Faculty Working Group on Regents’ Bylaws 5.09 and 5.10

Part I & II Final Recommendations

Submitted to Provost Alcock, Acting Provost Collins, and Interim Provost Moreland

February 16, 2020

5.09/5.10 Faculty Working Group

S.C. Glotzer (Chair), B. Maxim, L. Oswald, D. Potter, S. Rosaen, R.H. Simon, T. Tardif, K. Toyama and C. Wilson

EXECUTIVE SUMMARY

PREAMBLE

WORKING GROUP BACKGROUND & CHARGE

WORKING GROUP PROCESS

Part I

Part II

HISTORICAL BACKGROUND TO RB 5.09/5.10

Bylaw 5.09

Bylaw 5.10

REVIEW OF PEER INSTITUTIONS

PRINCIPLES AND VALUES

RECOMMENDATIONS

A Single, Streamlined 5.09 Process with Timelines

When and To Whom 5.09 Applies

No Severance Pay When Fired for Cause

No Expedited Proceedings or Interim Measures

Recommended Language for RB 5.09 and 5.10

Sec. 5.09. Procedures in Cases of Dismissal, Demotion, or Terminal Appointment for Tenured and Tenure-Track Faculty (proposed February 16, 2020)

Sec. 5.10. Severance Pay (proposed February 16, 2020)

TABLE: Proposed Actions and Timelines for Proposed RB 5.09
EXECUTIVE SUMMARY

In response to a charge from the University of Michigan’s three Provosts, the RB 5.09/5.10 Faculty Working Group – composed of nine U-M full professors – arrived at recommendations for revisions to Regents’ Bylaws 5.09 and 5.10. These recommendations reflect careful and considerable deliberation, feedback from the University community, and an in-depth review of the bylaws’ history. Throughout our deliberations, the Group held front-of-mind relevant values important to the University such as academic freedom, welfare of the campus community, due process, presumption of innocence, and responsible stewardship of public resources.

The Faculty Working Group recommends an overhaul of RB 5.09 to improve efficiency, reduce ambiguity and minimize open-ended timelines, all while ensuring fairness, transparency and robust due process. The 5.09 process endorsed by the Faculty Working Group will yield a definitive recommendation regarding faculty member dismissal or demotion to the President within 111 calendar days, or within 149 days in case of appeal, under ordinary circumstances. In addition, we recommend that RB 5.10 be modified so as to eliminate severance pay following termination for cause involving moral turpitude or professional or scholarly misconduct. Given the shortened 5.09 timeline, the Group does not perceive a need for special expedited proceedings or interim measures to address cases involving manifestly egregious misconduct.

Highlights of the Faculty Working Group’s recommendations include:

- A single process for 5.09, instead of the two currently specified in 5.09.4 and 5.09.5.
- Clear, realistic timelines associated with every step of the process that can be extended only by a mutual agreement between the affected faculty member and the administration, or by Hearing Committee decision in case of disagreement.
- Creation of a Standing Judicial Committee under the Senate Advisory Committee on University Affairs (SACUA), whose members stand ready to be appointed by SACUA to serve on a 5.09 Hearing Committee along with faculty nominated by the unit.
- Clear guidelines for Hearing Committee composition, which includes selected members of a new Standing Judicial Committee and additional faculty members nominated by the affected faculty member’s unit, all of whom are appointed by SACUA.
- “Discovery periods” for the University and the affected faculty member that precede the start of the hearing, during which all evidence and witness lists are shared.
- A single, optional review completed by SACUA within 21 days of appeal.
- No severance pay if a faculty member is terminated for cause involving moral turpitude or professional or scholarly misconduct, following recommendation by the Hearing Committee.
- A clarification in the 5.09 text about to whom it applies. (One dissenting member of the Faculty Working Group asserts this is a substantial change, not a clarification.)

These recommendations will protect academic freedom, the interests of the University and the institution of tenure.
Academic tenure was created to protect academic freedom, which includes freedom of research and publication, freedom of teaching, freedom of internal criticism and freedom to participate in public debate. As described in the 2010 Senate Assembly Statement on Academic Freedom

"Academic freedom is the liberty that faculty members must have if they are to practice their scholarly profession in accordance with the norms of that profession. Academic freedom is not a term or a condition of employment; rather, it is based in the institutional structure of this and other universities and is fundamental to their common mission of promoting inquiry and advancing the sum of human knowledge and understanding. Although some aspects of academic freedom are also protected by the First Amendment to the United States Constitution, academic freedom exists, independent of any external protection, as a basic prerequisite for universities to fulfill their mission to our society."

Tenure provides university faculty members with protections against harassment on the grounds of political or religious beliefs, or racial, gender, sexual identity and any other form of persecution or discrimination, that would lead to diminishment of academic freedom. The institution of tenure is sacrosanct within any university. When a tenured faculty member is accused of misconduct, it is a matter that the university community takes very seriously. The protections of tenure are so strong that universities have strict bylaws dictating procedures that must be followed if they consider the misconduct sufficiently serious as to warrant the removal of tenure from the faculty member, in essence firing him or her. Because of the protections of tenure, these processes must be clearly defined and offer ample opportunities to the affected faculty member to address the allegations (referred to as “due process”). Removal of tenure from a faculty member is a rare occurrence at any university.

Oftentimes, the alleged misconduct falls clearly outside the intended protections of tenure and the scope of the job of an academician, e.g. involving alleged criminal or otherwise extremely serious and harmful behavior -- such as sexual harassment or bullying -- that has no place at a university or anywhere. Such cases threaten the institution of tenure when the alleged misconduct is of a nature that was never meant to, and should not, enjoy the protections of tenure and the rights and privileges thereof.

When the tenure removal process takes an unreasonably long time, and with compensation continuing to be paid to the affected faculty member throughout, it can give a false impression of the essence and privilege of tenure. Thus it is to the benefit of all to ensure that the processes designed to deal with alleged misconduct warranting possible tenure removal or demotion are

---

unambiguous, efficient, transparent and fair, and conclude with a sound and just recommendation in a reasonable amount of time.

The recommendations of the Faculty Working Group contained herein are proposed to accomplish this important goal.

WORKING GROUP BACKGROUND & CHARGE

On September 24, 2019, the University of Michigan's provosts (Interim Provost Susan E. Alcock (Flint), Provost Catherine A. Davy (Dearborn), and Provost Martin A. Philbert (Ann Arbor) established a Faculty Working Group on Regents’ Bylaws 5.09 and 5.10 (the “Faculty Working Group”). The Faculty Working Group included nine full professors, and its purpose was to develop and offer recommendations to the President for revisions to Regents' Bylaw (RB) 5.09 (Procedures in Cases of Dismissal, Demotion, or Terminal Appointment) and RB 5.10 (Severance Pay).

The Faculty Working Group was charged with the following primary objectives [Appendix B]:

Part I:

- To gather information and assess the current state of similar policies at peer institutions;
- To develop recommendations for additions/amendments to RB 5.09 and 5.10 that allow for expedited proceedings and interim measures in cases involving manifestly egregious misconduct;

Part II:

- To comprehensively review RB 5.09 and RB 5.10;
- To make recommendations for revisions to RB 5.09 and RB 5.10 that reflect our community values, protect our commitment to due process, and promote the fair, transparent, and efficient resolution of cases.

Working Group Members

Sharon C. Glotzer (Chair), Anthony C. Lembke Department Chair of Chemical Engineering, John Werner Cahn Distinguished University Professor of Engineering, Stuart W. Churchill Collegiate Professor of Chemical Engineering, College of Engineering

Bruce Maxim, Narasimhamurthi "Nattu" Natarajan Collegiate Professor of Engineering and Professor of Computer and Information Science, College of Engineering and Computer Science, University of Michigan-Dearborn
The Faculty Working Group began its work in late September 2019, and split its efforts into two parts driven by the urgent request by the Regents for a preliminary report on Part I of the charge in advance of their December 2019 Board meeting. The question of expedited proceedings and interim measures in cases of manifestly egregious misconduct was thus considered prior to the Group’s consideration of possible revisions to RB 5.09 and 5.10, which began in January 2020. Throughout, we deliberated extensively and considered the many concerns that would attend a recommendation of such magnitude as the revision of a Regents’ Bylaw.
Part I

The Faculty Working Group was given just over eight weeks to submit to the three provosts a report with our preliminary recommendations involving only Part I of the charge. Through pre-work provided by the Office of the Vice-President and General Counsel (OGC), the Group was provided with information on 29 peer institutions’ policies at its first meeting on September 24, 2019. Announcement of the Faculty Working Group’s members and charge was made in The Record, both in print and online, on October 7, 2019 and the article included an email address for members of the University community to send input. For Part I, we were not able to solicit faculty input in additional ways, such as town hall meetings or surveys, given the short turnaround time. The Working Group members were encouraged to seek opinions from colleagues on the charge itself but were advised against sharing deliberations, recommendations, or the pre-work by the OGC on other institutions’ practices. In eight meetings, the Faculty Working Group worked in a discussion format, focused almost entirely on Part I. The diversity of our group fostered robust discussions of the issues, options, and recommendations. From our discussions, we developed a list of shared principles and values that guided our recommended amendments to RB 5.09 under Part I. We then collaboratively drafted our preliminary recommendations for Part I, and submitted our report to the provosts on November 21, 2019. Although our preliminary recommendation against expedited proceedings in cases of manifestly egregious misconduct was unanimous among the members of the Faculty Working Group, the recommendation concerning interim measures in such cases was not and two members dissented. The full Part I preliminary report together with the dissenting opinions and responses to dissenting opinions is included in Appendix C.

As discussed later in this report, our deliberations on Part II of the charge, combined with our considerably shortened 5.09 process recommendations as well as feedback from the university community, changed our preliminary recommendation on interim measures. Specifically, although our Interim Report on Part I recommends the possibility of pay suspension, this final report does not. Discussion of the Faculty Working Group’s deliberations on this point appears in the Recommendations section of this Report.

Part II

The Faculty Working Group met seven more times between January 7 and February 13, 2020 and had numerous online discussions. We requested, received and discussed anonymous input from lawyers and SACUA members recently participating in 5.09 proceedings to understand what and where the bottlenecks and other issues arise in the current process. The information we received and the discussions it prompted were strictly confined to general observations and experiences, and did not touch on any specific cases. We also requested, received and discussed historical documents from the Bentley Library in pursuit of understanding the source and spirit of the language in current RB 5.09/5.10.
We had requested wide dissemination of our Part I Preliminary Recommendations by the Provosts to provide ample time for feedback from the University community to inform our Part II work as well as for consideration by the Regents prior to Bylaw amendments, in the event that they moved to change the Bylaws prior to completion of the full Report. However, the Preliminary Report was, to the best of our knowledge, not shared beyond the offices of the Provosts. The Regents were briefed on the essence of our Preliminary Report at their December 5, 2019 Board meeting by Acting Provost Dittmar, but were not given access to the Report text.

To receive the broadest input from the faculty community in the short time allotted, we held five town halls: four on the Ann Arbor (Central and North), Flint and Dearborn campuses in January 2020, and one hosted by the Faculty Senate on February 3, 2020. We solicited further input via a survey, and an email address working.group.outreach@umich.edu was shared broadly with the University community. The survey link was sent via email to 10,400 faculty on January 23, 2020. A reminder was sent on January 31, 2020, which included language emphasizing that the survey responses would be de-identified upon receipt and before sharing with the Working Group.

Powerpoint slides were prepared by the Faculty Working Group and presented at each of the town halls. The powerpoint slides used at the town hall meetings were linked to the survey and vice versa. As slides were updated in response to input and additional Faculty Working Group deliberation, new slides were presented at subsequent town halls and made available at the survey link. In this way, faculty were able to respond to the latest thinking of the Working Group. This additional input helped shape our subsequent deliberations and ultimate recommendations in this final report. The distributed town hall slides and survey text can be found in Appendix D and E, respectively. A summary of feedback received at the town halls is in Appendix F.

Our small Faculty Working Group is but a cross-section of the University faculty, but we did our best to consider a diverse set of viewpoints in drafting our recommendations. We emphasize that the recommendations contained in our Report represent solely those of the Faculty Working Group members.

HISTORICAL BACKGROUND TO RB 5.09/5.10

Bylaws 5.09 and 5.10 have a long history. An early version of Bylaw 5.09 was in place by 1941. Bylaw 5.10 was adopted in 1959 as a direct consequence of the University’s suspension and termination of Dr. Chandler Davis and Professor Mark Nickerson during the McCarthy era for their refusals to testify in Congress before the House Committee on Un-American Activities. Bylaw 5.09 was substantially rewritten in the wake of AAUP’s censure of the University for its
acts in those cases. The Bylaw’s current language dates from 1959 and has remained largely unchanged in the intervening years.

The current language of Bylaws 5.09 and 5.10 is the result of substantial study and lengthy reports drafted by several faculty committees and subcommittees, and with substantial input of the Faculty Senate. We summarize that history below as best we can (acknowledging that time constraints prohibited us from making an exhaustive search for that history), and attach many of the relevant documents as Appendices G.1 - G.8 to this report. The contributions and thoughtful analyses of our predecessors should not be overlooked in any attempt to revise the language of Bylaws 5.09 and 5.10 today, nor should we easily dismiss the concerns of academic freedom and due process arising out of the events of the early 1950s that impelled the adoption of these protections.

While the current language of Bylaws 5.09 and 5.10 was drafted many decades ago, there have been few opportunities to test these procedures in practice. We are aware of three 5.09 processes having been resolved at the University of Michigan in the past 14 years. Two ended with the resignation of the affected faculty member, in one case only after excessively prolonged processes and delays, and one was terminated in favor of the faculty member by the unit executive committee.

It is further our understanding that, as a consequence of there never having been a concluded 5.09 case ending in a Regents’ decision to dismiss, severance pay has never been paid under 5.10, at least in the context of a 5.09 termination for cause. We note that the Geography Department was dissolved by the Regents in 1982. The nine tenured members of the department were found academic homes elsewhere within the University. We do not know what happened with the four untenured members of the department. However, 5.10 was intended to provide severance in just such cases, and SPG 601.02 would likewise so provide. Any revision of 5.10 must take into account the need for severance pay when a faculty member is terminated from the University as a result of financial exigency or the University’s dissolution of the faculty member’s academic home.

**Bylaw 5.09**

What is today Bylaw 5.09 first appeared in 1941 as Bylaw 5.091 and appears to have arisen out of actions of the University Senate.² Bylaw 5.091 was approved by the Regents at their second July 1941 meeting.³ The proceedings of the Regents’ meeting note that the adopted resolution was recommended for action by the President and the Senate Advisory Committee at a meeting

---

² The University Senate discussed faculty termination procedures as early as October 25, 1939, and the matter was referred to SACUA on May 20, 1940. A procedure was approved and adopted by the University Senate on October 21, 1940.

³ See [https://quod.lib.umich.edu/u/umregproc/ACW7513.1939.001/784](https://quod.lib.umich.edu/u/umregproc/ACW7513.1939.001/784)
of the committee on May 27, 1941. Bylaw 5.091 officially appeared in print following the December, 1941 Regents meeting.\(^4\)

In September 1943, the Regents further discussed changes to 5.091, and the matter was referred back to the Faculty Senate. In January, 1944, amendments to 5.091 were published in the Regents Proceedings.\(^5\) Key changes made at this time included an expansion of the categories of faculty members to which it applied, more detailed procedures regarding notice of the charges and the hearing process, and the addition of an appeals process to the Senate Advisory Committee on University Affairs.

The University's actions during the McCarthy era spurred the next major set of changes to Bylaws 5.09 and 5.10. In May, 1953, the (then) University Senate (now Faculty Senate) formed a Committee to recommend procedures should a faculty member's position be called into question as a result of governmental investigation.\(^6\) The Committee recommended and the Senate approved a new section 5.101 to the Bylaws, which was approved by the Regents on October 16, 1953.\(^7\)

In 1954, the University suspended and terminated Dr. H. Chandler Davis (a mathematics instructor) and Professor Mark Nickerson (a tenured associate professor), and suspended but later reinstated Professor Clement Markert (an assistant professor) for their refusal to testify before a group from the U.S. House Committee on Un-American Activities.\(^8\) The minutes of the Regents' Special August Meeting, 1954 are sparse and simply state: "The President reviewed in detail the procedure thus far followed in the cases of Messrs. Davis, Nickerson, and Markert," and that following a "lengthy discussion," the Regents voted to dismiss Davis and Nickerson and to lift the suspension of Markert.\(^9\) The President's Report to the University Senate on the Procedures and Actions Involving Three Members of the University Faculty, dated Oct. 5, 1954, however, notes that the Senate Advisory Committee elected a Special Advisory Committee to the President, consisting of five members, to hold hearings, with an appeal process to the Subcommittee on Intellectual Freedom and Integrity.\(^10\)

On April, 26, 1955, a Report to the University Senate of the Special Committee on Role of Faculty in Tenure Matters was issued [Appendix G.3]. The Report emphasized the important role of academic freedom, particularly as it relates to the "preservation of intellectual freedom." The Special Committee identified two "broad categories" of tenure dismissal cases: "Type A" cases, in which the faculty member had been deficient in the "performance of academic duties,”

---

\(^4\) See https://quod.lib.umich.edu/u/umregproc/ACW7513.1942.001/178

\(^5\) See https://quod.lib.umich.edu/u/umregproc/ACW7513.1942.001/579

\(^6\) Harlan Hatcher, President’s Report to the University Senate on the Procedures and Actions Involving Three Members of the University Faculty, at p. 4 (Oct. 5, 1954), attached as Appendix G.1.

\(^7\) Statement Presented by the Dean and Executive Committee at the Special Meeting of the Faculty of the College of Literature, Science, and the Arts, on Tuesday, June 1, 1954, at p. 1, attached as Appendix G.2.

\(^8\) For background, see Ellen W. Schrecker, No Ivory Tower: McCarthyism and the Universities ch. 8 (1986).

\(^9\) See https://quod.lib.umich.edu/u/umregproc/acw7513.1954.001/89

\(^10\) President’s Report to the University Senate on the Procedures and Actions Involving Three Members of the University Faculty, at pp. 6-7; 11-12; 14; 20, attached as Appendix G.1
and “Type B” cases, in which the conduct at issue would disqualify the faculty member from “continued membership in the academic community” or was “inimical to the welfare of the university or society.” The Special Committee recommended that Type A cases be heard by the School or College, with the University Tenure Committee serving as a review body, and that Type B cases be heard by the University Tenure Committee directly. It appears that the seeds of the current dual paths for 5.09 review are found here. The proposed revisions found in the Report were apparently adopted by the Regents in 1956.

Following the censure of the University by the AAUP in 1958 in response to the Davis-Nickerson cases, the Senate Subcommittee on Tenure issued a report dated March 30, 1959. This report sought to make no changes to the basic two-track structure of the existing Bylaw, but did recommend procedural changes that would, among other things, clarify the faculty member's right to counsel, ensure faculty participation in school-level hearings (i.e., those involving “Type A” cases), clarify and enhance review procedures, and provide the faculty member and the Senate Advisory Committee with an opportunity to comment on the President's recommendations to the Regents. A Report dated May 12, 1959 discusses the University Senate’s adoption of the recommendations of the Senate Subcommittee, with revisions [Appendix G.5]. After a revised Regents’ Bylaw 5.09 was adopted, the AAUP removed censure in 1959.

Bylaw 5.10

Regents Bylaw 5.10 was adopted in 1959 as a direct consequence of the University's dismissals of Dr. Davis and Professor Nickerson. The Faculty of the College of LSA adopted a resolution on Nov. 1, 1954, noting that Dr. Davis was terminated from his position less than three weeks before the beginning of a term, that he had one year left on his contract at the time of his termination, and that “[n]o charge of moral turpitude was involved.” Given the circumstances and the certainty that the timing of the termination would “inflict a special hardship on him and his family,” the resolution requested that he be paid one year's salary as severance.

At its November, 1954 meeting, the Regents concluded that no severance pay would be granted to Dr. Davis or to Professor Nickerson. The Senate Advisory Committee formed a five-person Special Committee on Dec. 1, 1954 to examine the issue of severance pay in cases

---

11 Report to the Senate Advisory Committee of its Subcommittee on Tenure Respecting Recommended Changes in Section 5.10 of the Regents’ By-laws, Defining Procedures in Case of Dismissal, Demotion or Terminal Appointment, attached as Appendix G.4.

12 For background, see https://facultysenate.umich.edu/davis-markert-and-nickerson/ and The Bentley Library site, at https://quod.lib.umich.edu/b/bhlead/umich-bhl-0373?view=text

13 See https://facultysenate.umich.edu/davis-markert-and-nickerson/


Final Recommendations on RB 5.09 & 5.10, submitted to U-M Provosts on February 16, 2020 p. 11
of terminations from the University. The Special Committee issued an 11-page report dated May 23, 1955, in which they examined six questions:

(1) What legitimate functions are served by severance pay, i.e., is such pay ever justified?
(2) If such pay is justified under some circumstances, how should its amount be calculated?
(3) If such pay is justified under some circumstances, should an effort be made to codify at least some of the substantive standards?
(4) If such codification is desirable and possible, what standards or principles regarding severance pay should be adopted?
(5) What procedures should be following in determining the applicability of the standards to a member of the faculty who has been dismissed?
(6) To what extent should this committee consider the retroactive application of such standards as might be adopted?

The Special Committee specifically noted that the University at the time had no “policy or set practice with regard to severance pay” but that since 1926 such pay had “been granted in more cases than not” in those termination cases involving action by the Regents. The Special Committee concluded that “real hardship can accrue from separation without reasonable notice, and a prime purpose of severance pay is to bridge the gap between paychecks.” This hardship is often caused by the timing of the academic hiring market, which often makes it difficult to obtain a new academic job except during prescribed “hiring times,” which may occur up to a year in advance of the intended start date.

The Special Committee also outlined the pros and cons of “codifying” the substantive standards justifying severance pay. The Report identified two key exceptions to severance pay in the case of termination without notice based on “political non-conformance”: (1) “where there is competent evidence to establish beyond a reasonable doubt that the individual concerned has been guilty of felonious conduct”; and (2) where the Regents would be prohibited by law from providing severance pay. (Both of these limitations were eventually incorporated into the Bylaw as adopted by the Regents.) The Report also recommended that “the machinery which is used in

---

16 Id. at 2.
17 Id. at 1
18 Id. at 2.
19 Id. at 8.
connection with the dismissal of a faculty member should also be used in determining whether or not he should receive severance pay."\textsuperscript{20} Because a separate committee was examining dismissal procedures, this Special Committee declined to opine further on this matter.

The May 23, 1955 report was followed by the Final Report and Recommendation issued on May 31, 1956 by the same special committee (now dubbed the “Sub-committee of the S.A.C.”) to the Senate Advisory Committee on University Affairs.\textsuperscript{21} This three-page report contained a single page of recommendations. Regents’ Bylaw 5.101 (later renumbered to 5.10) was adopted during the January 1959 meeting of the Regents,\textsuperscript{22} and largely tracks the substance of the Recommendations of the Final Report. Except for renumbering, that Bylaw has not been amended since its adoption over sixty years ago.

\section*{REVIEW OF PEER INSTITUTIONS}

In response to the first bullet of Part I of the charge (“To gather information and assess the current state of similar policies at peer institutions”), the Working Group reviewed the policies of 29 peer institutions and found the following.

All institutions have policies allowing suspension of duties during the review process under certain circumstances. Most state that suspension should occur when there is immediate danger of injury to the accused faculty member or members of the University community. Some allow suspension when there is a likelihood of serious harm to University property. A few do not specify what types of harm should lead to suspension.

<table>
<thead>
<tr>
<th>Suspension of Duties During Proceedings</th>
<th>Suspension of Pay During Proceedings</th>
<th>Severance Pay After Dismissal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Always</td>
<td>Never</td>
<td>Possible</td>
</tr>
<tr>
<td>Big 10 Schools (n=14)</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Other Peer Institutions (n=16)</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Three institutions allow suspension of salary during dismissal proceedings under certain circumstances:

- Michigan State University – If a three-member panel unanimously concludes that conduct has been egregious, e.g., damaging to University’s physical or intellectual

\textsuperscript{20} Id. at 9.
\textsuperscript{21} See Report dated March 31, 1956, to The Senate Advisory Committee on University Affairs, from Sub-Committee of the S.A.C. on Severance Pay (attached as Appendix G.7).
\textsuperscript{22} Proceedings of the Board of Regents (1957-1960), p. 763 (attached as Appendix G.8).
property, committing or attempting to commit violence against University community member(s), violating or attempting to violate fiscal or scholarly norms.

- University of Southern California – If the faculty member abandons duties, e.g., by failing to return from vacation or leave.
- University of Minnesota – If faculty member is not available for work, or if no final decision has been rendered one year after the commencement of formal dismissal proceedings, unless the parties agree otherwise, or unless the hearing panel of the Judicial Committee extends the time period because of undue delays in the procedure attributable to the actions of the University.

Three institutions (other than U-M) have policies that address severance pay.

- University of Maryland – One year from notice of termination, but not if terminated for cause involving moral turpitude or professional or scholarly misconduct.
- University of Minnesota – One year for program closures, even if faculty member refuses to accept reasonable reassignment or retraining, unless appointment ends earlier. No statement regarding severance pay if dismissed for cause.
- New York University – One year if recommended by the Tenure Committee or if recommended by the Tenure Appeal Committee in response to an appeal by the faculty member.

Most universities specify some time limits for some steps of the process, but leave other steps unconstrained. Of the steps left unconstrained, the most common are a period for initial investigation and appellate review. Five universities specify no timeline whatsoever.

All but two universities specify that the hearing committee, adjudicating panel, or equivalent body are composed of faculty members. (The composition of the committee is unclear in the remaining two universities.)

PRINCIPLES AND VALUES

Academic tenure provides protection of academic freedom -- a cardinal value within academe. Tenure provides those faculty who have it with the bedrock on which to pursue risky or unconventional scholarly ideas or efforts without fear of reprisal. According to the University of Michigan Faculty Senate Assembly’s 2010 Statement on Academic Freedom [Appendix A],

“academic freedom is the liberty that faculty members must have if they are to practice their scholarly profession in accordance with the norms of that profession,” and it includes “the freedoms of... research and publication, ...
teaching, … internal criticism [e.g. of the university], … and participation in public debate.”

Removal of tenure shall never be used to enable harassment for political or religious belief, or on the grounds of racial, gender, or sexual identity, or any other form of persecution, or discrimination or the diminishment of academic freedom and free speech. Furthermore, the removal of tenure shall not be sought to seek retaliation or retribution against a faculty member, or in instances of conscientious objection.

The University of Michigan has other values it respects and honors, such as the assurance of safety for all members of its community, responsible stewardship of its resources, and just processes for handling internal conflicts within its community. We highly value the unique privilege that tenure affords faculty members, and recognize that public support of privilege is often threatened when faculty members behave in ways that are inconsistent with our University values, whether criminal or otherwise, and inconsistent with the privilege of tenure.

These two sets of values can be put in tension when a tenured faculty member is accused of wrongdoing of a nature that is inconsistent with the privilege of tenure. The Working Group held this tension front of mind throughout our discussions. **Key touchstones** guiding our deliberations included:

- Academic freedom and free speech
- Presumption of innocence
- Robust, fair, due process
- Health, welfare, and safety of members of the University community
- Protection of the University’s mission and its ability to carry out its mission
- Responsible stewardship of public resources

These touchstones led to the following **core principles** on which we base our recommendations:

- The University should preserve and reinforce the institution of tenure.
- Removal of tenure should continue to be extremely rare.
- There should be a single process that is applied in all cases.
- Procedures should be conducted as expeditiously as fairness and due process allow.
- The burden is on the University to make a case for dismissal; in the absence of doing so, the faculty member retains the position.
- The process for determining dismissal of a faculty member should have substantial input from a committee of peers.

These values and principles are reflected in our recommendations for revisions to RB 5.09 and 5.10.
RECOMMENDATIONS

The Faculty Working Group conducted a thorough review of RB 5.09 and 5.10 in response to the first bullet of Part II of the charge (“To comprehensively review RB 5.09 and RB 5.10”). In addition, the Faculty Working Group recommends specific language for both bylaws; this language is included in this section.

A Single, Streamlined 5.09 Process with Timelines

In response to the second bullet of the Part II charge (“To make recommendations for revisions to RB 5.09 and RB 5.10 that reflect our community values, protect our commitment to due process, and promote the fair, transparent, and efficient resolution of cases”), the Faculty Working Group found the current 5.09 process to be lacking specificity on important issues (especially due process and timelines) and that the two processes outlined under sections 5.09.04 and 5.09.05 duplicate each other, to the disadvantage of both parties. We recommend a revised process that is streamlined for all, in accordance with our touchstones and principles.

The Working Group recommends the following, single-track process for dismissal/demotion hearing(s):

- A single process for 5.09, instead of the two currently specified in 5.09.4 and 5.09.5.
- Clear, realistic timelines associated with every step of the process that can be extended only by a mutual agreement between the affected faculty member and the administration, or by Hearing Committee decision in case of disagreement.
- “Discovery periods” for the University and the affected faculty member that precede the start of the hearing, during which all evidence and witness lists are exchanged.
- Creation of a Standing Judicial Committee under SACUA, whose members stand ready to be appointed by SACUA to serve on a 5.09 Hearing Committee.
- Clear guidelines for Hearing Committee composition, which includes selected members of the Standing Judicial Committee and additional faculty members nominated by the affected faculty member’s unit, all of whom are appointed by SACUA.
- A single, optional review completed by SACUA within 21 days of appeal.

The proposed process will yield a definitive recommendation regarding dismissal, demotion or otherwise within 111 calendar days, or within 149 days in case of appeal, under ordinary circumstances. Given this, the 5.09 process can be completed with Regents’ decision within 180 days or less (with appeal) or 145 days or less (if no appeal is made), under ordinary circumstances. There are provisions for extensions as needed to handle extraordinary situations.

The Faculty Working Group further recommends that 5.09 processes not be interrupted or delayed by Spring/Summer terms. In the event that the Hearing falls outside of Fall and Winter
When and To Whom 5.09 Applies

The Faculty Working Group proposes to update the language in RB 5.09 to reflect current usage of terminology in order to clarify the groups to whom RB 5.09 applies. Our language aims to clarify, and not change, when and to whom the existing 5.09 procedures apply.

All but one member of the Faculty Working Group interprets RB 5.09 to apply solely to those faculty for which tenure is relevant. We note SPG 201.13\(^{23}\) states that university appointments afforded the protections of 5.09 include assistant, associate and full professors, as well as those holding the rank of instructor full-time for ten or more years, but do "not include lecturer appointments or adjunct, clinical, research, or visiting appointments."

However, the current text of RB 5.09 extends its provisions to "any member of the teaching staff during the term for which any member of the teaching staff is appointed," which, according to RB 5.01\(^{24}\) includes "professors, associate professors, assistant professors, instructors, lecturers, and teaching fellows." This language is inconsistent with the language in the SPG, includes employee groups covered by collective bargaining agreements, and includes terms no longer in use.

The majority of the Faculty Working Group believe we have reconciled the Regents' Bylaws, the Standard Practice Guide, and historical precedent to indicate that 5.09 provides protections to only three groups: (1) a tenured faculty member, or (b) a tenure-track faculty member during the term of their appointment; or (3) a tenure-track faculty member who has held appointments with the University for a total of ten years in the rank of full time instructor or higher. This is the language we recommend in the revised Bylaw. We believe this language clarifies, but does not alter, existing coverage of 5.09. If our belief is incorrect, we would strongly encourage further study of the appropriate applicability of 5.09 before modifications are made.

A dissenting opinion by one member of the Faculty Working Group can be found in Appendix H. We encourage the University to consider further the procedures applicable to faculty who are covered neither by 5.09 nor a collective bargaining agreement to ensure that they too are being afforded due process in termination proceedings. Below we provide additional comments on the various groups referred to in the current text of RB 5.09.

\(^{23}\)https://spg.umich.edu/policy/201.13
\(^{24}\)https://regents.umich.edu/governance/bylaws/chapter-v-the-faculties-and-academic-staff/
Professors, associate professors, assistant professors
The application of 5.09, which in the current bylaw involves a hearing by the Tenure Committee, is intended to apply to cases where tenure is or may be involved -- that is, tenured and tenure-track faculty; these are professors, associate professors and assistant professors. In practice, RB 5.09 has not been interpreted to apply to any classifications other than tenure track faculty, and the few 5.09 proceedings that have been initiated by the University have applied only to tenured faculty.

Instructors
Instructor is a tenure-track title and as such instructors are covered by 5.09 during the term of an appointment and if they have been employed as full-time instructors for 10 or more years.25

Lecturers
Lecturers have mature collective bargaining agreements through their union, Lecturers’ Employee Organization (AFT Local 6244), that provide for length of appointment and due process protections should a lecturer’s appointment end prior to the expiration of its term.26 Those processes replace 5.09 processes for lecturers. The first UM-LEO agreement began in 2004.

Teaching Fellows
RB 5.01(5)27 states: “The terms teaching fellow, teaching associate, teaching assistant, student assistant, research assistant, technical assistant, laboratory assistant, and assistant shall be used to designate junior appointees who participate in the processes of teaching and research but do not possess faculty rank.....” Because they do not possess faculty rank, and because junior appointees (students) are untenured and not on tenure track, a modern interpretation of RB 5.09 would exclude them from the ambit of RB 5.09. Moreover, graduate students who teach have mature collective bargaining agreements through their union, Graduate Employees’ Organization (Local 3550), that provide for due process protections28. Those processes replace 5.09 processes for graduate student instructors. GEO arose in the 1970s.

Other Faculty Designations not mentioned in RB 5.09
Clinical track faculty have fixed term appointments that govern their employment and termination.29 SPG 204.34-1 states, “An academic unit may be authorized to appoint clinical instructional staff to support its instructional program only if the school, college, or division has adopted a policy authorizing such appointments in accordance with its bylaws and the policy has been approved by the appropriate provost, chancellor (University of Michigan-Flint and University of Michigan-Dearborn), president and Board of Regents. Clinical instructional

25 https://spg.umich.edu/policy/201.13
27 https://regents.umich.edu/governance/bylaws/chapter-v-the-faculties-and-academic-staff/
29 https://spg.umich.edu/policy/201.34-1, see Section I.B.
appointments are at appointment fractions of 50 percent or greater, and are without tenure....”
SPG 201.13 specifically excludes lecturer appointments or adjunct, clinical, research, or visiting appointments as being eligible to acquire the protections of Regents’ Bylaw 5.09 by the accumulation of 10 years of service.

