

Special Senate Committee on Faculty Discipline and Redress

To the Academic Senate, Santa Cruz Division:

The Special Senate Committee on Faculty Discipline and Redress, hereafter designated by the acronym SSC, was authorized by the Senate at our Fall 1995 meeting. The SSC was given the task of examining the state of UCSC provisions for faculty redress and discipline, to explore appropriate changes with the Administration, and to report back to the Senate. The membership of the committee was defined at the Winter meeting (with a subsequent change near the end of Winter quarter).

During the Winter quarter it became known that a Universitywide task force had been appointed by then-president Peltason to investigate the same territory. That Disciplinary Procedures Task Force is chaired by Prof. Daniel Simmons of UC Davis. Their initial report has been useful to our considerations.

A previous Work Group existed at UCSC that considered the same questions that we are considering. That Work Group was chaired by Ralph Hinegardner, and it reported to the Senate at our Fall 1995 Meeting. The Work Group was limited by the fact that it had not been authorized by the Senate; nevertheless its deliberations and recommendations were useful and have been incorporated into our considerations. Furthermore, the Administration has stated that it has modified its procedures on the basis of the Hinegardner report.

We have interacted with the Committees on Privilege and Tenure (P&T); Academic Freedom; Rules, Jurisdictions, and Elections; and the Universitywide Task Force on Faculty Discipline. We have also investigated the state of procedures on our sister campuses in order to compare with our own.

General Principles

It is useful to set down a few general principles that guide the formation of procedures on any of the campuses. The principles that apply are:

1. Shared governance is a crucial element of these procedures, because the authority to impose discipline lies with the Chancellor and her designees within the Administration (e.g. the Executive Vice Chancellor). Therefore the Senate's role must be advisory. It is useful to consider the example of personnel actions, in which the involvement of the Administration and the Senate are intertwined as cases move from the faculty to the Chancellor, who has the final decision.
2. Confidentiality is another element, as it is in personnel actions. The level of confidentiality must be adjusted carefully to avoid on the one hand, violating privacy rights, and, on the other, making actions so secret that there are no checks and balances and little accountability; these latter conditions can lead to general Senate members lacking confidence in the system.

3. Due process is necessary to safeguard the rights of participants in any case involving discipline or redress. For this reason it is necessary to consider the legal ramifications of any suggested procedure, and to assure all parties that their rights are being respected. Examples of issues that have arisen in this area are: what standard of proof should be required in a hearing; whether a complainant should be informed of progress in a case; how to assure the separation of an investigative panel from its corresponding judicial panel; and how to assure that faculty members have legal counsel, both in individual cases and in formulating policy. *There has been the suggestion that this is an over-riding concern, and that it requires that a committee such as ours have legal expertise within its membership. Our committee, which does not have legal expertise, believes that we at UCSC can answer legal questions by consulting with legal experts without having them be members of our committees. We point out that since UCSC does not have a law school, we have no ready source of legal expertise on our campus.*

4. Avoidance of conflict of interest is the final principle to be upheld. Any peer-review system requires that participants be perceived as objective. For this reason, for example, members of the Committee on Academic Personnel (CAP) who are in the same department as the faculty member under consideration recuse themselves from the case. In the case of Faculty Discipline and Redress, conflicts of interest can arise in a number of ways; these have to be foreseen and procedures developed that avoid them.

Outline of Procedures

Formal procedures in the UC system at the present time to deal with Faculty Discipline and Redress can be described in a general way as follows:

1. A student, faculty member, or member of the Administration has a complaint in mind. There must be a place for the complaint to be submitted, or at least discussed.
2. At this stage, the procedures for discipline and grievance cases diverge. In a discipline case, the complaint must be investigated, with enough information gathered for someone to decide whether there is enough evidence to show that a violation of the Faculty Code of Conduct may have indeed occurred. This stage is associated with the Charges Committee, if one exists. In a grievance case, this stage, particularly at the informal level, may be handled by the Administration, or it may be taken immediately to P&T. Either the Charges Committee (for disciplinary cases) or P&T (in grievance cases) makes a recommendation to the Administration.
3. Resolution without a formal hearing is possible at this stage if all parties agree to abide by the recommendation arising from step 2.

4. If a formal hearing is necessary, it will take place before the Committee on Privilege and Tenure (P&T), which recommends action if it is decided that a violation indeed occurred.

