

*This document entitled The UCTP at USC, was prepared in 1995 by Professor Wedlock with the assistance of other members of the Faculty Liaison Committee and colleagues who had served upon the UCTP. Professor Wedlock served on that committee from 1987 to 1990 and was a primary drafter of for the revisions in 1990 Guide to Tenure and Promotion. While it states a point of view that not all agree with it does provide an important historical perspective.*

## The UCTP at USC

### Summary and Conclusions

What follows this introduction is a brief history of the circumstances leading up to the creation of the UCTP, the understanding of the faculty that created it, the continuing expression of the faculty about the tenure and promotion process and the role of the UCTP within that process. The document is lengthened by extensive quotations from relevant documents.

This history demonstrates that when the departmental faculty was given the primary role in making tenure and promotion decisions in 1974, the UCTP was conceived simply as a check upon the potential for abuse by the units in setting and applying standards. The UCTP was given authority to review unit criteria for compliance with the standards of the Faculty Manual. It was also given authority to review the tenure and promotion decisions of the unit to determine if the unit had based its decision upon a conscientious application of its criteria to a candidate's performance record. This review was to circumscribe a unit from departing, for one reason or another, from their own criteria in making recommendations for tenure and promotion. The latter is not an insubstantial role, but the perception persists among faculty that it is not the current focus of UCTP deliberations.

Three other themes run throughout this history and limit the powers of the UCTP. First, only the units (departments and undepartmentalized schools and colleges) establish the criteria to be applied to candidates for tenure and promotion. Secondly, the UCTP was never given, nor does it now have, the authority to apply criteria that the unit has not adopted. Thirdly, the UCTP was never given, nor does it now have, the prerogative to exercise an independent judgment regarding whether the unit criteria have been met by the candidate. Moreover, whenever any faculty body has undertaken to define the recommendation function of the UCTP, it has spoken unequivocally against giving the UCTP any standards-setting or standards-applying function.

There are sound policy reasons why these themes so consistently arise in the history. Differences across departmental disciplines make it impossible to write one set of specific criteria to govern all departments of the university. Within the general standards of the Faculty Manual, the development of particular criteria for professional achievement and advancement are best developed at the departmental level among those who are most familiar with the norms of excellence in the field. For the same reason, members of the academic discipline are most adept at applying the criteria in their field. The more removed one is from an academic field the less qualified one is to determine what constitutes good work in that area.

Nevertheless, there are some dangers inherent in leaving sole authority for making the

crucial tenure and promotion decisions at the departmental level. Among these are a lack of assurance that the departmental criteria meet the broad standards of the Faculty Manual and a potential for actual decisions to be based upon personal interactions and (dis)favoritism rather than professional performance. The UCTP was devised as a check against these eventualities and for that reason given limited authority to review the work of the departmental unit in both its functions.

Despite the record's consistent affirmation of this view, The UCTP has always seemed to some faculty to stand improperly athwart the path to tenure and promotion by reviewing the records of candidates with an eye toward finding fault with their applications for advancement. During the formative years of the UCTP, a reach toward excellence and national stature was a signal feature of the Holderman Administration. Although its style and method for raising the quality of faculty admitted to tenure and senior rank may be different, the present administration has not abandoned that goal. Many faculty seem to have concluded that successive administrations have co-opted the UCTP into a tool for faculty renovation, by culling "weak" candidates even though they might meet the criteria of their "listless" departments. Certainly, the opportunity is there, and the inclination might be as well.

According to the 1986 and 1990 Guides (see sections V & VII), each candidate's file get a thorough study in the UCTP. When and how this process evolved is not clear -- nor, given the limited recommendation function outlined in section VIII, is it clear why it is necessary in all cases. However, as Professor Coolidge noted when the Faculty created the UCTP, (see section III) this type of review was contemplated only if it were suspected that the unit had strayed from its criteria in making its recommendation. The UCTP may believe it is necessary to take a close look at each file in order to be able to identify the suspicious decision from a unit.

A danger exists, however, in engaging each file in intimate detail. The target of the exercise may subtly shift. Instead of reviewing the *unit's* work in applying its criteria, the reviewer may begin routinely to judge the *candidate's* work independently against the criteria, or worse, judge the candidate's work against some other standard informed by "university norms" or those of the reviewer's unit.

