December 1, 2011

Dean Judy Olian
Chair, Search Committee for
Dean of the UCLA School of Public Health
University of California, Los Angeles
PublicHealthSearch@conet.ucla.edu

Dear Dean Olain:

I am writing in response to your November 22, 2011 message requesting comments from School of Public Health (SPH) faculty members on ideal qualities and qualifications for the new Dean. I am a very experienced epidemiologist who has been at the School of Public Health since my arrival as a postdoctoral fellow on December 1, 1973. I have been a research faculty member since July 1, 1976. I am very familiar with the last four Deans, including Dean Linda Rosenstock. As a basic qualification for appointment, the new Dean should endorse and personally adhere to the three basic UCLA policies described below.

First, the new Dean should promote an academic freedom climate in the School that is entirely consistent with the UCLA Mission Statement (http://www.wasc.ucla.edu/cpr_endnotes/Mission_Statement.pdf). This statement says “UCLA’s primary purpose as a public research university is the creation, dissemination, preservation, and application of knowledge for the betterment of our global society. To fulfill this mission, UCLA is committed to academic freedom in its fullest terms: we value open access to information, free and lively debate conducted with mutual respect for individuals, and freedom from intolerance. In all of our pursuits, we strive at once for excellence and diversity, recognizing that openness and inclusion produce true quality.”

Second, the new Dean should promote a political climate in the School that is consistent with the University of California Diversity Statement (http://www.ucop.edu/ucophome/coordrev/policy/PP063006DiversityStatement.pdf). This statement says “Diversity – a defining feature of California’s past, present, and future – refers to the variety of personal experiences, values, and worldviews that arise from differences of culture and circumstance.”
Third, the new Dean should promote full adherence by all faculty, staff, and students of the SPH, including the Dean, to the *UC Standards of Ethical Conduct* ([http://www.universityofcalifornia.edu/compaudit/ethicalconduct.html](http://www.universityofcalifornia.edu/compaudit/ethicalconduct.html)). These standards state “Pursuit of the University of California mission of teaching, research and public service requires a shared commitment to the core values of the University as well as a commitment to the ethical conduct of all University activities. In that spirit, the *Standards of Ethical Conduct* are a statement of our belief in ethical, legal and professional behavior in all of our dealings inside and outside the University.”

To illustrate their importance to the SPH, I describe and attach evidence regarding what I consider to be serious violations of these policies by Dean Rosenstock. In my opinion, she has politicized the School to the highest level ever in the 38 years that I have at the SPH. She does not welcome politically incorrect research findings or conservative approaches to important public health issues, such as, health care policy and environmental regulations. As the only outspoken conservative in the SPH, I can testify to the lack of conservative faculty members in the SPH, particularly within the Departments of Environmental Health Sciences (EHS) and Epidemiology. These two departments have little or no tolerance for the conservative approaches to environmental and epidemiologic issues that are contained in my publications and presentations. The situation regarding conservative academics is well described in the attached April 12, 2011 San Francisco Chronicle commentary “Academic Mission or UCLA Speech Code” ([http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2011/04/12/ED541IUA8N.DTL](http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2011/04/12/ED541IUA8N.DTL)).

I believe that intolerance toward conservatives and lack of political diversity in the SPH are primary reasons I have never been able to get a tenure track faculty appointment in spite of my outstanding accomplishments as an epidemiologist. Instead of welcoming my “minority” research findings and viewpoints in accord with the UCLA Mission Statement, the Dean has participated in a targeted, unjustified, and unethical two-year effort to terminate my research faculty position and to end my career at UCLA. The only reason I still have a position is because an August 30, 2011 decision by the Chancellor’s Office extended my appointment until June 30, 2012.

In addition to the lack of academic and political diversity in the SPH, the Dean has advocated public health policies and environmental agendas which I believe are scientifically incorrect and detrimental to the California economy. One prominent example of her advocacy style is contained in the attached November 2, 2010 California General Election Official Voter Information Guide “Argument Against Proposition 23” ([http://www.voterguide.sos.ca.gov/propositions/23/arguments-rebuttals.htm](http://www.voterguide.sos.ca.gov/propositions/23/arguments-rebuttals.htm)). This Voter Guide was sent to every registered voter in California. The “Argument Against Proposition 23,” which she signed as “Dean, UCLA School of Public Health,” contains numerous false and misleading statements, such as, “PROP. 23 is a DIRTY ENERGY PROPOSITION that MEANS MORE AIR POLLUTION and INCREASED HEALTH RISKS—Vote NO.” A massive statewide campaign based on inflammatory and erroneous statements of this nature contributed to the defeat of Proposition 23. Because of this defeat the California Air Resources Board (CARB) was able to recently approve costly and draconian Greenhouse Gas regulations which are scheduled to go into effect in 2012 ([http://www.arb.ca.gov/training/courses.php?course=514](http://www.arb.ca.gov/training/courses.php?course=514)). These new regulations, which do not exist anywhere else in the United States, will further damage the already poor business climate and economy of California.
For the past six years I have been engaged in a successful scientific effort to document that fine particulate matter (PM$_{2.5}$) does not kill Californians. This effort was most recently described in my November 28, 2011 UCLA Institute of the Environment and Sustainability Seminar (http://www.environment.ucla.edu/calendar/showevent.asp?eventid=667). Also, I have contributed in important ways to the recent CARB reassessment and modification of its multi-billion dollar diesel PM regulations. Unfortunately, the modified regulations, which are still massive in scope and implementation cost, are scheduled to begin in 2012 (http://www.arb.ca.gov/training/courses.php?course=512). These scientifically unjustified regulations, which do not exist in any other state, make it increasingly difficult to operate trucking related businesses in California and hurt the California economy. To understand how this scientific issue relates to Dean Rosenstock and the EHS attempts to terminate me, please read the three attached letters to the Dean: the June 30, 2009 letter from California businessman Norman R. Brown (http://www.cdtoa.org/CARBdocs/Delta_UCLA_Letter_063009.pdf); my June 15, 2010 letter (http://www.scientificintegrityinstitute.org/Rosenstock061510.pdf); and the August 26, 2010 letter from the Foundation for Individual Rights in Education (FIRE) (http://thefire.org/article/12208.html).

Dean Rosenstock has failed to address the serious violations of the Mission Statement, the Diversity Statement, and the Standards of Ethical Conduct that are identified in these three letters. In my opinion, the reputation of the SPH is being damaged by this type of leadership and by the unjustified EHS attempts to terminate me. I encourage you to ascertain from the new Dean candidates how they plan to deal with the issues of academic freedom, political diversity, and ethical conduct in the SPH. Finally, I request the opportunity to meet or speak personally with you regarding these and other matters related to the qualifications for the new Dean.

Thank you very much for requesting and considering my comments.

Sincerely yours,

James E. Enstrom, Ph.D., M.P.H.
School of Public Health
University of California
Los Angeles, CA 90095-1772
jenstrom@ucla.edu
(310) 825-2048
If you think that academia is not the exclusive playground of the academic left, consider the fate of UCLA epidemiologist James Enstrom.

In 2008, Enstrom thought that a report on the health effects of diesel emissions presented by the California Air Resources Board was faulty. As it turns out, CARB's nitrous oxide emission estimates were overstated by 340 percent. Enstrom and others had trouble believing that a Ph.D. statistician would make some of CARB's findings. They dug around and found that CARB researcher Hien Tran had falsely claimed to have a doctorate in statistics from UC Davis. In fact, Tran had a master's degree from UC Davis, but his doctorate came from an unaccredited school.

CARB has since scaled back the diesel regulations it had previously approved - although spokesman Stanley Young asserts that the policy change "was not related to the research" - which officials have maintained were overestimated because of calculations made prior to the recession. CARB did demote Tran and cut his monthly pay by $1,066 to $7,899 per month.

Enstrom didn't fare as well.

