

## Defending My Research and Academic Freedom at the University of California

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On January 18, 2007 the UC Regents discussed Action Item REE89 to ban tobacco industry funding at UC (<http://www.universityofcalifornia.edu/regents/regmeet/jan07/re89.pdf>). This discussion is summarized in the attached January 26, 2007 *Science* article (1) and in the Regents minutes (<http://www.universityofcalifornia.edu/regents/minutes/2007/fjn17.pdf>). Because I was mentioned in this discussion, I have prepared this document in order to defend my research and academic freedom at UCLA. In particular, I have addressed statements made about my research in Action Item REE89 itself and in the presentation by UCSF Professor Stanton A. Glantz (Glantz) (<http://www.universityofcalifornia.edu/senate/assembly/feb2007/Regents.tobacco.presentation.pdf>).

Several erroneous statements have been made by Glantz and the American Cancer Society (ACS) regarding the May 17, 2003 *British Medical Journal (BMJ)* paper that I wrote with Geoffrey C. Kabat, Ph.D. (<http://bmj.com/cgi/reprint/326/7398/1057.pdf>). I have responded to these statements in order to provide an accurate portrayal of my epidemiologic career at UCLA and my dealings with the ACS, both of which date back to 1973. My response addresses the essential aspects of six major issues, using five pages of text and eleven numbered attachments. Additional details on these issues are provided in the weblinks shown and in my Scientific Integrity Institute defense (<http://scientificintegrityinstitute.org/defense.html>). To be sure that these complex issues are fully understood, I am willing to personally explain them further.

### **D) My May 17, 2003 *BMJ* paper (“the UCLA study”) is valid**

- a. My *BMJ* paper on environmental tobacco smoke (ETS) and tobacco-related mortality is high quality epidemiologic research made possible because of the academic freedom that I have had at UCLA since 1973. Contrary to the harsh criticisms by Glantz and the ACS, my paper is being accepted as accurate and important by an ever increasing number of informed readers, who have objectively evaluated it relative to other research on this subject.
- b. My *BMJ* results, which show that tobacco-related mortality has a very weak relationship to ETS but a very strong relationship to active smoking, have stood as correct since their publication. No errors in these results have been identified by anyone, including the ACS, which possesses the California Cancer Prevention Study (CA CPS I) data upon which they are based.
- c. My *BMJ* results are entirely consistent with those in the most detailed analysis of ACS data with regard to ETS and lung cancer, the 199-page 1995 Emory University dissertation by Victor M. Cardenas, M.D., Ph.D. The dissertation abstract states (on page viii): “This study found no

evidence of an association between self-reported ETS and lung cancer risk among nonsmokers. However, using spousal smoking habits to assess exposure, we found ETS is only weakly, and not statistically significantly, related to lung cancer risk among nonsmoking women in seven years of follow-up of the CPS II cohort.” (<http://legacy.library.ucsf.edu/tid/sgg22d00>).

d. My *BMJ* results are also consistent with those in the new Western New York State study published in the October 9, 2006 *Archives of Internal Medicine*, which found “After adjustment for covariates, exposure to secondhand smoke was not significantly associated with an increased risk of myocardial infarction.” (<http://www.scientificintegrityinstitute.org/ArchIntMed2006.pdf>).

e. If all peer-reviewed epidemiologic evidence is fairly and fully evaluated, the relationship between ETS and lung cancer and coronary heart disease mortality in the US is very weak and is consistent with my findings. Kabat and I analyzed this evidence in our March 1, 2006 *Inhalation Toxicology* paper (<http://www.scientificintegrityinstitute.org/IT030106.pdf>).

f. If the ACS accurately analyzes all the CPS I and CPS II data that it currently possesses, I believe that its results on ETS and mortality will be entirely consistent with my *BMJ* results.

## 2) My dealings with the ACS have always been proper and professional

My dealings with the ACS, which date back to 1973, have always been proper and professional. These dealings made it possible for me to obtain special access to the CA CPS I data in 1991. I have never committed any “scientific misconduct,” as suggested in recent ACS letters. John R. Seffrin, Ph.D., ACS Chief Executive Officer, wrote the attached October 12, 2006 letter to the UC Regents which implies “scientific misconduct” in my dealings with the ACS (2). Then Michael J. Thun, M.D., ACS Vice President for Epidemiology wrote the attached January 24, 2007 letter (3) in response to UC Provost Wyatt R. Hume’s January 19, 2007 request to Dr. Seffrin for “specific information in support of an allegation of scientific misconduct against Professor Enstrom.” In his attached February 12, 2007 letter to UC Regents Chairman Richard C. Blum, UC Academic Senate Chairman John Oakley has concluded that these two ACS letters do not contain evidence constituting a violation of the UC Faculty Code of Conduct (4). In his attached March 22, 2007 letter to Dr. Seffrin, UC Provost Hume unequivocally states that the materials submitted to UC by the ACS “provide no evidence of scientific misconduct” (5). Drs. Seffrin and Thun then wrote the attached March 29, 2007 letter to Provost Hume that continues their campaign of disinformation about me and my research (6).

Instead of providing any evidence of scientific misconduct, the Seffrin and Thun letters make a number of false and/or misleading statements that I need to correct. The ACS has **never** funded any of my research involving the CA CPS I data that I was given in 1991. I had **never** received any funding from the tobacco industry before I was given the CA CPS I data. I would **not** have been begun receiving tobacco industry funding in 1992 if the ACS had **not** rejected six grant applications from me during 1989-1991. The ACS has **never** put any restrictions on my funding sources in conjunction with my CA CPS I research. Indeed, each of the ACS rejection letters contains the sentence “We hope that you will be successful in obtaining funds for other sources for the support of this research.” The ACS has **never** required me to inform them of my funding sources in general. However, I **did** inform the ACS of my 1998 award from the Center for

Indoor Air Research, which was the tobacco industry funding I used for the research in my *BMJ* paper. A March 30, 1998 Thun letter to me confirmed the disclosure of my funding: "I read over your correspondence to the Center for Indoor Air Research proposing additional follow-up in CPS-I and analyses of environmental tobacco smoke (ETS) in relation to lung cancer and heart disease. I am pleased that you have obtained funding for this additional work, but I am worried about the quality of CPS-I data for further studies of secondhand smoke. . . ."

My April 10, 1998 letter to Thun addressed his concerns about the quality of the CA CPS I data. I again addressed his concerns in my 1999 CA CPS I questionnaire survey, in the peer review process for my *BMJ* paper, in the *BMJ* paper itself, in subsequent *BMJ* and *Lancet* letters, and in the 2006 *Inhalation Toxicology* paper cited above. I have **never** "ignored multiple communications about fundamental methodological problems" and I have **never** had "several telephone conversations" with Thun in which he told me that the subject of ETS "could not be studied meaningfully" with the CA CPS I data. To substantiate these alleged communications, the ACS should produce actual evidence. My records indicate that Thun has had no direct contact with me since 1998 and Seffrin has never had any direct contact with me. The ACS is very displeased with my *BMJ* paper and they are attempting to discredit it and me by implying that I have committed "scientific misconduct" without producing any actual supporting evidence.

