

## UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM

## MEETING MINUTES

THURSDAY, DECEMBER 7, 2017

**Attending:** Christopher Elmendorf, Chair (UCD), Alan Terriciano, Vice Chair (UCI), Adam Aron (UCSD) (videoconference), Jan Goggans (UCM), Mary Furner (UCSB), John Levin (UCR) (videoconference), Jyu-Lin Chen (UCSF), Gail Hershatler (UCSC), Ty Alper (UCB), Fabio Macciardi (UCI) (videoconference), Eric Rauchway (UCD), Violet Barton (Graduate Student Representative, UCM) (telephone), Suher Adi (Undergraduate Student Representative, UCB), Elisabeth Yap (Senior Counsel, Office of General Counsel, UCOP), Tom Andriola (Vice President and Chief Information Officer, UCOP), Shane White (Chair, Academic Senate), Robert May (Vice Chair, Academic Senate), Brenda Abrams (Principal Policy Analyst, Academic Senate)

**I. Welcome**

Following Chair Elmendorf's welcome, the members introduced themselves. Members were advised that UCAF's discussions are confidential but can be described in broad terms to their local committees. Chair Elmendorf explained that some systemwide review items may not be relevant to UCAF and members agreed only the relevant review items should be forwarded to them.

**II. Consultation with the Office of the President**

- *Tom Andriola, Vice President and Chief Information Officer*

Vice President Andriola provided an update on the revised Presidential Policy on Electronic Information Security ("IS-3"). The revised policy was sent out for systemwide review over the summer and significant revisions were made to the policy as a result. The new draft policy will be less complicated and technical and the key changes from the old policy are now identified. Additionally, there was an effort to clarify the issues that faculty need to be aware of. Some of the specifics related to information security will need to be defined locally. Academic freedom concerns should be discussed with campus committees that normally handle governance issues with faculty. The CIO is working with the Senate's Committee on Academic Computing and Communications. The revised policy will be sent out for another review.

**III. Consultation with the Academic Senate Office**

- *Shane White, Chair, Academic Senate*
- *Robert May, Vice Chair, Academic Senate*

The Senate is monitoring various issues such as the proposed tax proposal, DACA students, and the unionization of graduate students. Chair White provided an update on the state's audit of UC, suggesting that members read the minutes from the recent special meeting of the Academic Council found here <http://senate.universityofcalifornia.edu/files/committees/council/council-11-17-17-minutes.pdf>

**IV. Campus Reports and Members Items**

**Santa Cruz:** The committee is discussing distinctions between academic freedom and freedom of speech. There is concern about the implications for academic freedom when resources are diverted to events that may actually infringe on academic freedom. The committee would like to raise the profile of academic freedom issues. The committee also discussed the Negotiated Salary Trial Program.

**Berkeley:** The committee has been reviewing changes to the campus policy for speaker events organized by student groups. Students commented that it was difficult to comply with the policy. The current policy is muddled and addressed issues related to event logistics but not freedom of speech issues per se.

**Santa Barbara:** This committee has also discussed the boundary between academic freedom and freedom of speech. Some individual faculty members have been threatened. The committee has contemplated how legal defamation is defined.

**Davis:** The committee debated if it should promote the adoption of the University of Chicago's statement on freedom of expression but decided that adopting another statement might jeopardize the existing strong protections of freedom of expression that bind UC and other universities. Another focus has been the freedom of expression working group's recommendations. The campus does not have an overall code of conduct for students. The advocacy group for free expression, FIRE, has asked the committee to consider several issues this year.

## **V. Free Speech Issues and UC Student Association Letter**

- *Elisabeth Yap, Senior Counsel, Office of General Counsel (OGC), UCOP*

In July, the Office of General Counsel convened representatives from all campuses to discuss issues related to speech, protest, and climate. That convening led to a continuing conversation with the campuses to collaborate more with respect how these situations are handled and about values and UC's position related to these issues. Issues of speech and climate are high priorities for the chancellors and OGC is providing guidance and support to the campuses. A working group to address the challenge of security costs related to certain events at the campuses has been established. There will continue to be variations across the campuses about how these matters are handled. A second convening with the campuses is planned. UCAF members are encouraged to contact their campus General Counsel with their questions and concerns.

