

RESEARCH

DISCRIMINATION IN  
CAL. STATE UNIV. SYSTEM.

SOURCE: JUAN D. HERNANDEZ

DEC. 1982



7613 Center Parkway  
Sacramento, California 95823

December 9, 1982

Mr. Herman Baca  
Committee on Chicano Rights  
1837 Highland Avenue  
National City, California 92050

Dear Mr. Baca:

I am writing to you on the recommendation of Mr. Henry Collins, who also suggested sending you the enclosed materials. Perhaps you knew Edward Casavantes and knew about his last struggle against discrimination in the California State University system. I joined him and carry on his fight. The enclosed documents describe some of that battle and some of the obstructions to social justice for Hispanics.

The issue of discrimination is important because the CSU is the largest system of higher education in the U.S.. The policies and practices established in this system affect higher education everywhere. The repression against Hispanics is particularly intense now. You may have heard about the termination of 15 Hispanics at the Sonoma campus, the resignations of many at San Bernardino, trouble in East Los Angeles, problems at San Jose. In the past several years and currently, Federal compliance agencies have been active on about 10 campuses. The issue is acute and needs the involvement of community organizations to seek public exposure and a political solution.

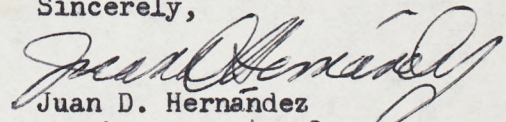
It is unfortunate indeed that no one having access is willing to pressure the Governor to do something before he leaves office. Unfortunate also is the paralysis of Chicano Studies. I understand the inertia during these hard times and during the transition in State government. I understand the impression that maybe it is only one person complaining. I assure you that is not the case.

I hope you can see your way clear to participate in this issue. Following are needed actions:

- (1) Media exposure,
- (2) An EEOC systemic investigation,
- (3) Public hearings by the Legislature, the California Advisory Committee to the U. S. Civil Rights Commission, the Fair Employment and Housing Commission,
- (4) Action by the Hispanic legislators, and
- (5) Seizing the leadership of civil rights in California by appointments of Hispanics to the directorship and the directorate of the Department of Fair Employment and Housing, the Fair Employment and Housing Commission, the Consumer Services Agency.

Thank you for your consideration. I look forward to hearing from you.

Sincerely,

  
Juan D. Hernández  
(916) 421-4619

Enclosures



7613 Center Parkway  
Sacramento, California 95823

November 12, 1982

Mr. Jim Caudillo, Chair  
Hispanic Coalition  
6401 Hazel Avenue  
Richmond, California 94805

Dear Mr. Caudillo:

As part of a chain of events beginning on November 17, 1981, when by invitation I testified before the Governor's Task Force on Civil Rights, I met with representatives of the California State Department of Fair Employment and Housing and of the California State University system on October 22, 1982, in Sacramento to discuss the issue of systemic discrimination in higher education. Present at the meeting were Carol Schiller and Earl Sullaway (DFEH), Jeffrey Stetson and Darlene Gallegos (CSU), myself, and Antonio Salazar-Hobson (an observer). I wish to report the essential facts of the meeting and to recommend action.

My goal was to seek an agreement for a series of meetings with expanding participation of relevant expertise. The ultimate outcome of this series would be the eradication of institutional discrimination in the CSU. DFEH's goal was to seek the specifics of discrimination at the Sacramento campus. Neither goal was achieved.

Four unacceptable statements were made during the meeting and were articulated by the Deputy Director for Field Operations of the State's compliance agency:

- (1) While women and the other minorities can achieve parity in the CSU system, Hispanics "have to be realistic and practical" about parity; that is, Hispanics cannot have parity. This is differential treatment, a disparate policy for Hispanics alone.
- (2) That there is a systemic issue in higher education was denied by DFEH, who asserted I was "assuming such an issue exists." A chart arraying data deriving from official State studies and reports and the fact that State and Federal compliance agencies are and have been recently active on many of the campuses put an end to the DFEH effort to denigrate the systemic issue. Thus, the focus was shifted to me (as noted below).
- (3) It was suggested that I should resign from the University when I was asked, "If things are so bad, have you ever thought of getting into something else?" This question of very unsound judgment was an attempt by Ms. Schiller to intimidate me by indicating that I personally and the issue I represent were of no consequence to DFEH and to the CSU.
- (4) Towards the conclusion of the meeting, Ms. Schiller introduced my civil rights litigation. Up to that point, my lawsuit had not been discussed -- nor had I referred to it in any way. She asked whether I understood how difficult it was to communicate with me because I had "created an adversarial role" for myself, because I was "escalating the issue." Mr. Stetson loined Ms. Schiller by stating, "We heard last night that



you were involved in a class action suit with Boenheim." (Marian Boenheim and Paul Barrozo are former CSU administrators who are protesting personnel management practices at the Sacramento campus.)

