



Minutes of the Academic Senate, Northern Section, January 21, 1952

TRANSCRIBER NOTE:

This excerpt from the meeting minutes includes a list of attendees and only those sections that pertain to the loyalty oath controversy. Page numbers reflect those of the original source.

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MINUTES OF THE ACADEMIC SENATE, NORTHERN SECTION

Meeting of January 21, 1952
Volume 10

Meeting. -

The Academic Senate, Northern Section met in special session on Monday, January 21, 1952 in the Auditorium, Benjamin Ide Wheeler Hall pursuant to call. Present: about 150 voting members of the Section. Professor M. P. O'Brien, Vice-Chairman, presided.

Minutes. -

The minutes of the meeting of January 14, 1952 were read and approved.

Special Order - Report of the Special Unified Committee on Tenure. -

Professor R. W. Jennings, Chairman of the Northern Section of the Committee, presented the report in the form in which it was distributed with the call for the meeting and explained in detail the significance of the several sections of the report. Thereafter, he invited questions and comment. Several questions were asked and answered by Professor Jennings. A transcript of this portion of the discussion is preserved in the papers of the Secretary.

One phase of the discussion led to adoption, by a vote of 65 ayes to 63 noes, of the following resolution offered by Professor Landauer:

The Academic Senate, Northern Section, expresses the desire that the Special Unified Committee on Tenure should submit with its final report the draft of a petition of the Academic Senate to the Board of Regents, this draft to embody the amendments to the Standing Orders of the Regents which in the opinion of the Committee would be desirable.

The Academic Senate, Northern Section, would also appreciate it if the Committee would also submit a draft of such amendments to previous declarations of the Academic Senate on tenure matters as will be necessary to bring the wording into conformity with the recommendations.

The text of the printed report follows:

REPORT OF THE SPECIAL UNIFIED COMMITTEE ON TENURE

To the Academic Senate, Northern Section:

The Special Unified Committee on Tenure submits its report and tentative recommendations for consideration by the Senate as a basis for implementing our system of tenure. The Committee has requested that a special meeting of the Senate be held, the call of which accompanies this report, at which this report will be placed before the Senate for full discussion and consideration. The Committee requests that the Senate not act on the report at this meeting. At and after the meeting the Committee will welcome proposals from members of the Senate. After considering any such proposals the Committee will submit its final recommendations to the Senate.

Respectfully submitted

Northern Section

W. L. Bostick
I. B. Cross
H. B. Gotaas
Miss E. H. Huntington
D. G. Mandelbaum
V. J. Puryear
R. W. Jennings, Chairman

Southern Section

G. H. Ball
N. H. Jacoby
E. A. Lee
A. E. Longueil
K. Macgowan
W. C. Putnam
W. W. Crouch, Chairman

January 4, 1952

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PART I: HISTORICAL AND LEGAL BASIS FOR TENURE AT THE UNIVERSITY OF CALIFORNIA

Professors and Associate Professors

Tenure for professors and associate professors was customarily understood to exist at the University of California even before formal action on the matter by the Regents in 1920. This appears from a statement of the Administrative Board (then acting as the administrative authority of the University in absence of a president) made to the Board of Regents and appearing in its minutes for November 11, 1919 (vol. 21, p. 205):

"The record of the dealing between the Regents of the University of California and the Faculty of the University of California in regard to all matters with reference to professorial appointments is ample proof of the regard which the Regents have for the necessity of safeguarding as far as possible the security of tenure of those who devote their full time to teaching in the University in a satisfactory manner."

The principal official action on tenure was taken by the Regents on March 9, 1920, as shown by the minutes for that day (vol. 21, p. 247):

"Your Finance Committee has the honor of recommending.. `that appointments as assistant professor be for a period of three years with a recognized right on the part of the University to terminate the appointment at the end of this period; that appointment as associate or full professor carries with it security of tenure in the full academic sense.'

"On motion the Regents approved the report of the Finance Committee and adopted as the action of the Board all recommendations contained in the report as to action to be taken by the Board."

This was, in effect, a definite statement of policy by the Regents to the effect "that appointment as associate or full professor carries with it security of tenure in the full academic sense." The Regents' acknowledgment of tenure for professors and associate professors thus is quite explicit.

From time to time the Regents have implemented this policy. On August 12, 1938, the following provision was added to the Standing Orders of the Regents (vol. 30, p. 353):

Ch. IX, 1(c). "The President shall recommend to the Board.. demotions, and dismissals of the officers and employees of the University. Whenever such action shall affect a professorial or equivalent position, such action shall be taken only after the President shall have consulted a properly constituted advisory committee of the Academic Senate." (Manual of the Academic Senate, November, 1945, Appendix B, p. 231)

This Standing Order was amended on March 31, 1951, to provide:

Ch. IX, 1(c), "The President shall recommend to The Regents appointments, promotions, demotions and dismissals of all officers and employees of the University, except the Vice-President - Business Affairs, and except as herein otherwise provided. Whenever any such action shall affect personnel under the administrative jurisdiction of a Chancellor, Provost or Director, such action shall be taken only after consideration of the recommendation of such Chancellor, Provost or Director. When such action relates to a professor or associate professor (or equivalent position), the Chancellor, Provost or Director shall consult with a properly constituted advisory committee of the Academic Senate."

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The Standing Orders of the Regents were also amended as follows on August 12, 1938 (Ch. XIV, 2(i)):

"The principle of severance compensation is approved in the case of premature and compulsory retirement of a faculty member with acquired tenure and not subject to dismissal, whose removal from service seems to be in the interest of the University.."

