

UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM

VIDEOCONFERENCE MINUTES

TUESDAY, DECEMBER 20, 2022

Attending: Melike Pekmezci, Chair (UCSF), Farrell Ackerman, Vice Chair (UCSD), Sean Gailmard (UCB), Gregory Downs (UCD), Lisa Naugle (UCI), Joe Bristow (UCLA), Justin Yeakel (UCM), Ivy Zhang (UCR), Daniel Arovas (UCSD), Steven Altschuler (UCSF), Eileen Boris (UCSB), Susan Cochran (Chair, Academic Senate), Jim Steintrager (Vice Chair, Academic Senate), Brenda Abrams (Principal Policy Analyst, Academic Senate)

I. Consultation with the Academic Senate Office

- *Susan Cochran, Chair, Academic Senate*
 - *Jim Steintrager, Vice Chair, Academic Senate*
- Academic Assembly approved Senate Regulation 479 which establishes the new California General Education Transfer Curriculum called for by California Assembly Bill 928.
 - President Drake spoke to Assembly about his ideas for UC's path forward following the graduate student researchers' (GSRs) strike.
 - The Vice Provost for Academic Personnel sent guidance to the executive vice chancellors regarding certification of work by personnel during the strike. The principal investigators (PI) will be the starting point for any federal audit and the Senate has alerted PIs that they should not sign work effort reports unless they are confident of their accuracy because signing incorrect reports is fraud.
 - The Regents voted to allow UCLA to join the Big 10 but will require UCLA to provide financial support for student athletes at UCB. This is shift in thinking that might come up in other situations if a campus does something that might harm another campus.

Discussion: There are concerns about GSRs on two campuses who already receive higher wages and will not be allowed to get the same raise as GSRs on other campuses and the codification of this pre-existing differential may have implications for faculty down the road. Chair Cochran indicated that funding for the GSRs' raises will probably come from the budget for faculty hires. Faculty in Science, Engineering, Math and Technology fields are worried about the raises in part because funding agencies will not increase the size of grant awards to accommodate the changes in pay at UC. UC can expect to see a lot of cascading effects from strike. The strike will have a variety of consequences that the striking employees did not anticipate but advising students about consequences would be an unfair labor practice. The Senate has encouraged faculty that if they withhold labor they are only protected if they have withheld all of it, that partial strikes are not protected under the law, and that withholding labor puts them at risk of having their wages docked.

II. Consent Calendar

Action: UCAF's September 23, 2022 videoconference minutes were approved.

III. Management Consultation: Draft Presidential Policy - Anti-Discrimination, Harassment, and Retaliation

UCAF submitted a memo to Council regarding the draft Presidential Anti-Discrimination, Harassment, and Retaliation policy.

Discussion: UCAF's feedback during the review of the new Presidential Policy on Abusive Conduct in the Workplace was not incorporated into the final version and the committee's input on the Anti-Discrimination, Harassment, and Retaliation policy might be ignored as well.

IV. Reporting Committee Findings to Divisional Executive Councils

- *Vice Chair Ackerman*

Vice Chair Ackerman thanked members for sending the bylaws for the divisional Committees on Academic Freedom (CAFs) and noted that there is minimal common language in them. The vice chair is concerned about the increasing growth in administrative positions in comparison to faculty which, along with other factors, has led to an erosion of shared governance. Members are asked if CAFs' bylaws should be amended to guarantee that their reports will be reviewed by the divisional senate's executive committee. Divisional bylaws indicate that CAFs will study issues but there is no language about who will receive or consider any findings. In addition, CAFs are not independent committees on all the campuses. It might be helpful for bylaws to be more similar in terms of rights and responsibilities, composition and independent status of CAFs. Given the increasing role of academic freedom in shared governance, it may be important for CAFs to always be independent committees. One recommendation is that bylaws have an operating or guiding definition of academic freedom, and UCAF might consider recommending greater uniformity across bylaws and language requiring that CAF findings are heard.

Discussion: One question is about the framework that would permit a CAF to discuss a finding that could touch on confidential personnel matters. There was a complicated incident at UCSD where CAF's finding that a faculty member's academic freedom rights were violated could have impacted the grievance the individual was likely to submit to the Committee on Privilege and Tenure (P&T). Although CAF's finding was not considered by the Executive Committee, it could have been turned over in response to a subpoena if the event of a legal proceeding. A case at UCLA raised questions about whether CAF's work was an incursion into the work of the judicial committees and the Academic Personnel office.

Chair Pekmezci indicated that if a faculty member contacts a CAF, the committee should investigate the matter. Senate leadership at UCD indicated that CAF studies policy and threats to academic freedom, but does not have the power to investigate incidents, and UCSB's CAF focuses on policy and external threats while P&T handles individual cases. CAF's authority to take an action when something urgent is brought to its attention by or about an individual faculty member is not straightforward. UCLA's CAF was approached by students with a serious complaint about a faculty member and CAF was clear about not being able to discuss the specific details but did provide the students with available resources.

