

University Committee on Privilege and Tenure  
Meeting December 5, 2013

**Minutes**

*Present:* Jeff Lansman (UCSF), chair; Vern Paxson (Berkeley); Rodrigo Lazo (Irvine); Juliana Gondek (UCLA), by phone; Helen Henry (UCR), by phone; Stefan Tanaka (UCSD); Daniel Weiss (UCSF); Alison Butler (UCSB); Gina Dent (UCSC); William Jacob (UCSB), Academic Council Chair; Mary Gilly (Irvine), Academic Council Vice Chair; Cynthia Vroom (OGC, UCOP), Consultant; Susan Carlson (VP Academic Personnel), Consultant; Martha Winnacker, staff. *Absent:* Robert Hillman (UCD for UCM), vice chair.

- I. **Greetings, introductions, and announcements.** Lansman called the meeting to order; members, consultants, and staff, including two members attending by phone, introduced themselves.
- II. **Approval of the agenda.** Members approved the agenda as noticed.
- III. **Consent calendar.** Members approved the consent calendar by formally adopting minutes of the May, 2013 meeting of the committee, previously reviewed over email by members of the 2012-13 committee.
- IV. **Round table.** Members reported on Privilege and Tenure activity in their divisions. The number of active cases is increasing, with more grievances than discipline cases. Members shared concerns that grievants need advice in order to formulate grievances in actionable terms. They noted that the APM does not provide adequate guidance for defining what is a violation of faculty rights and privileges. When complaints are stated in vague terms, local committees struggle to evaluate complaints to make a *prima facie* determination.
- V. **Moreno Report response working group.** Chair Lansman, Council Vice Chair Gilly, and Vice Provost Carlson are members of the joint Administration-Senate working group appointed by the President to evaluate the report of the Moreno Commission on racial bias incidents at UCLA and to make recommendations for possible adoption systemwide. Vroom and Winnacker are consultants to the working group. Other members of the working group, without direct ties to UCP&T, are Provost Aimée Dorr, UCAP chair Harry Green, UCAAD member Amani Nuru-Jeter, UCI Assistant Executive Vice Chancellor & Director, Office of Equal Opportunity and Diversity Kirsten Quanbeck, and Davis Law Dean Kevin Johnson; other consultants are UCR Assistant EVC Bill Kidder and staff Amy K. Lee, Academic Personnel Diversity, Labor & Employee Relations Director. The group is charged by the President with reporting by the end of the calendar year. It meets by teleconference.

Lansman reported that the group had met once by teleconference and endorsed the Moreno recommendation that every Chancellor make a strong public statement that bias, discrimination and harassment are unacceptable on the campus. The working group is working its way through the other recommendations of the Moreno Commission and will address them in its report. [Note: the working group completed its work and submitted its report to the President on December 23, 2013.]

Members discussed how bias, discrimination, and harassment occur between faculty and considered the potential and limitations of the P&T process for addressing these issues. Vice Provost Carlson participated in part of this discussion, which overlapped with her scheduled consultation with the committee. Members asked Lansman to convey the following to the working group and agreed to continue discussing these matters as the response to the Moreno report develops.

