

**UNIVERSITY COMMITTEE ON PRIVILEGE & TENURE
MEETING
MAY 30, 2012**

MINUTES

Present: David Brundage (chair), Victor Lippit (UCR), Onuttom Narayan (UCSC), Vern Paxson (UCB), Martha Winnacker (staff)

Participating by phone: Duncan Agnew (UCSD), Sarah Fenstermaker (UCSB), Phil Kass (Davis), Tony Reese (UCI)

I. Greetings/Introductions.

Brundage called the meeting to order at 10:00 a.m.

II. Consent calendar.

Members unanimously approved the consent calendar as noticed.

III. Non-Senate Faculty Access to Privilege & Tenure Process

Issue: Bylaw 337 grants non-Senate Faculty the right to a Privilege & Tenure hearing before early termination; procedures for implementing this right are described in APM 150. Does APM 150 adequately carry out the intent of Senate Bylaw 337?

Discussion:

Chair Brundage reported that he had received a letter from the Santa Cruz divisional Committee on Privilege & Tenure (included in agenda materials) recommending several changes in the APM to clarify and/or implement the intent of Bylaw 337.

1. Bylaw 337 gives non-Senate faculty the right to a P&T hearing for early termination (the faculty member "may" request a hearing; the divisional P&T committee "shall" conduct a hearing). APM 150 states that non-Senate faculty "should" be apprised of right to ask for a hearing. Santa Cruz and some other divisions treat the hearing as optional. The Santa Cruz divisional committee proposes revision of the APM to require that the faculty member be given notice of the right to request a P&T hearing with the first notice of intent to act. Members agreed that the proposed change should be enacted.

Action: The committee agreed unanimously to recommend that a faculty member who is subject to an early termination proceeding must be informed of right to request a P&T hearing at the same time he or she is presented with the notice of intent.

2. Bylaw 337 and APM 150 do not set a deadline for requesting a hearing; if early termination occurs, a challenge to dismissal may still be filed as a grievance before the end date of the appointment. The Santa Cruz divisional committee recommends adding language to the APM to clarify that the "end of appointment" means the last day of the original appointment rather than the date of early termination. Members discussed what the timelines should be. They noted that the notice of action must be issued within 30 days of the notice of intent and that the faculty member must respond to the notice of intent within 14 days; they agreed that the faculty member should be required to file notice of intent to request a hearing by the same deadline as that for filing his/her response to the notice of intent. Members further agreed that once a notice of intent to request a hearing has been filed, no administrative decision should be permitted until after the hearing has been held. After further discussion, members agreed to recommend doubling the amount of time for each phase of the process, allowing 30 days to respond and file a notice of intent to request a hearing and 60 days for the notice of action. [N.B. See February

2008 UCP&T letter to Council Chair discussing similar issues.]

Action: The committee voted unanimously to recommend that the APM be amended to require that notice of intent to request a hearing be filed with the faculty member's response to a notice of intent and that the deadline for response be extended to at least 30 days.

3. When a non-Senate faculty member files a notice of intent to request a hearing, the notice of action should be put on hold until after the P&T hearing: The APM should include language that requires the administration to include a report from the P&T hearing with its subsequent notice of intent or withdrawal of notice of intent. Members discussed the difficulty of completing a P&T hearing on the APM 150 timeline and the need to balance due process with the possibility of a need for prompt action. After considering various scenarios based on actual experience, members agreed that a 90-day interval would be appropriate.

Action: The committee voted to recommend that the APM be amended to require that, when a non-Senate faculty member files a notice of intent to request a hearing, the notice of action be held in abeyance until the hearing is complete or for 90 days, whichever is earlier. To implement this action, the committee requested that a letter be drafted for Chair Brundage to submit to Council Chair Anderson conveying its recommendation to seek amendment to the APM. **On further deliberation in a subsequent email discussion, members of the committee agreed to refer this recommendation to next year's committee with the intent that the committee draft precise language to accompany its recommendation.**

4. Bylaw 337: Members discussed the inconsistency between the APM and the Senate Bylaws regarding when a P&T hearing is to be conducted and agreed to take this issue up next year..

IV. Consultation with Cynthia Vroom, Office of General Counsel

In a follow-up to discussions with the committee at its December meeting regarding the three-year "statute of limitations" for bringing a grievance or filing charges contained in Bylaws 335 and 336, Vroom provided three hard copy documents to the committee, two of which may not be circulated: the legislative history of the 3-year rule; a 2009 letter from the then-chair of the Berkeley divisional Committee on Privilege & Tenure arguing that the bar to initiating proceedings for conduct that is more than three years old also bars admitting evidence that is more than three years old in a P&T hearing; and a memo from another division's CPT that argued for admitting "background material" regarding repetitive conduct. Vroom will provide pdf scans of the first two documents; the third has not been cleared for distribution.

