

APPROVED
MINUTES OF MEETING¹
BERKELEY DIVISION OF THE ACADEMIC SENATE
November 8, 2005

The fall 2005 meeting of the Berkeley Division was called to order at 4:18 p.m. on Tuesday, November 8, 2005, in Sibley Auditorium, Bechtel Engineering Center, pursuant to call. Professor Alice Agogino, chair of the Berkeley Division, presided, and called the meeting to order. Chair Agogino noted that the meeting length had been shortened by a half hour to accommodate Senate members with childcare responsibilities.

I. Minutes of Meeting

The draft minutes of the April 25, 2005 Division meeting were presented for approval.

ACTION: The minutes of the meeting were approved as submitted, with no objection.

II. Announcements by the President

UC President Robert C. Dynes is a former chancellor of UC San Diego, and was named president of the UC system in 2003. President Dynes declined to comment on the recent resignation of Provost M.R.C. Greenwood. He spoke on his view of the four highest priorities for the University system.

- UC budget: The 2006/07 budget proposal to be presented to the Regents includes the following highlights.
 - Funding to commence a five-year plan of incremental salary increases for faculty and staff.
 - Funding for enrollment growth of 5,000 students systemwide.
 - Multi-year funding to restore the faculty/staff ratio to its former level before the budget cuts of the past several years.
 - Funding for financial aid initiatives, including increased return to aid.
 - A request to make permanent the state funding for academic preparation.

The proposal includes the fee increases for undergraduate, graduate, and professional school students as agreed upon in the Compact with the governor.

- Long range planning for UC: A planning group convened last spring has been asked to envision the State of California and a premiere university in 2025. They are asked to identify the steps that UC must take to reach those goals.
- Faculty diversity task force: The President has formed the President's Task Force on Faculty Diversity to examine the current state of faculty diversity on each campus, make comparisons with similar institutions, identify areas of focus, and determine next steps. A final report will be presented to the

¹ Tapes of Divisional Meetings are available in the Academic Senate Office, 320 Stephens Hall.

- President and the chancellors in mid-January, and a systemwide summit is planned for spring 2006. Comment may be made on the task force website.
- 10+10 Universities: President Dynes visited China and is making efforts to formalize UC's collaborations with a group of premier Chinese institutions; he calls this the 10+10. UC will benefit from the intellectual exchange. UC's governance and structure, and the California Master Plan for Education can serve as a model for these Chinese institutions, which aspire to grow and expand.

President Dynes responded to a few audience questions.

- He clarified that members of the Academia Sinica are involved in the 10+10 collaborations.
- President Dynes was asked about UC's response to the report, *The Decline of UC as a Great International University*. UC is focused on the decline in funding for graduate programs. (It appears that funding, rather than visas, is a greater roadblock for Chinese graduate students). UC has included a proposal in the 2006-07 budget to allow residency status for international students after advancement to candidacy; the President is confident this will be approved.
- President Dynes elaborated further on the faculty diversity study timeline.

III. Other Announcements

A. Chancellor Robert J. Birgeneau

Chancellor Birgeneau welcomed new Senate members, then summarized key issues for the faculty and administration.

- Faculty appointments: The Chancellor announced a net increase of about 18 FTE faculty appointments since last year.
- Compensation: Some improvement in faculty compensation was possible with funding from the student fee increase. A strategic decision was made to hire fewer faculty at a more competitive rate of compensation. The administration is following up on the report of the task force on faculty compensation.
- Capital campaign: A financial model for endowed chairs is being developed.
- Fundraising and privatization: Fundraising efforts have been very successful under the direction of Vice Chancellor for University Relations Donald McQuade and Associate Vice Chancellor for University Relations Scott Bidy. The Chancellor noted that private donations must be consistent with the principles of academic freedom and the scope of UC's public status, or they would not be accepted.
- Renovation of the Memorial Stadium: A plan for the southeast quadrant has been developed and will soon be made public. The Chancellor clarified that athletics improvements will be funded by donations, and not at the expense of the academic programs. The plan includes facilities shared with the business and law schools.
- Interdisciplinary initiatives: Three initiatives have been established this year – a stem cell initiative; the Berkeley Diversity Research Initiative (co-chaired by Division Chair Alice Agogino and Dean of Social Sciences George Breslauer); and an initiative targeting the alleviation of global poverty. The Chancellor emphasized his feeling that Berkeley should take a leadership role, particularly on the latter two issues.
- Senior administration leadership: An advisory committee, including Senate representation, has been formed to identify a successor for the

position of executive vice chancellor and provost. UC experience is highly desirable.

