REPORT FROM THE PRESIDENT TO THE SENATE OF THE ACADEMIC COUNCIL

January 28, 1971

I think the most useful thing I can do before the Senate today is to make some comments regarding the question of procedures in the handling of charges which, as you know, are pending against a member of the faculty in relation to the disruption of a meeting at which Ambassador Lodge was to have spoken. I start out with the warning that I trust you will understand that I cannot discuss questions relating specifically and directly to the events in Dinkelspiel on the afternoon of the 11th of January or any single individual's alleged part in that situation because of the complicated and, I hope you will agree, unenviable role that the president of the University occupies in relation to any such matter as a disciplinary charge against a faculty member, or for that matter against a student. I think it is important at every stage of this to recognize that we are dealing with new problems and with untried solutions to those problems and to recognize also that it is entirely inevitable that what we do now, or don't do now, will have lasting effects, and for the president of the University to become involved in arguing the particulars of a given case when hearings appear to be pending would be one of those mistakes which would be unfortunate to everybody. I think I recognize the extent of the confusion regarding procedural matters. It seems to me it is very widespread. In this there is perhaps a degree of paradox. On one hand we are living in a time of revolt against formalism and against overemphasis on procedural niceties, and on the other hand we are living in a time of such divided views as to what constitutes acceptable or unacceptable behavior that procedures become, or tend to become, more important than ever. When there is consensus on values and behaviors, then procedures can be somewhat rough hewn and nobody in particular is inclined to challenge their inadequacy, but when there is not such consensus, then these procedures become terribly important. Going back over these procedural questions from the first—back to September of 1967 to the adoption of the tenure policy—the *Statement of Policy on Appointment and Tenure at Stanford University*—as most of you will remember, this policy was the result of very extended work mostly on the part of the then existing Executive Committee elected by the Academic Council. The policy has been widely circulated, suggestions and amendments proposed and extensively debated. It was approved by the entire faculty and later by the Board of Trustees on recommendation of the then president. It was felt necessary to have a new policy and to have it spelled out because previous to that time there had not been any clear codification, and in some respects practice and precepts were not identical. In fact, actual practice was rather more careful of faculty rights than any more formal statements in existence at that time required. On the subject of possible disciplinary cases the *Statement of Policy on Appointment and Tenure*, was, I think, fairly typical of good universities. As far as the grounds for bringing disciplinary action were concerned, the Statement makes only one ground, unless one counts incompetence and neglect of duty as grounds for disciplinary action. The only other grounds given—other than that was "personal conduct substantially impairing the individual's performance of his appropriate functions within the University community." In good universities the tenure statement usually has a phrase like that in it. Later the statement moves on to procedural safeguards and requirements in Paragraph 15. There is an uneven mixture of precision, vagueness, and sometimes sheer omission, and that, too, I think is typical.

The following Autumn, in 1968, this body [the Senate] passed a resolution concerning the faculty and the Policy on Campus Disruption, and the SJC or rather the predecessor of that body, the temporary judicial council since at that time SJC was not yet in being. I think you are all familiar with what that says. It has been appended as Appendix D [to the Packer Commission Report], and just to call a little more attention to it, it got stapled in as an addendum or correction. The purpose of that resolution was to take the first step toward imposing on the faculty not only the disruption policy but the jurisdiction of the SJC to be. But there was a need for several subsequent actions, were that intention to be served and the first step to be completed. First there was then envisaged a spelling out of interim penalties—to fill the gap between what was then described as "a slap on the wrist on one hand and academic capital punishment on the other." But, alas, nothing was done about that. Now, later this afternoon, we are to debate the matter in a report which begins to take up that question.

Secondly, in order for the 1968 Senate resolution to become effective—the most important point—it would have been necessary to have amended the SJC Charter in order to take cognizance of this new standard of jurisdiction, and it would have to be passed by all three constituencies. Thirdly, it appears to me that it would have been necessary to review the incongruencies between the new policy and the tenure policy with respect to the role of the Advisory Board, and that was never done, although a safeguarding clause was put into the 1968 resolution that "nothing in this statement be understood to amend or abrogate the provisions relating to the Advisory Board's role with respect to charges under Paragraph 15 of the tenure policy. Now these three things were not done and the Committee on Committees of this body set up a Task Force, which worked last summer, to review the performance and to make recommendations concerning several bodies that were in one way or another related to disciplinary matters on the campus—not only SJC, but SCLC, C-15, etc. This Task Force recognized the incomplete status of the faculty's initiative in the Fall of 1968 designed to bring the faculty under the jurisdiction of the SJC. I quote from the Task Force Report to this body: "Subsequent efforts of C-15 to write amendments to the Charter of 1968 incorporating the intent of the faculty Senate resolution have not been successful." It was precisely because of that, and the recognition by this body of that fact, that the Senate undertook to discuss and eventually to take action to set up the Interim Hearing Panels of 1970, which

(more)

would hear cases not involving penalties within the range set forth under Paragraph 15 of the tenure policy. Indeed, it could hardly be otherwise as far as these interim hearing bodies were concerned unless the Senate were to have placed in jeopardy faculty rights that have been protected by the tenure policy.

