

UNIVERSITY COMMITTEE ON PRIVILEGE & TENURE

MEETING

JANUARY 29, 2013

MINUTES

Present: David Brundage (UCSC), Chair; Jeff Lansman (UCSF), Vice Chair; Helen Henry (UCR); Alison Butler (UCSB); Vern Paxson (UCB); Stuart Banner, (UCLA); Onuttom Narayan (UCSC) (phone); Rodrigo Lazo (UCI) (phone); Phil Kass (UCD); Bill Jacob (UCSB), Council Vice Chair; Cynthia Vroom (OGC), Consultant; Martha Winnacker, Staff. *Absent:* Robert Hillman (UCM); Duncan Agnew (UCSD).

- I. Greetings/introductions. Brundage called the meeting to order and invited members to introduce themselves.
- II. Consent agenda. Members approved the agenda as submitted.
- III. Roundtable. Members reported on privilege and tenure experiences in their respective divisions, with particular attention to the question whether Privilege & Tenure committees are adequately informed of incidents in which no charge or grievance is filed but a faculty member is asked to enter into informal settlement negotiations with an administrator. In most divisions, P&T committees are usually not informed of informal negotiations that do not result in filing charges or grievances. Informal advisor/consultation groups exist in most divisions to provide confidential advice to potential grievants. Exceptions: UCLA has a separate charges committee that alerts P&T when a case is developing; Santa Cruz requires notice to P&T chair when informal negotiations commence, that chair be present when a subject is informed of pending disciplinary charges, and that committee be informed of informal negotiation results without names. Members agreed that faculty generally do not understand and are not aware of P&T procedures and protections. Two members reported unusual amounts of P&T activity, in their divisions, including multiple grievances arising from a single department. Members discussed appropriateness of bringing cases to UCP&T for discussion (not appeal). **Members agreed that it is useful to discuss actual cases in UCP&T order to achieve common understandings of principles and procedural best practices, so long as all identifying information is redacted.**
- IV. Consultation with attorney advisor Vroom. The committee discussed the role of attorney advisor.
- V. Impermissible criteria. (Paxson)
 - A. Scope of Senate Bylaw 335.A list. Bylaw 335.A restricts the scope of P&T grievances jurisdiction over personnel actions related to appointment or promotion to claims of procedural irregularities or decisions "on the basis of impermissible criteria, including (but not limited to) race, sex, sexual orientation, gender identity, or political conviction." Members discussed how to delineate

boundaries around the scope of what criteria are impermissible to consider in appointment and promotion other than those expressly listed. Examples of recent impermissible criteria claims include: committees have shown bias against a subfield; departments have discounted specialties that candidates were previously advised to pursue; committees have "cherry picked" small portions of a candidate's record to support a pre-set conclusion; committees have judged candidates negatively when potential outside reviewers declined to write letters. Members reported inconsistencies in the manner in which CAP committees treat requests for outside letters on candidates. Some committees compare raw numbers of letters requested to letters received and interpret a low response rate as indication that the candidate is not prominent in his or her field; others ask potential letter writers if they are willing to write and report their names only after they agree so that a failure to write is noted only for individuals who have first agreed; some committees solicit letters from people who are outside the candidates' field. UCP&T members agreed that the varied practices reported indicate there is a need for guidance on proper ways to solicit and evaluate outside letters, with particular attention to interpreting potential referees' decline or failure to write in ways that do not unfairly prejudice a candidate.

Action: Members agreed to address principles for handling letters in appointment and promotion cases at their next meeting. In the interim, members will need to determine what information they need.

