**MEMORANDUM**

October 14, 1996

TO:
Senate Sub-Committee on Tenure
Senate Committee on Faculty Affairs
Senate Judicial Committee
Faculty Consultative Committee
Members of the Faculty Senate

FROM:
Fred L. Morrison

SUBJECT:
New Tenure Proposals

At its meeting on September 5, the Board of Regents requested that the Faculty Senate and its committees consider a draft revision of the Tenure Regulations that had been prepared by the Hogan and Hartson law firm. Meetings were duly schedule, but were suspended when the Bureau of Mediation Services issued its Status Quo Order. The Faculty Consultative Committee informed the Regents that, because that proposal affected faculty covered by the Status Quo Order, it did not feel able to proceed to it unless specifically requested to do so. No such request has been made.

At its meeting on October 11, the Board of Regents formally requested that the Faculty Senate and its committees consider two new proposals that had been submitted to it that day as a new Tenure Policy to apply only to the Law School. (The Law School is not subject to the Status Quo Order). The two proposals are:

1. a draft, dated October 9, submitted by Regents Reagan and Spence (hereafter referred to as the "Reagan/Spence proposal"; and
2. a proposal, dated October 10, submitted by Dean Sullivan of the Law School.

In the course of the deliberations, one of the Regents also asked that a proposal submitted by Professor David Lykken, of the Psychology Department, also be taken into consideration. That proposal relates only to a single section of the Regulations.

At the request of the Chair of the Tenure Sub-Committee, I have prepared the following summary and analysis of the two proposals upon which the Senate has been asked to give its recommendation. (As appropriate, references are also made to the Lykken proposal.)

A chart on the following page shows the relationship between the June Faculty Senate drafts and the two alternative proposals. The subsequent text deals only with those sections in which there are differences among the several recommendations.

**TABLE OF SECTIONS**

(NOTE: All three versions include the "provostial governance" changes introduced by Faculty Senate proposal A, and the change from "non-regular appointment" to "term appointment" introduced by Faculty Senate proposal C. These changes run throughout the document, involving minor amendments in virtually every section, and are not further noted here.)

| Section | Faculty Senate | Reagan/Spence | Sullivan |
|---|---|---|---|
| Preamble | New text (Motion J) | Same | Same |
| 1. Academic Freedom | Amended (Motion B) | Same | Same |
| | | | |

| | | | |
|---|---|---|---|
| 2. Applicability | Amended (Motion K) | Same | Same |
| 3. Ranks, etc. | Amended (Motion C) | Same | Same |
| 4. Terms of app't (base pay issue) | Amended (Motions D & L) | Changes | Other changes |
| 5. Max. probation | Amended (Motion E) | Same | Same |
| 6. Regular faculty | No changes | No changes | No changes |
| 7. Probationary | Amended (Motion I) | Same | Same |
| 7A. Post-tenure review | New (Motion H) | Adds additional section 7A.5 | Adds additional section 7A.5 |
| 8. Term faculty | No changes | No changes | No changes |
| 9. App'ts with tenure | No changes | No changes | No changes |
| 10. Fac. discipline | No changes | Major changes | Other changes |
| 11. Fiscal emergency | No changes | No changes | Moves section |
| 12. Program change | No changes, but adds Interpretation | Major changes | Other changes |
| 13. Judicial Cttee. | Amended (Motion F) | Major changes | Restore 1985 text |
| 14. Procedures-I | Amended (Motion G) | Major changes | Restore 1985 text |
| 15. Procedures-II | No changes | Major changes | Restore 1985 text |
| 16-19. Final clauses | No changes | No changes | No changes |

**Comments on the Reagan/Spence Proposal**

**Summary.** The Reagan/Spence proposal differs from the June draft proposed by the Faculty Senate in the following ways:

In section 4.4 (base pay), it differs in a number of small details from the Faculty Senate draft. It no longer provides for reductions of base pay, except in narrowly defined circumstances, and thus differs significantly from the September Hogan & Hartson draft. The draft is nevertheless based on that Hogan and Hartson language, and thus some anomalies remain.

It follows the Faculty Senate version of section 7A (post-tenure review), but adds a new section 7A.5, which would permit colleges to adopt other post-tenure review systems, if the Faculty Senate approved.

