Executive Board

UCLA Policy: Public and Discretionary Statements by Academic Campus Units

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Darnell Hunt
Executive Vice Chancellor and Provost

Re: Proposed UCLA Policy XXX: Public and Discretionary Statements by Academic Campus Units

Dear Executive Vice Chancellor and Provost Hunt,

At the November 9, 2023, meeting of the Executive Board, members reviewed the proposed UCLA Policy XXX: Public and Discretionary Statements by Academic Campus Units and the feedback of divisional Academic Senate committees and councils. Members expressed appreciation for the task force’s efforts with such an extraordinarily difficult task and recognize that guidance on statements is needed. However, the Executive Board finds the existing Systemwide Academic Senate guidance that advises departments to create an agreed upon process before issuing any statements to be sufficient, and members voted to reject the proposed policy that creates an intermediary level (a policy for making policies) as unnecessary.

The Executive Board members noted that many of the divisional committees and councils expressed serious concerns about the draft policy including a lack of clarity about the intent and goals. Some members agreed that the policy was a good idea, but the actual draft language was confusing at best such as the effort to define a public statement. Other members expressed skepticism about the need for a campus policy. Several members noted that having an overarching policy during fraught times may offer some guidance for departments; they suggested that larger institutional guardrails could be useful.

Members were enthusiastic about the recommendation by the divisional Committee on Rules and Jurisdiction (CR&J) for inclusion of the June 2022 UC Academic Council endorsement of the May 2022 University Committee on Academic Freedom (UCAF) recommendations and the UC Regents Policy 4403: Statement of Principles Against Intolerance in the UCLA Policy document and that Section I. Purpose and Scope clarify that the UCLA policy is a divisional implementation of existing systemwide policies and recommendations. Executive Board members observed that the existing UCAF recommendations seemed simpler and with more encompassing language. In short, there is an existing model that seems to work. Members affirmed the basic ability of groups to make statements and raise concerns, and suggest encouragement for academic units to review their bylaws and make local policy.

The Academic Senate appreciates the opportunity to advise on this important policy proposal.

Sincerely,

Andrea Kasko

Andrea Kasko
Chair, UCLA Academic Senate

Encl.

Cc: Kathleen Bawn, Vice Chair/Chair Elect, UCLA Academic Senate
   Gene Block, Chancellor, UCLA
   Jessica Cattelino, Immediate Past Chair, UCLA Academic Senate
   April de Stefano, Executive Director, UCLA Academic Senate
   Yolanda Gorman, Chief of Staff and Senior Advisor to the Chancellor, UCLA
   Anna Joyce, Director of Administrative Policies and Strategic Initiatives, UCLA
   Emily Rose, Assistant Provost and Chief of Staff to the EVCP, UCLA
At its meeting on November 1, 2023, the Committee on Rules and Jurisdiction (CR&J) discussed the UCLA Policy for public and discretionary statements by academic campus units.

Members unanimously supported the policy and particularly praised the policy’s respect and protection of minority or silent viewpoints.

Members were unclear why Section V. References did not include specific citations. CR&J strongly recommends inclusion of the June 2022 UC Academic Council endorsement¹ of the May 2022 University Committee on Academic Freedom recommendations and the UC Regents Policy 4403: Statement of Principles Against Intolerance² in the UCLA Policy document. Members recommended that Section I. Purpose and Scope clarify that this UCLA policy is a divisional implementation of existing systemwide policies and recommendations.

Thank you for the opportunity to review and comment. If you have any questions, please do not hesitate to contact me at snwhite@dentistry.ucla.edu or via the Committee’s analyst, Lori Ishimaru, at lishimaru@senate.ucla.edu.

cc: Kathleen Bawn, Vice Chair/Chair-Elect, Academic Senate
Jessica Cattelino, Immediate Past Chair, Academic Senate
April de Stefano, Executive Director, Academic Senate
Lori Ishimaru, Senior Policy Analyst, Academic Senate
Members of the Committee on Rules and Jurisdiction

¹ https://senate.universityofcalifornia.edu/_files/reports/rh-senate-divs-recs-for-dept-statements.pdf
² https://regents.universityofcalifornia.edu/governance/policies/4403.html
November 8, 2023

To: Andrea Kasko, Chair
     UCLA Academic Senate

Re: UCLA Policy: Public and Discretionary Statements by Academic Campus Units

The Committee had only a short time to consider the document and was unable to do so for a reasonable length at a meeting. The opinions below were assembled from comments submitted by members through email.

