

UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM

MINUTES OF MEETING  
THURSDAY, APRIL 5, 2007

**Attending:** Jerold Theis, Chair (UCD)

Ronald Amundson (UCB), Chris Connery (UCSC), Albert Lin (UCD), Paul Amar (UCSB), Janice Plastino (UCI), Miriam Kupperman (UCSF), Marthine Satris (Graduate student rep-UCSB), Max Besbris (Undergraduate student rep-UCB), John Oakley (Academic Senate Chair), Michael LaBriola (Senate Analyst)

**I. Chair's Announcements – Jerold Theis**

In December, UCAF relayed a concern to Council Chair Oakley that the California Public Records Act was being interpreted to exclude UC faculty as “members of the public” eligible to make requests for public records under the act. The UC General Counsel has contacted the California Attorney General’s office for a ruling.

Council is expected to review UCAF’s Student Freedom of Scholarly Inquiry Principles in April. Professor Patrick Fox, UCAF’s liaison to the Student Academic Freedom Work Group, put finishing touches on the document after final consultations with UCAF members and with a small group composed of UCEP and CCGA members, who met in March to ensure that UCAF’s document and the joint UCEP/CCGA report *The Role of Graduate Students in University Instruction* were consistent and aligned.

Academic Council declined UCAF’s request to endorse and forward to Senate divisions the educational document the committee finalized in March entitled *Academic Freedom: Its Privilege and Responsibility within the University of California*.

Chair Theis reported that Raphael Zidovetzki (UCR) had been appointed 2006-07 UCAF vice chair and would serve as UCAF chair in 2007-2008.

**II. Consent Calendar**

**Action:** UCAF approved the draft minutes of November 7, 2006.

**III. The Regents’ Proposed RE-89 – Adoption of Policy Restricting University Acceptance of Funding From the Tobacco Industry**

The Regents asked the Senate to clarify its position on a proposal to ban the acceptance of funding from the tobacco industry for University research. Faculty opinion is divided between those who view the principles of academic freedom as the highest concern and those who are uncomfortable with the unethical practices of the tobacco industry.

UCAF voted to oppose RE-89 by a vote of eight to zero with one abstention. (Two committee members who were not present submitted their vote by email before the meeting.) One member

noted that many Health Sciences faculty support the ban because they believe the mission of a Health Sciences campus is incompatible with the mission of the tobacco industry.

Chair Theis asked members to review a draft UCAF response to RE-89. He noted that the views of UCAF members do not necessarily have to reflect the views of their divisions or divisional committees. He added that the charge of UCAF is to defend the University from threats to academic freedom and to provide a systemwide perspective on academic freedom issues.

UCAF modified the memo to strengthen and clarify the arguments, to focus on the academic freedom concerns rather than shared governance concerns in RE-89, and to eliminate language that might be perceived as inflammatory.

It was noted that a ban on tobacco industry funding would establish a dangerous precedent that could lead to similar bans being proposed on funding from other specific industries and corporations, based on political, moral, health, or other considerations. Members agreed that such bans stifle the freedom of faculty to conduct research and advance knowledge. In addition, it would be complicated, if not impossible, to enforce a ban on tobacco company money.

The committee added language noting that concerns over inappropriate influences in research are fully and adequately addressed by the Faculty Code of Conduct (APM 015), which cites two specific obligations of a faculty member relevant to potential problems RE-89 seeks to address: the responsibility of the faculty member to speak the truth about a subject as he or she sees it, and the obligation to practice intellectual honesty. APM 015 is a safeguard already in place that prevents faculty research from being co-opted.

**Action:** UCAF will circulate and approve a revised memo and submit to Academic Council.

#### **IV. Systemwide Review of a draft UCOP Proposal on the Relationships Between Pharmaceutical Vendors and Clinicians**

UCAF reviewed a proposed UCOP policy, “Proposed Guidelines Regarding Vendor Relations.” Academic Council also asked for comment on three additional proposed policies:

- i. Faculty may not publish articles or editorials that are ghostwritten by vendor employees:
- ii. “No strings attached” grants or gifts directed to individuals from vendors shall be prohibited (this excludes competitive grants).
- iii. All consulting agreement and unconditional grants shall be publicly listed (e.g., on an internet web site).

UCAF focused its discussion on the three additional proposed policies, strongly opposing item ii, and finding the other two inoffensive, but also redundant with current policy and thus unnecessary. UCAF concluded that item ii., prohibiting faculty members from accepting no-strings-attached monetary gifts or grants from a pharmaceutical vendor, could be a serious blow to the freedom and ability of UC faculty to conduct research.