As described in Guides, the UCTP member's task on a panel (and for all mandated read files) seems to be very much like what they would do as unit faculty passing on a unit colleague's file. UCTP members are not formally taught about the limited scope of their review of individual files. Even if members were so instructed, holding the focus on reviewing the unit's work is hard to do under the workload -- it would be easy for more familiar habits to ascend to predominance. Moreover, it must be somewhat galling to UCTP members from "rigorous" units to be called upon to support the promotion of someone who barely meets the lax criteria of a "weaker" unit. The temptation to protect the value of one's title could be hard to resist for one not schooled to the necessity of resisting it.

There is nothing in the creation or subsequent history of the UCTP supporting the

contention that it has a general authority either to create criteria for tenure or promotion or to exercise an independent judgment as to whether a candidate for promotion or tenure has met the criteria established by any unit. This role may perhaps be one that is endorsed by past and present administrations, but, as the attached demonstrates, it is not the role envisioned by the Faculty that created the present process; to the contrary, it has been consistently denounced by successive expressions of faculty authorities. Until the Faculty endorses such a change, the Administration is wrong to encourage the UCTP to exercise that power and the UCTP exceeds its proper role by doing so.

## I -- Basic Principles

Tenure and promotion are awarded by the Board of Trustees upon the recommendation of the President. All "decisions" prior to that of the Board are purely advisory. Nevertheless, the President's decision may not be arbitrary or capricious under law. The Faculty Manual is a contractual agreement between each faculty member and the university and its terms are enforceable in the courts of the State of South Carolina.<sup>1</sup> In addition, employee rights under state and federal law might affect the legality of a denial of tenure or promotion.

## II -- Before UCTP

Until academic-year 1975-76, tenure and promotion recommendations were largely an administrative matter. Tenure was granted with promotion, and although tenure could be granted independently it could not be withheld if a candidate was promoted. Some units, e.g. the Law School, did engage in a collegial review of candidates, but any recommendation by the candidate's faculty was not required to be forwarded past the department head. The recommendations of the department heads were forwarded to the deans of the schools and colleges. Recommendations favoring tenure (but not promotion) were required to be accompanied by a recommendation from the department's tenured faculty of equal or higher rank than the candidate.

As described in the 1970 University Self-Study, the Vice-provost collected all the recommendations of the various deans and forwarded them to a "Council of Deans" (academic deans and vice-presidents). Recommendations were made by this group through the Provost to the President, who acted upon their recommendations. The 1970 Self-Study found that, in general, the faculty believed that these decisions were "fair," but at the same time it noted:

. . . There exists little doubt that some promotions . . . have been made simply because a dean or department head, for certain personal reasons, wanted them

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<sup>1</sup> Storer v. University of South Carolina, 288 S.C. 555, 343 S.E.2d 664 (Ct. App. 1986); Stucky v. University of South Carolina, 284 S.C. 295, 309 S.E.2d 709 (Ct. App. 1985). Cf. Lentzner v. Winthrop Univ., 10 Indiv. Emp. Rts. Cases 946, 1994 WL 830081 (S.C. Ct. C.P. 1994).

made, and resultant ill feeling exists here and there. . . .

. . . Too often . . . a department head or dean exerts undue influence or even recommends only whom he wishes [regardless of departmental faculty recommendation]. . . . [T]he [Self-Study] Committee strongly recommends that faculty be uniformly involved in the promotional process. A promotion that can be justified on stipulated, objective bases rarely has to be defended and cannot provide nourishment for discontent and poor morale.

Id. at 305.

### III -- The Adoption of the Current System

In response to the Self-Study recommendation, President William Patterson convened an Ad Hoc Committee, comprised of Professors Seigler (ENGL), Chair, Coolidge (HIST), Cantey (PHYS), Felix (LAWS), Wood (BADM), and Brown (Spartanburg), to recommend a new tenure and promotion process. Their recommendation (termed "Plan A"<sup>2</sup>) was reviewed by the Faculty Advisory Committee, Faculty Welfare Committee, and the Academic Forward Planning Committee before it was presented to the Faculty on November 26, 1974.

Plan A was adopted by the Faculty virtually intact. The functions given to the UCTP are those recited in the Faculty Manual, with minor stylistic changes. Plan A rendered the review power over candidate files cryptically: "The Committee shall forward its recommendation to the Office of the President." There is no description of how that recommendation is to be reached.<sup>3</sup> The preceding sub-paragraph merely states that the Committee is to receive all prior departmental and administrative recommendations, so presumably, the recommendation is to be based upon the record made below and not some independent basis.

President Patterson commented that, despite some misgivings about intradepartmental politics, he thought that Plan A properly placed the responsibility for tenure and promotion in the hands of a candidate's faculty peers, as opposed to others.