Allowing and regulating discretionary

Most members thought such statements should be allowed. This is in line with the opinion of UCAF. Its May 22, 2022 letter to the Academic Council stated, “a prohibition on the ability of departments to issue statements would represent a monumental change in U.C. policy and practice that neither Council nor UCAF believes is warranted.”

In spite of that support, a widely expressed concern was chilling minority viewpoints. The question was raised of the policy’s enforcement given that different ACUs might adopt different rules. Nevertheless those expressing skepticism stated that there were no good answers.

One member believed the document was unnecessary and even harmful, that members of the community already have the right to express their views as individuals, that statements on behalf of ACUs implicate the University and constitute, in practical terms, compelled speech for the dissenters. Since this member’s viewpoint touches many of the subjects below in a connected way, I have reproduced it at the end of this document.

Public statements on ballot referenda and legislation should be allowed

On page 3, the draft forbids public statements that endorse or oppose “candidates for elected or appointed government office, or . . . specific ballot referenda or legislation.” Several members did not dispute that ACUs should be silent on candidates running for office; one reason is that their platforms involve matters wider than any ACU’s expertise. However, they believed forbidding comments on current legislation or on ballot measures arbitrarily restricts academic freedom.

The UCLA draft supports this rule on the grounds that banning statements on legislation and referenda follows from “applicable laws and University policies.” No citations are given, and the question was raised whether current laws or policies do in fact forbid this. Addressing this same question of statements on candidates, legislation, and referenda, the UCAF/Academic Council documents of May 25 and June 2, 2022, cite the 1970 Policy on the Use of University Properties - 40, “As a State instrumentality, the University must remain neutral on religious and political matters.” Read literally, this seems quite restrictive but, as the UCAF/Academic Council documents point out, the phrase “political matters” in the ban has consistently been interpreted in a narrow meaning. For example, the University
filed an amicus brief on affirmative action admissions, and also sued the Trump administration over DACA.

The UCAF and Academic Council documents were somewhat inconsistent about what counts as “political”, but they conclude, “the University views departmental statements as consistent with existing policy and applicable laws so long as they do not take stands on electoral politics [emphasis added], and so long as they do not purport to speak for the University as a whole.” Prohibiting statements on electoral politics would allow statements on legislative or ballot measures since no one is being elected. Banning that included such cases would interfere with a major purpose of a university - ACUs could not convey their specialized knowledge to the public at a critical time.

Note that this UCLA draft bans not just discretionary statements about referenda or proposed legislation; it bans all *public* statements about them, i.e., including those relevant to the ACU’s daily activities. A member pointed out that if some new Congress or President wanted to cut funding for universities that teach critical race theory, the CRT Program in the Law School, the History Department, or the African-American Studies Department could say nothing publicly against it, at least until it passed. In 2024 Californians will vote on repealing Proposition 8, which prohibited same sex marriage; the current draft would tell the Williams Institute to stay silent. There will also be a ballot measure to fund early pandemic detection, but the Clinical Epidemiology and Infection Prevention Department could say nothing about that either. The proposed rule goes against not only academic freedom but the University’s major role of sharing useful knowledge with society. The phrases “specific ballot referenda or legislation” should be deleted.

**Complexity of the draft’s rules**

Some members felt the document was unwieldy and needed to be simplified. It should distinguish the more important rules from the less important ones and keep the former.

“Discretionary” statements

One member, while recognizing what the word meant in this context, found this confusing. All language is discretionary. The document defines the word only vaguely. It was also felt that in some contexts vagueness is desirable.

**Should statements be able to claim unanimous support?**

According to the draft, “[An ACU] may not specify that the statement received unanimous endorsement (even if it did). This is to avoid the generation of incentives to identify and pressure holdouts.” Wherever an ACU sets its majority quota – unanimity, one-third or just a majority – a statement may be one vote short of passing, leading to the same incentive to pressure faculty. It was suggested that for this reason, as well as for keeping the rules simple, this portion should be omitted.

