

**OFFICE OF THE PROVOST  
AND VICE CHANCELLOR FOR ACADEMIC AFFAIRS**

**HIRING PROCESSES REVIEW COMMITTEE REPORT**

August 26, 2014



**ILLINOIS**  
UNIVERSITY OF ILLINOIS AT URBANA-CHAMPAIGN

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## I. COMMITTEE CHARGE

The committee was charged with reviewing hiring processes used on the Urbana campus, and relevant campus units, for the prior and current employment appointments of James Kilgore. (Attachment 1, charge letter) In particular, the committee was asked to focus on the process followed, if any, to review Mr. Kilgore’s criminal convictions and to assess the impact on his employability. The committee was charged with providing findings regarding how employment decisions were made and conclusions regarding the adequacy of the hiring policies and processes that were followed. Finally, if the committee concludes that the hiring processes were not adequate to serve important institutional interests, the committee was asked to make recommendations for how campus and unit policies should be improved with respect to the review and assessment of criminal convictions of potential employees, including Mr. Kilgore.

## II. COMMITTEE MEMBERSHIP

Matthew Wheeler, Professor, Animal Sciences, *Chair*  
Jennifer Amos, Sr. Lecturer, Bioengineering  
Ken Ballom, Dean of Students  
Janet Barrett, Professor, Music  
Gregory Girolami, Head & Professor, Chemistry; CAFT Representative  
Heidi Johnson, Director, Office of Diversity, Equity and Access  
Lt. Matt Myrick, Division of Public Safety  
William Stewart, Associate Dean & Professor, Applied Health Sciences  
Deb Stone, Director, Academic Human Resources  
Katherine Galvin, Associate Provost, Provost’s Office, *ex officio*

## III. EXECUTIVE SUMMARY

Mr. Kilgore has held 13 different appointments in eight different units at the University of Illinois at Urbana-Champaign from 2010 through the present. Mr. Kilgore was hired as an academic hourly and in various visiting lecturer appointments. The practices used to hire Mr. Kilgore complied with and followed the accepted policies and practices in place at the time of his various appointments. At the time

of each of these appointments, no university or campus policy required that Mr. Kilgore be subjected to a criminal background check.

During the relevant time period, the only campus policy in place that required a criminal background check was the policy on Security Sensitive Positions: Academic Staff, Campus Administrative Manual, Section IX, C-44. This policy requires a criminal background check if a position is deemed "security sensitive" as determined by the four-part test that evaluates whether the job duties include entrusting the employee with: 1) the care or daily close contact with pre-college aged children or resident students at Beckwith Living Center; 2) large amounts of cash or other items of significant value; 3) firearms; or 4) controlled substances and direct patient medical care. Mr. Kilgore was not hired into any security sensitive positions and therefore no criminal background check was required.

All indications are that Mr. Kilgore voluntarily disclosed his prior use of an alias and was open about his criminal conviction history. Although one hiring administrator indicated he was not aware of Mr. Kilgore's criminal history, most hiring units were well aware of his past and generally came to the conclusion that hiring Mr. Kilgore would not create an unsafe environment within their unit or campus. Based on the current hiring practices for the appointments that Mr. Kilgore held (academic hourly appointments and visiting non-tenure system positions), the hiring decisions were left to the individual department heads' discretion and not subject to a broader campus review of Mr. Kilgore's criminal history.

Notwithstanding the committee's findings that the hiring officials did not violate any university or campus policies or procedures when hiring Mr. Kilgore, the committee finds that the existing hiring policies regarding the inquiry and review of criminal convictions are inadequate to protect important institutional interests. Specifically, the committee finds that it is time to end the practice that the vast majority of new hire appointments are made with no inquiry into criminal history and no evaluation of potential risk that may be posed by individuals with criminal convictions. Accordingly, the committee recommends that the campus develop a criminal background check policy that requires all new hires, excluding student appointments and a few categories of temporary appointments, to be subjected to a criminal history review. Where convictions are found, the committee recommends that the policy require an individualized assessment of whether the individual should be prohibited from holding the employment position at issue.

Because of the need for flexibility and nimbleness in hiring, the committee strongly recommends that the policy affords hiring units the ability to seek an exemption from the criminal background check requirement under limited and narrow circumstances that are carefully delineated in the policy. Although the committee feels strongly that an exemption process from criminal background review is necessary, exemptions should only be granted to an individual on one occasion and only under carefully circumscribed situations. A one-time only exemption rule is necessary to ensure that individuals do not secure more permanent employment without being subjected to a criminal background check. More specific recommendations regarding a criminal background check policy are set forth at the end of this document, but most importantly include the need for Senate involvement in the creation and review of any criminal background check policy and faculty involvement in the assessment of the impact of criminal history on faculty hiring decisions.

Finally, the committee does not support a blanket or permanent exclusion of employment for Mr. Kilgore. The record demonstrates that Mr. Kilgore has been a successful employee and has contributed to the scholarly and educational missions of the campus in the academic hourly and visiting specialized faculty

positions that he has held over the last four years. The committee recognizes that the process of developing and implementing a criminal background check policy and procedures will take some time. The committee submits that barring Mr. Kilgore from employment while those policies and procedures are created would single him out unfairly and unnecessarily, given his creditable employment record with the university. Consequently, the committee recommends that Mr. Kilgore be allowed to continue to be employed by the university in accordance with the policies that apply to all individuals seeking employment. Specifically, we would endorse the professional judgments of units wishing to hire Mr. Kilgore during the Fall 2014 semester pursuant to the hiring practices currently in place.

