

## UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM

November 18, 2004 Meeting Minutes

**Attending:** Patrick Fox, Chair (UCSF)

Herma Hill Kay (UCB), Barbara Epstein (UCSC), Mark Eisner (UCSF), Jerold Theis (UCD), Lisa Hajjar (UCSB), Phillip Bonacich (UCLA), Edna Bonacich (alt-UCR), Mark Massoud (Student Rep-UCB), Maria Bertero-Barceló (Academic Senate Executive Director), Michael LaBriola (Senate Analyst)

### **I. Chair's Announcements - *Patrick Fox***

Chair Fox welcomed UCAF members, reviewed the committee charge, and summarized a few of the major issues addressed last year. UCAF has been budgeted for two in person meetings this year, but can schedule additional telephone conferences as needed. Committee meetings are confidential, and tapes of meetings are erased after the Chair approves the minutes and circulates them to members. Finally, members can send messages or documents to all committee members through the UCAF listserv by addressing an email to [UCAF-L@LISTSERV.UCOP.EDU](mailto:UCAF-L@LISTSERV.UCOP.EDU).

**Action:** The committee approved the minutes of April 23, 2004.

### **II. Message from the Academic Senate Executive Director – *María Bertero-Barceló***

Senate Executive Director Bertero-Barceló thanked members for their volunteer service to the Academic Senate. She explained how systemwide Senate committee work gives faculty a voice and an opportunity to directly influence University policy. She encouraged UCAF members to report regularly to their local committees about systemwide business, and in turn, to share local concerns with UCAF. Members should be informed about divisional positions on policy, but they are not bound to represent any particular view. The Chair and Vice Chair of the Senate will attend UCAF meetings whenever possible, and student representatives add unique and valuable perspectives to meetings.

Executive Director Bertero-Barceló briefly outlined some of the major issues facing the systemwide Academic Senate and the University in 2004-2005. These include:

- Long-range strategic budget and academic planning in the context of the Compact.
- How to address declines in funding for and quality of graduate education.
- Competition for future management of the Department of Energy National Labs.
- Research strings, restrictions on funding sources, government panels, and academic freedom.
- Senate involvement in oversight of the California Institutes for Science and Innovation.
- Continued study of admissions, eligibility and comprehensive review policy.
- Review of systemwide Senate regulations and local variances.
- How to improve transfer articulation between UC and the Community Colleges.
- Efficiency of the personnel process and gender/ethnic disparities in the step system.
- Faculty welfare issues: potential changes to the funding of the University retirement system; fee waivers; and parking.
- Authorizing official divisional status for the UC Merced Senate.

The administrative role and mission of the Senate Office is to support the academic mission of the faculty through their Senate committee work. The Committee Analyst is available to prepare agendas; to draft minutes, responses and reports; and to share his knowledge about the work of other Senate committees. Committees are encouraged to suggest topics for inclusion in the

electronic newsletter *The Senate Source*. The Senate recently launched a new effort to monitor and track legislation, which it hopes will be effective in keeping faculty better informed about Federal and State legislation related to the University. Beginning this year, meeting minutes will be posted on the web, and members should monitor for sensitive content on the assumption that anyone could potentially see them. UCAF does not have regular consultants, but the committee is welcome to schedule executive sessions. Executive session minutes will not be web-posted, but are publicly discoverable. A password-protected website will soon allow UCAF to post complete agendas, minutes and working documents online. Finally, all systemwide committee members are now required to use UCLA travel to book airline tickets.

The committee is not required to keep minutes. Members discussed the possibility of adopting a style of minutes that would record actions only. Most members supported the current approach of keeping a fairly detailed record of the proceedings as useful for the sake of background for current and future members. Members agreed to review the draft of the minutes closely and excise inappropriate content.

### **III. Campus Reports**

**Santa Cruz.** Last year, the UCSC Senate unanimously passed a resolution opposing the USA Patriot Act. The resolution calls upon the Chancellor to report regularly to the faculty about violations of civil liberties, to provide a regular accounting of students or faculty who have been prevented from coming to the university or whose publication of research has been impeded as a result of government actions, and to post notices in libraries and bookstores about the potential for government investigation into what books and emails people buy and send. Several members of CAF and Faculty Welfare also met with the Acting Chancellor, who was supportive and agreed to report violations of civil liberties and continue a dialogue with the Senate. However, it is unlikely that permanent changes will be enacted until a permanent Chancellor is appointed.

