January 18, 2011

Daniel Simmons
Chair, Academic Council

In Re: Proposed Revisions to APM 010 and 015

Dear Dan,

Thank you for the opportunity to review and opine upon the proposed revisions to APM 010 and 015. Upon receipt of your request, I asked the UCLA Senate’s Committee on Academic Freedom, the Committee on Faculty Welfare, the Committee onPrivilege and Tenure, and the Executive Board, which speaks for the Division, to opine. As is our custom, all other committees were welcome to opine at their discretion. I am attaching the responses we received, for your information.

The UCLA Academic Senate is convinced that steps should be taken to more explicitly protect the academic freedom of faculty, and that revisions of APM 010 and 015 are in order. We are generally supportive of the revisions proposed in April 2010 by UCAF, but find them incomplete in two regards. In addition to the proposed UCAF revisions, we propose the following, per the recommendations of the UCLA Committee on Academic Freedom:

1. In APM-015, Part I, condition 3, “enjoyment of constitutionally protected freedom of expression” should be expanded to read:

   “enjoyment of freedom of expression, including but not necessarily limited to constitutionally protected freedom of expression.”

The reasoning behind this change is as follows. The current wording of this condition appears to be intended to protect faculty from repercussions for their scholarly and non-scholarly expression, both within and outside the scope of employment, hence it appears to represent a “floor” of protection. But in light of how Garcetti is being interpreted, the Executive Board and UCLA’s AF Committee worry that the current wording could be interpreted by the courts to represent a “ceiling” with respect to expression within the scope of employment. With this concern in mind, the Executive Board recommends the above revision in wording.
2. In APM 015, Part II, C, condition 1 the “unacceptable conduct” item, “Intentional disruption of functions or activities sponsored or authorized by the University”, should have an additional sentence for clarification:

“Intentional disruption of functions or activities sponsored or authorized by the University. However, addressing institutional policies or actions, whether or not in the course of employment, shall not be considered a relevant form of intentional disruption.”

Again, concerns in light of how Garcetti has been interpreted have led to this suggested change.

Thank you again for the opportunity to review and opine upon this important matter. Please do not hesitate to contact me if I can be of any service.

Sincerely,

Ann Karagozian
UCLA Academic Senate Chair

Cc: Martha Kendall Winnacker, Executive Director, Systemwide Academic Senate
Jaime R. Balboa, Chief Administrative Officer, UCLA Academic Senate
This is to follow up on our discussion in our meeting in December. The main concern we discussed about the proposed revisions to APM 10 and 15 was that the proposed language affirming the “freedom to address any matter of institutional policy…” is fairly weak. I would feel more comfortable if the language were stronger than address, a term that does not offer an explicit guarantee against content and viewpoint discrimination.

I would suggest the following:

(1) The proposed new language in the general university policy be changed from “and freedom to address any matter of institutional policy or action whether or not as a member of an agency of institutional governance” to either

   a. “and freedom to offer candid opinions on any matter of institutional policy or action whether or not as a member of an agency of institutional governance.”

   Or

   b. “including on matters of institutional policy or action whether or not as a member of an agency of institutional governance.” [where this clause would modify the prior clause offering protection of ‘freedom of expression and publication’]

   Or

   c. “and freedom to speak or write without institutional discipline or restraint on matters related to professional duties and the functioning of the University, whether or not as a member of agency of institutional governance.”

I prefer ‘a’ because I think it is more direct and concise. ‘c’ is an adaptation of the first AAUP recommendation and the one adopted by the University of Minnesota. It also seems fine.

(2) I would also suggest modifying the next sentence that now reads: “These freedoms enable the University to advance knowledge and to transmit it effectively to its students and to the public.” I would worry that the values articulated in that sentence might be interpreted to limit the freedoms articulated in the sentence before it in cases where it is alleged that candid opinions interfere with efficient education methods.
I would rewrite it to read “These freedoms enable the University to advance knowledge and to transmit it effectively to its students and to the public through a system of strong faculty involvement in shared governance.”

(3) Along the same lines of (1) above, I would suggest the proposed new language of APM-015 be made stronger. Instead of its reading “4. freedom to address any matter of institutional policy or action whether or not as a member of an agency of institutional governance,” I suggest

   a. “4. freedom to offer candid opinions on any matter of institutional policy or action whether or not as a member of an agency of institutional governance,”

(That is, I suggest replacing ‘address’ with ‘offer candid opinions’)

Or,  b. “4. freedom to speak or write without institutional discipline or restraint on matters related to professional duties and the functioning of the University, whether or not as a member of agency of institutional governance.”

4. In APM-015, condition 3 now says that conditions hospitable to protection of faculty is “enjoyment of constitutionally protected freedom of expression.” I believe this is intended to protect faculty from repercussions for their scholarly and non-scholarly expression both within and outside the scope of employment. At one time, I think this phrase offered only a floor of protection but in light of how Garcetti is being interpreted, I worry that it could be read to also suggest that a ceiling with respect to expression within the scope of employment.

I suggest clarifying it so that it reads

   a. “enjoyment of freedom of expression, including at least but not necessarily limited to constitutionally protected freedom of expression.”

5. I would consider adding to Part II, C (where types of unacceptable conduct relating to the university are detailed). I would consider amending 1. which now reads “Intentional disruption of functions or activities sponsored or authorized by the University,” to read “Intentional disruption of functions or activities sponsored or authorized by the University. However, merely offering candid opinions about institutional policies or actions, whether or not in the course of employment, shall not be considered a relevant form of intentional disruption.”
To: Ann Karagozian  
Academic Senate, Chair

From: Shane White  
Faculty Welfare Committee, Chair

Re: Senate Item for Review: Proposed revisions to APM 010 and 015

The Faculty Welfare Committee reviewed the Senate Item for Review: Proposed revisions to APM 010 and 015 at their meeting on Tuesday, November 9, 2010. The committee unanimously approved the endorsement of the proposed revisions to APM 010 and 015.

We thank you for the opportunity to participate in this process.

Cc: Jaime Balboa, Chief Administrative Officer, Academic Senate  
Dottie Ayer, Assistant to Chief Administrative Officer, Academic Senate  
Brandie Henderson, Policy Analyst, Academic Senate
Hi Dottie,

I just talked to Dr. Berliner, Chair of the Privilege and Tenure (P&T) Committee: she confirmed that P&T has no comments at all and "The committee endorsed the proposal(s) as written". Please let me know if you need more formal notice of such or anything else.

Thanks!
John