

Howard Schachman Fights Retirement

An eminent Berkeley biochemist's effort to stave off retirement raises pointed demographic—and tenure—issues for research universities

AT WHAT AGE should a university professor retire? Seventy—the age at which federal law currently allows universities to impose mandatory retirement—may sound reasonable, until you consider the case of biochemist Howard Schachman, 71. Schachman's bustling lab at the University of California, Berkeley, is full of graduate students, post-docs, and undergraduates. He has more federal grant support than most researchers 20 years younger. He's a popular and, some say, indispensable teacher. And he's dead set against the retirement the university forced on him last year and the limited reemployment they offered.

Rather than accept the university's conditions, Schachman filed an age-discrimination complaint with the state of California. His controversial stand focuses attention on the conflict between a competent individual's right to work, regardless of age, and the need of research universities to make room for up-and-coming junior faculty.

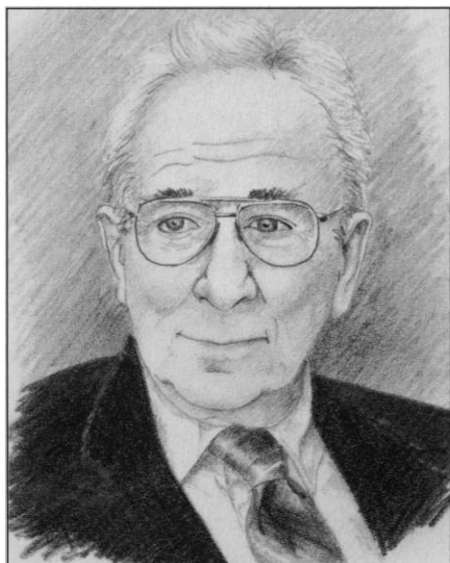
That conflict is sharpened by the huge bolus of faculty hired in the '50s and '60s who are now reaching retirement age. To ensure that their positions are vacated for new faculty, universities asked for an exemption when Congress outlawed mandatory retirement in 1986. And they got it—through 1993. But as that 7-year window closes, a lot of productive, popular scientists like Howard Schachman are turning 70 and getting pinched.

The pinch is made more painful by the possibility that mandatory retirement isn't necessary. Some recent studies suggest that even without mandatory retirement, most professors will continue to retire before age 70 and that the number staying on will have little impact on the availability of faculty positions. Whether that is true hasn't been fully resolved. But it does seem clear that most universities haven't done much effective planning for the conditions that will prevail after 1993—conditions that could lead to a fundamental reappraisal of the notion of tenure.

Schachman's situation is influenced not only by federal law, but also by a more restrictive state law. Since 1983 California has allowed universities to practice mandatory retirement of tenured professors only if

they have policies "permitting reemployment of these individuals on a year-to-year basis."

It is the California law that Schachman has accused the University of California of violating. Before his 70th birthday, in December 1988, Schachman asked his department chairman, Nicholas Cozzarelli, to inform university administrators that Schachman did not want to retire. The administration responded that Schachman would have to retire, but could be recalled to duty—on



Not going gently. Howard Schachman of UC Berkeley thinks his retirement was unlawful.

the university's terms.

Those terms were part of a recall policy UC has practiced for years, calling back more than 100 retired professors to part-time teaching or research duty each year at Berkeley alone. But the specific conditions governing recall had never been spelled out in writing and that fact got the university in trouble during a 1988 age-discrimination lawsuit. The court found UC was violating state law because its recall policy was not written down.

When Schachman's retirement came up in the spring of 1989, UC had not yet spelled out its recall policy. To avert another lawsuit, Berkeley gave Schachman a 1-year reprieve. Although he was officially retired on 1 July 1989, the university agreed to treat

him as though he were not for one more year. He continued to collect full salary and to have all the other rights and duties of a full-time professor. Schachman refused to sign his retirement papers or consider himself retired. The university could not legally retire him, he argued, since it did not have a written recall policy in compliance with California law.