No Severance Pay When Fired for Cause

The Faculty Working Group is unanimous that severance pay should not be given when a faculty member is dismissed for moral turpitude or for professional or scholarly misconduct including intentional refusal, expressed or implied by conduct, to perform properly assigned academic duties, as determined by the Hearing Committee.

Examples of professional misconduct include harassment of any kind, failing to disclose significant financial relationships with outside entities that violate contractual terms or where there has been an intentional refusal, expressed or implied by conduct, to perform properly assigned academic duties. Examples of scholarly misconduct include deliberately falsifying data or serious plagiarism. None of these examples other than intentional refusal to perform academic duties are covered by the current RB 5.10 language. We note that our recommendation follows AAUP guidelines.31

The Faculty Working Group recommends that academic personnel with indeterminate tenure who are dismissed under Sec. 5.09 for reasons other than those listed above, such as financial exigency or program discontinuation, shall be entitled to severance pay following written notice of termination. The duration and amount of severance pay should be as indicated in the current text of 5.10.

No Expedited Proceedings or Interim Measures

Finally, in response to the second bullet of Part I (“To develop recommendations for additions/amendments to RB 5.09 and 5.10 that allow for expedited proceedings and interim measures in cases involving manifestly egregious misconduct”), the Faculty Working Group believes that the proposed streamlining of 5.09 mitigates much of the rationale behind this request and that no separate proceedings nor interim measures should be put in place for cases involving manifestly egregious misconduct.

Importantly, although the Faculty Working Group initially proposed (with two dissents) developing a pay suspension committee review process for cases involving manifestly egregious misconduct, the proposed streamlining of 5.09 mitigates much of the rationale behind this request.

---------------------

30 https://spg.umich.edu/policy/201.13
egregious misconduct in our Part I Report recommendations, we no longer make this recommendation. In particular, we had recommended that a pay suspension committee of tenured faculty members could advise the President on suspending pay (while, in parallel, a faculty judicial committee considered tenure removal) only in the most egregious cases of alleged misconduct, and, only when at least four of the five committee members were convinced there was clear and compelling evidence of guilt. Moreover, pay is a property right and thus due process must be afforded the affected faculty member if pay suspension is considered. Thus we recommended a shortened hearing process for pay suspension that contained sufficient elements of due process but not as complete as those afforded the affected faculty member in the tenure removal hearing.

The resounding concerns expressed by the two dissenting Faculty Working Group members, survey respondents and townhall participants (see Appendix C, D, F) led us to reconsider our recommendation on pay suspension. Several points raised multiple times by survey respondents and town hall participants were especially instructive. For example, we learned that suspension of pay during a 5.09 proceeding could have unintended consequences, in particular for those who have fewer financial resources or social support, which could disproportionately affect faculty members from under-represented minority groups. Members of such groups are also often subject to unfair implicit bias. Critical to the Faculty Working Group’s preliminary suggestion of a pay suspension process was the requirement that pay suspension not prejudice the tenure removal committee’s deliberations going on in parallel, just as suspension of duties is not supposed to prejudice the 5.09 process. The latter is (in principle) possible because the decision is made solely by the President, but the former involves a faculty hearing committee and thus carries significant weight; for this reason, we asserted that neither the tenure removal hearing committee nor members of SACUA must know if pay is suspended. However, upon further reflection, we agreed with those who pointed out that such a firewall is unrealistic and would likely be impossible to realize. As a third example, we agreed with comments that two parallel hearings -- one on tenure removal and one on pay suspension -- would be unfairly burdensome to the affected faculty member.

These considerations, together with the degree to which the Faculty Working Group succeeded in streamlining and shortening the 5.09 process, convince us that pay suspension is unnecessary and unwise.

We note that our current recommendation that no interim measures be implemented during a 5.09 proceedings is in line with the American Association of University Professors’ suggestions for handling faculty misconduct and discipline.32

---

Recommended Language for RB 5.09 and 5.10

Sec. 5.09. Procedures in Cases of Dismissal, Demotion, or Terminal Appointment for Tenured and Tenure-Track Faculty (proposed February 16, 2020)

Applicability. The procedures prescribed in this section shall be followed before recommendation is made to the Board of Regents of dismissal or demotion of

1. a tenured faculty member; or
2. a tenure-track faculty member during the term of their appointment; or
3. a tenure-track faculty member who has held appointments with the University for a total of ten years in the rank of full time instructor or higher.

A recommendation of dismissal, demotion, or terminal appointment may be made on the basis of demonstrated misconduct in teaching or research, substantial and manifest neglect of duty, and/or personal conduct that substantially impairs the individual’s fulfillment of institutional responsibilities; this includes acts involving moral turpitude or professional or scholarly misconduct. This recommendation must be supported by clear and convincing evidence, subject to the procedures contained in this Bylaw. The process should never be employed to enable harassment for political or religious belief, or on the grounds of racial, gender, or sexual identity, or any other form of persecution, or discrimination or the diminishment of academic freedom and free speech.

In cases where it is not possible to continue the appointment of a tenured faculty member due to program discontinuation, the procedures under this Bylaw are applicable.

Initiation of Proceedings. Proceedings that may result in a recommendation of dismissal, demotion, or terminal appointment may be initiated by the provost and executive vice president for academic affairs or by the executive authority (dean, director, or executive committee) of the school, college, or other unit (hereinafter called the administrative unit) in which the affected faculty member is employed. Before initiating action with respect to a faculty member, the president, the provost, and executive authority of the unit must all be notified in writing and the President shall refer the case to SACUA. In exceptional cases, where the alleged misconduct of a faculty member as presented in the complaint threatens direct and immediate injury to one or more members of the University community or to the essential functions of the University, the President may direct that the affected faculty member be relieved of some or all of his/her/their university duties and responsibilities, without prejudice and without loss of compensation, pending the final disposition of the case.

1. Notice of Charges and Hearing Committee Members. Immediately upon the referral of a case to SACUA, the affected faculty member shall be given written notice, stating with reasonable particularity the charges (as prepared by the provost and executive vice president for academic affairs or executive authority of the administrative unit). Not later than 10 days after receipt of the notice, the affected faculty member has the right to
request a hearing before a Hearing Committee to be appointed by SACUA. Not later than seven days after the affected faculty member has requested a hearing, SACUA must select and name a Hearing Committee, which will consist of five tenured faculty at rank or above rank of the affected faculty member, with three from a Standing Judicial Committee appointed by SACUA and two from a list provided by the administrative unit of the affected faculty member. The affected faculty member may, with clear and sufficient reasons for potential bias, request the removal and replacement of one or more members of the Hearing Committee not later than seven days after SACUA has communicated the Hearing Committee’s composition to the affected faculty member. The Hearing Committee shall consider these requests and finalize the committee within seven days of receiving the faculty member’s challenge. Under ordinary circumstances, the hearing will conclude no later than 81 days after the issuance of the Charge Letter.

a. Submission of Evidence. The provost and executive vice president for academic affairs or the executive authority (dean, director, or executive committee) of the school, college, or other unit shall present all evidence to be used at the hearing to the affected faculty member within 30 days of the issuance of the Charge Letter. The affected faculty member shall present to the provost or executive authority all evidence to be used at the Hearing within 30 days after receiving those materials.

b. The Hearing. The Hearing Committee shall conclude the hearing no later than 81 days after the issuance of the Charge Letter. The provost and executive vice president for academic affairs, or a representative, as well as the executive authority of the administrative unit in which the affected faculty member is employed, or a representative, may be present at the committee hearing, and may present such evidence as was submitted prior to the hearing, as described in 1.a. herein. In addition, they may (1) have an adviser of their choosing who may act as counsel; (2) be present at all sessions of the Hearing Committee at which evidence is received or argument is heard; (3) call, examine, and cross examine witnesses; (4) examine documentary evidence received by the Hearing Committee, and may present such evidence as was submitted to prior to the hearing, as described in 1.a. herein. If they wish to make any recommendations, they shall make them to the committee prior to the conclusion of the hearing, whereupon such recommendations shall become a part of the committee’s record in the case. The affected faculty member may (1) have an adviser of the faculty member’s own choosing who may act as counsel; (2) be present at all sessions of the Hearing Committee at which evidence is received or argument is heard; (3) call, examine, and cross examine witnesses; (4) examine documentary evidence received by the Hearing Committee; and may present such evidence as was submitted to prior to the hearing, as described in 1.a. herein. A full record of the hearing shall be taken.

c. Written Report of Hearing Committee’s Recommendation. The Hearing Committee shall file a written report with SACUA, the affected faculty member, the Executive Authority of the affected faculty member’s unit, and the Provost and President within 30 days of completion of the hearing. The report shall contain the
committee's conclusions, recommendations, and the reasons therefor. If dismissal, demotion, or terminal appointment is recommended, the report shall contain a specific statement of the conduct on which the recommendation is based. There shall be filed with the report the complete written record in the case, including the recommendations, if any, made to the Hearing Committee and a transcript of the record of any hearings conducted by the Hearing Committee.

d. **SACUA Review of the Hearing Committee Report.** If the Hearing Committee recommends that adverse action be taken against the affected faculty member, SACUA shall immediately advise the affected faculty member that they may request, within 10 days, that SACUA review the proceeding conducted by the Hearing Committee. In conducting its review of the case, SACUA shall take account of all relevant factors, including consideration of the questions (1) whether the Hearing Committee observed the procedure prescribed in this subsection, (2) whether the Hearing Committee accorded a fair hearing, (3) whether the deficiencies or acts of misconduct on which the Hearing Committee's recommendations are based are related to the charges stated in the first instance as the basis for investigation, and (4) whether the weight of the evidence, as it appears in the record, supports the Hearing Committee's findings and recommendations. This review will be based solely on the full record of the Hearing Committee's proceedings. In determining its recommendation, SACUA shall be free to make any recommendation appropriate to its findings and conclusions respecting either the procedural or meritorious aspects of the case. The faculty member, either in person or through a representative or both, shall have the right to appear before SACUA and to comment on the Hearing Committee's proceeding. A full record shall be kept of the SACUA review. This hearing will take place within 21 days of the request for review from the affected faculty member.

e. **SACUA Report.** A written report of the conclusions made by SACUA, together with the record of the review proceeding, shall be filed with the affected faculty member, the executive head of the administrative unit, the provost and executive vice president for academic affairs, and the president within seven days of the completion of the SACUA review hearing. SACUA may also include its comments on the Hearing Committee's findings, conclusions, and recommendations.

f. **If dismissal is recommended.** The affected faculty member, the executive authority of the administrative unit, and the provost and executive vice president for academic affairs may, within seven days after receiving copies of the SACUA report and the record, file written comments with the president.

g. **If dismissal is not recommended or if the affected faculty member does not request a SACUA review.** The affected faculty member, the provost and executive vice president for academic affairs and/or the executive authority of the administrative unit may, within 10 days after receiving the Hearing Committee report, file written comments with the President.
h. *President's Recommendation and Parties' Response.* The president shall thereafter review the record in the case and shall formulate his or her own recommendations and the reasons therefor within seven days of receiving the parties’ written comments. All parties to the proceeding shall be furnished copies of the president’s recommendations and may, within ten days after receiving the same, submit to the president written comments regarding the recommendations. The full record of the case, including the recommendations of the president and any comments by the affected faculty member or SACUA, shall then be transmitted by the president to the board within seven days for final action.

i. *Removal of Tenure/Dismissal or Demotion* shall be discussed and voted upon no later than the next regularly scheduled Regents meeting for which all materials have been provided.

Sec. 5.10. Severance Pay (proposed February 16, 2020)

*Applicability.* If the termination is for cause involving moral turpitude or scholarly or professional misconduct including intentional refusal, expressed or implied by conduct, to perform properly assigned academic duties, no severance will be paid and the faculty member’s compensation will end on the date that he or she receives written notice of termination. Academic personnel with indeterminate tenure who are dismissed under Sec. 5.09 for reasons other than those listed above, such as program discontinuation, shall be entitled to severance pay following written notice of termination. The Hearing Committee, established pursuant to RB 5.09, shall include in its Report a recommendation regarding the payment of severance consistent with this Bylaw provision.

1. *Severance Pay for a Dismissed Faculty Member on Indeterminate Tenure.* Severance pay in the case of an employee on indeterminate tenure means regular monthly payments, equal to the employee’s salary during the appointment year of dismissal, covering a period following written notification of dismissal equal to one appointment year, except where the employee during such year secures other employment. In the latter event, from the time such other employment begins, the monthly payments shall not exceed the difference between the amount of the monthly payments otherwise provided herein and the employee’s monthly compensation from such other employment.

2. *Severance Pay for a Dismissed Faculty Member Under Contract for a Determinate Period.* Severance pay in case of academic personnel under contract for a determinate period shall be the same as for personnel on indeterminate tenure, except where the period remaining under any contract following written notification of dismissal is less than one year. In such case, the payments otherwise provided herein shall extend at least to the regular terminal date of the contract.
<table>
<thead>
<tr>
<th>Action</th>
<th>Timeline*</th>
<th>Interval</th>
<th>Overall Day Count if all max</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. President refers case to SACUA</td>
<td>Promptly after receipt of 5.09 request from EA of Unit</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>2. SACUA refers case to Standing Judicial Committee (JC) and gives written Charge Notice to affected faculty member (AFM)</td>
<td>Immediately</td>
<td>--</td>
<td>0</td>
</tr>
<tr>
<td>3. AFM may request a hearing</td>
<td>Within 10 days of notice</td>
<td>+10</td>
<td>10</td>
</tr>
<tr>
<td>4. SACUA appoints Hearing Committee (HC) members &amp; informs AFM</td>
<td>Within seven days of (3)</td>
<td>+7</td>
<td>17</td>
</tr>
<tr>
<td>5. AFM can raise objections to individual HC members</td>
<td>Within seven days of (4)</td>
<td>+7</td>
<td>24</td>
</tr>
<tr>
<td>6. HC membership conflicts addressed and finalized by SACUA</td>
<td>Within seven days of (5)</td>
<td>+7</td>
<td>31</td>
</tr>
<tr>
<td>7. University discloses all evidence to AFM</td>
<td>In parallel with (4, 5, 6) &amp; within 30 days from (2)</td>
<td>+30 from (2)</td>
<td>30</td>
</tr>
<tr>
<td>8. AFM discloses all evidence to University</td>
<td>30 days from receiving University docs in (7)</td>
<td>+30 from (7)</td>
<td>60</td>
</tr>
<tr>
<td>9. HC receives all evidence and hears case</td>
<td>Should be completed within 81 days of (2)</td>
<td>+21</td>
<td>81</td>
</tr>
<tr>
<td>10. HC files written report with all parties</td>
<td>Within 30 days of hearing (9)</td>
<td>+30</td>
<td>111</td>
</tr>
<tr>
<td>11. If HC recommends adverse action against AFM, SACUA advises AFM that AFM may request a review</td>
<td>Immediately</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>12. AFM may submit request for review of proceedings, and must provide reasons for request</td>
<td>within 10 days of (10,11)</td>
<td>+10</td>
<td>121</td>
</tr>
<tr>
<td>13. SACUA examines request and, at its discretion, may examine whether the process was followed and the recommendation is consistent with the evidence.</td>
<td>Within 21 days of (12)</td>
<td>+21</td>
<td>142</td>
</tr>
<tr>
<td>14. SACUA submits a written report of its findings and recommendations to all parties</td>
<td>Within seven days of (13)</td>
<td>+7</td>
<td>149</td>
</tr>
<tr>
<td>15. All parties may file written comments with the President in response to the SACUA report.</td>
<td>Within seven days of (14) (or if no appeal, within 10 days of (10))</td>
<td>+7 (or +10)</td>
<td>156 (121 if no request for appeal)</td>
</tr>
<tr>
<td>16. President reviews case and any submitted comments, formulates</td>
<td>within seven days of (15)</td>
<td>+7</td>
<td>163</td>
</tr>
</tbody>
</table>
his recommendation and reasons therefor and submits copies of his/her report to all parties

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>17. All parties may submit final written comments on recommendation to President</td>
<td>within 10 days of (16)</td>
<td>+10</td>
<td>173 (138 if no request for appeal)</td>
</tr>
<tr>
<td>18. Full record of case submitted by President to Board of Regents</td>
<td>Promptly (within seven days) after expiration of 10 day period in (17)</td>
<td>+7</td>
<td>180 (145 if no request for appeal)</td>
</tr>
<tr>
<td>19. Board of Regents take final action</td>
<td>Promptly on or before the next regularly scheduled Regent’s meeting</td>
<td>Next regularly scheduled Regent’s meeting</td>
<td></td>
</tr>
</tbody>
</table>

*Blue rows indicate actions if appeal is requested following report of the Hearing Committee*
Statement on Academic Freedom

On behalf of the University of Michigan Faculty Senate, the Senate Assembly defines the following standards of academic freedom:

Academic freedom is the liberty that faculty members must have if they are to practice their scholarly profession in accordance with the norms of that profession. Academic freedom is not a term or a condition of employment; rather, it is based in the institutional structure of this and other universities and is fundamental to their common mission of promoting inquiry and advancing the sum of human knowledge and understanding. Although some aspects of academic freedom are also protected by the First Amendment to the United States Constitution, academic freedom exists, independent of any external protection, as a basic prerequisite for universities to fulfill their mission to our society. Academic freedom is most commonly vindicated by individual faculty members, but remains first and foremost a professional prerequisite of faculty members as a group.

Academic freedom includes the following specific freedoms:

- **freedom of research and publication.** Within the broad standards of accountability established by their profession and their individual disciplines, faculty members must enjoy the fullest possible freedom in their research and in circulating and publishing their results. This freedom follows immediately from the university’s basic commitment to advancing knowledge and understanding. Restrictions on research and publication should be minimal and unobtrusive.

- **freedom of teaching.** This freedom is an outgrowth of the previous one. Faculty members must be able not only to disseminate to their students the results of research by themselves and others in their profession, but also to train students to think about these results for themselves, often in an atmosphere of controversy that, so long as it remains in a broad sense educationally relevant, actively assists students in mastering the subject and appreciating its significance.

- **freedom of internal criticism.** Universities promote the common good not through individual decision or bureaucratic calculation, but through broad-based engagement in the scholarly endeavor. Faculty members, because of their education and their institutional knowledge, play an indispensable role as independent participants in
university decision making. By virtue of this role, they are entitled to comment on or
criticize University policies or decisions, either individually or through institutions of
faculty governance.

- *freedom of participation in public debate.* Both within and beyond their areas of
expertise, faculty members are generally entitled to participate as citizens in public
forums and debates without fear of institutional discipline or restraint, so long as it is
clear that they are not acting or speaking for the University.

Since academic freedom derives from the institutional structure of American universities, it is
qualified in various respects. However, when academic freedom is so qualified, it is of critical
importance that restrictions be drawn up and implemented with substantial faculty input, in such
a way as to minimize infringement of academic freedom. In large part, this goal should be
accomplished by ensuring that institutional discipline of faculty members is in proportion to the
severity and persistence of misconduct, and by insisting that alleged offenses be handled with
appropriate standards of due process, including, wherever possible, the judgment of competent
peers. For the rest, however, it must be recognized that contemporary threats to academic
freedom are constantly evolving. This University — its faculty, administration, and students alike
— must exercise constant vigilance in resisting such threats, whether they arise within the
university or from outside.

**Commentary**

*Bibliography.* The conception of academic freedom articulated in this document derives
chiefly from two statements issued by the American Association of University Professors
(AAUP): the 1915 *Declaration of Principles on Academic Freedom and Academic Tenure* and
the 1940 *Statement of Principles on Academic Freedom and Tenure*, with the 1970
Interpretive Comments on this statement. These fundamental statements are now
supplemented by “Protecting an Independent Faculty Voice: Academic Freedom after *Garcetti
v. Ceballos,*” *Academe* 95 (Nov./Dec. 2009) 67-88. (All three documents are available on-line
at the AAUP website.) Our formulations of this conception are heavily influenced by Matthew
Freedom* (Yale Univ. Press, 2009), which also discusses at length cases arising under the
AAUP principles. For contemporary sources of pressure on academic freedom, we have relied
primarily on Robert O’Neil, *Academic Freedom in the Wired World: Political Extremism,
Corporate Power, and the University* (Harvard Univ. Press, 2008). Stephen H. Aby and James
an extensive, fully annotated bibliography. A much longer (but unannotated) bibliography is
http://eprints.lincoln.ac.uk/1763/.

**Scope of statement.** For purposes of this statement, faculty members are the membership
of the University of Michigan’s Senate, as defined in Regents Bylaw 4.01. Although the AAUP’s
1940 statement associates academic freedom with tenure, it needs stress that academic
freedom applies equally to all faculty members, regardless of rank or tenure.
However, those faculty who serve the University as senior officers or administrators, or who are on their immediate staffs, are normally expected to support publicly the University's policies, procedures, goals, and programs; therefore they have more limited freedom to speak about these matters without institutional restraint or discipline.

**Other non-faculty claims to academic freedom.** The present statement, although applicable only to Senate members, does not preclude other claims. Above all, the University of Michigan itself, as an institution of higher learning, has an independent claim, long recognized both in national and state law, to institutional academic freedom and autonomy, the freedom to budget, hire, select students, determine curriculum, set salaries, and so on. Further, by virtue of their participation in the process of education, other non-Senate members of the University community, such as lecturers, adjunct teachers, clinicians, researchers, and students, also have legitimate claims to academic freedom, by analogy with the present statement (necessary changes having been made).

**Academic freedom and free speech.** This statement adopts the stance of the 1915 AAUP Declaration, which describes academic freedom not as an individual protection from any and all constraints, but rather as the freedom to pursue a scholarly profession in accord with the standards of that profession. As the Declaration states, academic freedom is meant to defend “not the absolute freedom of utterance of the individual scholar, but the absolute freedom of thought, of inquiry, of discussion and of teaching, of the academic profession.” See Finkin and Post, 38-39. In this respect, academic freedom is distinct from the constitutional right to free speech as guaranteed by the First Amendment to the Constitution. However, in some instances modern courts have construed the right to free speech as protecting aspects of academic freedom, particularly within public universities. The present statement is occasioned, in part, by a perception that federal courts are currently abridging the constitutional protection of faculty, so that a heightened degree of institutional protection is now required. See O’Neil, 43-77, and also the AAUP’s 2009 article cited above, which makes the point that, because of a number of recent judicial decisions permitting university administrators to treat faculty members on the model of ordinary employees, “the case for academic freedom at both public and private institutions [should now be made], not as a matter of law, but as a principle vital to the effective functioning of institutions of higher learning.”

**Professional standards of accountability.** As has often been observed, the AAUP’s conception of academic freedom accords with normal practice at American universities, where faculty members are, for instance, hired and promoted in large part based on evaluations by their peers, including faculty members at other institutions. Today, however, a substantial amount of scholarship either questions or disregards traditional disciplinary boundaries, and this perspective, too, has become a regular part of the academic profession. The present statement is not meant to inhibit such scholarship.

**Qualifications on academic freedom.** Assertions of academic freedom can come into conflict with other basic institutional values of a modern university. Academic freedom is not a defense against allegations of professional misconduct in research or teaching, nor does it provide complete protection against illegal or otherwise justifiably prohibited conduct or
speech, particularly if it significantly disrupts teaching, research, administration, or other authorized activities on the campus. Academic freedom would not, for example, provide a defense to harassment of a student, nor would it in itself justify offensive speech in a classroom that is irrelevant to the subject matter being taught. Further, although academic freedom entails a high degree of faculty autonomy in organizing and teaching courses, it may also be limited by the requirements of curricula and of responsible teaching and collegiality, within an environment of tolerance and mutual respect. For example, as the AAUP acknowledged in its 1940 Statement, faculty members "should be careful not to introduce into their teaching controversial matter which has no relation to their subject." Finally, academic freedom is not inconsistent with reasonable institutional regulation of such areas as the performance of externally sponsored research, the conduct of research on human subjects, the use of the University's logo and trademarks, the deposit of faculty research in computer archives, and so on; but such regulations must be tightly defined so as to ensure that they are justified by important university policies, that they do not reflect hostility to particular viewpoints, and that they restrain academic freedom no more than is necessary.

**Academic freedom and disciplining faculty members.** The primary thrust of the AAUP's statements on academic freedom is that faculty members are not ordinary employees subject to the usual discipline of the American workplace. Rather, because of the nature of the educational enterprise, they are more accurately described as “appointees” (1915 Declaration) or “officers” (1940 Statement) of the institutions they serve; therefore administrative retaliation for the exercise of academic freedom is impermissible. In accord with this view, faculty members play a large role in disciplinary procedures at the University; they provide the sole membership of grievance panels, and they also comprise the SACUA Tenure Committee which sits on all Bylaw 5.09 cases for removal of tenure, demotion, and dismissal of faculty members. In fulfilling this function, faculty members, when hearing and deciding cases, are expected to know and implement the present statement; and the institutions of faculty governance should also periodically review and update this statement so as to provide it with currency. In addition, the issue of whether faculty disciplinary proceedings across the University adequately protect academic freedom should be the subject of thorough consideration as current grievance and disciplinary procedures are revamped.

**Threats to academic freedom.** These threats, which are described and documented at length in O'Neil's book, are constantly evolving as universities respond to a changing world. For instance, over the past several decades various universities have experienced an internal drift toward political orthodoxy and intolerance of dissent; this drift should be stoutly resisted, even as the bounds of orthodoxy themselves shift. Recurrent as well are the conflicts between a university's claims to autonomy and authority on the basis of its academic freedom, and faculty claims to independence on the basis of their own freedom. However, larger long-term dangers to academic freedom are now emerging, and they are often less easy to recognize and diagnose. These dangers include, for instance, increasing legal intrusions (both judicial and administrative) on independent faculty research; controversies stemming from the ubiquity of modern media, in particular the internet; the attempts of corporate sponsors to control university-based research; the efforts of self-appointed watchdogs to harass individual
teachers through websites and blogs; and demands that universities demonstrate political “balance” when appointing faculty. A great deal will depend on precisely how this and other universities adapt to their changing environment without losing hold on basic institutional values such as academic freedom. The present statement can only stress that, when these values are confronted by fresh challenges, all members of our educational community must take care not only to understand but to defend them vigorously.
## Working Group Mission

To further our shared commitment to the preservation of the purpose and protections of tenure, to address egregious situations deserving of expedited procedures/Measures, and to review and revise existing policy in accordance with our commitment to due process and our community values, with particular focus on clear procedures and the timely, fair, and transparent resolution of cases.

## Sponsorship

- **Susan E. Alcock**, Interim Provost and Vice Chancellor for Academic Affairs
- **Catherine A. Davy**, Provost and Vice Chancellor for Academic Affairs
- **Martin A. Philbert**, Provost and Executive Vice President for Academic Affairs

## Statement of Purpose

To develop and offer recommendations to the President for revisions to Regents’ Bylaw (RB) 5.09 *(Procedures in Cases of Dismissal, Demotion, or Terminal Appointment)* and (RB) 5.10 *(Severance Pay)*.

## Objectives

The primary objectives of the working group are:

### Part I:

- To gather information and assess the current state of similar policies at peer institutions; and
- To develop recommendations for additions/amendments to RB 5.09 and 5.10 that allow for expedited proceedings and interim measures in cases involving manifestly egregious misconduct;

### Part II:

- To comprehensively review RB 5.09 and RB 5.10;
- To make recommendations for revisions to RB 5.09 and RB 5.10 that reflect our community values, protect our commitment to due process, and promote the fair, transparent, and efficient resolution of cases.

## Scope

- RB 5.09, RB 5.10, and related policies (e.g., SPG 201.13)
- All UM Campuses
- Faculty covered by RB 5.09 and 5.1
- Culture and Awareness
<table>
<thead>
<tr>
<th><strong>Chair:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sharon Glotzer,</strong> Anthony C. Lembke Department Chair of Chemical Engineering, John Werner Cahn Distinguished University Professor of Engineering, Stuart W. Churchill Collegiate Professor of Chemical Engineering</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Membership:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bruce Maxim,</strong> Narasimhamurthi “Nattu” Natarajan Collegiate Professor of Engineering and Professor of Computer and Information Science, College of Engineering and Computer Science, University of Michigan-Dearborn</td>
</tr>
<tr>
<td><strong>Lynda Oswald,</strong> Louis and Myrtle Moskowitz Research Professor of Business and Law and Professor of Business Law, Chair of Business Law, Stephen M. Ross School of Business</td>
</tr>
<tr>
<td><strong>David Potter,</strong> Francis W. Kelsey Collegiate Professor of Greek and Roman History, Arthur F. Thurnau Professor and Professor of Greek and Latin, Department of Classical Studies, College of Literature, Science, and the Arts</td>
</tr>
<tr>
<td><strong>Sarah Rosaen,</strong> Professor of Communication Studies and Chair, Department of Communication Studies, College of Arts and Sciences, University of Michigan-Flint</td>
</tr>
<tr>
<td><strong>Dick Simon,</strong> Professor of Internal Medicine and Associate Chair, Internal Medicine, Medical School</td>
</tr>
<tr>
<td><strong>Twila Tardif,</strong> Professor of Psychology, College of Literature, Science, and the Arts</td>
</tr>
<tr>
<td><strong>Kentaro Toyama,</strong> W. K. Kellogg Professor of Community Information and Professor of Information, School of Information</td>
</tr>
<tr>
<td><strong>Camille Wilson,</strong> Professor of Education, School of Education</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Legal Consultant:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Gloria Hage,</strong> Associate General Counsel</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Administrative Leads:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>James Burkel,</strong> Assistant Vice Provost for Academic and Faculty Affairs</td>
</tr>
<tr>
<td><strong>Christine Gerdes,</strong> Special Counsel to the Provost</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Administrative Support:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Rafael Bremer,</strong> Executive Assistant</td>
</tr>
<tr>
<td><strong>Kerry Nisbett,</strong> Senior Administrative Specialist</td>
</tr>
<tr>
<td><strong>Timeline</strong></td>
</tr>
<tr>
<td>--------------</td>
</tr>
<tr>
<td><strong>Part II:</strong></td>
</tr>
</tbody>
</table>
Working Group on Regents’ Bylaws 5.09 and 5.10

Part I Recommendations

Submitted to Interim Provost Alcock, Provost Davy and Acting Provost Dittmar

November 21, 2019

Assenting members:
S.C. Glotzer (Chair), B. Maxim, D. Potter, S. Rosaen, R. H. Simon, T. Tardif and C. Wilson

Dissenting members:
L. Oswald, K. Toyama

I. WORKING GROUP BACKGROUND & CHARGE

On September 24, 2019, the University of Michigan’s provosts (Interim Provost Susan E. Alcock, University of Michigan Flint, Provost Catherine A. Davy, University of Michigan Dearborn, and Provost Martin A. Philbert, University of Michigan Ann Arbor) established a Working Group on Regents’ Bylaws 5.09 and 5.10 (the “Group”). The Group included nine (9) full professors, and its purpose was to develop and offer recommendations to the President for revisions to Regents’ Bylaw (RB) 5.09 (Procedures in Cases of Dismissal, Demotion, or Terminal Appointment) and RB 5.10 (Severance Pay).

The Group was charged with the following primary objectives:

Part I:
- To gather information and assess the current state of similar policies at peer institutions;
- To develop recommendations for additions/amendments to RB 5.09 and 5.10 that allow for expedited proceedings and interim measures in cases involving manifestly egregious misconduct;

Part II:
- To comprehensively review RB 5.09 and RB 5.10;
- To make recommendations for revisions to RB 5.09 and RB 5.10 that reflect our community values, protect our commitment to due process, and promote the fair, transparent, and efficient resolution of cases.

The Group was given just over eight (8) weeks to submit to the three provosts a report with our recommendations on Part I of the charge. Through pre-work provided by the Office of the General Counsel (OGC), the group was provided with information on 29 peer institutions’
policies at the first meeting on 9/24/19. Announcement of the Group’s members and charge was made in The Record, both in print and online, on October 7, and the article included an email address for members of the University community to send input. Regrettably, we were not able to solicit faculty input in additional ways, such as town hall meetings or surveys, given the short turnaround time. The Group members were encouraged to seek opinions from colleagues on the charge itself but were advised against sharing deliberations or recommendations, or the pre-work by the OGC on other institutions’ practices. It is our hope that wide dissemination of our Part I Report will provide ample time for feedback from the university community to inform our Part II work as well as for consideration by the Regents prior to Bylaw amendments.

In eight (8) meetings, the Group worked in a discussion format, focused primarily on Part I. The diversity of our group fostered robust discussions of the issues, options, and recommendations. From our discussions, we developed a list of shared principles and values that guided our recommended additions/amendments to RB 5.09 under Part I. We then collaboratively drafted this report, which provides the Group’s recommendations for Part I. The Group’s recommendations for Part II will be presented in a forthcoming report. It is the Group’s intention to provide additional opportunity for input from the university community on our more comprehensive charge in Part II, such as town hall meetings. We aim to listen carefully to this additional input so that it may help shape our deliberations and recommendations.

Working Group Members

Sharon Glotzer (Chair), Anthony C. Lembke Department Chair of Chemical Engineering, John Werner Cahn Distinguished University Professor of Engineering, Stuart W. Churchill Collegiate Professor of Chemical Engineering, College of Engineering

Bruce Maxim, Narasimhamurthi "Nattu” Natarajan Collegiate Professor of Engineering and Professor of Computer and Information Science, College of Engineering and Computer Science, University of Michigan-Dearborn

Lynda Oswald, Louis and Myrtle Moskowitz Research Professor of Business and Law and Professor of Business Law, Chair of Business Law, Stephen M. Ross School of Business

David Potter, Francis W. Kelsey Collegiate Professor of Greek and Roman History, Arthur F. Thurnau Professor and Professor of Greek and Latin, Department of Classical Studies, College of Literature, Science, and the Arts

Sarah Rosaen, Professor of Communication Studies and Chair, Department of Communication Studies, College of Arts and Sciences, University of Michigan-Flint

Richard H. Simon, Professor and Vice Chair for Faculty Affairs, Department of Internal Medicine, Medical School

Twila Tardif, Professor of Psychology and Associate Director, Lieberthal Rogel Center for Chinese Studies, College of Literature, Science, and the Arts

Kentaro Toyama, W. K. Kellogg Professor of Community Information and Professor of...
Background on the Group’s Charge \textit{viz} Part I:

There have been only three cases in which the 5.09 hearing process has occurred in the past decade at the University of Michigan. However, in light of recent events affecting institutions of higher education, we recognize the need to review our processes regarding the very rare instances where removal of tenure is to be considered. Protections for tenure arose out of multiple infringements of academic freedom, including the 1954 cases of Clement Markert, Mark Nickerson, and Chandler Davis at our own institution. Our current 5.09 process arose in the 1950s, with the intent of protecting academic freedom and having cases of potential removal of tenure determined not by a single person, but through a fair and transparent process involving committees of faculty peers.