In February 2010, after renewing his research grants regularly since 1976, UCLA notified Enstrom that he had lost his funding. Unlike Tran, he would be out of a job.

A July 2010 memo later informed Enstrom that Department of Environmental Health Sciences faculty had determined his work did not meet department requirements and "your research is not aligned with the academic mission of the Department."

Not aligned with the academic mission? That reads like academic-speak for "politically incorrect." Enstrom has little doubt that UCLA cut his cord because he was a CARB whistle-blower. Worse, his 2005 study on the health effects of fine particulate matter essentially found that the diesel exhaust has slight, if any effect, on premature death.
"The timing is almost unmistakable because I had essentially no problems for a position that started July 1, 1976," Enstrom told me over the phone. "This is extremely dangerous for academic freedom and scientific integrity."

Enstrom has been fighting his sacking. Last week, the university held hearings on his case. The university won't comment, citing privacy issues.

The Foundation for Individual Rights in Education has taken up Enstrom's cause in the name of academic freedom. FIRE Vice President Adam Kissel explained, "We don't know who's right or wrong on the science, but we know that everyone has a right to challenge one another on the quality of the science if they do it in good faith."

CARB research chief Bart Croes said Enstrom's fine-particulates health study was not "inconsistent with ones we've used in our work," but he saw "deficiencies" in Enstrom's methodology. Some critics suggest that while his study aligned with other research, and has been cited by the U.S. EPA, his test group was too old; besides, Enstrom is too stingy with caveats and too activist in his interpretations.

Maybe the critics are right. Or maybe that's how they always go after conservatives. It's not simply that they disagree, it's that the scientist in question doesn't meet this hallowed academic standard that is rarely if ever applied to left-leaning scientists/activists. They believe in academic freedom, but that doesn't mean they should have to tolerate dissent.

E-mail: dsaunders@sfchronicle.com.

http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2011/04/12/ED541IUA8N.DTL

This article appeared on page A - 8 of the San Francisco Chronicle
Certificate of Correctness

I, Debra Bowen, Secretary of State of the State of California, hereby certify that the measures included herein will be submitted to the electors at the General Election to be held on November 2, 2010, and that this guide has been prepared in accordance with the law.

Witness my hand and the Great Seal of the State in Sacramento, California, this 10th day of August, 2010.

Debra Bowen
Secretary of State
SUSPENDS IMPLEMENTATION OF AIR POLLUTION CONTROL LAW (AB 32) REQUIRING MAJOR SOURCES OF EMISSIONS TO REPORT AND REDUCE GREENHOUSE GAS EMISSIONS THAT CAUSE GLOBAL WARMING, UNTIL UNEMPLOYMENT DROPS TO 5.5 PERCENT OR LESS FOR FULL YEAR. INITIATIVE STATUTE.

OFFICIAL TITLE AND SUMMARY

SUSPENDS IMPLEMENTATION OF AIR POLLUTION CONTROL LAW (AB 32) REQUIRING MAJOR SOURCES OF EMISSIONS TO REPORT AND REDUCE GREENHOUSE GAS EMISSIONS THAT CAUSE GLOBAL WARMING, UNTIL UNEMPLOYMENT DROPS TO 5.5 PERCENT OR LESS FOR FULL YEAR. INITIATIVE STATUTE.

- Suspends State law that requires greenhouse gas emissions be reduced to 1990 levels by 2020, until California’s unemployment drops to 5.5 percent or less for four consecutive quarters.
- Suspends comprehensive greenhouse-gas-reduction program that includes increased renewable energy and cleaner fuel requirements, and mandatory emissions reporting and fee requirements for major emissions sources such as power plants and oil refineries.

Summary of Legislative Analyst’s Estimate of Net State and Local Government Fiscal Impact:

- The suspension of AB 32 could result in a modest net increase in overall economic activity in the state. In this event, there would be an unknown but potentially significant net increase in state and local government revenues.
- Potential loss of a new source of state revenues from the auctioning of emission allowances by state government to certain businesses that would pay for these allowances, by suspending the future implementation of cap-and-trade regulations.
- Lower energy costs for state and local governments than otherwise.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Global Warming and Greenhouse Gases. Greenhouse gases (GHGs) are gases that trap heat from the sun within the earth’s atmosphere, thereby warming the earth’s temperature. Both natural phenomena (mainly the evaporation of water) and human activities (principally burning fossil fuels) produce GHGs. Scientific experts have voiced concerns that higher concentrations of GHGs resulting from human activities are increasing global temperatures, and that such global temperature rises could eventually cause significant problems. Such global temperature increases are commonly referred to as global warming, or climate change.

As a populous state with a large industrial economy, California is the second largest emitter of GHGs in the United States and one of the largest emitters of GHGs in the world. Climate change is a global issue necessitating an international approach. Actions in California regarding GHGs have been advocated on the basis that they will contribute to a solution and may act as a catalyst to the undertaking of GHG mitigation policies elsewhere in our nation and in other countries.

Assembly Bill 32 Enacted to Limit GHGs. In 2006, the state enacted the California Global Warming Solutions Act of 2006, commonly referred to as Assembly Bill 32 or “AB 32.” This legislation established the target of reducing the state’s emissions of GHGs by 2020 to the level that emissions were at in 1990. It is estimated that achieving this target would result in about a 30 percent reduction in GHGs in 2020 from where their level would otherwise be in the absence of AB 32.

Assembly Bill 32 requires the state Air Resources Board (ARB) to adopt rules and regulations to achieve this reduction. The law also directs ARB, in developing these rules and regulations, to take advantage of opportunities to improve air quality, thereby creating public health benefits from the state’s GHG emission reduction activities.
**Argument Against Proposition 23**

Texas Oil Companies Designed Prop. 23 to Kill California Clean Energy and Air Pollution Standards.

Big Texas oil companies and state politicians who receive oil company money designed Prop. 23 to repeal clean energy and air pollution standards in California.

Those oil companies are spending millions on a Deceptive Campaign to promote Prop. 23 because it would allow them and other polluters to escape accountability and increase their profits.

Prop. 23 is a Dirty Energy Proposition that Means More Air Pollution and Increased Health Risks—Vote No.

Prop. 23’s main backers, the Valero and Tesoro oil companies, are among the worst polluters in California. They’re using Prop. 23 to repeal portions of the health and safety code that require them to reduce air pollution at their California refineries.

“Prop. 23 would result in more air pollution that would lead to more asthma and lung disease, especially in children and seniors. Vote NO.” —American Lung Association in California

Prop. 23 is a Job Killer—Threatening Hundreds of Thousands of California Jobs.

Across California, clean energy companies are sprouting up and building wind and solar power facilities that provide us with clean power, built right here by California workers.

By repealing clean energy laws, Prop. 23 would put many of these California companies out of business, kill a homegrown industry that is creating hundreds of thousands of California jobs, and damage our overall economy.

“California is the hub of innovation and investment in clean energy technologies and business. But Prop. 23 would reverse the state’s clean energy laws, jeopardizing billions in economic growth and hundreds of thousands of jobs.” —Sue Kedey, Executive Director, California Solar Energy Industries Association, representing more than 200 solar energy small businesses.

The independent, nonpartisan Legislative Analyst Office says Prop. 23 could dampen additional investment in clean energy technologies by private firms, thereby resulting in less economic activity than otherwise.

Would the case.

Prop. 23 Would Jeopardize:

- 12,000 California-based clean energy businesses
- Nearly 500,000 existing California clean energy jobs
- More than $10 billion in private investment in California

Prop. 23 Would Keep You Addicted to Costly Oil—Vote No.

By killing incentives for clean energy, Prop. 23 reduces choices for consumers already facing high gas and electricity costs.

“Prop. 23 would keep consumers stuck on costly oil and subject consumers to spiking energy prices.” —Consumers Union, publisher of Consumer Reports Magazine


Prop. 23 would harm efforts to reduce our dependence on foreign oil that comes from countries that support terrorism and are hostile to the United States.