This unethical conduct demonstrated that the meeting was convened and conducted in bad faith. Since Ms. Schiller was aware of my litigation, she was also aware of the Equal Employment Opportunity Commission findings of the CSU discrimination against me. To wit: "The facts as well as the record illustrate Charging Party has been subjected to retaliation...In the context of the entire record... the Commission finds Respondent has engaged in employment practices made unlawful by Title VII, and Section 704(a)." It is exceedingly inconsistent and ludicrous for DFEH to imply that my situation would improve or that the issue would dissipate if my litigation were withdrawn and, thereby, to participate with the CSU in its continuing retaliatory efforts against me.

The DFEH thrust of the meeting, then, was an attempt to reduce the systemic issue to a campus problem and to blame a victim of discrimination for even raising the question. I will not be intimidated and especially not by the State's compliance agency. Further, under California law and regulation, to know that discrimination exists and to do nothing is also discriminatory and unlawful.

In a letter, dated May 4, 1982, Alice Lytle stated DFEH would collect the facts and explore how best to address the issue. In a telephone conversation preliminary to the meeting of October 22, Ms. Schiller stated she would have the facts at the meeting. She did not present the facts and the staff analysis. During the meeting, however, Ms. Schiller stated she did not know whether the CSU problem involved disparate treatment of Hispanics or "simply sloppy personnel management." Personnel mismanagement, of course, violates the guarantees of the Fourteenth Amendment.

She also stated she needed to know whether there were job opportunities in the CSU system. At the meeting, I contended that in any given year the CSU has about 456 full-time faculty positions to fill and about 3,140 part-time offerings. This was confirmed by Mr. Stetson who stated that "on the average" the figures were accurate. I referred to the 1983-84 CSU budget proposal providing for over 300 new positions. There are also the continuous job opportunities through resignations, terminations, leaves and sabbaticals. Finally, the CSU early retirement program was intended to benefit minorities. I think the focus should be on discrimination and its consequences since Federal compliance regulations provide for such a focus even during periods of organizational retrenchment. Indeed, discrimination is exacerbated by retrenchment (as you know). The DFEH inaction is in my opinion pretextual for sustaining a policy stance that treats Hispanics differently.

The necessary actions are obvious:

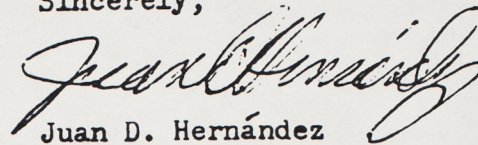
- (1) DFEH must articulate a public policy equitable to Hispanics and enforce it. An investigation of DFEH may be essential to securing equitable policy.
- (2) DFEH must investigate the CSU systemically or otherwise involve itself in the negotiations for systemic remedies.
- (3) The Governor in his remaining time and the Governor-elect must not ignore this situation involving an incompetent and corrupt State compliance agency and its unacceptable relationship to higher education and to California's largest minority group.



The Hispanic Coalition must act immediately or lose the situation for years.

I wish to thank you for your continuing concern and look forward to hearing from you. I have been in contact with Ms. Marcella Flores and have kept the member organizations apprised.

Sincerely,



Juan D. Hernández

Attachments (2)

cc: Hispanic Caucus  
Alphonse Gallegos  
Joanne Lewis  
Alice Lytle  
Mario Obledo  
Douglas Patiño  
Herman Sillas  
Ron Vera, MALDEF  
U. C. Davis Law School  
United Professors of California





## State and Consumer Services Agency

OFFICE OF THE SECRETARY  
915 Capitol Mall, Suite 200  
Sacramento, CA 95814

(916) 323-9493  
TDD: (916) 323-6975

May 4, 1982

Mr. Juan D. Hernandez  
7613 Center Parkway  
Sacramento, California 95823

Dear Mr. Hernandez:

Thank you for your recent letter regarding the California State University System.

I have asked the Department of Fair Employment and Housing to gather all the data that is available and explore how best to address the concerns you raise. The investigation of your individual complaint is indicative of the complexity of employment practices in institutions of higher education. It is necessary to carefully evaluate all the available options to ensure that the course of action selected will achieve the results all of us are seeking. While I am not in a position to make a firm commitment at this time, I do want to assure you that this matter will receive attention.

Should you find that you are adversely affected by the anticipated cut-backs and have reason to believe your treatment is in retaliation for having filed a discrimination complaint or for testifying before the Civil Rights Task Force, contact the Department of Fair Employment and Housing Sacramento office. Either the state or the Equal Opportunity Commission will process a second complaint in your behalf.

I appreciate the time and effort you have expended, speaking out in behalf of Hispanics who are seeking employment opportunities in the state's educational system. We recognize the importance of this issue; it will not be ignored.