B. *Proof of Gender bias.* Members discussed the challenge of determining whether evidence offered as proof of gender bias is compelling. For example, gender bias may manifest as bias against certain sub fields or as poor or negligent mentoring, but not all such instances reflect actual bias. Although P&T committees should gather demographic statistics to determine whether departments show patterns of differential treatment based on gender, few committees have the skills or knowledge to carry out a full investigation. Distinguishing attitudes toward specific subfields from objective assessment of scholarly achievement is difficult. During the discussion, members discovered that their divisional P&T committees have very different degrees of access to CAP records - varying from receiving entire files and interviewing CAP members to seeing only documents that are specifically requested by the grievant. A member urged "aggressive" investigation into claims of gender discrimination; however, the member also urged caution in examining subfield bias as a proxy for gender bias, warning the P&T committees should avoid "mission creep" into making substantive evaluations of scholarly merit, which is beyond P&T's jurisdiction. Vroom advised that P&T committees will find little guidance in the courts for identifying gender bias, since class action suits on this issue typically involve very large numbers and statistically significant patterns that are not available in academic departments, schools, and colleges. **Members agreed that P&T committees should make clear statements when they cannot reach a conclusion because of inadequate information.**

VI. Consultation with the Vice Chair of the Academic Council. Vice Chair Bill Jacob reported on systemwide developments, including the improved budget outlook for UC since Proposition 30 passed,

the Regents' and State rejection of tuition increases to supplement state funds, the Governor's push for UC to develop more robust systemwide online education offerings; and the Governor's wish to increase faculty teaching requirements. He reported on the Senate's success in persuading the proponents of a Consolidated Benefits Rate (used for charging benefits to grants) to adopt a more nuanced plan that will not burden individual faculty Principal Investigators as much as the plan that was originally put forward. He also reported that although the Regents budget included funds for a 3% increase in faculty salaries, a vigorous debate is underway over the political "cost" of any general increase ; whether to apply an increase, if any, to the salary scales or to all salaries; whether any mandated increase will unduly burden campuses that have addressed most salary needs locally. Any general increase that may occur will not come until the last months of the fiscal year. Members speculated that inconsistent salary practices may give rise to future P&T grievance cases. Finally, Vice Chair Jacob reported that the search process for a new President is beginning under procedures outlined in Regents Policy 7101; a Faculty Advisory Committee of 13 (one representative from each division, the Chair and Vice Chair of the Academic Council, and one at-large member appointed by the Chair of the Academic Council) will advise the Regents special committee. The Governor intends to participate directly in the search and is entitled to do so by his constitutional position as President of the Board of Regents.

VII. Bylaw 337 and APM 150 revision. (Narayan) The 2011-12 committee agreed to recommend revision of the provisions of the APM that prescribe timelines for proceedings in early termination cases involving non-Senate faculty. However, the committee did not develop specific language for this purpose and asked the 2012-13 committee to finish its work. Members reviewed draft language that would make the proposed revisions in the APM and Bylaw 337. The proposed revisions accomplish the following: (1) the revision to APM 150-32.c.2 will require adequate notice to allow the subject of early termination time to respond and to be clearly informed that he or she must make choose between the two remedies available to him/her (Bylaw 337 or APM 140); (2) the revision to APM 150-32.d establishes realistic timelines to allow for a response, including requesting a hearing; (3) the revision to APM 150-32.e extends the timeline and suspends action until the Senate hearing is complete, while also establishing a 90-day period for completing the hearing and establishing posthearing procedures. The amendment to Bylaw 337 aligns it with the revised APM language. Discussion focused on the proposed exception clause in APM 150-32.e that would set a 90-day deadline for completion of the hearing "unless the administration is notified of inability to hold the hearing within 90 days." Members asked whether this kind of language appears elsewhere in the APM. Members considered two alternative approaches: [1] "If the hearing cannot be completed within 90 days, it must be completed within [60 or 90] days of the first hearing. If, however, the responsible Senate officer has informed the Administration that the Committee has been unable to convene within 90 days . . ." [2] Break the "unless" sentence into two and add a 90-day time limit from the first hearing.

Action: Members voted unanimously to recommend the proposed revisions to APM 150 and Bylaw 337 with the proviso that the proposed revision of APM 150-32.e would be modified as discussed in

the second alternative and that final language would be circulated to the committee for approval prior to transmittal to the Council chair.