Join Public Health Advocates, Clean Energy Companies and Small Businesses: Vote No on 23.

Prop. 23 is Opposed by:

- American Lung Association in California
- Coalition for Clean Air
- AARP
- League of Women Voters of California
- More than 50 leading environmental organizations
- LA Business Council
- More than 200 solar and wind energy companies
- Hundreds of other businesses across California

Stop the Texas Oil Companies’ Dirty Energy Proposition.

Vote No on 23.
www.StopDirtyEnergyProp.com

Jane Warner, President
American Lung Association in California

Linda Rosennstock, M.D., Dean
UCLA School of Public Health

David Pacheco, President
AARP California

**Rebuttal to Argument Against Proposition 23**

Don’t Be Misled

Proposition 23 only impacts California’s global warming law.

Opponents never mention global warming because the law won’t reduce global warming.

Voters Have a Choice

Yes on 23 saves jobs, prevents energy tax increases, and helps families, while preserving California’s clean air and water laws.

No on 23 imposes a massive energy tax on consumers, kills over a million jobs, and doesn’t reduce global warming.

Proposition 23 Protects the Environment and Public Health

Proposition 23 temporarily postpones greenhouse gas regulations, which have no direct public health impacts. It doesn’t affect laws protecting air and water quality or laws combating asthma and lung disease.

Proposition 23 Saves Jobs, Doesn’t Discourage Green Jobs

Other states without our global warming law have stronger wind energy and renewable fuels industries than California.

2.3 million Californians are unemployed and Prop. 23 will save over a million jobs that would otherwise be eliminated.

Yes on 23—California Can’t Afford New Energy Taxes

Proposition 23 saves poor and working families from $3800 annually in increased prices for everyday necessities, including Higher:

- Electricity and natural gas bills
- Gasoline prices
- Food prices

Yes on 23—Join Consumers, Taxpayers, Small Business and Families

Proposition 23’s diverse coalition includes:

- California State Firefighters Association
- California Small Business Association
- National Tax Limitation Committee
- Construction workers
- Local air quality officials

Other States and Countries Postponed Their Global Warming Laws to Protect Their Economies, California Should Too.

California Can’t Afford a Self-imposed Global Warming Tax That Won’t Reduce Global Warming

www.yeson23.com

Brad Mitzelfelt, Governing Board Member
Mojave Desert Air Quality Management District

J. Andrew Caldwell, Executive Director
The Coalition of Labor, Agriculture & Business

James W. Kellogg, International Representative
United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry
Enrollment for 2012 classes begin December 1, 2011.

Available Courses: 514 - Truck and Bus and Tractor-Trailer GHG Reporting Training

Course #514: Truck and Bus and Tractor-Trailer GHG Reporting Training

The Truck and Bus Regulation applies to privately and federally owned diesel trucks and buses that operate in California. Requirements for the regulation begin January 1, 2012 and are phased-in annually through January 1, 2023. To take advantage of alternate compliance schedules or other flexibility in the regulation, fleets must report by January 31, 2012. In addition, the Tractor-Trailer Greenhouse Gas (GHG) Reduction Regulation applies to 53-foot or longer box-type trailers and the heavy-duty tractors that pull them. To take advantage of the optional small fleet phase-in schedule, small fleets with 20 or fewer 53-foot or longer box-type trailers must report by July 1, 2012.

The Truck and Bus and Tractor-Trailer GHG Reporting Training will cover:
- The Truck and Bus and Tractor-Trailer GHG Reduction Regulation requirements;
- How to use the automated Truck and Bus Fleet Calculator;
- How to report using the Truck Regulation Upload, Compliance and Reporting System (TRUCRS).

Course Fees:
- Government Fee: $0
- Industry Fee: $0

Course Coordinator: Danielle Chambers
Phone: (916) 323-0027

Registration Information: Click here for details

Attention: for class detail, please click on the class date or location.

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The Board is one of five boards, departments, and offices under the umbrella of the California Environmental Protection Agency.
CaVEPA | ARB | DPR | DTSC | OEHHA | SWRCB

ShareThis

12/1/2011 12:25 PM
Does Fine Particulate Matter Kill Californians? An Epidemiologic and Regulatory Controversy

Presented by James E. Enstrom, Ph.D., M.P.H., Epidemiologist, School of Public Health and Jonsson Comprehensive Cancer Center, UCLA

Monday, November 28, 2011
12:00 PM - 1:00 PM
La Kretz Hall, Suite 300, Large conference room

Abstract
The relationship between fine particulate air pollution (PM2.5) and mortality is an important public health issue in California and the United States. Based primarily on national epidemiologic evidence centered around the 1980s, an October 2008 Staff Report by the California Air Resources Board (CARB) concluded that PM2.5 exposure contributes to 18,000 annual deaths in California, with diesel particulate matter (PM) exposure being responsible for 3,500 of these deaths. Primarily because of these “premature deaths,” CARB approved a complex set of multi-billion dollar diesel regulations in December 2008. These regulations, many of which go into effect in January 2012, are designed to reduce the diesel PM emitted by all California vehicles and equipment powered by diesel engines. However, California-specific evidence from seven independent sources, much of which has emerged since 2008, indicates that there is NO relationship between PM2.5 and total (all cause) mortality in California. In addition, a March 2011 US EPA Regulatory Impact Analysis stated that only 2% of the national PM2.5-related “premature deaths” occur in the Western US. Dr. Enstrom will describe the underlying scientific evidence linking PM2.5 and diesel PM to mortality and the way this evidence has been evaluated by California scientists since 1989. In addition, he will discuss the limitations of this evidence and the need to put it perspective with other health risks in California. Finally, he will make the case that PM2.5 is not killing Californians and that there is no longer a sound public health basis for the CARB diesel regulations.

About the Speaker
In 1970 Dr. Enstrom obtained a Ph.D. in physics from Stanford University. Since December 1973, he has been conducting epidemiologic research at the UCLA School of Public Health, where he obtained an M.P.H. and postdoctoral certificate in epidemiology. Since 1976 he has held research faculty positions in the School of Public Health and the Jonsson Comprehensive Cancer Center. Since 1981 he has been a Fellow of the American College of Epidemiology. His epidemiologic research has focused on the relationship of mortality to healthy lifestyles, vitamin C, active and passive smoking, smoking cessation, and air pollution. Since 2005 he has been President of the Scientific Integrity Institute, which he established in order to promote scientific integrity in epidemiology and to fully address controversial epidemiologic relationships, such as, the one described above.
Enrollment for 2012 classes begin December 1, 2011.

Available Courses: 512 - Diesel Vehicle Regulation Overview

Course #512: Diesel Vehicle Regulation Overview
The Air Resources Board has several new and existing regulations designed to reduce emissions from diesel vehicles used in California in a variety of activities including on-road commercial trucks and buses; diesel vehicle idling; transportation refrigeration units (TRU); drayage trucks used at ports; construction; mining, other off-road; and other industries. Additionally, Green House Gas (GHG) control strategies including requirements related to EPA SmartWay standards are soon to be requirements for diesel vehicles in California. This course is designed to provide an overview of many diesel programs and will be presented similarly at each training session.

Printable Class Materials
Course agenda
Course presentation

Course Fees:
Government Fee: $0
Industry Fee: $0

Course Coordinator: Randy Opfer
Phone: (916) 322-8049

Registration Information: Click here for details

Attention: for class detail, please click on the class date or location.

