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*Chair of the Assembly of the Academic Senate
Faculty Representative to the Regents
University of California
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August 14, 2024

MICHAEL V. DRAKE
PRESIDENT

Re: Shared Governance in Policy Compliance and Emergency Management

Dear President Drake,

UC campuses continue to cope with the aftermath of 2023-24 protests even as they prepare for a likely new wave of protests and presumably new protest tactics this fall. Above all, the encampments and campus responses to them have raised numerous areas of concern for faculty. Some of these concerns fall under the broad purview of the Academic Senate to address “any matter pertaining to the conduct and welfare of the University” ([Regents Bylaw 40.1](#)). Others relate to the Senate’s specific Regental delegations of authority and, in particular, ensuring “the quality of instruction, research, and public service at the University” and protecting academic freedom. At its July 24, 2024 meeting, the Academic Council discussed both how the University might address and assess the handling of the past protests, as well as Senate expectations for meaningful engagement—in accordance with the principles and practices of shared governance—regarding freedom of expression, academic freedom, “time, place, and manner” (TPM) policies, campus policing, and emergency responses.

Council also discussed a letter prepared by the [University Committee on Affirmative Action, Diversity, and Equity \(UCAADE\)](#), which I attach for your reference. UCAADE makes the following points:

- During the spring 2024 protests, the guidelines in the [2012 Campus Protests Report](#) (aka, Robinson-Edley Report), which aim to minimize the use of outside law enforcement and protect the right to free expression, were not consistently followed across campuses.
- The presence and effectiveness of local institutions to manage protests and engage with protestors varied significantly, with some campuses having established structures that facilitated better outcomes.
- There was insufficient transparency and documentation around decision-making processes, particularly regarding the use of law enforcement and consultation with faculty.

The Council joins UCAADE in urging greater transparency, communication, and shared governance in response to protests moving forward.

To expand on and add to these concerns, we witnessed significant variability in how individual campus administrations responded to recent protestors. All ten campuses had encampments of

various sizes and duration. Of these, fully six came to an end only with police intervention. In several cases, mutual aid was employed in the clearing of the encampments and related protest activity, including numerous arrests of campus affiliates and non-affiliates. On three campuses, administrators successfully engaged with protestors on their demands and encampments were disbanded voluntarily.

At three divisions where there were major police interventions (UCLA, UC San Diego, and UC Irvine), faculty concern was such that votes of no confidence and/or censure of chancellors were taken via the Academic Senate. Although none of these motions passed, the margins were narrow and revealed significant fissures within the faculty at these divisions regarding how administrations handled the encampments and how they had deployed police. The very fact of such votes—a rare occurrence but within the procedures of the Academic Senate to carry out—underlines how serious and unusual the situation was. Clearly in the case of UCLA, UC Office of the President (UCOP) concurred with the faculty assessment of deep concern, since an independent investigation of the administrative response, focusing on the use of police, was launched immediately after the encampment had been cleared. We should add that the UCI Division of the Academic Senate passed a resolution requesting of UCOP an independent investigation of the police intervention on that campus, which again signals unresolved issues post-encampment. The UCSD Division of the Academic Senate passed two related resolutions: one asking the Chancellor to work with the Academic Senate to implement measures to make future police actions on campus in response to civil disobedience less likely; and a second to create a Faculty Crisis Response Committee as a new Senate standing committee.

Given the variability of responses and outcomes across the system, little wonder that faculty continue to have questions about what could have been done differently and how campuses might learn from mistakes, successes, and from one another. One of the recommendations of the Robinson-Edley Report is to conduct post-event reviews of police responses to civil disobedience on campuses. In the words of the report: “Meaningful and transparent review of the response to civil disobedience promotes accountability and enhances the credibility of campus and police leadership within the University community, and beyond” (p. 96). The report further recommends that the “reviewing body should be housed within the University but outside the Administration and police department on the campus in question” (p. 96). Without recounting details of the report’s recommendations about how to conduct post-event reviews, Academic Council considers an overarching post-event review is more than warranted. Among other things, such a review would help us better understand, gauge, and perhaps assuage faculty concerns, and might help reveal to what extent communication and faculty consultation through the Academic Senate on those campuses where police were not deployed may have contributed to better outcomes.

As UCAADE notes, some campuses have established structures that facilitated less contentious outcomes during the spring protests. At UC Berkeley, where the divisional Senate chair was included as an active participant in frequent high-level emergency meetings, the encampment ended without police intervention. Similarly, the UC Davis emergency management model, which includes Senate representation, appeared to function well. UC Santa Cruz employs a similar model; however, we understand that the UCSC administration excluded the Senate just before deciding to clear its campus encampment. Going forward, we recommend that all campuses consider adopting the Berkeley or Davis model or something similar and include the Senate chair on the emergency management consultation team. It is crucial for campus administrations to keep the Senate informed and ideally engaged at each decision-making stage. Members of Academic Council are also fully aware that there are numerous variables at play—including historical experiences, campus cultures, accessibility of campuses to non-affiliates, and many more—and do not consider consultation with the Senate a

panacea. We do think it is worth looking into models that may serve well and might be replicated across all divisions—and considering whether in the failed cases, more or better communication would have proven ameliorative.