I hope that the approach that we have made will be a satisfactory one to you. I, myself, am very pleased with it. I think that one of the great problems that we face in an institution is the question of promotion and tenure. I think it is a faculty responsibility. I am not absolutely convinced that working with one's peers in this sort of thing is the ideal way of granting tenure and promotion, but I

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<sup>2</sup> An alternative proposal from the floor, "Plan B" would have made the UCTP an appellate body from negative unit recommendations. It was never voted upon.

<sup>3</sup> For such a description, see section V, infra and section VIII, infra.

must say that I am convinced that I don't know of any better way. I know for a fact that we have had some controversies and discussions over the past three or four years that have ended up in my office as the Provost, and I am sure most of you would not want the decision being made in the Provost's office.<sup>[4]</sup> It so happens that he, unfortunately in many cases, does not know the faculty members that well.

Minutes of the USC Faculty Meeting at 3 (Nov. 26, 1974).

Professor Rufus Fellers, Chair of the Faculty Advisory Committee, described the proposal similarly:

The only specific feature I would care to mention is that what [Plan A] endeavors to do, and attempts to do, is to place the primary responsibility for the procedures and for the criteria for promotion and tenure in the hands of the tenured faculty members of the individual department and/or other academic unit.

Id., as did Professor Milledge Siegler, the Chair of the Ad Hoc Committee:

[E]ach department has the right to draw up its own tenure and promotion regulations which it then submits to the 24-man committee. All the 24-man committee does is see that they are within the very broadest lines in keeping with the established policies. It is impossible to have the same promotion and tenure regulations workable for each department.

Id. at 4.

Robert Patterson, also of the Ad Hoc Committee, commented:

Plan A represented an essential ingredient of faculty competency. The plan recognized peer judgement . . . . In so far as the faculty could arrange it, promotion and tenure would be a non-political matter, based solely upon merit and based upon the notion of peer evaluation. . . .

Id. at 5.

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<sup>4</sup> Interestingly, Plan A placed the faculty committee in the stream after the Provost, not before. There was no response to an inquiry as to whether the UCTP deliberations should not more naturally come before the Provost's office made its recommendation to the President. The chosen placement of the UCTP would seem to indicate that part of its function was intended to be to review the Provost's recommendation, as well as the unit's, for consistency with unit criteria.

There were no assertions that the locus of authority for establishing criteria and procedures should be anywhere other than in the units. The record thus shows that the intent of Plan A was that the UCTP's role in reviewing unit criteria was only to determine if they were within the provisions of the Faculty Manual. It had no authority to alter, disregard, or add to the criteria for promotion or tenure settled upon by the units. It could only refuse to accept them if they were not consistent with the standards and "relevant data" articulated in the Faculty Manual for tenure or promotion. This was not a point of dispute.

At the time of its adoption, one major concern about Plan A was how it might simply substitute intradepartmental collegial favoritism for administrative favoritism.<sup>5</sup> This may be what President Patterson was alluding to in his remark about not being convinced that Plan A was the "ideal way." Professor Patterson's remark about arranging the tenure and promotion "non-political[ly]" supports the view that the UCTP review and recommendation authority was meant as a check on this eventuality.

Professor Milledge Siegler, the Chair of the Ad Hoc Committee described the role of the UCTP recommendation process thusly:

The 24-man committee [UCTP] will see that the policies of the University, of the Board of Trustees, and of the State of South Carolina, all of which govern this faculty, are applied equally to the various colleges and departments.

Id. at 4.

Perhaps the most instructive insight to be gained from the Minutes on the "recommendation" role of the UCTP came when:

Professor William T. Trotter of Mathematics asked if the 24-man committee would actually make meritorious decisions on candidates for a particular rank. Professor Charles Coolidge of History [an Ad Hoc Committee member] responded that the 24-man committee would simply check on procedures. There would be conceivably, however, circumstances for which the committee would have to go into substance and they would have the power to do that.

Id. at 6 (emphasis added).

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<sup>5</sup> The other major issue was whether promotion and tenure should be severed for consideration in all cases, *i.e.*, should promotion without tenure be permitted. Plan A allowed for units to recommend to tenure but not promote and vice-versa. This issue may be rearing itself again within the UCTP. But because Plan A resolved in favor of permitting the unit to sever the tenure from the promotion decision, the UCTP should not base its decisions upon a disagreement with the unit's recommendation on the matter.

