“Freedom of speech is the one freedom we need to defend all the other ones.”

- Eric Sevareid

To the Academic Senate:

The sole function of the Committee on Academic Freedom (CAF) is to study and report on issues that we believe affect the academic freedom of the University. During academic year 2000-01 we responded to a number of such issues.

Academic Due Process for Faculty in Student Appeals of Grades and Academic Freedom Protection for Academic Standards

On being informed of the content of a discussion last year between the chairs of RJ&E and P&T, the Committee has become concerned that the grade appeal procedures in SCR Pt.3, App. C (undergraduate grades) and SCR 16.3 (graduate grades) are not consistent with academic due process and academic freedom. Our concern is increased by the fact that the shift to A-F grading will take effect in Fall Quarter 2001. This creates the opportunity for conflict over many new grading distinctions. Similar concerns have been expressed by a number of colleagues. Now is a good time to assess the appeal procedures, because the advent of conventional grading will quite probably require some adjustments in current procedures.

Due Process. The decision to change an instructor’s grade, contrary to the will of the instructor, necessarily involves a judgment that the grade was given on the basis of personal discrimination, or on other arbitrary grounds, rather than being properly based on the student’s performance. We make this statement because it is widely understood, across the University, that if an instructor acts in this manner he or she has violated the Code of Conduct (II.A.1(d), II.A.2). On the other hand, long standing University principles of due process and Senate practice reserve decisions on whether a faculty member has violated the Code of Conduct to the Committee on Privilege and Tenure, where the faculty member’s rights are carefully protected. If a separate

1[1] "The Committee studies and reports on any conditions within or outside the University, which, in its judgment, may affect the academic freedom of the University, with particular reference to the acceptance of positions and resignations from positions in the University, and to the reputation of the University and of individual members of its faculty." Santa Cruz Division Bylaw 13.9.2.

2[2] Other Divisions state explicitly in their legislation that the use of non-academic criteria in assigning a grade is in violation of the Faculty Code of Conduct. See UCSD S. Reg. 502E.1; UCR S. Reg. R5.1.10.
proceeding is held to decide such a question the instructor may be faced with the Hobson’s Choice of either responding and prejudicing a future disciplinary proceeding, or declining to respond and so assuring an adverse decision with disciplinary implications. This is the due process problem. There have been recent instances in which just such a choice has been presented to an instructor.

Academic Freedom. The related academic freedom problem follows from past actual practice. Under our present procedures there have been instances in which the relevant grievance committee changed a faculty member’s grade, effectively substituting its judgment for the instructor’s, often without notifying the instructor that such action was taken. And when notification was made it was often the case that no reasons were given for the decision. In the atmosphere created by such vague decisions faculty become inhibited and do not grade according to their best judgments. CAF believes that decisions on grading are protected by academic freedom, as are the structure, content and procedures of any officially approved course.3[3]

That is not to say that there is absolute protection for anything an instructor may do. Students are always entitled to appeal a grade or evaluation on the grounds set out in the Code of Conduct, which preempts Divisional Regulations. In that connection it is the Committee’s judgment (and long University tradition) that it does not violate academic freedom for CEP, a department chair, a department curriculum committee, or the department itself to ask colleagues to explain their grading philosophies and course procedures. On the other hand, once an instructor presents a reasoned basis for his or her grading policies, the Committee is of the opinion that penalizing or otherwise restricting that instructor’s choice of standards is inconsistent with academic freedom principles.

We place these statements in particular institutional contexts to draw a distinction between discussions of the content and conduct of a specific course within the Senate and such discussions with administrators or administrative staff. The Committee believes that given the constraints of academic freedom and the exclusive authority of the Senate over the curriculum, rarely, if ever, is it appropriate for high administrators outside a department to play a role in investigating the conduct of individual courses and in particular in investigating the academic standards applied by an individual instructor. We believe also that it is never appropriate for administrative staff to take a role in the conduct of courses or the interpretation and application of academic standards. (See the related legislative ruling of the Divisional RJ&E, AS/SCP/1201, regarding the constraints on administrators and others in discussing the content and conduct of individual courses.)

