



320 STEPHENS HALL
UNIVERSITY OF CALIFORNIA

April 2, 2014

GIBOR BASRI
Vice Chancellor for Equity and Inclusion

ANGELICA STACY
Associate Vice Provost for Faculty Equity

Subject: Independent investigative report on acts of bias and discrimination involving faculty at UCLA

Dear Gibor and Angy,

On March 31, 2014, Divisional Council (DIVCO) discussed the *Independent investigative report on acts of bias and discrimination involving faculty at UCLA*, informed by commentary of the committees on Privilege and Tenure, and the Status of Women and Ethnic Minorities. We endorsed the committees' reports and recommendations, which are appended in their entirety.

DIVCO is concerned with the opacity of the process by which cases that should be escalated to the next level are so escalated. We ask for clarification on how such cases are identified, to whom, and how (and in what manner) this information is stored, such as in personnel files, other records, or administrative records.

We would appreciate receiving this clarification so that we may consider it in conjunction with the findings of the climate survey on April 14, 2014.

Sincerely,

Elizabeth Deakin

Elizabeth Deakin
Chair, Berkeley Division of the Academic Senate
Professor of City and Regional Planning

Encls. (2)

Cc: Robert Powell, Chair, Committee on Privilege and Tenure
Nicholas Paige, Chair, Committee on the Status of Women and Ethnic Minorities

Andrea Green Rush, Executive Director staffing the Committee on
Privilege and Tenure
Diane Sprouse, Senate Analyst, Committee on the Status of Women and
Ethnic Minorities



320 STEPHENS HALL
UNIVERSITY OF CALIFORNIA

February 6, 2014

Elizabeth Deakin
Chair, Berkeley Division of the Academic Senate

Subject: Committee on Privilege and Tenure response to the Independent investigative report on acts of bias and discrimination involving faculty at UCLA ("Moreno report")

Dear Betty,

The Committee on Privilege and Tenure (P&T) met on January 28, 2014, to discuss the Moreno report and the issues it raises in relation to Berkeley. I am writing to pass on a summary of that discussion.

Briefly, the members of the committee believe that P&T has an important but limited role to play given its scope and procedures. I describe these below. Looking beyond P&T, the members of the Committee believe that Berkeley needs three things: (1) The campus should have a clear and transparent user-friendly access point for discussing, reporting, investigating and adjudicating discrimination-related issues and concerns. The access point, which might take the form of a "one-stop" website, should include a step-by-step process for reporting or discussing discrimination-related issues. (2) The campus community needs to be informed multiple times about this access point. Members of the faculty should know what to do if he or she believes they have been subject to any form of racial discrimination or has observed any. (3) The offices charged with these responsibilities must have the resources to address matters brought to them. These points roughly correspond to the first three measures described in President Napolitano's January 24, 2014 letter to the Chancellors.

P&T's Role:

The Committee's role in dealing with issues related to discrimination is largely defined by its jurisdiction and procedures as specified in the Senate bylaws (335). P&T has jurisdiction in three types of cases: grievances from faculty, disciplinary cases in which the administration seeks to impose a disciplinary action on a member of the faculty for violations of the code of conduct; and early termination cases.

Senate bylaws require that grievances must be filed in writing. Grievances, at least at Berkeley, focus on some aspect of an administrative personnel decision, e.g., denial of tenure. The Ombuds committee generally deals with other sorts of conflicts. In reviewing a personnel decision, P&T's scope is limited to procedural errors in the handling of the case or in the possible use of impermissible criteria in evaluating the case. P&T is specifically proscribed from reviewing questions of academic merit.

Considerations based on race or gender are obviously impermissible criteria. Their use, if proved, would lead to a finding for the grievant and a recommended remedy. The grievant bears the burden of proof (and the standard is a preponderance of the evidence). It seems likely that a grievant would have no difficulty meeting the burden of proof in a case involving the jaw-dropping comments quoted in the Moreno report. Indeed, those cases would most likely be settled before they ever reached P&T.