This highlighted sentence reveals that Professor Coolidge believed that a review of the merits of a candidate's case would be a rare exercise. Presumably the other faculty who served on the four committees that reviewed Plan A concurred, for no one disputed his answer nor even further discussed the matter.

Professor Coolidge's response, however, is unilluminating as to what these circumstances might be. Given the power granted to the local units under Plan A and the faculty's concern over having a "non-political" merit system devoid of intradepartmental (dis)favoritism, the ready inference is that the UCTP would delve into the substance of a decision only if it appeared that the unit recommendation -- yea or nay -- were based on something other than compliance (or not) with the unit criteria. The UCTP's investigation into "substance" would be to review the unit's work in applying the criteria, not the candidate's accomplishments in attempting to meet them.<sup>6</sup> This interpretation is consistent with the de-politicizing function of the UCTP, the grant of power to review substance, and Professor Coolidge's implication that the power would be exercised infrequently.

#### IV -- The 1980 Self-Study

The first self-study undertaken by the University following the adoption of Plan A explicitly describes the recommendation function of the UCTP as focusing on the unit's work and not the candidate's:

Policies and procedures for tenure and promotion, as stated in the Faculty Manual, constitute a dramatic revision of the procedure that has taken place since the 1970 Self Study. In 1974 the faculty approved a new system whereby the procedures for tenure and promotion were made primarily within an academic unit

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To be sure that an equitable system be established and administered by the various academic units, a 24-person, University-wide committee was established to supervise the drafted guidelines as proposed by the academic units, to approve them, to review the annual evaluations of the academic units, and to make recommendations to the administration each year on those tenure and promotion

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<sup>6</sup> Close comparison between the contents of the file and the unit criteria would be particularly appropriate before the UCTP were to disagree with a "strange" negative vote from the unit. If the unit had voted to deny tenure on improper grounds it is unrealistic to expect it to reform itself upon a remand of the case. If the decision were against tenure in a candidate's last probationary year, it would have no choice but to apply the unit criteria itself or permit an injustice to occur. As inconsistent as this result seems with respect to the primacy of unit peer review, it is strongly consistent with the protective role envisioned for UCTP in cases which had become "politicized" at the unit level. See also section VII, infra.

cases forwarded by the academic units. The university committee is charged with the responsibility of overseeing and reviewing the work of the academic units for compliance with the academic units's own guidelines and with those standards adopted for the entire University.<sup>7</sup>

1980 USC-Columbia Institutional Self- Study, Ch. 5 at 169-70 (emphasis added). Later in the 1980 Self-Study the proposition is repeated:

The 24-person committee first screens files for compliance with the unit criteria. If the candidate does not meet the unit criteria he/she is rejected without prejudice. The University Committee then reviews the work of the academic unit, votes on the applicant's requests, and makes its own recommendations to the president. . . .

Id. at 171 (emphasis added).

Other passages from the 1980 Self-Study recognize the presumptive validity of unit peer decisions under unit criteria and articulate the rationale for that presumption.

Each unit has clearly stated criteria which have been approved by the Tenure and Promotion Committee. These criteria vary widely, however. To a considerable extent this is a result of differences in content of and methodology in the respective fields. This is by no means an undesirable situation. . . .

Id. at 158-59.

The new procedure rests heavily on the faculty to judge the qualifications of fellow faculty members. With the extensive preparation of the faculty, the system should be -- and probably is -- more equitable for those persons whose performance is being reviewed and should lead to a higher standard of performance by individual faculty members. Since the academic unit's evaluation standards are published and available to all faculty members, anyone whose activities are being reviewed must be aware of the standards by which he/she will be evaluated. It is

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<sup>7</sup> The last prepositional phrase of this sentence might be read out of context to suggest that the UCTP has some independent review power to measure candidates against some independent set of "standards adopted for the entire University." There are two reasons that this reading would be a incorrect. First, there were no such standards, save those in the Faculty Manual, which had not been changed by the adoption of Plan A. Secondly, when unit criteria were approved by the UCTP, they were perforce within the standards set by the Faculty Manual. The phrase is most likely a reference to "the policies of the University, of the Board of Trustees, and of the State of South Carolina, all of which govern this faculty . . . ." which Professor Siegler mentioned at the Nov. 26, 1974, Faculty Meeting.



then only a matter of interpretation and application of the guidelines.

Id. at 171-72 (emphasis in original).