Very truly yours,

Alice A. Little  
Agency Secretary  
State and Consumer Services

AAL:jk

cc: Joanne Lewis, DFEH

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DEPARTMENTS AND PROGRAMS OF THE AGENCY

Building Standards Commission • Consumer Affairs • Fair Employment & Housing • Fire Marshal  
Franchise Tax Board • General Services • Intergovernmental Personnel Act Grant Program  
Museum of Science & Industry • Personnel Board • Public Broadcasting Commission  
Public Employees' Retirement System • Statewide Compliance Coordination  
Teachers' Retirement System • Veterans Affairs • Governor's Task Force on Civil Rights



ETHNIC AND SEX DISTRIBUTION OF FACULTY, ADMINISTRATIVE STAFF, STUDENTS, AND DEGREES  
AWARDED IN THE CALIFORNIA STATE UNIVERSITY  
SYSTEM\*

	Percent of Total Faculty	Tenured	Non- Tenured	Part- Time	Executive	Under- graduate Students	Graduate Students	Bachelor Degrees	Master Degrees	Percent of California Population+
Hispanic	3.2	2.0	5.9	7.9	2.6	6.7	4.5	6.3	4.8	19.2
Black	2.7	2.0	6.0	3.5	2.9	8.2	5.8	4.8	5.5	7.7
Native American	0.5	0.3	0.9	1.0	0.0	1.5	1.2	1.2	1.1	0.9
Asian	5.0	4.9	5.5	5.1	0.6	8.8	7.7	6.2	5.5	5.3
Total Minority Presence	11.4	9.2	18.3	17.5	6.2	25.1	19.3	20.0	17.4	33.1
Women	21.0	17.2	29.8	33.2	5.9	48.9	54.8	45.1	50.0	

\*Sources: California Postsecondary Education Commission. "Equal Educational Opportunity in California Postsecondary Education, Part III," March, 1980.

+United States Bureau of the Census. 1980 Census Data.



GOVERNOR'S TASK FORCE ON CIVIL RIGHTS  
on  
RACIAL, ETHNIC AND RELIGIOUS VIOLENCE

Testimony of Juan D. Hernández

November 17, 1981  
Sacramento, California

Thank you for the invitation to testify before you. While the opportunity to speak about racial and ethnic violence in higher education in California is welcomed, it is done with trepidation for its consequences personally; but the issue of discrimination in higher education is so important that personal safety and security are set aside. It is an axiom well founded in statistics that education has a direct and profound bearing upon income -- the more education, the more income -- and upon the quality of life of persons and families in U.S. society. Education is the doorway up and out of poverty for all.

It will seem shocking to some to learn that the academy with its ivy covered walls, hallowed halls, and ivory towers is the site of another newer racism. The old racism -- obvious, ugly, physically violent -- was recognizable by all and rejected by most. The new racism -- hidden, still ugly, psychologically violent -- was not as recognizable and not as rejectable. Now, minorities of color and the entire society are confronted with an exquisite racism -- ultra subtle, complex, elaborate -- involving objective policy, refined procedure, sophisticated practice. Exquisite racism is not recognizable except to those who are its objects; it is embraceable by most but just as ugly and just as violent. Maybe it is more violent because it is comprehensive and, therefore, unmanageable and because the objects feel utterly helpless and abandoned.

Describing exquisite racism is not the goal here; it would require several hours. Rather, I wish to describe the general situation, to provide some data concerning the 19 campus system, and to request specific actions in remedy of a grave situation which is at the point of explosion.



In October, 1978, The Chronicle of Higher Education carried an article describing the experience of Black professors on White campuses in various parts of the United States. Their experience was very familiar and was common to all minorities of color. That experience included reducing the number of minority faculty members, disparaging minority research as illegitimate, having great difficulty securing tenure and promotions, double identity problems, belittling minorities with ideas about "reverse discrimination", non-admission to the "club" that comprises "the good old boys" who advance their own, and having to hear caustic comments from majority group colleagues. Comments such as: "We are protecting academic standards", "You are here because we lowered our standards", "We need to raise standards", "I am not comfortable with this individual," "He just doesn't fit into a slot as a full-time faculty member," and "I don't see any room for you in our curriculum" are very common. These comments precede adoption of policies harmful to minorities and to minority interests. These sort of things occur also in California's systems of higher education.

Because of events occurring in the unit where I work, I began to become very concerned about racism in higher education in 1976. Then, with increasing frequency and intensity, events harmful to minorities began to occur and included extremely serious charges of fraud in the handling of student evaluations of minority professors. Four minority professors were severely criticized in personnel committees. Through a series of grievances, lawsuits, and complaints and through a support group, three professors survived; a Hispanic did not. During this period, the CSUC lay-off policy was being developed and this was known. In the Spring, 1978, 15 minority faculty members in the School of Social Work, CSUS, met with the University President to describe the worsening situation. He promised to get back to them. In the Fall, 1978, "all hell broke loose." There was a comprehensive assault upon minority faculty members, students, and programs. Minority faculty members could not manage the situation. There is some evidence indicating University management was involved; certainly management was apprised. The situation was so acute, Dr. Ed Casavantes



and I filed charges of discrimination with EEOC and requested a class action investigation. EEOC would only process our individual complaints. After a 2 year exhaustive investigation, EEOC released Letters of Determination finding reasonable cause in both complaints. Unfortunately, the letter for Dr. Casavantes came through a month after his death. He died at age 51 of a heart attack. There is no doubt in my mind that he paid the ultimate violent price for resisting racism. Upon his death, CSUC refused to discuss settlement of his complaint. Similarly, CSUC refused to settle my complaint and apparently wants me to sue in Federal District Court. The University must believe it can win because after all I am not dead and still have my job. I have no illusions about our system of justice and understand the great risks involved. It seems the University is unconcerned about justice -- only winning -- but it is losing its respectability in the process; and I and my family are paying a heavier and heavier price for resisting racism. The issue must not be defeated, for a dear price will then be exacted from all minorities.