Section 10 (faculty discipline) is also based on the Hogan and Hartson draft, but deletes some of the most criticized language, such as the "proper attitude" passage. The language, however, still retains "adequate cause" as the basis for termination of faculty appointments, listing five specific causes as illustrations. (This is in contrast to the present Code which list four specific causes.) Each of the existing causes is expanded, making removal of faculty members easier; an additional cause is added. The text also allows "other disciplinary actions," including unlimited pay reductions, without prior hearing. Hearings in such cases would be before an outside labor arbitrator, who is prohibited from hearing academic freedom complaints.

The document retains the authority of the University to dismiss tenured faculty in section 12 (programmatic change). The section is, however, softened. It requires the decisions to be made on the basis of long-term plans and gives the faculty a slightly enlarged role in reviewing them. The procedural aspects remain, however, unchanged, including a virtual exclusion of any meaningful review of decisions to dismiss a faculty member.

Sections 13, 14, and 15, dealing with the structure of the Judicial Committee and with its procedures, remain unchanged from the Hogan & Hartson draft that was proposed at Morris in September.

**Comments.** The following comments address each of the sections in which there is a difference between the Faculty Senate proposal and the Reagan/Spence proposal. Some of these comments are new responses to the proposal. Others were originally expressed in connection with the September Hogan and Hartson draft that have neither been addressed in the text of the proposal, nor responded to in any other way.

**Section 4.4.** In this section, Regents Reagan and Spence have eliminated the express provision for reduction of base salaries. The language of the section, however, appears to contemplate reductions, by providing for written notices and providing for appeals to a labor arbitrator. This may simply be a drafting oversight.

**Section 7.5** This section would permit alternative post-tenure review processes to be adopted for a particular college, on the proposal of the dean of that college and the approval of the Faculty Senate. This introduce a welcome flexibility. The section should, however, also involve the faculty of the college (or the representative body of that college) a role in proposing and shaping the alternative processes.

**Section 10.2** The proposal eliminates some of the most offensive language from this section. It appears, however, to continue to authorize discipline for "adequate cause," a vague and uncertain term. If so, it should be rejected as overbroad. If not, it is without operative purpose and should be deleted as redundant.

**Section 10.21** This section has three significant features.

First, contrary to the assurances provided in the covering memorandum, it continues to provide "adequate cause" as the basis for dismissal of faculty members. This is perhaps most evident if the language is seen as it would be after adoption (without capitalizations or strikeouts):

A faculty appointment may be terminated or suspended before its ordinary expiration only for adequate cause, including one or more of the following causes...

It is clearly not language that limits to the following list.

Second, each of the existing specified "causes" is made broader. In one case, item (1), the burden is placed on the faculty member, rather than on the administrator, to prove the case. In other cases, the current requirement that conduct be repeated or egregious is deleted, permitting dismissal proceedings for a single act. The change in item (3) alters the structure of the sentence, to permit the University to impose disciplinary sanctions for non-work-related conduct that has no impact on the workplace.

Third, a new fifth "cause" is added. It has been carefully modified to limit its application. The new limitations, which are a welcome restriction of this removal power, would apply only under this fifth paragraph

You should also note that the draft presented by the Regents does not accurately reflect the language of the present Tenure Regulations.

**Section 10.22** This section was unchanged since the September draft. Comments at that time included the following, to which no response has been made:

1. This provision contains no definition of grounds for discipline more specific than "adequate cause." This leaves a decision about what constitutes such case in the first instance in the hands of the immediate supervisor of the faculty member. Especially in light of the limited procedural protections provided, this is disturbing.

2. This provision does not limit the sanctions that may be imposed. The three listed are only illustrations ("include, but not limited to"). Thus except for termination of the appointment, the range of punishments is limited only by the limits on the imagination of the disciplining administrator.

3. There is no requirement that the punishment be proportional or appropriate. Once the "adequate cause" has been shown, the level of punishment is entirely within the discretion of the administrator. A pay reduction could be of any magnitude (e.g., 50% of salary), as this is drafted. Since the level of punishment involves an exercise of the

administrator's discretion, that issue could not be reviewed in a grievance under the Grievance policy, since that policy expressly excludes review of discretionary decisions.

4. Could suspension from duties be used, e.g., to exclude a faculty member from participating in important faculty business, such as tenure decisions or selection of new faculty members?