The revised procedures [Plan A] call for the faculty within an academic unit to establish and administer the unit's criteria for awarding or denying tenure and/or promotion. The basic philosophy on which this is founded is to make faculty members, who are most knowledgeable of the qualifications necessary for holding faculty positions within a discipline, responsible for the evaluation of other faculty members in that discipline.

Id. at 169-70.

The understanding of the authors of the 1980 Self-Study was that the UCTP reviewed unit criteria for compliance with the standards of the Faculty Manual and reviewed unit recommendations to see if the unit had made its decision by applying its criteria to the record of the candidate. The 1980 Self-Study did not view the UCTP as empowered to make independent judgments about whether a candidate met the unit's criteria. In short, the 1980 Self-Study is consistent with UCTP review of the "substance" of an application for promotion or tenure only in Professor Coolidge's rare circumstance when the unit had failed in its duty to base its recommendation solely on the candidate's performance under its criteria.

Because this function would seem to be a fairly limited one, the 1980 Self-Study was concerned that the UCTP was spending too much time reviewing files. It therefore made the following recommendation:

RECOMMENDATION 5-18: Given the long and time consuming process, requiring many man hours, that the functions of the UCTP Committee be examined with a view to increasing the efficiency of the whole process.

This is hardly a recommendation that is consistent with the UCTP having an independent or de novo power to judge a candidate's qualifications for tenure or promotion.

#### V -- The 1986 Guide to Tenure and Promotion

On April 17, 1986, the UCTP published the first edition of A Guide to USC-Columbia Tenure and Promotion Procedures.<sup>8</sup> Its "Introduction" describes its purpose as providing "a concise description" of the tenure and promotion process. The "Introduction" also notes that the 1986 Guide is not a "controlling authority." Nor could it be, for neither it nor its 1990 successor

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<sup>8</sup> After its 1990 revision, the guide came to be known as the "Goldenrod" Book after the color of its cover.

has ever been approved by any faculty governing authority.<sup>9</sup> Nevertheless, consulting it is useful in reconstructing the understandings of the 1986 UCTP members about the authority of the UCTP. Unfortunately, the 1986 Guide is no more directly illuminating than Plan A had been when it described the UCTP's "recommendation" function. Section IV.B.3 of the 1986 Guide merely states, "The UCTP studies each file [received from the provost] and then forwards it with the Committee's recommendation to the President."

Later in the document, however, the meaning of "studies each file" is elaborated and the manner in which it does so is instructive. Section IV.C.1 of the 1986 Guide describes how the UCTP "panels"<sup>10</sup> work:

Each panel chairman . . . asks each panel member to review the [assigned files] before the panel meeting. After discussion of a file at a panel meeting, panel members record their secret votes and justifications on standard[ized] ballots. Once the ballots are counted, the panel chairman uses them [*i.e.* the "justifications"] to prepare the panel report [to the UCTP] on the candidate.

In ' IV.D.6., we find the following description of a typical UCTP meeting:

When the Committee is ready to review the cases assigned to a particular panel, the chairman asks the appropriate panel chairman to present the panel reports. Then the panel chairman gives the candidate's name, the vote totals of the unit, the votes of the administrators at and below the level of the Provost, and the vote totals of the panel. The panel chairman summarizes the favorable and unfavorable positions of the panel. The floor is then open for questions and discussion. In a difficult case, there may be extensive discussion of, and selected readings from, the unit criteria and the candidate's file.

A vote is not immediately taken. The UCTP chairman announces a "vote collection date" by which time committee members must submit ballots with "a few sentences in justification." Id. at ' IV.D.7.

A typical file is not read by all the UCTP members, although any member may read any<sup>11</sup>

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<sup>9</sup> See section X for a contemporary faculty view of its authority.

<sup>10</sup> The UCTP is constituted into three panels. All the candidates from a unit are reviewed by the same panel. The panel chairs then report the panel's recommendation to the full UCTP, as described in the text, infra.

<sup>11</sup> With one exception: UCTP members may not review files of candidates they had an opportunity to vote on at the unit level. Nor may they comment on the candidate or be present

file and many do so before "vote collection." However, some files are required reading:

' IV.D.5 **Mandated read files.** A candidate's file becomes a "mandated read" file if either the UCTP chairman or at least three Committee members so request, or if there are at least three dissenting votes from a panel recommendation. Each mandated read file must be read by all Committee members eligible to do so.

