

**UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM
VIDEOCONFERENCE MINUTES
THURSDAY, MARCH 23, 2023**

Attending: Melike Pekmezci, Chair (UCSF), Farrell Ackerman, Vice Chair (UCSD), Sean Gailmard (UCB), Gregory Downs (UCD), Lisa Naugle (UCI), Martie Haselton (UCLA Alternate), Justin Yeakel (UCM), David Jennings (UCM Alternate), Ivy Zhang (UCR), Eileen Boris (UCSB), Roger Schoenman (UCSC), Susan Cochran (Chair, Academic Senate), Brenda Abrams (Principal Policy Analyst, Academic Senate)

I. Chair's Announcements

Chair Pekmezci updated the members on the Committee on Privilege and Tenure's (UCPT) proposal related to simultaneous misconduct and personnel actions. The concerns identified by UCAF when the proposal was discussed in December were conveyed to UCPT and Chair Pekmezci met with that committee's chair who appreciated the recommendations. The problem is that personnel actions are being paused but this happens randomly without informing the faculty member involved so they have no way to object. UCPT proposes that the personnel action should only be paused when charges are officially filed, not when a complaint is made. Another recommendation is that an investigation should be evaluated every six months to determine if the pause is still justified. If the investigation ends with no finding of misconduct, the personnel action will restart.

One major concern was about faculty being granted tenure but later being found guilty of misconduct because tenure cannot be taken away. On one hand, tenure should not be granted to someone who did something wrong, but the administration should not be able to indefinitely pause the process to prevent the individual from getting tenure. If UCPT's proposal is adopted, the administration will have to notify faculty when a personnel action is being paused and faculty will be able to object. Chair Pekmezci thinks the changes to the proposal are positive and encouraged members to review a recent memo from UCPT and let the chair know if there is any additional feedback.

Discussion: One concern is that other individuals will learn about the misconduct action and a faculty member's reputation will be damaged. UCPT understands the importance of keeping the misconduct investigation confidential so only the individual who has the personnel file, the department chair, and the faculty member would be notified. An investigation that ends with a sanction will be permanently documented in the personnel file. It is unclear how the proposal will affect sabbatical leave, and this is a question Chair Pekmezci will bring to UCPT's chair.

II. Consent Calendar

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

III. Systemwide Review Item: Proposed Presidential Policy on Anti-Discrimination

UCAF provided feedback on the proposed Presidential Anti-Discrimination policy during the management consultation in October. The committee felt that this policy was very similar to the policy on abusive conduct discussed in September and Academic Personnel has provided an explanation about the differences. The anti-discrimination policy is related to the protected categories covered by Federal and State laws. Chair Pekmezci does not think that the committee's concerns about academic freedom

have been addressed in the proposed policy. The proposal states that the policy will not regulate anything relevant to academic freedom. However, if there is complaint about an anti-discrimination action by a faculty member the policy still indicates that it will be handled by the Local Implementation administration office rather than by faculty peers.

Discussion: The proposed policy indicates that the Local Implementation Officer (LIO) will consult with the appropriate academic officer for relevant academic expertise, but it is not clear who the appropriate officer is, how that person is to be identified, or if this refers to the Academic Personnel Office. Consulting an academic officer is not the same as consulting with Senate faculty. Decisions about whether a faculty member's action implicates academic freedom should be in the hands of the Senate, and putting this process in the hands an administrator is not an appropriate way to implement disciplinary policies over Senate faculty. A touchstone of academic freedom is that scholars are accountable to scholars in their actions as scholars. UCAF should assert that any time a Senate member is involved, the first consideration should be whether their actions are protected by academic freedom.

As written, the policy presumes that whoever is making a judgment understands the many relevant issues concerning academic freedom, but there is no reason to believe this. A member asked if the committee is suggesting that CAFs be involved with every investigation, noting that the number of investigations could be significant and that CAFs do not actually have investigatory power. Chair Pekmezci indicated that the Senate body responsible for these investigations would be UCPT. UCAF members also expressed dismay that a new systemwide administrative office will be established to handle discrimination complaints at the same time budget cuts are being made. The committee could suggest repurposing existing offices and staff that already handle various types of investigations.

The policy does not explain how the LIO will be supervised and the amount of power this individual will have is troubling. A member observed that policies like the one under discussion emanate from Title VII and Title IX so the legal concerns may be outside the area of expertise of UCPT members. Any adjudication process will always go through UCPT, but the intention might be that the LIO has the legal expertise to determine if a complaint has merit or not before it goes forward. There have been serious high profile incidents involving faculty where little action was taken until the Title IX officer got involved, so revamping these policies could be an effort to improve UC's response. However, it is problematic to give legal expertise more standing than academic expertise especially because this enhances administrative power. Additionally, some cases cannot be exclusively decided by administrators, purely on the basis of legal definitions.

