To the Irvine Divisional Senate Assembly:

The Committee on Privilege and Tenure (CPT) respectfully submits its activities for the 2017-18 academic year.

I. Committee Charge and Operation

The primary function of the Committee on Privilege and Tenure (CPT) is to consider potential and formal grievances brought by members of the Academic Senate and to consider disciplinary charges against members of the Academic Senate. Details are confidential.

Donald Senear, Professor of Molecular Biology and Biochemistry, chaired the Committee on Privilege and Tenure. The committee as a whole met 3 times.

The committee meets as needed, forming subcommittees to review and manage the early stages of the grievance and disciplinary processes. In addition, there are e-mail exchanges throughout the year to discuss reviews of policy proposals at both the campus and system levels.

II. Campus and Divisional Issues

A. Dispute Intervention, Advising, and Cases

The Chair of CPT engages in discussions with members of the Academic Senate who seek advice and guidance about the P&T process. These interventions are designed to 1) help the faculty member understand the process without entering into specific recommendations about specific cases, and 2) clarify the nature of issues and identify various avenues by which informal resolution with acceptance by all parties might be achieved.

In the past year, the chair engaged in multiple discussions with faculty and the administration about six active and potential "cases". As a result of these efforts, and those of the Complaint Advisor Panel, the issues in many of these matters were clarified, de-escalated, and/or resolved. It is the belief of the Irvine Committee on Privilege and Tenure that informal discussion and participation by the Committee on Privilege and Tenure can lead to effective compromises, a quicker resolution of concerns, and a reduction in antagonism and discontent.

The committee reviewed six grievances during the 2017-18 academic year, one of which was received in Winter 2017. One of these was a grievances, submitted in response to the imposition of an involuntary leave, resulted in a hearing. For another grievance, which alleged research misconduct, it was determined that administrative remedies had not been exhausted. The case was referred to the grievant with the committee’s recommendation where to seek administrative redress. For the remaining four grievances, the committee determined that the prima facie standard had not been met.

The grievance submitted as a result of the imposition of an involuntary leave was the first of its kind to be reviewed at any UC campus since changes to APM-16 governing such interim actions took effect on July 1, 2017. While the APM confers the right to an expedited hearing in such cases, neither it nor Senate policy defines what constitutes expedited. Thus, in consultation with officers of the Systemwide Senate and the Office of General Council at UCOP, the committee developed an expedited process on an ad hoc basis that adheres to the spirit of Senate Bylaw 335. A hearing panel was constituted in late Fall. It
subsequently conducted a preliminary inquiry and hearing within 16 and 41 calendar days, respectively. While it is not appropriate here to detail the outcome of the inquiry and hearing, it is important to note that the hearing panel expressed concern about the imposition of the involuntary leave and its scope. The Committee of Privilege and Tenure asserts that the imposition of an involuntary leave should only be applied in the most extreme of circumstances and in the least intrusive manner when the conditions outlined in APM 016 are met:

“there is a strong risk that the accused faculty member’s continued assignment to regular duties or presence on campus will cause immediate and serious harm to the University community or impede the investigation of his or her wrongdoing, or in situations where the faculty member’s conduct represents a serious crime or felony that is the subject of investigation by a law enforcement agency.”

No disciplinary cases were reviewed by the committee.

No early termination cases were reviewed by the committee.

The committee received notice from the Administration of an intent to separate. The Committee was able to reach out to the faculty member and put a halt to the intent to separate.

Two of the four grievances that the committee reviewed detailed behavior from faculty colleagues and/or administrators that the complaint experienced as bullying or generally combative. The committee has seen an increase in recent years of concern about such behavior. While APM 015 speaks about unacceptable faculty conduct, the committee believes that the type of behaviors described in these grievances, while not conducive to a collegial environment, do not rise to the level required to represent a violation of faculty rights. Nonetheless, the committee believes that some efforts are needed to educate our colleagues on issues of civility and collegiality so as to minimize experiences which could be construed as combative or bullying.

B. Policies and Procedures
In Fall 2017, the Committee presented its revision of Appendix III, University Policy on Faculty Conduct and the Administration of Discipline, UCI Procedures for Hearing Complaints of Faculty Code Violations and Grievances by the Senate Committee on Privilege and Tenure (CPT) to the Senate Cabinet. The appendix details the procedures for investigating allegations of faculty misconduct, imposing disciplinary sanctions, and the responsibilities of the administration and the Committee on Privilege and Tenure in these matters. Based on the questions about the location of the procedures in the Senate Manual, and its implications, a general desire for P&T to be incorporated into the disciplinary process earlier than is currently the case, and a desire to have greater knowledge about the resolution of faculty disciplinary matters that don’t reach P&T, CPT agreed to continue its review and revision of Appendix III in order to achieve the following aims:

1-Simplify the procedures for hearing complaints related to violations of the Faculty Code;
2-Ensure and delineate the involvement of Senate faculty (either current or former CPT members) in both the inquiry/investigative stage as well as the agreement/negotiated settlement that would lead to resolution of the incident without a hearing before the Committee on Privilege and Tenure; and
3-Request the creation of a compendium of prior disciplinary cases that involve faculty and their resolution to be reviewed by the Senate every 3-5 years in order that the Senate and CPT can be aware of the range of sanctions or penalties that faculty may be facing as a result of faculty code violations.
III. Complaint Advisor Panel

The Complaint Advisor Panel is composed of former CPT members who advise faculty on procedures relating to grievances and disciplinary actions.

Two faculty members were directed to panel members for assistance and advice with grievance procedures.

IV. Systemwide Issues

In Spring 2018, the systemwide Senate initiated discussions about disciplinary procedures in response to the OCR findings related to a resolution agreement and Title IX investigation at UC Berkeley. Related, President Napolitano asked for Senate recommendations on the following three items:

1-how to define a reasonably prompt timeframe to complete a P&T hearing or an early resolution in an SVSH matter;
2-how to provide rights to complainants in the P&T hearing process so that they align with the rights provided to faculty respondents; and
3-whether a different standard of proof (i.e., preponderance of the evidence) for disciplining faculty who have been found to have violated the SVSH policy is warranted.

At the same time, UCPT began an informal review of the UC Policy on Sexual Violence and Sexual Harassment. A full systemwide review will occur in Fall 2018.

UCPT met three times this year, in November, February, and May and discussed areas of common concern.

V. Carry-forward Items for 2018-19

The Committee will continue to review and modify Appendix III with the intent of submitting an updated Appendix for review by CRJ, the Senate Cabinet and the Divisional Assembly in Fall 2018/Winter 2019.

The Committee will consider how best to utilize the Complaint Advisor Panel in fulfilling its charge with respect to addressing and responding to faculty grievances, discipline, and early termination cases.

The Committee will continue to press for modifications in administrative procedures for the resolution of alleged violations of the Faculty Code of Conduct (APM 015) in SVSH cases, in particular to enhance the independence and transparency of review by the Peer Review Committee.

VI. 2017-18 Committee on Privilege and Tenure

Donald Senear, Biological Sciences (Chair and UCPT Representative)
Richard Brestoff, Arts
Dan Burk, Law
Miles Coolidge, Arts
Sanjeev Dewan, Business
Michelle Garfinkel, Social Sciences
Stuart Kleinfelder, Engineering
Frank Meyskens, Health Sciences (Clinical)
Katherine Porter, Law
Irene Tucker, Humanities
Stephen White, Health Sciences (Basic)
Ping Wang, Health Sciences (Clinical)

VII. 2017-18 Complaint Advisor Panel

Leo Chavez, Social Sciences
Stuart Krassner, Biological Sciences