The publication of the 1986 Guide did little to quiet the grumbling about the UCTP applying its own standards or acting like a unit tenure and promotion committee at the university level. Despite protests from members of the UCTP that they stayed strictly within their province when reviewing files, these remonstrations were greeted skeptically by many faculty. Despite its intention to mollify critics, the 1986 Guide may have added to their arsenal, since it explicitly changes the UCTP's focus from the task of reviewing the units' recommendations to the task of reviewing candidates' files in depth.<sup>12</sup> This syntactic shift could be read malignly by a cynic.

## VI -- The 1990 Self-Study

The suggestion that the UCTP was overstepping its authority surfaced explicitly in Chapter 5 of the 1990 USC-Columbia Institutional Self-Study.

Academic officials who expressed reservations about the [T&P] procedures generally felt that the University Committee at times exceeded its authority by arbitrarily imposing requirements that were not part of the approved unit criteria.<sup>[13]</sup> Implicit in these criticisms was a feeling that such decisions should be

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during the UCTP discussion of that candidate. A unit's files are routed away from a panel on which a faculty member from that unit sits. Depriving the UCTP of its most qualified specialists in the candidate's field is hardly the way to bring peer judgment to bear upon the candidate's qualifications. It is, however, consistent with insulating the UCTP from whatever intradepartmental politics might have infected the unit recommendation.

<sup>12</sup> This extraordinary attention is what makes service on the UCTP so time-consuming. In 1992-93 the UCTP used an "expedited review" for files which had received unanimous positive recommendations prior to arrival, unanimous positive review by the panel, and a recommendation for such review by the panel. 1992-93 Annual Report of the UCTP (April 13, 1993). The practice has been abandoned on the grounds that it was unfair to ineligible candidates to give others this easy route to advancement. Even the expedited review, however, requires the panel to make an intensive look into a candidate's file.

<sup>13</sup> Carol Kay, former Dean of the former College of Humanities, wrote to Professor Marcia

made by a more restricted committee closer to the discipline of the faculty member under consideration for tenure or promotions. Some confusion existed regarding the role of the Committee. Although it is very precise in describing the constitution and powers of the Committee, The Faculty Manual has no statement defining the function of the Committee. It is not clear whether the Committee should take an active role in raising academic standards or in making standards more uniform throughout the University. Such a role seems to be implicit in the Committee's power to approve unit criteria.<sup>14</sup>

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Welsh, then Chair of the Faculty Senate and the Faculty Advisory Committee as follows on August 21, 1995:

Since I arrived on campus in 1986, I have increasingly heard widespread concern about the function of the [UCTP] . . . . While the Committee was greatly needed at the time of its inception, by the 1980's serious concerns were expressed about the Committee's appearing to exercise its own criteria over and above the departmental criteria. . . . This perception has recently intensified, this time with real justification.

When Art Smith arrived as Provost [1987-88], he told us on the Deans' Council that he was encouraging the UCTP to exercise just such a function. For example, he wanted the UCTP . . . to be more rigorous . . . . While many of us agreed with much of what he wanted, we encouraged Provost Smith to remember that the UCTP was not supposed to make a *de novo* review of files and that some of his initiatives went against approved criteria in some departments. . . .

Provost Smith . . . continued to encourage the UCTP and the Deans to be more rigorous in very specific ways in evaluating files. This tendency of trying to improve *standards* by massaging the *process* appears to be continuing under the present administration.

<sup>14</sup> This sentence is indisputable. By rejecting submissions of new criteria by departments, the UCTP has compelled units to return with clearer and more explicit expressions of the standards that their faculty must pass. (In so doing, the UCTP may also have exacted more rigorous hurdles than the Faculty Manual would compel.) This having been said, the power to put hydraulic pressure on the units does not address the issue here: Has the UCTP been substituting its judgment for that of the unit or applying standards which are not within the unit criteria in an effort to raise standards? If so, faculty are right to complain that their contractual rights are being violated because the Faculty Manual authorizes neither of these actions by the UCTP.

Id. at 5-17.<sup>15</sup> These observations led to:

Recommendation 5-8: Given the lack of consensus on the function of the UCTP, the faculty should formulate a statement for The Faculty Manual clarifying the function of the UCTP. Id. at 5-19.