The Chancellor responded to some questions from the audience.

- In solicitation of alumni donors, the capital campaign promotes Berkeley's unique stature as a leading public research institution. Individual campus units will be able to identify their own priorities, and donor interests will also be taken into account. The Chancellor emphasized the need to assist economic accessibility for undergraduates by funding financial aid.
- Funding of endowments is favored for the long-term benefit, over funding of immediate needs.

Vice Chancellor McQuade responded to a question regarding temporary gift tax relief instituted in the wake of the Hurricane Katrina disaster.

Chair Agogino noted that the Chancellor will speak on "Passion for Public Education" at the Haas School of Business the following day.

B. Chair of the Berkeley Division, Alice Agogino

- Committee updates: Chair Agogino briefly reviewed the standing committees of the Division and noted that articles highlighting Senate activities are planned in the *Berkeleyan*.
- Clark Kerr Award: The Division will present the Clark Kerr Award to Jack Peltason, 16th president of the University of California, at a ceremony following the meeting. President Peltason was recognized in the audience.
- Shared governance: Chair Agogino reviewed recent collaborations between the Senate and the administration.
 - Faculty compensation: The faculty compensation task force's report is under review and a report from the provost is expected in the spring.
 - Streamlining personnel processes: A cumulative online database for biobibliographic data is under development that will eventually replace the 'biobib'.
 - Berkeley Diversity Research Initiative: An open session will be held in early December, by which time the Request for Proposals should be released.
- Disaster Preparedness Work Group: The recent hurricanes have highlighted the importance of disaster recovery planning. The decentralized character of research presents special problems for the campus. Faculty expertise will be needed in recovery efforts. An update by the Senate work group on disaster planning will be made in the spring.
- Faculty art: A new display of faculty art in the Division office was announced, prepared in coordination with the Department of Art Practice.

C. ASUC Academic Affairs Vice President Jason Dixon

Vice President for Academic Affairs Jason Dixon discussed the students' support for the redevelopment of Lower Sproul Plaza, which could address serious seismic and safety issues and make better use of the area. Lower Sproul has great potential as a central hub of student services which are now located around the campus. A permanent location for the Multicultural

Center is overdue. Redevelopment would raise the quality of student life and contribute to the strength of the university. The ASUC asks for the Senate's support in working with the administration to make this project a priority for the campus.

IV. Special Orders-Consent Calendar

*For proposed legislative amendments, **additions** to the current text are noted by an underline; **deletions** to the current text are noted by a strikethrough line*

A. Proposed amendment of Berkeley Division Bylaw 17.B, duties of the Committee on Committees

By request, Item A, Proposed amendment of Berkeley Division Bylaw 17.B, was moved from the Consent Calendar to New Business for discussion.

B. Proposed amendment of Berkeley Division Bylaw 37.B, duties of Graduate Council

The Graduate Council (GC) is unique among the committees of the Berkeley Division in that it has bylaws that supplement its bylaw in the Berkeley Division Manual. These supplemental bylaws were originally adopted in 1961 and establish standing committees of the Graduate Council to carry out work related to graduate education. The members of these standing committees are mostly not GC members and do not report on any regular basis to the GC. Since these bylaws were last updated in 1995, the previous GC chair and Senate staff undertook a revision of these bylaws. The GC chair consulted with the Committee on Rules and Elections (R&E) regarding the proposed revisions. R&E suggested an amendment to the GC's Divisional Bylaw to allow for the appointment of non-GC members to these standing committees. GC members unanimously endorsed the proposed amendment. Divisional Council approved it for the consent calendar.

37. GRADUATE COUNCIL

B. Duties

- The Council exercises administrative and coordinating functions in the Graduate Division at Berkeley in accordance with Senate By-Law 330.
- The Council may delegate its authority for the approval of graduate courses, numbered 200-299, to the Divisional Committee on Courses of Instruction. (EN 4.22.03)
- The Graduate Council may adopt bylaws setting out the membership and procedures for appointment of its standing committees.