**Berkeley.** The Divisional Committee met on September 27, 2004. It reviewed the "Provisional Data Management, Use and Protection Policy." Professor David Wagner of the committee drafted a letter requesting clarification of certain aspects of the proposed policy. His letter was approved by the committee and submitted to the Chair of the Division. The committee also reviewed the report of the Task Force on International Students and Scholars regarding the impact of the USA PATRIOT ACT.

**Riverside.** Riverside has yet to meet this year, but the divisional committee plans to draft its own Patriot Act resolution.

**Los Angeles.** Over the last few years, the UCLA divisional CAF has been concerned with the intrusiveness of Institutional Review Board human subjects committees into the way faculty conduct research at UCLA, particularly in the Social Sciences. In response to these concerns, the Office of Research set up an IRB specifically for the Social Sciences. CAF will continue to study the issue, and it has plans to ask the IRB for a description of its procedures and an account of all cases in which it has judged a violation. CAF feels it may be inappropriate for an IRB to have the power to punish a faculty member without additional faculty review.

**San Francisco.** The UCSF CAF is studying the academic freedom implications of units within the university placing restrictions on faculty to prevent them from accepting research grants from the tobacco industry. The UCSF School of Medicine recently instituted a policy saying it will not accept grants from tobacco companies or their subsidiaries. CAF is also planning a symposium to address issues related to government interaction with the university, e.g., the Patriot Act, SUTI

clauses, overt political stacking of Federal advisory committees and federally mandated travel bans.

**Santa Barbara.** CAF has been assessing campus specific effects of post 9-11 legislation, particularly the impact of visa restrictions on foreign students and scholars, and government access to information about international visitors. UCSB graduate school applications from international students have dropped 24% this year. CAF believes such restrictions are ineffective, impair the free flow of ideas, and harm the university economically, both in terms of research brainpower and in the resources necessary to comply with government policies. A complete report will soon be posted on the web. Finally, the committee is following congressional legislation pertaining to oversight of international area studies, particularly Middle East studies, and the CAF chair is seeking advice about how to develop an effective UCSB Patriot Act resolution based on other successful campus models.

**Comments:** In developing its Patriot Act resolution, UCSC consulted with University Counsel Cynthia Vroom to make sure the terms and actions outlined in the resolution were legally sound. A UCB task force on international graduate students and scholars has also produced a report.

**Action:** Divisional committees are asked to communicate with their chancellors or appropriate campus representatives to determine what university resources are being used to prepare for possible government requests for information and how that information will be reported to the campus community. For instance, each campus has had to set up an electronic system (SEVIS) to report the presence of foreign students and faculty members to the U.S. Citizenship and Immigration Services.

**Davis.** Davis' new Integrity in Research policy was developed in response to a request from the Department of Health and Human Services, and has been in effect since November 2003. The Committee on Academic Freedom and Responsibility opposes the policy. CAFR believes the policy leaves faculty members too vulnerable to accusations of misconduct, and removes a reasonable obligation on the part of the University to restore the integrity of a faculty member falsely accused of misconduct. CAFR also feels the Senate was not given sufficient time to review the policy, and the policy does not give the Senate appropriate jurisdiction over the process consistent with the rules of shared governance. CAFR has reviewed policies on integrity and misconduct in research at UCB, UCR and UCLA. These policies are similar to the Davis policy, but they also differ in that they refer matters of investigation and discipline to Academic Senate committees, while the UCD policy does not. Davis plans to continue studying the legality of the policy with the help of the Senate, and welcomes input and support from other divisions. UCAF members questioned why the DHHS is requiring such a policy, and whether DHHS is providing a policy template to universities.

**Action:** Members agreed to find their campus policy on Integrity in Research and send it to Dr. Theis. The committee will also research the context of the DHHS request and locate the DHHS Office of Research Integrity Model Policy for Responding to Allegations of Scientific Misconduct.

**Student Representative.** UCAF's graduate student representative brought forward a proposal for new end-of-semester GSI and TA discussion section evaluations. UCAF members considered the issue more appropriate for discussion by the Educational Policy Committee.