In addressing Part I of our charge, the Group embraced fully and unanimously the above sentiments of protection and transparency as bedrock for any recommended modifications of RB 5.09/5.10. In considering our charge regarding “interim measures in manifestly egregious cases,” the Group focused on interim measures pertaining exclusively to possible suspension of pay pending the outcome of the 5.09 process.

II.  PRINCIPLES AND VALUES

Academic freedom\textsuperscript{33} is a cardinal value at the University of Michigan, and a key element of academic freedom is academic tenure. Tenure provides those faculty who have it with the bedrock on which to pursue risky or unconventional scholarly efforts without fear of reprisal.

\textsuperscript{33} According to the University of Michigan Faculty Senate Assembly’s 2010 \url{Statement on Academic Freedom}, “academic freedom is the liberty that faculty members must have if they are to practice their scholarly profession in accordance with the norms of that profession,” and it includes “the freedoms of… research and publication, … teaching, … internal criticism [e.g. of the university], … and participation in public debate.”
The University of Michigan has other values it respects and honors, such as the assurance of safety for all members of its community, responsible stewardship of its publicly supported funding, and just processes for handling internal conflicts within its community.

These two sets of values are put in tension when a tenured faculty member is investigated for alleged wrongdoing of a nature that is inconsistent with the privilege of tenure. The Group held this tension, and the critical importance of fairness and due process, front of mind throughout our discussions. These considerations are reflected in our recommendations on revisions to the 5.09 process contained herein. Key touchstones guiding our deliberations included:

- Protection of academic freedom
- Fairness to the investigated faculty member throughout the process
- Protection of the health and welfare of members of the university community
- Protection of the university’s mission and its ability to carry out its mission
- Protection of the university’s commitment to responsible stewardship

These touchstones led to the following core principles on which we base our recommendations:

- Removal of tenure should continue to be extremely rare.
- Our recommendations should aspire to strengthen the institution of tenure.
- The process followed in 5.09 cases should be applied equally in all cases.
- All aspects of 5.09 procedures should be conducted as expeditiously as fairness and due process to the investigated faculty member allows.
- Any ambiguity in the process we are defining should be resolved in favor of the investigated faculty member.
- Interim measures of suspension of duties without pay during a 5.09 proceeding should be exceedingly rare and implemented only in cases of manifestly egregious misconduct.
- Any recommendation of suspension of pay must not prejudice the Tenure Removal Committee.

The Group discussed extensively the use of the term “manifestly egregious misconduct.” We recognize that any term used to define alleged misconduct appropriate for the extraordinary consideration of suspension of duties without pay will be subjective and open to interpretation, and that any attempt to list misconduct falling under this umbrella is doomed to be incomplete or overly restrictive. To avoid ambiguity to the extent possible, in this Report we use the word “manifestly” to mean “clearly, obviously, patently or plainly,”\(^\text{34}\) and “egregious” to mean “extremely bad.”\(^\text{35}\) Moreover, we intend for “manifestly egregious misconduct” to refer to conduct clearly outside of the protections and privileges of tenure. The term shall never be interpreted to enable harassment for political or religious belief, or on the grounds of racial, gender, or sexual identity, or any other form of persecution, or discrimination or the diminishment of academic freedom and free speech. Furthermore, the term shall not be applied to seek retaliation or retribution against a faculty member. We also do not intend for the term “manifestly egregious misconduct” to refer to cases of alleged dereliction of duties, poor

\(^{34}\) The Cambridge Dictionary (https://dictionary.cambridge.org/us/)

\(^{35}\) ibid.
performance or conscientious objection. We expect allegations of manifestly egregious misconduct to be exceedingly rare, unusually serious, and harmful to the university community.

III. REVIEW OF PEER INSTITUTIONS

The Group reviewed the policies of 29 peer institutions and we concluded that only Michigan State University’s policy explicitly permits suspension without pay during a pending dismissal proceeding for tenured faculty. Several other universities have bylaws that are ambiguous with respect to pay suspension. While we recognize the need for a policy permitting the possible suspension of duties without pay in exceedingly rare and extraordinary circumstances, we found elements of Michigan State’s policy inconsistent with our principles and values, particularly as they concern fairness and transparency of process.

IV. RECOMMENDATIONS - OVERVIEW

In Part I of the charge, we were asked to examine two substantive issues: A. Expedited Proceedings in Cases of Manifestly Egregious Misconduct; and B. Interim Measures in Cases of Manifestly Egregious Misconduct. Our recommendations are briefly summarized as follows.

We do not recommend that an expedited or in any way abbreviated process for tenure removal be used in cases alleging manifestly egregious misconduct. However, in extraordinary cases where the President suspends the duties of the investigated faculty member for the duration of the 5.09 process (as permitted under current 5.09 bylaws) we recommend the President have the option of calling for a Pay Suspension Committee of five tenured faculty members to review possible suspension of pay while duties are suspended. The Pay Suspension Committee, operating separately from the 5.09 Tenure Removal Committee and in parallel with those proceedings, shall review the case and make a recommendation on suspension of pay to the President in under 50 calendar days. An additional 10 days is provided for an optional response from the faculty member and final decision by the President. If pay is suspended, the investigated faculty member shall continue to receive health, dental, and vision care benefits for the duration of the entire 5.09 process provided the investigated faculty member continues to make his/her own contributions. Should the full 5.09 process for tenure removal end in favor of the faculty member, there shall be full restitution of back pay.

The recommendations contained in this Report take an important, necessary and proactive step in protecting the privilege and protections of tenure by recommending to the Regents of the University of Michigan processes that separate, in a clear and transparent way, the type of manifestly egregious alleged misconduct that tenure is not intended to protect from the intended, sacrosanct purpose of tenure -- academic freedom.

The Group’s recommendation of a process for consideration of pay suspension was not unanimous; two dissenting opinions are included in Appendix A. In Appendix B, we provide additional discussion and reasoning that led to our recommendation. We soberly recognize the precedent we are setting by the changes to RB 5.09 proposed herein, which we believe will serve

---

36 Hereafter, “days” refer to “calendar days.”
to strengthen the institution of tenure by clarifying its inherent privileges and intended protections.

*We recommend that the provosts and/or president share the full contents of this report and solicit feedback from the university community with ample time to allow the Regents to consider this feedback prior to any amendment of RB 5.09/5.10.*

**V. RECOMMENDATIONS – DETAILS**

We address separately and in detail below the Group’s recommendations on the two issues of expedited proceedings and interim measures.

**A. Expedited Proceedings**

In order to uphold the principles of (i) due process, (ii) presumption of innocence and (iii) the institution of tenure, the committee does not approve of case-specific “expedited proceedings” for the removal of tenure. Removal of tenure should always take exactly the time required to ensure full due process with provisions for appeal, no more and no less. To suggest that a separate expedited 5.09 process is possible is equivalent to saying either that the standard 5.09 process includes elements that are not required for full due process, or that full due process must be curtailed in some cases but not others. The Group believes that full due process must always be extended for the 5.09 process. However, we recognize that the 5.09 process may have unnecessary elements that could be eliminated for all, or necessary elements that could be streamlined for all, in accordance with our touchstones and principles. Additionally, the Group recognizes the university’s potential need for interim measures to avoid binding the university to long-term financial commitments of a sort that would go against responsible stewardship of public funds. *The Group will examine all aspects of the 5.09 process in undertaking Part II of our charge, and we will make any recommendations for changes to the process with the exception of interim measures – which we address here -- in our subsequent Part II report.*

**B. Interim Measures in Cases of Manifestly Egregious Misconduct**

In extraordinary and exceedingly rare cases where the alleged misconduct of a faculty member, as presented in the complaint, is manifestly egregious, the President may suspend the duties of the faculty member, per the current 5.09 by-law. In that event we propose that the President have the option to call for a Pay Suspension Process at that time, or during the pendency of the 5.09 hearing in the case of substantial new evidence of manifestly egregious misconduct. The invocation of the Pay Suspension Process shall only occur once during a single 5.09 process.

---

37 The current process by which the President may remove duties is stated as: “In exceptional cases which, in the judgment of the president, threaten direct and immediate injury to the public reputation or the essential functions of the university, the president may direct that the affected faculty member be relieved of some or all of his or her university duties and responsibilities, without prejudice and without loss of compensation, pending the final disposition of the case.”

Although we will address this in greater detail in Part II of our work, we recommend that the preconditions for suspension of duties be clarified to be consistent with the principles and values articulated in this Report.
The Pay Suspension Process will involve the creation of a separate Pay Suspension Committee and hearing, independent of – and in parallel with – the 5.09 hearing process. We recommend the process consist of the following steps and timeline, and conclude no later than 60 days following invocation of the Pay Suspension Process:

- Upon invocation of the Pay Suspension Process, the University will at the same time submit all supporting materials regarding the case to the investigated faculty member.
- The Pay Suspension Committee shall be assembled by the Provost no later than 14 days from the initial invocation of the Pay Suspension Process.
- The Pay Suspension Committee shall be composed of five (5) tenured faculty at the same rank or above as the investigated faculty member. Two (2) of these members shall be appointed by SACUA (but not a member of SACUA at the time or the SACUA Tenure & Promotion Committee), one inside and one outside the school/college initiating the complaint; one (1) shall be appointed by the Executive Committee or equivalent elected governing body within the school or college initiating the 5.09 complaint; one (1) shall be the Chair or Vice Chair of the Academic Affairs Advisory Council, AAAC (Ann Arbor campus), or Faculty Council (Dearborn and Flint campuses) on the investigated faculty member’s campus; and one (1) shall be appointed by the Provost on the faculty member’s campus. Committee nominees must ensure at the time of appointment that they have had no prior and will have no future involvement in the case and have no conflict of interest with the investigated faculty member.
- Once assembled, the identities of the Committee members will be released to the investigated faculty member and, within seven (7) days, any objections to particular members must be resolved by the Provost to finalize the committee.
- Once finalized, the Pay Suspension Committee will receive the identical supporting materials initiating the 5.09.
- The investigated faculty member will have up to 28 days to submit any additional written materials for consideration by the Committee after invocation of the Pay Suspension Process.
- The Pay Suspension Hearing must occur between 29 and 42 days after invocation of the Pay Suspension Process. In the hearing, the University bears the burden of proof. The investigated faculty member has the right to counsel, but no witnesses will provide in-person testimony at this hearing.38
- All five (5) members of the Pay Suspension Committee have voting rights. The Committee shall recommend pay suspension only when at least four (4) out of five (5) committee members concur.
- The bar for recommending pay suspension shall be clear and convincing evidence of egregious misconduct.
- The Committee must deliver a report containing its vote, written recommendation, and any dissenting opinions regarding the full or partial suspension of pay to the President.

There is opportunity for witness testimony during the 5.09 tenure removal process.

38 Final Recommendations on RB 5.09 & 5.10, submitted to U-M Provosts on February 16, 2020 p. 41
and the investigated faculty member within seven (7) days of the hearing.

- If the investigated faculty member wishes to provide a written response to the committee's recommendation, he/she must provide this response to the President within five (5) days of receiving the report.

- The President must then render his/her final decision within five (5) days of receiving the investigated faculty member's response to the report, and no later than 10 days after the report is submitted.

- If suspension of pay is recommended, cessation of pay will occur immediately. However, the university contribution at the "active employee rate" to the investigated faculty member's health, dental, and vision benefits will continue provided the investigated faculty member also continues their own contributions. No other benefits will be paid during this period. Should the full 5.09 process for tenure removal end in favor of the faculty member, there shall be full restitution of back pay.

- Like the suspension of duties as per current Bylaw 5.09, suspension of pay should be without prejudice. To avoid prejudicing the 5.09 tenure review process, the University will not share the suspension of pay decision, nor the recommendation of the Pay Suspension Committee, with the Tenure Removal Committee.

VI. CONCLUSIONS

We recommend the creation of a faculty committee to review, at the President’s request, possible suspension of pay during the 5.09 process in cases where there is substantial evidence of manifestly egregious misconduct and suspension of duties is recommended by the President. In these cases, a Pay Suspension Committee of five (5) tenured faculty members, who have no conflicts of interest with the concurrent tenure removal process, will review the case and make a recommendation to the President in under 50 days. An additional 10 days is provided for an optional response to the recommendation by the investigated faculty member and the final decision by the President. The entire process will thus be concluded in fewer than 60 days from the President’s initial request. The Pay Suspension Committee will act independently of the Tenure Removal Committee, and any recommendation by the Pay Suspension Committee and subsequent decision by the President shall not be considered prejudicial to the outcome of the tenure removal process.

*We respectfully but emphatically urge that the full contents of this Report be shared publicly with the university community as soon as possible, and that the Regents broadly solicit and consider feedback from the faculty prior to adopting any or all of our recommendations.*

In a forthcoming report addressing Part II of the Group’s charge, the Group will detail considerations and guidelines for deliberations by the 5.09 Tenure Removal Committee that shall also pertain to the Pay Suspension Committee. Such considerations and guidelines will reflect the principles and values identified in this Part I report as well as possible additional touchstones.
that should guide the work of both committees. It is the Group’s intent to solicit input on the more general charge put to us in Part II through multiple venues.
Kentaro Toyama, Dissenting Opinion #1
Together with my colleagues in the Working Group on Regents’ Bylaws 5.09 and 5.10 (henceforth, “Working Group”), I strived in good faith to find a solution that would satisfy our charge. The outcome – an expedited process for possible suspension of pay – is a good one within the framework of the charge. Ultimately, though, I believe that our charge was asking us to “square the circle” by seeking less due process in coming to a determination of guilt exactly when the stakes are higher.

I deeply sympathize with the desire to have expedited proceedings in cases of manifestly egregious misconduct. I am as unhappy as anyone to see faculty members apparently guilty of a heinous crime compensated with public funds during a lengthy dismissal procedure. But, the operative word is “apparently”: To protect those who are innocent despite the appearance of guilt, we need a robust due process in every case, and particularly in the case of tenure – the closest thing we have to a sacred institution at modern research universities.

Thus, I would like to make a humble request of the Regents, President, and Provosts to avoid any separate “expedited” process for pay suspension or tenure removal. My reasoning is as follows:

- The University of Michigan should be a leader in advocating for the protections of academic tenure, not in weakening them. In our review of 29 peer universities, we found only one university – Michigan State University – that allows pay suspension prior to the completion of the due process for tenure removal. Tenure is bigger than U-M.
- An abridged process for suspension of pay violates AAUP guidelines. The American Association of University Professors (AAUP) – the foremost institution representing faculty at American universities – recommends that for tenured faculty, suspension of pay “should not be imposed until after a hearing in which the same procedures apply as in a dismissal case, which include written notice of the charges, a hearing before a Working Group in which the administration bears the burden of proof, right to counsel, cross-examination of adverse witnesses, a record of the hearing, and a written decision”[emphasis mine].
- It is unclear why faculty tenure protections should be eroded when the issues that likely prompted reconsideration of 5.09/5.10 appear to have originated in weaknesses in administrative offices. In the recent events that likely prompted a rethinking of 5.09/5.10, the underlying problems were at least as much problems of administration as they were of tenure protections. In the prominent MSU case, there were complaints going back to 1997. Eroding tenure protections in response to such cases feels like scapegoating, which I think sends the wrong message about how the U-M leadership views faculty.
- An abridged process to pay suspension hobbles the accused faculty member’s ability to mount an effective defense, and therefore encroaches on a fair process for tenure removal.
An abridged process to pay suspension violates the fundamental American principle of “innocent until proven guilty.” If the main tenure removal process involves the full due process we believe is required for removing tenure, how can an abridged/expedited process be adequate for removing pay, the main enabler of tenure? This is the ethical crux. In addition, while I am not a lawyer, it seems like a separate process could leave an opening for a challenge in court.

If despite the objections above, the University Leadership does approve an expedited route to pay suspension, then I would like to request that the Working Group’s recommendations be further strengthened, so that the route to pay suspension only occurs in cases when misconduct is clearly manifest and unquestionably egregious:

1. First, I request that any Pay Suspension Committee be directed to recommend pay suspension only in cases where 4 out of its 5 members find that the evidence before them is beyond a reasonable doubt. (The Working Group’s recommended standard is “clear and convincing evidence.”) Otherwise, the misconduct is arguably not manifest; the available evidence at that point is arguably not enough to prove guilt.

2. Second, I would request that the possible types of misconduct to which the label “egregious” might apply be further circumscribed, with the additional clauses below, which would help ensure that pay suspension only occurs in cases that are unquestionably egregious. (By eliminating these types of cases for pay suspension, I am not arguing that these cases should not lead to tenure removal at all, but just that the full due process of tenure removal should be accorded.)
   a) Pay suspension should not apply to any case in which the conduct in question involves speech or expression that is protected by U.S. law or U-M policies, or which might be categorized as such.
   b) Pay suspension should not apply to cases in which the faculty’s conduct could be construed by a reasonable person to be an act of conscience.

Finally, I note that my dissent does not imply a lack of willingness to consider ways to make the main tenure removal process as efficient as possible while still ensuring a rigorous due process.

Lynda J. Oswald, Dissenting Opinion #2

While I find the policy crafted by the committee to be a thoughtful process in many respects, I am unable to join in the Committee’s report. I dissent and write separately to state my concerns.

I have grave doubts about the wisdom and the ramifications of adopting a pay suspension policy at the University of Michigan. The Committee’s efforts uncovered only one other institution among the 29 peer institutions reviewed that had a pay suspension policy. That institution is Michigan State University and its policy is a direct result of the horrific and well-publicized recent events at that institution. As the well-known legal adage states, “hard cases make bad law.” Extraordinary cases ought not to dictate general rules that will be applicable to less extreme cases. Nor should our revulsion toward the circumstances of that case blind us to the true lessons to be learned. MSU incurred over $500 million in liability for its delay in taking
action as compared to thousands of dollars in compensation after it began action to revoke tenure.

The proposed policy contemplates suspension of pay in the context of a 5.09 hearing, but before any finding has been made about the validity of the charges brought against the faculty member. Pay suspension is thus a punitive sanction that occurs in the absence of a finding of misconduct. The potential harms to the faculty member involved are severe and likely irremediable: (1) the loss of income may prevent the faculty member from mounting a full and vigorous defense to the charges brought in the 5.09 hearing; (2) the determination to suspend pay may prejudice the faculty member in the 5.09 hearing as it may be seen as an indication that misconduct warranting tenure removal did indeed occur; and (3) the suspension of duties coupled with a suspension of pay is a de facto removal of tenure prior to the conclusion of the 5.09 hearing. The benefit to the University is small in comparison: the savings of the faculty member’s salary during the pendency of the 5.09 hearing. It is important to note that the pay suspension policy is not required to protect the University community – during the pendency of the Section 5.09 hearing, the faculty member can be suspended from all duties and barred from campus pursuant to a separate policy.

I am aware that the University might receive criticism from some members of the public for paying compensation during the pendency of a Section 5.09 proceeding. But many of those individuals would likely challenge the concept of tenure itself, not understanding its purpose and role. I would urge the University to make a vigorous and unequivocal defense of tenure from a consistent position that compensation is payable, in all events, until tenure is revoked after the due process afforded by a Section 5.09 proceeding.

The implementation of a pay suspension policy prior to the conclusion of a full 5.09 proceeding is an assault upon the institution of tenure. It would be regrettable if this assault were to be led by two leading research institutions in the State of Michigan, which has had a long and proud tradition of public education and academic freedom.
Appendix B to Phase I Report: Response

Preamble
The 5.09/5.10 Working Group (hereafter, Group) was charged by the three University of Michigan provosts with addressing possible expedited 5.09 tenure removal proceedings and interim measures in cases involving manifestly egregious misconduct. As indicated in the first section of this Report, we were given just over 8 weeks to produce a set of recommendations and convey them to the provosts for discussion at the December 5, 2019 Regent’s meeting. Due to the restricted time constraints, we did not have the opportunity to solicit broad input in the way we might have liked, and we were advised against vetting our recommendations with faculty outside the Group before submitting our report. Our small group is but a cross-section of the university faculty, but we did our best to consider a diverse set of viewpoints in drafting our recommendations. We emphasize that the recommendations contained in our Report represent solely those of the Working Group members.

We deliberated extensively and considered the many concerns that would attend a recommendation of such magnitude as the revision of a Regents Bylaw. In an effort to keep our Report concise, much of the debate and reasoning underpinning our ultimate recommendations is not detailed in the body of the Report. Below we provide additional context and discussion surrounding the various elements of our recommendations, particularly those that generated dissenting opinions. The content of this Appendix has been signed by the seven (7) assenting members of our nine (9)-member Group.

Overview
Academic Tenure provides faculty members with protections against harassment on the grounds of political or religious beliefs, or racial, gender, sexual identity and any other form of persecution or discrimination, that would lead to diminishment of academic freedom. The institution of tenure is sacrosanct within any university. When a tenured faculty member is accused of misconduct, it is a matter that the university takes very seriously. The protections of tenure are so strong that universities have strict bylaws dictating procedures that must be followed to the letter if they consider the misconduct sufficiently serious as to warrant the removal of tenure from the faculty member, in essence firing him or her. Because of the protections of tenure, these processes are (typically) clearly defined and offer ample opportunities to the investigated faculty member to address the allegations (referred to as “due process”). Removal of tenure from a faculty member is a rare occurrence at any university.

It is even rarer when the alleged wrongdoing by a faculty member involves manifestly egregious misconduct. In those exceedingly rare cases, the alleged misconduct almost always falls well outside the intended protections of tenure and the scope of the job of an academician, involving alleged criminal or otherwise extremely serious and harmful behavior that has no place at a university or anywhere. In addition to an immediate initiation of the tenure removal process in such cases, the executive officer (e.g. President) of the university is likely to relieve the faculty member of his or her duties until the tenure removal process is complete. Our current 5.09 Bylaw requires that a faculty member relieved of duties receives regular compensation until the tenure removal process has been completed, even in these very rare cases of manifestly egregious alleged misconduct -- the type of misconduct that might occur, say, once in a decade at a
university. Examples include the recent highly publicized cases at Michigan State University and the University of Southern California.

Such cases threaten the institution of tenure when the manifestly egregious alleged misconduct is of a nature that was never meant to, and should not, enjoy the protections of tenure and the rights and privileges thereof. When a faculty member is suspended with pay in these cases, or when the tenure removal process takes longer than might seem appropriate, it can give a false impression of the essence and privilege of tenure.

The Group was charged with recommending whether the University of Michigan should have an expedited tenure removal process and the option of interim measures – i.e. suspension of pay – in these rare, once-in-a-decade cases of manifestly egregious misconduct. The Group was quick to conclude that under no circumstances should a faculty member be subjected to expedited tenure removal proceedings. Due to the gravity of tenure protections, we were unanimous in recommending that the same process be applied in every case, regardless of the severity or egregiousness of the alleged misconduct. But the Group recognizes that the time to completion of the existing 5.09 process can be excessively long. In our forthcoming Report pertaining to Part II of our charge, the Group expects to recommend changes to the tenure removal process that expedite the process equally for all cases to the extent possible that maintains fairness and due process for the faculty member.

The following sections provide a response to the dissenting reports in Appendix A.

**Our recommendations preserve the ability of tenure to protect those activities for which it was intended.**

We believe that the recommendations contained in this Report do not weaken any of the core principles of tenure. But they do limit the inappropriate use of tenure to protect individuals who have performed serious, harmful, manifestly egregious acts.

A related dissenting point in Appendix A is that “Extraordinary cases ought not to dictate general rules that will be applicable to less extreme cases.” We concur strongly with that statement and believe it to be consistent with the Group’s recommendation. It is precisely the extraordinary cases we are concerned with in our Report, and our recommendation is that a pay suspension proceeding be initiated only in similarly extraordinary cases.

**We take pride in the University of Michigan setting a precedent for an explicit and transparent pay suspension procedure – crafted by the faculty for the faculty – in cases of manifestly egregious misconduct that fall clearly outside the intended protections of tenure.**

We surveyed current practices and bylaws of 29 peer institutions. The only university bylaws we found that explicitly address pay suspension are those of Michigan State University. Their process for possible suspension of pay during a tenure removal proceeding does not require that the recommendation for pay suspension be made solely by a tenured faculty committee of peers. The Group dismissed immediately that approach for the University of Michigan. At least one other university does not mention explicitly the possibility of pay suspension during a tenure removal process, but the wording of their policies implicitly allows for pay suspension. The Group felt that any pay suspension process must be conducted by tenured faculty members and

---

must afford due process to the investigated faculty member.

**Our recommendations align with the necessity of responsible stewardship of public funds.**
The manifestly egregious misconduct we envision in such cases is of a nature that was never meant to, and should not, enjoy the protections of tenure and the rights and privileges thereof. The Group therefore asserts that responsible stewardship of public funds dictates pay suspension where there is clear and convincing evidence of manifestly egregious misconduct, after careful deliberation, as determined by a supermajority vote of the Pay Suspension Committee and concurrence by the President.

The Group considered the effect a pay suspension might have on a faculty member while their 5.09 tenure removal proceeding is ongoing. For example, suspension of pay might negatively affect the faculty member’s ability to mount as vigorous a defense in their tenure removal hearing as they might have otherwise. With one exception, the Group accepts this, regrettably, as a possible though unwanted potential outcome of our recommendations. We recommended that all health, dental and vision care benefits remain intact despite suspension of pay. Should the full 5.09 process for tenure removal end in favor of the faculty member, there shall be full restitution of back pay.

**Suspending duties without pay does not violate tenure protection or de facto remove tenure.**
The Group debated whether suspension of duties without pay is, in effect, removal of tenure prior to the outcome of the tenure removal hearing, whereas suspension of duties with pay is not. The Group agreed strongly that regardless of with or without pay, suspension of duties has nothing to say about tenure removal. Importantly, the Group’s proposal is for pay suspension; there would be full restitution of pay if the 5.09 proceedings end in a recommendation against dismissal. The investigated faculty member retains all honorific titles bestowed upon them by the University throughout the 5.09 process, and although access to their research funds is suspended, their research grants are not closed. Also, although the faculty member may be barred from campus, in principle their students, postdocs and research staff may still continue to carry out research. And while the faculty member’s pay may be suspended, their health, vision and dental care benefits are not.

**The term “manifestly egregious misconduct” is the most appropriate term to use.**
The Group spent considerable hours discussing the use of the word “egregious.” We worried that the word could be ambiguous in meaning, defined “in the eye of the beholder” and/or lead to the misapplication of the proposed recommendations. The Cambridge Dictionary defines “egregious” as “(of something bad) extreme; beyond any reasonable degree.” We considered alternative adjectives but found none that carried the severity of the word “egregious.” The Cambridge Dictionary further defines “manifestly” to mean “very obviously.”

Thus, manifestly egregious misconduct refers solely to misconduct that is very obviously extremely bad and of a type that in no conceivable way could be considered worthy of protection.
in the name of academic freedom

**Our recommended procedure for a pay suspension option offers due process.** During the 5.09 process, the investigated faculty member is given due process that includes the right to counsel, the right to address the tenure removal committee of faculty peers, the right to cross-examination of adverse witnesses, the right to provide additional exculpatory evidence and, post-decision, the right for additional levels of review.

We assert that due process must also be afforded during the pay suspension proceeding; however, it need not and should not be as extensive as that provided in the tenure removal process. In the current tenure removal process, there are numerous levels of review and opportunities for delay in reaching a final decision. We sought an appropriately expeditious pay suspension process that balances fairness to the investigated faculty member against the University’s responsible stewardship of funds, with a bias in favor of the investigated faculty member. The procedures we are recommending for suspension of pay provide all necessary due process protections to the investigated faculty member, and greater due process protections than are provided for virtually any other non-tenure track faculty member.

**“Clear and convincing evidence” should be the bar for recommendation of pay suspension.** The Group discussed at length what the bar should be for the pay suspension committee of five faculty members to vote in favor of suspension of pay. Possible bars considered include beyond a reasonable doubt, clear and convincing evidence, and a preponderance of the evidence.

Being convinced by the evidence “beyond a reasonable doubt” means that the evidence establishes the alleged misconduct “to a moral certainty and that it is beyond dispute that any reasonable alternative is possible.” This bar is higher than that used by the University in tenure removal cases and all similar instances, as well as in civil cases beyond the University of Michigan. Clear and convincing evidence is the degree of certainty typically used by all other such processes at the University of Michigan. It asserts that the evidence “must be highly and substantially more probable to be true than not and the trier of fact must have a firm belief or conviction in its factuality.” The term “preponderance of evidence” means that the evidence in support is higher than the evidence against, even if only slightly higher. This is the lowest bar of the three.

“Preponderance of the evidence” was rejected by the Group as being too low a bar for something as serious as suspension of pay. One member of the Group argued in favor of using the words “beyond a reasonable doubt,” reasoning that the bar should be higher for suspension of pay than any other bar used in the 5.09 process. The remainder of the Group felt that reasonable doubt is inappropriate here because (1) it is used strictly in our society in the criminal context, and (2) already the bar for suspension of pay is *de facto* higher than the bar for suspension of duties.

**Suspension of pay – like suspension of duties – must be without prejudice.**

---

41 [https://legal-dictionary.thefreedictionary.com/beyond+a+reasonable+doubt](https://legal-dictionary.thefreedictionary.com/beyond+a+reasonable+doubt)

Of immense importance to all members of the Group is that the recommended pay suspension process not prejudice in any way the outcome of the tenure removal process, which occurs in parallel. We were very concerned that a recommendation and/or outcome in favor of pay suspension – or even just the knowledge that the President has initiated a pay suspension process following his/her decision to suspend duties – might influence the deliberations of the tenure removal committee. We assert that any suspension of pay must be without prejudice, and we have put measures in place to greatly limit this possibility.

Our remedy to protect against prejudicing the tenure removal proceeding is to ensure the University keep the initiation, recommendations and outcome of the pay suspension proceeding outside and away from the tenure removal process. Of course, a recommendation and/or outcome against pay suspension favors the investigated faculty member, and it should be the prerogative of the faculty member to share the information outside of the pay suspension process.

Furthermore, we purposely recommended that a pay suspension proceeding be invokable only if the President suspends duties for manifestly egregious behavior that threatens serious harm to the university and its members. The executive officer of a university must always have the power to relieve someone of duties – even tenured faculty members - in the interest of safety. Just as the suspension of duties is to be without prejudice, so too should the suspension of pay be without prejudice.
APPENDIX D: SLIDES SHOWN AT TOWN HALLS

D.1: SLIDES FROM CAMPUS TOWN HALLS, JANUARY 23-27, 2020

D.2: SLIDES FROM SENATE ASSEMBLY TOWN HALL, FEBRUARY 3, 2020
Regents’ Bylaws 5.09/5.10
Working Group Town Hall

North Campus AA Town Hall, January 23, 2020
Central Campus AA Town Hall, January 23, 2020
Dearborn Campus Town Hall, January 24, 2020
Flint Campus Town Hall, January 27, 2020

What are Regents’ Bylaws 5.09/5.10?

Specify process by which TT faculty can be fired and lose tenure (5.09) and receive one year of compensation after termination (5.10).

Instituted in McCarthy era to ensure strong protections for academic freedom.

*Are mostly unchanged since written.*
Regents considering changes to RB 5.09/5.10

Our current Bylaws dictate:
- A two-tiered process that is complicated, ambiguous, and long.
- Faculty receive full compensation until 5.09 process concludes with termination, regardless of egregiousness of alleged misconduct.
- In most cases, terminated faculty members receive one year of severance pay, regardless of egregiousness of alleged misconduct.

As written, our 5.09 process applies to the type of egregious misconduct that was never meant to be afforded the protections of tenure.

Regents considering changes to RB 5.09/5.10

In response, the three Provosts (AA, Flint, Dearborn) appointed a faculty working group to recommend changes in the Bylaws for consideration by the Regents.
5.09/5.10 Working Group Members

- Sharon Glotzer (Chair), Professor and Chair, Chemical Engineering (Ann Arbor)
- Bruce Maxim, Professor, Engineering and Computer Science, (Dearborn)
- Lynda Oswald, Professor, Ross School of Business (Ann Arbor)
- David Potter, Professor, Classical Studies, LS&A (Ann Arbor)
- Sarah Rosaen, Professor, Communication Studies, Arts and Sciences, (Flint)
- Richard Simon, Professor & Vice Chair for Faculty Affairs, Internal Med (Med School)
- Twila Tardif, Professor, Psychology, LS&A (Ann Arbor)
- Kentaro Toyama, Professor, School of Information (Ann Arbor)
- Camille Wilson, Professor, School of Education (Ann Arbor)

Support from the General Counsel’s Office and AA Office of the Provost:
James Burkel, Christine Gerdes, Gloria Hage

Provosts’ Charge to Working Group

Part I – draft completed and seeking feedback on key points from the faculty

- To gather information and assess the current state of similar policies at peer institutions;
- To develop recommendations for additions/amendments to RB 5.09 and 5.10 that allow for expedited proceedings and interim measures in cases involving manifestly egregious misconduct;

Part II – ongoing and seeking input from the faculty

- To comprehensively review RB 5.09 and RB 5.10;
- To make recommendations for revisions to RB 5.09 and RB 5.10 that reflect our community values, protect our commitment to due process, and promote the fair, transparent, and efficient resolution of cases.
WG Guiding Principles, Values & Touchstones

● Academic freedom, fairness and protection of due process, welfare of university community, protection of university mission, reflection of our shared values, responsible stewardship
● Efficient but fair and transparent process for tenure removal is good both for accused faculty member and for university
● Our recommendations should aspire to strengthen the protections of tenure

Key Changes We Are Proposing (Part I)

In cases of “manifestly egregious misconduct,”

No expedited process (no change)
  ○ All 5.09 cases should have the same (efficient & fair) process.

Possible pay suspension process (new!)
  ○ Pay suspension should be extremely rare.
  ○ Pay suspension should have a high bar.
  ○ Pay suspension should not prejudice tenure removal hearing.

By being good stewards of public funds, we strengthen tenure.
Recommended Pay Suspension Process for 5.09

- Triggered by president for “manifestly egregious misconduct”
- Pay Suspension Committee of five faculty
  - 3 appointed by SACUA
  - 2 chosen by unit and provost
- Firewall between PSC and tenure removal hearing
- Due process afforded accused faculty member
- **High bar**: 4 of 5 members must find “clear and convincing evidence” to recommend immediate pay suspension
- Decision within 60 days
- Benefits would continue

Dissents on Part I

Oswald and Toyama dissented with majority recommendation. Both object to pay suspension prior to a finding of misconduct.