**Section 10.3.** This section is also identical to that proposed in the Hogan & Hartson draft. There has been no response to the commentary about that draft, which stated:

1. The language does not indicate the level of administrator authorized to act. Presumably a department or section head could impose any of these punishments without reference to or review by any dean or senior administrator. In light of the limited training and experience of these officers, it seems unwise to grant such authority to the lowest level administrators.

2. The exclusion of "formal proceedings of any kind" before action seems excessive.

3. The right of appeal under the Grievance policy does not provide adequate protection. First, all complaints of violations of academic freedom are excluded from consideration under the Grievance Policy (Sec. II.B. para. 3). Thus this policy would divert such claims from the Judicial Committee to the grievance process; then the grievance process would find them excluded! Second, under the Grievance Policy, the proportionality or appropriateness of a punishment would be subject to very limited review. (Sec. II.B., para. 2) Thus, as long as some minor infraction could be demonstrated, the administrator involved could impose a major penalty and escape review of its appropriateness. Third, the final decision under the Grievance Policy would be made by an outside labor arbitrator, not by peers.

**Section 12.1** The new version of section 12.1 adds several limitations to the program termination provisions of the Regulations. First, it requires programmatic change decisions to be made on long-term institutional objectives, not short-term financial considerations. Second, it provides for application of this section only in cases of "discontinuation" of a program, and eliminates the word "restructuring." Third, it extends the period for faculty consultation about the program change from 60 to 90 days. The word "program" is still undefined and could be as small as a single faculty member's activities. As stated in the September commentary [modified to reflect the elimination of "restructuring" in the current draft]:

"This transforms the protection of tenure into a protection only so long as the President and Regents continue the faculty member's "program." A program can be discontinued . . . on 60 [now 90] days' notice, with only limited faculty input. The word "program" is not defined and could be as small as a single faculty member's specialty. (E.g., in the case of the late Mulford Sibley, who was frequently attacked by politicians and others outside of the University, a discontinuation of "utopian political theories" could have led to the abolition of his position.)

**Section 12.2** This section is unchanged from the September Hogan & Hartson draft. The comments at that time included:

1. The draft does not firmly commit the University to offer reemployment or retraining. Reassignment or retraining is limited to other faculty positions and thus gives the University less flexibility in new assignments than does the Faculty Senate's proposal (e.g., it does not appear to permit transfer to administrative or professional assignments). Thus the probability of finding a suitable place for a terminated faculty member is lower under this policy than under that offered by the Faculty Senate's interpretation.

2. Because of the way [the introductory language of the second paragraph is] drafted, a faculty member would have no enforceable right to reassignment or retraining, nor would a faculty member have a right to review. The test stated there is not whether reassignment or retraining would be "impracticable," but rather whether "in the University's judgment" it would be impracticable. The University could meet that claim simply by reciting its assertion of impracticability in its letter of dismissal, and thus avoid any review. The language is drafted in a way that excludes any possibility of independent review of the level of effort of the University to reassign or retrain faculty.

3. Note that this section effectively renders section 11, relating to financial emergencies, a nullity. Under this proposal, it would be easier to dismiss a faculty member if there were no financial crisis, than if there were one!

**Section 13.2** This language is also identical to that proposed in September. The comments was: "The change at lines 3-5 would require Board approval of changes in Judicial Committee rules. This may be involving the board excessively in matters of detail. A better choice might be to parallel section 16.3, which requires approval of the procedures for granting tenure by the Tenure Committee and the Vice President for Academic Affairs, with reports to the Board and to the Faculty Senate."

**Section 13.5** This language also remains unchanged. Although the Judicial Committee has welcomed the availability of independent legal counsel and may itself expand the functioning of that officer, it remains concerned about placing in a non-faculty member full authority to "regulate the procedure" it follows. This seems to fly in the face of the concept of "peer review."

**Section 14.2** Here, again, the Regents' proposal simply follows the language of the September draft that was presented at Morris. The commentary then was:

1. The Faculty Senate draft used this section to authorize the imposition of lesser sanctions and to provide adequate procedures to regulate them. The Regents' draft does so in section 10.22 (with only rudimentary procedures) and deletes that item here.

2. The shift from "must" to "shall" in -[the next to last line of the draft] either reflects a preference for archaic drafting style or a desire to "soften" the requirement that the faculty member be provided a copy of the recommendation. The Regents' draft repeats this change in some (but not all) of the instances in which the word "must" in found in the Regulations.