**Action:** The Committee Analyst will put UCAF's student representative in touch with the UCEP student representative.

#### **IV. Council Resolution on Research Strings and the Influence of Corporate Funding on Research**

**Issue:** Last year, the Universitywide Committee on Research Policy (UCORP) produced a report on restrictive clauses and strings in contracts, grants and gifts, along with a Resolution, which stated that no special encumbrances should be placed on the freedom of UC faculty to accept or reject research funding from any source. However, some health sciences faculty continue to push for a position against the Resolution, claiming shared governance allows a unit of faculty to place restrictions on itself. Recently, a number of faculty members at UCSF asked their Chancellor to enact a policy barring faculty from accepting research funds from tobacco companies, based on their record of corporate behavior and history of distorting scientific research. UCORP found that such policies represent violations of university policy and academic freedom. In July, UCAF endorsed the UCORP Resolution in support of the right of faculty to pursue research funded by any source deemed legitimate by university policy. However, UCAF also concluded that the Resolution was not “sufficiently sensitive” to possible adverse influences of corporate funding on research. UCORP has since agreed to work with UCAF on what the committee called “the potentially pernicious influences of corporate funding.”

**Discussion:** One member noted that the formulation of academic freedom rights in the new version of APM 010 affirms the autonomy of the academic community in relation to outside influences—government, administrators, etc.—but does not address the rights of individual faculty members against their own communities. Members generally agreed that faculty are governed by their communities of academic peers, but individuals should also have rights against those communities. A few members suggested that a change or amendment to APM 010 would help affirm this, while others said there were ways of addressing the issue of funding sources that didn’t require further amendments to 010.

Members discussed whether a funding agency could by its very nature be inconsistent with the mission of a university. Although the work of a tobacco company and the mission of a School of Public Health are not apparently consistent, the mission of a department, school or small research unit does not necessarily have to be aligned with the mission of its individual faculty. Moreover, views about a specific type of research or funding source are subject to change, as political and cultural climates change. It is conceivable that someday other funding entities might be targets, based on their corporate records, or political or moral views.

There are already contract guidelines in place at UC prohibiting faculty from accepting money from entities that would place restrictions on the publication of research results. These guidelines are designed to protect faculty and the integrity of the institution, and to ensure the free transmission of ideas and research. The peer review process also safeguards the competence and quality of research after it is completed and published. However, to review an individual’s decision to conduct a type of research or decision to accept funding to make that work possible, would represent a violation of 010.

In sum, members support UCORP’s work and the Academic Council resolution. They believe there should be no additional institutional controls over the type of granting entities faculty members interact with and accept funds from.

UCAF members also discussed corporate influences within the university. Declining public funding of higher education has led to the perhaps inevitable increasing reliance of UC and university faculty on corporate sources to fund research. University-industry partnerships are now commonplace, as is a sense that research done on behalf of corporations is normal and acceptable. Merit increases and promotions are increasingly tied to research dollars, although there is nothing in the APM linking financially based research productivity to academic advancement. It was said that some departments implicitly require an NIH grant for promotion to Associate Professor. These factors, combined with increasing amounts of advertising, have contributed to a perception and concern in some quarters that the university is “for sale.”

Members agreed that there is a cultural problem in the university, and that the increased number of corrupting influences and temptations may cause some faculty to lose a sense of direction and ethics. Freedom creates the risk of abuse, but more restrictions are not an effective or appropriate way of transforming the culture or ensuring ethical decision-making. Instead, UC must revitalize an understanding of ethics in academia. The integrity of the University of California is inextricably connected to the integrity of its individual faculty so it will be increasingly vital for the institution to strengthen its faculty so they can operate according to ethical models.

Grants are tied to promotion, but it is asking too much for faculty not to want promotion. The current peer review and tenure system safeguards are fundamental parts of academic freedom. UC needs better mechanisms to ensure more ethical self-governance. The university must identify ways to help faculty be more independent and less susceptible to corporate influence. UC can take steps to encourage its faculty to own their research and adhere to standards of integrity, so tobacco style manipulation doesn't occur in the future. Finally, there needs to be a stronger policy of self-policing within the academic senate.

**Action:** UCAF will send comments to Council and also respond to UCORP about a strategy for addressing the issue of corporate influences in research.