Vroom reported intense and extended debate over how to handle evidence when a disciplinary case is brought against an individual who has received repeated warnings and informal interventions over extended prior periods. The time limit is intended to protect the accused from having to defend against stale charges and to incent administrators not to delay disciplinary proceedings when intervention is called for. Among the causes of administrative delays are turnover of department chairs and loss of institutional memory, department chairs' lack of knowledge of the P&T process and the statute of limitations, or prolonged efforts to reach informal resolution . A member commented that administrators may not take action to correct conduct unless they receive a formal complaint. Another suggested that since the Faculty Code of Conduct provides for discipline of misconduct that "is made serious through its repetition," it is "common sense" to look back further than three years when repeated patterns of unacceptable conduct are alleged. Another suggested asking for a Legislative Ruling on whether the time limit for initiating proceedings also applies to evidence that is more than three years old. Members noted the distinction between formal disciplinary action, as defined in the APM, and

records of informal counseling or other interventions. A member suggested that evidence that is not admissible to establish guilt might be considered when determining the appropriate disciplinary sanction after a hearing committee has found a violation of the Faculty Code of Conduct.

After further discussion, members agreed that the discussion should continue next year and that **UCP&T should seek formal input from divisional committees** on Privilege & Tenure. Members urged that any formal documents created by divisional committees on this subject be collected. Members further recommended that faculty be proactively informed about P&T processes.

Members asked Vroom to discuss threat management teams' discretion to determine that an individual is a threat. Vroom reported that threat management teams bring together professionals to assess the whether an individual is actually threatening and that they do not take steps to prevent an individual from coming on a campus until they are convinced this is necessary. She noted that restraining orders are procedurally challenging to obtain and that alternatives may be more effective. Members asked if there is **a systemwide written policy that guides threat management teams. Vroom believes that** campuses may have their own policies. **Follow up:** Vroom or Winnacker to inquire re deadlines for filing charges and/or filing a grievance in cases when a faculty member is barred from campus by a threat management team.

V. Proposed revisions to APM 010, 015, 016.

Issue: Does UCP&T wish to comment on proposed changes to the APM?

In discussing the proposed revision to APM 010, members raised questions about the need for the proposed revision, commenting that the right to comment on institutional matters may not properly fall under "academic freedom." A member suggested that the proposed change will help courts understand the importance of protecting faculty freedom to discuss institutional questions. In discussing the proposed change to APM 015, members supported the proposal. In discussing the proposed revision of APM 016, members began with a memo from the Santa Cruz divisional committee (included in agenda materials) that raised concerns about the proposed addition of "policies" to "rules and regulations" that can be enforced by administrative actions outside of the discipline process. There is no definition of how the term "policy" is different from "rules and regulations," and the addition suggests potential applicability to matters that are now addressed through the privilege & tenure process. Substitution of "include but not limited to" for the words "such as" before a short list of examples of the kinds of administrative rules & regulations faculty are expected to follow is unnecessarily expansive. A member commented that administrative consequences of non-compliance with policy are viewed as logical and that a CPT would be unlikely to uphold a grievance claim arising from an administrative action, such as preventing a faculty member who refused to complete the mandatory sexual harassment prevention training from supervising employees.

Action: The committee voted to opine as follows: (1) without objecting to the proposed revision to APM 010, question its necessity; (2) support the proposed revision to APM 015; (3) oppose the proposed revision of APM 016. [N.B. These views have been transmitted in a letter from Chair Brundage to Council Chair Anderson.]

VI. Consultation with Senate Vice Chair Robert Powell

Discussion: Powell offered updates on major issues currently being addressed by the systemwide Senate leadership. (1) The Faculty Salary Task Force was convened by the Provost at the President's request to make recommendations for faculty salary increases if a 3% augmentation were available. Its recommendations have been reviewed by the Senate committees and divisions, but the current budget uncertainty means no increase is possible before January 1. (2) In its budget request to the State, UC proposed to take over servicing its own bonds in order to reap potential savings from refinancing at