The existence of tenure for professors and associate professors has long been acknowledged and in practice respected by the University's administrative officers. Several examples will confirm the point.

In December, 1927, Professor Robert J. Kerner was appointed Professor of History at the University. Upon receiving the letter of appointment for the year July 1, 1928 to June 30, 1929, Professor Kerner sent the following telegram to President Campbell:

"RECEIVED APPOINTMENT SPECIFYING PERIOD 1928 TO 1929 WHICH MAY BE INTERPRETED AS TEMPORARY APPOINTMENT FOR ONE YEAR ONLY. INVITATION WAS FOR APPOINTMENT EFFECTIVE JULY 1, 1928 WHICH I ASSUMED WITHOUT QUESTION TO BE ON PERMANENT TENURE. WOULD MUCH APPRECIATE WIRE WHETHER ERROR HAS BEEN MADE IN OFFICIAL NOTIFICATION AND WHETHER APPOINTMENT IS DEFINITELY ON PERMANENT TENURE."

In response to this telegram Vice President Walter Morris Hart wired:

"PERMANENT TENURE IS ASSURED FOR ALL FULL PROFESSORS AND ASSOCIATE PROFESSORS STOP YOUR NOTIFICATION IS IN PRECISELY THE FORM SENT ALL NEW APPOINTEES." (Emphasis supplied)

Provost Gordon S. Watkins of Riverside reported that when he came to the Los Angeles campus of the University of California in 1925 as Professor of Economics "verbal answers to my inquiries about privilege and tenure indicated that for professors and associate professors this status was guaranteed." He often has stated since, as an administrator, that "for professors and associate professors tenure is guaranteed." Professor Joseph A. Brandt reported that President Sproul told him that his "appointment was set but that it would have to go before the Regents since it was a tenure appointment." A letter from President Sproul to Dean E. T. Grether, dated February 3, 1948, included this phrase: "... appointments to positions of permanent tenure such as associate professorships and full professorships..." Dean Vern O. Knudsen by letter of December 14, 1950, stated that "appointments to ranks carrying permanent tenure should be made only after thorough consideration of the candidate's record."

Another illustration of the administrative acceptance of tenure was Vice-President Hutchison's letter to a department chairman at Davis, April 6, 1951. When asking for a statement in regard to an assistant professor then in his fourth year of service in that rank, after quoting Appendix A of the Supplement to the Senate Manual of September, 1948, Dean Hutchison stated: "A scrupulous and objective review of each junior member of the staff prior to his attainment of tenure can be of great value in strengthening the faculty."

A point frequently made by Dr. Monroe E. Deutsch when he was Vice-President and Provost was that if a man is advanced from the status of assistant professorship to that of associate professorship, the University thereby was committed to permanent tenure for that individual. As one of many applications of this view, Dr. Deutsch, and upon occasion the President, urged Professor B. H. Lehman as chairman of the Senate Budget Committee and as chairman of the Department of English to give especially careful consideration to promotions to the associate professorship. They and later Dean A. R. Davis stressed the importance of that step in rank, clearly on the ground that after promotion to an associate professorship a faculty member had tenure rights. Professor Lehman further stated to our Committee:

"In short, all my experience as administrator and all my conferences with superiors and all my appointment letters to new staff assumed that associate professors and professors had tenure, both by what was said of and to instructors and assistant professors

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and what was said of and to the more advanced appointments. I never heard this assumption questioned. I never heard President or Provost or Dean say a word that suggested that a University could be conducted if the assumption were not true, admitting testing in the lower grades and creating security in the higher."

Dr. Deutsch regularly applied this tenure policy. He wrote, on July 5, 1940: "This is to certify that Albert I. Elkus holds appointment on the faculty of the University of California as Professor of Music. His annual salary is _____ and by virtue of this appointment he has permanent tenure." A letter by Provost Deutsch on March 2, 1945, stated: "As to the matter of tenure, it is understood that the two grades of professor involve permanent or indefinite tenure in the ordinary academic sense of the term." This was further specifically

illustrated in a memorandum issued on July 4, 1945, concerning Professor A. Tarski, in which Provost Deutsch stated:

"This is to certify that Professor A. Tarski holds the rank of Associate Professor of Mathematics in the University of California, Berkeley, and this rank is regarded 'as continuing during good behavior and efficient service'. In short, it is considered as permanent in the sense in which that phrase is used in the academic world. The position involves indefinite tenure."

The two top classes of Agricultural Experiment Station employees have tenure. The following is a portion of a report by the Regents' Committee on Agriculture which was adopted by the Board of Regents on February 14, 1928 (vol. 25, p. 197):

"That Experiment Station titles be recognized by the Board of Regents as equivalent of the corresponding academic titles in other parts of the University in so far as any questions relating to tenure of office, leaves of absence and retiring allowances may be concerned."

This granted associate and full agronomists, etc., tenure rights equivalent to those of associate and full professors.¹

have been given temporary or probationary appointments. It is not, therefore, the obligation of the University to prove defects in the individual. The individual himself must show affirmatively that he has qualities justifying retention and promotion. If he does show superior ability, he should be promptly recommended and urged for advancement. In justice, both to the individual and the University, a decision should be made as early as practical as to those who have not proved themselves worthy of permanent appointment." (Italics added.)

The above paragraph obviously implies that when the assistant professor is promoted to a higher rank his position is no longer temporary and that he has achieved tenure.

