

UNIVERSITY OF CALIFORNIA

ACADEMIC SENATE

UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM

June 18, 2008 Teleconference Meeting Minutes

Attending: Raphael Zidovetzki, chair (UCR); Patrick Fox, vice chair (UCSF); Paul Amar (UCSB); Karen Bassi (UCSC); Ethan Bier (UCSD); Raymond Russell (UCR); Eugene Volokh (UCLA); John Tan (Graduate Student, UCD); Michael LaBriola (Committee Analyst)

I. Consent Calendar

- Draft minutes of December 18, 2007

ACTION: UCAF approved the minutes.

II. Implementation of RE-89 – Restrictions on Tobacco Company-Funded Research

ISSUE: At its September 2007 meeting, the Board of Regents approved a [compromise version](#) of RE-89, which does not prohibit faculty from accepting funding from tobacco-affiliated companies, but which requires each campus chancellor to establish a scientific review committee to advise the chancellor about any such funding proposal. The chancellor is required to approve proposals prior to submission to funders on the advice of the review committee, which RE-89 notes should be drawn from the community of scholars and consist of at least three faculty members with relevant expertise. In December, UCAF expressed concern that the policy still interferes with the authority and autonomy of faculty to conduct research, and is contrary to academic freedom principles, but UCAF decided to table the issue until more details about implementation plans became known. In February, President Dynes sent a memo to the chancellors asking them to establish implementation procedures for RE-89 and recommending a model for the local review and approval process mandated in the policy.

Chair Zidovetzki suggested that UCAF send a resolution to Academic Council voicing strong opposition to the new review scientific review process structure.

DISCUSSION: Vice Chair Fox noted that it is important for UCAF to voice opposition, but perhaps more important is that members and local CAFs monitor what is happening on individual campuses. He said at UCSF, no specific procedures have been established for implementing RE-89 yet, but a specific administrator in the office of the vice chancellor for research has been assigned the responsibility. One member suggested that UCAF delay acting until the beginning of 2008-09 to see how the divisions implement RE-89, but others felt it was better to act now.

UCAF should reiterate its opposition to RE-89, but given that it is now UC policy also suggest an implementation protocol that will help soften its impact on academic freedom. UCAF should request a specific role for the Senate in the composition of local review committees – specifically, ex-officio representation from divisional CAFs, and chancellors should select faculty for the review committees only after consultation with the Committee on Committees.

UCAF will also suggest that it monitor implementation with the help of local academic freedom committees; collect data on campus implementation procedures; identify potential problems; and, on an ongoing basis, examine actions of local review panels and report findings or problems back to Academic Council.

ACTION: UCAF will submit a resolution to Council. Members will research implementation progress on each campus.

III. Update on UCAF's Request for a Council Seat and a Two-Year Chair

ISSUE: Earlier in the year, UCAF sent a memo to Academic Council requesting a seat on Council and a change to the committee bylaw that would require a two-year UCAF chair. In May, Council decided to send the issue out for systemwide Senate review. UCAF members were asked to encourage their divisional chairs to endorse the change.

IV. The Use of "Collegiality" in the Academic Personnel Process

ISSUE: Last year, UCAF asked Council to investigate the use of "collegiality" in the evaluation of faculty for merits and promotions and its effect on academic freedom. Council asked the University Committee on Academic Personnel (UCAP) and the University Committee on Privilege and Tenure (UCPT) to comment. After considering their responses, Council agreed that "collegiality" should not be used as a formal criterion in personnel reviews and that all faculty should be made aware of their responsibility to participate in civil discourse. Council also noted that it would be impossible to form a consensus about what constitutes non-collegial or disruptive behavior, and said that UCAF's request for CAPs to "suspend the use of collegiality" in evaluations was unwarranted.

DISCUSSION: There was a question about how the review might impact the case of a faculty member who was allegedly denied promotion due to non-collegiality. It was noted, however, that UCAF's original query and the review memos both addressed the general issue, and it would be inappropriate for UCPT or UCAP to opine on a specific case.

Council says collegiality should not be used; UCAP says that there is no basis to "suspend" its use because it never has been used. The former is prospective, the latter is retrospective. There is some ambiguity and the agreement between the two positions should be made clearer.

UCAF members noted a contradiction between the Council and UCAP letters, which they felt illustrated and emphasized the ambiguity of the term "collegiality." Council maintains that "collegiality" should not be used as a formal criterion in personnel reviews, while UCAP says there is no basis for CAPs to suspend the use of collegiality in the evaluation of candidates. The contradiction needs to be reconciled. Because the term is so ambiguous, it should not be applied either as a specific term or a general concept. In a new memo, UCAF will point out this contradiction, highlight Council's position, make the statement that collegiality should not be used as a criterion, and request a clarification from UCAP as to why it says there is no basis to suspend the use of collegiality.

ACTION: UCAF will send comments to Council.

V. Academic Freedom Paper

ISSUE: In December, UCAF decided to resubmit its paper *Academic Freedom: Its Privilege and Responsibility within the University of California*, to Academic Council. Senate Chair Brown advised UCAF to first identify redundancies with President Emeritus Atkinson's accompanying [paper](#) to APM 010, to make improvements, and to articulate clearly how its paper adds value to the understanding of APM 010 beyond the information presented in the Atkinson paper.

DISCUSSION: Members noted that the UCAF paper differs from the Atkinson paper in that it provides more detail about the legal basis for academic freedom, describes the current state of First Amendment law, and clarifies the distinction between academic freedom and freedom of speech rights. The Atkinson paper discusses academic freedom only, rather than the constitutional protections that accompany it.

There were suggestions to remove or modify sections two and three, shorten the section on the history of academic freedom, change the title of the paper, and add a preamble about UCAF's intent to summarize the current state of the law. In its cover memo, UCAF should note that it has responded to Council's feedback by improving the paper and editing out redundancies with the Atkinson document. UCAF also views the paper as a living document that the committee will update regularly with the emergence of new relevant case law. The preamble should note that the paper is not intended to be a legal document or to give advice. Instead, UCAF wants to provide information about the law to help the professoriate be more informed about the topic.

ACTION: UCLA representative Volokh will revise the paper to address the suggestions.

VI. Campus Reports

San Diego: There have been concerns at UCSD that provisions in a draft campus security policy, "PPM 510-1, Section IX," would limit academic freedom and free speech. That policy is being revised, and CAF will forward any additional concerns to UCAF for discussion in the fall. CAF is also seeking more details about *Hong vs. UC Regents*, and is concerned about arguments coming from UC Counsel about the case that faculty speech uttered in the context of shared governance is not protected by free speech and academic freedom.

Many feel the *Hong* case, if lost, would damage the principle of faculty self-governance. It was noted that the case is a legitimate concern, but UCAF should bear in mind that the committee's charge is to examine the structural and organizational issues that impinge on academic freedom more than individual cases.

San Francisco: The UCSF CAF is concerned about a number of cases in which faculty with overdrafts on extramural funded projects have been asked by the department chair to compensate the department for those overdrafts with salary money. CAF is seeking a policy clarification. UCAF members noted that the practice should be stopped, but it could be more of a faculty welfare issue, although there were other factors, including threatened separation, which may make it an academic freedom issue.

Los Angeles: Animal rights activists are harassing animal research scholars with violence, threats of violence, and vandalism at UCLA and other UC campuses. There have been complaints about inadequate protection, but so far it appears that the University is doing what it can. In addition, student members of CAF recently developed a statement on student academic freedom.

Minutes prepared by: Michael LaBriola
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