

UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM

VIDEOCONFERENCE MINUTES

THURSDAY, SEPTEMBER 23, 2021

Attending: Ty Alper, Chair (UCB), Melike Pekmezci, Vice Chair (UCSF), Sean Gailmard (UCB), Carol Hess (UCD), Terry Dalton (UCI), Susanne Lohmann (UCLA), David Jennings (UCM), Ivy Zhang (UCR), Farrell Ackerman (UCSD), Donald Taylor (UCSF), Alenda Chang (UCSB), Minghui Hu (UCSC), Perry Meade (Undergraduate Student Representative, UCB), Elisabeth Yap (Senior Counsel, UC Legal), Robert Horwitz (Chair, Academic Senate), Susan Cochran (Vice Chair, Academic Senate), Brenda Abrams (Principal Policy Analyst, Academic Senate)

I. Welcome and Introductions

Chair Alper welcomed the campus representatives, Chair Horwitz and Vice Chair Cochran to the first UCAF meeting of the 2021-2022 academic year.

II. Department Statements

- *Elisabeth Yap, Senior Counsel, UC Legal*

Academic Council has asked UCAF to provide recommendations on the issue of departments making statements about political issues, and whether - under the law, UC policy, or principles of academic freedom - departments should be able to issue such statements and, if so, how and what kind of disclaimers and procedures might be necessary. Chair Alper joined Academic Council's meeting yesterday to summarize the issue, outlining four general principles which are relatively undisputed. The first principle is that individual faculty members and collectives of faculty members always have a right to speak about whatever they want to speak about. The second principle is that the UC, as an institution, can also speak on political issues, with the exception of electoral politics, but it is generally left to the president to speak for the institution and to the chancellors to speak for the campuses.

The third principle is that campus units, like departments, generally need to avoid speaking for or being seen as speaking for the larger institution to which they belong. Finally, when departments issue statements as departments, there is a concern that such statements will be interpreted as speaking for UC. If there is consensus on UCAF about these four principles, the question becomes whether there is a policy the committee can recommend that allows faculty members to speak individually and as collectives but in a way that makes it clear in some fashion that they are not speaking on behalf of UC as a whole when they do so. This might take the form of a disclaimer that should be attached to such statements, or some other mechanism to eliminate confusion about faculty members' voices not representing the institution while still allowing their opinions to be expressed. Counselor Yap provided advice on Chair Alper's framing of the principles and noted they present a mix of legal and policy issues. Counselor Yap also discussed the legal implications of a department website hosting individual expression, as opposed to posting only the positions of the department or the University as a whole.

Discussion: One question is whether a group of people in a department can claim that a statement is the position of the department even if they clarify that they are not speaking on behalf of UC. Counselor Yap provided advice. Another question is how to determine when a group of people in a department is able to speak on behalf of the entire department, and Chair Alper indicated that the committee can suggest how departments should go about this. However, yesterday, some members

of Academic Council felt that UCAF should not dictate how departments should make these decisions. Departments can figure out how they want to make this determination, as long as there is a mechanism for dissenters to share their viewpoint and ensure the academic freedom of everyone involved on all sides of the issues. UCAF may want to recommend the use of disclaimers to indicate that the opinions or statements expressed should not be taken as a position or endorsement of the University of California.

A member argued that individual faculty and collectives of faculties have academic freedom and free speech rights, but departments and other formal collectives, such as this committee, are not corporations and do not have anything like academic freedom or free speech rights. There is a concern about protections against someone claiming to speak for another individual without their endorsement or if there is criteria by which a department can claim to speak for an individual. This is probably a matter of policy and it speaks to the need for a disclaimer that prevents confusion about who holds a certain viewpoint. Senate Chair Horwitz suggested that there are two questions about disclaimers to address. One disclaimer would indicate that this statement is not a statement by the University. The second issue is whether there should be a disclaimer on the department's website stating that the following faculty members agree with a statement. This disclaimer would clarify that a statement is not made on behalf of the department while also indirectly protecting the members of the department who do not agree with the statement.

