

UNIVERSITY OF CALIFORNIA

ACADEMIC SENATE

UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM

MINUTES OF MEETING

TUESDAY, NOVEMBER 10, 2009

Attending: Raymond Russell, Chair (UCR), Ronald Amundson, Vice Chair (UCB), Gregory Pasternack (UCD), William Parker (UCI), Cameron Gundersen (UCLA), Erik Menke (UCM), Piotr S. Gorecki (UCR), Harold Pashler (UCSD), Roberta Rehm (UCSF), Vickie Scott (UCSB), Mary Beth Pudup (UCSC), Harry Powell (Senate Chair), Dan Simmons (Senate Vice Chair), Brenda Abrams (Policy Analyst)

I. Introductions and Announcements

Following introductions, Chair Russell explained committee procedures to the members. The chair emphasized the confidential nature of the committee's discussions and noted the lines of communication.

II. Academic Freedom in Shared Governance

As a result of the Hong vs. UC Regents case, there is a question about whether academic freedom exists in the context of shared governance. The committee began by reviewing the most relevant definitions of academic freedom. President Atkinson, with help from UCAF, defined academic freedom in a 2003 essay. Robert Post, a law professor at UCD, was asked by President Atkinson to draft the new policy which was adopted and incorporated into the Academic Personnel Manual at that time. UCAF felt that the policy left some questions unanswered and, in 2007-2008, drafted a statement that was submitted to Council. The purpose of the later UCAF statement is to clarify the difference between academic freedom and the freedom of speech guaranteed by the Constitution, and to describe the extent to which the Supreme Court has weighed in on academic freedom issues. Council declined to endorse the statement, describing it as time sensitive discussion of the law as it appeared to UCAF and noting that other important legal developments have subsequently occurred. The Atkinson, Post and UCAF papers all agree that academic freedom at UC is more than the First Amendment, and therefore needs more protection than that provided by the Constitution.

Discussion: Committee members agreed that academic freedom and the First Amendment are different. Academic freedom has been interpreted as faculty's responsibilities and rights in their research and teaching, which in turn confer to faculty the right to legislate within the norms of the profession, set curricular standards and standards of evaluation for faculty. Academic freedom is fundamentally related to faculty as a distinct type of labor force and the rights conferred upon faculty within the University. The Post document makes clear the big areas of academic freedom; however, it does not address the need for faculty to have administrative and budgetary control over their scholarship. The long-standing principle that the administration manages the money and the faculty manage the curriculum on parallel tracks is untenable moving forward in the current budget environment and may jeopardize shared governance.

Chair Russell provided the background on Professor Hong's lawsuit against UC and the use of the Garcetti argument in the Hong case. In the Garcetti vs. Ceballos case, Ceballos argued he was performing his job to evaluate other employees and Garcetti argued that Ceballos was participated in management for which different rules apply, but the Court specifically stated that

the ruling may not apply to academia. By using the Garcetti argument in the Hong vs. UC case, UC indicated that when faculty participate in management, it is done by the University's rules.

UCI passed a resolution in May 2008 asking the OGC not to make further use of the Garcetti argument, and UCAF considered submitting a similar letter. Representatives from the Office of General Counsel met with UCAF in March 2009 and the committee expressed its concerns about using the Garcetti argument. OGC explained that the Garcetti argument was used at the request of the individual defendants who wanted the strongest possible defense, and suggested that the APM could be amended as needed to address the shared governance component of academic freedom.

The UCD divisional committee on academic freedom is also concerned about the implications of the case of Professor Renken from the University of Wisconsin-Milwaukee. Professor Renken had an NSF grant and criticized how his department was using the grant money. In response, the department returned the grant to NSF. The professor sued arguing that his First Amendment rights had been violated. The court did not agree.

The rulings in Hong and similar recent cases have demonstrated that the First Amendment does not provide protection for academic freedom, and that the University policy about academic freedom does not address faculty speech in shared governance. In June 2009, the UCD divisional academic freedom committee chair advised faculty at that campus to be careful about their speech at faculty meetings in light of these recent court cases. The American Association of University Professors (AAUP) is encouraging universities to do more to protect faculty speech in shared governance, and has promised to issue recommendations soon regarding the wording of such protections.