C. Proposed enactment of Berkeley Division Bylaw 91, School of Public Health

The Faculty Council of the School of Public Health (SPH) requests the proposed withdrawal of Senate Bylaw (SB) 235, which establishes the SPH as a faculty directly subject to the jurisdiction of the Assembly of the Academic Senate. Given that the SPH is no longer jointly established with UC San Francisco, the SPH wishes to disestablish itself as a faculty of the Assembly and establish itself

as a faculty of the Berkeley Division. The proposed bylaw, coupled with the withdrawal of Senate Bylaw 235 effectuates the change. It was reviewed by the Committee on Rules and Elections, and approved for the consent calendar by Divisional Council.

91. SCHOOL OF PUBLIC HEALTH

In addition to ex officio members, Bylaw 64, members of this Faculty are:

1. All members of the Division who are members of the School of Public Health.
2. The Chancellor at UC San Francisco.

D. Proposed withdrawal of Appendix II of the Manual of the Berkeley Division

Because the disciplinary procedures laid out in Appendix II of the Manual of the Berkeley Division have been entirely superseded by the current provisions of APM 015, (Faculty Code of Conduct), APM 016 (University Policy on Faculty Conduct and the Administration of Discipline), and the hearing procedures of the Divisional Committees on Privilege and Tenure (Senate Bylaw 336), the committee on Rules and Elections has proposed removing all the now non-functional text of Appendix II, leaving only a small introduction to deal with cross-references. It was reviewed by the Committee on Privilege and Tenure, and approved for the consent calendar by Divisional Council.

APPENDIX II OF THE MANUAL OF THE BERKELEY DIVISION

**PROFESSIONAL CONDUCT AND FACULTY DISCIPLINE
And DISCIPLINARY PROCEDURES FOR THE BERKELEY CAMPUS**

~~Academic Senate By-law 336 and Appendix IV of the *Manual of the Academic Senate* The following Codes, approved by the Berkeley Division of the Academic Senate on February 11, 1971, are the statements of the Berkeley Division for the guidance of its members with respect to conduct and disciplinary procedures. It should be noted that Regental and other University policies also affect the subject matter of these Codes.~~

~~The Assembly of the Academic Senate approved a statewide Code of Professional Rights, Responsibilities and Conduct of University Faculty, and University Disciplinary Procedures on June 15, 1971. This Code is printed as Appendix V to the *Manual of the Academic Senate*.~~

R. A. COCKRELL, *Secretary*

February 7, 1973

Last revision 4/4/94

PROFESSIONAL CONDUCT AND FACULTY DISCIPLINE

Title 1.

The central function of a university, as an institution of higher education, is to provide an environment conducive to extending, sharing and critically examining knowledge, wisdom and values. This is a vital function in a free society, and to help discharge it effectively, the faculty member of the University must himself be free to seek and teach the truth as he sees it. This is the basis on which his privileges and protections—including the protection of tenure—rest. It also imposes on him certain professional responsibilities to his students, his colleagues, and the institution of which he is a member. Central guides for professional conduct are contained in the following 1966 Statement of Professional Ethics issued by the American Association of University Professors.

I. The professor, guided by a deep conviction of the worth and dignity of the advancement of knowledge, recognizes the special responsibilities placed upon him. His primary responsibility to his subject is to seek and to state the truth as he sees it. To this end he devotes his energies to developing and improving his scholarly competence. He accepts the obligation to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge. He practices intellectual honesty. Although he may follow subsidiary interests, these interests must never seriously hamper or compromise his freedom of inquiry.

II. As a teacher, the professor encourages the free pursuit of learning in his students. He holds before them the best scholarly standards of his discipline. He demonstrates respect for the student as an individual, and adheres to his proper role as intellectual guide and counselor. He makes every reasonable effort to foster honest academic conduct and to assure that his evaluation of students reflects their true merit. He respects the confidential nature of the relationship between professor and student. He avoids any exploitation of students for his private advantage and acknowledges significant assistance from them. He protects their academic freedom.

III. As a colleague, the professor has obligations that derive from common membership in the community of scholars. He respects and defends the free inquiry of his associates. In the exchange of criticism and ideas he shows due respect for the opinions of others. He acknowledges his academic debts and strives to be objective in his professional judgment of colleagues. He accepts his share of faculty responsibilities for the governance of his institution.