The committee discussed what seems to be a noticeable pattern of proposed policies that subject Senate faculty to evaluation and potential discipline by the administration rather than through Senate channels. Since members serve on UCAF for a limited period of time, it can be challenging to know if there has been an increased number of flawed policy proposals. The analyst encouraged members to review annual reports and previous meeting minutes to get an overview of the committee's evaluations of various policies. Members should also pay close attention to policies when they are serving on the divisional CAFs, and Chair Pekmezci remarked that it is incumbent on CAF members to flag academic freedom implications when issues are discussed at the campus level.

Sending a general reminder about academic freedom to Council to forward to the divisions at the beginning of each academic year could prompt people to think about academic freedom issues. The analyst also noted that systemwide Senate bylaws allow members to serve on UCAF for four consecutive years, and members are encouraged to serve multiple years. The committee agreed to monitor future

proposed policies to determine if there is a pattern related to academic freedom being overlooked. Council will be notified if there is an apparent trend where the administration is empowered first and Senate faculty will be consulted only if it is deemed necessary, which is backwards.

Action: Chair Pekmezci will draft a memo outlining UCAF's concerns about the anti-discrimination policy.

IV. Systemwide Review: Proposed Revisions to the Presidential Policy on Inventions, Patents, and Innovation Transfer

Chair Pekmezci asked members if they have concerns about the proposed revisions to the Presidential Policy on Inventions, Patents, and Innovation Transfer.

Discussion: Members have not identified any concerns but the chair asked them to share any comments after the videoconference. Otherwise, the committee does not need to opine.

V. The College Board's Changes to the Advanced Placement African American Studies Curriculum

Chair Cochran has informally asked UCAF to discuss the changes made by the College Board to the African American Studies curriculum in response to pressure from the state of Florida. Although this is worrisome in the context of academic freedom, it is not clear if UCAF should issue a statement.

Discussion: One initial reaction is that members may not be informed enough to have an opinion on what is a complicated matter. A member thinks a statement affirming the importance of African American Studies would be appropriate and pointed out that the College Board excised works by UC faculty including Robin Kelly at UCLA, Angela Davis at UCSC, and others. The eliminated content includes contemporary work on feminist and intersectional analysis and queer studies. There was a positive response to the College Board's original curriculum when it was tested and UCAF could affirm that the curriculum and exams should not be subject to political whims.

There is a concern about making a statement that might be construed as validating the College Board as an academic institution because it is a nonprofit business making enormous profits. The College Board is a problematic business and if it is going to be influenced by politics, UC should consider its relationship with this company and utilization of the College Board curriculum and exams. UC should consider if advanced placement tests are useful indicators for admission or credit. It would behoove the College Board to stand up for academic freedom if it wants UC and other academic institutions to continue purchasing and using its products.

Action: Members agreed to send a memo to Council and Vice Chair Ackerman volunteered to draft it.

VI. Search Committee Access to Letters of Recommendation

- *Sean Gailmard (UCB)*

UCB's Academic Personnel Office (APO) has started experimenting with a policy restricting search committees' access to letters of recommendation (LORs) for applicants for tenure track positions and in some cases restricting access to curricula vitae (CVs). In the past, the APO generally granted waivers so the LORs could be seen but the office has started to enforce the policy this year. Search committees have not been able to access letters until there is a short list of candidates. This policy has been widely denounced and from the perspective of academic freedom, it impinges on the ability of faculty to

evaluate the scholarship of other faculty. The APO is concerned about discrimination in the evaluation of files. Members are asked if other campuses have a similar policy and if the committee should push back.

Discussion: This policy infringes on faculty decision-making and has an impact on departments. LORs can have biased language particularly for women candidates and faculty of color. There is a concern about the lack of evidence regarding the negative impact of letters and it is possible that they are useful in ways that have not been considered. Some disciplines are moving away from LORs until there is a short list but this parameter is set by the search committee rather than the administration. A member observed that well-known and connected faculty are treated differently and candidates who are not well-known may be unfairly overlooked. Questions about letters are coming up at other campuses so it would be useful for UCAF to provide a statement about how this impedes academic freedom.