## VII -- The 1990 Faculty Advisory Committee Report

In response to the recommendation of the 1990 Self-Study, The Faculty Advisory Committee prepared a report and submitted it to the Faculty Senate on November 7, 1990. No action on the report was taken by the Faculty Senate, and although the following paragraph was submitted to the Spring 1991 meeting of the Faculty, it was not properly printed in the agenda and was tabled after confusion arose on the floor. No further action was taken upon the 1990 FAC Report. Nevertheless, the Faculty Advisory Committee's views on the function of the UCTP are entitled to substantial weight, given the pivotal role of that committee in faculty governance and the fact that it was chaired by Professor Robert Felix (LAWS), who was a member of the 1974 Ad Hoc Committee that drafted Plan A. This report stated:

### ['] 3. Recommendations in Individual Cases.

To be distinguished from the "approval" [of unit criteria] function is the authority of the UCTP to make recommendations to the President in individual cases for tenure and promotion. UCTP recommendations are based on a review of unit faculty and subsequent administrative recommendations. Although its recommendations are subsequent, they are not for that reason superior. The UCTP does not operate as an appellate court in the sense that it affirms or reverses the decision of an inferior tribunal. The "recommending" function is intended to provide a broad based faculty expression whether unit criteria have been fairly and persuasively applied [by the units] in given cases. This function is neither a slavish adherence to the unit recommendation nor an independent rejection of the unit recommendation unmindful of the specialized expertise of the unit and the justifications given for its decision whether to recommend for tenure and promotion.

Although ' 3 of the 1990 FAC Report is less than a model of clarity in positively describing the "recommendation" function, it does remind us that the UCTP's review is to be of the work of the units rather than that of the candidates. It implies, moreover, that the UCTP should not differ from a unit recommendation unless it can conclude that the material in the candidate's file could not allow the members of the unit to reach the recommendation if they applied the unit's approved criteria. Finally, in making this judgment about the unit's decision,

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<sup>15</sup> Each chapter of the 1990 Self-Study is separately paginated.

the UCTP is cautioned that, given their immediacy and expertise, the unit's faculty are in a superior position to apply its criteria accurately.

But perhaps more to the point of this history is the 1990 FAC Report's description of what the UCTP was and was not intended to do:

['] 1. Background

[A brief description of the proposal of Plan A].

The UCTP was established to ensure fair peer review, to set up procedures for due process, and to protect individual faculty members and academic units from capricious treatment by administrators and colleagues. . . .

It was not expected that the UCTP would become an adversarial gatekeeper or a superstandards authority. . . .<sup>16</sup>

This language stresses the protective role of the UCTP against biased unit decisions. Certainly, the 1990 FAC Report can hardly be any stronger in denouncing the proposition that the UCTP has some overarching authority to review candidates' files for more than discovering the

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<sup>16</sup> In other sections, the 1990 FAC Report addresses the "criteria approval" function of the UCTP in the following ways.

The authority of the UCTP to "approve" unit criteria was to be understood in the context of the UCTP's authority to publish general guideline for criteria and procedures, subject to the approval by the University Faculty and the Board of Trustees, and the responsibility of academic units to formulate specific criteria and procedures.

Id. at ' 1;

The authority of the UCTP to approve unit criteria and procedures for tenure and promotion consists of receiving unit criteria and procedures and comparing them to the Faculty Manual to assure that the criteria and procedures are consistent with established policies. . . .

Authority has not been delegated by the Faculty to the UCTP to force units to change their specific criteria or procedures (for better or worse) except to require that they conform to the Faculty Manual. . . .

Id. at ' 2.

information necessary to decide whether the units faithfully applied their criteria.

#### VIII -- The 1990 Guide (The "Goldenrod" Book)

Meanwhile, the UCTP had not been unresponsive to the concerns that animated the observations in the 1990 Self-Study. Its Internal Rules Subcommittee<sup>17</sup> had been busy revising the troublesome 1986 Guide. The major change was to detail the duty of a UCTP member in carrying out the "recommendation" function. In place of the one-sentence in the 1986 Guide,<sup>18</sup> the 1990 Guide had two lengthy paragraphs:

IV.B.3. The UCTP reviews<sup>[19]</sup> each file and determines whether, taken as a whole, it supports the conclusion that the unit's recommendation was arrived at by weighing the candidate's strengths and weaknesses upon the scale established by the unit's criteria. In reviewing files the responsibility of the UCTP is two fold:

a) To verify that the criteria used by units have been approved by the UCTP; and

b) To review individual tenure and promotion cases and to recommend to the president for or against tenure or promotion.

and

IV.B.4. The basis for voting by individual UCTP members is the material in the file presented to the UCTP and the recommendations by unit faculty and administrators that accompany it. Members of the UCTP consider only the criteria applicable to the case and are guided by reasonable deference to the specialized

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<sup>17</sup> The UCTP has two subcommittees, Internal Rules and Criteria and Procedures. The latter committee reviews revisions to unit criteria for compliance with the strictures of the Faculty Manual and recommends approval or rejection to the full committee.