5. The Chancellor or her designate, upon receiving the report of P&T, decides on the action to be taken.

In disciplinary cases, the investigation of the complaint is handled in various ways on the different campuses. On four of the campuses, the investigation is carried out by a standing Academic Senate committee (called the Charges Committee). On two of the campuses, the Charges Committee is formed by cooperative actions between the Senate and the Administration; to wit, the Committee on Committees provides a list of Academic Senate members from which a Vice Chancellor picks. At one of the campuses the investigation is carried out by one person, a "Charges Officer".

Two points should be emphasized here: first, at each stage of the above formal procedures, it is understood on most campuses that attempts shall be made to reach informal resolution of the matter. Second, a crucial requirement on any proposed procedure is the separation of the investigatory and hearing panels. This requirement is part of due process; that is, a faculty member who is dissatisfied with the outcome of a process may sue in open court on the basis of a lack of such separation.

The Difference between Discipline and Redress

It is customary to distinguish cases that involve an accusation against a faculty member with the expectation that said person will be punished if found guilty, and cases in which a faculty member asks for redress for the purpose of righting a wrong done against said faculty member. In the one case a faculty member is accused, and becomes the defendant; in the other case a faculty member (the *complainant*) is on the side of the prosecution. Similarly, in the matter of a discipline case, the Administration serves in the capacity of the prosecution, while in the matter of a Redress, or Grievance case, the Administration is often the defendant. It is this reversal of roles that have led in the past to different procedures in the two types of situations.

Difficulties with the Present Situation

Our SSC was created because the Senate has perceived problems with the present situation. The problems that have appeared relate to the general principles listed above. For example, extreme confidentiality has led to an inability of faculty to evaluate judgments made by the Administration, which has led to distrust.

The Simmons Task Force concentrated on disciplinary matters, not grievances. They identified six problems with the current disciplinary procedures that they stated *are common to all nine campuses!*

1. Undue Delay: the most serious cause of undue delay was identified as due to the existence of two full investigations: one at the Charges stage and one at the stage of the hearing before P&T.
2. Lack of Participation by the Complainant: Because of confidentiality requirements, complainants are not fully informed about: the charges against the faculty member as they are developed by the Administration; procedural delays; informal negotiations and settlements; and the outcome of the final hearing. This problem could equally well be entitled "Excessive confidentiality".
3. Lengthy and Complex Hearings: The issues at stake in matters of faculty discipline are extremely serious, often career-threatening. Therefore legal rights come to the fore, attorneys are involved, and the faculty committees that have to conduct hearings and make decisions are put in very difficult situations.
4. Sanctions: Lack of Flexibility and Uncertain Confidentiality: The Academic Personnel Manual provides for punitive sanctions but lacks remedial [rehabilitative] ones. Furthermore, there is "great uncertainty about the extent to which the University may make known to others the fact of discipline or the grounds therefore."
5. Confusion between Disciplinary and Grievance Proceedings: "There is confusion among potential *complainants*, and also among the University personnel advising them, about whether and when to pursue a grievance either instead of, as prelude to, or in conjunction with a disciplinary complaint."
6. Lack of Standard of Proof: The bylaws and regulations do not set down the standard of proof to be used in the formal hearings of P&T. The possibilities range from "preponderance of the evidence", through "strong probability", to "clear and convincing evidence that".

With regard to the specific situation at Santa Cruz, we can say that all of the above problems have become evident at one time or another over the past few years. Although the Simmons report mainly discusses disciplinary matters, when viewed from the perspective of grievances, the above six problems are still relevant.

Our SSC has identified one additional problem of consequence: **Conflict of Interest**. In a disciplinary matter in which a faculty member is accused by another faculty member, the members of any investigative or hearing committee must examine themselves for conflict of interest, and recuse themselves if such exists. We accept this procedure as a matter of course, even though we know its application is many times problematic. In a case in which an administrator is accused, the question arises of conflict of interest for administrators who will be actively involved in prosecuting or judging the case. If faculty recuse themselves because of belonging to a particular Department, then what is the analogous criterion for administrators? There are no guidelines to follow in such matters. Many grievance cases will have similar questions arise. If faculty member A is aggrieved because of actions taken by a department

faculty or a department chair, and a member B of that department is on the P&T, then B should not sit in judgment on A. What procedures should be followed for cases in which an administrator judging the case may have been directly or indirectly involved in creating the situation that led to the grievance? Again no guidelines exist.

We note here that it is ironic that guidelines and practice exist for the case of faculty, in which there are a large number of alternative committee members from which to draw, and hence to easily solve the problem: while there are no guidelines for the Administration, for which the problem is considerably more difficult because of the relatively small number of alternative administrators from which to draw.