But by the end of 1989 UC did have a written policy. The policy said positions vacated by retirement are generally to be filled by new permanent appointees. Recall of retired professors, the policy states, is to be used as an interim measure, based in part on space and the availability of funds. Recalled professors are not paid a salary—they are expected to collect retirement income—and receive only a nominal teaching fee (\$6000 per course), paid from the same fund that pays graduate teaching assistants.

When Schachman requested, in the spring of 1990, that the terms of his employment be continued for another year, he was offered a recall appointment by the book: \$6000 to teach his physical biochemistry course. He turned down the offer and filed an age-discrimination complaint with the California Department of Fair Employment and Housing. "Using retirement income to replace salary, changing the title to Professor Emeritus, and removing all the rights and privileges of a professor is not 'reemployment,'" he argues in a written statement he provided to *Science*.

Schachman and his supporters believe retirement based on age unjustly exposes a professor to potential loss of lab space and students, leaving him a "guest of the department," as one emeritus professor put it. But California law does allow universities to practice mandatory retirement, provided they have a reemployment policy. So the case against UC, says Schachman's lawyer, Dov Grunschlag, hinges on whether UC policy complies with that law.

UC Associate Vice President for Academic Affairs, Calvin Moore, says the UC policy is in keeping with the law—and is essential to assure continuous renewal of the faculty, he says. But Grunschlag argues that, by making reemployment subject to budget and other criteria, UC policy does not fulfill

the intent of the state law, which, he says, was to make competence the major criterion for reemployment.

Schachman's is a strong test case, because there is no doubt about his competence. In terms of teaching, service, and research, Schachman is "not [merely] good, but extraordinary, operating at the very highest levels," according to Cozzarelli, Schachman's department chairman until 1989 and ardent supporter. Schachman's rigorous course in physical biochemistry has always been one of the most popular courses in the department, Cozzarelli says, and his teaching evaluations are "the highest I ever saw as a chairman." Schachman's grades from the federal funders are high as well: Last year he received a \$1.8-million, 5-year NIH renewal, with a priority score in the second percentile.

Schachman's forced retirement is a blatantly unfair reduction of status, says Stanford biochemist and Nobel laureate Arthur Kornberg. "There is a man who is in mid-career, as far as the vigor of his research, the popularity and importance of his teaching, and his impact on the community. It's utterly absurd to say that because he's reached some arbitrary age . . . that he's to be discriminated against so severely. Why don't they set him out on some peak and let him starve to death?"

By asking that Schachman's retirement be waived, Cozzarelli was saying the department would rather have Schachman than a new faculty member who might fill his slot—a decision the university would not let the department make. But while Cozzarelli may have been speaking for the majority of Schachman's colleagues, not all are so supportive. "It's really an ugly situation right now, because it's putting a rift between Howard and other people in the division," says Randy Schekman, who became Schachman's division chief during a department reorganization in 1989. Schekman, who personally supports Schachman, says the case has put the department in a bind. Because Schachman refused the call back to duty, the department has no one to teach his course. And the university is withholding from the department the position vacated by his retirement, a move that some feel is a reaction to the complaint.

Some of Schachman's colleagues grumble privately that he is being selfish by trying to stay on as a full-time faculty member—that he should retire gracefully and let his slot go to a promising younger researcher. That theme is echoed by Sheldon Steinbach, vice president of the American Council on Education, one of the organizations that lobbied for the faculty exemption in the 1986 federal age discrimination law. "The question," says

Steinbach, "is do you want to try and infuse new blood into the teaching facilities, or allow . . . those who are senior to continue at their choice, rather than the institution's choice, for as long as they want to?"

Yet even Steinbach concedes that the universities haven't done much to plan for 1994, when the current exemption expires. They've been sitting around waiting, he says, for the results of a study by the National Academy of Sciences on the potential impact of ending mandatory retirement. A sufficiently dire prediction could encourage Congress to extend the exemption until the year 2000, which was what the universities wanted—and didn't get—the first time.

