

May 2, 2008

Quentin Williams, Chair
Senate Executive Committee

RE: Inquiry from UCSC Scholars for Peace in the Middle East

Dear Quentin,

On October 12 the CAF received a memo from Quentin Williams on behalf of the SEC asking the committee to respond to an inquiry from Scholars for Peace in the Middle East (SPME), with Professor Ilan Benjamin and Tammi Rossman-Benjamin, a lecturer in Hebrew at UCSC, as co-signatories. In Fall 2007 CAF Chair Bettina Aptheker appointed a subcommittee, who met during winter quarter and discussed the matter. During Winter quarter of 2008, the committee, chaired by Christopher Connery, met with UCSC attorney Carole Rossi for clarification on a number of related issues. The entire committee met twice during spring quarter to discuss this report.

The SPME letter asked for an investigation of what it claimed to be a pattern of “anti-Israel and anti-Zionist bias and political advocacy found in classrooms and at departmentally-sponsored events.” The letter concluded that the following situation prevailed at the University:

- “1. Education has become indoctrination.
2. Political goals and personal partisan interests have taken precedence over standards of truth, accuracy, and scholarship.
3. Scholarly debate, the expression of differing opinions and the dissemination of important information and knowledge have been suppressed.”

Referring to Robert Post, former Professor of Law at Boalt Hall, UC Berkeley, and currently on the faculty of the Yale University Law School, who said during a lecture at UCSC that academic freedom is the right of the profession to the “unimpeded application of professional norms of inquiry,” the letter of inquiry states that this alleged bias and political advocacy violate those norms.

In this report, the committee will focus on those issues that are most pertinent to our committee’s charge 13.9.2:

The Committee studies and reports upon 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 resignation from positions in the University, and to the reputation of the University and of individual members of its faculty.

Our desire to clarify some of the issues raised in the inquiry will also lead to discussion of some areas tangential to the committee's direct purview, such as those related to APM 15, the Faculty Code of Conduct. We note at the outset that the terms "anti-Israel" and "anti-Zionist", which are featured in the inquiry, are themselves controversial, and matters of interpretation, and our reference to these terms in no way constitutes a judgment that we agree with the inquiry's claims that these were in fact the positions of speakers or instructors.

Historical and National Context of the Inquiry

Scholars for Peace in the Middle East is an international body, with chapters at many American universities, maintaining that an important component for peace in the Middle East is addressing what it calls "ideological distortions, including anti-Zionist and anti-Semitic slanders" on university campuses. Its literature mentions the "new Anti-Semitism" on U.S. campuses.¹ Other organizations monitoring perceived anti-Israel or anti-Semitic activities on campuses include StandWithUs, whose website has included numerous posts on activities at UCSC², and Campus Watch, an organization associated with the Middle East Forum whose mission is "monitoring Middle East Studies on campus."³ Anti-Israel bias is also a common complaint lodged by the Students for Academic Freedom, an advocacy group spun off from David Horowitz's Center for the Study of Popular Culture, and the main sponsor of the Academic Bill of Rights, a set of principles designed to combat alleged leftist bias in academe through a series of state legislative initiatives mandating political "balance" in hiring and curriculum design. These advocacy organizations have been quite active in recent years on a number of campuses, and with the medium of the Internet are able to draw national and international attention to local issues. Our committee notes that allegations of anti-Israel, anti-Zionist, or other forms of politically motivated bias have been common occurrences in recent years throughout the UC system, and several of these are referenced in the on-line academic freedom resources referenced in footnote five. Recently, the Ad Hoc Committee to Defend the University⁴ was formed in response to perceived threats to academic freedom in the current climate.⁵ The points made in the SPME inquiry are similar in position and in wording to positions taken by some of the above organizations in cases around the country. UCSC, named the worst university in the United States by David Horowitz, would be expected to feature prominently in this national discussion.

¹ Quotations and mission description are from <http://www.spme.net/index.html>. Accessed April 22, 2008. The organization's activities around one recent tenure case at Barnard College are documented in a recent *New Yorker* article by Jane Kramer, "The Petition: Israel, Palestine, and a Tenure Battle" (April 14, 2008).

² http://www.standwithus.com/news_post.asp?NPI=1153. Accessed April 22, 2008

³ <http://www.campus-watch.org/>

⁴ <http://defend.university.googlepages.com/home>. Accessed April 22, 2008

⁵ A recent study suggests the widespread perception of this era as one in which academic freedom is more endangered than in the McCarthy era. <http://www.insidehighered.com/news/2007/08/15/freedom> Accessed April 22, 2008.