lower rates. The legislature has not been supportive. (3) The Rebenching Budget Committee, convened by the President to develop recommendations for how state funds should be allocated to campuses, will soon issue its report; which will be submitted for Senate review in Fall 2012. Approximately \$250M has been taken “off the top” for centrally funded activities. The committee will recommend that the remaining state funds be distributed in equal increments per enrolled student, weighted by student category and that 25% of new state funds, if any, be used over several years to reduce current disparities between campuses. The report will go to the President, who will make final decisions. (4) Tax initiative. The Senate’s Memorial called on the Regents to support measures that would increase revenue to the State and/or prioritize higher education. The Regents are continuing to discuss whether to endorse the Governor’s tax initiative. (5) UC Online Education deployed its first courses in the spring semester (Merced) and spring quarter (UCLA, Berkeley, Davis, and UCSC). Issues regarding who may teach courses that are offered more often than an individual faculty member can teach them remain unresolved. Powell reported that there is no agreement on how funds will flow if large numbers of students enroll across campuses. A member suggested that if online courses are perceived as “easy” large numbers of students might enroll in the UCOE online version of a course that is also offered in the student’s home department. Powell noted that departments retain authority to designate specific courses as major requirements and prerequisites. Members anticipate possible grievances arising from these issues. (6) The Provost has convened a work group to make recommendations for a pilot Negotiated Salary Plan similar to the Health Sciences Compensation Plan. The pilot would be offered on a subset of campuses that wish to experiment with offering this kind of plan to faculty in disciplines where specific kinds of funding is available. A proposal to add a new section 668 to the APM that would have created such a plan systemwide was negatively reviewed. The pilot will allow for data collection over 3-5 years. (7) Two issues have arisen related to the unique characteristics of UCSF. The Chancellor proposed at the January Regents meeting that UCSF should be more autonomous and should have its own governing board. A work group will report back to the Regents in July. In March, the division chair announced that Senate membership would be extended to Associate and Full HS Clinical and Adjunct Professors. Powell and Senate Chair Anderson asked UCR&J for a legislative ruling regarding the meaning of the Standing Orders of the Regents that define Senate membership (does affiliation with a professional school offering courses only at the graduate level automatically confer Senate membership, regardless of the title of appointment?). UCR&J opined that the Standing Orders and their interpretation in the Senate’s Bylaws and the APM clearly derive Senate membership from the title of appointment. OGC has opined that the Standing Orders are ambiguous. Academic Council charged a small work group with identifying the specific privileges that derive from Senate membership and where the authority lies for extending those privileges more broadly. UCP&T should be aware that one of the privileges cited by the UCSF division is access to the privilege & tenure process. Powell believes the UCSF division will want to ask the Regents to clarify the intent of Standing Order 105.1(a). Powell noted that as a graduate-only health sciences campus with a large hospital, UCSF is different from the general campuses.

VII. Update on divisional Privilege & Tenure cases

Discussion. Members discussed issues that have arisen in privilege & tenure proceedings in their divisions this year. Complex grievance and discipline cases in several divisions have settled after prolonged negotiations. Potential grievants sometimes decide not to proceed when they are advised as to what they would need to prove in order to prevail in a grievance hearing. Faculty are generally not well informed about the privilege & tenure process. Some divisions worry when negotiations extend over months, but Vroom advises that extended negotiations may lead to settlements that are acceptable to all parties and should usually be allowed to proceed so long as all parties are negotiating in good faith. Members agreed that the function of grievant counselor is important, but divisions follow different practices to provide this service to potential grievants. Several divisions are preparing for

hearings, likely this summer. A member reported two whistleblower cases that are being adjudicated by P&T. Members noted that whistle blowing may go through the LDO, through a PPSM grievance, and through P&T. P&T must inform the LDO and deliver its report when it handles a complaint about improper government activity.

VIII. Appropriate sanctions: relative severity of demotion and suspension

Issue: Should suspension be considered as a less severe form of discipline than demotion, contrary to the existing order in APM 016?