#### **IV. COMMITTEE ACTIVITIES AND PROCESS**

The committee met 8 times between May 23 and August 21. During some of these meetings, the committee interviewed the following executive officers who have hired Mr. Kilgore:

- Associate Professor Merle Bowen, Director of the Center for African Studies
- Professor Rob Olshansky, Head, Urban and Regional Planning
- Mike Ross, Director of the Krannert Center for Performing Arts
- Professor Jorge Chapa, former Director of the Center for Democracy in a Multiracial Society
- Associate Professor Rebecca Ginsburg, Director, Education Justice Project

In addition to these in-person interviews, the committee reviewed the following documents:

- Correspondence between Mr. Kilgore and the Center for African Studies related to him being a Research Affiliate, a non-employment affiliation which preceded any formal employment with the university;
- hiring paperwork for each of Mr. Kilgore's appointments with the University of Illinois at Urbana-Champaign;
- relevant portions of the campus Search Manual;
- the campus policy regarding criminal background checks for security sensitive positions; and
- criminal background check policies from peer institutions.

The committee submitted its final report to Chancellor Wise and Provost Adesida on August 26, 2014.

#### **V. FINDINGS**

The committee makes the following findings regarding the hiring policies and processes used by the campus in hiring Mr. Kilgore in the various academic hourly and visiting lecturer appointments he has held between January 2010 and August 2014.

##### **FINDINGS RELATED TO EXISTING POLICIES, PROCEDURES AND LAW REGARDING CRIMINAL BACKGROUND CHECKS**

1. The University of Illinois at Urbana Champaign has four main categories of employment:
  - tenure-system faculty
  - non-tenure system faculty (i.e., specialized faculty including lecturers, instructors and modified professorial appointments such as Research Professors, etc.)
  - academic professional positions exempted from civil services (including temporary academic hourly appointments); and

- civil service staff positions, governed by State University Civil Service System (SUCCS) responsible for implementing and overseeing the State Universities Civil Service Act, 110 ILCS 70.

Mr. Kilgore was employed in two of these four categories: as a visiting non-tenure system faculty member and as an academic hourly.

2. Campus policy directs that every effort should be made to advertise, post, and evaluate applicants for vacant positions. Academic search procedures have been developed in order to ensure an open and competitive process to fill position vacancies. Filling vacancies through the search process assures that the University maintains compliance with Federal and State affirmative action legislation in addition to offering assurance that units are hiring the most qualified candidates.

However, there are good and justifiable reasons for enabling some appointments to be made without going through standard search procedures. Certain positions are eligible for search waiver requests due to (a) the existence of statutory or other policy guidelines governing the appointment or search process; (b) the unique talents and skills required for the position; or (c) urgent departmental/unit teaching needs that cannot be addressed through the normal search process (i.e., increased class enrollment at the beginning of a semester requiring an immediate teaching appointment). For example, until a policy change involving modified titles was instituted in April 2014, units could ask for search waivers to hire Visiting Lecturers.

3. Academic hourly appointments do not require that the unit conduct a competitive search (or ask for a search waiver) as is required for other, more permanent academic appointments. Academic hourly appointments allow units to have time-limited academic work performed on a temporary, hourly appointment. Because of the nature of the academic duties, academic hourly appointments are exempt from the State Universities Civil Service System. The employment of an academic hourly is dependent upon the available funding, usually at the discretion of the hiring supervisor or the primary investigator on the grant funding the academic hourly position. There is no expectation that approval to hire an academic hourly would be required at a level any higher than the unit executive officer, unless the individual to be hired is a retiree of the University. Additionally, individuals hired into academic hourly positions do not complete an application form.
4. The search waiver process is intended to allow for flexibility in exceptional or unusual circumstances, such as an unexpected faculty departure. Similarly, the academic hourly category allows for much needed flexibility that enables units to maximize the use of resources, particularly research resources, react to emergent needs in a nimble and effective way and utilize highly qualified individuals on an as needed basis. The professional discretion of the unit head and position supervisors determines when this employment category is an appropriate solution based on the specific need. Campus HR affirms that the work is appropriate to be exempted from civil service but it is the unit's determination to hire on a temporary basis.
5. It is important to note that the Academic Hourly process is being reviewed at this time, particularly in regard to the alignment of these processes with the Affirmative Action Plan. Part of the campus's motivation for looking at how academic hourly appointments are made is the fact that the Office of Federal Contract Compliance Programs (OFCCP) has focused its compliance reviews on confirming that all employees are covered under the affirmative action

plan. The current restructuring of the academic hourly appointment process is notable because that ongoing process affords the campus the opportunity to incorporate processes developed in response to the recommendations made by the committee.

