

Budget Sub. 2 Summary of Justice Moreno's Report

Background

An April 2017 audit of the University of California Office of the President (UCOP) concluded that UCOP amassed substantial reserve funds, used misleading budgeting practices, provided its employees with generous salaries and atypical benefits, and failed to satisfactorily justify its spending on systemwide initiatives.

As part of the audit, the State Auditor sent two surveys to UC campuses to assess their use of UCOP's services and programs as well as their perceptions of UCOP's process for charging campuses for UCOP services. The surveys each contained the request not to share the survey with "others outside your campus." During the course of the audit, audit staff learned that campuses had shared the surveys with UCOP, and found that some survey responses were changed in ways that made UCOP appear more efficient and effective. The Auditor concluded that she could not use the surveys in her report to the Legislature due to this interference.

The law firm Hueston Hennigan was hired by the UC Board of Regents to review the UCOP's actions regarding the surveys. The Hueston Hennigan investigation was led by Retired California Supreme Court Justice Carlos R. Moreno, and a report was released in November 2017.

Summary of the Report

The investigation included interviews with 38 people at campuses and UCOP and a review of 427,000 pieces of data (emails and texts) and documents. The report concluded that members of the President's Executive Office engaged in actions that interfered with the preparation and submission of survey responses from the ten individual campuses to the State Auditor in four ways:

- (1) directing the campuses to have the survey responses reviewed and approved by that campus' Chancellor, which had a chilling effect on responses because chancellors report to the President;
- (2) instructing the campuses that the survey responses should be submitted to UCOP for review before submission to the State Auditor;
- (3) informing the campuses that the survey responses were not the time to "air dirty laundry" or otherwise provide negative information; and
- (4) reviewing the responses submitted by the campuses and suggesting revisions and/or changes to responses that reflected poorly on UCOP – including requesting that some campuses reconsider "Poor" or "Fair" ratings.

President Napolitano acknowledged her role in the first two actions but the report concludes that the evidence is insufficient to conclude that she participated in or had knowledge of the other two actions. The report lays out the following timeline:

- The surveys were sent to the campuses on Oct. 20, 2016. Soon after, UCOP learned of the surveys and discussed how to manage these surveys. Within a few days, UCOP executives, including Chief Financial Officer Nathan Brostrum, the President's chief of staff, Seth Grossman, and the deputy chief of staff, Bernie Jones, made calls to campus chancellors or other executives informing them that chancellors should review all answers and be responsible for the answers.
- At a Nov. 10 meeting at UCOP, one witness who spoke to investigators described Napolitano as "very upset" regarding the audit and asking how UCOP could get more "control" over the surveys. The idea of UCOP reviewing all survey responses was first proposed at this meeting.
- In calls between the UCOP chief of staff, deputy chief of staff and campus executives on Nov. 14, campuses were told to submit their survey responses to UCOP before submitting them to the Auditor. According to the report, "Several participants described an implicit message conveyed on the calls: that campuses would be accountable for any survey responses critical of UCOP. To one witness, it was clear that UCOP wanted to make sure the survey responses would reflect well on President Napolitano." Additionally, the report states, "Three Associate Chancellors also reported that on the November 14 calls, the COS (chief of staff) or DCOS (deputy chief of staff) cautioned the participants that the surveys were not the place or forum in which to air "dirty laundry.""
- At a Nov. 15 dinner with the chancellors, one chancellor told investigators that President Napolitano "advised the campus Chancellors that the survey responses should not be overly negative." Napolitano denied saying that, instead recalling that she was concerned that survey responses be accurate and reflect chancellors' viewpoints.
- Between November 14 and November 16 (after the UCOP calls), at least three campuses modified survey responses before the drafts were sent to UCOP for review. One campus flagged a response during an internal review, commenting that the respondent "didn't get the message . . . that this is NOT the vehicle to critique UCOP."
- Additionally, UCOP reviewed campus survey responses, and the chief of staff and deputy chief of staff flagged responses that appeared overly negative. The

report notes that five campuses received calls with suggested changes from UCOP. One campus was told their survey was "too negative," another was told poor ratings could be "used politically to reduce funding to OP and ultimately to the campuses."

