

UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM

MINUTES OF MEETING

TUESDAY, NOVEMBER 7, 2006

Attending: Jerold Theis, Chair (UCD)

Albert Lin (UCD), Ethan Bier (UCSD), Janice Plastino (UCI), Raphael Zidovetzki (UCR), Miriam Kupperman (UCSF), John Oakley (Academic Senate Chair), Michael Brown (Academic Senate Vice Chair), Marthine Satris (Student Rep-UCSB), Max Besbris (Student Rep-UCB), Michael LaBriola (Senate Analyst)

I. Chair's Announcements – *Jerold Theis*

Chair Theis welcomed UCAF members and reviewed the [charge](#) of the committee. The members introduced themselves.

II. Consent Calendar

Action: UCAF approved the draft minutes of April 25, 2006 and the 2005-2006 UCAF Annual Report.

III. Academic Freedom Educational Materials

Chair Theis asked UCAF to review former UC President Atkinson's paper "[Academic Freedom and the Research University](#)," written shortly after the Assembly passed a revised policy on academic freedom in 2003. The paper describes the meaning and implications of APM 010 in a philosophical and historical context.

The chair then asked the committee to review his own draft paper, "Academic Freedom: Its Privilege and Responsibility within the University of California." The paper presents a legal history of academic freedom in the United States, California, and the University of California; it outlines the responsibilities of the professoriate within their academic freedom privilege; and clarifies the difference between faculty freedoms within the classroom and their First Amendment rights as private citizens.

Chair Theis noted that many faculty and students do not fully understand the meaning of academic freedom. He proposed that UCAF ask Academic Council to distribute both papers to the divisional Senates along with a recommendation that divisions post the documents on Senate and/or campus websites as educational tools to promote more understanding and awareness of academic freedom.

UCAF members suggested new language for the sections describing foundational Supreme Court cases and opinions and decided the committee memo should also recommend that the document be included in the start-up materials new professors receive at training seminars or elsewhere, and that each Regent be supplied with a copy.

Action: After UCAF members review changes to the academic freedom paper with their divisional committees, the committee will forward the document to Academic Council with the above noted requests.

IV. Student Freedom of Scholarly Inquiry Principles

UCAF reviewed comments submitted to Academic Council by systemwide committees and divisions during the systemwide review of UCAF's *Student Freedom of Scholarly Inquiry Principles*. Council had asked UCAF to consider the comments, and if necessary, to respond with a modified document.

The *Principles* document was produced by a systemwide Work Group established to discuss the issue of academic freedom for students. The Work Group was led by former UCAF chair Patrick Fox. UCAF reviewed a revised draft from Professor Fox that incorporated committee and divisional comments. UCAF discussed several of these revisions, including:

- A recommendation from UC Irvine to add exception language relating to the limitations of a student's freedom to conduct graduate thesis or dissertation research. UCAF agreed with Professor Fox's suggestion to add the UC Irvine exception language in Footnote 7 of the Principles. One member suggested that the practice at UCSD of pooling graduate support grants and fellowships could represent a conflict with the UCI addition, but the committee decided this was not an academic freedom issue.
- A new footnote in response to UCORP's request for clarification of student "intellectual property rights" in the context of "generally accepted standards of attribution." UCAF decided to retain the concept of "intellectual" rights to reflect the faculty's responsibility for protecting the intellectual contributions of students in terms of attribution given them in encouragement of their research and creative activities.
- A recommendation from the Coordinating Committee on Graduate Affairs (CCGA) that a small work group of CCGA, UCEP, and UCAF members meet to ensure that the language in the UCAF Principles and in the UCEP/CCGA [proposed policy](#) on the use of graduate student instructors was consistent and aligned.
- A recommendation from UC Los Angeles for new language emphasizing the responsibility of faculty for protecting student freedom of scholarly inquiry.
- Other minor edits to the language of the document to ensure clarity and consistency.

Action: UCAF will inform Professor Fox of UCAF's discussion and review future revisions to the document over email. Chair Theis will send a memo to Council endorsing CCGA's recommendation for the work group and nominating Patrick Fox to serve as UCAF's liaison.