6. In addition to the campus hiring policies and procedures, the committee reviewed enforcement guidelines issued by the United States Equal Employment Commission (EEOC). In EEOC Enforcement Guidance No. 915.002 (April 25, 2012), the EEOC explains that it “enforces Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits discrimination based on race, color, religion, sex or national origin. This Enforcement Guidance is issued as part of the Commission’s efforts to eliminate unlawful discrimination in employment screening, for hiring or retention, by entities covered by Title VI, including private employers as well as federal, state, and local governments.”
7. Enforcement Guidance No. 915.002 addresses how the courts and the EEOC interpret employers’ consideration of arrest and conviction records when making employment decisions under Title VII. In this guidance document, the EEOC cautions that use of an individual’s criminal history in making employment decisions may constitute employment discrimination under Title VII. Specifically, EEOC Guidance No. 915.002 states:
  - A violation may occur when an employer treats criminal history information differently for different applicants or employees, based on their race or national origin (disparate treatment liability).
  - An employer’s neutral policy (e.g., excluding applicants from employment based on certain criminal conduct) may disproportionately impact some individuals protected under Title VII, and may violate the law if not job related and consistent with business necessity (disparate impact liability).
  - National data supports a finding that criminal record exclusions have a disparate impact based on race and national origin. The national data provides a basis for the Commission to investigate Title VII disparate impact charges challenging criminal record exclusions.
  - Two circumstances in which the Commission believes employers will consistently meet the “job related and consistent with business necessity” defense are as follows:
    - The employer validates the criminal conduct exclusion for the position in question in light of the Uniform Guidelines on Employee Selection Procedures (if there is data or analysis about criminal conduct as related to subsequent work performance or behaviors); or
    - The employer develops a targeted screen considering at least the nature of the crime, the time elapsed, and that nature of the job (the three factors identified by the court in *Green v Missouri Pacific Railroad*, 549 F.2d 1158 (8<sup>th</sup> Cir. 1977)). The employer’s policy then provides an opportunity for an individualized assessment for those people identified by the screen, to determine if the policy as applied is job related and consistent with business necessity. (Although Title VII does not require individualized assessment in all circumstances, the use of a screen that does not include individualized assessment is more likely to violate Title VII.).

8. With respect to whether a policy that excludes individuals from employment based on criminal conduct exclusion is job related and consistent with business necessity, the EEOC states that “the employer needs to show that the policy operates to effectively link specific criminal conduct, and its dangers, with the risks inherent in the duties of a particular position.” The EEOC identifies the following, non-exhaustive list of evidence that may be reviewed when conducting an individualized assessment of job relatedness and business necessity:
  - The facts or circumstances surrounding the offense or conduct;
  - The number of offenses for which the individual was convicted;
  - Older age at the time of conviction, or release from prison;
  - Evidence that the individual performed the same type of work, post-conviction, with the same or a different employer, with no known incidents of criminal conduct;
  - The length and consistency of employment history before and after the offense or conduct;
  - Rehabilitation efforts, e.g., education/training;
  - Employment or character references and any other information regarding fitness for the particular positions; and
  - Whether the individual is bonded under a federal, state or local bonding program.
  
9. In addition to the foregoing EEOC guidance regarding federal discrimination law, the committee also considered Illinois Public Act 88-629 (110 ILCS 12/5), which requires that each public institution of higher education identify security sensitive positions and make provisions for the completion of criminal background investigations prior to employing individuals in those positions. In order to satisfy this law, the campus policy on security sensitive positions for academic staff members is outlined in the Campus Administrative Manual (CAM), IX/C-44.
  
10. The CAM policy identifies four categories of job duties that would classify a position as security sensitive. Essentially, if employees are entrusted with any of the following duties the job is considered security sensitive:
  - the care or daily close contact with pre-college aged children or resident students at Beckwith Living Center;
  - large amounts of cash or other items of significant value;
  - firearms;
  - controlled substances and direct patient medical care.
  
11. The CAM goes on to define what is involved in a background investigation and part of that process is a criminal conviction history check. If a candidate for a security sensitive position has a criminal history, that criminal history report is forwarded to the campus Investigative Review Committee (IRC) for consideration. The IRC is comprised of members from the following campus departments; Academic Human Resources, Public Safety, Equal Opportunity and Access, Staff Human Resources, Student Conflict Resolution, and University Counsel. According to the CAM, the purpose of the IRC is to, “...determine whether the criminal conviction record is related to the position for which the individual has applied and whether the person would be a security risk in the position.” The IRC makes a decision to either approve the candidate for further employment consideration or deny the candidate employment within the University. The denial is generally for a one or two year period at which time the candidate’s viability can be reconsidered if employment is still desired. Any denial affords the candidate an appeal process for the IRC to review their decision.

12. Criminal history background checks for security sensitive positions at the University of Illinois are handled by a third-party vendor, which is the national standard. A criminal history check, including a sex offender registry check, generally costs \$44.75. The committee has some concerns that in some of the emergent needs for temporary help such as academic hourly, the financial cost and time lost in the process of a criminal background check might exceed the value of the work being done. The committee strongly recommends that a certain *de minimis* level of employment could be exempt from any new background check requirements.
13. The vendor initiates the background check upon receipt of an electronic release from the individual. Results can be returned in as little as 3 business days, but may take considerably longer if the individual has a common name that requires further investigation. It is not uncommon for false positives to be returned from the Illinois State Police because the initial check does not include an individual specific indicator such as social security number. Applicants may be asked to provide fingerprints to confirm identity which lengthens the process. It is possible for the hiring to be delayed by as much as a few weeks.
14. Academic Human Resources (AHR) has no centralized application process or repository for Academic Hourly employees who might be hired for non-security sensitive positions. The scrutiny of those hires is generally left up to individual departments. Academic Hourly positions that are considered security sensitive are vetted through AHR and any potential candidate with a criminal conviction is sent to the IRC for review.
15. Faculty (tenure stream and specialized faculty) and Academic Professionals go through a hiring process which includes the use of an online application system, "HireTouch." Applicants for positions which must be filled through a competitive search process complete an on-line application. There is a question on the academic professional application regarding prior conviction history. However, this question is not on the faculty application and there is no academic hourly application.