**3) Evidence that the UCSF Campus Code of Conduct has not been properly enforced**

I have evidence indicating that the UCSF Campus Code of Conduct has not been properly enforced. On July 1, 2005 I filed a nine-page, single-spaced complaint of alleged scientific misconduct by Glantz and UCSF Professor Lisa A. Bero because of their extensive campaign of erroneous claims about me, including their April 2005 *Tobacco Control* paper (<http://www.tobaccoscans.ucsf.edu/pdf/Enstrom-TC.pdf>). My complaint documented my allegations of scientific misconduct as defined by the Code of Conduct: "Misconduct in Science means fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting, or reporting research." (<http://ucsfhr.ucsf.edu/files/finalcc.pdf>). My complaint is directly relevant to the University Policy on Integrity in Research, which is cited in Action Item RE89 (<http://www.ucop.edu/ucophome/coordrev/policy/6-19-90.html>).

UCSF Associate Vice Chancellor, Academic Affairs Sally J. Marshall dismissed my complain in the two attached March 1, 2006 letters, which state "After consideration of the Ad Hoc Committee report, we have decided that no further action by the University is warranted," and "It should be emphasized that, according to University Policy, all those involved in these matters have the burden of confidentiality." (7). Since these letters contain no specific response to my detailed allegations of scientific misconduct, I asked UCSF Chancellor J. Michael Bishop in a February 26, 2007 email message if the full Ad Hoc Committee reports can be revealed to me and/or Regent Blum without the "serious legal implications" stated in the Marshall letters. However, the attached March 13, 2007 letter from UCSF Vice Provost, Academic Affairs Marshall reiterated the confidentiality issue and concluded "Since we have previously investigated your claims, I conclude that there is no merit to your request." (8).

**4) Inappropriate insertion of *BMJ* paper into the US DOJ tobacco trial**

An important part of Action Item RE89 and the presentation by Glantz to justify implementation of a ban on tobacco industry funding at UC is based on the August 17, 2006 Kessler RICO decision following the US Department of Justice tobacco trial (Civil Action No. 99-2496 (GK)) (<http://www.dcd.uscourts.gov/opinions/2006/99-2496-082006a.pdf>). Because my *BMI* study is mentioned throughout this decision (primarily on pages 1380-1383), the Regents should know precisely how my study got inserted into the July 1, 2004 United States' Final Proposed Findings of Fact Civil 99-CV-02496 (GK), that was used in the Fall 2004 trial (<http://www.usdoj.gov/civil/cases/tobacco2/U.S.%20Final%20Proposed%20Findings%20of%20Fact%20REDACTED%20w%20BkMs%2020040701.pdf>).

I believe that Glantz was involved in the insertion of my study into the above lawsuit and in the mischaracterization of it therein (<http://www.ucsf.edu/senate/towhallmeeting/dkessler-rico-uc.pdf>). I base this belief on his extensive participation in previous tobacco lawsuits, his April 2005 *Tobacco Control* paper, my above scientific misconduct complaint, and the substantial information about the Kessler decision that Glantz provided former Regent Cruz M. Bustamante in September 2006 (<http://www.ucsf.edu/senate/towhallmeeting/Bustamante-Complete.pdf>). I am certain that the answer to the insertion is known to Glantz, Bero, Sharon Y. Eubanks (D.C. Bar No. 420147), Former Director, USDOJ Tobacco Litigation Team, and/or Stephen D. Brody (D.C. Bar No. 459263), Current Director, USDOJ Tobacco Litigation Team.

On February 1, 2007 I sent Jeffrey A. Blair, Esquire, of the Office of the General Counsel of The Regents a formal email request for assistance in determining the source of the above insertion. I pointed out to Mr. Blair similarities between the order and content of the text on pages 119-123 of the April 2005 *Tobacco Control* paper and pages 821-826 of July 1, 2004 United States' Final Proposed Findings of Fact. The attached March 29, 2007 letter to Regent Blum from UCSF Vice Chancellor David A. Kessler and Sharon Y. Eubanks provides evidence that there is a relationship between UCSF and USDOJ regarding the above lawsuit (9). On April 5, 2007 I located and spoke with Eubanks about my insertion into the lawsuit, but she refused to give me any information or assistance. Since I did not learn of the insertion of my *BMI* paper until after the Fall 2004 trial, I deserve an opportunity to refute the mischaracterization of my *BMI* study in the Findings of Fact and the Kessler RICO decision.

**5) The advocacy activities of Glantz are being used to interfere with my academic freedom**

I have located a July 6, 2000 legal decision regarding Glantz that the Regents should read: “Californians for Scientific Integrity v. The Regents of the University of California” (Case No. C028522) (<http://www.law.com/regionals/ca/opinions/supremecourt/appeal00/c028522.html>). Apparently, the California State Legislature has granted Glantz the right to use his UCSF faculty position to engage in advocacy activities that “promote a smoke-free environment.” However, I contend that the way Glantz has used this right is inconsistent with UCSF Campus Code of Conduct and is an abuse of his faculty position. This contention is based in part upon the UCSF response to my July 1, 2005 complaint of alleged scientific misconduct by Glantz, as described above. Furthermore, I have evidence that Glantz has been interfering with my academic freedom and my ability to conduct research with which he disagrees. I do not believe that Glantz should have a special right to use his UCSF faculty position to engage in advocacy activities, especially when he uses this right to restrict the academic freedom of other UC faculty like myself.

**6) The UC Regents need to hear from all parties affected by Action Item RE89**

In the interest of fairness and completeness, the UC Regents need to hear from all affected parties before a final vote is taken on Action Item RE89. All UC faculty who have received tobacco industry funding be given an opportunity to explain why they consider tobacco industry funding to be important, to demonstrate that they have conducted high quality research with this funding, and to refute the implication that they are part of an enterprise “to support a public deception” about tobacco products. In this regard, UC President Dynes sent out a March 9, 2007 letter asking for comments from UC investigators funded by the tobacco industry. The Regents must consider all these comments before making their decision. In addition, they need to consider the May 9, 2007 decision of the UC Academic Assembly regarding RE89 (<http://www.universityofcalifornia.edu/senate/assembly/may2007/assembly.05.09.07.pdf>).

**Attachments (numbered in the order that they are cited):**

1. January 26, 2007 *Science* article “UC Balks at Campus-Wide Ban on Tobacco Money for Research” (2 pages) (<http://scientificintegrityinstitute.org/Science012607.pdf> or <http://www.sciencemag.org/cgi/reprint/315/5811/447a.pdf>)
2. October 12, 2006 Seffrin ACS letter to UC Regents (2 pages) (<http://scientificintegrityinstitute.org/SeffrinACS101206.pdf> or <http://mywebsite.register.com/db5/00424/academic-integrity.com/download/ACSNationalLetter10-12-06.pdf>)
3. January 24, 2007 Thun ACS letter to Hume (2 pages) (<http://scientificintegrityinstitute.org/ThunACS012407.tif>)
4. February 12, 2007 Oakley letter to Blum (3 pages)
5. March 22, 2007 Hume letter to Seffrin (2 pages) (<http://scientificintegrityinstitute.org/HumeUCOP032207.pdf>).
6. March 29, 2007 Seffrin and Thun ACS letter to Hume (2 pages) (<http://scientificintegrityinstitute.org/SeffrinThunACS032907.tif>)
7. March 1, 2006 Marshall letters to Enstrom (2 pages) (<http://scientificintegrityinstitute.org/MarshallGlantz030106.tif> and <http://scientificintegrityinstitute.org/MarshallBer030106.tif>)
8. March 13, 2007 Marshall letter to Enstrom (1 page) (<http://scientificintegrityinstitute.org/MarshallGlantz031307.tif>)
9. March 29, 2007 Kessler and Eubanks letter to Blum (2 pages) (<http://scientificintegrityinstitute.org/KesslerEubanks032907.tif> or <http://mywebsite.register.com/db5/00424/academic-integrity.com/download/Dr.KesslertoChairBlum-March292007.pdf>)

