

COMMITTEE ON ACADEMIC FREEDOM

Annual Report 2020-21

To: Academic Senate, Santa Cruz Division

The Committee on Academic Freedom (CAF) monitors conditions. It assesses matters that may affect academic freedom at UCSC, responding to individual faculty concerns and reporting emerging issues to the academic senate. The Chair of CAF represents the Santa Cruz division to participate in the University Committee on Academic Freedom (UCAF), which met five times by videoconference in Academic Year 2020-2021 to conduct business concerning its duties as outlined in Senate Bylaw 130.

CAF met every three weeks across the academic year as issues arose for discussion and review, frequent consultations by email, and shared documents between meetings.

COMMITTEE ISSUES

I. Zoom censorship and pre-enforcement lawsuit

This year CAF deliberated on this issue. As part of the UC Academic Senate, our primary concern is that zoom censorship should never occur in the UC system. The troubling precedent at San Francisco State University shows that Zoom would not hesitate to exercise its technological discretion to serve powerful interest groups. The curtailment of corporate power is, of course, not new to the UC system. When Chair Hu served as CAFA chair and BOARS representative, we had voted to stop legacy admission and carefully reviewed the requests of many assessment service corporations. UCOP should have some procedures for similar precautionary measures. We have also learned that Zoom recently appointed the former UC president Janet Napolitano to its Board of Directors. We are uncertain what sorts of potential impacts on academic freedom during the remainder of the pandemic months, not to mention the post-pandemic future.

CAF would like to see academic freedom clauses added to UC's licensing agreements with Zoom if they are not already in place. CAF would like to access it if there is already some academic freedom language in UC's licensing agreement with Zoom. If there is no such academic freedom language in UC's licensing agreement with Zoom, CAF would like to urge the campus' Administration to help initiate the process to add the language to the licensing agreement.

At the beginning of the academic year, the University Committee on Academic Freedom (UCAF) learned that the video communication platform Zoom had canceled academic discussions at other institutions after receiving complaints and finding violations of their terms of service. The committee's primary concern was the dangers evident in UC's contract with Zoom because the University routinely violates Zoom's terms and standards in the course of regular instruction, research, and extracurricular activities and because under the agreement, the power to decide what content to allow lies with Zoom, not the University. Following consultation with Information Technology and Academic Affairs at the Office of the President, [UCAF submitted a memo to Academic Council](#) with three recommendations which included negotiating with Zoom for contractual terms that protect the academic freedom of UC faculty and other teachers and researchers. The memo was endorsed by Council in January and transmitted to Michael Brown, Provost and Executive Vice President for Academic Affairs. Provost Brown subsequently reported that the Office

of the President and the UCAF Chair were actively negotiating with Zoom and that a revised Zoom policy was under review. On April 13th, Zoom announced a new content moderation policy for higher education users that—with limited exceptions—gives content moderation rights to universities and, thereby, protects academic freedom.

UCAF welcomed the news of Zoom’s policy for higher education users and the protections it afforded for academic freedom. However, the committee recognized that Zoom had reserved the right to cancel any event that the company determined might entail a “legal or regulatory risk” to Zoom. Specifically, this company, along with other private internet platforms, refused to host a seminar sponsored by faculty at UC Merced and the UC Humanities Research Institute which featured a speaker associated with a US-designated foreign terrorist organization, out of concern that the events could violate federal law by providing “material support” to a terrorist organization in violation of 18 U.S.C. § 2339B. In light of uncertainty about whether the statute applies to academic discussions like those canceled and about the impact of the statute on academic freedom, UCAF asked Council to call upon UC to file a pre-enforcement lawsuit, or to take similarly urgent steps, to clarify the reach of the federal material support statute. At its April meeting, Council unanimously endorsed the request from UCAF asking the University to seek clarification from the Department of Justice on the reach of the “material support” statute or to take other similarly urgent legal steps to protect academic freedom.

II. Academic Freedom For The Student Conduct Task Force

During the Winter quarter, the Committee discussed the creation of the Student Conduct Review Task Force. CAF’s concern was that the phrase "academic freedom" did not appear in the Task Force charge letter. CAF believes that academic freedom for graduate students is a critical issue. Therefore, in correspondence to David Brundage, chair of the Santa Cruz Division of the Academic Senate, dated December 3, 2020, we recommended that when problems of academic freedom arise during disciplinary actions on graduate students, appropriate measures should be taken to consult with the CAF to evaluate the seriousness of the violation(s). We strongly urged that the campus should develop a process for adjudicating the academic freedom issues as part of the final recommendation from the Student Conduct Review Task Force. Based upon the Bylaws and Standing Orders of the Regents, the Academic Senate is responsible for interpreting and applying the professional standards that define academic freedom of teaching, research, scholarship, and the public dissemination of knowledge. When academic appointees with non-faculty titles, in this case, our graduate students, contribute to or support the University's fundamental mission, they must be free to pursue this work according to applicable, acknowledged, national, professional standards (paraphrased from the Academic Personnel Manual section 10 Appendix B)¹. The Student Conduct Task Force, appointed by the Chancellor, shall feel free to report their findings and policy recommendations. However, the Academic Senate should be responsible for adjudicating if our graduate students' work or pursuit would apply to an external and existing professional standard. By implication, the Academic Senate should be judging if the graduate students pursued their works within the bounds of academic freedom. CAF will be happy to consider such arguments should they be made during the graduate student conduct process. We hope this can be memorialized in the formal procedures.