**Section 14.4** This is another section in which the Reagan/Spence draft simply copied the Hogan and Hartson proposal, without responding to the commentary on it, either in the text of their draft or in explanation. The commentary then was:

1. The Regents' draft removes the requirement that the President respect the conclusions and recommendations of the panel that actually heard the case. The original text provided that he could deviate from those recommendations only for "compelling reasons." The Regents' draft would permit deviation for any reason, however trivial. . . . The President and administration have never requested such a change and apparently do not do so now. The source of the concern promoting this amendment remains mysterious.

2. The 1985 regulations continued to give the President authority to overrule the Judicial Committee, if the reasons were sufficiently compelling. It sought to enforce this requirement of fairness and due process by imposing a legal standard (the "compelling reasons" test) and a procedural check (before doing so, the President would have to meet personally with the Judicial Committee, and the President would know that his deviation from the expectation of respect for Judicial Committee decisions would become widely known). The Regents' draft eliminates both of these checks, allowing the President to act secretly.

**Section 14.5** The initial report on this section stated: " The Faculty Senate proposal eliminated the appeal to the Board of Regents as part of its effort to expedite the proceedings. Appeals to the Board have rarely, if every, been successful. Careful consideration of individual appeals would require substantial time, which might detract from other important business of the Board. If the Board wishes, however, to continue to exercise this responsibility, there is little or no reason to oppose the change."

**Section 14.6** This proposal would permit suspension without pay during removal proceedings under certain circumstances. The September review of this provision, which is unchanged, stated:

1. The Regents' draft . . . permits the initiating administrator to suspend a faculty member without pay, beginning 30 days after formal removal proceedings have commenced, if the departmental tenured faculty previously

concurred in the recommendation to terminate the appointment. This is apparently aimed at discouraging the charged faculty member from dragging out the proceedings to retain salary. One issue is whether back pay should be automatic, if the faculty member is not in fact found liable for termination.

2. Note that the standard for temporary suspensions with pay is changed to allow such suspensions for other "compelling reasons." The procedures to be followed in such cases are also simplified to keep this preliminary action from detracting from the principal proceeding. The Faculty Consultative Committee would be able vigorously to protest any unwarranted suspension.

**Section 15.5** This section deals with actions by the President in reviewing certain actions of the Judicial Committee not involving the removal of a faculty member. The comments to section 14.4, above, apply in a parallel fashion.

**Conclusion.** Although the draft shows substantial improvements over the September document, it will presents substantial challenges to due process and academic freedom, and would serve as an obstacle to change in the University.

It denies or limits due process in providing for major sanctions (such as large pay cuts) without prior hearing, by eliminating the obligation of the President to give proper deference to Judicial Committee determinations, and by excluding academic freedom issues from review in many cases. The vagueness of the disciplinary standards and of other provisions leads also to this concern.

It attacks academic freedom by excluding those issues from scrutiny in cases involving programmatic change and in all discipline cases other than termination. The structure of the programmatic change section also would permit abuses of academic freedom without any possibility of review.

The proposal probably would be an impediment to change at the University, because it would place faculty member's appointments in jeopardy if change were approved.

## Comments on the Sullivan proposal

**Summary.** The Sullivan proposal is presented in an effort to find a common ground between the Regents' document and the Faculty Senate version. It focuses on two separate groups of issues: (1) programmatic change and the financial stability of the University, and (2) disciplinary actions regarding faculty members.

The "programmatic change/financial stability" portion of the package focuses on two sections of the proposals, sections 4 (base pay) and 12 (programmatic change). It takes the following approach:

With respect to programmatic change, it takes much of the Interpretation discussed in the Faculty Senate and approved by the Tenure Sub-Committee, permitting broad reassignment powers, but places this explicitly in the text of a new section 12.3. It then recognizes that some faculty members may choose not to accept reassignment and provides for the termination of their employment in language that parallels that found in the earlier drafts from the Regents.

To deal with the possibility that there may be shortfalls, this draft also draws on an existing provision of the 1985 Regulations (section 11.4) to introduce a new section (new section 4.5) permitting the Board of Regents and the Faculty Senate jointly to provide for University-wide (or college-wide) pay cuts to deal with financial stringencies short of financial exigency. These could not be applied discriminatorily against individual faculty members.

The approach thus draws from both the Regents' and the Senate drafts and would represent concessions by both sides.