It seems to us that under present circumstances it would be best to follow the practice at UCLA, where due process for both faculty and students is respected explicitly in student grade appeals, and so to amend our Bylaws and Regulations to follow UCLA Regulations A-313, A-306(D)

3[3] Part I.4(a) of the Faculty Code of Conduct lists, as one of the professional rights of faculty, participation in the “approval of course content and manner of instruction.”
(attached), which require a prior finding by the Privilege and Tenure Committee before a grade may be changed without the consent of the instructor.

In light of these comments we request the Graduate Council to reassess carefully the present complex and in some important respects, undefined, appeals process for graduate grades. That process has four levels of review. Two of these leave the department chair and Graduate Dean – whose participation as a member of the administration itself raises questions – with duties that are undefined.

We note for the information of the Senate that this matter has recently been discussed in detail by the CAF and UP&T chairs, and that it was mutually agreed that policy toward student grade appeals and related matters should be re-assessed and carefully addressed by the responsible Senate Committees.

The Senate has waited for two years for an RJ&E ruling on the question whether the current Divisional Senate Regulations and Bylaws dealing with grade appeals are consistent with academic due process. We are told that the complexity of this question has prevented a ruling. Recent examination of the range of appeals practices across the UC system (an examination suggested by the UP&T chair) reveals wide inconsistencies between campus practices.4[4] In the Committee’s judgment it is now appropriate to ask UCRJ for a ruling that will be applicable across the University.

UCLA SR A-313.

Correction of Grades

All grades, except DR, I and IP are final when filed by an instructor in the end-of-term course report. However, the Registrar is authorized to change a final grade: a) upon written request of an instructor, provided that a clerical or procedural error is the reason for the change, or b) upon written request of the Chair of the Division in cases where it has been determined by the Committee on Privilege and Tenure that an instructor has assigned a grade on any basis other than academic grounds. ....

UCLA SR A-306(D)

If an instructor in charge of a course has been determined by the Committee on Privilege and Tenure to have assigned a grade on any basis other than academic grounds, the Committee on Privilege and Tenure shall communicate that information to the Division Chair. Within a period of two weeks after notification, guided by the Committee on Committees, the Division Chair shall establish an ad hoc committee to determine whether the grade shall be changed. The ad hoc committee shall consist of at least three members, with at least one member a representative of the department involved. The ad hoc committee will obtain whatever records are available and use these records to make a final decision concerning the grade. If the records

4[4] Compare, e.g., UCLA SR A-306(D) and UCB SR A-207B.
are not adequate, then the committee may assign a grade of Pass, or allow the student to repeat the course without penalty. The ad hoc committee will report to the Division Chair, who shall report the change of grade to the Registrar. In order to protect the student, the grade shall be changed, if warranted, within four weeks following the formation of the ad hoc committee. [Variance to SR 780.]

Contents of Anonymous Student Course Evaluations Placed in Faculty Personnel Files

In response to recent incidents involving inappropriate language used in anonymous comments placed in faculty personnel files and apparent inappropriate procedures for handling such comments, the Committee submitted the following questions to UCAF for systemwide discussion. There was agreement within UCAF that these questions in fact describe irregular practices across the University and that the relevant systemwide agencies should give them some attention. UCAF will write a letter to the Academic Council. These questions were also recently discussed with the UP&T Chair, who agrees that imposing some restrictions on anonymous student comments appears appropriate.

- Is it consistent with University rules and principles to allow students convicted of cheating in the faculty member's course or under investigation for cheating in that course to prepare anonymous course evaluations, which are then included in the faculty member’s personnel file?

- Is it consistent with academic due process to include statements, anonymous or signed, containing personal slurs, sexual comments, or personal remarks about ethnicity, in an instructor's personnel file?

- Is it consistent with fundamental fairness and University policy to include anonymous student comments in a faculty member's personnel file, when those comments are not on official forms, are submitted after grades are submitted or at some time other than during class, or submitted in such a way that there is no assurance that a student enrolled in the class has independently prepared them?

University e-mail policy

The Committee reviewed the draft policy dated July 10, 2000. It seems to us that this draft - the end product of considerable interchange (and so shared governance) between UCOP, the Divisional CAF’s and other Senate agencies - adequately protects the rights of individual users while remaining sensitive to the legal obligations of the University.