Members do not know if this policy was ever reviewed by any divisional Senate committees, and it would not have been brought to the attention of CAFs since they are not on the divisional Senate executive committees. UCAF should investigate whether the policy was shared with the Senate or not before the committee makes a statement. UCB's CAF can discuss this policy with the vice provost for faculty in the Office for Faculty, Equity, and Welfare and the CAF might send a letter to the divisional Council. The analyst indicated that UCAF can send a memo to Council with a request that it be forwarded to President Drake and relevant campus administrators. The committee's memo would state that decisions about whether and when to provide LORs should be made at the department level, that evidence that the policy has anti-discriminatory effects is weak, and that the policy has serious countervailing costs that infringe on the ability of the faculty to decide how to evaluate scholarship.

VII. Campus Reports/Member Items

UCI: CAF has been dealing with post-strike issues and the impact of the new contract on the budget. The committee also discussed the proposed policy on anti-discrimination.

UCSC: There were concerns that the self-attestation forms were being used in the wake of the strike as a kind of coerced consent. Faculty were told they had to fill out these forms which essentially ask people to out themselves about participation in and support for the strike. CAF understands the institution's need to collect data for grants and compliance purposes, but there is a conflict with academic freedom.

UCSB: CAF has discussed the campus's Scholars at Risk program and the local administration's failure to replenish contributions to it. The Scholars at Risk program is important and the administrators at other UC provide funding.

UCM: The main issue is the overhaul of the campus financial system which has complicated the ability of faculty to track their grant or account balances. Merced switched to Oracle financial systems in 2020. While this is primarily a faculty welfare issue, it also severely impacts the ability of faculty to conduct research because financial decisions about a grant cannot be made if the amount of funds available is unknown. The administration states that the problems are being fixed.

UCLA: There is concern about the increase in complaints to the Discrimination Prevention Office (DPO) which are occasionally heard at CAF. The committee has stopped discussing individual cases after some CAF members who talked about a case in the Anderson School were subpoenaed to testify. The increase in complaints involves some truly morally offensive incidents, although there could be cases where someone is "verbally unhygienic" but still within the bounds of academic

freedom. The vice chancellor of equity, diversity, and inclusion (DEI) is stepping down and CAF's chair met with administrators to discuss the need for the DEI office, which includes the DPO, to be restructured based on issues cited in the Moreno report and the 2021 implementation report. There is an ongoing conversation about faculty exercising appropriate care versus avoiding offending students, and CAF wants to emphasize the positive instead of the punitive, because the latter is leading faculty to edit and censor themselves. Another important issue is audio recording of classes and the use of the data from these recordings by Otter.AI to improve the company's algorithm for transcriptions.

UCD: CAF has primarily focused on an event earlier in this month by a far-right group which had also sponsored an event in the fall that had numerous repercussions. The fall event prompted the chancellor to sponsor a series of academic freedom and free speech events on campus. Current and past members of CAF participated in events that were also well-attended by students, faculty, and staff. The March event went smoothly and there were just a few arrests in contrast to the brawls that occurred in the fall.

VIII. General Document about Academic Freedom and Relevant Resources

- *Vice Chair Ackerman*

Vice Chair Ackerman explained that UCAF has previously discussed the need to disseminate a general statement about what academic freedom is because it seems to be misunderstood and because there is concern about administrative creep into academic freedom and shared governance. Following the committee's last meeting, a member shared a definition of academic freedom generated by artificial intelligence (AI), but the analyst made UCAF aware of concerns that Senate leadership have about this. Chair Cochran explained that the committee can use this statement but must indicate that it was authored by an AI program. Senate leadership would be concerned about someone uncovering that the statement was written by one of these programs and it would be politically damaging to UC if the faculty issued a statement they did not write.

Chair Cochran also posited that UCAF members can devise a more sophisticated statement. The vice chair explained that the idea is to use the AI-generated statement to prompt discussion and for the committee to revise it. There is more that can be clearly asserted about academic freedom. Vice Chair Ackerman proposed looking at other statements on academic freedom and working with Chair Pekmezci and the UCSD representative to prepare a draft to share with the committee. The finalized statement will be sent to Council for endorsement with a request that it be distributed to the campuses at the start of each academic year. The statement would remind faculty and administrators to think about academic freedom issues and that UCAF and divisional CAFs are resources.