President Sproul's circular statement of May 27, 1948, "The Functions of Departmental Chairmen in the University," states:

"It should be remembered that Instructors and Assistant Professors

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Administrative and academic officials have long officially distinguished between tenure and non-tenure personnel. An example is found in the printed "Instructions to Appointment and Promotion Committee" for the year 1947. These instructions read:

"In submitting recommendations, the committee should bear in mind that normally the University will terminate appointments of assistant professors who do not qualify for promotion after three terms (each of two years) of service in that grade. Associate professors, however, who do not qualify for further promotion will be retained indefinitely in that grade, but assistant professors should not be recommended for promotion unless there is reasonable expectation of further advancement."

It should be noted that the above paragraph clearly states that associate professors, even though they do not qualify for promotion to the full professorship, "...will be retained indefinitely in that grade..."

1. The Regents have granted equivalent tenure privileges to astronomers and associate astronomers (Extracts from the Standing Orders of the Regents, Ch. XIV, 4(a); Manual of the Academic Senate, November, 1945, Appendix B, p. 237); and to clinical professors and associate professors in the College of Dentistry (Regents' Minutes, April 30, 1943, vol. 33, p. 340). Ch. XIV, 4(a) of the Regents' Standing Orders further provides: "The equivalent academic rank of members of departments and stations where titles other than professor, associate professor, assistant professor, and instructor are used, shall be fixed by the President, subject to approval by the Board." (Manual of the Academic Senate, November, 1945, Appendix B, p. 237.)

Official use has customarily been made of the terms tenure and non-tenure. Two of the budget sheets (formerly signed by President Sproul and now signed by the Chief Budget Officer) sent to chairmen of departments are labeled as follows:

"Sheet 1 - Academic positions with tenure"

"Sheet 2 - Academic positions without tenure"

This is a clear indication, over official signature, that there are certain academic positions which carry tenure.

In brief, prior to the controversy over the Oath which began in June, 1949, the faculty, the President and the Board of Regents proceeded on the assumption that tenure existed for professors and associate professors and that the conditions respecting tenure would be adhered to by all parties, the faculty on the one hand and the Regents and Administration on the other.

Tenure by Reason of Length of Service in Ranks other than Professor and Associate Professor

Prior to October 6, 1947, faculty members who had served long years in a rank other than professor or associate professor were considered to have acquired an expectation of reappointment vaguely characterized as "moral tenure." In its "Resolutions Concerning Promotions, Appointments, and Tenure" of the above date the Senate regularized this undefined expectation. The pertinent passage in the Resolutions runs:

"Officers of instruction who have served for a series of terms in excess of a total of eight years in the grades of instructor, assistant professor, lecturer (on more than half-time appointment), or associate (on more than half-time appointment), should thereby have attained tenure by reason of length of service: that is, their appointments should be regarded as continuing during good behavior and efficient service." (Supplement to Manual of the Academic Senate, September, 1948, Appendix A, p. 14.)

Under present promotion regulations, which require from departments a positive commitment on instructors at the end of two years and on assistant professors at the end of four, few instructors or assistant professors can attain tenure by length of service. It still applies, however, to associates and lecturers. This type of tenure is granted, not automatically, but after a review of the individual case by the Committee on Budget and Interdepartmental Relations. The minutes of March 4, 1948, and later, of the Committee on Budget of the Northern Section of the Senate reveal that the committee makes regular "appraisals..of all persons now serving in their sixth or seventh year," and the annual report for 1948 of the Committee on Budget of the Southern Section speaks of the "evaluating appraisal of faculty members prior to their attainment of tenure by reason of length of service."

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Tenure by reason of length of service is in a somewhat different position than tenure by reason of rank. It is more recent, particularly in its formal promulgation. It has been neither approved nor disapproved by the Regents. The administrative officers of the University, however, have in practice accepted it. And the Senate and its committees have proceeded on the assumption that it is as actual as tenure by rank.

Thus tenure, in a wide range, and in a very specific sense, has been recognized in the University of California as an established and accepted practice.

The Controversy over Tenure

The controversy over tenure arose when on June 24, 1949, the Regents required of the faculty a loyalty oath over and above the oath of allegiance to the state and federal constitutions required by their action on August 13, 1918, and again on June 12, 1942. The additional oath was later changed to a statement made part of the

notification of salary. A number of members of the Senate who had tenure refused to sign the contractual statement and were discharged.

On February 24, 1950, during the oath controversy, the Regents recorded the following action, again confirming tenure for professors and associate professors:

"In relation to all other questions [than the Loyalty Oath] regarding tenure the Regents reaffirm that the responsibility for judging members of the faculty is a common concern of the faculty, of the President and of the Regents, in accord with the terms of University Regulation No. 5, promulgated in revised form June 5, 1944. The Regents will, therefore, adhere to their traditional practice of taking no action against any member of the faculty on grounds other than membership in the Communist Party without referring the case through the President to the Committee on Privilege and Tenure of the Academic Senate for full findings and recommendations as in the past." (Executive Session Minutes, Vol. 3, p. 279)

Yet subsequent actions by the Regents left the meaning of tenure uncertain. Professors and associate professors who were certified by the President and by the Committee on Privilege and Tenure of the Academic Senate to be loyal and competent, and who were conceded by the Regents not to be Communists, were afterwards summarily dismissed for failing to make the required oath or affirmation. Rightly or wrongly, the inference has been widely drawn that the Board of Regents has in effect withdrawn the authority it had previously delegated to the President and the Academic Senate to erect and administer standards for the disqualification of tenure members of the faculty.