#### FINDINGS RELATED TO THE HIRING OF MR. KILGORE

16. Before Mr. Kilgore was employed by the campus in 2010, he held a non-employment Research Affiliation with the Center for African Studies. Since then, Mr. Kilgore has been employed by eight different units of the University of Illinois at Urbana-Champaign in academic hourly positions and visiting non-tenure system appointments.
17. For each of the positions held by Mr. Kilgore, the following table provides the title, appointing unit, term of appointment, whether a competitive search or a search waiver was required and obtained, and whether a criminal background check was required by University policies in place at the time of the hire.
18. On one occasion Mr. Kilgore was contracted by International Programs and Studies to provide a single lecture and given a one-time lump sum payment for that service. This lump sum payment was incorrectly classified as a lecturer appointment, when normally an individual providing a



one-time lecture would not be given a title or appointment. Otherwise, this transaction was appropriately processed and did not violate any campus policies or procedures.

**Positions held by Mr. Kilgore**

<b>Position Title</b>	<b>Appointing Unit (Campus Location of Position)</b>	<b>Start and End Dates</b>	<b>Security Sensitive Position?</b>	<b>Hiring Procedure Followed at the Time of Hire</b>	<b>Applicable Policies Followed?</b>
Academic Hourly	Center for Democracy in a Multiracial Society	01/25/10 to 01-09-11	No	Unit professional judgment applied	Yes
Academic Hourly	Department of Urban and Regional Planning	10/04/10 to 08/17/13	No	Unit professional judgment applied	Yes
Academic Hourly	Center for African Study	01/24/11 to 05/15/14	No	Unit professional judgment applied	Yes
Academic Hourly	Program for Research in the Humanities	05/01/11 to 06/30/11	No	Unit professional judgment applied	Yes
Academic Hourly	Department of Entomology	09/04/11 to 05/25/13	No	Unit professional judgment applied	Yes
None (see ¶18)	International Programs and Studies	06/19/12 (one service day)	No	Unit professional judgment applied	Yes
Visiting Adjunct Lecturer	Department of Urban and Regional Planning	08/16/12 to 12/31/12	No	Search waiver required and obtained	Yes
Visiting Lecturer	Liberal Arts and Sciences (International Studies)	01/02/13 to 05/15/13	No	Search waiver required and obtained	Yes
Academic Hourly	Department of Urban and Regional Planning	05/10/13 to 09/15/13	No	Unit professional judgment applied	Yes
Visiting Lecturer	Liberal Arts and Sciences (International Studies)	10/16/13 to 12/15/13	No	Search waiver required and obtained	Yes
Visiting Lecturer	Liberal Arts and Sciences (International Studies)	01/16/14 to 03/15/14	No	Search waiver required and obtained	Yes
Visiting Lecturer	Fine and Applied Arts (Krannert Center for the Performing Arts)	1/23/14 to 05/15/14	No	Search waiver required and obtained	Yes
Academic Hourly	Department of Urban and Regional Planning	09/16/13 to 08/15/14	No	Unit professional judgment applied	Yes

19. Mr. Kilgore has not held any security sensitive positions at the University. Therefore, Mr. Kilgore's past criminal record would not have been scrutinized by the Investigative Review Committee (IRC) and his hiring would be subject only to the review of the department hiring him for the various academic hourly or visiting lecturer positions he has held.
20. However, we point out the following: Mr. Kilgore was in federal custody from 2002 until 2009 and then federal probation (supervised release) from May 10, 2009 to May 9, 2011. Mr. Kilgore's first appointment within the University was in 2010, while he was on federal probation. Had Mr. Kilgore applied for a security sensitive position in 2010 (he did not), his application would have been subjected to review by the IRC and it is likely that his application would have been denied. This conclusion is based on the normal protocol of the IRC not to approve candidates who are currently on parole, probation, supervised release or conditional discharge from a criminal case.
21. Mr. Kilgore was hired into several temporary academic hourly positions, for which no search is required and the hiring decision and review was carried out wholly within the hiring unit. Mr. Kilgore was also hired on a search waiver (which required campus review outside of the unit) for the following positions:
  - Visiting Adjunct Lecturer (Urban and Regional Planning – August 16, 2012 to December 31, 2012). A waiver was requested by Urban and Regional Planning to hire Mr. Kilgore to instruct UP423: Introduction to International Planning in place of a Professor who had accepted a research assignment. UP423 is a key elective course offered to all students and a required course to those students pursuing the Transitional Planning Stream of the program. Mr. Kilgore had worked with the previous instructor for several years. He possessed the requisite expertise to instruct the course and was a guest lecturer in the past for the course.
  - Visiting Lecturer (LAS International Studies – January 2, 2013 to March 15, 2014). A Global Studies Lecturer announced that they would be leaving the University in early December and the Department had to find a replacement to teach 2 ½ courses beginning in January of 2013 (about 4 weeks after the announcement). The Department sent a request for qualified teachers through the Center for Global Studies distribution list and through emails to affiliated Department Heads and Chairs. Two individuals had strong qualifications in both Development Studies and Research Methods. Both individuals were interviewed and it was determined Mr. Kilgore was the most qualified candidate.
  - Visiting Lecturer (Krannert Center for the Performing Arts – January 23, 2014 to May 15, 2014). Krannert was searching for Lecturers for the Exploring Arts and Creativity course to provide students with opportunities to engage in the arts and class discussions that offered diverse, worldly perspectives. Mr. Kilgore was selected due to his background in international affairs, cultural understanding, and social justice, in addition to his interdisciplinary work through the Center for Global Studies, among other campus departments. Mr. Kilgore was paired with another Lecturer to offer a range of perspectives and life experiences related to the arts.
22. The following represents the committee's findings arising out of the interviews of a select number, not all, of unit executive officers who have hired Mr. Kilgore. These more detailed findings regarding the hiring processes begin with the interview of Professor Merle Bowen,

Director of the Center of African Studies (CAS), because Mr. Kilgore's first formal campus affiliation was through a non-employment Research Affiliation with CAS.