There is a tendency in the University to characterize these events as peculiar to specific units and to deny the existence of discrimination. This is an effort to isolate "hot spots" and "trouble-makers." In no way is this issue isolated. It is pervasive of the CSUC system. Official state data indict the system as discriminatory towards minorities of color. I wish to refer you to specific evidence:

- (1) California Postsecondary Education Commission, "Equal Educational Opportunity in California, Part III." This report (released in March, 1980) is sufficient, according to civil rights specialists, to require a systemic investigation; however, to do so is a political and moral decision. The major finding is the gross under-representation of Blacks and Browns. For example, there are only 2.0% Hispanics with tenure; only 3.2% Hispanics non-tenured and part-time; only 2.6% Hispanic executives; only 1.8% Hispanic full professors; only 6.7% Chicano undergraduates and only 4.5% Chicano graduates.



- (2) California Postsecondary Educational Commission, "Postsecondary Education in California: Information Digest 80." This report shows a decline in the number of faculty beginning in 1978 -- the very period minority faculty members were under assault locally.
- (3) Assembly Select Committee on Fair Employment Practices, "Transcript of Hearing on Effectiveness of Affirmative Action in the Public Sector" October 1, 1980. The transcript reveals the following facts:
  - a. During an 8 month period in 1980, EEOC received 214 complaints from State employees; how many emanated from higher education was not reported.
  - b. The U.S. Department of Labor reported receipt of 77 complaints from State employees, 73 of those complaints from persons in the CSUC and UC systems.
  - c. The Department of Fair Employment and Housing is receiving an increasing number of complaints since 1978; about 9,000 complaints are filed annually. From January, 1977, through June, 1980, state employees filed 788 complaints.
- (4) California Coordinating Office on Civil Rights, "Higher Education Survey." While the data have not been analyzed, there have been about 700 responses -- indicating an issue of such magnitude as to require creative, positive, constructive response -- not denial, hostility, counter attack, gross resistance.

You want to know about the impact upon the community. I can safely state that the Hispanic community is scandalized by the persistence, pervasiveness, and form of discrimination in higher education. Hispanic community leadership is stunned by the utter lack of self awareness of education personnel, the lack of social consciousness about racism, the insensitivity towards the destructiveness of discrimination for all people. Minorities are not the only ones harmed; Those who discriminate are also harmed. The issue will not go away. The situation will worsen with neglect. Bold action is necessary to rectify it all, and I have several recommendations.



### Recommendations:

- (1) That the Department of Fair Employment and Housing investigate systemically the CSUC system -- immediately.
- (2) That the Assembly Select Committee on Fair Employment Practices hold hearings specifically on higher education -- immediately.
- (3) That the Governor get personally involved with the Trustees, the Chancellor, and even with local university presidents to energize now an effective and constructive affirmative action.
- (4) That the Legislature withhold funds from CSUC to assure immediate response.
- (5) That a separate agency with enforcement powers be created -- a Department of Minority Affairs with an ombudsman, for example.
- (6) That the CSUC Affirmative Action Officer report to the Trustees, not the Chancellor.
- (7) That local Affirmative Action Officers be granted a degree of autonomy to act against racism by reporting to the system-wide Affirmative Action Officer, for example.
- (8) That the "old boy system" of recruiting and hiring be eliminated. This involves eliminating internal mechanisms of recruiting, pre-screening, and possible pre-selection. This requires use of minority media, minority organizations, advance planning; it is troublesome to managers who are in a hurry but necessary.
- (9) And, finally, that the policy of non-settlement of complaints be scuttled. This policy is a signal to discriminate because there are no sanctions against it. The policy is a signal not to complain because there is no remedy or remedy might be realized at great personal cost. It is also a signal to deny problems, to avoid solutions, and to continue to discriminate because it must be useful to management.

### Conclusion:

I believe discrimination in higher education has reached toxic levels. But this is a reflection of the mean society in which we live. There is a resurgence of meanness with a vengeance not only against



minorities of color but also against the poor, children, women, the elderly, prisoners, veterans, gays, the disabled, students, educators, workers, and immigrants of color especially those from the Hispanic world.

The former Chair of the Equal Employment Opportunity Commission reported in a newspaper interview that there was a backlog of discrimination complaints totalling 100,000 in mid-1977. She stated about 80,000 racial discrimination complaints are filed annually plus about 5,000 age discrimination cases and about 2,500 equal pay cases. In June, 1979, the San Francisco EEOC District Office had a backlog of 3,500 discrimination cases. EEOC was concerned about the resurgence of the old racism in California; the hate groups and the vigilante groups.