IV. As a member of his institution, the professor seeks above all to be an effective teacher and scholar. Although he observes the stated regulations of the institution, provided they do not contravene academic freedom, he

~~maintains his right to criticize and seek revision. He determines the amount and character of the work he does outside his institution with due regard to his paramount responsibilities within it. When considering the interruption or termination of his service, he recognizes the effect of his decision upon the program of the institution and gives due notice of his intentions.~~

~~V. As a member of his community, the professor has the rights and obligations of any citizen. He measures the urgency of these obligations in the light of his responsibilities to his subject, to his students, to his profession, and to his institution. When he speaks or acts as a private person he avoids creating the impression that he speaks or acts for his college or university. As a citizen engaged in a profession that depends upon freedom for its health and integrity, the professor has a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.~~

~~Conduct which is responsive to these guidelines obviously furnishes no occasion for discipline, but not every departure from these ideal specifications exposes a faculty member to disciplinary sanctions as distinct from other expressions of disapproval by colleagues. *The general principle governing discipline is that it may be imposed on a faculty member for conduct, not justified by the foregoing guides, which significantly impairs the University's central function as an institution of higher education.*~~

Title II

~~In accordance with the general principle governing discipline, the following categories indicate the kinds of conduct which may be open to University discipline. They should not, however, be construed as an exhaustive list of acts which warrant discipline.~~

~~A. — Failure to meet scholarly responsibilities.~~

- ~~(1) Intentional violation of canons of intellectual honesty, such as plagiarism or other intentional misappropriation of the work of others.~~
- ~~(2) Discrimination, in the exercise of the responsibilities of a faculty member, on political grounds, or for reasons of race, religion, sex or ethnic origin.~~
- ~~(3) Failure to meet the responsibilities of instruction, including: (a) persistent intrusion of material which has no relation to the subject of the course; (b) arbitrary denial of access to instruction; or (c) use of arbitrary criteria in evaluation of student work.~~
- ~~(4) Use of the position or powers of a faculty member to coerce the judgment or conscience of a student or to cause harm to a student for arbitrary or personal reasons.~~
- ~~(5) Failure to disqualify oneself from exercising professional responsibility over a student in cases where a conflict of interest exists, particularly if the conflict of interest~~

~~involves a sexual or familial relationship between the faculty member and the student. (En. 4/4/94)~~

~~B. Breaches of responsibility within the University community.~~

- ~~(1) Intentional disruption of functions sponsored or authorized by the University.~~
- ~~(2) Intentional breach of University rules, which is either persistent or which significantly impairs the central function of the University as an institution of higher education; or incitement of others to violate University rules when such incitement creates a clear and present danger that such violation will occur.~~
- ~~(3) Unauthorized utilization of University resources or facilities on a significant scale for pecuniary gain or for political or sectarian activity.~~
- ~~(4) Misrepresentation of personal views as a statement of position of the University or an agency of the University; mere identification of a faculty member in a public forum as a member of the University or of its agencies shall not constitute misrepresentation.~~
- ~~(5) Conviction of a crime based upon an act which demonstrates unfitness to be a member of the faculty.~~

~~C. Nothing in this Title II is intended to or shall be construed as reflecting a position by the Division or its members on the propriety or impropriety of a strike by members of the faculty.~~

~~Title III.~~

~~The authority to discipline faculty members in appropriate cases derives from the mutual recognition by the faculty and administration of the University's mission as an institution of higher learning. This includes a responsibility of the University to protect and encourage the faculty in contributing to teaching, learning, research and public service and implies that the function of discipline is to preserve conditions hospitable to pursuit of the administration's central tasks. Such conditions, as they relate to the faculty, include:~~

- ~~(1) Free inquiry and exchange of ideas.~~
- ~~(2) The right to present controversial material relevant to a course of instruction.~~
- ~~(3) Enjoyment of constitutionally protected political or religious expression.~~
- ~~(4) Participation in the governance of the University, including
 - ~~(a) approval of course content and manner of instruction;~~
 - ~~(b) establishment of requirements for matriculation and for degrees;~~~~

- ~~(c) appointment and promotion of faculty and officers of the administration, including chairmen of departments;~~
 - ~~(d) discipline, including dismissal, of members of the faculty, and the formulation of rules and procedures for discipline of students;~~
 - ~~(e) establishment of norms for teaching responsibilities and for evaluation of both faculty and student achievement; and~~
 - ~~(f) determination of the forms of departmental governance.~~
- ~~(5) The right to be judged by one's colleagues and in accordance with fair procedures, in matters of promotion, tenure and discipline, on the basis of the faculty member's professional qualifications and professional conduct, excluding any political or religious test or mere membership in any organization.~~

~~In the administration of discipline, as in the governance of the University generally, the University must seek to protect and foster these conditions.~~

