VII. REPORTS OF STANDING COMMITTEES (Cont'd)

B. Committee on Privilege and Tenure (UCP&T) (action)
Proposed amendments to Academic Senate Bylaw 336.B.4

Senate Bylaw 336 governs the standards and procedures employed by divisional Privilege and Tenure committees for disciplinary cases. An important aspect of these standards and procedures is the statute of limitations for disciplinary cases, which protects faculty from having to defend themselves against charges for events taking place in the distant past. SBL 336.B.4 currently defines the statute of limitations for disciplinary cases as:

> "No disciplinary action may commence if more than three years have passed between the time when the Chancellor or Chancellor's designee knew or should have known about the alleged violation of the Code of Conduct, and the delivery of the notice of proposed disciplinary action. "

Because the interpretation of the statute of limitations as contained in the current bylaw has been problematic on at least one campus, the University Committee on Privilege and Tenure (UCP&T) reviewed SBL 336 and identified two problematic phrases that are in need of further clarification: "Chancellor's designee" and "should have known." The committee's intention was to modify SBL 336.B.4 to the greatest extent possible without triggering the need to revise the Faculty Code of Conduct (APM 015), which would require University-wide review and Regental approval. For example, any change to the three-year time limit for when disciplinary action may commence would necessitate such a change. The committee discussed a variety of different methods of clarifying this statute of limitations and came and recommended that SBL 336.B.4 be revised as follows:

336. Privilege and Tenure: Divisional Committees – Disciplinary Cases

B. Prehearing Procedure in Disciplinary Cases

4. No disciplinary action may commence if more than three years have passed between the time when the Chancellor or Chancellor's designee, **who is authorized to initiate proceedings in accordance with SBL 336.B.1 and divisional disciplinary procedures,** knew or should have known about the alleged violation of the Code of Conduct, and the delivery of the notice of proposed disciplinary action. **For purposes of this section, if an administrator or employee in a supervisory role (e.g., program director, department chair, dean) has actual knowledge about an alleged violation, then it will be presumed that the Chancellor or Chancellor's designee should have known about the alleged violation.**

At its February 23, 200 meeting the Academic Council agreed that the proposed UCP&T language was an improvement over the current bylaw but concurred that the current proposal did not accomplishes what it was intended to accomplish and found the proposed changes to be confusing. Therefore the Academic Council suggested that additional clarification could be achieved by inserting the word "conclusively" in the second sentence of the UCP&T's proposed revision, as follows:

336. Privilege and Tenure: Divisional Committees – Disciplinary Cases

B. Prehearing Procedure in Disciplinary Cases

4. No disciplinary action may commence if more than three years have passed between the time when the Chancellor or Chancellor's designee, who is authorized to initiate proceedings in accordance with SBL 336.B.1 and divisional disciplinary procedures**,** knew or should have known about the alleged violation of the Code of Conduct, and the delivery of the notice of proposed disciplinary action. "For purposes of this section, if an administrator or employee in a supervisory role (e.g., program director, department chair, dean) has actual knowledge about an alleged violation, then it will be **conclusively** presumed that the Chancellor or Chancellor's designee should have known about the alleged violation."

Action Requested: Approval of the proposed amendment to Academic Senate Bylaw 336.B.4. The proposed amendment to Academic Senate Bylaw 336.B.4, which were found to be consonant with the Code of the Academic Senate by the University Committee on Rules and Jurisdiction (UCR&J), was approved by the Academic Council on February 23, 2005, and is presented here for the Assembly's approval. (Please note that in accordance with Senate Bylaw 116. Authority of the Assembly – Part II. E. "The Assembly is authorized to approve modifications to the University Academic Senate legislation…Except for Bylaws marked '{Protected –see Bylaw 116.E}', modification of Bylaws requires the approval of two-thirds of all voting members of the Assembly present;" Modification of Bylaws shall take effect immediately following approval unless a different date is specified or required.)

Present Wording:

336. Privilege and Tenure: Divisional Committees – Disciplinary Cases

B. Prehearing Procedure in Disciplinary Cases

4. No disciplinary action may commence if more than three years have passed between the time when the Chancellor or Chancellor's designee knew or should have known about the alleged violation of the Code of Conduct, and the delivery of the notice of proposed disciplinary action.

Proposed Wording:

336. Privilege and Tenure: Divisional Committees – Disciplinary Cases

B. Prehearing Procedure in Disciplinary Cases

4. No disciplinary action may commence if more than three years have passed between the time when the Chancellor or Chancellor's designee, **who is authorized to initiate proceedings in accordance with SBL 336.B.1 and divisional disciplinary procedures,** knew or should have known about the alleged violation of the Code of Conduct, and the delivery of the notice of proposed disciplinary action. **"For purposes of this section, if an administrator or employee in a supervisory role (e.g., program director, department chair, dean) has actual knowledge about an alleged violation, then it will be conclusively presumed that the Chancellor or Chancellor's designee should have known about the alleged violation."**

JUSTIFICATION:

The intent of the statute of limitations in SBL 336.B.4 is to protect faculty from having to defend themselves against charges for events taking place in the distant past. This avoids a situation where a faculty member is precluded from an adequate defense against charges because evidence has been lost, memories may have faded, or key witnesses are no longer available. This is analogous to criminal and civil statutes of limitations, which by establishing time limits within which charges can be filed protect a citizen from having to defend against stale charges. In both criminal and civil cases, the time limitation is interrupted only when the accused becomes a fugitive from the jurisdiction where he or she allegedly committed the crime. In criminal matters, the time limit usually begins when the crime is committed. In civil cases there are instances in which an injury is not discovered for months or years after it occurs. In such situations, statutes of limitations may be judged to begin either on the "date of discovery" of the harm, or the date on which the plaintiff "should have discovered" the harm, that is, the date when a judge considers it fair to say that the plaintiff "should have known" about the harm, whether or not the plaintiff actually knew about it. The authors of SBL 336.B.4 created a similar doctrine for the statute of limitations for disciplinary cases with the idea that the three-year statutory period begins when a member of the administration, who is obliged to report the alleged violation to the Chancellor or relevant Vice Chancellor, discovers the alleged violation of the Code of Conduct.