- a. *Recommendations:* (1) Each campus Chancellor should take a visible leadership stance against discrimination and harassment, issuing strong public statements and taking other steps most likely to be effective in the individual campus context. (2) Each campus should establish a single, well-publicized portal for lodging complaints of discrimination or harassment on the basis of any protected characteristic (race, ethnicity, gender, etc.). (3) Each campus should establish a central office of discrimination and harassment prevention staffed by trained investigators who are able to receive, assess, and investigate complaints, have the power to compel evidence, can make referrals to appropriate disciplinary bodies, and can broker informal settlements when the complainant prefers an informal route. (4) Each campus should provide for collection of anonymized data that will enable tracking of the frequency of incidents of harassment and/or discrimination, the nature of resolutions, and whether the parties are faculty, staff, or students. (5) In establishing such offices are established, each campus administration should work with the divisional Senate to provide for a liaison with the local CPT that is appropriate to that campus environment. (6) Each campus should retain and protect the confidentiality of its Ombuds office as a place where a potential complainant can seek expert advice without triggering a formal process.
- b. *Observations and concerns:* Overall, the charge to P&T committees is to provide a due process by peers for adjudicating discipline and grievance matters involving Senate faculty. By definition, this charge addresses only a relatively small portion of campus climate issues that may permit discrimination and harassment to occur and does not empower the Senate to exercise a full range of remedies. Notably: the Senate is advisory to the administration, and only the administration has the authority to initiate disciplinary action. Members of the committee commented on a number of the specific issues arising from this tension. (1) Since disciplinary charges must originate with the administration, even where a local Charges committee conducts the preliminary investigation, P&T committees are not aware of many potential discipline matters that are settled in agreements between an administrator and a faculty member prior to charges being brought. The P&T system explicitly encourages negotiated settlements as conducive to a healthy campus community, but P&T committees may need to devise ways of obtaining data that would enable them to assess the campus climate and whether any classes of faculty are vulnerable to discrimination or harassment. Informal resolution, which may not involve P&T at all, is often the best response to an issue and should be maintained as an available process. In best case scenarios, discriminators are made aware of the impact of their conduct and change their behavior. Examples of ways administrators can achieve such goals include requiring individuals or entire academic

units to participate in training or to adopt specific procedures for dealing with identified categories of decision making. However, there is a tension between the benefits of informal resolution, usually confidential as they relate to individuals, and the need to create a campus climate of accountability in which discrimination and harassment are perceived to have consequences. P&T committees may be challenged to define what their role should be in relation to matters that do not result in formal filings. (2) Most faculty do not understand their rights and privileges or how they might use the P&T process to bring a grievance. Common areas of concern and confusion occur in the tenure and promotion process and in assignment of lab and office space and other research support. A proactive education campaign is needed that might include presentations during new faculty orientations and concise fact sheets distributed to faculty for use when they suspect that they may have a grievance and need advice. Even with such general knowledge, individual faculty who think their rights or privileges may have been violated need advice at the outset to understand what they would need to show in order to make a case that P&T committee will recognize as a grievance. (3) Initiating a formal grievance process against an administrator is potentially costly and draining for faculty, because the Administration will always be represented by a litigator, and the faculty member will need his/her own lawyer to ensure an equal contest. Members of UCP&T discussed the idea of creating panels of volunteer faculty advocate/litigators, presumably drawn from law school faculty, who could serve as individual grievants' representatives. A grievance against a fellow faculty member may be more appropriately treated as a discipline matter, but the potential grievant will often need advice about how to lodge a complaint with a cognizant administrator. (4) Especially but not exclusively for junior faculty, bringing a grievance claim may be perceived as career-damaging. P&T committees cannot directly eliminate such perceptions, but raising consciousness about what constitutes unacceptable discriminatory or harassing conduct together with education about the P&T process might increase support for individuals who are the targets of such conduct in ways that make it easier for them to bring an action. (5) Although trained investigators in a central anti-discrimination office may be more effective than faculty in the fact finding phase of an investigation, it will be essential to negotiate the boundaries between the responsibilities of such offices and those of P&T committees, so that the P&T committees retain their authority to determine whether a given set of facts constitutes disciplinable or grievable conduct and to recommend an appropriate response to the Chancellor. These negotiations will include establishing the correct point in the process for handing off an investigation from the anti-discrimination office to an adjudicatory process before the P&T committee. (6) P&T committees are charged with providing due process by peers in individual cases that are handled in confidence. The current process does not provide an obvious way to aggregate data other than by counting the number of cases, nor does committee turnover facilitate development of institutional memory. Yet the P&T process might be stronger if committees were able to track patterns, e.g., patterns of grievances arising in specific departments, and alert administrators to