1. *De facto* removal of tenure
2. May hinder the accused faculty member’s ability to mount a defense
3. May prejudice the 5.09 hearing committee
4. Of 29 peer institutions, only MSU has a similar policy

Toyama has additional objections.

5. Diverges from AAUP recommendation
6. Scapegoats faculty when contributory causes may be administrative
7. Violates “innocent until proven guilty”
In Response to Dissents, the Majority Argue...

1. Not *de facto* tenure removal: faculty member retains honorific titles & research grants are not closed
2. If pay suspended and accused faculty member does *not* lose tenure, withheld pay fully restituted
3. Firewall between PSC and 5.09 hearing + SACUA, so no prejudice
4. U-M should set precedent for explicit and transparent pay suspension procedure – *crafted by faculty for faculty* – in cases of manifestly egregious misconduct
5. It is ok for UM to diverge from the AAUP recommendation
6. Only possible if already suspended from duties by president
7. Due process both in tenure removal process AND in pay suspension process

5.09 cases are rare
Egregious misconduct 5.09 cases are exceedingly rare

The majority’s recommendations *seek to strengthen the privilege of tenure* by preserving the ability of tenure to protect those activities for which it was intended.
**Key Changes We Are Proposing (Part II)**

- A single, timely and unambiguous 5.09 process
- 5+ person Hearing Committee
  - 3 from SACUA-appointed **Judicial Standing Committee**
  - minimum of 2 chosen by Unit EA (e.g. Dean).
- Hearing completed within 84 calendar days of notification
  - Option for procedural review by SACUA and/or written comments
- Process completed* within ~ 150 calendar days (21 weeks) or less

* ordinarily

---

**Questions for Faculty from the Working Group (WG)**

- What are your thoughts on the WG’s draft recommendations as summarized?
- Do the draft recommendations align with stated principles and values?
- Are there things the WG is overlooking in its potential recommendations?
- Do you have any feedback regarding the current language of RB 5.10, which provides for severance pay following dismissal?
- Do you have any other feedback you would like to provide to the WG?

Provide your written comments through our survey link here.
Regents’ Bylaws 5.09/5.10
Working Group Town Hall

Senate Assembly Town Hall, February 3, 2020

These slides reflect changes responsive to feedback received at the previous town halls, and from surveys and emails.

New & Improved!

What are Regents’ Bylaws 5.09/5.10?

Specify process by which TT faculty can be fired and lose tenure (5.09) and receive one year of compensation after termination (5.10).

Instituted in McCarthy era to ensure strong protections for academic freedom.

Are mostly unchanged since written.
Regents considering changes to RB 5.09/5.10

Our current Bylaws dictate:
- A two-tiered process that is complicated, ambiguous, and long.
- Faculty receive full compensation until 5.09 process concludes with termination, regardless of egregiousness of alleged misconduct.
- In most cases, terminated faculty members receive one year of severance pay, regardless of egregiousness of alleged misconduct.

As written, our 5.09 process applies to the type of egregious misconduct that was never meant to be afforded the protections of tenure.

Regents considering changes to RB 5.09/5.10

In response, the three Provosts (AA, Flint, Dearborn) appointed a faculty working group to recommend changes in the Bylaws for consideration by the Regents.

Very tight timeline, with final recommendations delivered to Provosts by February 16, 2020.
5.09/5.10 Working Group Members

- Sharon Glotzer (Chair), Professor and Chair, Chemical Engineering (Ann Arbor)
- Bruce Maxim, Professor, Engineering and Computer Science, (Dearborn)
- Lynda Oswald, Professor, Ross School of Business (Ann Arbor)
- David Potter, Professor, Classical Studies, LS&A (Ann Arbor)
- Sarah Rosaen, Professor, Communication Studies, Arts and Sciences, (Flint)
- Richard Simon, Professor & Vice Chair for Faculty Affairs, Internal Med (Med School)
- Twila Tardif, Professor, Psychology, LS&A (Ann Arbor)
- Kentaro Toyama, Professor, School of Information (Ann Arbor)
- Camille Wilson, Professor, School of Education (Ann Arbor)

Support from the General Counsel's Office and AA Office of the Provost:
James Burkel, Christine Gerdes, Gloria Hage

Provosts’ Charge to Working Group

Part I
- To gather information and assess the current state of similar policies at peer institutions;
- To develop recommendations for additions/amendments to RB 5.09 and 5.10 that allow for expedited proceedings and interim measures in cases involving manifestly egregious misconduct;

Part II
- To comprehensively review RB 5.09 and RB 5.10;
- To make recommendations for revisions to RB 5.09 and RB 5.10 that "reflect our community values, protect our commitment to due process, and promote the fair, transparent, and efficient resolution of cases."
WG Guiding Principles, Values & Touchstones

- Academic freedom, fairness and protection of due process, welfare of university community, protection of university mission, reflection of our shared values, responsible stewardship...
- Efficient, fair, transparent process is good both for accused faculty member and for university
- Our recommendations must aspire to preserve the intended protections of tenure

Input

- Review of processes at peer institutions
- General comments on bottlenecks from faculty who’ve served on hearing committees & SACUA (in person) and in writing (TPP)
- General comments from lawyers and administration involved in 5.09 cases (in person & in writing)
- Feedback from survey (still open!), emails, Town Halls 1 - 4

*These slides reflect changes responsive to feedback received at the previous town halls, and from surveys and emails.*

Final Recommendations on RB 5.09 & 5.10, submitted to U-M Provosts on February 16, 2020
Considerations for 5.09 (1/2)

<table>
<thead>
<tr>
<th><strong>Old</strong></th>
<th><strong>New</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Two pathways</td>
<td>One pathway</td>
</tr>
<tr>
<td>Few timelines for action</td>
<td>Timelines for each step</td>
</tr>
<tr>
<td>Vague timeline to hearing</td>
<td>Hearing completed within 84 calendar days of notification</td>
</tr>
<tr>
<td>Open-ended process</td>
<td>5.09 process completed in 22 weeks or less!</td>
</tr>
<tr>
<td></td>
<td>○ Including option for appeal, review, comments</td>
</tr>
</tbody>
</table>

*Also new:* Proposed *discovery phase* prior to hearing.

Considerations for 5.09 (2/2)

<table>
<thead>
<tr>
<th><strong>Old</strong></th>
<th><strong>New</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Two paths, two types of hearing committees</td>
<td>Standing Judicial Committee (under SACUA?)</td>
</tr>
<tr>
<td>Unit appointed</td>
<td>This should eliminate a bottleneck.</td>
</tr>
<tr>
<td>SACUA appointed</td>
<td><strong>Who should select the committee members?</strong></td>
</tr>
<tr>
<td></td>
<td>○ At least 3 from SJC?</td>
</tr>
<tr>
<td>Either is problematic</td>
<td>■ But not SACUA members, since they may need to do procedural review</td>
</tr>
<tr>
<td></td>
<td>• At least 2 “subject matter experts” chosen by unit-elected exec comm or equivalent?</td>
</tr>
<tr>
<td>Requires commitment of uncertain length</td>
<td></td>
</tr>
<tr>
<td>Must drop everything</td>
<td></td>
</tr>
</tbody>
</table>

Final Recommendations on RB 5.09 & 5.10, submitted to U-M Provosts on February 16, 2020  p. 64
Considerations for 5.10

Should the Working Group recommend elimination of severance clause 5.10, resulting in no severance if 5.09 results in termination for cause?
- Current RB 5.10: One-year severance pay after termination (by 5.09), except when (1) prohibited by law based on character or conduct, (2) faculty convicted of a felony, or serious misdemeanor involving students or university, (3) when there is intentional refusal to perform “properly assigned academic duties.”

Severance paid in instances of research falsification, harrassment, retaliation, and other “non-crimes” that most would agree fall outside of the protections of tenure.

Considerations for 5.10

Should the Working Group recommend elimination of severance clause 5.10, resulting in no severance if 5.09 results in termination for cause?

What are pros and cons?
- AAUP - “...severance except in cases of moral turpitude…”
- Few peers provide severance following termination.
- What else?
Additional Considerations for 5.09 (Part I of charge)

In cases of “manifestly egregious misconduct,”

No expedited process (no change)
- All 5.09 cases should have the same (transparent, expeditious & fair) process.

Possible pay suspension process as “interim measure”
- Pay suspension should be extremely rare, have a high bar and not prejudice tenure removal hearing.
- Two dissenting members of Working Group.
- Based on town halls and survey responses largely indicating dissent, WG is re-examining the idea.

Most Popular Feedback Received from Town Halls at AA(Central, North), Dearborn and Flint Campuses, & from Faculty-Wide Survey: No pay suspension

- Trigger for pay suspension (MEM) difficult to define
- Removing pay before there is a finding to terminate and remove tenure is problematic for many reasons
  - “Innocent until proven guilty,” prejudicial (firewall impractical), unintended consequences, potential for bias in application, etc.
- Two parallel hearings is clunky and burdensome
- If shortening 5.09, why bother with pay suspension?
Questions for Faculty from the Working Group (WG)

1. What do you think about having a single streamlined 5.09 process?
2. How should the hearing committee be constituted, and by whom?
3. Should we recommend elimination of severance (5.10)?
4. Given the reduced time to complete 5.09, should pay be suspended in manifestly egregious cases, or should there be some other interim measure?

Provide your written comments through our survey
http://j.mp/509feedback

Alternatively, or if you’ve already filled out the survey, email us at working.group.outreach@umich.edu.
Question #1: Proposed 5.09 Timeline

- University notifies accused faculty member (AFM) of charges; triggers 5.09.
- Within 10 days, AFM can request a hearing.
- Within 7 days after, SACUA names Hearing Committee (HC). AFM can challenge nominees.
- Within another 7 days, HC finalized.
- University must provide all materials within 35 days of notification.
- Within 25 days after receiving the University’s materials, AFM submits materials for defense.
- Hearing completed within 60 days after HC finalized (84 days after notification).
- Within 2 days of hearing completion, HC informs SACUA of decision; SACUA informs AFM, unit, University.
- Within 10 days of hearing outcome notification, AFM can appeal.
- Within 14 days of receiving appeal, SACUA decides whether review is merited. If so,
  - SACUA will hear the appeal within 30 days.
- SACUA provides written report within 5 days, to the President and the AFM.
- AFM has 7 days to respond to President.
- President makes final recommendation to Regents.
- Regents decide final outcome.

Include or add explicit time for report writing?

Questions for Faculty from the Working Group (WG)

1. What do you think about having a single streamlined 5.09 process?
2. How should the hearing committee be constituted, and by whom?
3. Should we recommend elimination of severance (5.10)?
4. Given the reduced time to complete 5.09, should pay be suspended in manifestly egregious cases, or should there be some other interim measure?

Provide your written comments through our survey

http://j.mp/509feedback

Alternatively, or if you’ve already filled out the survey, email us at working.group.outreach@umich.edu.
Questions for Faculty from the Working Group (WG)

1. What do you think about having a single streamlined 5.09 process?
2. How should the hearing committee be constituted, and by whom?
3. Should we recommend elimination of severance (5.10)?
4. Given the reduced time to complete 5.09, should pay be suspended in manifestly egregious cases, or should there be some other interim measure?

Provide your written comments through our survey

http://j.mp/509feedback

Alternatively, or if you’ve already filled out the survey, email us at working.group.outreach@umich.edu.
APPENDIX E: SURVEY QUESTIONS SENT TO FACULTY

Survey Questions – Faculty Working Group on RB 5.09/5.10

January, 2020

Please click on the campus with which you are most closely affiliated:
(Ann Arbor, Dearborn, Flint)

Please click the description that best describes your faculty status with the university:
(Tenured, Tenure-Track (not yet tenured), Clinical Track, Research Track, Lecturer, other)

1. Please share your thoughts regarding the Working Group’s potential recommendations as summarized in the linked PowerPoint.
2. Do you feel the potential recommendations align with the principles and values described above? If not, please share your thoughts on what you see as misalignment.
3. Are there things the Working Group is overlooking in its potential recommendations? If so, please explain.
4. Please share any feedback you have regarding the current language of RB 5.10, which provides for severance pay following dismissal.
5. Please share any other feedback you would like to provide to the Working Group.
APPENDIX F: SUMMARY OF FACULTY FEEDBACK TO WORKING GROUP FROM TOWN HALLS AND SURVEY RESPONSES

Five town hall meetings were conducted across all three campuses of the University of Michigan. Three town hall meetings happened on the Ann Arbor campus and one town hall each at the Dearborn and Flint campuses. A total of 90 faculty attended the town halls. A survey was emailed to all 10,400 faculty (tenure track, clinical track, research track, lecturers, and supplemental) across all three campuses of the University of Michigan (Ann Arbor, Dearborn, and Flint). A total of 278 faculty participated (257 from Ann Arbor, 8 from Dearborn, and 14 from Flint). Here are the summarized responses from faculty at the town hall meetings and the administered survey.

In general, many of the responses were in support of the working group recommendations. Faculty agree that a more efficient timeline for 5.09 cases is warranted and thought the proposed process seemed fair. Several faculty pointed out that the composition of the committee to hear 5.09 cases should be considered carefully. They strongly believe it should be composed of faculty and should avoid bias by having SACUA review recommendations so that administrators do not have undue influence in the composition of the committee. Although many faculty endorsed the recommendations of the working group, several faculty want more transparency and several feel that aligning the bylaws with AAUP standards is important. They appreciated the chance to give feedback but several people pointed out that a presentation of the working group thinking was not sufficient to fully understand what is being proposed. Additionally, faculty were concerned that Regents’ request may be an overreaction to recent, high profile cases that are a public relations issue for the University. Regardless of that concern, faculty agree that updates to the policy are important and should not be reactive to current cases, but be determined by a process that is objectively fair regardless of the case. Moreover, many faculty brought up that they were against an expedited and/or pay suspension process. Most agreed with the working group dissenters on our initial thinking about a pay suspension option for those that were deemed to have committed manifestly egregious misconduct. In general faculty agree that there is conduct that should result in the removal of tenure, but they feel one process for all cases is the best option. Concerns about a pay suspension process were that it assumes guilt before innocence, it is hard to create a firewall between the decision of the pay suspension committee and the 5.09 hearing, calls into question due process for some cases, and can unduly harm the reputation of the faculty member if they are in fact proven to be innocent in the end. Additionally, many faculty pointed out that the definition of manifestly egregious misconduct is unclear and without clear boundaries calls into question whether academic freedom will be protected in all cases. Overall, faculty felt that a single process with shorter timelines is a better solution than invoking pay suspension. However, faculty wanted more clarity about how the committee will make its decision, how timelines will be enforced, want an appeal process for the affected faculty member, and thought great consideration should
be given to the time allotted for writing the committee report given the density of information. In general most faculty said they either think severance should not be awarded for those that are fired for cause or at least for those that committed a crime. They did say that severance should be given for 5.09 cases that are related to University efficiency decisions (e.g. eliminating a department). The final comment that came from a majority of faculty was thanks to the committee for the hard work.
G.1 1954 President’s Report to the University Senate on the Procedures and Actions Involving Three Members of the University Faculty

G.2 1954 Statement Presented by the Dean and Executive Committee at the Special Meeting of the Faculty of the College of Literature, Science, and the Arts

G.3 1955 Report Special Committee on Role of Faculty in Tenure Matters

G.4 Report to the Senate Advisory Committee of its Subcommittee on Tenure Respecting Recommended Changes in Section 5.10 of the Regents’ By-laws, Defining Procedures in Case of Dismissal, Demotion or Terminal Appointment, March 30, 1959

G.5 May 12, 1959 Summary of University Senate Recommendations regarding Section 5.10


G.7 Report dated March 31, 1956, to The Senate Advisory Committee on University Affairs, from Sub-Committee of the S.A.C. on Severance Pay

G.8 Proceedings of the Board of Regents (1957-1960), p. 763
President's Report to the University Senate

on the Procedures and Actions Involving

Three Members of the University Faculty

Harlan Hatcher

University of Michigan

October 5, 1954, 4:15 P. M.

Rackham Lecture Hall
I have called this special meeting of the Senate primarily in order that I might report to you on the proceedings and their conclusion involving three members of the University staff who refused to answer under oath questions about their relationship to the Communist Party before a Congressional Committee.

Because of the Senate's concern and responsibility in such matters, I would wish in any event to make this report as a part of normal procedure. Since the cases were resolved in August while most of you were away, I desired to take the earliest opportunity to make this official statement to you. Following this report the meeting will be open with full opportunity for discussion.

The timing, like the origin of the cases themselves, was a matter quite beyond our control. We have pursued the cases diligently, and they have moved as fast as they could consistent with fair procedure and judicial study by the various bodies concerned with them. Had the cases come before us last December or January, as originally indicated, they would have been resolved in the spring. Instead, they were placed before us on May 11, and they were ended in August.

I observe once more that nothing more difficult or distressing can come before a university than conduct of this kind, and that free men, representing a university, having the protection of the institution when their cause is honorable, assume a grave responsibility when they throw upon their colleagues and upon the university the burdens inherent in a refusal to answer questions.
pertaining to the safety and welfare of this nation on the grounds that a frank answer might incriminate them. There must be good and convincing reasons to justify such a stand.

We must keep in mind the context of these inquiries and their relationship to the grave crises which we have faced and which still menacingly confront us. We have been through a devastating war; we have strained our economy and expended some $87 billion in a global struggle for survival against a ruthless communist attack and imperialistic expansion; our young men have been conscripted in time of technical peace; they have been removed from college classrooms to fight aggressive communism; they have been slain on the world's battlefields. Crimes have been committed against our national security which have been linked to the communist conspiracy. We are not, therefore, dealing with a political party in our traditional and accepted sense of American freedom, but with a skilled and crafty and relentless intrigue which, if successful, would deliver us into the hands of those who would destroy our freedoms as they have destroyed them wherever they have been victorious. We wish to brighten the lamps of freedom, not to permit the extension of darkness upon the face of the earth.

It was not any surprise that in these dangerous days the University of Michigan, as a major institution closely linked to the national defense, with millions of dollars of research work going on in advanced and sensitive fields, and with some seven thousand men and women on its various staffs, would naturally be subjected to careful scrutiny by authorized agencies.

The University has its own independent concern for such matters. It would not knowingly employ communists on its staff; neither would it retain them if it had knowledge of such affiliation. When the first announcement was made in the press that the University of Michigan was to be investigated, I sent a telegram to Congressman Velde briefly stating our position.
It read:

"We read in the papers that the University of Michigan is named as one of the schools on your list for investigation. Although we have not received notice of your plans we wish to assure you of our willingness to cooperate with you to the fullest extent. We fully share the interests of our citizens in guarding, preserving, and enhancing our American heritage. The University is dedicated to sound education and to the safety and progress of the nation. It has long been among the leading institutions in its cooperation with the Armed Forces in the field of research and other services considered vital to our national strength. It is maintained by the State in the public interest. These considerations have led us to exercise all vigilance consistent with American practice against the possibility of subversive activities, while preserving the traditional freedom of scholarly investigation upon which our national progress is based. It is our belief that the University is successfully fulfilling its mission and discharging its great obligation to our country."

This was not to invite further investigation, but neither was it to oppose it. It was a policy statement, protective in intent and, I believe, in result. Mr. Velde's reply stated that the University was not to be investigated, but that a few individuals whose activities had been brought to the Congressional Committee's attention would be questioned.

The prospect of such an inquiry led us all to be concerned with the procedures to be followed by the University if and when it should be confronted by the problems inherent in such hearings on the part of members of its staff. We were, and are, aware that a major objective of communism is to divide free
men and, if possible, plunge them into strife among themselves. The Association of American Universities had already come to grips with the question and issued a policy statement subscribed to by all the member institutions - i.e., the 39 leading American and two Canadian Universities. This statement, entitled "The Rights and Responsibilities of Universities and Their Faculties", was distributed to the Senate and was the subject of considerable discussion. Out of these discussions grew the appointment of a special committee in May, 1953, to study the issues raised by the Association of American Universities report and to recommend procedures to be followed in case a member of this faculty should have his right to his University position questioned as a result of governmental investigation.

The Committee held five extended meetings.

"With respect to advising faculty members in the event they are called before legislative committees, the Joint Committee decided on the following brief statement: Faculty men, like other citizens, have a duty to testify fully and freely when subpoenaed by legal authority. There is no general right of silence. Refusal to testify, either on the Constitutional ground of possible self-incrimination or on the ground that the question is irrelevant to the matter under investigation, may lead to a citation for contempt or other serious legal consequence."

As a result of these studies, the Committee recommended and the Senate approved a new section 5.101 to the Bylaws to care for special cases of this nature which were not envisioned when Bylaw 5.10 was adopted. The Regents approved.

After many postponements of the hearings, the House Committee on Un-American Activities called four members of this faculty before them to answer questions concerning their alleged past and present affiliations with the
Communist Party. One of them responded candidly, discharged himself honorably and was not involved in these investigations. The other three refused to answer most of the questions put to them by the Committee: They were H. Chandler Davis, Instructor in Mathematics; Clement L. Markert, Assistant Professor of Zoology; and Mark Nickerson, Associate Professor of Pharmacology.

The hearings were recorded and have been available for study during the rather long interim before a printed copy could be had.

Although some institutions have taken a strong stand that refusal to answer questions before a duly constituted congressional committee is in itself grounds for dismissal, the University of Michigan has not adopted this policy. It has not minimized the gravity of such action on the part of any of its members, but it has determined to examine each individual case on its own merits and to act in accordance with the findings.

Following the distressing performance of our three colleagues at the hearings at Lansing I took the minimum action open to me under the procedures endorsed by the Senate and approved by the Regents: The Resolution read "Though the Joint Committee recognizes that the administrative officials of the University have the power, for good cause, to suspend a faculty member from his classroom duties, it is emphatic in its belief that such suspension should not affect salary."

After the conclusion of the hearings (to which I listened) I called Dean Odegaard and Dean Furstenberg to my office on May 10, 1954, along with Professor Paul Kauper and Mr. Arthur Brandon, Mr. Niehuss being in the Philippines at the time, to discuss the situation with them and to present to them the letters of suspension which I proposed to send to Drs. Davis, Markert, and Nickerson. This was the text of the letter:

"Your refusal to answer the questions directed to you by a duly authorized committee of the Congress of the United States..."
seeking to establish the facts about Communist activities in this Nation raises serious question as to your relationship to the University of Michigan and to your colleagues, and places upon you the duty to go forward to explain your actions.

"Pending a thorough review of the evidence of this case through the regularly constituted procedures as established by the University Senate (faculty) and the Board of Regents of the University, you are hereby suspended, without loss of pay, from all duties connected with the University, effective immediately."

At this point the operation of the new Bylaw came into effect. The Senate Advisory Committee had appointed a Subcommittee on Intellectual Freedom and Integrity in February, 1954, to be available to serve as the hearing body provided for in 5.101. Having meditated upon its functions, this committee took the position that it was not available to the President for consideration of these cases until after he had made a decision and the affected person asked for a review. This, in the opinion of the Dean of the Law School, was "a possible, though not a necessary nor a helpful interpretation" of the Committee's function. After a conference with this committee, however, with full respect for its views, I accepted its withdrawal from the cases. I then called upon the Senate Advisory Committee to consider whether they would appoint a special committee to advise the president in the further study and actions which would have to be taken. The Senate Advisory Committee elected a special committee of five for this purpose.

I extend to them again my profound appreciation for their unselfish labors at so much sacrifice to themselves in their study of these cases and for their counsel and recommendations.

This Special Advisory Committee to the President listened to the recorded testimony before the House Committee on Un-American Activities. They held
hearings with the Executive Committees of the colleges affected, with department heads, with colleagues, and with the principals who were under suspension.

My statement to the Committee, in the presence of Drs. Davis, Markert, and Nickerson was as follows:

"Three members of our University staff have been alleged to have been active members of the Communist Party and to have engaged in activities that brought them to the attention and under the surveillance of agencies of the United States Government charged with guarding the national security.

"None of them had disclosed any of these associations to the University at the time of their appointment. In compliance with the requirements of the laws of the State of Michigan, each had signed a sworn and notarized statement that he was 'not a member of any political party or organization which advocates the overthrow of our constitutional form of government.'

"When these men were questioned by the House Un-American Activities Committee about their past and present associations and activities in relation to the Communist Party, they refused to answer, thereby inescapably raising the question as to their ability to be candid about these relationships without self-incrimination, and as to their integrity when they signed the above oath of office.

"Their refusal inevitably placed the University under the obligation to examine these cases. The University cannot say that these questions are unimportant, and that it does not matter whether a member of the teaching profession answers them or not. Neither does the University believe that respect for law is in conflict with freedom of the mind. This is not an inquiry into the technical competency
of the men in question. It does not involve any question of the right freely to investigate, to arrive at or to hold unpopular views. It is a question of relation to or involvement in a conspiratorial movement which, if successful, would subvert the freedoms and the liberties which we hold sacred.

"The central principle involved here is clearly stated in 'The Rights and Responsibilities of Universities and Their Faculties,' as formulated by the Association of American Universities, and reiterated in substance by the University of Michigan's Senate Advisory Committee on procedures. The significant quotes from the statement of the Association of American Universities are:

'As in all acts of association, the professor accepts conventions which become morally binding. Above all, he owes his colleagues in the university complete candor and perfect integrity, precluding any kind of clandestine or conspiratorial activities. He owes equal candor to the public. If he is called upon to answer for his convictions it is his duty as a citizen to speak out. It is even more definitely his duty as a professor. Refusal to do so, on whatever legal grounds, cannot fail to reflect upon a profession that claims for itself the fullest freedom to speak and the maximum protection of that freedom available in our society....

'Appointment to a university position and retention after appointment require not only professional competence but involve the affirmative obligation of being diligent and loyal in citizenship. Above all, a scholar must have integrity and independence. This renders impossible adherence to such a regime as that of Russia and its satellites. No person who
accepts or advocates such principles and methods has any place in a university. Since present membership in the Communist Party requires the acceptance of these principles and methods, such membership extinguishes the right to a university position....

'Unless a faculty member violates a law, however, his discipline or discharge is a university responsibility and should not be assumed by political authority. Discipline on the basis of irresponsible accusations or suspicion can never be condoned. It is as damaging to the public welfare as it is to academic integrity. The university is competent to establish a tribunal to determine the facts and fairly judge the nature and degree of any trespass upon academic integrity, as well as to determine the penalty such trespass merits.'

"It is now incumbent upon the University through its regularly established tribunal 'to determine the facts and fairly judge the nature and degree of any trespass upon academic integrity, as well as to determine the penalty such trespass merits.'

"This the University is proceeding to do.

"Answers, freely and candidly given, to the following questions must be sought:

"Were you ever a member of the Communist Party?

"Are you now?

"When did you sever relationship? Why?

"How did you sever this relationship?

"What contacts, if any, have you had with members or their activities since that time?
"Why did you conceal (withhold) this information from the University when you filed your credentials with it?

"Why, particularly, did you not reveal it when you signed the Appointment Affidavit?

"What contact, if any, since the subpoena?

"Assuming he never belonged, or severed connections in years gone by:

"Why did you decline to testify, replying on (1st or 5th)?

"Were you seeking to protect associates? If so, why?

"Why place this consideration above the University?

"Were you concerned about the doctrine of waiver, and the possibility that answers to subsequent questions might tend to incriminating evidence against you?

"Did you decline because of dislike for the tribunals?

"If so, what is the truth about you in relation to these questions?"

The testimony patiently taken is voluminous. It runs to approximately 200,000 words.

It reveals many details of similarity in the three cases which also conform to the pattern set by other such cases in other universities. It also revealed that the cases were not patterned or identical, but that in considerable detail they were individual and had to be studied and weighed as separate cases.

The case of H. Chandler Davis was distinctive. The line of questioning by the House Committee on Un-American Activities indicated a rather close and continuing involvement in the communist apparatus on the part of Dr. Davis. In response to the questions, he took the same attitude before the Special Advisory Committee to the President that he had taken before the Congressional Committee at Lansing. He said, in effect, that these were questions concerning political activities and beliefs, and that he would not answer them.

The Special Advisory Committee to the President unanimously recommended his dismissal.

I sent Dr. Davis the following letter, which he for his own reasons released to the Michigan Daily:
"Dear Dr. Davis:

On May 10, 1954, you were interrogated under oath by representatives of the House Committee on Un-American Activities which alleged, and whose representative has stated to us, that it possessed information concerning your membership in and associations with the activities of the Communist Party. You were asked by this duly constituted legal body questions as to your past and present affiliations with Communism, whether or not you were a member of the Party while at Harvard University, whether or not you were associated with certain active Communists, whether the State Department revoked your passport because you were a Communist, whether you are now a member of the Communist Party, whether you have solicited members for the Communist Party at Ann Arbor and questions of similar import.

You refused to answer these questions in public testimony on the grounds that this Committee had no right to ask them.

You have taken the same attitude and have refused to answer these or related questions or to talk candidly about yourself and your alleged activities in the Communist Party before me, and the Special Senate Committee to advise the President, on your own personal decision that the answers are none of our business.

This conduct is inexcusable in a member of our profession who seeks at the same time the protection of and continued membership in the University whose policies he disdains and whose responsibilities he ignores.

Your conduct to date is clearly inimical to the mission and trust reposed in this University, and indicates your unfitness
to continue in the position you hold.

In view of the evidence available to me, and of the unanimous recommendation of the Special Committee to advise the President, I regret to state that it will be my duty to recommend to the Regents your immediate dismissal from the staff of the University.

Before I present my recommendation to the Regents of the University for final action Bylaw 5.10 (5), I call your attention to your privilege under the Regents' Bylaws to have your case reviewed by the Senate Advisory Committee, and the opportunity which this right affords you to present any mitigating considerations which may, so far, have been withheld. Under the provisions of this Bylaw you have five days from this date within which to file your request for a hearing. The Chairman of this Senate Subcommittee is Professor Angus Campbell."

Mr. Davis then asked the Subcommittee on Intellectual Freedom and Integrity for a review of his case. His performance before this committee was the same as that before the others. He maintained that an inquiry into communist activity was an inquiry into his political beliefs and he would not discuss them with this committee either.

This Committee unanimously recommended his dismissal. The Chairman of the Senate Advisory Committee on University Affairs has already informed you of the reason why you have not received a copy of this report because of the objection of Dr. Davis to its circulation. I regret that it is not available to you. I have no wish to withhold it. I am sure that a careful study of this Davis report as made by the Subcommittee on Intellectual Freedom and Integrity might be of some help to you in understanding and evaluating the report on Dr. Nickerson, which you
do have, even though you do not have the voluminous evidence upon which the two reports were based.

The President concurred in this recommendation, and, after their own full study of the documents, the Regents took action to dismiss Dr. Davis. In this one case, there was no dissent from complete unanimity of decision by all responsible bodies.

The case of Dr. Nickerson took on quite different contours. In many respects it was a most difficult case, and one upon which we have spent many hours of study, council and prayer. Dr. Nickerson had not revealed to the University prior to or after his joining our Faculty of Medicine any of his many considerable activities in the Communist Party extending over a period of years.

The questions asked by the Congressional Committee indicated something of the alleged scope and period of an intimate involvement in the Communist Party. Most of these questions he refused to answer on the grounds of the Fifth Amendment with the advice of counsel, leading to the presumption that he was using the amendment legally and that there were in truth facts in his case which, if disclosed, would tend to connect him with a crime.

On May 24, 1954, and again on June 3, 1954, the Executive Committee of the Medical School met for extensive discussions with Dr. Nickerson about his associations with the Communist Party and his relationship to the Medical School. The Executive Committee of the Medical School, after weighing the case from their own close knowledge and responsibility, unanimously recommended his dismissal, and this recommendation was communicated to me by letter signed by the Dean of the Medical School for the Executive Committee under date of June 11.
On June 14, the Special Advisory Committee to the President held two lengthy hearings with Dr. Nickerson. Following the hearings they studied the testimony and discussed the problems which it raised. The Committee was particularly concerned as to what consideration to give to the unanimous recommendation of the Executive Committee of the Medical School. Since the recommendation of the corresponding committee of the College of Literature, Science, and the Arts in regard to Dr. Markert was to be noticed, at least, it was hard to disregard completely the action of the Medical School. I believe that the prevailing view was, however, to disregard it as far as possible, and this Special Committee incorporated in its report to the President the specific statement that "The Executive Committee of the Medical School did not make any recommendation to the Special Advisory Committee as to whether Dr. Nickerson should be retained or dismissed."

This Special Committee was divided in its view. Three members felt that "Dr. Nickerson's refusal to testify before the House Committee on Un-American Activities is subject to censure and that there exists grounds which warrant a severe reprimand but which stop short of warranting his dismissal." Two members of this committee concluded that Dr. Nickerson "had failed in his moral responsibilities to the University, that he has not shown proper loyalty to the University, that he continues to be a Communist in spirit, and that he has acted so as to bring discredit on the University. We conclude that he lacks the integrity and the fitness to continue as a member of the faculty of the University of Michigan and recommend his immediate dismissal from the University."

You will see here, without my pressing into the manifold details of the evidence, the difficult nature of the problem. The case rests
heavily upon the truth, candor and completeness of Dr. Nickerson’s testimony, and upon whether he did in truth and in good faith withdraw from the Communist Party, or whether he has continued in the new order and pattern of activity which the Communist Party adopted and has carried on since 1948.

Whether or not he did satisfactorily demonstrate his withdrawal from the Communist Party and its activities is a matter upon which fair-minded persons may, and clearly do, differ. The Chairman of his Department and the Dean and Executive Committee of his School, persons who may be presumed to know him better than any of the others who have dealt officially with his case, believe him to be unfit for continued membership on the Medical School faculty. The President's Advisory Committee divided on the question, three recommending severe censure and two dismissal.

Under the Bylaws, which we have tried to follow with scrupulous attention to the letter and the spirit, the President is bound to assume his heavy and distasteful responsibility at this point, and reach a decision.

I believe that I can give you some indication of the considerations which led to a judgment without violating any of the confidences or judicial procedures involved.
Dr. Nickerson's claims of withdrawal from the Communist Party are not supported by corroborative evidence of any sort, and might, under other circumstances, be flatly contradicted.

The date which he gave for his final "drifting away" -- 1948 -- coincides with the approximate date when the Communist Party went "underground" and it became the party line for members to conceal their affiliations.

He has not by words or action indicated any disapproval of the Communist Party or of its actions, nor has any action of his been reported which would be inconsistent with continued party membership.