There seems to be a widespread willingness to offend and harm large numbers of people. The saddest phenomenon of all is the willingness of so many persons in bureaucracies to assist, to participate in the process of oppression in order to curry favor with the few who are seen as powerful.

Ultimately, I agree with Marty Morgenstern of the Governor's Office of Employee Relations. He testified that affirmative action in California is certainly a failure, especially for Mexican Americans.

Higher education must become a model of equity, a model who protects equally its minorities, a model who teaches equity, a model who preserves the American ideal of equality and fair play.



FLORES SECAS PASANDO

I am deeply saddened. I feel intensely a moral outrage. Chicanos, Mejicanos, Méjico Americanos, Hispanos, todo el mundo, have lost one of our distinguished researchers and writers, one of our so few mental health clinicians, one of our towering intellectuals. We lost him before he was able to make his most important contribution to raza and to minority people everywhere. At age 51, during his sleep last Sunday, Edward J. Casavantes died. Se murió Casavantes esperando justicia en su causa. Adiós, amigo. Adiós, Señor. Adiós, Don Eduardo...

He rose from obscurity to national and international fame. He believed in the American dream, struggled to do always "the right things" in order "to make it." He made it. But the American nightmare killed him.

Beginning as a clinical social worker, he became a clinical psychologist and social science researcher. He was among the first social scientists to distinguish between culture and culture of poverty. He demonstrated how to establish base-line knowledge when he wrote El Tecato. His greatest achievement was as Senior Analyst for the U.S. Commission on Civil Rights when he participated in the preparation and publication of the monumental seven volume Mexican American Education Study that documented the facts, scope, and dynamics of racism against Hispanic youth in education in the



Southwest. Pero se acabó Casavantes.

He died before realizing a victory in his last struggle--the greatest struggle of his life. In the issue of discrimination against Hispanics, he challenged the mighty 19 campus California State Colleges and University system. Indisputable facts show that system is in the process of diminishing the number of Hispanics. Casavantes died because he dared to challenge the system and its exquisite racism. He challenged the American nightmare. Y nos van a pagar.

But he was not afraid, as so many are. He was a man of high principle. He was courageous in the face of his destruction. He would not relent even though his body could not fight. His mind and his spirit were strong. And that is how he will be remembered, for he fulfilled the ideals of the Mexican--ideals reaching back 20,000 years--the ideals of wisdom and creativity, inner strength and awareness, respectfulness and sacrifice. Sadly for his family, he sacrificed completely. Proudly for his children, his ultimate example was cultural perfection. Relentlessly for la raza, he engendered institutional change. What he created will not die.

!Viva Casavantes!

FLORES SECAS PASANDO  
by  
Juan Donald Hernández  
February 19, 1981  
Sacramento, California





# EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

• SAN FRANCISCO, CALIFORNIA 94102 •

CERTIFIED MAIL NOS: 8269223  
8269224

Charge No: 091791339

Edward J. Casavantes, Ph.D.  
945 Saverien Drive  
Sacramento, California 95825

Charging Party

California State University  
6000 "J" Street  
Sacramento, California 95819

Respondent

## DETERMINATION

Under the authority vested in me by the Commission's procedural regulations, I issue on behalf of the Commission, the following determination as to the merits of the subject charge.

Respondent is an employer within the meaning of Title VII and the timeliness and all other jurisdictional requirements have been met.

Charging Party, a Mexican-American male alleges that Respondent unlawfully discriminated and retaliated against him because of his race and national origin by denying him tenure and promotion.

Respondent denies it discriminated during the tenure evaluation process because; (1) It followed all policies and procedures, and (2) Charging Party was denied tenure because of poor teaching ability.

Charging Party contends Respondent retaliated against him for his outspoken and active role in Civil Rights and Chicano affairs. Charging Party also claims that Respondent's tenure committee discriminated against him by (1) not considering his complete professional record; (2) considering an evaluation mechanism with which there was tampering and questionable results, reflecting adversely upon minorities up before the committee; (3) granting tenure to non-Hispanics less qualified or with questionable teaching experience; and (4) not considering that his class sizes doubled with administration refusing to assist him as they had previously done in the reproduction of required materials:

**COPY FOR YOUR  
INFORMATION**



During the academic years of 1976/1977 and 1977/1978, there were 43 full-time faculty members - 32 Whites, 7-6 Blacks, 1 Asian, 1 Native American\* and 2-3 Hispanics. It is undisputed that Charging Party was hired as an Associate Professor in Respondent University, School of Social Work (hereafter referred to as SSW) in September 1973, and was considered for but denied tenure in the 1976/1977 and 1977/1978 academic years.

The issue is whether Charging Party's ultimate denial of tenure was the result of violations of Sections 703(a) and 704(a) of Title VII of the Civil Rights Act of 1964, as amended. Section 704(a) states in part:

"It shall be an unlawful employment practice for an employer to discriminate against any of his employees . . . because he has opposed any practice made an unlawful employment practice by this title, or because he has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this title".

