Jurisdiction for resolution. The instructor should answer to some other body such as the Committee on Courses. UCAF members debated whether having a specific written policy could be problematic, and it was noted that legislation cannot be written to address every potential problem. The committee reviewed Senate Regulations which may address the concerns that have been discussed. The point was made that the authority over curriculum rests with multiple parties. The authority is shared by the Senate, which approves the course description, the instructor of record, and the chair who represents the departmental practices. There was a situation at one campus where an instructor required only a final exam and other faculty wanted the instructor to include a mid-term. Departments could vote that all courses would have mid-terms and finals and this would not be an academic freedom issue. Instructors should include a statement on their syllabi indicating that a syllabus can be changed at any point during the course if necessary and announced in class.

#### **V. Chancellors' Welcoming Letters and "Campus of Civility"**

The Chancellors have been encouraged by the Office of the President to make the beginning-of-the-year civility statements. The committee is asked whether there should be some uniformity across the UC campuses.

**Discussion:** Some faculty question the motivation for the civility statements. A member stated that the word "civility" is being lampooned at the campuses and recommends using the word "respect" instead. Innocuous statements about civility might be fine, but they should in no way infringe on academic freedom. A member remarked that there is concern about UC authorizing civility in certain types of discourse. People feel that the standard of civility prevents them from expressing their true sentiments or opinions. Individuals should be free to speak in many ways, not just in civil ways. Some UC faculty may

have concerns related to what has happened at the University of Illinois. The vice chair recommended that the term civility be defined when these statements are made. The CSUs have made a statement about civility, and several members agree that UCAF should make a statement that is general.

**Action:** The chair proposed drafting a statement with the vice chair, which will delineate UCAF's position on this matter, for the members to review before submitting to the Academic Assembly.

## **VI. UC Policies on Faculty Postings on Social Media**

- *Steve Drown, Deputy General Counsel, Office of General Counsel*

Chair Montgomery described the cases at the University of Illinois and the University of Kansas. The complete facts of the Illinois case are not known, but the faculty member from the University of Illinois is now suing. The allegation is that outside donors pressured UI to rescind a tenured offer to that faculty member. The UK professor has been reinstated. Counsel Drown has limited information about the specific comments, but stated that if this person was simply expressing his views, UI's response is troubling. Counsel Drown indicated that the actions in the Illinois case seem to have been politically driven. At UC, the goal is to protect faculty and academic freedom. UC wants to attract and retain top quality faculty and to protect faculty engaged in any kind of controversial research. Counsel Drown is happy to take any questions he cannot answer today back to his colleagues at OGC.

**Discussion:** It was noted that faculty members have blogs, but it is not clear whether what is written on the blogs is protected by academic freedom. To what extent is a faculty member's Facebook or Twitter a sacred space, or can it bleed over into an assessment of the faculty member's suitability for tenure, promotion, or merit. Counsel Drown responded that UC does not have the authority to take down a posting on a private account, and UC cannot do anything about a faculty member's personal blog or Facebook page unless there is criminal conduct. Other situations might be related to behavior that violates the faculty code of conduct, which should not be confused with academic freedom. For example, the University would act if a faculty member disclosed confidential information about a student or colleague on a website not affiliated with UC.

Under UC policy and California statute, UC is obligated to defend and indemnify faculty members when they are engaged in conduct within the course and scope of their employment. If a faculty member critiqued a colleague's research on social media, UC would defend and indemnify the individual posting the comments. The University has a real interest in doing right by faculty and in avoiding headlines like those about UI. If a faculty member comments about something outside his or her expertise on his or her personal blog, Counsel Drown indicated that UC could do nothing about it. It would be problematic if a dean put a negative statement in a faculty member's personnel file referring to social media postings and campus counsel would advise administrators against this. Counsel Drown remarked that the University of Kansas had a draconian policy, and a similar situation could not happen at UC.

Counsel Drown indicated that a UC social media policy may be forthcoming, but he also stated that any policy about social media postings would have to enhance, and not chill, free speech.

## **VII. Departmental Administration of Fellowships**

- *Steve Drown, Deputy General Counsel, Office of General Counsel*

A member is concerned about a department announcement of a fellowship with a preference for students able to demonstrate a specified ancestry. OGC recently opined on this issue after UCSB inquired about a fellowship designed to give preference to members of federally recognized Native American tribes, native Hawaiian Islanders and Native Alaskans. The campus was advised that there is moderate risk for being out of compliance with Proposition 209, although a new Presidential initiative encourages the campuses

to push the envelope with respect to Proposition 209 compliance. Counsel Drown is part of a workgroup gathering current practices from the campuses on this matter. There is authority for treating these three groups as having political sovereignty and federal laws have been developed that allow preferences. UC policies have the status and effect of state policies, and UC has made an argument where it can establish preferences because a number of statutes focus on educational benefits for these sovereign groups. UC would try to ride the broader language of those statutes through UC policies to advance the education of these group in supporting preferences for admission and financial aid.