~~DISCIPLINARY PROCEDURES FOR THE BERKELEY CAMPUS~~

~~*Title I.*~~

- ~~1. (a) The following procedures shall govern the discipline of members of the faculty and, except as herein otherwise provided, no discipline of any type shall be imposed on a member of the faculty except in accordance with these procedures.~~
- ~~(b) Communications to faculty members by department chairmen or comparable officers of administration, not authorized to impose discipline, shall not be subject to these procedures.~~
- ~~(c) These procedures are not applicable to communications by administrators at a level higher than department chairmen which are not intended to be disciplinary in nature; a faculty member who receives a communication from such an administrator which has not gone through these procedures shall not be regarded, for any purpose, as having been disciplined by such communication.~~
- ~~(d) Actions which do not constitute discipline, e.g., failure to reappoint at the expiration of a term appointment, or which are not subject to these procedures may nevertheless provide the occasion for a claim of violation of privilege or tenure under Senate By-Law 112 (d). The procedures set forth herein are not intended either to enlarge or diminish the right to a hearing in such cases. In the event a hearing is held in such cases, however, the provisions of Titles VII, VIII, and IX below shall be applicable.~~

~~*Title II.*~~

2. ~~(a) There shall be a Panel of Counselors, consisting of a chairman and four to seven members appointed by the Committee on Committees and approved by the Chancellor. The chairman shall, if feasible, be a former member of the Committee on Privilege and Tenure.~~
- ~~(b) Members of the Panel of Counselors shall serve as mediators in disciplinary cases as set forth in paragraphs 5 and 6 below.~~
- ~~(c) Members of the Panel of Counselors may also be requested by the Committee on Privilege and Tenure to make preliminary investigations and reports, and to act as hearing officers in non-disciplinary cases under the provisions of Senate By-Law 112 (d).~~
- ~~(d) Members of the Panel of Counselors may also be requested by the Committee on Privilege and Tenure to assist a complainant in a grievance case or a defendant in a disciplinary case, when the Committee determines that there is an urgent need for such experienced assistance. A member who has served as a mediator or hearing officer in a case is disqualified from assisting a complainant or defendant in the same case. A member who has provided assistance to a complainant or defendant is disqualified from serving in other capacities in the same case. (En. 10/22/79)~~

Title III.

3. ~~Designation of an administrative officer to investigate allegations and process formal charges. The Chancellor shall designate an administrative officer to investigate allegations, wherever originating, of faculty misconduct and to process charges against faculty members in accordance with the provisions herein. Except as provided in paragraph 7, the Chancellor shall not participate in such investigations or in the processing of charges against a faculty member.~~
4. ~~Conference with the faculty member. If, following his preliminary investigation, the administrative officer intends to recommend to the Chancellor that a complaint be filed against the faculty member, he shall, before making such recommendation, notify the faculty member in writing of such intention, and invite the faculty member to reply to the allegations against him in a personal conference. The faculty member and the administrative officer shall each be entitled to bring a representative of his choice to such a conference.~~
5. ~~Appointment of a counselor. Following receipt of such a notification, either party may request the chairman of the Panel of Counselors to appoint a counselor from among the Panel to aid in exploring the facts and the issues and resolving differences between the parties through informal mediation. If the chairman determines that the other party concurs in the request, he shall make such an appointment.~~

6. — ~~Confidentiality of counselor's mediation.~~ In order to promote a free exchange of views, all aspects of the counselor's mediation shall be strictly confidential. Without limiting the foregoing:
- (a) ~~The counselor shall not disclose to either party any statements made to him by the other party without that other party's explicit consent; shall not make known any observations, conclusions, or recommendations he may have concerning the case to any person except the parties; and shall not discuss any aspect of the case with the chairman or any member of the Committee on Privilege and Tenure or testify before said Committee; and~~
 - (b) ~~The parties and their representatives shall not directly or indirectly make known to any other person any observations, conclusions, or recommendations submitted to any of them by the counselor.~~

Title IV.