The "discipline" sections are similarly constructed. The major elements include:

Elimination of the vague "adequate cause" language in sections 10.2 and 10.21, as well as the broader definitions of grounds for "removal for cause" in section 10.21. On the other hand, it would recognize a general cause of "grave misconduct manifestly inconsistent with continued faculty appointment" as a basis for removal.

It would permit the imposition of other sanctions on faculty members, but would require prior hearing before an impartial body, if the faculty member requested. In order to ensure peer review and the protection of academic freedom, such cases would be heard in the Judicial Committee, but under procedures less strict than those in removal cases.

It would postpone other controversies, involving the relationship between the Judicial Committee and the administration for further study, thus leaving the 1985 Regulations in place for these issues.

The proposal would also accept the addition of section 7.5, permitting colleges to adopt their own post-tenure review policies with the approval of the Faculty Senate. It would also have the incidental effect of preserving the appeal to the Board of Regents in removal cases, as the Regents have sought.

**Comments.** The following comments are arranged by section number, indicating the relationship of the proposal to the Faculty Senate and to the Reagan/Spence proposal.

**Section 4.4** The Sullivan proposal follows the text of the Reagan/Spence proposal, but makes some small changes to eliminate language inconsistent with the fundamental proposition that base pay can only be reduced for the listed reasons. [Sullivan differs, but only slightly, from both other versions.]

**Section 4.5** The Sullivan proposal would permit the President to propose across-the- board salary cuts for the entire University or for a single college, without declaring financial emergency. The cuts could take effect only if approved both by the Faculty Senate and by the Board of Regents. They must be applied by a mathematical formula, not by individualized action. It is adapted from an existing provision, section 11.4. [The Sullivan proposal is the only version to contain this section in this place.]

**Section 7A.5** The Sullivan proposal adopts the Reagan/Spence suggestion of permitting colleges to fashion their own post-tenure review procedures, with the approval of the Faculty Senate. [The Sullivan proposal, like Reagan/Spence, adds a new section here.]

**Section 10.2** (new numbering) The Sullivan proposal eliminates this language entirely. It thus eliminates any ambiguity as to whether this section itself provides grounds for disciplinary action or is merely an introduction to the two following sections. [The Sullivan proposal thus eliminates a new provision added by Reagan/Spence.]

**Section 10.21** (Section 10.2 of the 1985 Code) This proposal is a mixture of the Reagan/Spence draft and the 1985 Code. First, it eliminates the ambiguous "adequate cause" language in the introductory part. Second, it retains the existing language for the first four grounds for termination of a faculty appointment. Third, it adds a new fifth ground, copied from the Reagan/Spence language. [The Sullivan proposal is a mixture of the two other versions.]

**Section 10.22** There is a general rewrite of this section, to require serious violations before the imposition of sanctions, and to eliminate reference to any particular sanctions that could be imposed. [The Sullivan proposal differs from Reagan/Spence; there is no comparable provision in the Faculty Senate version.]

**Section 10.3** The new proposal permits lesser sanctions to be imposed without resort to the full disciplinary procedures of section 14. On the other hand, unlike the Reagan/Spence draft, it requires a hearing to be held before a punishment is imposed, rather than after-the-fact, if the faculty member requests one. [The Sullivan proposal differs in detail from Reagan/Spence; there is no comparable provision in the Faculty Senate version.

**Section 12.** The Sullivan proposal retains the language of sections 12.1 and 12.2 of the 1985 Code, regarding programmatic change. It then adds two further sections, 12.3, drawn from the Faculty Senate's Interpretation, and 12.4, drawn from the Reagan/Spence document.

In brief, the new draft would give faculty members a right to reassignment and retraining, but would emphasize the flexibility that the University has in making any reasonable assignment. This language of section 12.3 is drawn from the Interpretation that the Senate discussed last spring, but is now incorporated into the Tenure Policy itself to emphasize its impact. Disputes about the reasonableness of an assignment would be handled by the Judicial

Committee, to assure peer review and to ensure that academic freedom concerns could be heard.

Under section 12.4 a faculty member would, however, be able to refuse reassignment and take a termination option. The language of that option is drawn from part of the text of section 12.2 in the Reagan/Spence draft.

[The Sullivan draft thus draws on both other documents, as well as the 1985 Code, to provide an alternative solution.]