**Removing statements from UCLA sites at the end of each term**

Two members expressed the view that this was overdone and a year might be better. “Renewal of any statement must follow the procedures associated with the production of statements above.” Requiring it term by term would call for full meetings, discussions, and revotes every three months, and would increase the pressure on dissenters that the draft wants to avoid.
Consultation with CAF

Two members stated that the draft should include the 2022 recommendation of UCAF and Academic Council, “Time permitting, departments should consult with their campus Committee on Academic Freedom (CAF) when considering publication of a departmental statement on a controversial.” A reason was that we are attuned to the issues, and might notice a problem not foreseen in the rules and guidelines. Concern was expressed that it would increase our workload; on the other hand, there was doubt that many ACUs would do it.

A member’s skepticism about the overall project

One member wrote the following:

“As a practical matter, much of this ‘policy’ would be unworkable, as this document implicitly admits in several places. The key problem is with ‘Discretionary Statements’ -- a euphemistic way of describing statements of opinion, and in particular opinions on political controversies. The proposal requires such statements be ‘responsible’ and ‘judicious’, without providing useful guidance on how that will be guaranteed. The document admits that it raises serious problems of how Discretionary Statements are proposed, written, debated, voted upon and publicized (when, how, and by whom). It correctly admits that ‘It is difficult to protect anonymity’ and that there may be ‘pressures to identify and pressure holdouts’, again without providing clear protections.

“It further acknowledges that the common usage of ‘subgroups’ to produce statements may ‘conflict in content with a statement of the broader academic unit’. So they should only be considered ‘cautiously’, as the ‘Guidance’ vaguely recommends. The document admits the ‘risks of intra-unit conflict [not to mention inter-unit conflicts]’, ‘and the misattribution of statements to members of the community who do not wish a public association with those statements.’ This highlights the fundamental problem with collective speech--that some people (with a majority view) end up speaking on behalf of other people (with a different, minority view, private or no particular view). The Policy states that ‘Unanimity cannot be required’. Thus my academic freedom is violated when a group of my colleagues makes a statement which I did not sign, and with which I do not agree, while doing so officially ‘on my behalf’. Even if a ‘broad consensus’ disagrees with me, this compelled speech violates my rights. I could perhaps try to provide some kind of dissent. But once the official (majority) statement is announced by my UCLA Academic Unit (however that might be defined), we all know that peculiar legal niceties (e.g.: ‘This statement represents the views of ...some kind of majority...of...those who were included in this group, and only during the current academic term’) will be ignored in the subsequent public discussion and reverberations throughout social media. This document correctly admits that even knowing who is speaking is problematic: ‘These delineations [about subgroups and subsets] may not be well-understood by students and the public.’

“In fairness to the writers of the Proposal, many of its unanswered questions and problems are not necessarily the result of sloppiness. Instead, they have no good answers. The more basic reason may be inherent in what this document is attempting to do, which is to enable official statements about matters far from, or even disconnected from, the core mission of UCLA faculty. Our number one mission is to educate our students. When Academic Units issue official opinions that stray too far from that, little will be gained, but much can be lost.
“This document is too fundamentally flawed to be even a starting point for a policy. Even with heavy editing, it will cause more (unintended) harm than its purported benefits.

“Fortunately, this document is a non-solution to a non-problem. Every UCLA employee, including every faculty member of any rank, and every researcher, clinician and graduate student, already enjoys individual freedom of speech to express their opinions on any issue—in their own name. And if, for example, a group—large or small—of UCLA employees wishes to band together to sign a Letter or Petition—even on a political controversy or ‘global event’ --they are free to do so, making it clear that each signer speaks for themselves. Their UCLA affiliation of course does not mean that UCLA officially endorses—or officially condemns—what they wrote. This simple fact also protects the EVC and Provost from attacks, more effectively than this misguided Policy proposal could.”

The committee appreciates the opportunity to comment on this matter and looks forward to reviewing this policy again should we be asked. If you have any questions, please contact me (barry.onell@polisci.ucla.edu) or Academic Senate Policy Analyst, Lilia Valdez (lvaldez@senate.ucla.edu).