This is not the first time that SPME or its members have figured in the work of the Committee on Academic Freedom. In 2002-03, responding to a complaint brought by Paul Lubeck, then chair of CAF Barbara Epstein made the following points in a letter to Ilan Benjamin:

. "It is important that people be able to express views with which others may strongly differ, without fear of being charged with holding attitudes with which few if any would want to be associated (such as anti-Semitism, racism, sexism).

...

We want to encourage an atmosphere in which even highly charged issues, such as the current situation in Israel/Palestine, can be discussed calmly and without fear, on the part of participants, of accusations which may damage their reputations. We appreciate your concern with issues having to do with Israel/Palestine and your participation in campus discussions, but we would like to encourage you to participate in a way that will encourage further discussion rather than discouraging it. (Epstein, April 24, 2003)"

We note that the inquiry from SPME under consideration here does not accuse anyone of racism or anti-Semitism. It is hoped that this response to the inquiry, in clarifying principles and policies of academic freedom and freedom of speech, and noting procedures in place to promote sound scholarship, teaching, and breadth of inquiry, will contribute further to a civil atmosphere.

Academic Freedom Principles at Stake

Academic freedom differs from freedom of speech. The latter is protected by the Constitution, but does not extend into all institutional situations. Faculty freedom of speech within the classroom, for example, is subject to oversight that would not necessarily obtain were that faculty member speaking outside the university. Academic freedom is inextricably tied to principles of faculty self-governance, first articulated by the AAUP in 1915, and subject to later modifications. Central to academic freedom is the freedom of the faculty as a whole to develop professional standards and norms, and to regulate itself based on those standards and norms.

Presentation of political positions in the classroom or in public forums are not violations of academic freedom, nor is a lack of "balance," real or perceived, a violation of academic freedom. As former UC President Richard Atkinson wrote, "academic freedom is concerned with protecting the conditions that lead to the creation of sound scholarship and good teaching, not with maintaining political neutrality."⁶ Particularly

⁶. Distributed Spring, 2003. For a text of this document, and links to many other documents regarding academic freedom, see <http://library.ucsc.edu/~ldjaffe/acfdm.html>. Many thanks to UCSC librarian Lee Jaffe for compiling this web resource.

when a course or an event touches issues of controversy, there will be those who disagree with views presented by the professor or speaker. Our report will discuss the procedures in place that guard against ideological coercion, which would indeed be a case of faculty misconduct. But absent blatant misconduct, along the specific lines described in the section below, it is in the interest of academic freedom for there to be great latitude allowing the free expression of views, controversial or not, including “partisan” views. Academic freedom has its fundamental interest in the proliferation, not in the restriction of speech. Our committee believes that it is in the campus’s interest for there to be debate and dialogue around issues of controversy and concern. This, however, is not a call for balance, pure and simple. Balance, as many scholars have pointed out, is in the eyes of the beholder, and is a notoriously slippery concept. Some feel, for example, that given the national climate, it is only at the university that voice can be given to unpopular or critical points of view. A majority view within the university could be a minority view in the national context, and vice versa. We commend the view of David Hollinger, Preston Hotchkis Professor and recent Department Chair in History at the University of California, Berkeley, who has written a thoughtful critique of the partisan political character of charges of imbalance, arguing that the only relevant criteria for balance is “simply to do an academic project professionally. To be imbalanced is to leave out of account something that the academic norms of evidence and reasoning in the interest of truth require you to take into account.”⁷ Academic norms of evidence and reasoning are—and here Hollinger echoes positions taken by Robert Post on the basis of academic freedom in professional norms—best determined by professionals in the field, professionals who understand that many fields are marked by controversy and a great diversity of interpretations and viewpoints. As Post wrote, in a report to President Atkinson:

“Standing Order 105.2 represents the regents’ commitment to a principle of academic freedom that is historically and theoretically fundamental: university scholarship, and the teaching that expresses and transmits that scholarship, is to be understood as a matter of professional knowledge. It follows from this principle that evaluation of scholarship and teaching is to be entrusted to the judgment of competent professionals, in the form of the corporate body of the faculty. This principle underlies the academic freedom of the entire university, because it distinguishes the enterprise of scholarship from the political governance of the state. The maintenance of this distinction is one of the great achievements of public higher education in the United States. Modern scholarship is built on a foundation that requires the professional autonomy of the professoriate.