**General comment of sections 13-15.** Dean Sullivan also proposes a review of the issues involving the relationship of the Judicial Committee to the University administration, and of other procedural matters. This is particularly appropriate, because most of these issues were not raised when the original tenure proposals were before the Senate in April and May, nor has there been any reasoned explanation of their purpose or impact. His basic approach is to retain the 1985 draft, except where there is already agreement between the Senate and Regents' proposals, until the underlying issues are articulated and discussed.

**Section 13.2** The proposal would retain the present language regarding Judicial Committee rules, pending a thorough review of the proposal. [Differs from Reagan/Spence; retains existing Regulations.]

**Section 13.5** The proposal would omit any formal reference to the Legal Officer, until the review could be completed. Under the existing Regulations, the Judicial Committee has appointed an attorney-adviser to assist it in its proceedings; the appointment was made with the agreement of the President and the General Counsel. The relationship between the legal adviser and the committee is evolving. Thus a decision not to make an amendment at this time would not have an immediate impact. [Differs from Reagan/Spence; retains existing Regulations.]

**Section 14.1** As a consequence of providing an alternative procedure for dealing with discipline other than termination or suspension, this version eliminates the reference to lesser sanctions that was included in the Faculty Senate version. [Follows Reagan/Spence, albeit with a different alternative procedure; differs from Faculty Senate version.]

**Section 14.4** Dean Sullivan would postpone resolution of the issues involving the degree of respect that the President must give to Judicial Committee decisions until the study of Judicial Committee processes can be completed. Thus the language in this section would remain unchanged. [Differs from Reagan/Spence; retains existing Regulations.]

**Section 14.5** Following the general principle stated above, Dean Sullivan would simply retain the existing 1985 language for this section. Since the Faculty Senate proposed to eliminate the possibility of appeal to the Board of Regents, but the Reagan/Spence draft would retain it in another form, this has the effect of retaining the appeal. [In practical effect, this supports the Reagan/Spence position, although in different language; differs from the Faculty Senate language.]

**Section 14.6** This issue, as well, is postponed until completion of the study on faculty judicial processes. The issue of temporary suspensions of faculty during proceedings was not publicly raised during the tenure discussions last spring, nor has there been any explanation of the approach since the publication of the Morris draft in September. Thus postponement of the issue until it can be fully examined appears appropriate. [Retains original text; differs from Reagan/Spence provision; no comparable provision in Senate proposals.]

**Section 15.5** The resolution of this issue parallels that of section 14.4 above.

**Conclusion.** The Sullivan proposal reflects an effort to draw on both pending documents, the Faculty Senate draft of June and the Reagan/Spence draft of October 9. It appears to address most of the concerns about the latter draft, as articulated above, while addressing the core concerns of the sponsor Regents in promoting programmatic change, maintaining financial stability, and providing for appropriate discipline. It postpones resolution of issues about the reorganization of judicial responsibilities until the underlying issues can be fully discussed in an appropriate forum.

### Comments on the Lykken Proposal

**Summary.** Professor David Lykken submitted a proposal for consolidation of some functions of the Academic Misconduct Committees (and possibly those of other similar bodies) with the functions of the Judicial Committee. The

intent was both to ensure that faculty received a hearing before punishments were imposed and to eliminate wasteful duplication of effort between the two bodies.

At the October 11 Regents' meeting, one Regent asked that this proposal also be taken into consideration by the Faculty Senate.

**Comment.** The proposal was originally submitted to the Tenure Sub-Committee in May of 1996. Given the heavy load of other issues then pending and the complex interrelationships between the Tenure Regulations, the Academic Misconduct Policy, and federal guidelines, the Tenure Sub-Committee decided that addition of this issue to the complex of issues then pending would be impossible. The Sub-Committee intended, however, to begin a serious study of the issue, as soon as the present round of amendments had been concluded.

The Lykken proposal has merit. It could lead to a reduction of duplicate effort that goes into these proceedings today. It would, however, require substantial effort to adopt and implement. Provosts and deans would have to accept new responsibilities; assurances with federal agencies would need to be renegotiated. Committee procedures would need to be altered. These are not reasons to reject the proposal, but it cannot be adequately discussed and evaluated in the short time available before the November Regents' meeting.

**Conclusion.** The Lykken proposal should be made part of the study of judicial processes and procedures that is suggested by Dean Sullivan.