

MEMORANDUM

October 31, 1996

TO: President Hasselmo

FROM: Acting Associate Vice-President Farber

RE: Revised Sullivan Tenure Proposal

In general, the Sullivan proposal is an effort to seek common ground by melding some elements of the Spence proposal with elements of the Senate's proposal. Because the Sullivan proposal only introduces a few new elements, I think it would be simplest to provide my assessment of these new elements in Q & A form. Note that the proposal would apply only to the law school faculty.

How does the revised proposal differ from the original Sullivan proposal?

- Essentially, the only differences relate to procedures for discipline.
- The original proposal called for a task force to study procedural issues, but the Senate said that the resulting delay would be harmful to the University, so Dean Sullivan has now made his own procedural recommendations.
- The procedural recommendations are close to those originally proposed by the Senate itself, but with some fine-tuning.
- Changes from the Senate proposal (discussed in more detail later) are designed to streamline the process without impairing in any respect the faculty member's rights to due process and academic freedom.

Under the Sullivan proposal, how would the University handle programmatic changes?

- Unlike the Regents proposal, no special process would be required before the change is made. Thus, programmatic changes would be simpler to accomplish.
- The University could recoup part of the faculty member's salary by "contracting out" the faculty member to another institution, which would then pick up the bulk of the salary.
- The University would offer faculty members retraining or reassignment. If the faculty member was unhappy with the offer, he or she would have two choices:
 1. Accept a severance package, or
 2. Begin work on the new assignment, and then bring a Judicial Committee case to challenge the reasonableness of the assignment.

Note that the faculty member would *not* be able to delay the reassignment by filing a grievance. Thus, the process of reorganization would be streamlined. On the other hand, no layoffs would be allowed.

Under the Sullivan proposal, how would the University gain financial flexibility?

- In the event of a financial shortfall, across-the-board decreases could be made in base pay. It would not be necessary to use the cumbersome procedures for "financial exigency," which only come into play when the University faces virtual bankruptcy.
- In one version of the Sullivan proposal, the salary adjustment could be made when a particular college (rather than the entire University) encounters financial troubles.

- As noted above, the University would also have the right to "contract out" faculty in connection with programmatic changes.

How does the Sullivan proposal affect the grounds for discipline?

- It adds a new "catch all" basis for termination, to handle cases that don't fall clearly within the existing categories. At the same time, it avoids using an ambiguous phrase like "adequate cause" to describe the grounds for discharge.
- For the first time, it explicitly recognizes the existence of lesser sanctions for less serious misconduct.
- It provides a streamlined procedure for minor discipline, such as a letter of admonition in a faculty member's file, with a right to a hearing before the sanction goes into effect.

What about the need for procedural reform?

- The revised proposal largely follows the Senate's recommendations. For example, it does not mandate that the legal officer preside at hearings.
- It goes beyond the Senate in eliminating any incentive for a faculty member to stall during termination proceedings. If the proceedings last more than a year, the faculty member is suspended unless (a) the recommendation to terminate was not supported by the departmental faculty or (b) unnecessary delays have been caused by the University.
- According to the drafter of the 1985 tenure code, administrative participation in establishing Judicial Committee rules was accidentally omitted. The proposal gives the administration the same role in approving these rules as in other tenure-related procedures.
- Like the Senate version, it continues the tradition of giving heavy weight to the Judicial Committee's recommendations. It does make a small change in the wording of the provision to discourage unnecessary litigation.