7. — ~~Recommendation to the Chancellor.~~ If the administrative officer and the faculty member arrive at a mutually agreeable settlement, the administrative officer shall report that fact to the Chancellor, and shall recommend that the matter be disposed of in accordance therewith. If discipline is to be imposed upon the faculty member pursuant to the settlement, or if there is no settlement, but the faculty member has informed the Chancellor that he does not intend to contest the proposed discipline the Chancellor may thereupon impose such discipline. If the matter is not thus resolved, the administrative officer shall recommend to the Chancellor whether a complaint should be filed with the Committee on Privilege and Tenure (hereafter referred to as the "Committee"). The Chancellor shall, within 14 days of receipt of such recommendation, determine whether such a complaint shall be filed; if one is, he shall have no further contact with the matter (unless he appears as a witness) until the Committee has transmitted its findings and conclusions to him.
8. — ~~Complaint.~~ If the Chancellor determines that a complaint should be filed, the administrative officer shall prepare the complaint, which shall contain a plain and concise statement of the facts and specify the discipline proposed. The complaint shall then be filed with the Committee.
9. — ~~Service of complaint.~~ Upon receipt of the complaint, the chairman of the Committee shall promptly deliver a copy to the faculty member or send it by registered mail to his last known place of residence.

Title V.

~~10. Answer and Notice of Hearing.~~

- (a) ~~In any case in which the discipline proposed in the complaint is dismissal, demotion or suspension, the faculty member shall have 14 days from the date of receipt of the complaint in which to file~~

an answer in writing with the Committee, setting forth his position with respect to the conduct alleged and the discipline proposed. Upon receipt of the answer, or upon failure of the faculty member to file an answer, the Committee shall set a date for the hearing upon at least 10 days' notice, as required by Senate By Law 112 (C) (2).

(b) In all other cases, the time for filing an answer shall be 7 days from the receipt of the complaint. Upon receipt of the answer the Committee shall set a date for a hearing upon at least seven days' notice. If no answer is filed within such period, the Committee may, in its discretion, either set a date for a hearing as aforesaid or report to the administrative officer who filed the complaint, the faculty member and the Chancellor, that no answer has been filed, in which case the Chancellor may thereupon impose the discipline proposed in the complaint.

11. *Method of Notice; Extensions of Time.* Notices under paragraph 10 shall be given either personally or by registered mail. The chairman of the Committee, on written application filed with him, may grant a reasonable extension of time for the filing of an answer in any case.

Title VI.

12. *Prehearing conference.* Prior to the hearing, and with due notice, the Committee may, on the request of a party or on its own initiative, conduct a prehearing conference, at which time it may require the parties to define the issues, to outline their arguments, and to designate the witnesses they intend to call.

13. *Sufficiency of complaint or defense.* If it appears to the Committee that there is a substantial question as to the sufficiency of the complaint, or the sufficiency of any issue raised by the faculty member as a defense, the Committee may entertain formal argument on such question prior to the hearing.

14. *Hearings.* Hearings before the Committee shall be conducted under the rules set forth in Academic Senate By Law 112 (C) (2) (e):

"(e) *Hearing.* At the time and place fixed, the committee shall hold a hearing on the charges. The committee shall consider only such charges as are set forth in the complaint. No member of the committee shall sit on a matter that involves a member of his department or equivalent unit. 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 but it need not be conducted according to technical rules relating to evidence and witnesses. Any oral or documentary evidence may be received if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, but the committee shall as a matter of policy provide for the exclusion of irrelevant or unduly repetitious evidence. All findings, conclusions, and recommendations of the committee

shall be supported and in accordance with substantial evidence. Mere uncorroborated hearsay, however, shall not constitute substantial evidence. No evidence other than that presented in the Complaint and Hearing shall be considered by the committee or have weight in the proceedings, except that notice may be taken of any judicially noticeable fact. Parties present at the hearing shall be informed of matters thus noticed; and every party shall be given reasonable opportunity on request to refute such matters. 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 a representative of his own choice who may act as counsel. Likewise the person preferring the charges shall be entitled to be present when evidence is being received and to be represented during the hearing by any person of his choice. A full record of the hearing, by recording tape or otherwise, shall be made and upon request a transcript thereof shall be furnished to the parties concerned."

Provision of a copy of a tape recording of the hearing shall be deemed to constitute compliance with the foregoing requirement concerning a transcript.

15. Committee assistance in obtaining testimony. If a member of the faculty, administration, student body, or staff declines to accept the request of a party to testify as a witness before the Committee, such party may apply to the Committee for assistance. If the Committee determines that the testimony of the prospective witness will relate to facts which are material to the issues, and not reliably obtainable in any other way, the Committee may request him to testify before it.