UCAF noted that sufficient mechanisms, protocols, and safeguards are already in place on the individual campuses and in systemwide regulations to ensure ethical practices and prevent conflicts of interest. Current UC policy requires “no strings” grants to go through the same

sponsored projects firewalls as other proposals. Item i, which would prohibit faculty from publishing articles or editorials that are ghostwritten by vendor employees, is redundant as such behavior is already prohibited in the Faculty Code of Conduct.

UCAF was concerned that the proposal as written would prohibit most casual interactions between clinicians and vendors and impose an unnecessary layer of bureaucracy and micro-management onto those interactions and the acceptance of even small gifts. Although there are legitimate concerns about the influence of pharmaceutical vendors on individual faculty as well as more general concerns about the privatization of the University, limiting faculty freedoms in this way deflects from real threats and conflict of interest issues. Moreover, it is difficult to imagine a fair and practical policy that would effectively regulate gifts of pens and calendars.

In addition, UCAF noted that item iii appears to contradict item i, if the “unconditional” grants noted in i are assumed to also be no-strings-attached grants. Such grants would be prohibited in item i, yet item iii requires that they be publicly listed along with consulting agreements.

**Action:** UCAF will submit the above comments to Council.

#### **V. Review of Misconduct in Research Data received from Research Integrity Officers**

In February, UCAF asked campus Research Integrity Officers for data on the number of misconduct in research charges filed in 2005-06 and whether campus policies contain provisions for reimbursing the legal expenses of faculty who are accused of misconduct but later found innocent. All but two RIOs responded. No campus reported having a policy to reimburse innocent faculty members for legal fees.

Chair Theis noted that legal expenses are significant for accused faculty members, who, in some cases, may be targets of personal retaliation or attacks. It is also an issue of academic freedom when unfounded complaints about misconduct intimidate faculty into curtailing research activities. The number of individuals accused of misconduct is small, and reimbursement of legal fees for the innocent will not constitute a great burden on the University’s budget.

UCAF members agreed that it should be University policy to reimburse any legal fees incurred by faculty members who are found innocent of accusations of misconduct. There was also some support for asking the University to provide a legal insurance policy that would cover fees of all faculty members, independent of the outcome of a legal action. The committee decided that having more information about the viability of such a program would be useful, but conducting a study was outside the central purview and expertise of UCAF. The Committee will suggest that other agencies within the Senate or the University conduct a study about the cost and viability of a legal insurance program.

**Action:** UCAF will submit comments to Council.

#### **VI. Consultation with Senate Chair John Oakley**

Academic Senate Chair John Oakley joined the meeting. He noted that Council declined UCAF's request to circulate the Committee's Academic Freedom Paper to divisions. He said Council members appreciated UCAF's efforts, but felt it was the wrong time to distribute a particular vision of academic freedom at a time when issues like RE-89 are under systemwide review.

He encouraged the committee to pursue actions and initiatives that address threats and potential threats to academic freedom. He said those issues should not be approached on an anecdotal basis, but should be supported with strong empirical evidence of systematic problems. UCAF can act as a kind of early warning system for academic freedom concerns.

The new chair of The Regents is San Francisco financier Richard Blum. The Senate, Regents, and Administration are working together to implement a re-organization of the Office of the President to maximize transparency and accountability, particularly around budget and compensation practices. Senate leaders are committed to maintaining the academic character of the University's leadership and are resisting any effort to impose a corporate model of management onto UC.

Chair Oakley said the Senate is essentially a parliamentary system, in which the Senate leadership does not speak for the Senate as much as the Senate speaks through the leadership. This leadership is effective only when they have the full confidence of the faculty.

## **VII. Assessing Shared Governance in Privilege and Tenure Decisions and “Collegiality” as a Factor in Personnel Reviews**

UCAF discussed a concern that “non-collegiality” has been used in some cases as a factor in the evaluation of faculty for merits and promotions, although “collegiality” does not appear in the APM advancement criteria, which state that reviews should be based on research, teaching, and service. In addition, there is at least one case, at Davis, in which a Privilege and Tenure Committee decision was overturned by the administration.