**Findings Related to Mr. Kilgore's appointment in the Center for African Studies**

23. Professor Bowen remembered well the procedures she followed when she made Mr. Kilgore a Research Affiliate and subsequently an employee in the Center for African Studies.
24. In 2009 Mr. Kilgore expressed a desire to become a Research Affiliate with the Center. A Research Affiliate is not an employee. Rather, affiliation status allows for research association including library access, office space, and access to resources. Professor Bowen reported that Mr. Kilgore was open about his past history including his criminal record and use of an alias. She believed that a substantial length of time had passed since Mr. Kilgore's crime (i.e., 40 years) and concluded Mr. Kilgore to be effectively rehabilitated.
25. Professor Bowen followed the Center's procedures for establishing Research Affiliate relationships by bringing Mr. Kilgore's CV to the attention of the Center's elected Advisory Board. After receiving positive evaluation from her board, Professor Bowen invited Mr. Kilgore to be a Research Affiliate with the Center in June 2009.
26. In 2010, the Center (CAS) lost its Title 6 National Resource Center funding from the United States Department of Education. To address the financial shortfall, the Dean of the College of Liberal Arts and Sciences (LAS) advised the Center to drop permanent staff, to maintain programs where possible, and to pursue grants to support their activity. Hiring an academic hourly allowed the Center to maintain some of its outreach visibility and to continue to seek grants to support its programs. As a temporary position without a secure funding stream, hiring an academic hourly to perform those functions was cost-effective.
27. In January 2011, the Center (CAS) hired Mr. Kilgore as an academic hourly to write grants and plan events. Because it was an academic hourly position averaging 10-12 hours per week, submission of a Principal Administrative Position Exemption (PAPE) was not required nor was there a need to advertise for the position. As the unit executive office, Professor Bowen had the authority to give final approval for hiring an Academic Hourly position.
28. Notwithstanding that authority, Professor Bowen still conducted a hiring review, specifically she asked for his qualifications related to fund raising and research, and requested references. Mr. Kilgore's letters of references were from academics and directors from other peer institutions and were "stellar," including one from The Most Reverend Desmond Tutu, winner of the 1984 Nobel Peace Prize. As part of the process of hiring Mr. Kilgore for the hourly position, Professor Bowen went beyond the guidelines of standard protocol, and consulted with both of her supervisors, the Dean of LAS (Dr. Ruth Watkins) and the Interim Head of Global Studies (Dr. Wolfgang Schlor) for guidance. Neither of these consultations suggested that she should not hire Mr. Kilgore. Additionally by 2010, Professor Bowen was aware that Mr. Kilgore had already been hired by other units at the university and was contributing in positive ways.
29. Professor Bowen's decision to hire Kilgore as an academic hourly took into consideration these factors that constituted the basis for her professional judgment:

- the responsibilities and safety risks of the position, i.e., writing grants and planning events for the Center;
  - Mr. Kilgore’s qualifications and past history;
  - Mr. Kilgore’s exemplary letters of reference;
  - compliance with university policies and hiring practices;
  - the fact that her supervisors did not object to the hire;
  - the fact that two other units on campus had already hired Mr. Kilgore.
30. Because Mr. Kilgore was under supervised release, Professor Bowen wrote a letter to his parole officer to provide information about the employment and job responsibilities.
31. In terms of his performance, Professor Bowen reports that Mr. Kilgore has been exceptional at his duties. Mr. Kilgore has done more than his academic hourly position would require including securing \$2.7 million in grants to support the Center, writing newsletters, coordinating a memorial service for Nelson Mandela, and organizing conferences including one being held in Africa. Professor Bowen’s staff has never conveyed any signs of feeling threatened by his presence.
32. The Committee finds that the procedures followed by the Center not only conformed to campus protocol for the positions in which Mr. Kilgore was hired, but that Professor Bowen went beyond such protocol to consult with others about the prospective hire because she was aware of his criminal record.

**Findings related to Mr. Kilgore’s appointment in the Center on Democracy in a Multiracial Society**

33. The Education Justice Project (EJP), housed within the Center on Democracy in a Multiracial Society (CDMS), was the first unit to hire Mr. Kilgore. Professor Jorge Chapa was the Director of CDMS and he relied upon the professional judgment and recommendation of Professor Rebecca Ginsburg when he approved the hiring of Mr. Kilgore as an academic hourly in the EJP. Professor Ginsburg, Director of the EJP, first hired Mr. Kilgore as an academic hourly in 2010. She was one of four investigators on a Graduate College Focal Point grant entitled “Incarceration in America.” The purpose of the grant was to engage the campus and local community members to understand “the nexus between education, incarceration, poverty, and crime in modern America.”
34. Initially, Mr. Kilgore was a community member who self-selected to be a participant in the weekly seminars associated with the grant. His insight was appreciated by other participants, and he was considered to be talented at developing a collaborative discussion – thoughtful, well-read, good listening skills, and not domineering. The development of a bibliography was an important part of the grant, and was developed concomitantly as the seminar progressed. In the Spring of 2010, Professor Ginsburg hired Mr. Kilgore as an academic hourly at \$15 per hour for five hours per week to develop the bibliography.
35. Professor Ginsburg made it clear that Mr. Kilgore was not hired “in spite of his past” but rather was hired “because of his past.” It made sense to Professor Ginsburg to hire a formerly incarcerated person who also had the requisite scholarly training to develop a bibliography directed at incarceration. Professor Ginsburg has been influenced by “standpoint theory” that

indicates a person's background provides insight to their perspective. If one's background is relevant to one's voice, then the right person to develop a literature review on incarceration would be someone who has first-hand experience with incarceration. Professor Ginsburg recognizes that 1 in 100 Americans have been formerly incarcerated, and characterizes the 99% of Americans who have not been incarcerated as under-estimating their daily encounters with formerly incarcerated people.