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June 30, 2009

William H. Cormier, Director
Administrative Policies & Compliance
University of California, Los Angeles
2255 Murphy Hall
Los Angeles, CA 90095-1405

Re: Alleged Unethical Conduct by UCLA Professors Mary D. Nichols and John R. Froines

Dear Mr. Cormier,

Thank you very much for your May 27, 2009 response to my April 13, 2009 complaint. I fail to understand how you could conclude that my allegations about Professors Mary D. Nichols and John R. Froines do not constitute scientific misconduct as defined in UCLA Policy 993 (http://www.adminvc.ucla.edu/appm/public/993.htm). Based on my educational background and my 44-year experience as a successful businessman in California, I find that the behavior of Professors Nichols and Froines does not support Policy 993’s strongly worded General Policy. Specifically, their “selective research tactics” do not support “fostering a climate conducive to research integrity in accordance with the University’s Policy on Integrity in Research.” Additionally, I strongly believe that my allegations constitute unethical conduct based on the UC Standards of Ethical Conduct (http://www.universityofcalifornia.edu/compliance/ethics/ethicalconduct.html).

The sentences from these Standards that most directly apply to my allegations are as follows:

Purpose “In that spirit, the Standards of Ethical Conduct are a statement of our belief in ethical, legal and professional behavior in all of our dealings inside and outside the University”

(2) “Members of the University community are expected to conduct themselves ethically, honestly and with integrity in all dealings. This means principles of fairness, good faith and respect consistent with laws, regulations and University policies govern our conduct with others both inside and outside the community”

(4) “Members of the University community are expected to become familiar with the laws and regulations bearing on their areas of responsibility. Many but not all legal requirements are embodied in University policies”

(7) “All members of the University community engaged in research are expected to conduct their research with integrity and intellectual honesty at all times . . . . Members of the University community engaged in research are not to . . . knowingly omit data or results to misrepresent results in the research record . . . .”
Essentially, your policy states that to be a member in good standing, your ethics cannot be compromised when you are off the UCLA campus. This is the main thrust of my complaint. I have presented numerous incidences of compromised ethics but your response attempts to narrate my complaint as a “public policy issue and not issues of potential research misconduct.” Am I to assume that it is acceptable with UCLA to allow some “modification” of a member’s ethics when “off campus”? Not according to the Standards of Ethical Conduct, which state that “The University might have reason to examine the outside activity of an employee in circumstances where serious misconduct there reflects unfavorably on the University . . . .” I contend that my allegations against Professor Nichols and Professor Froines constitute very serious misconduct and, when fully brought to light, will reflect quite seriously on your fine university. Sunlight is a great disinfectant, and I intend to provide the light supported by research from credible and accomplished scientists. The actual economic damage brought about by CARB’s edicts has the potential to preclude California from emerging from our current economic debacle for a decade or more, if ever.

You also state that UCLA Policy “applies to research conducted by UCLA faculty or academic appointees under the sponsorship of UCLA and is narrowly focused on specific instances of fabrication of data, falsification or plagiarism.” Falsification is defined (in part) in Policy 993 as “manipulating Research materials, equipment or processes, or changing or omitting data or results, such that the Research is not accurately represented in the Research Record”. THIS IS EXACTLY WHAT HAS BEEN DONE. Under the specific direction of Professor Nichols, supported by the research of Professor Froines, CARB has excluded or attempted to diminish any data that conflicts with their agenda. By the very virtue of their UCLA professorships, they drag your institution into this fray. This will not bode well with the massive California business community that supports your fine organization. A failure to review this behavior by two of your professors, under the guise that they do not represent UCLA when dealing with public policy, will not go unnoticed by your benefactors, especially those severely impacted by the unnecessary regulations.

I take specific issue with your statement that “the information you have provided was neither credible nor specific enough under our policies to warrant a research misconduct inquiry.” A substantial amount of very specific evidence was presented in my April 13, 2009 allegations. I could have sent you several hundred pages, but abbreviated the text to not overwhelm you. Thus, I believe that my allegations deserve a more careful evaluation. My concerns are supported by at least ten very fine physicians and scientists who have submitted public comments to CARB during the past year: John D. Dunn, M.D., J.D., from Texas; James E. Enstrom, Ph.D., from UCLA; Anthony Fucaloro, Ph.D., from Claremont McKenna College; Frederick W. Lipfert, Ph.D., from New York; Matthew A. Malkan, Ph.D., from UCLA; Henry I. Miller, M.D., from the Hoover Institution; Suresh H. Moolgavkar, M.D., Ph.D., from the University of Washington; D. Warner North, Ph.D., from Stanford University; Robert F. Phalen, Ph.D., from UC Irvine; and S. Stanley Young, Ph.D., from the National Institute of Statistical Sciences.

In order to make my allegations as directly relevant to UCLA as possible, I request that you further assess my allegations regarding Professor Froines, who has been a full-time faculty
member at the UCLA School of Public Health since 1981. To make my case against Professor Froines as strong as possible, I have used the Internet (Google.com, PubMed.gov, and www.ucla.edu) to formulate additional allegations of falsification that add to my original April 13, 2009 allegations (Attachment A).

Elinor W. Fanning, a UCLA toxicologist, and John R. Froines are the first two authors of a February 2009 peer-reviewed paper “Particulate Matter (PM) Research Centers (1999–2005) and the Role of Interdisciplinary Center-Based Research” Environmental Health Perspectives 2009;117:167–174 (http://www.ehponline.org/members/2008/11543/11543.pdf) (Attachment B). Quotes from the Abstract are: “Objective: The U.S. Environmental Protection Agency funded five academic centers in 1999 to address the uncertainties in exposure, toxicity, and health effects of airborne particulate matter (PM) identified in the “Research Priorities for Airborne Particulate Matter” of the National Research Council (NRC). . . . Data sources and synthesis: The collective publications of the centers served as the data source. To provide a concise synthesis of overall findings, authors representing each of the five centers identified a limited number of topic areas that serve to illustrate the key accomplishments of the PM Centers program, and a consensus statement was developed. Conclusions: The PM Centers program has effectively applied interdisciplinary research approaches to advance PM science.”

I have evidence that this paper does not “provide a concise synthesis of overall findings.” For instance, the section “Life shortening associated with exposure to PM” (page 170) is quite misleading. The first reference (Zanobetti et al. 2003) deals only with European cities and it provides no evidence that “life shortening” is “associated with exposure to PM.” The second reference (Laden et al. 2006) provides evidence that the relationship in between PM2.5 and total mortality in six Midwestern cities has declined since the 1970s and 1980s and was barely significant in the 1990s. The final two references (Pope et al. 2002 and Pope and Dockery 2006) provide evidence that the relationship PM2.5 and total mortality varies geographically and has weaken substantially over time. A proper “synthesis of overall findings” should have stated that the current relationship between PM2.5 and mortality is very weak in the United States and may be nonexistent in states like California.

In addition, UC Irvine Professor Robert F. Phalen published a October 2004 peer-reviewed paper “THE PARTICULATE AIR POLLUTION CONTROVERSY” Nonlinearity in Biology, Toxicology, and Medicine 2004;2:259–292 (http://www.pubmedcentral.nih.gov/picrender.fcgi?artid=2659607&blobtype=pdf). Quotes from page 289 of this detailed 34-page paper are: “Today, we are at an important crossroad with respect to the future of air-pollutant regulation. One road involves performing the needed research and making decisions on the basis of the science, with full consideration of the many trade-offs associated with new regulations. The other road involves adopting regulations driven by public fear, politics, and pressure groups. The first road is obviously the more beneficial one for protecting human health. . . . The second approach promises uncontrolled, chaotic, and rapidly changing rules. A great deal is at stake. Will science and reason, or expediency, fear, and ignorance, be the determinants of public health decisions?”
Professor Froines has been the Director of the Southern California Particle Center since it was initiated in 1999 with $11 million in grants to UCLA from US EPA (grant R827352) and CARB (http://www.scpes.ucla.edu/news/PRuca11mml.pdf) (Attachment C). Professor Phalen was an Investigator in the Center during 1999-2005 (http://www.scpes.ucla.edu/publications.html). Both the Froines and Phalen papers received funding from US EPA grant R827352. However, in spite of the claim that the 2009 EHP paper gives a “synthesis of overall findings,” the Froines paper does not cite the Phalen paper. I believe that the Phalen paper was not cited because it raises serious and powerful doubts about PM science and regulations associated with PM. Thus, I allege that the 2009 EHP paper provides further evidence of falsification by Professor Froines through omission of relevant findings.

