

**APPROVED**  
**2006/2007 ANNUAL REPORT**  
**COMMITTEE ON ACADEMIC FREEDOM**  
**Christopher Kutz, Chair**

*The duty of this Committee is to study and report upon any conditions within or without 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.*

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The Committee on Academic Freedom (ACFR) met eight times during the 2006/2007 academic year and considered the following issues:

USA PATRIOT Act

The Committee took up the response by the University Counsel to its memo of May 10, 2006, which first discussed the academic freedom implications of the renewed PATRIOT Act and the Pentagon's TALON program, which put campus political activities under surveillance. The committee had urged the Chancellor, among other things, to seek to determine the effects of PATRIOT act informational requests on campus academic freedom, and to stand by earlier statements of policy that encroachments by the Act were to be resisted.

The University Counsel has responded, in relation to the PATRIOT Act, that as it was valid law, the Chancellor could only resist its application with permission of the Regents; and as to the TALON program, that since it was an executive program, not a law, there was no legal basis for any objections by the University.

The Committee found both these responses unpersuasive, and renewed its request of the Chancellor (via DIVCO) that the University seek to determine the scope of intrusiveness of the PATRIOT Act, that it seek to minimize its intrusiveness (if need be, requesting permission from the Regents to challenge the law in court), and that it join other institutions in asking that the TALON records of campus political activity be expunged, and that the program be discontinued.

Institutional Review Boards (IRB) at UC: IRB Operations and the Researcher's Experience

The committee was asked to comment on this report regarding reforms in the IRB review process. The Committee agreed with the report's procedural recommendation, that the review process be streamlined, standardized, and made more "customer friendly." However, the Committee felt that the report neglected substantive concerns about the

IRB process and its implications for academic freedom, notably a concern that some IRBs may be evaluating the overall worth of a particular research project, on the basis of the IRB's charge to evaluate the value of the research relative to the risk of the human subjects participating in the research. The Committee was concerned that some IRBs, in judging the risk/harm balance, were in fact evaluating the merits of scholarship without reference to or competence in the relevant discipline's standards. The committee was also concerned that the IRB rules and regulations, which were developed primarily to govern biomedical harm, were a poor fit for social science research, and so especially impinged upon the academic freedom of social science researchers. The Committee recommended that the University investigate these questions (as other universities are doing), along with the procedural reforms.

#### Draft Proposal on the Relationships between (Pharmaceutical) Vendors and Clinicians

The committee was asked to comment on this proposal, which seeks to limit the influence of health care vendors on university clinicians (including clinicians with research appointments). The committee was asked to consider the proposal in two parts; the first part required comment on the UCOP proposed ban on gifts from health care vendors to university personnel. The second part required the committee to comment on the proposed policies prohibiting faculty from publishing articles and/or editorials ghostwritten by vendor employees, prohibiting "no-strings attached" gifts and grants from vendors (excluding competitive grants), and requiring public listing of consulting agreements and unconditional grants.

In the first part of the review, the committee saw no direct impingement of academic freedom, but expressed a general concern that the policy of banning even small gifts was excessively paternalistic. Despite the support for the policies offered in testimony and discussion by Dean /Professor Dennis Levi of the UC Berkeley School of Optometry and Clinical Professor John Swartzberg of the UC Berkeley School of Public Health, the committee expressed concern that because this policy would single out health care personnel only among all campus researchers, it discriminated invidiously against that group.

In the second part of the review, the committee members were concerned over the lack of clarity in the term 'ghostwritten' and worried that it may be underinclusive, in that a vendor could contribute to an article without being listed as an author. The committee decided to recommend that, instead of banning ghostwritten articles, there be full disclosure of the authorship of articles and editorials. As to the proposed ban on "no strings" grants, the Committee was in sympathy with the very real concerns about bias created by gift relationships. Nonetheless, the Committee saw that the ban on 'no strings attached' non-competitive grants impinged on the academic freedom of researchers, and was directly in conflict with the University's strong commitment to the freedom of researchers to accept funds from any source that was otherwise in compliance with university regulations. In response to the third proposal included in the draft, the committee felt that full disclosure of unconditional grants was unnecessary if these types of grants are already banned under the second proposal. Lastly, the committee was again

concerned that clinicians have been singled out in this document since researchers in other fields are also susceptible to biasing effects through their relationships with vendors.

### Energy Biosciences Institute

The committee discussed the possible academic freedom implications of the Energy Biosciences Institute proposal. The committee had three principal concerns regarding the EBI proposal: 1) the governance structure seemed to allocate decisional power more to BP than to the University; 2) closed-shop proprietary research done on campus at the EBI was in conflict to University values of openness, 3) and that EBI affiliates might be intimidated by those who oppose the partnership between the university and BP.

The committee met with Vice Chancellor – Research Beth Burnside and Associate Vice Chancellor – Research Robert Price to discuss these concerns. In response to the first concern above regarding the governance structure, Vice Chancellor Burnside said that the UC faculty members on the governing board are not paid by British Petroleum (BP), but by the University (through EBI funds). The director of EBI is a Berkeley faculty member and the academic members of the governing board outnumber the non-academics. In response to the second concern, Vice Chancellor Burnside mentioned that proprietary research will be done only by BP employees, not faculty or graduate students, and that there are precedents, albeit not on campus, for proprietary labs working in conjunction with university work. With regards to the third concern, Associate Vice Chancellor Price believed a statement from the administration or the Academic Senate on the importance of respecting academic freedom rights on campus would be beneficial in protecting those doing research for EBI.

After meeting with Vice Chancellor Burnside, the committee discussed additional concerns and recommendations. It was unclear to the committee who would be protected under the university's academic freedom policy. The committee was concerned that if British Petroleum (BP) employees receive adjunct faculty status, they may not have academic freedom rights. The committee decided to recommend to Chair Drummond that academic freedom protections be put into place for adjunct lecturers if the current academic freedom policy does not already apply to them. The members agreed that the proprietary research component of the proposal did not raise any academic freedom concerns. The members also decided to ask for more clarification on the role of BP staff on the hiring of EBI employees. The committee wrote a letter to Chair Drummond, notifying the Senate of their concerns regarding possible academic freedom impingements.

Following the approval of the Resolution on Energy Biosciences Institute at the Special Meeting of the Berkeley Division, April 19, 2007, the Chair of ACFR was designated as one of a four member Senate negotiation oversight committee. The Committee discussed concerns they would like the Chair to pursue in that oversight capacity. These concerns included, among others, a desire that the role of BP in UC personnel and grant-making processes be minimized.