**Discussion:** It was noted that the purpose for the Free Speech center established by President Napolitano is not clear. The committee received the UC Student Association's (UCSA) October letter about freedom of speech and hate speech addressed to President Napolitano and the Regents. The UCSA's specific requests to the University were reviewed. Members had questions about how legal defamation is defined, what constitutes illegal defamation and clarifying the line between protected and unprotected speech. Some people feel that saying the remedy for hate speech is more speech is insufficient. Counselor Yap explained that "hate speech" is not a legal category of speech exempt from First Amendment protections, whereas harassment and incitement to violence are exempted. UC should support students who feel marginalized by hateful speech and take steps to create campus climates that give these students a way to respond.

Case law regarding incitement to violence is clear according to Counselor Yap and there is a high threshold for establishing that a person was directly targeted in a specific way. The current state of the law does not address the types of incidents now occurring at UC campuses. Students are not satisfied with the response that hate speech is free speech and assert that the current laws should be changed. Certain incidents have made individual students feel like their lives had been threatened. The University generally has the right to condemn certain speakers or types of speech, exercising its own right to speak.

A member questioned why UC cannot make a policy establishing that certain actions would harm a large majority of students similar to the policies that prohibit smoking on campus. UC is a public institution and there are many spaces on UC campuses such as Berkeley's Sproul Plaza where members of the public have the legal right to express themselves regardless of their viewpoints, and Counselor Yap explained that under current law this is different from how speech can be controlled in the classroom. First

Amendment law distrusts government determinations about what is offensive and what is hurtful, and the history of the First Amendment protections is built on protecting the free speech and association rights marginalized groups. It is problematic to equate no smoking regulations with a regulation that says if a government deems speech offensive it can be prohibited, because there is this distrust that the government should determine what is or is not offensive. Students at schools in the South are being suspended for kneeling during the National Anthem because other students say that this action is an affront to their family members who are military veterans. While UC has constitutional autonomy and is not subject to state statutes, Counselor Yap explained that the University is subject to the state constitution (which has a First Amendment analogue) and to federal law.

Legally, defamation is a statement of provable fact that is false and causes injury to someone's reputation. Name-calling is not subject to defamation law because the individual is not stating a fact by calling someone a name. But it is not clear if a poster with photos and names of individuals and the word "terrorists" would be considered defamation.

UC could decide to not allow any outside speakers in spaces that are not traditionally public. UC may also reserve event spaces for dedicated purposes, but even within such "limited public fora," the University may not discriminate based on viewpoint. The goal of some controversial speakers is to be shut down by UC to make a point. It was suggested that UC should be more creative in how it responds to controversial speakers, by dictating the format for the events for example.

UC administrators can and do state that they do not approve of certain viewpoints. The Statement on Principles against Intolerance is a Regent's policy applicable to all campuses and some campuses have principles of community. Attempts to codify hate speech in campus civility policies in the 1990s were all ruled unconstitutional by the courts and before some were shut down they were used against students of color. To say that hate speech is protected by the First Amendment is not to deny that the speech is harmful. If UC is required to allow hurtful speech then the University should provide resources to aid those students who are targeted and negatively impacted by that speech.

Chair Elmendorf indicated that UC could institute a policy prohibiting student groups from inviting speakers not engaged in academic inquiry, and this would not be inconsistent with the First Amendment or academic freedom. It is not clear how a university could have a hate speech code that applies generally to activities on campus without butting up against academic research and teaching.

Some students are reportedly staying away from campus to avoid encountering hate-spewing speakers and the people who accompany them. Faculty are concerned about the incidents on campus but the solutions are not clear. The conditions on campus can be traumatic and the graduate student representative believes there is an impact on working conditions as well as academic freedom to take into consideration.

Counselor Yap will keep UCAF informed about the administrative efforts to address the free speech activities. One suggestion is that UCAF should meet more frequently to discuss these issues

UCAF's student representatives requested a written response to the UCSA letter and the members expressed support for a statement agreeing that hateful speech causes real harms. The UCSC representative offered to write a first draft.

**Action:** The committee will prepare a response to the UCSA letter.

## **VI. Student Misconduct and Academic Progress**

The committee did not discuss this issue.

**VII. New Business**

There was no New Business.

**VIII. Executive Session**

There was no Executive Session.

Meeting adjourned at: 2:40 PM  
Minutes prepared by: Brenda Abrams  
Attest: Chris Elmendorf