


## MEMORANDUM

TO: Professors:  
Alan Brownstein  
Joanne Diehl  
Michael Nantz  
Ruth Reck

FROM: Jerold Theis 

SUBJECT: Annual (2004-2005) Report of the Committee of Academic Freedom and Responsibility

DATE: August 5, 2005

Enclosed is a copy of the annual report of our activities for the 2004-2005 Academic year. Please look it over and if you have any additions or corrections please let me know by August 30, 2005.

I will send the report to the Chair of Academic Senate after that date. Thanks to all of you for your service this year.

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**Annual Report: Academic Year 2004-05  
Davis Division: Academic Senate**

**Committee on Academic Freedom and Responsibility**

<b>Total Meetings</b>	<b>Meeting Frequency</b>	<b>Average hours of committee Work each week</b>
<b>3 in person sessions</b>	<b>3 per year</b>	<b>4-5</b>
<b>Total Reviewed 3</b> (courses, proposals, cases, etc.)	<b>Total of reviewed -0- deferred from the previous year</b>	<b>Total -0- deferred to the coming academic year</b>

**Listing of bylaw changes proposed:**

Committee reviewed bylaw change Academic Senate 3.7.1 Membership of Executive Council. Recommended chair of CAFR be a permanent member of Executive Council.

**Listing of committee policies established or revised:**

NONE

**Issues considered by the committee:**

1. Proposal from College of Ag & Env Sci to consolidate departments of Agronomy, Range Science, Enviro Horti, Polmology and Veg Crops (see report attached).
2. Review of UCD Policy and Procedure Section 210-35 Integrity in Research (see attached report).

**Recommended procedural or policy changes for the coming year:**

NONE

**Committee's narrative:**

See attached reports

Review of UCD Policy 210-35 still in progress. New draft being compiled as review proceeds.



SCHOOL OF MEDICINE  
DEPARTMENT OF MEDICAL MICROBIOLOGY AND IMMUNOLOGY

ONE SHIELDS AVENUE  
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January 28, 2005

To: Daniel L. Simmons  
Chair of Davis Academic Senate  
303 Voorhies Hall  
UC Davis

From: J.H. Theis  
Chair of Academic Freedom and Responsibility  
UC Davis

A handwritten signature in black ink, appearing to read "J.H. Theis", is written over the "From:" field of the letter.

Re: Section 3.7.1 Executive council membership; page 29, Item 1, in the "Mending the Wall" document.

The committee recommends that the divisional by laws be amended to "establish the membership of the Executive Council" to include: "The chair, vice-chair, and secretary of the Division, the representatives, and first alternate representative of the system-wide assembly, the chairs of the faculties, of the schools and colleges, and the chairs of the following committees: Academic Personnel, Academic Planning, Budget Review; Admissions, Elections, Rules and Jurisdiction, Graduate Council, Undergraduate Council and Research." Left off this list is the chair of the committee on Academic Freedom and Responsibility. This is a standing committee of the Academic Senate in every respect that the others are and whose chairs were included. Furthermore, directly or indirectly, virtually everything that impacts teaching or research on this campus has the potential to impact APM 010. The very essence of an institution of higher learning depends upon the freedom of its faculty to teach and investigate topics that may be highly controversial in the society at large. Other committees are not oriented to consider the ramifications of the actions they take as regards APM 010. As an example, I sent a copy of CAFR response to the P & P, section 210-35; Policy on Integrity in Research, to the Committee on Research, Committee on Faculty Welfare, and the Committee on Privilege and Tenure in June of 2004. To date, I have had no comments from any of their committees on the intrusion on shared governance that policy commits, nor on how the policy may affect the duties and responsibilities of any of those committees.

There is an absolute need for a person, sensitive to the issue of Academic Freedom, to be a member of the Executive Council and the Chair of CAFR should be included on the list of committee chairs to serve on the Executive Council.

I am hereby requesting that the membership list for Executive Council be amended to include the Chair of the Committee of Academic Freedom and Responsibility.



SCHOOL OF MEDICINE  
DEPARTMENT OF MEDICAL MICROBIOLOGY AND IMMUNOLOGY

ONE SHIELDS AVENUE  
DAVIS, CALIFORNIA 95616-8645

October 12, 2004

TO: Dan Simmons  
Chair, Academic Senate  
c/o Gina Anderson  
220 Mrak Hall, Campus

FROM: Committee Academic Freedom and Responsibility (CAFR)  
J. H. Theis, Chair

A handwritten signature in black ink, appearing to be "J. H. Theis".

RE: Proposal from College of Agricultural and Environmental Sciences to Consolidate the Departments of Agronomy and Range Sciences, Environmental Horticulture, Pomology, and Vegetable Crops into the Department of Plant Sciences

Enclosed please find the committees comments and concerns and the recommendations by the Chair of CAFR for further action by the Executive Council and the Academic Senate.