V. Consultation with Senate Leadership – John Oakley and Michael Brown

Academic Senate Chair John Oakley and Vice Chair Michael Brown joined the meeting and thanked UCAF members for their volunteer service to the Senate. Chair Theis asked Chair Oakley to comment on three topics:

1. The current relationship between The Regents and the President of the University

Chair Oakley noted that after a year of heated public criticism about UC compensation policy, the leadership of the University was working together to push forward a broad program of change and re-organization to increase transparency and accountability.

After the media reported last year that some elements of UC senior executive compensation packages were not being included in Regents' reviews, The Regents commissioned a series of audits and are implementing a program of reform, which includes the creation of two new positions within UCOP to oversee non-academic functions. The Senate leadership and The Regents agreed that solving the University's systemic issues was of primary importance.

2. The status of the 2006-07 Office of the President budget and whether budgets for the University as a whole are available in writing

Chair Oakley noted that a written budget for the Office of the President exists and will be publicly available after discussion at the November Regents meeting. He said a culture of transparency around budgets has not always existed at UCOP, but that UC has entered a new era of greater transparency.

3. The view of Academic Council on approaching the Regents with suggestions for strengthening shared governance

Chair Oakley noted that shared governance is strong at the systemwide level. The Senate has excellent relations with both The Regents and the president. The chair and vice chair serve as Faculty Representatives to the Board of Regents and are members of all Regents committees. He said the Senate leadership is committed to maintaining the academic character of University leadership and will resist any efforts to impose a corporate model of management on UC.

He added that the quality and strength of shared governance at the divisional level was not consistent. He noted that if a division initiated a broad effort to document abuses of shared governance to the systemwide Council, it would take the necessary steps to seek a resolution.

Chair Oakley outlined a few other issues facing the Senate and the University in 2006-07:

1. Continued discussion of The Regents' interim senior management compensation ["slotting"](#) plan and the potential effect of campus stratification on the UC system.
2. Continued discussion of executive and faculty compensation, total remuneration, and the erosion of benefits.
3. Implementation of the Senate's Memorial to the Regents urging the elimination of non-resident tuition for academic graduate students.
4. Further discussion and implementation of [UCAP's recommendations](#) for the return of a more consistent and meaningful salary scale system.

Chair Oakley added that the Senate is essentially a parliamentary system. He and the vice chair are responsible for accurately reporting the views of the faculty to the administration and the Regents. This leadership is effective only when they have the full confidence of the faculty.

UCAF members noted that UC will struggle to maintain its excellence if the state gives it budgets that are below par with comparable institutions.

VI. “Collegiality” as a Factor in Personnel Reviews

Chair Theis reported that there have been cases in which “collegiality” was used as a factor in the evaluation of faculty for merits and promotions. He said CAPs and administrators have viewed allusions to “cooperation” appearing in the Faculty Code of Conduct and elsewhere as indicators that collegiality can be considered in reviews, although collegiality does not appear in the APM criteria for advancements, which states that reviews should be based on the quality of research, teaching, and service. UCAF members expressed concern and decided the committee should research the issue further with the help of local CAP committees and UCAP.

Action: Chair Theis will contact the chair of UCAP to ask if CAPs consider “collegiality” a legitimate factor in merit and promotion evaluations and actions.

VII. Assessing Shared Governance in Privilege and Tenure Decisions

Chair Theis noted that he is aware of at least one case in which a decision by a Senate Privilege and Tenure (P&T) committee has been overturned by the administration. He said such actions threaten shared governance and academic freedom. The chair requested that UCAF members ask local P&T committee (without asking for information that could reveal the identity of individual faculty) for examples of cases in which administrators have overturned P&T committee decisions. Chair Theis will also contact the UCPT chair.

Action: UCAF will gather data in time for the next meeting.

VIII. Researching the Status of Instruction and Research (I&R) Funding

Chair Theis noted that state funds earmarked for Instruction and Research (I&R) used to go directly to individual faculty members, but that system has eroded to the point where individual faculty members receive very little, if any, of those funds. He asked UCAF members to request detailed data from campus administrators about what part of I&R funding is used for administrative purposes and what part is distributed to departments. The chair said money intended to support faculty should not be used for administrative purposes. It prevents faculty from pursuing research without relying on outside funding sources. Academic freedom without fiscal independence is an empty shell, and the University had an obligation to protect the independence of its faculty.

UCAF members decided that however important, the issue was ancillary to the main charter of the committee, and it would be more appropriate and effective for another committee or perhaps the larger Senate to investigate the matter. One member noted that the I&R issue is a narrow piece of a much larger problem—the lack of a transparent accountability structures for dispersing discretionary state funds among the campuses.