Suggested changes in UCSC procedures

At this point the SSC provides a set of recommendations for changing our policies and procedures in matters of discipline and redress. Each recommendation is followed by a short analysis (in italics). This section is the heart of our report to the Senate, because it contains the possible action items to be considered. We have had discussions with the Administration about these changes. We have been told that, until pending litigation is resolved, the Administration cannot put itself in the position of developing policies in these matters, either independently or in cooperation with the Academic Senate. However, the Administration's factual comments on a draft of this report were very useful to our committee and have been taken into account.

Again we note that the example of personnel actions is a useful guide for how shared governance works. A personnel action may move from faculty to Department Chair to Dean to the Academic Senate Committee on Academic Personnel to the Executive Vice Chancellor. In a like manner, dealing with matters of discipline and redress must involve cooperation between the Academic Senate and the Administration.

We also note that the Simmons report made numerous recommendations, three of which they identified as major. We have included the major ones in our list (Numbers 6, 7, and 9).

SSC Recommendations

1. Identify an ombudsperson who will be the initial contact for a potential complainant. This ombudsperson will serve to advise the complainant whether the matter is a disciplinary or grievance case, and how to proceed in attempting informal resolution, or in filing a formal complaint. The ombudsperson should be beholden to the Academic Senate as a whole, so that faculty have confidence in advice received. The ombudsperson needs to have experience and training in cases of discipline and redress. *An ombudsperson who is somewhat independent of the individual faculty complainant and of administrators who will be directly involved in the case can advise a complainant in an objective fashion. One suggestion is to identify and train a member of the Academic Senate staff as the ombudsperson. Academic Senate staff are ultimately hired and supervised by the Chair of the Academic Senate, which provides some independence from the administration. For this purpose, it might be appropriate to use the Academic*

Senate Coordinator (presently Elaine Wheeler, previously Julie Dryden). This recommendation would reduce or avoid a number of conflicts of interest.

2. Change the Charges Committee into a Committee of the Academic Senate. *This change will primarily avoid conflict of interest by taking responsibility for the committee out of the hands of administrators who may have conflicts of interest, yet without diluting the committee's effectiveness as an advisor to the Administration. It thus does not decrease the sharing in shared governance. We are not recommending specific legislation at this time, because there are still several choices to be made, which should be discussed by the Senate and the choice of which should be part of the charge to next year's committee. In particular, should the Charges Committee be a Standing Committee, or should it be a committee appointed for each case? In the latter choice, should the appointing committee be the Committee on Committees or P&T? What restrictions should be placed on the membership of a Charges Committee? As a committee of the Senate, the Charges Committee would ultimately report back to the Senate about its work, either directly or through P&T; such reports present both an advantage and a difficulty. The advantage is that the Senate may get information (like CAP reports) on the extent to which the Charges Committee(s) and the Administration agree or disagree. The difficulty is that there are relatively few discipline cases on this campus, and a way must be found to avoid violating confidentiality with such reporting.*

3. In cases in which the accused is an administrator, develop specific procedures to insure that the administrators involved in prosecution or judgment do not have a conflict of interest. This may be as simple as using a Dean from another Division or as complicated as requiring an administrator from another campus. *The main concern here is conflict of interest. This recommendation requires thought on the part of the Administration as well as detailed discussions between the Senate and the Administration.*

4. Decide between two alternatives for dealing with the confusion between disciplinary and grievance cases. The first alternative is to distinguish them sharply, writing different legislation for each. The second is to write legislation that applies to both without distinction. Our SSC feels that the latter is possible and should be explored. *Both disciplinary and grievance cases would follow the same sequence of steps listed above in the Outline of Procedures. The key difference between the two that has led to their distinction in the past is the role of the Administration; in disciplinary cases the role of the investigator/prosecution is played informally by an administrator, and formally by University Counsel, while in grievance cases the defendant is often either the University as a Whole, or an individual administrator, again represented by University Counsel. This difference has led to a difference in procedure: in disciplinary cases, the procedure starts with the Charges Committee; in grievance cases, the procedure starts with P&T. In the latter case, a difficulty arises with regard to the separation between the investigative and judicial panels. If it becomes an*

Academic Senate committee, the Charges Committee could serve as the investigatory panel in both discipline and grievance cases. (We should also change its name in this event.) This would entail a significant change in the responsibilities of P&T, and it would require a real collaboration between the Charges Committee and P&T in advising the Senate on policy issues related to grievance and discipline.