Title VII

16. Findings. The Committee shall make findings as to all of the relevant facts. On all disputed questions of fact, the findings shall be based on the evidence taken at the hearing and shall be made on the principle that the party making an allegation which is disputed shall have the burden of proving it by a preponderance of the evidence.

17. Conclusions. The Committee shall also determine whether, upon the basis of the facts found, there is cause for discipline.

18. Appropriate discipline. If the Committee determines that cause for discipline exists, then it shall also determine what discipline is appropriate in light of the gravity of the offense and all of the facts and circumstances, including the discipline proposed in the complaint; except that if the discipline proposed in the complaint is other than dismissal, demotion, or suspension, and the

~~Committee finds that there is cause for discipline, the proposed discipline shall be accepted by the Committee unless it concludes that such discipline is unreasonable.~~

~~19. Panels. In any case in which dismissal, demotion, or suspension is not proposed in the complaint, the Committee may hear the case by a panel consisting of the chairman and two members selected by the Committee on the principle that all members shall serve on an equal number of panels in an academic year and, within that principle selected by lot. The panel's findings and conclusions shall be submitted to the full Committee before being issued. The full Committee shall have no authority to revise the findings of fact made by the panel but may revise the panel's conclusions, provided that the Committee shall not alter the result initially reached by the panel without having first entertained argument by the parties. A panel's determinations, not revised by the full Committee, shall be deemed the findings and conclusions of the Committee for purposes of these procedures.~~

~~20. Transmittal of findings and conclusions. The Committee's findings and conclusions shall be transmitted in writing to the administrative officer who filed the complaint, to the faculty member, and to the Chancellor. If the complaint proposed dismissal, demotion, or suspension, a copy shall also be transmitted to the President of the University and the Chairman of the University-wide Committee on Privilege and Tenure, as required by Senate By-Law 112 (C) (2) (f)~~

Title VIII.

~~21. (a) The administrative officer and the faculty member may each appeal the Committee's determination to the Chancellor within seven days from receipt thereof. After such appeal has been heard, or if there is no appeal, after the expiration of such seven-day period, the Chancellor may impose the discipline specified by the Committee. If in the opinion of the Chancellor there are serious and compelling reasons which require a result different from that reached by the Committee, he shall prepare a written statement setting forth such reasons, and his specific objections, and return the case, with such statement, to the Committee, transmitting a copy of the statement to the persons named in paragraph 20. Within seven days after receipt of such statement, the Committee shall reconsider the case, taking into account the reasons and objections of the Chancellor. On such reconsideration, the Committee shall entertain argument by the parties, either orally or in writing, on any issues not fully presented at the first hearing. It shall not, however, revise its findings of fact except insofar as it determines that the reasons and objections of the Chancellor require additional findings of fact on matters not fully considered at the first hearing, in which case the Committee shall receive evidence with respect to such matters. The Committee shall then submit its findings and conclusions on reconsideration, which will be distributed in the same manner as the original findings and conclusions. The Chancellor shall then~~

~~make his final decision, taking into account the Committee's action on reconsideration.~~

~~(b) A comparable procedure shall be followed in any case in which the discipline in question can be imposed only by The Regents on recommendation of the President.~~

~~Title IX.~~

~~22. (a) Until the proceedings have been completed, public statements about the case by either the faculty member or administrative officers should be avoided so far as possible except for such simple announcements as may be required, covering the time of the hearing and similar matters, except that the faculty member may release, without comment, a copy of the complaint against him.~~

~~(b) Hearings shall not be open to the public, but the Committee may, in its discretion, permit the administrative officer and the faculty member each to designate a limited number of observers, who shall be subject to the obligation of confidentiality described herein.~~

~~(c) The Committee's findings and conclusions and the record of the hearing shall remain confidential after the proceedings have been completed, except where the faculty member authorizes their release.~~

~~(d) Public statements about the case by any party or his representatives or observers shall be deemed to constitute a waiver of the right to confidentiality as to those matters to which such statement relates.~~

~~Title X.~~

~~23. The Divisional Committee on Privilege and Tenure shall compile annually and submit to the Division a report describing its rulings and decisions during the previous year, and the grounds therefor. This report shall not name the faculty members involved in any case or provide any more identifying detail than is required to fully inform the Division of the nature of the Committee's actions and rulings.~~