The chair asked if committee members see opportunities to clarify the right of faculty to freedom of speech in shared governance by amending the APM. APM 010 currently states that "The principles of academic freedom protect freedom of inquiry and research, freedom of teaching, and freedom of expression and publication." Later sentences add that "The exercise of academic freedom entails correlative duties of professional care when teaching, conducting research, or otherwise acting as a member of the faculty. These duties are set forth in The Faculty Code of Conduct (APM 015)." The phrase "or otherwise acting as a member of the faculty" is a vague statement and members suggested different language. Some attention was given to the possibility of adding "freedom of participation in shared governance" or "freedom of departmental deliberation" to the list of freedoms that are protected by principles of academic freedom. A member noted, however, that such language does not address how funds are managed. It was suggested that adding language about "administrative activities" might cover that. Some members felt that such details would be more appropriate in a discussion of shared governance than in a definition of academic freedom.

The committee agreed to review the upcoming AAUP recommendations when they become available, and to consider this issue again at the March meeting. It was noted that the experience of shared governance may be different across the campuses. Members discussed whether the policy needs to clearly cover decisions made collectively by departments.

III. Consultation with the Academic Senate

- Harry Powell, Academic Senate Chair
- Dan Simmons, Academic Senate Vice Chair

Chair Powell remarked that the Hong case could create a climate where there is reluctance to participate in shared governance. It is important for faculty to understand the protections that are in place. Chair Powell noted that faculty are questioning whether shared governance failed during discussions about the budget cuts with the administration, remarking that shared governance is not in a state of disrepair. The administration has made a commitment to consult with the Senate. UC's Senate is working with the senates of the community college and state university systems to advocate collectively for public higher education. The UC Commission on the Future has a broad range of participants and Senate membership was expanded. The Senate will comment on the Commission's recommendations.

Discussion: Chair Powell agreed that speech in administrative consultation with faculty outside of privilege and tenure issues is protected by academic freedom. Seminars about specific cases could be held at the campuses. Vice Chair Simmons recommended looking at the Faculty Code of Conduct to determine if language should be added to address administrative consultation. A committee member raised the issue about budget decisions having an impact on curriculum and indicated that the administration should acknowledge this. Faculty at all the campuses need access to information about the budget, including the impact on academics caused by the disestablishment of programs. At UCSC there is a proposed policy to give deans power to consolidate or disestablish programs. The Regents gave faculty the right to participate in shared governance and administrators need to be reminded and educated about this. According to Chair Powell, the President has consistently stated that the furlough program will end in August 2010. Although the furlough program was implemented on a systemwide basis, the President is interested the letting campuses take steps they deem necessary to handle the budget.

IV. Implementation of RE 89

Chair Russell provided the committee with background on RE 89. The Regents required campuses to set up committees to give special scrutiny to proposals that utilize funding from the tobacco industry. UCAF sent letters to the University Committee on Research Policy and the University Committee on Committees recommending there should be Senate involvement in the appointment of campus review committees. It is not clear whether UCOC has responded.

Discussion: The proposed ban on tobacco funding was a direct threat to academic freedom. It would have also paved the way for restrictions on other types of funding. The compromise policy did not bar faculty from seeking funding from the tobacco industry for their research, and instead required such proposals to receive special scrutiny. The Council and the Assembly both voted on the tobacco funding issue. That no new proposals for funding were received in the first twelve months after RE 89 was passed indicates that the new procedures have discouraged UC researchers from seeking funding from the tobacco industry.

Action: The chair will write a letter that consolidates the UCAF and UCORP recommendations into a new letter to UCOC.

V. Legal Fees for Faculty Accused of Misconduct in Research

UCAF met with OGC last year to discuss the issue of legal fees for faculty accused of misconduct. A draft set of these guidelines has not been provided, but there are guidelines for reimbursing legal fees for whistleblowers.