If Standing Order 105.2 expresses a norm of professional autonomy, the Academic Senate, in exercising that autonomy, must be guided by a second

⁷ David Hollinger, “What Does It Mean to be “Balanced” in Academia?” History News Network, February 22, 2005. <http://hnn.us/articles/10194.html> . Accessed April 22, 2008 .

fundamental principle of academic freedom: individual faculty are to be accorded broad freedoms independently to think, write, and engage in research. These freedoms are necessary if the university is to fulfill its function of promoting the advancement of knowledge. Analogous freedoms extend to teaching, where faculty report and explore the results of their scholarly endeavors.”

...

Scholarship requires an open mind, but this does not mean that faculty members are unprofessional if they reach definite conclusions. It means rather that faculty must always stand ready to revise their conclusions in light of new evidence or further discussion. Scholarship also requires the exercise of disinterested reason, but this does not mean that faculty are unprofessional if they are urgently committed to a definite point of view. It means rather that faculty must form their point of view by applying professional standards of inquiry rather than by succumbing to external and illegitimate incentives such as monetary gain or political coercion.

There is no academic norm that prohibits scholarship from communicating definite viewpoints about important and controversial questions, like democracy, human rights, or the welfare state. Faculty must be free to communicate these viewpoints in their pedagogy. Political passion is in fact the engine that drives some of the best scholarship and teaching at the University of California, and this is particularly true in the humanities and social sciences.⁸ ”

There is no threat to academic freedom or to academic integrity in the presentation of a single side of a controversial issue. This is confirmed by all the relevant literature on academic freedom, as well as in UCSC attorney Carole Rossi’s comments to our committee, which made clear that the events specified in the SPME complaint were not, even if they were represented accurately, violations of university policy. Our committee feels, then, that there is no intrinsic threat to principles of academic freedom in political speech, advocacy, or taking controversial positions in the classroom, provided that production and dissemination of knowledge adheres to professional norms, the means of whose safeguarding we will discuss below. We agree with attorney Rossi’s position that the solution to problems with speech is more speech, not prohibition.

In compiling this report, the committee solicited comments from several faculty members on campus about their interactions with the SPME. We also asked UCSC attorney Carole Rossi to offer an opinion on whether or not letter or e-mail campaigns instigated by SPME (see Hershatter communications in the appendix) could in any way constitute harassment of faculty. The faculty who commented on their interaction with the SPME

⁸ Robert Post, “Academic Freedom and the “Intifada Curriculum.”” *Academe*, May June 2003. Accessed April 22, 2008, on *Academe Online*, <http://www.aaup.org/AAUP/pubsres/academe/2003/MJ/Feat/Post.htm>.

or its representatives (see communications from Hershatter, Lubeck, Pudup, and Rofel appended to this report) all felt that the organization's complaints were intimidating. One colleague reported that, as department chair, she would be hesitant in hiring a lecturer or scheduling a course that would elicit complaints from the SPME. Another colleague, noting the presence of a member of the SPME—one with no declared interest in Muslim Studies-- at meetings for the organization of a Muslim Studies initiative on campus, wrote that this had a "chilling effect" on this curricular initiative. Another colleague wrote that, facing repeated demands and communications from SPME about a conference she had organized, she had considered hiring a lawyer. It is very unfortunate that colleagues feel intimidated by this group's activities, and we hope that all parties on campus do their best to maintain civility in their disagreements. Nevertheless, as our committee's meeting with UCSC attorney Carole Rossi suggested, the bar is fairly high for harassment, and there is considerable First Amendment latitude given to the kind of critique pursued by SPME.

There may be cases, as is suggested in attorney Rossi's comments, and noted in the minutes to our meeting, when a faculty member might be justified in filing a grievance with the Privilege and Tenure Committee alleging violations of faculty rights or privilege. In general, though, protections for free speech are many: it is well within the bounds of free speech to call for criticism of an event or a speaker, however uncivil or uncollegial the ensuing criticism might be. Although the behavior detailed in the appended e-mails—and we make no judgment on the accuracy of these reports—does not seem to constitute actionable offense, faculty should decide for themselves whether or not they want to approach the committee on Privilege and Tenure about issues of concern. But more important is that, in the spirit of academic freedom and freedom of inquiry, faculty must not allow themselves to be intimidated by political criticism. They must realize that controversial positions—and controversy is of course often in the eye of the beholder-- will produce controversy. Still, to faculty who would feel intimidated from scheduling a course, speaker, or conference due to an unwillingness to face an expected barrage of inquiry or complaint, and to university administrators who might be the recipients of those complaints, we would like to emphasize the point that no one in the university, and no university administrator, is absolutely required to respond at length to complaints, particularly repeats or near-repeats of complaints that have been previously addressed by senate or other administrative bodies.