36. Professor Ginsburg stated that she is always aware of the risks she takes and those that involve her students. When inviting someone to guest speak in class, to participate in a panel discussion at a conference, or to compile a bibliography, Professor Ginsburg uses professional judgment to assess the appropriate level of risk given the situation. The EJP rarely reaches-out to invite participants – they usually self-select and are generally in an advanced stage of transforming their lives. She has professional associations with several formerly incarcerated people who are now in graduate school at some of the nation's elite institutions, or hold positions of esteem in various organizations. When evaluating potential risk posed by admitting people to the EJP, Professor Ginsburg exercises her professional judgment in considering (1) length of time since the individual has re-entered society from prison, (2) the level of re-adjustment support, often related to skills with technology, and (3) the individual's personal motivation for educational achievement.
37. In the case of Mr. Kilgore, Professor Ginsburg considers him to be one of the foremost scholars on incarceration and re-entry into society. She cites his work in her own research. Mr. Kilgore was appointed to serve on the advisory board for the EJP under normal procedures for doing so: (1) he was nominated; (2) his nomination was discussed by the advisory board; (3) the advisory board interviewed him to discuss mutual interests and get a sense of fit; and (4) he was invited to serve on the advisory board given his appropriate fit. Serving on the advisory board for the EJP is a volunteer position.
38. Professor Ginsburg has been pleased with the work of Mr. Kilgore in the EJP, including his contributions on the advisory board. She describes American society as being challenged to accept formerly incarcerated people as full citizens. The EJP is hosting a national conference this Fall with several panel discussions on topics related to re-entry of formerly incarcerated people to their families and return to civil society.
39. The Committee finds that the procedures followed by the Center conformed to standard protocol for the positions in which Mr. Kilgore was hired, and that appropriate professional judgment was applied to assess any potential risk that may be posed due to his criminal record.

#### **Findings Related to Mr. Kilgore's appointments in the Dept. of Urban and Regional Planning**

40. Professor Rob Olshansky was serving as Interim Head of the Department of Urban and Regional Planning (DURP) when Mr. Kilgore was hired by DURP to be a Visiting Adjunct Lecturer in Fall 2012. Olshansky was the key person involved in Mr. Kilgore's hire.
41. In the Fall of 2012, Professor Olshansky was faced with finding a replacement for Professor Faranak Miraftab for UP 423: International Planning. Professor Miraftab recommended Mr. Kilgore to the department as someone who knew the course area well and would be a good fit to teach the course.

42. Professor Miraftab had been hiring Mr. Kilgore as an academic hourly to perform research under her direction. Mr. Kilgore was a former colleague of Professor Miraftab from South Africa. Professor Miraftab mentioned to Professor Olshansky that Mr. Kilgore had issues in his past but stated that he had served his time.
43. Professor Olshansky researched Mr. Kilgore online and read about his crimes. Professor Olshansky agreed with Professor Miraftab's conclusion that Mr. Kilgore had served his time. Professor Olshansky also noted that Mr. Kilgore was already in the university system, which he found reassuring. Professor Olshansky met with Mr. Kilgore prior to hiring him to talk about the course. He confirmed that Mr. Kilgore did have unique qualifications to teach the course. Professor Olshansky did not question Mr. Kilgore about his criminal past when they met. Professor Olshansky checked with his department Human Resources staff before processing the appointment. The department approved the hire. Based on his own research and his trust in Professor Miraftab's assessment of Mr. Kilgore's qualifications and his own assessment that Mr. Kilgore had served his time, Professor Olshansky hired Mr. Kilgore as a Visiting Adjunct Lecturer. Professor Olshansky did not feel the need to consult with anyone beyond his department HR, particularly due to the fact that Mr. Kilgore was an internal hire (i.e., already employed elsewhere on campus).
44. After teaching the course, Professor Olshansky reviewed Mr. Kilgore's ICES and student feedback and determined that Mr. Kilgore did an outstanding job. Professor Olshansky would like to hire him again to teach the same course in the future.
45. The Committee finds that the procedures followed by the DURP not only conformed to campus protocol for the positions in which Mr. Kilgore was hired, but that Professor Olshansky went beyond such protocol and researched Mr. Kilgore online as well as talking to him before he was hired because he was aware of his criminal record.