Finally, Professor Froines participated in the November 30, 2007-December 1, 2007 Impact Project “Moving Forward” Conference, that was co-sponsored and partially funded by three UCLA Centers (http://www.scribd.com/doc/562980/Impact-Project-Moving-Forward-Agenda) (Attachment D). Page 5 of the 28-page conference program states that the first objective of the Conference is to “Share research findings from scientific studies on the health effects of air pollution on children, the elderly, workers, and others.” However, based on my examination of the entire program, I believe that this “collaboration of community and university partners” did not accurately present the current PM health effects in Los Angeles and California. Instead, I believe the conference focused on “environmental justice” in response to hyped health effects associated with diesel vehicles used in goods movement throughout Los Angeles and California.

To address my concerns, I want to know if Professor Froines or other participants in “THE LATEST HEALTH RESEARCH FINDINGS” session (page 6) presented any of the epidemiologic evidence showing NO current relationship between PM2.5 and mortality in California. Also, I want to know if anyone presented data from the CDC WONDER mortality database (http://wonder.cdc.gov/cmf-icsd10.html) showing that during 2000-2005 Los Angeles County had an age-adjusted total death rate that was 11% lower than the national rate and lower than the rate in 47 of the 48 continental states (Attachment E). Based on this evidence, I do not see any premature death crisis in Los Angeles County or California. Finally, it strongly appears that US EPA research funds awarded to UCLA may have been used to support advocacy in connection with this conference. My understanding is that Federal research funds cannot be used for advocacy. In summary, I allege that this conference provides further evidence of falsification by Professor Froines and may implicate UCLA in taking an advocacy position on this issue.

Based on his approximately 25-year membership on the CARB Scientific Review Panel, his participation in the 2007 “Moving Forward” conference, his 2008 letter recommending Professor Nichols as CARB Chair (Attachment F), and his 2009 EHP paper on the UCLA PM Center (to mention just a few of his efforts) I allege that Professor Froines has engaged in a clear and consistent pattern of falsification regarding PM health effects in California. Furthermore, I strongly believe that if the proper appointment process had been followed and a scientist like Professor Phalen had been Chair of the Scientific Review Panel in 1998, diesel particulate matter would never have been declared a toxic air contaminant and CARB would not have approved the current diesel regulations.
In accordance with the letter and spirit of the UCLA Policy 993 and the UC Standards of Ethical Conduct, I implore you to further examine my allegations against Professor Froines. To help you in this examination, I request that you solicit the expertise of Linda Rosenstock, M.D., who is Dean of the UCLA School of Public Health (http://www.ph.ucla.edu/about_aboutdean.html). Professor Froines has his primary appointment in this school. I feel compelled to make this request because the actions of Professors Nichols and Froines have severely impacted me and thousands of other businessmen in California through what amounts to falsification of scientific studies. We now are burdened with draconian regulations that are destroying our ability to remain in business in California and that, based on our assessment of the available evidence, are not scientifically justified and are not imposed on businessmen in any other state or country. In the spirit of helping California businessmen survive and hopefully improve the California economy, I trust you will fully evaluate my allegations and the issues they raise.

Finally, in order to make sure that you understand how serious I am about this matter, I sent a detailed June 8, 2009 letter to Governor Arnold Schwarzenegger describing “California Air Resources Board’s Part in Our Economic Collapse” (Attachment G). Also, I am the lead petitioner in a lawsuit regarding the CARB Scientific Review Panel, Brown v. Adams, which was filed in Sacramento County Superior Court on June 18, 2009 by the Pacific Legal Foundation (PLF). This lawsuit is summarized in a June 18, 2008 PLF news release (http://community.pacificlegal.org/Page.aspx?pid=934) (Attachment H). The entire 45-page lawsuit is posted on the PLF website (http://community.pacificlegal.org/Document.Doc?id=305). The nine petitioners in this lawsuit represent all affected businesses in California.

I repeat my earlier statement: sunlight is a great disinfectant and I intend to provide the light supported by research from credible and accomplished scientists. As a California businessman whose taxes have been used to fund the US EPA, CARB, and UCLA, I have the right to expect that $11 million awarded to UCLA has been used to conduct objective research on “the uncertainties in exposure, toxicity, and health effects of airborne particulate matter (PM).” Furthermore, I have the right to expect that the scientist leading this research, Professor Froines, has objectively reported the current health effects of PM in California. I realize that my allegations may create some problems for your fine institution, but it would be a travesty to ignore this very strong evidence of a falsification (knowingly omitting data or results to misrepresent results in the research record) that is resulting in an economic calamity.

Thank you very much for your consideration.

Sincerely,

[Signature]

Norman R. Brown, President

cc: Dean Linda Rosenstock
    School of Public Health
    University of California, Los Angeles
    650 Charles E. Young Drive South, Room 16-035 CHS
    Los Angeles, CA 90095-1772
William H. Cormier

June 30, 2009

cc: cont’d

Chancellor Gene Block
University of California, Los Angeles
2147 Murphy Hall
Los Angeles, CA 90095-1405
Alleged Unethical Conduct by UCLA Professor John R. Froines (April 13, 2009 Letter)

John R. Froines, Ph.D., is Professor in the UCLA School of Public Health (http://portalctrl.ucla.edu/sph/institution/personnel?personnel_id=45492) and UCLA Institute of the Environment (http://www.ioe.ucla.edu/people/person.asp?Facultystaff_ID=75), as well as Chair, California Air Resources Board (CARB) Scientific Review Panel (SRP) on Toxic Air Contaminants (TAC) (http://www.arb.ca.gov/srp/public.htm). Below are two specific allegations of unethical conduct by Professor Froines. Several hundred pages are needed to fully describe these allegations, but only a few essential pages have been enclosed with this complaint. All of the pages can and should be viewed or printed from the Internet by using the weblinks contained within the text below.

1) Allegation of Falsification of Scientific Evidence:

Evidence of falsification is contained in the enclosed June 4, 2008 letter (Attachment I) that Professor Froines wrote to Senator Don Perata recommending California Senate confirmation of Mary D. Nichols as Chair, CARB (http://www.scientificintegrityinstitute.org/FroinesNichols060408.pdf). This letter included the enclosed Attachment on diesel particulate matter (PM) and mortality (http://www.scientificintegrityinstitute.org/FroinesDiesel060408.pdf). The 23 scientists that Professor Froines cited in the Attachment all agreed with the findings of CARB Staff Report on PM and premature deaths (http://www.arb.ca.gov/research/health/pm-mort/pm-mort_final.pdf). However, his letter and Attachment failed to cite a single dissenting scientist or any of the epidemiologic evidence that clearly indicates there is NO current relationship between PM and mortality in California. His sentence “While there may be a few studies that suggest a lack of evidence for the relationship, the overwhelming evidence suggests the relationship is positive” does not accurately describe the epidemiologic evidence in California. Specific evidence of falsification in the Attachment is given in the enclosed pages of scientific criticism published in the January 2009 California Transportation News “A Regulatory Fraud or a Polluted Process?” (Attachment J) (http://www.cdtoa.org/old_archives/2009/01_09/TransNewsLowResProof.pdf, pages 7-9).