But will the academy's findings support the need for mandatory retirement? Probably not, if another recently completed study is any indication. Sharon P. Smith of Fordham University and Albert Rees of Princeton compared data on retirement ages at a sampling of universities and colleges, includ-

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—Arthur Kornberg on
Howard Schachman

ing some in the handful of states that have outlawed mandatory retirement. At public research universities, Smith says, "the abolition of mandatory retirement has no perceptible effect on the mean age of retirement."

Smith and Rees arrived at that conclusion through direct comparisons between three public research universities that still practice mandatory retirement (UC Berkeley, the University of Georgia, and the University of Michigan at Ann Arbor) and three similar universities in states where mandatory retirement has been abolished (the University of Florida, the University of Virginia, Charlottesville, and the University of Wisconsin, Madison).

Smith and Rees say they cannot directly extrapolate their findings to private research universities, because Wisconsin and Maine, the only two states that have outlawed mandatory retirement at private institutions, have no private research universities of the caliber of Harvard or Stanford.

But a recent projection of retirement patterns at one private university—Stanford—suggests the end of mandatory retirement there would not spell disaster. The Stanford study showed that average faculty age did

creep up a few years when the retirement age was raised from 65 to 70 in 1982 and that ending mandatory retirement will probably cause it to rise a bit more.

But the damage is unlikely to be very severe. A worst-case scenario formulated as part of the study suggested that in the absence of forced retirements the number of faculty under age 35 would drop from 171 to 160. "It's significant, but not devastating," says economics professor John Shoven, who directed the study.

But whether one takes the half-empty or the half-full view of what 1994 will bring in terms of the retirement of aging professors, another problem will definitely be thrown into high relief that year. Everyone knows some faculty members who have been unproductive for years but remain in their positions under the protection of tenure. Until now universities have waited until those people turned 70 to reclaim their positions.

But the imminent loss of that easy way out has got some universities thinking about periodic performance review as a way of identifying and retiring nonperformers. Such a policy could amount to a redefinition of the concept of tenure, but that, in itself, is not such a bad thing, according to Schekman, Schachman's division chief. "People can mentally retire at a very early age because tenure protects them," he says.

The difficult question is how tenure would change—and practically any proposal is bound to run into resistance. The UC Berkeley faculty senate recently floated a university-wide plan for identifying and, if necessary, dismissing "grossly incompetent faculty." The proposal has already met resistance at the Los Angeles campus, and Schekman suspects it is doomed because it will be perceived as too great a threat to tenure.

Another controversial idea being tossed around is a change in the salary scale. The present system, in which salaries only move up—but not down—provides financial incentive to stay long past one's prime, says Berkeley's Cozzarelli. For professors who are still productive, but not as productive as they once were, he says, "maybe it's not an inappropriate thing to have a gradual [salary] fall." Schekman agrees. "If there were rungs up the ladder and rungs down, then we might be able to encourage people to retire sooner." Such a scheme may both spur retirement at the end of the working life and also encourage less productive faculty members to get out early.

While most universities are tossing ideas like these around like hot potatoes, at least one major research institution has voluntarily faced the music. Johns Hopkins University has not forced any faculty to retire since

1988, and this year the policy was made permanent. Part of the university's reason was a reflection on what happened in 1982 when retirement age was raised from 65 to 70. In 1981 three prominent professors were forced to retire against their will at 65, triggering "terribly adverse faculty relations," according to Bob Wilson, vice presi-

dent for personnel programs. The stinging memory of that confrontation was a major factor in Hopkins' decision to end mandatory retirement, Wilson says. "Why remake for ourselves the problem that hurt us so badly in 1982?"

If Howard Schachman and his supporters have their way, that is just the advice that

UC and other universities would heed. The mandatory retirement policies would be lifted now, and universities would then be forced to think about what they need to do after 1993, when the larger questions of age, tenure, and competence will reemerge in a new—and permanent—form.