Academic Council believes that the Academic Senate through divisional leadership or delegations of leadership should, as a matter of practice and principle, be both informed and consulted during emergency situations and the like. There should be protocols and structures in place to access critical information and to promote timely consultation, and UCOP might play a helpful role in supporting the systemwide Senate as we work with divisions to ensure this is so. In this regard, one of the most troubling elements of the administrative responses to the protests was shifting to remote instruction without adequate, or in some cases any, prior consultation with the Academic Senate, despite its authority over the delivery of instruction, including modality. Although the administration clearly has the authority to declare an emergency and cancel classes, we are concerned about the reflex default to remote instruction (following on the pandemic pivot), and that remote instruction may become a protest management tool. In the future, any proposed emergency move to remote instruction must include consultation with the Senate. Regarding continuity of instruction, the administration has understandably treated this as a student’s right vis-à-vis academic labor disruption and pointed the faculty in the direction of their responsibilities under the Faculty Code of Conduct and asked the Academic Senate to remind our colleagues of these responsibilities. At the very least, we should expect consultation and ratification of decisions concerning instruction during protests and the like to come from the Academic Senate given its purview within the structures of shared governance.

Post-event review would also shed some light on another alarming aspect of the variable responses of campuses, including how [California Penal Code 626.4](#) was employed, as well as the use of interim suspensions. Council has also received credible reports of instances in which individual Regents directly intervened in negotiations between campuses and protestors, and instances in which Regents and UCOP administrators compelled campuses to file charges against faculty, students, and staff who were arrested during protests, bypassing normal campus disciplinary procedures. Furthermore, the Regents [amended](#) UCOP’s [May 9 guidelines](#) on disciplinary actions to assert that amnesty is inconsistent with due process for individuals cited for UC policy violations. Some individual Regents also appear to have exerted pressure on or otherwise interfered with Senate procedures on votes of no confidence and related measures. Such Regental actions and mandates are unusual and surface deep concerns about potential overreach of authority.

Shifting to the State Legislature’s response to the protest events at UC, the approved California State Budget for 2024-25 now includes several stipulations regarding notification of students of campus TPM policies, consistency of content and implementation of such policies across the UC system, and the development of campus climate action plans that aim to safeguard legal free expression while maintaining safe and welcoming educational access for all. Although UCOP’s plan to clarify, communicate, and ensure systemwide consistency of TPM policies does not ostensibly include any new restrictions, it will likely intensify efforts to enforce existing prohibitions on blocking access to campus facilities, impeding University operations, constructing structures on campus property, overnight camping, and masking with the intent to conceal identity. Additionally, the initiative will enforce an existing requirement that faculty, students, and staff carry UC identification while on campus. We believe that consultation with the Senate may help the administration better understand how communications about TPM restrictions will be received and where there is likely to be pushback.

More importantly, however, because it gets to the heart of the Senate’s authorities, campus climate action plans that touch on matters of instruction and academic freedom should only be developed in

conjunction with the Senate. This is especially true for the legislative stipulations that are spelled out in Section 219, Provisions 34.a.7 and 34.a.8 of the 2024 budget trailer bill ([Senate Bill 108](#)), which are worth citing. Stipulation 7 requires each campus to explain “how the campus intends to foster healthy discourse and bring together campus community members, and viewpoints that are ideologically different, in order to best promote the educational mission of the institution and the exchange of ideas in a safe and peaceful manner.” Stipulation 8 requires each campus to “identify educational programs and activities for faculty, staff, and students to support the balance between free speech activities, educational mission, and student safety.” While these stipulations are doubtless well-intentioned, they open thorny issues of academic freedom, which, as noted, the Regents specifically enjoin the Senate to protect.

To summarize Academic Council’s specific requests for your consideration:

1. In keeping with the recommendations of the Robinson-Edley Report on post-event review and in recognition of the widespread nature of the protests and variability of campus responses, we request an internal, systemwide and campus-independent review of the events of the spring and one that would involve capturing all faculty concerns.
2. Also in keeping with Robinson-Edley as well as campus experiences of the spring, we request that UCOP support and facilitate efforts at the divisions to ensure that the Academic Senate is represented on emergency management teams and that decisions about instruction, in particular, respect the Senate’s delegated authority.
3. Further and in keeping with Senate purview, we expect significant consultation with the Academic Senate on the implementation of requirements in the current California Budget Act of 2024 regarding time, place, and manner restrictions and especially on campus climate action plans where they touch on matters of instruction and academic freedom.