There are faculty who consult CAFs about pressing violations of their academic freedom by colleagues, but a P&T case can take a year to be resolved. At UCB, P&T's reports go to the chancellor, and CAF which has no investigative power submits its reports to the divisional Council. Members do not recall their CAFs being consulted by P&T committees about cases. Individual cases can reveal important academic freedom policy issues. CAFs have a degree of informal authority rather than investigative power, and how the divisional Council leadership responds to CAF's input is dependent on the chair of the division, the issue at hand, and other factors. Based on the discussion, members seemed to agree that requiring that a CAF's findings are heard by the divisional Council could be problematic but that a definition in bylaws about the committee's responsibilities would be helpful. UCM's CAF is part of the Committee on Faculty Welfare and it would be difficult to have a separate committee because faculty are spread thin by high service loads. The composition of CAFs and other structural issues may be related to how long

ago the bylaws were written. UCAF could consult with the systemwide P&T committee regarding their respective responsibilities.

V. Privilege and Tenure's Proposal to Change Senate Bylaws Related to Simultaneous Academic Misconduct and Personnel Actions

Chair Pekmezci explained that the systemwide Committee on Privilege and Tenure (UCPT) is proposing changing the bylaws to address situations when there are simultaneous personnel actions and misconduct investigations. UCPT has asked UCAF to respond to its proposal by the end of January.

Discussion: There is a concern that an individual accused of misconduct might read a delay in the merit case as a denial of the presumption of innocence. Checks and balances should be in place to ensure that this process is not used for retaliation. Who will make the decision that a case should result in suspension of the personnel action or not needs to be clarified. Another question is how Academic Personnel committees will be informed about past alternative sanctions of faculty who were determined to have engaged in misconduct. There should be a mechanism in place to have information available for future personnel actions. A central administrative office such as the vice provost for faculty should cross-check each case. The policy does not take into consideration that there could be cases where formal misconduct charges are filed which might not merit a presumptive pause on personnel actions. The committee recommends that UCPT define the types of misconduct charges that should lead to a suspension of personnel actions.

Action: Chair Pekmezci will draft a memo to UCPT with the committee's feedback.

VI. Chancellors' Civility Statements

The chair asked if members have received a 2015 UCAF statement on civility after chancellors send out welcome messages each fall and if the statement is adequate or should be revised.

Discussion: A member commented that "civility" is a charged word and its definition is not entirely clear. About eight years ago, UCB's chancellor had an initiative focused on civility which was not well received and was seen as a way to impose limits on academic freedom. UCAF's civility statement does not appear to be issued at any campus and members debated whether it would support such a statement. An alternative might be a general reminder to faculty that academic freedom involves passionate discourse that could possibly be uncivil. Vice Chair Ackerman pointed out that one reason people object to the Chicago Principles is because they do not accept uncivil interactions. UC administrators cannot prohibit uncivil speech just as they cannot prohibit hate speech because the Constitution protects it nor can faculty be punished for it. UC faculty enjoy stronger protection for uncivil speech than the Chicago Principles can offer.

VII. Annual Reminder to Faculty about Academic Freedom Resources

In the past, UCAF has thought about sharing resources about academic freedom on the committee's website and divisional CAF websites. A statement on academic freedom, which does not rigidly define it, could be posted on the websites.

Discussion: The analyst mentioned that a document about academic freedom with information about resources could be sent to Council to disseminate to the divisions at the start of each academic year.

People might not think of looking for UCAF or CAF websites. The document could describe where academic freedom is relevant in terms of teaching, research, and the exchange of ideas in general while also acknowledging that there is a gray area. It can also point out that CAFs will entertain concerns and have discussions about these matters.

Action: Vice Chair Ackerman and the UCSD representative agreed to work on a statement.

VIII. Campus Reports/Member Items

UCD: CAF is exploring if there are policies or rules regarding the content of messages sent using department listservs. It has to be possible to place restrictions on listservs but this should be done beforehand. Listservs might be limited to important department business, but faculty should not be penalized if they send something the policy does not allow. An additional complication arises when the department listserv includes graduate students.

UCLA: There is an ongoing saga with recorded audio from classes being exported for the purposes of artificial intelligence, and there is a conflict between intellectual property and compliance with the Americans with Disabilities Act. UCAF members may want to contact other local committees to determine if this is an issue elsewhere.

IX. New Business/ Executive Session

A member described a situation related to APM 025 and APM 671 involving a UCSD faculty member who was forced to resign because of concerns related to their relationship with China. Federal funding agency laws and policies governing research and grant disclosures are complex and it may be unreasonable to ask faculty to be responsible for compliance. Faculty rely on staff to manage compliance. The intersection of this issue with academic freedom is not clear but faculty should not be subject to harassment for procedural violations, and any penalties should be commensurate with the offense. If a form has not been filled out properly the punishment should not be being forced out of one's job.

Videoconference adjourned at: 12:35 PM

Minutes prepared by: Brenda Abrams

Attest: Melike Pekmezci