His testimony before the committees reflects approval and admiration for the actions and program of the Communist Party. This approval apparently extends to the character of individual members of the party since he says that a prerequisite for a proposed member of the party was "that his integrity was beyond question." If "integrity" is a necessary qualification for membership in the Communist Party the term must have a meaning in Communist circles unknown to those outside.

Dr. Nickerson did say that he would not rejoin the party if it is as bad "as the newspapers say it is," but he made the reservation that he had no reason to believe that it is in fact a subversive or disloyal organization.

By taking advantage of the Fifth Amendment in the Congressional Committee hearings he necessarily took the legal ground that truthful answers to the committee's questions would expose him to the hazard of a successful criminal prosecution. This stand is inconsistent with his subsequent assertions that he has never done anything illegal.
The "frank and candid" disclosures of his past activities which have appeared to impress the committee members are all concerning matters which he knows to be matters of record in government files. He has not disclosed any phase of his activity which was not already a matter of record.

His vagueness concerning the circumstances of his withdrawal from the party is an example of his unwillingness to disclose matters which he surmises may be unknown to his questioners.

His disclaimers of knowledge of the Communist Party today and of its relation to Russia and his statements that he has made no attempt to determine the facts about the party do not ring true in the light of his long association with the party, his continuing support of its doctrines and the studies he must have made in connection with his appearance before the Congressional Committee.

Nor does his vagueness on these matters seem consistent with his apparent certainty and knowledge of such other matters as the current situation and Communist position in France, Czechoslovakia and other countries.

In short, his testimony may properly be interpreted as that of a man who has decided in advance exactly what he is going to be informed on and what he is not.

Dr. Nickerson's present affirmation of agreement with the Communist Party and its aims is a proper subject of consideration, in the light of his long and active work as a party member and because of its bearing upon the question of whether he has in fact severed his allegiance to the party or merely "gone underground."

Final Recommendations on RB 5.09 & 5.10, submitted to U-M Provosts on February 16, 2020
Standing alone, the question of political and economic ideologies would not be matters of grave concern to the University. But as evidence bearing upon the determination of the fact of severance or non-severance of Communist affiliation they may be made the proper subject of inquiry without invading the sacred precincts of freedom of thought. It is not thoughts but the definite fact of adherence or non-adherence to the present Communist organization which is the subject of inquiry.

The burden of refuting the inescapable inferences flowing from his admitted former membership and present refuge in the Fifth Amendment must necessarily rest upon Dr. Nickerson.

There is a reasonable presumption that a relationship such as he had with the Communist Party and its activities continues in the absence of a clear showing of its discontinuance.

Pursuant to these, and other considerations, I wrote to Dr. Nickerson under date of July 27 as follows:

"Dear Dr. Nickerson:

"Since the hearings at Lansing before the House Committee on Un-American Activities on May 10, 1954, you have appeared before the Dean and the Executive Committee of the Medical School, and before the Special Advisory Committee to the President. Your answers to their questions leave grave doubts as to your fitness to hold your present position of responsibility and trust, and have raised in my mind and in the minds of the University committees serious concern about your integrity as a member of the teaching profession. While the Special Advisory Committee is closely divided and a majority recommends a strong censure rather than dismissal, the Dean and Medical School Executive Committee unanimously recommend dismissal."
"You have refused to answer pertinent questions put to you by a duly constituted legal body concerning your activities and affiliations with the Communist Party on the grounds that the answers might tend to incriminate you. Although you deny that you would overthrow the government of this country by force, you have vigorously asserted before the committees of your colleagues that you want it clearly understood that you hold the same views and beliefs now which you held while you were an active member and an officer in the Communist Party; and that, although you are not now an active Communist, you drifted away from your activities only because you did not have enough time to devote to them, and not because you were in disagreement with the aims, policies, and methods of the Communists. Under these circumstances it becomes difficult to accept your disavowal of the illegal and destructive aims of the Communist Party.

"These serious disqualifications which bring your case before me under the provision of Bylaw 5.101 become even more weighty when joined with the formal recommendation made to me by the Dean and the Executive Committee of the Medical School (copy attached) that you be dismissed because your continued membership in the Medical faculty would be harmful to the School and may injure the reputation of the University as a whole. This recommendation places your case also under the general provisions of Bylaw 5.10.

"In view of all of the evidence available to me I regret to state that it is my present intention and my duty to recommend to the Board of Regents your immediate dismissal from the staff of the University. Before I present my recommendation to the Regents for final action I call your attention to
your privilege under the Bylaw to have your case reviewed by the Senate Advisory Committee, and the opportunity this right affords you to present any mitigating considerations which may, so far, have been withheld.

"Under the provision of this Bylaw, you have five days from this date within which to file your request for such a further hearing. The Chairman of the Senate subcommittee is Professor Angus Campbell."

Dr. Nickerson asked the Subcommittee on Intellectual Freedom and Integrity to review his case as provided by the Bylaw. This Committee worked promptly and diligently. It had available to it the recorded testimony, the transcript of the hearings of the Special Advisory Committee to the President, and it held its own hearings with Dr. Nickerson. The Committee did not at any time confer with the President. Following this procedure, the Committee made its report, a copy of which has been circulated to the Senate, in which it makes its recommendation that, although it found Dr. Nickerson to possess "more than one man's share of human faults and frailties," to be "an arrogant man" and "perhaps also a foolish man," he should be censured but not discharged.

Again it was my disagreeable duty to review the totality of this case and to transmit all data concerning it to the Regents. I read hopefully through the testimony taken by the Subcommittee on Intellectual Freedom and Integrity, seeking to find some new evidence that might controvert that already presented. Not only was it not there to be found, but instead there appeared repeated reinforcements of previous evidence upon which the original recommendation had been framed.
Upon the basis of the evidence before me and of the conflicting and apparently irreconcilable positions taken by the Medical School and by the two advisory committees, the President felt compelled to concur in the recommendation of the Medical School that Dr. Nickerson should be discontinued as a member of that faculty.

In transmitting to the Regents the complete data, as required by the Bylaws, I wrote: "After studying the record of the further hearing by the Subcommittee on Intellectual Freedom and Integrity, I fail to find anything in the testimony to alter the conclusions stated in my letter of July 27, 1954, to Dr. Nickerson and my memorandum to the Subcommittee. I submit the complete record for your study and consideration in preparation for the Regents' decision in this case."

The Regents studied this case earnestly prior to their meeting in August. They discussed it fully at their meeting. They felt the same regret that the President felt in not finding grounds for accepting the advice of the Subcommittee. They did not differ on the question of the general principles of intellectual freedom as stated by the Subcommittee, but on the reading and the interpretation of the evidence and the testimony.

Their action was to sever Dr. Nickerson's connection with the University, with one Regent dissenting.

The case of Dr. Narkert was in some fundamental respects different from the two preceding cases. After going over the story and the evidence again and again, I still find myself wondering just why the Congressional Committee called him into public session, and even more, why he refused to respond to their questions in the spirit of a free and honorable man, as he seems to have responded before our University groups.

The questions asked him by the Congressional Committee were clearly based upon the verifiable facts about his past affiliation with the Communist
Party, his youthful adventure in the Spanish Civil War, and his work with the Communist Party, chiefly in California. Although he was not under oath while testifying before the Special Advisory Committee to the President, he swore to the truth of his statements, and all who heard him were impressed by his apparent candor.

It seems clear that he was scarred by adverse experiences in his youth during the deep depression, that he dramatized himself in his role as liberator in Spain, that he knew very little about the Communist Party when he adopted the label to identify a group with which he worked in Colorado, and that he was then and now remains an undisciplined mind outside of his own field who scorns all authority. His involvement in the Communist conspiracy was actually tenuous, and even the investigator who was responsible for issuing the subpoena said that to the best of his knowledge and belief Dr. Markert did withdraw from the Communist Party and had not been in any way identified with it since he broke away from it in the late 1940's.
"On the important question as to why Dr. Markert drifted away from the party," I quote from the Special Advisory Committee to the President, "he mentioned the lack of democracy in the Party, the growing dogmatism and lack of free thinking in the higher leadership, the growing emotional tie to Russia, the tendency to dictate ideas, and the unwillingness to permit any heresy."

"The most serious charge against Dr. Markert," the report continues, "arises out of his failure to testify before the Claridy Committee, thus bringing embarrassment to the University of a quite needless sort in view of the nature of the testimony he could have given."

He was found to be an arrogant and opinionated man, naive outside of his field of speciality, who holds ideas repugnant to the overwhelming majority of his colleagues.

All of us support firmly the conviction that a man has a right to hold unorthodox or unpopular views. This fundamental right has never been at issue in these cases at any point, including the considerations by the Regents of the University.

On recommendation of the Executive Committee of his College, on recommendation of a four-to-one majority of the Special Advisory Committee to the President, on my own judgement, and with the concurrence of the Regents, with one Regent dissenting, I wrote a letter of censure to Dr. Markert and lifted the suspension.

My friends and colleagues, this is, in brief, the story of this unhappy and most burdensome episode which has been unavoidably thrust upon us in the midst of pressing constructive work which demands the attention of all of us. These cases are problems in areas where division of opinion is sharp and often heated and where any decision
would displease many people for whom we have the highest respect. I myself have been ably abused from all sides, well in advance of any judgment I might possibly find it necessary to render.

Like the several faculty committees, I have earnestly tried to do my duty and to discharge my grave responsibilities honestly, fairly and resolutely. The Regents have most scrupulously followed to the letter their commitments under their Bylaws. Under much provocation they have refrained from comment and from judgment until the facts obtained from the full play of the procedures were in and before them. They have recognized that the various groups have given their advice to the best of their knowledge and belief. They have necessarily accepted final responsibility for their decisions which they reached only after judicial consideration of all the evidence and issues involved, and in accordance with what they believe to be fair and just, and in the best interest of the University.

Our procedures, in my opinion, revealed in practice some weakness which I hope will receive the further study of the Senate. And I hope also that this searing experience through which we have now passed may add at least another step to our understanding of the full dimensions and difficulty of the problem which confronts us from the campus at Ann Arbor to the global struggle with which we are wrestling. And I hope also that our understanding may be enlarged to the point where our national policy is so clear and firm that all the facts in these cases can be generally known and dealt with wisely.

Of one thing I am sure. Nobody's freedom has been invaded or abridged at the University of Michigan, and the proper way to keep it sturdy and productive is to exercise it responsibly in keeping with our high and honorable tradition.
Statement Presented by the Dean and Executive Committee at the Special Meeting of the Faculty of the College of Literature, Science, and the Arts on Tuesday, June 1, 1954.

The Dean and Executive Committee wish to present to the Faculty a statement concerning the activities of the Executive Committee of the Literary College relative to the matters referred to in the petition which occasioned the call to this special meeting.

As background we should like to call attention to a discussion which took place in the Executive Committee last fall as a consequence of the adoption by the Regents of Bylaw 5.101 in response to the recommendation of the University Senate. Under usual circumstances the Dean and Executive Committee act for the College in matters of appointment, at least in making the initial official recommendation, in accordance with Bylaw 10.03. In the special case of dismissal or demotion of a person with tenure rank or of a person with more than eight years of service in rank as an assistant professor or instructor, the Dean and Executive Committee also act as the first agency to make dismissal or demotion recommendations in accordance with Bylaw 5.10. Presumably foreseeing possibilities of the very kind which have recently arisen, the Senate, however, held discussions which led to the adoption of the additional Bylaw 5.101 for what are termed "exceptional cases which threaten direct and immediate injury to the public reputation or essential functions of the University."

In reviewing the consequences of this change, the Executive Committee of the College concluded that though the matter was not entirely clear the intent of the new Bylaw appeared to be to set the initial responsibility for official faculty participation in reaching a judgment at the Senate rather than at the College level. The Executive Committee, even so, could not relieve itself of its sense of responsibility toward the welfare of the College and the members of its Faculty in the face of this procedural change which had been adopted by the appropriate authorities within the University. As a means of expressing this continuing sense of responsibility and still conforming to the altered situation of Bylaw 5.101, which we assumed would probably be invoked in an emergency situation, the Executive Committee took steps which led to the exchange of letters with the President which is already recorded in the minutes of this Faculty on pp. 1958-1959:

The Committee reviewed the recent revision of Section 5.10 of the Bylaws of the Board of Regents, "Procedure in Cases of Recommendation of Dismissal, Demotion, or Terminal Appointment," and, in the interests of clarification, requested the Dean to transmit the following letter to President Hatcher:

December 23, 1953

"The Board of Regents on October 16, 1953, adopted a procedure to be applied in exceptional cases of an emergency character involving dismissal or other action affecting members of the Faculty. While this action suggests that the earlier procedure adopted by the Regents (Section 5.10
of the Regents Bylaws) be followed 'as far as practicable,' it does not specifically provide that in cases affecting members of the College Faculty, the Executive Committee of the College is to be consulted. Since such consultation was clearly required in the established procedure since 1939 the Executive Committee of the College hopes that in such cases as may arise affecting members of the Literary College staff consultation with the Executive Committee will be provided."

The President replied to the above letter as follows:

January 6, 1954

"I am glad to have your letter of December 23 concerning the interest of the Executive Committee of the College in cases of an emergency nature that might possibly arise affecting members of our faculty. I appreciate deeply the thoughtful consideration which our colleagues have given and are giving to these vexing problems.

"We shall need all the wisdom and understanding we can summon to keep our course clear and straight, and I am sure that I should want to consult immediately with the Dean and Executive Committee of the College and with the Chairman of the Department prior to action in the event that I should have to make a determination under Bylaw 5.10 involving a member of our faculty.

"Please express to the members of the Executive Committee my sincere thanks for their communication."

The Committee was unanimously of the belief that the President's reply clarified the procedure to be followed in cases of emergency character.

As we all know, on Monday, May 10, 1954, following the testimony of the three members of the Michigan faculty before the Clardy Committee in Lansing the President took the step described in the official news release of the University as follows:

In view of the testimony before the House Sub-Committee on Un-American Activities in Lansing today by Messrs. Mark Nickerson, Associate Professor, Clement L. Markert, Assistant Professor, and H. Chandler Davis, Instructor, I am, by virtue of the authority delegated to me, ordering their immediate suspension, pending a thorough investigation by the University. Up to this point the House Committee has not supplied the University with any information taken from its files.

Suspension is ordered without prejudice to the final decision in their cases. If further investigation seems to warrant dismissal procedures, any person affected has the right to be heard by a special committee of the University Senate (faculty) before action is taken by the Regents of the University.
The University has urged all persons called before duly constituted Congressional committees to respond frankly to reasonable questions. At the same time it is the University's policy that all members of its family be given the protection to which they are entitled under our laws and traditions.

The President took this step on his authority as chief executive of the University. Any further official statements concerning this step would presumably have to come from him as the responsible party.

On Monday evening, May 10, at the request of the President, the Dean informed the members of the Executive Committee that the President, in accordance with the exchange of letters already read and as a preliminary step before taking any further action in any direction, wished to consult with us and the chairmen of the two departments concerned. To prepare ourselves for this consultation, it appeared necessary to hear the testimony before the Clardy Committee insofar as the two members of our Faculty were concerned, and if possible to hear whatever Messrs. Davis and Markert were willing to tell us about the matter from their point of view. Consequently, on Tuesday, May 11, the Dean and Executive Committee and Professors Dugald Brown and Theophile Hildebrandt heard a tape recording of the hearings.

On Wednesday, May 12, in response to an invitation from the Dean and the Executive Committee Messrs. Davis and Markert came individually to a session of the Executive Committee where, in the presence also of their respective department chairmen, they were asked to make whatever statements they were willing to make to members of the Executive Committee and their department chairmen as colleagues, but also inevitably as individuals charged with certain administrative responsibilities within the University related to their appointment status in the Faculty. We believe it is just to assert that the two members of our Faculty, in the course of these conversations, were given every opportunity by us to make their own interpretation of their position clear to us.

On the following day, Thursday, May 13, the chairmen of the Mathematics and Zoology departments were asked to appear before us with one member of the Executive Committee of each of the Departments to make whatever comments they were prepared to make at that time concerning the matter before us.

Prior to the meeting with the President, the Dean and Executive Committee had become concerned about a possible, though perhaps not necessary, interpretation of the procedure of Bylaw 5.101, namely, that before a hearing could be held by the Senate an initial recommendation for dismissal by the President would be required. Given the complexity of the matter before us and the necessity of doing justice to the individuals and to the University, we saw the need for judicious weighing of each case on its own merits before any conclusion on the substance should be reached.

In mid afternoon, May 13, the Dean and Executive Committee actually met with the President for the consultation which he had requested. We reviewed with him all aspects of these cases, substantive and procedural, which had come to our attention in the course of our preliminary inquiry. Such as they were at the time of this consultation with the President, our judgments on the individual cases were reported to him.
Given also the assumption clearly held by the President as the responsible party under Bylaw 5.101 that the cases of Messrs. Davis and Markert fell within the type of emergency which the University community had recognized in advance might occur by taking the steps which led to Bylaw 5.101, it was believed that the investigation, the initial judicial review in a proper sense, should take place at the Senate level prior to any further action by the President. It was our firm belief that the President of the University, properly cognizant of the legitimate concern and interest of the Faculty, should not attempt to reach a judgment or conclusion on the individual cases without the benefit of the wisdom of a representative group of peers in the University Faculty. This line of reasoning led to the conclusion that the next steps in procedure lay between the President of the University and the Senate.

The President accepted our point of view as to procedure, and it was immediately announced in an official University news release. Since the report of our meeting with the President appeared in the Michigan Daily in a revised, and somewhat garbled form, I will read the official release in so far as it pertains to the two cases of immediate concern to our own Faculty:

President Harlan Hatcher of the University of Michigan announced tonight (May 13, 1954) that he will come to no final conclusion whether to reinstate or to recommend dismissal of Messrs. Clement L. Markert or H. Chandler Davis, now under suspension for their testimony before the House Sub-Committee on Un-American Activities, until he has conferred with the Special Committee of the faculty appointed to conduct hearings.

Dr. Hatcher said he will ask the Special Committee to evaluate all known facts and testimony and hold hearings if desired, then make recommendations to him. The University President said he will elaborate on procedures at the meeting of the University Senate next Monday afternoon.

President Hatcher said that there would be no rush in making a final decision, and that each case would be evaluated separately. He made the announcement following a three-hour discussion with Dean Charles E. Odegaard and the Executive Committee of the College of Literature, Science and the Arts, where Dr. Markert is assistant professor of zoology and Dr. Davis is instructor of mathematics.

Subsequent developments procedurally have been between the President and the Senate Advisory Committee. The Dean and Executive Committee have played no part in the actual deliberations between the President and the Senate Advisory Committee which have led (1) to the creation by the Senate Advisory Committee of a special committee (Professors D. M. Dennison, W. B. Palmer, R. A. Smith, P. S. Barker, and R. H. Sherlock) to advise the President initially in connection with the three cases, and (2) to the designation of the Senate's Subcommittee on Intellectual Freedom and Integrity to hear appeals from the President's first recommendation, if appeals should develop.

Despite this further clarification of procedures within the framework of Bylaw 5.101, the Dean and Executive Committee still continued to feel a sense of responsibility in these matters toward our own Faculty. We felt that we should ask for a further opportunity to participate in the process of con-
sideration of the two cases which fall within our own Faculty even if we were not ourselves to act as the faculty committee responsible for the full investigation preceding a recommendation to the President. We, therefore, requested the President to ask the Senate Committee on whose report he would found his initial recommendation to include the Dean and Executive Committee as well as Chairmen and Executive Committees of the departments concerned among those to be called to appear before the Senate Committee for consultation and advice prior to their rendering of judgment. At the meeting on May 13 the President accepted immediately the reasonableness of this request. He has already asked the special Senate Committee now constituted to carry out our request.

On the basis of our experience to date the Dean and members of the Executive Committee have, of course, formed judgments of varying degrees of firmness with reference to the substance of the cases of Messrs. Davis and Markert. The degree to which these judgments can be called final judgments may vary from member to member. Additional opportunities may still arise to provide the Dean and Executive Committee with data relevant to the judgment process. Whether the final conclusion of these cases will accord with the personal or collective judgment of the Dean and Executive Committee, it is obviously impossible for anyone to say now.

In any case, it is clearly inappropriate for the Dean and the Executive Committee at this time to speak to the substance of the cases of Messrs. Davis and Markert. The matter is in the course of judgment. Furthermore, we should remember that Messrs. Davis and Markert have their own special and personal problems apart from the question of their status in the University. However those may develop, it is not for us to complicate them at this time by stating what they have told us in our discussions.

With reference to procedure, we can say on the basis of such opportunities for observation as have come our way that to our knowledge there has been no departure from the procedures laid down as a result of the Senate's discussion and action last year. What change there has been, if indeed it can be called change, has been in the direction of further additions to the procedure better to fulfill the spirit of the Senate's recommendations.

There may be differences of opinion over the wisdom of the suspension of the three faculty members. In this respect the President acted, as his press release indicated, on his own authority. It is not for the Dean and Executive Committee to presume to speak for him. The suspension was a fait accompli at the time when the Executive Committee entered the process.

Difficult as the question of suspension without prejudice may be, there is a more important question. The question of judgment on the merits of the individual cases yet remains before the University. The hope of the Dean and Executive Committee is that all steps taken from this time forth will be in accord with the calm and judicial review, with the weighing of all relevant evidence contemplated by the discussion in the University community last year, proclaimed as the intention of the University at the time when the Senate and Administration made their recommendations relevant to Bylaw 5.101, and accepted by the Regents when they adopted Bylaw 5.101.
As much as lies within our province, it is our intention to help the University to hold fast to a course which will permit the rendering of a judgment in the individual cases on a reasoned moral basis; indeed, if such be humanly possible in the tangled affairs of our time, to reach a conclusion which will make us proud, say ten years hence, of our University — and of our own behavior as individuals who collectively helped to make up the University in this time of trouble.

R. C. Boys
William Frankena
William Haber
Otto Laporte
W. H. Maurer
F. H. Test
C. E. Odegaard, Chairman
Pursuant to call in response to petition, a special meeting of the Faculty of the College of Literature, Science, and the Arts was held on June 1, 1954, at 5:00 p.m. in Angell Hall Auditorium A with Dean C. E. Odegaard in the chair. There were 337 persons present.

Preceding the meeting a statement (pp. 1995-2000) from the Dean Executive and Executive Committee had been circulated and time was allocated Committee for individual reading of the statement, obviating a public reading. Statement

In calling the meeting to order the Dean reminded the assemblage that it was not an open meeting and was restricted to the governing Faculty, which by provision of the Faculty Code consists of professors, associate professors, assistant professors, resident lecturers with professorial rank, and further that instructors of less than one year’s standing were not entitled to vote. No visitors had been invited to this meeting. He then requested that any unauthorized persons withdraw. Some eight or ten persons thereupon left the room.

Before presenting the topic for discussion, the Secretary was requested to read Sec. A 3.10 of the Faculty Code as to the confidential character of the proceedings and the Dean indicated that before the close of the meeting he would make an announcement with respect to any press release.

Emphasizing that it was his intention to conduct the meeting so that there would be as free and frank discussion as the circumstances permit, Mr. Odegaard regretted it had been necessary to call the meeting at an inconvenient hour and on short notice, but upon receipt of the petition he felt that its purposes could best be served in calling the meeting without delay. Since there was no fixed time of adjournment the wishes of the Faculty would govern.

The Secretary was then called upon to read the call to the meeting (p. 1994). The Dean pointed out that the petition called for a report from the Executive Committee and that the stated purpose of the meeting was "to discuss issues involved in the cases of our two suspended faculty members." He noted that the petition did not give notice of any specific resolution. Therefore, he requested the Secretary to read Sec. A 3.09 of the Faculty Code, which requires that prior notice of any resolution be given unless there be unanimous consent for its introduction. However, he reminded the meeting that there was nothing in this procedure to inhibit full and free discussion of the general issues involved as distinct from specific resolutions.

In addition to consideration of the report of the Executive Committee which had been distributed, the Chair announced that he would call for a statement from Professor Angus Campbell as Chairman of the Senate Subcommittee on Intellectual Freedom and Integrity and also a statement from Associate Professor W. B. Palmer as a member of the special Senate Investigating Committee.
The Faculty, having had an opportunity to read the Executive Committee's statement, the Dean forthwith called upon Mr. Campbell. He reported that in January of 1954 the Senate Advisory Committee appointed a special Subcommittee on Intellectual Freedom and Integrity. This committee was created specifically to meet the requirements of an appeal board specified in Sec. 5.101 of the By-laws of the Regents. The members of this committee are: Professors Karl Litzenberg, Gilbert Ross, and A. F. Smith, Associate Professor R. L. Garner, and Professor Angus Campbell - Chairman.

In meetings of this committee with representatives of the University administration it became apparent that the new bylaw, Sec. 5.101, did not make provisions for consultation by the University administration with representatives of the Senate prior to a decision on the part of the President regarding the disposition of cases which might arise under this bylaw. The Senate Advisory Committee did not feel that its Subcommittee on Intellectual Freedom and Integrity could properly serve both in an advisory and appeal capacity.

Consequently, at the request of the President, the Senate Advisory Committee appointed a new committee called the Special Advisory Committee to the President. The members of this committee are Dr. P. S. Barker, Professors D. M. Dennison and R. H. Sherlock, Associate Professor W. B. Palmer, and Professor R. A. Smith - Chairman.

The procedures which these two committees will pursue in the cases currently under consideration are as follows:

1. The Special Advisory Committee to the President will meet with the President to review the evidence in each of the cases concerned and will transmit to the President their conclusions regarding the disposition of each case.

2. The President may decide at this point to lift the suspension of the individual concerned or he may decide that the evidence merits a preliminary decision of dismissal.

3. In the latter case the President will transmit this preliminary decision to the individual concerned who then has five days in which to ask for an appeal to the Committee on Intellectual Freedom and Integrity.

4. If a request for an appeal comes to the Committee on Intellectual Freedom and Integrity, it will review the evidence in the case and transmit its conclusions to the President.

5. The President will now make a final decision either to lift the suspension of the individual concerned or recommend his dismissal to the Board of Regents.

Mr. Palmer then spoke of the new Special Advisory Committee which had been announced by the President in the preceding week. As Dr. Barker was out of town until Monday night it had been necessary for the Committee to meet without him. At the first
meeting on Saturday noon Mr. Smith was selected as Chairman. The President indicated his reasons for asking that an advisory committee be established and the Committee discussed its problems, functions, and procedures. On Sunday from 9:30 a.m. to 3:00 p.m. the Committee was again in session and a further meeting of about three hours was held on Monday. At this time a very preliminary and very informal meeting was held with the three suspended faculty members. They were informed to the nature of the Committee's work and the procedures that would be followed. Certain questions which the Committee intended to ask were indicated at that time in order that the individuals involved would be apprised of their intent. A tentative time schedule was arrived at subject to concurrence from Dr. Barker. The Committee pledged itself not to divulge wilfully any of the information received, except in so far as its final recommendations may have to be supported by evidence which has been made available. This pledge, Mr. Palmer asserted, should explain the nature of the report that he had just made.

Mr. Litzenberg, having been recognized, read the following statement as an expression of views of the members of this Faculty who serve on the Senate Advisory Committee.

"Mr. Dean:

The five members of this Faculty who are also elected members of the Senate Advisory Committee on University Affairs desire to present a joint statement. These individuals are:

Angus Campbell, Professor of Psychology and Sociology
Leo Goldberg, Professor of Astronomy
Frank O. Copley, Professor of Latin
James T. Wilson, Associate Professor of Geology
Karl Litzenberg, Professor of English

The present special meeting of the Faculty of the College of Literature, Science, and the Arts has been called in a proper manner, in accordance with the provisions of the Faculty Code, Article III, Section 4. We do not question the legality of this meeting; we do not question the right of anyone in the University to discuss the issues involved in the suspensions. Moreover, we believe that if the meeting is employed to clarify the confusion which is apparently widespread regarding the procedures being followed, a very useful purpose will have been achieved.

The cases of the three men who have been suspended from University duties have already passed from the College level to the Senate level, the principals having been heard by their respective deans and executive committees. The cases will now be examined by the President with the aid and advice of a special committee appointed for the purpose by the Senate Advisory Committee, and consisting of:
If, as a result of these examinations, the President concludes that dismissal is called for in any case or cases, the Committee on Intellectual Freedom and Integrity of the Senate Advisory Committee will then exercise its designated appellate function before any recommendation is transmitted to the Board of Regents.

So far as Senate regulations are concerned, the conduct of the inquiries is absolutely unimpeachable.

The present meeting was called, according to the petition reprinted in the notice, "to discuss issues involved in the cases of our two suspended faculty members." We feel that the interests of the University, and of the faculty members now under suspension, will be served best if this meeting confines itself to the announced agenda and does not digress into arguments or stray into actions which at this particular moment in the history of the University could well increase, rather than lessen, the tensions which now exist.

It is our solemn hope that this Faculty will not approve any recommendations concerning the disposal of the cases now under examination, for such recommendations would, perforce, be based on opinion and pre-judgment, and might have the effect of prejudicing procedures which have already been put into operation. We cannot overlook the fact that this Faculty does not have before it, and can not have before it, anything even remotely resembling evidence relative to the members of this College who have been suspended.

We repeat: the investigations are now at the Senate level; the President is advising with five men of good will; correct procedures are being followed.

We urge, therefore, that this meeting be devoted to discussion, to temperate discussion, and to temperate discussion only.

Signed: Angus Campbell
Frank O. Copley
Leo Goldberg
James T. Wilson
Karl Litzenberg"

Assistant Professor W. J. McKeachie inquired if these Senate committees had arrived at any criteria or general principles by which they would be guided in their deliberations and, if so, it would seem appropriate that they should be stated.

Final Recommendations on RB 5.09 & 5.10, submitted to U-M Provosts on February 16, 2020
Mr. Campbell felt it was not a proper question, since he regarded these committees as serving somewhat in the function of a jury and in a sense this would be of the nature of pre-polling the jury.

Assistant Professor E. E. Moise could not agree with this, for Professor it was not clear whether they were petit juries, grand juries, judges, or legislators. Without legislation as to the burden of proof it was important to know what sort of facts or allegations would support dismissal and it would, therefore, seem that such broad questions of principle are appropriate matters for discussion.

Associate Professor Wilfred Kaplan asked Mr. Campbell to quote Professor existing legislation which would be guiding his Committee, but Mr. Kaplan Campbell declined to add anything to what he had already said on that point. In reply to Mr. Moise, however, he did point out that although none of the Committee had sought the assignment, it would enter upon its duties and proceed in what each considered his best judgment.

Assistant Professor G. G. Laties queried as to the relationship Professor between the questions these committees had been considering and the work of the Clarady Committee.

Mr. Campbell pointed out that his Committee would not come into the case until a dismissal had taken place. Mr. Palmer added that his Committee was still at the beginning of a long road and it would be inappropriate to comment at this time. They had assured the suspended faculty members that they are still of open minds, and as yet there was insufficient evidence to pass upon guilt or not.

Assistant Professor Cyrus Levinthal wanted to know what was meant by the term "guilt." Mr. Palmer replied that it might be termed "conduct unbecoming a member of the Faculty." He pointed out that it was not their role to inquire into the teaching or research competence of a faculty member, but there were other attributes that were important, and these attributes had been called into question. Every opportunity would be given to the faculty members involved to state their case.

Professor S. B. Myers wanted to know if the members of these committees would be acting as individuals or as representatives of the Faculty. Mr. Campbell replied that he would act as an individual.

Professor P. W. Slosson remarked that it would be improper to discuss cases which are now properly before the appropriate committees of this University. It is all the more incumbent on us to discuss general principles which may apply to future cases. Briefly, he sought to make two points: firstly, that refusal to testify before a governmental committee (although it is always injudicious), may spring from honorable motives; secondly, that the misconduct of a member of the Faculty, short of actual crime, must be weighed in the balance with the positive usefulness of the person involved to the institution; we may well tolerate in a creative genius what we would not tolerate in a mediocrity.

These remarks were received by the Faculty with some applause.
Assistant Professor A. S. Sussman sought a reason for the suspension or some objective statement.

Mr. Laties wanted to know whether the motives of the Congressional investigation committee were to be taken into consideration in evaluating the evidence. To this Mr. Kaplan added that if they were, then the statement of President Eisenhower of yesterday should be read.

Professor G. B. B. M. Sutherland, on a point of information, asked if the special committees when making their recommendations would publish a report of their reasons. Mr. Campbell said that his Committee is required to make a full statement of its discussion and reasons for the advice given, but the special committee is not covered in the Bylaws. Mr. Litzenberg emphasized that the decision must be that of the President and he is to make known his reasons at that time. In elaboration, Mr. Odegaard referred to the procedure set up in the new Regents Bylaw 5.10.

Assistant Professor A. M. Eastman pointed to the treatment followed in the cases of the students, Sharpe and Shaeffer, where there was a delay so as not to prejudge. There should be action only after conviction by a jury for contempt.

Professor K. E. Boulding queried as to whether there had been a legal opinion of the effect of the Trucks Act. Mr. Litzenberg remarked that since the Regents have constitutional status it is believed that the Trucks Act is not applicable.

Associate Professor Ernst Pulgram remarked that it would be unfortunate if we adjourned without a statement of our opinion. So far we have only a record of debate. It would be useful to all concerned in judging these cases if they could have a sentiment of our opinion.

The Chair reiterated his earlier statement as to the parliamentary procedure to be followed at this meeting.

Professor W. H. Maurer then rose and, reading from manuscript, spoke as follows:

"I should like to be permitted to express my opinion. I ask for this privilege only on the ground that I should like to stimulate further discussion of the issues before us, I believe it to be important that we discuss frankly our positions.

In making this statement, I should like to speak for myself, as a member of this Faculty. I am not representing here the Executive Committee of the College of which I am a member. I am speaking only for myself. I hope this will stimulate discussion.

The plea I make is that we seek the common ground on which we agree; that we probe positively in our discussions for the potential unanimity that I am certain harbors here.

If we get side-tracked on the areas in which we disagree we accent only our potential division and split ourselves assunder with irreparable hostilities."
Not that we should avoid our differences; but that we argue seeking out agreements wherever possible. And I believe that this move toward agreement by positive probing holds as much for the Faculty and Administration and Regents, too, as it does for us in our separate councils.

I believe that if we canvassed this Faculty, following adequate discussion, a respectable majority would not advise the discharge of any of these members of ours in question. I believe that on the facts that we have, the facts that we know, we would not advise their dismissal.