Coercion and Violations of the Faculty Code of Conduct, and the Complaint Process

The Faculty Code of Conduct, APM-15, emphasizes in its preamble the centrality of academic freedom to the professorial mission. It explicitly recognizes the faculty right to present controversial material, and emphasizes the importance of shared governance in the preservation of academic freedom and the pursuit of knowledge. The code prohibits "discrimination, including harassment, against a student [or colleague, as specified in the same section in the code] on political grounds, or for reasons of race, religion, sex, sexual orientation, ethnic origin, national origin, ancestry, marital status, medical condition, status as a covered veteran, or, within the limits imposed by law or University

regulations, because of age or citizenship or for other arbitrary or personal reasons,” as well as “use of the position or powers of a faculty member to coerce the judgment or conscience of a student or to cause harm to a student for arbitrary or personal reasons.” It also prohibits “making evaluations of the professional competence of faculty members by criteria not directly reflective of professional performance.” Nowhere in the SPME inquiry is any allegation made of faculty coercion of students, on any basis. Were that the case, and were any student treated in a punitive manner for his/her political views, we hope that the student would file charges. Although SPME has itself questioned the competence of faculty lecturers with whom they have disagreed, it is not evident that this criticism constitutes “harassment... on political grounds,” and not simply the exercise of free speech. On the other hand, accusations of racism or anti-Semitism might be cause for grievance [the SPME inquiry under consideration mentioned “anti-Israel” and “anti-Zionist” bias, but not anti-Semitism], either from the accused or the accuser. Established policy does provide faculty with the right to file a complaint against another faculty member if they believe strong evidence exists that the code of conduct has been violated, and that they are the targets of inappropriate accusations. Such complaints are handled by the Charges Committee of the Executive Vice Chancellor’s (EVC) Office. Based on policies specified in the Faculty code of conduct (APM 015 and 016), the aggrieved faculty member completes a complaint form and files it with the EVC’s office. The evidence is examined by the Charges Committee, which issues a report and recommendation to the EVC. Should the EVC intend to discipline a faculty member, the report is forwarded to the Privilege and Tenure committee.

Students do not have a right to be taught according to a particular viewpoint. Student academic freedom derives from faculty academic freedom, and does not exist as a separately protected category. Students do have the right to disagree with content presented in a course and faculty typically welcome vigorous debate. If a student strongly objects to the content of a course, she/he has several options. The student can speak directly with the instructor about any concerns related to the diversity of ideas presented in class and/or may seek consultation with the chairperson of the department in which the course is being offered. If the student is emphatic that the student’s rights have been abridged or that the instructor has acted inappropriately and, furthermore, believes the instructor and chair offer no recourse, the student may file a complaint under the terms of the Faculty Code of conduct (APMS 015 and 016). Such complaints are governed by a formal process described in the Student Handbook (2007-08) under Judicial 115.00, “Student Grievance Procedures.” The student completes and submits a form to the EVC’s office and the Charges Committee, which is staffed by the EVC’s office, examines the evidence.

In conclusion, we find that the APM is very clear about what constitutes violation of the code of conduct, and provides ample opportunity for the consideration of grievances arising from this.

Procedures for Hiring Lectures and for Determining Course Content and Approval

The SPME inquiry suggests that there are problems in the hiring of lecturers and in approval of course content. As we have stressed throughout this report, academic freedom rests on procedures, administered under shared governance, for ensuring that standards and norms are maintained in determining the work of teaching and research. After close examination, we find the campus possesses a robust set of established policies and procedures already in place that protect the rights of individuals and the academic freedom of professors to teach in an open environment. Our findings in these policy areas are described below.

Hiring of Lecturers

Academic Personnel Office (APO) procedures to hire a lecturer are described on their website at:

http://www2.ucsc.edu/ahr/academic_policies_and_procedures/cappm/100500.htm.