**Discussion:** A member described a hypothetical situation where a private donor gives funding to a department that is earmarked for white males. He asked if UC would accept such strings from the donor. Counsel Drown explained the student-to-fund matching program, whereby a donor would be advised that UC will accept the funds but would use them to support under-privileged white males who would otherwise receive a scholarship or other funding. OGC also now encourages UC development offices to direct donors wishing to make such restricted donations to other institutions. The member presented additional hypothetical situations advised that these situations would indeed be problematic. He was then was directed to his campus counsel to discuss the matter further.

### **VIII. Guidelines for Protecting Non-Tenured and Non-Senate Faculty**

- *Steve Drown, Deputy General Counsel, Office of General Counsel*

A member described a scenario involving a staff member who, as part of her job, has routinely conducted research in academic integrity in response to questions from faculty. This staff person has been enjoined against publishing her research results listing her University affiliation because it would reflect poorly on UC. One question is whether a long-term Lecturer with Security of Employment enjoys the same privileges as Senate faculty.

**Discussion:** Counsel Drown indicated that LSOEs at UC enjoy academic freedom protections. Another case involved a librarian hired to curate an unusual collection and tasked with promoting the collection. The librarian reached out to the press and the event was covered. The librarian was instructed not to speak to the media without authorization from the head librarian. Counsel Drown observed that this seems like an issue related to job performance, not an issue of protected speech or academic freedom. Individuals can do whatever they want with respect to outside professional activities; however, Counsel Drown indicated that a staff member has to be careful about circumstances when they use their University affiliation and to avoid suggesting that the research has been peer reviewed by UC.

### **IX. Consultation with the Academic Senate Office**

- *Mary Gilly, Chair, Academic Senate*
- *Dan Hare, Vice Chair, Academic Senate*

Chair Gilly thanked the members for their service at their campuses as well as on UCAF. The November Regents meeting was interesting. The governor made a couple of last-minute appointments to the Board hoping to sway the vote on UC budget and tuition. Chair Gilly described the governor's desire to establish a committee to explore ways to fix UC. The governor claims that attempting to keep the current cost structure is naïve. The Regents who were not just appointed voted in favor of the five-year plan. Students were miffed since they felt they were responsible for the success of Proposition 30, but most of those revenues have gone to K-12. Three of the governor's appointees voted in favor of the long-term sustainability plan. Another proposal was for faculty to teach more.

The same week that the governor vetoed funds for UC, he approved a \$250M tax credit for the film industry. Budget negotiations will not begin until after the May revise. The Committee on Planning and Budget is reluctantly in favor of the tuition increases. The vote by the Regents gives the president an

additional lever to use with the legislature, the other lever being non-resident tuition. The Senate would prefer that the state do what it should and that UC would not rely on tuition increases. The total remuneration study shows that UC is behind the comparison 8 institutions. There are a number of questions and various steps being considered to address the gap. The applications to UC for 2015 from underrepresented minorities have increased, but applications for transfer students are flat. At ICAS, the community colleges have stated that the AA degrees for transfer have become the way the students think about transferring to the CSUs to get their degrees. The number of students obtaining the AA degrees has grown steadily, and there is concern that UC will have problems fulfilling its mission for transfers. UC is looking at five majors to see if campuses can agree on a set of courses that will be good preparation for those courses. A legislator is proposing a constitutional amendment to take away some of UC's autonomy.

**Discussion:** One member voiced concerns about administrators' salaries. Another member asked if there would be an effort to have more equity in faculty salaries across campus. It was noted that as governor of Arizona, President Napolitano secured more funding for K-12 and higher education in that state. Chair Gilly commented that this coincides with how the president has described herself to Council, as focused on locating more resources for the University rather than with tinkering with UC. Issues related to retention are addressed at the campuses. A member asked about the CSUs offering four-year degrees. This is currently being debated by the CSUs and community colleges. Community colleges are having to think more carefully about the qualifications for instructors.

#### **X. Systemwide Review of APM 210-1-d**

Chair Montgomery thanked Chair Gilly and Vice Chair Hare for joining the committee for the discussion about proposed revisions to APM 210-1-d. The Academic Senate is waiting for feedback from the divisions and standing committees about the proposed revisions to APM 210-1-d. The chair explained the process for the systemwide review of APM 210-1-d and shared a handout with the original language of APM 210-1-d, the proposed revision under review, and a version crafted by two UCSD faculty members. The UCSD representative explained the objections raised by these faculty and reported that a special divisional Assembly meeting was called to discuss the proposed revision.