VIII. Non-Senate faculty access to P&T processes. (Lansman). At UCSF, 18% of the faculty are in ladder ranks; 22% are in in-residence appointments; and 40% are non-Senate faculty. The Division believes the non-Senate faculty should have the rights and privileges of Senate membership, because they do the same work as Senate faculty but are not supported by permanent FTE because of the special character of UCSF as a health sciences-only campus. Last year the Division attempted to extend Senate membership but was not allowed to do so on the basis of established Senate processes and Bylaws. A 2010 study of Senate membership recommended that non-Senate faculty should be appointed to Senate titles when they are doing the same work as Senate faculty. This has not happened. A particular issue for non-Senate faculty is exclusion from P&T protections that would provide a means of appeal from actions by department chairs. UCSF would like non-Senate faculty in Health Science Clinical and Adjunct titles to have full access to P&T processes in disciplinary and grievance matters. Members expressed varying degrees of familiarity with and understanding of the issues and the powers of department chairs in schools of medicines; in response to a question, it was suggested that, at least at UCSF, the division would bear the cost of additional P&T hearings; a member expressed doubt that campus administrators would agree to such provisions and asked whether individual campus administrations would have discretion to do so or not.

Action. Members agreed to continue consideration of this issue at the next meeting if a formal proposal is presented. In the interim, Winnacker will circulate the 2010 report on Senate membership and some materials from the 2011-12 discussion to members of the committee.

IX. Three-year rule. In 2011-12, the committee discussed the complexities and inconsistencies in the way divisional P&T committees apply the "three year rule" contained in Bylaws 335 and 336 that limits the conduct for which disciplinary charges may be brought or a grievance claim filed to conduct within the preceding three years. Divisions disagree whether this rule is also an "evidence rule" that prohibits introduction of evidence from more remote periods into proceedings based on conduct that has occurred or become known within the past three years. Members reported various situations in which a case grounded in recent conduct has been seen as addressing conduct that is believed to have occurred over as long as two decades. A member noted the seeming contradiction between treating the three-year rule as a bar on evidence and APM 015's description of conduct that is "made serious by repetition." A member commented that, as an evidence rule, the rule has two purposes: to encourage administrators to initiate disciplinary proceedings when they become aware of misconduct and to avoid subjecting the subject of a disciplinary or grievance proceeding from having to respond to incomplete evidence from the distant past. A member noted that an assistant professor would be unlikely to bring a grievance against a senior colleague prior to achieving tenure, even if he/she had a strong claim. A member countered that he has never seen a grievance claim in which the grievant sought to address

conduct that occurred more than 3 years in the past. Various members and the consultant reported on differences between the ways that divisions have approached this problem. In 2011-12, Winnacker attempted to get permission to circulate memos prepared by two P&T committees in different divisions that took opposite positions; permission was denied. Members agreed that the question is recurrent and should be resolved.

Action: Members agreed to take this question up again at the next meeting. Winnacker will attempt to redact the referenced memos sufficiently that the originating divisions will consent to their circulation within the committee.

X. Divisional activity reports. Members reviewed the divisional activity reports for 2011-12. It was noted that 2010-11 was also included for Santa Barbara; this will be corrected. Members commented that the survey is not easy to read and offered to consider whether to propose better ways to present the data.

XI. UCP&T as a resource to divisional committees. Members agreed that it is helpful to share experiences and policy questions. A member noted that frequent turnover in membership makes UCP&T a potentially important repository of institutional memory and suggested that members pose questions on the listserv or on Sharepoint. Members commented that staff provide continuity. Members identified as issues they would discuss: consolidation of timelines and rules for scheduling hearings in APM 015.III.B.7 and Bylaw 336; how to archive UCP&T discussion; how full P&T committees should handle reports from charges committees; whether it is possible to provide better orientation to new divisional P&T committee members prior to their involvement in actual proceedings.