Chair Brundage asked the committee to consider the relative severity of disciplinary sanctions listed in APM 016 in ascending order, with demotion treated as less severe than suspension, even though demotion leaves a more conspicuous record for the remainder of the individual's academic career. He reported that there is a perception that junior faculty who may be subject to discipline are being pressured to accept a demotion rather than go through the P&T process without fully understanding the impact such a record will have on their future. He suggested that demotion should normally be used for discipline only when academic advancement has been based on misconduct and that suspension should be treated as a less severe sanction than demotion. In the ensuing discussion, members expressed varying opinions about whether demotion should be limited to reversing advancement based on misconduct, but consensus emerged that the order of increasing severity should be modified to make suspension less severe than demotion. Members questioned the significance of denying emeritus status as a disciplinary sanction and questioned whether the ranking is useful. As the discussion proceeded, members reported that administrators use the relative severity of sanctions as bargaining tools to persuade faculty to accept a negotiated settlement without going to P&T. When a faculty member requests a P&T hearing, the hearing committee is barred from recommending a sanction more severe than that requested by the administration. Members asked whether they can get information about informal proceedings that do not come to P&T and concluded that little is available. By definition of the Standing Orders and the APM, a sanction that is negotiated without involvement of P&T is not "discipline," since "discipline" may not be imposed without an opportunity for a hearing. [N.B. See Item VII of the Notice of Meeting of the Assembly for October 31, 2001, in which the University Committee on Privilege & Tenure proposed amendments to Senate Bylaws 335, 336, and 337 for an explanation of the rationale underlying the ranking of sanctions, online at <http://www.universityofcalifornia.edu/senate/assembly/oct2001/oct2001viic.pdf>]

Action: The committee agreed to recommend that the severity of sanctions be reordered in ascending order as follows: censure, salary reduction, withdrawal of emeritus status, suspension, demotion, dismissal. The committee did not recommend revising the language on demotion.

IX. UCP&T as a resource to divisional committees

Issue: How can UCP&T best serve as a resource to divisional committees?

Generally, members agreed that coming together to share information and discuss issues they encounter is the most important support UCP&T can offer. They also noted the following:

- (1) Members raised a larger concern that Senate service is becoming untenable as faculty positions go unfilled and teaching loads increase. Members described extremely large numbers of students (one member teaches 695), including for junior faculty, so that time for research is increasingly limited. At the same time, CAPs are not recalibrating standards and increasingly rely on proxies such as citation indexes and impact factors for evaluating publications, even though these are not valid in all fields. Members asked how they can recommend Senate service at mid-career in such an environment. Members commented that CAP reviews need to recognize growing teaching and service loads, but CAPs are also stretched thin by their members' workload and perform less thorough reviews. P&T grievance procedures for

protesting denial of promotion or merit increase consider only whether correct procedures were followed and whether impermissible criteria were used. Grievants are bringing evidence of shoddy CAP processes. Members expressed deep concern that the quality of Senate governance will deteriorate and urged funding for course releases to enable more careful Senate service.

Action: The committee agreed to make a statement as a committee expressing these concerns.

(2) Members believe that many grievance and disciplinary matters reflect failures in mentoring. Adding demographic information to the annual P&T data collection might help to clarify whether this is the case. **Winnacker will investigate whether this can be done.**

(3) Members discussed whether a systemwide training would be useful but concluded that it is important for all members of a divisional P&T committee to receive training.

Action: The committee agreed to ask Vroom to send offers to provide training to divisional P&T committees. **Winnacker and Vroom will work together in August to develop a communication.**

X. New business

The committee agreed to meet twice in 2012-13.

Attachment 1: Proposed revision to Bylaw 337.A”

A. Jurisdiction (Am 6 June 2012)

In cases of proposed termination of a Senate or non-Senate faculty member before the expiration of the faculty member's appointment, or in cases where a tenured faculty member faces termination for incompetent performance, or for other faculty members whose right to a hearing before a Senate committee is given by Section 103.9 or 103.10 of the Standing Orders of The Regents (Appendix I) (hereafter collectively referred to as early termination), the faculty member shall be informed that he or she may request a hearing before a Divisional Privilege and Tenure Committee. If the faculty member so requests, the committee shall then conduct a hearing on the case to determine whether, in its judgment, the proposed early termination is for good cause and has been recommended in accordance with a procedure that does not violate the privileges of the faculty member. Resolution of the dispute, either through negotiation or mediation, is permissible and appropriate at any stage of these proceedings. Termination as a result of a disciplinary case pursuant to Bylaw 336 is not covered by this Bylaw.

No Senate or non-Senate faculty member may be terminated prior to the expiration of an appointment without having an opportunity for a hearing before the Divisional Privilege and Tenure Committee. So long as the faculty member requests a hearing before the end of his or her existing appointment, the Divisional Privilege and Tenure Committee shall appoint a Hearing Committee and proceed according to Section B below. If the faculty member fails to request a hearing before the end date of the appointment in question, the faculty member may seek a grievance hearing by grieving the non-reappointment pursuant to Senate Bylaw 335 in the case of Senate faculty or the Academic Personnel Manual in the case of non-Senate faculty.