Chair Theis contacted the UCAP chair to ask if CAPs consider “collegiality” in personnel actions. UCAP members could not recall a case where a CAP recommended denial of a merit or a promotion based solely on lack of “collegiality.” The UCP&T chair was also contacted for data on cases in which administrators have overturned P&T committee decisions. UCP&T forwarded the annual divisional P&T surveys covering 2002-2006. The survey notes the number of filed grievances, discipline cases, and early termination hearings on each campus. However the chairs of UCAP and UCP&T both noted that their annual survey does not collect the type of data requested by UCAF.

Chair Theis noted that the use of “collegiality” as a CAP criterion is an academic freedom issue because its use could have an effect on personal expression and speech. However, there is insufficient data to conclude with certainty whether it is a local issue or a systemwide problem. “Collegiality” appears to be employed as a factor in review by CAPs on some campuses, although it is not well grounded in the APM and the term has not been adequately defined. Faculty deserve to know what criteria they are judged on, whether “collegiality” is one of those criteria, and if so, what is meant by “collegiality.” Although there is no evidence of a widespread problem, the potential for abuse exists.

**Action:** UCAF will recommend that the Senate look at collegiality and consider a systemwide policy for use of the term.

### **VIII. Proposed Open Access Policy**

UCAF reviewed a proposed UC policy that would grant permission to The Regents to make published faculty research available in an open-access online repository of scholarly publications. Proponents from both the Senate and administration believe the policy will help maximize the dissemination and impact of UC faculty scholarly work. The policy will allow faculty to retain individual copyright while giving publishers non-exclusive rights to published work. Faculty members may opt out of the policy.

In general, UCAF supported the policy as consistent with academic freedom. The committee focused discussion on the most preferable opt-out option. UCAF decided option “C,” the notification-based option, was best from the academic freedom perspective. Options A and B, which require consultation with a UC campus “open access agent” (UC-OA), could impair a faculty member’s ability to publish in a journal. Members felt the burden should not fall on individual faculty members to work with a local agent.

The committee also raised a concern about the implementation topic “Recording access characteristics of faculty publications.” Some members felt that requiring faculty members to submit a list of published works appearing in open access repositories as well as the identity of the repositories, could constitute intimidation.

**Action:** UCAF will send comments to Council.

### **IX. Researching the Status of Instruction and Research (I&R) Funding**

Chair Theis reported that he is researching the distribution of state funds earmarked for faculty Instruction and Research (I&R) at Davis, which he noted are being used for administrative purposes rather than their intended purpose as discretionary funds for faculty research. Academic freedom without fiscal independence is an empty shell. The University had an obligation to protect the financial independence of its faculty. He encouraged UCAF members to research the issue locally.

### **X. Campus Reports**

**Santa Barbara.** The CAF has been discussing the impact of the USA Patriot Act on foreign students and scholars at UCSB, and the library. The UCSB Center for Middle East Studies recently lost funding from the federal government, raising concerns about the politicization of research and leading some to call for the creation of an autonomous state funding mechanism for Area Studies education and research.

**Irvine.** Academic Freedom is a subcommittee of the Committee on Faculty Welfare. The subcommittee has been discussing Institutional Review Boards, the erosion of UC benefits, and the salary scale system. The UCI Senate is discussing the formation of a new Ethics Committee.

**Davis.** CAFR is discussing a complaint from a medical school researcher against a department chair who refused to sign a grant because the research was deemed to be outside the department's priorities.

**Berkeley.** The CAF released a report about a pending energy research partnership agreement between UC Berkeley, BP Oil, LBNL, and the University of Illinois. The report addressed the concerns of faculty who believe the agreement weakens shared governance and faculty who oppose University-Industry contracts. CAF supported the right of Berkeley faculty to participate in the consortium, while acknowledging concerns about faculty participation in the conception and development of the agreement. CAF's chair and other Senate chairs were subsequently invited to participate in the contract negotiation process. In addition, the UCB Senate chair requested a blue ribbon panel to discuss shared governance protocols for future agreements.

**Santa Cruz.** The CAF wants to address what it perceives to be a general sense of uncertainty at UCSC about the meaning of academic freedom. CAF is planning a series of events to promote more understanding, including a lecture by Robert Post and a discussion of electronic surveillance and privacy with Columbia Law Professor Eben Moglen.

**San Francisco.** CAF is organizing a Symposium on the Politicization of Science. Paul Berg, Nobel Laureate at Stanford University, has agreed to speak at the Symposium.

**Undergraduate Student Representative.** Students at UC Berkeley are concerned about the energy research partnership agreement with BP.

The meeting adjourned at 3:00 PM

Minutes prepared by Michael LaBriola  
Attest: Jerold Theis

**Distributions:**