## **V. Academic Freedom and Students**

Last year, Student Regent Matt Murray asked UCAF for input into a new university policy he had proposed concerning academic freedom for students. Some students believe there is ambiguity about where they stand in relation to academic freedom that should be addressed in a new policy or statement. Although there are policies in place, both in Student Affairs and in the faculty code of conduct, which protect student freedom of speech and fair treatment inside and outside the classroom, the 2003 revision of APM 010 does not specifically address academic freedom for students who are engaged—as post docs, teaching assistants, or researchers—in scholarly inquiry, research and publishing activities in a capacity similar to faculty. This year, a student committee will meet to discuss the issue, and that group will include as Senate liaisons UCAF Chair Patrick Fox and UCAF member Barbara Epstein.

Members discussed two types of academic freedom situations for students: one in which students serve in faculty like positions such as TAs, post docs, and researchers, and another in which they are participants and learners in a classroom. The latter is more difficult to define. In the current definition, academic freedom rights for faculty are derived from one's community of peers, who judge the merits of research and teaching. But it is the professor, not another student, who judges a student's work. Faculty academic freedom rights have to do with their membership in the professoriate, and their right and ability to express and opine on something they have expertise in. But students are by definition not experts. What is the framework for the right of a student to express an opinion she doesn't have expertise in or is not on the class discussion agenda? It requires a balance. In classroom work, students have a right to approach topics from their own point of view and should not be penalized for taking a different view from the faculty member. But students occasionally disrupt a class with a divergent view claiming they have academic freedom to discuss the issue. Students do have a right to express viewpoints, but from the point of view of the faculty member, this behavior can also infringe on the right of the professor and the rest of the class from accomplishing the goals of the course.

Members agreed that the academic freedom of students essentially derives from the faculty themselves and the faculty code of conduct, which prohibits a faculty member from recruiting disciples to his own views. In classroom discussion students have the right to express themselves, but professors also have a right to keep a class on track.

**Action:** UCAF will continue discussion at the April meeting or when a draft is available from the special committee.

## **VI. Patriot Act and other Issues**

Last year, three divisional senates—Santa Cruz, Berkeley and Irvine—passed resolutions responding to the USA Patriot Act to safeguard academic freedom and the rights of members of the University, which prompted UCAF to submit its own resolution to Academic Council. Council endorsed the UCAF resolution and forwarded it to President Dynes, who is expected to respond soon.

UCAF supports the provision in each of these resolutions calling for a designated individual to be a clearinghouse for related government requests for information. Davis has also designated such an individual (but its Senate has not yet submitted a formal resolution). Members believe it would be valuable for CAF committees to recommend to administration that one person be responsible for collecting such data and reporting to the Senate. Additionally, if UCAF can gather solid data about the impact on the University of the Patriot Act, e.g., difficulties faced by foreign students and scholars, it can attempt to assess the impact on the entire system.

**Action:** UCAF members agreed to work with their divisions to investigate what the most appropriate mechanisms would be for monitoring Patriot Act related activities on campus. For campuses that have a policy, members will research whether the provisions have been implemented and if there are any measurable outcomes so far.

## **VII. California Institutes for Science and Innovation (Cal ISI)**

The California Institutes for Science and Innovation are multicampus industry/university research partnerships. The goal is to have the University work in collaboration with private industry to bring technology and inventions into the marketplace more quickly, which is also expected to help California's economy. The Senate has been asking for a role in the review structure for these entities, and Senate/Administration agreement on that role is still pending. Members agreed that there is a potential, in such close affiliation with industry, for pernicious pressures to arise on the university that could be harmful to academic freedom. Operating on a business model may not always be consistent with university practices in general and academic freedom in particular. In terms of publication rights and the dissemination of research, Senate involvement could create a filter to prevent exploitive contracts from getting through. UCAF is supportive of Senate efforts to involve itself. The agreement between Novartis and Berkeley may shed some light on similar arrangements at UC.

**Action:** Professor Kay will circulate the report of the external committee that reviewed the agreement between Novartis and UC. Members will also review the proposed review process for the Cal ISIs, when it is released. If the committee feels their concerns have not been addressed, they will draft a letter to academic council.

The meeting adjourned at 3:00 PM.  
Minutes prepared by Michael LaBriola  
Attest: Patrick Fox