Proposed revision of Bylaw 335 and APM - 015 (Faculty Code of Conduct)

An extensive revision of the statewide disciplinary procedures was referred for comment to UCAF and the Divisional CAF’s. The committee strongly supports the letter in response sent by UCAF to the Academic Council and UP&T. A copy of the UCAF letter is attached below as Appendix 1. The Committee believes that the inclusion of specific standards of proof in the revised bylaw 335 is a positive change. The Committee remains concerned about many aspects of the revised code of conduct, particularly with the undefined character of certain provisions
designed to mesh with APM – 075, the new regulations dealing with gross incompetence, and
with the incorporation by reference of APM-025 into the Code of Conduct, which may well
result in the liability of faculty for purely technical violations of rules that are difficult to
understand.

**Proposed APM 025, Conflict of Commitment and Outside Activities of Faculty**

The Committee was asked to review the proposed APM-025. Our response is attached in
Appendix 2. While we were considering this subject, a number of colleagues contacted the
Committee and expressed great concern over what they saw as unnecessarily restrictive
provisions that could damage academic freedom in research. We were made aware of similar
concerns expressed by the Committee on Research. In response we wrote a statement of position
reproduced below in Appendix 2. When UCAF discussed this subject other Divisional CAF’s
expressed similar reservations. However UCAF was given only 48 hours to formulate a response
before the Academic Council acted. In the interest of time UCAF decided to support UCFW’s
statement on APM-025, which also expressed some, though not all, of the arguments advanced
by UCAF and the Divisional CAF’s. The Committee’s concerns are not well reflected in the
version of APM-025 as adopted. We believe revisions are needed to protect academic freedom
properly.

**Statement on Student Interference with Spring 2000 Senate Meeting**

In Spring 2000, several dozen students who opposed a proposal on the Senate’s agenda blocked
the entrance to the room in which the Senate was to meet for its regularly scheduled spring
meeting. As a result the meeting was cancelled.

The Committee agreed unanimously that this action by students violates the academic freedom
of the Senate to meet, debate and resolve issues properly before us.

**Sexual Harassment Report**

The Committee’s attention was called to the 1999-2000 report [SH00] from the Title IX
Office, which begins with the administration’s assertion that sustaining academic freedom requires
compliance with standards of conduct that forbid “sexual offenses of any kind.”

Title IX of the Civil Rights Act requires that “No person in the United States shall, on the basis
of sex, be excluded from participation in, be denied the benefits of, or be subjected to
discrimination under any education program or activity receiving Federal financial assistance.”

Prohibited acts must have sexual content and be so “objectively offensive as to alter the
‘conditions’ of the victim’s employment.” The law does not forbid “genuine but innocuous
differences in the ways men and women routinely interact with members of the same sex and of


the opposite sex.””7 [7] Under the related provisions of Title VII,8 [8] the Supreme Court has held that employers may not “[require] people to work in a discriminatorily hostile or abusive environment.”9 [9]

The Committee is concerned that some incidents and conclusions in the 1999-2000 Title IX report, and in previous reports, may not involve sexual conduct,10[10] that some offenses described seem to involve acts that are not directed against any specific persons,11[11] and that some allegations appear to concern innocuous conduct.12[12] The danger is that if disciplinary actions by the administration under Title IX go beyond what is allowed by federal law, or are perceived to do so, we may develop what amounts to a general civility code that will interfere with academic freedom and freedom of speech.13[13] The Committee therefore suggests that future summaries of offenses in Title IX reports make clear that the Title IX office has taken actions only against offenses forbidden by Title IX and related federal laws. We recognize that there may be good policy reasons for forbidding certain types of student behavior that are not illegal under Title IX, and that some actions may be preventative in nature rather than a response to illegal acts. Such preventative actions should be identified and justified independently of Title IX. We further suggest that care should be taken by the campus administration not to allow the Title IX Office to involve themselves in matters beyond the purview of Title IX, Title VII, and the associated federal regulations, and to make clear in any public statements or reports that the activities of this Office are restricted to the specific areas authorized by federal law.

Campus Campaigns for Charitable Contributions

7[7] Ibid.

8[8] Title VII makes it "an unlawful employment practice for an employer . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1).