It was noted that no one is debating whether the UCLA chancellor's statement about Black Lives Matter represents the view of everyone at UCLA, and that UCAF's discussion today was prompted by a position related to a specific international political issue that makes many people uncomfortable. It is unclear if there are any studies or demonstrable facts that show that a statement signed by university departments have tangible effects or make an impact on the problem at hand. A member asserted that the faculty making statements about Palestine are trying to cloak themselves with the authority of the department which gives the statements more weight and influence in the public debate. But the statements are not necessarily in sync with UC's views, and a disclaimer may not make a difference on a website that obviously belongs to a department. The fundamental question is whether a group of faculty in a department can channel their political statement through the department and speak with the authority of the department. In one department, the suggestion to make a political statement involves significant discussion among the faculty to ensure that everyone is heard and members of the department in agreement with the statement will be identified, especially when the decision to post it is not unanimous.

There is agreement that UCAF should propose a policy but should tread very carefully. It is recommended that any policy should address that department statements should reflect alternative points of view, which might be difficult. Senate Chair Horwitz does not want the Senate to be seen as a body that is restricting free speech or academic freedom. Many departments regularly make statements and Chair Alper would be troubled by a policy that restricts speech even in cases where statements are misguided or ineffective, and parsing out whether the statements are consistent with UC policy would be prohibitively complicated. UCAF should emphasize that when posting statements on a department website, the website should as a matter of policy explicitly provide space for dissenting views in the department. This approach would be more expansive and protective of academic freedom for those who disagree. One unresolved question is how the opinions of dissenting students are handled.

UCAF should make it clear that a department website can be utilized to post individual statements and that faculty have the right to post expertise-based statements that have some political slant to them, but departments need to be responsible.

III. Next Steps: Department Statements

Chair Alper will draft a memo that captures the committee's thinking and ask for comments over email. UCAF should take time to deliberate, and members may share the draft memo with their divisional CAFs. Chair Horwitz would prefer having a systemwide response to the issue of department statements, rather than having campuses take differing approaches. It is not yet clear if UCAF proposes will be policy or guidelines, and Chair Horwitz noted that a proposed policy would undergo systemwide review. Guidelines could be ignored by departments and there is also a question of who will enforce the guidelines or policy. UC's Electronic Communications policy has language about violations which could include disciplinary action of some kind, but it is probably unnecessary for UCAF to wrestle with this question. Issuing guidelines would be a weaker signal than issuing policy, even in the absence of an enforcement mechanism.

IV. Topics for 2021-2022

Members are invited to email Chair Alper and the analyst with agenda items for the December and March committee meetings.

Discussion: The UCM CAF is considering the issue of academic freedom in the classroom as it relates to students recording lectures and posting sound bites on the internet. The representative would like to know if there are ways that faculty might protect themselves from having their speech in a classroom become public speech without their permission. One member suggested that UCAF should articulate some common principles about responsible conduct rather than trying to prohibit students from engaging in this behavior.

The faculty at UCI have been told that they have to record their lectures for the students who will still be taking courses remotely. Chair Horwitz explained that this is related to faculty intellectual property rights over lectures, exams and other course materials. Issues related to reopening the campuses were discussed by Academic Council yesterday, including how much faculty control the modality of their teaching. In addition, this issue was specifically addressed in the May 2021 Systemwide Guidelines and Recommendations for Fall Campus Re-Opening sent to President Drake and the chancellors. Faculty should push back on any requirement to record lectures but also consult with the student disability offices to gain a clearer understanding of what accommodations need to be given. UCI's administration seems unwilling to recognize that offering courses in multiple modalities is more work for faculty and not sustainable. UCSD's Office of Student Disabilities issued a letter demanding that any faculty member with a student with disabilities in their class record all of their lectures. The UCLA representative will send UCAF the response from the divisional CAF about accommodations for students with disabilities.

The point was made that posting video or audio clips has a chilling effect in the classroom particularly if something morally charged and politically controversial is under discussion. The problem may not be as much about protecting faculty as it is about protecting students from each other and protecting the ability to speak freely in the classroom. It is already illegal under California law for students to record audio of other people without their knowledge and permission, so these students are engaging in a criminal act. Reportedly, UCLA has a contract with Otter Artificial Intelligence to give the company all the voice data of students and faculty produced in UCLA classes so it can train its AI. This was done without informing the students or professors.

Videoconference adjourned at: 12 PM

Minutes prepared by: Brenda Abrams

Attest: Ty Alper