Furthermore, Professor Froines failed to mention the extensive, long-term efforts to reverse the August 27, 1998 CARB declaration of diesel PM as a TAC, which was a direct result of his May 27, 1998 diesel TAC letter (http://www.arb.ca.gov/toxics/diesel_tac/combined.pdf). Professor Froines is well aware of the intense scientific controversy regarding diesel PM because he was named as a defendant in the 1999-2006 lawsuit (Apodaca et al. v. California Air Resources Board et al.) that challenged the diesel PM TAC declaration (http://www.scientificintegrityinstitute.org/Apodaca021706.pdf). Also, Professor Froines is well aware that three of the 23 scientists he cited in the Attachment have published key epidemiologic research on PM and mortality that is based on the 1982 American Cancer Society (ACS) Cancer Prevention Study (CPS II) cohort database. These three scientists have refused to facilitate any form of independent reanalysis of the ACS database, in violation of the Federal Data Quality Act. For his Attachment to be objective, Professor Froines should have acknowledged that the evidence used by CARB to establish a relationship between diesel PM and mortality in California has not been independently verified and is still highly disputed, as evident in the 148 pages public comments on this relationship, that were submitted to CARB as of July 11, 2008 CARB (http://www.arb.ca.gov/research/health/pm-mort/pm-mort_supp.pdf).
2) Allegation of Failure to Follow California Health and Safety Code Section 39670.

Professor Froines has served as the toxicologist on the CARB SRP since at least 1986 and is currently up for reappointment to another three-year term. No other California toxicologist has had an opportunity to serve during this period. This is in violation of the letter and spirit of the California Health and Safety Code Section 39670, which clearly specifies that each SRP member is to be appointed for a term of three years and is to be appointed from a pool of at least three nominees submitted to the appropriate appointing body by the President of the University of California (http://caselaw.lp.findlaw.com/cacodes/hsc/39670-39671.html). Indeed, the selection process for all nine SRP members has not followed Code Section 39670. Information from CARB SRP transcripts and other sources indicates that all SRP members have served at least 5 years, 5 members have served at least 12 years, and Professor Froines and one other member have served at least 23 years. One consequence of this pattern of service is that the SRP consists primarily of activist scientists who are NOT representative of the diversity of all California scientists who are qualified to serve on this panel. Furthermore, Professor Froines, who has been SRP Chair since 1998, is well aware of this situation regarding SRP appointments.

Since Professor Froines first began assessing diesel exhaust as a potential TAC for the SRP in 1989, he has been the California scientist most responsible for emphasizing the adverse health effects of diesel PM and for getting it declared a TAC. This TAC declaration is primarily based on weak and controversial epidemiologic relationships between PM and deaths, not on the toxicological evidence that falls within Professor Froines’ scientific area of expertise. Most experimental toxicological evidence does not support the health risks of diesel PM found in the epidemiologic studies. Furthermore, other California toxicologists disagree with Froines’ assessment of diesel PM toxicity. UC Irvine Professor Robert F. Phalen has described this disagreement in his 2002 book “The Particulate Air Pollution Controversy: A Case Study and Lessons Learned” (http://www.amazon.com/gp/reader/1402072252/ref=s9_13_rdr_ty). Professor Phalen has run the UC Irvine Air Pollution Health Effects Laboratory for over 30 years and currently serves on the directly relevant US Environmental Protection Agency (EPA) Clean Air Scientific Advisory Committee Particulate Matter Review Panel (CASAC-PMRC) (http://yosemite.epa.gov/sab/sabpeople.nsf/WebPeople/PhalenRobert%20F.?OpenDocument). Furthermore, the 669-page 2002 US EPA “Health Assessment Document for Diesel Engine Exhaust” does not support the CARB finding that diesel exhaust causes premature deaths (http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=29060).

This scientific controversy is one key reason why it is important to have appointments to the SRP made in full accordance with Code Section 39670. The fact that CARB diesel regulations costing billions of dollars to implement are a direct result of a SRP TAC determination is an even more important reason why Professor Froines and other SRP members should be required to strictly adhere to all relevant provisions of California Health and Safety Code. Since thousands of California businesses are in danger of extinction because of CARB regulations that do not exist in any other state and that appear to be scientifically unjustified, the above allegations of unethical conduct should be fully and fairly evaluated in a timely manner.
June 15, 2010

Dean Linda Rosenstock  
School of Public Health  
University of California  
Los Angeles, CA 90095-1772

Re: Improper February 10, 2010 Layoff Notice and Improper June 9, 2010 Layoff Notice  
Regarding My Academic Appointment in Environmental Health Sciences

Dear Dean Rosenstock:

I have written this letter to request your help with my UCLA academic appointment. Since July 1, 1976 I have continuously held a non-tenured faculty position in the UCLA School of Public Health (SPH) supported by research funding that I have brought to UCLA. Until July 1, 2004 my position was based in the Dean’s Office and since that date it has been based in the Department of Environmental Health Sciences (EHS). On February 5, 2010 I met with Richard J. Jackson, M.D., Chair of EHS, regarding the continuation of my EHS appointment beyond June 30, 2010. During this meeting I discussed several issues, including the ongoing EHS faculty review of my position, the funding for my position, my research on fine particulate air pollution (PM2.5) and mortality in California, and my concerns about the 26-year service of John R. Froines, Ph.D., as a member of the Scientific Review Panel (SRP) on Toxic Air Contaminants.

On February 9, 2010 I requested from Dr. Jackson a detailed explanation of accounting irregularities regarding my research funds that have occurred during the past three years. On February 10, 2010 I received a formal layoff notice from Dr. Jackson stating that I would be laid off effective April 21, 2010 because of the alleged lack of funding for my position beyond April 20, 2010 (see enclosed notice). This notice was not based on the ongoing EHS faculty review of my position. On February 12, 2010 Dr. Jackson promised to provide the detailed explanation that I requested regarding the accounting irregularities, in response to my questioning of the validity of his claim that “as of April 20, 2010 of this year your funds will be depleted.” As of late March 2010 I had not received any response from Dr. Jackson regarding the accounting of my research funds or the EHS faculty decision about the continuation of my appointment. Thus, on April 1, 2010 I met with SPH Associate Dean Hilary Godwin, who is also an EHS faculty member, and we discussed six issues relevant to funding irregularities and to the continuation of my EHS appointment. These issues are described in my April 1, 2010 letter to Dr. Godwin.

On April 23, 2010 I asked Dr. Jackson via email for the results of the EHS faculty vote on my appointment and his May 5, 2010 email response stated that he could give me “the results of that vote within a few days.” Having received no response from Drs. Jackson or Godwin as of June 7, 2010, I requested a final decision from Dr. Jackson and a meeting with Dr. Godwin. On June
9, 2010 Dr. Jackson informed me via email that the EHS faculty voted 9 to 0, with 3 abstentions and 1 absence, to end my EHS appointment. On June 10, 2010 at 9:30 AM I meet with Drs. Jackson and Godwin and received a June 9, 2010 layoff notice from Dr. Jackson that my EHS appointment would end as of June 30, 2010 (see enclosed notice). Since I have not taken any salary since January 2010, because of major uncertainties regarding my research funding, they agreed to help facilitate the use of my remaining funding to pay my salary from February 2010 through June 2010, particularly if I did not contest the validity of the two layoff notices.

Based on UCLA accounting information that I received on June 10, 2010 at 2:30 PM, I currently have about $45,000 of research funding and over 3,000 hours of unused vacation and sick leave. Using the combination of my existing research funds and my vacation and sick leave, my position can be fully funded from February 2010 through December 2011. Since I now have direct evidence that my EHS position can be funded well beyond April 20, 2010, Dr. Jackson did not base his February 10, 2010 layoff letter on an accurate assessment of the financial status of my EHS appointment. Thus, I contend that Dr. Jackson’s February 10, 2010 layoff notice is improper and should not have been issued. Also, Dr. Jackson has not fulfilled his February 12, 2010 commitment to respond to my February 9, 2010 email message about accounting irregularities and the failure of EHS to provide me with a monthly summary of my funds.