13[13] The Supreme Court has made it clear that Title VII does not set up a civility code. See Oncale, 523 U.S. at 80-81 (rejecting the argument that “recognizing liability for same-sex harassment will transform Title VII into a general civility code for the American workplace”).
Responding to concerns expressed by several faculty members, the committee agreed unanimously on the following statement. Under the University’s rules, freedom of speech and thought are to be respected. Therefore, a non-coercive environment should be maintained with respect to the active solicitation of contributions to specific charities.

Different people have different views on which charities deserve support and why. These differences of opinion are and should be protected. In no case should individual members of the University community be specifically identified and pressured to make donations to an officially approved charitable cause.

The Committee is concerned about the official use of University staff and resources in the promotion of, or collection of funds for, any charitable organization not officially connected with the University’s own general purpose and welfare. There are many honorable and effective charitable organizations. But whether to give to any, and which to give to, is a matter of conscience - a matter of moral, political or even religious values. It is therefore difficult to see any justification for the University's promotion of one charity over another, when the charity is not officially connected to the University. It is certainly inconsistent with academic freedom when academic or administrative units create a spirit of coercion by aggressive pursuit of funds for such charities.

The Committee recognizes, with the minority opinion, that the University's goals and welfare do involve some responsibility for the welfare and goals of the local community. And the Committee does not wish to exempt the University's responsibility to the community in case of emergencies, where urgent care and aid through responsible charities may be necessary.

The Chair of the Committee takes a minority view. In his opinion institutional participation in charitable campaigns has a long and honorable history in universities and private corporations. He fully agrees with the Committee that a non-coercive atmosphere must be maintained. Yet charitable collections need not be coercive. Rather than to withdraw from making any official collections at all, as the Committee’s argument suggests, it seems more responsible and effective to broaden the list of available charities, and to sensitize those who manage the collections to the principle of free choice. This seems particularly apt at a time when charitable contributions across the country are falling short.

The Chair believes that to reject entirely any institutional participation in charitable activities on the ground that charitable giving has no connection with the University’s purposes or welfare will send an unfortunate message. That message will say that the University rejects the notion that part of its responsibility is to participate in protecting and enhancing the general welfare of the local community.14 [14] The great problems of American political life often revolve around the need to resolve conflicts between duty to

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14[14] The Committee’s argument implies that official University collections of charitable contributions are allowable if the purposes of the charity are connected “with the University’s own purposes and welfare.” The Chair believes that it is precisely such official collections –
help the less fortunate and the principle of freedom of choice. Here, duty need not be sacrificed to principle. The principle of free choice can be upheld by offering a broad menu of organizations to receive campus contributions, decided on after allowing suggestions from all, rather than a single choice. This will show respect for individual conscience. It will also allow individuals to contribute to charities they believe efficiently deliver resources to people in need.

**Proposed University-wide Copyright Policy**

The Committee responded to a request from UCAF for Divisional comments on an Academic Council document dated 5/10/01. Our response is attached below in Appendix 3.

**Proposed Principles of Community**

The Committee received a request for comments on a proposed list of “Principles of Community,” formulated by an administration committee named by the Ombudsman. The Committee’s response is attached below in Appendix 4.

Respectfully submitted,

COMMITTEE ON ACADEMIC FREEDOM

Rebecca Breslau

Dan Guevara

David Harrington

Joel Yellin, Chair

**Appendix 1 UCAF Comments on Proposed Amendments to SB335 and APM-015**

April 9, 2001

Michael Cowan, Chair, Academic Council

George Blumenthal, Chair, University Committee on Privilege and Tenure

111 Franklin Street, 12th Floor

Oakland, CA 94607-5200

inevitably expressing sensitive value choices supported by people with administrative authority - that are most likely to lead to coercion and so to conflict with the principle of freedom of choice.
Re: Proposed Changes in AMP 015 and Senate Bylaw 335

Dear Academic Council Chair Cowan and UCP&T Chair Blumenthal:

The Committee on Academic Freedom discussed the proposal submitted by the Committee on Privilege and Tenure addressing changes in AMP-015 and SB 335 at its meeting on March 9, 2001. The Committee appreciated the extensive work that went into revising and updating these policies and Bylaws, the complexity of the issues that are being addressed, and the emphasis placed on evolving a clear policy that would facilitate fair and just approaches to difficult and often contentious situations. It is within this context that I submit the following synopsis of our wide ranging discussion. In some cases the points listed raise issues that need to be clarified by [UP&T]; other points focus on more substantive issues; finally, several items are included that do not specifically address the current proposal, but rather raise issues that are of continued concern related to the policies that are now incorporated within the current proposal, namely APM-025 on Conflict of Commitment and APM-075 on Termination for Incompetent Behavior.