<sup>18</sup> "The UCTP studies each file [received from the provost] and then forwards it with the Committee's recommendation to the President." 1986 Guide ' IV.B.3.

<sup>19</sup> The "panel review and report" and "mandated read" processes were not altered by the 1990 Guide. See section V, supra.

expertise of the members of the unit voting, the quality of the material in the files, the quality of the justifications that accompany faculty votes and administrative recommendations, and the strength of support in the unit.

These paragraphs sought to confine the discretion of individual UCTP members to stray from the review function originally assigned to them by the Faculty. Once again, the document focuses the UCTP's review on the unit's conclusion -- not the candidate's work. Furthermore, only approved unit criteria are to be considered. Finally, deference is to be paid to the expertise of the unit faculty in gauging whether the candidate's performance satisfies the unit's criteria.

But the language can be read to support a broader role than that. If one reads the subparagraph as requiring "reasonable deference" only to the "specialized expertise of the unit" she can find support for room to exercise an independent view of the quality of the material in the file, the quality of the justifications, and the strength (and depth) of support in the unit.

If the narrow reading is the evolved view of the UCTP, then it is consistent with the unequivocal expression of faculty authorities that the UCTP has no *de novo* or independent review authority. If the broader reading is the one followed by the UCTP, then it is in conflict with the unambiguous expression of the faculty that it does not have an independent review authority (except in very limited circumstances).<sup>20</sup> Since the 1990 Guide is only an internal document of the UCTP<sup>21</sup> it cannot legitimate any transgressions of its delegated powers.

#### IX -- The 1995 Revision to the Faculty Manual

On April 3, 1995, the Faculty made a major revision to standards for promotion and tenure for faculty hired after January 1, 1996, by amending the Faculty Manual.<sup>22</sup> In general, these revisions might be characterized as raising the requirements for tenure and promotion. Nevertheless, even while doing so, the Faculty re-affirmed the long-standing primacy of unit criteria and judgment by adopting the following sentence, as amended:

In every instance, the record of teaching, research (scholarship or creative performance), and service shall be thoroughly documented, in compliance with UCTP guidelines,

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<sup>20</sup> See ' III, supra.

<sup>21</sup> See section X, infra. Interestingly, the 1994-95 Annual Report of the UCTP states that the committee voted to revise the Guide once again.

<sup>22</sup> This was the only substantive revision of the tenure and promotion standards since before the adoption of Plan A. Plan A itself did not make any substantive changes to the tenure and promotion standards.



with unit criteria regarding what constitutes high quality to serve as the basis for such decisions. (Emphasis added.)

In short, as in 1974, 1980, and 1990, the proposition that some University wide criteria should be utilized alongside the unit criteria was repudiated.

#### X -- The Status of the 1990 Guide

At the May 2, 1995, Faculty meeting, Professor Charles Tucker (SOCY) moved to have the 1990 Guide submitted to the Faculty for a vote. The reason given for the motion was that the UCTP was applying substantive standards contained in the 1990 Guide, which had not been approved by the Faculty. Since there plainly are no substantive standards in the 1990 Guide, the motion was defeated, but the very fact of the motion revealed that some still believed that the UCTP was overstepping its role.

At the September 1995 Faculty Meeting, Professor Eldon Wedlock (LAWS) moved that some authoritative faculty body draft language to be placed on the cover of the 1990 Guide to dispel any notion that the document was prescriptive. The motion passed. On November 1, 1995, the Faculty Senate, upon the motion of the Faculty Advisory Committee, passed the following resolution:

RESOLVED: that there be printed on the cover of the [1990] "Guide to USC-Columbia Tenure and Promotion Procedures" the following statement:

This pamphlet describes the University's tenure and promotion process and internal procedures of the University Committee on Tenure and Promotions (UCTP). It will be helpful to candidates for tenure and/or promotion as they prepare their files for review. This document has not been approved by the Faculty or Faculty Senate; it is an internal document of the UCTP. It was not intended and should not be construed to supersede the tenure and promotion procedures set forth in the Faculty Manual or the tenure and promotion criteria of the relevant department or unit. The Faculty Manual and the unit criteria remain the only controlling authorities.

Once again the Faculty, through its representative body rejected the idea that the UCTP had any standards-setting authority.

(Prepared by Prof. Eldon D. Wedlock (LAWS) for the Faculty Liason Committee.)