Professor Franklin's case has then come along. I tried to follow the prescriptions in the tenure policy to the letter in writing Professor Franklin, first, a letter which he could and did release but which, had he preferred and had circumstances been different, he could have treated in confidence. Allowing that option is stated to be desirable in the tenure policy. This letter informed him that, on the facts as then alleged and as then known to me, it seemed likely to me that a penalty within the range set forth in the tenure policy under Paragraph 3 and, therefore, reserved for hearing before the Advisory Board and no other body, would be appropriate. That first letter reminded him further of his rights under the tenure policy: first, to attempt a settlement offhand or out of court, if you like, and secondly, to demand a hearing, open or private according to his wish, before the Advisory Board. His response was in some ways ambiguous. He did demand a hearing, I think in no uncertain terms, and he made it clear that he preferred to be heard before the SJC and not before the Advisory Board. Incidentally, of course, his representation that he was being charged with heckling was not and is not true, and my response, which was again made public, was that the SJC is simply impossible as the locus of this hearing since only the Advisory Board has standing under the tenure policy in cases where the penalty may involve discriminatory loss of salary. Had we attempted to accede to his demand to be tried by SJC, I believe, and I have been so advised, that we would be vulnerable to the charge of having bypassed or ignored procedures established under the tenure policy. And I think again, looking to the fact that while this is one case, it is a case which might be described as of constitutional importance to this university, it is important for every faculty member to consider what he is dealing with, if and when he moves blithely to undermine such safeguards as these regarding behavior in the tenure policy. The tenure policy was after all designed first and foremost to protect the faculty and I think no fair reading of that policy can come to any other conclusion than that is its essentially underlying purpose. I recognize that the overriding concern in Professor Franklin's response is his demand for a hearing—an open one—and to that end, formal charges are being prepared for mission to the Advisory Board.

I have been asked why, in the second letter, I proposed a penalty before the hearing. My reasons basically are two. First, it seemed unfair to me not to give the respondent the best estimate that I could make—again on the facts as known to me at this time—as to what the penalty might most probably be, since knowledge of this would inevitably constitute a factor in his consideration of the next steps. It seemed desirable in my view to leave as little ambiguity, as little room for rumor mongering and panic, as possible on this subject. I would emphasize the importance of clarity and as much calm judgment as the extraordinary circumstances will allow. Obviously I am giving myself advice, but I am giving everybody who will hear it and heed it advice too. I think we are at a very crucial point in the history of this university. The time for rhetoric about the means for protecting essential rights while enforcing essential responsibilities is over, because the task is upon us. I think it is important not to become enamored of analysis with civil or criminal procedures because all such analogies break down and the effort to patch them up only leads to more confusion, and that in turn to feelings of paranoia and mutual suspicions. It is perfectly obvious that many things are unspecified in the tenure policy. To take one clear example—how the admissibility of evidence is to be determined in an Advisory Board hearing. But other crucial points are covered and ought not be overlooked, and, as I say, they operate principally for the protection of the faculty. Now it has been and doubtless will continue to be very difficult to be adequately and accurately informed on this procedure. I would cite the story in one of the metropolitan S.F. newspapers which managed to get two screaming errors about jurisdictional bodies into one sentence by printing the following:

"Franklin contended that his case should be heard by SJC, a student group, rather than by the Stanford Advisory Board which is made up of faculty and administrative members." As you all know the SJC consists of a chairman from the Law School faculty and half faculty and half students, and the Advisory Board you elect—the Council elects every year—from the faculty, and there are no administrative members.

Everyone has an obligation to be informed and to think in terms of long perspective. I believe fundamentally that protection of free speech is in everybody's interest, including that of the demonstrators against Ambassador Lodge. Their rights have long been protected and will continue to be in the face of widespread indignation at the abuses to which these rights have sometimes been put. And the rights of others will likewise be protected to the best of my ability as long as I am responsible for maintaining a free campus at Stanford.

Richard W. Lyman