

Weigel, Stanley Alexander, 1906-1999

Letter to Edward C. Tolman from Stanley A. Weigel, February 17, 1954

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Professor Edward C. Tolman

1530 LaLoma

Berkeley 8, California

Dear Edward:

You have asked for information regarding the legal costs and fees which will be involved in the prosecution of the 21 separate suits for back pay or severance pay denied members of the faculty of the University of California by the recent unprecedented action of the Regents.

One aspect of your inquiry concerning fees can readily be met. As you know, I have advised each faculty member in writing that the amount thereof will be in whatever sum and on whatever basis may be agreed upon in the future, or, if there is no agreement, the fee will be determined by each faculty member in his own complete discretion. Since it is a source of personal satisfaction to me, I would not wish to change this understanding unless it is in any way unsatisfactory or embarrassing to any of my clients in this matter. In any such case, I shall be perfectly willing to be governed by the personal wishes of any such client, provided that his or her suggestion would not entail my receipt of an excessive fee.

When I indicated the foregoing to you over the telephone, you stated that, nevertheless, you would like to have an outline of the work involved. I am glad to meet this request, but

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warn you that it is a long story because the cases are likely to be long cases.

The preparation of 21 complaints, now just about completed, has involved, over-all, at least four months of solid work and time of one or more lawyers in research, drafting, re-drafting and final checking. While the pattern of each complaint for the three major groups — those who have tenure and have returned to the University, those without tenure who have returned and those who have resigned — has been similar, major or minor individual differences have precluded "assembly line" treatment. In addition to the complaints, we have prepared summonses, writs and points and authorities.

After the suits are filed and the defendants have been served, it is reasonably to be anticipated that the defendants will interpose various motions, demurrers or other legal maneuvers, each of which will have to be met. This will entail additional research, preparation of additional papers and court appearances. It may also involve the filing of amended or supplemental complaints.

Assuming, as seems to me to be likely, that we successfully resist all such efforts on behalf of the other side, the defendants will then be required to file an answer to each complaint. (For your information, the majority of the complaints are some 20 pages in length.) The answers will have to be analyzed, further research will be entailed and it may prove advisable for us to demur to the answers or move to strike portions of them or take other steps in regard to them.

When the answers have finally been settled, each case will then be at issue and ready for trial.

In advance of trial, it will be in the interest of my clients that we take the depositions of one or more defendants or representatives of the defendants. The purpose of such depositions is to force the defendants to bring to light the facts upon which they rely and to enable us to proceed to trial reasonably free of the danger of surprise moves by our opponents and reasonably set to meet whatever basic factual issues may be pertinent.

Then there will be the trials themselves. There ought to be some hope, I should think, that one or several trials will be the bellwether for all others like them, but this cannot be counted upon. The trials will involve the interviewing and readying of

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witnesses in advance and, of course, the give, take and concentrated work of trying cases in court. I could not venture a sound guess at this time as to how long each trial would be. In my own planning, I am thinking in terms of not less than a week for each case which has to be tried.

Once the trial is concluded and once the court has indicated which way it has decided, findings of fact and conclusions of law and judgments will have to be prepared. There may be hearings in regard to the findings and conclusions.

All along the way, at various points, the court or counsel will undoubtedly want briefs and legal memoranda to be filed.

The end is not yet.

I have concluded, reluctantly, that the suits are of a character which can be soundly brought only in the Superior Court of the State of California — the trial court. If we lose in the trial court, we shall most certainly want to appeal. If we win in the trial court, we would be foolish, in the light of the ugly history of the miscalled loyalty oath controversy, to assume that a majority of the Regents would call it quits. Can you imagine that those who have "guided" the majority of the Regents will accept the decision of the trial court?

So there will be appeal, probably first to the District Court of Appeal and thereafter efforts for review by the Supreme Court of the State of California and possibly by the United States Supreme Court itself.

So when one feels, as I do, that the action of the majority of the Regents is utterly shocking and utterly unjust, the long road ahead is distressing and aggravating, even discouraging. It should not take so long nor should it be so difficult to obtain simple justice. However, there is no alternative except to surrender to arbitrary inequity and iniquity.

I feel that the words "arbitrary iniquity" are not in the slightest overstatement. The moral right of the non-signers to reasonable compensation for the period when they were wrongfully deprived of their posts is absolutely clear. There may be legal obstacles to that right, but I myself see no validity in any which have been urged. Even if they are valid, it seems to me that the Regents should have sought ways and means of doing justice, rather than ways and means of getting around it.

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Now as to costs. If we are forced to prosecute the cases along the full length of the legal road, I would estimate that filing fees, cost of depositions, expenditures for travel and communication, stenographic services, reporting services, printing or mimeographing of briefs and other papers, the cost of obtaining transcripts of records for appeal, and other incidental expenses, might well run as high as \$500.00 in each case. I would doubt that they would run, in any case, less than half of that sum.

Of course, much can be saved if it can be worked out so that two or three cases will be agreed to be determinative of all. It would not, however, be wise to count upon consummation of this, because it would

take reasonable agreement between reasonable counsel representing reasonable clients. In this connection, I have in mind several public expressions at Regents meetings by Mr. John Francis Neylan to the effect that he sympathizes with the problems of counsel for the professors.

Unfortunately, the law is such that attorneys' fees cannot be recovered nor, for that matter, a large proportion of the indicated expenses.

Were it not for your request, I should not have burdened you with so long a letter. I sensed that you wanted the full picture and have tried to present it without either exaggeration or understatement. You have some experience which enables you to appraise it. I refer to your first-hand knowledge of the time and work involved in *Tolman v. Underhill*, in which we were fortunately able to start in an appellate court and there to institute a single proceeding covering many individuals.

I do hope this letter will not discourage anyone determined to fight for his or her rights and, in a larger sense, for the rights of all who have the will to resist the wrongful and arbitrary exercise of naked power.

For myself there have been no illusions about the size or length of the task ahead. This is one reason why I have counselled patience and more patience in the hope that a majority of the Regents might act wisely for their own good, for that of my clients and, most importantly, for the good of the University itself. It is one reason, also, why I exhausted every legitimate means of compromise, settlement, arbitration, negotiation, etc. However, it was not to be other than it is. Under all the circumstances, I find it not without satisfaction to be on the eve of again taking the professors' cases to court.

Sincerely
SAW:AC
Enclosure