5. Define responsibilities for investigation so as to minimize duplication between the investigations at the Charges level and those of later stages of preparation for a hearing before P&T. *The reduction of duplication in the investigative process is a decided improvement in due process. Excessive delays are deleterious for numerous reasons, such as: they can cause a faculty member under investigation to lose career opportunities; they cause memory loss in witnesses' recollection; and they cause a lack of continuity in the membership of key panels involved in a case.*

6. Increase openness and accountability by informing complainants of procedures under way, of decisions and the reasons given, and of final resolutions. The complainant will be required to hold some, if not most, of this information in confidence. *In the present system, complainants can be kept completely in the dark as to the procedures and disposition of a case. By informing complainants of these matters, the process is made much more open, and therefore the possibility of abuse is much less. The concomitant loss of confidentiality is a small price to pay for this openness. There is a question here of due process, because the Information Practices Act makes clear that a person has considerable rights to access information about oneself, but almost no right to access information about any other person. Yet, in the UCSC Policy on Research Integrity, which covers scientific misconduct, the complainant is in fact informed at every step. Thus keeping the complainant informed has a precedent.*

7. Find ways for the Senate and its individual members to receive legal counsel by some means other than hiring and paying personal attorneys. Legal advice is necessary not only from the general consideration of due process, but also from the perspective of specific regulations in the area of Sexual Harassment, and specific provisions in the Information Practices Act. *For many years the issue of legal counsel for members of the Academic Senate has been under consideration. The Simmons report mentioned the possibilities only long enough to dismiss them for reasons that are unconvincing to our SSC. It is clearly necessary for due process for faculty members to have legal representation in the formal hearings involving discipline or redress. As noted above, the present use of University Counsel is essentially restricted to representation of the University as a Whole, which translates into the Administration. Other possibilities include defining another Universitywide office in parallel with the present University counsel, using faculty from the University's law schools, identifying fund sources for hiring attorneys, and paying the attorney fees for Senate members who have been*

exonerated. This is a Universitywide problem that may be difficult to solve unilaterally at UCSC.

8. Expand the range of available sanctions from the present four (written censure, suspension, demotion, or dismissal). Suggestions of the Simmons report are: public censure, withdrawal of faculty privileges, and conditional suspension, demotion, or dismissal. *The flexibility provided by an expanded list of possible sanctions would allow much more attention to be paid to rehabilitation of the guilty party rather than concentration on punishment. This suggestion, made by the Simmons committee, does not relate to our four general principles. However, another aspect of sanctions; that is, whether the imposition of sanctions ought to be made public or not, does relate to confidentiality. The idea of public censure is not attractive, but it can be effective.*

We put forward one resolution with our report; to continue our Special Senate Committee for another year for the purpose of drafting legislation and defining procedures, in cooperation with the Administration, to carry out the recommendations made in this report. If the Senate votes for this resolution it would be an approval of the general sense of these recommendations, and a mandate to carry them out to the best of our ability.

The changes to be wrought as a result of these deliberations may involve the following documents:

- Manual of the Santa Cruz Division of the Academic Senate
- Appendix 002.015 to the above Manual on "Campus Procedures for Implementation of University Policy on Faculty Conduct and the Administration of Discipline",
- Academic Personnel Manual

Respectfully submitted,

SPECIAL SENATE COMMITTEE
ON FACULTY DISCIPLINE
AND REDRESS

George Blumenthal
David Hoy
Stanley Flatté, Chair

May 1, 1996

**Proposed Senate Resolution on the Continuation of the
Special Senate Committee on Faculty Discipline and Redress**

Resolved: The Santa Cruz Division hereby continues for one year the Special Senate Committee on Faculty Discipline and Redress which it established in the 1995-96 academic year. The charge of the committee for the 1996-97 academic year consists of the following:

To develop any necessary changes to the

- Bylaws and Regulations
- Academic Personnel Manual

of the Division in order to carry out changes along the lines recommended by the 1995-96 Special Committee in its report to the Senate, and to present such changes to the Senate for discussion and vote. The above actions shall be done in cooperation with the Administration so that shared governance is properly considered. Interaction shall be continued with the following committees: Privilege and Tenure; Academic Freedom; Rules, Jurisdictions, and Elections; and the Universitywide Disciplinary Task Force chaired by Prof. Daniel Simmons.

Respectfully submitted,

SPECIAL SENATE COMMITTEE
ON FACULTY
DISCIPLINE AND REDRESS

George Blumenthal
David Hoy
Stanley Flatté, Chair

May 1, 1996