The Academic Senate, University of California has stated that: "The University's dual-track system of authority and responsibility presumes that faculty members are best qualified to chart the university's educational course, while administrators are most competent to direct its finances and organization. In practice, these domains are over lapping and interdependent. To function successfully together, faculty and administrators depend upon a high degree of consultation, trust, mutual respect, and a tradition of collegiality". George D. Louderback has been quoted at the AAUP annual meeting in 1937 regarding shared governance: "The success of such a system cannot be guaranteed by the wording of a series of rules or principles, but must depend finally on an effective degree of mutual respect and confidence between faculty and administration".

With this in mind the committee on Academic Freedom and Responsibility finds that many of the comments in Appendix A though perhaps rhetorical are nevertheless disturbing. If the faculties felt coerced, manipulated, beat down or blackmailed by the administration and as a result voted for the consolidation then clearly, whether the Dean admits to such behavior or not, that was the perception by the voting faculty, of the use of such tactics by the Dean. This is not in keeping with the principles of trust, mutual respect and collegiality upon which shared governance is based nor does it foster confidence between faculty and administration. The administrative end does not justify the means for achieving that end if the means violate the principles of shared governance. The fact that 80% of those faculty that voted, voted for consolidation is not the issue, what needs to be asked is why did the 80% that voted vote in favor of consolidation? It should be noted that 89% of the faculties concerned participated in the vote but at least one comment (pg. 8 bottom) suggests that at least one faculty member felt abstaining was not an option and a vote against the merger was perceived as being unhealthy for the faculty member. Is this a single individual or did others feel the same?

The second concern the committee has with the reorganization involves the duties assigned to the vice chair regarding teaching and curriculum development. It is unclear if the term "recommend" involves faculty input or it really means the vice chair "unilaterally decides". In keeping with the provisions of APM 010 the committee suggests items 1-8 under vice chair-teaching and curriculum development on pg. 21 of Appendix B be amended to include the specific requirement that "consultation with the faculty must occur before such recommendations are made". The committee finds that item #4 is particularly problematic in that it omits any mention of faculty input and does not even entail the use of a curriculum committee. APM 010, Academic Freedom, clearly establishes the faculty as the deciding force in course content, curriculum structure and presentation. Item 4 is a violation of APM 010, both as regards authority and principle.

Recommendations by the chair CAFR based upon the comments of committee members.

- 1). Academic senate recommendation for or against consolidation of the 4 departments be withheld until the Executive Council has discussed the concerns expressed in items 1 and 2 above.
- 2). Duties of the vice chair regarding teaching and curriculum development be amended so as to require faculty consultation before recommendations are made.
- 3). Duties in item 4 be specifically placed in the hands of a faculty appointed curriculum committee and removed as one of the duties of the vice chair of the proposed new department.

June 7, 2004

To: Dr. Bruce Madewell  
Chair, Academic Senate  
301 Voorhies Hall

From: Dr. J.H. Theis  
Chair, CAFR  
School of Medicine  
Tupper Hall



RE: CAFR Review of UCD Policy and Procedure Section 210-35  
Integrity in Research and Responding to Allegations of Research Misconduct

Dear Chair Madewell:

Please find enclosed the collective report of the Committee on Academic Freedom and Responsibilities and the conclusions of the Chair, CAFR, based upon the comments by Committee members.

Review of the UC Davis Policy and Procedure  
Section 210-25 Integrity in Research and Responding to Allegations of Research  
Misconduct

This policy was the result of demands made by the Department of Health and Human Services, Office of Research Integrity, which claimed that the former UC Davis Policy did not comply with federal regulations.

Vice Chancellor for Research, Barry M. Klein has submitted the revised policy without review by the Academic Senate UC Davis or any consultation with the Executive Council of the Academic Senate. He excuses himself from doing this in his November 21, 2003 letter to the Council of Deans and Vice Chancellors claiming that the Department of Health and Human Services had given UC Davis 30 days to submit a revised or New policy based on the Office of Research Integrity Model Policy or be declared ineligible for PHS funding.

The new Policy 210-25 has been in effect since November 12, 2003. The document consists of

D). A 17 page section of definitions, Policy Scope, Federal Sponsor oversight and Institutional Review and Decision guidelines.

II). An 11 page document titled: Attachment 1 conducting the Inquiry.

III). A 13 page document titled: Attachment 2 Conducting the Investigation.

IV). A 3 page document titled: Attachment 3 Reporting of Violations to Federal Agencies.

These four documents have been reviewed by 3 members of the Academic Freedom and Responsibility Committee, UC Davis. Contained herein is a summary of our findings and concerns about this new UCD Policy and Procedure Section 210-25.

There are several over riding general criticisms of the policy that will be noted first.

A). The Policy as submitted is a complete abrogation of the standing orders of the Regents covering shared governance in matters of faculty discipline and misconduct, standing order: 100.4© and 103.2, The faculty code of conduct particularly Part I Professional Rights of Faculty point 4e and 5. It is also in violation of the newly defined APM 010 on Academic Freedom.

B). The Policy as submitted provides excessive and over-riding discretion to the Research Integrity Officer who alone and without consultation with the appropriate committee(s) of the Academic Senate decides when allegations of misconduct warrant inquiries (Policy document Item II-P.)