With regard to the latter section, Charging Party must carry the initial burden of establishing a prima facie case of retaliation by showing:

1. He engaged in a protected activity;
2. Respondent was aware of the activity;
3. He suffered harm; and
4. Harm so closely followed on the heels of Charging Party's protected activity that one can infer discriminatory motivation.

Respondent admits Charging Party was very active in the Hispanic and minority community opposing discrimination both on and off the University campus. However, no evidence surfaced showing these activities included opposition to employment practices of which Respondent was aware. Additionally, of those activities of which Respondent was aware, all were credited as a positive aspect of Charging Party's qualifications and experience background. Thus, there is no evidence to support Charging Party's allegation of retaliation.

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\*This individual is viewed by both Anglo and minority faculty to be Anglo.



Section 703(a) states in part:

"It shall be unlawful employment practice for an employer to fail or refuse to hire . . . any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin or to limit, segregate or classify his employees . . . in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of such individual's race, color, religion, sex or national origin . . ."

With this section, as with the former section, Charging Party must also establish a prima facie case of racial/national origin discrimination by showing he was subjected to differential treatment, and/or the added element of showing the existence of significant procedural irregularities in the tenure process.

The burden then shifts to Respondent to articulate a legitimate non-discriminatory reason for its action(s). Shifting again, Charging Party must subsequently demonstrate that Respondent's stated reason(s) is (are) a pretext to hide the real motivation of discrimination.

The University procedures for tenure and retention provide for a retention, tenure and promotion (hereafter referred to as RTP or PRT) primary committee of peers to evaluate the candidate for tenure based on criteria stated in University policy. The RTP primary committee then recommends its evaluation to the Dean of the SSW, and the RTP secondary committee then submits its recommendations and reasons to the SSW Dean, and ultimately to the University President for final action. Prior to the 1977/1978 academic year there was no secondary committee.

PRT Committee A - 1976/1977 (Fall Semester)

Charging Party was initially considered for tenure during the fall semester of the 1976/1977 academic year by RTP Committee A. There were two minority (One Black and one Hispanic), five Caucasian members and one non-voting Black member on RTP Committee A. One of the Caucasian members also served as a Chairperson. The committee reviewed two White women, a Black man, an Asian man, a White man, and Charging Party for tenure and promotion.



A. The factors against which Charging Party was to be measured were:

1. Teaching effectiveness;
2. Professional accomplishments;
3. University service;
4. Community service.

According to PRT procedure V.A., and faculty manual, Section 404.A.1, Charging Party was not evaluated on factors 2, 3, and 4 above. Instead, Charging Party was measured against:

- a. Judgment;
- b. Teaching;
- c. Contribution to social work education.

No other candidate for tenure and promotion was measured against factors "a" & "c". Others were judged on factors 1 thru 4 above.

B. RTP Procedures III A-D state in part that:

The RTP Committee "shall" arrive at its recommendations by review of data from:

1. The faculty member being considered for tenure;
2. Evaluative statements from the member's SSW concentration;
3. Results of student opinion polls to be submitted at member's discretion;
4. Student statements in writing (either for or against member's requested action-in the instant case, tenure-of the RTP Committee)

White committee members did not give weight to the "results of student opinion polls" properly submitted by Charging Party. This fact is corroborated thru Commission interview, and by the Majority Report of Grievance Committee A (which reviewed the RTP Committee actions when Charging Party grieved the latter's recommendation to deny tenure). Grievance Committee A, consisting of 3 White men, conceded the RTP Committee rejected and ignored the evaluation materials submitted. The Majority Report further comments that the RTP Committee substituted two (2) other measures of teaching effectiveness



i.e., Charging Party's "controversial approach to social work" and "quality of judgment in student relations". Moreover, the report relates how school Administration gave tacit approval of Charging Party's technique, and there were no student objections or abuse in his teacher/student relationships.

- C. Grievance Committee A's Minority Report also verifies the fact that the RTP Committee did not evaluate Charging Party by the mandated criteria as previously mentioned in item A above.

Grievance Committee A and RTP Committee members indicate the latter committee was not to hear oral student testimony; PRT Committee minutes bear this out, but one\* student was called in by the White RTP Committee chair to comment on Charging Party. The comment was negative. No students were called in to testify about any other faculty up for tenure.

- D. Statements from RTP Committee members show White members of the Committee were favorably disposed toward White candidates. The same members were critical of minority candidates, didn't give equal evaluative time to minority candidates, and attempted to place restrictions on qualifications of minority candidates which were not placed on Whites. Thus, the atmospheric flavor of the committee was tinged with inequity. For example, the only two voting minority committee members refused to make an evaluation or recommendation on a White woman up for tenure and promotion because the committee only had one document - her resume for evaluation. White committee members actively promoted recommending her for tenure. Charging Party had the required materials, but White members of the committee allowed only cursory review.

More importantly, White members of the RTP Committee recommended early tenure for another White woman who "had never taught period", i.e., had been only a field "instructor", but had not taught in the classroom nor at all at Respondent's University. The University President later rejected RTP Committee A's recommendation because she had not taught. Both situations are violative; the former violates the PRT Committee's own mandate as evidenced in the Committee Chair's 10/28/76 memo, as well as SSW PRT policy IIIA - D (rev. 11/10/76).