Sincerely,

Barry O’Neill, Chair
Committee on Academic Freedom

cc: Kathy Bawn, Vice Chair/Chair-Elect, UCLA Academic Senate
    Jessica Cattelino, Immediate Past Chair, UCLA Academic Senate
    April de Stefano, Executive Director, UCLA Academic Senate
    Lilia Valdez, Senior Policy Analyst, UCLA Academic Senate
    Committee on Academic Freedom Members
November 8, 2023

To: Andrea Kasko, Chair
    UCLA Academic Senate

Re: UCLA Policy: Public and Discretionary Statements by Academic Campus Units

At the November 7, 2023 meeting, the Committee on Diversity, Equity, and Inclusion discussed the proposed UCLA Policy on Public and Discretionary Statements by Academic Campus Units. During this discussion, members shared various concerns.

Some members noted that it would not be appropriate for academic campus units to make statements that do not represent the ideas of everyone in the unit. Similarly, there was some concern regarding the qualifications of academic campus units to make statements on items that are outside of their areas of expertise. The proposed policy does not provide adequate guidance to ensure that the statements made satisfy the standard established through this policy. Members also mentioned that the policy as written would be difficult to implement and monitor.

Members made a point to discuss the freedoms that faculty have, both as individuals and as groups of individuals, to make statements that do not represent the full academic campus unit. Some members also expressed the idea that the institution should strive to be non-partisan, and allowing for such statements on behalf of full units would present issues to both the institution and its faculty.

Some members had concerns that the timing of this policy could cause some concerns among campus groups. Though some members agreed with the purpose of the policy, they found that now might not be the best time to implement new standards.

We appreciate the opportunity to express our views on this matter. If you have any questions, please do not hesitate to contact me (thall@mednet.ucla.edu) or Academic Senate Policy Analyst, Lilia Valdez (lvaldez@senate.ucla.edu).

Sincerely,

Theodore Hall, Chair
Committee on Diversity, Equity and Inclusion

cc: Kathy Bawn, Vice Chair/Chair-Elect, UCLA Academic Senate
    Jessica Cattelino, Immediate Past Chair, UCLA Academic Senate
    April de Stefano, Executive Director, UCLA Academic Senate
    Lilia Valdez, Senior Policy Analyst, UCLA Academic Senate
    Members of the Committee on Diversity, Equity, and Inclusion
To: Andrea Kasko, Chair, Academic Senate

From: Diana Messadi, Chair, Committee on Privilege and Tenure

CC: Kathleen Bawn, Vice Chair/Chair-Elect, Academic Senate
Jessica Cattelino, Immediate Past Chair, Academic Senate
April de Stefano, Executive Director, Academic Senate
Marian M. Olivas, Principal Policy Analyst, Academic Senate
Members of the Committee on Privilege and Tenure

Date: November 3, 2023

Re: Proposed Policy for Public and Discretionary Statements by Academic Units

The Privilege and Tenure Committee (P&T) members received this proposed policy for review at our October 26, 2023 meeting and were invited to submit comments on it by today. Committee members reviewed the draft, and discussed at our November 2, 2023 meeting. We did not vote to take any formal position on the draft, but we offer the following comments and concerns:

1) The draft recommends that academic units develop procedures that only allow policy statements or commentaries to be issued if a “supermajority” of the faculty in that unit concurs with the statement; but supermajority is not defined. Is this 60%? Two-thirds? Ninety percent? This ambiguity should be addressed. Further, the parliamentary procedure which the Senate follows advises against “requiring more than a majority.”

2) Relatedly, because posting statements requires some form of a majority vote, the draft does not offer any path for conveying the views of dissenting parties. Rather, it purports to protect “the interests of those in the unit who disagree” by “enjoying the freedom . . . not to speak.”¹ Should the minority be invited to submit a dissenting statement that would go out along with the majority statement? Because P&T is concerned with faculty rights, it is important to note that this seems to pose a significant imbalance of rights.

¹ There is not even a provision for allowing a minority view to be posted.
3) Issues such as (1) and (2) are consistent with a more general critique: why not simply prohibit academic units at UCLA from taking public positions on world affairs or political and social issues? Why not, instead, permit faculty to develop and issue their own statements, if they wish, subject to the proviso that they make clear at the outset of such statements that they are only expressing the views of the signatories, and not in any way an official view of UCLA or any academic unit of UCLA. This would protect academic freedom and allow ideas to be expressed in a much less cumbersome way, without embroiling the university directly in political matters.