- C). The Policy as submitted provides no procedures for handling allegations of research misconduct that involve “inappropriate treatment of living subjects” non-compliance with Institutional Review Board (IRB) policies or directives” and “fiscal malfeasance regarding research.” The procedures for handling allegations of this type are **at** the discretion of the Research Integrity Officer. (III Policy A Scope).
- D). The policy does not clearly define terms in the standard of proof regarding what evidence is necessary to show: “a significant departure from accepted practices of the relevant research” one of the two requirements for a finding, by the Research Integrity Officer of Research Misconduct. (III Policy C-3).
- E). The policy does not provide for due process before notification of the federal sponsor of “reasonable indications of “criminal violations” which must be done within 24 hours of a “finding”, (which term is not defined).
- F). The policy as submitted allows for the Research Integrity Officer to appoint the Inquiry and Investigation Committees and determine the appropriate expertise of such committee members without consultation with the appropriate committees of the Academic Senate (III Policy E-2-b).
- G). The Policy as submitted requires that the Research Integrity Officer maintain confidentiality during the inquiry and investigation and the policy requires the accused to maintain confidentiality. The person reporting the misconduct called in the document the “reporter” may request anonymity and during the “Allegation assessment and Inquiry Phase UC Davis will make effort to honor the request.” Only if the Reporter’s testimony is required does the reporter run the risk of losing their anonymity (IV Procedures B-1-C).
- H). The Chancellor, without consultation with the Academic Senate, may impose an interim suspension with or without pay on the person accused of misconduct in Research (IV Procedures, A) This is in violation of standing order of the Regents 100.4-C.
- I). The accused employee will have to provide their own counsel, if they want one, at their own expense from the time the inquiry is opened (III Policy E-4a).
- J). The policy as submitted acknowledges that the accused faculty member’s reputation may be damaged even if UC Davis decides no research misconduct took place and the federal sponsor concurs with that decision by the Deciding Officer (Vice Chancellor for Research, UC Davis, currently Barry M. Klein). However, the Policy only requires the Research Integrity Officer to “undertake “reasonable efforts” to restore the accused reputation, as required by federal regulations, sponsoring agencies and based on the University’s discretion in the absence of mandatory restoration.” (Section XI-B).



Attachment I Conducting the Inquiry

B). First Steps if an Inquiry is Necessary:

The Research Integrity Officer appoints and charges the Inquiry Committee – no provision for consulting the Academic Senate Committees is made or required).

“The accused should not be notified in advance of the securing of Research Records.” If the accused faculty member is not available securing of the records may begin in the accused’s absence.” “The Research Integrity Officer should obtain the assistance of the accused’s supervisor and Institutional counsel if this process is necessary.” (Attachment I-C-4).

D). Notification of the Respondent (accused) contains statements that deny that the accused has the right to exercise 5<sup>th</sup> Amendment Rights. Attachment I D-2.

Potential respondents (those that may be co-authors of papers but have been brought into question or Co-PIs of grant applications that have been brought into question) may also become accused of research misconduct at the discretion of the Research Integrity Officer.

Attachments I E-1 Use of an Inquiry Committee.

“The Research Integrity Officer may appoint a committee of three or more persons to conduct the inquiry.”

The Academic Senate is not required to be consulted in the choice of members for this Inquiry Committee.

It is not clear that a committee is even required. As E-2 provides for a single individual –the Research Integrity Officer to conduct the inquiry directly.

Attachment I Section I General Approaches to conducting an Interview item 7 Access to Counsel.

Prohibits the counsel of a witness from objecting to questions put to the witnesses. Requires the witness to respond directly to the interview question. This is a violation of the 5<sup>th</sup> Amendment rights and other constitutional rights of a witness.

## Attachment 2 – Conducting the Investigation

### Section C Notification of the Respondent (accused).

It is unclear in this section if the accused will receive a description of the evidence used to support the accusation of misconduct in research.

### Section A Purpose of the Investigation

The scope of the investigation may go beyond that delineated by the original charges. There appears to be no limits to the scope of the investigation that the Research Integrity Officer may explore.

### Attachment II-E Appointment of the Investigation Committee.

There is no provision made in the policy for Academic Senate Committees to have any input in the selection of the Investigation Committee members.

Attachment II Page 13

### Confidentiality

The draft report on the Investigation is to be given to the Respondent (accused) and the Reporter (accuser) only if they agree to keep it confidential. This means it is impossible for the counsel for the accused to expose the Institutional abuses this policy will encourage without placing the faculty member in additional harms way.

Conclusions, by the Chair, CAFR based upon the review of the documents by committee members.

1. This policy, if it remains in force, removes the Academic Senates' function in faculty discipline, in cases involving research misconduct as outlined in the standing order of the Regents 100.4.C and contained in the Faculty Code of Conduct APM 016 and APM010.
2. This Policy establishes two individuals A)The Research Integrity Officer who is the Executive Director of the Office of Human Research Protection and Research Compliance at UC Davis and is appointed by the Vice Chancellor of Research at UC Davis and B). The Deciding Official who is the Vice Chancellor of Research at UC Davis and gives them career ending powers over all employees of the UC Davis campus with no input from any committee(s) of the Academic Senate or the Academic Federation.