Based on UCLA Policy 910: Management of Sponsored Projects, “Once an Award has been made, the department chair [Jackson] . . . has continuing responsibility to ensure that administrative staff . . . 4. Provide the PI [Enstrom] with accurate and timely information about expenditures; confer with the PI in order to make adjustments as may be necessary . . . .” (http://www.adminpolicies.ucla.edu/app/Default.aspx?id=910). During the past three years I have not received the accurate and timely information that I needed to manage the funding of my salary and my research. As examples of the problems: I was not given the April 2008 Summary of Funds when my Fund 59605 first became overdrawn, I was not informed that an overdraft of $65,357.18 on Fund 59605 was transferred to my unrestricted Funds 45634 and 59039 on April 29, 2009, and I was not informed of the May 2009 closure of Fund 59605 by External Fund Management (EFM). According to an EFM source, automatically generated messages were sent to EHS regarding these three Fund 59605 events, but I did not receive these messages.

In addition to considering the February 10, 2010 layoff notice to be improper, I consider the June 9, 2010 layoff notice to be improper because it does not give me the appropriate notice of layoff according to Appendix 33 of the UCLA CALL (http://www.apo.ucla.edu/call/append33.htm). There are only 21 days from June 10, 2010 through June 30, 2010, the scheduled end date my EHS appointment, but my understanding from a knowledgeable source is that a 60-day layoff notice is normally given to SPH employees. In addition, according to Section III B of Appendix 33, “The order of layoff . . . must be reviewed by the Chancellor . . . for conformance to applicable University and campus policies before the layoff . . . is implemented.” Thus, I request your assistance in making sure that my layoff adheres to all provisions of Appendix 33 of the UCLA CALL, including review by UCLA Chancellor Gene Block, before it is implemented.

I contend that the primary reason for my layoff is the following sentence in the June 9, 2010 layoff notice: “Programmatically, your research is not aligned with the academic mission of the Department.” From my perspective, this is an utterly false statement because my epidemiologic
research on the health effects of PM2.5 is directly related to the stated mission of EHS: “The Department of Environmental Health Sciences explores the fundamental relationship between human health and the environment.” Furthermore, my research is directly relevant to the overall objective of the EHS Southern California Particle Center “to investigate the underlying mechanisms that produce the health effects associated with exposure to particulate matter (PM).”

During the past two years I have been presented in several scientific and public forums extensive evidence that the health effects of PM2.5 have been exaggerated (see enclosed June 9, 2010 Forbes.com commentary). My position that PM2.5 does not cause premature deaths in California disagrees with the stated position of five senior faculty members of EHS, including Dr. Jackson and Dr. Froines. However, based on the February 26, 2010 symposium on PM2.5 and premature deaths organized by the California Air Resources Board (CARB), my position appears to be correct. UC Berkeley Professor Michael Jerrett presented results based on the ACS CPS II cohort showing no current relationship between PM2.5 and all cause mortality in California, consistent with my null 2005 findings based on the CA CPS I cohort. Dr. Jackson sent a March 8, 2010 email message to all EHS faculty containing the link to the webcast of the CARB symposium (http://www.cal-span.org/cgi-bin/archive.php?owner=CARB&date=2010-02-26). However, he cancelled my planned April 21, 2010 EHS Seminar “Does Diesel Particulate Matter Kill Californians? Perspective on an Epidemiologic Controversy.” Indeed, during the entire 2010 review process of my EHS position, I was never given the opportunity to meet with all EHS faculty members in order to explain the significance of my PM2.5 epidemiologic research and my other contributions to EHS during the past six years.

Given the circumstances described above, I conclude that my pending layoff is not consistent with Appendix 33 of the UCLA CALL. In addition, I contend that I am being laid off in a highly selective manner. This layoff will end my academic freedom at UCLA to speak out on a timely and important public health issue, will end my 34-year faculty position at UCLA, and will impede my ability to conduct additional research on a public health issue of great importance to California. In order to document my contention, I request information on all other non-senate academic appointments in the SPH who have received layoff notices during the past ten years. Also, I request information on all non-Senate academic appointments on the entire UCLA campus who have received layoff notices during 2010. In particular, I want to know how many layoff notices have been given to those who have held their appointments for at least 34 years.

I request a personal meeting or telephone conversation with you well before June 30, 2010 in order to deal with the above issues. If you wish to decline my request, please let me know soon.

Thank you very much for your consideration.

Sincerely yours,

James E. Enstrom

James E. Enstrom, Ph.D., M.P.H.
jenstrom@ucla.edu
(310) 825-2048
August 26, 2010

Chancellor Gene D. Block
Chancellor’s Office
University of California, Los Angeles
Box 951405, 2147 Murphy Hall
Los Angeles, California 90095-1405

**URGENT**

*Sent by U.S. Mail and Facsimile (310-206-6030)*

Dear Chancellor Block:

As you know from our August 14, 2009, letter concerning a separate matter, the Foundation for Individual Rights in Education (FIRE; www.thefire.org) unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, due process, freedom of association, religious liberty and, as in this case, freedom of speech on America’s college campuses. I appreciate Senior Campus Counsel Patricia M. Jasper’s prompt and satisfactory resolution of the previous matter involving First Amendment rights.

FIRE is disappointed to be writing to you again about the violation of First Amendment rights on your campus. FIRE is very concerned about the threats to freedom of speech, academic freedom, and due process posed by University of California, Los Angeles’ (UCLA’s) decision not to rehire Dr. James E. Enstrom, a faculty member in the UCLA School of Public Health (SPH). Non-rehire decisions made because of a faculty member’s protected expression, of which Enstrom’s case appears to be an example, violate the First Amendment.

This is our understanding of the facts; please inform us if you believe we are in error. Dr. Enstrom has continuously held a non-tenured faculty position in SPH since 1976. He has consistently been rehired by UCLA. Since 2004, he has been rehired into UCLA’s Department of Environmental Health Sciences (EHS). His research on environmental health issues falls squarely within EHS’ research mission. Over the years, he and a few of his SPH colleagues have sometimes disagreed strongly about research on environmental health issues—for example, on the extent of the threat to public health posed by certain air pollutants, a topic of Enstrom’s research which has been the subject of intense debate in California.
Enstrom also was a successful whistleblower regarding members of the Scientific Review Panel on Toxic Air Contaminants for the California Air Resources Board who, according to a lawsuit filed by the Pacific Legal Foundation (PLF) in June 2009, had been serving beyond the three-year legal limit on their terms of office without being properly re-nominated. One such member was EHS faculty member John Froines. As a direct result of Enstrom’s advocacy on this issue, Froines was replaced on the panel effective July 22, 2010. According to Enstrom, at least six of the nine panel members were replaced in 2010 as a direct result of Enstrom’s advocacy and the PLF lawsuit.

Enstrom has faced retaliation as a result of his whistleblowing and as a result of his research. According to a February 9, 2010, e-mail from Enstrom to EHS Chair Richard J. Jackson, he first learned about the retaliation on December 14, 2009, when he learned that, without his knowledge or permission, his salary had been charged to various funds in place of Fund 59605, which had been “an active source of ongoing support that paid my entire UCLA salary.” Enstrom also learned in January 2010 that this fund had been cut off without Enstrom’s knowledge, causing the other funds to be depleted.

Then, according to a June 15, 2010, letter from Enstrom to SPH Dean Linda Rosenstock, Enstrom faced further retaliation in February 2010, when Jackson informed Enstrom that Enstrom was being “indefinitely … laid off” as of April 21, 2010, due to lack of funding for his position. Ever since his February 9 e-mail, Enstrom has been asking for a full accounting of his research funds dating back to 2007, but he has not received a response of any substance. In his June 15 letter, Enstrom calculated that there was sufficient funding (including unused vacation and sick leave) to employ him at least through December 2011. UCLA officials appear to have subsequently abandoned this particular justification for severing Enstrom’s employment.

On June 9, 2010, however, Enstrom learned of still another instance of retaliation from his department. He received an e-mail from Jackson stating that the EHS faculty (including Froines) had voted not to rehire Enstrom. Jackson also wrote Enstrom a letter on June 9 stating that Enstrom would be “indefinitely laid off” effective June 30, 2010. Jackson wrote that the decision was made for “programmatic and financial reasons,” adding:

Programmatically, your research is not aligned with the academic mission of the Department, and your research output and ability to secure continued funding does not meet the minimum requirements for the Department. In reviewing financial resources, the Department is unable to continue your current appointment.