The evidence clearly indicates Charging Party was treated differently, and subjected to major procedural violations. The resulting substantial harm done to Charging Party was non-recommendation for tenure (the plum of the evaluative process), and instead, one year of retention.

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\*emphasis is the Commission's



Respondent insists it followed the proper procedures and policies except in hearing oral testimony. According to Respondent, RTP Committee members "maintained that they voted to hear such testimony in this case only in order to substantiate or nullify information contained in student letters or oral complaints." Although Grievance Committee A credited this reasoning, it must be noted that thirty-five (35) favorable recommendations for Charging Party from faculty and students were submitted to the committee Chair while eight (8) negative recommendations were sent. (The Commission finds it incredible that one student could substantiate or nullify recommendations of forty-three other persons).

It is undisputed that there are always a few negative responses against faculty. However, since more than 80% of Charging Party's responses were positive, there arises a credibility question concerning the need for testimony. To buttress the foregoing, the Minority Report of Grievance Committee A factually shows that the "criticism" of Charging Party's teaching effectiveness is not supported by the evidence" which was favorable and constituted the overwhelming response sent to the RTP Committee A.

#### PRT Committee B - 1977/1978

In the spring of 1978 Charging Party again went up for tenure, this time before RTP Committee B. This Committee operated under provisions of University RTP policy #4.13.00 thru 4.21.07 as well as procedures #SG 78-051. Primary Committee B was comprised of two Black and five White voting members, and one non-voting Native American. Secondary Committee B was all White.

There is no dispute that Charging Party's teaching performance was the factor which led to the determination of no tenure or promotion. All testimony as well as written evidence confirm that the data relied upon for the determination, consisted of computerized student evaluations for the fall 1977 semester. This was the first time a teacher evaluation was mandated, and the first time such an instrument was processed by the Dean's office and not by the faculty. It is undisputed that the instrument itself, and its processing, proved to be highly controversial and so questionable that it was abandoned the same academic year it was initiated (fall of 1977/spring 1978). Evidence indicates irregularities associated with the evaluation process, to wit:

1. A computer printout shows complete responses of 4 "students" out of a class of 31, for a Black professor. This class, in fact, was never evaluated. Respondent



reasons that this occurred through computer error. However, evidence reveals that while errors of this sort are technically possible, the processes and procedures surrounding this particular circumstance make it highly improbable. First, it is unlikely that 4 students attempting to write one or more 5 digit codes for their classes would make mistakes producing exactly the same different five digit code for the unevaluated class. Next, the Associate Dean corrected a total of 60 errors after a careful review of each class evaluated. Finally, a "header" form was completed for each class evaluated. This form must exist in order for a printout to be made. The unevaluated class had a printout, so a strong inference is made that a "header" for this class was deliberately produced and that the 4 evaluations were fabricated. This is buttressed by the fact that contrary to the Associate Dean's contentions, an obvious security breach occurred in the handling of the original student evaluation forms since more than 17 of such forms were filed in a White faculty member's personnel file and handcarried to the person who filed them by the faculty member himself. Further, in Grievance Committee B hearings, the Associate Dean himself admitted the forms were highly unsecured.

2. Another Black professor's class was evaluated twice while the other classes were evaluated once. The evaluations used by the PRT Committee were low and the professor claims this resulted in his not being granted tenure.
3. The ranking system used in the instrument demonstrated how one faculty member fared compared to other faculty. Scores (or stanines) which were low were misleadingly taken to indicate poor teaching. Using this system, in a class of approximately 30 students, poor responses from 4 to 6 students would produce significantly lowered stanine scores.
4. All student comments written on forms were typed in a list. None appeared for one of Charging Party's classes even though students in that class claimed they wrote comments. From the foregoing, four facts appear consistently and clearly. First, there were irregularities in processing which had negative impact; secondly, the numbers (4-6) of negative student responses in more than one instance were just enough to



produce significantly lower stanines; next the negative effect and irregularities only impacted on minority candidates up for tenure; and finally, as evidenced by the Anglo Professor's file, there is a clear implication that the student evaluation data could have been tampered with since there was obviously a severe breach in the security handling of the evaluations.

On the other hand, Charging Party admits he did poorly during the fall 1977 semester as compared to other semesters. However, Charging Party's student evaluation printouts for the semester following the "poor" evaluations, and data from semesters before, were good and very competitive with other similarly situated SSW faculty who were recommended for tenure and promotion by the same committees which didn't recommend Charging Party. All faculty interviewed, including the SSW Dean and RTP Committee members, state that no SSW faculty member is denied tenure or penalized for "one bad year" or semester of low student evaluations. They all concur that candidates (as stated by the SSW Dean) are evaluated "over their track record." The committees did not evaluate Charging Party "over the track" as they did others, and they did recommend denying tenure specifically based upon evaluations for one semester. This also is a violation of RTP policy #4.13.01A which states the normal assessment period is 4 years. An Anglo woman was evaluated on not only 4 years, but beyond, in another University.