## RESEARCH FUNDING

## UC Balks at Campus-Wide Ban on Tobacco Money for Research

Concerned about academic freedom, the University of California (UC) has delayed voting on a plan to impose a blanket ban on research funding from tobacco companies. If approved, the ban would make UC the only U.S. university to forbid tobacco dollars campus-wide. Faculty members anguished over the issue for 4 years before calling on UC's governing body—the regents—to take a stand. Instead, the regents

the grant do not violate university policy (for example, by excluding foreigners). As of last year, there were 19 active grants at UC supported by the tobacco industry, totaling \$15.8 million. (UC's total grants and contracts added up to \$4 billion that year.)

Before the regents would consider a tobacco-funding ban, however, they asked the senate for input. That's when things got complicated. "The tobacco issue put our princi-



Faculty fission. Stanton Glantz (left) would like to see a blanket ban on tobacco funding at UC, but James Enstrom (right) says such a ban would violate academic freedom.

punted it back to the faculty last week.

"It's a very good decision," says James Enstrom, an epidemiologist at UC Los Angeles who uses Philip Morris money. "Academic freedom makes this a great university, and the faculty need time to consider this issue more thoroughly." But Stanton Glantz, a bio-engineer and antitobacco crusader at UC San Francisco, turns the argument around: "The tobacco industry funds research to confuse the public," he says. "This manipulation of the scientific process subverts academic freedom and is antithetical to the fundamental mission of the university."

Momentum for a UC-wide ban on tobacco funding has been building. Since 2003, seven units within the university system, including UC Berkeley's School of Public Health and the UC San Diego Cancer Center, have shut their doors to tobacco money. But UC's faculty-composed Academic Senate voided these bans in May 2005, declaring that only the regents had the authority to decline funding—and that they had to do it for the entire system or not at all. Currently, UC researchers can take money from any source, as long as terms of

ples in conflict," says senate member and UC Santa Cruz social psychologist Faye Crosby. "Most of us agreed that academic freedom trumps all other principles." But then the senators reviewed documented evidence that the tobacco industry had manipulated researchers into publishing biased results—by tweaking manuscripts or threatening to cut off funding, Glantz charges. "We realized academic freedom can be illusory," says Crosby. For many, allowing the university to accept tobacco money was

allowing a threat to academic freedom.

Enstrom disagrees. "I do not feel that any tobacco funding arrangements I've had have manipulated my academic freedom," he says. In 2003, Enstrom published a study in the *British Medical Journal* that found no relation between secondhand smoke and lung cancer deaths. The project was partially funded by the Center for Indoor Air Research, which itself is funded by tobacco companies. Enstrom says the study was methodologically sound and that it added an important minority opinion to the smoking debate. "Thankfully, UC doesn't allow only certain points of view to be funded," he says. "My entire career has been based on the academic freedom I've had."

The senate's recommendation to the regents reflected the divisiveness of the issue. On one hand, the faculty asserted that "grave issues of academic freedom would be raised" if the regents banned funding based solely on its source. On the other, they declared that academic freedom could be suppressed, and that the tobacco industry had a history of such suppression.

The seemingly contradictory wording proved too much for the regents. At an ▶

### Kansas Standards Evolve Again

Eighteen months after its state education board adopted science standards promoting the teaching of intelligent design (ID), Kansas is set to toss them out. Next month, a newly aligned board expects to adopt standards that emphasize evolution.

The change follows elections that flipped the board's 6–4 conservative majority to a 6–4 margin for moderates (*Science*, 11 August 2006, p. 743). As a result, the board replaced the former chair, ID proponent Steve Abrams, with Bill Waggoner, who has fought against the ID-tainted standards since their adoption in August 2005.

The pending standards have been written by a committee appointed by the board that delivered a product deemed unacceptable by conservatives. "We'll be glad to bring back standards that do not contain supernatural explanations and are in line with national and international norms," says Sue Gamble, a moderate board member. "These standards will help teachers to strengthen the teaching of evolutionary content."

—YUDHJIT BHATTACHARJEE

### No Roving for Moon Rovers

Budget troubles at NASA will likely nix plans to send a series of sophisticated robotic rovers to the moon after the agency sends an orbiter there next year. NASA officials blame a tight exploration budget and the rising cost of the rovers, which were meant to find possible human landing sites and gather scientific data. Industry and agency sources say that up to half of the roughly \$800 million set aside over the next 3 years for rover development at Marshall Space Flight Center in Huntsville, Alabama, could go to Goddard Space Flight Center in Greenbelt, Maryland, and Ames Research Center in Mountain View, California, to design smaller and cheaper spacecraft that could do similar jobs.

The decision to cancel the original set of rovers comes just a few months after NASA chief Michael Griffin moved the program from Ames to Marshall. That decision, sources say, was made to please Congress's Republican-dominated Alabama delegation, but the recent election, which put Democrats in the driver's seat, took pressure off the agency. The remainder of the would-be rover funding would cover budget shortfalls in NASA's effort to develop a launcher to replace the space shuttle, slated for retirement in 2010. The proposed cuts are part of the agency's 2009 budget request to be announced on 5 February.

—ANDREW LAWLER

CREDITS (LEFT TO RIGHT): PROVIDED BY S. GLANTZ/UCSF; PROVIDED BY J. E. ENSTROM

18 January meeting at UC San Francisco, the governing body appeared as divided as the senate. "I believe a yes vote [on this ban] would establish a very dangerous precedent which threatens our culture of academic freedom," said Regent Jefferson Coombs at the meeting. "It would convey a signal that we do not trust our world-class faculty." Regent Richard Blum countered

that "none of us take academic freedom lightly, ... but [accepting tobacco money] hurts academic freedom, not helps it." In the end, the regents voted overwhelmingly to send the issue back to the faculty. An amendment charges the senate to clarify whether a blanket tobacco funding ban truly threatens academic freedom before the regents meet again in May.

Michael Cummings, an authority on smoking issues who runs the Tobacco Control Program at the Roswell Park Cancer Institute in Buffalo, New York, says he's disappointed with the delay. "It's good to debate academic freedom," he says, but "if you can't choose on this, you can't choose on anything."

—DAVID GRIMM

## AVIAN INFLUENZA

# With Change in the Seasons, Bird Flu Returns

An upsurge in H5N1 bird flu outbreaks in poultry across Asia is driving home the message that even countries that have eliminated the virus once shouldn't become complacent. The continuing high death toll in humans, including two recently detected cases of infection with a Tamiflu-resistant strain in Egypt, is also a grim reminder of how devastating the virus might be if it acquires the ability to spread easily among humans.