Such a layoff timeline violates UCLA’s “Procedures for Non-Reappointment of an Appointee Who Has Served Eight or More Consecutive Years,” of which section 137-32 requires that “The University shall provide a written Notice of Intent not to reappoint at least sixty (60) days prior to the appointment’s specified ending date.” (Incidentally, the American Association of University Professors recommends 12 months in such cases.)

On June 30, 2010, SPH Associate Dean for Academic Programs Hilary Godwin wrote Enstrom extending his appointment for an additional 60 days, ending August 30. Godwin wrote:
The basis for non-reappointment is that the faculty of Environmental Health Sciences have determined that your research is not aligned with the academic mission of the Department, and that your research output and other contributions do not meet the department minimums.

Enstrom appealed this decision, following UCLA’s “Procedures for Non-Reappointment of an Appointee Who Has Served Eight or More Consecutive Years,” via a July 14 letter to Vice Chancellor for Academic Personnel Thomas Rice. Rice deferred to Godwin, who rejected the appeal. Godwin sent Enstrom a letter on July 29, stating:

As previously notified, the reason for non-reappointment is [that] the faculty of the Department of Environmental Health Sciences has determined that your research is not aligned with the academic mission of the Department, and your research output and other contributions do not meet the department requirements.

In both Enstrom’s June 15 and July 14 letters, Enstrom challenged the decisions against him. In particular, he demonstrated that his research on environmental health is fully aligned with the “mission” of EHS and that his research output has been robust. He also argued that this and the other grounds given by Jackson and Godwin for non-rehire are merely pretextual, hiding the faculty’s dislike for his research findings and his advocacy against such a prominent EHS faculty member as Froines.

In the absence of any evidence that Enstrom has failed to meet “department minimums” or “department requirements” or even that such standards exist, we agree with Enstrom’s characterization of the non-rehire decision as pretextual. According to Enstrom, his research output has changed little over time. Furthermore, he has never been told what the “department requirements” or “department minimums” are, and he has never seen any statement of what these requirements are, if they exist at all. He also is unaware that the so-called requirements have been used to assess anyone else in the department, let alone to justify a decision not to rehire.

On August 12, Enstrom filed a timely grievance challenging his non-reappointment. According to Enstrom, a Grievance Liaison has found merit in the grievance and has referred it to Rice so that he can select a Step II Reviewer of the grievance, following UCLA procedure.

Again, all signs are that UCLA would not have made its non-rehire decision but for the apparent animus felt by many of his peers as a result of Enstrom’s research and his whistleblowing—all instances of protected speech. As a public university, UCLA is both legally and morally bound by the First Amendment’s guarantees of freedom of expression and academic freedom. The Supreme Court has held that academic freedom is a “special concern of the First Amendment” and that “[o]ur nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to teachers concerned.” Keyishian v. Board of Regents, 385 U.S. 589, 603 (1967) (internal citations omitted). As the Supreme Court wrote in Sweezy v. New Hampshire, 354 U.S. 234, 250 (1957):

The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those
who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. ... Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.

This principle holds whether the subject is communism, Catholicism, climate change, or the effects of air pollution. We trust that you understand that the First Amendment’s protections (as well as the free speech protections of the California Constitution) fully extend to public universities like UCLA. See, e.g., *Keyishian*, 605-06 (“[W]e have recognized that the university is a traditional sphere of free expression so fundamental to the functioning of our society that the Government’s ability to control speech within that sphere by means of conditions attached to the expenditure of Government funds is restricted by the vagueness and overbreadth doctrines of the First Amendment”); *Healy v. James*, 408 U.S. 169, 180 (1972) (citation omitted) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools’”).

Non-tenured faculty members do not have diminished First Amendment rights because of their employment status. Adverse employment action against a non-tenured faculty member, when that action is due to the faculty member’s protected expression, violates the faculty member’s First Amendment rights. This includes decisions not to rehire adjunct faculty members who have a reasonable expectation of being rehired. See *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 283 (“[A teacher’s] claims under the First and Fourteenth Amendments are not defeated by the fact that he [does] not have tenure.”); *Mabey v. Reagan*, 537 F.2d 1036, 1045 (9th Cir. 1976) (“Withal, it is our duty to protect First Amendment values. Initially, our concern is to guard the rights of the terminated instructor. But, more importantly, we examine alleged First Amendment violations because of their potential chill on others, especially those situated like the complainant. Although a person’s tenure status is irrelevant to the First Amendment inquiry (*Perry v. Sindermann* (1972) 408 U.S. 593, 597–98, 33 L. Ed. 2d 570, 92 S. Ct. 2694), our close examination is particularly appropriate where, as here, a complex of reasons may as well mask an unlawful motive as legitimately motivate a refusal to rehire …”) (emphasis added).

While a public university is often allowed to choose not to rehire a non-tenured faculty member for a very wide variety of reasons, or for no reason at all (unless contractual agreements state otherwise), it is not permitted to make such a decision for a constitutionally impermissible reason, such as whistleblowing retaliation or as punishment for protected speech. Yet all signs are that this is just what has happened here. UCLA appears to have used hitherto unknown, ambiguous, or unenforced funding and research output “minimums” as mere pretexts for accomplishing what it could not otherwise accomplish lawfully. But for retaliation for Enstrom’s protected expression, he would still be employed by UCLA. This is impermissible.

**Enstrom’s Case Requires Immediate Resolution**

Because Enstrom’s case involves the violation of a faculty member’s rights, you have not only the authority but also the moral and legal responsibility to work to resolve the situation as quickly as possible. Every day that the case continues is a deeper violation of academic freedom
and freedom of speech and a more thorough chilling of faculty speech at UCLA. Merely waiting for the process of the grievance to run its course does not absolve you or UCLA of the moral and legal responsibility to immediately reverse the decision not to rehire Enstrom.

FIRE urges you to immediately reverse the decision not to rehire Enstrom. We also request that you ensure that he receives the full financial accounting he has requested. Furthermore, if any written evidence of “department minimums” does exist, Enstrom must receive a copy of it in order to properly defend himself.

In the alternative, if you choose not to recognize Enstrom’s rights in this matter, FIRE requests that you preserve the status quo while Enstrom has a pending grievance at UCLA, and keep Enstrom employed as a faculty member at UCLA until his grievance is resolved. This status will permit Enstrom to seek additional research funding in order to demonstrate the possibility of funding for employment beyond December 2011.

We urge UCLA to show the courage necessary to admit its error. Please spare the university the deep embarrassment of fighting against the Bill of Rights, by which it is legally and morally bound. While we hope this situation can be resolved amicably and swiftly, we are committed to using all of our resources to see this situation through to a just and moral conclusion.

We have enclosed a waiver that permits UCLA to fully discuss Enstrom’s case with us. Because Enstrom’s last day at UCLA is scheduled for August 30, we ask for a response in writing by 5:00 p.m. PT on August 30, 2010.

Sincerely,

Adam Kissel
Director, Individual Rights Defense Program

Encl.

cc:
Patricia M. Jasper, Senior Campus Counsel
Kevin S. Reed, Vice Chancellor-Legal Affairs and Associate General Counsel
Charles F. Robinson, General Counsel and Vice President for Legal Affairs
William Cormier, Director, Administrative Policies & Compliance
Richard Jackson, Chair, Department of Environmental Health Sciences
Linda Rosenstock, Dean, School of Public Health
Hilary Godwin, Associate Dean for Academic Programs, School of Public Health
Susan Fisher, Manager, Human Resources, School of Public Health
Esther Hamil, Assistant Director, Academic Personnel Office
Thomas Rice, Vice Chancellor, Academic Personnel