However, cases involving discrimination typically allege a more subtle form of bias, at least in recent experience. (In the five years that I have been on P&T, there have been no cases involving allegations of racial discrimination and one or possibly two cases involving gender.) Insofar as subtle biases may only be evident when one can look across a large number of cases, the grievant may face a very high hurdle in proving his or her case. Neither the grievant nor P&T has subpoena power, and P&T's access to personnel files is limited to the grievant's for obvious reasons of privacy.

Indeed, even if P&T could look at a small number of "comparable" cases, academic records usually vary in several dimensions related to academic merit. For example, one person may have fewer publications but in better places. Given these differences and that P&T is precluded from judging merit, it may be very hard for a grievant to show by a preponderance of the evidence that racial or gender considerations rather than academic judgments led to different outcomes in "similar" cases.

One of the issues raised in the Moreno report centers on disciplining those who engage in discrimination or harassment based on race. The report suggests that this may serve as deterrent.

As noted above, P&T does play a role in disciplinary actions. If the administration and the faculty member fail to reach a negotiated settlement regarding an alleged violation of the code of conduct, the matter is brought to P&T which holds a formal hearing, and makes a recommendation based on its findings.

At least at Berkeley, P&T does not investigate disciplinary cases. If, however, P&T became aware of a possible violation of the code of conduct while investigating a

grievance, P&T can and in the past has reported it to the administration. It would then be up to the administration to investigate the allegation.

In sum, P&T does offer an effective remedy for faculty members seeking redress if race or gender is and explicit consideration in personnel decisions. P&T is also mindful of the possibility that more subtle forms of bias may enter personnel decisions but proving this by a preponderance of the evidence, which the Senate bylaws require the grievant to do, may be much harder. P&T is likely not to play much of a role related to the “climate” issues raised in the Moreno report insofar as these do not result in formal grievances.

Beyond P&T:

In addition to discussing the Moreno report and the issues it raises for P&T, the members of the committee also discussed some of the broader issues that the report raised for the campus.

It is not clear to us that the campus has the mechanisms in place to deal with the “climate” issues discussed in the Moreno report. It may well. What they are, who does what, and how they should be accessed all need to be more transparent and user-friendly as stated above. For example, the role of the Equity Officer is unclear to us.

Given the sensitivity of these issues and the vulnerability more junior members of the faculty might feel, it seems important that there be a place where someone can go to discuss issues informally and another place where someone can go to report to someone who has a responsibility to look into and investigate reports brought to it. The Ombuds committee may serve in the first role. Where to go for informal discussion and formal reporting must also be clearly described at the access point.

Echoing the findings of the Moreno report and President Napolitano’s letter to the Chancellors, the members of P&T agree that Berkeley needs:

- (1) A clear and transparent user-friendly access point for discussing, reporting, investigating and adjudicating discrimination-related issues and concerns. The access point, which might take the form of a “one-stop” website, should include a step-by-step process for reporting or discussing discrimination-related issues.
- (2) The campus community needs to be informed multiple times about this access point. Members of the faculty should know what to do if he or she believes has been subject to any form of racial discrimination or has observed any.
- (3) The offices charged with these responsibilities must have the resources to address matters brought to them.

I would be happy to meet with you to discuss these issues further.

Regards,

A handwritten signature in black ink, appearing to read 'R. Powell', with a horizontal line underneath.

Robert Powell
Chair, Committee on Privilege and Tenure

JANUARY 31, 2014

TO: ELIZABETH DEAKIN, CHAIR
BERKELEY DIVISION OF THE ACADEMIC SENATE

FROM: NICHOLAS PAIGE, CHAIR
COMMITTEE ON THE STATUS OF WOMEN & ETHNIC MINORITIES

RE: SWEM response to the Independent Investigative Report on Acts of Bias and Discrimination Involving Faculty at UCLA (the "Moreno Report")

Following the release of the Moreno Report (MR), and acting on advice of the Academic Council, UC President Janet Napolitano called for the formation of a joint Senate-Administration Working Group to address the issue of racial harassment on the UC campuses. President Napolitano has also been briefed by chancellors on their impression of climate conditions and procedures for resolving complaints of discrimination on the individual campuses. As part of the formulation of a response on the part of the Academic Senate of the Berkeley Division, SWEM has been asked to review the report and to make suggestions pertaining to the handling of reports of bias and discrimination at UC Berkeley.