This uncertainty as to tenure rights was further aggravated by the change in April, 1950, of the form of letter annually sent to persons having tenure to notify them of their salary and rank. The letter regularly used by the Secretary of the Regents before 1950 for professors, associate professors and their official equivalents had stated: "At the annual budget meeting of the Regents of the University of California, your salary for the year ending June 30, _____, as Professor of _____, was fixed at \$_____." This was an embodiment of the policy of the Regents and implied a contractual recognition of legal tenure.

In April, 1950, however, following the Regents' action of April 21, 1950, prescribing a new form of contract, the annual letter sent to professors, associate professors and their equivalents was changed to read: "This is to notify you that you have been appointed Professor of _____ for the period July 1, 19____, to June 30, 19____, with a salary at the rate of \$_____ per annum." This form of appointment letter was also used for the fiscal year July 1, 1951, to June 30, 1952.

It thus appeared that although the Regents and administrative officers accepted the principle of tenure, faculty members of tenure rank were in fact being offered annual appointments which carried the possible inference that employment might be abruptly terminated at the end of any appointment year. Some members of the faculty refused to sign an acceptance of the new form of appointment letter on the ground that such an acceptance might be construed as a waiver of tenure rights.

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On November 16, 1951, the Regents adopted a resolution discontinuing the special declaration as applied to appointments for the current academic year and in the future. In addition, the form of letter of notification and acceptance used prior to April, 1950 was restored. This action of the Regents reestablishes the basic conditions with respect to tenure which existed prior to the oath controversy. The form of letters of notification and acceptance is not an immaterial matter. The principle of tenure was jeopardized when, by the terminology of the annual appointment letter, it was made to appear that persons in tenure ranks received annual appointments only, with continuation from year to year at the pleasure of the Regents. It is important for the protection of the principle of tenure (existent and prospective) that the form of notice sent annually to members having tenure be different from the forms used for those individuals not in tenure ranks, and that the Regents specifically

prescribe the form of notice to be used.

In previous years the Academic Senate has never felt it necessary to ask the Regents to define the tenure which by their actions they had formally established.

Professor Ira B. Cross, who on behalf of the present Unified Committee checked the 1910-1951 minutes of the public and executive sessions of the Regents, and the minutes of the Senate, failed to discover any record of a request by the Senate for the Regents' approval of its resolutions on tenure. On April 7, 1920, the Senate adopted Resolutions concerning tenure and other matters and voted to refer them to the President and, subject to his approval, to have them printed and circulated. (This was a month after the Regents had established tenure for professors and associate professors on March 9, 1920.) There was no request that the Resolutions be referred to the Regents. On October 25, 1939, the Senate amended the above Resolutions, but did not vote to refer them for approval to the President or the Regents. This was also true of the amendments adopted by the Senate on October 6, 1947. Apparently the Academic Senate, relying upon the 1920 grant of tenure by the Regents, has not since considered it necessary to ask the Regents to define tenure.

To recapitulate:

1. From 1920 up to the time of the oath controversy in 1950, the Regents' actions consistently recognized that professors and associate professors at the University of California possessed permanent tenure. The Regents' policy was consistently adhered to by successive Presidents and by other administrative officers. Moreover, there has been a clear understanding among members of the faculty since 1920 that professors and associate professors had tenure.
2. The 1950 action of the Regents in discharging, because they failed to sign the prescribed contract form, professors and associate professors who were admittedly loyal and competent and not Communists, has created uncertainty as to the status of the tenure at the University of California, the more so since the action was taken contrary to the recommendation of the Committee on Privilege and Tenure.
3. It is clear that the interests of the University now require the formal adoption by the Regents and the Academic Senate of a clear definition of academic tenure and of policies for its attainment and protection.

PART II: TENTATIVE RECOMMENDATIONS FOR FURTHER IMPLEMENTING TENURE AT THIS UNIVERSITY

Tenure is not an end in itself but only a means to an end. That end is the creation of conditions under which the pursuit of truth may proceed in an environment congenial to its success. A failure to grasp the inseparable relation between tenure on the one hand and productive research and teaching on the other may lead to a complete misunderstanding of both the nature of tenure and its importance.

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The function of the scholars who form the faculty of a university is to seek and teach the truth. If this function is to be sustained, the scholar-teacher must feel free to pursue and present knowledge in his chosen field without fear and without concession to expediency. Tenure, the right of the scholar-teacher to be secure in his position during good behavior and efficient service, is a means to this end. Without it there can be no continuing academic freedom. And without academic freedom there can be little lasting pursuit of truth. At the same time it must be recognized that academic freedom presupposes an academic responsibility for maintaining high professional standards—a responsibility which university teachers must be prepared to assume.

The system of tenure and the rules under which it has operated have never been set forth by the Regents in a clear and detailed manner. In addition, no specific procedures have been set up by the Senate to guide the Committee on Privilege and Tenure in its consideration of dismissals and demotions of officers of instruction who have tenure. It is important that the Academic Senate and the Regents should reach a specific agreement with respect to tenure conditions for faculty members, and enact appropriate Standing Orders and Senate Resolutions. This legislation should thereafter be changed only after consultation among the Senate, the Administration, and the Board of Regents. The recommendations of this Committee are made in the light of these considerations. They have been arrived at after a close examination of the practice in force in other universities. (See Appendix)

This Unified Committee makes the following tentative recommendations for consideration by the Senate as a basis for implementing our system of tenure. The Committee believes it essential that a meeting of the Academic Senate be held at which this report shall be presented to the Senate for full discussion and consideration, but without any action being taken at that meeting. At and after this first meeting this Committee will welcome proposals and recommendations from members of the Senate. After considering any such proposals and recommendations the Committee will submit its final recommendations to the Senate.