**Findings related to Mr. Kilgore's appointments in the College of Fine and Applied Arts**

46. The College of Fine and Applied Arts offers a course, FAA 110, Exploring Arts and Creativity, as a discovery course for freshmen. Mike Ross, Associate Dean and Director of the Krannert Center for the Performing Arts, explained that in conjunction with support from the Mellon Foundation, this course is designed as a collaborative focus for the Krannert Center for the Performing Arts, engaging students in the pursuit of artistic experience, creativity, and diversity. The course is co-taught by one member of the FAA faculty and someone from on campus but "outside" FAA in order to mix perspectives, points of view, and areas of expertise.
47. The criteria for selecting faculty to co-teach this course include open-mindedness, a fertile imagination, knowledge of diverse creative processes, generosity of spirit, and a capacity for dialogue. Mike Ross was clear to say that the intent of the course is to promote inquiry and dialogue and so the faculty members can't just be "talking heads."
48. Mr. Kilgore was recommended to co-teach this course in Spring 2014 by Sam Smith, the FAA engagement specialist in communities of color. In approving this Visiting Lecturer appointment, Mr. Ross did not investigate Mr. Kilgore's particular academic status, but rather relied on the fact that Mr. Kilgore was already employed elsewhere on campus and relied upon the professional

judgment of Sam Smith and others. Mr. Kilgore's qualifications indicated that he was well suited for this position.

49. In the FAA 110 course, Mr. Kilgore was paired with a faculty member in the Department of Theatre. Mr. Kilgore's role was to provide an alternative perspective regarding the experience of the arts to complement the Theatre faculty member's perspective.
50. In selecting Mr. Kilgore for this opportunity, the professional discernment of the faculty was key. Additionally, Mr. Ross gave Sam Smith's recommendation for this pairing considerable weight.
51. Mr. Ross was not aware of Mr. Kilgore's criminal history until after Mr. Kilgore was teaching this course and he read about the controversy in the newspapers. He also was not aware of Mr. Kilgore's prior name, Charles Pape, and so there was no reason to seek additional consultation. Mr. Ross operated from the assumption that individuals already associated with the university would be selected for this position. In Mr. Ross's professional judgment, Mr. Kilgore's qualifications were well suited to the position and he had the appropriate expertise to perform the duties and fulfil the educational goals associated with serving as a Visiting Lecturer in FAA 110.
52. During the Spring, Krannert's academic engagement liaison visited the class and noted that Mr. Kilgore's interaction with students was very positive. The Theatre faculty member's evaluation of Mr. Kilgore's performance was similarly positive, noting that Mr. Kilgore was highly collaborative, very thoughtful and respectful of different student perspectives. Mr. Ross said that he attended one special event that Mr. Kilgore organized, focused on the way music and dance are incorporated into Freedom Day in South Africa. Mr. Ross was very impressed with the organization of the event and Mr. Kilgore's open, non-dogmatic style and the positive student responses.
53. The committee finds that the procedures followed by the Krannert Center conformed to campus protocol for the positions in which Mr. Kilgore was hired.

#### **FINDINGS RELATED TO PEER POLICIES**

54. In March 2014, the Urbana campus Office of Academic Human Resources (AHR) conducted a benchmark review of the criminal background check policies and procedures of our Big Ten and scholarly peers specifically related to faculty. This review was an update of a similar review conducted in 2012. AHR representatives examined online background check policies and interviewed appropriate personnel for the thirteen (13) Big Ten institutions and seven (7) institutions recognized as scholarly peers (University of North Carolina, University of Texas – Austin, University of Virginia, University of Washington, University of California – Los Angeles, University of California – San Diego, University of California at Berkeley).
55. At the time of the AHR review, ten of the thirteen institutions performed background checks for all of their tenured and non-tenure track/specialized faculty members as part of the hiring process. Those ten institutions were:

University of Michigan



Michigan State University  
Northwestern University  
Ohio State University  
Penn State University  
Purdue University  
University of North Carolina  
University of Texas – Austin  
University of Virginia  
University of Washington

56. At the time of the AHR review, six of the reviewed institutions performed background checks for all of their *security sensitive* tenured and non-tenure track/specialized faculty members at the time of hire. Those six institutions were:

Indiana University  
University of Minnesota  
Rutgers University  
University of Wisconsin-Madison  
University of California – Los Angeles  
University of California – San Diego

57. At the time of the AHR review, two institutions did not perform background checks for their tenured and non-tenure track/specialized faculty members as part of the hiring process. These institutions were:

University of Maryland  
University of Nebraska

58. At the time of the AHR review, the University of Iowa performed background checks for all of their tenured and for all of their *security sensitive* non-tenure track/specialized faculty members as part of the hiring process.




59. At the time of the AHR review, the University of California at Berkeley performed background checks for all of their *security sensitive* non-tenure track/specialized faculty members as part of the hiring process.

60. The institutions reviewed in this benchmark study have varying adjudication policies that are used when an applicant has a criminal conviction history. Each institution outlines their review and adjudication approach with their policy/procedures. The procedures of each institution allow the use of professional judgment in making a hiring decision after considering multiple factors.

61. The following chart represents the findings of the AHR review of peer institutions' policies and procedures for faculty and specialized faculty criminal background checks in March 2014.

Employee Group	UIUC	Indiana	Iowa	Maryland	Michigan	Michigan State	Minnesota	Nebraska	Northwestern	Ohio State	Penn State	Purdue	Rutgers	Wisconsin
Faculty														
Non-tenure track/specialized Faculty														

Employee Group	UC - Berkeley	UC -- Los Angeles	UC -- San Diego	University of N.C.	UT - Austin	University of VA	University of WA
Faculty							
Non-tenure track/specialized Faculty							

-  : Background checks are performed for this employee group.
-  : Background checks are performed for security-sensitive/limited positions only.
-  : No Background checks are performed for this employee group.