High alert. Since H5N1 virus was detected in Japan this month, officials have been checking blood samples from poultry at neighboring farms.

Over the past 3 weeks, Thailand and Vietnam reported their first H5N1 outbreaks among poultry in 6 months. Japan, which seemed to have dodged the bullet since its cluster of outbreaks in 2004, confirmed that the virus hit one farm on 11 January and probably a second farm on the 23rd. South Korea, which last November suffered its first outbreak since containing the virus in 2004, reported that the virus had turned up on a fifth poultry farm. Several wild birds found dead in Hong Kong tested positive for H5N1. And Indonesia on 20 January reported its fifth human death from the virus in just 10 days, bringing its death toll to 62, by far the most of any country.

The increase in outbreaks in the Northern Hemisphere follows what has become an established pattern. The reason for the seasonality is still not well understood, says Les Sims, a veterinarian based in Mandurah, Australia, who advises the U.N.'s Food and Agriculture Organization (FAO). It is likely to be some complex interaction among several factors, including cooler temperatures enabling the virus to survive longer in the environment, greater poultry trade in preparation for winter festivals, and movements of wild birds.

The recurrence of the virus in South Korea and Japan is particularly notable. In both the winter of 2003--'04 and this year, outbreaks in South Korea were followed 4 to

6 weeks later by outbreaks in Japan. "The outbreaks in Japan and South Korea suggest to me free-flying birds as the most likely origin," says Sims. Both countries are trying to determine how the virus was reintroduced.

"The reasons for these failures need to be examined and the lessons applied elsewhere," says Sims. But overall, he says the speed of the response, particularly in Thailand and Vietnam, "is a positive sign and shows that the surveillance systems are working."

In Indonesia, four of the five recent human deaths occurred in the Jakarta area. In response, the city government on 17 January ordered residents who keep backyard poultry to eat, sell, or cull their birds by the end of the month or have them confiscated and destroyed. The government is talking of gradually replacing the live markets that currently account for 80% of poultry sales in the city with slaughterhouses. "It would be a sea change culturally," says John Weaver, senior adviser to FAO in Jakarta. If done properly, he says, eliminating backyard poultry could reduce the opportunity for the virus to survive in the environment. But he cautions against a sudden prohibition, which could lead smallholders to hide their fowl and refuse to cooperate with animal dis-

ease control efforts. Early this week, meanwhile, experts were poring over the puzzling and potentially worrisome details of a recent cluster of human H5N1 cases in Egypt. Late December, a 16-year-old girl and her 27-year-old uncle, living in the same house in Gharbiya province, both died of H5N1 infection. Sequence information made public on GenBank on 23 January by the U.S. Naval Medical Research Unit 3 (NAMRU-3) in Cairo shows that both were infected with a virus strain that is moderately resistant to the antiviral drug Tamiflu.

Tamiflu resistance has been reported in a few other human H5N1 cases after patients were given the drug. However, the Egyptian samples showing resistance were taken just 2 days after Tamiflu treatment began, an unusually short period in which to develop resistance, says NAMRU-3 commanding officer Bruce Boynton. What's more, the virus in both patients had a rare resistance-conferring mutation, called N294S, seen only in one previous H5N1 patient in Vietnam.

That's why Boynton says the evidence suggests "a more disturbing" theory: that both were infected by a sick bird that already harbored the mutated virus. If more such birds exist, doctors may see more H5N1 patients who don't respond well to Tamiflu. And if such a resistant strain were to spawn a pandemic, the world's vast Tamiflu stockpiles might be less helpful.

Tests are currently under way to determine whether the patients had the resistant strain before they took the drug and whether virus from a third suspected H5N1 patient in the household, who also died, has the same mutation, Boynton says. Veterinary virologists are also checking to see whether the mutated virus can be found in birds in Egypt. —DENNIS NORMALE AND MARTIN ENSERINK

CREDIT: MIYAZAKI/PREFECTURAL GOVERNMENT/AP PHOTO



John R. Setfrin, PhD  
Chief Executive Officer

October 12, 2006

Regents of the University of California  
Office of the Secretary  
1111 Franklin Street, 12<sup>th</sup> floor  
Oakland, CA 94607

RE: Tobacco Industry Funding for Academic Research

Dear Regents:

I was heartened to learn that the Board of Regents is considering a policy that, if approved, would prohibit tobacco industry sponsorship of research across the entire University of California System. I appreciate the gravity of this issue, having participated last year in similar deliberations with the Board of Directors of the American Cancer Society regarding whether to approve a policy that would proscribe grants to scientific investigators or health professionals who are funded by the tobacco industry. The discussion was especially weighty, because the Society, like a University, cherishes freedom of inquiry, and is reluctant to oppose any source of funding for legitimate scientific research. Although the Society has not itself accepted funding of any kind from the tobacco industry for many years, the Board recognized the potential ramifications of extending this policy to our grantees.

Several issues proved to be especially critical in our Board's deliberations. First is that the tobacco industry has exerted a corrupting influence on biomedical research for at least 40 years. The Industry is not an honest partner in research. Entities such as the Tobacco Institute, the Counsel for Tobacco Research and the Center for Indoor Air Research were jointly created and funded by tobacco companies to create the appearance of scientific legitimacy and independence while deceiving the public about the adverse health effects of tobacco smoking and second hand smoke. These entities are essential to a sophisticated public relations campaign that seeks to buy credibility while recruiting a coterie of "expert" witnesses who create the appearance of scientific controversy long after genuine scientific controversy has ended. On the one hand, the tobacco industry funds some meritorious studies of basic disease processes. This research lends scientific credibility to the program while sidestepping the risks and harms caused by smoking. On the other hand, the industry funds scientifically inferior proposals that could never survive legitimate peer review. Results from these studies are then selectively publicized as part of industry campaigns to deny the addictiveness and extraordinary harm caused by active smoking and secondhand smoke, and to attack legitimate research findings.

A second critical issue concerns whether or not academic freedom protects the "right" of University faculty to obtain research funding wherever possible. Our Board recognized that the purpose of academic freedom is to protect the discovery and dissemination of knowledge from political, economic, or other repression. Consequently, the efforts of the tobacco industry to manipulate and distort scientific research for economic gain are the antithesis of the goals of academic freedom.

October 12, 2006

A third concern addressed by our Board was whether a specific policy prohibiting research sponsorship by the tobacco industry would put the Society on a “slippery slope”, releasing a profusion of similar demands to restrict funding from other industries or special interests. This has not been the case. No other legal industry produces an addictive product that kills approximately half of its long-term consumers when used as directed. The tobacco industry is unparalleled with respect to its devastating health effects, the aggressiveness with which it promotes its products globally, and its long and continuing history of obfuscation. The extent of the harm is itself difficult to comprehend. Tobacco smoking is estimated to have killed one hundred million people in the 20<sup>th</sup> century; if current trends continue, it is projected to kill one billion people in this century. Marketing tobacco products is antithetical to social responsibility

Finally, our Board was aware of at least two occasions in which the Society experienced first hand the extent to which the tobacco industry will misrepresent scientific evidence in order to deny the harmful effects of active smoking and second hand smoke and to subvert efforts to prevent exposure. In one instance occasion, the Tobacco Institute obtained two large American Cancer Society datasets by subpoena, purportedly to use in defending the companies in lawsuits about active smoking. The Industry then contracted with the consulting firm of LeVois and Layard in San Francisco to examine the health consequences of second hand smoke. The analyses were conducted in such a manner to obscure the increased risk of coronary heart disease in non-smoking individuals exposed to environmental tobacco smoke. The Tobacco Institute then publicized the misleading results throughout the U.S., with the false implication that they were endorsed by the Society, wherever communities were considering prohibiting smoking in public places. The second instance involved analyses lead by Dr. James Enstrom of UCLA, who misled long term colleagues at the Society by failing to mention to the Society that he had applied for and received funding from Philip Morris, and who ignored multiple communications about fundamental methodological problems with his analyses. Although the decision currently before the Regents is much broader than any individual case of scientific misconduct, the Society could provide additional documentation of scientific misconduct, if this is helpful.