4) Related to (3), the policy seems to be unnecessary and to contradict the existing Faculty Code of Conduct which already states that Faculty already have the right to “enjoyment of constitutionally protected freedom of expression.”2 “Faculty members have the same rights and obligations as all citizens. They are as free as other citizens to express their views and to participate in the political processes of the community.”3

5) Further, the Faculty Code of Conduct admonishes: “When they act or speak in their personal and private capacities, they should avoid deliberately creating the impression that they represent the University.”4 It also forbids “Unauthorized use of University resources or facilities on a significant scale for personal, commercial, political, or religious purposes.”5 Why should faculty operating as “academic units” be excused from these admonitions?

These comments reflect the general sense of our committee; we are broadly concerned that this policy, with its cumbersome and difficult-to-enforce procedures, will make protecting the rights of all more challenging.

Thank you for the opportunity to review and comment. If you have any questions, please do not hesitate to contact me at dmessadi@dentistry.ucla.edu or via the Committee’s analyst, Marian Olivas, at molivas@senate.ucla.edu.

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2 Part I, Faculty Code of Conduct “Professional Rights of Faculty”
3 Part II, Faculty Code of Conduct E. The Community “Ethical Principles”
4 Ibid
5 Part II, Faculty Code of Conduct: E.1
November 3, 2023

To: Andrea Kasko, Chair, UCLA Academic Senate

From: Brooke Scelza, Chair, Graduate Council

Re: UCLA Policy: Public and Discretionary Statements by Academic Units

At its meeting on October 27, 2023, the Graduate Council reviewed and discussed the draft UCLA Policy: Public and Discretionary Statements by Academic Campus Units and offers the following observations for the Executive Board’s consideration:

Members discussed the potential overreach of the university and underscored the ability of campus academic units to develop their own policies. Some members also commented on the potential impact on academic freedom and sought clarification on the broad nature of the voting requirements to issue public and discretionary statements (e.g., the policy requires staff, post-docs and others not typically given voting rights to vote on the statement—see sections 1.iii and 1.iv)

One member noted that the potential members of the Academic Campus Unit are categorized by positions of employment. Some members had questions regarding graduate students who are not employed by the department. The current draft gives rights to graduate student employees only, but nothing in section 1.iv identifies graduate students at large as being part of the Academic Campus Unit.

Some members noted that the draft policy was timely and there was a benefit to having a clear process.

Some members had concerns regarding minority voices and appreciated that the policy considered situations in cases where academic units are split and aimed to protect members’ views from being misrepresented.

We appreciate the opportunity to express our views on this matter. If you have any questions, please contact us via Graduate Council Analyst, Emily Le, at ele@senate.ucla.edu.
At its meeting on October 26, 2023, the Committee on Charges had a brief opportunity to discuss the proposal to create a policy addressing “Public and Discretionary Statements by Academic Units.” The Committee had these concerns:

- Why is this even needed when individuals and groups of individuals may use private means to make statements? No rationale is offered for why there is need for a policy that allows units to use the UCLA name to make discretionary “comments on institutional, local, regional, global or national events, activities or issues” and, further, to use University resources to see that these are “distributed, disseminated, posted online or otherwise shared via mass distribution with University constituencies or the public.”

- Why are “campus leaders” (Deans, Chairs, and “other”) listed as being allowed to make their own statements (p. 6)? Is this a proper use of the leadership role (disclaimer or not)? Committee members expressed concerns that UCLA itself, as one of the divisions of the University of California, is an “Academic Campus Unit.” As such, should the Chancellor or Vice Chancellors be allowed to make statements on behalf of UCLA without meeting the standards and providing the disclaimers outlined in the proposed procedures?

- The lack of uniform procedures is concerning. Instead, the policy leaves it to individual Academic Campus Units (widely defined as departments or divisions (both academic and nonacademic) as well as other official UCLA entities, including schools, centers, laboratories, institutes, the UCLA Academic Senate, and UCLA Extension) to develop, publish, and implement procedures that are supposed to meet 13 requirements for public statements; 11 additional procedural requirements for creating discretionary statements and 5 requirements for posting these statements. Conforming with the “codes of conduct” is just one of these requirements. Yet, nothing in the policy provides for review of these procedures to ensure they comply with the requirements, let alone the proper mechanism for enforcing misuse of the process.