I. Regents' and Senate Legislation.

We recommend that the Senate "Resolutions Concerning Tenure, Appointment, and Promotions" of October 6, 1947 be revised, and that the Senate petition the Board of Regents to adopt Standing Orders, with respect to the following points:

A. Definition of Tenure.

There is now no explicit definition of tenure in the "Resolution". We recommend that this definition be inserted:

"Tenure" is the right of a person to hold his position until the age of retirement, with dismissal or demotion therefrom only for specified causes under the procedures adopted by the Academic Senate and approved by the Board of Regents.

B. Appointment of Persons having Tenure to Administrative Positions.

There is nothing in the present "Resolution" which covers the tenure of a Senate member appointed to an administrative position. We recommend that the following paragraph be inserted:

Appointment to the position of president, vice president, chancellor, provost, dean, assistant dean, director or chairman of a department, or to any other administrative position in the University or removal therefrom, shall not deprive the person so appointed, or so removed, of tenure in the highest rank of the faculty of the University which he held with tenure prior to his appointment to such office or conjointly with such office.

C. Notice of Appointment and Notification of Salary for Tenure Members.

Because of the important bearing on tenure of the form of the annual notice, we recommend that the following forms be used.

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1. For notification of tenure members who have been granted an advance in rank and for new tenure appointments:

"You have been appointed to the tenure position of (Professor) (Associate Professor) of _____ at the University of California as of (date). Your salary has been fixed at \$ _____ for the year _____."

2. For notification of tenure members as to salary under the annual budget, or any amendment thereof:

"Your salary as (Professor) (Associate Professor) of _____ has been fixed at \$ _____ for the year _____." (This form of annual notice was used regularly prior to 1950.)

D. Grounds for Dismissal or Demotion of Tenure Personnel.

The resolutions of the Academic Senate now provide that tenure shall continue "during good behavior and efficient service." The Unified Committee believes that grounds for dismissal or demotion should be specific. We suggest the following formula:

Persons having tenure may be dismissed or demoted only upon proof of one or more of the following causes:

(a) incompetency; (b) physical or mental incapacity; (c) neglect of duty; (d) dishonesty; (e) moral turpitude; (f) (pursuant to the Regents' policy adopted October 11, 1940 and action of the Academic Senate adopted March 7, 8, 1950) membership in the Communist Party.

Proceedings for the dismissal or demotion of such persons shall be conducted in accordance with the rules of procedure prescribed by the Academic Senate.

E. Review Procedure.

Under the traditional practice for handling dismissal cases of faculty members having tenure, the Regents, except during the controversy regarding the oath, have consistently accepted the recommendations of the President after he has consulted with the Faculty Committee on Privilege and Tenure. Similar practices are deeply imbedded in the traditions of all great American universities and are essential to the maintenance of academic freedom.

This Unified Committee believes that the Board of Regents, in order to foster the continued progress of the University and to protect it from unnecessary harm, should continue the former practice of accepting as final the recommendations of the President, after he has consulted with the Committee on Privilege and Tenure. This Unified Committee therefore recommends that the Senate petition the Board of Regents to adopt the following statement of principle as a Standing Order:

No member of the faculty who has acquired tenure as defined herein [see above page 9] shall be dismissed or demoted except upon recommendation of the President after he has consulted with the Committee on Privilege and Tenure, which shall hold a hearing.

F. This Unified Committee recommends that the Academic Senate petition the Board of Regents to adopt as a Standing Order the Senate Resolution of October 6, 1947, relating to tenure of officers of instruction other than professors and associate professors amended to provide as follows:

Officers of instruction who have served for a series of terms in excess of a total of eight years in the grades of instructor, assistant professor, lecturer (on more than half-time appointment), or associate (on more than half-time appointment), or in any sequence of these grades, should thereby have attained tenure by reason of length of service. Such persons shall be dismissed or demoted only upon proof of one or more of the following causes:

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(a) incompetency; (b) physical or mental incapacity; (c) neglect of duty; (d) dishonesty; (e) moral turpitude; (f) (pursuant to the Regents' policy adopted October 11, 1940 and action of the Academic Senate adopted March 7, 8, 1950) membership in the Communist Party.

Proceedings for the dismissal or demotion of such persons shall be conducted in accordance with the rules of procedure prescribed by the Academic Senate. (new matter emphasized)

Some difficulties have arisen in connection with administering this rule. The Unified Committee therefore recommends that the Senate request the Committee on Budget and Interdepartmental Relations, in consultation with the Committee on Privilege and Tenure to study problems involved in administering the rule and report its findings and recommendations to the Senate.

II. Rules of Procedure of Committee on Privilege and Tenure.

We suggest that the Academic Senate, by resolution, establish rules of procedure to govern hearings of the Committee on Privilege and Tenure and recommend the following rules:

1. Principles. The defendant shall have an opportunity to face his accusers at a hearing and to be heard in his own defense by all persons who pass judgment on his case. In the hearing of charges of incompetence, the testimony of faculty members in the same field, either from his own or some other institution, shall always be taken.