1. The proposed changes in AMP-015 attempt to differentiate between ethical principles and inappropriate behaviors. While this is a laudable goal, members of the Committee felt that the distinction was lost in the attempt to outline unacceptable behavior. Thus, for example, it is noted that the ethical principles address ‘aspirational’ goals, ones that might be viewed as optimal in the abstract but difficult to achieve in reality, and thus always on the horizon of achievement. However, these same aspirational goals often then become mandated behaviors. For example, under Part II A. Teaching and Students, the ethical principles note that “Professors…. practice intellectual honesty,” yet lack of this behavior (violation of canons of intellectual honesty) is also a form of unacceptable behavior. Likewise under Part II D. Colleagues, the ethical principles note that “Professors do not discriminate against or harass colleagues,” and this is also an example of unacceptable conduct. In what way is the unacceptable behaviors derived from aspirational ethical principles? This becomes possible only if the ethical principles outlined are, in truth, mandatory, in which case violation becomes relevant to mandatory discipline. Is discipline relevant if you violate both the ethical principles and your behavior interferes with university functions; do you have to do both or can violation of either/or be punished? The Committee felt that the underpinnings of the ethical principles need to be reconsidered in terms of how they are viewed and how they inter-relate with unacceptable behavior.

2. There are two quotes included on page 2 #2, “not justified by the ethical principles” and “significantly impairs the University’s central functions as set forth in the Preamble.” The footnote indicates that the quotes came from the working Committee but since the context of this discussion is not clear, and the document is not available for review, the quotes may not be appropriate here and the intent should be included in different wording.
3. Under Section II – type of Disciplinary Action. There was concern regarding the proposal under the non-disciplinary section on page 17, and referred to on page 15, that gave the Chancellor the authority to suspend an individual’s pay prior to a hearing; “In rare and egregious cases, a Chancellor may be authorized by special action of the Regents to suspend the pay of a faulty member on involuntary leave pending a disciplinary action.” While the following sentence indicating that there was a cause, that of non performance of duties, appeared justified, the Committee had difficulty seeing a reason for suspension of pay from an individual who had not yet had an adequate venue in which to state his or her case. This appears to be a disciplinary action.

4. Under Section II – type of Disciplinary Action, item 4. Demotion. Note is made that demotion is appropriate “when the misconduct is relevant to the academic advancement process of the faculty member.” The Committee felt that further explanation was needed regarding what might be included in such a case; that is, consider including an example of what is relevant to the academic process, such as, for example, plagiarism.

5. The proposed changes include specific reference to cases where the Chancellor cannot delegate his/her authority to someone else. For example, page 15, “Authority for the suspension of a faculty member rests with the Chancellor and may not be re-delegated.” Because this is specified in certain areas, it leaves open the possibility that the Chancellor could delegate such authority in those areas not so designated. Is this the intent? If delegation is allowed or deemed appropriate in certain circumstances, it should be clear to whom this authority could or would potentially be delegated to.

6. Standing order 103.2 (Section III – Procedures for Discipline, top of page 18) regarding privilege to a hearing was deleted and, as far as could be determined, not inserted elsewhere. Was this the intent? This may need to be clarified.

7. There was considerable concern expressed over the total incorporation of AMP-025 Conflict of Commitment (APM015, Part II, C, 7) within the domain of unacceptable behavior. Including the full language of this complex document by reference as defining unacceptable conduct was viewed as a departure from past practice, in which specific examples of unacceptable conduct were clearly stated. This would potentially open a faculty member to changes of unacceptable behavior for technical violations or misunderstandings. Further, the point was raised that if the list of examples is not inclusive, there is potential for ethical and legal problems to arise; thus if disciplinary decisions are reviewed by courts and other agencies, they may resist the idea that it is legitimate to penalize faculty for violating rules that were created after the offense was committed. The Committee felt the wording needed to be changed to indicate that only serious and knowing violation of the Conflict of Commitment policy would warrant potential sanction, and that unacceptable conduct should be defined as precisely as possible.