Discussion: Members agree that the whistleblower policies are a good model for guidelines for reimbursing fees for faculty accused of misconduct in research. When there is an allegation of

misconduct in research, there is a faculty committee that investigates the allegations and lawyers are not involved at this phase. The committee agreed that this issue is broader than AF and that a letter will be sent to UCFW stating this.

VI. Research Using Animal Subjects

The chair of UCFW asked UCAF to discuss the attacks on researchers who use animal subjects. There are no recent incidents involving animal rights activists, but it is an academic freedom issue that committee members should monitor at their campuses.

Discussion: Because researchers who use animal subjects have recently been targets of especially high levels of harassment, threats to their academic freedom merit special attention. A member asked if there is pressure related to other sensitive issues, and suggested that UCAF should also monitor them. The list could include issues like climate change, the Israel and Palestine issue, and any unreasonable pressures put on faculty to refrain from or modify their research activities or controversial political views. It was noted that a situation where administrators impose policies on faculty research that are a burden should be avoided. Members should encourage their local committees to monitor all of these issues.

VII. Report of the Undergraduate Educational Effectiveness Task Force

The report by the Undergraduate Educational Effectiveness Task Force has been sent out for systemwide review.

Discussion: There is a question about whether faculty are being asked to evaluate how well their colleagues teach. Existing program reviews do not use metrics. The mastery of a subject can be assessed by looking at exams. The effectiveness of the program to increase the students' ability to confront a new situation is being assessed. Chair Russell indicated that the academic freedom could be limited if faculty are told how to teach. Members discussed whether an additional layer of assessing student learning is needed since faculty are already doing many things. Another issue is that faculty do not have the resources to implement new types of assessment.

Action: The chair will write a letter stating that faculty should continue to bear primary responsibility for assessing other faculty, and that assessment should work within existing mechanisms.

VIII. Proposal for Differential Fees by Major

The chair wanted the committee to have the opportunity to review the proposal for differential fees by major. Academic freedom could potentially be impacted if students decide against studying certain majors because of the higher costs.

Discussion: It may be reasonable for fees in certain disciplines to be higher when faculty in those disciplines are paid more. Academic freedom may be impacted if implementation is done in a way that results in programs being cut. Differential fees might be expanded to other majors. Chair Russell noted that the committee does not have to comment on the proposal if it deems that the academic freedom issues are not significant. The committee voted unanimously to not opine on the proposed differential fees by major.

IX. Campus Reports and Member Items

San Diego: The campus policy on public events has been revised. A number of individual cases have been referred to the CAF.

Santa Cruz: A controversial policy governing the establishment and disestablishment of departments has been proposed which establishes some new powers for deans. It also changes how things are done by allowing the deans to initiate the process of closing programs.

Los Angeles: The issue of research using animal subjects will be considered and a statement about it will be produced. The representative mentioned also that a student at UCLA signed a confidentiality agreement with the source of research funding.

Santa Barbara: There was case involving one faculty member. The case was considered by the Council on Faculty Issues and Awards which also handles academic freedom and faculty welfare issues. There will be a discussion about whether this committee should be separated into individual committees.

Irvine: At UCI, academic freedom and faculty welfare are the responsibility of a single committee. All of the issues discussed by UCAF today are construed by UCI's committee as faculty welfare issues rather than academic freedom issues.

San Francisco: There will be a symposium at UCSF in January focusing on "Academic Freedom in an Era of Industry Collaboration."

Riverside: A question about whether preventing faculty from taking furlough days on days of instruction is a violation of academic freedom is being considered.

X. New Business

There was no new business.

XI. UCAF Goals for 2009-2010

Members should think about UCAF's priorities for this year. Several issues discussed today will be looked at again including defining academic freedom, external threats to academic freedom, and RE 89 review committee membership.

Discussion: Other topics include the impact of the budget decisions on the curriculum and the UC Commission on the Future report. Exploring whether students are signing confidentiality agreements with the research funding source will also be discussed.

Meeting adjourned at: 3:30 p.m.

Minutes prepared by Brenda Abrams

Attest: Raymond Russell