Even though none of the candidates had stanines as low as Charging Party, all but one of them had classes of 27-31 or less students. The following table shows class sizes of Charging Party compared to similarly situated Professors, i.e., those up for tenure in 1977/1978.

Fall 1977 Semester

	No. of Classes	No. of Students Enrolled per Class	Total Students
Asst. Prof. A Female, White	1	16	16
Assoc. Prof. D Native Amer. Male	2	23;17	40
Assoc. Prof. C Asian Male	2	26;19	45
Assoc. Prof. C White Male	3	10;23;23	56
Asst. Prof. B White Female	3	27;12;19	58
Full Prof. B Black Male	3	12;18;22	52
Charging Party	4	52;61;58;15	186
Assoc. Prof. F Black Male	3	19;15;31	65



It is clear that Charging Party had the most classes with the highest number of students compared to other similarly situated Professors. He also had more undergraduate classes. Charging Party had almost 3 times the number of total students than Associate Professor F who had the next highest total number of students, and was also a minority.

Respondent officials who scheduled classes state there is no way one may determine class enrollment size before assignments are made. However, it is undisputed that undergraduate classes are commonly much larger than graduate classes.

Respondent also states it did not assign graduate courses to Charging Party (in fall 1977) because he did not have a master degree in Social Work nor "considerable experience" in the field, i.e., 5 years. However, this statement is fallacious because Charging Party was assigned not only graduate students, but a graduate course during that semester. Respondent countered that this was before they knew he did not have the degree or experience in the field. Nevertheless, Charging Party subsequently was assigned a graduate course and individual grad students in fall 1978 and spring 1979. The latter was the last semester Charging Party taught. These particular Respondent Officials last scheduled classes in August 1978 for that fall semester (fall 1978). Thus, Respondent's reasons for not giving Charging Party all or more of the smaller grad classes, and none or less of the larger undergrad classes as other faculty, fall before available evidence.

The deliberations of both RTP Committees A and B are questionable not only because of the foregoing, but also because of the overt subjectivity of individual members. One RTP Committee B member, a Black, admitted he voted against Charging Party in large part because he also was being considered before the same committee of which he was a member. Further, from Respondent's evidence it appears that he was not tenured while meeting with the committee. The former is a direct conflict of interest, and the latter a violation of the State Education Code, Division 8, Part 55; Title V of the California Administrative Code Chancellor's Memo PSA 71-57 dated 8/30/71, and CSUS regulations 4.01.00.

Moreover, the RTP Secondary Committee B whose job it is to assure that the RTP Primary Committee B followed procedures, did not object to these procedural violations. Further, some RTP Committee B members admit they allowed hearsay information to influence their decision. Additionally, the committee called Charging Party back after his first presentation so Charging Party could give them added clarification of his teaching effectiveness, and then did not consider the information presented, which was very favorable to Charging Party.

All of the foregoing is also supported by the following factors:



According to witnesses who appeared before Grievance Committee B, and from Commission interview, there was a strong feeling among all minority faculty that 1976/1977 - 1977/1978 was the time to attack minority faculty. During that period two minority faculty members (one Black man and one Chicano) had to grieve the promotions of less qualified Whites over them and won. With no exception there were suspect irregularities concerning the student evaluations process which impacted on only the minority candidates for tenure and promotion in 1977/1978.

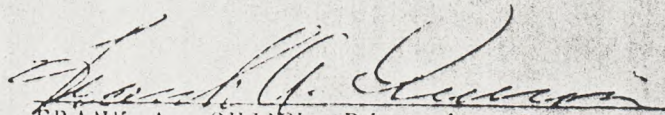
An Anglo Professor in the SSW, in his capacity as an RTP 1977/1978 Committee B member, aggressively questioned a minority candidate, who was before the committee for retention, on her attitude and opinions about racism. The Professor's demeanor and intonation was viewed as having verbally pushed the candidate "against the wall for racism" e.g., did she think racism existed in SSW even though there were minorities on staff? His line of questioning was not relevant for the instant deliberations, and he was stopped by committee members, one Black and one White. The foregoing will serve to show an atmosphere boding discrimination, and an underlying tone of negative racial emphasis.

Respondent's reasons for its actions do not withstand scrutiny, and fall before all available evidence. This combined with the experiences of other minority faculty members in an atmosphere permeated with racial and National Origin discrimination lead the Commission to conclude that the reasons Respondent advanced for denying Charging Party tenure are unconvincing and pretextual. In view of the facts as a whole, the Commission has determined a violation of Title VII has occurred as alleged with the tenure process, and thus; with regard to the negative recommendation for tenure.

Having determined that there is reasonable cause to believe the charge is true, the Commission now invites the parties to join with it in a collective effort toward a just resolution of this matter. A "Notice of Conciliation Process" is enclosed for your information. A representative of this Office will contact each party in the near future to begin the conciliation process.

On behalf of the Commission:

3/22/81  
Date

  
FRANK A. QUINN, District Director

Enclosure