IX. Online Publications

Chair Theis asked UCAF members to consider whether the growing numbers of online publications that bypass traditional peer review channels threaten academic freedom or represent an expansion of academic freedom. He said faculty who publish online may come under attack by members of the public who lack the expertise of faculty peers.

UCAF members noted that academic freedom includes the freedom to publish. A faculty member under review for promotion or tenure may submit published research that has appeared in a variety of publications— national peer reviewed journals, non-peer reviewed online journals, and even non-traditional sources like Web blogs. In all cases, faculty specialists in the department and academic personnel committees evaluate the scholarly value of the work as it pertains to the promotion decision.

X. California Public Records Act

UCAF learned that the California Public Records Act (CPRA) currently excludes UC faculty as “members of the public” eligible to make requests for public records under the act.

The problem was first brought to the attention of the UCSD Committee on Academic Freedom by Nora Gordon, an assistant professor in Economics at UC San Diego, who was denied access to information from a California public school district based on section 6252b of the CPRA, which excludes California state employees as “members of the public.”

UCAF agreed with Dr. Gordon that excluding UC faculty from the right to obtain information about public institutions under the CPRA represents an intrusion on academic freedom. UCAF agreed to bring the matter to the attention of the Academic Council and to urge the University to work with the legislature to amend section 6252b so that researchers at public institutions of higher education would no longer be denied access to public records.

It was noted that the California legislature excluded themselves from the law by passing Section 6252.5, which states: “Notwithstanding the definition of ‘member of the public’ in Section 6252b, an elected member or officer of any state or local agency is entitled to access to public records of that agency on the same basis as any other person.” UCAF members felt UC faculty should have this same exception.

Action: A motion carried unanimously for UCAF to send comments to Council asking Council to bring the matter to the attention of the Office of the President and the state legislature so that an exception to the CPRA can be made for researchers at public institutions of higher education.

XI. UCORP’s Report on Institutional Review Boards at UC

UCAF reviewed UCORP’s report, [*Institutional Review Boards at UC: IRB Operations and the Researcher’s Experience*](#). The study was prompted by concern (expressed in UCAF and elsewhere) that IRBs are straying beyond their charge to protect the safety and confidentiality of human subjects into inappropriate interference into research methodology and research quality

UCAF members agreed that meaningful evaluation of research protocols by IRB committees is critical for the protection of human subjects. They noted a number of common complaints: IRBs that spend too much time on questions of methodology rather than of issues of safety and protection; IRBs that apply medical protocols inappropriately to Social Science research; unreasonable delays in IRB approvals; and the lack of structure that allow faculty to appeal IRB decisions.

UCAF concurred with the majority of UCORP's recommendations, particularly the recommendation to establish new mechanisms for increased local faculty oversight. They viewed as critical the need for UC to increase IRB accountability by instituting formal structures and procedures that would allow faculty to register complaints or challenge the decision of an IRB through an independent body; new Senate oversight bodies to evaluate IRB operations; and new annual reporting procedures. UCAF felt that local senate research committees could be charged with reviewing IRBs and reporting to the appropriate agencies in Washington who have direct oversight.

UCAF also felt that UCORP's recommendation for more funding support for IRBs was stated too broadly, because it was not clear to UCAF that investing more money in IRBs would make those committees more effective or efficient. Rather, more funding could simply increase the size of an already ineffective bureaucracy. UCAF felt recommendations for increased funding should be made on a case-by-case basis by faculty when a demonstrated need arises.

UCAF members noted that UCORP made no specific recommendation for changing the problem of IRBs inappropriately using medical research protocols for non-medical research projects in the social and behavioral sciences, it. UCAF felt the report should include a separate, specific recommendation addressing the need for a broader set of distinct research protocol models. IRBs and faculty should work together to develop a series of pre-approved systemwide templates for experimental protocols in the social sciences, humanities, and arts based on the most widely used protocols and the unique nature of those disciplines. It would be most appropriate for these boilerplates to be administered on the individual campuses under the specific provisions of a systemwide policy.

Action: UCAF will send the above noted comments to Council.

The meeting adjourned at 3:00 PM
Minutes prepared by Michael LaBriola
Attest: Jerold Theis