Given these issues, I am proud that our Board of Directors voted unanimously not to fund scientific investigators or health professionals who accept research funding from the tobacco industry. I hope that your debate will lead you to a similar conclusion. I have enormous respect for your institution and fully recognize the impact that your leadership will have on other Universities, here and worldwide.

Sincerely,



John R. Seffrin, PhD

JRS/jn

cc: Lieutenant Governor Cruz Bustamante

Robert Dynes, PhD, President

John Oakley, LLD, Chair, Academic Senate

**Michael J. Thun, MD, MS**  
Vice President for Epidemiology and  
Surveillance Research



January 24, 2007

Wyatt R. Hume  
Provost and Executive Vice President  
Academic and Health Affairs  
University of California  
1111 Franklin Street, 12th Floor  
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Dear Provost Hume:

Thank you for your January 19 letter to Dr. Seffrin regarding his correspondence last October to the Board of Regents on the issue of tobacco industry funding for scientific research. He is away from the office but asked that I forward the information you requested.

The enclosed attachments represent documents that my colleagues and I have received over the last decade without our systematically searching records from the tobacco industry or other sources. They include the following:

- Inter-office correspondence from Philip Morris indicating that as early as 1979, the company saw Dr. Enstrom's work as potentially useful to its interests. References to "letters and telephone conversations" with Dr. Enstrom begin in 1990.
- A grant application from Dr. Enstrom to the Council for Tobacco Research in 1991. The CTR was a granting agency established by Philip Morris. At the time, Dr. Enstrom was collaborating with Dr. Clark Heath and Mr. Larry Garfinkel who were respectively the current and former vice presidents of Epidemiology for the Society. The Society was also funding Dr. Enstrom's efforts to extend the follow-up of Californian participants in Cancer Prevention Study 1 beyond 1972. Neither at that time nor later did Dr. Enstrom inform his collaborators that he was seeking funding from Philip Morris.
- Documents beginning in 1997 that refer to a grant proposal on passive smoking from Dr. Enstrom to the Center for Indoor Air Research. Like CTR, CIAR was a funding agency created and sponsored by Philip Morris. Dr. Enstrom did tell his collaborators that he was seeking funding from CIAR but did not mention that this entity was directly linked to the tobacco industry.

- A 1998 letter from me to Dr. Enstrom cautioning him that his long-term follow-up of Californians in CPS-I was poorly suited to studies of secondhand smoke. This letter was followed by several telephone conversations in which I told him that the subject could not be studied meaningfully, given the limited data on ETS exposure in his cohort.
- A 2003 email to me from Dr. Heath, stating that, "I am appalled that Enstrom applied for Phillip (sic) Morris money, whether or not he received it." The ACS was unaware of the source of his funding until after publication of his 2003 paper.
- Several reports expressing methodological criticisms of the Enstrom and Kabat 2003 paper.
- Several examples of how the tobacco industry exploited the 2003 Enstrom and Kabat publication in public relations campaigns to trivialize the risks associated with secondhand smoke.
- An editorial and two published letters to the editor from me regarding scientific criticisms of the paper.

Please do not hesitate to contact me if I can be of further assistance in this matter.

Sincerely,



Michael J. Thun, MD, MS

cc: John Seffrin, PhD

UNIVERSITY OF CALIFORNIA, ACADEMIC SENATE

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SANTA BARBARA • SANTA CRUZ

*John B. Oakley*  
*Professor of Law*  
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*Fax: (510) 753-0309*  
*Email: John.Oakley@ucop.edu*

*Chair of the Assembly and the Academic Council*  
*Faculty Representative to the Board of Regents*  
*University of California*  
*1111 Franklin Street, 12th Floor*  
*Oakland, California 94607-5200*

February 12, 2007

Richard C. Blum, Chair  
The Regents of the University of California  
1111 Franklin Street, 12th Floor  
Oakland, CA 94607-5200

Dear Dick:

I write in reply to your letter of January 25, 2007, to me and President Dynes. Because you requested a prompt reply, I write in my official capacity as Chair of the Assembly and Academic Council of the Academic Senate, but without the opportunity to consult with the Council or the Assembly in the drafting of this communication.

I write to answer your three questions but before doing so, I respectfully disagree with the premise of the first sentence of your letter, which states as a fact known to me that the letter sent to The Regents on October 12, 2006, by Dr. John Seffrin, CBO of the American Cancer Society (ACS), "contained allegations of research misconduct on the part of a UC researcher." As I said in my letter to UCLA's Acting Chancellor Abrams of January 19, 2007 (copy enclosed), with reference to the final two sentences of the fifth paragraph of Dr. Seffrin's two-page, single-spaced letter, "it is an arguable but hardly necessary construction of the letter as one that charges Dr. [James] Enstrom [of UCLA] with scientific misconduct."

I did in fact refer Dr. Seffrin's letter to Acting Chancellor Abrams once I became aware of it. Upon further reflection, though, I do not think that Dr. Seffrin's initial letter actually warranted such a referral on my part. This conclusion is reinforced by the nature of the information provided by proxy by Dr. Michael Thun, a Vice President of the ACS, in response to Provost Hume's follow-up letter to Dr. Seffrin.

The fifth paragraph of Dr. Seffrin's letter contains seven sentences. They assert the following:

1. On at least two occasions "the tobacco industry . . . misrepresented [scientific evidence]." [Note that this does not accuse Dr. Enstrom of scientific misconduct, and is consistent with the tobacco industry having misrepresented the nature and findings of anybody's research, whether intrinsically sound or unsound, to serve the industry's own unsavory purposes.]
2. One such instance involved the Tobacco Institute using subpoenas to obtain two large ACS datasets.

3. The tobacco industry hired a consulting firm to examine this data for the consequences of ETS.
4. The analyses of this data by the tobacco industry's consulting firm were conducted in a misleading manner in order to obscure the harmful effects of ETS.
5. The Tobacco Institute then publicized these misleading results wherever communities were considering anti-smoking laws, with the false implication that the results derived from ACS data were endorsed by the ACS.
6. The second instance of the tobacco industry's misrepresentation of scientific evidence "involved analyses by Dr. James Enstrom of UCLA, who misled long term colleagues at the Society by failing to mention to the Society that he had applied for and received funding from Philip Morris, and who ignored multiple communications about fundamental methodological problems with his analyses." [Note that this second alleged instance of "misrepresentation of] scientific evidence" by the tobacco industry consisted of the misrepresentation by the industry of Dr. Enstrom's research. Dr. Enstrom is then described as having passively misled his former colleagues at ACS by "failing to mention" his application for and receipt of research funding from the tobacco industry, and by "ignor[ing]" their assertions of methodological flaws in his research.]
7. Although the "decision currently before the Regents" poses broader issues than "any individual [not "individual's"] case of scientific misconduct, the Society could provide additional documentation of scientific misconduct" upon request.