apparent problem areas where corrective action up to and including discipline might be in order. Members noted that cognizant administrators are the only campus officers who may have documentation that would support identification of patterns of bad conduct. Ideas about how to resolve the tension between confidentiality in personnel cases and the need for data and analysis require further discussion. (7) The P&T process is set up to handle formal claims by administrators that faculty have violated the Code of Conduct (discipline) or by individual faculty that administrators or peers have violated their rights or privileges (grievances) as defined in the APM. Many small actions that are not individually actionable may combine to create a hostile climate that constituted discrimination or harassment. The APM and P&T committees are challenged to find ways to link the broader campus climate to actionable conduct. (8) A substantial portion of formal discrimination claims arise from the merit and promotion process. Although P&T committees may not second guess a CAP committee's evaluation of the merit of an individual's research, teaching, and service, a P&T committee may find that procedures have been violated and send a case back to a CAP for further review. A member suggested that information about P&T procedures might be included in the checklist faculty are asked to acknowledge at the beginning of the CAP process.

- VI. **Consultation with Vice Provost Carlson.** The committee heard from Vice Provost Carlson that she has begun an informal review of last year's UCP&T recommendation to amend APM 150 (early termination of non-Senate faculty). Due to other APM revisions already in the pipeline, formal review may not begin until Fall 2014. She anticipates four APM revisions to be sent for review in January and February.
- VIII. **Consultation with Academic Council Chair Jacob.** Jacob reported on the work of the Moreno working group; the President's initiatives for graduate and postdoctoral support, efficiency review, transfer enrollment, zero energy consumption, and technology transfer. He also provided updates on continuing concerns surrounding the implementation of Composite Benefits Rates for faculty research grants and on an opportunity for UC employees who may have enrolled in an inappropriate health care plan to make changes after Open Enrollment.
- IX. **Consultation with Attorney Advisor Vroom.** No minutes were taken for this discussion, which was conducted under attorney-client privilege.
- X. **Moreno response – continued.** All discussion on this topic has been summarized above.
- XI. **Applicability of the three-year rule to the admissibility of evidence in hearings.** Last year's committee decided to send an advisory letter to department chairs about the implications of the three-year "statute of limitations" for initiating discipline and grievance cases contained in Bylaws 335 and 336. The intent was to educate department chairs about their responsibility to initiate formal actions promptly when conduct requires intervention. Current members of the committee reframed the issue as a need to provide department chairs with a more general primer on P&T, faculty rights and privileges, and the kinds of behavior that implicate a department chair's responsibility to take corrective action. Members agreed that department chairs need to be better educated about types of unacceptable conduct, their obligation to report complaints to a cognizant authority promptly, rather than perpetuating problems. They also noted that individuals may tolerate objectionable behavior for a long time rather than filing

a formal grievance and that department chairs need to be advised to create an environment in which potential grievants feel confidence that their concerns will be heard and attended to. The P&T structure is designed to legitimate valid grievances and provide a due-process venue for addressing them, but better education is needed to make these processes accessible to all those who can benefit from them.

- XII. **Access to the P&T process for non-Senate faculty.** This discussion, carried over from last year, was inconclusive and did not result in any action.
- XIII. **Response to the proposed revisions of APM 600.** The committee had no further comment.
- XIV. **Priority topics for further discussion.** Members agreed to focus on (1) next steps toward a systemwide response to the Moreno report; (2) consideration of ways in which P&T committees can be more proactive to promote informal actions and resolutions that support a culture of accountability and improve the campus climate; (3) consideration of drafting a P&T manual that would help committees understand formal procedures and address confusion about what are appropriate communications to parties; (4) consideration of whether to invite divisional P&T staff to join a UCP&T meeting. (5) Redraft the letter proposed last year to serve as the “primer on P&T” for department chairs as discussed earlier.