8. There was considerable discussion regarding the noted Statute of limitation of 3 years. Some felt that 3 years was a long time, especially since a great deal of memory regarding any incident could be lost during this time. It would be helpful to have some indication about why three years was chosen and some guidelines on how the date from which three years is
determined is selected. Is it three years for the completion of the issue or to bring the actual complaint?

9. SB335, E, 2. The exact intent of this paragraph was not clear. Specifically, that “the findings and conclusions of the prior disciplinary hearing shall be conclusive.” Does this indicate that a grievance may not be filed subsequent to a disciplinary hearing? The inclusion of some examples would be helpful.

10. Note was made by a Committee member that at several points (e.g. page 5 of SB335, item 8) language is included noting that the findings, etc, are confidential “to the extent allowed by law,” when the language should read, “allowed or required by law” in order to conform with numerous statutes that protect privacy.

11. A concern was raised about SB335, B, 4. When the committee feels there is not a *prima facie* case the grievant will receive a written communication regarding this finding. Should the grievant be given the right to rebuttal this denial? It was acknowledged that the implied acceptance level for a complaint is low (prima facie). However, there remained some concern, so the Committee would request that this section be reviewed with specific regard for due process and fairness. Are their other mechanisms available if the grieving party(ies) are not satisfied?

Additional issues that were raised regarding documents that are referred to within the current proposal include:

1. There was concern raised regarding the statement in AMP 016, page 14, referring to APM-075 Termination for Incompetent Performance. The statement suggests that there is clear articulation in this document of the conditions under which a faculty member with tenure or Security of Employment may be terminated. However, it was noted that APM-075 actually does not contain clear guidelines for distinguishing between a disciplinary action and an incompetence proceeding or for determinations related to certain medical problems that might interfere with performance. Thus by referring in total to the guidance offered by the language in APM-075, the same ambiguities will hold.

2. Concern was also raised regarding the consistency between AMP-075 and the Code of Conduct. Specifically, the issue raised related to the provision under the Code of Conduct that guarantees “the right to be judged by one’s colleagues, in accordance with fair procedures, in matters of promotion, tenure, and discipline, solely on the basis of the faculty members’ professional qualifications and professional conduct” (Part I, B,5). This was contrasted with the APM-075 language that provides a basis for termination that distinguishes between pedagogy and content, which appears to contrast with the Code and may create problems if controversial material is presented that is relevant but may be challenging to students or make them uncomfortable. This lack of consistency is of concern and warrants further review.
If you have any questions, please let me know.

Sincerely yours,

Margaret I. Wallhagen, Ph.D., RN, CS
Gerontological Nurse Practitioner
Associate Professor
Chair, University Committee on Academic Freedom

**Appendix 2. Statement on Proposed APM-025**

The Committee on Academic Freedom supports the adoption of well-defined rules addressing potential conflicts of interest in carrying out the professional responsibilities of faculty. State law and ethical principles require us to adopt such rules. Moreover, faculty are obligated to allocate their time so as to fulfill their responsibilities to colleagues, the University and students. So it is well accepted that rules can legitimately be enacted to limit time spent on activities outside the University, particularly on for profit activities, in order to assure that faculty responsibilities are met.

We read the proposed rules and procedures outlined in APM 025, Conflict of Commitment and Outside Activities of Faculty Members, in light of these general considerations. We believe these rules are excessively complicated in some important respects and in others sufficiently vague that faculty will find them extremely difficult to follow. In addition, we are troubled by the extent to which high administrators are given discretion to grant exceptions. We believe any discretionary exceptions should be sufficiently well defined to preclude perceptions of favoritism, special dealing, or selective enforcement.

We are specially concerned by the notion that prior approval is required for participation in entrepreneurial activities. It seems to us, based on the general principles we have outlined, that after the fact disclosure is well supported by precedent, both in our University and elsewhere. But the requirement of prior approval seems to us to raise questions of principle and practical application that should be carefully thought through. Among other considerations, we do not see how the future details of a project can be reliably identified; and we are concerned that prior approval may delay development of projects, change the nature of a project, and possibly discourage carrying through projects that are likely to be beneficial and that are consistent with ethical standards. It seems to us that no convincing case has been made that the net benefits of a prior approval system outweigh the net benefits of a more traditional system based on posthoc disclosure.
It is ironic that in an era in which government granting agencies are placing emphasis on programs that foster partnerships between academic institutions and private industry, and are encouraging the development of ideas from academic research into tangible products, new technologies or public policies, the University is considering a proposed regulatory policy likely to chill precisely these developments.