I do not think that these allegations of misconduct by the tobacco industry, illustrated in part by the tobacco industry's exploitation of Dr. Enstrom's research and accompanied by complaints that Dr. Enstrom had passively misled or ignored the ACS, constitute the sort of prima facie evidence of a violation of the Faculty Code of Conduct that would impose on me or the President a duty to take action. They did spur further inquiry by the President (acting through the Provost), albeit not immediately. Yet, nothing received since indicates anything other than: (1) Dr. Enstrom's research and conclusions may be flawed; and (2) the tobacco industry regards Dr. Enstrom's research as good news which it is happy to have sponsored and happy to broadcast. I'm not sure what is implied, but so far as I can tell, neither Dr. Seffrin's letter nor Dr. Thun's follow-up (copy enclosed) facially assert that Dr. Enstrom altered or contrived his research in order to dance to the tune of the tobacco industry.

Of particular interest are the last two pages of Dr. Thun's response and enclosures in reply to Provost Hume on behalf of Dr. Seffrin, which consist of a letter published in the November/December 2003 issue of the British Journal of Medicine by Dr. Enstrom and his co-author, Dr. Kabat, together with a response by Dr. Thun. Enstrom and Kabat assert: "For Thun to attack our integrity and the validity of our findings because of tobacco industry funding is character assassination of the worst kind." In his contemporaneous response, Dr. Thun does not reply to this argument against his allegedly ad hominem attack, and instead redirects inquiry to the scientific validity of Dr. Enstrom's and Dr. Kabat's research, rather than to any scientific misconduct that might have informed that research: "None of the counterarguments cited by Enstrom and Kabat correct the fundamental scientific flaw of their paper . . . ."

Because I had sent him a copy of my letter to Acting Chancellor Abrams, Dr. Enstrom called me. When we spoke, Dr. Enstrom asserted that he has been the victim of a long-running campaign by a valued colleague of mine, Professor Stanton A. Glantz of UCSF, who is a past member of the Academic Council

and a present member of the Assembly of the Academic Senate. Dr. Enstrom claimed that Prof. Glantz has inaccurately and unfairly sought to discredit his (Dr. Enstrom's) research. Dr. Enstrom further asserted that Prof. Glantz had violated the Faculty Code of Conduct (APM-015) by making false accusations against him (Dr. Enstrom), and that these claims of misconduct by Prof. Glantz were documented in writing on Dr. Enstrom's website, at [www.scientificintegrityinstitute.org/defense.html](http://www.scientificintegrityinstitute.org/defense.html).

If I were correct in referring to Acting Chancellor Abrams the allegations of misconduct by Dr. Enstrom, I should also refer Dr. Enstrom's allegations against Prof. Glantz to Chancellor Bishop of UCSF. But I've concluded that this would be inappropriate.

I made sure that Dr. Enstrom knew of the formal procedures for filing a complaint of faculty misconduct. I think this was the proper response. I believe that if disparaging statements made to third parties were too readily to trigger an inquisitorial duty on the part of the third party, it would invite whispering campaigns over points of view, and might threaten the climate of robust academic debate that has served the University of California very well. The parties to the debate over Dr. Enstrom's role in the program of judicially-declared fraud and deceit by the tobacco industry know how to assert genuine charges of faculty misconduct. If they believe such misconduct has occurred, they should follow appropriate channels to assert such misconduct.

Now, in specific answer to the concluding three questions of your letter:

1. Allegations of research misconduct or any other violation of the Faculty Code of Conduct should be reported by the accusing party to the Chancellor of the campus at which the accused is employed, there to be handled under APM-016 if the accused is a member of the Academic Senate, or otherwise under APM-150.
2. The process did not appear to break down in this particular case.
3. There is no reason, therefore, to believe there will be breakdowns in the future.

Sincerely yours,



Encl.: Oakley letter to Abrams, attaching Seffrin letter to Regents and Hume letter to Seffrin  
Thun letter to Hume, with multiple attachments

cc: Regents Moores, Gould, Parsky, and Ruiz  
President Dynes  
Faculty Representative Brown  
Provost Hume  
General Counsel Robinson  
Prof. Glantz  
Dr. Enstrom

# UNIVERSITY OF CALIFORNIA

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OFFICE OF THE PROVOST AND EXECUTIVE VICE PRESIDENT -  
ACADEMIC AND HEALTH AFFAIRS

OFFICE OF THE PRESIDENT  
1111 Franklin Street, 12th Floor  
Oakland, California 94607-5200

March 22, 2007

John R. Seffrin, PhD  
Chief Executive Officer  
American Cancer Society  
1599 Clifton Road, NE  
Atlanta, GA 30329

Dear Dr. Seffrin:

I am writing to follow up on the January 24, 2007 letter from Dr. Michael J. Thun of your office, who responded on your behalf to my letter of January 19, 2007, asking that you send me any specific information you have supporting an allegation of scientific misconduct against UCLA researcher Dr. James Enstrom. As you know, my request was in response to your October 12, 2006 letter to the Regents about tobacco industry funding for academic research, in which you expressed concerns about specific research conducted by Dr. Enstrom.

I forwarded Dr. Thun's letter and all of its attachments to UCLA Acting Chancellor Norm Abrams, who is responsible for ensuring appropriate handling of allegations of scientific misconduct on the UCLA campus. Chancellor Abrams initiated a thorough review of the materials forwarded by Dr. Thun. He asked two senior campus officials, both of them scientists, to independently review the materials. Both officials independently reached the conclusion that these materials provide no evidence of scientific misconduct.

The materials Dr. Thun provided reflect the robust debate in the scientific literature about the research methodologies used by Dr. Enstrom in conducting the work that was the basis for his 2003 article published in the British Medical Journal. Disagreements regarding research methodology, and disputes about the soundness of scientific conclusions do not, however, constitute scientific misconduct. There is room for vehement and heartfelt disagreement about the soundness of particular scientific analysis and conclusions, and the scientific and academic community has well-established mechanisms for judging which results are ultimately deemed to withstand close and sustained scientific scrutiny. Indeed, the material Dr. Thun provided regarding the published criticisms and defenses of Dr. Enstrom's work is one example of how research can be refuted (or upheld) in open peer-reviewed scientific literature.

The University of California takes allegations of scientific misconduct seriously. I appreciate your sharing your concerns with me. I am satisfied that Chancellor Abrams conducted a careful and thorough review of the materials that were the basis of your concerns, and I support his conclusion that there is no basis for initiating a formal inquiry or investigation of scientific misconduct against Dr. Enstrom.

Dr. John R. Seffrin  
March 22, 2007  
Page 2

Please feel free to contact me if you have further questions or concerns.