It may be that we could even agree on a positive recommendation regarding one or both these members, namely, that they be reinstated. I personally believe that there is a large body of opinion here that would urge the reinstatement of one or both of the men in question in our College.

We probably would divide on some reasons that would lead to these conclusions. But I believe there are adequate reasons for these conclusions upon which we could agree and that would at the same time be convincing and persuasive to our administrative colleagues.

For example: would any members of our Faculty or of the Administration accept the negative premise that in our profession the basic principle that a man is innocent until proved guilty shall not obtain?

There might conceivably be some dissenting votes, but I do not believe that we would exclude from our judgments in the area of our profession those sound democratic principles that we associate with fair play, with respect for individual dignity, for personality, for privacy, and for congenial association based on faith and trust in one another.

The implication of accepting those principles is, of course, that the burden of proof is with those who bring the charges, and I am sure that we would insist that those who bring the charges do not glean them from whim and suspicion but from fact, fact, fact."

At this point Mr. Maurer was interrupted by applause. Continuing, he said:

'There are some among us who seem concerned, and properly so, with the responsibility of this institution to the state. I agree with those who argue that we cannot divorce ourselves from the real world. But I am somewhat bewildered if the implications are that we must sacrifice high principle for public relations. There are two points I should like to make in this regard:

Let us take care whom and what we attempt to appease.

The President of the United States, the Secretary of State, the Attorney General, the Army, and the Republican Party are now faced with a nasty problem--nastier than when it first loomed--that has arisen from counsel that once seemed acceptably wise, namely, 'we might do well to cooperate.'

Does anyone here suppose that the seats of learning would fare any better than these powerful seats of effective political power?
Suppose we attempt to appease in ways that compromise us in the basic policy of free inquiry - a policy tested by experience as essential to our effectiveness, does anyone here suppose that those publics that would rest back in comfort after we have purged from our midst the witches wanted at the stake that we will have won additional friends for intelligence, for learning, for experimental thinking, for fearless speaking, and for free inquiry? The contemporary lessons are that those we would appease would merely advance to take a strangulation hold.

And the second point I wish to make is that any appeasement might well turn sour! The finance committee of the legislature, the Republican members of the Board of Regents, might themselves rue the day they were encouraged by us, the Faculty, to appease a movement, a trend that would as soon suck the blood of the President of the United States, the Constitution of the United States, the Republican Party as they would the eggheads, the pinkos, and the intelligentsia of this land. (I have in mind that Mr. Clardy said that they were not only after the communists but after the pinkos as well.)

The polls show a decline of Mr. McCarthy's popularity. The television shows, what words dared not disclose, that we are dealing with a brazen tyrant, who has respect for nobody excepting himself.

Formidable newspapers are warning citizens that there is a cloud on the horizon no bigger than the countryside. The Detroit Free Press, not even reputed a liberal organ, has warned Mr. Clardy that the FBI and the courts can do a better job than he can and that he ought to let them do it.

If this University becomes so misguided as to throw a sacrificial lamb or two to the mangy wolves, I sincerely believe it will rue the day. I say that if sound reason brings us to the conclusion that we have no adequate cause to dismiss these colleagues, we should have unshakable confidence in the process of reason and of fair play and in the good sense of the citizens of this state. This is the best expression of public relations that I know. I have no doubt that if we stand by the principles of freedom that have obtained in this College to date that we will give sorely needed leadership in the world of scholars, not only here but abroad as well.

I should like to express my opinion that a greater evil than that of advocacy to overthrow the government by force is the actual overthrow of the free human mind by censorship, intimidation, or threat of loss of job.

I believe in free government and in free communities because the risks are worth the trusting and competent personalities which freedom inspires, and I know of no other social or political policy suggested as a substitute for freedom or even as protection of a free society that does not have greater calculated risks.

I believe the policy of free speech--including the right of citizens to be employed in public and private institutions by the tests of merit alone--is an essential policy for the survival of our society.

I do not consider such a policy a 'luxury' to be dispensed with when the risks are imagined to be too formidable to allow it, because it is precisely in great emergencies as we are now ex-
periencing that the policy of free expression is most serviceable to
the society as a whole.

A free society is predicated on the conviction that men, using
the power of reason and persuasion, may create communities of compe­
tent, happy, generous, cooperative, creative personalities.

If we ourselves lose confidence in the power of reason and
abet those who would use force and intimidation, we forfeit the
right to rule ourselves and give over the right to govern to those
who seem less sensitive to human values and who are, therefore,
likely to be recklessly brutal in their anxieties to have prevail
their fanatical beliefs and stupid over-simplifications.

Some of us who are over-anxious about disloyalty in our midst
and who are therefore persuaded to support those who would suppress
'evil' or unorthodox notions, will find themselves supporting
persons of coarse natures who never hesitate to inflict torture,
psychological and physical, on any who stand in the way of their
march to power. Thus it is that good and kind and intelligent
people forfeit their right to govern to cruel persons who respect
neither privacy nor dignity of their fellows:

What follows, if I read contemporary history aright, is not
what I have set my mind to as 'civilization.'

Prolonged applause greeted the conclusion of this statement.

Mr. Moise then moved the following:

"RESOLVED: That it is the sense of this meeting of the
Faculty of the College of Literature, Science, and the Arts
that in a dismissal proceeding against a faculty member the
burden of proof should be on those who assert that a dismissal
is warranted, providing that this statement is made neither as
legislation nor as a proposal for legislation but merely as an
expression of the opinion of this meeting."

The motion was thereupon seconded.

Professor Gardner Ackley rose to say that he would oppose this
motion as he would any other resolution presented today. It had been asserted that those concerned with the procedures to be followed in these cases have no principles to guide them and that this Faculty should provide such principles. He maintained that we did have such principles and that they were to be found in the long and honored tradition of this University! It was not necessary to state them specifically for the cases at hand. In any case, now was not the time to be considering them. Perhaps earlier this year we may have been remiss in not doing so when we set up our procedures. But: we cannot legislate wisely on these principles here and now. A group of this size here cannot hammer them out now. It is impossible to obtain a consensus on matters so complex. The difficulties are compounded by emotional involvements based in part upon rumor and lack of facts. He remarked that he himself had tried earlier to formulate a resolution and after showing it to a number of colleagues found that there could be no agreement as to what should go into it. The resolution now before us seemed to be aimed in part at whether or not a faculty member has a right of silence. For his part, he had an opinion on this subject
different six months ago than it was today or possibly than it might be six months hence. It would seem that the procedure adopted to this point is appropriate. None of us would knowingly sacrifice our tradition. The role of the Committee we have set up is to look at the facts and judge all the circumstances and then to render an opinion. A resolution such as this can at this point only be divisive. The time may come when unity needs to be sacrificed. At such time we can then stand up for what we regard as appropriate.

As Mr. Ackley resumed his seat, there was a further burst of applause.

Professor L. C. Anderson, in support of the last speaker, referred to the resolution as insidious and a reflection upon those who had been elected to the committees. We should not assume that they would not look at all the facts and judge wisely.

Again there was applause.

On a point of personal privilege Mr. Moise rose to say that he had no intention of insulting anyone. Our tradition was indeed sufficiently clear, but might we not forget it?

Professor E. N. Goddard said he was in agreement with Mr. Moved to table Anderson and, having confidence in the appointed committees, he would move to table the motion. This was seconded and put to the meeting by voice vote. There being some doubt as to the outcome, the Chair called for a standing vote. The tellers reported 144 in favor and 109 opposed, whereupon the Chair declared the motion to table was carried. Carried

Before putting the motion for adjournment, the Dean reread No public release of the proceedings and he announced that it was not his intention to release any report to the press at this time. As to any subsequent action of this nature, he intended to wait until he had an opportunity to confer with the Executive Committee.

The meeting then adjourned at 6:40 p.m.

Lionel H. Laing
Secretary of the Faculty
REPORT TO THE UNIVERSITY SENATE OF THE SPECIAL COMMITTEE ON
ROLE OF FACULTY IN TENURE MATTERS

Robert C. Angell
Stephen S. Attwood
Burton L. Baker
Kenneth A. Easlick
Russell A. Smith
W. Clark Trow
E. Lowell Kelly, Chairman

April 26, 1955
REPORT TO THE UNIVERSITY SENATE OF THE SPECIAL COMMITTEE ON
ROLE OF FACULTY IN TENURE MATTERS

This report is submitted to the Senate pursuant to a resolution adopted by that body on October 28, 1954, directing the Senate Advisory Committee to appoint a special committee "to study, prepare reports and make recommendations for consideration by the Senate with respect to ... the role of the faculty in matters of tenure."

This Committee was appointed on December 1, 1954. It held five meetings all of which lasted several hours. On one occasion President Hatcher met with the Committee so that it might obtain his opinions on a number of issues being considered. The Chairman of the Committee met once with the Senate Advisory Committee to discuss a draft of the Committee's report.

The Committee is unanimous in its support of this report and its recommendations.

The Problem

Because academic tenure is so closely related to the preservation of intellectual freedom, university faculties have traditionally and appropriately been concerned with the development of the principles of tenure and with their implementation. Academic tenure has and continues to be one of the major concerns of the American Association of University Professors whose successive committees on Tenure have provided us with the now almost universally accepted principles governing academic appointments in universities and colleges. By way of background, the most recent statement of these principles is quoted from the AAUP Bulletin, Spring 1954, p. 83:

Academic Tenure

"(a) After the expiration of a probationary period teachers or investigators should have permanent or continuous tenure, and their services should be terminated only for adequate cause, except in the case of retirement for age, or under extraordinary circumstances because of financial exigencies.

"In the interpretation of this principle it is understood that the following represents acceptable academic practice:

"(1) The precise terms and conditions of every appointment should be stated in writing and be in the possession of both institution and teacher before the appointment is consummated.

"(2) Beginning with appointment to the rank of full-time instructor or a higher rank, the probationary period should not exceed seven years, including within this period full-time service in all institutions of higher education; but subject to the proviso that when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution it may be agreed in writing that his new appointment is for a probationary period of not more than
four years, even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years. Notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period.

"(3) During the probationary period a teacher should have the academic freedom that all other members of the faculty have.

"(4) Termination for cause of a continuous appointment, or the dismissal for cause of a teacher previous to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution. In all cases where the facts are in dispute, the accused teacher should be informed before the hearing in writing of the charges against him and should have the opportunity to be heard in his own defense by all bodies that pass judgment upon his case. He should be permitted to have with him an adviser of his own choosing who may act as counsel. There should be a full stenographic record of the hearing available to the parties concerned. In the hearing of charges of incompetence the testimony should include that of teachers and other scholars, either from his own or from other institutions.

Teachers on continuous appointment who are dismissed for reasons not involving moral turpitude should receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution.

"(5) Termination of a continuous appointment because of financial exigency should be demonstrably bona fide."

Fortunately, the dismissal or demotion of university faculty members is a relatively uncommon event and even rarer are the occasions when such action occurs under conditions regarded as unjust by colleagues of the aggrieved faculty member. This is, indeed, high tribute to the administrative officers and governing bodies of colleges and universities whose good judgment, wisdom and essential fairness lead them to administrative actions so generally acceptable to their faculties.

When, however, it does occasionally happen that the administrative decision and action in a tenure case does not conform to the considered judgment of the faculty of the institution, a situation is created which is likely to have a series of unfortunate consequences: deterioration of administration-faculty relations, lowering of the morale of both staff and students and an unfavorable impact on public relations. While it is never possible to assess accurately the resulting damage to an institution, it is the uniform opinion of observers who have been close to such affairs that the damaging effects are both serious and lasting. For this reason then, rather than because of the frequency of contested tenure cases, this Committee believed it essential to explore ways of reducing the probability of such incidents at the University of Michigan.

While recognizing that the final legal authority for eventual decisions in tenure cases rests with the Board of Regents, we believe it to be an acceptable principle that the Regents, the administrative officers and the faculty of the institution must share the serious responsibility of determining the acceptable principles of tenure and implementing them in such a manner as to ensure, on the
one hand, justice to the individual staff member, and, on the other, the best interests of the institution and the larger society which it serves. The general principle of faculty participation in such decisions is clearly accepted in the present By-laws 5.10 and 5.101.

Principles Underlying the Committee's Deliberations

Our Committee has concerned itself with the general question of the appropriate roles of the faculty and units of the faculty in matters of tenure. Several principles have guided our thinking and our recommendations:

(1) To the extent that it is possible, without injustice, individual cases of dismissal or demotion should be handled with minimal involvement of faculty groups and with minimal publicity. Thus, if a "case" can be amicably and fairly settled by informal discussion between a chairman of a department and a member of his staff, we would see no good resulting from initiating formal action, leading to the involvement of other faculty and administrative groups.

(2) In all cases, where an amicable and fair agreement cannot be achieved through such informal discussions, we believe it highly desirable to have explicit rules to guide (a) the orderly initiation of charges, and (b) the hearing and review procedures.

(3) While recognizing the general desirability of involving as few faculty members as possible in the adjudication of tenure cases, and while also recognizing the unique competence of the immediate colleagues of a staff member in evaluating his academic performance, we believe it essential that mechanisms be established which will (a) ensure that reasonably common standards of performance and personal conduct will be used in arriving at decisions, and (b) that as far as possible, the recommendation for disposition reflect the professional conscience of the faculty as a whole.

Alternative Procedures Proposed for Two Broad Categories of Tenure Cases

In its early deliberations, this Committee listed a considerable number of charges which have been or might be used as a basis for dismissal or demotion actions. While it did not seem feasible to undertake any rigorous classification of such charges, it was obvious that certain of them fell clearly in a category which might be broadly labelled "deficiency in the performance of academic duties", and that such matters (Type A cases) were clearly of primary concern to the school or college in which the affected faculty member is employed. At the other end of the scale, however, we noted another type of charge: conduct regarded as potentially disqualifying a person for continued membership in the academic community or inimical to the welfare of the university or society. Such matters, it appeared to the Committee might more properly be regarded as appropriate concern of the university as a whole. It was the Committee's opinion that the general procedures incorporated in the present By-law 5.10 were satisfactory for handling the first type of case but that a distinctly different and carefully delineated procedure was desirable in Type B cases.

In the course of working out what seemed to be the most appropriate set of procedures for these two extreme types of cases, the Committee recognized fully the possibility that a specific case might involve a charge or charges which did
not fall clearly in either of these two categories or alternately charges of both varieties. Since the Committee was firmly of the opinion that it was not desirable that actions be initiated simultaneously or carried out independently under both procedures, our proposal incorporates a plan for determining in doubtful cases which of the two procedures should be followed.

A new University Committee on Tenure

An essential feature of the Committee's proposal is the creation of a new university-wide committee, to be known as the University Committee on Tenure. While tenure problems and cases are relatively infrequent, we regard them as sufficiently important to justify the creation of this new committee, which would by virtue of the status, experience and wisdom of its elected members, soon come to be regarded as reflecting the professional conscience of the entire faculty in all matters of tenure. We envisage the University Committee on Tenure as serving in five distinctive roles:

Role 1. General Policy Matters

In addition to the more specific functions allocated to this Committee, we would hope that it would meet from time to time for general discussion of matters of academic freedom and tenure and that its members would keep themselves generally informed regarding the thinking and action of other university faculties on these matters. From time to time, we would hope that this Committee might meet with members of the University administration (including Regents) for a discussion both of general issues and of more specific questions as may be relevant to the local scene. Such policy recommendations as the Committee might regard as desirable would be submitted to the Senate for approval and transmitted to the Regents.

Examples of substantive problems which might well be considered by the University Committee on Tenure include three which arose in the deliberations of this Committee:

(a) Is demotion, i.e., reduction in rank or salary, an appropriate type of action in faculty tenure cases? By-law 5.10 includes this type of action; our proposed revision does also, but primarily because we did not feel that we were charged with making recommendations for substantive changes in the By-laws.

(b) Should an effort be made to define the conditions under which public notice should or should not be given to the several actions and recommendations in a tenure case?

(c) Should the right of tenure be given to an instructor or assistant professor after he has served for a total of eight years in either or both ranks or only after he has served eight years in his present rank, as now provided in By-law 5.10?

Role 2. As a monitor of all contemplated formal actions involving dismissal or demotion

This Committee believes it highly desirable that any impending or contemplated action against any faculty member in any administrative unit of the University be made known to the University Committee on Tenure which would be charged with the general responsibility of keeping itself informed regarding
the progress of the case. Even in cases involving no formal action initiated against a faculty member, a discussion of the issues should contribute to the background of experience needed in dealing with other cases.

Role 3. Consultant to Administrative Officers of the University and to Individual Faculty Members

It is believed that the University Committee on Tenure might serve a very useful consultative function to any administrative officer (chairman, dean, director, vice-president, or the president) confronted with the problem of initiating charges against a staff member. In this consultative role, this Committee might be asked for two types of opinions:

(a) An opinion regarding the appropriateness of the proposed charge or charges as grounds for dismissal or demotion. (Note, that this opinion would be independent of any judgment regarding the guilt or innocence of the individual concerned.)

(b) An opinion as to whether the nature of the charges are such as to be more properly handled as a Type A or a Type B case. In case the administrative officer contemplating action does not concur with the opinion rendered by the University Committee on Tenure, we propose that the President shall decide which of the two procedures shall be followed.

Similarly, the University Committee on Tenure would be available for consultation by any member of the faculty who wishes information or an opinion regarding his rights and responsibilities in matters of tenure.

Role 4. As a review body in Type A cases

It is proposed that the University Tenure Committee with its background of experience in matters of tenure be substituted for the Senate Advisory Committee (or its subcommittee on Intellectual Freedom and Integrity) as the body to which the faculty member may appeal his case in the event of an adverse decision by a College Hearing Committee in Type A cases.

Role 5. As the original hearing body in Type B cases

In such cases, because of the nature of the charges and the desirability of uniformity of standards in all units of the University, it is proposed that the University Tenure Committee have the original investigating and hearing functions and assume responsibility for arriving at a recommendation for disposition of the case.

The Procedures Proposed

While the proposed by-law revision spells out the details of the procedures envisaged as desirable by this Committee, it is believed that most faculty members will find our proposal easier to comprehend by reference to Charts A and B in which we have attempted to indicate the responsibilities and the actions appropriate to each of the several individuals and groups involved in tenure cases.

In addition to the changes in procedure which we believe desirable and possible by creation of the University Tenure Committee, our proposal incorporates
one other significant change for present procedures: in Type B cases, in which the University Tenure Committee would serve as the original investigating body, we propose that the appeal and review function should be assumed by the entire Senate Advisory Committee, which is also broadly representative of the entire University.

Action in tenure cases by any faculty Committee, whether original or appellate, eventuates only in a recommendation for disposition by the Board of Regents. Actually the recommendation is transmitted to the President who in turn forwards it to the Board of Regents. In doing so, the President has the privilege of supporting the recommendation of the faculty committee(s) or making an alternate recommendation for disposition of the case. The Board of Regents is in turn free to accept or reject the recommendations of either the Senate Committee or the President.

In Type B cases, it is almost inevitable that a large proportion of the university faculty may develop a serious concern with the issues involved. Since the actual facts surrounding such cases may not appropriately be made available to the entire staff, we believe it essential that the review procedure be of such a nature as to lead a large proportion of the faculty to regard the final recommendation as one deserving its wholehearted support. We are, therefore, recommending that the review when requested and final recommendation in Type B cases become the responsibility of the entire Senate Advisory Committee. Although the Senate Advisory Committee may wish to designate to a sub-committee the hearing in the case, we believe the final decision and recommendation should be an action of the group as a whole and hence most likely to be indicative of the professional conscience of the total faculty.

Advantages of Proposal

The advantages we see in the proposal as contrasted with the existent procedures are:

(a) It eliminates certain ambiguities of procedure and thus assures more orderly sequence of procedures.

(b) It contributes to better communication between all persons and groups involved.

(c) It avoids the possibility of different actions being initiated and carried on independently as is now possible under By-laws 5.10 and 5.101.

(d) It permits the President (and the Regents) to refrain from arriving at or announcing a decision until after receiving the recommendations of appropriate faculty committees.

Although tenure cases are relatively infrequent, and although we have high confidence in the essential good will of faculty members, administrative officers and the Board of Regents, and in their desire to arrive at just decisions regarding such cases, this Committee believes that the consequences of misunderstanding are so dire that every effort should be made in advance of specific cases to clarify the appropriate roles of the faculty in matters of tenure, and to spell out the procedures by which these roles will be played in the best interests of the individual, the university and society. We believe that the principles and procedures herein recommended are consonant with this general goal and would hope that they
will be accepted by the faculty, administrative officers and the Regents as con­
tributing to better communication and more effective cooperative functioning among 
these three groups, all equally devoted to the welfare of the University.

Specific Senate Action Recommended

Your Committee recommends that the Senate request the Board of Regents to 
substitute a new By-law 5.10 (copy attached) for present By-laws 5.10 and 5.101. We believe that the proposed By-law consolidates the most useful features of both of those it is designed to replace and furthermore that it provides for a number of additional procedures essential to the most effective handling of tenure cases.

Special Committee on Role of Faculty in Tenure Matters

Robert C. Angell
Stephen S. Attwood
Burton L. Baker
Kenneth A. Easlick
Russell A. Smith
W. Clark Trow
E. Lowell Kelly, Chairman
<table>
<thead>
<tr>
<th>Unit</th>
<th>General Functions</th>
<th>Special Functions in Type A or B cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Society, i.e. the citizens of the state of Michigan</td>
<td>1. Public reaction via letters, editorials and the ballot</td>
<td></td>
</tr>
<tr>
<td>Board of Regents</td>
<td>1. Receives and studies all recommendations transmitted by President</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2. Makes final decision and takes action</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3. Reports to public (via press)</td>
<td></td>
</tr>
<tr>
<td>President</td>
<td>1. Receives complaints</td>
<td>In exceptional cases, may relieve accused of some or all university duties without loss of pay</td>
</tr>
<tr>
<td></td>
<td>2. Confers with UTC regarding seriousness of complaint and appropriate procedure for initiating formal charges</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3. In case of disagreement between UCT and school or college as to whether case should be handled as a Type A or B case, makes decision</td>
<td></td>
</tr>
<tr>
<td></td>
<td>4. Receives recommendation for disposition growing out of original hearing</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5. Advises affected staff member of right of appeal and procedures to be followed</td>
<td></td>
</tr>
<tr>
<td></td>
<td>6. Transmits recommendation of both original and appellate bodies to Board of Regents</td>
<td></td>
</tr>
<tr>
<td></td>
<td>7. Transmits own recommendation to Board of Regents</td>
<td></td>
</tr>
<tr>
<td>Senate Advisory Committee</td>
<td></td>
<td></td>
</tr>
<tr>
<td>University Committee on Tenure</td>
<td>1. Study and recommendations concerning policy</td>
<td>In Type B cases, serves as the original hearing committee.</td>
</tr>
<tr>
<td></td>
<td>2. Monitors all tenure actions</td>
<td>In Type A cases, serves as the review body</td>
</tr>
<tr>
<td></td>
<td>3. Consults with administrative officers and others regarding tenure matters</td>
<td></td>
</tr>
<tr>
<td>School or College</td>
<td></td>
<td>In Type A cases, initiates charges, holds hearing and recommends action</td>
</tr>
</tbody>
</table>
CHART B: FLOW CHART SHOWING ROUTING OF TENURE ACTIONS IN PROPOSED BY-LAW REVISION

Legend:  
M = Affected faculty member  
UCT = University Committee on Tenure (Herewith recommended)  
Exec. = Executive authority--dean, director, or executive committee of school or college or other administrative unit  
Hearing Committee = executive, administrative, or ad hoc committee of school or college, or other administrative unit

Initiation of Proceedings (Subsections 2 and 3)  
1. Complaints received by President and/or Exec. of Administrative Unit  
2. Whichever of above considers that a case should be investigated so reports to the other and to UCT  
3. Exec. and UCT each render an opinion as to whether Case is Type A or B, and so inform President. If Exec. and UCT disagree, President decides.

Type A cases (Subsection 4)  
Primarily involving deficiency in performance of academic duties

4. School or College (Exec.)  
- Advises M of referral, and that he may request hearing  
- Investigates  
- Conducts hearing if requested by M, before Hearing Committee (HC)  
- HC reports to Exec., M, UCT, and President

5. Exec. advises M if he or HC recommends adverse action, and that he may request review by  

Type B cases (Subsection 5)  
Primarily involving conduct injurious to the broader welfare of the University and society.

4. Committee on Tenure (UCT)  
- Advises M of referral and that he may request hearing  
- Investigates; Exec. may be present and recommend  
- Conducts hearing if requested by M  
- Reports to Senate Advisory Committee, President, Exec. and M

5. President or affected faculty member may request review of case by Senate Advisory Committee

6. Senate Advisory Committee  
- Receives report from UCT  
- Conducts review of case (including hearing if deemed necessary)  
- Reports recommendation to M, Exec., UCT and President  
- M, Exec., and UCT may file comments with President

7. President transmits full reports and his own recommendation to Regents.
April 26, 1955

PROPOSED REVISION OF SECTIONS 5.10 and 5.101 OF THE BY-LAWS
(Consolidating both into one section)

Sec. 5.10. Procedures in Cases of Dismissal, Demotion or Terminal Appointment.

(1) Applicability. The procedures prescribed in this section shall be followed (a) before a recommendation is made to the Board of Regents of dismissal or demotion of any member of the University faculty and (b) before a recommendation is made to the Board of Regents of the terminal appointment of an instructor or assistant professor after he has served for a total of eight years in his present rank. Subject to pursuing these procedures, a recommendation of dismissal, demotion or terminal appointment may be made for causes accepted by University usage, properly connected with the improvement and efficiency of the faculty and consistent with the character of the tenure involved.

(2) Initiation of Proceedings. Proceedings which may result in a recommendation of dismissal, demotion or terminal appointment may be initiated by the President or by the executive authority (dean, director or executive committee) of the school, college or other unit (hereinafter called the "administrative unit") in which the affected faculty member is employed. In exceptional cases which, in the judgment of the President, threaten direct and immediate injury to the public reputation or the essential functions of the University, the President may direct that the affected faculty member be relieved of some or all of his University duties and responsibilities, without prejudice and without loss of compensation, pending the final disposition of his case.

(3) Proceedings Dependent on Classification of Case. Cases involving matters concerning primarily the administrative unit in which the affected faculty member is employed shall be subject to the procedures provided for by subsection (4) of this section. Cases involving matters of general University concern shall be subject to the procedures provided for by subsection (5) of this section. The President, before initiating action with respect to a faculty member, shall, after consulting with the University Committee on Tenure and the executive authority of the administrative unit, determine whether the case shall be handled under subsection (4) or subsection (5) of this section. The executive authority of an administrative unit, before initiating action with respect to a faculty member, shall notify the President and the University Committee on Tenure, and the President, after consulting with the University Committee on Tenure, shall determine whether the case shall be handled under subsection (4) or subsection (5) of this section. The President's determination shall be communicated in writing to the University Committee on Tenure and the executive authority of the administrative unit.

(4) Procedure in Cases Referred to the Executive Authority of the School or College.

(A) Upon referral of a case to the executive authority of an administrative unit, the executive authority shall promptly give written notice thereof to the faculty member affected, and to the University Committee on Tenure. The notice shall indicate the nature of the matter which the executive authority proposes to investigate and shall advise the faculty member that he may, upon making written request not more than ten days after receipt of the notice, have the opportunity to be heard.
(B) The executive authority shall promptly investigate a case referred to it, and, if the faculty member has requested a hearing, shall provide for a hearing either before the executive committee of the administrative unit or before a special ad hoc faculty committee appointed by the executive authority. A full stenographic record of the hearing shall be taken, and the hearing committee shall, with reasonable promptness, file a written report on the case, together with a transcript of the record of the hearing, with the executive head of the administrative unit, the University Committee on Tenure, and the President. The report shall contain the hearing committee's conclusions and recommendations and the reasons therefor. If dismissal, demotion, or terminal appointment is recommended, the report shall contain a specific statement of the deficiencies or acts of misconduct on which the recommendation is based, and a copy of the report shall be delivered to the faculty member.

(C) If the hearing committee recommends that adverse action be taken against the faculty member, the executive authority of the administrative unit, before considering the matter further, shall advise the faculty member in writing that he may have a review of the case by the University Committee on Tenure as provided in subparagraph (D) of this subsection. If the hearing committee recommends that adverse action should not be taken against the faculty member, but the executive head of the school or college, upon a review of the hearing committee's report and the record, disagrees with its recommendation and concludes that he should recommend adverse action against the faculty member, he shall notify the faculty member in writing of his recommendation, and with reasonable particularity, of the reasons therefor, and shall advise the faculty member that he may have a review of the case by the University Committee on Tenure as provided in subparagraph (D) of this subsection.

(D) The request of the faculty member for review of his case by the University Committee on Tenure shall be presented in writing to the Chairman or Secretary of the Committee within ten days after receipt by the faculty member of the notice from the executive head or authority of the administrative unit that adverse action against the faculty member has been recommended. Upon receipt of a request for review, the Committee shall promptly, but upon not less than ten days' written notice to the faculty member and to the executive head of the administrative unit, conduct a hearing in the matter, of which a full written record shall be taken. The faculty member shall have the right to be heard at the hearing, either in person or through a representative. Within thirty days following the hearing the Committee shall prepare a written report stating its findings of fact, and its conclusions and recommendations, and shall file a copy of the report, together with a transcript of the record of its proceedings, with the President, the executive head of the administrative unit, and the affected faculty member. The faculty member may, within ten days thereafter, file written comments thereon with the President and with the executive head of the administrative unit.

(E) Within twenty days after receiving a copy of the report of the University Committee on Tenure, the executive authority of the administrative unit shall notify the President in writing of its
final recommendations in the case. The President shall thereafter transmit the full record in the case, together with his own recommendations, to the Board of Regents for final action.

(5) Procedure in Cases Referred to the University Committee on Tenure.

(A) Upon referral of a case to the University Committee on Tenure, the Committee shall promptly give written notice thereof to the faculty member affected. The notice shall indicate the nature of the matter which the Committee proposes to investigate, and shall advise the faculty member that he may, upon making written request not later than ten days after receipt of the notice, have the opportunity to be heard by the Committee.

(B) The Committee shall promptly investigate a case referred to it, and may call upon any member of the University faculty or staff for relevant information. The executive authority of the administrative unit in which the affected faculty member is employed may be present or represented at all meetings of the Committee, and, if it wished to make any recommendations, shall make them to the Committee prior to the conclusion of the Committee's investigation, whereupon such recommendations shall become a part of the Committee's record in the case. If the affected faculty member requests a hearing before the Committee, a full stenographic record of the hearing shall be taken.

(C) Within thirty days after the referral of the case to the Committee, or within any additional period allowed by the President, the Committee shall file a written report on the case with the affected faculty member, the President, and the executive authority of the administrative unit. The report shall contain the Committee's conclusions and recommendations and the reasons therefor. If dismissal, demotion or terminal appointment is recommended, the report shall contain a specific statement of the conduct on which the recommendation is based. There shall be filed with the report the complete written record in the case, including the recommendations, if any, made to the Committee by the executive authority of the school or college, and a transcript of the record of any hearings conducted by the Committee.

(D) If the University Committee on Tenure recommends that adverse action be taken against the affected faculty member, the President, before considering the matter further, shall furnish a copy of the Committee's report and of the record in the case to the faculty member, and shall advise him in writing that he may have a review of the case by the Senate Advisory Committee as provided in subparagraph (F) of this subsection, provided a request for review is made in writing to the Senate Advisory Committee within ten days.

(E) Regardless of the nature of the recommendation made by the University Committee on Tenure, the President, upon a review of the Committee's report and the record, may, before making a recommendation to the Regents in the case, refer the case to the Senate Advisory Committee for review as provided in subparagraph (F) of this section. The President shall notify the affected faculty member in writing of such referral.
(F) Upon receipt of a request for review, the Senate Advisory Committee shall obtain a copy of the report of the University Committee on Tenure and of the record in the case, and shall promptly, but upon not less than ten days' written notice to the faculty member, the President, the University Committee on Tenure and the executive authority of the administrative unit, conduct, either itself or through a sub-committee, a hearing in the matter, of which a full written record shall be taken. The faculty member shall have the right to be heard either in person or through a representative. Within thirty days following the hearing the Senate Advisory Committee, acting as a whole, shall make a written report to the President, stating its findings of fact and its conclusions and recommendations. With the report shall be transmitted a transcript of the record of the proceedings of the Committee. Copies of the report and record shall also be filed with the affected faculty member, the University Committee on Tenure, and the executive authority of the administrative unit, each of whom may, within ten days thereafter, file written comments thereon with the President.

(G) After receiving the report of the Senate Advisory Committee, and any written comments thereon, the President shall transmit the full record in the case, together with his own recommendations, to the Board of Regents for final action.

(6) University Committee on Tenure

(A) The University Committee on Tenure shall be a standing committee of the University faculty. The faculty of each school or college shall have one representative on the Committee. Within the time prescribed by the President after the adoption of this provision the members of the faculty of each school or college holding indeterminate tenure shall elect one of their number to the Committee to serve an initial term indicated by the following (the term in each case to begin as of a date fixed by the President):

College of Literature, Science and the Arts, College of Engineering, Law School and School of Business Administration—four years; Medical School, School of Dentistry, School of Education and School of Music—three years; School of Nursing, School of Social Work and College of Architecture and Design—two years; School of Natural Resources, School of Public Health and College of Pharmacy—one year.

Upon the expiration of the original term of a member, and on each successive expiration of a term, election of a successor shall be for a four-year term. A person shall be ineligible to serve for more than two terms consecutively. The Committee shall, annually, elect a chairman and a secretary.

(B) The Committee may elect from its members an ad hoc panel of seven members to carry out any of the hearing and investigative functions of the Committee in a case referred to it under subsection (4) or subsection (5) of this section. However, any conclusions and recommendations shall be made by the Committee as a whole.

(C) The Committee, in addition to its function in specific tenure cases as provided in this section, shall meet regularly,
or on call of the Chairman of the Committee, the President, or the Chairman of the Senate Advisory Committee, for the purpose of considering any matters relating to faculty tenure, and making recommendations to the President and to the University Senate.

(D) The Committee shall be available to administrative officers and to staff members for consultation on matters of tenure.