The MR makes for disturbing reading. SWEM's recommendations come out of discussion of the report as a whole, and are not articulated specifically with the report's own recommendations (A-F; pp. 21-25). Many of the report's recommendations concern the reform of UCLA's reporting gateway and chain of command (B-D). SWEM finds that UC Berkeley's procedure already largely resembles what the MR envisions. SWEM also feels that UC Berkeley has been out front in its diversity efforts in admissions and hiring, an area that the MR finds wanting at UCLA (recommendation E). However, while the MR's recommendations are not directly applicable to UC Berkeley, SWEM views this as an opportunity for the faculty senate to direct attention to faculty climate issues and administrative processes, to revisit policies and procedures, and re-commit to ensuring a diverse, inclusive, welcoming and cooperative environment for all.

SWEM makes seven recommendations:

1) Improved Monitoring of Campus Climate. The MR furnished considerable anecdotal detail on incidents of racial harassment. The incidents cited were heterogeneous, ranging from micro-aggressions and explicit slurs to more structural issues, including the denial of tenure and the marginalization of individuals of color with respect to positions of power (i.e., service as chair). The report did not give, and no doubt could not give within its parameters, a sense of the pervasiveness of racially motivated harassment at UCLA, or whether it was increasing or decreasing. We note that UC Berkeley has since 2003 been conducting comprehensive campus climate surveys, surveys that include questions relating to the perception of harassment, as well as more general information on job satisfaction broken down by

gender and ethnicity. Such data help give a basic idea of the existence and location of problems, and help avoid a sense of “disconnect” between administration and the experience of faculty, staff, and students. Such surveys should, we think, be a part of every campus’s data. It is our understanding that following each survey, the results are reviewed by an ad-hoc committee, convened by the Vice Chancellor for Equity and Inclusion (VCEI), and that at that time the survey questions themselves are revisited and retailored in preparation for the next survey.

In a slightly different vein, SWEM notes that Program Reviews vary in terms of their examination of climate issues, and that at any rate problems can appear in between Program Reviews. We recommend that the Equity Adviser for each department on campus be responsible for conducting a periodic assessment (perhaps bi-yearly) of departmental culture and climate that should include faculty, staff, and students. (Such assessment clearly falls under the “climate” rubric of the Equity Adviser’s job description.) The assessment should be conducted through questionnaires and voluntary interviews. We realize that as relates to the experience of ethno-racial minorities, whose numbers are often small, such assessments may not allow real anonymity, and therefore be of limited value in recording all problems. Nonetheless, a periodic, departmental- or unit-level assessment seems to us a useful tool, both for the units and for the VCEI (who can put a standard survey at the disposal of Equity Advisers). At the unit level, they will put the climate issue front and center by their very existence, as well as raise the profile of the Equity Advisor itself. They will allow the VCEI, meanwhile, to take the campus’s climate “pulse” continuously (as opposed to relying on the much longer intervals covered by campus climate surveys) and to communicate problems immediately to the Chancellor. It will also allow the VCEI to direct sensitivity training (see item 6 below) or informal help to units exhibiting patterns of complaint. In seriously dysfunctional units, FTE requests should be denied until an appropriately inclusive climate is restored.

2) Improved Record-Keeping. Distinct from the data gathered from surveys is data gathered by those designated to receive and investigate complaints of harassment and discrimination (e.g., Vice Provost for the Faculty, Ombudsperson, Racial Harassment Officer, Vice Chancellor for Equity and Inclusion). Our sense is that there is currently no mechanism on the UC Berkeley campus to monitor the number of reports (informal and formal) or their location (school, department). These data would provide a sense of the pervasiveness of racial harassment and discrimination on the UC Berkeley campus. We fully recognize the confidentiality issues involved in the gathering of such data, which would no doubt be shareable publically at only the most aggregated level. We also recognize that some faculty might want to share experiences without feeling that they have actually logged a formal report. For example, the VCEI has ongoing meetings with faculty of color to learn about concerns and monitor climate; would faculty necessarily want to feel that an informal report made in such a context is being tabulated? Nevertheless, we suggest that such record-keeping is a vital complement to the data gathered by campus climate surveys. We thus encourage the Office for the Prevention of Harassment and Discrimination (OPHD), the Vice and Associate Vice Provosts for the Faculty,