Sincerely,



Wyatt R. Hume  
Provost and Executive Vice President  
Academic and Health Affairs

cc: Regent Blum  
President Dynes  
Chancellor Abrams  
Academic Council Chair Oakley  
General Counsel Robinson  
University Auditor Reed

**RECEIVED**

MAR 29 2 - 2007



March 29, 2007

ACADEMIC AFFAIRS

Wyatt R. Hume  
Provost and Executive Vice President  
Academic and Health Affairs  
University of California  
1111 Franklin Street, 12th Floor  
Oakland, CA 94607-5200

Dear Provost Hume:

Thank you for your March 22 letter notifying us that Chancellor Abrams, of UCLA, has reviewed the materials we provided to you and found no evidence of scientific misconduct on the part of Dr. James Enstrom. We applaud the vigilance with which the University of California has responded to the term "scientific misconduct" in our October 12, 2006 letter to President Dynes. Since this issue seems to have become a focus of the University's response, however, we wish to clarify several issues for the record.

First, it has never been our intention to request a formal review of Dr. Enstrom's actions nor have we ever suggested that his behavior meets the official University definition of "scientific misconduct". We have no indication that Dr. Enstrom engaged in plagiarism or falsification of data. In fact, we have no interest in personalizing this issue, except to illustrate the vulnerability of the current system. It would be unfortunate if our letter to President Dynes were to be misinterpreted as a complaint against a specific individual, rather than our perspective on the broader and more fundamental issue of the corrupting influence of tobacco industry funding for research.

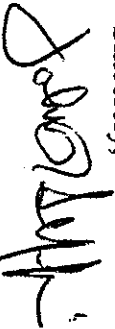
We doubt that Dr. Enstrom's study of secondhand smoke would ever have been conducted or published without funding and support from the tobacco industry. Unfortunately, when he first proposed collaborating with the Society's epidemiologists in the late 1980s, he did not reveal that he was already serving as a paid consultant to Philip Morris in litigation concerning secondhand smoke. His initial proposal was to extend follow-up of participants in Cancer Prevention Study I who resided in California. The American Cancer Society did not fund this proposal, because a committee of external scientific advisors meeting in the early 1990s judged it to have low scientific merit. Their concern was that it would be infeasible for the study to collect information on exposures after 1972, the year in which the American Cancer Society study ended and the participants were last contacted.

Wyatt R. Hume  
Page 2  
March 29, 2007

You must appreciate that the scientific debate about the Enstrom study is far more fundamental than a technical discussion of the merits of one methodological approach versus another. The final manuscript that Enstrom and Kabat published in the British Medical Journal in 2003 had no information on secondhand smoke exposure between 1972 and 1998 (69% of the 39-year follow-up) for most of the cohort, and relied on information from one source of exposure (a spouse who smoked) during the first twelve years. A basic principle of empirical research is that scientific findings are only as valid as the underlying measurements. Because the data that Enstrom collected could not distinguish who was or was not exposed to secondhand smoke, his findings were predestined to find no relationship between secondhand smoke and either lung cancer or heart disease at the outset, give or take the random variation that is an inherent feature of all studies.

In summary, we believe that the Enstrom study is an actual example of how tobacco industry funding for research selectively supports certain scientific projects that should never be conducted, and likely would never be conducted even if abundant funding were available from reputable sources. We appreciate your attention on this issue and deeply regret if any misunderstanding of the intent of our letter to President Dynes last October has inconvenienced you and your staff.

Sincerely,



John R. Seftin, PhD  
Chief Executive Officer



Michael Thun, MD  
VP, Epidemiology & Surveillance Research

cc: President Dynes  
Regent Blum

University of California  
San Francisco



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UCSF Medical Center  
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Sally J. Marshall, Ph.D.  
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Academic Affairs  
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tel: 415/514-0421  
fax: 415/514-0200  
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March 1, 2006

**CONFIDENTIAL**

James E. Enstrom, PhD, MPH  
University of California, Los Angeles  
Box 951772  
Los Angeles, CA 90095-1772

Dear Dr. Enstrom:

As you are aware, allegations of misconduct under the Faculty Code of Conduct were brought by you against Dr. Stan Glantz. I am writing to inform you that the University has concluded its investigation of the allegations. After consideration of the Ad Hoc Committee report, we have decided that no further action by the University is warranted.

It should be emphasized that, according to University Policy, all those involved in these matters have the burden of confidentiality. Since any violation of confidentiality would not only violate University Policy but could also have serious legal implications, I urge you to maintain all information pertaining to this matter in confidence.

Finally, I want to thank you personally as well as on behalf of the University, for your assistance and cooperation in this matter.

Sincerely,

*Sally J. Marshall*  
Sally J. Marshall, PhD  
Associate Vice Chancellor, Academic Affairs

cc: Marcia Canning, campus counsel

SJM/mf

University of California  
San Francisco



A Health Sciences Campus

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The Graduate Division  
UCSF Medical Center  
The Research Institutes

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March 1, 2006

**CONFIDENTIAL**

James E. Enstrom, PhD, MPH  
University of California, Los Angeles  
Box 951772  
Los Angeles, CA 90095-1772

Dear Dr. Enstrom:

As you are aware, allegations of misconduct under the Faculty Code of Conduct were brought by you against Dr. Lisa Bero. I am writing to inform you that the University has concluded its investigation of the allegations. After consideration of the Ad Hoc Committee report, we have decided that no further action by the University is warranted.

It should be emphasized that, according to University Policy, all those involved in these matters have the burden of confidentiality. Since any violation of confidentiality would not only violate University Policy but could also have serious legal implications, I urge you to maintain all information pertaining to this matter in confidence.

Finally, I want to thank you personally as well as on behalf of the University, for your assistance and cooperation in this matter.

Sincerely,

*Sally J Marshall*

Sally J. Marshall, PhD  
Associate Vice Chancellor, Academic Affairs

cc: Marcia Canning, campus counsel

SJM/mf

University of California  
San Francisco



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March 13, 2007

**CONFIDENTIAL**

James E. Enstrom, PhD, MPH  
University of California, Los Angeles  
Box 951772  
Los Angeles, CA 90095-1772

Dear Dr. Enstrom:

Chancellor Bishop asked me to respond to your email of February 26, 2007 regarding Professor Glantz' January 18, 2007 presentation to The Regents.

As you were previously informed, the documents concerning your complaint filed July 1, 2005, including the ad hoc committee reports, are confidential under the University of California's Academic Policy and are protected from disclosure.

I have reviewed slides 11 and 12 of Professor Glantz' presentation and compared them with the original documents he quotes from the American Cancer Society and Judge Kessler's Final Opinion in Civil Action No. 99-2496 (GK) and I find that he has accurately quoted them.

Since we have previously investigated your claims, I conclude that there is no merit to your request.

Sincerely,

A handwritten signature in cursive script that reads "Sally J. Marshall".

Sally J. Marshall, PhD  
Vice Provost, Academic Affairs

SJM/mf

cc: Regent Richard Blum  
Chancellor J. Michael Bishop  
Executive Vice Chancellor and Provost A. Eugene Washington  
Chief Campus Counsel Marcia Canning

University of California  
San Francisco



School of Medicine  
Office of the Dean

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March 29, 2007

Richard Blum  
Chairman, Board of Regents  
University of California  
909 Montgomery St., Suite 400  
San Francisco, CA 94133

To the Board of Regents:

The Regents are presently considering a policy to address an important ethical question: Under what circumstances is it appropriate for the University of California to accept funds from the tobacco industry to pursue research and educational activities? The proposed policy, under which the Regents would decline funding of research activities from the tobacco industry, is both reasonable and grounded in factual determinations directly relevant to research issues. To ignore the current and ongoing activities of the tobacco industry would compromise the integrity of the University and its researchers, as it would call into question the independence of their work.