2. Procedure.

a. Complaint. Charges against a person having tenure may be filed with the Committee only by the President, or with the consent of the President, by the following:

The Chief Administrative officer of the campus involved, the Dean of the School or College, or the head of the Department. The charges shall be in writing, shall be entitled the "complaint", and shall contain a plain and concise statement of the facts constituting the basis of the charges.

b. Service of Complaint. Upon receipt of the complaint, the Chairman of the Committee shall promptly deliver a copy to the defendant or send it by registered mail to his last known place of residence.

c. Answer to Charges. The defendant shall have fourteen days from the date of receipt in which to file an answer in writing with the Committee. The Chairman of the Committee, on written application filed with him, may grant a reasonable extension of time for the filing of an answer.

d. Notice of Hearing. Upon receipt of the answer, or upon failure of the defendant to file an answer, the Committee shall set a date for the hearing. The defendant shall be given, either personally or by mail, at least ten days' notice of the time and place of the hearing.

e. Hearing. At the time and place fixed, the Committee shall hold a hearing on the charges. No member of the Committee shall sit on a matter that involves a member of his division or department. A majority of the Committee shall constitute a quorum for the conduct of the hearing.

Except as hereinafter provided, the hearing shall be conducted according to such rules as the Committee may from time to time establish.

The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any pertinent oral or documentary evidence may be received, but the Committee shall as a matter of policy provide for the exclusion of irrelevant or unduly repetitious

evidence. All findings and recommendations of the Committee shall be supported by and in accordance with substantial evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

The defendant shall be entitled to be present at all sessions of the Committee when evidence is being received and to have with him an adviser of his own choice who may act as counsel. Likewise the person preferring the charges shall be entitled to be present during the progress of the hearing, and to be represented during the hearing by any person of his choice.

A full stenographic record of the hearing shall be made and shall be available only to the parties concerned.

At the conclusion of the hearing, the Committee shall promptly make its findings and recommendations, the original of which together with the stenographic record shall be filed with the President. Copies of the findings and recommendations shall be transmitted to the defendant and to the person preferring the charges. The findings, recommendations and stenographic record of the hearing, original and copies, shall be confidential.

- f. Presidential Review. The President shall review the findings and recommendations of the Committee and confer with the defendant if the latter so requests. If the President's recommendation would result in dismissal or demotion, he shall thereupon make a report to the Board of Regents with respect to the disposition of the case.

III. Faculty Handbook.

The Unified Committee recommends that the Office of the President include in the Orientation Handbook for Faculty Members the Standing Orders of the Board of Regents and resolutions of the Academic Senate governing appointment, promotion, and tenure.

APPENDIX A FACULTY TENURE AT OTHER UNIVERSITIES AND COLLEGES

Replies to the questionnaire prepared by this Committee and sent to 54 colleges and universities in the United States and Canada were received from 52 institutions. In 34 instances replies were received from both the president or his designated representative and from one or more faculty members. In 9 instances replies have not been received from the faculty member to whom the questionnaire was sent. In the case of 9 institutions, the information was received from a faculty representative, but no reply was received from the administration. A joint faculty-administration reply was received from 2 institutions; 2 others failed to reply to the questionnaires sent out although a follow-up letter was dispatched. Replies received, however, are from institutions located in all regions of the United States. State supported universities, large endowed universities, small liberal arts colleges, technical schools, and agricultural and mechanical colleges are represented. A large number of the replies followed the questionnaire outline meticulously. Many wrote general letters and enclosed copies of manuals or other publications.

It is apparent that many institutions have adopted formal regulations concerning both the appointment of faculty to tenure positions and the dismissal or discipline of faculty only within the past 7 or 8 years. In a small number of instances, boards of trustees have adopted or given favorable recognition to the statement of principles of academic freedom and of tenure formulated by the American Association of University Professors and the American Association of Colleges in 1940. In some instances the trustees have adopted other similar statements of policy and principle. Replies to the Committee questionnaire were delayed in a number of instances because discussions were going on during the 1950-1951 college year regarding changes

in rules and policies pertaining to appointment in tenure positions. Cornell was a good example of this, Penn State was another. The reply from the University of Colorado was delayed because of a lengthy hearing in a tenure case that had been conducted before the Faculty Committee on Tenure and Privilege and the President.

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Many institutions that had proceeded for years purely according to custom, or have had only fragmentary written rules, have found it desirable to think out and formulate rules and procedures. In some institutions this came after a distressing incident. Judging from the letters, however, it would appear that most of this tendency to write out statements of policy and specifications of procedure has arisen from an awareness of new problems and a desire to improve faculty personnel policies before "incidents" arose. In the majority of instances, it would appear that the initiative in this work came from the faculty, but in some the administration took the lead, inviting faculty proposals.

Inspection of the materials sent to the Committee makes clear that emphasis has been placed upon (a) definitions of tenure stated in terms of rank (b) statements of policy delimiting the length of the probationary period for instructors and assistant professors (c) statements of principles to govern tenure and academic freedom. In other words, there has been more preoccupation with the appointment and promotion process than with procedural matters involved in dismissals. At the same time it should cause no surprise that the amount of faculty participation in the appointing process, as well as in the disciplinary procedure, varies widely. In general, however, it would appear that there is a strong trend toward increasing the extent of faculty participation in university government. With this trend has come the development of stated procedures, handbooks, manuals, policy statements, formal interpretation of rules. This appears to be more pronounced among the large state universities than among other institutions of higher learning.