We look forward to working with you on these critical matters of shared governance. Please do not hesitate to contact me if you have any questions.

Sincerely,



James Steintrager, Chair
Academic Council

Enclosure

Cc: Academic Council
Provost & Executive Vice President Newman
Executive Vice President & Chief Operating Officer Nava
Vice President and Chief of Staff Kao
Chief Policy Advisor McAuliffe
Senate Division Executive Directors
Senate Executive Director Lin

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UNIVERSITY COMMITTEE ON AFFIRMATIVE ACTION, DIVERSITY, AND EQUITY Assembly of the Academic Senate

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July 8, 2024

**JAMES STEINTRAGER
CHAIR, ACADEMIC COUNCIL**

RE: POLICING AND FREEDOM OF EXPRESSION

Dear Chair Steintrager,

UCAADE is a body charged with ensuring that all UC voices are heard, respected, and protected. It is from this position that we submit the following to Academic Council:

Protests across the UC system in 2024 were met with a wide range of administration decisions and actions on the 10 campuses. In some cases, administrators and protestors (and, critically, interstitial staff and faculty) worked together to ensure and protect the right to peaceful expression as part of university function. In other cases, administrators avoided engagement and turned to outside law enforcement. UCAADE recognizes that each of these protests was unique – and that protester and outsider behavior varied across campuses. But from the perspective of the committee, it is perhaps more important that the processes administrations used to arrive at those decisions also varied tremendously.

UCAADE would like to highlight three features that have arisen from the ensemble of experiences this past year:

(1) Robinson-Edley Report guidelines were not followed to the same degree across campuses.

These guidelines are supposed to shape how campus administrators engage with protestors, with the express aim of minimizing the use of outside law enforcement. Exceptional campus protections around free expression are a key way in which marginalized voices and opinions are heard; second, risks of racial profiling and police brutality disproportionately fall on our minoritized students, faculty, and staff. Anything other than the most urgent or most thoughtful engagement

with outside police therefore does not enhance the safety of our students, nor foster the principles of diversity, equity, and inclusion. Our own chief safety officer has acknowledged that, even in the best of circumstances, it is impossible to ensure that these reinforcement units understand, respect, and uphold our unique community values in the way that trained safety personnel within our campus communities do. Use of external officers must be a last resort and confined to extreme and urgent situations.

This is particularly important in the wake of the recent deliberate and welcome reallocation of resources away from armed UCPD officers to a more holistic set of campus safety resources. Such a policy shift had raised the possibility of a move towards more consensual policing, based on principles of de-escalation and dialogue. This was clearly followed on some campuses, and not at all on others.

(2) Local institutions to help campus communities handle protests in a structured manner differ across the system.

Campuses that had pre-existing committees and procedures in place to facilitate communication and jointly understand and interpret the local safety situation in general had more successful experiences. These bodies were formal in some cases, informal and impromptu in others, but served a vital role in encouraging transparency and faculty consultation. They were also critically important in educating students about activism and helping them to understand their rights and responsibilities in advance, as well as the consequences of different choices and when/how they would apply. In locations without these kinds of groups, the information vacuum was filled by outsiders who were typically not concerned with student awareness of their choices and potential consequences.

(3) Transparency about decision making (including faculty consultation) has been poor.

Although some campus administrations have circulated timelines or other documentation of protest-related events (including decisions around use of law enforcement), this has not been uniform; moreover, to our knowledge there has been no independent documentation of these decisions. If we are to learn and grow, we have to understand where we fell short of our shared ideals. It should be the university's highest priority to protect our community members in their individual and collective expression (including physical protection when necessary). We would like to extend the benefit of the doubt to those in decision making positions because we assume they meant well. But how various safety considerations were weighed on our campuses in many cases remains unclear. Many are thus left feeling that the language of safety has been weaponized in different ways but do not feel any safer.

Based on these stylized facts, UCAADE therefore calls for a systemwide participatory process to examine and update policies around protests and expression of first amendment rights, including TPM restrictions, administration communication channels during such events, shared governance practices, de-escalation procedures, and guidelines around civil disobedience. Moreover, we call on President Drake to institute transparency and accountability dashboards for administration use of external law enforcement. Just as our own UCPD are held to transparency and accountability standards across our campuses, our leadership must also be held accountable for their decisions and their adherence (or non-adherence) to policies and procedures around freedom of expression, de-escalation, and use of resources.

Our campuses are communities-within-communities that are exceptional in many ways: we hold freedom of expression and academic freedom paramount, and we share the belief that we can build a better and more just world through a dedication to unfettered inquiry and the robust exchange of ideas. In all we do, but also in how we do it, we must take our job of being a light for the world seriously. Thank you for considering this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Burney". The signature is fluid and cursive, with the first name "Jennifer" written in a larger, more prominent script than the last name "Burney".

Jennifer Burney
Chair, UCAADE

cc: UCAADE