Recent factual findings made by a federal district court, following a nine-month trial in which the tobacco industry was fully represented, reveal the ethical challenges presented. The district court found that the defendant tobacco companies violated the Racketeer Influenced and Corrupt Organizations Act (RICO). In so doing, the court determined that the companies had engaged in a wide-reaching scheme – through the creation of an “enterprise” – designed to deceive the American public with a fraud so pervasive and well-organized, the court found that it continues to this day. Of particular relevance to the proposal before the Regents, the court found that the tobacco industry concealed and suppressed research findings that were harmful to the companies’ economic interests, with utter disregard for human health. An important element of this effort was the “myth of independent research,” in which the industry claimed to support independent, peer-reviewed research, when, in fact, some of the projects were carefully selected and managed by industry lawyers and executives to obtain results that would confuse scientists, the public, and public policy makers, in order to “keep the controversy alive” about the effects of smoking and secondhand smoke. Most important in terms of the Regents’ current deliberations, the court found that this conduct is likely to continue into the future.

The misconduct of the tobacco industry, insofar as research is concerned, has long been both alleged and documented; however, the determination by a neutral fact-finder, who made her findings of conspiratorial conduct objectively on a full and fair record, provide a compelling rationale for the Regents to decline money from

these companies. Stated simply, the tobacco industry's highly unethical conduct is *swi generis*, and singling it out for exclusion on the basis of this conduct does not affect other industries. As a RICO enterprise, the conduct of the tobacco industry stands alone regarding its aggressive manipulation of the scientific process through selective funding of research, reason enough to impose the restrictions proposed.

Some have suggested that the University should wait until appeals are exhausted before it relies upon the district court's findings. There is no good reason to wait years for appeals to run their course, because the findings of fact, which form a basis for imposition of this policy, are not likely to be overturned. It is a well-settled principle of appellate practice that findings of fact will not be overturned unless clearly erroneous. This is a very high standard and not one that likely will be met given the substantial record evidence that supports the court's findings. In the unlikely event that the D.C. Circuit or the U.S. Supreme Court would reverse the findings on research, the policy could be revisited. It is impractical, though, to ignore these findings at the present time.

While a significant number of other leading academic institutions have adopted policies restricting the acceptance of research funding by tobacco companies, the University of California has uncharacteristically lagged behind in confronting this ethical issue. Some opponents of the proposed policy suggest that it infringes upon academic freedom, yet we are aware of no evidence of encroachment upon academic freedom at universities where similar policies have been put in place.

That academic freedom is essential to the existence of the University is clear beyond argument. With those opponents of the policy who contend that the policy improperly intrudes upon academic freedom, perhaps it is the meaning of "academic freedom" upon which we disagree. Academic freedom is the freedom to study any subject or body of material without unreasonable interference. Albert Einstein put it best when he expressed his understanding of academic freedom to include an obligation: "By academic freedom, I understand the right to search for the truth and to publish and teach what one holds to be true. This right also implies a duty; one must not conceal any part of what one has recognized to be true."

There is nothing in the proposed policy that would restrict the ability of any researcher to study and investigate fully and publish any and all findings. Accepting funding from tobacco companies, who have a history of distorting science and were found to have engaged in fraudulent conduct through their research activities, is antithetical to the concept of academic freedom. We strongly believe that academic freedom, by whatever definition, must coexist with academic responsibility. The University has an obligation, indeed, it has a responsibility, to adopt a policy that protects both.

In response to those who contend that suppression of research results is not a problem because the University does not accept prior restraints on publications, we respectfully believe that misses the mark. The controlling conduct of the tobacco industry over research findings rarely was placed in writing and almost never was openly agreed upon. Because of this, its influence is nearly impossible to detect and eliminate by applying standard University policies.

It is important to emphasize that nothing in the proposed policy would in any way restrict the subjects or the content of research even of faculty (and others) advocating pro-tobacco industry positions. It only ensures that adopting such positions is not financed by the tobacco industry. By declining money from the tobacco industry, the Regents would protect the reputation and integrity of the University by ensuring that there would not even be the appearance that University of California faculty who advocate pro-tobacco positions are doing so because of tobacco industry financing.

A number of well-regarded academicians have suggested that imposing the proposed policy places the University on a "slippery slope," opening the door and easing the way to other more controversial restrictions. We believe this fear is ill-founded. To begin with, tobacco is a unique product, one that when used as intended causes illness and death; no other industry sells a similar product and markets it for alleged "pleasure". The policy on tobacco industry funding is not an arbitrary limitation; it is narrowly tailored to address a unique and compelling situation. It seems highly unlikely that adoption of this policy could be used as a basis for any restrictions in the future, and it seems to us shortsighted to use arguments of a slippery slope as an excuse not to take action. Indeed, adoption of such policies at other universities has not led to farther restrictions.

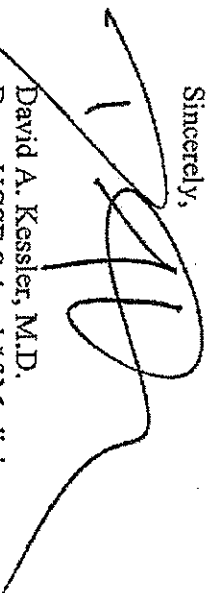
Without the adoption of a policy prohibiting certain tobacco company funding, partnership with the tobacco industry through the grant process is inevitable. By accepting research funds at this stage, the University gives the tobacco industry undeserved respectability and legitimacy by association. The University becomes a *de facto* partner with the industry. Such an apparent partnership needlessly endangers the status and reputation of the University.

This is an ethical issue. The question of adoption of the policy proposed is not a dilemma for the University; rather, it is an opportunity. Many times, because of a failure to recognize ethical problems as such, important ethical considerations are dismissed or ignored. Attempting to make this a debate regarding "academic freedom" or threats of moving down a slippery slope is such an error.

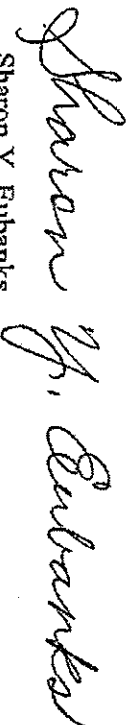
Having personally observed the conduct of this industry and the documentary evidence from the companies' own files, it is difficult to be completely dispassionate about these issues. That said, there exists an objective analysis available to the Regents which should not be ignored, dismissed, or minimized. We urge the Regents to review the factual findings of the United States District Court for the District of Columbia. When doing so, bear in mind that

full due process led to the court's decision. This decision should serve as a mandate for the proposed policy, adoption of which will protect the reputation of the University of California.

Sincerely,



David A. Kessler, M.D.  
Dean, UCSF School of Medicine  
Vice Chancellor for Medical Affairs



Sharon Y. Eubanks  
Former Director and Lead Counsel for the United States Tobacco Litigation Team  
U.S. Department of Justice