and the VCEI to develop a shared system for record-keeping of complaints both formal and informal. These records should include, to the extent possible: general descriptions of those involved (no names but rank, department), description of harassing/discriminatory event(s), duration of events, whether events have been reported to others (e.g., Deans/Chairs), and anecdotal evidence of the degree to which such treatment affects one's ability to carry out their duties. In our view, such data will be useful for the same reasons advanced in item 1, enabling a continual and focused monitoring of climate and the detection of patterns of complaint.

3) Points of Access for Complaints. SWEM did not attempt to navigate UCLA's procedures for conflict resolution, which the MR found "difficult to access and, from a practical standpoint, essentially nonexistent" (p. 2). SWEM did conduct an informal check on Berkeley's reporting structures for racial harassment, and we judge them adequately centralized and easy to find. A search of the campus's web site for "racial harassment complaint" immediately brings up the site for the OPHD. Here, there are a variety of pertinent pages, some broadly informational (containing text from the APM, for example, or definitions of what constitutes a racially hostile environment and information on the University's duty to respond to the latter), some describing the nuts and bolts of lodging a complaint. It appears to us that complaints of racial harassment are no more difficult to initiate than are complaints of sexual harassment. (It was obviously impossible for us to evaluate the efficacy and clarity of the process itself, once initiated.) The Director of the OPHD, who is also the University's Title IX officer, is tasked with the investigation and resolution of both sorts of complaints, making her/him essentially the equivalent of the "Discrimination Officer" the MR calls for. This is not to say that there are not other entry points for lodging a formal complaint (e.g., the Committee on Privileges and Tenure of the Academic Senate; the office of the Vice Provost for the Faculty). But this bare fact does not mean, in our eyes, that bewildering obstacles face a party wanting to file a complaint.

However, there are ambiguities in the website of the OPHD that we feel must be removed. First, the page "Reporting Racial Harassment" (<http://ophd.berkeley.edu/policies-and-procedures/responding-reports-racial-harassment>) states: "All members of the University community are encouraged to contact the Title VI Compliance Coordinator (Racial Harassment Officer) if they observe or encounter conduct that may constitute racial harassment. Reports of racial harassment may be brought to the Title VI Compliance Coordinator (Racial Harassment Officer), to a human resources coordinator, or to any manager, supervisor, or other designated employee responsible for responding to reports of racial harassment." However, neither the title "Title VI Compliance Coordinator" nor that of "Racial Harassment Officer" seems to be used elsewhere on the OPHD website. On the "Staff" page, one finds a "Compliance Officer" listed. Is this the Title VI Compliance Coordinator, a.k.a Racial Harassment Officer? Titles must be standardized.

The differing functions of the Title IX Officer and the Compliance Officer are also not clear to the untrained eye. While we presume that a complaint directed to

either would be referred appropriately, it might be helpful to have a single number to call.

Furthermore, some faculty, especially junior faculty, may not feel comfortable making a formal complaint—out of fear of retribution, because they suspect that they would be unable to prove harassment, or simply because they feel that it would take too much time away from the rest of their professional and personal lives. For this reason we feel that faculty should have a clear avenue for lodging informal complaints—complaints designed to communicate to the administration that all is not well, that such-and-such a department or unit has problems. There are at least two avenues for such complaints. First, one may bring such matters directly to the attention of the VCEI. Second, one may use the UC’s system-wide intolerance report form to make anonymous complaints (https://ucsystems.ethicspointvp.com/custom/ucs_ccc/default.asp), the Berkeley section of which is monitored by the VCEI. While SWEM feels these options are sufficient, they are not particularly well-publicized. Notably, there is no explanation of possibilities for informal complaint on the site of the OPHD, which, again, is the site that comes up most readily when searching “racial harassment.” The intolerance report form can be reached through the Climate Survey page of the Equity, Inclusion, and Diversity site’s list of resources (<http://diversity.berkeley.edu/more-information>). We recommend that the OPHD’s FAQ page be modified to include specific options for informal incident reporting, as well as a link to the EI&D resource page.