- There is a tension between the right of groups to express an opinion and, as noted on p. 3 A6, statements that may violate the Faculty Code of Conduct.
November 2, 2023

To: Andrea Kasko, Chair
   Academic Senate

Re: UCLA Policy: Public and Discretionary Statements by Academic Campus Units

Dear Chair Kasko,

The Faculty Welfare Committee (FWC) circulated the UCLA Policy: Public Discretionary Statements by Academic Campus Units as an independent review. Members offered the following comments.

FWC members noted that the proposed policy is filled with many legalities, is confusing, and the points outlined appear contradictory. Public statements were defined as “part of the day-to-day, term-to-term operations of the Academic Campus Unit.” In contrast, discretionary statements were considered “not part of the day-to-day, term-to-term operations of the unit.” However, the term “Public Statement” is stated also to include discretionary statements (p2). How is this possible? Others thought that units should be generally dissuaded from using discretionary statements to weigh in on events beyond the scope and knowledge of the unit. Second, it remains unclear how this policy will achieve its goal of “protect(ing) members of an Academic Campus Unit from being misrepresented or misunderstood to endorse a point that they have not chosen to endorse.” If everyone is expected to comment or not comment. In that case, there remains considerable concern about bullying and pressure on the faculty, by students or peers, to agree or disagree with the discretionary statement, which goes beyond our role as educators and researchers. Third, some members felt that there should be a requirement that all discretionary statements posted by an academic unit or sub-unit require a unanimous vote.

Thank you for the opportunity to comment on this proposed policy. If you have questions, please do not hesitate to contact me at butlersj@ucla.edu or via the Committee analyst, Renee Rouzan-Kay, at rrouzankay@senate.ucla.edu.

Sincerely,

Samantha Butler, Chair
Faculty Welfare Committee

cc: Kathleen Bawn, Vice Chair/ Chair-Elect, Academic Senate
Jessica Cattelino, Immediate Past Chair, Academic Senate
April de Stefano, Executive Director, Academic Senate
Renee Rouzan-Kay, Senior Policy Analyst, Faculty Welfare Committee
Members of the Faculty Welfare Committee
November 1, 2023

Andrea Kasko, Chair
Academic Senate

Re: UCLA Policy: Public and Discretionary Statements by Academic Campus Units

Dear Chair Kasko,

At its October 20, 2023, meeting, the Committee on Data, Information Technology, and Privacy (CDITP) reviewed the draft of the UCLA Policy on Public and Discretionary Statement by Academic Campus Units. Members made the following comments:

The members of CDITP have significant concerns about the purpose, scope, and application of this proposed policy. Most problematically, the committee found the policy overly vague. While the committee appreciates a need to balance the relationships between collectives of faculty and individual faculty members, the draft fails to articulate why this policy is necessary and what this policy seeks to accomplish in regulating and limiting specific forms of speech on UCLA digital platforms. In particular, there were concerns about the lack of specificity as to how and when faculty speech was covered by this policy and to the particular nature of the Guidelines as applied to Social Media accounts that are not hosted on UCLA Domains. Further issues with the vague wording of the policy might be seen in how “Discretionary Statements” is poorly defined in the policy: an obituary for a colleague posted to a Department website could well be construed as ACU “comments on institutional...events.”

More broadly, members of CDITP wondered whether other public universities currently have such a policy. As it stands, this draft policy seems deeply under-considered: it does not address questions of, for example, how the archiving of Discretionary Statements should be covered by public record-keeping responsibilities. It also seems focused on a burdensome implementation of processes to emphasize what members of the university community cannot do. The committee urges the Administration to reconsider the necessity of the policy and to refine substantially the draft policy and its scope.

Thank you for the opportunity to comment on the proposed policy. If you have any questions, please do not hesitate to contact me at fisher@humnet.ucla.com or via the Committee analyst, Renee Rouzan-Kay, at rrouzankay@senate.ucla.edu.

Sincerely,

Matthew Fisher, Chair
Committee on Data, Information Technology, and Privacy

cc: Kathleen Bawn, Vice Chair/Chair-Elect, Academic Senate  Jessica Cattelino, Immediate Past Chair, Academic Senate  April de Stefano, Executive Director, Academic Senate  Renee Rouzan-Kay, Senior Policy Analyst, Committee on Data, Information Technology, and Privacy  Members of the Committee on Data, Information Technology, and Privacy