■ MARCIA BARINAGA

Conflict of Interest: PHS Readies New Rules

The Public Health Service is about to serve up its second attempt at drafting rules to guard against conflict of interest among biomedical researchers supported by federal funds—but already there are indications that the PHS could double fault. The first effort, drafted last September, generated more than 700 letters of protest, prompting PHS to sound a retreat. The latest effort may please some critics—the rules are less restrictive and they only apply to clinical research—but at least one influential congressman, Representative Ted Weiss (D-NY), has already made it clear that he now considers the proposed rules far too lax.

The National Institutes of Health began writing the rules last year under prodding from Congress—especially Weiss. The intent was to develop explicit guidelines governing how and when—and if—researchers receiving federal money could have financial interests in private companies that might be affected by their research. But Health and Human Services Secretary Louis Sullivan ordered NIH staff back to the drawing board last December after the department received a flood of complaints that the guidelines would stifle nascent attempts to promote industry-government collaborations (*Science*, 12 January, p. 154). The guidelines were also attacked for being too vague—and thus impossible to comply with—and an administrative nightmare.

NIH came up with a new version of the guidelines on 31 May and sent it along to assistant secretary for health James O. Mason. Acting NIH director William Raub, in a covering letter, argued that they should be made to apply to all areas of biomedical research. "We could argue, as many do," he wrote, "that financial conflicts of interests are more pernicious in clinical research than elsewhere, because only there could biased studies find almost immediate application in the health care system." But, Raub concluded, "Prudent stewardship means doing everything reasonable across the board toward assuring that we get the best and most convincing research results the public's money can buy."

The department overruled Raub, however—Mason decided that the new rules, at least initially, would cover just clinical research. They also describe financial interest as "any interest of monetary value which may be *directly and predictably affected by a clinical trial* [emphasis added]," a much narrower definition than previously used.

A draft of the new rules, dated 16 July, delivered to Weiss's committee staff leaves the major responsibility for determining

what is an unacceptable conflict of interest to the institutions receiving federal funds for research, just as last year's rejected effort did. Financial links to companies should be allowed only if they are "judged unlikely to compromise the design, conduct, or reporting of the PHS-supported research," the draft rules state.

It is this flexibility that Weiss finds objectionable. And, as chairman of the human resources and intergovernmental relations subcommittee of the House Committee on Government Operations, he's in a position to make his objections felt.

For the past few years, Weiss has been holding hearings to call attention to what he sees as problems in the way the government handles charges of scientific misconduct or conflict of interest. In a report issued earlier this week,* Weiss's committee argues that "the public may be misled and endangered by scientific misconduct and conflict of interest, and that protection from biased or fraudulent research currently depends on individuals and medical journals, because universities and federal agencies do not provide adequate safeguards." The report details ten cases of alleged misbehavior by scientists, most of which have already been well publicized.

The report argues that Congress should enact legislation that would "restrict honoraria, consulting fees, stock ownership, and other financial conflicts of interest for scientists who conduct federally funded biomedical research." It criticizes the new PHS rules on conflict of interest for "[maintaining] the status quo" rather than requiring private and public institutions to clean up their act. In addition, the report argues for more protection for whistle-blowers and encourages NIH

to do a better job of enforcing existing policies governing scientific misconduct.

Public Health Service officials declined to comment on the report, saying only that "the Secretary and the Assistant Secretary for Health wish to assure the public that any use of public funds for research will be done in a quality way." As for the new conflict-of-interest rules, the PHS statement merely says they are still being developed. But a source familiar with the rules says Sullivan is expected to be briefed on a final version this week. Once they are published in the *Federal Register*, the new rules will once again be open for public comment.

■ JOSEPH PALCA



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Not Impressed. Ted Weiss wants stricter rules.

*"Are scientific misconduct and conflicts of interest hazardous to our health?" (report by the Committee on Government Operations, U.S. Government Printing Office, Washington, D.C., 1990).