These are sound procedures that have been in place for many years. Lecturer recruitments follow many of the same procedures as ladder rank faculty recruitments, including submission of an application letter detailing the applicant's credentials and experience, letters of reference, and curriculum vitae. Many departments operate an ongoing Lecturer Pool to facilitate recruitment of talented potential lecturer candidates. Some departments, such as Community Studies, have the Lecturer Pool CALL posted on its web site, but others are listed at the APO website by Division.

Course Content and Approval

At present, academic quality is regulated through a multi-tiered course approval system. The process of course approval begins at the department level when each department chair vets course proposals submitted by faculty and lecturers, and even students seeking to offer a student directed seminar. After the chair reviews the proposal and, if deemed necessary, requests amendments to the original proposal, the chair then forwards the proposals to divisional deans for resource approval. After review at these two levels the course proposal is submitted for final review and approval by the Committee on Educational Policy (CEP), whose decision authorizes the course to be offered at UCSC. CEP's charge can be viewed in the UCSC Senate Manual at:

<http://senate.ucsc.edu/manual.htm>

Summer session course approvals are handled somewhat differently because summer session has operated as a separate enterprise. The process begins each fall when summer session puts out a CALL to departments for courses to be offered the following summer. Departments submit a rank ordered list of courses to the Summer Session office. This list may include courses already on the books (i.e., already reviewed and approved) or proposed courses to be offered on a one-time or permanent basis. After departmental approval, the summer session office submits any new or revised course proposal to CEP

for their review and final approval. All summer session teaching appointments are coordinated by the summer session office, with approval of the department and, when appropriate, CEP. Depending on course cost and enrollment, the summer session office may choose to not offer courses on the departmental lists.

The procedures in place for hiring lecturers and determining course content mention no specific procedures for complaints from third parties (i.e., neither instructor nor student) about the outcomes of those procedures. We can conclude that the university and Senate deem existing procedures to be sufficient guarantors of adherence to academic norms, and see no reason for additional safeguards or avenues of appeal from external bodies. These are procedures that have developed over many decades, with faculty rights that have been, in many cases, hard won. Changes to these procedures, such as instituting additional levels of review or scrutiny, would of course be matters for the whole Senate. We see no need to move in that direction.

Outside Speakers, Conferences, and Colloquia

Many units on campus schedule talks, conferences, and colloquia, and these have a variety of aims: to present new knowledge, to stimulate debate or foster discussion on controversial issues, or for more general pedagogical aims. It is of course in the campus's interest that students be exposed to a range of perspectives, partisan and non-partisan. Some members of the university community feel that it is particularly important that students and faculty are exposed to viewpoints that are under-represented in the mainstream media or in the society at large. Others feel that the university itself should present all points of view on controversial issues. It would appear that those who hold either of the above positions value access to a wide range of viewpoints and positions. Although the SPME mentions a number of events with viewpoints with which they disagree, there is no reference to SPME encountering difficulties in scheduling events of its choosing. We would encourage all groups on campus who want specific voices and positions to be heard on campus to schedule events featuring those positions.

Conclusion

We believe that the SPME are deeply sincere in their complaints about bias and indoctrination, but we note that there is great latitude for political speech on campus, and sound grievance procedures in place to protect students from coercion or intimidation. We hope that members of the SPME gain a better understanding, from this report, of the nature of academic freedom, the place of "balance" therein, and of the near absence of restrictions on advocacy per se. We do not find that any of the events about which the SPME complains constitute threats to academic freedom, or to the academic integrity of the university, which itself depends on the protection of academic freedom. We also uphold the right of SPME, on freedom of speech grounds, to make their opinions and viewpoints heard. In the future, the SPME or some other organization might want to object to a particular course, or to procedures for course approval. But it should be

noted, as this document has tried to make clear, that lack of balance, real or perceived, is not in itself grounds for action.

The administration and Senate, in responding to future complaints from the SPME or related organizations, should bear in mind the toll taken on faculty members, committees, and administrators arising from the need to respond to repeated inquiries. We hope a consideration of this report, and of the relevant APM sections, will facilitate future administrative or Senate response, or lack of response.

Sincerely yours,

COMMITTEE ON ACADEMIC FREEDOM

Raja Guha Thakurta

David Londow, NSTF Rep

Nicole Paiement

Mary Beth Pudup

Holger Schmidt

Christopher Connery, Chair

Appendices

Emails from Hershatter, Lubeck, Pudup, and Rofel

Meeting minutes from CAF meeting with UCSC attorney Carole Rossi