Chair Pekmezci remarked that UCAF is typically a reactive rather than proactive committee, and this may be because it is not on Academic Council. UCAF is only involved in responding to systemwide review items or if Senate leadership identifies something of relevance. This annual reminder could encourage people to include UCAF earlier and more robustly in discussions rather than as an afterthought. It was noted that, on most campuses, CAFs are not part of the Senate's executive committees. Chair Cochran indicated that UCAF's desire to be on Council comes up regularly and explained that Council is constructed to have a balance between the divisional Senate chairs and the chairs of key systemwide committees. An argument would have to be made for UCAF to replace another committee on Council, and members should give some thought to what it could contribute that is above and beyond the contributions of other committees and how UCAF would improve the functioning of Council. The

committee should also identify what it is unable to do because it is not on Council. Members could review Council minutes to identify deliberations that UCAF to which UCAF could have contributed.

Discussion: Even though UCAF meets just three times a year, the analyst pointed out that it is often difficult to secure a chair for the committee, so adding attendance at monthly Council meetings might make securing a chair more challenging. Members debated different ways to balance voting on Council that would not require equal numbers of divisional and standing committee chairs. It is somewhat unfair to ask UCAF to justify having a seat at the table if the other committees on Council are not required to do the same, and it is unclear how the committees on Council were selected while UCAF was excluded. The charter that established UC called for shared governance and the case could be made that this committee monitors shared governance from the perspective of academic freedom. One question is how to ensure that greater attention is paid to academic freedom and shared governance, and UCAF will take up this critical issue next year.

IX. Consultation with the Academic Senate Office

- *Susan Cochran, Chair, Academic Senate*
- The Regents met last week and much of the focus was on approving campus plans for construction, most of which will be revenue-generating student housing.
- The Senate gave a presentation on transfer to the Regents' Academic and Student Affairs Committee. There is pressure from state legislators who any student who gets a community college degree to be admitted to the UC campus of their choice, even though UC does not have the capacity to handle a dramatic influx of transfer students. To this end, the legislature has introduced Assembly Bill 1749, a trailer bill on transfer from the California Community Colleges.
- Chair Cochran briefed the Regents on the Academic Assembly's approval of a revision of systemwide Senate Regulations 610 and 630 to require that undergraduate students spend at least a year taking some in-person classes on campus in order to graduate, with exceptions for students participating in UC Education Abroad, the UC Washington, D.C. Center, UC Sacramento Center or in a prison program. This is a commitment to have at least a year of engagement with students so they can get the best out of their UC undergraduate degree.
- Some Regents are unhappy about the in-person requirement because they want UC to offer online degrees to improve access and increase revenue. The Senate continues to have a variety of concerns about online degree programs.
- The Regents appear troubled by the recent labor negotiations with the union representing the graduate student researchers (GSRs). One unresolved issue is top-ups, the additional money required to reach a department's previously offered funding package. The union believes GSRs should still get the extra money while UC asserts that the top-ups are not part of the salaries. If disagreements between the union and UC are not resolved, the parties will end up in court and actions may be taken by the GSRs on the campuses. The new contract has a no strike clause so if GSRs withhold labor could be fired, which is important for GSRs and faculty to understand.
- A related issue is docking the pay of GSRs' and faculty who went on strike, Chair Cochran noted that few GSRs and faculty submitted the attestation forms. Lower paid, less privileged union workers whose pay would have been docked immediately during a strike are unhappy about how the GSRs were treated, a perspective that may be shared by several Regents.
- A workgroup on faculty mission, priorities, and balance post-pandemic will be co-chaired by the Vice Provost of Academic Personnel and UCD's divisional Senate chair. This group will devise strategies to help faculty recover from the pandemic and strike, particularly junior faculty and others whose research was disrupted. A workgroup on the future of UC doctoral programs will be co-chaired by a

division chair and a graduate dean and is a response to the emerging issues related to having represented student employees which changes the landscape for academic doctoral training.

Discussion: The UCB representative summarized the earlier discussion about UCB's policy prohibiting search committees from having LORs until there is a short list of candidates. Chair Cochran suggested that UCAF could invite the Vice Provost of Academic Personnel and Programs to discuss this issue and that the UCB representative contact the divisional committee on Academic Personnel. UCB's divisional Senate chair can bring the issue to systemwide Council, which will give the other division chairs an opportunity to share if this is happening at their campuses. The goal is to encourage people to think critically about the policy and the rationale for adopting it. Since UCAF does not have another meeting this academic year, the analyst indicated that Chair Pekmezci could send a memo to the chair of the systemwide Committee on Academic Personnel (UCAP) asking members of that committee to determine if this policy on LORs is being adopted and touch bases with the divisional CAFs.

VIII. New Business/ Executive Session

There was no New Business of Executive Session.

Videoconference adjourned at: 1:15 PM

Minutes prepared by: Brenda Abrams

Attest: Melike Pekmezci