**Appendix 3. Response to Proposed Course Materials Copyright Policy**

Professor Meg Wallhaven

Chair, University Committee on Academic Freedom

Dear Meg:

The UCSC Divisional CAF is responding to your request for comments on the 5/10/01 Council materials on the proposed copyright policy.

It seems to us that this document is well considered and directed toward the important issues. We have a few comments.

1. Under A, is support from the Committee on Research to be interpreted as normal resource support or is it considered exceptional?
2. Under C, may decisions by a Course Materials Policy Committee be appealed? Is it not the case that a category of such decisions might well implicate faculty rights and privileges, and so that a faculty member could bring a grievance over such a decision to the Privilege and Tenure Committee? If so, this should be included in the policy.
3. We are concerned that the statement: "The University shall have the right to use any course syllabi, and make derivative works from them, on a perpetual, royalty-free, nonexclusive basis." may be overbroad and so conflict with the ownership rights guaranteed by other language in the policy. It would help if the meaning of “syllabi” were specified more fully and tailored to this use.
4. "Ownership of rights to course materials that are created by the intellectual labor of more than one person shall be owned jointly." A faculty member writes a textbook after teaching a course for 10 years. Students have provided material as the result of doing homework, taking exams and submitting term projects. Is this covered by this part of the policy? (There are other variants of the same question.)
5. Should not the Course Materials Committee also file its report with the Academic Senate?
6. The policy mentions the prohibition in the Code of Conduct that forbids “Unauthorized use of University resources or facilities on a significant scale for personal, commercial, political, or religious purposes.” By virtue of this reference, has this language now been given new broader meaning?
Appendix 4. Comments on Proposed Principles of Community

June 7, 2001

Professor Donald Potts

Biology Department

Sinsheimer Laboratories

Dear Don:

The Academic Freedom Committee discussed the “Principles of Community” document (POC) as you asked. We appreciate the efforts of the Ombudsman’s committee to improve the atmosphere here for discussion of campus issues. Yet before putting out this document we think it would be helpful to consider some implications.

You have told us this is a statement of aspirations, not intended to be enforced. We are nevertheless concerned about the potential connection with enforcement, particularly in view of the footnoted statement in the document: “UCSC is committed to the enforcement of policies that promote the fulfillment of our principles of community,” followed by a reference to the Faculty Code of Conduct. If no implications for enforcement are intended, why mention enforcement and the Code of Conduct?

As I wrote to you already, for us this raises in another way the concern recently expressed by the University Committee on Academic Freedom (UCAF) about the relations between aspirations for conduct and rules for conduct in the proposed revision of the Code of Conduct. The POC also addresses aspirational goals, “that might be viewed as optimal in the abstract but difficult to achieve in reality, and thus always on the horizon of achievement.” Here also we share UCAF’s concern that “these same aspirational goals often then become mandated behaviors.”

We are particularly troubled by the statement: “We embrace diversity in all its forms...” which uses terminology that means many different things to individual members of our community. "Diversity" can mean "diversity of ideas," or "ethnic diversity," among other possibilities. Similarly, the implied connection between “equitable access to resources, … and rewards” and
the celebration of “heritage … and diversity” is also unclear and open to problematic interpretations.

We suggest that it may be useful for your committee to clarify the POC document in light of our comments. It seems to us also that your committee should consider the Preamble to the Code of Conduct before issuing a final document.

We have one further thought. The traditional role of the Ombudsman is to be helpful to members of the community who must deal with the inevitable bureaucracy that is created in any organized community. The notion is that the Ombudsman is a special person who “passes through walls” in order to make the institution’s structures more transparent. It seems clear that these traditional notions do not comprehend an Ombudsman who creates a committee – itself a prime bureaucratic entity, particularly one that propagates principles of conduct, however well designed and intended.

Yours truly,

Joel Yellin
Chair, Committee on Academic Freedom

cc: Privilege and Tenure Committee