¹ <https://www.ucop.edu/academic-personnel-programs/files/apm/apm-010.pdf>: “While there is substantial variation in students’ competence to engage in scholarly inquiry based on their level in the educational process, the faculty has the major responsibility to establish conditions that protect and encourage all students in their learning, teaching, and research activities. Such conditions include, for example: free inquiry and exchange of ideas; the right to critically examine, present, and discuss controversial material relevant to a course of instruction; enjoyment of constitutionally protected freedom of expression; and the right to be judged by faculty in accordance with fair procedures solely on the basis of the students’ academic performance and conduct.”

While we applauded the meticulous work charged to the Student Conduct Task Force, we reiterated that, according to APM, it is the Academic Senate that should adjudicate the scope of academic freedom for our graduate students. It was not the Committee's intention to suggest that the Senate intervene or disrupt the ongoing work of the Student Conduct Task Force. Instead, the Committee offered that the Senate could proceed independently from the Task Force to adjudicate any decisions on the applicability of academic freedom protections that may be raised during the prospective discipline of our graduate (and undergraduate) students.

III. Faculty Self-statement On Diversity And Credentials In The Promotion Of Academic Freedom

In March 2020, a memo² from UCAF to Council about Diversity, Equity, and Inclusion (DEI) statements was forwarded to the Committee on Affirmative Action, Diversity, and Equity (UCAADE), which did not respond. This March, the committee submitted a revised memo on DEI statements to the Council calling attention to faculty concerns about some campuses applying the 2019 guidelines for these statements inappropriately as a screening tool or in other ways that suggest DEI activities are a requirement or a litmus test of belief for faculty. UCAF's new memo along with a response from UCAADE was discussed by Council in April, and UCAADE proposed working with UCAF on a revised set of guidelines on DEI statements. The revised guidelines were endorsed by Council in June and will be transmitted to the divisions following consultation with the Systemwide Equal Opportunity/Affirmative Action Administrators Group.

CAF discussed UCAF's letter and fully supported UCAF's guidelines on DEI statements.

IV. Data ownership plan and potential curtailment of academic freedom

CAF participated in the systemwide review of the Data ownership plan draft and the potential danger to academic freedom. CAF concluded that the Data ownership plan was a serious incursion to academic integrity and freedom and provided a statement on the issue. UCAF also objected to the ownership plan along a similar line.

V. Divisional and Systemwide Reviews

The following are issues on which CAF provided comment:

- Bay Tree Bookstore
- Systemwide Review of the Innovative Learning Technology Initiative Assessment Report and Recommendations for the Future
- Committee on Educational Policy (CEP) Policy on UCSC Undergraduate Online and Hybrid Courses — DRAFT
- Systemwide Review of Universitywide Police Policies and Administrative Procedures
- Systemwide Review of Proposed Presidential Policy SARS-CoV-2 (COVID-19) Vaccination Program

² The Use of Contributions to Diversity, Equity, and Inclusion (DEI) Statements for Academic Positions at the University of California <https://senate.universityofcalifornia.edu/files/reports/rm-mb-divchairs-use-of-dei-statements.pdf>

VI. Academic Freedom and the Return of In-person Instruction

Chair Hu participated in the UCAF discussion on the concern of academic freedom and the return of in-person instruction. In the course of the pandemic, UCAF has twice written to the Academic Council to express a strong concern that steps necessitated in an emergency situation should not be treated as precedent afterward, especially to the extent that they are inconsistent with academic freedom. UCAF then issued a statement and emphasized that the responsibility for determining the proper mode of instruction in individual classes lies primarily with the faculty.

VII. Support for Animal Research at the University of California

Chair Hu brought this issue to the attention of the CAF, which unanimously supported UCAF's position for animal research at the University of California³. At its March 2021 meeting, the Academic Council endorsed the letter from both the University Committee on Research Policy (UCORP) and the University Committee on Academic Freedom (UCAF). The joined letter called on the University to defend faculty with stronger expressions of public support. The letter emphasized that the harassment can affect faculty mental health, personal safety, and also academic freedom.

VII. Carry Forward

1. Follow-up with Chancellor and CEVC regarding the Student Conduct Taskforce

Respectfully submitted,

COMMITTEE ON ACADEMIC FREEDOM

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Angus Forbes
Minghui Hu, Chair

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³ See UCAF to Academic Council Re: Statement on Animal Researchers, March 5, 2021 at <https://senate.universityofcalifornia.edu/files/reports/mg-md-support-for-animal-researchers.pdf>