The presentation by the two UCSD faculty members did not include any background information about why this policy is necessary. The Assembly approved the UCSD version as the official campus response. The emphasis of these faculty was on protecting people who do not explicitly engage in diversity-related teaching, service, and research, fearing that they may be penalized in the personnel review process. Even though their proposal has been approved, the two UCSD faculty went a step further by contacting all the CAFs and the UCAF members.

**Discussion:** Chair Gilly asked if there is evidence in merit and promotion cases where faculty who did not engage in diversity-related activities were disadvantaged. There does not appear to be data supporting this position. The committee discussed the problematic language in the original version of the APM and the reasons that the proposed revision raised academic freedom concerns. Research, teaching, and service should be evaluated separately, as they always have been. The current language suggests that specific findings would be deemed to be bad or good. Some members questioned whether the language about diversity should be removed from the APM, and other members agreed that it is important to remember the historical factors that led to this policy.

Vice Chair Hare clarified that UCOP has not initiated a review of this policy but rather, upon the Senate's recommendation, issued the proposed revision to the APM. The third version crafted by the UCSD faculty would have to be sent out for new systemwide review; it would not be approved as a result of this current process. Several members agree that the language from UCSD is a clearer statement than the proposed revision, while other members voiced no objections to the original language of APM 210-1-d.

Language previously suggested by UCAF does not appear in the current proposal. Vice Chair Hare clarified that the Academic Council had to mediate between Academic Senate committees, so the final language may not be what any one committee put forward. A member described earlier debates at UCAF about the concerns related to specific language in the original paragraph.

**Action:** The chair will draft a memo outlining UCAF's feedback.

## **XI. Systemwide Review of Presidential Open Access Policy for Non-Senate Member**

UCAF reviewed the systemwide policy for Senate faculty last year.

**Discussion:** Members opted not to opine on this matter.

**Action:** The analyst will report that UCAF will not opine on this matter.

## **XII. Campus Reports and Member Items**

**UCLA:** The member explained the Moreno Report. The report of the After the Moreno Report Task Force and comments from the UCLA Senate committees are due in two weeks. Some of the recommendations are vague: more training for committees that deal with personnel, and processes are to be more transparent. One recommendation is for the creation of a minority review committee, which would monitor how personnel decisions are being made. A potential academic freedom concern is the recommendation that program reviews take into account diversity. Courses that speak to diversity concerns and depending on how this is deployed it could be problematic. UCAF will continue to monitor this matter.

**UCSC:** The CAF continues to work on responses to the Freedom of Information act. Staff have been added to help respond to the number of requests. The committee will work on strategies to mitigate the chilling effects of this on research. Faculty spend enormous amount of time responding to requests.

**UCD:** Some researchers at UCD found that funding applications for some state departments and private funders ask them to sign agreements about the state holding complete rights about how and where faculty can publish. A coordinated response is needed for faculty, and the Senate needs to take the lead. UC should make a resolution to the California legislature to change this policy at least for state agencies. The Davis CAF is considering a statement encouraging faculty to not accept grants that have such requirements. Members should gather information from their campuses about this matter to share with the committee. UC engages in millions of dollars in secret research already, and research with indigenous communities belongs to those communities own the data and the rights.

**UCB:** The CAF will meet next week and the civility issue will be on the agenda. The influence of impact factors is being discussed and the committee will write a memo about over-reliance on impact factors. The representative reported that UCSD no longer requires letters at Step VI. The lack of external assessments has implications such as whether, without external assessments, the judgment of one's performance is based on the assessments of people who may not be experts in the field. The UCB representative worries that this might cause a faculty member to constrain his or her research activities to conform to the wishes of department colleagues. A brief discussion about practices at other campuses revealed that the UCD CAP has reportedly stopped requiring letters but the UCR CAP does still require them. This is under discussion at UCSC. This matter will be on the March UCAF agenda.

**UCLA:** A group published a report that purported to show an anti-Israel bias in the programmatic activities of Near Eastern Studies department. There is pressure put on programs and some have lost

funding. There are academic freedom values at stake in demands for equal time or more neutral presentation of points of view. The committee did not find that written statements about academic freedom principles apply to departments and centers when they offer programs open to the public at large. The CAF is considering preparing a statement to clarify that academic freedom principles as they operate within UC do apply to programmatic activities, not just research and teaching. As long as there is room on campus for the expression of opposing views, there should be no requirement of equal time. APM 010 may not be clear about academic freedom attaching itself to these types of activities.

### **XIII. New Business**

There was no New Business.

### **XIV. Executive Session**

There was no Executive Session.

Meeting adjourned at: 4 PM  
Minutes prepared by: Brenda Abrams  
Attest: Kathleen Montgomery