~~Title XI.~~

~~24. Notwithstanding the foregoing, the Chancellor may suspend a member of the faculty on an interim basis with full pay without having first pursued the procedures provided herein, if in the judgment of the Chancellor there is a clear probability that the faculty member's continued assignment to his regular duties will be immediately and seriously harmful to the University community, provided, that in any such case (i) the Chancellor shall embody such judgment, and the reasons therefore, in a written statement to the faculty member; (ii) the suspension shall terminate unless the administrative officer files a complaint against the faculty member within five days after~~

~~the suspension becomes effective; and (iii) the Committee on Privilege and Tenure shall begin hearings on the case within seven days after the complaint is filed, unless the faculty members asks for an extension; and shall insure that the hearings are completed expeditiously; and shall transmit its findings and conclusions within seven days after the hearings are concluded.~~

ACTION: Items B, C and D on the Consent Calendar were approved without objection.

V. Reports of Special Committees (None)

VI. Reports of Standing Committees

A. Committee on Admissions, Enrollment, and Preparatory Education

Professor Robert Jacobsen, chair of the Committee on Admissions, Enrollment, and Preparatory Education (AEPE), summarized the double read process used in comprehensive review last year. He recognized the campus admissions officials, staff and the approximately 100 readers who are involved in the review process annually. The range of academic indicators was higher last year, and more students from lower-performing high schools were admitted, demonstrating that the process is resulting in improved access to students.

In a change of procedure this year, applications for those students who will clearly be admitted or who will clearly not be admitted after the initial review will not be read an additional time. All applications will still be included in multiple reviews that take place after the reading process. This change is intended to focus attention on those who need further consideration to be properly evaluated.

B. Subcommittee on Transportation and Parking

Professor Evan Williams, chair of the Division's Subcommittee on Transportation and Parking, also serves on the Chancellor's Joint Oversight Committee on Parking. He reported the reality that there is insufficient parking on campus, and this shortage has impacted the University's academic mission. Alternative transportation is promoted and shuttle operations are also being improved, but will not completely solve the problem. Much of lost parking has been due to construction, and the current replacement policy falls far short of recovering the actual cost. The joint oversight committee urges the adoption of its recommendations:

- Revise the parking replacement policy to reflect the true cost of replacement.
- Restrict the use of parking revenues for transportation needs only.
- Integrate parking and transportation issues into the planning process for new construction.

VII. Petitions of Students (None)

VIII. Unfinished Business (None)

IX. **University and Faculty Welfare (No additional items)**

X. **New Business**

A. **Proposed amendment of Berkeley Division Bylaw 17.B, duties of the Committee on Committees**

The proposed amendment of Berkeley Division Bylaw 17.B would change the role of the Committee on Committees from making appointments to the Committee for the Protection of Human Subjects (CPHS) to making nominations. The Office of the Vice Chancellor for Research would then make the appointments. The Berkeley Division proposes to permanently transfer responsibility for the administration of the CPHS from the Division to the Office of the Vice Chancellor for Research. The CPHS is no longer a standing committee of Graduate Council. The proposed bylaw amendment reflects this change and effectively transfers responsibility. Divisional Council approved it for the consent calendar.

17. COMMITTEE ON COMMITTEES

B. Duties

This Committee appoints:

- The Chair, Vice Chair, Secretary and Parliamentarian of the Division;
- All other Standing Committees;
- Special Committees as the Division may direct;
- Faculty Representative to the Senate of the Associated Students of the University of California, who also serves as a member of the student Search and Selection Committee and the Grievance Board, as provided in By-Law 13.C;
- Student members to Committees on Educational Affairs (By-Law 13);
- Nominees for appointment to administrative committees when called upon by the Chancellor; ~~in particular,~~ nominees to all positions on the Chancellor's Committee for Animal Care and Use, except for non-Senate and outside University members;
- ~~All Senate members of the Graduate Council's Standing Committee for Protection of Human Subjects; appoints a Senate member for its Chair in consultation with the Chair of the Graduate Council and the Vice Chancellor for Research; appoints its student members in accordance with By-Law 13.C. (En. 4.88; Am. 11.13.03)~~
Nominees to all non-chair positions on the Committee for the Protection of Human Subjects, except for non-Senate and outside University members.
- ~~Student members to Committees on Educational Affairs (By-Law 13).~~

This item was moved from the Consent Calendar. A motion was made to refer the amendment back to Divisional Council for reconsideration. The motion was seconded with no discussion and approved by a vote of 25 in favor, none opposed.

The meeting was adjourned at 5:35 p.m.

Daniel F. Melia
Secretary, Berkeley Division