62. The 2014 benchmarking effort described above focused on the question of criminal background check policies for faculty. However, in 2012, AHR conducted a similar review of the Committee on Institutional Cooperation (CIC) institutions' background check policies for all employee groups. These studies show that the two year period between 2012 and 2014 was very active one with respect to the development of criminal background check policies and practices. Consistent with this trend seen in many of our peer institutions, the committee recommends that Illinois further develop criminal background check policies and practices.

## VI. RECOMMENDATIONS

Based on the foregoing findings and informed by the EEOC guidance document, the committee makes the following recommendations:

1. All new, non-student, employment appointments should be subjected to a criminal background check, except where the hiring unit has requested and received a one-time only exemption from the criminal background check requirement as described in ¶5 below;
2. When a criminal conviction is discovered, the campus should ensure that an individualized assessment occurs, following the guidance given by the EEOC, that focuses on whether an exclusion for employment would be related to the job and based on business necessity;
3. Individualized assessment of whether an individual should not be allowed employment based on his or her criminal history should have input from the relevant stakeholders who can appropriately inform the question of job relatedness and business necessity, including tenure-system faculty involvement in the review of tenure system faculty or specialized faculty appointments;
4. The criminal background check policy should include the careful exercise of professional judgment in assessing such factors as those evaluated by the hiring officials who approved Mr. Kilgore's employment, e.g.,
  - a. Length of time since re-entry into society from the penal system;
  - b. Development of skills since the time of the crime;
  - c. Personal motivations of the applicant for the position at issue;
  - d. Letters of employment and character reference;
  - e. History of effectiveness in employment;
  - f. Appropriate academic and other qualifications for the position; and
  - g. Potential risk posed to the students, faculty, staff or campus community if the individual is hired into the position;
5. Because the educational and research missions of the university require the ability to be nimble and expedient in the face of time-sensitive hiring needs, there needs to be a process for hiring units to seek an exemption from the criminal background check requirement when there is an important and immediate need to hire someone into a temporary position that is intended to be of very short duration;
6. The exact parameters of an exemption process should be determined by another committee with input from campus and academic unit administrators, human resources professionals and Senate representatives, but should include the following:
  - a. A standing campus committee or central campus human resources office charged with the responsibility of making exemption decisions;
  - b. A limitation to appointments that are very short in duration and serve an urgent and important institutional need;
  - c. A review of the job duties and assessment of potential risks posed by those job duties;

- d. The requirement that no individual person should be allowed to be hired under an exemption more than one time; and
  - e. Annual or periodic audits of the exemption process to ensure that it is being appropriately limited in its application to truly exigent and important circumstances; and
7. The Academic Senate must be involved in the creation and review of a criminal background policy and implementing procedures;
8. Finally, based on the committee's review of Mr. Kilgore's employment history and consideration of the EEOC guidance on factors that can be considered when evaluating job relatedness and business necessity, the committee does not support a blanket or permanent exclusion of employment for Mr. Kilgore. The record demonstrates that Mr. Kilgore has been a successful employee and has contributed to the scholarly and educational missions of the campus in the academic hourly and visiting specialized faculty positions that he has held over the last four years. The committee recognizes that the process of developing and implementing a criminal background check policy and procedures will take some time. The committee submits that barring Mr. Kilgore from employment while those policies and procedures are created would single him out unfairly and unnecessarily, given his creditable employment record with the university. Consequently, the committee recommends that Mr. Kilgore be allowed to continue to be employed by the university in accordance with the policies that apply to all individuals seeking employment. Specifically, we would endorse the professional judgments of units wishing to hire Mr. Kilgore during the Fall 2014 semester pursuant to the hiring practices currently in place.

UNIVERSITY OF ILLINOIS  
AT URBANA - CHAMPAIGN

Office of the Provost and Vice Chancellor  
for Academic Affairs

Swanlund Administration Building  
601 East John Street  
Champaign, IL 61820



May 13, 2014

Matthew Wheeler, Professor, Animal Sciences, *Chair*  
Jennifer Amos, Sr. Lecturer, Bioengineering  
Ken Ballom, Dean of Students  
Janet Barrett, Professor, Music  
Gregory Girolami, Head & Professor, Chemistry, CAFT Representative  
Heidi Johnson, Director, Office of Diversity, Equity and Access  
Lt. Matt Myrick, Division of Public Safety  
William Stewart, Associate Dean & Professor, Applied Health Sciences  
Deb Stone, Director, Academic Human Resources  
Katherine Galvin, Associate Provost, Provost's Office, *ex officio*

Dear Colleagues:

Thank you for your willingness to serve on a committee to review the hiring processes that were used by the Urbana campus, and relevant campus units, for the prior and current employment appointments of James Kilgore. In particular, I ask that you focus your review on the process followed, if any, to review Mr. Kilgore's criminal convictions and to assess the impact on his employability in the relevant appointments. I ask that you provide findings regarding how employment decisions were made and conclusions regarding the adequacy of the hiring policies and processes that were followed. If you conclude that the hiring processes were not adequate to serve important institutional interests, please offer specific recommendations for how our campus and unit policies and processes should be improved, in particular with respect to the review and assessment of criminal convictions of potential future employees, including Mr. Kilgore.

I ask that the committee complete its work as expeditiously as possible. Professor Matthew Wheeler has generously agreed to chair this committee. The Office of University Counsel will provide legal counsel to the committee and Associate Provost Katherine Galvin will serve as an *ex officio* member to provide staff support.

Sincerely,

Ilesanmi Adesida  
Vice Chancellor for Academic Affairs and Provost

Phyllis M. Wise  
Chancellor

Cc: Rhonda Perry, Associate University Counsel