From the evidence contained in the replies to our questionnaire, it would appear that the president is the customary channel for making nominations to tenure ranks in the faculty. While the board of trustees or the board of regents has legal authority, it is a commonly accepted practice that the board appoints only upon the recommendation of the president. Most institutions report that appointment to tenure rank is made with advice of the faculty. In the majority of schools this is upon the recommendation of the chairman and senior members of the department. The college dean reviews the appointment and makes a recommendation to the president. Almost no reports were received of appointments having been made to tenure positions without faculty advice; however, some reports of promotion to tenure rank without faculty advice were included. In addition to departmental recommendation some institutions have standing committees of the faculty to review tenure appointment proposals. Some employ ad hoc committees for this. Those having standing committees of one type or another include Pennsylvania, Princeton, North Carolina, Oklahoma, Utah, Montana, Wisconsin, Stanford, Dartmouth, Reed, Pomona, Oregon and Saskatchewan. Those with ad hoc committees of review include Texas, Johns Hopkins, Amherst, Toronto and British Columbia. Few have as extensive a system of standing ad hoc committees of the faculty to advise upon appointments to tenure ranks as that found at the University of California.

Forms and procedures for notifying a faculty member of tenure rank of his appointment vary almost as widely as institutions. As in the case of Harvard, Princeton and Columbia, the notice of appointment is a handsome certificate. Yale sends the appointee a copy of the appropriate minute of the corporation showing the appointment. The majority of institutions indicated that some form letter or notice is used. In a few cases individual letters are sent; in still fewer, notification is made orally by an administrative officer. In most instances, however, where a formal notice is sent, that notice indicates whether the appointment has been made for indefinite tenure or for a specific term. In a relatively few instances, the appropriate by-law or statute defining conditions of faculty tenure is printed on the notice form. Twenty-three answers indicated specifically that faculty are not required to sign the notice of appointment or "contract" form. Ten indicated that a signature or some acknowledgment was required, and the remainder did not specify. Thirty-three institutions indicated

that they do not use annual contracts. The original notice of employment is regarded as sufficient. If there is a change in salary, most institutions have a printed slip or form that is sent indicating the new salary. Some use the same procedure to notify of a promotion, whereas others send a new appointment form or letter indicating the higher rank and the conditions of tenure pertaining to it. Five institutions replied that they used annual contracts, although not all of those required a signature to the form referred to as a contract. The practice followed by the majority appears to regard the appointment of a faculty member with indefinite tenure as having been completed when the board acted upon the nomination of the president which in turn had been supported by faculty advice. The form or letter of notice is regarded as an action "following through" and informing the person of the action and of his status which resulted. The "annual contract" for faculty members presumed to have permanent tenure is recognized only in minority practice.

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Of the institutions studied, 41 have statutes or by-laws governing appointment to tenure positions. In a large number of instances, these rules or statements of policy are printed or mimeographed and distributed (or are available). Forty-seven report that professors have permanent tenure. Some, for example, Columbia and Amherst, indicate that all appointments are "at the pleasure of the Board of Trustees," although in practice those of professorial rank have permanent tenure. Some others, for example, Brown and Penn State, indicate that professors had permanent tenure if specifically recommended and voted for the individual. Fifteen institutions report that they have a "probationary" period for professors appointed from other institutions. Reappointment carries permanent tenure. These initial term appointments range from 1 to 5 years, with 3 years most common.

Forty-one institutions report that associate professors have permanent tenure. Twenty-two have "probationary" terms for those appointed to the rank from other institutions. Some, for example, Yale, give permanent tenure to this rank only by specific vote in individual instances, but grant permanent tenure to professors generally.

A most commonly stated rule recognizes a probationary period of 6 to 8 years for assistant professors. Few schools grant tenure automatically at the end of that time. Only 3 or 4 schools reported that permanent tenure is given regularly to assistant professors under specific rule or definite practice. Most regulations reported in this survey provide that assistant professors shall be appointed for 3-year terms. Renewal of appointment beyond the probationary period indicated is stated as establishing permanent tenure for the individual. In most instances, the rule is that the department and the administration shall review the record at the end of 5 to 6 years and shall recommend either promotion or a 1-year terminal contract. In some instances the time spent in other institutions is credited formally toward the completion of the probationary period. For example, Ohio State grants an assistant professor permanent tenure after three years if appointed from another institution where service has been at that rank. New York University gives recognition for service in other institutions in determining the number of years to be served before permanent tenure is acquired at any rank.

Fewer institutions reported specific legislation or by-laws regarding dismissal procedure than reported specific procedures for appointment to tenure positions. Thirty-six have some statement regarding these procedures. Twenty of this number specify certain grounds for dismissal. Included among those grounds are: felony or deliberate breach of law or established code of moral conduct, gross immorality, incompetence and neglect of duty. Several institutions, both publicly supported and endowed, include financial exigencies of institutions as one reason for possible release of faculty members on permanent tenure. In a few instances, for example, Kansas and Oklahoma, state law limits all appointments to one year on the theory that the state cannot be bound to commitments or expenditures in the future. Similar legislation applies to faculty in certain schools and colleges at Cornell. However, the University Regents there have adopted a statement of policy assuring faculty members with permanent tenure in both the endowed and the state-supported colleges of continuance unless state funds are drastically reduced in the future.

Several institutions that have formal statements regarding dismissal indicate only that a faculty member on tenure may be removed for "cause." Most of the statements specify a short list of causes for which dismissal may be made.