4) Complaint Resolution and Discipline. The MR states at several points that UCLA’s complaint resolution “focuses on making victims whole, not [on] meting out consequences” (p. 20), and suggests that much more of the latter is necessary. We have three comments: i) The MR appears to suggest that there is some sort of “third way”—a resolution that would effectively punish offenders without working through formal Academic Senate processes, processes that are perceived as “quasi-litig[ious],” “bewildering,” and drawn-out (p. 20). (Such a third way is not called for in the reports numbered recommendations.) SWEM does not understand how a faculty member can be disciplined without due process, however cumbersome the procedure may be. ii) The MR states that disciplinary sanctions serve the “long-term needs of the campus community” (p. 20) by deterring future offenses. SWEM observes that any sanctions would be confidential, and hence useless for sending messages to the campus as a whole. iii) While we do not agree with this particular part of the report, SWEM does find it imperative that faculty members not be discouraged in any way from seeking disciplinary action through the appropriate channels. Such discouragement would include depriving complainants of meaningful support and resources while bringing a complaint, essentially forcing them to retain legal counsel at their own expense. It would also include coaxing a complainant toward informal resolution.

5) Publicizing Policy. SWEM’s members were split on the subject of “zero tolerance”-type statements: some followed the MR in noting their effectiveness with respect to the prevention of sexual harassment (see p. 21) and the message zero-

tolerance policies send to the broader campus and community, while others felt keenly the irony of using, for a good cause, a tactic that has so often been deployed against the interests of people of color (and moreover proved ineffective in many contexts [e.g., War on Drugs, school discipline]). Further, it is noted that zero-tolerance policies should not be used in lieu of preventive and corrective action. We agree that it would be helpful to publicize—on the OPHD website and on the pages of all offices where complainants might be expected to seek counsel—the fact that tenure does not mean immunity, and that faculty members are subject to a variety of disciplinary sanctions. Such sanctions are of course outlined in the APM and in the Faculty Code of Conduct—documents which are frequently “known of” rather than known. In addition to making policies and possible sanctions widely known, we recommend that in the interest of campus climate the Chancellor make a public declaration about diversity, equity, inclusion, bias, and discrimination as soon as possible in response to the MR. Should climate data suggest ongoing problems on the campus, the Chancellor should also consider including similar statements in appropriate addresses to the campus community.

6) Training. The MR made no specific recommendations on racial sensitivity training. SWEM acknowledges that mandated training is frequently unpopular and moreover may have little effect on the worst offenders. Nonetheless, we suggest making racial harassment a more important component of the biannual Sexual Harassment Prevention training course that is mandatory for supervisory employees. (We also note, with surprise, that contrary to general belief there is as of yet no enforcement of the training requirement.) More important, we urge the administration to consider the implementation of targeted training. For example, the VCEI might be given authority to mandate supplementary training in units where patterns of complaint have been established. Interactive theater training has been shown to be more effective than computer-based programs, and might be particularly warranted in such circumstances.

7) Dissolving Accrued Power. One type of reaction to the incidents described in the MR would stress the need for further enlightenment: we must better understand racism, and better educate against it, as a preventive action. Such is, for instance, the impetus behind calls for more training (see item 6, above). SWEM certainly acknowledges the need for research into “best practices” for the prevention of racial harassment. We also feel, however, that much can be gained by thinking of problems like these as problems of power as much as problems of understanding. For example, the cases of “Departments A and B,” given prominent treatment in the MR, are ones in which it appears that cliques have been allowed to dominate department life and department decision-making. SWEM feels that it is imperative to work to dissolve such domination, especially in the matter of hiring decisions, personnel cases, and service as chair. To this end, deans must be on the lookout for ingrained concentrations of power when considering chairship appointments and the constitution of hiring committees. In addition, faculty must have confidence that their personnel cases (merit, VBA) will be written up by impartial parties. APM 245 already requires of deans to display vigilance on the

issue of diversity, equity and inclusion. Such vigilance is moreover part of the assessment of a dean's service.