- The report notes that UC Santa Cruz did not submit their responses to UCOP before submitting them to the Auditor. On Nov. 22, President Napolitano called the Santa Cruz chancellor regarding this. The Santa Cruz chancellor described Napolitano as being "furious," while Napolitano told investigators she used a "measured tone." After the call, the campus asked the Auditor to return the survey, and multiple answers were changed. A subsequent email from the Santa Cruz chancellor to the deputy chief of staff stated "[a]s you will see, I addressed 98% of your concerns and I made a number of additional changes as well (all in a direction you would not find problematic)."

The report notes that "The President and her executive staff have stated that the campus survey responses were vetted for three parameters: whether the response was within the scope of the audit, whether it was factually accurate, and whether it represented the perspective of the Chancellor."

Other issues the report raises include:

- UCOP felt that state audit staff were acting inappropriately, with UCOP staff noting "reports of audit staff making workers at the Oakland headquarters "uncomfortable," even "cornered and threatened," and of "audit staff roaming the halls" and "cornering people with flash drives and asking them to download their hard drive."" In a text to her chief of staff, Napolitano referred to the audit as a "witchhunt."
- The report notes that there was much internal discussion within UCOP and at the campuses about whether the interference was appropriate. The UC General Counsel wrote in an email that the interference might not violate the law but he wrote, "In my view, the greater risk is political, not legal. OP should think carefully about creating an appearance that OP is biasing the results of the survey, which likely would be a subject of criticism in the final audit report." Emails and texts between the chief of staff and deputy chief of staff suggest the two knew they might be breaching protocol. In one text, the chief warned the deputy to keep communications "off of email." He later texted the deputy "Don't want anything in email that could be problematic if made it [sic] way back to the auditor." The deputy texted back, "it wouldn't surprise me if one or more of the IADs (campus audit officials) snitched us to the CSA (California State Auditor)."

Post Report Activities

The UC Board of Regents discussed this report in a lengthy closed session meeting in November 2017.

After the meeting, UC Regents Chair George Kieffer read a statement, saying the president's actions "reflected poor judgment and set in motion a course of conduct that the Board of Regents finds unacceptable." Kieffer's statement, however, expressed the Regents' support for President Napolitano continuing in her job. In a separate statement, Napolitano apologized and said "I have already taken steps to ensure that this does not happen again and together with the Board will work to implement the additional changes being recommended by the Board to further strengthen our processes in this regard."

UC is pursuing two other actions related to this issue:

- The consulting firm Sjoberg Evashenk is working for the Regents and is preparing a report on redundancy between campus administration and UCOP, which was one of the issues the Auditor's surveys was seeking to address. The review is expected to determine if UCOP programs, activities, or personnel unnecessarily duplicate similar campus programs and if savings could be achieved by eliminating duplicative programs, activities or personnel; and to assess which programs and services should be performed by UCOP and which programs and services would be better placed at the campus level. This report is expected to be finished in April.
- At its January 2018 meeting, the UC Regents approved new policies regarding audits involving the Office of the President. The new policies:
 - State that University employees are not to obstruct or interfere in any way with protected disclosures in any state audit.
 - Creates more direct reporting lines to the Board of Regents for UC audit officials during audits regarding the Office of the President.
 - Makes changes to performance evaluations processes for senior managers, including whether officials who report to the President and the Regents, such as the General Counsel and Chief Investment Officer, display independence from the President.

Finally, the Legislature also took action related to this issue. AB 562 calls for a fine of up to \$5,000 for anyone who knowingly interferes with the State Auditor. The bill was signed into law by Gov. Jerry Brown last fall.