Twenty-five of the institutions studied specify that a dismissed faculty member shall be entitled to a hearing. Three or four provide specifically that a faculty member may be suspended by the president or dean pending a hearing. Eighteen provide for some type of standing committee of the faculty to hear cases involving a member with indefinite tenure or a faculty member who has been dismissed before the end of his normal term. Often these committees are committees of general reference that advise the administration on appointments and other matters of university and faculty welfare. The others provide for ad hoc committees, usually selected by the president. In some, provision is made for hearing before an ad hoc committee composed of 1 or 2 faculty members selected by the accused faculty member, an equal number selected either by the president or by the chairman of the board, and an additional member chosen by the other members of the committee.

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Colorado, Texas, Washington and Minnesota Universities have standing committees selected by the faculty to hold hearings on cases involving faculty tenure. Minnesota's committee is called the "Judicial Committee." A second committee composed of faculty representatives and administrative officers and chaired by the vice-president meets periodically to interpret tenure rules and legislation.

Pennsylvania, Cal Tech, Illinois, Indiana, Louisiana State, and Texas A and M refer in their by-laws to dismissal hearings before a committee of the governing board. In some instances, the faculty committee and the trustees' committee are permitted to sit jointly, or the latter is directed to confer with the faculty committee.

Princeton, Stanford, Cornell, Penn State, Rutgers, Texas, Oklahoma, Utah, Colorado and Washington indicated more or less specifically that the record of the hearing before the faculty committee, together with the recommendations of that committee, shall be transmitted to the governing board. In several such rules, it is not clear whether the president is simply the channel of communication. His responsibilities for making a finding and recommendation to the board are not specified. In institutions such as Harvard, Yale, Princeton, Chicago and Stanford, however, it is very clear that the president has full responsibility for advising the board. The rules of the Stanford Trustees specify that individual Trustees may not interfere in a dismissal case. The President is directed to lay the record and recommendations before an open meeting of the Trustees. A majority vote of those Trustees present decides.

Only a few of the most recently drawn regulations specify procedures for notifying a dismissed faculty member of the charges against him. Several replies to the questionnaire stated that so few dismissal cases occurred in that institution that procedures had not been formalized; however, that it was assumed to be the responsibility of the department chairman to inform the dismissed member of the charges against him. In others, the dean of the appropriate college or the president was regarded as responsible for this action. In those institutions where the regulations provide for a review of the record by the governing board, reference is made more or less specifically to the opportunity of the accused to make such statements as he desires in his defense, and that those statements will be included in the record and made available to the president and the board of trustees.

Penn State, Texas, Cornell, Oklahoma, Colorado, Michigan, Washington, and Nebraska indicate that stenographic reports are required of hearings.

Missouri, Utah, Illinois, and Stanford state that a summary or "record" of proceedings shall be kept and shall be forwarded to the governing body. Others do not specify.

Eighteen of the institutions studied specify in some manner that a statement of accusation shall be furnished the accused. Not all specified that it shall be in writing. Utah requires that the President shall give a full

statement to the Faculty Council as well as to the individual. Pennsylvania states that the accused shall be informed in writing within 10 days after being suspended from employment. Several institutions provide that a faculty member shall be dismissed "immediately" in a case involving moral turpitude.

A small number of the university regulations provide that except in cases where moral turpitude is proven, or in case of treason, compensation shall be paid the dismissed faculty member for one year beyond the date of dismissal.

From the replies received, it appears that 3 institutions have some type of oath prescribed by the governing board. Sixteen reported that state oath requirements for teachers applied to their faculty. In two instances, a state law that had been in effect for several years had been interpreted recently to apply to the college or university faculty for the first time. The information is not entirely complete because some replies indicated that the Legislature was contemplating an oath requirement, but that the outcome was not known at the time of reply. Almost all state oaths were stated in terms of supporting the constitution of the state and nation and of upholding the established form of government. The new state oath in Oklahoma goes much beyond those requirements, however, Faculty members in the State of Washington are required by law to subscribe to two oaths.

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Most replies to the questionnaire stated that there had been no dismissals of tenure faculty members for many years. Therefore, no answer could be given to the questions regarding practice. In some instances, it was reported that the faculty member had resigned and had not requested a hearing; a few instances reported removals for mental unbalance, and in almost no such instance was a faculty committee consulted. Missouri replied that it was still on the AAUP disapproved list for having dismissed a tenure faculty member some years ago. However, the University Board has adopted a policy within the past two years concerning academic freedom and tenure that is based upon the AAUP policy statement of 1940.

The University of Washington sent a digest of the hearings before a faculty committee of five faculty members charged with membership in the Communist Party. The committee divided in its findings and recommendations. Ultimately two of the five men were dismissed by the board.

The University of Colorado, likewise, sent a copy of the report and recommendations of the Committee on Privilege and Tenure and a statement by the President regarding a hearing on a case involving a faculty member who had been accused of being a member of the Communist Party and of having concealed this membership when employed by the University. The committee presented a unanimous finding that the allegations mentioned above were contrary to fact and that other allegations were insufficient to warrant dismissal. Therefore the committee recommended that the faculty member be retained. The governing board accepted the recommendations of the faculty committee.

Adjourned.

Attest:

THOMAS B. STEEL

Secretary

RECORD OF COMMUNICATIONS

Date	To Whom	Concerning
1/24/ 52	President R.G. Sproul	Copy of these minutes

Date	To Whom	Concerning
	Professor S. J. Wanous, Secretary, Academic Senate, Southern Section	