(7) Definitions. "Dismissal" within the meaning of this section means the removal of a faculty member from his position in the University before the expiration of his appointment, either determinate or indeterminate. "Demotion" includes reduction in academic rank, reduction in salary, or withholding of salary. Demotion as defined in this section applies to academic rank and the salary paid for academic services. It is not to be construed as a demotion when an administrative officer ceases to hold his administrative position but engages in or continues in academic pursuits with a downward adjustment in salary to a level customarily paid for academic services of the nature he is expected to render. "Terminal appointment" means the granting of an appointment for a limited period with the understanding that, because of academic or other deficiencies, it will not be renewed.
REPORT TO THE SENATE ADVISORY COMMITTEE ON TENURE RESPECTING
RECOMMENDED CHANGES IN SECTION 5.10 OF THE REGENTS' BY-LAWS, DEFINING PROCEDURES
IN CASE OF DISMISSAL, DEMOTION OR TERMINAL APPOINTMENT

The Senate Advisory Committee will recall that its Subcommittee on Tenure was created for two principal purposes: (1) to advise the Senate Advisory Committee on tenure matters referred to the Subcommittee for study and consideration and (2) to advise individual faculty members on questions of tenure as they arise under the Regents' By-Laws.

At a meeting held last spring, following reorganization of the Subcommittee, it was agreed that a study would be made of the procedures in cases of dismissal, demotion or terminal appointment of faculty persons as presently set forth in section 5.10 of the Regents' By-Laws. You may recall that section 5.10 as presently worded is based on the extensive revisions adopted in 1956. One factor, among others, that accounted for the Subcommittee's decision to study the present procedures was the AAUP's action last spring in censuring the University's action in 1954 in the Davis-Nickerson cases. The AAUP's action was based on the report of its committee that had been appointed to study these cases. It should be emphasized that the cases studied by the AAUP's committee did not arise under the present section 5.10 of the Regents' By-Laws but arose under the earlier regulations which were in force in 1954. It is for this reason that the AAUP's committee report, in so far as it charges that the procedures employed in 1954 were defective, is not relevant to discussion of the procedures presently defined in Section 5.10 of the Regents' By-Laws. It may be noted, however, that in the concluding part of the AAUP's report attention was called to some aspect of the By-Laws as revised in 1956, and although the report noted what it regarded as improvements in the revised procedure, it called attention to what it thought were still two defects in the new procedures. One defect referred to was that in the initiation of investigation with respect to a given faculty person, the present regulations require that the faculty member affected be apprised of "the nature of the matter," whereas the committee's report thought that this should be more precisely stated and that the faculty member should be apprised "with reasonable particularity" of the nature of the charges against him. The other weakness of the present procedure as charged by the committee's report is that in view of the role assigned to the Senate Advisory Committee in respect to definitive recommendations, a person's case will be judged by persons who did not actually hear the case at either the original hearing or the review level.

Although the criticisms expressed in the AAUP's committee report have been taken into account by the Subcommittee in its review of the present procedures under section 5.10 of the Regents' By-Laws, the Subcommittee in its review of present procedures did not limit its consideration to these criticisms. The Subcommittee did, however, recognize that since these regulations were revised in 1956 on the basis of extensive study and thought at that time, changes should not now be lightly suggested and that the present pattern should be maintained as far as possible, consistent with what the Subcommittee regarded as desirable revisions. In accordance with this plan the Subcommittee has suggested no change in the general pattern whereby under the present By-Laws a distinction is observed in procedures applicable to school cases on the one hand and the University-wide cases on the other. It will be observed from reading of the procedures as proposed to be revised according to our recommendations that no change...
is suggested in the substance or wording of a large part of the present By-Laws. The proposed revisions affect only subsection (4) and (5) of Section 5.10 of the Regents' By-Laws.

The proposed revisions of subsections (4) and (5) as set forth in the attached copy are concerned with the following matters:

(1) Requirement that initial notice of investigation state charges with "reasonable particularity"

Subparagraph (a) of subsection (4) of the present By-Law states that in the school type of case the notice given by the executive authority to the faculty member affected shall "indicate the nature of the matter which the executive authority proposes to investigate." Likewise, subparagraph (a) of subsection (5), dealing with the procedure in case of the University-wide case, states that the Senate Advisory Committee in giving notice to the faculty member affected "shall indicate the nature of the matter which the Committee proposes to investigate..." Your Subcommittee feels that this language is too broad in stating the kind of notice required when an inquiry is initiated. The term "reasonable particularity" which is used at one point in the present regulation seems to be appropriate at these points as well, and it is for this reason that the Subcommittee in its recommended revisions has suggested a revision of the language in both these subsections in order to substitute "with reasonable particularity" for the broader language "nature of the matter." We feel that this serves as an added protection to the faculty member in determining what charge is under investigation and in affording him a better opportunity to meet the charge and to defend himself. It might be noted that adoption of this proposed revision would be in effect a return to the use of a term employed in the regulations prior to the 1956 revisions.

(2) Hearing in school type of case

Subparagraph (b) of subsection (4) states that the hearing shall be before the executive committee of the administrative unit or before a special ad hoc faculty committee appointed by the executive authority. We have added a requirement that if an ad hoc committee is used, it shall be appointed by the executive authority with the approval of the executive committee or the governing faculty of the administrative unit. This assures faculty participation in the hearing in a school type case whether the hearing committee is the executive committee of the administrative unit or a special ad hoc faculty committee.

We have also inserted a sentence to spell out the right, implied but not asserted in the present language, that the affected faculty member may be represented by an adviser of his own choosing who may act as counsel.

(3) Revision of review procedure in the school type of case

The present procedure under subsection (4), dealing with a school type of case, is first to have a hearing before a committee which is appointed by the executive authority of the school that is affected. The hearing committee's recommendation, in case it is adverse to the faculty member, is then subject to review by the Senate Advisory Committee which may conduct the review itself or have the review conducted by a subcommittee, except that in the latter case the report and recommendation shall be approved by the full Senate Advisory
Committee. Actually, it is a little inappropriate to speak of this as a review proceeding, since the Senate Advisory Committee or its subcommittee under the present regulation is required to conduct what amounts to a new hearing in the matter. Your Subcommittee agrees that it is basically sound to have a type of review in this case which amounts to a new hearing or at least admits the possibility of new evidence, since the initial hearing committee in this instance is appointed by the executive authority, and it would appear desirable that the opportunity for review should be fairly broad in order to permit a complete inquiry by a committee that is not appointed by the executive authority. However, the committee has proposed a revision of these review provisions in order to incorporate the following features:

(a) Instead of having the review conducted by the Senate Advisory Committee or by an ad hoc subcommittee appointed by it, we have indicated in our proposed revision that the review be conducted by the Senate Advisory Committee's standing Subcommittee on Tenure. It seems clear to us that a review in this case should not be conducted by the Senate Advisory Committee as a whole, in view of the fact that it amounts in part to a new hearing and the Senate Advisory Committee is too large a body to serve effectively in this capacity. Moreover, we believe that instead of having an ad hoc committee appointed for this purpose there is merit in having a standing committee which is concerned with tenure matters conduct the review. To use a standing committee of this kind will insure greater regularity and stability in the procedures to be followed in these cases as well as avoid some of the practical problems involved in getting a committee appointed in response to immediate needs.

(b) In subparagraph (e) of the proposed revised subparagraph (4), we have attempted to state in greater detail the factors to be taken into account in review of the case, after making clear in the previous subparagraph (d) that the review committee may in addition to reviewing the record receive new evidence, and that the affected faculty member may examine and rebut any new evidence received. It should be noted that the committee will take into account all relevant factors, including consideration of the questions (1) whether the hearing committee observed the procedure prescribed by this subsection, (2) whether the hearing committee afforded a fair hearing, (3) whether the deficiencies or acts of misconduct on which the hearing committee's recommendations are based are related to the charges stated in the first instance as the basis for investigation, (4) whether the proceeding as it developed before the hearing committee involves matters of general university concern, (5) whether the weight of the evidence, as it appears in the record and as it is supplemented by the further evidence taken by the review committee, supports the hearing committee's findings and recommendations.

Moreover, the proposed revision states that the review committee, in determining what its recommendation shall be, shall be free to make any recommendations appropriate to its findings and conclusions respecting either the procedural or meritorious aspects of the case. The Subcommittee felt that it was desirable to state the matter in this way so as to have room for flexibility in the review committee's recommendations. Thus, the review committee would be free to perhaps recommend in a given case that there be a new hearing because of lack of fairness or failure to follow the prescribed procedure by the hearing committee or that the adverse action as recommended be modified to some extent or that it be reversed or that it be approved.
(c) Finally, instead of having the Senate Advisory Committee approve the review committee's report and recommendations, the revised procedure at this point provides that the Senate Advisory Committee shall have the opportunity to submit its comments to the President with respect to the report and recommendations submitted by the hearing committee. It seems clear that this definitive report and recommendations should not come from the Senate Advisory Committee, since it has not served either as a hearing or as a review committee. However, it does seem desirable to give the Committee or its members a chance to submit their comments to the President after receiving the review committee's report.

(4) Initial hearing by the Senate Advisory Committee's standing Subcommittee on Tenure in the University-wide type of case and limited review by the whole Senate Advisory Committee.

Subsection (5) of the present By-Laws provides that the initial investigation and hearing in cases of a University-wide case may be conducted by a subcommittee of the Senate Advisory Committee on University Affairs, but that the reports and recommendations shall come from the Senate Advisory Committee acting as a whole. This provision is properly subject to the criticism that the definitive report and recommendation comes from a body which has not heard the case in the first instance, since the initial hearing is actually conducted by a committee appointed by the Senate Advisory Committee. Your Subcommittee proposes a revision incorporating the following features:

(a) Instead of having the initial hearing conducted by an ad hoc committee appointed by the Senate Advisory Committee, this hearing will be conducted by the Senate Advisory Committee's standing Subcommittee on Tenure. As pointed out above, it may be assumed that the Subcommittee on Tenure, with its special interest in respect to tenure matters, is peculiarly an appropriate body to conduct the hearing, and there are some advantages in not having the Senate Advisory Committee set up a special ad hoc committee for this purpose. It may again be emphasized that it will contribute to stability and regularity of procedure here to have a standing subcommittee deal with this matter.

(b) The present regulation does not provide for a review or appeal in the case of a University-wide case. Your Subcommittee agrees in general that such a review should not be necessary, in view of the fact that the hearing which we propose is to be conducted by the Subcommittee on Tenure. Nevertheless, as a possible precautionary measure, we have included in our proposed revision here a very limited review at the discretion of the Senate Advisory Committee where a review is requested by the affected faculty member in case of an adverse recommendation by the hearing committee, for the purpose of inquiring whether the hearing committee conducted a fair hearing and followed the prescribed procedure. It may be assumed that in most cases the Senate Advisory Committee will decline to review the case, or if it does that it will be quite likely to find that the hearing committee had afforded a fair hearing and followed the prescribed procedure. It will be noted that what we have proposed here is that if the Senate Advisory Committee in conducting this limited review does find that the hearing committee failed to afford a fair hearing or to follow the prescribed procedures, it will have authority to order a new hearing in the case. We feel that we are justified in recommending that the Senate Advisory Committee have the power of its own motion to order a new hearing, since the Subcommittee on Tenure which conducts the initial hearing is a...
subcommittee of the Senate Advisory Committee and should in this sense be subject
to its control. Since the hearing committee’s report is made to the Senate
Advisory Committee in the first instance, it seems appropriate that if it
determines its subcommittee has erred in a matter of procedure, it should have
authority to remand the case for a new hearing.

(5) Privilege of Affected Faculty Member and Senate Advisory Committee
to Comment on President’s Recommendations

The present By-Laws do not require the President to send to the affected
faculty member or the Senate Advisory Committee on University Affairs a copy
of his recommendations to the Board of Regents for final action in these cases.
In our proposed revisions as stated in subparagraph (h) of subsection (4) and
in subparagraph (g) of subsection (5), we provide that the President shall
review the record in the case and formulate his own recommendations and the
reasons therefor. The affected faculty member and the Senate Advisory Com-
mittee shall then be furnished copies of the President’s recommendations, and
may within ten days submit written comments to the President respecting his
recommendations. This is a wholly new provision. It may be supposed that
under the present procedure the President in transmitting his recommendations
to the Regents will in the usual case make his recommendations known to the
affected faculty member and the Senate Advisory Committee and that there will
be opportunity for at least informal comment with respect to his recommenda-
tions. We feel, however, that there is merit in formalizing a procedure that
allows definite opportunity to both the affected faculty member and the Senate
Advisory Committee for comments before the Regents take final action on the
matter. The comments should be submitted to the President for his considera-
tion and for inclusion in the record of the case which the President submits
to the Board of Regents for final action. The faculty member should be assured
of such an opportunity to be informed as to the President’s recommendations
and to make written comments which go to the Board of Regents before final
disposition of the case. The purpose of providing for comments by the Senate
Advisory Committee is not that the Senate Advisory Committee should have an
opportunity to sit in judgment on the President, since the President’s ac-
countability is to the Board of Regents and not to the Senate Advisory Commit-
tee. Nor does it follow that because the Senate Advisory Committee has the
privilege of filing comments that its comments would be critical of the
President’s recommendation or of the findings on which he based his recommenda-
tions. On the contrary, it may be presumed that in the usual case, the
Senate Advisory Committee, if it had any comments, would indicate its approval
of the President’s recommendation. In that case the President’s position
would be strengthened. On the other hand, if it appears to the Senate Advisory
Committee that the President in submitting a given recommendation was basing
his conclusions on evidence that did not appear in the record or on findings
not substantially supported by the record, it appears appropriate, in view of
the emphasis in these regulations on the importance of observing fair and
proper procedures, that the Senate Advisory Committee have the privilege of
pointing these matters out in written comments which become part of the record
submitted to the Board of Regents. It should be added that the copies of the
President’s recommendation which go to the affected faculty member and the
Senate Advisory Committee should be treated as confidential and that in turn
any comments by the faculty member or the Committee would not be publicized
except as authorized by the Board of Regents.
In conclusion we may add by way of a further word of explanation that in recommending the use of the Senate Advisory Committee's standing Subcommittee on Tenure, we have in mind the Subcommittee as created and constituted by the Senate Advisory Committee's own action, namely, a subcommittee whose members are appointed solely by the Senate Advisory Committee for overlapping and relatively long terms. In view of the necessity that this subcommittee, because of the functions assigned to it, be accountable wholly to the Senate Advisory Committee and, indirectly, to the faculty, we recommend that its present status be continued and that it not acquire the kind of Regential status that has been accorded to some of the other subcommittees.

Our committee, in recommending these revisions of Subparagraphs (4) and (5) of Section 5.10 of the Regents' By-Laws at this time, does not mean to imply that no further revision of Section 5.10 should be anticipated. Other suggestions for improvement in these and other subparagraphs have been made to the committee. They will receive further consideration, but are not recommended now either because they were brought to the committee's attention too late for adoption this year, or because the committee has not yet arrived at a final decision on the merits. The Subcommittee on Tenure will continue its consideration of proposals for improvements in arrangements for handling these cases, but it does believe that the recommendations now being submitted deal with the most urgent and significant issues.

Respectfully submitted,

The Subcommittee on Tenure

Stanley E. Dimond
Arthur M. Eastman
Ferrel Heady
Gilbert Ross
Robert M. Thrall
Paul G. Kauper, Chairman
(Fall Semester)
William J. Pierce, Chairman
(Spring Semester)
Proposed Revision of Subparagraphs (4) and (5) of
Section 5.10 of the Regents' By-Laws

(4) Procedure in Cases Referred to the Executive Authority of the School or College.

(a) Upon referral by the President of a case to the executive authority of an administrative unit, the executive authority shall promptly give written notice thereof to the faculty member affected, and to the Senate Advisory Committee on University Affairs. The notice shall state with reasonable particularity the charges which the executive authority proposes to investigate and shall advise the faculty member that he may upon making written request not more than ten days after receipt of the notice, have the opportunity to be heard.

(b) The executive authority shall promptly investigate a case referred to it, and, if the faculty member has requested a hearing, shall provide for a hearing either (1) before the executive committee of the administrative unit or (2) before a special ad hoc faculty committee appointed by the executive authority with the approval of the executive committee or the governing faculty of the administrative unit. The affected faculty member may have an adviser of his own choosing who may act as counsel. A full stenographic record of the hearing shall be taken, and the hearing committee shall, with reasonable promptness, file a written report on the case, together with a transcript of the record of the hearing, with the executive head of the administrative unit, the Senate Advisory Committee on University Affairs, and the President. The report shall contain the hearing committee's conclusions and recommendations and the reasons therefor. If dismissal, demotion, or terminal appointment is recommended, the report shall contain a specific statement of the deficiencies or acts of misconduct on which the recommendation is based, and a copy of the report shall be delivered to the faculty member.

(c) If the hearing committee recommends that adverse action be taken against the faculty member, the executive authority of the administrative unit, before considering the matter further, shall advise the faculty member in writing that he may have a review of the case by the standing Subcommittee on Tenure appointed by the Senate Advisory Committee on University Affairs as provided in subparagraph (d) of this subsection. If the hearing committee recommends that adverse action should not be taken against the affected faculty member, but the executive head of the school or college, upon a review of the hearing committee's report and the record, disagrees with its recommendation and concludes that he should recommend adverse action against the faculty member, he shall notify the faculty member in writing of his recommendation, and with reasonable particularity, of the reasons therefor, and shall advise the faculty member that he may have a review of the case as provided in subparagraph (d) of this subsection.

(d) The request of the faculty member for review of his case by the review committee shall be presented in writing to the Chairman or Secretary of the Senate Advisory Committee on University Affairs within ten days after
receipt by the faculty member of the notice from the executive head or authority of the administrative unit that adverse action against the faculty member has been recommended. The request for review shall be referred to the standing Subcommittee on Tenure appointed by the Senate Advisory Committee on University Affairs and designated by it as the review committee. The review committee shall promptly, but upon not less than ten days' written notice to the faculty member and to the executive head of the administrative unit, conduct a hearing in the matter, of which a full written record shall be taken. The review committee shall review the record and reports and recommendations transmitted by the hearing committee and may in addition receive new evidence. The faculty member, either in person or through a representative or both, and the executive head of the administrative unit shall have the right to appear, to comment on the proceeding before the hearing committee and on its findings, conclusions and recommendations, and to examine and rebut any new evidence received by the review committee. A full record shall be kept of the review proceeding.

(e) In conducting its review of the case, the review committee shall take account of all relevant factors, including consideration of the questions (1) whether the hearing committee observed the procedure prescribed in this subsection, (2) whether the hearing committee accorded a fair hearing, (3) whether the deficiencies or acts of misconduct on which the hearing committee's recommendations are based are related to the charges stated in the first instance as the basis for investigation, (4) whether the proceeding as it developed before the hearing committee involves matters of general University concern, and (5) whether the weight of the evidence, as it appears in the record and as supplemented by any further evidence taken by the review committee, supports the hearing committee's findings and recommendations. In determining what its recommendation shall be, the review committee shall be free to make any recommendation appropriate to its findings and conclusions respecting either the procedural or meritorious aspects of the case.

(f) Within thirty days following its hearing the review committee shall file a written report with the affected faculty member, the executive head of the administrative unit, the President, and the Senate Advisory Committee on University Affairs. The report shall contain the Committee's conclusions and recommendations and the reasons therefor. There shall be filed with the report a transcript of the record of the hearing conducted by the review committee.

(g) The faculty member and the Senate Advisory Committee on University Affairs may, within ten days after receiving the review committee's report file written comments thereon with the President and, in the case of the faculty member, with the executive head of the administrative unit. Within twenty days after it receives the hearing committee's report, the executive authority of the administrative unit shall notify the President of its final recommendation in the case.

(h) The President shall thereafter review the record in the case and shall formulate his own recommendations and the reasons therefor. The affected faculty member and the Senate Advisory Committee on University Affairs shall be furnished copies of the President's recommendations and
may, within ten days after receiving the same, submit to the President written
comments respecting the recommendations. The full record of the case, in­
cluding the recommendations of the President and any comments by the affected
faculty member or the Senate Advisory Committee on University Affairs, shall
then be transmitted by the President to the Board of Regents for final action.

(5) Procedure in Cases Referred to the Senate Advisory Committee on University
Affairs.

(a) Upon referral of a case by the President to the Senate Advisory
Committee on University Affairs, the Committee shall designate its standing
Subcommittee on Tenure to serve as a hearing committee and shall refer the
case to it for hearing. The hearing committee shall promptly give written
notice to the faculty member affected. The notice shall state with reasonable
particularity the charges which the committee proposes to investigate, and
shall advise the faculty member that he may, upon making written request
not later than ten days after receipt of the notice, have the opportunity
to be heard by the committee.

(b) The hearing committee shall promptly investigate a case referred
to it, and may call upon any member of the University faculty or staff for
relevant information. The President or his representative may be present
at all meetings of the committee, and may present such evidence as he deems
appropriate. The executive authority of the administrative unit in which
the affected faculty member is employed may be present or represented at all
meetings of the committee, and, if it wishes to make any recommendations,
shall make them to the committee prior to the conclusion of the committee's
investigation, whereupon such recommendations shall become a part of the
committee's record in the case. If the affected faculty member requests a
hearing before the committee, a full stenographic record of the hearing shall
be taken.

(c) Within thirty days after the referral of the case to the hearing
committee, or within any additional period allowed by the President, the com­
mittee shall file a written report with the Senate Advisory Committee on Uni­
versity Affairs. The report shall contain the committee's conclusions and
recommendations and the reasons therefor. If dismissal, demotion or terminal
appointment is recommended, the report shall contain a specific statement of
the conduct on which the recommendation is based. There shall be filed with
the report the complete written record in the case, including the recommen­
dations, if any, made to the committee by the executive authority of the school
or college and a transcript of the record of any hearings conducted by the
committee.

(d) If the committee recommends that adverse action be taken against
the faculty member, the Senate Advisory Committee on University Affairs shall
advise the faculty member affected that he may request the Senate Advisory
Committee to review the proceeding conducted by the hearing committee. The
faculty member's request for a review shall be presented in writing to the
Chairman or Secretary of the Senate Advisory Committee on University Affairs
within ten days thereafter. Upon receipt of this request the Senate Advisory Committee on University Affairs may in its discretion conduct a hearing for the purpose of determining whether the hearing committee granted a fair hearing and followed the procedure prescribed by this subsection. If such a review hearing is granted, the faculty member, either in person or through a representative or both, shall have the right to appear and to comment on the proceeding before the hearing committee. A full record shall be kept of the review proceeding.

(e) If the Senate Advisory Committee on University Affairs determines that the hearing committee failed to grant a fair hearing or to follow the prescribed procedure, it shall set aside the committee's findings and conclusions and remand the case to the committee for a new hearing in accordance with the procedure prescribed by this subsection. A written report of the action taken by the Senate Advisory Committee on University Affairs, together with the record of its review proceeding, shall be filed with the affected faculty member, the executive head of the administrative unit, and the President.

(f) If the hearing committee recommends that adverse action should not be taken against the affected faculty member, or if it recommends that adverse action be taken and the affected faculty member does not request a review by the Senate Advisory Committee on University Affairs, or if in case a review is requested and granted it is determined that the hearing committee granted a fair hearing and followed the prescribed procedures, the Senate Advisory Committee on University Affairs shall file the hearing committee's report and recommendations together with the complete written record in the case with the affected faculty member, the President, and the executive authority of the administrative unit. In filing the report and record with the President, the Senate Advisory Committee on University Affairs may also include its comments on the hearing committee's findings, conclusions and recommendations. The affected faculty member and the executive authority of the administrative unit may, within ten days after receiving copies of the hearing committee's report and the record, file written comments with the President.

(g) The President shall thereafter review the record in the case and shall formulate his own recommendations and the reasons therefor. The affected faculty member and the Senate Advisory Committee on University Affairs shall be furnished copies of the President's recommendations and may, within ten days after receiving the same, submit to the President written comments respecting the recommendations. The full record of the case, including the recommendations of the President and any comments by the affected faculty member or the Senate Advisory Committee on University Affairs, shall then be transmitted by the President to the Board of Regents for final action.
At the spring meeting of the University Senate the following motion was adopted:

The University Senate recommends to the Board of Regents that Section 5.10 of the Regents' By-Laws, on Procedures in Cases of Dismissal, Demotion or Terminal Appointment, be revised as recommended in the report of the Subcommittee on Tenure dated March 30, 1959, and the proposed revision draft distributed with the call to this meeting. The Subcommittee on Tenure, after consultation with the Senate Advisory Committee, is authorized to consider and approve minor changes in the proposed revision of Section 5.10 which conform substantially to these recommendations.

In accordance with the motion the Subcommittee on Tenure has considered and approved minor changes in the proposed revision of Section 5.10 of the by-laws and the Committee recommends that Section 5.10 be amended to read as follows:

[The notes after each subsection or paragraph indicate revisions made in the draft prepared for the call of the Senate meeting.]

Sec. 5.10. Procedures in Cases of Dismissal, Demotion or Terminal Appointment.

(1) Applicability. The procedures prescribed in this section shall be followed (a) before a recommendation is made to the Board of Regents of dismissal or demotion of any member of the University faculty and (b) before a recommendation is made to the Board of Regents of the terminal appointment of an instructor or assistant professor after he has served for a total of eight years in his present rank. Subject to pursuing these procedures, a recommendation of dismissal, demotion or terminal appointment may be made for causes accepted by University usage, properly connected with the improvement and efficiency of the faculty and consistent with the character of the tenure involved.

The procedures are not applicable to cases involving voluntary resignations and do not preclude informal consultations among the
President, the Vice-President and Dean of Faculties, the executive authority of an administrative unit and members of the University faculty, which may result in resignation.

Note: The last sentence has been revised to include the Vice-President and Dean of Faculties.

(2) Initiation of Proceedings. Proceedings which may result in a recommendation of dismissal, demotion or terminal appointment may be initiated by the Vice-President and Dean of Faculties or by the executive authority (dean, director, or executive committee) of the school, college, or other unit (hereinafter called the "administrative unit") in which the affected faculty member is employed. In exceptional cases which, in the judgment of the President, threaten direct and immediate injury to the public reputation or the essential functions of the University, the President may direct that the affected faculty member be relieved of some or all of his University duties and responsibilities, without prejudice and without loss of compensation, pending the final disposition of his case.

Note: Under the existing section, the President or the executive authority may initiate proceedings. In accordance with the concept that the President should be free from having to judge the case at least in part prior to the hearing, the revision places the responsibility for initiating proceedings in the hands of the Vice-President and Dean of Faculties and the executive authority.

(3) Proceedings Dependent on Classification of Case. Cases involving matters concerning primarily the administrative unit in which the affected faculty member is employed shall be subject to the procedures provided for by subsection (4) of this section. Cases involving matters of general University concern shall be subject to the procedures provided for by subsection (5) of this section. The Vice-President and Dean of Faculties, before initiating action with respect to a faculty member, shall notify the President, the Senate Advisory Committee on University Affairs and the executive authority of the administrative unit. The President, after consulting with the Senate Advisory Committee on University Affairs and the executive authority of the administrative unit, shall determine whether the case shall be handled under subsection (4) or subsection (5) of this section. The executive authority of an administrative unit, before initiating action with respect to a faculty member shall notify the President and the Senate Advisory Committee on University Affairs, and the President, after consulting with the Senate Advisory Committee on University Affairs, shall determine whether the
case shall be handled under subsection (4) or subsection (5) of this section. The President's determination shall be communicated in writing to the Senate Advisory Committee on University Affairs and the executive authority of the administrative unit.

Note: The third sentence has been added in view of the powers given the Vice-President and Dean of Faculties under subsection (2).

(4) Procedure in Cases Referred to the Executive Authority of the School or College.

(a) Upon referral by the President of a case to the executive authority of an administrative unit, the executive authority shall promptly give written notice thereof to the faculty member affected, and to the Senate Advisory Committee on University Affairs. The notice shall state with reasonable particularity the charges which the executive authority proposes to investigate and shall advise the faculty member that he may, upon making written request not more than ten days after receipt of the notice, have the right to a hearing.

Note: The last clause formerly read "have the opportunity to be heard." Language clarification was suggested by the AAUP.

(b) The executive authority shall promptly investigate a case referred to it, and, if the faculty member has requested a hearing, shall provide for a hearing either (1) before the executive committee of the administrative unit or (2) before a special ad hoc faculty committee appointed by the executive authority with the approval of the executive committee or the governing faculty of the administrative unit. The affected faculty member may (1) have an adviser of his own choosing who may act as counsel; (2) be present at all sessions of the hearing committee at which evidence is received or argument is heard; (3) call, examine, and cross-examine witnesses; and (4) examine all documentary evidence received by the hearing committee. A full stenographic record of the hearing shall be taken, and the hearing committee shall, with reasonable promptness, file a written report on the case, together with a transcript of the record of the hearing, with the executive head of the administrative unit, the Senate Advisory Committee on University Affairs, and the President. The report shall contain the hearing committee's conclusions and recommendations and the reasons therefor. If dismissal, demotion or terminal appointment is recommended, the report shall contain a specific statement of the deficiencies or acts of misconduct on which the recommendation is based, and a copy of the report shall be delivered to the faculty member.
Note: The second sentence has been expanded to spell out rights in addition to the right to counsel to which the affected faculty member is entitled. Additional language was suggested by the AAUP.

(c) If the hearing committee recommends that adverse action be taken against the faculty member, the executive authority of the administrative unit, before considering the matter further, shall advise the faculty member in writing that he may have a review of the case by the standing Subcommittee on Tenure appointed by the Senate Advisory Committee on University Affairs as provided in subparagraph (d) of this subsection. If the hearing committee recommends that adverse action should not be taken against the affected faculty member, but the executive head of the school or college, upon a review of the hearing committee's report and the record, disagrees with its recommendation and concludes that he should recommend adverse action against the faculty member, he shall notify the faculty member in writing of his recommendation, and with reasonable particularity, of the reasons therefor, and shall advise the faculty member that he may have a review of the case as provided in subparagraph (d) of this subsection.

Note: This subparagraph remains unchanged.

(d) The request of the faculty member for review of his case by the review committee shall be presented in writing to the Chairman or Secretary of the Senate Advisory Committee on University Affairs within ten days after receipt by the faculty member of the notice from the executive head or authority of the administrative unit that adverse action against the faculty member has been recommended. The request for review shall be referred to the standing Subcommittee on Tenure appointed by the Senate Advisory Committee on University Affairs and designated by it as the review committee. The review committee shall promptly, but upon not less than ten days' written notice to the faculty member and to the executive head of the administrative unit, conduct a hearing in the matter, of which a full written record shall be taken. The review committee shall review the record and reports and recommendations transmitted by the hearing committee and may in addition receive new evidence. The faculty member, either in person or through a representative or both, and the executive head of the administrative unit shall have the right to appear, to comment on the proceeding before the hearing committee and on its findings, conclusions and recommendations, and to examine and rebut any new evidence received by the review committee. A full record shall be kept of the review proceeding.

Note: This subparagraph remains unchanged.
(e) In conducting its review of the case, the review committee shall take account of all relevant factors, including consideration of the questions (1) whether the hearing committee observed the procedure prescribed in this subsection, (2) whether the hearing committee accorded a fair hearing, (3) whether the deficiencies or acts of misconduct on which the hearing committee's recommendations are based are related to the charges stated in the first instance as the basis for investigation, (4) whether the proceeding as it developed before the hearing committee involves matters of general University concern, and (5) whether the weight of the evidence, as it appears in the record and as supplemented by any further evidence taken by the review committee, supports the hearing committee's findings and recommendations. In determining what its recommendation shall be, the review committee shall be free to make any recommendation appropriate to its findings and conclusions respecting either the procedural or meritorious aspects of the case.

Note: This subparagraph remains unchanged.

(f) Within thirty days following its hearing the review committee shall file a written report with the affected faculty member, the executive head of the administrative unit, the President, and the Senate Advisory Committee on University Affairs. The report shall contain the Committee's conclusions and recommendations and the reasons therefore. There shall be filed with the report a transcript of the record of the hearing conducted by the review committee.

Note: This subparagraph remains unchanged.

(g) The faculty member and the Senate Advisory Committee on University Affairs may, within ten days after receiving the review committee's report, file written comments thereon with the President and, in the case of the faculty member, with the executive head of the administrative unit. Within twenty days after it receives the hearing committee's report, the executive authority of the administrative unit shall notify the President of its final recommendation in the case.

Note: This subparagraph remains unchanged.

(h) The President shall thereafter review the record in the case and shall formulate his own recommendations and the reasons therefor. The affected faculty member and the Senate Advisory Committee on University Affairs shall be furnished copies of the President's recommendations and may, within ten days after receiving the same, submit to the President written comments respecting the recommendations. The full record of the case, including the recommendations of the President and any comments by the affected faculty member or the Senate
Advisory Committee on University Affairs, shall then be transmitted by the President to the Board of Regents for final action.

Note: This subparagraph remains unchanged.

(5) Procedure in Cases Referred to the Senate Advisory Committee on University Affairs.

(a) Upon referral of a case by the President to the Senate Advisory Committee on University Affairs, the Committee shall designate its standing Subcommittee on Tenure to serve as a hearing committee and shall refer the case to it for hearing. The hearing committee shall promptly give written notice to the faculty member affected. The notice shall state with reasonable particularity the charges (as prepared by the Vice-President and Dean of Faculties) which the committee proposes to investigate, and shall advise the faculty member that he may, upon making written request not later than ten days after receipt of the notice, have the right to a hearing before the committee.

Note: The third sentence has been revised to indicate that the charges are to be prepared by the Vice-President and Dean of Faculties and not by the committee. The last clause has been revised to correspond to (4)(a).

(b) The hearing committee shall promptly investigate a case referred to it, and may call upon any member of the University faculty or staff for relevant information. The Vice-President and Dean of Faculties, or his representative, may be present at all meetings of the committee, and may present such evidence as he deems appropriate. The executive authority of the administrative unit in which the affected faculty member is employed may be present or represented at all meetings of the committee, and, if it wishes to make any recommendations, shall make them to the committee prior to the conclusion of the committee's investigation, whereupon such recommendations shall become a part of the committee's record in the case. If the affected faculty member requests a hearing before the committee, a full stenographic record of the hearing shall be taken. The affected faculty member may (1) have an adviser of his own choosing who may act as counsel; (2) be present at all sessions of the hearing committee at which evidence is received or argument is heard; (3) call, examine, and cross-examine witnesses; and (4) examine all documentary evidence received by the hearing committee.

Note: The second sentence has been modified to confer certain rights on the Vice-President and Dean of Faculties rather than the President. The last sentence has been added to state the rights of the affected person as provided in (4)(b).
(c) Within a reasonable period of time after the referral of the case to the hearing committee, the committee shall file a written report with the Senate Advisory Committee on University Affairs. The report shall contain the committee's conclusions and recommendations and the reasons therefor. If dismissal, demotion or terminal appointment is recommended, the report shall contain a specific statement of the conduct on which the recommendation is based. There shall be filed with the report the complete written record in the case, including the recommendations, if any, made to the committee by the executive authority of the school or college and a transcript of the record of any hearings conducted by the committee.

Note: Instead of thirty days, the committee is provided a reasonable period of time within which to report.

(d) If the committee recommends that adverse action be taken against the faculty member, the Senate Advisory Committee on University Affairs shall advise the faculty member affected that he may request the Senate Advisory Committee to review the proceeding conducted by the hearing committee. The faculty member's request for a review shall be presented in writing to the Chairman or Secretary of the Senate Advisory Committee on University Affairs within ten days thereafter. Upon receipt of this request the Senate Advisory Committee on University Affairs may in its discretion conduct a hearing for the purpose of determining whether the hearing committee granted a fair hearing and followed the procedure prescribed by this subsection. If such a review hearing is granted, the faculty member, either in person or through a representative or both, shall have the right to appear and to comment on the proceeding before the hearing committee. A full record shall be kept of the review proceeding.

Note: This subparagraph remains unchanged.

(e) If the Senate Advisory Committee on University Affairs determines that the hearing committee failed to grant a fair hearing or to follow the prescribed procedure, it shall set aside the committee's findings and conclusions and remand the case to the committee for a new hearing in accordance with the procedure prescribed by this subsection. A written report of the action taken by the Senate Advisory Committee on University Affairs, together with the record of its review proceeding, shall be filed with the affected faculty member, the executive head of the administrative unit, the Vice-President and Dean of Faculties, and the President.

Note: The last sentence has been revised so as to include the Vice-President and Dean of Faculties.
(f) If the hearing committee recommends that adverse action should not be taken against the affected faculty member, or if it recommends that adverse action be taken and the affected faculty member does not request a review by the Senate Advisory Committee on University Affairs, or if in case a review is requested and granted it is determined that the hearing committee granted a fair hearing and followed the prescribed procedures, the Senate Advisory Committee on University Affairs shall file the hearing committee's report and recommendations together with the complete written record in the case with the affected faculty member, the President, the Vice-President and Dean of Faculties, and the executive authority of the administrative unit. In filing the report and record with the President, the Senate Advisory Committee on University Affairs may also include its comments on the hearing committee's findings, conclusions and recommendations. The affected faculty member, the executive authority of the administrative unit and the Vice-President and Dean of Faculties may, within ten days after receiving copies of the hearing committee's report and the record, file written comments with the President.

Note: The Vice-President and Dean of Faculties has been added to the list of persons entitled to copies of the written record. The last sentence has been amended to permit the Vice-President and Dean of Faculties to file comments with the President.

(g) The President shall thereafter review the record in the case and shall formulate his own recommendations and the reasons therefor. The affected faculty member and the Senate Advisory Committee on University Affairs shall be furnished copies of the President's recommendations and may, within ten days after receiving the same, submit to the President written comments respecting the recommendations. The full record of the case, including the recommendations of the President and any comments by the affected faculty member or the Senate Advisory Committee on University Affairs, shall then be transmitted by the President to the Board of Regents for final action.

Note: This subparagraph remains unchanged.
On the Matter of "Severance Pay"

A Unanimous Report to
the University Senate

by

A Special Committee of the Senate
Composed of:

Ernest F. Brater
William J. LeVeque
Wilbert J. McKeachie
L. Hart Wright
Merwin H. Waterman, Chairman

University of Michigan
Ann Arbor
May 23, 1955
This report is submitted to the Senate pursuant to a resolution adopted by that body on October 28, 1954, directing the Senate Advisory Committee to appoint a special committee "to study, prepare report(s) concerning and make recommendations for consideration by the Senate with respect to . . . (3) severance pay."

Procedures followed by the Severance Pay Committee in preparing this report. Since its appointment on December 1, 1954, the Severance Pay Committee has held approximately fifteen meetings. With the hope that we might profit from the experience of others, inquiry was made at the outset of a great many organizations for the purpose of learning as much as possible concerning their practices relating to severance pay. The organizations solicited included:

1. The University of Michigan, specifically with reference to past instances where some benefit tantamount to severance pay has been granted;
2. Other leading American universities, specifically 24 in number, of which 21 responded;
3. The American Association of University Professors (no response);
4. The state and federal Civil Service Commissions; and
5. The American Management Association, specifically with reference to industry practices in the case of dismissed executives.

It is apparent from a study of the facts and from conversation with University officials that the University of Michigan has no policy or set practice with respect to severance pay. In separation cases requiring Regental action during the years since 1926 severance pay has been granted in more cases than not. The amount has varied, and concluding appointment or notice was in lieu of severance pay in two instances.

Without intending to make any comment whatever with reference to the cases of Drs. Davis and Nickerson, it appears in general, over the years, that this University has been liberal with respect to severance pay in dealing with individual cases, if not as a matter of policy at least as a matter of fact.

Analysis of the policies (or lack of same) and practices at other colleges and universities also seems to put Michigan's handling of this problem in a liberal light. Some institutions avow lack of authority to make salary payments after termination of employment whether by discharge, death or illness. These are state colleges whose funds are closely controlled through state channels. Others say that their policy is "against severance pay--except," and then indicate that cases have been handled on an individual basis. From correspondence alone and without access to actual cases, this University's practices appear to compare favorably with those of all twenty of the institutions responding to our questions. It must be remembered, however, that we do know more in detail about the history of our own practices.

Examination of civil service rules and procedures brought to light nothing more than payments equivalent to "accumulated annual leave" for
circumstances of forced separation. With respect to industrial practices it was reported that discharged employees at the executive level were in many instances accorded severance pay although no universal policies were apparent.

The basic questions considered by this committee. The committee considered six basic questions bearing on severance pay in the course of its deliberations:

1. What legitimate functions are served by severance pay, i.e., is such pay ever justified?

2. If such pay is justified under some circumstances, how should its amount be calculated?

3. If such pay is justified under some circumstances, should an effort be made to codify at least some of the substantive standards?

4. If such codification is desirable and possible, what standards or principles regarding severance pay should be adopted?

5. What procedures should be followed in determining the applicability of the standards to a member of the faculty who has been dismissed; and

6. To what extent should this committee consider the retroactive application of such standards as might be adopted?

These questions are considered below in the order stated. The term "dismissal" as used in this report is intended to refer to the discharge of any member of the University faculty who is on indeterminate tenure, or who was appointed for a definite term not yet expired.

1. What legitimate functions are served by severance pay, i.e., is such pay ever justified? It would seem only fair that a faculty member would normally be given reasonable notice of any impending dismissal, the purpose being to provide him with the time necessary to take the essential steps which would normally lead to re-location. It is the view of this committee that severance pay should be treated as nothing more nor less than a substitute for such notice. Accordingly, in any case where reasonable notice has been given, severance pay would not seem to be justified. Where reasonable notice has not been given, severance pay would seem to be justified except in the instance where the character of the asserted ground for dismissal was such as to excuse reasonable notice. These exceptional situations form the subject matter of Part 4 of this report.

The nature of academic positions and the customs and habits of employment in the several branches of the profession make it extremely difficult for academic persons to shift jobs at will. Although the times of year vary somewhat, it is true that an unemployed professor is apt to have difficulty locating a new position except at "hiring time" when other institutions are doing their own advance planning and employment. It is evident that real hardship can accrue from separation without reasonable notice, and a prime purpose of severance pay is to bridge the gap between pay checks.

Another realistic consideration lies in the nature of the employment contract between the teacher and the institution. Tenure appointments are by
nature indefinite and there is no spelling out of an obligation, but this does not remove the fact that custom has led to the expectation of continuity of employment and the accompanying security of severance pay. There is not much real difference between unexpired definite period contract and the indeterminate ones in this regard.

As a practical matter in the field of human relations affecting the status and reputation of the University, it is important that separation of an employee, when such action becomes necessary, should be accomplished with a minimum of hard feeling. It is important to the morale and effectiveness of the staff as a whole that values of the tenure concept be supported and strengthened by acceptance of the severance pay idea. It is important to the University's ability to attract new and competent staff that it scrupulously observe the standards of the academic profession. This University has by its actions a number of times seemed to recognize this among other factors with benefit to itself.

(2) If such pay is justified under some circumstances, how should its amount be calculated? If severance is deemed to be nothing more nor less than an alternative or substitute for reasonable notice, questions pertaining to the amount of severance pay which should be given in any particular case, absent such notice, would logically be dependent upon the further question of how much notice would be deemed to have been reasonable in that case. And in turn the latter question should depend in part upon the type of job which we should expect a faculty member to consider as an acceptable alternative to the post from which he was dismissed. Obviously, the time which would normally be required to locate just any job, e.g., that of a day laborer, would be much less than would be the time normally required to locate a particular type of job.

Clearly it could be argued that the reasonableness of the notice should depend upon the ease with which a person would normally be able to re-locate in an equivalent position, taking account of the opportunities in private industry as well as of those in academic communities. This line of argument would lead to the conclusion that reasonable notice would vary greatly, depending in part on the degree to which a staff member's special abilities may be in demand by private industry.

This variable standard was considered and rejected by your committee for two reasons.

First, it is our view that a faculty member is more than a person possessing a particular substantive competence. Above all, he is a teacher, and this facet of his existence is frequently as important to him as is the substantive field in which he works. This consideration, plus the administrative difficulties which would be encountered in applying the variable standard to which reference was made above, led your committee to conclude that the reasonableness of the notice should be determined by the amount of time necessary for the individual to take the essential steps which would normally be expected to lead to another teaching post.

Second, in a practical context, the actual amount of notice required under this latter rule would also seem to vary, depending in part upon the law of supply and demand in the various fields. But again, administrative difficulties would be encountered in fitting the shoe precisely to a given foot. In developing a more feasible or fixed principle, account might well be taken of the fact that the college professor is entrapped by the necessary hiring practices of universities. Staff members are usually hired in advance on the basis of a year...
or more, and it is the exception rather than the rule for a vacancy to appear in the course of an academic year. In many fields, the professional association meetings, frequently near at Christmas time, constitute the basic "hiring hall" for the following academic year. And in addition, it would appear that a faculty member might well be given sufficiently advanced notice of dismissal as to enable him prior to such meetings to gather information concerning the schools which might be interested in interviewing him.

On the whole, your committee believes that notice in the amount of one academic year should be expected in any case where notice is required at all. And it logically follows that in such cases immediate dismissal without notice should call for periodic severance payments covering a like period.

Severance pay is not an honorarium or premium. It is paid to cushion the impact of hardship. Accordingly, it should never duplicate earnings obtained from a new assignment. It should be paid month to month. And if a faculty member does relocate before the end of the normal severance pay period, remaining payments should be so reduced as to take account only of the difference between his old and his new compensation. Of course, it could be argued that severance payments should terminate on the day the individual begins working in his new position, the theory being that the faculty member apparently deemed the other job acceptable, and that he did so knowing, at least with respect to the near future, that his living standard must be reduced. This limitation was rejected by the committee, in part because we would not like to put a premium on his refusing the offer of a new assignment at reduced pay.

(3) If severance pay is justified under some circumstances, should an effort be made to codify at least some of the substantive standards? There are two primary reasons which argue against codification of any substantive standards relating to severance pay. One of these questions the need for such a statement of principles, the other relates to the feasibility of attempting such.

The administration cooperated fully in furnishing to us the case histories of those situations where faculty members have been dismissed, including those where such persons had, as well as where they had not, received benefits which were at least closely akin to severance pay. Again without intending to make any comment with reference to recent cases, the committee can say with respect to the remaining cases that the University has maintained a generous attitude in cushioning the hardship which otherwise would have arisen in some dismissal situations. Some argument could be made, therefore, that the need for a statement of principles is not very great.

The second argument against attempting to formulate a statement of principles relates to the difficulty involved in trying to develop an adequate and workable statement. The mind of man cannot conceive of all of the situations which will arise in the future. Consequently a statement or code which is specific in its direction in that it is geared to precise situations can never be expected to provide wholesale coverage of all of the situations which might arise. And in formulating a code directed to specifics, there is the additional difficulty of finding language which would clearly communicate the result intended in all of the many variable patterns of those situations which the code does in fact purport to cover, to say nothing of the unlikelihood that those preparing such a code would have conceived of, and thus legislated wisely with reference to all of the many variations. At the other extreme, any attempt to cast the principles in quite general language so as to attempt to encompass the cases not imagined on the occasion of the codification leaves a great deal of discretion by way of interpretation, and the subsequent practice under such codification might tend in varying degrees to approximate the practice which would be followed in the absence of a statement of
There are six arguments which can be advanced in support of some measure of codification.

(a) It is believed that a middle road could be found between the two extreme types of codification described above. A partial codification might be attempted with hope of some measure of success, it being frankly acknowledged that it is not intended that the statement cover the whole circumference. This, indeed, is the way Anglo-American civilizations have responded, and with a fair degree of success, to the needs of their own legal orders. Partial statutory codes have been superimposed on their common law systems in those isolated areas which (i) lend themselves to codification and (ii) seem particularly worthy of more precise statement.

(b) Notwithstanding the generous attitude which has been manifested by the various administrations of this University in many situations, it remains true that at least most men prefer to work, as well as to live, in the context of well understood ground rules which have been approved after careful deliberation by them and their peers. Such a setting provides the comfort essential to each man's own complete development, the consequent benefit running to the entire institution of which he is a part. While much could be said on this subject, perhaps it will suffice to point out that in the local scene it was perhaps in recognition of this principle that the Board of Regents approved similar rules, some specific and some fairly general, bearing on related matters such as sick leave, retirement furloughs, and academic furloughs.

(c) In implementing the philosophy just noted in (b) above, it is doubtful if it is enough to provide that a faculty committee, unrestrained by and without guidance from such rules, will participate in the judgment of cases as they arise. Have we not seen instances where three committees, all composed exclusively of faculty members, rested their verdicts in the same case on a varying assortment of basic principles, one committee holding unanimously one way, another unanimously reaching the opposing result, and the third being split almost in the middle? As a purely practical matter, the academic community as a whole can share in the establishment of the basic principles under which they are to work only through some type of codification of the rules under which they are to be employed.

(d) There is reason to hope and to believe that thoughtful rules adopted in a calm period, known to all in advance, may serve to minimize the possibility that antagonisms between segments of the academic community will recur on the occasion of each dismissal with its com­mitting problem of severance pay.

(e) In an institution as large as this, the administrative difficulty in drawing lines on an ad hoc basis can be overcome in some measure by conforming to established ground rules. Of these, as previously mentioned, the University already has many. While the standards are not always precise (illustratively, those bearing on academic furloughs), large institutions nevertheless normally derive administrative comfort from the fact that at least a general rule previously approved by them is available to guide their conduct.
(f) Finally, and again as a practical matter, there is some question as to whether the University can properly make severance payments where it has not, at least in effect, previously committed itself to a standard scheme to make the matter something of an obligation forming a part of an employee's contract of hire. In short, it is at least doubtful that the University can make a gift, i.e., make payments for work not done, out of state funds. However, adoption by the Regents of a by-law regarding severance pay would protect the University in such cases to the same extent as it is now protected with reference to retirement furlough pay, and would make severance pay considerations an established part of the separation process.

A comparison of the competing arguments advanced above led your committee to conclude that at least a partial codification should be attempted. A start has been made toward this end as is indicated in the next part of this report. Before the whole task is completed, it may be discovered that the possible product is not worth the effort, for the question of feasibility is one which can only be answered as the task of codification goes forward.

(4) If such codification is desirable and possible, what standards or principles regarding severance pay should be adopted? It is believed that the grounds for the bulk of dismissals which take place in Universities can be divided into five classifications: (1) incompetence, (2) insubordination, (3) conduct in the nature of a felony (4) extreme types of social non-conformance, and (5) extreme types of political non-conformance.

The lines between these classes are neither sharp nor easily defined. In fact some of them tend to blend one into the other, and others clearly overlap. Illustratively, perversion or promiscuity are instances of social non-conformance but may also be criminal in character. Political non-conformance may be simply that and nothing more, or it may take on criminal characteristics, and may go on also to affect the teaching competence of the individual. And with reference to this latter effect, the same may or may not result in the case of alcoholism, another instance of social non-conformance. It is also possible that a case which in its early stages amounted to nothing more than an extreme type of political or social non-conformance might finally result also in a case of insubordination, excusable or otherwise. These illustrations serve to emphasize the obvious complexity of the problem.

Our committee does not attempt at this time to propose a statement of principles which would cover the wide range of possibilities encompassed by all of the foregoing classifications, and for two reasons.

First, we did not in our deliberations have before us an overall statement of principles, approved by the Senate, bearing on the standards governing dismissal itself. This is not the fault of any person. The fact is that at the time the preparation of this written report was initiated, another committee was trying to deal with that troublesome matter. Secondly, while we have developed some ideas with reference to the various classifications above, it would not seem profitable for us to try to communicate them now, for such would involve a whole host of assumptions. We would, e.g., be required to assume that conduct "Y" would justify dismissal, and thus present us with a severance pay problem when in fact the Senate might not agree that conduct "Y" is a proper ground for dismissal. In the end, we would have been required to play the game "Suppose" ad infinitum. This seemed undesirable and fruitless to say nothing of the fact that it would have made a virtual god of a report deadline.
In spite of the foregoing difficulties, we do believe that it would be worthwhile to report on at least one classification. But our belief that it would be worthwhile to make such a report at this time stems from the fact that we should not like for anyone to feel that the problem assigned to us has been buried. From our point of view then, this portion should be considered a progress report.

The one classification on which we are prepared to report concerns the extreme types of what, for the lack of a better term, we call political non-conformance. The selection of this as the first classification on which a report is made arose from the fact that the Senate seems to have evidenced considerable interest in this matter.

In discussing this subject as it relates to severance pay, we should like to make it very clear that it is not the responsibility of this committee to quarrel with any standard applied in dismissing a member of the faculty. The matter of grounds for dismissal is beyond our charge. The only question confronting us in this part of our report is whether or not the character of the asserted ground for dismissal is such as to excuse reasonable notice (or in the alternative terms, severance pay). And to us this means whether or not the asserted grounds for dismissal are such as to indicate that the faculty member has placed himself beyond the point that would call for fair treatment in reducing the financial hardship which follows dismissal without notice.

It is fundamentally true that there is something of a conflict between the search for truth and any requirement of orthodoxy. It is equally true that one could hardly expect to find more varied and yet intensively held views with reference to any subject than is currently held by various segments of our society with reference to the totality of the consequences which should follow certain extreme types of political non-conformance by a member of a university faculty. It has seemed to us that the same variations or differences and equally intense reactions are to be found with reference to this same matter within the academic community itself, including the faculty, student body and alumni.

In dealing with this basic question, it is equally important to note that people in all of the foregoing groups are shifting from one position to another as their understanding changes and as the evidence in support of, or in derogation of this or that continues to mount.

Significant to us also is the fact that these differences among sensible people will not be confined to the present. Moreover, fifteen or a hundred years from today, the sharp differences of opinion in this general area may well be focused on individuals other than those who formerly did, do, or might belong to the communist party or a so-called communist front organization.

These notions,

(1) That the search for the truth is in conflict with a requirement of political orthodoxy;

(2) That sensible people differ markedly and sharply with reference to the line where political non-conformance actually becomes something more;

(3) That people are constantly shifting their views on the matter stated in (2) above in the light of new evidence bearing, e.g., on the matter of communism;
That even the focus of their concern may be something else at a later date;

That it so often happens that the decisions which must be made in such cases can not be based on rocks of indisputable facts; and

That the question before us is not whether the person should be dismissed, but instead is whether the person has placed himself beyond that point which would call for fair treatment in effecting his dismissal, by reducing the financial hardship which follows dismissal without notice.

suggest to your committee that a statement of principle covering this matter should reflect three basic qualities.

These qualities are:

(1) Flexibility, in the sense of a capacity to look to the changing future as well as to the present;

(2) Preciseness, so that the ground rule will actually be understood;

(3) Fairness, in the sense that in this area where the views of sensible people associated with the University reflect marked differences, a faculty member should not be denied minimum humane treatment on the basis of any standard (backed by one sensible group or another) which is more demanding than that exacted by the ground rules duly established by the democratic society of which all of those associated with the University are a part.

This combination of qualities can be satisfied by a simple standard having only two facets, which, after much discussion, gained the unanimous approval of this committee.

First, as a general rule, severance pay in the case of dismissal without notice should be denied only where the asserted ground for dismissal in the area of political non-conformance is that there is competent evidence to establish beyond a reasonable doubt that the individual concerned has been guilty of felonious conduct. This would provide a flexible standard in the sense that it will shift as our society responds to new situations. At the same time it provides a fixed principle. And finally, it would recognize that until our society has indicated according to its orderly processes that a faculty member has put himself beyond the point deserving minimum humane treatment, other bodies within that society should hesitate to impose standards geared to their own views.

A second facet relates to duly processed prohibitions which our society may impose upon the governing body of this institution. It would seem inconsistent with the principle stated in the previous paragraph for us to request, or expect, the Board of Regents to violate any applicable laws which that same society has duly processed by way of a prohibition.

The two foregoing principles might be illustrated by two simple situations. Illustrative of the basic principle is the case where the asserted ground for dismissal is the finding that there is evidence establishing beyond a reasonable doubt that the individual has violated the Smith Act, the federal provision under which the first eleven communist leaders were convicted.
For an example of a legal prohibition which might possibly confine the Board of Regents in a severance pay situation, one can point to the Michigan Trucks Act.

We did not deem it our function, or even proper for us, to attempt a legal analysis of those two acts. But in order that the illustrations might be more meaningful, a copy of the two relevant provisions is set forth in the appendix attached to this report.

(5) What procedures should be followed in determining the applicability of the standards to a member of the faculty who has been dismissed? It seemed obvious to us that the machinery which is used in connection with the dismissal of a faculty member should also be used in determining whether or not he should receive severance pay. Some slight modifications in the basic rules will be necessary, e.g., in the case where the first official body to act recommends that the employee be retained, a finding by the final appellate body that he should be dismissed might well require a referral back to the first body in order to obtain their views on the question of referral severance pay.

Our committee concluded that the details of this procedure should be worked out only after the Senate has indicated its approval of any new basic rules which might be proposed by another committee dealing with the matter of procedure as it bears on dismissal, and after the Senate has indicated what, if any, standards should be applied to dismissal or severance pay, or both.

(6) To what extent should this committee consider the retroactive application of such standards as might be adopted? A motion was made at the meeting of the Senate on October 28, 1954 to the effect "that it is our (Senate) intention that any policies or provisions agreed upon by the committee studying Severance Pay and approved by the Senate shall be applicable to Drs. Davis and Nickerson."

The rejection by the Senate of that motion is unfortunately subject to at least two interpretations. The first is to the effect that the Senate did not desire to bind this committee to the principle of retroactivity, but intended to leave the way open for the committee to consider and make such recommendations as it saw fit with reference to that principle. A second possible interpretation is to the effect that the Senate did not want the committee to consider the possibility of retroactive application of such principles as might be adopted, the hope perhaps being to divorce a careful and deliberate study of basic principles from the bitterness and antagonisms which developed in some quarters with reference to cases concerning the two above-named professors.

This committee makes no recommendation whatever with reference to the principle of retroactivity. A sample, admittedly unscientific in approach, of faculty views indicated that there was a difference of opinion as to the purposes of the Senate on the occasion of the vote referred to above. This being so, the Committee felt that "good" would not be served by reporting on this phase of the problem.
CONCLUSIONS

On the basis of the considerations set forth in the body of this report this committee unanimously recommends the adoption by the Senate of the following resolutions:

Resolved:

(1) That the Senate approve separately the matters set forth below:

(a) the acceptance in principle of the need for and desirability of severance pay in lieu of adequate notice of dismissal as presented in Part 1 of this report,

(b) the acceptance of a minimum of one academic year's salary, in lieu of notice, as the appropriate amount of severance pay with reasons and qualifications as set forth in Part 2 of this report, and,

(c) the recommendation that procedures for determining the amount of severance pay, if any, which may be appropriate in individual cases should be dovetailed with such dismissal procedures as may be adopted by the Senate, as suggested in Part 5 of this report.

(2) That the Senate separately approve in principle each of the following matters, it being understood that final approval will be asked only after a subsequent report to be submitted at a later Senate meeting:

(a) Part 3 of this report which recommends that an attempt be made to codify standards under which severance pay should be granted and,

(b) Part 4 of this report which suggests a treatment of the severance pay problem in the area of so-called political non-conformance.
APPENDIX

SMITH ACT
(18 U.S.C.A. #2385)

#2385. Advocating overthrow of Government.

Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof--

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

TRUCKS ACT

No person may hold any non-elective position, job or office for the state of Michigan, or any political subdivision thereof, where the remuneration of said position, job or office is paid in whole or in part by public moneys or funds of the state of Michigan, or of any political subdivision thereof, where reasonable grounds exist, on all of the evidence, from which, after hearing, the employer or superior of such person can say with reasonable certainty that such person is a communist or a knowing member of a communist front organization. In cases involving a person within the classified service of the state of Michigan such hearing shall be held by the civil service commission: Provided, That the refusal of any person who holds a non-elective position, job or office for the state of Michigan, or any political subdivision thereof, who upon being called before a duly authorized tribunal or in an investigation under authority of law, to testify concerning his being a communist or a member of a communist front organization on the ground that his answers might tend to incriminate him, shall be, in the hearing provided for in this section, prima facie evidence that such person is a communist or a knowing member of a communist front organization.
REPORT

To: The Senate Advisory Committee on University Affairs

From: Sub-committee of the S. A. C. on Severance Pay

Subject: Final Report and Recommendations to S. A. C. for Submittal to the University Senate Regarding a Severance Pay Policy Applicable to University Academic Employees

References:
1. Report of the Senate Committee on Severance Pay, dated May 23, 1955, and accepted by the Senate on that day.
2. Minutes of the University Senate meeting of December 8, 1955 instructing the S. A. C. to "take the appropriate steps to insure that the 1955 Report of the Committee on Severance Pay receive thorough consideration and that definite recommendations of policy be presented to the Senate."
3. Letter of February 23, 1956 from the S. A. C. appointing this sub-committee to "continue study and to advise the S. A. C. with respect to recommendations for a policy on severance pay."

PREFACE

By its action in May 1955 the University Senate agreed to the following propositions:

1. The welfare of the University as well as that of individual faculty members is furthered by the existence of explicitly formulated principles governing the relationships between the University and the academic staff. (See original committee report, particularly page 5, (b), (e), and (f).)

2. It is to the welfare of both parties that, excluding specified exceptional cases, severance pay be given to academic personnel who hold unexpired appointments and who are dismissed with less than one academic year's notice. (See report, page 4, et seq.) In setting standards for severance pay it must be remembered that the question is not whether a person should be dismissed, but instead is whether a person has placed himself beyond the point which would call for such treatment in effecting his dismissal as would reduce the financial hardship which follows dismissal without notice.

3. Particularly in the case of a dismissal for reasons of political non-conformity, it was agreed that severance pay should be given unless there is substantial evidence that the dismissed person has committed a felony, or that such payment would be contrary to law. (See report page 8, last paragraph, and page 9, first paragraph.) Until our society has indicated according to its orderly processes that a faculty member has put himself beyond the point of deserving minimum humane treatment, other bodies within that society should hesitate to impose standards geared to their own views.
The foregoing propositions support the conclusion that a policy covering this matter of severance pay should reflect three basic factors. These qualities are:

1. **Flexibility**, in the sense of a capacity to look to the changing future as well as to the present.

2. **Preciseness**, so that the ground rule will be actually understood.

3. **Fairness**, in the sense that in any area where the views of sensible people associated with the University reflect marked differences, a faculty member should not be denied minimum humane treatment on the basis of any standard (backed by one sensible group or another), which is more demanding than that exacted by the ground rules duly established by the democratic society of which all those associated with the University are a part.

In attempting to set up standards governing severance pay in cases not involving political non-conformity, this sub-committee considered three possibilities. One was to use some such phrase as "moral turpitude" to describe the exceptional cases in which severance pay should not be given. It was felt, however, that any such ethical characterization is too vague, and that any behavior leading to dismissal without notice would probably be termed morally base by some persons.

The second attempt was to consider all cases and to give a definite "yes" or "no" to each. The disadvantages of such procedure were soon manifest; the time required to draft such a code would be exorbitant, there would be no guarantee of completeness, borderline cases would arise at every step, and each of dozens or hundreds of cases would have to be agreed to by the Senate. Further, even if such a code could be drafted, it would be inflexible and would require repeated re-examination and amendment.

The third possibility was to use--insofar as possible--a criterion of lawfulness similar to that already agreed upon in the matter of political non-conformity. Since this standard of lawfulness stands on the accumulated experience of society, it can be stated quite simply--at the same time it is precise and fair--and it responds automatically to societal changes.

We did feel, however, that there were two types of behavior which were not felonious, but which were sufficiently inimical to the good of the University as to constitute exceptions to the general principle. They are (1) refusal to discharge assigned academic duties, and (2) serious misdemeanors in connection with students or directly involving the University. It was to accommodate the latter that the standard according to which severance pay could be reasonably denied was expanded to include certain misdemeanors.
RECOMMENDATIONS

This committee recommends that the above background material be presented to the University Senate together with the following specific proposals for the granting of severance pay:

1. A university employee of academic rank who is dismissed without having received proper notice (as defined below) shall be entitled to severance pay (as defined below) except:
   a. Where the lack of University funds with which to continue his employment was the cause for dismissal; or
   b. Where, because of the character of the employee's conduct, the University is prohibited by law from making such payment; or
   c. Where there is competent evidence to establish beyond a reasonable doubt that the employee has been guilty of a felony, a serious misdemeanor in connection with students or directly involving the University; or
   d. Where there has been refusal to perform properly assigned academic duties.

2. Proper notice of dismissal means a notice of dismissal, conditional or otherwise, received by an employee at least one academic year in advance of the effective date of dismissal.

3. Severance pay in the case of an employee on indeterminate tenure means regular monthly payments, equal to the employee's salary during the academic year of dismissal, covering a period following dismissal equal to one academic year, except where the employee during such academic year secures other employment. In the latter event, from the time such other employment begins the monthly payments shall not exceed the difference between the amount of the monthly payments otherwise provided herein and his monthly compensation from such other employment.

Severance pay in the case of an employee under contract for a determinate period shall be the same as that for an employee on indeterminate tenure, except where the period remaining under the former's contract following dismissal is less than one year. In such case the payments otherwise provided herein shall extend at least to the regular terminal date of his contract.

It is further recommended that the University Senate transmit these proposals through proper channels to the Board of Regents with a request that such by-law or by-laws be enacted as will give effect to them.

This report is respectfully and unanimously submitted by:

Ernest F. Brater
William J. LeVeque
Wilbert J. McKeachie
L. Hart Wright
Merwin H. Waterman, Chairman
this instance, there appears to have been some ambiguity as to the provisions of the Student Government Council Plan adopted four years ago by the student body and subsequently by the Regents.

One of the provisions of that plan permits a periodic review by the student body and the Regents. The Regents, therefore, have asked the Vice-President for Student Affairs to work with the appropriate student and faculty organizations and to report any suggestions for clarifications or changes which seem necessary and desirable.

On recommendation of the Vice-President and Dean of Faculties the Regents adopted the following amendment to the Regents' Bylaws:

Sec. 3.101. Severance Pay.

1. Applicability. Academic personnel with indeterminate tenure who are dismissed in accordance with the provisions of Section 3.10 shall be entitled to severance pay for one academic year following written notification of dismissal except:
   (a) Where because of the character of the employee's conduct, the University is prohibited by law from making such payment;
   (b) Where there is competent evidence to establish beyond reasonable doubt that the employee has been guilty of a felony, or a serious misdemeanor in connection with students or directly involving the University;
   (c) Where there has been an intentional refusal, expressed or implied by conduct, to perform properly assigned academic duties.

2. Amount of Severance Pay. Severance pay in the case of an employee on indeterminate tenure means regular monthly payments, equal to the employee's salary during the academic year of dismissal, covering a period following written notification of dismissal equal to one academic year, except where the employee during such academic year secures other employment. In the latter event, from the time such other employment begins, the monthly payments shall not exceed the difference between the amount of the monthly payments otherwise provided herein and his monthly compensation from such other employment.

3. Severance Pay for a Dismissed Faculty Member Under Contract for a Determinate Period. Severance pay in the case of academic personnel under contract for a determinate period shall be the same as for personnel on indeterminate tenure, except where the period remaining under any contract following written notification of dismissal is less than one year. In such case, the payments otherwise provided herein shall extend at least to the regular terminal date of the contract.
APPENDIX H: DISSENTING OPINION ON “TO WHOM RB 5.09 APPLIES”  

Written by Kentaro Toyama

The other members of the Faculty Working Group propose a change to the text of RB 5.09, which appears to remove its applicability to full-time clinical faculty, non-union-member lecturers, and possibly other subgroups of non-tenure-track teaching faculty. I object to this recommendation for the following reasons:

1. Academic freedom should be extended as much as possible to all faculty, especially all teaching faculty. Removing RB 5.09's applicability to some of our teaching faculty erodes their academic freedom.

2. The affected groups should be consulted when making decisions of this magnitude. They were largely not -- all of the Working Group members are tenured professors. (The handful of clinical faculty that I communicated with individually all hoped that 5.09 would continue to apply to them.)

3. The original text of RB 5.09 extends its provisions to "any member of the teaching staff during the term for which any member of the teaching staff is appointed,” which, according to RB 5.01 includes "professors, associate professors, assistant professors, instructors, lecturers, and teaching fellows." SPG 201.13, to which my colleagues refer, mentions in a footnote that “Non-tenured faculty have the right to the procedures specified in Regents’ Bylaw 5.09 when the University seeks dismissal during the term of appointment specified in the employment contract.” (The excerpt they point to that appears to exclude lecturers and clinical faculty is about who is granted tenure by default after ten years.) Then, in SPG 201.34-1, there is a note that says, “For definitional purposes in other Standard Practice Guides, the term “regular instructional faculty” includes tenure track faculty (I.A. above), clinical instructional faculty (I.B. above), lecturers (I.C above), and lecturers (bargained-for) (I.D above),” which if used to read 201.13, appears to generate outright inconsistency. Given the ambiguity in the existing policies as written, and the considerable thought that went into RB 5.09 in its original form (as described elsewhere in this document), I believe we should not make changes without more deliberation than we had time for. The Faculty Working Group was also not explicitly charged to consider this change.

I support all other aspects of the Working Group's recommendations.